



## Gender-Based Violence in Kosovo

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**Abstract:** Violence has become an occurrence which is spreading all over the world, where not only the poor countries have not been immune to it, but neither the most developed countries have prevented it. Kosovo, has been faced too with this epidemic issue to come to the conclusion that gender-based violence exists in Kosovo. Therefore, this paper will specifically focus on gender-based violence as an aggravating circumstance which has increased apparently during 2015-2018, in Kosovo. The methods which were applied in this paper are; observation, case study, interview, comparative method, quantitative research such as published statistical data and data analyse. The outcome shows that mostly woman and LGBTI+ community have been target of the gender-based violence. The fact that social norms and Albanian common law, still apply in daily basis, makes it more challenging the rule of law, therefore this is the main area where de facto with de jure clash. This by all means, must make justice system more cautious and determined to fight and prevent gender-based violence, and not allow their personal perception interfere in their objectivity. The discrepancy between legal framework and judicial practice must balance itself by justice authorities, which must confront properly this criminal offense.

**Keywords:** woman and man; violence; social norms; legal framework; judicial system

### 1. Introduction

What is gender? What is violence? By understanding the genesis of these two essential concepts, we will get to know better what is gender based violence, which gender is mostly vulnerable, how it happens, what are the causes and how can we prevent it? The use of any type of violence is a criminal offense, which is harmful and damages not only the survivor's life but consequences can reflect in the entire society because it makes it even more difficult the process of living in peace and

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harmony. Yet in current Kosovo's legislation domestic violence is not foreseen as a criminal offense but is proceeded with civil procedures. As the main form of violence, gender-based violence many times results in the end of the life of the victim which mostly that victim is a woman, but not always ends with killing, other times may result in severe serious bodily injuries. Other times it may result with no fatal injury, only with lightly bodily injuries. And sometimes with no physical injury at all! But even then, it results with psychological trauma because violence not necessarily is visible, and it manifests in many forms which doesn't always directly lead to scars which can be seen by the human eyes. Yet, the after effects remain the same, the use of violence in the history of human kind never it had a positive impact. This de facto situation, and the number which increased rapidly isn't a justification to normalize violence, as institutions of justice, mainly police does so. In practice the justice authorities who are in charge tend to not be surprised and there are few cases on which the patriarchal mentality has interfered in their objectivity and have made them see violence as a private matter which is between perpetrator and the injured party and they can resolve it between themselves. To prevent the violation of human rights, laws which ensure the protection of human rights exist, and Kosovo has incorporated a large number of international universal declarations, conventions in its national legislation. The primary problem which comes to light in the Kosovar society is the implementation of laws which protect at all costs, the human life, integrity and dignity. Thus, to solve this problem, many NGO have raised the issue of gender-based violence and by monitoring the work of justice institutions with years, they have come to conclusion that trainings and workshops are more than necessary starting by police officers and ending with prosecutors and judges, to make them aware how to behave in rapport with the victims before/after the victim reports the case. Yet, even the trainings and workshops didn't change that much the reality of how victims of gender-based violence are treated. Progress in areas of justice institutions barely ever met the expectations of civil society, since the main obstacle is the lack of implementation of legal framework.

## **2. Definition of Gender**

What is sex, and what is gender? The law which has the main objective to ensure gender equality acknowledges the differences between sex and gender, and specify on Article 3, disposition 1.8 that sex refers to the biological and physiological characteristics that define men and women (Law No. 05/L -020 ), meanwhile "gender- is socially-constructed roles assigned to women and men, which

is an acquired identity that is learned, changed over time, and varies widely within and across cultures” (Article 3, disposition 1.7, Law No. 05/L -020). The law on equality gender recognizes two genders in Kosovo and divides it in two groups: “woman- includes any person that considers itself as such, regardless of age or marital status” while “man- includes any person that considers itself as such, regardless of age or marital status” (Article 3, Disposition 1.2 and 1.3 of Law No. 05/L -020, 2015).

