

“Beyond Laws”



Testing Kosovo institutions' capacity to protect
the socioeconomic rights of LGBT persons

“Beyond Laws”

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Introduction

Executive Summary

This report gathers the results of the project “Beyond Laws” conducted by CEL Kosovo in 2020-2021, which aimed to better understand the socioeconomic vulnerabilities of Kosovo LGBT persons, particularly in the context of the Covid-19 pandemic; identify the institutions which should mitigate them; test their ability to do so; and produce material presenting these results, useful to inform public policy as well as advocacy.

In particular, the testing of Kosovo institutions was conducted through situation testing, an experimental method aiming to assess the real attitudes of public officers towards certain categories of individuals. More specifically, undercover journalists addressed institutions in Kosovo, requesting LGBT-specific services. Their interactions with public officials were recorded, as a way to gather evidence of concrete instances of discrimination.

On average, tested officials showed to be worryingly unprepared to deal with LGBT clients and patients. While some had an open approach, knew the proper terminology and were willing to provide services, a considerable number displayed disturbing levels of ignorance and prejudice. With few exceptions, tested officials did not believe that they were under a professional duty to provide services tailored to LGBT persons and their unique life experiences.

Overall, the existing anti-discrimination legal framework seems to be vastly unenforced in Kosovo, in part due to a lack of mechanisms meant to ensure that these provisions are applied. When they are not lucky enough to encounter a willing civil servant, Kosovo LGBT citizens appear to be largely on their own when it comes to the protection of their socioeconomic rights.

The socioeconomic rights of LGBT persons

When it comes to LGBT rights, political and civil rights are often at the forefront of monitoring, activism and advocacy activities. When the marginalization of LGBT persons is widespread and systemic, it is often the case that LGBT organizations and other stakeholders prioritize the mitigation of the most dramatic effects of homotransphobia, such as lack of legal recognition or of representation in policy-making, harassment, violence and killings targeting the LGBT community. Faced with limited funding and a generally hostile environment, this is often a matter of necessity rather than of preference.

One should not forget, however, that human rights are intrinsically interrelated and interdependent. Where political and civil rights are advanced and socioeconomic rights are neglected, the former unavoidably suffer.

The risk, in fact, is that of promoting a system where the LGBT community enjoys theoretical freedom, but lacks substantive freedom. While an adequate legal framework protecting LGBT rights and recognizing LGBT lives is of the essence, the concrete possibility for LGBT persons to access these protections, and to seek justice when they are violated, depends greatly on the socioeconomic means at their disposal. Indirect forms of discrimination, whether they pertain to education, housing, employment, health or other socioeconomic dimensions, deprive the LGBT community of the resources and the security necessary for them to achieve full freedom.

When the concept of human security was first introduced, it was summarized as “freedom from fear and freedom from want.”¹ While freedom from fear pertains to the ability of institutions to ensure safety from external aggressions, and to refrain from undue interference into the personal liberties of citizens; freedom from want pertains to ability of institutions to ensure that all citizens enjoy a sufficient level of means to conduct a dignified life.

In other words, it pertains to the level of empowerment that the population, and particularly minorities, enjoy – and that they can express, among other things, by exercising their civil and political rights.

Where the LGBT community suffers from social and economic marginalization, as a consequence of widespread stigma that may not necessarily be reflected in the legal framework, it will be disproportionately harder for them to access the protections and remedies that they are entitled to on paper.

The socioeconomic marginalization of LGBT persons

Worldwide, LGBT persons suffer disproportionately from socioeconomic marginalization. It has been demonstrated, for instance, that young gay men earn less than their heterosexual peers,² that LGBT persons are twice as likely to be homeless compared to the general population, and that they display lower health conditions, by showing higher rates of certain forms of cancer, infection with HIV, and mental health issues.³

This creates distrust among the community and reticence to seek help when needed, further exacerbating their alienation. In a 2012 EU-wide survey,⁴ more than 20% of trans individuals reported facing discrimination by healthcare personnel, which justifies why more than 40% of the LGBT respondents admitted not to be willing to disclose their SOGI when seeking health-care – something that can jeopardize their chances to receive adequate treatment.

The socioeconomic alienation of LGBT persons should not be understood as separate or as secondary compared to more mainstream forms of discrimination. On the contrary, they reinforce one another.



¹ http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf

² <https://doi.org/10.1177/001979391406700109>

³ <https://undocs.org/en/A/74/181>

⁴ https://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf

It has been proved, for example, that gay and bisexual men with higher socioeconomic status are less likely to report discrimination, in comparison to poorer individuals from the same cohort.⁵

This corroborates our understanding of discrimination as a multi-faceted and integrated phenomenon, which cannot be understood nor addressed sectorally – lest we build societies where LGBT people are recognized in theory liberties and opportunities that they cannot enjoy in practice.

The Covid-19 pandemic

In May 2020, 96 Independent Experts⁶ warned that “in all latitudes, LGBT persons are disproportionately represented in the ranks of the poor, people experiencing homelessness, and those without health care, meaning that they may be particularly affected as a result of the pandemic.” Indeed, more than a year into the pandemic, it seems that the socioeconomic conditions of LGBT folks have plummeted across all dimensions.

Not only the effects of the pandemic have affected the LGBT community disproportionately, but also measures taken by governments to contain the contagion have often directly eroded LGBT rights. Containment measures, for instance, have forced LGBT people, particularly youth, into homotransphobic households,⁷ increasing cases of domestic violence – in some cases as much as threefold.⁸ This is particularly true for Kosovo,⁹ where the strong role that family plays in society – due to a public welfare that is often insufficient if not outright lacking – has been forced again on many LGBT individuals.¹⁰

Further, social distancing has weakened the support network of LGBT persons, and reduced spaces for advocacy of LGBT organizations. The closure of borders has made access to LGBT-specific healthcare harder, while restrictions on movement have generally increased risks for LGBT folks to experience police abuse.¹¹

LGBT-specific services – such as gender-affirming care or legal gender recognition procedures – have often been deemed “non-essential,” and suspended.



⁵ <https://www.apa.org/pi/ses/resources/publications/lgbt>

⁶ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25884&LangID=E>

⁷ <https://www.lgbti-era.org/sites/default/files/pdfdocs/ENG%20L%26Q%20i%20EGAL%20Analysis%20Covid%2019%20and%20LGBTI%20community%20in%20Serbia.pdf>

⁸ <https://undocs.org/pdf?symbol=en/A/75/258>

⁹ Before the pandemic, CEL already dealt with members of the LGBT community displaced from their houses by their families due to their sexual orientation or gender identity. In some cases, this led to suicide attempts. When homeless LGBT persons had nowhere to go, CEL has organized for them to be sheltered in Albania, as there is no dedicated shelter in Kosovo. This is doubly problematic in the context of the Covid-19 pandemic, due to border and movement restrictions.

¹⁰ <https://kosovotwopointzero.com/en/lgbtq-life-under-quarantine/>

¹¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25884&LangID=E>

Globally, some 20% of HIV seropositive LGBT individuals have lost access to specialized care providers.¹²

Faced with financial precariousness, loss of employment and solitude, LGBT people have experienced a dramatic deterioration in their quality of life. Due to mistrust of institutions, difficulties in accessing adequate healthcare, and higher chances to present co-morbidity, members of the LGBT community have also suffered from higher risks of infection with and death from the coronavirus.¹³

In the context of emergencies, it is not uncommon for minority rights to be compressed more than others.¹⁴

In the past year, some countries have gone as far as repelling legal recognition of some fundamental LGBT rights.¹⁵

The Covid-19 pandemic has dramatically impacted virtually everyone across the world. However, albeit global, this crisis has not impacted everyone in the same way. The poor, the marginalized and the vulnerable have been disproportionately affected – among which stands the LGBT community. In Albania, for example, 47% of LGBT people were found to be unemployed in 2020, against an average of 30% for the general population, with half losing their job during the state of emergency.¹⁶

If anything, the Covid-19 pandemic has exacerbated the ever-existing cleavages within our societies, rendering them even deeper and more evident. Faced with such an existential threat, institutions have often put LGBT rights, hardly on top of their agenda in normal times, further to the bottom. When this did not take the form of legal discrimination, it took the form of socioeconomic discrimination, meaning that emergency measures sustaining the economy have disregarded the experiences of LGBT folks – considered as something one can indulge, if anything, during times of bonanza.

