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Center for Equality and Liberty
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Personat LGBTI dhe të drejtat e tyre në Kosovë

LGBTI osobe i njihova prava na Kosovu

The LGBTI persons and their rights in Kosovo



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LGBTI persons and their rights in Kosovo

Annual Report 2018





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Abbreviations

ACG	Advisory and Coordination Group for the LGBT rights
CCRK	Criminal Code of the Republic of Kosovo
CEL	Center for Equality and Liberty
CRA	Civil Registry Agency
CSGD	Center for Social Group Development
CSO	Civil Society Organizations
ERAC	Equal Rights for All Coalition
IDAHOT	International Day against Homophobia and Transphobia
KPI	Kosovo Police Inspectorate
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
MIA	Ministry of Internal Affairs
OGG	The Office of Good Governance (The office of Good Governance, Human Rights, Equal Opportunities, and Non-Discrimination)
OIK	Ombudsperson Institution of Kosovo



Executive Summary

Although there have been positive changes in the past few years on advancing LGBTI rights, and despite the advanced legal protection with the constitution and several laws, the LGBTI movement still faces numerous barriers when it comes to the social acceptance and tolerance. Even though institutions are the first actors to ensure non-bias treatment towards the citizens of Kosovo, they are the ones who implement such laws according to their personal beliefs rather than what the laws ensure. At times it also seems that the amendment of these laws is a tick in the box of “ensuring human rights protection” as it is a requirement for European Integration rather than the reality of inclusiveness.

Accordingly, this point of view gives the perception to the general public that LGBTI persons and issues are something imported by the internationals instead of the reality of the struggles of the LGBTI persons in Kosovo.¹ Consequently LGBTI persons are forced to live double lives, living in fear of becoming subject to discrimination and violence.

This report will illustrate the reality of the LGBTI persons in all aspect of their rights. It provides a clear summary of the actions taken by relevant actors on ensuring the protection and implementation of the laws

in place, but also advancing relevant laws that will ensure the equality of LGBTI persons with the general society. The report begins with an introduction of the situation analysis of the rights of LGBTI persons in Kosovo, followed by a brief legal analysis. This will portray the follow up of the positive changes and the amendment of the Criminal Code of Kosovo and also the legal gender recognition process. Further on, the report examines the effort and commitment of relevant institutions to fulfill their mandate responsibilities towards LGBTI rights.

Additionally, this report will also illustrate the role of media, emphasizing the positive changes that have been done in the past years, the widespread rife of hate-speech and uncontrollable content in the comments section, as well as the media’s role in raising awareness. It provides an overview of actions undertaken by the LGBTI organizations to meet identified needs, as well as examples of the pressure and threats faced by the LGBTI rights activists. Finally, the report summarizes reported cases of violence against the LGBTI persons and concludes with a list of recommendations for the institutions.

1 National Democratic Institute, *LGBTI Public Opinion Poll in Western Balkans, June/July 2015*, (2015), https://www.ndi.org/LGBTI_Balkans_poll



Introduction

Advancing Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) rights remains a challenge to all actors involved in the LGBTI issues and has still a long way until equality has been established. The Kosovar society is rooted in patriarchy with a very strong influence in the everyday life, hence, making it very difficult for anything other than the traditional norms to be presented to the public. As such, it makes it difficult even for the institutions to ensure the implementation of the laws that are in place. However, in the past few years, the LGBTI movement has made some positive changes in the lives of LGBTI persons.

During 2018, the LGBTI activists have been more visible on media, raising the LGBTI topic on a more visible and widespread manner. This however, has been gainsaid by the society, and activists have been subjected to threats and hate speech. Media, during this year, has had some positive changes, where televisions and other media have invited the LGBTI activists to be part of their shows in order to portray and promote the visible activities and also to further raise awareness among the general public.

Although the Office for Good Governance within the Prime Minister's Office (OGG), has a mandate to promote LGBTI rights, during the International Day Against Homophobia and Transphobia, on 17th of May

2018, agreed to light up the Government building with the rainbow flag, however, the OGG only hired a company to do this, but did not participate in the ceremony, although this was an official activity that was proposed and organized by OGG itself. Further on, during Pride Week, the Head of OGG and one representative of the OGG were invited in two panels in the Conference "Improving LGBTI rights: What went wrong and what can we do differently", in which they confirmed their participation, however, only one of the representatives participated in the panel whereas, the Head of OGG ignored the participation totally, without any notice. This shows lack of commitment when it comes to publicly talk about LGBTI issues by the institutions of Kosovo.

