



LOST IN ADMINISTRATION:

*How Kosovo's Bureaucracy Produces Indirect
Discrimination and Blocks Access to Legal
Remedies for LGBTI+ Persons*

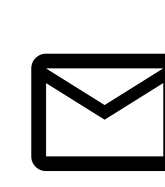
CENTRE FOR EQUALITY AND LIBERTY OF THE LGBT COMMUNITIES IN KOSOVA (CEL)

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ABSTRACT

Kosova ka një nga dispozitat kushtetuese kundër diskriminimit më progresive në Evropë, duke ndaluar diskriminimin për shkak të orientimit seksual drejtpërdrejt në Kushtetutë, dhe që nga viti 2015 e ka zgjeruar mbrojtjen ligjore edhe të identiteti gjinor, përmes Ligjit për Mbrojtjen nga Diskriminimi dhe Ligjit për Barazi Gjinore. Megjithatë, përvoja e përditshme e personave LGBTI+ në Kosovë formësohet më pak nga këto garanci formale e më shumë nga funksionimi i zakonshëm, në dukje asnjës, i administratës publike: zyra të gjendjes civile që historikisht refuzojnë kërkesa për ndryshimin e emrit apo të shënuesit gjinor; administrata familjare dhe shëndetësore të ndërtuara mbi një model të ngurtë e heteronormativ të familjes; sisteme të të dhënave që e bëjnë orientimin seksual dhe identitetin gjinor statistikisht të padukshëm; dhe institucione për trajtimin e ankesave që janë ose tepër të pafuqishme ose tepër të ngadalta për të dhënë një zgjidhje brenda një kohe të arsyeshme. Ky punim argumenton se problemi i diskriminimit ndaj personave LGBTI+ në Kosovë është, në një masë të konsiderueshme, problem i diskriminimit të tërthortë të prodhuar përmes praktikës administrative dhe jo përmes vetë tekstit të ligjit, dhe se e njëjta arkitekturë burokratike që e prodhon këtë diskriminim është ajo që u pengon personave LGBTI+ qasjen në mjete efektive juridike kundër tij. Duke u mbështetur në kornizën ligjore të Kosovës, në çështje ligjore të ngritura, në raportime të Avokatit të Popullit dhe në monitorimin e procesit të integritetit në Bashkimin Evropian, punimi mbyllet me propozime konkrete për reforma administrative dhe procedurale.

1. INTRODUCTION

Kosovo presents a puzzle for scholars of anti-discrimination law. Article 24 of its Constitution bans discrimination on a list of grounds that expressly includes sexual orientation, placing Kosovo among a small number of states worldwide with an explicit constitutional guarantee of this kind.^[1] Since 2015, Law No. 05/L-021 on Protection from Discrimination has added gender identity to the list of protected grounds and has been harmonized with the EU's Race Equality Directive (2000/43/EC) and Employment Equality Directive (2000/78/EC).^[2] A parallel Law on Gender Equality and a reformed Law on the Ombudsperson entered into force the same year, giving Kosovo's national human rights institution an explicit equality-body mandate.^[3] On paper, Kosovo therefore looks like a comparatively strong performer among its regional peers.

The lived reality is different. LGBTI+ organizations, the Ombudsperson itself, and the European Commission's own accession monitoring converge on a single diagnosis: Kosovo's legal protections exist largely on paper, while implementation remains inconsistent and political will is often absent.^[4] This paper takes that diagnosis seriously and asks a more specific question: through which mechanism does the gap between law and practice actually operate? Its central claim is that this gap is produced, case by case, by ordinary public administration by the evidentiary requirements that a civil registrar applies, by the forms that a hospital or a benefits office uses, by the reasoning (or its absence) that an official gives when rejecting an application, and by the time a complaint takes to move from an Ombudsperson's desk to an enforceable court judgment. None of these acts announce themselves as anti-LGBTI+ discrimination. Each is framed as a neutral administrative rule of general application. Their cumulative effect on LGBTI+ persons, however, is severe and disproportionate which is precisely the analytical signature of indirect discrimination, as opposed to discrimination that names its target directly.

The paper proceeds in six further parts. Part 2 sets out indirect discrimination as a legal concept and explains why it is the more accurate frame for the Kosovo case than the direct-discrimination paradigm that dominates public debate. Part 3 maps Kosovo's constitutional and statutory anti-discrimination architecture, and identifies a structural fault line running through it: strong general guarantees sit alongside a near-total absence of operational implementing procedures. Part 4 examines four administrative domains civil registration and legal gender recognition, family and household administration, health administration, and data collection in which this fault line becomes concrete, using the landmark case of Blert Morina as an extended illustration. Part 5 turns to remedies, showing how judicial delay, an under-resourced Ombudsperson institution, and uneven free legal aid combine to frustrate the very redress mechanisms the law promises. Part 6 situates Kosovo's experience within the European Union accession process, which supplies both an external benchmark and a source of leverage for reform. Part 7 sets out concrete recommendations, and Part 8 concludes.

