

Report: **ANTI DISCRIMINATION LAW IN KOSOVO - Seven years on**

Executive Summary

1. The Anti-Discrimination Law in Kosovo was adopted by the Assembly of Kosovo and promulgated by the Special Representative to the Secretary General in 2004. It entered into force on the 19th of September 2004 and without any amendments continues to be a legally binding statute today.

2. It is largely based on European Union legislative acts; primarily the equal treatment directives in relation to race¹ and equal treatment in employment and occupation².

3. The Law itself identifies a three fold purpose; firstly, to prevent and combat discrimination. Secondly, it promotes effective equality and to put into effect 'the principle of equal treatment of the citizens of Kosovo under the rule of law'³. Similarly the Law identifies further principles such as equal treatment, fair representation and interethnic tolerance⁴.

4. The prohibition of discrimination is a key value, which the constitutional order of Kosovo is founded upon⁵ and this is also included in over 25 pieces of legislation.

5. However, despite extensive legal measures in place discrimination in Kosovo remains a fact of life and one, which is accepted widely by citizens and institutions.

6. The types of discrimination identified in the Law include: direct discrimination, indirect discrimination, harassment, instruction to discriminate, victimization and segregation. These forms of discrimination are examined in detail in the report, which are sufficiently clear in the Law. However, reference is made to international jurisprudence to provide practical examples and good practice when dealing with such claims at national level, due to the non-existence of these at national level.

7. The Anti-Discrimination Law covers an impressive sixteen grounds of discrimination including: 'sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property or any other status'⁶. It is also expansive in that all of the above grounds are covered in respect of direct or indirect discrimination⁷ and in relation to any right set forth by law⁸, which has been rightly identified as exceeding the protection provided by the European Union Directives⁹. Therefore, the grounds covered are indeed very comprehensive and ensure protection in a range of instances.

¹ European Council Directive 2000/43/EC

² European Council Directive 2000/78/EC

³ Article 1, Anti-Discrimination law 2004/3

⁴ Article 2 Ibid

⁵ Article 7 (1) Constitution of the Republic of Kosovo

⁶ Article 2 (a) Anti-Discrimination Law 2004

⁷ Ibid

⁸ Article 4 (n) Anti-Discrimination Law 2004

⁹ Fabian G, 'Implementation of the Anti-Discrimination Law in Kosovo: A plan in need of execution' 31, January 2006 available at <http://www.errc.org/cikk.php?cikk=2459> accessed on 21/11/2011

8. However, we have very few, if any practical examples in regards to discrimination claims on these grounds due to lack of implementation. Instead reference is made to situations where it can be foreseen that such discrimination on the various grounds can occur. One particular ground of discrimination, which is not properly dealt with by any of the institutions is that of sexual orientation.

9. By recognizing ‘any other status’, the Anti-Discrimination Law allows for superior protection in regards to new grounds of discrimination and the opportunity for further development of the law.

10. The Anti-Discrimination Law ensures wide applicability by covering natural and legal persons from the public and private sectors. With regards to public bodies, they can be held liable for any action or inaction, which violates a right or rights of a natural or legal person or persons¹⁰. Additionally, the implementation scope of the Law is detailed through thirteen specified areas, whilst the fourteenth outlines that the implementation scope can be further expanded through ‘any other right set forth by applicable law’¹¹.

11. The applicable areas are sufficiently clear in order to be applied in practice within administrative and judicial processes. Additionally, there are over 25 pieces of legislation that prohibit discrimination in various spheres. However, once again implementation of these is lacking and comparison between protection offered in the Anti-Discrimination Law and other pieces of legislation show a number of discrepancies. Of particular significance is the exclusion of some grounds such as sexual orientation, which in effect excludes citizens from protection.

12. Importantly, the Law recognizes exceptions and positive actions, which do not constitute discrimination. There are sufficiently clear, although examples from within Kosovo are lacking and recourse is once again made to international jurisprudence.

13. The remedies and enforcement are incredibly important aspects of the Law, although they lack clarity. Particularly, Chapter II of the Law entitled ‘procedures and sanctions’ presents a number of difficulties in respect of implementation. Whereas, the bodies created to promote equal treatment have not been created in compliance with the Law.

14. It is evident throughout that implementation is not at a satisfactory level. In 2007 we found that there was very slow progress in implementation, whereas now our research indicates that the Anti-Discrimination Law provides ‘protections only on paper’, which creates a myth that the law protects all against discrimination and in practice there are ‘other reasons’ for lacking effectiveness.

15. The promotion of the Anti-Discrimination Law since 2004 on the whole has been ineffective due to limited campaigns, lack of coordination from government institutions and exclusion of some groups altogether such as the LGBT community.

16. Requesting information from institutions with regard to discrimination cases revealed the lack of respect for the Law on Access to Public Documents by the majority of institutions. Additionally, the majority of institutions did not have any such cases and any that did, had very few over a long period of time.

¹⁰ Article 4 Anti-Discrimination Law 2004

¹¹ Article 14 (n) Ibid

17. On the whole only a few of cases dealing with discrimination were identified having reached the courts, although they were not adequately dealt with.

18. Similarly, the Ombudsperson of Kosovo has only a few cases of discrimination, once again covering a long period of time.

19. The media do not always identify discriminatory practices in their reporting and at times discriminate against marginalized individuals.

20. Overall the implementation of the Anti-Discrimination Law has not seen any substantive progress. Whilst the law is comprehensive in defining the forms of discrimination and the protected grounds, Chapters II and III are not sufficiently clear to enable implementation. These are issues, which have been discussed over a number of years, yet no attempts have been made to address them. In regards to bodies mandated to promote equal treatment, these have been created through Administrative Instructions and contrary to what the Anti-Discrimination Law says. Furthermore, certain groups such as LGBT are excluded from protection altogether, as they are never mentioned in any produced literature or positive measures taken by institutions addressing discrimination.

21. The fight against discrimination will be ineffective if Laws exist which are not enforced and strategies are written or training events are attended. Elimination of discrimination cannot be a de jure issue only, at all times it needs to be eliminated de facto and public institutions are legally responsible to take a lead on this.

22 A number of recommendations have been made, which the institutions should work together with all stakeholders including civil society to address.