This report provides a comprehensive overview of the year of 2018 as it discusses legal and institutional developments for LGBTI rights as well as a summary of the actions taken by the civil society organizations. The report concludes with a brief description of the hate crime, hate speech cases and threats reported by LGBTI persons during the reporting year.

Legislation

Kosovo's legal framework provides advanced guarantees for human rights aligned with international standards. The constitution stands on the principles of equality and non-discrimination² which explicitly prohibits discrimination on a range of bases including gender and sexual orientation³. These principles are further fortified by the Law on Protection from Discrimination⁴ and Gender Equality⁵. Theoretically, the constitution allows for the majority of international human rights agreements and instruments⁶ to be applied to Kosovo's legal system, and to enable the interpretation of human rights and fundamental freedoms in coherence with the European Court of Human Rights decisions⁷.

Contradictory to the principle of equality as defined by the Constitution⁸, the LGBTI persons are banned from entering lawful marriage. This is because the current Family Law restricts the act of engagement and marriage to persons of opposite genders only⁹. However, in December 2018, a staff

member of the Center for Social Group Development (CSGD) has participated in one workshop of the working group that are drafting the Civil Code, in which the family law is going to be included. During the hearings there was nothing mentioned regarding marriage, however, in the beginning of 2019 CSGD will initiate meetings with relevant institutions to try to change the restriction that is within the Law.

The Law on Civil Status¹⁰ lacks legal and sub-legal provisioning for the process of gender reassignment covering modification of data on public registers and documents.¹¹ Starting since 2017 and continuing in 2018, CSGD held a few meeting with representatives of the Civil Registry Agency (CRA) and Ministry of Internal Affairs (MIA), requesting for the amendment of the Civil Status Law and drafting of an administrative instruction for enabling the change of gender marking in identification documents, by redefining legal gender recognition. In the beginning of 2018 the law has been sent for the amendment and CRA have requested the assistance of

2 Constitution of the Republic of Kosovo, 2008, c.I, article 7 (1).

3 *Ibid*, c. II, article 24 (2).

4 Law No. 05/L-021.

5 Law No. 05/L-020.

6 Constitution of the Republic of Kosovo, 2008, c. II, article 22.


7 *Ibid*, c. II, article 53.

8 *Ibid*, c. II, article 24, article 37.

9 Law No.2004/32 Family Law of Kosovo, 2006, part II, c. I, article 9, article 14.

10 Law No.04/L -003.

11 Center for Social Group Development and Center for Equality and Liberty, *Report: Social Protection and Access to Healthcare for Transgender People in Kosovo*, (Prishtina, Kosovo, December 2016).



CSGD to organize workshops to draft the administrative instruction for enabling the change of gender marking in identification documents, by redefining legal gender recognition. In the last five months the CRA and MIA did not meet with CSGD representatives with the justification that they are waiting for the establishment of the working group¹² that would amend the law and draft the sub-legal act which would regulate the change of sex/gender in the official documents.

The new Criminal Code of the Republic of Kosovo (CCRK) is approved by the Kosovo Parliament and decreed by the President in December 2018. This Criminal Code will enter into force on 15th of April 2019. Subsequently, hate crime was introduced

to Article 70 (General rules for mitigation or aggravation of punishments). The grounds of sexual orientation and gender identity were included in Article 141 (Inciting discord and intolerance), Article 173 (Aggravated Murder), Article 184 (Assault), Article 185 (Light Bodily Injury), Article 186 (Grievous Bodily Injury), Article 190 (Violating equal status of citizens and residents of the Republic of Kosovo) and Article 321 (Destruction or Damage to Property).

Although there is a need for constant advocacy on amending laws to achieve equality for LGBTI persons, the legislation in Kosovo is quite advanced when it comes to ensuring protection against discrimination. However, implementation of such laws remains low or non-existent.

12 Erdon Arifaj, "RE: Kerkese " [RE: Request], Email to CSGD, 30July 2018.

Institutional responsibility towards LGBTI rights

In accordance with constitutional obligations to promote equality and human rights, the President of Kosovo, Mr. Hashim Thaci joined the first pride parade in Kosovo held on October 10, 2017. He had also participated in the 2016 march for marking the International Day against Homophobia and Transphobia (IDAHOT). However, in this year's Pride Parade, the President of Kosovo could not join as he was outside of the country on an official visit in Armenia. Regardless of his absence, Mr. Thaci congratulated the parade through his social media "Twitter" where he wrote: *"Best wishes from #Yerevan, to people celebrating love and human rights in #Prishtina today for #PrishtinaPride. Last year I attended the event that highlights the equality for all in our republic, together with @UlrikeLunacek&@USAmbKosovoDelawie. #LGBTQ#in-thenameoffreedom"*. The "tweets" of the President had a positive impact on its own to the wider population, but not as significant as when he physically participated in the First Pride Parade in 2017. Public advocacy for the LGBTI rights by high institutional and political representatives is indispensable in the struggle for equality and advancement of human rights, therefore the participation of the president and other leaders in the pride parade demonstrates a positive commitment in this regard.