¹ Constitution of the Republic of Kosovo, Art. 24; see also *LGBTQ rights in Kosovo, Constitutional protection and worth noting Kosovo is one of the few states in Europe with a constitutional ban on sexual-orientation discrimination*.

² Law No. 05/L-021 on Protection from Discrimination, Official Gazette of the Republic of Kosovo, No. 16, 26 June 2015, Art. 2.

³ ENNHRI, Kosovo* country page, describing the entry into force in 2015 of the Law on the Ombudsperson, the Law for Protection from Discrimination and the Law on Gender Equality, and the expanded mandate this gave the Ombudsperson Institution.

⁴ Outright International, Kosovo country page, describing established legal protections "on paper" alongside inconsistent implementation and often absent political will.

2. INDIRECT DISCRIMINATION AS A LEGAL CONCEPT

European anti-discrimination law distinguishes direct from indirect discrimination. Direct discrimination occurs where a person is treated less favorably than another is, has been, or would be treated in a comparable situation, on the basis of a protected characteristic. Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons sharing a protected characteristic at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary. This is the formula used in the EU's Race Equality and Employment Equality Directives, and it is the formula that Kosovo's own Law No. 05/L-021 was drafted to mirror when the Assembly aligned Kosovo's anti-discrimination framework with EU standards.^[5]

The distinction matters because it changes what a claimant, an Ombudsperson, or a court must actually look for. A direct-discrimination lens invites the search for an official who explicitly refuses service to someone because they are lesbian, gay, bisexual, trans, or intersex the kind of episode that makes headlines but that a modern, EU-aligned bureaucracy will rarely produce, because officials are trained to avoid stating discriminatory reasons openly. An indirect-discrimination lens instead asks a structural question: does a rule that looks neutral in fact fall more heavily on LGBTI+ persons than on others, and if so, can the state justify it? The European Court of Human Rights has developed this structural sensitivity over two decades, holding in *Thlimmenos v. Greece* that Article 14 of the Convention is violated not only when states treat comparable situations differently without justification, but also when they treat different situations identically without justification. In *D.H. and Others v. Czech Republic*, the Court went further and accepted that a facially neutral rule could be shown to be discriminatory through its disproportionate practical effect on a protected group, even without any discriminatory intent on the part of the authorities that designed it.

Legal gender recognition is where this doctrinal history has moved fastest. In *Christine Goodwin v. United Kingdom* the Strasbourg Court first recognized a Convention-based right to legal recognition of a person's post-transition gender. Two decades later, in a case concerning North Macedonia, the Court held specifically that requiring proof of surgical intervention before a state will amend a person's legal gender is itself a human rights violation a ruling that Kosovo's own transgender litigants and their lawyers invoked directly against Kosovo's Civil Registration Agency.^[6] Most recently, the Court of Justice of the European Union held in October 2024, in the *Mirin* case, that a Member State must recognize a gender and name change lawfully obtained in another Member State, treating refusal as a breach of free movement rights and of the right to private and family life.^[7] Applied to Kosovo, this jurisprudential trajectory means that an evidentiary rule requiring medical proof of surgery before a civil registrar will amend a name or gender marker is no longer a defensible "neutral" administrative practice: it is precisely the kind of provision, criterion or practice that indirect-discrimination doctrine targets, because it applies formally to everyone but in substance can only ever be invoked against transgender applicants.

⁵Law No. 05/L-021 on Protection from Discrimination, Art. 2, stating that the law is enacted in accordance with Council Directive 2000/43/EC and Council Directive 2000/78/EC.

⁶[1]Prishtina Insight, "Kosovo turns its eye on Macedonian transgender rights" (31 January 2019), reporting the lawyer Rina Kika's argument that Kosovo institutions should comply with the reasoning in the European Court of Human Rights judgment concerning North Macedonia and establish accessible legal gender recognition procedures.

⁷Judgment of 4 October 2024, Case C-4/23, *Mirin*, EU:C:2024:845; discussed in European Commission, *Union of Equality – LGBTIQ+ Equality Strategy 2026–2030*, noting that Member States' legal gender recognition requirements vary and that several still impose medical procedures which the European Court of Human Rights has found capable of violating human rights.

This is the analytical lens the remainder of this paper applies to Kosovo's public administration. The claim is not that Kosovo's officials are, as a rule, personally hostile to LGBTI+ persons although some plainly are, as later sections show. The claim is that even where officials act in good faith and simply apply the rule in front of them, the rule itself, and the institutional apparatus surrounding it, systematically disadvantages LGBTI+ persons relative to others, and that this is a legally cognisable form of discrimination under Kosovo's own Law No. 05/L-021, not merely a social or political failing outside the law's reach.

