

HUMAN

RIGHTS

HUMAN

**CIVIL SOCIETY REPORT  
ON HUMAN RIGHTS  
IN KOSOVO IN 2020**

HUMAN

RIGHTS

MAY 2021

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# LIST OF ABBREVIATIONS

<b>ACA</b>	Anti-Corruption Agency
<b>ACG</b>	Advisory and Coordination Group for LGBT+ individuals in Kosovo
<b>AJK</b>	Association of Journalists of Kosovo
<b>AoK</b>	Assembly of Kosovo
<b>BSPK</b>	Union of Independent Trade Unions of Kosovo
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CERD</b>	Convention on the Elimination of All Forms of Racial Discrimination
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CRSV</b>	Conflict-related sexual violence
<b>CSO(s)</b>	Civil society organization(s)
<b>CYAC</b>	Central Youth Action Council
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms
<b>EU</b>	European Union
<b>FCPNM</b>	Council of Europe Framework Convention for the Protection of National Minorities
<b>GCMP</b>	Governmental Commission on Missing Persons
<b>GoK</b>	Government of Kosovo
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICRC</b>	International Committee of the Red Cross
<b>IMC</b>	Implementation and Monitoring Council
<b>IPA</b>	Information and Privacy Agency
<b>Istanbul Convention</b>	Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence
<b>KCS</b>	Kosovo Correctional Service
<b>KGVK</b>	Committee of Blind Women of Kosova
<b>KIPH</b>	Kosovo Institute of Public Health
<b>KJC</b>	Kosovo Judicial Council

<b>KPC</b>	Kosovo Prosecutorial Council
<b>KPCVA</b>	Kosovo Property Comparison and Verification Agency
<b>K-Albanian</b>	Kosovo Albanian
<b>K-Ashkali</b>	Kosovo Ashkali
<b>K-Bosniak</b>	Kosovo Bosniak
<b>K-Egyptian</b>	Kosovo Egyptian
<b>K-Gorani</b>	Kosovo Gorani
<b>K-Roma</b>	Kosovo Roma
<b>K-Serb</b>	Kosovo Serb
<b>LGBT+</b>	Lesbian, Gay, Bisexual, and Transsexual
<b>LYACs</b>	Local Youth Action Councils
<b>MCYS</b>	Ministry of Culture, Youth, and Sports
<b>MEST</b>	Ministry of Education, Science, and Technology
<b>MICS</b>	Multiple Indicators Cluster Survey
<b>MLSW</b>	Ministry of Labour and Social Welfare
<b>MPRC</b>	Missing Persons Resource Center
<b>NGO(s)</b>	Non-governmental organization(s)
<b>NPM</b>	National Preventive Mechanism
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>OGG</b>	The Office of Good Governance, Human Rights, Equal Opportunities, and Non-Discrimination
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>OiK</b>	Ombudsperson Institution of Kosovo
<b>OP-CAT</b>	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>PIK</b>	Police Inspectorate of Kosovo
<b>PPE</b>	Personal protective equipment
<b>SOC</b>	Serbian Orthodox Church
<b>SPRK</b>	Special Prosecution Office of Kosovo
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNESCO</b>	United Nations Educational, Scientific, and Cultural Organization
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children’s Fund
<b>UNMIK</b>	United Nations Interim Administration Mission in Kosovo
<b>UNSC</b>	United Nations Security Council
<b>Venice Commission</b>	European Commission for Democracy Through Law
<b>WGAD</b>	Working Group on Arbitrary Detention
<b>WGMP</b>	Working Group on Persons Unaccounted for in Relation to the Events in Kosovo
<b>WHO</b>	World Health Organization

# 1. INTRODUCTION

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**1.** The present report<sup>1</sup> provides an overview of the human rights situation in Kosovo in 2020, including of the main problems and challenges to realizing human rights as well as human rights violations and the impact of the COVID-19 pandemic on human rights. It was prepared jointly by CSOs focused on protecting and promoting human rights in Kosovo with a view toward filling in an existing gap in joint reporting on human rights in Kosovo at the local and international levels, in addition to enhancing cooperation and coordination between them. This is the second report of its kind, following the publication of the first such report covering the period of 2019.

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

# 2. METHODOLOGY

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

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

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

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

**5.** The consultation process consisted of email correspondence as well as several consultations and drafting sessions that convened over 34 Kosovo CSOs working in different fields of human rights. The first consultation session was held online in November 2020, followed by another online drafting and mentoring meeting that was organized the same month. After the first round of inputs had been collected from the contributing CSOs, an in-person drafting session was organized in February 2021, where organizations had the opportunity to work together on the first draft of the report. During this meeting, an editing committee was created with the aim of having more CSOs involved in the process of editing the report. The committee was composed of representatives of five CSOs, namely, Advancing Together, Balkan Sunflowers Kosova, Center for Social Groups Development, Civil Rights Program Kosovo, and the Center for Legal Aid and Regional Development. A final email correspondence was done in April 2020 through which CSOs were given the opportunity to review the draft of the report, validate its findings and conclusions, and provide their comments and suggestions, which were then incorporated into the report. The drafting process and the editing of the report were facilitated by Mr. Hilmi Jashari, Human Rights Expert and former Ombudsperson of Kosovo, and Ms. Marigona Shabiu, Executive Director at the Youth Initiative for Human Rights - Kosovo.

**6.** The following 34 CSOs contributed to this report: Advancing Together (AT), Advocacy Center for Democratic Culture (ACDC), Balkan Sunflowers Kosova (BSFK), Center for Legal Aid and Regional Development (CLARD), Center for Protection of Women's Rights, Center for Social Groups Development (CSGD), Centre for Equality and Liberty (CEL), Civil Rights Program Kosovo (CRP/K), Diakonie Mitrovica, FOL Movement, Forum for Civic Initiative (FIQ), Group for Legal and Political Studies (GLPS), Handikos, Humanitarian Law Center Kosovo (HLCK), Integra, Coalition of Non-governmental Organizations (NGOs) for Child Protection (KOMF), Kosova Rehabilitation Centre for Torture Victims (KRCT), Kosovar Civil Society Foundation (KCSF), Kosovar Gender Studies Center (KGSC), Kosovo Law Institute (KLI), Kosovo Women's Network (KWN), Kosovo Young Lawyers (KYL), Medica Gjakova, Missing Persons Resource Center (MPRC), New Social Initiative (NSI), NGO AKTIV, NGO THY, Partners Kosovo Center for Conflict Management, Roma in Action, Roma Versitas, Social Housing and Property Rights in Kosovo (SHPRK), Terre des Hommes Kosovo, Voice of Roma, Ashkali and Egyptians (VORAE), and Youth Initiative for Human Rights - Kosovo (YIHR KS).

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

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

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

**9.** Although Kosovo cannot formally become a party to international human rights conventions and mechanisms, Article 22 of the Constitution stipulates that nine United Nations (UN)<sup>3</sup> and regional<sup>4</sup> human rights instruments directly apply in Kosovo, providing additional legal sources that protect and promote human rights in Kosovo. In an important development for the rights of women and girls, the Assembly of Kosovo (AoK) amended Article 22 by adding the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) to the list of directly applicable human rights instruments in September 2020.<sup>5</sup> Importantly, all of these directly applicable human rights instruments supersede Kosovo’s legislation or other acts of public institutions in cases of conflict. The International Covenant on Economic, Social, and Cultural Rights (ICESCR), however, is not listed among the international human rights instruments directly applicable in Kosovo. Nevertheless, the AoK adopted the 2030 Agenda and its 17 Sustainable Development Goals in a unanimous resolution on 24 January 2018,

<sup>2</sup> See generally, [The Constitution of Kosovo](#) (9 April 2008), as amended on 25 September 2020 (hereinafter Constitution of Kosovo).

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

<sup>4</sup> Specifically, the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (4 November 1950) 213 UNTS 221 (hereinafter ECHR); the Council of Europe, [Framework Convention for the Protection of National Minorities](#) (1 February 1995) ETS 157 (hereinafter FCPNM); the [Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence](#) (11 May 2011) CETS 210 (hereinafter Istanbul Convention).

<sup>5</sup> [Amendment of the Constitution of Kosovo No. 07-V-058](#) (25 September 2020).

providing a meaningful entry point on promoting and protecting economic, social, and cultural rights in Kosovo.

**10.** In 2015, Kosovo made further progress in aligning its legal framework with international standards when it adopted a package of basic laws on human rights, namely, Law No. 05/L-019 on Ombudsperson, Law No. 05/L-020 on Gender Equality, and Law No. 05/L-021 on Protection from Discrimination. Their full application is key for the effective implementation of the human rights framework in Kosovo and requires the allocation of necessary resources and serious capacity building efforts. As highlighted throughout this report, Kosovo also has other more specific laws relevant to the protection of certain rights or groups of persons.

**11.** Kosovo has established dedicated bodies and mechanisms to promote and protect human rights. The Office of Good Governance, Human Rights, Equal Opportunities, and Non-Discrimination (OGG) designs policies in the areas of good governance, human rights, equal opportunities, and anti-discrimination and oversees and provides advice to Ministries in the mentioned areas. The Inter-Ministerial Coordinating Group on Human Rights is a high-level political mechanism established by the former Prime Minister of Kosovo in April 2016 to monitor Kosovo's implementation of human rights policies, which held a meeting in December 2020 for the first time since 2018. The Committee on Human Rights, Gender Equality, Missing Persons, and Petitions is one of the AoK's permanent committees mandated to formulate draft laws and to monitor the implementation of existing ones. Although the Committee was not envisaged as an individual complaint mechanism, it can highlight human rights issues and trends within the AoK and forward any individual or group complaint, as appropriate. The OjK is an independent constitutional body mandated with monitoring, defending, and protecting the rights and freedoms of individuals from the wrongdoing of authorities. In fulfilling its five-year non-renewable mandate, the OjK may, among other things, receive complaints, launch investigations, make recommendations and publish reports as well as advocate for changes that advance the implementation of human rights standards.

**12.** The governance of Kosovo is based on the principles of the separation of powers and checks and balances.<sup>6</sup> The executive branch is, however, generally characterized by a lack of responsibility and accountability, while the AoK is often unable to exercise proper parliamentary control over the executive and judicial branches. The World Justice Project's Rule of Law Index of 2020 ranked Kosovo overall 54th out of the 128 countries and territories included in the assessment.<sup>7</sup> In the index, Kosovo ranks 71st out of 128 under the "constraints on government powers" factor, which includes indicators such as whether government powers are effectively limited by (1) the legislature; (2) the judiciary; and (3) independent auditing and review, et cetera.<sup>8</sup> Kosovo also ranks 97th out of 128 under the "regulatory enforcement" factor, which contains indicators such as whether (1) government regulations are effectively enforced; (2) government regulations are applied and enforced without improper influence; and (3) administrative proceedings are conducted without unreasonable delay, et cetera.<sup>9</sup>

<sup>6</sup> Constitution of Kosovo, note 2, Art. 4.

<sup>7</sup> World Justice Project, '2020 Rule of Law Index: Kosovo', last accessed on 27 April 2021.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

## 4. OVERVIEW OF THE IMPACT OF THE COVID-19 PANDEMIC ON HUMAN RIGHTS IN KOSOVO

**13.** In response to the first reported cases of COVID-19 in Kosovo in March, the Government of Kosovo (GoK) swiftly implemented strong initial measures to contain the pandemic that were subsequently lifted, reinstated, and/or modified on several occasions to comply with Kosovo's Constitution and international human rights law as well as to respond to the evolving epidemical situation. As the government never declared a state of emergency in 2020 that would have allowed it to derogate from some but not all human rights in Kosovo,<sup>10</sup> COVID-19 measures that restricted human rights were only valid to the extent they were (1) provided by law; (2) for a legitimate purpose (e.g., the protection of public health); and (3) both necessary and proportionate to the achievement of a legitimate purpose.<sup>11</sup> In this regard, on 31 March, the Constitutional Court declared the initial curfew and restrictions on private and public gatherings unconstitutional on the basis that Kosovo-wide measures were not "prescribed by law" and thus violated the freedoms of movement, peaceful assembly, and association and the right to privacy. This decision led the Ministry of Health to subsequently adopt municipal-specific measures starting on 14 April 2020. In August, Law No. 07/L-006 on Preventing and Combating the COVID-19 Pandemic in Kosovo entered into force, strengthening the legal basis for the Ministry of Health to restrict human rights as long as necessary to combat and prevent the spread of COVID-19 and fine people for non-compliance with COVID-19 measures.<sup>12</sup>

**14.** Provided they constitute valid restrictions on human rights, the government's measures could be regarded as satisfying its positive due diligence obligations under the rights to life and health to prevent, stop, or at the very least mitigate the spread of life-threatening diseases like COVID-19.<sup>13</sup> The measures taken in 2020 to contain the COVID-19 pandemic in Kosovo included, among other things, imposing rotational movement schedules, curfews, and municipal quarantines that restricted movement; limiting gatherings to less than five people and prohibiting social and family gatherings; suspending religious and cultural activities, although cultural activities have been permitted at reduced capacities since September; closing schools and providing only distance learning until September 2020; closing non-essential businesses followed by varying limitations on business working hours; prohibiting travel by air and land subject to certain exceptions until

10 See Constitution of Kosovo, note 2, Art. 56. Human rights that cannot be derogated from include, among others, the right to life and the prohibition against torture or other cruel, inhuman, and degrading treatment.

11 Constitution of Kosovo, note 2, Art. 55.

12 [Law No. 07/L-006 on Preventing and Combatting COVID-19 Pandemic in Kosovo](#) (25 August 2020).

13 UN Human Rights Committee, 'General Comment No. 36 on Article 6: Right to Life' (3 September 2019) [UN Doc. CCPR/C/GC/36](#), para. 26; Committee on Economic, Social, and Cultural Rights, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12)' (11 August 2020) [UN Doc. E/C.12/2000/4](#), paras. 16, 44.

June; and requiring persons entering Kosovo to quarantine for 14 days in centers designated for this purpose followed by self-isolation at home.

**15.** In November, the government introduced a three-tier system of COVID-19 measures depending on whether a municipality is classified as a green, yellow, or red zone based on the number of cases per 100,000 residents.<sup>14</sup> In addition to maintaining the prohibition against public gatherings of more than five persons and specific movement restrictions for older persons (over 65) subject to exceptions for emergency and medical reasons, it also imposed a curfew and entry and exit restrictions from 19:00 to 05:00 for municipalities classified as “red zones”; limited business operating hours to 20:00 or earlier depending on the classification; and once again suspended all religious ceremonies and activities (except with immediate family members). As of 31 December, the measures adopted in November largely remained the same, although the start of the curfew and entry and exit restrictions in red zone municipalities was extended to 20:00.<sup>15</sup>

**16.** In addition to restricting the freedoms of movement, peaceful assembly, and religion, the pandemic and measures to contain it significantly impacted the realization of a wide range of other civil and political rights as well as economic, social, and cultural rights in Kosovo. The deterioration of the epidemiological situation in July and August and then again in October and November presented serious implications for the rights to life and health, especially in light of reports regarding limited and selective COVID-19 testing, infected medical workers, overloaded hospitals, insufficient medical supplies, and high prices for COVID-19 medications. As of 31 December, there were 51,328 confirmed COVID-19 cases and 1,335 deaths according to the Kosovo Institute of Public Health (KIPH).

**17.** The arrests of more than 1,000 people for failure to comply with the initial COVID-19 measures that were later found to be unconstitutional raised implications for the right to liberty and security of the person, although the arrests did not lead to criminal prosecutions. While media workers were exempted from restrictions on the freedom of movement while on duty, other issues, such as the lack of personal protective equipment (PPE) to attend and report on official events, hindered the freedom of the media. The pandemic also exacerbated pre-existing issues relating to language rights and the right to information for non-Albanian speaking communities and persons with disabilities. In addition, the media published the personal information of COVID-19 patients on several occasions in violation of Law No. 06/L-082 on the Protection of Personal Data and the right to privacy. Kosovo courts operated at reduced capacity while prioritizing urgent cases (e.g., cases concerning detention and domestic violence) for most of 2020, raising concerns for the right to effective remedy and fair trial rights in non-prioritized cases. The decision to delay extraordinary mayoral elections in Podujevë/Podujevo and North Mitrovica until 29 November impacted the rights to participate in public affairs and vote while holding the elections in the midst of the pandemic also required a careful balancing with the rights to life and health.

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14 [GoK Decision No. 01/42](#) (11 November 2020).

15 [GoK Decision No. 01/51](#) (22 December 2020).

**18.** The pandemic and COVID-19 containment measures also adversely affected the realization of economic, social, and cultural rights in Kosovo, especially the rights to an adequate standard of living, occupational safety and health, education, and participation in cultural life. The International Monetary Fund estimated that economic activity in Kosovo declined by six per cent in 2020 due to the pandemic,<sup>16</sup> which resulted in, among other things, more than 50,000 people reportedly losing their jobs, the closure of businesses, and an increase in the number of individuals and families on social assistance schemes. Kosovo institutions adopted and implemented several economic recovery packages and measures to mitigate some of the pandemic's socio-economic impact, such as a €170 million emergency economic recovery package in March, an amended budget establishing a €365 million economic recovery fund in August, and Law No. 06/L-016 on Economic Recovery – COVID-19 to provide additional economic relief in December.

**19.** The closure of educational institutions at all levels and the use of only distance learning from mid-March to September impacted the enjoyment of the right to education. With the start of the new academic year in September, primary and secondary schools resumed using a combination of in-person and online education, while universities continued to teach using only distance learning. The lack of technological equipment and/or internet connectivity, however, hindered access to education for some members of the K-Roma, K-Ashkali, and K-Egyptian communities as well as for persons living in poverty and persons with disabilities.

**20.** The pandemic and related measures resulted in the cancellation of most cultural activities in 2020 and significantly impacted the enjoyment of cultural rights, while economic recovery measures initially failed to sufficiently target creators of cultural content in Kosovo. With exception of May and June when COVID-19 measures were briefly lifted, the government suspended all cultural activities from mid-March until 25 September 2020, after which in-person cultural activities were permitted at reduced capacities.

**21.** The pandemic and related COVID-19 containment measures disproportionately affected the rights of members of non-majority communities in Kosovo and persons in vulnerable situations. Non-majority communities, including K-Serbs, faced increased challenges to the right to information, personal and public security, and equal access to services, including economic aid and relief. Members of K-Roma, K-Ashkali, and K-Egyptian communities encountered increased risks and challenges due to, among other things, their limited access to education, clean water, and healthcare. The reported increase in gender-based violence, including domestic violence, and in unpaid care work attributed to the pandemic and related measures disproportionately impacted the rights of women and girls to life, physical and mental integrity, health, and equality. The COVID-19 crisis also affected children's rights to life, physical and mental health, security, and education and reportedly resulted in an increase in violence against children. Persons with

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16 International Monetary Fund, "[Kosovo: Staff Report for the Article IV Consultation](#)" (17 February 2021), p. 4.

disabilities, particularly children with disabilities, also experienced several challenges to their right to access essential social, health and rehabilitation services, although important exceptions were made in the measures restricting movement for people who care for them.

**22.** Numerous reports were received that persons in vulnerable situations, in particular, older persons, persons on the move, and members of K-Roma, K-Ashkali, and K-Egyptian communities, lacked sufficient food, medical supplies, and PPE, impacting the enjoyment of their rights to life, health, food, and other interrelated rights. Due to their increased risk of COVID-19-related health complications, older persons were subject to specific restrictions limiting their movement. People on the move also faced a limited ability to apply physical distancing measures in asylum centers, immigration detention centers, and collective centers for internally displaced persons across Kosovo. In addition, movement restrictions exacerbated the vulnerable situations LGBT+ persons are confronted with in Kosovo, while the suspension of international travel by air and land until June disproportionately affected transgender people's access to essential healthcare services, such as hormone therapy, that are not provided in Kosovo.

**23.** The Kosovo Correctional Service (KCS) generally managed the pandemic well in Kosovo's correctional facilities by adopting and implementing a specific operational plan and successfully limited the number of detainees and prisoners who contracted COVID-19. At the same time, the on-and-off suspension of visits by family members, lawyers, and monitoring organizations as well as issues hindering the ability to apply alternative measures to detention raised some concerns.

## 5. CIVIL AND POLITICAL RIGHTS

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

**24.** The Constitution of Kosovo prohibits torture, cruel, inhuman, or degrading treatment or punishment.<sup>17</sup> The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) also prohibit such conduct and are directly applicable in Kosovo and supersede Kosovo's legislation in cases of conflict.<sup>18</sup> The obligation to interpret the provisions of the Constitution in line with decisions of the European Court of Human Rights<sup>19</sup> also envisages the obligation to investigate allegations of torture, cruel, inhuman, or degrading treatment. Kosovo's Criminal Code criminalizes torture,<sup>20</sup> while the Criminal Procedure Code prohibits forced confessions<sup>21</sup> in compliance with international human rights standards. The Criminal Code also criminalizes mistreatment, intimidation, or grave insult by a person in a position of authority.<sup>22</sup> Other

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17 Constitution of Kosovo, note 2, Art. 27.

18 Ibid., Art. 22. See also CAT, Arts. 1-2, 4; ECHR, Art. 3.

19 Constitution of Kosovo, note 2, Art. 53.

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

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

22 Criminal Code, note 20, Art. 195.

cruel, inhuman, or degrading treatment or punishment, however, has not yet been criminalized in the same terms as torture, despite a recommendation by the UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment (Special Rapporteur on torture) to do so during his visit to Kosovo in 2017.<sup>23</sup> The Special Rapporteur on torture also recommended that Kosovo expressly exclude the admissibility of evidence obtained through torture or other cruel, inhuman, or degrading treatment or punishment.<sup>24</sup>

**25.** In line with the requirements of Articles 1 and 3 of the Optional Protocol to the CAT (OP-CAT) and according to Law No. 03/L-195 on Ombudsperson,<sup>25</sup> the Ombudsperson acts as a National Preventive Mechanism (NPM) against torture and other cruel, inhuman, and degrading treatment or punishment. In 2020, the NPM carried out a total of 52 ad hoc visits to places where persons are deprived of liberty.<sup>26</sup> During the reporting period, the OiK opened investigations into five cases of alleged ill-treatment by the Kosovo Police, while in one case it requested that the Police Inspectorate of Kosovo (PIK) open an investigation based on its mandate.<sup>27</sup> The cases were under investigation at the time of writing. In 2020, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Kosovo from 6 to 16 October, and its preliminary findings were communicated to relevant authorities.