Although in the past years The Assembly of Kosovo promised to promote and ensure

implementation of the existing laws, during 2018 the Assembly has not initiated any meetings or activities regarding LGBTI rights.

The Government of Kosovo continued to address LGBTI rights through its main existing mechanism, namely the Advisory and Coordination Group for LGBTI rights in Kosovo (ACG), operating under the mandate of the OGG. Although in the previous year, for the Pride Week on October 2017, the ACG managed to organize a reception, in which the Prime Minister of Kosovo Mr. Ramush Haradinaj, reconfirmed the commitment of the Government of Kosovo for the advancement and protection of the LGBTI rights, in the 2018's Pride Week the ACG not only failed to organize anything to mark this year's Pride Week, but also after confirming its participation in two panel discussions organized by the LGBTI organizations, they did not show up in any of them, without any prior notice. Also, the head of OGG did not show in the conference organized by CEL in June 2018, though he confirmed his participation in the panel of this conference.

The ACG held only two meetings in 2018. At the first, on May 11th, the ACG discussed about the marking of IDAHOT, where the OGG agreed to light up the government building with the rainbow flag, followed by a ceremony, where they invited relevant stakeholders to participate. The ceremony was attended by the LGBTI organizations and the Ambassador of the USA.

At the second meeting, on September 27th, the group gathered to discuss about the coordination of the activities for the 2018 Pride Week, however, the ACG members that represent governmental and public institutions did not participate in any of the activities, public events or campaigns that promote LGBTI rights.

The ACG still lacks rules and procedures which affect their functionality especially in terms of accountability and decision-making. The ACG has not been able to monitor the implementation of its recommendations to other institutions and thus the impact on other institutions remains questionable. Likewise, as much as the National Work Plan for the Advisory and Coordination Group for the Rights of the LGBTI community is concerned, it is failing to be addressed and met properly. The National Work Plan has ended in November 2018, and there is no indication that the ACG will draft the next National Action Plan. CSGD will publish a report on the implementation

of this Action Plan in 2019. Even so, no information on the work of the ACG, nor the work or activities of OGG related to LGBTI rights/issues can be found on the OGG's webpage.

While the OGG's website contains a number of different strategies, action plans and other documents relevant to the mandate of OGG, the National Action Plan of ACG is still absent and this document cannot be found online anywhere else besides in the website of the CSGD¹³.

The Mayor of Pristina, Mr. Shpend Ahmeti, who is also the head of the Social Democratic Party of Kosovo, participated in this year's Pride Parade. In a statement the media, he asked all the politicians, in position and those in opposition, to "come out" and declare their stand on the matter of human rights of LGBTI persons. Further on, he said that he believes that every citizen of Pristina and Kosovo should be free to live their life in peace.

13 <http://csgd-ks.org/wp-content/uploads/2017/03/Plani-i-punes-GKK-ZQM-ZKM.pdf>



Law enforcement for LGBTI rights

Kosovo Police has continued to do a great job even during 2018 on ensuring the protection of the LGBTI persons as well as the activities that the LGBTI organizations have organized. It is important to mention that during 2018 there was one case where the Kosovo Police took the necessary measures towards five police officers who were suspended due to lack of professionalism and violation of privacy towards two LGBTI persons.

No new cases were brought to the courts during 2018. However, it is difficult to keep track of the cases after they are reported to the police. There is no tracking system for the data related to hate crime cases against the LGBTI persons on prosecution and courts.

Human rights institutions and mechanisms while dealing with LGBTI rights

Ombudsperson Institution of Kosovo (OIK) was more attentive towards the LGBTI rights and tended to have a better cooperation with the LGBTI organizations compared to previous years. The LGBTI rights were given considerable attention in the OIK's 2017

annual report¹⁴ published in March 2018, in which the Ombudsperson explains the Amicus Curiae case submitted to the Basic Court in Pristina¹⁵ “*criminal offenses committed against members of the LGBT community, are admitted from responsible institutions in the very first phase and are further treated as criminal offenses defined by the Criminal Code but without raising the issue that these offenses are directed against members of LGBTI community, motivated and committed on the basis of hatred against sexual orientation and gender identity, therefore, the Ombudsperson considers that provisions on the ban of discrimination on any grounds, particularly on the basis of sexual orientation, must be reciprocal with Article 74 of the Criminal Code, which defines severity, more precisely in paragraph 2, point 2.12.*”