### **2.1. Definition of Violence, Causes**

The World Health Organization defines violence as: The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation. After understanding what is violence, it is important to identify the main causes which contribute and encourage the use of violence. “As determining factors which increase the use of violence are considered: (non)education, poor economic development, patriarchal mentality, these factors contribute to the spread of violence in every society and Kosovar society isn’t an exception.” Sejdiu (2018). However from her personal experience and the interviews with her clients she states that “not necessarily the poor economic situation or lack of education can cause violence.” There are various type of the nature of violence such as physical violence, psychological violence, economic violence and sexual violence.

### **3. Gender-Based Violence**

After explaining what is gender, and what is violence, now we can gain a better insight of what is gender based violence. Violence on the grounds of gender- shall mean all acts of violence that result in, or are likely to result in, physical, sexual, psychological, social or economic harm or suffering on the grounds of gender, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Law No. 05/L -020, 2015, Article 3, point 1.18). The law on gender equality in its article 4, paragraph 2 defines that “Gender-based violence is a form of discrimination that seriously inhibits women’s and men’s ability to enjoy rights and freedoms on a basis of equality and is prohibited.” Due to national statistics taken from Kosovo Police, woman is most likely to experience gender-based violence, and the highest percentage of perpetrators in rapport with the victim, are husbands, ex-husbands, and partners, while when the victim of

domestic violence is male, most of the perpetrators are in family rapport; father-son, or brothers with the victim. Certainly, another vulnerable group of gender-based violence are children too. Sejdiu (2018) explains that except woman which come to the shelter, mothers come too and “apart from mothers which we accept at the shelter with scars from physical violence, in most cases the children have bruising too” Children are most exposed to physical and psychological violence and it mostly has an enormous negative impact on their development. Sejdiu says “their presence in an environment where violence is used, directly affects their psychological well-being, in few cases children try to be empathic with their mothers, but in more cases children model the behavior of the perpetrator by using force to their mothers, or siblings.” The main types of violence will be explained below.

### **3.1. Physical Violence**

Physical violence is one of the main forms of gender-based violence and the primary type which is recognized by society and is mostly discussed. Physical violence takes several forms and it manifests with various acts and symptoms “such as slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder” (Kulluri & Haxhiymeri, 2000, Mapping out the existing information on domestic violence in Albania). Domestic violence cases reported to Kosovo Police, show that physical violence is the primary used violence according to the criminal offense in Criminal Code. Why the number just keeps increasing? “Kosovo is dominated by a patriarchal, traditional system and political structure and it is culturally accepted for husbands to beat their wives...” (International Helsinki Federation for Human Rights & HF Research Foundation, Woman 2000, An investigation into the status of Woman’s Rights in Central and South Eastern Europe and the Newly Independent States, p. 516).

### **3.2. Psychological Violence**

Psychological abuse includes behavior that is intended to intimidate and persecute, and takes the form of threats of abandonment or abuse, confinement to the home, surveillance, threats to take away custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation (Kulluri & Haxhiymeri, 2000, Mapping out the existing information on domestic violence in Albania). Psychological violence in most cases is an ingredient part of each type of violence, hence it’s not always used as a singular form of violence, but is mixed in each experience, for example a victim of physical violence, must have been a victim of psychological violence too because of the impact that physical violence has left in them.