3. KOSOVO'S ANTI-DISCRIMINATION AND EQUALITY FRAMEWORK

Kosovo's framework can be described, without exaggeration, as unusually strong at the level of general principle and unusually thin at the level of operational detail. The Constitution's Article 24 bans discrimination on numerous grounds, sexual orientation among them, and its definition of marriage is gender-neutral, a point the then-President of the Constitutional Court publicly acknowledged in 2014 when she noted that the Constitution did not, as a matter of its own text, foreclose same-sex marriage.^[9] Ordinary legislation has not followed this constitutional opening: the Law on Family defines marriage as a union of a man and a woman, and Kosovo's LGBTI+ rights organizations have argued for years that this contradicts the Constitution's own wording.^[10] This is not a marginal inconsistency; it is the first, clearest example of a pattern that recurs throughout this paper a general constitutional or statutory guarantee that has no corresponding administrative machinery built to give it effect, leaving implementation to be improvised, contested, or simply refused at the level of individual offices.

Law No. 05/L-021 on Protection from Discrimination, adopted in May 2015 and in force from July 2015, added gender identity to the list of protected grounds already covering sexual orientation, which had been protected since Kosovo's original 2004 anti-discrimination law.^[10] It empowers any person who considers themselves a victim of discrimination to file suit before the Basic Court in Prishtina, and gives the Ombudsperson power to act on complaints, issue opinions, order shortened enforcement deadlines, and require publication of court decisions establishing a violation.^[11] The Law on Gender Equality, adopted the same year, offers a parallel track of protection built around the concept of “gender reassignment.”^[12] The Law on the Ombudsperson, also reformed in 2015, shortened the admissibility-assessment period for complaints from thirty days to ten, created a National Torture Prevention Mechanism, extended the equality body's jurisdiction to cover private as well as public actors, and introduced penalties for institutions that fail to cooperate with the Ombudsperson's investigations.^[13] In April 2019, a new Criminal Code entered into force with enhanced penalties for hate crimes motivated by a victim's sexual orientation or gender identity.^[14]

What this framework conspicuously lacks is any dedicated statute governing legal gender recognition, and any statute recognising same-sex partnerships or marriage. A draft Civil Code that would have introduced same-sex civil partnerships was rejected by the Assembly in March 2022, with only twenty-eight of one hundred and twenty members voting in favour.^[15]

⁹ Deda, D. A. (2013). *E drejta për të lidhur martesë dhe për të krijuar familje e personave brënda së njëjtës gjini në Republikën e Kosovës*.

¹⁰ ERA – LGBTI Equal Rights Association, Kosovo country page, tracing the prohibition of sexual-orientation discrimination to the 2004 Law for Protection from Discrimination and the 2015 amendment extending protection to gender identity.

¹¹ Law No. 05/L-021 on Protection from Discrimination, Arts. on judicial competence and Ombudsperson powers, as reproduced in Equinet Europe's official translation of the law.

¹² ERA – LGBTI Equal Rights Association, Kosovo country page, describing the 2013 Gender Equality Bill's proposed inclusion of protection from discrimination on grounds of gender reassignment.

¹³ ENNHRI, Kosovo* country page, summarizing the 2015 human-rights law package's procedural reforms to the Ombudsperson Institution.

¹⁴ Republika e Kosovës (2019) Kodi Penal i Republikës së Kosovës, Nr. 06/L-074. *Gazeta Zyrtare e Republikës së Kosovës*, Nr. 2, 14 janar 2019. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413> (Accessed: 27 July 2026).

¹⁵ 'Kosovo Activists Protest After MPs Vote Against Same-Sex Unions', *Balkan Insight*, 17 March. Available at: <https://balkaninsight.com/2022/03/17/kosovo-activists-protest-after-mps-vote-against-same-sex-unions/> (Accessed: 27 July 2026).

In April 2024, Prime Minister Albin Kurti announced his government's intention to legislate on same-sex partnerships, a commitment later linked publicly to Kosovo's bid to join the Council of Europe.^[16] As of this writing, no such legislation has been adopted, and no administrative procedure for legal gender recognition exists in statute; both remain matters left to ad hoc litigation, a gap explored in depth in Part 4. The overall picture, then, is of a legal architecture that is genuinely progressive at the level of constitutional text and general statutory principle, but that has never been completed downward into the administrative rules, forms, and procedures that public officials actually apply day to day. It is in that unfinished space between principle and procedure that indirect discrimination against LGBTI+ persons in Kosovo is produced.

¹⁶ILGA-Europe, *Annual Review of the Human Rights Situation of LGBTI People in Europe and Central Asia 2025*, noting Prime Minister Kurti's announcement of plans to introduce same-sex partnership legislation as part of Kosovo's bid to join the Council of Europe.