Further on, during 2018 a transgender man attempted to change both the name and sex marker in his identification documents at the Civil Registry Office in Gjakova/ Djakovica, a request which was rejected at the recommendation of the CRA. He appealed the decision directly to the Agency, but Morina's appeal was rejected and described as being “without basis”, however, after that, the case was sent to the Constitutional Court, where the OIK is going to get involved in the case as an *amicus curiae* (friend of the court), assisting the Constitutional court by offering information and expertise.¹⁶

14 <https://oik-rks.org/2018/04/17/raporti-vjetor-2017/>

15 Legal Opinion of Ombudsperson with regards to the issue of homophobia and transphobia submitted to the Basic Court in Prishtina on 2 May 2017.

16 <https://kosovotwopointzero.com/transgender-case-taken-to-kosovos-highest-legal-institution/>



Media reporting on LGBTI issues

Media has drastically changed the approach regarding the objective and fair treatment of the LGBTI persons as far as the articles are being published or broadcasted, and are notably more respectful than they used to be. However helping the public attitudes remains low especially on social media platforms where there is a widespread rife of hate speech and uncontrollable content in the comments section.

The LGBTI persons are still underrepresented in the Kosovar media especially their stories and identities. In the last year it is noticed that journalists has improved significantly on the reporting related to LGBTI persons, however, there are still a lot of misunderstandings by them when it comes to using the appropriate pronouns for trans persons, their identities are being underrepresented and when represented they are inaccurate, stereotypical and even

harmful because there is not a clear understanding from their part regarding the Gender Identity, Sexual Orientation, Gender Expression, whereas a result a widespread stigma and discrimination against LGBTI persons remains.

There is an undeniable need of workshops that need to be focused on developing effective, sensitive and inclusive communication strategies for journalists and media professionals dealing with such issues and to use the media as a tool for changing public attitudes in the advancement of the LGBTI rights in Kosovo

According to CSGD's media monitoring between January and November 2018, there were 359 reports on LGBTI issues on all online media, almost all of which were positive or neutral with a very few being negative. In terms of online media, Index Online had the most positive approach, followed by "Bota Sot" and "Insajderi".



The contribution of LGBTI organizations


The LGBTI organizations have continued to work on promoting and protecting LGBTI rights in Kosovo. In the field of advocacy the CSGD was engaged on the CCRK amendment and that of the legal gender recognition, while the work of the Center for Equality and Liberty (CEL), on the other hand, involved advocacy through raising awareness. Although there was only one case that has been sent to the court, the capacities regarding hate crimes against the LGBTI persons still needs to be increased amongst judges. CEL organized one training with Judges on the 8th of May 2018 in Prishtina, where seven Judges of basic Courts from different municipalities of Kosovo participated. The training was focused on international instruments for the protection of the human rights, practical steps, practical cases, the role of judges in protecting the rights of the LGBT persons.

Empowerment on the other side of the LGBTI movement was achieved through *community building* activities. CSGD and CEL are focused on increasing capacities of LGBTI persons for organizing themselves as activists to advocate in the improvement of the rights and the well-being of LGBTI persons, to build up the social activism among LGBTI persons, to encourage them to question the social norms and also to support them with any difficulties or concerns they

might have. This is done through variety of trainings, workshops, group discussions, social activities and networking programs. This year the CSGD started a program which is focused on the empowerment of young LGBTI persons as future leaders and activists. This program aims to build capacities of young LGBTI persons and leaders for planning, implementing and evaluating developmental work programs with LGBTI people in their communities.

In order to increase the networking circle of the LGBTI persons and empower them as social activists, many persons attended the regional pride parades. Moreover, during the organizing process of “International Day Against Homophobia and Transphobia – IDAHOT” and “Pride Parade”, the CSGD involved many LGBTI persons as volunteers where they were active part of the organization process.

Likewise, with the extent of hate speech, which is often converted into hate crimes, and the limited knowledge of LGBTI persons on the availability of adequate legal protection and procedures in mind, CSGD organized an *information campaign* which gave information on where cases of the hate crime can be reported, steps to follow and the free legal aid services provided by LGBTI organizations in Kosovo. Provision of *legal aid* by the CSGD was available to LGBTI victims regardless of the nature of violations.