### 3.3. Sexual Violence

What is sexual violence? Sexual violence according to WHO is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work. Based on the World Report on violence and health (2002) apart from physical force, it may involve psychological intimidation, blackmail or other threats – for instance, the threat of physical harm, of being dismissed from a job or of not obtaining a job that is sought. It may also occur when the person aggressed is unable to give consent – for instance, while drunk, drugged, asleep or mentally incapable of understanding the situation (World Report on violence and health, 2002). Criminal Code of the Republic of Kosovo, in Article 230 punishes rape by imprisonment from 2 years till 15 years, depending from the circumstances which it mentions, and if as a result of rape, the victim dies, the perpetrator shall be punished no less than 10 years or by lifelong imprisonment. Furthermore, the sanctions for sexual assault differ, “Whoever touches a person for a sexual purpose or induces such person to touch the perpetrator or another person for a sexual purpose, without the consent of such person, shall be punished by a fine or by imprisonment of up to one (1) year” the sanction with fine is added in this specific article for sexual assault. According to Article 231 the punishment for sexual assault under following circumstances must be no less than 1 year and no longer than 10 years imprisonment if the victim is alive, if the victim dies as a result of sexual assault the same punishment will be applied as in rape, as in sexual assault. Yet, in few cases due to stigma from society, is considered not only taboo to report it, but even to talk about it. Sadly, in some provinces this response to the criminal offense: “if the rapist marries the victim, the case usually doesn't go to court.”<sup>1</sup> still applies. The Criminal Code of the Republic of Kosovo, in its articles recognizes rape, and sexual assault as two forms which sexual violence takes form, but sexual harassment isn't listed, therefore is a legal gap.

### 3.4. Economic Violence

According to WHO economic violence includes attacks by larger groups motivated by economic gain – such as attacks carried out with the purpose of disrupting economic activity, denying access to essential services, or creating economic

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<sup>1</sup> International Helsinki Federation for Human Rights & HF Research Foundation, Woman 2000 An investigation into the status of Woman's Rights in Central and South Eastern Europe and the Newly Independent States, p. 517.

division and fragmentation (World Report on Violence and Health, 2002). Economic violence is one of the first type of violence which is practiced upon woman (mostly). One of the reasons that victims of violence in Kosovo might stay in an abusive relationship is because they are dependent financially from the perpetrators and family doesn't give them enough support to leave the place, and public or private sector doesn't ensure them employment. Since the majority of woman don't own a house, they are in the mercy of fate as a result of lack of financial, economic independence. In Kosovo, "Unemployment rate for women in 2014 was 41.6% versus 33.1% for men, while for women in 2015 was 36.6% versus 31.8% of men." (Kosovo Agency of Statistics, Woman and Man in Kosovo 2014-2015, 2016) Kosovo's Agency of Statistics, findings show that "sources of individual income in Kosovo in 2015, according to the Household Budget Survey for women were revenues from wages, pensions and cash sent from abroad-family, and, only 5% of woman, were owners of an apartment or house."

#### **4. Domestic Violence during 2015-2018**

Domestic violence is the primary form which victims of gender-based violence encounter, and this problem concerns most Kosovo, since the highest number of victims belong to this category, and are in a family relationship with the perpetrator. What gave the perpetrator this right? According to Podvorica (2015) the Albanian common law gave the husband the right to use violence to his own wife, using various types of violence, starting from rebuke to her killing, and for this to not respond to anyone. The father had tendency to use brutal violence against his own kids too". About the main causes which contribute to the increase of domestic violence, we can foresee that Sadikaj (2016), has a similar belief "Violence within members of the family comes as a result of the influence of certain factors, such as the temperament, tradition, the level of civilization in general. These factors make men convince themselves that they have the right to lead the family according to their will. They think that women and children should behave and act according to the attitude of a man or a father." Domestic violence doesn't always end up being reported but the victims which did report are registered and based on these statistics we can have a number which portrays the de jure situation we are in. As we can see below, the cases which were reported by woman come first in its statistics data, therefore, it is evident that there is a higher number of cases of domestic violence reported by woman since woman are the main target, but on the other hand the lower number of reported cases of domestic violence by man may and may not correspond

with the reality since patriarchal mentality concern both genders and man which are affected by gender stereotypes might be reluctant to report violence because society will see them as less manly if they admit that they too have been victims of any type of violence.