**26.** Kosovo authorities have continued to show commitment to generally uphold the right to humane treatment and the prohibition of torture. In 2020, KRCT conducted eight visits to detention centers and received no reports of torture. The US Department of State report for 2020, however, mentions two isolated cases of ill-treatment.<sup>28</sup> According to the NPM's annual report for 2020, incidents between prisoners are no longer occurring in correctional facilities in Kosovo.<sup>29</sup>

**27.** The failure of Kosovo authorities to adequately address specific needs of groups and persons in vulnerable situations in places of detention (e.g., women, children and youth, older persons, persons with chronic diseases and mental disabilities, and LGBT+ persons), inefficient investigations, and the failure to prioritize the processing of such cases, however, continued to raise concerns in 2020.

**28.** Police interrogations and investigations continued to fall beyond the scope of relevant monitoring mechanisms. Complaints of mistreatment during interrogations and investigations further highlight the need to reinforce oversight mechanisms within the Kosovo Police. Following

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

24 Ibid.

25 [Law No. 05/L-019 on Ombudsperson](#) (26 June 2015), Art. 17.

26 OiK, '[Annual Report 2020 No. 20](#)' (14 April 2021), p. 101 (hereinafter 2020 OiK Report).

27 Ibid., p. 103.

28 US Department of State, '[Kosovo 2020 Human Rights Report](#)' (30 March 2021), p. 5 (hereinafter 2020 US State Dept. Human Rights Report).

29 2020 OiK Report, note 26, p. 107.

the CPT's recommendations, the Kosovo Police has started installing cameras for juveniles in police stations, while it is planned to install security cameras in all stations and interview rooms by the end of 2021.

**29.** During 2020, the PIK received 15 per cent more complaints than in 2019.<sup>30</sup> Out of 1,658 complaints, 35 per cent were forwarded for criminal investigations to the Investigation Department, while the remaining 65 per cent were processed as disciplinary matters by the Division of Internal Investigations and Verification of the Past within the Kosovo Police. In 2020, criminal charges were brought in 82 cases investigated by the PIK. Out of these 82 cases, 23 concerned ill-treatment and nine involved domestic violence.<sup>31</sup>

**30.** KRCT reporting indicates that material and housing conditions in correctional institutions in Kosovo are relatively good.<sup>32</sup> There have also been improvements in housing conditions due to renovations and functionalization of new facilities, such as the detention center in Pristina. At the same time, housing conditions in some of the correctional facilities remain to be challenging, for instance in some parts of the correctional center in Dubravë/Dubrava and the detention center in Pejë/Peć.

**31.** The issue of the placement and treatment of detainees, including pre-trial detainees, with mental issues has not yet been addressed by relevant authorities, such as the Ministry of Justice (and its KCS) and the Ministry of Health (and its Prison Health Unit). Detainees with mental disorders are still being held in detention centers or correctional centers pending a court decision or even after the end of the trial. However, the infrastructure, services, and treatment are not suitably adjusted to their specific needs and requirements, in contradiction to Kosovo's legal framework and directly applicable human rights instruments. Based on KRCT's assessment, the treatment of inmates with mental disorders in Kosovo is considered to be contrary to the principles of dignified treatment of persons deprived of their liberty.

**32.** In 2020, one of the main challenges for the KCS was the management of the pandemic and prevention of the spread of COVID-19 in detention facilities. Based on KRCT's assessment, the KCS and the Prison Health Unit have, in general, successfully managed the situation. The number of prisoners infected with COVID-19 remained very low. The provision of hygiene products and protective measures for detainees and staff was ensured, while the supply of face masks has been satisfactory. Masks were also produced by convicts in the Lipjan/Lipljan correctional center. KRCT prepared a report on the KCS' management of the COVID-19 pandemic,<sup>33</sup> and relevant recommendations were shared with the KCS and the Prison Health Department.

**33.** While there are verbal commitments to address the recommendations of the Special Rapporteur on torture, relevant institutions, such as the Ministry of Justice, Ministry of Health, and

30 PIK, '[Annual Report 2020](#)' (2020), pp. 6, 9.

31 Ibid., p. 19.

32 KRCT, '[Human Rights in Kosovo Correctional Institutions. Monitoring Report 2019 – 2020](#)' (December 2020), p. 30 (hereinafter KRCT 2019 – 2020 Monitoring Report).

33 Ibid., pp. 51-67.

the Kosovo Judicial Council (KJC), have yet to act and comply with these recommendations. These recommendations include establishing systematic training programs on the Istanbul Protocol for health professionals who examine persons deprived of their liberty as well as for lawyers, prosecutors, and judges to strengthen their capacities to identify and document torture and other forms of ill-treatment.

### 34. Recommendations:

- The Ministry of Justice, Ministry of Health, KJC, and KCS should comply with the recommendations of the NPM.
- The Ministry of Justice, Ministry of Health, KJC, and KCS should implement the recommendations of the Special Rapporteur on torture.
- The Ministry of Justice, Ministry of Health, KJC, and KCS should address and comply with the CPT's preliminary recommendations.<sup>34</sup>

## 5.2. The right to liberty and security of the person

**35.** The Constitution of Kosovo guarantees everyone the right to liberty and security.<sup>35</sup> The Criminal Procedure Code<sup>36</sup> and directly applicable human rights instruments<sup>37</sup> create a strong legal framework to protect people from arbitrary arrest or detention. The Constitution provides that everyone who is deprived of liberty shall be promptly informed of the reasons for their deprivation in a language they understand and brought before a judge within the first 48 hours.<sup>38</sup> It also envisages the right to compensation for everyone who was arrested or detained in violation of the guarantees established by the Constitution.<sup>39</sup>

**36.** The excessive use and length of pre-trial detention, however, persisted in Kosovo in 2020. International human rights law provides that pre-trial detention should only be ordered when reasonable and necessary as well as when other measures of restraint are deemed insufficient. It should be an exception rather than a rule.<sup>40</sup> Relevant provisions of the Criminal Procedure Code are largely compliant with this standard, as they stipulate that pre-trial detention can only be applied when other measures of restraint would be insufficient to ensure the presence of the defendant at trial, prevent reoffending, or ensure the successful conduct of the criminal proceedings.<sup>41</sup> KRCT's

34 CPT, '[Council of Europe Anti-torture Committee Visits Kosovo\\*](#)' (20 October 2020).

35 Constitution of Kosovo, note 2, Art. 29.

36 Criminal Procedure Code, note 21, Arts. 10, 12-13.

37 UDHR, Arts. 3, 9; ICCPR Arts. 9-10; ECHR, Art. 5.

38 Constitution of Kosovo, note 2, Art. 29.

39 Ibid.; see also Criminal Procedure Code, note 21, Art. 15.

40 ICCPR, Art. 9(3), UN Human Rights Committee, 'General comment No. 35: Article 9 (Liberty and Security of Person)' (16 December 2014) [UN Doc. CCPR/C/GC/35](#), paras. 11-12, 38.

41 Criminal Procedure Code, note 21, Art. 187.

monitoring, however, indicates that pre-trial detention is being excessively used in Kosovo, often without due consideration being given to the circumstances of the case. According to KRCT, around 70 per cent of detainees in Kosovo, including pre-trial detainees, do not have a final court decision.<sup>42</sup> Since 2015, KRCT has addressed around 50 submissions to different courts in Kosovo raising concerns about the practice of ordering and extending detention, which, in its opinion, has resulted in “lengthy and only superficially justified detention”.<sup>43</sup> The situation is further exacerbated by delays in first instance judicial proceedings and a significant number of cases that are being returned for retrial by the Court of Appeals.<sup>44</sup> Kosovo has yet to introduce an effective remedy, including compensation, to address such interference with the right to liberty and security.<sup>45</sup>

**37.** In 2019, the Constitutional Court of Kosovo, in a case that addressed several aspects of the right to liberty and security of the person, held that extending pre-trial detention without a continuous and individualized examination of the circumstances violated the right to liberty and security of the person. However, it remains to be seen whether Kosovo courts will consistently implement this new standard, which requires judges to conduct an individualized assessment of all the relevant circumstances in each case.

**38.** COVID-19 containment measures also impacted the enjoyment of the right to liberty and security in Kosovo. According to the former Ombudsperson, more than 1,000 persons were arrested at the early stages of the pandemic for failing to comply with COVID-19 containment measures.<sup>46</sup> Some of them were arrested for violating either the initial curfew or the ban on public and private gatherings, both of which were held to be unconstitutional on 31 March. On 20 August, the Supreme Court of Kosovo ruled that people who were arrested for non-compliance with COVID-19 containment measures that were introduced in March will not be charged or criminally prosecuted.<sup>47</sup> According to the decision, such prosecution would only be possible if there were decisions addressing specific individuals on what they can or cannot do. Those arrested without sufficient legal basis did not receive any compensation despite advocacy by the former Ombudsperson.<sup>48</sup> At the early stages of the pandemic, the former Ombudsperson also called for the application of alternative measures of restraint where possible but to no avail.<sup>49</sup> The AoK Committee on Human Rights, Gender Equality, Missing Persons and Petitions examined the possibility of amending relevant legislation to allow for the early release of prisoners due to COVID-19 but ultimately concluded that this fell outside the scope of its mandate.

**39.** In August, the Working Group on Arbitrary Detention (WGAD) adopted an opinion in the case of the expulsion of six Turkish nationals in March 2018 over their alleged links to the Hizmet/Gülen

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42 KRCT 2019 – 2020 Monitoring Report note 32, p. 48.

43 Ibid.

44 European Commission, ‘[Kosovo\\* 2020 Report](#)’ (6 October 2020), p. 22 (hereinafter 2020 EC Progress Report).

45 Ibid.

46 Kosovo Police, ‘[The Policing in the Time of Pandemic: Six \(6\) Month Work Report of Kosovo Police](#)’ (September 2020), p. 4.

47 Supreme Court of Kosovo, ‘[Miratohet Mendimi Juridik lidhur me veprën penale – Mosveprimi sipas dispozitave shëndetësore gjatë epidemisë](#)’ (20 August 2020).

48 RTK Live, ‘[Kërkohet Dëshmëpërblim Për Qytetarët Që U Arrestuan Gjatë Epidemisë](#)’ (rtklive.com, 1 June 2020).

49 OïK, ‘[Press Release](#)’ (20 April 2020).

movement.<sup>50</sup> The WGAD found that the deprivation of liberty of these six individuals by Pristina authorities was arbitrary and that there was no legal basis justifying such deprivation of liberty and removal from Kosovo. The WGAD noted that the arrest and detention of the six individuals in question resulted from the exercise of their rights to the freedom of opinion and expression and asked the authorities in Pristina and Ankara to, among other things, ensure a full and independent investigation of the matter and accord the six Turkish nationals an enforceable right to compensation and other reparations.<sup>51</sup> In 2020, the Special Prosecution Office of Kosovo (SPRK) continued investigating the case. It is worth recalling that this case had already been examined by various institutions in Pristina. The OiK released an ex officio report in April 2018, while the AoK adopted a report<sup>52</sup> in June 2019, citing 31 breaches of law and procedures, including alleged violations of the International Covenant on Civil and Political Rights (ICCPR), by Pristina authorities. At least three of these six Turkish nationals have since been sentenced to seven to eight years of imprisonment in Turkey for “participating in an armed terrorist organisation.”<sup>53</sup>

#### 40. Recommendations:

- The KJC, Kosovo Prosecutorial Council (KPC), and Kosovo Chamber of Advocates should follow the guidelines regarding the application of pre-trial detention established by the decision of the Constitutional Court of 8 October 2019.
- The courts of Kosovo should treat pre-trial detention as a measure of restraint that should be applied only when absolutely necessary under the applicable legal framework.
- The GoK and the AoK should introduce an effective legal remedy to address cases of arbitrary deprivation of liberty resulting from protracted judicial procedures and excessive use of pre-trial detention.

### 5.3. The right to a fair trial and effective remedy

**41.** The Constitution of Kosovo guarantees everyone the right to a fair and impartial trial,<sup>54</sup> whereas Law No. 06/L-054 on Courts stipulates that “[a]ll courts should function in an expeditious and efficient manner to ensure the prompt resolution of cases.”<sup>55</sup> The Constitution also provides that everyone has the rights to judicial protection and effective legal remedy if any right guaranteed by the Constitution or by law has been violated.<sup>56</sup> The ICCPR and the ECHR, which also guarantee

50 In March 2018, six Turkish nationals were arrested by the Kosovo authorities and expelled to Turkey over their alleged links to the Hizmet/Gülen movement. They were charged with “international espionage” and “running an armed terrorist organization.”

51 WGAD, ‘Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020’ (25 September 2020) [UN Doc. A/HRC/WGAD/2020/47](#), paras. 103–106 (hereinafter WGAD Opinion).

52 US Department of State, ‘[Kosovo 2019 Human Rights Report](#)’ (February 2020), p. 16.

53 WGAD Opinion, note 51, paras. 47, 49, 53.

54 Constitution of Kosovo, note 2, Art. 31.

55 [Law No. 06/L-054 on Courts](#) (18 December 2018), Art. 7(5).

56 Constitution of Kosovo, note 2, Art. 54.

fair trial rights, are directly applicable in Kosovo and supersede Kosovo's legislation in cases of conflict.<sup>57</sup> At the same time, according to KLI's analysis, out of 209 judgments of all courts in Kosovo, only 20 court judgments (or 9.56 per cent) explicitly referred to the ECHR.<sup>58</sup>

**42.** Following the outbreak of the COVID-19 pandemic, the KJC adopted a decision on 15 March to reduce all activities of Kosovo courts to only urgent cases, such as those involving detention or other restrictive measures and domestic violence. A brief resumption of regular operations in June was quickly followed by another reduction in activities in July and the prioritization of the above-mentioned categories of cases. Media personnel and court monitors were allowed to participate in court proceedings only at the discretion of court presidents and judges, which raised concerns regarding the transparency of proceedings. The first online court hearing in Kosovo was held in a civil case at the Basic Court of Prizren only in September 2020.<sup>59</sup>

**43.** According to KLI, the backlog of administrative, civil, and criminal cases increased during the pandemic. During 2019, the Department of Administrative Affairs had 9,244 pending administrative cases of which 2,929 (or about 32 per cent) were resolved, while 6,315 cases (or about 68 per cent) remained unresolved. In 2020, according to the statistics provided by the courts, out of 8,285 cases that the department had pending, only 1,947 cases (or 23.50 per cent) were resolved. An even greater increase was seen in the number of backlogged civil and criminal cases. In 2019, 4,739 criminal cases were pending of which only 1,630 cases (or 34 per cent) were resolved. In 2020, out of 5,791 pending cases, only 1,808 cases (or 31.22 per cent) were resolved.

**44.** With regard to civil proceedings, KLI findings show that the average duration of the proceedings in the first instance courts constitutes 1,513 days and 1,288 days in the courts of second instance. The average duration of a case that is reviewed by the two instances is, therefore, 2,801 days or about seven years and eight months. Kosovo has yet to introduce an effective remedy, including compensation, to address delays in judicial proceedings.

**45.** In 2020, at least three KPC members resigned in order to apply for positions of heads of certain prosecutorial offices and were subsequently elected. This practice, which persisted over the years, is contrary to Law No. 06/L-011 on the Prevention of Conflict of Interest in Discharge of a Public Function<sup>60</sup> and was criticized by the US Embassy in Kosovo as well as the European Union (EU) Office in Kosovo.<sup>61</sup> In December 2020, the KJC decided to promote five of 11 judges of the Serious Crimes Department of the Basic Court in Pristina to the Special Department of this Court. As a result, the trials in about 1,000 cases had to start from the beginning due to the change of presiding judges. At the beginning of 2021, the Serious Crimes Department was left with only six judges. Such decisions coupled with the lack of sustainable policies and the absence of effective

57 Constitution of Kosovo, note 2, Art. 22. See also ICCPR, Art. 14; ECHR, Art. 6.

58 KLI, 'Praktika e GJEDNJ-së, obligimnëjetër' (25 September 2020).

59 Marcel Lekaj, 'FOTO - Gjykata e Prizrenit mban seancën e parë online' (kallxo.com, 2 September 2020).

60 Law No. 06/L-011 on the Prevention of Conflict of Interest in Discharge of a Public Function (27 April 2018).

61 KLI, 'Dorëheqja e anëtarëve të KPK-së në kohën para shpalljes së konkursit për kryeprokurorë, praktikë që mund të paraqesë konflikt të interesit dhe mungesë të integritetit' (8 October 2020).

solutions affect the continuity of the operation of courts and impact the rights to an effective remedy and a fair trial within a reasonable time.

#### 46. Recommendations:

- The GoK and the AoK should introduce a law establishing compensation for victims of any violations of the right to a fair trial within a reasonable time.
- The KJC should ensure that any disruption of the work of the judicial system does not lead to violations of the rights to a fair trial and an effective remedy, including by prioritizing cases according to general importance and impact on individual rights and groups in vulnerable situations; promoting technological solutions such as online services, remote hearings and videoconferencing; and following expert guidance given by the Council of Europe European Commission for the efficiency of justice.

#### 5.4. The freedom of expression and opinion, the right to information, and the right to privacy

**47.** The Constitution of Kosovo guarantees the freedom of expression and opinion, the right to information, and the freedom of the media in Kosovo,<sup>62</sup> while grounds for restrictions are in full compliance with international instruments that are directly applicable in Kosovo,<sup>63</sup> in particular the ECHR.

**48.** Law No. 06/L-081 on Access to Public Documents, which entered into force in July 2019, aims to guarantee the right of every person without discrimination to access public documents produced, received, maintained, or controlled by public institutions as well as the right to re-use public sector documents.<sup>64</sup> This relatively new law establishes the Information and Privacy Agency (IPA) as an independent body responsible for monitoring its implementation. However, after three unsuccessful attempts, the AoK has not yet managed to elect the Privacy Commissioner. The proposal of the AoK Committee on Security to amend the law with regard to the election of the commissioner was criticized by CSOs, which considered it an attempt to politicize this mechanism.

**49.** Regarding the freedom of the media, there were several reported attacks against media workers in 2020, some of which were related to their work on matters pertaining to the pandemic. On 5 May, a journalist was reportedly threatened by the Kosovo Police in Gjilan/Gnjilane while she was investigating allegations that COVID-19 measures were being applied unequally, including the 14-day mandatory quarantine.<sup>65</sup> On the occasion of World Press Freedom Day on 3 May, several actors, including the OiK, the Organization for Security and Co-operation in Europe (OSCE)

62 Constitution of Kosovo, note 2, Arts. 40-42.

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

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

65 AJK, 'Other threats to journalists, Yllka Ahmetxhekaj, Prishtinë' (5 May 2020).

Mission in Kosovo, and the Association of Journalists of Kosovo (AJK), raised concerns regarding the recent attacks and threats against journalists and highlighted the crucial importance of the freedom of the media in Kosovo.<sup>66</sup> Furthermore, the AJK published a research report in October entitled “The Impact of the COVID-19 Pandemic on the Economic Situation of Journalists, Cameramen and Photojournalists”, which discusses several challenges that media personnel have faced during the pandemic in relation to their labour and economic rights, occupational safety, and ability to discharge their reporting functions.<sup>67</sup> The report draws attention to layoffs, pay cuts, and delays in paying wages that have allegedly taken place since March 2020, further noting some media workers had their employment contracts terminated without prior notice in violation of Law No. 03/L-212 on Labour. According to the report, media workers were also not classified as “essential workers” under the GoK’s initial COVID-19 emergency fiscal package and were therefore not entitled to some of its benefits, further impacting their economic situation. It also highlights that media workers faced difficulties in carrying out their work and obtaining sufficient PPE to protect their right to occupational safety and health.

**50.** Non-Albanian speaking communities faced particular challenges in obtaining relevant and timely information on COVID-19 prevention and containment measures as the pandemic exacerbated existing issues regarding the provision of translations in both official languages, impacting their right to information and language rights. Despite Article 5 of the Constitution and Law No. 03/L-37 on the Use of Languages,<sup>68</sup> translations of the GoK’s decisions regarding COVID-19 containment measures into Serbian often reached the Serbian speaking communities only after those measures had entered into force, while some COVID-19-related press conferences lacked translators for media personnel reporting in Serbian. For instance, the KIPH provided updates on the COVID-19 situation in Kosovo only in Albanian. According to a public opinion poll conducted by the NGO AKTIV, the “failure of Kosovo institutions to effectively communicate with non-majority communities [about COVID-19-related information] has created a wide space for the spread of conspiracy theories and ‘false news’”, significantly impacting “perceptions regarding the danger posed by COVID-19”. The NGO AKTIV highlighted, in particular, that the Ministry of Health has not updated the Serbian version of its webpage for months during the pandemic.<sup>69</sup>

**51.** The Constitution of Kosovo guarantees the right to privacy,<sup>70</sup> while the right to protection of personal data is guaranteed by Law No. 06/L-082 on Protection on Personal Data.<sup>71</sup> The law requires that data subjects are made aware of the processing of personal data related to them and that the processing of personal data should be carried out only if necessary and proportionate to the explicit, specified, and legitimate purpose pursued.<sup>72</sup>

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66 See, e.g., OIK, ‘[Ombudsperson’s Statement on the Event of World Press Freedom Day](#)’ (3 May 2020).