Even when it comes to international aid, when allocating relief funding addressing the immediate impact of the pandemic, LGBT rights have been sidelined. Worldwide, as little as 0.31% of overall foundation funding has reached LGBT organizations.¹⁷



¹² <https://undocs.org/pdf?symbol=en/A/75/258>

¹³ <https://www.lgbti-era.org/sites/default/files/pdfdocs/Understanding%20the%20Impact%20of%20COVID-19%20Pandemic%20Measures%20on%20the%20LGBTI%20Community%20in%20the%20Western%20Balkans.pdf>

¹⁴ https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fracial-ethnic-minorities.html

¹⁵ <https://www.hrw.org/news/2020/05/21/hungary-ends-legal-recognition-transgender-and-intersex-people>

¹⁶ <https://www.historiaime.al/lgbt/situata-e-lgbti-gjate-pandemise-rritje-e-papunesise-dhe-nevojesh-per-strehim-e-s-herbime/>

¹⁷ <https://undocs.org/pdf?symbol=en/A/75/258>

It has been proved, however, that the legal recognition of gay rights is positively associated with growth in GDP per capita, and that as much as 22% of the loss in welfare due to institutionalized homophobia is correlated with LGB people's discrimination in health and the labor market. In a recent study in Eastern Europe, losses in GDP between 0.14% and 1.75% have been attributed to LGBT discrimination.¹⁹

This should put to rest the argument that LGBT rights are expendable in times of crisis, when it is in fact true that investing in making the economy more inclusive benefits both the LGBT community and the wider society.

Kosovo's legal framework

This reflection on the relevance of the socioeconomic rights of LGBT folks, especially in the context of the Covid-19 pandemic, is particularly relevant to Kosovo. Due to the unique constitutional history of the country, the Kosovo LGBT community can count on a quite progressive legal framework. The principles of equality and non-discrimination, including on the basis of one's gender, sexual orientation, and other personal statuses, are explicitly enshrined in the country's constitution.²⁰

Additionally, a number of key international human rights covenants are recognized constitutional rank.²¹ The absence of the International Covenant on Economic, Social and Cultural Rights (ICESCR) from this list is a notable exception – arguably, due to influence from the US.²² The interpretation of these instruments is also directly applicable into Kosovo legislation²³ – something particularly relevant if we consider the work of the ECtHR in expanding recognition of LGBT rights across the continent.²⁴

While Kosovo's constitution is particularly explicit in recognizing civil and political dimensions of equality, it is vaguer with respect to the socioeconomic aspects of equality. Notwithstanding, a variety of laws expands Kosovo's protection of LGBT rights when it comes to socioeconomic rights. Among these, the Law on the Protection from Discrimination²⁵ and the Law on Gender Equality²⁶ are key, and explicitly mention the socioeconomic rights of LGBT persons.

When it comes to employment, differential treatment on grounds other than knowledge and ability is prohibited.²⁷ While the Law on Employment has been adopted before the Law on the



¹⁸ <https://doi.org/10.1016/j.worlddev.2019.03.011>

¹⁹ <https://static1.squarespace.com/static/5bba53a8ab1a62771504d1dd/t/6085c5a9833eae5a86c674c0/1619379629514/The+Economic+Case+for+LGBT%2B+Inclusion+in+CEE+-+ENGLISH.pdf>

²⁰ See: art. 7 and art. 24: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

²¹ Namely: (1) UDHR; (2) EHCR and its Protocols; (3) ICCPR and its Protocols; (4) FCNM; (5) ICERD; (6) CEDAW; (7) CRC; (8) UNCAT; (9) Istanbul Convention. See art. 22:

<http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

²² https://www.theadvocatesforhumanrights.org/human_rights_and_the_united_states#Major%20Treaties%20Not%20Ratified%20by%20US

Protection from Discrimination, and thus does not offer an equally inclusive language, the latter still bans SOGI-based discrimination in matters of employment.²⁸

Discrimination against LGBT persons in healthcare²⁹ or social and family services³⁰ is also forbidden by law.

A stark exception in this rather advanced legal framework is the lack of recognition of equal marriage³¹ or civil partnerships for homosexual couples,³² something that local LGBT organizations have been grappling with for years.³³ Among other things, this impacts the possibility for same-sex couples to access parental leaves and other family-related rights in matters of health and employment.

In 2018, activist Blert Morina was the first in Kosovo to publicly seek change in name and sex marker on his official documents. After a two-year long legal battle, the Basic Court of Pristina ruled in his favor.³⁴

Legally, however, this does not constitute a precedent for similar cases in the future – to date, sub-legal provisions regulating legal gender recognition are still missing. This creates a normative vacuum, and makes it virtually impossible for trans citizens to keep their gender identity confidential when seeking employment, or when interacting with public officials.

Further, the law itself – the Law on Civil Status – also presents discrepancies, notably, in that the Albanian version refers to “gender” while the English version to “sex” when it lists the Civil Status components.³⁵



²³ Implementation of these instruments, however, remains piecemeal. In 2020, Kosovo’s Ombudsperson admitted: “Basic courts rarely use human rights laws package or make decisions based on the primary principles of international human rights acts contained in the Constitution, although they are an integral part of the Kosovo legal system. Also, courts in Kosovo, with the exception of the Constitutional Court, do not use or refer to the case law of the [ECtHR], for which the Constitution obliges.” See:

https://www.theioi.org/downloads/g25p/Kosovo_OM_Annual%20Report_2019_EN.pdf

²⁴ https://cel-ks.org/wp-content/uploads/Transgender-Report_ENG.pdf

²⁵ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10924>

²⁶ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923>

²⁷ https://www.theioi.org/downloads/g25p/Kosovo_OM_Annual%20Report_2019_EN.pdf

²⁸ See: art. 2.

²⁹ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8666>

³⁰ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2808>

³¹ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18420>

³² Recently, in its resolution on the 2019-2020 Commission Reports on Kosovo, the EP called on Kosovo “to include same-sex partnerships in the draft Civil Code, as guaranteed by the country’s Constitution.” See: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0113_EN.pdf

³³ <https://cel-ks.org/wp-content/uploads/Annual-Report-ENG.pdf>

³⁴ <https://kosovotwopointzero.com/en/landmark-decision-for-transgender-rights/>

³⁵ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2743>

Looking at other European countries, the protection of LGBT rights in Kosovo may seem quite advanced. While LGBT persons in Kosovo can indeed count on a number of quite progressive laws, these laws generally lack implementation,³⁶ and a socio-political culture to sustain their effectiveness in practice. As a result, while Kosovo scored better than countries like Italy in ILGA's 2020 Annual Review,³⁷ the situation on the ground is more complex.

There is actually a widespread feeling among local activists that progressive laws advancing LGBT rights are adopted not because of conviction, but in order to “tick the box” of human rights protections required for the European integration process to progress, and under pressure from international institutions.³⁸

If one considers the extremely low acceptance of LGBT rights and identities among the general population,³⁹ it becomes evident that these laws have not been passed as a result of a wider process of normalization of LGBT lives.

An example of this is the Advisory and Coordination Group (ACG) for LGBT rights. Established by the Government of Kosovo in 2013, the work of the ACG has been scattered at most, and nonexistent at worst⁴⁰ – lacking in transparency and accountability,⁴¹ and failing by and large to meet its own strategies and plans.⁴² The wide array of challenges Kosovo institutions face in building a strong economy and in protecting the human rights of the general population, challenges that have only worsened as a result of the Covid-19 pandemic, have provided further justification for Kosovo institutions not to consider the implementation of LGBT-relevant laws as a matter of priority – and to redirect funding, resources and political will elsewhere.

This phenomenon of fundamental disapplication of norms protecting LGBT rights should not be underestimated. While this has the obvious effect of protracting the marginalization of Kosovo LGBT community, it has also additional, negative effects.