**Table I. Domestic Violence reported to Kosovo Police**

Year	2015	2016	2017
Reported by woman	862	992	990
Reported by man	202	255	309
Over the age of 65	N/A	N/A	129
Albanian	879	1051	1045
Serbian	88	90	87
Roma	26	20	40
Ashkali	26	34	36
Egyptian	11	6	31
Goran	14	12	8
Turkish	7	12	4
Bosnian	10	16	35
Other	3	6	13

Based on these data which were provided by KIPRED rapport, we can see as well that on year 2015 generally speaking, the number of reported cases from all ethnic background, and both genders were 1064. In 2016 the number just gets larger an estimation of 1247, in 2017 also it is obvious that more cases get reported, total number of reported cases is 1299. The statistics however, tell only one side of the story, the de facto with the jure doesn't match always, and so the number of the victims might be higher but victims might not report their case. One of the main reason they decide to do so might be that they have no support and they don't believe in justice system. Though, it is noticeable that in addition to upper statistics a change in a positive way has just taken place, victims have started to report the violence and following every lawful procedure in order to punish the culprit. "The role of the judiciary is very important in the opportunity which it provides for access to justice to individuals and to put into place the violated rights (Zymberi & Qerimi, 2015, E drejta ndërkombëtare e të drejtave të njeriut/International Human Rights Law, p. 198, Oslo & Prishtina)."

**Table II. The number of domestic violence cases reported to the Police during 2018**

Municipalities	January	February	March	April	May	June	July	August	September	October	November	December	Total
Prishtinë	40	21	33	31	29	32	30	70	43	37	40	25	431
Gjilanë	15	10	21	8	12	17	27	21	15	25	14	24	209
Ferizaj	14	11	11	15	15	20	17	23	14	15	15	9	179
Gjakovë	6	9	6	9	6	9	17	18	11	17	11	13	132
Pejë	17	9	10	9	18	20	22	31	14	15	11	14	190
Prizren	20	15	19	17	14	22	17	30	24	18	33	17	246
Mitrovicë	7	6	3	7	4	9	9	12	5	9	3	8	82
North Mitrovicë	2	4	2	4	2	6	4	4	5	5	3	8	49
Total number	121	85	105	100	100	135	143	209	131	141	130	118	1518

Based on these statistics taken from Kosovo Police, from January till December in 2018, 1518 victims has reported domestic violence. This statistic contains one of the highest number, comparing with previous years, because on one hand it shows the awareness of victims to report cases, on the other hand it demonstrates that the use of violence is becoming more and more present in the daily life. If we split the total number of reported cases according to gender, 1189 victims are female, and 308 are male. Criminal offense according to Criminal Code of Kosovo, and reports on domestic violence during 2018 taken by Kosovo Police sum up in words, that light bodily injure comes first in its statistics according to the type of criminal offense (646 cases), second comes assault with a total of 322 reported cases, and in third place comes threat (278 cases), in fourth place comes harassment with 61 cases being part of police data system, and 23 cases reported as grievous bodily injury. Overall, 6 cases are registered as aggravated murder which resulted with the death of victims (woman).

#### 4.1. The Role of Non-Governmental Organizations and Challenges

After the victim report the case, except the heavy burden which the victim holds because he/she doesn't know how the case will turn out, another problem arises, where to go? Another confrontation face to face with the perpetrator, can only rage the culprit and the victim can and will be re-victimized, therefore to avoid this Non-Governmental Organizations appear as the only solution for victims of domestic violence when they have no family support. The impact of Non-Governmental Organizations is immense into providing the victims emotional support, and providing the fundamental needs such as location, healthcare etc. In some cases when the victims are mothers, they take their child with themselves and NGO-s provide shelter to the victim's kids too and in most cases except their mother, the kids themselves were targets of domestic violence also. In Kosovo currently there are seven NGO-s offering shelter for victims of domestic violence. "Shelters offer psycho-social activities and health treatments, but no trainings for professional

skills.” Sejdiu (2018). Unfortunately, we can notice that there is no program which focuses on reintegration and social rehabilitation for the victims of domestic violence. Financial sustainability, lack of resources to guarantee professional skills training of clients within the shelter, and security, Sejdiu highlights as main challenges which shelters are faced with.