67 AJK, ‘[The Impact of COVID-19 Pandemic on the Economic Situation of Journalists, Cameramen and Photojournalists](#)’ (27 October 2020).

68 [Law No. 02/L-37 on the Use of Languages](#) (1 March 2007) (hereinafter Law on the Use of Languages).

69 NGO AKTIV, ‘[Annual Report on the State of Language Rights in Kosovo: Language Rights in the Time of the Pandemic](#)’ (1 February 2021) (hereinafter 2020 AKTIV Report on Language Rights).

70 Constitution of Kosovo, note 2, Art. 36.

71 [Law No. 06/L-082 on Protection on Personal Data](#) (25 February 2019).

72 Ibid., Art. 3.

**52.** In an emblematic case on 4 April, a media outlet released the names of 210 K-Serbs, K-Roma, and K-Gorani who had been ordered to isolate, including the names of individuals being treated for COVID-19.<sup>73</sup> According to the Kosovo Press Council, the release of their private data and their possible COVID-19 status violated chapter seven of the Kosovo Press Code, which guarantees the right to privacy in media reporting.<sup>74</sup> Later that day, the OiK reacted and sent a letter of recommendation to the Agency for Personal Data Protection alleging a violation of the Constitution and relevant legislation. On a separate occasion, a media outlet published the names and identification numbers for 82 Serbian doctors and nurses who entered Kosovo to monitor the COVID-19 situation in the northern municipalities.<sup>75</sup> Such incidents appear to violate Law No. 06/L-082 on Protection of Personal Data and the right to privacy guaranteed by Kosovo's Constitution as well as by directly applicable human rights instruments, such as Article 17 of the ICCPR.

**53.** The only way to ensure adequate enforcement of data protection legislation is to strengthen the authority of the IPA. The existing capacity and financial support of this agency does not provide a sufficient basis to ensure proper implementation of the legal framework protecting the rights to information and privacy in Kosovo.

#### **54. Recommendations:**

- The GoK and the AoK should ensure the election of the IPA's Commissioner occurs without any unreasonable delays and that adequate human and financial resources are allocated to allow the IPA to implement its mandate.
- All central and local level institutions should enable access to information in all official languages and, during the pandemic, provide essential information in the languages of other local communities.
- All actors should ensure that any processing of health-related data is secure and kept confidential in accordance with the applicable legal framework in Kosovo.

### **5.5. The freedom of peaceful assembly**

**55.** The Constitution of Kosovo and directly applicable human rights instruments guarantee the freedom of peaceful assembly for every person in Kosovo.<sup>76</sup> Law No. 03/L-118 on Public Gatherings guarantees residents of Kosovo the right to organize and participate in public gatherings.<sup>77</sup> The existing legal framework requires 72-hour notice for public gatherings, except in such cases when no additional security measures are required. When no response is provided by authorities 48

73 Radio Kontakt Plus, '[Gazeta Sinjali da hitno ukloni lične podatke osoba u izolaciji i obolelih od Kovida-19](#)' (radiokontaktplus.org, 4 April 2020).

74 Ibid.

75 Indeksonline, '[Document / Names of 82 Serbian doctors and nurses who entered Kosovo today](#)' (indeksonline.net, 28 April 2020).

76 Constitution of Kosovo, note 2, Art. 43; ICCPR, Art. 21; ECHR, Art. 11.

77 [Law No. 03/L-118 on Public Gatherings](#) (15 April 2009).

hours prior to the public gathering, the gathering can take place without any restriction. If the authorities prohibit the assembly, the law allows for the submission of a complaint against such a decision to the “highest police bodies” within 48 hours. The authorities must issue their response within another 48 hours. The organizer or a representative of the public gathering, who is not satisfied with the decision of the authority to prohibit the public gathering, then has the right to appeal the decision to the court within three days through a fast-track procedure.

**56.** Importantly, provisions contained in Law No. 03/L-118 on Public Gatherings refer only to the residents of Kosovo. It remains unclear whether the guarantees established by the law also extend to non-residents, such as stateless persons, refugees, and foreign nationals, et cetera. Simultaneous and counter assemblies are not allowed, although this is not explicit. The law states that a request to organize an assembly can be denied if it is planned to occur at the near or exact time and place for which permission for another assembly has been granted.

**57.** In 2019, the Ministry of Internal Affairs began the process of drafting a new Law on Public Gatherings. At the time of writing, the draft law has passed online public consultations; however, the latest version still does not address comments provided by CSOs. In October 2020, upon the request by the GoK, the European Commission for Democracy Through Law (Venice Commission) published its opinion on the draft law.<sup>78</sup> According to the Opinion, the definitions of “peaceful public assembly” and “public assembly” are unclear and may lead to confusion about the role of the police in cases of public rallies and the duties and responsibilities of the organizers of “public peaceful assemblies”. The draft law does not define the notion of “peaceful”, creating room for various interpretations. The definitions of “violence” and “protests” do not meet international human rights standards. The notion of the “competent body” that is authorized to allow or refuse public gatherings requires further details, including by specifying which organs or officials fall within the scope of this provision. Additionally, sanctions for natural persons for violating the law were assessed as disproportionately high. It is also important that the GoK take into consideration findings and recommendations of the Guidelines on Freedom of Peaceful Assembly that the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) and the Venice Commission published in 2019,<sup>79</sup> which reflect the caselaw of the European Court of Human Rights as well as the practice of other democracies. These guidelines focus on a human rights-based approach to policing assemblies and provide guidance for implementing local legislation on the freedom of peaceful assembly in accordance with international standards.

**58.** COVID-19 containment measures significantly impacted the exercise of the freedom of peaceful assembly. Throughout the year, depending on the numbers of new infections and measures introduced by the government, the freedom of assembly was subjected to different limitations ranging from a ban on gatherings<sup>80</sup> during the early stages of the pandemic to the brief lifting of all the restrictions on the freedom of peaceful assembly in June. The lockdown, however,

78 Venice Commission, ‘[Opinion on the Draft Law on Public Gatherings](#)’ (9 October 2020) Doc. No. CDL-AD(2020)030.

79 Venice Commission and ODIHR, ‘[Guidelines on Freedom of Peaceful Assembly](#)’ (8 July 2019) Doc No. CDL-AD(2019)017.

80 [GoK Decision No. 01/15](#) (23 March 2020).

did not prevent Kosovo residents from finding creative ways to voice their opinions and concerns. For a few days, residents all around Kosovo protested on their balconies and from the windows of their homes by banging pots and pans to condemn Kosovo politicians for “causing drama and uncertainty” over the future of Kosovo’s leadership during the COVID-19 pandemic. Also, Lëvizja Vetëvendosje, following the usual procedures, obtained permission from the Kosovo Police to organize two (test) protests in accordance with COVID-19 prevention measures established by the KIPH. Additionally, the Kosovo Police issued a statement claiming that protests during the pandemic are allowed if the measures, such as social distancing, are complied with. At the same time, activists seeking justice for an 11-year-old Roma boy killed in July 2019 filed a lawsuit contesting the Kosovo Police’s denial of their request to hold an in-person protest on 31 August due to the pandemic. The request was denied even though the organizers reportedly complied with all applicable COVID-19 containment measures.

## 59. Recommendations:

- The GoK should address and incorporate the recommendations of the Opinion of the Venice Commission into the draft law on public gatherings.
- The GoK should address and incorporate recommendations of ODIHR and the Venice Commission in their Guidelines on Freedom of Peaceful Assembly concerning a human rights-based approach to public gatherings into the draft law on public gatherings.
- The Ministry of Internal Affairs should ensure that the amendments to Law No. 03/L-118 on Public Gatherings provide a possibility to organize and attend counter and spontaneous assemblies. It should also include provisions extending the freedom of assembly to stateless persons, refugees, foreign citizens, and others.

## 5.6. The freedom of association

**60.** The freedom of association is guaranteed by Article 44 of the Constitution of Kosovo. It includes the right of everyone to establish an organization without obtaining a permit, the right to be or not to be a member of an organization, and the right to participate in the activities of an organization. The latest version of Law No. 06/L-043 on Freedom of Association in Non-governmental Organizations entered into force during the second quarter of 2019.<sup>81</sup> The Law recognizes three forms of NGOs: associations, foundations, and institutes. Institutes were just recently introduced as a new legal form, and bylaws defining the formation and operation of institutes are still being drafted. Specific laws regulate association within trade unions, political parties, and religious communities. The existing legal framework does not contain restrictions that would require organizations to operate only in certain areas and does not limit the number of organizations that can operate for similar purposes. The freedom of association applies equally

81 [Law No. 06/L-043 on Freedom of Association in Non-governmental Organizations](#) (24 April 2019).

to individuals and legal entities that want to establish associations, foundations, or institutes. No one can be discriminated against for the decision to associate or not to associate, and no person can be required to associate against their will.<sup>82</sup> The legal framework allows the establishment of grassroots bodies. However, it does not define them as a separate category.

**61.** The new law shortened the registration procedure from 60 to 30 days, which is free of charge and simple to follow. The existence of an online platform for CSO registration eases the process. As of 31 December 2020, the Public Registry of NGOs listed 10,759 organizations, which cover a wide range of themes such as persons with special needs, empowerment, democratization, and civil society development.

**62.** In 2020, KCSF interviewed CSOs, donors, and public institutions in order to collect information from all relevant stakeholders on how the pandemic impacted civil society in Kosovo. According to the results of the survey, 96.71 per cent of CSOs stated that the COVID-19 pandemic impacted their daily work and around 20 per cent of CSOs closed down their offices, while more than 60 per cent reported working remotely. About 30 per cent of the CSOs surveyed reported that they had to lay off or temporarily suspend staff, while 38 per cent of CSOs reported that the number of volunteers had decreased. The majority of surveyed CSOs registered last year did not report any pressure from the authorities. None of the surveyed CSOs said they faced any restrictions when exercising their freedom of association online or offline.

**63.** In 2020, the GoK did not initiate any amendments to the legal framework on the freedom of association or to the overall legal framework on NGOs. In the meantime, CSOs in Kosovo were very vocal in urging the GoK to include them in its COVID-19 emergency economic recovery packages. The advocacy to include CSOs as beneficiaries of the Ministry of Finance's Fiscal Emergency Package has proven successful.

#### **64. Recommendations:**

- The GoK should ensure that CSOs are specifically included in all COVID-19 economic relief measures so as to ensure the proper functioning of civil society both during and after the COVID-19 pandemic.

### **5.7. The freedom of belief, conscience, and religion**

**65.** The Constitution of Kosovo and Law No. 02/L-31 on Freedom of Religion in Kosovo stipulate that Kosovo is secular and neutral in matters of religious beliefs.<sup>83</sup> The legal framework guarantees everyone the right to the freedom of belief, conscience, and religion.<sup>84</sup> This right includes the

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82 Ibid., Art. 4.

83 Constitution of Kosovo, note 2, Art. 8; [Law No. 02/L-31 on Freedom of Religion in Kosovo](#) (1 April 2007), Art. 5 (hereinafter Law on Freedom of Religion).

84 Constitution of Kosovo, note 2, Art. 38.

freedom “to have, not to have, to retain or to change one’s religion or belief and the freedom, either alone or in community with others, in public or in private” and “to manifest one’s religion or belief, in worship, teaching, practice and observance.”<sup>85</sup> The Law, however, does not provide religious entities or groups with the possibility to register and acquire legal personality, which creates additional obstacles to the work and proper functioning of religious communities. Religious communities without legal personality cannot exercise their right to property, maintain bank accounts, employ workers, and so forth. As a result, some religious communities are being forced to register and function as NGOs, despite the inadequacy of this framework for religious communities.<sup>86</sup>

**66.** Despite several rounds of review and revisions to bring it in largely in line with the 2014 opinion of the Venice Commission,<sup>87</sup> a draft law to amend Law No. 02/L-31 on Freedom of Religion in Kosovo to allow religious communities to register and obtain legal entity status has been pending since 2013 and has not still been adopted as of December 2020. If adopted, the draft law would finally provide religious communities with the right to register and acquire legal personality, creating a two-tier registration system for legal entity status: automatic registration and legal status for six recognized religious communities and elective registration for “new” religious communities if certain conditions are satisfied. According to the latest version of the draft law approved by the GoK in September 2020, there are six recognized religious communities entitled to automatic registration and legal entity status: the Kosovo Islamic Community, the Catholic Church, the Serbian Orthodox Church (SOC), the Jewish Religious Community, the Kosovo Protestant Evangelical Church, and the Tarikate Community of Kosovo.

**67.** In 2020, members of K-Serb communities continued to be subjected to violence and intimidation when attempting to access religious and cultural sites on pilgrimages or other significant events. In early 2020, K-Serbs faced a protest when attempting to visit an Orthodox church in Gjakovë/Đakovica, as was the case at the beginning of 2019. This may be regarded as a limitation of their constitutional right to the freedom of religion and belief as pilgrims were unable to enter their place(s) of worship. There were also attacks on graveyards and attempts to intimidate and threaten those trying to visit them. Between January and November 2020, three cases of desecration of Serb Orthodox graves were reported in the municipalities of Istog/Istok and South Mitrovica. The failure of the authorities to prevent attacks on religious sites and monuments, as well as ensure access to them, prevented worshippers from practicing their religion and can be regarded as a violation of the right to freedom of religion.

85 Law on Freedom of Religion, note 83, Art. 1.

86 Serbeze Haxhijaj, ‘Grupet fetare të Kosovës ende të ndara për Ligjin që ofron Status Ligjor’ (kallxo.com, 11 February 2021).

87 Venice Commission, ‘Opinion on the Draft Law on Amendment and Supplementation of Law No. 02/L-31 on Freedom of Religion of Kosovo’ (25 March 2014) Doc. No. CDL-AD(2014)012.

**68.** Containment measures that were introduced following the outbreak of COVID-19 affected the exercise of the freedom of religion. Throughout 2020, the GoK tightened and relaxed restrictions based on the COVID-19 situation in Kosovo. Most of the mosques, churches, and other houses of worship were closed during the peak of the pandemic and no religious ceremonies were allowed to take place there,<sup>88</sup> impacting, among others, the freedom to assemble in connection with a religion or belief as prescribed by the Law.

### **69. Recommendations:**

- The GoK and the AoK should amend Law No. 02/L-31 on Freedom of Religion in Kosovo to provide religious groups with the right to register and acquire legal personality.
- The GoK should provide better protection for religious sites, such as graveyards, monasteries, churches, and mosques.

## **6. SECTION B: ECONOMIC, SOCIAL, AND CULTURAL RIGHTS**

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### **6.1. Labour rights**

**70.** The Constitution of Kosovo guarantees equal legal protection and non-discrimination, the right to work and freely choose an occupation, and the freedom of association, including the freedom to form trade unions.<sup>89</sup> It also stipulates that children shall have the right to be protected from, among other things, exploitation.<sup>90</sup> Law No. 03/L-212 on Labour, which was adopted in 2010, continues to regulate employment relationships and the labour rights of employees in both the private and public sectors,<sup>91</sup> while Law No. 04/L-161 on Safety and Health at Work, which was adopted in 2013, provides legal protection for the right to occupational safety and health.<sup>92</sup> Law No. 04/L-011 on Trade Union Organization regulates and determines the rights and freedoms of employees to establish trade unions in the public and private sector.<sup>93</sup>

**71.** In a positive development, the GoK proposed Draft Law No. 07/L-028 on the Labour Inspectorate with the main goals of addressing informal employment and increasing the capacity for business inspections to prevent violations of the rights of employees according to the concept paper. However, the Draft Law, which would replace the existing Law No. 2002/9 on Labour Inspectorate, has been awaiting review and approval by the functional committee of the AoK since September.<sup>94</sup>

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88 [GoK Decision No. 01/15](#) (23 March 2020); [GoK Decision No. 01/42](#) (11 November 2020).

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

90 Ibid., Art. 50.

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

92 [Law No. 04/L-161 on Safety and Health at Work](#) (14 June 2013) (hereinafter Law on Safety and Health at Work).

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

94 [Draft Law No. 07/L-028 on Labour Inspectorate](#) (14 September 2020).

**72.** The Labour Inspectorate, which is the key mechanism for monitoring the implementation of Kosovo's labour laws and handling related complaints, presented a worrying picture for the labour sector in its 2020 report.<sup>95</sup> According to the report, the Labour Inspectorate lacks the necessary capacity to effectively oversee the implementation of the labour laws as it only has 30 inspectors who must inspect and supervise 50,000 active entities in the private sector alone. In other words, each inspector must supervise 1,666 entities within a year. Another key issue is the discrepancy complaints reviewed by the Labour Inspectorate relating to the public sector (10,010 complaints) versus the private sector (646 complaints). The report also indicates that informal employment continues to be a persistent problem throughout Kosovo: 19 per cent of the 25,725 employees in the entities that were inspected lacked employment contracts. One main reason why employers do not enter into formal employment contracts is to avoid having to pay contributions in their employees' Pension Trust accounts.

**73.** In May, the President of the Union of Independent Trade Unions of Kosovo (BSPK) highlighted that workers' rights were being violated in Kosovo, including the right to occupational safety and health during the pandemic.<sup>96</sup> The NGO KWN also called for greater attention to women's labour rights and additional efforts to combat gender-based discrimination in the labour market.

**74.** Workers in Kosovo's public institutions remained under mandatory work obligation throughout the pandemic, although the GoK issued several decisions for the protection of health and prevention of the spread of the pandemic from the very beginning such as requiring institutions to work with reduced staff. Many civil servants reported that these rules and the decisions of the government were not being sufficiently implemented and respected. In some cases, public sector workers were obliged to work even if the work environment did not provide the opportunity to maintain safe physical distance and proper hygienic measures. Indeed, disinfectants and PPE only became widely available in the workplace with time. In one emblematic case, FOL Movement reported that employees in some central level institutions were asked to return to work on 14 September in direct violation of the GoK's decision of 1 July obliging all institutions to work with reduced staff to ensure adequate physical distance of the workers. This specific case represents a violation of workers' labour rights, in particular their right to occupational safety and health to which they are entitled to under their employment contracts, the Constitution, and Kosovo legislation.<sup>97</sup>

**75.** Reportedly, teachers with underlying medical conditions were also required to work in person when schools reopened in September, raising particular concerns for their right to occupational safety and health.<sup>98</sup> At the same time, the President of the BSPK emphasized the general concern

95 Labour Inspectorate of Kosovo, '[Raporti I Punës Për Vitin 2020](#)' (22 March 2021).

96 RTK Live, '[Ajdini: The Rights of Workers in Kosovo Are Not Being Respected](#)' (1 May 2020).

97 Law on Labour, note 91; see also Law on Safety and Health at Work, note 92.

98 Arbisa Shefkiu, '[Denoncimi i Jasharajt, mësuesit e sëmurë po obligohen të mbajnë mësim gjatë COVID-19](#)' (kallxo.com, 10 November 2020).

over reported cases in which companies would not allow their employees to get tested for COVID-19, again depriving them of their right to occupational safety and health.<sup>99</sup> The General Director of the Kosovo Police reported that 293 police officers were infected with COVID-19, 234 police officers were quarantined, and 12 police officers died due to COVID-19 as of 15 December,<sup>100</sup> once again raising implications for the right to occupational safety and health of another category of workers.

**76.** The COVID-19 pandemic and related measures affected almost every aspect of society, but it especially negatively affected workers, in particular those employed in the private sector. In particular, the GoK introduced COVID-19 restrictions on movement<sup>101</sup> and limited the activities of private sector businesses and industries, cultural and sports events, and eventually educational institutions to varying degrees through the pandemic.<sup>102</sup> As such, businesses were affected by these restrictions and experienced a fall in revenues, which consequently affected the wellbeing of many societal groups. According to the Tax Administration of Kosovo, Kosovo experienced a significant fall in revenues in the first nine months of 2020, over €1 billion less than in 2019.<sup>103</sup>

**77.** Early on in the pandemic, the former government approved an emergency fiscal package on 30 March to mitigate some of the pandemic's socio-economic consequences that contained 15 measures designed to help individual workers, businesses, and public organizations with €179.6 million to cope with the difficulties caused by the pandemic,<sup>104</sup> including financial support to for companies by subsidizing monthly salaries by an amount of €170 for two months, 50 per cent rental subsidies for small and medium enterprises, and €130 subsidy for a period of three months for people who lost their jobs. However, there were delays in the distribution of funds because of the need to revise the Kosovo budget, which took extra time to be processed by the AoK due to political divergences. Some groups also experienced difficulties in accessing these benefits. In particular, some returnees and internally displaced persons were not familiar with online application and lacked relevant documentation, while civil services worked with limited staff. In addition, persons who lacked formal employment contracts and lost their job during the pandemic were at risk of not benefiting as private companies were reluctant to formalize their contracts for one year, which was a precondition.<sup>105</sup>

**78.** As businesses suffered in their struggle to continue work as usual, the COVID-19 crisis disproportionately affected workers who experienced acute violations of the right to just and favorable conditions of work, such as illegal termination of contracts, wage cuts, a lack of employer-employee contractual relationships, increased workloads because of labour cuts, late payments

99 Mediana Halili, '[Jusuf Azemi: Pronarët e bizneseve nuk lejuan testimin e puntorëve për COVID-19](#)' (kallxo.com, 25 November 2020).

100 AoK, '[Nga mbledhja e Komisionit për Çështje të Sigurisë dhe të Mbrojtjes](#)' (15 December 2020).

101 [GoK Decision No. 01/15](#) (23 March 2020).