It emboldens institutions in their homotransphobia, in that they can rainbow-wash their inadequacy by making reference to progressive laws that have limited effect in practice; and it risks further antagonizing the general public, by furthering the idea that, similarly to these laws, LGBT rights and lives are heterogeneous to Kosovo, and a Western-imposed fashion.⁴³



³⁶ <https://www.lgbti-era.org/content/kosovo>

³⁷ https://www.ilga-europe.org/sites/default/files/2020/full_annual_review.pdf

³⁸ https://cel-ks.org/wp-content/uploads/Advancing_LGBTI_ENG.pdf

³⁹ A survey conducted in 2015 shows that that Kosovo is one of the most homophobic countries, compared to the other countries surveyed in the region. Only 3% of Kosovars would accept their child if they were LGBT, and 30% would punish them, would not interact with them, or would not allow them to live with them any longer.

See: <https://www.lgbti-era.org/one-stop-shop/ndi-public-opinion-poll-balkans-lgbti-communities>

⁴⁰ <https://cel-ks.org/wp-content/uploads/Annual-Report-ENG.pdf>

⁴¹ <https://cel-ks.org/wp-content/uploads/CSGD%20-%20CEL%20Annual%20Report%202018.pdf>

⁴² [https://cel-ks.org/wp-content/uploads/CSO%20Report%20Final%20\(Eng\).pdf](https://cel-ks.org/wp-content/uploads/CSO%20Report%20Final%20(Eng).pdf)

⁴³ <https://cel-ks.org/wp-content/uploads/Annual-Report-ENG.pdf>

Finally, it augments the general distrust of Kosovo LGBT citizens towards institutions, exacerbating their vulnerability and alienation.

This is even more applicable to proximity services, as it is reported that Human Rights Units within Kosovo Municipalities are widely ineffective when it comes to the protection of LGBT rights.⁴⁴

LGBT socioeconomic marginalization in Kosovo

In a 2018 survey covering Southeastern Europe,⁴⁵ two-thirds of LGBT respondents reported hiding their SOGI in the workplace. More than 40% admitted witnessing negative comments or behaviors against LGBT colleagues. As a result, as much as three-fourths hid their identity at work.

Most importantly, 16% denounced experiencing discrimination in relation to employment benefits or conditions, as a consequence of their SOGI. If one compares this percentage (16%) with the number of LGBT workers who reported living openly their LGBT status in the workplace (24%), one can draw a dramatic picture of the levels of discrimination experienced by LGBT workers in the region. From an intersectional perspective, trans people, lesbian women and men perceived as feminine were disproportionately discriminated against, alongside LGBT people with lower incomes.

Somewhat unsurprisingly, Kosovo ranked last in all but one dimension – where it ranked second-last – in comparison with other countries in the region. When asked whether they had experienced homotransphobic discrimination at work in the previous year, 27% of Kosovo respondents answered affirmatively – setting the country at the top of the list, and against a regional average of 20%. Kosovo maintained the same record also when considering experiences of discrimination in the previous five years.

When reviewing discrimination in education, Kosovo again displayed the worst scores in all dimensions, making it the country with the highest level of homotransphobia in schools, and with the lowest level of perceived safety of LGBT people in education settings.

Further, 39% of interviewees across the region reported facing homotransphobia when seeking healthcare, so much so that one-tenth of the respondents admitted renouncing to medical treatment for fear of discrimination. Both phenomena affected disproportionately the trans community.

Kosovo ranked last also in this last domain (alongside Albania). In Kosovo, some 20% of the

⁴⁴ *ibidem*

⁴⁵ <https://www.lgbti-era.org/sites/default/files/pdfdocs/0354%20Life%20on%20the%20Margins%20Survey%20results%20of%20the%20living%20experiences%20of%20lgbti%20people%20in%20south%20eastern%20europe-i-lovepdf-compressed.pdf>

respondents reported facing hardship in identifying an accessible, LGBT-friendly healthcare provider, while 13% denounced their specific needs being ignored by healthcare personnel.

Overall, these data outlined a gloomy picture of LGBT rights respect in Kosovo, where inclusive change lags behind, laws do not suffice, and discrimination against LGBT folks remains pervasive and systemic.

SITUATION TESTING OF KOSOVO INSTI- TUTIONS

In order to test Kosovo institutions' readiness to protect the socioeconomic rights of LGBT citizens, the research team has followed a two-pronged approach.

Considering the limited resources available, it has decided to narrow its research on the application of LGBT-relevant socioeconomic protections to the domains of employment and health only.

Understanding that the LGBT community is diverse, and that LGB and trans individuals in particular have different needs and face different forms of discrimination, it has decided to test:

Kosovo institutions' ability to protect the right to non-discrimination of homosexual individuals in matters of employment, namely, by testing the readiness of Kosovo Employment Offices to provide guidance to homosexual persons seeking employment after losing their job due to their sexual orientation, and the readiness of Labor Inspectorates to offer support to homosexual individuals who have been fired due to their sexual orientation;

Kosovo institutions' ability to protect the right to non-discrimination of transgender individuals in matters of health, namely, by testing the readiness of the Kosovo health system to offer gender confirmation treatments.

In Kosovo, Family Medicine Centers provide Primary Health Care. This means that citizens that wish to receive medical attention must visit Family Medicine Centers first. If needed, they are then referred to specialist care, offered in Regional Hospitals.

The research team has followed this procedure, by testing:

© Primary Care Physicians

© Endocrinologists

© Psychiatrists

Testing has been conducted in a sample of five Municipalities, namely:



This sample was chosen trying to respect geographical balance. It also included some among the biggest municipalities in terms of population, under the assumption that they would be better positioned in terms of service provision.

It should also be noted that, when seeking services from Labor Inspectorates or Healthcare Providers, it is normally expected of citizens to provide their personal information, so as to initiate public proceedings (in the case of Labor Inspectorates) or to receive referrals and medical attention (in the case of Health Services). In order to ensure that the situation testing would be conducted in full compliance and within the limits of Kosovo's legal framework, instead of initiating public proceedings or requesting medical services through which a legal relationship is established, testers have requested professional advice, which are already available to the public, on behalf of a third party.

Additionally, the research team has paid due diligence in terms of protecting the identity of individuals subject to testing, through anonymization of elements that may make them identifiable – notwithstanding the fact that they were tested while serving in a public capacity.

The methodology of situation testing combined with the use of third-party stories – that is, using the story of an anonymous individual and asking information on behalf of such individual – is most efficient on at least four grounds.

First, one can argue that, through situation testing, one can record the behaviors and beliefs of public officials more honestly, as the results are not skewed by their knowledge of being tested – something referred to as the “Hawthorne effect,” and highly likely when subjects serving in a public capacity are tested on knowledge and behaviors that they are demanded to show by law.

Second, it is lawful, in that it limits itself in retrieving information that should be available to the public, and it protects the identity of the tested subjects.

Third, it shields individuals who actually need these services and would have been able to test institutions by using their own personal stories from discrimination, and from possibly revealing their identities. By using professional journalists as opposed to members of the LGBT community as testers, this method avoids any potential harm to individuals.

Considering the existing stigma around homosexuality and transgender identities, and the documented reticence of the Kosovo LGBT community to approach institutions – for fear of discrimination or for fear that their SOGI would be later revealed to others – this methodology had the last benefit of resembling reality. In real life, it is safe to suppose that LGBT persons, when addressing institutions, may feel the need to “test the waters” through persons of trust, or to pretend that they are not requesting services for themselves, in order to protect their identity and to avoid direct discrimination.

TESTING OF LABOR INSPECTORATES

The table below summarizes the results of Labor Inspectorates' testing in terms of their ability to offer support and guidance to homosexual persons that have lost their job on the ground of their sexual orientation.

The Labor Inspector:

	Ferizaj Uroševac	Gjakovë Đakovica	Mitrovicë Mitrovica South	Prishtinë Priština	Prizren
had an open approach and was ready to listen	✓✓	✗	✗	✓✓	✓✓
showed professionalism and understanding of their professional responsibility in addressing the issue	✓✓	✗	✗	✓	✓✓
refrained from overt homophobic comments and behaviors	✓✓	✓	✓✓	✓✓	✓✓
refrained from otherwise incorrect or indirectly homophobic comments and behaviors	✓✓	✗	✗	✗	✓✓
showed knowledge of the applicable legal framework	✓✓	✗	✗	✗	✓



⁴⁶ See: Criminal Code, Law on Minor Offences, Law on Protection of Personal Data, Law on the Rights and Responsibilities of Citizens in Healthcare, and Constitution of Kosovo.