Another challenge which comes to spotlight, is that protection orders not always fulfill the purpose which they are given for. Is there any case where the perpetrator committed a violation of the protection order and came to the shelter with an attempt to return the victim to the house? Sejdiu says that none of the perpetrators has come to the shelter on which she works in Pristina, with an attempt to return the victim at home “because the location of the shelter is not known to the others but only to cooperative institutions such as police and CSW” but she continues “there have been cases when they went to the Centre for Social Welfare and in other shelters in different municipalities.” If police were more careful, if police kept under observation the perpetrator, and be cautious with the implementation of the protection order, perpetrators who have violated the protection order wouldn’t be given the chance to do so.

In the question what happens with victims after they terminate the timeline of 6 months staying there Sejdiu states that “Victims of domestic violence in most cases return to abusers, or in rare cases when the biological family accepts it, and even rarer when the victim itself becomes independent and integrated into the society. Until now I have not seen any case that has emerged from the shelter and that our institutions have created a solution apart from the requirement to protection orders, meaning that most of the clients seeking shelter need residence, but so far our institutions have never donated any social housing for this category, as a result of which the number of recidivist victims increases and this causes the problem not to be solved but merely repeating itself” In order to decrease the number of victims of domestic violence Sejdiu suggests that the sanctions for the perpetrators must be strengthen and the number of victim’s legal defenders must increase since only 6 legal defenders operate in Pristina. “The punishment must be proportionate to the severity of the offense and the behavior and circumstances of the perpetrator.” (Code No. 04/L-082, Criminal Code of the Republic of Kosovo, Article 73, point 2) Apart from Sejdiu (2018) and Criminal Code of the Republic of Kosovo, Salihu, (2015) considers a proper sanction as a solution too, since “Due to this many people do not commit criminal offenses because they know that they will be punished and along with other deprivations, they will also lose the authority they enjoy in society.”

## 5. Violence against LGBTI+ Community in Kosovo

As a community which is diverse, living in a conservative society as Kosovo makes it even tougher and challenging them to be accepted, since they are faced with discrimination and comparing with other communities like religious and ethnic communities, where is more foreseen as something natural, the approach towards LGBTI+ differs. For example, according to the report “NDI Public Opinion Poll in the Balkans on LGBTI Communities”, LGBTI people see themselves as most discriminated, where 81% of Kosovars on the question “Which of the following groups would you say are the most exposed to discrimination in your country?” answered that sexual minorities (LGBTI) is most exposed to discrimination, and a small percentage answered that Roma ethnicity, people with physical disabilities and then the elderly, but first as the most discriminated community was highest ranked LGBTI community, not only from other communities which were listed in the list, but from 5 other countries too, in this report which were part of the study such as Albania, Serbia, Macedonia, Montenegro and Bosnia & Hercegovina. The patriarchal mentality as a system which functions properly just by enforcing gender stereotypes, only intensifies the belief that romantic relationships are relationships on which only two persons with different sexes can engage, and that everything else which consists attraction to same sexes, attraction to both sexes, gender identity or/and intersex individuals, is an illness and therefore wrong. According to a research which was published in 2015, by IPSOS, with special emphasis on the social norms and how they affect LGBTI community, these are the main findings:

**Table I. If you would find out that your child is a homosexual (previously mentioned LGBTI person), how would you react?**

	I would support him/her completely	Don't know	I would accept it but I would try to make sure that no one else finds out that except our family	I would try to help him/her – to find a cure for that	I would stop communicating with him/her	I would made him/her leave our family house	I would use physical punishment
Albania	6%	11%	10%	42%	12%	12%	6%
Bosnja & Hercegovina	8%	18%	10%	44%	11%	7%	2%
Kosovo	3%	22%	5%	41%	9%	15%	6%
Macedonia	5%	8%	7%	58%	10%	8%	3%
Montenegro	8%	11%	12%	47%	9%	11%	2%
Serbia	12%	5%	10%	48%	7%	7%	1%

In the question of the research report “NDI Public Opinion Poll in the Balkans on LGBTI Communities” in 2015, “How would you react if you find out that your child is a homosexual (or LGBTI person)?” the answers show mostly the universal denial, about LGBTI’s rights and how much support is needed, and how less is provided.