102 Ibid.; [GoK Decision No. 01/42](#) (11 November 2020).

103 GAP Institute, '[The Impact of the COVID-19 Pandemic on Kosovo's economy](#)' (October 2020).

104 Ministry of Finance and Transfers, '[Decision on Operational Plan on Emergency Fiscal Package](#)' (3 April 2020).

105 Antigona Isufi, '[Dy muaj pasi u largua nga puna pronari i kompanisë i kërkon punëtorit 170 eurot e Pakos Emergjente](#)' (kallxo.com, 18 August 2020).

of overtime wages, and a lack of adequate social safety nets for workers. Many people in Kosovo had their employment terminated because of the lack of protection of workers' rights and were subsequently exposed to difficult financial situations. Some public sector workers, such as police officers who worked extra hours due to the pandemic, reportedly experienced delays in payments of overtime wages. For instance, in September, the GoK finally allocated about €4 million to pay overtime wages to members of the Kosovo Police that accrued from 15 March to 31 August, resolving a long-standing issue impacting their labour rights. Meanwhile, medical support staff, such as technical workers in health institutions, were initially excluded from the wage supplements provided to doctors and nurses, which may have amounted to discrimination, although they were eventually included in such payments. Other emblematic cases involving violations of the right to just and favorable conditions of work included instances in which companies were not contributing to their employees' Pension Trust accounts,<sup>106</sup> employers refusing to allow employees infected with COVID-19 to take paid sick leave to quarantine and undergo medical treatment,<sup>107</sup> and employees not having sufficient time from the end of their work shifts to return home prior to the beginning of COVID-19 curfews, resulting in fines.<sup>108</sup>

**79.** The lack of strong labour unions, insufficient respect for the rule of law, and other issues related to transparency and accountability in Kosovo exacerbate labour rights violations in Kosovo, especially during the pandemic.<sup>109</sup> This especially affects members of non-majority communities and women as they are heavily employed in the informal economy and thus can rarely benefit from the government's financial help.<sup>110</sup> Data corresponding to women and men involved in the informal economy remains vague. There is no gender analysis conducted to inform measures needed to tackle workers in the informal economy who remain the most vulnerable to labour rights violations. Gender-based discrimination in the labour sector also remains widespread with only a few reported cases, a lack of knowledge on the institutional referral mechanisms, and inadequate inspections on the matter.

## 80. Recommendations:

- The AoK should ensure that Draft Law No. 07/L-028 on the Labour Inspectorate fully complies with international and regional labour rights and standards and undertake to adopt it to improve the functioning of the Labour Inspectorate, while the GoK should allocate additional funding to address the Labour Inspectorate's limited monitoring and inspection capacities.

106 Behar Mustafa, '[Ndërtimtarët nuk ua paguajnë Trustin punëtorëve – VIDEO](#)' (kallxo.com, 16 December 2020).

107 Telegrafi, '[Prishtinë, punëtori me coronavirus punojnë në market – nukidhapushimshefitij](#)' (telegrafi.com, 23 November 2020).

108 Adelina Ahmeti, '["Ora policore", qytetarja ankohet se u dënua nga Policia duke u kthyer nga puna](#)' (kallxo.com, 13 November 2020).

109 RTK Live, '[Pa Kontratë Pune, S'Ka Ndihtë Nga Pakoja Emergjente](#)' (rtklive.com, 10 April 2020).

110 Democracy for Development, '[\(Non\)Inclusion of Women in the Labor Market](#)' (12 January 2021).

- The GoK should provide more concrete support for the workers who have disproportionately been affected by the pandemic COVID-19, especially those who have lost their sources of income and livelihood. This includes providing financial support to all persons who are unemployed, with a particular focus on marginalized communities.
- The GoK should provide greater care to ensuring the right of all workers to occupational safety and health, including, in particular, proper work environments that fully comply with COVID-19 protection and safety measures.
- The Ministry of Labour and Social Welfare (MLSW) should make social safety nets widely available for all workers to ensure that they do not fall into abrupt financial hardships in cases of emergency.

## 6.2. The right to education

**81.** Article 47 of Kosovo's Constitution guarantees and protects the right to education, emphasizing that basic education is compulsory and free, and also guarantees equal educational opportunities for all people according to their specific needs and abilities. Law No. 04/L-032 on Pre-University Education is the basic law that regulates the pre-university educational system in Kosovo.<sup>111</sup> In addition to defining the duties of the Ministry of Education, Science, and Technology (MEST) in planning, setting standards, and ensuring the quality of pre-university education, the Law also stipulates that “[n]o persons shall be denied the right to education” and requires the MEST take into account when planning, managing, and delivering pre-university education internationally accepted norms, the rights of the child, the protection of groups in vulnerable situations, and the promotion of gender equality.<sup>112</sup> Law No. 04/L-037 on Higher Education seeks to ensure the quality of higher education in Kosovo and requires equal opportunities for students and staff in higher education settings without discrimination.<sup>113</sup> In addition, Law No. 03/L-068 on Education in the Municipalities of Kosovo regulates the organization of public educational institutions and the provision of all levels of public education at the municipal level, requiring the MEST to, among other things, “promote a non-discriminatory educational system in which each person’s right to education is respected” and “improve the quality, relevance and efficiency of education”.<sup>114</sup>

**82.** Several issues continued to impact the right to education in Kosovo, including student dropouts and challenges concerning the inclusion of students with special needs as well as early childhood education and development. The issue of students dropping out of compulsory basic education continued to be one of the most problematic issues in Kosovo’s education system, although there was a slight decrease in the number of cases dropouts – 0.05% in 2020 compared to 0.07% in 2019.<sup>115</sup> According the annual statistical assessment conduct by the MEST and Kosovo Agency of Statistics for 2020, the education and inclusion of all students with special needs in regular

111 [Law No. 04/L-032 on Pre-University Education in Kosovo](#) (16 September 2011).

112 *Ibid.*, Arts. 3 and 5.

113 [Law No. 04/L-037 on Higher Education in Kosovo](#) (9 September 2011).

114 [Law No. 03/L-068 on Education in the Municipalities of Kosovo](#) (15 June 2008).

115 MEST, ‘Mundësi të barabarta në arsim për të gjithë: Java kundër braktisjes 11-20 nëntor 2020’ (November 2020).

education also remained an issue of concern. According to the assessment, there were 3,903 students with special needs in regular classes,<sup>116</sup> although the report noted that the assessment was not made for all students with special needs due to the fact that professional teams had not yet completed the assessment in their respective municipalities.

**83.** Early childhood development also remains a particular challenge as only 15 per cent of children (17 per cent boys and 13 per cent girls) aged three to four years attended early education programs.<sup>117</sup> The significant drop in children from K-Roma, K-Ashkali, and K-Egyptian communities who attended early childhood education in 2014 (16 per cent) compared to 2020 (eight per cent) shows a widening gap equity gap in early childhood education between children from these communities and other children in Kosovo.<sup>118</sup>

**84.** The initial measures taken by the government to halt the spread of COVID-19 in March 2020 included closing all educational institutions and providing education through distance learning. This inevitably impacted the overall quality of education as well as access to education for some students, especially those belonging to certain groups in vulnerable situations such as members of non-majority communities, returnees, internally displaced persons, and persons living in poverty due to their low financial standings resulting in a lack of essential IT equipment and/or internet connectivity.

**85.** In response to the pandemic, the MEST suspended in-person education on 12 March 2020 and developed in due course a distance education learning platform for grades 1 to 9 that was broadcasted from 20 March 2020 via public TV stations and also available on the internet.<sup>119</sup> The Ministry of Education of Serbia also launched distance learning for students following the Serbian curriculum in Kosovo, which was also provided through public TV stations and online.<sup>120</sup> However, students from K-Roma, K-Ashkali, and K-Egyptian communities faced significant barriers in accessing distance learning due to a lack of IT equipment, internet connectivity, or TV sets.<sup>121</sup> According to the former Minister of Education, about 32,000 students either did not attend distance learning regularly or at all due to the aforementioned reasons, including children with disabilities.<sup>122</sup> Subsequently, the MEST reported that 9,070 students (or 2.8 per cent) of public students from grades 1 to 12 did not follow distance learning from March to June 2020 due to difficult socio-economic situations and the lack of required technological equipment, while

116 Kosovo Agency of Statistics and MEST, 'Education Statistics in Kosovo 2019/20' (12 June 2020), p. 69.

117 UNICEF Kosovo Office, '2020 Annual Programme Results' (22 March 2021), p. 3 (hereinafter UNICEF 2020 Programme Results).

118 Ibid., pp. 3-4.

119 MEST, [E-learning Platform](#).

120 Ministry of Education of Serbia, 'Распоред емитовања образовних садржаја'.

121 Gentiana Ahmeti, 'Viti i pandemisë në shkollë, mësimi online i paarritshëm për të gjithë' (kallxo.com, 6 February 2021).

122 Arbisa Shefkiu, 'Likaj: Rreth 32 mijë nxënës s'janë përfshirë në mësimin nga distanca' (kallxo.com, 16 June 2020).

private school students had a 100 per cent participation rate.<sup>123</sup> According to one report, only 22 per cent of students and teachers in Kosovo believed that there was an adequate platform to support effective online learning, and the inadequacy and unpreparedness of teachers in using technology for online teaching also presented another challenge.<sup>124</sup>

**86.** Universities were also allowed to teach using only distance learning from March and the remainder of 2020, although an exception was eventually made to allow for in-person practical or laboratory work, examinations, and administrative services.<sup>125</sup> However, there were several reports that universities and their students did not respect and implement protective measures against COVID-19, such as physical distancing, insufficient hygienic facilities in the classrooms and toilets, lack of thermometers, and students not wearing protective masks.<sup>126</sup>

**87.** On August 27, 2020, the MEST decided that the 2020 – 2021 school year in Kosovo would start on 14 September 2020 according to its Master Plan approved by the government that envisioned teaching according to three scenarios – in-person, distance learning, or a combined approach – depending on the epidemiological situation for each school.<sup>127</sup> However, the MEST reportedly did not make the necessary preparations after the school year resumed to implement only distance learning should the epidemiological situation have deteriorated.<sup>128</sup> New COVID-19 cases were almost immediately reported among teachers and students, requiring several primary and secondary schools to temporarily close and revert to using only distance learning, which, once again, led to several of the aforementioned challenges affecting the quality of and access to education. In the Government of Serbia-run school system in Kosovo, grades 1 to 4 also resumed in late September with in-person education, while grades 5 to 8 and high school commenced using a mix of in-person and distance learning. Reportedly, some schools were not regularly disinfected and lacked disinfectants for students and educational staff. Nevertheless, according to a joint UN Children’s Fund (UNICEF) and MEST poll published in October, the majority of students were glad that schools reopened and preferred to continue with in-person education for the 2020 – 2021 academic year.<sup>129</sup>

## **88. Recommendations:**

- The MEST should conduct and publish an official study into the impact of the COVID-19 pandemic on the realization of the right to education in Kosovo, especially with regards to the educational outcomes of students during the 2019 – 2020 and 2020 – 2021 academic years.

123 MEST, ‘Udhëzues I Përgjithshëm I Mash Për Organizimin E Mësimit Në Vitin Shkollor 2020/2021 Në Kushtet E Pandemisë COVID-19’ (10 September 2020); Telegrafi, ‘Mungesa e mjeteve teknologjike bënë që 9.070 nxënës të mos marrin pjesë në mësimin online’ (telegrafi.com, 17 September 2020).

124 World Bank, ‘Western Balkans Regular Economic Report No. 17: The Economic and Social Impact of COVID-19’ (Spring 2020).

125 Gentiana Ahmeti, ‘Çalimi në menaxhimin e pandemisë në universitetet publike’ (kallxo.com, 31 December 2020).

126 Xheneta Murtezaj, ‘Ngecja e universiteteve në respektimin e masave kundër pandemisë’ (kallxo.com, 31 January 2021).

127 MEST, ‘Udhëzues I Përgjithshëm I Mash Për Organizimin E Mësimit Në Vitin Shkollor 2020/2021 Në Kushtet E Pandemisë COVID-19’ (10 September 2020).

128 Nga Xhejlane Kaçiu, ‘Pupovci: Vala e dytë e coronavirusit është e parashikueshme, por në arsim nuk janë bërë përgatitje për këtë fazë’ (telegrafi.com, 22 September 2020).

129 UNICEF Kosovo Office and MEST, ‘Back to School: U-Reporters’ Opinions and Perceptions on the Reopening of Schools in Kosovo’ (October 2020).

- The GoK should undertake more concrete steps in ensuring the right to education for all students during the pandemic, including by providing financial and in-kind support to students, supplying educational institutions with proper hygienic amenities and monitoring the observance of the protective measures, and being more proactive in the processes of capacity building in schools by providing additional training for teachers and professors.
- The MEST should implement special measures to improve access to education and make education more inclusive, especially for students from marginalized groups and communities, students in vulnerable situations, and all other students who face challenges in accessing education because of their lower financial standing and lack of proper educational equipment.
- The MEST should create a capacity-building program for teachers on the methods and practice of teaching in the era of technology, especially on the use of technology in distance learning and teaching.
- The MEST should provide educational institutions all necessary COVID-19 hygienic and protective amenities and increase its monitoring of whether educational institutions at all levels are respecting COVID-19 protective measures.
- The MEST should establish programs to support parents and caregivers for early childhood development.

### 6.3. The right to health

**89.** The Constitution of Kosovo guarantees to every person the right to have their “physical and psychological integrity respected”, which includes the right to make their own medical decisions and to not undergo medical treatment against their will.<sup>130</sup> It also stipulates that healthcare and basic social insurance relating to, among other things, disease and disability shall be regulated by law.<sup>131</sup> Several directly applicable international human rights instruments also guarantee the right to the highest attainable standard of physical and mental health in Kosovo.<sup>132</sup> Law No. 04/L-125 on Health, which provides for the protection and improvement of the health of all people in Kosovo, expressly stipulates that its implementation must fully comply with guaranteed human rights standards and principles.<sup>133</sup> It establishes that the provision of healthcare should ensure, among other key principles, full equity in access, inclusiveness and non-discrimination, and quality in services.<sup>134</sup> Law No. 05/L-025 on Mental Health, in turn, protects and promotes mental health in Kosovo, including by guaranteeing several specific rights to people with mental health issues.<sup>135</sup>

130 Constitution of Kosovo, note 2, Art. 26.

131 Ibid., Art. 51.

132 Constitution of Kosovo, note 2, Art. 22; see also UDHR, Art. 25; CRC, Art. 24; CEDAW, Arts. 10(h), 11(f), 12, 14(b).

133 [Law No. 04/L-125 on Health](#) (7 May 2013), Arts. 1, 4.

134 Ibid., Art. 5.

135 [Law No. 05/L-025 on Mental Health](#) (23 November 2015), Arts. 1, 6, 8.

Law No. 04/L-249 on Health Insurance creates a mandatory public universal health insurance system to ensure access of all people in Kosovo to basic healthcare with a view to improve health indicators and provide financial protection against high healthcare costs.<sup>136</sup> Other laws exist that also support the realization of the right to health in Kosovo, including in relation to protecting public health, preventing and fighting against infectious diseases, reproductive rights and health, and occupational safety and health.<sup>137</sup> In addition, an administrative instruction adopted in 2013 establishes a charter of patients' rights and responsibilities.<sup>138</sup>

**90.** Several challenges continue to impede the implementation of this robust legal framework and hinder the effective functioning of Kosovo's healthcare system, including insufficient human and financial resources, inadequate enforcement of existing laws and policies, insufficient sectoral coordination and monitoring, and low participation of key groups.<sup>139</sup> Most notably, Law No. 04/L-249 on Health Insurance has still not been enforced and implemented more than six years after its initial adoption. According to the current Ombudsperson, the failure to implement this important law is unjustifiable and has created negative consequences for people in Kosovo, such as having to bear the financial costs of basic healthcare services.<sup>140</sup> The lack of universal healthcare insurance in Kosovo also reportedly created a heavy financial risk and burden for COVID-19 patients who have been forced to pay for their treatment out-of-pocket, making their treatment more difficult and disproportionately affecting persons living in poverty as they were unable to pay for some or all of their prescribed medicines.<sup>141</sup>

**91.** The pandemic exacerbated and exposed pre-existing challenges relating to the limited capacities of Kosovo's healthcare system and enjoyment of the right to health for all people in Kosovo. Key challenges included reports of insufficient oxygen supplies and hospital beds as well as difficulties related to the supply of protective equipment, tests, medication, and respirators due to the failure to properly implement the relevant legal framework.<sup>142</sup> For most of the pandemic, the number of daily PCR COVID-19 tests conducted remained below 1,000 tests per day, raising concerns for the ability of institutions to conduct contact tracing and effectively monitor the evolving epidemiological situation. While the number of daily PCR COVID-19 eventually increased to between 1,000 and 1,900 tests per day in the last few months of 2020, testing remained below the World Health Organization's (WHO) recommendations to conduct 2,000 to 4,000 tests per day at the end of the year. The initial challenges in ensuring an adequate supply of protective equipment raised particular concerns for the right to occupation and safety of medical workers, some of whom contracted COVID-19 and even died as a result while working on the front lines to provide medical care to people during the pandemic. Healthcare workers accounted for 3,236

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136 [Law No. 04/L-249 on Health Insurance](#) (30 April 2014), Arts, 1-2, 6.

137 [Law No. 02/L-78 on Public Health](#) (15 August 2008); [Law No. 02/L-109 for Prevention and Fighting Against Infectious Disease](#) (15 October 2008); [Law No. 02/L-76 on Reproductive Health](#) (1 May 2008); Law on Safety and Health at Work, note 92.

138 [Administrative Instruction No. 15/2013 Charter of Patient Rights and Responsibilities](#) (13 August 2013).

139 OïK, '[Ex Officio Report No. 434/2020 with Regard to Limitations on Provision of Health Services During COVID-19 Pandemic in Kosovo](#)' (23 February 2021), para. 62 (hereinafter OïK Ex Officio Report on Healthcare Access).

140 *Ibid.*, para. 63.

141 Kallxo, '[Pa sigurime shëndetësore në pandemi](#)' (*kallxo.com*, 6 March 2021).

142 OïK Ex Officio Report on Healthcare Access, note 139, paras. 58-60.

out of 49,843 COVID-19 cases, or 6.5 per cent of all cases, at the end of December 2020. Some rural villages also reportedly lacked doctors and staff in their local clinics as medical staff were reallocated to Pristina's medical centers due to the larger number of patients in those locations.

**92.** According to the current Ombudsperson, Kosovo institutions also failed to fully satisfy their constitutional and legal obligations to provide people in Kosovo with access to health services during the pandemic, especially with respect to persons who were not infected with COVID-19 and sought medical treatment for other conditions.<sup>143</sup> In particular, the Ombudsperson concluded that the decision to suspend elective surgeries and specialist visits from March to September 2020 “lacked [a] legal basis” and that Kosovo institutions did not provide alternatives to ensure access to health services. As a result, waiting lists for surgeries have “grown significantly”.<sup>144</sup> Persons living with HIV/AIDS and tuberculosis also faced particular challenges with regard to healthcare access during the pandemic.<sup>145</sup> The current Ombudsperson also reported that healthcare institutions did not perform tests or maintain sufficient contact with HIV/AIDS patients, while tuberculosis patients experienced a lack of special sanitary facilities within pulmonology clinics and an insufficient number of pulmonologists. Reportedly, “[i]nadequate health services and environmental factors produced disproportionately high COVID-19 mortality rates” in Kosovo.<sup>146</sup>

**93.** Beyond the obvious toll on physical health and the right to life, the pandemic and related measures also negatively impacted the right to mental health. Measures, such as the lockdown and mandatory quarantine in the first few months of the pandemic, as well as the pandemic's impact on the socio-economic situation and general uncertainty about the future led to increased levels of mental health issues in Kosovo, such as anxiety and sleep disorders. However, the Ministry of Health reported in late October that it lacked the necessary budget to increase mental health services. In one emblematic case relating to mental health and the right to life, a 26-year-old student who returned from Germany committed suicide in early May after being required to undergo mandatory quarantine in the student center in Pristina, although the investigation into this matter was still ongoing at the end of 2020. This particular incident highlighted the disproportionate impact that COVID-19 measures have had on persons in vulnerable situations, including those with mental health issues, and the need to ensure that measures are sufficiently targeted to address their specific needs.

**94.** The Office of the Language Commissioner and the Ombudsperson received several complaints in 2020 relating to the publication of important information relating to the pandemic and prevention measures only in Albanian by the Ministry of Health and the KIPH, which hinders

143 Ibid.

144 Bujar Vitija, ‘[The far-reaching consequences of Kosovo's failure to secure vaccines](#)’ (*pristinainsight.com*, 1 March 2021).

145 Oik, ‘[Press release – The Ombudsperson published a report with recommendations No. 698/2020 with regard to access to health care services for persons affected by HIV and Tuberculosis during the COVID-19 pandemic](#)’ (27 January 2021).

146 Amnesty International, ‘[Amnesty International Report 2020/21: The State of the World's Human Rights](#)’ (7 April 2021), p. 217.

the right of non-Albanian speaking communities in Kosovo to access critical health information during the ongoing pandemic.<sup>147</sup> Despite past interventions and promises by both institutions to implement previously issued recommendations to improve access to information, the websites of the KIPH and Ministry of Health still present information mostly in Albanian and are largely nonfunctional in Serbian.

## 95. Recommendations:

- The GoK should take all necessary measures to immediately ensure the implementation and enforcement of Law No. 04/L-249 on Health Insurance without any further delay, including by ensuring that all people in Kosovo are provided with universal healthcare insurance.
- The GoK should increase the budget allocated to the healthcare system in Kosovo, including additional funding for mental healthcare services.
- The GoK and relevant institutions in the field of health should ensure that all people in Kosovo, especially COVID-19 patients and persons with chronic medical conditions like HIV/AIDS and tuberculosis, can equally access quality and affordable essential medicines, medical supplies (e.g., tests and oxygen), and medical treatments, including by bearing the expense of private medical treatment in cases in which healthcare services are not being provided by public healthcare institutions.
- The Ministry of Health and hospitals in Kosovo should ensure that specialist visits and elective surgeries are provided to those who need them in a timely manner even during the ongoing pandemic in full compliance with COVID-19 prevention measures.
- Relevant institutions, including the Ministry of Health, should ensure that rural medical clinics are adequately staffed and equipped.
- The Ministry of Health and the KIPH should fully comply with their obligations under Law No. 02/L-37 on the Use of Languages by ensuring all official communications, including their websites, provide information in Kosovo's official languages.