After last year's Pride Parade, and three marches before that, the LGBTI organizations held the second Pride Week in Pristina. Hundreds of people (more than 600) supporting the LGBTI rights cause marched through the main boulevard and square in Pristina, to protest homophobia and transphobia in the country and to celebrate the diversity of the LGBTI persons. Being the only Pride Parade in the Balkans without barricades, the march ended without incidents. Among many local institutional officials who attended the Pride Parade, there was also a great show of support from the international community, mainly Embassy representatives, and international institutions and organizations. Moreover, the Embassy of the Kingdom of the Netherlands brought to Kosovo the Ambassador of the Prides from Amsterdam, Mr. Hans Verhoeven. Mr. Verhoeven held a few activities to support the Pride Week, however some of those activities and postings in Mr. Verhoeven's Facebook profile had a bad response in the public eye, which slightly damaged the image of the Pride Week¹⁷. However, the massive support of the LGBTI organizations from Albania, Serbia,

Macedonia, Montenegro and Bosnia should also be acknowledged.

Since one of the main objectives of the organization is to empower the LGBTI persons and enhance their wellbeing, CSGD continued providing psychological support for LGBTI persons who were facing difficulties and are struggling with mental health issues. The CSGD usually promotes psycho-social services in the "Drop-In" center where a lot of discussion regarding the issues of mental health are held. In addition, in order to reach to other LGBTI persons who don't frequent the center, the services also get promoted in local communities where outreaches operate and distribute health materials related to safe-sex.

According to the data collected by the associated psychologists who are engaged by CSGD for psychological sessions for LGBTI persons, clients who have held psychological sessions, psychotherapy, during January - November, presented anxiety disorders, adjustment disorders, acute stress disorder and mood disorders, depression.

17 Minutes of the meeting organized by CSGD and CEL – Evaluation of the 2018 Pride Week, 5 November 2018

Attacks on LGBTI activists

During 2018 there has not been any case of violence towards LGBTI activists. There

are only cases of harassment and threats after visible activities are carried out by the organization. Such cases are reported to the police.

Reported cases before the relevant institutions

LGBTI persons continue to express fear or distrust towards the rule of law institutions in Kosovo¹⁸. However, during 2018 there are more cases reported to the police rather than the organizations. The LGBTI organizations have continued to provide free legal aid to LGBTI persons and have continually tried to advise LGBTI persons to report their cases to the police, which

would automatically re-build the trust in the institutions.

According to the police, four cases have been reported during 2018. Two of the cases have been reported in Drenas/Glogovac, and two others in Pristina. It is important to mention that the incident with the five police officers that have been suspended due to lack of professionalism is still on-going, and the Kosovo Police Inspectorate (KPI) is handling the case.¹⁹

18 National Democratic Institute, *LGBTI Public Opinion Poll in Western Balkans, June/July 2015*, (2015), https://www.ndi.org/LGBTI_Balkans_poll

19 Salih Dragidella, "RE: Lidhur me rastet e raportuara" [RE: Regarding the reported cases], Email to CSGD, 19 December 2018.



Recommendations

1. Ministry of Internal Affairs and Civil Registry Agency should review primary and secondary legislation to enable transgender persons to change the sex mark on identification documents;
2. The Family Law needs to be reviewed within the package of Civil Code and to introduce marriage between two persons or gender neutral spouses;
3. The OIK should be more vocal and visible on the promotion of fundamental rights and freedoms of LGBTI persons, The OIK should be engaged in the working group for Family Package in the Civil Code to promote the gender neutral concepts for marriage and partnership;
4. The OGG should effectively supervise the line ministries on the progress of the implementation of the ACG recommendations and when necessary, undertake concrete actions to ensure the implementation of all recommendations;
5. The ACG should be more engaged in promotion of the LGBTI rights, draft its rules and procedures and should initiate the drafting of the next work plan;
6. A tracking mechanism for hate speech and crimes based on sexual orientation and gender identity should be available following the CCRK revision;
7. CSOs should take more pro-active role on monitoring and requiring accountability from the institutions to implement laws, sub-legal acts, existing strategies and action plans that are related to LGBTI issues and rights.
8. Certain donors should be careful when granting projects for LGBTI organizations. They should consult LGBTI organizations on activities that are more relevant to the LGBTI movement in Kosovo and not to impose their ideas for activities that might not be relevant. This kind of approach creates the sense that LGBTI organizations are donor driven projects;
9. Certain donors should be encouraged to organize donor coordination meetings for LGBTI issues;
10. Certain donors should find the modalities to support strategies of LGBTI organizations instead of short term projects;
11. Certain donors should be careful when supporting LGBTI organizations and their activities by bringing experts or technical assistance. Sometimes some of the experts are creating more damage of the movement rather than supporting and advancing it.