Only 3% of Kosovars accepted them completely, 22% were unsure and claimed that they don't know how would they react, 5% stated that they would personally accept it only with one condition, making sure that LGBTI individual wouldn't come out to others except their close circle as well-known as family, 41% believe that being part of LGBTI community is some kind of sickness and it needs help to overcome it and being cured completely as being a member of LGBTI community in one way or another is a disease itself, 9% claimed that they would stop communicating with their own child if they identified in any of LGBTI acronyms, 15% declared that they would throw their kid out of their house, and 6% would use physical punishment. Kosovo findings dominate in the survey from all these regional states, in making the child leave the house, as a type of reaction after learning the sexual orientation of their kid, but in using physical punishment Albania and Kosovo displayed the same way of thinking and behaving. Each of the response contains in its structure some kind of violence, for example psychological violence and physical violence, except the column which fully accepts the existence of an LGBTI member.

**Table II. Have you personally ever been exposed to psychological abuse due to your sexual orientation or gender identity, e.g. cruel jokes? Have you personally ever been victimized by physical violence due to your sexual orientation or gender identity?**<sup>1</sup>

State	Exposed to psychological abuse	Victimized by physical violence
Albania	76%	32%
Bosnja&Hercegovina	72%	15%
Kosovo	81%	29%
Macedonia	66%	27%
Montenegro	54%	28%
Serbia	57%	23%

The findings say that 81% of LGBTI+ community in Kosovo has in one form or another been exposed to psychological abuse due to their sexual orientation, while Montenegro due to statistics remains the country with lowest percentage comparing with the regional countries. Furthermore, the members of the LGBTI+ community respond in the previous survey, that they have been victims of physical violence too, Albania has the highest percentage, and in second place comes Kosovo with 29%, Montenegro in third place with 28%, Macedonia with an amount of 27%, Serbia 23%, and least Bosnia & Hercegovina with only 15% of LGBTI population which were faced with physical violence due to sexual orientation or gender identity.

<sup>1</sup> Research report "NDI Public Opinion Poll in the Balkans on LGBTI Communities" (2015), Available at: <https://www.lgbti-era.org/sites/default/files/pdfdocs/LGBT%20Poll%202015%20Western%20Balkans%20NDI%20.pdf>

The process of not coming out, hiding their sexual orientation or living in closet due to fear and unacceptance is more likely, than feeling free to express their sexual orientation in Kosovo. However, there are members who has come out to their families, and when describing the process of coming out two respondents say, “In the family the reaction was negative, they shouted and even physically assaulted me, however now things have calmed down and we just don't talk about it.” Coping mechanisms differ –there are cases that after a certain period there is some type of coming to terms with the situation in silence, but in other cases family bonds are broken. “My brother and sister reacted poorly... they told me this was not normal, it was an illness, that I needed to change, but over time realized that I could not so the [situation became] calmer.” (YIHR-Kosovo, CSGD, Freedom and Protection for LGBTI in Kosovo, 2013) This approach towards LGBTI+ community, isn't present only in the majority of civil society, there are even officials in public positions, which share a similar mindset, for example “...one official believes that nothing needs to be done in order to strengthen LGBT rights and another believes that “having in mind the problems that this society has, the LGBT issues are not worth addressing at all.” (YIHR-Kosovo, CSGD, Freedom and Protection for LGBTI in Kosovo, 2013).

It is truly predictable that the members of this community due to their sexual orientation has been victims of direct and indirect discrimination, and victims of many types of abuse, starting by psychological violence, physical violence, harassments, etc.