	Ferizaj Uroševac	Gjakovë Đakovica	Mitrovicë Mitrovica South	Prishtinë Priština	Prizren
showed understanding of the stigma surrounding LGB persons in Kosovo	✓✓	✗	✗	✓	✓✓
was willing to provide services	✓✓	✗	✗	✓	✓✓
was able to provide services tailored to LGB persons	✓✓	✗	✗	✗	✓✓

Table 1. Summary of results pertaining to the testing of Labor Inspectorates in sample municipalities

Legend

Yes	✓✓
Partly	✓
No	✗

Summary of results

The results of the testing of Labor Inspectorates were mixed, and overall unsatisfactory. On average, Labor Inspectors showed not to be knowledgeable about anti-discrimination legal provisions, nor to understand the specific condition and needs of LGB workers. Consequently, half of them were unwilling to provide services, and more than half were unprepared to provide services tailored to LGB persons. Similarly, while none engaged in directly homophobic behaviors, a majority of them made comments that were indirectly discriminatory or derogatory towards LGB persons.

Transparency

One of the most striking issue ascertained during the testing was the reticence of two out of five Labor Inspectors to provide information to the research team, on the ground that they were seeking information in lieu of others, and they could not provide a legal authorization from the party. As a Labor Inspector put it, Labor Inspectorates “do not work like one-euro shops, where, whenever you want, you go in and out.” The same Inspector, after aggressively dismissing our male undercover journalist, agreed to quickly converse with our female undercover journalist, for the reason that they wanted “to be decent, since [she was] a woman.”

This is particularly concerning, as one can expect that, when seeking protection from institutions, LGB employees may feel the need to safeguard their anonymity when approaching public officials they do not necessarily trust – particularly if one takes in to account endemic nature of homotransphobia is in Kosovo. In this context, it is plausible that LGB workers may pretend to ask information “for others”, or, as in our case, they may ask friends or trusted persons to approach institutions on their behalf.

As a matter of fact, there a number of legal provisions that contradict the words of these Inspectors. First, the Law on Organization and Functioning of State Administration and Independent Agencies demands public administration to operate following a principle of transparency, whereby administrations are bound to inform the public for their activity.⁴⁷

Second, the Law on General Administrative Procedure establishes a principle of information and active assistance, meaning that public organs must provide interested persons with information concerning – among other things – the manner how to initiate a specific administrative proceeding.⁴⁸ The Albanian version of the law clarifies that “interested persons” are to be considered both persons who are generally interested to receive information, and persons who have a legal interest in receiving information.

Third, denying information on a procedure involving a case of discrimination based on sexual orientation to people that are not ready to qualify themselves as the ones being directly discriminated against seems to violate the right of access to public documents and the right to privacy enshrined in the Constitution.⁴⁹

Finally, the Civil Servant Code of Conduct of the Republic of Kosovo also sets out a broad obligation for public officials to respond to requests from citizens – without qualifying the nature of the request or of the interest of the person.⁵⁰



⁴⁷ See art. 5: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18684>. It should be noted that the previous Law on the State Administration, abrogated by the new Law on Organization and Functioning of State Administration and Independent Agencies, defined even more unequivocally the principle of cooperation of administration bodies with citizens. See art. 56: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2706>

⁴⁸ See art. 11: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559>

⁴⁹ See art. 41: and art. 38: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

⁵⁰ See art. 4.1.3: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10764>

All in all, the reticence of Labor Inspectors to provide information on their work liberally to the general public infringes upon a number of legal and constitutional provisions. Most importantly, one may argue that such misapplication of Kosovo law served the purpose of providing some justification to Labor Inspectors that wished to deny assistance to LGB persons – all the while hiding their true, discriminatory intentions. Surely, it represents a concrete barrier for LGB persons seeking services they are entitled to by law.

Preparedness

Beyond the issue of providing information, there is the issue of the quality of the information provided. Only in one case (Ferizaj/Uroševac) the Labor Inspector was able, unprompted, to provide all relevant information; delineate all the different options available to party; explain in detail the administrative process the Labor Inspectorate would undertake; and illustrate the possible remedies it would be able to accord. They were the only one, for instance, to suggest resorting to a free legal aid office, or to clarify that the Labor Inspectorate did not have the mandate to award compensation or to revert an improper dismissal, but only to punish the employer for their violation.

In Prizren, the Inspector was slightly less complete in their presentation, and sometimes needed questions before providing information.

As for the other municipalities, Labor Inspectors gave some information, but piecemeal and only after specific requests from the research team, who – differently from real workers – already knew where to look, and what to look for. In one case, after explaining that they were simply seeking some general information around the procedures in matters of employment discrimination, the undercover journalist was told: “It does not matter. Go get authorization and file a complaint. In the complaint, you write everything regarding why [the employee] was discriminated against.”

This is particularly concerning. Faced with a hostile environment and incomplete information, a non-expert LGB employee may very well feel pressured into opening an investigation, without adequately pondering the consequences that this process could bring about, and expecting remedies that may be impossible to receive.

In another case, when asked whether there were some guidelines in place determining how the Inspectorate would react to such cases of discrimination, the Inspector replied: “Definitely not. There is no rule defining how to approach this issue.” So much so that they suggested: “Maybe you know what kind of mechanisms are in place to protect these people.”

This begs the question of whether workers that experience homophobia can reasonably expect to find justice when, after almost twenty years since the establishment of the Labor Inspectorate, the institution has yet to adopt guidelines on how to deal with such cases. As demonstrated by the testing, in absence of such standardized operating procedures the possibility for queer folks to receive appropriate services will be highly dependent on the specific Inspector they will meet when addressing the institution – leaving them at the mercy of fate.

Confidentiality

While all Labor Inspectors recognized their legal duty to protect the confidentiality of the proceedings, some were adamant in admitting that what is provided for in the Law on the Labor Inspectorate⁵¹ is not necessarily respected in practice.

In one case, a Labor Inspector confessed that the sexual orientation of the complainant “remains confidential to the inspector. But in the moment that the inspector goes to the field, [people] will realize who [the inspector] is talking about, whether you like it or not.” Another admitted: “I am afraid that we will not be able to protect confidentiality – other staff may access the complaint, and you know how Albanians are...”

Others thought otherwise. In one case, the Inspector declared: “There are some naïf people, and they can gossip. But I believe that this is going to remain confidential and that the procedure will be dealt with normally. You are going to tell me, and I am going to bring this to my grave, no one can find out about this.” Adding, “I understand that [your friend] did not feel comfortable enough to come here in person.”

Yet, when asked whether there was a Code of Conduct demanding of Inspectors to respect confidentiality, the same Inspector answered negatively. Fortunately, the Civil Servant Code of Conduct⁵² sets out a very clear duty in this regard.

Arguably, the violation of confidentiality (suspected or real) may result in the biggest barrier for LGB persons seeking protection from institutions, and may very well be the reason behind the fact that none of the Labor Inspectors – some of whom have held the position for more than twenty years – reported ever dealing with cases involving LGB workers.

Anti-discrimination legal knowledge

While some of the Labor Inspectors showed a well-rounded understanding of Kosovo anti-discrimination laws, others seemed to believe that only the Law on Employment was relevant to the case. This is particularly concerning because, as illustrated above, the Law on Employment does not explicitly mention sexual orientation as grounds on which discrimination is prohibited, and it is complemented in this regard by the Law on the Protection from Discrimination.

Trying to make sense of the limits of the Law on Employment, a Labor Inspector argued that, when Kosovo adopted the law, “they did not think that there would be gay people in Kosovo.” On the contrary, LGB persons exist in Kosovo, and civil servants demanded to protect their rights should know the few laws that protect their freedoms.

More generally, this sheds further light on the fragility of Kosovo anti-discrimination framework, which is characterized by broad lawmaking, but substantial disapplication of norms.

⁵¹ See section 5: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3252>

⁵² <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10764>

Professional responsibility

Only two out of five tested Inspectors showed to be fully convinced that they had a personal, professional responsibility in addressing the issue. The rest, convinced that the case was too odd, too hard to prosecute, or too specific for their knowledge, implied that the case was a tough one – and that there was little they could do.

Indeed, many seemed to struggle to put the case of homophobic discrimination on the same footing as other forms of employment violations. While none engaged in directly homophobic behaviors, many had difficulty in employing a correct terminology, never using the word “homosexual,” or “gay,” and preferring words like “special” or “specific” when referring to the problem at hand.