4. THE ADMINISTRATIVE MACHINERY: WHERE BUREAUCRACY BECOMES DISCRIMINATORY

4.1 Civil Registration and Legal Gender Recognition: The Morina Paradigm

The clearest illustration of Kosovo's implementation gap is the case of Blert Morina, who in April 2018 asked the local Office of Civil Registry to change his first name and his sex marker from female to male.^[17] His six-page submission set out, with reference to Kosovo's Law on Gender Equality, Law on Protection from Discrimination, and the European Convention on Human Rights, why the mismatch between his documents and his lived identity obstructed his everyday life banking, crossing borders, and ordinary interactions with public institutions.^[18] A Commission within the Agency for Civil Registration, part of the Ministry of Internal Affairs, recommended rejection, and the Directorate for General Administrative Work within the Gjakova civil registry denied the request on the stated ground that his existing documents did not “hamper his integration into society” a conclusion offered without further reasoning as to which legal requirement Morina had failed to meet.^[19] Separately, the Civil Registry took the position that gender is a natural fact that could only be altered on the strength of a medical report demonstrating surgical intervention.^[20]

Both grounds for rejection are textbook indirect discrimination. The requirement of a reasoned decision is a general principle of administrative law that applies to every applicant before every Kosovo institution; here it was not applied at all, leaving Morina with no way to know what, if anything, he could still do to satisfy the registry. The medical-evidence requirement was, in form, a general evidentiary rule about how “natural facts” are proven; in substance, it is a rule that no cisgender applicant will ever be asked to satisfy, because no cisgender applicant needs to prove their gender to keep the marker already on their documents. It therefore falls, by definition, only on transgender applicants which is precisely the disparate-impact structure that Article 2 of Law No. 05/L-021 is designed to capture.

Morina pursued two parallel tracks: a constitutional review of the registry's decision, filed in July 2018, and a lawsuit before the Basic Court in Prishtina. The Constitutional Court dismissed his application roughly thirteen months later, in September 2019, without engaging the merits, meaning it produced no interpretation of general application that could guide future cases.^[21] The Basic Court hearing then finally began in October 2019, some eighteen months after the original administrative rejection, and in December 2019 the Basic Court in Prishtina ruled in Morina's favour, annulling the prior decisions and ordering the authorities to act within fifteen days without requiring any evidence of surgery or other medical intervention, a first for Kosovo's judiciary.^[22]

¹⁷ Kosovo 2.0, “Landmark request to change name and sex marker denied” (June 2018), describing Morina's April 2018 request submitted to the Office of Civil Registry in Gjakova.

¹⁸ Balkan Insight, “Transgender Man Challenges Kosovo to Accept His Identity” (25 June 2018), summarising the legal arguments made on Morina's behalf and describing the difficulties he faced at border crossings.

¹⁹ Kosovo 2.0, “Landmark request to change name and sex marker denied” (June 2018), quoting Morina's lawyer Rina Kika's objection that the Commission gave no explanation for how it reached its recommendation, despite the detailed legal submission filed on his behalf.

²⁰ Prishtina Insight, “The good, the bad and the unconstitutional: Transgender rights before the courts” (2019), and Prishtina Insight, “Kosovo turns its eye on Macedonian transgender rights” (31 January 2019), both describing the Civil Registration Agency's rejection of Morina's request for lack of medical evidence of gender reassignment surgery.

²¹ Prishtina Insight, “The good, the bad and the unconstitutional: Transgender rights before the courts” (2019), reporting the Constitutional Court's dismissal of Morina's case after one year, one month and six days, and his lawyer's comment that a merits decision would have clarified the legal position for all future cases of this kind.

²² Kosovo 2.0, “Landmark decision for transgender rights” (20 January 2020), and Exit – Explaining Albania, “Draft Civil Code of Kosovo Fails LGBT Community, Report Finds” (17 February 2021), both describing the Basic Court's December 2019 ruling annulling the prior denials and setting a fifteen-day deadline for compliance, without requiring proof of surgical intervention.

²³ Refuzohet kërkesa historike për ndryshim të emrit dhe gjinisë, Kosovo 2.0, 17 May. Available at: <https://kosovotwopointzero.com/sq/landmark-request-to-change-name-and-sex-marker-denied> (Accessed: 24 July 2026).

Two features of the aftermath matter more than the victory itself for the purposes of this paper. First, the Ministry of Justice and the Civil Registration Agency publicly stated that the ruling would not be treated as binding precedent, meaning every other transgender person in Kosovo wishing to correct their documents would have to bring their own multi-year court case rather than rely on an administrative procedure informed by Morina's result.^[23] Second, once Morina had won, the body he had to approach to actually obtain his new documents was the same Gjakova civil registry office that had denied his original request the remedy for an administrative decision remained dependent on the cooperation of the very administrative unit responsible for it.^[24] Legal gender recognition in Kosovo therefore exists today not as a codified administrative procedure but as a fragile judicial precedent that the responsible ministries themselves have declined to generalize exactly the unfinished space between constitutional principle and administrative procedure identified in Part 3.

The downstream effects of this gap reach beyond documents. Morina has described the intensified scrutiny he faced at border crossings while his identification papers did not match his appearance, and during the COVID-19 border closures of 2020 he and other transgender people in Kosovo were forced to pause hormone therapy obtained abroad, since Kosovo's public hospitals did not, and largely still do not, provide this care as a standard, funded service.^[25] This is not a rule that bars transgender people from healthcare; it is an absence of a rule no protocol integrating gender-affirming care into the public health system and that absence produces the same disparate burden that an explicit ban would, discussed further in section 4.3 below.