## **6. Legal Context, where have we been and where do we stand?**

The Constitution of The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of social life. (Article 7.2) and also has incorporated international agreements and instruments such as: Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; International Covenant on Civil and Political Rights and its Protocols; Council of Europe Framework Convention for the Protection of National Minorities; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child; Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, and in the case

of conflict, are directly applicable and have priority over provisions of laws and other acts of public institutions (Article 22)

Even before Kosovo declared its independence, the pattern of laws which were adopted by the Assembly of Kosovo were very sophisticated and in accordance with international law, such as The anti-discrimination law (UNMIK, Law No. 2004/3), Law on gender equality (UNMIK, Law No. 2004/2), On Protection against Domestic Violence (UNMIK, Regulation No. 2003/12), **On the prohibition of trafficking in persons in Kosovo** (UNMIK, Regulation No 2001/4) but after Kosovo declared its independence, laws which are approved, did abrogate the previous laws and regulations from UNMIK. Nowadays the laws which are part of legal framework and repealed the old ones are: Law on Gender Equality, Law on protection from discrimination which entry into force in 12 June 2015 the same day as the Law on Gender Equality did. Law on protection against domestic violence, is part of the legal framework also, “this law aims to prevent domestic violence, in all its forms, through appropriate legal measures, of the family members, that are victims of the domestic violence ...” (Law No. 03/L –182, Article 1, disposition 1). Law on Crime Victim Compensation which concentrates on the financial reparation that are given by state to the victims of crime, is part of the legal framework too. It’s worth drawing attention the fact that the articles from 6 to 44 began to apply only one year later after the entry into force, of this law, particularly in 15 June 2016 the victims of crime or their legal representative which fulfill the criteria, could submit a request for compensation for material or/and immaterial damage. And many strategic documents are part of legal framework, for instance: Action Plan on the implementation of Resolution 1325 “Women, Peace and Security” in Kosovo 2013–2016, and the responsible institution was Agency for Gender Equality for the period of time 2013-2016. Also other valid strategic documents such as National Strategy of the Republic of Kosovo Protection from Domestic Violence 2016-2020 and Action Plan of the National Strategy of the Republic of Kosovo Protection from Domestic Violence 2016-2020. Unfortunately, “.. the Istanbul Convention is not a part of Kosovo’s Constitution yet...” (Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators, December 2018).

## 7. Challenges with Rule of Law, Case Study

The greatest obstacle with the rule of law is the implementation in the daily life. The latest case shows that the injury party before being murdered reported the domestic violence to police, and followed every lawful procedure in order to punish the guilty

party. “When police do respond to a report of a domestic dispute, they seldom arrest the man responsible for spousal assault.” (The human rights watch global report on Woman’s Human Rights, 2001 p. 382), and in this specific case the response by police was rather unprofessional, while just after the husband killed his wife and daughter, police arrested the culprit but due to lack of operating in time we can foresee that the injury party died, with her own daughter too, as a result of the violence and grievous bodily injury which were caused by her husband/the perpetrator, two killings which would have been prevented if only police would take appropriate measures in time.

“The victim and her daughter were murdered by her husband/father in August 2018. The victim had reported her husband’s violence and threats multiple times before the incident, including a few hours before her death. On the 12<sup>th</sup> of May 2018, the victim reported her husband’s violence and he was ordered detention, for one month only—after which he was set free—allegedly due to health problems. The prosecution was aware that the suspect was in possession of a firearm. When the victim reported several threats she had received from her spouse by phone, including 5 hours before her death, the police assessed that the threats posed no risk for victim.<sup>74</sup>In not responding to the report of acts of threats to commit domestic violence and not using reasonable means to protect the victim in order to prevent further violence, the police violated Article 24 of the Law on Protection against Domestic Violence. Further, the Police failed to conduct a valid and up-to-date Risk Assessment in order to provide suitable protection and services for the victim <sup>76</sup> Even though the initial risk assessment is completed when interviewing the victim and the initial Basic Data Form is filled out, the current SOP’s do not call for a valid, continuous and in-depth risk assessment. A checklist provided for the police on the risk assessment consists of 5-6 checks that do not fulfil the conditions of a valid risk assessment. Had the police updated the risk assessment from the initial Basic Data Form and responded immediately to the threats against her life by advising the issuance of a TEPO, both the victim (the mother) and her daughter’s death could have potentially been avoided. Further, the Police did not issue a prompt Temporary Emergency Protection Order for the victim, in accordance to Article 22 of the Law on Protection against Domestic Violence. The police stated that their responsibility ended with the fact that the victim did not request a protection order. Moreover, the Police was made aware that the perpetrator owned firearms, but neither the police nor the prosecution sought the confiscation of the weapon from the perpetrator. TEPO’s can be requested by multiple parties, including by the victim, any person authorized by the victim, a victim’s advocate, someone who shares a domestic