## 6.4. Property rights

**96.** Kosovo has an extensive legal framework designed to protect property rights.<sup>148</sup> In February 2017, the GoK launched the Kosovo Strategy on Property Rights that established five key policy objectives, including strengthening the legal framework, addressing informality in the immovable property sector, and enforcing property rights of displaced persons and non-majority communities. According to CSOs, however, the adoption of the Strategy failed to improve the overall situation with regard to property rights, and old challenges continued to persist.

147 2020 OiK Report, note 26, p. 95.

148 Constitution of Kosovo, note 2, Arts. 7, 46, 121, 122, 156, 159. See also, e.g., [Law No. 03/L-154 on Property and Other Real Rights](#) (4 August 2009); [Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency](#) (3 November 2016); [Law No. 2002/5 on the Establishment of the Immovable Property Rights Register](#) (1 August 2008); [Law No. 03/L-007 on Out Contentious Procedure](#) (12 January 2009); [Law No. 2004/06 on Inheritance in Kosovo](#) (1 August 2006).

**97.** 2020 saw some progress with regard to the enforcement of decisions made by judicial and non-judicial authorities in conflict-related property cases. In April, the Kosovo Property Comparison and Verification Agency (KPCVA), which is mandated to adjudicate property claims and resolve discrepancies between property deeds, adopted an administrative instruction on the determination of procedures for demolition of unlawful structures. In October, it implemented for the first time a decision on the demolition of an illegal construction in a case that had been adjudicated by the Supreme Court years before.<sup>149</sup> Nevertheless, as of October 2020, the KPCVA had 61 evictions pending, 23 of which related to property located in the Mitrovicë/Mitrovica region owned primarily by K-Albanians.<sup>150</sup> The KPCVA has yet to receive over four million scanned cadastral documents from Belgrade as per the Brussels Agreement. The AoK still has not adopted amendments to Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency aimed at improving the functioning of KPCVA.

**98.** Ongoing incidents of illegal occupation, the non-enforcement of eviction and demolition orders, and the inability of the KPCVA to provide adequate compensation continued to impact the property rights of displaced persons and returnees, further hindering their ability to return. Non-majority communities, especially K-Serbs and K-Roma, as well as K-Albanians in northern Kosovo were particularly affected.<sup>151</sup> Some displaced persons and returnees, including members of K-Roma, K-Ashkali, and K-Egyptian communities in Kosovo, also faced difficulties in obtaining the necessary civil registration and identity documents to register property in their names and exercise their rights with regard to inherited or transferred property.<sup>152</sup> The 2016 decision of the Constitutional Court confirming the SOC's ownership of the land adjacent to the Visoki Dečani Monastery remained unimplemented<sup>153</sup> impacting property rights of the SOC.

**99.** Even though Law No. 06/L-024 on Treatment of Constructions Without Permit was adopted in 2018, Kosovo is still facing the challenge of legalizing numerous buildings without permits. According to CSOs, more than 356,000 buildings in Kosovo have yet to be legalized. The international community is addressing this issue by advising local and central level institutions; however, legal assistance for the applicants on how to file relevant applications to the authorities is still lacking.

#### **100. Recommendations:**

- The KPCVA should implement, without delays, decisions of the Housing Property Claim Commission and the Kosovo Property Agency.

149 2020 US State Dept. Human Rights Report, note 28, p. 12.

150 Ibid., p. 13.

151 OSCE Mission in Kosovo, '[Property Rights Mass-Claim Mechanism: Kosovo Experience](#)' (16 June 2020), p. 16.

152 2020 US State Dept. Human Rights Report, note 28, p. 20.

153 Ibid., p. 11.

- The Kosovo Police and the Prosecutor’s Offices should ensure that properties belonging to members of non-majority communities are not re-occupied after evictions conducted by the KPCVA.
- Central and local level authorities should continue the awareness campaign on the importance of the legalization of constructions without a permit.
- Central and local level authorities should take appropriate steps to formalize informal settlements in due time.

## 6.5. Cultural rights

**101.** Kosovo has a robust constitutional and legal framework to promote the realization of cultural rights<sup>154</sup> and protect cultural heritage,<sup>155</sup> although several implementation challenges persisted in 2020. Directly applicable international human rights instruments in Kosovo protect the right to “freely participate” in cultural life;<sup>156</sup> cultural, religious, and language rights of “ethnic, religious or linguistic minorities”;<sup>157</sup> the right to equal and non-discriminatory participation in cultural activities without distinctions based on race, national, or ethnic origin<sup>158</sup> or sex;<sup>159</sup> and children’s cultural rights.<sup>160</sup> The Council of Europe Framework Convention for the Protection of National Minorities (FCPNM), which also directly applies, imposes obligations to promote equality for non-majority communities in cultural life and to create conditions allowing them to express, preserve, and develop their culture, religion, language, and traditions, especially in the field of education.<sup>161</sup> Although the ICESCR is not among the list of directly applicable instruments, Kosovo has committed to implementing the 2030 Agenda for Sustainable Development<sup>162</sup> and proposes aligning Kosovo’s legal framework with the ICESCR in its Draft Program for the Protection and Promotion of Human Rights 2021 – 2025, which, if undertaken and successful, would implement a key recommendation of the UN Special Rapporteur in the field of cultural rights.<sup>163</sup>

**102.** In terms of obligations under relevant legislation, Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo protects the rights of all communities in Kosovo to maintain, express, develop, preserve, and enhance their culture, identity, and cultural heritage.<sup>164</sup> Law No. 02/L-37 on the Use of Languages further guarantees

154 Constitution of Kosovo, note 2, Art. 58, subsections (1), (3), (4), and Art. 59, subsection (1). See also, e.g., [Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and Their Members in Kosovo](#) (4 June 2008), as amended in 2011 (hereinafter Law on Community Rights); [Law No. 02/L-57 on Institutions of Culture](#) (1 Apr. 2007); [Law No. 02/L-59 on Philharmonic, Opera, and Ballet](#) (1 May 2007); [Law No. 04/L-065 on Copyright and Related Rights](#) (30 Nov. 2011), as amended by [Law No. 05/L-047](#) (3 November 2016) and [Law No. 06/L-120](#) (4 July 2019).

155 Constitution of Kosovo, note 2, Arts. 9 and 58, subsection (5). See also, e.g., Law on Community Rights, note 154; [Law No. 02/L-88 on Cultural Heritage](#) (1 July 2008); [Law No. 03/L-039 on Special Protective Zones](#) (4 June 2008) (hereinafter Law on SPZs).

156 UDHR, Arts. 22, 27.

157 ICCPR, Art. 27.

158 CERD, Arts. 1, 5(e)(vi).

159 CEDAW, Arts. 1, 3, 5, 13.

160 CRC, Arts. 4, 17, 20, 29(c), 30, 31.

161 FCPNM, Arts. 4, 5, 12, 15, 17.

162 UN Kosovo Team, ‘[Sustainable Development Goals](#)’, last accessed 28 April 2021.

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

164 Law on Community Rights, note 154, Arts. 2.1, 5.1.

language rights, which are key to the cultural identity of each community in Kosovo.<sup>165</sup> Law No. 02/L-88 on Cultural Heritage provides more specific obligations relating to the protection, conservation, restoration, and administration of cultural heritage, establishing, among other things, protective zones for immovable cultural heritage. The subsequently adopted Law No. 03/L-039 on Special Protective Zones (SPZs) creates special zones that provide enhanced protection for SOC monasteries, churches, and other religious sites and for other “historical and cultural sites of special significance” for the K-Serb community and other communities in Kosovo.<sup>166</sup> The Implementation and Monitoring Council (IMC) monitors compliance with this law.

**103.** At the policy level, Kosovo’s Strategy for Cultural Heritage for 2017 – 2027 remained in place in 2020, which seeks to enhance the protection and preservation of cultural heritage in accordance with the legal framework and principles; international standards; and sustainable cultural, economic, and social development.<sup>167</sup> The Ministry of Culture, Youth, and Sports (MCYS), however, has yet to adopt and publish a comprehensive strategy on cultural rights, although it announced in February 2020 that it would begin developing such a strategy.<sup>168</sup>

**104.** Several challenges to implementing this strong legal and policy framework persisted in 2020, such as insufficient human and resource capacities, the absence of an appropriate data collection system to enable evidence-based policies, and non-compliance with Law No. 02/L-37 on the Use of Languages by the MCYS. Budgetary allocations continue to remain primarily donor driven and insufficient to effectively implement the legal framework to promote the realization of cultural rights and protect cultural heritage in Kosovo, both of which require “long-term financial support in order to have a lasting impact”.<sup>169</sup> Despite a commitment by the GoK to “gradually increase” the budget for culture and cultural heritage,<sup>170</sup> the MCYS budget for 2020 on culture and cultural heritage was reduced by €917,287 (nine per cent) and €505,939 (8.3 per cent), respectively.<sup>171</sup> However, the reduction – at least with respect to cultural heritage – was largely due to the overall budgetary impact of the pandemic. Meanwhile, the MCYS is still not sufficiently complying with Law No. 02/L-37 on the Use of Languages, creating challenges for non-Albanian speaking communities to enjoy their right to timely and complete information on cultural rights and the protection of cultural heritage. For instance, the MCYS website has several sections that are only available in Albanian, and its news section is regularly updated in Albanian but was last updated during the reporting period in Serbian on 17 July 2020.

165 Law on the Use of Languages, note 68.

166 Law on SPZs, note 155, Art. 1.

167 MCYS, ‘[National Strategy for Cultural Heritage 2017-2027](#)’ (2 August 2016).

168 MCYS, ‘[Minister Dumoshi Announces Strategy for Culture](#)’ (14 February 2020).

169 2020 EC Progress Report, note 44, p. 38.

170 GoK, [Government Program 2020 – 2023](#) (June 2020), p. 59.

171 Compare [Law No. 06/L-133 on the Budget Appropriations for the Budget of Kosovo for Year 2019 – Tables of Budget for Year 2019](#) (14 February 2019) with [Law No. 07/L-014 on Amending and Supplementing the Law No. 07/L-001 on Budget Appropriations for the Budget of Kosovo for Year 2020](#) (7 August 2020).

**105.** In 2020, there were 23 religious and other cultural heritage assets under permanent protection<sup>172</sup> and around 1,600 cultural assets under temporary protection.<sup>173</sup> Eight new cultural assets were added to the temporary protection list in October 2020, including the traditional cultural event “Flaka e Janarit” in Gjilan/Gnjilane. Kosovo also has 24 SPZs providing specific cultural heritage sites with enhanced protection and close monitoring by the IMC and 24-hour protection by a multiethnic police unit. Four religious cultural sites in Kosovo - the Visoki Dečani Monastery, the Patriarchate of Pejë/Peć Monastery, the Church of Holy Apostles, and the Holy Virgin of Ljevise – continued to be recognized and protected as World Heritage Sites by the UN Educational, Scientific and Cultural Organization (UNESCO).<sup>174</sup>

**106.** The resumption of work on the transit road running through the designated SPZ of the Visoki Dečani Monastery in July 2020 raised concerns not just for the protection of cultural heritage but also for the respect of property rights and the rule of law, especially against the backdrop of the continued non-implementation of May 2016 Constitutional Court decision upholding the SOC’s ownership rights to 24 hectares of land surrounding the monastery. Following the halting of construction in mid-August and several months of discussions between relevant stakeholders, the IMC endorsed an agreement in November 2020 regarding the simultaneous reconstruction of an international bypass road outside of the Visoki Dečani monastery’s SPZ and a road for local traffic only within the SPZ.<sup>175</sup> The IMC underscored that this important new agreement in the field of cultural heritage fully complies with the applicable legal framework and that it will monitor the implementation of the agreement, which seeks to foster “inter-community relations through the protection of religious cultural heritage” while also promoting the economic development of the region and the free movement of people in Kosovo.

**107.** As in past years, inadequate administration and protection of cultural heritage remained a particular issue of concern in 2020, such as insufficient fire protection systems and the unauthorized construction and destruction affecting some protected cultural heritage sites. The ongoing problems concerning the restoration of the Novobërdë/Novo Brdo Fortress – one of Kosovo’s most famous cultural monuments – provides an emblematic example of this persisting issue. In March 2020, Kosovo prosecutors filed an indictment seeking compensation from a company for conducting “faulty” restoration work and damaging the walls of the fortress during a project initiated by the Kosovo Institute for the Protection of Monuments in October 2019.<sup>176</sup> The Kosovo Council for the Cultural Heritage, which is an independent agency that monitors and protects cultural heritage, warned that the fortress remained under threat in 2020 despite the restoration work.<sup>177</sup>

**108.** Nevertheless, there were some positive developments to restore and conserve cultural heritage in 2020. For instance, the Commission of the Kosovo Institute for the Protection of

172 MCYS, [Decision No. 69/2016](#) (10 October 2016).

173 MCYS, [List of Cultural Heritage for Temporary Protection](#) (27 October 2020).

174 UNESCO World Heritage Centre, [‘Medieval Monuments in Kosovo’](#) (last accessed 28 April 2021).

175 IMC, [‘Statement by the Implementation and Monitoring Council’](#) (12 November 2020).

176 Perparim Isufi, [‘Kosovo Prosecutors Accuse Serbian Company of Wrecking Medieval Fortress’](#) (balkaninsight.com, 11 March 2020).

177 Ibid.

Monuments rejected a project that sought to preserve only one wall of the 1926 Catholic Church “Engjëllii Rojës” (The Guardian Angel) in Ferizaj/Uroševac and build an entirely new church in its place.<sup>178</sup> The municipality of Prizren reportedly took proactive steps to remove unauthorized structures in the historic city center of Prizren,<sup>179</sup> which is protected as a SPZ under a specific law.<sup>180</sup> The MCYS, in collaboration with the relevant municipal institutions, restored the Behramaj mill built in Obiliq/Obilić in 1864 in July<sup>181</sup> and three old houses in Prizren’s historic city center in October 2020.<sup>182</sup> The MCYS also created a management plan for the Prizren Fortress, which is an object of particular importance for Kosovo’s cultural heritage,<sup>183</sup> and took steps to conserve the “Mill of Dulahit” close to Pristina for the winter season and began creating plans to restore this object of “historical significance”.<sup>184</sup>

**109.** There were several reported incidents targeting religious cultural heritage belonging to the SOC and Islamic Community of Kosovo in 2020. Incidents affecting SOC property were reported to have taken place in early 2020 in the villages of Novake/Novakë, Gornje Selo/Gornjasellë, and Sredska/Sreckë.<sup>185</sup> In April, a fire incident destroyed a 450-year old mosque in Gjilan/Gnjilane, which the municipality condemned in a statement calling it “a criminal act, severely damaging the religious tolerance in the municipality”. In August, an SOC church in Prizren and a mosque in Kaçanik/Kaçanik were damaged according to the Kosovo Police,<sup>186</sup> while a representative of a mosque in Pejë/Peć reported to the Kosovo Police that unknown person(s) broke into the mosque and reportedly stole a cash box containing money collected during Friday prayers. The desecration of an SOC church in Obiliq/Obilić was also reported to the Kosovo Police in September.<sup>187</sup> The Abbot of Visoki Dečani Monastery, Father Sava Janjić, expressed his concerns about such incidents and called for renewed efforts to create a society “in which cultural, ethnic, linguistical, religious diversity will be protected and preserved.”<sup>188</sup>

**110.** Intellectual property rights, such as copyright, are still in the process of being fully developed and implemented in Kosovo. While the MCYS adopted the 2019 – 2023 Strategy for Strengthening the Copyright System in June 2019, it has yet to be fully operationalized. In addition, several issues continued to impede the adequate enforcement of intellectual property rights in 2020, such as insufficient inter-agency cooperation, protracted enforcement and application procedures, and

178 <https://www.koha.net/kulture/230232/stopohet-plani-per-rrenimin-e-kishes-shekullore-ne-ferizaj/>.

179 2020 EC Progress Report, note 44, p. 38.

180 [Law No. 04/L-066 on Historic Centre of Prizren](#) (18 July 2012).

181 MCYS, ‘[Restaurohet mulliri i shekullit 19 në Graboc të Obiliqit](#)’ (28 July 2020).

182 MCYS, ‘[Ministrja Dumoshi: Prizreni, qytet ndër më të pasurit, në trashëgimi kulturore](#)’ (14 October 2020).

183 Ibid.

184 MCYS, ‘[MKRS-ja do të kujdeset për ‘Mullirin e Dulahit’](#)’ (7 October 2020).

185 Radio Kontakt Plus, ‘[OEBS izražava zabrinutost zbog oštećenja crkve Uspenja Presvete Bogorodice u Sredskoj](#)’ ([radiokontaktplus.org](http://radiokontaktplus.org), 23 August 2020).

186 KoSSev, ‘[Oštećena crkva u Sredskoj kod Prizrena i staklo džamije u Kačaniku](#)’ ([kossev.info](http://kossev.info), 22 August 2020).

187 Lajmi, ‘[Incident i ri në fshatin e Kosovës ku jetojnë serbët, çka po ndodhë atje?](#)’ ([lajmi.net](http://lajmi.net), 16 September 2020).

188 KoSSev ‘[Sava Janjić za Nova.rs: Zabrinuti smo za manastire na KiM](#)’ ([kossev.info](http://kossev.info), 3 September 2020).

limited litigation on intellectual property rights due to a lack of prosecutors and judges with the requisite specialized knowledge.<sup>189</sup>

**111.** The COVID-19 pandemic and measures to contain it have significantly impacted the enjoyment of cultural rights and the creators of cultural content in Kosovo. With exception of May and June when COVID-19 measures were largely lifted, the government suspended all religious and cultural activities from mid-March until 25 September 2020, impacting the enjoyment of cultural rights in Kosovo. In September, the government once again allowed in-person religious activities subject to prevention measures and in-person cultural activities at 40 per cent of normal capacity. As of November, however, all religious activities were once again prohibited subject to some exceptions, while cultural activities were still permitted at reduced capacity. Leaders of cultural institutions, such as the Kosovo Philharmonic, Ballet, and Theater, highlighted that the pandemic forced the cancellation of most cultural activities planned for 2020 and that, despite allowing the partial resumption of in-person activities, the re-introduction of evening curfews later in 2020 further negatively impacted planned cultural activities as most performances occur in the evenings. The suspension of cultural activities and the closure of cultural institutions also impacted the realization of economic and social rights for creators of cultural content in Kosovo. Self-employed creators of cultural content appear to have been excluded from the initial emergency COVID-19 fiscal package,<sup>190</sup> and the government only ensured that self-employed persons could benefit from economic recovery measures under its €365 million economic recovery program in October.<sup>191</sup>

## **112. Recommendations:**

- The GoK should ensure the full enforcement of the legal framework on SPZs and address the issue of illegal constructions and/or demolitions in protected areas.
- The GoK should fully comply with Law No. 02/L-37 on the Use of Languages in all activities and provide information on cultural rights and protection of cultural heritage in timely manner in Kosovo's official languages, including on the MCYS website.
- The GoK should provide long-term and sustainable funding for activities and institutions relating to cultural rights and the protection of cultural heritage, including through sufficient budgetary allocations.
- The GoK should implement all recommendations issued by the Council of Europe,<sup>192</sup> which monitors implementation of the FCPNM in Kosovo, and the UN Special Rapporteur on cultural rights.<sup>193</sup>
- The GoK should place human rights at the center of the COVID-19 response and recovery with a view to ensuring that people can enjoy their cultural rights and that creators of cultural content can realize their economic and social rights during and after the pandemic.

189 2020 EC Progress Report, note 44, p. 77.

190 [GoK Decision No. 01/19](#) (30 March 2020).

191 Office of the Prime Minister, '[Government of Kosovo holds its 34th meeting](#)' (8 October 2020).

192 Council of Europe Advisory Committee on the FCPNM, '[Fourth Opinion on Kosovo](#)' (8 March 2017) Doc No. ACFC/OP/IV(2017)001; Council of Europe Committee of Ministers, '[Resolution CM/ResCMN\(2019\)11 on the Implementation of the FCPNM in Kosovo](#)' (3 July 2019).

193 Report of the Special Rapporteur on Cultural Rights, note 163, paras. 100, 102.

## 7. SECTION C: RIGHTS OF SPECIFIC PERSONS OR GROUPS

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

**113.** Article 7 of the Constitution enshrines gender equality “as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, social, cultural and other areas of societal life.” In addition to prohibiting discrimination on the grounds of gender, the Constitution also requires due consideration of “internationally recognized principles of gender equality” during appointments to several institutions, including to the AoK and the Constitutional Court.<sup>194</sup> Several human rights instruments that uphold women's rights and gender equality apply directly in Kosovo.<sup>195</sup> Beyond this constitutional framework, Kosovo has a number of laws currently in force that promote and protect women's rights and gender equality, including Law No. 05/L-020 on Gender Equality, Law No. 05/L-021 on Protection from Discrimination, Law No. 05/L-019 on Ombudsperson, Law No. 03/L-182 on Protection against Domestic Violence, and the revised Criminal Code.