This differentiation is not a matter of form. In fact, such emphasis on the “special” nature of the case was instrumental in justifying lower standards in terms of professionalism, effectiveness and even service provision. In one case, the Inspector remarked: “I cannot guarantee anything in this case, because [your friend] was discriminated against in a very peculiar way. We cannot [do anything] without arguments, evidence. In a case like this one, concrete facts, arguments, evidence – we cannot find them.”

The case of homophobic discrimination was so “very peculiar” that, in their eyes, it must have not clearly qualified as prosecutable discrimination after all. As an Inspector said after the details of the case were presented to them, “our issue is that we have to identify the problem.”

Unable to identify – as their position requires them to do – an effective course of action to prosecute the alleged impropriety, these Inspectors attributed their own failures to the problem itself, and ultimately to the victim of discrimination. One Inspector candidly admitted: “I do not want to demoralize you or anything, but I have little hope that I can do something on this. The legal basis [is limited]. Nor is it that [your friend] can really prove this.”

This seems to suggest that, in a case of homophobic discrimination, the burden of proof lies on the victim. Three out of five tested institutions, in fact, ultimately implied that it was a responsibility of the homosexual employee to demonstrate that they were fired due to homophobia, and that it was not – on the contrary – a responsibility of the Inspector to verify whether the employer had legal grounds on which they could legitimately dismiss the employee. In other words, the discriminated LGB worker had to fulfill the work of the Inspector, and be the one bringing about justice.

If truth be told, the lack of interest of some Inspectors in the case may have also been due, among other things, to a lack of resources. Overwhelmed by a number of different cases, violations relating to homophobia must have appeared as of secondary importance. In one case, the Labor Inspector admitted: “We have a legal deadline of 30 days [to review allegations], but now, to be honest, we are a very small number of inspectors. We prioritize construction because it is in the worst condition, and it is impossible to meet the 30-day deadline – but if it is urgent, we can probably take it into account.”

Formal equality vs. Substantive equality

This strategy of substantial unwillingness to concretely protect one's human rights, under the pretense that is simply not possible, is not uncommon in cases of discriminatory behaviors against minorities. The strategy is tricky, in that it is easy to fall prey to it.

Such strategy goes as follows: when a victim of systemic oppression brings to the attention of institutions a concrete example of such oppression, institutions that are only on paper interested in protecting their rights adopt a "formal equality" approach. Arguing that they "do not see color," "gender," or – as in our case – "sexual orientation," institutions pride themselves in treating the victim of violence or discrimination "as everyone else" – and that is where they further marginalization.

Indeed, formal equality demands that people are treated the same under the law, and that they are not unduly discriminated against by public institutions. The issue with this entirely acceptable provision is that, while queer folks and cis, straight men and women are all equal inasmuch as they are all human beings who enjoy the same human rights, they are not the same. To treat people that are marginalized and cast to the bottom of our society as if they were enjoying the same privilege, the same safety, the same resources, or the same human security enjoyed by those at the top means substantively replicating their oppression.

Let us apply these considerations to the argument put forward by some of the Labor Inspectors. Stuck in a "he said, she said" situation – where two abstract individuals with conflicting rights (one, to be considered innocent until proven guilty; the other, to non-discrimination) are formally equal under the law – the Inspectors argued that no punishment could be determined. To prove that reality trumps theory, it suffices to consider that, when the formal rights of the privileged collide with the formal rights of the systemically oppressed, the rights of the former invariably prevail.

Indeed, such an approach does not consider the specific and objective system in which this interaction, or formal clash of rights, takes place. In real life, we do not have two abstract citizens: on the one hand, we have a straight employer, enjoying the privilege granted them by the structures of patriarchy and capitalism. On the other hand, we have a homosexual employee, who is rendered vulnerable by both. Thus, if we draw this formal clash back to the real world, we realize that the formal freedom theoretically enjoyed by both employer and employee, in practice it is fundamentally precluded to the latter.

This is not to say that Labor Inspectors should take the word of a complainant at face value, merely because they are part of a systemically oppressed category. What they should do, however, is to recognize that discrimination really and objectively exists, and incorporate this demonstrated truth into their action. In other words, when an LGB person living in a country vastly homophobic comes forward, at great personal risk, to denounce discrimination, if no reasonable justification for the behavior of the accused can be found, then the complaint should be reasonably considered as substantiated.

This two-pronged approach – utilizing notions of formal equality while also taking into consideration the concrete elements of reality – has a number of benefits. First, it promotes both the principle of presumption of innocence and the principle of substantive equality. Second, it outlines a clear course of action for the probatory work of the Labor Inspectorate. Third, and most importantly, it gives a fighting chance to the victim. This, in turn, would foster trust in public institutions, enabling more cases of injustice to come forward, and opening a path for this form of discrimination to be concretely fought against, and possibly eradicated.

Conclusions

All things considered, Labor Inspectorates need to adjust their procedures to the real-life conditions of LGB employees in Kosovo – for instance, by putting in place additional measures to safeguard their confidentiality. This is something that impacts queer employees disproportionately, due to the widespread stigma that – albeit undesirable and unfortunate from a formal equality perspective – targets them systemically. Another adjustment should be that of adapting the investigation process, by way of incorporating the documented reality of widespread homophobia into the probatory elements.

It should be clear that these adjustments would not accord special or additional rights to certain categories of individuals. Quite the opposite, they would create an environment where, in practice, these individuals can realistically enjoy the protections they are entitled to in theory, by ensuring that the investigation is not naturally skewed in favor of the defendant.

Other positive improvements would be: to provide information liberally to any citizen that asks; train Labor Inspectors on the needs and reality of LGB workers; and raise awareness among Labor Inspectors, employers and LGB workers of the rights and obligations stemming from Kosovo's anti-discrimination laws.

Limits of testing

It should be noted that, for the reasons portrayed above, the research team could not test the work of Labor Inspectorates beyond a request for preliminary information. It is yet to see if, even among those who scored the best during the testing, Labor Inspectors would be able in practice – i.e. during an actual investigation – to follow through with the principles they set out in theory.

TESTING OF EMPLOYMENT OFFICES

The table below summarizes the results of Employment Offices' testing in terms of their ability to offer support and guidance to homosexual persons seeking employment, after losing their job due to their sexual orientation.

The Employment Counselor:

	Ferizaj Uroševac	Gjakovë Đakovica	Mitrovicë Mitrovica South	Prishtinë Priština	Prizren
had an open approach and was ready to listen	✓✓	✓✓	✓✓	✗	✓✓
showed professionalism and understanding of their professional responsibility in addressing the issue	✓✓	✓✓	✗	✗	✓✓
refrained from overt homophobic comments and behaviors	✓✓	✓✓	✓✓	✓✓	✓✓
refrained from otherwise incorrect or indirectly homophobic comments and behaviors	✓✓	✓✓	✓	✓✓	✓✓
showed knowledge of the applicable legal framework	✓✓	✗	✓✓	✗	✗

	Ferizaj Uroševac	Gjakovë Đakovica	Mitrovicë Mitrovica South	Prishtinë Priština	Prizren
showed understanding of the stigma surrounding LGB persons in Kosovo	✓✓	✓✓	✓	✗	✓✓
was willing to provide services	✓✓	✓✓	✗	✗	✓✓
was able to provide services tailored to LGB persons	✓✓	✓	✗	✗	✓

Table 2. Summary of results pertaining to the testing of Employment Offices in sample municipalities

Legend	
Yes	✓✓
Partly	✓
No	✗

Summary of results

Compared to Labor Inspectorates, Employment Offices scored better during the testing. Overall, Employment Counselors were ready to listen and to provide information, and scored well also with regards to display of incorrect or homophobic behaviors.

Nevertheless, a considerable limit ascertained during the testing is the fact that Employment Offices are not instructed to give priority to LGB job-seekers, nor they actively engage in initiatives specifically intended to help LGB persons secure a job.

As a result, an LGB job-seeker cannot realistically expect to face, through Employment Offices, employment conditions or opportunities that are substantially different from the ones they face in real life, and that led to their unemployment.

Transparency

With the notable exception of Pristina, none of the Employment Counselors had difficulty with providing information. None had difficulty with the fact that the research team was requesting information in lieu of others.