4.2 Family and Household Administration

Because the Family Law confines marriage and engagement to differently-sexed couples, and because no partnership statute has replaced the rejected 2022 civil-code proposal, every administrative process that assumes a married or legally-recognized household hospital next-of-kin registration, inheritance processing, tax filing status, social-benefit eligibility, and next-of-kin notification in emergencies is built around a template that a same-sex couple cannot, as a matter of form, complete.^[26] None of the individual forms in question mention sexual orientation; each simply asks for proof of marriage or of a recognized family relationship. The cumulative effect, replicated across dozens of unconnected administrative touchpoints inside hospitals, municipalities, pension funds, and tax offices, is a systemic disadvantage that operates through the ordinary paperwork of family life rather than through any single discriminatory rule indirect discrimination distributed across an entire administrative ecosystem rather than concentrated in one office.

4.3 Health and Social-Service Administration

Kosovo's health administration illustrates how discrimination-by-omission can appear even where the underlying service is, in principle, lawful. Gender-affirming care is legal in Kosovo, but it is conditioned on medical diagnosis and receives no public funding, forcing patients toward private or foreign providers whose services many cannot reliably afford layering an economic filter on top of the medical one and making continuity of care a function of personal wealth rather than of settled clinical protocol.^[27]

The COVID-19 pandemic exposed the same administrative fragility in a different register. During the mandatory quarantine period imposed on citizens returning to Kosovo between March and June 2020, the Ombudsperson opened ex officio investigations into allegations that people placed in quarantine faced discriminatory treatment, illustrating a broader pattern in which crisis administration, improvised under pressure, tends to default to majority assumptions unless deliberate safeguards are built in advance.^[28] More narrowly, a 2023 report that new HIV diagnoses at the University Clinical Center of Kosovo's infectious disease department were being publicly announced by clinic officials underlines how sensitive health data concerning the LGBTI+ community continues to be handled through the ordinary, non-specialized channels of clinical intake and public communication, with attendant risks to confidentiality and stigma that a targeted administrative protocol could substantially reduce.^[29]

²⁴ Kosovo 2.0, "Discrimination in social and health services" (2020/2023), describing Morina's return to the Municipality of Gjakova in January 2020 to request new documents from the office that had originally rejected his application.

²⁵ Kosovo 2.0, "Discrimination in social and health services" (2020/2023), describing Morina's interrupted hormone therapy during the 2020 border closures and his call for public hospitals to provide such treatment; see also Equaldex, "LGBT Rights in Kosovo," noting that gender-affirming care in Kosovo requires a medical diagnosis and receives no state funding, making it difficult to access in practice.

²⁶ 'A family denied', Prishtina Insight, 21 January. Available at: <https://prishtinainsight.com/a-family-denied-mag/> (Accessed: 20 July 2026).

²⁷ Equaldex, "LGBT Rights in Kosovo," describing gender-affirming care in Kosovo as legal but requiring medical diagnosis, unfunded, and difficult to access in practice.

²⁸ ENNHRI, Kosovo* country page, describing the Ombudsperson's ex officio investigations, opened between March and June 2020, into alleged discrimination against citizens placed in mandatory quarantine on return to Kosovo.

²⁹ ILGA-Europe, Annual Review of the Human Rights Situation of LGBTI People in Europe and Central Asia – Kosovo, covering January–December 2023 (2024), reporting the October 2023 announcement by the head of the HIV department at the Infectious Disease Clinic of the University Clinical Center of Kosovo (QKUK) regarding new diagnoses among LGBTI people and their families.

4.4 Data Collection and Institutional Invisibility

A parliamentary coordinating group on LGBTi+ issues was created by the Assembly in late 2013, but civil-society reporting has repeatedly criticized its weak performance and limited monitoring output in the years since.^[30] Systematic, disaggregated data collection on discrimination has been an even later development: it was only through a European Union and Council of Europe joint programme, running through the Office for Good Governance inside the Prime Minister's Office, that Kosovo adopted a new reporting framework for monitoring the Law on Protection from Discrimination, following a 2019 assessment of the country's human-rights mechanisms.^[31] Without such systematised data, sexual-orientation- and gender-identity-based discrimination remains chronically undercounted in official statistics, which in turn weakens the evidentiary basis for policy reform a self-reinforcing cycle in which the absence of data becomes itself an administrative obstacle to correcting the practices that data would otherwise expose.