**114.** Women continued to face challenges to exercising their right to participate in public affairs as well as in decision-making at all levels and also remained underrepresented in local and central institutions as well as in political parties. According to Law No. 05/L-20 on Gender Equality, special measures are required to ensure equal representation (i.e., 50 per cent) of each gender in public institutions and at all decision-making levels, while the equal representation of women in decision-making processes is also strongly encouraged by the UN Security Council Resolution 1325 on Women, Peace, and Security (Resolution 1325).<sup>196</sup> However, the majority of the central and local institutions have still not fulfilled the 50 per cent representation requirement set by Law No. 05/L-20 on Gender Equality, while women and women's rights groups continued to be underrepresented and insufficiently consulted in the ongoing Pristina-Belgrade dialogue in non-compliance with Resolution 1325 and the EU's Strategic Approach to Women, Peace, and Security.

**115.** In an important step advancing women's rights and ongoing efforts to address gender-based violence in Kosovo, the AoK amended Article 22 of Kosovo's Constitution to add the Istanbul Convention to the list of directly applicable human rights instruments that supersede local laws in cases of conflict. The Istanbul Convention obliges Kosovo authorities to adopt an in-depth legal and policy framework to address gender-based violence in all its forms, prevent and eliminate violence against women, protect and assist its survivors, and prosecute the perpetrators. The

<sup>194</sup> Constitution of Kosovo, note 2, Arts. 24(2), 71(2), 101(1), 104(2), 108(2) and (4), 109(4), 110(1), 114(1).

<sup>195</sup> Ibid., Art. 22. See also generally, UDHR; CEDAW; CERD; UNCAT; CRC; ECHR; FCPNM.

<sup>196</sup> UNSC, Resolution 1325 on Women, Peace and Security (31 October 2000) [UN Doc. S/RES/1325](#), para. 1.

current Ombudsperson also highlighted the importance of this development, emphasizing that violence against women and girls constitutes a widespread human rights violation.<sup>197</sup> In a related welcome development, the Supreme Court of Kosovo approved an instruction in June 2020 that clarifies the legal qualification and treatment of domestic violence cases in Kosovo, in particular with regard to Article 248 of the Criminal Code, and seeks to ensure that survivors receive adequate protection in accordance with the Istanbul Convention.

**116.** Several challenges persisted in 2020 with regard to protecting women's rights and ensuring gender equality, such as the inadequate implementation of Kosovo's strong legal framework, insufficient compensation to survivors of domestic violence, and a lack of disaggregated data. In particular, the lack of progress with regard to ensuring the collection, maintenance, and transparent reporting of gender disaggregated data continues to make it difficult to fully monitor whether women's rights and gender equality are being respected in accordance with applicable international and regional human rights standards and Kosovo's legal framework.

**117.** Beyond these general implementation challenges, the pandemic and related measures also exacerbated pre-existing issues concerning the rights of women and girls and gender equality in Kosovo, especially with regard to the realization of their socio-economic rights and gender-based violence. Reports indicated that the socio-economic impact of COVID-19 and measures to contain it affected women and girls in Kosovo disproportionately compared to men. Women in Kosovo earn less and have less job security than men as 30 per cent of women are employed informally in the private sector, providing them with less of an economic cushion to weather the economic impacts of COVID-19. Measures to contain COVID-19, such as restrictions on the freedom of movement and the closure of schools, also increased the burden of unpaid care work that is disproportionately placed on women and girls in Kosovo, especially with regard to single mothers as they represent the majority of single parent households in Kosovo. Throughout the pandemic, several actors, including international organizations and civil society, called on the GoK to adopt specific measures to ensure that women and girls are placed front and center in COVID-19 containment and recovery measures. In this regard, and according to the UN Development Programme's COVID-19 Global Gender Response Tracker, Kosovo was among 15 countries and territories in Europe, North America, Australia, and New Zealand that adopted specific measures addressing the economic security of women during the pandemic.<sup>198</sup>

**118.** Several challenges to effectively prevent and address gender-based violence, including domestic violence, persisted in 2020, especially with isolation measures that obliged women to stay at home facing abuse and violence with little to no possibility of reporting it. According to the Kosovo Police, there were 2,069 reported cases of domestic violence in 2020 compared to 1,915 cases in 2019, representing an increase of 154 reported cases.<sup>199</sup> However, reports indicated

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197 Oik, '[Statement of the Ombudsperson Naim Qelaj on the Universal Children's Day](#)' (20 November 2020).

198 Office of the Prime Minister, '[Prime Minister Hoti: Kosovo among 15 Countries with Measures for Women's Economic Security during Pandemic](#)' (8 March 2021).

199 Kosovo Police, '[Policing in the time of pandemics: Annual work report of Kosovo Police January - December 2020](#)' (March 2021), p. 11.

that the pandemic and related measures have likely made it more difficult for survivors to report such cases, implying that the actual number of gender-based violence cases, including cases of domestic violence, could have been higher in 2020. For instance, the government's decision to quarantine survivors of domestic violence during the first few months of the pandemic before sending them to one of Kosovo's domestic violence shelters has been noted as a possible cause of underreporting of domestic violence cases.

**119.** Shelters for survivors of gender-based and other forms of violence were provided budgetary allocations to deal with the difficult situation created by the pandemic and had to take measures to ensure new admissions did not result in the spread of COVID-19. While a special budget line was created for shelters in the 2020 budget, many shelters that provide essential services to women, children, and other survivors continually face the threat of closure due to a lack of a long-term and sustainable budget solution. Therefore, there is still a pressing need to create a permanent budget line in order to ensure sustainable funding for shelters.

**120.** Courts continued providing low sentences in cases of gender-based violence, while some judges still encouraged family reconciliation and blamed victims for crimes perpetrated against them. In September 2020, the Basic Court in Gjakovë/Đakovica reduced the life sentence of Pjetër Nrecaj, who murdered his wife and daughter in 2018, to only 24 and a half years in prison, which led to public protests by women's rights activists.<sup>200</sup> Attempts to reconcile cases may create an enabling environment for recidivism, placing victims at risk of further violence. There is still a need for gender equality training of judges, prosecutors, and the police, specifically regarding the provisions in the revised Criminal Code on sexual harassment and domestic violence and the new obligations of public institutions under the Istanbul Convention.

**121.** With regards to sexual harassment, KGSC achieved a positive major development. In November 2020, the GoK and KGSC signed a policy against Sexual Harassment in Public Administration that aims to prevent and sanction sexual harassment in the workplace, which is the first of its kind.<sup>201</sup> The current database within the Ministry of Justice, established by UN Women, includes mainly all forms of violence against women, such as physical violence, sexual violence and rape, stalking, forced marriage, forced abortion, and forced sterilization, which means all forms of violence that happens outside of domestic relations are included except female genital mutilation and psychological violence. The current database also includes information on the perpetrators as well.

200 KWN, "[Do not encourage the perpetrators](#)", *KWN Stands Against Short Sentences for Murderers of Women* (16 September 2020).

201 KWN, "[After years of advocacy, KGSC pushes the adoption of the Policy against Sexual Harassment in Public Administration in Kosovo](#)" (30 November 2020).

## 122. Recommendations:

- Kosovo's legal framework should be amended and revised to reflect the Istanbul Convention.
- The GoK should revise the Draft Law on Labour so as to comply with the EU Work-life balance directive.
- The GoK should hire more female inspectors, particularly within the Labour Inspectorate, and provide specific training to inspectors on gender-based discrimination in the labour context, including on discrimination during recruiting procedures and during the promotion and transfer of workers.
- The GoK should create a permanent budget line that would provide sustainable funding for shelters for survivors of domestic violence.
- The KJC should provide gender equality training for judges, prosecutors, and the police, specifically regarding the provisions in the revised Criminal Code on sexual harassment and domestic violence and the new obligations of public institutions under the Istanbul Convention.
- The Kosovo Coordinator for Domestic Violence should expand its database to include all forms of gender-based violence, not only domestic violence.
- Kosovo institutions should improve their collection, maintenance, and transparent reporting of data disaggregated by, among other things, gender and ethnicity.

## 7.2. Children rights

**123.** Article 50 of the Constitution explicitly protects the rights of children, including their “right to protection and care necessary for their wellbeing” and protection from violence, mistreatment, and exploitation. The Convention on the Rights of the Child (CRC), which defines children as under the age of 18, is also directly applicable in Kosovo as per Article 22 of the Constitution. Kosovo's primary legislation is also in line with the standards and principles contained in the CRC. Most notably, Law No. 06/L-084 on Child Protection entered into force in July 2020<sup>202</sup> against the backdrop of reports that COVID-19 containment measures increased violence against children in Kosovo. The new law, which enables the full implementation of Kosovo's Constitution and the directly applicable CRC, aims to protect children from physical and mental violence, abuse, exploitation, neglect, and other forms of violence that endanger their lives, safety, health, education, or development. Among other things, it prohibits physical punishment and other forms of disciplinary measures that undermine and weaken the child's human dignity in all educational and care institutions, the law enforcement and justice system, work settings, and at home. The National Strategy on the Rights of the Child for 2019 – 2023 identifies issues that need immediate interventions to provide children with the necessary protection and care for their welfare and development.<sup>203</sup>

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202 [Law No. 06/L-084 on Child Protection](#) (17 July 2019).

203 OGG, '[Strategy on the Rights of the Child 2019 – 2023](#)' (9 August 2019).

**124.** Despite this robust legal and policy framework protecting children and their rights, implementation challenges continued to persist in 2020, particularly due to insufficient financial and human resources resulting from a lack of will among central and local institutions to further invest in this important area. Due to the two changes of government, the dissolution of the AoK, and the ongoing pandemic, a new Draft Law on Local Government Finance, which would establish a specific and minimum budget line for social services benefitting, among others, children, remained pending throughout 2020 despite several requests by civil society for its adoption. Moreover, also due to the COVID-19 crisis and political instability, the MLSW and relevant municipal institutions were considerably delayed in announcing the public calls to support services provided for children from the non-governmental sector.

**125.** The latest Multiple Indicators Cluster Survey (MICS) from 2020 shows a worrying situation with regard to childhood poverty and that children from K-Roma, K-Ashkali, and K-Egyptian communities continue to be the furthest behind. According to the MICS data, one in four children under the age of five live in the poorest households.<sup>204</sup> For every 1,000 births, 16 children die before reaching their fifth birthday with 70 per cent of these deaths occurring within their first month of life, while the number is almost two times higher among children from K-Roma, K-Egyptian, and K-Ashkali communities.<sup>205</sup> Based on the MICS report, eight per cent of children aged 2 to 17 reported functional difficulties in at least one domain (e.g., seeing, hearing, walking, communication, and learning), while the percentage is higher (14 per cent) among children from K-Roma, K-Ashkali, and K-Egyptian communities.<sup>206</sup> Concerning child labour, 5.3 per cent of children between the ages of 5 and 17 have been involved in labour, while this percentage is also higher among K-Roma, K-Egyptian, and K-Ashkali children at 6.9 per cent.<sup>207</sup>

**126.** Children who lack parental care are provided with alternative care solutions and are not placed in large residential institutions, although foster care is not available in all municipalities and “often does not meet internationally recognized requirements”.<sup>208</sup> Ensuring the proper social inclusion of children with disabilities also remained a problem, and many of them still have “limited access to social, health, and educational services”.<sup>209</sup> In addition, Kosovo authorities have been “inefficient in providing adequate care for street children and have failed to properly address the issue”, although the first pilot care center for street children, was inaugurated in Pristina in 2019, continued to provide them and their families with psycho-social and educational support in 2020. Physical and psychological violence against children also persisted and reportedly increased in

204 Kosovo Agency of Statistics and UNICEF Kosovo Office, ‘[Launching of the Key Findings of the 2020 Multiple Indicator Cluster Survey \(MICS\)](#)’ (November 2020) (hereinafter 2020 MICS Key Findings).

205 UNICEF 2020 Programme Results, note 117, p. 3.

206 2020 MICS Key Findings, note 204.

207 UN Kosovo Team, UNICEF, UN Women, *et al.*, ‘[2019 – 2020 Kosovo\\* \(UNSCR 1244\) Multiple Indicator Cluster Survey and Roma, Ashkali and Egyptian Communities in Kosovo Multiple Indicator Cluster Survey](#)’ (November 2020), p. 27.

208 2020 EC Progress Report, note 44, p. 35.

209 *Ibid.*

part due to COVID-19 containment measures, such as restrictions on the freedom of movement, while Kosovo authorities made insufficient progress in addressing violence against children despite the entry into force of Law No. 06/L-084 on Child Protection.<sup>210</sup>

**127.** The pandemic and related measures disproportionately affected the rights of children in Kosovo. According to the former Ombudsperson, COVID-19 measures and their socio-economic impact affected children's rights to life, health, security, and education in Kosovo.<sup>211</sup> He observed that the COVID-19 pandemic revealed "more weaknesses" in efforts to realize their rights and has "deepened...existing inequalities." In this regard, he highlighted that the interaction between the impacts of COVID-19 and other factors, such as gender, ethnicity, disability, and economic status, has affected children differently, using the example of K-Roma, K-Ashkali, and K-Egyptian children and children with disabilities who face more challenges in accessing online education. He also noted the increase of domestic violence has particularly impacted children, stressing that freedom from violence is a fundamental right and a "necessary precondition" for their well-being and health. Children with disabilities and their parents also faced challenges in accessing essential social, health, and rehabilitation services due to the pandemic.<sup>212</sup> For instance, the GoK suspended the routine immunization programme that covers more than 210,747 children aged 0 to 12 in March 2020 for two months, while measures were gradually lifted from May.<sup>213</sup>

**128.** Although shelter services for children without parental care and child survivors of violence, abuse, and trafficking were provided in short-term financing until 31 December 2020, the lack of long-term sustainable financing for shelters and services providing support to children in vulnerable situation continued to be an issue of concern, especially in light of the pandemic's financial impact. KOMF, the OiK, the Association of Kosovo Municipalities, and other organizations published a joint position paper calling on the GoK to establish a long-term and sustainable solution to the financing of social services by approving the Draft Law on Local Governance, which, if adopted, would establish a minimum level of funding for social services. According to KOMF, many children in vulnerable situations have been left without access to social services as service providers have shut down or at are at risk of closing because of a lack of funding due to the pandemic. The current Ombudsperson also specifically called for sustainable funding to respond to the health, social, and economic crisis caused by the pandemic and on Kosovo institutions to approve tailored measures to support children in street situations, children with disabilities, and children living in poverty.<sup>214</sup>

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210 Ibid.

211 OiK, '[Ombudsman's statement on the occasion of International Day of Children](#)' (1 June 2020); OiK, '[Statement of the Ombudsperson Naim Qelaj on the Universal Children's Day](#)' (20 November 2020).

212 Koha, '[KOMF: Qeveria dhe komunat të marrin me urgjencë masat për zbatimin e Ligjit për Mbrojtjen e Fëmijëve](#)' (*koha.net*, 31 May 2020).

213 Ibid.; UNICEF 2020 Programme Results, note 117, p. 3.

214 OiK, '[Statement of the Ombudsperson Naim Qelaj on the Universal Children's Day](#)' (20 November 2020).

## 129. Recommendations:

- To address the situation of childhood poverty in Kosovo, the AoK should amend Law No. 2003/15 on the Social Assistance Scheme in order to remove the discriminatory criteria requiring that a family must have at least one child under the age of 5 to benefit from the social assistance scheme as well as to increase the monthly amount of social assistance to meet the basic living conditions for families.
- The MEST should take additional measures to ensure the inclusion of all children with disabilities in school and their access to health and social services, including by hiring support assistants in schools for children with disabilities.
- The AoK should proceed as soon as possible with the approval of the Draft Law on Local Government Finance, which provides for the establishment of a Specific Grant for Social Services to guarantee sustainable funding of social services.
- The MLSW should establish a sustainable scheme for contracting social and family services by the non-governmental sector.
- The MEST should increase the number of psychologists in schools in order to strengthen the emotional support of students and care for their mental health.

## 7.3. Youth rights

**130.** Young people in Kosovo aged 15 to 24 comprise about 20 per cent of the entire population<sup>215</sup> and still constitute one of the groups in the most precarious situation in Kosovo due to several factors, such as “[d]emographic pressures, joblessness growth pattern, a propensity towards emigration, and poor education outcomes”.<sup>216</sup>

**131.** Kosovo has the lowest Human Development Index rating in the region, and living standards are well below EU norms.<sup>217</sup> The poor economic situation in Kosovo directly affects the realization of social and economic rights of youth in Kosovo and their employment opportunities. Young people between the ages of 15 and 24 remain the most affected group by unemployment and inactivity. Youth unemployment is as high as 49 per cent, which suggests “undeclared work and [a] misalignment between education outcomes and labour market needs”.<sup>218</sup> Implementation of the MLSW 2018 – 2022 Sectoral Strategy and the 2018 – 2020 Action Plan for Increasing Youth Employment, which is critical to addressing youth unemployment in Kosovo, “remains at a low level”.<sup>219</sup>

215 MCYS, ‘Strategy for Youth 2019 – 2023’ (May 2019), p. 5 (hereinafter Kosovo Youth Strategy).

216 2020 EC Progress Report, note 44, p. 79.

217 UNICEF Kosovo Office, ‘Child Rights Monitoring and Social Protection: Promoting the best interests of children in social and economic policy and public discourse’, last accessed on 28 April 2021.

218 2020 EC Progress Report, note 44, p. 57.

219 Ibid., p. 79.

**132.** Law No. 03/L-145 on Empowerment and Participation of Youth seeks to promote the participation of youth in decision-making processes and improve their quality of life and social status.<sup>220</sup> It addresses the right of youth to self-organize and volunteer with organizations and their responsibilities, the obligations of central and municipal institutions, the establishment and responsibilities of Local Youth Action Councils (LYACs) in charge of improving the status of youth, and the participation of youth in sectoral policies relating to education, employment, public health, social issues, and other issues relating to them.<sup>221</sup> The MCYS Youth Strategy 2019 – 2023 and Action Plan remained in place, both of which aim to improve the situation of youth in Kosovo through their increased participation in decision-making processes and public life, participation in informal education, employability, education, health promotion, culture, sports, and recreation.<sup>222</sup>

**133.** Despite this legal and policy framework, youth participation in decision making remained a challenge during 2020. The functionalization of the LYACs and the Central Youth Action Council (CYAC) that represent the interests of youth at the central and local levels has been sorely lacking. In addition, not all municipalities have an approved budget for the implementation of youth action plans, hence making the youth sector function partially or not in full capacity.<sup>223</sup> Young people are also not being adequately informed about their role in decision-making and politics and lack a voice in decision-making institutions due to current practices, resulting in their low interest in politics and exclusion from discussions on issues concerning them.

#### **134. Recommendations:**

- The institutions at the central and local levels should include youth in decision-making processes at all levels in order to ensure that young people are able to participate and provide their contribution as equal partners while making sure that their needs and interests are reflected in final policies and programs.
- The MEST should follow the trends of best practices worldwide for adjusting the educational system in accordance with the needs of students in Kosovo and the economic situation, including for electronic-based lecturing.
- The GoK should develop inter-ministerial strategic plans to bridge the gap between education and the labour market in Kosovo with a view to making education more targeted to labour market needs, including by offering more paid hands-on experience opportunities for students in their field of studies.
- The MCYS should provide concrete support to the CYAC and LYACs in order for these youth mechanisms to exercise their mandates properly.

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220 [Law No. 03/L-145 on Empowerment and Participation of Youth](#) (5 November 2009), Art. 1.

221 Ibid., Arts. 4-10.

222 Kosovo Youth Strategy, note 215, p. 4.

223 Ibid., p. 9.

## 7.4. Persons with disabilities

**135.** Article 24 of the Constitution explicitly prohibits discrimination based upon “disability”, while Article 51 states that “basic social insurance related to...disability shall be regulated by law”. In addition, several human rights instruments that protect the rights of persons with disabilities are directly applicable in Kosovo.<sup>224</sup> Although Kosovo has several laws concerning persons with disabilities, it still lacks a harmonized law addressing all persons with disabilities. Law No. 2003/23 on Disability Pensions provides social protection for persons unable to provide for themselves due to disability. Law No. 03/L-022 on Material Support for Families of Children with Permanent Disabilities provides monetary support to families caring for children with permanent disabilities. However, the law still employs outdated terminology to define children with permanent disabilities, such as “immobile children” and “totally blind children”. It also does not provide material support to families caring for children with non-permanent disabilities, even though they too need this support. Law No. 03/L-019 on Vocational Ability, Rehabilitation, and Employment of People with Disabilities specifically prohibits employment-related discrimination and emphasizes the need for equal opportunity and treatment of persons with disabilities in employment hiring, training, and re-training and guarantees their legal protection. The Kosovo Constitution has still not been amended to make the Convention on the Rights of Persons with Disabilities (CRPD) directly applicable. The Kosovo Strategy on the Rights of Persons with Disabilities 2013 – 2023 remained operational and provided important policy guidelines on the protection and promotion of the rights of persons with disabilities in Kosovo with a view toward creating an equal and inclusive society, including by ensuring the incorporation of CRPD norms and standards into policies and programs for persons with disabilities.<sup>225</sup>

**136.** The AoK unanimously adopted a resolution on 4 December declaring its commitment to improve the constitutional and legal framework for guaranteeing and protecting the rights of persons with disabilities in Kosovo and that 2022 would be the year of persons with disabilities in Kosovo. The AoK also encouraged relevant authorities to bring forward an amendment so that the CRPD be added to the human rights instruments directly applicable in Kosovo listed under Article 22 of the Constitution.

**137.** Despite the adoption of the legal framework, persons with disabilities are still one of the groups in the most vulnerable situations in Kosovo due to limited support as well as inadequate health services, social and personal assistance, rehabilitation, and assistive devices. The failure of the Kosovo Council for Persons with Disabilities to hold meetings for two years has also been another shortcoming in the supervision and implementation of legislation for persons with disabilities.

<sup>224</sup> Constitution of Kosovo, note 2, Art. 22. See also UDHR, Art. 25; CRC, Arts. 2, 23.

<sup>225</sup> OGG, ‘Kosovo Strategy on the Rights of Persons with Disabilities 2013 – 2023’ (June 2013).