Some actively showed to understand why the job-seeker had not come there in person. In one case, the Counselor reassured the tester: “I completely get it. [...] I am aware of the issue your friend is dealing with. I know the LGBT community, so I get what you are saying.” A couple went as far as suggesting the undercover journalist to accompany their friend during their next appointment, to make them feel more at ease.

Confidentiality

All of the Counselors ensured that the case would be treated with confidentiality, and that the sexual orientation of the job-seeker would in no way be recorded in public documents. In one case, the Counselor maintained: “It does not matter even if it turns out we know the person. We treat everybody equally.” Another, when asked if they had LGB job-seekers in the past, answered: “Maybe they came, but we did not know it.”

While this is definitely a positive element, it was later understood that membership to the LGB community was irrelevant to the Counselors also because it did not affect their work. In other words, a homosexual person who does not find a job due to homophobia is not given priority, nor are they considered differently from anybody else. So much so that one Counselor admitted: “For my part, of course everything is confidential. But how much is that worth?” Another went as far as saying: “We treat everyone same. It is the Center for Social Work that deals with discriminated categories.”

Preparedness and professional responsibility

Two Counselors did not know whether LGB persons would be given priority by Employment Offices. In one case, the Counselor referred to a manual listing the vulnerable categories that are given priority, signaling that they had just recently received it. Asked about it, the Counselor responded: “[The manuals] are from 2019, but until they printed them...”

On average, the tested Counselors showed to be sensible to the issue. In one case, the Counselor went as far as saying: “There is no priority for LGBT people as jobseekers, and honestly I am sure that many colleagues of mine never even thought about it,” and added: “I really would like to help.” Another, when reading the list of vulnerable jobseekers, argued: “And here they added the category: ‘etc.’ Now, who are ‘etc.’? I think that also [LGBT] persons need to be part of ‘etc.’ ”

As a matter of fact, the Operational Manual for the Provision of Employment Services instructs Employment Counselors to profile job-seekers when they first seek counsel. Looking at elements such as qualifications, age, health or for how long they have been unemployed, jobseekers are divided into three categories, according to the level of risk they run to remain unemployed in the long term. From least vulnerable to most, each category of jobseekers is provided with increasing guidance and support by Employment Counselors.

As maintained also by one of the Counselors, the Manual explicitly mentions, among others, people with disability, beneficiaries of social assistance and victims of domestic violence as classes of individuals that run the highest risk of long-term unemployment. Notwithstanding the documented and disproportionate levels of unemployment experienced by LGBT people, there is no mention of them in the profiling table.

Ultimately, this means that many Counselors believed that their hands were tied, and they could do little to help. In one case, the Counselor stated: “He can get registered without any problem, but in order to help him in getting employed, that depends on the employer. If a certain employer does not employ him [because of homophobia], then we cannot do anything about it. We cannot oblige or pressure somebody if they do not want to. [...] It is a private company, and neither the Agency nor the state can interfere with it. You know, the owner of the company is like God.”

This is why the same Employment Counselor suggested the undercover journalist to find a fictitious address for their friend in Pristina, so that they could be put under the responsibility of the Employment Office in the capital – under the assumption that they would find “a higher degree of tolerance” there. They even suggested to find themselves a company willing to hire the person, so that they could participate in a publicly funded program where the state covers for part of the salary of the recently hired employee. They added “You said that he looks a bit [gay]... And for Pristina probably this does not present any problem.” Another Counselor also suggested trying in Pristina.

The fact that many LGBT persons move to Pristina to find housing, employment and a generally lower homotransphobic environment is a common phenomenon in Kosovo. Yet, one cannot but question whether it is fair for LGBT persons to be compelled to do so, and forego the right that many others enjoy to be employed and to reside where they desire.

Further, as the findings demonstrate, the Employment Office in Pristina is the one that actually scored the worst during the testing, disproving the assumption that a more liberal social environment necessarily equals more prepared and qualitative institutions.

All in all, it seems that most of the Counselors (with the notable exception of Ferizaj/Uroševac), albeit open, were not particularly prepared to deal with LGB job-seekers. Further proof of this is that all those who were asked whether they had any LGB client in the past answered negatively.

This unpreparedness must have been the reason why Counselors could not identify avenues for action beyond simply “following the procedure”.

Ultimately, this means that an LGB job-seeker would either have to find an LGBT-friendly workplace on their own, or just enter into the system, and hope to be lucky.

Conclusions

If one calls to mind the previous reflection on substantive equality, one could identify ways in which public institutions could actually promote justice, beyond simply replicating a reality that systemically discriminates against the queer community. A first start would be listing LGBT persons as workers vulnerable to long-term unemployment. It should be underscored, however, that giving priority to queer job-seekers when the labor market remains vastly homotransphobic would support the LGBT community only on paper. More needs to be done to mainstream diversity in the labor market.

Some examples of this would be for Employment Offices to draft lists of LGBT-friendly workplaces, raise awareness among businesses on Kosovo's anti-discrimination legal framework, or otherwise engage in initiatives that can have a direct and positive impact on the job market.

This makes all the more sense if one considers that it is not quite true that employers are "God," when it is actually the case that there is something that binds employers too in the exercise of their freedom of enterprise – the law. Kosovo legal framework, in fact, prohibits discrimination in all matters of employment, including hiring – both in the public and private sector. If institutions do not recognize an active duty to promote the implementation of anti-discrimination provisions, who is left to enforce the law?

For this reason, while the testing of Employment Offices produced better results compared to those of Labor Inspectorates, these results must be still considered as unsatisfactory. In both cases, the best-case scenario for a discriminated LGB employee or job-seeker is to find a civil servant ready to listen, and who does not engage in homophobic language. Beyond this, it seems that queer folks are largely on their own.

Testing of Health Services

The tables below summarize the results of Health Services' testing in terms of their ability to provide gender affirming treatments (GATs).

The Primary Care Physician:

	Ferizaj Uroševac	Gjakovë Đakovica	Mitrovicë Mitrovica South	Prishtinë Priština	Prizren
had an open approach and was ready to listen	✓✓	✓✓	✓✓	✓✓	✗
showed professionalism and understanding of their professional responsibility in addressing the issue	✓✓	✓✓	✓✓	✓	✗
refrained from overt transphobic comments and behaviors	✓✓	✓✓	✓✓	✓✓	✗
refrained from otherwise incorrect or indirectly transphobic comments and behaviors	✗	✓✓	✓✓	✓✓	✗
showed knowledge of GATs	✗	✓	✗	✗	✗
showed understanding of the stigma surrounding trans persons in Kosovo	✓✓	✓✓	✓	N/A	✗

	Ferizaj Uroševac	Gjakovë Đakovica	Mitrovicë Mitrovica South	Prishtinë Priština	Prizren
was willing to provide services	✓✓	✓✓	✓✓	✓✓	✗
was able to provide services specific to the trans patient	✗	✗	✗	✗	✗

Table 3. Summary of results pertaining to the testing of Family Medicine Centers in sample municipalities

The Endocrinologist:

	Ferizaj Uroševac	Gjakovë Đakovica	Mitrovicë Mitrovica South	Prishtinë Priština	Prizren
had an open approach and was ready to listen	{ }	⊘	{ }	{ }	✓
showed professionalism and understanding of their profes- sional responsibility in address- ing the issue	{ }	⊘	{ }	{ }	✗
refrained from overt transphobic comments and behaviors	{ }	⊘	{ }	{ }	✓✓
refrained from otherwise incor- rect or indirectly transphobic comments and behaviors	{ }	⊘	{ }	{ }	✗
showed knowledge of GATs	{ }	⊘	{ }	{ }	✗

	Ferizaj Uroševac	Gjakovë Đakovica	Mitrovicë Mitrovica South	Prishtinë Priština	Prizren
showed understanding of the stigma surrounding trans persons in Kosovo	{ }	⊘	{ }	{ }	×
was willing to provide services	{ }	⊘	{ }	{ }	×
was able to provide services specific to the trans patient	{ }	⊘	{ }	{ }	×

Table 4. Summary of results pertaining to the testing of Endocrinologists in sample municipalities

The Psychiatrist:

	Ferizaj Uroševac	Gjakovë Đakovica	Mitrovicë Mitrovica South	Prishtinë Priština	Prizren
had an open approach and was ready to listen	{ }	⊘	{ }	×	×
showed professionalism and understanding of their professional responsibility in addressing the issue	{ }	⊘	{ }	×	×
refrained from overt transphobic comments and behaviors	{ }	⊘	{ }	✓✓	✓✓
refrained from otherwise incorrect or indirectly transphobic comments and behaviors	{ }	⊘	{ }	✓✓	×
showed knowledge of GATs	{ }	⊘	{ }	×	×

	Ferizaj Uroševac	Gjakovë Đakovica	Mitrovicë Mitrovica South	Prishtinë Priština	Prizren
showed understanding of the stigma surrounding trans persons in Kosovo	{ }	⊘	{ }	×	✓
was willing to provide services	{ }	⊘	{ }	×	×
was able to provide services specific to the trans patient	{ }	⊘	{ }	×	×

Table 5. Summary of results pertaining to the testing of Psychiatrists in sample municipalities

Legend

Yes	✓✓
Partly	✓
No	×
unavailable	⊘
unavailable at the time of testing	{ }

Summary of results

Compared to other institutions, Health Services scored the worst during the testing. Doctors almost unanimously showed to ignore the most elementary notions of transitioning health-care, including the very meaning of “transgender”. In a number of cases, physicians seemed to ignore some among the most basic principles of human anatomy.

While around 50% of them had an open approach towards the research team, none of them was able to provide any actionable information or service.

As many as four doctors engaged in indirectly discriminatory or transphobic behaviors. In one case, a doctor resorted to religious proselytism.

Compared to primary healthcare, the situation of specialist healthcare was – if possible – even worse. In four municipalities, specialist doctors were not available. In three municipalities, specialists were available in theory, but the research team could not get ahold of them in practice. When they were available, endocrinologists and psychiatrists scored remarkably worse than Primary Care Physicians.

Transparency

According to the law, healthcare services are personal, and cannot be requested or offered to others than the interest party. Indeed, the Law on the Rights and Responsibilities of Citizens in the Health Care states that patients are obliged to provide credible proof of personal data.⁵⁴

For this reason, the research team requested advice on the medical procedures to follow if one wished to transition – information that medical professionals have an ethical obligation to provide to the general public.⁵⁵ While doing so, the research team inevitably referred to hypothetical situations, which solely aimed at identifying any discriminatory behavior.

None of the tested physicians refused to provide such information to the testers. In one case, the doctor showed discomfort, and stated: “Now I do not know how to protocol your case. You are taking my time, on whose behalf to protocol it? I have no right to register it.” Still, they ended up answering to the questions of the tester.

Preparedness

A 2016 report measuring the preparedness of healthcare personnel in regards to GATs (through interviews with Kosovo physicians) showed doctors to possess a fair knowledge of the terminology and of the treatment of transgender patients.⁵⁶ Beyond this, they were found unable to provide treatment, often unwilling to recognize their professional responsibility in offering such treatment, and sometimes showing discriminatory attitudes.

While the second part of these results is in line with the findings of this report, in this case tested physicians seemed not to command even the most basic notions of human anatomy or transgenderism – showing levels of ignorance that are honestly hard to reconcile with their medical degree.



⁵⁴ See: art. 21:

https://msh.rks-gov.net/wp-content/uploads/2020/03/2004_38-Law-on-the-Rights-and-Responsibilities-of-the-Citizens-in-the-Health-Care.pdf

⁵⁵ See: art 20 of the Code of Ethics and Medical Deontology.

⁵⁶ https://cel-ks.org/wp-content/uploads/Transgender-Report_ENG.pdf

When the research team sought information relating to the transition process for patients who were assigned male at birth (AMAB), four out of five tested Primary Care Physicians recommended visiting a gynecologist. This escapes the most basic understanding of human anatomy, as it is clear even to the non-expert individual, let alone to the non-expert doctor, that an AMAB person presents male and not female genitalia.

Ignorance around transitioning run deep. At least three doctors, including a Psychiatrist, argued that there would be no reason for a trans patient wishing to start transitioning to receive psychological support. One stated: “If you accept the form, the way, the lifestyle – then why do you have to consult a psychiatrist or a psychologist? [...] This has nothing to do with a psychologist. If you want me to do this, this is mechanical work. The psychologist cannot do the surgery, do you understand me...”

The fact that doctors so easily dismissed the potential impact that transitioning, and the almost certain ensuing stigma, may have on the mental health of the trans patient is shocking. Showing to believe that being trans is a choice, and a choice that a person makes because they want to pursue a personal inclination similarly to the one who pursues a hobby, a doctor argued: “Considering the very fact that someone has taken such a step [i.e. starting to transition], I believe that they are mentally prepared.”

Exemplifying the utter unpreparedness of most of the tested doctors, in one case a physician recommended seeking psychological support in a nearby center specialized in treating drug addictions – as if the two conditions were somehow overlapping.

It should not come as a surprise, then, that at least five out of eight tested physicians never dealt with a trans patient.

Professionalism and professional responsibility

At least half of the tested physicians seemed to believe that, however ignorant, they were not bound by a professional duty to offer services related to transitioning. Transitioning was often referred to as a “big problem,” which somehow justified doctors’ inability to provide any sort of information or service. In one case, the doctor clarified: “We are too small of a center here to deal with such big jobs.”

Indeed, it is true that primary care physicians – differently from specialist doctors – are not expected to be expert in all medical domains. This was indeed the opinion of many – as one stated, “I cannot give information. As a family doctor, I do not have any information.”

Still, primary care physicians are expected to be able to identify what kind of specialist care the patient needs, and direct them to the most appropriate place where they can receive it. The same doctor inadvertently admitted it, and conceded: “We provide services for all things, and maybe for this, but it is a shortcoming that we do not have much information.” Subsequently, they recommended turning to a gynecologist or a pathologist.

In this context, many advised to go elsewhere – to Pristina or private clinics. In one case, when asked why a transgender patient would have to go somewhere else to receive health-

care they are theoretically entitled to receive where they live, an endocrinologist rebutted: “Pristina is not far away. I cannot help them here because I do not deal with those jobs. I deal more with diabetes. And I do not deal with these other problems. And the ones I cannot finish, it is better to go somewhere else. I cannot do a job that I do not know how to do well.”

Similar to the case of Employment Offices, the assumption that specialists in the capital would be better positioned to provide this kind of services proved to be unsubstantiated. In Pristina, a psychiatrist clarified: “Honestly, there is nobody here that knows or is specialized on that, on how to deal with this.”

Another doctor suggested going to Tirana, arguing that transitioning “is a long procedure” and it would be probably easier to do it there. It must have escaped them that the average transgender person does not dispose of the means to move to another country for the length of their transition – something that could be additionally complicated by the pandemic, and ID checks at the border.

In one case, the doctor suggested resorting to google, begging the question why transgender persons should receive medical attention from google, while everyone else receives it from doctors. Only in one case the doctor made the reasonable suggestion to approach an LGBT NGO.

An important finding relating to specialist healthcare is also the great difficulty testers encountered when trying to reach endocrinologists and psychiatrists. With the sole exception of Prizren, specialist healthcare was either lacking, or it was offered during very limited hours. More often than not, specialist doctors were unreachable also during those few working hours, in most cases in more than one instance – painting a dire picture of specialist healthcare provision for not only transgender individuals, but for everyone in Kosovo.

Even when trying to avoid discriminatory language, many doctors inadvertently engaged in transphobia. In one case, the doctor warned: “We should always try not to hurt anyone else for our own good.” Another doctor, drawing a comparison between homosexuality and transgenderism, stated: “It is no coincidence that we have accepted homosexuality. So, we have accepted it as a fashion and it should simply be allowed.”

In one case, a primary care physician engaged in outright transphobic proselytism, and issued statements visibly in contrast with scientific evidence. Describing transitioning as “break[ing] yourself spiritually and emotionally,” they argued that the process involved “completely changing the genetic structure that Allah has given,” and was consequently “biologically unnatural.”

When asked about whether they thought that transitioning was okay, they answered: “Hell no! For me, it is the Apocalypse. Not for me, but for everything that God has separated: plus/minus, male/female. There is no nonbinary gender. Otherwise it cannot function. Plants as plants have the pistil and also the seed. It cannot happen otherwise. There is no logic.” It is no coincidence that such transphobic and violent statements went hand in hand with misogynistic statements.