Institutional hostility toward LGBTI+ persons has, on at least one occasion, come from the Assembly itself. Following a plenary session held on 16 March 2022, several civil society organizations lodged a complaint with the Ombudsperson against the Assembly of the Republic of Kosovo, alleging that statements made by deputies during the session amounted to hate speech against the LGBTIQ+ community and created a discriminatory environment within the institution responsible for legislating protections in the first place.^[32] The pattern recurred during the 2025 election cycle, when several parties used discriminatory language about LGBTI+ people in their campaigns and the Election Complaints and Appeals Panel fined one coalition specifically for hate speech targeting the community.^[33] Taken together, these episodes show that administrative and institutional hostility is not confined to civil registries: it recurs inside the legislature, the electoral machinery, and law enforcement, each a body whose ordinary, non-LGBTI+-specific function nonetheless produces disparate harm to LGBTI+ persons when exercised without deliberate safeguards.

³⁰ ERA – LGBTI Equal Rights Association, Kosovo country page, noting the European Commission's observation of poor performance by the national Coordination Group on LGBTI issues in successive progress reports.

³¹ Council of Europe, "Presentation of the research 'Diversity and equality in Kosovo*' and launching of the new reporting framework on monitoring the Law on Protection from Discrimination" (2019), describing the joint EU–Council of Europe programme's support for the Office for Good Governance's 2019 assessment and new reporting template.

³² Ombudsperson Institution of Kosovo (OIK), Annual Report 2024 on the Implementation of Law No. 05/L-021 on Protection from Discrimination in the Republic of Kosovo (2025), describing the complaint filed against the Assembly of the Republic of Kosovo concerning the 16 March 2022 plenary session, and the Ombudsperson's evaluation of the deputies' statements as hate speech creating a discriminatory environment.

5. BLOCKED REMEDIES: COURTS, THE OMBUDSPERSON, AND FREE LEGAL AID

5.1 Judicial Delay as De Facto Denial of Remedy

A 2018 discussion paper by the European Centre for Minority Issues found that Kosovo court cases take, on average, roughly eight and a half years to resolve a finding invoked specifically in commentary on the barriers facing transgender litigants seeking legal gender recognition.^[33] Even where a court ultimately rules in the applicant's favor, as it did for Morina, the process consumes years of a person's life, imposing psychological and financial costs wholly disproportionate to the underlying administrative decision under challenge, and because the resulting judgment is not treated as binding precedent, every subsequent applicant restarts the same multi-year process from the beginning. Activists supporting Morina argued, well before his case was decided, that ordinary litigation therefore did not constitute an effective remedy within a reasonable time as required by both Article 31 of the Kosovo Constitution and Article 6 of the European Convention on Human Rights an argument grounded not in the substance of Kosovo's anti-discrimination law, which both sides in that debate treated as adequate, but in the sheer duration of the process meant to enforce it.^[34]

5.2 The Ombudsperson: A Broad Mandate, Thin Capacity

The 2015 reforms gave Kosovo's Ombudsperson institution real tools: a shortened ten-day admissibility assessment, a National Torture Prevention Mechanism, jurisdiction extending to private as well as public actors, and penalties for institutions that refuse to cooperate.^[35] Yet the European Parliament's own progress reporting on Kosovo has flagged that the Ombudsperson's work is hindered by a persistent lack of adequate office premises, and has called on Kosovo's authorities to allocate proper facilities in line with the Paris Principles governing national human rights institutions a plainly logistical, administrative failing undermining the functioning of the one institution specifically empowered to police discrimination.^[36]

The Ombudsperson's own 2024 annual report on the implementation of Law No. 05/L-021 documents active recent engagement on LGBTI+ discrimination: an amicus curiae opinion submitted to the Basic Court in Prishtina in case R. no. 175/2024 concerning discrimination and violation of the dignity of LGBTI+ persons, alongside a related civil lawsuit, C. no. 2993/2024, filed in March 2024, and the Ombudsperson's own finding, discussed above, regarding the 2022 Assembly plenary session.^[37] These entries are, in one sense, evidence that the institution functions. In another sense, they show that a complaint originating in a 2022 Assembly session was still generating formal opinions and associated litigation only in 2024 a multi-year institutional response time consistent with the pattern documented in section 5.1. Moreover, because Ombudsperson opinions, including amicus curiae submissions, are recommendatory rather than binding, their practical value still depends on a court converting them into enforceable relief, layering the Ombudsperson's own delay on top of the judiciary's.

³³Outright International, Kosovo country page, describing the 2025 electoral cycle's discriminatory campaign rhetoric, the Election Complaints and Appeals Panel's fine against the "Coalition for Families," and the August 2025 suspension of five police officers for abusing a queer person in custody.

³⁴Prishtina Insight, "Kosovo turns its eye on Macedonian transgender rights" (31 January 2019), citing the European Centre for Minority Issues' 2018 discussion paper, Implementation of the international human rights treaties named in the constitution of Kosovo, and its finding that Kosovo court cases can take an average of eight and a half years.

³⁵Prishtina Insight, "Activists demand institutions respect gender identity" (2018), quoting activist Lendi Mustafa's argument that Morina's lawsuit was not an effective judicial remedy given procedural delays, citing Article 31 of the Kosovo Constitution and Article 6 of the European Convention on Human Rights.

³⁶ENNHRI, Kosovo* country page, summarizing the procedural reforms introduced by the 2015 human-rights law package.