**138.** The MLSW, in accordance with the Stabilization and Association Agreement, is in the process of harmonizing Kosovo's legislation with the EU *acquis* for persons with disabilities and legislation on pension schemes. The establishment of an independent central mechanism for the management and administration of all social and pension schemes is also envisaged.<sup>226</sup> The effect and impact that this reform can have, especially the policy of decentralizing service delivery, which is intended to provide sustainable funding for protected categories, remains to be seen.<sup>227</sup>

**139.** People with disabilities in Kosovo continue to have a profound lack of access to public institutions and spaces, such as educational institutions, health centers, courts, and prosecutor offices, which prevents them from fully participating in society. Although the Law on Construction provides minimum standards for construction, building access for people with disabilities is regulated by an administrative instruction that is still not being fully implemented. Awareness concerning disability among people with disabilities, their families, institutions, and society in general remains low in Kosovo.

**140.** People with disabilities experienced several challenges to the enjoyment of their human rights during the COVID-19 pandemic in Kosovo, although important exceptions were made in the measures restricting movement for people who care for them. In particular, the failure to provide sign language interpreters during official press conferences and information in Braille hindered access to important information on COVID-19 restrictions and prevention measures for persons with hearing and visual impairments, respectively. For instance, the Committee of Blind Women of Kosova (KGVK) stated that no COVID-19 information had been printed in Braille as of mid-June for visually impaired persons during the pandemic and called for the full implementation of Law No. 04/L-092 for Blind Persons, which, according to the KGVK, has not been fully implemented in practice. The KGVK also noted that visually impaired persons faced other issues, such as inadequate financial support from Kosovo's institutions, discrimination in employment and urban mobility, and the lack of books in Braille.<sup>228</sup>

**141.** Children with disabilities were left without access to education for nearly a month-and-a-half into the COVID-19 crisis in Kosovo as the MEST only launched an online educational platform for them at the end of April. Regarding their right to health, the Association of Patients' Rights in Kosovo noted that the health of patients with chronic medical conditions, such as persons with disabilities, deteriorated because of the lack of sufficient healthcare due to the focus on COVID-19. According to the KOMF, the COVID-19 crisis significantly impacted children with disabilities and their parents due to a lack of essential social, health, and rehabilitation services. Relevant NGOs also noted that children with disabilities and their families' economic and social rights, including their right to an adequate standard of living, were disproportionately impacted by the COVID-19 crisis and called on Kosovo institutions to create tailored economic packages that account for their specific needs. The GoK, however, reportedly did not sufficiently consult CSOs working on this

226 GoK, 'National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA) 2017 – 2021' (March 2017), p. 235.

227 Ibid.

228 Zeri, 'Asnjë informacion për mbrojtje nga COVID-19 nuk është shtypur për të verbërit' (zeri.info, 18 June 2020).

issue to ensure COVID-19 measures were tailored to the specific needs of persons with disabilities, impacting their right of participation.

#### 142. Recommendations:

- The GoK and AoK should amend Article 22 of the Constitution to make the CRPD directly applicable in Kosovo.
- The GoK should ensure access to all public institutions and public spaces for people with disabilities, including by fully implementing the existing legal framework and administrative instructions on this issue.
- The GoK should ensure that people with disabilities can equally enjoy their right to access health services, social and personal assistance, rehabilitation, and assistive devices, including by drafting and adopting the Administrative Instruction on Rehabilitation and Supporting People with Disabilities with Assistive Devices, based on the Rights and Statute of Persons with Para and Tetraplegia.
- The GoK should ensure that the rights and needs of persons with disabilities are placed at the center of the COVID-19 response and recovery, including their right to access key information by providing sign language interpreters at all official press conferences and ensuring the full implementation of Law No. 04/L-092 for Blind Persons.

### 7.5. Minority rights

**143.** Kosovo has a robust legal, institutional, and strategic framework on the rights and protection of non-majority communities<sup>229</sup> that is aligned with international human rights standards. Article 3 of the Constitution underlines that Kosovo is a “multi-ethnic society” and guarantees equal protection before the law to everyone, including the “protection of the rights and participation” of all communities in Kosovo but “significant efforts are required still in order to create the conditions for a truly multi-ethnic society”.<sup>230</sup> Article 24 of the Constitution specifically prohibits discrimination on the basis of a person’s “relation to any community”. In addition, Chapter III of the Constitution sets out the rights of communities and their members and the obligations of Kosovo in this regard. It provides members of all communities in Kosovo with the “right to freely express, foster and develop their identity and community attributes.”<sup>231</sup> Non-majority communities are also constitutionally assured, among other things, the right to use of their native language(s) on a private and public level, the ability to foster links with States with which they share “cultural, linguistic and religious” heritage, and representation in the AoK, public institutions and bodies

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

230 2020 EC Progress Report, note 44, p. 37.

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

and public broadcast media.<sup>232</sup> The FCPNM, which is directly applicable in Kosovo,<sup>233</sup> also protects and promotes the rights and freedoms of non-majority communities in Kosovo. At the legislative level, Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo covers the rights of communities in relation to equality, language, culture, religion, education, economic and social opportunities, health, and political participation. Implementation of this robust framework remains an issue and is complicated by capacity weaknesses within Kosovo's institutions that undermine the comprehensive upholding of the rights of non-majority communities.

**144.** Freedom of movement continues to be a problem for members of non-majority communities, especially for K-Serb community members. The GoK still does not recognize Serbia-issued personal documents bearing Kosovo town names to be valid travel documents, which has hindered the free movement of K-Serbs in and out of Kosovo.<sup>234</sup> Reportedly, Serbian nationals married to K-Serbs also faced challenges in accessing civil documents.<sup>235</sup>

**145.** While the security situation of non-majority communities remains stable according to the latest EU progress report,<sup>236</sup> there were reported incidents targeting members of non-majority communities in 2020 involving physical and verbal assaults, harassment and intimidation, and the destruction of misappropriation of property, many of which targeted K-Serbs and returnees.<sup>237</sup> The Ministry for Communities and Returns received 49 complaints involving security incidents towards K-Serbs and returnees from January to October 2020.<sup>238</sup> NGO AKTIV reported more than 20 security incidents targeting K-Serbs between March and June 2020.<sup>239</sup> In June, the UN Special Rapporteurs on minority issues, the human rights of internally displaced persons, and contemporary forms of racism sent an official joint communication to the former government raising concern over the reported inter-ethnic incidents targeting members of non-majority communities in Kosovo, although the government has yet to respond.<sup>240</sup> With regards to incidents, another correlated issue is the number of members of non-majority communities in the Kosovo Police, which remains low. For instance, there is only one member of the Kosovo Police who comes from a non-majority community (the K-Ashkali community) in Klinë/Klina, while in Istog/Istok there are only five K-Bosniaks, one K-Ashkali, and one K-Serb in the Kosovo Police.

**146.** Despite the advocacy by NGOs, relevant Kosovo institutions continued to react slowly to cases of sexual and gender-based violence reported by members of the K-Roma, K-Ashkali, and

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

233 Ibid., Art. 22.

234 2020 US State Dept. Human Rights Report, note 28, p. 16.

235 Ibid.

236 2020 EC Progress Report, note 44, p. 37.

237 Special Procedures of the UN Human Rights Council, Joint Communication from UN Special Rapporteurs on minority issues, the human rights of internally displaced persons and contemporary forms of racism (29 June 2020) [Reference No. AL KSV 1/2020](#) (hereinafter Joint Special Procedures Communication)

238 2020 US State Dept. Human Rights Report, note 28, pp. 30-31.

239 Ibid., p. 30.

240 Joint Special Procedures Communication, note 237.

K-Egyptian communities in violation of applicable international standards and Kosovo's legal framework and their right to equal treatment and non-discrimination. In cases where there is no intervention from NGOs, the institutions do not cooperate at all with each other in referring and seeking treatment in these cases. In one emblematic case, an instance of domestic violence reported by a member of the K-Egyptian community in Gjakovë/Đakovica was not addressed at all to the Center for Social Work or the Victims Advocate, while NGOs provided the victim in this case with psychosocial assistance.

**147.** Implementation and enforcement of Law No. 02/L-37 on the Use of Languages, which, among other things, recognizes two official languages in Kosovo and requires the provision of information in both languages, remained an ongoing and pressing challenge in 2020 that needs to be rapidly addressed. Poor quality or no translations of official documents and other language-related difficulties continued to hinder members of non-majority communities, in particular K-Serbs, from accessing public services and judicial institutions.<sup>241</sup>

**148.** The K-Serb and other non-Albanian speaking communities also faced particular challenges in obtaining relevant and timely information on COVID-19 prevention and containment measures as the pandemic exacerbated existing issues on providing translations in both official languages, impacting their right to information and language rights as well as their access to economic recovery programs. The Office of the Language Commissioner reported that it received several complaints in 2020 because "decisions related to the pandemic were, in most cases, not translated" into Serbian. According to its report, the websites of the Ministry of Health and the KIPH are still "nonfunctional in Serbian" despite several recommendations and interventions in the past. Based on the research conducted by the NGO AKTIV, the vast majority of the respondents stated that they had difficulty understanding instructions to access COVID-19 financial assistance measures.<sup>242</sup> Another report published by NGO AKTIV stated that the lack of information in Serbian during the pandemic "had multiple negative effects on the position of members of the Serb and other non-majority communities in Kosovo", including, in particular, increased health risks, lack of awareness on restrictive measures, and hindered access to economic assistance measures.<sup>243</sup>

**149.** Other non-majorities communities, such as K-Roma, K-Ashkali, and K-Egyptian, were disproportionately affected by the COVID-19 and its related containment measures due to their limited access to clean water and healthcare, which has exacerbated their poor living conditions. Beyond the challenges they faced in accessing online education, numerous reports were received that these communities lacked sufficient food, PPE, medical supplies, and hygienic items, impacting their rights to life, adequate food, health, and other interrelated rights. Members of

241 2020 US State Dept. Human Rights Report, note 28, pp. 31-33.

242 NGO AKTIV, '2020 Trend Analysis: Attitudes of the Serbian Community in Kosovo' (November 2020).

243 2020 AKTIV Report on Language Rights, note 69.

these communities will continue to need health, food, and economic assistance both during and after the COVID-19 crisis to fully enjoy their economic and social rights. In particular, their right to an adequate standard of living was disproportionately impacted by the closure of non-essential businesses and the suspension of economic activity as some of them work in the informal economy and may have limited access to social protection safety nets. According to the OiK, K-Roma, K-Ashkali, and K-Egyptian communities remain the most marginalized and endangered groups.<sup>244</sup> Despite the fact that there is already a Strategy and Action Plan for the Integration of K-Roma, K-Ashkali, and K-Egyptian communities, this strategy has not marked any great progress or results so far, and this year is also the last year of the strategy.<sup>245</sup>

**150.** Apart from the language issue described above, another challenge for the members of the non-majority communities is employment. They are less employed in management positions, the civil service of Kosovo, health care institutions, formal education, and private enterprises.<sup>246</sup> Moreover, “members of non-majority communities remain underrepresented in the civil service at both the central and municipal levels” as well.<sup>247</sup>

### **151. Recommendations:**

- Public institutions should increase the capacities of central and local level institutions in language knowledge, quality of official translations, and provision of services in non-majority languages, including in the judicial system.
- The GoK should ensure proper follow up on the implementation of recommendations adopted by the Council of Europe Committee on the FCPNM.
- Judicial institutions should properly address potentially ethnically motivated crimes.
- The Kosovo Police should recruit more police officers from non-majority communities, while also strengthening community policing as recommended by the European Commission.

## **7.6. LGBT+ Rights**

**152.** Article 24 of the Constitution expressly prohibits discrimination on the grounds of gender and sexual orientation. Several directly applicable human rights instruments also prohibit discrimination on the basis of sex and other status in Kosovo.<sup>248</sup> Law No. 05/L-021 on Protection from Discrimination establishes a general framework for preventing and combating discrimination based on sex, gender, gender identity, and sexual orientation, among other statuses, and designates the OiK as the authorized body to accept and investigate complaints of discrimination. It protects LGBT+ persons from direct and indirect discriminatory acts or omissions by central and local institutions as well as by natural and legal persons in the public and private sectors.

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244 2020 OiK Report, note 26, p. 87.

245 Ibid, p. 96.

246 Ibid., p. 97.

247 2020 EC Progress Report, note 44, p. 37.

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

Furthermore, Law No. 05/L-020 on Gender Equality guarantees equal opportunities and treatment to men, women, and persons who have a protected “gender identity or sex determination” in the “public and private spheres of social life, including political and public life, employment, education, health, economy, social benefits, sports, culture and other areas”.

**153.** While National Action Plan for 2019 – 2022 developed by the Advisory and Coordination Group for the LGBT+ individuals in Kosovo (ACG) remained operational, none of its measures were implemented from November 2019 until February 2020. The situation slightly improved with respect to the implementation of activities foreseen within the Action Plan as the OGG took the initiative to strengthen the cooperation with CSOs that work for the advancement of the LGBT+ rights in organizing several meetings and events on the importance of advancing LGBT+ rights.

**154.** At least three cases of violence targeting LGBT+ people were reported to the Kosovo Police in 2020 and subsequently referred to the Prosecutor’s Office of Kosovo. As reported by the Kosovo Police, two cases were an incitement of hatred, discord, and intolerance based on religious, race, and ethnic grounds, whereas one case was an incitement of threat.

**155.** Following the developments in 2019 regarding sex-marker changes for transgender people, the Ministry of Internal Affairs and Public Administration decided to establish a Working Group to work on drafting a new piece of legislation that will regulate the issue of changing sex-markers within public registries. This initiative would resolve the existing legal gaps concerning legal gender recognition.

**156.** In August 2020, the GoK approved the Draft Civil Code, which still has yet to be adopted by the AoK. LGBT+ organizations have advocated for an additional amendment to the Draft Civil Code as it retains the traditional concept of marriage between a man and a woman and stipulates that other forms of civil unions will be regulated through a specific law that has yet to be developed. According to these organizations, this formulation discriminates against LGBT+ people as it does not expressly recognize same-sex marriages in violation of the right of every person to marry as per Article 37 of the Constitution or, at the very least, same-sex civil unions. The Draft Civil Code leaves the regulation of this important issue for the LGBT+ community in Kosovo to a future law that may in fact never be developed or adopted as it fails to provide a mandatory timeline specifying when such a law should be developed and adopted.

**157.** The third annual Pride Parade in Kosovo was held on 12 October with the support of relevant Kosovo institutions and the international community in the format of a parade with vehicles in Pristina to comply with COVID-19 measures. The parade sought to bring visibility to LGBT+ people in Kosovo and demand the realization of their human rights, including the inclusion of same-sex marriage in the pending Draft Civil Code. To mark the occasion, the Ombudsperson issued a

public statement recalling that everyone in Kosovo is equal and that Kosovo authorities have a duty to protect the human rights of LGBT+ people.<sup>249</sup>

**158.** Measures to contain COVID-19 exacerbated the vulnerable situations LGBT+ persons are confronted with in Kosovo. According to two NGOs working on LGBT+ rights in Kosovo, CEL and CSGD, the measures restricting movement forced many LGBT+ persons to return or remain at home in confinement for a prolonged period of time with some family members who may not accept their sexual orientation or gender identity, causing possible impacts to their rights to physical and mental health and to personal integrity.<sup>250</sup> The suspension of international travel by air and land disproportionately affected transgender people's access to healthcare because health services to help them transition, such as hormone therapy, are not provided in Kosovo, even though WHO guidelines stipulate that transition therapies are essential health services for the transgender community.

**159.** During the past year, the municipality of Pristina has shown great solidarity with and support for LGBT+ people by providing a safe day center for them, which NGOs can also use to hold activities to build the capacities of LGBT+ persons. It has also allocated funding for the construction of a shelter in Kosovo that will be the first shelter for the accommodation of LGBT+ people.<sup>251</sup>

#### **160. Recommendations:**

- The OGG should organize more frequent ACG meetings with relevant stakeholders and key actors, in particular with the Ministry of Health to initiate more reporting from professionals from different health departments on transgender and intersex issues.
- The OGG should be more active in requesting and organizing workshops with Kosovo Police officers in the entire region of Kosovo by involving experts from different EU states.
- The Ministry of Justice should amend the current draft of the Civil Code to specifically include same-sex marriages.
- The GoK should ensure the implementation of the laws on LGBT+ persons, taking into consideration the latest amendments to the Criminal Code.
- The GoK should adopt a new regulation with procedures to allow transgender people to change their name and gender in official documents.

### **7.7. People on the move**

**161.** Article 156 of the Kosovo Constitution stipulates that Kosovo "shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession." The Stabilization and Association Agreement between the EU and Kosovo also reaffirms their right of return and the protection of their property rights and related

249 OïK, '[Ombudsperson's statement on the occasion of the Pride Week](#)' (12 October 2020).

250 CEL, '[Statement on International Day against Homophobia, Biphobia and Transphobia](#)' (22 May 2020).

251 Telegrafi, '[Komuna e Prishtinës ndan 300 mijë euro për ndërtimin e strehimores për komunitetin LGBTI](#)' (telegrafi.com, 3 October 2020).

human rights.<sup>252</sup> It provides for cooperation between the EU and Kosovo in asylum matters with a view toward assisting Kosovo to satisfy the standards contained in the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol, including to ensure respect for the non-refoulement principle and the human rights of asylum seekers and refugees. More specifically, Law No. 06/L-026 on Asylum sets forth the conditions and procedures for granting refugee, subsidiary protection, or temporary protection status and regulates the rights and obligations of persons granted such status as well as those of asylum seekers.<sup>253</sup> Other laws relevant to the protection and rights of people on the move include Law No. 04/L-219 on Foreigners, which defines refugees in compliance with international standards,<sup>254</sup> and Law No. 04/L-218 on Preventing and Combating Trafficking in Human Beings and Protecting Victims of Trafficking.<sup>255</sup> Importantly, Law No. 04/L-219 on Foreigners prioritizes alternative measures to detention for foreigners when feasible.

**162.** Kosovo authorities have a solid legal framework on asylum that guarantees access to the territory and respect for the principle of non-refoulement, reception conditions, access to refugee status determination procedures, freedom of movement, and alternatives to detention as well as a legal framework governing family reunification and contributing towards the integration process of recognized refugees in Kosovo. This framework provides legal protection to people on the move who are in the most vulnerable situations, such as unaccompanied minors, children, families with children, women, and victims of trafficking in human beings and torture.

**163.** Kosovo still remains a transit route for mixed movements, and about 1,370 applications for international protection were lodged in 2020.<sup>256</sup> Irregular movements continued to occur, and cases of pushbacks, smuggling, and harmful practices towards asylum seekers have increased.<sup>257</sup> According to the UN High Commissioner for Refugees (UNHCR), there is a lack of a “detailed census and adequate profiling data” for displaced persons and returnees, which hinders their access to human rights and development plans.<sup>258</sup>

**164.** Displaced persons and returnees continue to face security problems and challenges in realizing their economic and social rights. UNHCR reported that there were 45 incidents targeting returnees and their property as of July.<sup>259</sup> Over 408 displaced persons were living in collective housing centers as of June.<sup>260</sup> Despite the concerns raised by the Ombudsperson in annual reports

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

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

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

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

256 According to the data collected by the NGO CRP/K, which provides free legal aid to asylum seekers and refugees in Kosovo.

257 Based on border monitoring activities and observations of the NGO CRP/K, especially during the COVID-19 pandemic situation.

258 2020 US State Dept. Human Rights Report, note 28, p. 17.

259 *Ibid.*, p. 18.

260 *Ibid.*, p. 17.

over the past three years and recommendations on this issue, the resolution of the housing issue for displaced families still remained unresolved by the end of 2020.

**165.** Despite the ongoing pandemic, the number of voluntary returns increased in 2020 compared to 2019. According to UNHCR, there were 394 returnees compared to 2019, during which there were a total of 191 returnees. From January to the end of December 2020, 238 K-Serbs, 16 K-Albanians, 76 K-Ashkali, K-Egyptians, three K-Bosniaks, and 61 K-Roma returned.

**166.** People on the move, however, faced an increased risk of contracting COVID-19 due to their limited ability to apply physical distancing measures and limited access to adequate food, PPE, hygiene products, and essential medications for chronic medical conditions. These issues, which have implications for their rights to life, health, and adequate food, were exacerbated for asylum seekers housed in Kosovo's asylum centers, migrants subjected to a mandatory 14-day quarantine in the immigration detention center in Vranidoll/Vrani Do designated for this purpose, and internally displaced persons housed in Kosovo's collective centers. From March to June, 171 to 207 asylum seekers were housed in Kosovo's asylum centers, while up to 31 migrants were quarantined at the same time in the Vranidoll/Vrani Do center. On 29 May, all people on the move still quarantined in the Vranidoll/Vrani Do center, which closed on 30 May, were tested for COVID-19 and then released into self-isolation for 14 days. Delays in provision of and applications for social assistance as well as delays in the processing of asylum claims due to suspension of refugee status determination procedures and the lack of proper clothing for all ages, genders, and seasons affected the rights of many asylum seekers.

**167. Recommendations:**

- The GoK should ensure access to rights and basic services to all asylum seekers and refugees in a timely manner and improve the living conditions in all asylum centers in Kosovo.
- The GoK should enhance inter-institutional cooperation and coordination to effectively respond to the needs and requests of recognized refugees and persons with subsidiary protection status in Kosovo for their legal and socio-economic status.
- The Ministry for Communities and Returns should create a clear database with adequate profiling data for displaced persons and returnees.
- The Ministry for Communities and Returns should develop and adopt a new strategy for communities and returnees.