All in all, in the majority of cases the behavior of doctors contradicted a number of regulations

that limit Kosovo physicians in the exercise of their functions. The Code of Ethics and Medical Deontology,⁵⁷ in fact, sets out clear duties for Kosovo doctors in terms of their professional standards.

With no exception, doctors have shown to lack knowledge on the appropriate treatment for trans patients. This violates art. 10 of the Code, which binds doctors to practice a high professional standard; art. 15, which requires of doctors to use all scientific, contemporary sources to ensure an effective treatment; and art. 16, which obliges doctors not only to follow and practice the most contemporary science, but also to continuously update their knowledge, in organized settings or individually.

Hence, it does not seem the case – as many argued – that the professional duty of a doctor goes as far as their knowledge goes. Kosovo doctors, on the contrary, are ethically bound to update their knowledge so as to provide treatment – or at least adequate counselling – to all patients.

This is particularly true for specialist physicians. It is simply untenable for an endocrinologist, as one did during the testing, to argue that they are expert only in treating diabetes, and that they are ready to provide services only relating to diabetes. On the contrary, art. 21 of the Code of Ethics requires specialist doctors to operate according to best knowledge, and to provide the most correct and most comprehensive opinion to patients, following a principle of medical expertise.

Further, art. 23 of the Code recognizes the right for patients to choose where to receive medical treatment, and an active obligation for doctors to promote such right. This seems to go in open contrast with the fact that doctors in every municipalities denied treatment to the trans patient, and failed to indicate a different avenue where they could receive it.

Finally, art. 24 and 26 prohibit doctors from imposing on the patient their personal, philosophical, moral or political opinions; abusing them physically or emotionally; or getting involved in their personal or private matters. These provisions were also infringed upon in a couple of cases.

All things considered, it is disheartening to observe that all tested doctors violated most of the provisions above, and that, as a consequence, it is factually impossible for transgender citizens to receive adequate, specialized treatment in Kosovo. Once again, this sheds light on a country where anti-discrimination laws and regulations are present and comprehensive, but vastly unenforced.

Practically speaking, this means that Kosovo transgender folks who wish to transition need to travel abroad and resort to private clinics, at a great cost, personal discomfort and risk. Particularly in the context of the pandemic, transgender persons may also end up receiving inconsistent treatment – something that can seriously jeopardize their health.



⁵⁷ <https://omk-rks.org/kodi-i-etikes/>

Conclusions

All in all, it is clear that Kosovo health institutions need to adopt a comprehensive strategy ensuring the provision of transition therapies to transgender persons, and guaranteeing adequate professional standards from the part of public doctors. This strategy should include guidelines on how to treat transgender patients, and specialized training for health professionals. The responsible authority should also promote knowledge of the Code of Ethics and Medical Deontology, enforce its application, and create mechanisms where patients can denounce malpractices.

As it appears that transgender and non-conforming healthcare services are outright missing in Kosovo, health authorities should seize the opportunity to build up a healthcare system that serves best transgender individuals, in that it is human rights-based, and follows the best science available.

Differently from what often happens in countries that have started offering some healthcare services to transgender folks in the past, such a system should aim to ensure that transgender and non-conforming healthcare is offered following a model based on informed consent – as opposed to a “gate-keeping” model where transgender and non-conforming persons must necessarily undergo rigid procedures that frequently trump their freedoms and negate their unique life experiences.⁵⁸

This system should follow the Yogyakarta Principles,⁵⁹ and promote the rights of transgender persons – such as the right to receive accessible and human rights-based healthcare, the right to be informed about the services available, the right to self-determination, the right to receive treatment from healthcare providers that are adequately knowledgeable and trained, the right to privacy, and the right to receive healthcare in proximity.



⁵⁸<https://tgeu.org/wp-content/uploads/2019/12/TGEU-Guidelines-to-Human-Rights-Based-Trans-specific-Healthcare-EN.pdf>

⁵⁹ <https://yogyakartaprinciples.org/>

Recommendations

Legislation

1. Mainstream LGBT rights and inclusiveness in the legal framework, particularly when amending existing laws having an impact on the socioeconomic rights of LGBT citizens;
2. Update the Law on Employment to explicitly include SOGI as grounds on which discrimination is prohibited, thus harmonizing it with the Law on the Protection from Discrimination;
3. Recognize the right for same-sex couples to enter into marriage or civil partnerships, in compliance with the obligations deriving from the Constitution;
4. Match the English with the Albanian version of the Law on Civil Status, unequivocally mentioning gender as a civil status component. Enact sub-legal provisions allowing for gender identity recognition. Provide by law that the process for legal gender identity recognition is transparent, dignified, confidential, swift, and not contingent on medical procedures related to transitioning;
5. Amend the Law on the Rights and Responsibilities of Citizens in the Health Care to specifically recognize the right of trans citizens to receive accessible and quality healthcare, in full respect of the principles of bodily integrity and self-determination. Provide for state-guaranteed coverage of gender confirmation treatment (such as masculinizing/feminizing hormones, top and gender reassignment surgeries), by amending the Law on Health and/or the Law on Health Insurance;

Labor Inspectorate

6. Train Labor Inspectors on SOGI-sensitive language and Kosovo anti-discrimination framework. Spread knowledge on Inspectors' duties stemming from the Civil Servant Code of Conduct and other pieces of law, monitor and ensure their application;
7. Adopt specific and binding guidelines on how to treat cases of employment discrimination on grounds of sexual orientation or gender identity, and provide training on these guidelines;
8. Instruct Inspectors to provide clear and complete information to the public, without need to



⁶⁰According to the Legislative Programme for the year 2021, approved by the Government of the Republic of Kosovo in May 2021, many of the laws mentioned in this report are planned to be amended soon. See: https://kryeministri-ks.net/wp-content/uploads/2021/05/Final_Programi-Legjislativ-per-vitin-2021_12.05.2021.pdf

disclose one's identity or interest. Ensure that there are complaint mechanisms for parties that see their rights violated, such as the right to information or the right to confidentiality, and ensure the effectiveness of such mechanisms;

9. Raise awareness among workers and employers on their employment rights and Kosovo anti-discrimination legal provisions;
10. Collect and monitor data on employment discrimination against LGBT workers in Kosovo;

Employment Office

11. Adopt active employment policies for LGBT persons, for instance, by including in the Operational Manual for the Provision of Employment Services LGBT persons as a category vulnerable to long-term unemployment, drafting lists of LGBT-friendly employers, or launching initiatives tackling LGBT people's unemployment;
12. Raise awareness among employers on their legally mandated duty not to discriminate against LGBT people when hiring;
13. Adopt specific and binding guidelines on how to deal with LGBT jobseekers, and provide training on these guidelines;
14. Collect and monitor data on the unemployment of LGBT persons in Kosovo;

Health Services

15. Train physicians on SOGI-sensitive language and Kosovo anti-discrimination framework. Spread awareness among doctors of their duties stemming from the Code of Ethics and Medical Deontology and other pieces of law, monitor and ensure their application;
16. Adopt specific and binding guidelines on how to treat transgender patients, and provide training on these guidelines;
17. Ensure that there are complaint mechanisms for transgender patients that see their rights violated, such as the right to privacy or the right not to be object of emotional abuse, and ensure the effectiveness of such mechanisms;
18. Actively build capacity and knowledge of the public healthcare system, with the aim of providing adequate, specialized and human rights-based healthcare to transgender and non-conforming citizens. This would include training healthcare providers, establishing and ensuring provision of gender confirmation treatments and other services necessary for the wellbeing of transgender patients, and ensuring access to proximity services;
19. Raise awareness among transgender persons on their rights, and the healthcare services available;
20. Collect and monitor data on the provision of transgender healthcare as well as requests for

transition services in Kosovo;

Civil Society

21. Provide accessible information to LGBT persons on their socioeconomic rights and legal protections;
22. Collect data on the socioeconomic marginalization of LGBT citizens, monitor progress;
23. Push for the mainstreaming of LGBT rights and experiences into Kosovo legislation. Keep track of the work of Kosovo institutions in promoting the socioeconomic rights of LGBT citizens and in enforcing the national anti-discrimination framework, promote accountability.