³⁷ERA – LGBTI Equal Rights Association, "European Parliament Publishes Progress Report on Kosovo," reporting the European Parliament's finding that the Ombudsperson's work is hindered by inadequate premises and its call for authorities to allocate new premises in line with the Paris Principles.

5.3 Free Legal Aid and the Chilling Effect on Reporting

Kosovo's Constitution treats free legal aid as a basic right, and the Free Legal Aid Agency implements this in partnership with six accredited non-governmental organizations, of which only the Kosovo Law Institute currently provides online legal aid a service that saw a roughly thirty per cent rise in case engagement in 2023 compared with 2022.^[38] In 2020, a USAID-supported initiative launched an online platform connecting LGBTI+ persons specifically with legal aid, implemented in cooperation with the Free Legal Aid Agency a targeted outreach effort that, notably, originated with an international donor rather than as a standing feature of the domestic legal-aid system.^[39]

The result of years of delay, thin institutional capacity, and uneven outreach is a documented reluctance among LGBTI+ people to report discrimination or abuse to the police at all: despite the enhanced Criminal Code protections in force since April 2019, only ten bias-motivated crimes against LGBTI+ people were officially reported to the authorities in 2019, compared with a further thirteen reported only to LGBTI+ organizations rather than to the state.^[40] That gap between what is reported to civil society and what is reported to the state is itself a measure of institutional distrust, and it is corroborated by more recent evidence. A recent USAID-funded project by the Kosovo Local Government Institute, surveying 367 citizens from under-represented groups including the LGBTI+ community specifically to measure legal knowledge and unmet need for free legal aid, signals that basic questions about legal literacy and institutional trust among LGBTI+ Kosovars remain open research questions roughly a decade after the 2015 reform package, rather than settled facts that the reforms can be assumed to have resolved.^[41]

³⁸ OIK, *Annual Report 2024 on the Implementation of Law No. 05/L-021 (2025)*, documenting the *amicus curiae* opinion for the Basic Court in Prishtina in case R. no. 175/2024 and the related civil suit C. no. 2993/2024 filed on 1 March 2024

³⁹ United Nations in Kosovo, *"Justice Being Served: The Expanding Reach of Free Legal Aid"* (2024), describing the Free Legal Aid Agency's partnership with six accredited NGOs, the Kosovo Law Institute's unique online-aid role, and its roughly thirty per cent increase in case engagements in 2023 relative to 2022.

⁴⁰ USAID, *"Kosovo Celebrates 4th Annual Pride Week"* (2020), describing the launch, during Pride Week, of an online platform connecting LGBTI persons with legal aid, developed by USAID's Justice Matters partner in cooperation with the Free Legal Aid Agency.

⁴¹ ILGA-Europe (2020) *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe and Central Asia*. Brussels: ILGA-Europe. Available at: https://web.archive.org/web/20200606070321/https://www.ilga-europe.org/sites/default/files/2020/full_annual_review.pdf (Accessed: 27 July 2026).

6. KOSOVO IN THE EU ACCESSION MIRROR: A COMPARATIVE PERSPECTIVE

Kosovo submitted its application for European Union membership in December 2022, and the European Commission's Enlargement Report now assesses LGBTI+-relevant developments under Chapter 23, on the judiciary and fundamental rights.^[42] The 2025 Enlargement Review jointly produced by ILGA-Europe and ERA situates Kosovo alongside other accession candidates and identifies the same recurring pattern documented throughout this paper: comparatively solid formal legislation, weak and uneven implementation, hostile political rhetoric intensifying around election periods, and continuing episodes of institutional violence.^[43]

The comparison cuts both ways. On one hand, the European Union's own internal case law and policy have already condemned the specific administrative practice that Kosovo's Civil Registration Agency historically applied to Blert Morina and, in principle, to every transgender applicant since: the Court of Justice's *Mirin* judgment and the European Commission's own 2026–2030 LGBTI+ Equality Strategy both treat a medical-intervention requirement for legal gender recognition as a practice inconsistent with fundamental rights standards that Member States are expected to meet.^[44] Kosovo's own courts, through Morina, effectively reached the same conclusion four years before the CJEU's *Mirin* ruling evidence that Kosovo's judiciary, when it engages with a case on the merits, is capable of meeting or even anticipating EU standards. What is missing is not legal insight but administrative follow-through: codifying a judicial precedent into a general procedure that officials outside the courtroom must actually apply.

On the other hand, the accession process supplies external leverage that domestic litigation alone cannot generate. Joint EU–Council of Europe programming, such as the Horizontal Facility III action on “Combating Discrimination and Hatred,” channels funding and technical support directly to the Office for Good Governance, the Ombudsperson Institution, the Agency for Free Legal Aid, and the Agency for Civil Registration, precisely the administrative bodies identified in Parts 4 and 5 of this paper as the sites where indirect discrimination is produced and where remedies are frustrated.^[45] Because rule of law and access to justice sit at the core of EU accession conditionality, Kosovo's candidate status gives reform advocates a structured, externally monitored occasion renewed with each annual Enlargement Report to press for exactly the kind of administrative codification that individual litigation, however successful in a single case, cannot achieve on its own.