## 8. SECTION D: CROSS-CUTTING ISSUES/ SPECIFIC HUMAN RIGHTS ISSUES

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### 8.1. Transitional justice and human rights

**168.** By the end of 2018, about 900 pending cases relating to possible crimes committed during the 1998 – 1999 conflict in Kosovo that were being investigated by international organizations were transferred to and placed under the jurisdiction of Kosovo’s judicial system. Since then, the pace of the prosecution authorities’ work to resolve these cases, which is a critical component to realizing the right to the truth and advancing transitional justice in Kosovo, has so far not been promising. As of this report, it can be concluded that the judicial system in Kosovo is only at the beginning stage of its herculean task to provide justice for the victims and their families by identifying the alleged perpetrators of these crimes and punishing them according to the law.

**169.** In 2019, the KPC adopted a strategy on war crimes, although challenges to its implementation persisted in 2020 due to political issues, a lack of financial and human resources, and the lack of international and regional cooperation.<sup>261</sup> The prosecutors and judges within Kosovo’s judicial system currently tasked to investigate and prosecute war crimes are generally insufficiently experienced in the prosecution of these crimes, which are inherently specific and require specific expertise in relevant international standards as well as prior experience in adjudicating such complex cases.

**170.** By the end of 2020, no alleged perpetrator had yet to be tried in absentia in accordance with amendments to the Criminal Procedure Code that were adopted and entered into force in 2019, which allowed for trials to be held in absentia in relation to crimes concerning serious violations of international humanitarian law and international criminal law committed between January 1998 and June 1999. Allowing trials to proceed without the physical presence of the accused, however, would not be in compliance with international fair trial rights and standards, in particular Article 6 of the ECHR and the Pact on Human Rights and Freedoms. In addition, the provisions of the Criminal Procedure Code regarding in absentia trials are imprecise and unclear, especially in relation to the actions that the court should take before deciding to organize a trial in absentia.

**171.** The main trials on war crimes indictments that took place in the past lasted for an unacceptably long time, even in cases where the defendants were being held in detention. When adjudicating these cases, the trial panels should adhere to the strict provisions of the Criminal Procedure Code regarding the duration of the main trial when the defendants are in detention. The provisions

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261 2020 EC Progress Report, note 44, p. 23.

of the ECHR regarding a fair trial also foresee that trials must be completed within a reasonable time in cases where the defendants are in detention. Furthermore, after the completion of the indictment assessment procedure, trial panels should, at the stage of the opening of the main trial, make adequate preparations so that the main trials are completed within the deadlines as prescribed by the law. Long-lasting main trials, not justified by a large number of witnesses, should be avoided. The trials must be completed within the deadlines prescribed by the law. Each extension predetermines the decision on punishment.

**172.** According to some CSOs, such as HLC Kosovo, it is important to establish effective legal cooperation between Pristina and Belgrade to better address complex cases involving war crimes and other international crimes, especially given the context of the ongoing EU-facilitated dialogue and the international community's calls to continue political negotiations. In particular, issues concerning legal cooperation and mutual legal assistance should be placed on the agenda of these ongoing negotiations and talks, which would be crucial to establishing effective communication between the judicial institutions of Kosovo and Serbia and a more successful prosecution of war crimes.

**173.** Outside of judicial prosecutions, the creation of memorials is often viewed as a method to deal with the past. In the last two decades, thousands of memorials have been erected in Kosovo, although there has been an overall lack of representation of children, women, and civilians in public memorialization. Memorials commemorating civilians impacted by the conflict are more often than not self-funded through individual initiatives and placed on private property. Furthermore, there is no legal framework regulating memorials, allowing anyone to place a monument on private property or even on public property with a simple request to their municipal authorities, which is often granted. This lack of regulation may put at risk a more factual narrative of past events and can lead to one-sided memorials that do not fully account for and deal with the complexities of the past.

**174.** The situation and status of the victims and survivors of conflict-related sexual violence (CRSV) is another very important issue with regard to transitional justice in Kosovo. As a result of the 1998 – 1999 conflict in Kosovo, women and men as well as boys and girls were subjected to CRSV throughout Kosovo both during and in the aftermath of the conflict. While the exact number is unknown, some estimate that there are about 20,000 CRSV survivors. To date, however, there has not been any systematic documentation or research of CRSV in Kosovo.

**175.** In recent years, significant efforts have been undertaken by many actors in Kosovo to uphold the rights of CRSV survivors to reparations and address their needs. In 2014, the legislative framework was amended to provide reparations to survivors of CRSV and establish the Government Commission on the recognition and verification of the status of sexual violence victims of the war. The Commission is composed of nine members in total, which includes five representatives of the relevant ministries, a psychologist, a psychiatrist, a lawyer, and a civil society representative. Four

NGOs that have experience in the field of protection of sexual violence victims are authorized by the Commission to receive applications and to carry out other duties.<sup>262</sup>

**176.** The amended law defines a CRSV survivor as a person who survived sexual abuse and rape that occurred from 27 February 1998 to 20 June 1999, although civil society continues to advocate for revising this temporal limitation as it excludes some CSRV survivors from the process. Persons who successfully obtain CRSV survivor status are entitled to several forms of reparations and assistance,<sup>263</sup> including a monthly pension of €230; payments for health services abroad relating to health conditions resulting from the war and for which treatment is not available in Kosovo; priority for employment in public and private enterprises; release from property taxes; and housing assistance.<sup>264</sup> The process of applying for and receiving verification of CRSV status, which is a prerequisite to obtaining reparations and other forms of assistance, officially began in February 2018 and will conclude in February 2022. CSOs have raised concerns regarding this arbitrary time limitation and have been advocating for its removal. Since beginning its work in 2018, the Government Commission has received 1,396 applications for CRSV status, of which 904 or 75 per cent were approved (873 women and 31 men), while 242 or 20 per cent were refused. Due to the pandemic situation, the number of survivors who applied for the status has decreased, mainly due to reduced contact between CRSV survivors and the NGOs that have been certified to support them in this process with filling out the application and providing them with psychosocial counseling. The stigmatization of CRSV survivors also continued to remain a particular problem and challenge in 2020, preventing many of them from advocating or speaking openly about sexual violence and their own experiences. This might have also discouraged them from seeking out assistance or reparations benefits out of the fear that their identity might be revealed in the process.

**177.** Despite some progress made in 2020, the issue of the estimated 6,044 persons who were unaccounted for in relation to the 1998 – 1999 conflict in Kosovo is still unresolved. According to the International Committee of the Red Cross (ICRC), there are still 1,642 missing persons. The process of clarifying the fate and whereabouts of missing persons, which is critical to realizing their family members' right to the truth, has stagnated over the past few years. Nevertheless, efforts so far have resulted in clarifying the fate of 70 per cent of the total number of estimated missing persons. Adopted in 2011, Law No. 04/L-023 on Missing Persons continues to govern this critical issue with the aim to protect the rights and interests of missing persons and their family members, in particular the right of family members to the truth about the fate of their loved ones.<sup>265</sup> While

262 [Regulation \(GRK\) No. 22/2015 on Defining the Procedures for Recognition and Verification of the Status of Sexual Violence Victims During the Kosovo Conflict](#) (30 December 2015).

263 [Law No. 04/L-172 on Amending and Supplementing the Law No. 04/L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Army, Sexual Violence Victims of the War, Civilian Victims of War and Their Families](#) (23 April 2014), Art. 6.

264 Ibid.

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

the government approved the Concept Document on Missing Persons in 2019 with a view to amending Law No. 04/L-023 on Missing Persons,<sup>266</sup> which is something that families of missing persons had been advocating for years, the AoK has yet to include this important initiative in its legislative agenda.

**178.** The Working Group on Missing Persons (WGMP) and the Governmental Commission on Missing Persons (GCMP) continue to operate as the main institutional mechanisms dedicated to enlightening the fate of missing persons. Since March 2004, the WGMP, which is chaired by the ICRC and composed of two delegations from Belgrade and Pristina, has been an important humanitarian cooperation and coordination mechanism committed to advance efforts to realize the right to the truth of the families of missing persons. The WGMP, which addresses efforts to locate persons who went missing between 1 January 1998 and 31 December 2000, has held 51 meetings as of September 2020, the locations of which alternate between Pristina and Belgrade.

**179.** The GCMP, which was established in 2006, supervises, harmonizes, and coordinates activities with local and international institutions and organizations with regards to clarifying the fate of the missing persons. According to the GCMP, Pristina authorities performed nine site assessments during 2020 in North Mitrovica, Pejë/Peć, Gjilan/Gnjilane, Rahovec/Orahovac, Skënderaj/Srbica, and Prizren municipalities, resulting in the finding of the human remains of at least 11 individuals at eight sites. The DNA identification is currently ongoing. In addition, seven reburied bodies were identified, out of which four were handed over to the families. According to the Serbian GCMP, Belgrade authorities conducted three site assessments in 2020. Human remains of at least five individuals were found in the newly discovered mass grave site in Kizevak in Raška, while the “Štavalj coal mine” in the Sjenica municipality will be assessed further. The “Kozarevo” site in Raška was also assessed without any positive findings.

**180.** The COVID-19 pandemic has negatively impacted the entire process of resolving the cases of missing persons, thus the right to the truth for the family members of missing persons. However, the WGMP continued with its work despite the circumstances through meetings and joint site assessments. It held its two regular meetings in February and September and one ad hoc meeting in December 2020. The work of NGOs dealing with this sensitive issue was also jeopardized during the pandemic due to a more limited ability to cooperate, communicate, and exchange information. Access to information for the family members of missing persons was particularly more difficult during the lockdown due to limited access to electronic devices.

**181.** The issue of missing persons has also been included on the agenda of the recent EU-facilitated talks between Belgrade and Pristina. A series of expert level meetings on missing persons took place in Brussels in July as part of the Pristina-Belgrade dialogue. This important issue was also included in the economic agreements between Pristina and Belgrade signed in Washington on 4

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

September 2020, where both parties pledged to expedite efforts to locate and identify remains of missing persons and identify a point of contact to lead these efforts.

**182.** The MPRC recently addressed the lack of capacity to deal with the missing persons issue at the municipal level. In 2020, MPRC evaluated municipal capacities related to officials who are dealing with missing persons issue and municipal services provided to family members of missing persons. According to the MPRC's findings, the majority of municipalities in Kosovo do not have an official who deals exclusively with missing persons cases. In some municipalities, officials assigned to work in other departments, such as municipal human rights officers, are required to – in addition to their other job duties – address the missing persons issue as well and provide different services to family members of missing persons, which negatively affects the execution of the rights of family members of missing persons.

**183. Recommendations:**

- The number of judges and prosecutors who exclusively deal with war crimes should be increased.
- All officials, including police officers, prosecutors, and judges, should be provided specialized training in investigating and prosecuting war crimes and other international crimes.
- The time limitation for survivors of sexual violence to apply to receive the status of the victim as provided by the Law should be removed.
- The GoK should further support and conduct extensive campaigns for survivors of CRSV in order to fight the stigma.
- Kosovo institutions should start working in a structured, fact-based, and inclusive manner in order to ensure that memorials accurately document and commemorate the past, such as in the form of a war museum, war childhood museum, marking of crime sites, and other forms of memorialization.
- The WGMP, GCMP, and other relevant stakeholders should advance efforts to clarify the missing persons and realize their families' rights to the truth as well as to justice and redress, including by taking concrete to prevent the politicization of this issue and to ensure that process of searching for the missing is guided only by humanitarian and human rights considerations.
- Relevant institutions should address the issue of misidentification/mis-association of the human remains located during the process of searching for the missing.

## 8.2. Corruption and human rights

**184.** Corruption severely impacts the enjoyment of all human rights, in particular for groups and persons in the most vulnerable situations.<sup>267</sup> In particular, corruption disrupts the availability, quality, and accessibility of human rights-related goods and services and sustainable development, and it also undermines the credibility and functioning of public institutions and the rule of law, both of which are central to the effective promotion and protection of human rights.<sup>268</sup>

**185.** Corruption in Kosovo continued to be a serious and pressing issue in 2020, while Kosovo's justice institutions have still not indicated any willingness to change the situation. Based on the 2020 Corruption Perceptions Index, Kosovo continues to be a highly corrupt country.<sup>269</sup> According to Freedom in the World 2020 Report on Kosovo, Kosovo still has an insufficient and weak institutional framework to combat corruption due to overlapping mandates and insufficient coordination, which has resulted in "distrust" in the government.<sup>270</sup> Relevant authorities are reportedly not committed to prosecuting and addressing high-level corruption, and convictions are still "rare" even in the few cases in which high-level officials are prosecuted for corruption.<sup>271</sup> According to some reports, the judicial system often did not try cases on purpose so as to allow for statutes of limitation to expire.<sup>272</sup> In 2018, the GoK adopted an anti-corruption strategy and action plan for 2018 – 2022, which was submitted to the AoK but thus far it has not yet been approved. This shows a lack of political will and leadership to fight corruption.<sup>273</sup> Overall, Kosovo has made "limited progress" in addressing corruption, and it needs to do more to investigate and prosecute high-level corruption cases, confiscate assets obtained from corrupt practices, and create special judicial departments dedicated to resolving high-level corruption cases that are often complex in nature.<sup>274</sup>

**186.** According to Anti-Corruption Agency's (ACA) Annual Work Report for 2020, the ACA conducted preliminary investigation procedures in a total of 313 cases, of which 134 cases were carried over from previous years and 179 were received by the ACA in 2020. Of these, 124 cases were referred to the Kosovo Prosecutor's Office and Kosovo Police for further proceedings, 16 were referred to competent administrative bodies with a request to initiate disciplinary proceedings, and 112 cases were closed, while 61 cases are still being investigated. The total number of handled anonymous reports is 19. During the reporting year, the Agency handled a total of 66 cases initiated ex officio.<sup>275</sup>

**187.** During 2020, the SPRK filed indictments against four former government ministers, Mr. Besim Beqaj, Ms. Mimoza Kusari-Lila, Mr. Dardan Gashi, and Mr. Nenad Rašić, as well as fifteen

267 OHCHR, '[Corruption and human rights](#)', last accessed on 28 April 2021.

268 [Ibid.](#)

269 Transparency International, '[Corruption Perceptions Index 2020](#)' (January 2021), p. 3.

270 Freedom House, '[Freedom in the World 2020: Kosovo](#)' (March 2020).

271 [Ibid.](#)

272 2020 US State Dept. Human Rights Report, note 28, p. 22.

273 2020 EC Progress Report, note 44, p. 28.

274 [Ibid.](#), p. 24.

275 ACA, '[Annual Work Report 2020](#)' (March 2021), p. 9.

other persons who are accused of abusing their position in relation to the privatization of the distribution of the Kosovo Energy Corporation,<sup>276</sup> while the judge of the Basic Court of Mitrovicë/Mitrovica, Mr. Rafet Ismajli, and of the Basic Court in Pejë/Peć, Mr. Sali Berisha, were also accused of corruption. This particular case was still pending at the end of 2020.

**188.** Another problem related to the fight against corruption is the selective approach of judges in corruption cases involving high-profile officials, which is contrary to the right to a fair trial and equal treatment under the law for other persons accused and prosecuted for lower-level corruption offences. In general terms, the largest number of persons accused of corruption end up with convictions, but this does not happen even in cases where high-profile officials have been charged with corruption charges.<sup>277</sup> This is confirmed by KLI's analysis covering the period from 17 February 2008 to 31 May 2020, in which 298 indictments against 216 politicians have been analyzed, most of which contain criminal offenses related to corruption. According to the findings of KLI, out of 55 cases in which high-profile state officials were accused, 33 cases ended with a final decision, of which only three cases or five per cent were convicted, while in 30 other cases, the court did not find criminal liability against high-profile officials.<sup>278</sup>

### 189. Recommendations:

- The GoK should demonstrate genuine leadership, the ability to practice advance planning, and a willingness to allocate adequate resources to fight against corruption. It should adopt a new strategy and action plan to address corruption and establish a monitoring mechanism to assess its implementation and impact.
- Prosecutors in the Department for Corruption and Financial Crime in the SPRK should be appointed on the basis of merit criteria, while the Kosovo Prosecutor's Office and the SPRK should continuously invest in the professional development of prosecutors in this department.
- The SPRK should increase the number of ex officio investigation cases.
- The SPRK should establish a special department for the fight against corruption.

## 8.3. The environment and human rights

**190.** The constitutional order of Kosovo is based on the principles of, among other things, the protection of the environment.<sup>279</sup> Article 52 enshrines that environmental protection is everyone's responsibility and requires public institutions to consider environmental impacts in their decisions.

276 Betim për Drejtësi, 'PSRK ngritë aktakuzë për korrupsion ndaj Mimoza Kuasri-Lilës, Besim Beqajt, Dardan Gashit e 16 zyrtarëve tjerë' ([betimiperdrejtesi.com](http://betimiperdrejtesi.com), 10 April 2020).

277 KLI, 'Lufta për statistika të korrupsionit' (23 June 2020).

278 KLI, 'Politikë e "kriminalizuar"' (26 December 2020).

279 Constitution of Kosovo, note 2, Art. 7.

Additionally, Kosovo's legislation also incorporates international instruments and standards to safeguard its air, environment, land, and water,<sup>280</sup> while the Criminal Code establishes criminal offences and sanctions for harming the environment.<sup>281</sup> The AoK adopted the 2030 Agenda and its 17 Sustainable Development Goals in 2018, many of which aim at ensuring healthy lives, protecting the environment, and promoting a greener planet. However, several issues relating to the protection of the environment continued in 2020, including the lack of proper implementation of the legal framework and other policies.

**191.** Kosovo has many environmental problems that have been inherited over decades of uncontrolled use of various sources, such as natural and mineral resources, and industrial production coupled with high levels of pollution. The general environmental situation in Kosovo has regressed over the past years due to increased construction, traffic, and industrial pollution, including the pollution from power plants and household heating during the winter. Kosovo is still at an "early stage" of addressing environmental issues, such as climate change.<sup>282</sup> In particular, Kosovo still needs to establish an effective water monitoring system, enforce legal provisions on environmental liability, and implement the climate change strategy.<sup>283</sup> In 2020, Kosovo Environmental Protection Agency published the Report on Environmental Indicators, which analyzes the environmental pressures based on indicators relating to the air, water, soil, climate change, biodiversity, and others, thus filling a reporting gap that existed in the previous year.<sup>284</sup>

**192.** Air pollution continues to be a leading concern in Kosovo. According to AQICN, Kosovo continues to be listed as having a moderate air pollution level of 74 under the Air Control Index.<sup>285</sup> However, this level of air pollution varies from one city to another, with some cities experiencing notably worse air pollution levels.<sup>286</sup> In particular, the air quality in Pristina has deteriorated significantly.<sup>287</sup>

**193.** With regards to water, Kosovo has adopted some laws that are still not fully in compliance with the EU *acquis*.<sup>288</sup> Even though laws are in place requiring the protection of Kosovo's water resources, "pollution, overuse, and misuse of rivers has continued at almost the same pace" as in prior years.<sup>289</sup> This is still no apparent institutional initiative to improve the sustainable use of water resources, which is necessary to ensure "public health, environmental protection, and socio-economic development" in Kosovo.<sup>290</sup>

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

281 Criminal Code, note 20, Arts. 170, 338-353.

282 2020 EC Progress Report, note 44, p. 92.

283 *Ibid.*, p. 93.

284 Ministry of Economy and Environment and Kosovo Environmental Protection Agency, '[Kosovo Environment 2020 Report on Environmental Indicators](#)' (2020), p. 21, Table 3.

285 AQICN, "[Worldwide Air Quality: Air Quality Rankings](#)".

286 *Ibid.*

287 Delfinë Elshani, '[Air Kosovo: Reaching New Lows](#)' (GLPS, 14 January 2020).

288 2020 EC Progress Report, note 44, p. 94.

289 2020 OiK Report, note 26, p. 42.

290 *Ibid.*

**194.** In 2020, authorities in Pristina and Belgrade signed an agreement with the United States to work on a feasibility study looking at the possibility of sharing the disputed Gazivode/Ujmani Lake as a source of water and energy.<sup>291</sup> Under the agreement, the government committed to establishing a Working Group for a feasibility study focused on: (1) “[d]elineating the existing technical allocation of the lake’s water resources”; (2) “[e]xploring what, if any, opportunities exist to enhance the lake infrastructure to optimize water supply, to allow for additional uses (e.g. irrigation, drinking water)”; and (3) “[m]aking sure that any recommendations or proposals in the study should not jeopardize current water usages.”<sup>292</sup>

**195.** The building of hydropower plants by KelKos Energy, a Kosovo-based hydropower energy management company in the city of Deçan/Dečane,<sup>293</sup> is another challenge to environmental protection that received a lot of attention in 2020. Particularly, due to the high criticism received from the environmentalist Mrs. Shpresa Loshaj, KelKos Energy recently submitted a lawsuit that demands €100,000 from Mrs. Loshaj for defamation.<sup>294</sup>

#### **196. Recommendations:**

- The GoK should undertake an urgent review of the practices of implementation of sanctions by environmental inspectors.
- The GoK should strengthen the coordination of activities between the relevant Inspectorates, Kosovo Police, the Kosovo Prosecutor’s Office, and courts in relation to environmental protection.
- The GoK should establish an effective water monitoring system as well as implement the climate change strategy as recommended by the European Commission.

291 Nikola Đorđević, ‘[Kosovo and Serbia’s underwhelming agreement](#)’ (emerging-europe.com, 7 September 2020).

292 GoK, ‘[Implementation Plan of the Washington Agreements Economic Normalisation Between Kosovo and Serbia](#)’ (October 2020).

293 Shpresa Loshaj, ‘[The fight for Kosovo’s rivers must go on](#)’ (prishtinainsight.com, 15 October 2020).

294 Igor Todorović, ‘[Small hydropower plant owner sues activist Shpresa Loshaj in Kosovo\\* for defamation](#)’ (balkangreenenergynews.com, 22 February 2021).