⁴² Kosovo Local Government Institute (KLGI), “Community Justice Mapping in Kosovo” project description, describing a survey of 367 citizens from under-represented groups, including the LGBTI community, measuring legal knowledge and need for free legal aid.

⁴³ European Commission, *Kosovo Report 2024*, noting Kosovo's December 2022 EU membership application and the assessment of judiciary and fundamental-rights issues under Chapter 23.

⁴⁴ ILGA-Europe / ERA, *LGBTI Enlargement Review 2025*, Kosovo chapter.

⁴⁵ European Commission, *Union of Equality – LGBTIQ+ Equality Strategy 2026–2030*, discussing Case C-4/23 *Mirin* and noting that several Member States still impose medical procedures for legal gender recognition that the European Court of Human Rights has found capable of violating human rights.

7. RECOMMENDATIONS

The following reforms follow directly from the diagnosis set out above: Kosovo's problem lies less in its general legal principles than in the missing administrative procedures needed to give those principles effect, and in the under-resourcing of the very institutions meant to deliver remedies.

(a) Enact the Project Law on Civil Status based on self-determination rather than medical evidence, codifying the outcome of the Morina litigation as a generally binding administrative procedure available to every applicant, rather than leaving it to case-by-case litigation that the responsible ministries have declined to treat as precedent.

(b) Resolve the contradiction between the Constitution's gender-neutral definition of marriage and the Family Law's restriction of marriage and engagement to different-sex couples, whether by amending the Family Law or by adopting the same-sex partnership framework publicly announced in 2024, together with secondary legislation instructing civil registries, hospitals, and social-benefit agencies on how to process partnership documentation.

(c) Impose a statutory duty on administrative bodies the Civil Registration Agency and municipal civil-status offices in particular to issue individualized, reasoned decisions whenever an application is denied, closing the unreasoned-denial gap exposed by the initial rejection of Morina's request.

(d) Provide the Ombudsperson Institution with adequate premises, staffing, and enforcement authority so that its opinions and amicus curiae submissions can translate more quickly into binding judicial outcomes, and introduce statutory time limits for the judicial processing of discrimination claims to prevent multi-year delays from operating as a de facto denial of remedy.

(e) Institutionalize, rather than fund only through ad hoc donor projects, SOGI-specific outreach within the Free Legal Aid Agency, and expand the number of accredited organizations capable of providing online and in-person legal aid beyond the current handful.

(f) Build routine, disaggregated data collection on sexual-orientation- and gender-identity-based discrimination into the reporting frameworks already piloted with the European Union and Council of Europe, so that future policy is driven by systematic evidence rather than by individual cases that happen to attract public attention.

(g) Adopt binding clinical protocols integrating gender-affirming healthcare into the public health system, so that continuity of care no longer depends on private providers or on cross-border access vulnerable to disruption, as it was during the 2020 pandemic border closures.

8. CONCLUSION

Kosovo's difficulty in securing equal treatment for LGBTI+ persons is, this paper has argued, less a problem of missing legislation than a problem of missing administration. The Constitution bans discrimination on the ground of sexual orientation more explicitly than almost any other constitution in Europe; the Law on Protection from Discrimination extends that guarantee to gender identity and mirrors the European Union's own directives; the Ombudsperson has, since 2015, held a genuine equality-body mandate. And yet a transgender man had to spend nearly two years litigating simply to have his documents reflect his own name, a same-sex couple still cannot obtain any legal recognition of their relationship, an under-resourced Ombudsperson's office cannot secure adequate premises for its own staff, and Kosovo's courts, on average, take the better part of a decade to resolve a case. None of these failures required a single official to say, out loud, that LGBTI+ people deserve less protection than anyone else. Each operates through a facially neutral rule, an unexplained denial, an unfunded protocol, or an unresourced institution the ordinary, unglamorous machinery of bureaucracy, functioning exactly as designed, but designed around an incomplete picture of who its users are.

The same machinery that produces this discrimination also houses the remedies the law promises against it: the civil registry, the Basic Court, the Ombudsperson, the Free Legal Aid Agency which is why the problem this paper describes is self-reinforcing rather than self-correcting: bureaucratic dysfunction generates the harm and then frustrates its own correction. Yet the Morina case is, at the same time, the clearest evidence that Kosovo's institutions are capable of getting this right when a case is finally decided on its merits, and Kosovo's own courts anticipated a European legal standard that the Court of Justice of the European Union would only formally articulate four years later. The deficit, in other words, is one of systematization, resourcing, and follow-through not of legal imagination. Kosovo's ongoing accession negotiations with the European Union, which place rule of law and fundamental rights at the center of the process, offer both an external benchmark against which this deficit can be measured and a structured, recurring occasion on which to press for the administrative reforms that would finally close it.