relationship with the victim, representative of the Centre for Social Work, or any person with direct knowledge of an act or more acts of domestic violence against the victim. Other institutions were involved in the victim's case, including the Center for Social Work and the Victim's Advocates. All these institutions were aware of the long-standing systematic violence being committed against her. According to Article 22 of the Law on Protection against Domestic Violence, Social Work Centers can request TEPO 's, on behalf of the victim directly when children are put at risk, Centres for Social Work can request Protection Orders and Emergency Protection Orders in cases when violence also affects children. The poor reaction, lack of coordination, as well as weak implementation of the roles and responsibilities foreseen under the Standard Operating Procedures for Protection from Domestic Violence in Kosovo by the Kosovo Police, Centre's for Social Work and other parties involved, including by the prosecutorial services, have potentially exacerbated the conditions for the death of the victim and of her nine-year old daughter." (Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators, December 2018).

## 8. Conclusion

Kosovo's legal framework has improved during years, it's structure has changed for better, by adding many mechanisms which fight gender-based violence, gender inequality and by adopting an approach which combat unequal treatment due to "nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds ..." (Article 1, Law No. 05/L-021, 2015). Also, the adaption of the law on crime victim compensation opened the gates towards social justice. On legal framework, generally we can conclude that there was a strong will from policymakers to really address this matter properly by drafting these laws, but on practice we still have many barriers which we are encountering, and there are many things which needs to be done in order to fight and prevent gender-based violence. Why? Because Kosovo's justice system still faces difficulties in approaching the cases and taking into account the principles of acting on speed to ensure that victim's life is protected. The implementing of the Protection Order, Emergent Protection Order, Temporary Emergency Protection Order and Restraining Order is still a challenge. We can conclude that there is not

so much effort fighting the gender-based violence from the competent institutions, starting from the police which refers the case and ending with judges which give the verdict. The main problem seems to be the unprofessional method, which some of them practice in their daily work basis. The judges which are dealing with cases of this nature, in courts must take into account the general rules in calculating the punishment. Because without calculating the circumstances and especially if the perpetrator is a recidivist the given punishment will lack the central purpose, which is to remedy the wrongdoings.

In the nearest future justice institutions must be more cautious with cases of gender based violence and civil society as a post conflict society should start seeing violence as something which is unacceptable and be persistent to end the stigma which victims are faced regularly. After woman and children, the most discriminated group and most vulnerable towards gender-based violence is LGBTI+ community. The legal framework condemns any type of discrimination against sexual orientation and acknowledges in its articles the gender identity, but in practice by the majority of society they are seen as immoral. Majority of members of LGBTI+ community claim that they have been faced with physical violence, psychological violence, threats, pressure due to homophobia. Due to fear that police will not treat them fair and equally as other citizens of Kosovo because of their sexual orientation, it is noted that few members of LGBTI+ community who are abused or victims of any type of gender based violence, firstly go to Non Government Organizations which provide emotional or legal support to LGBTI+ community, then they go at police to report the cases, and others might decide to not report violence. Another problem which is evident, is that shelters struggle with providing the victim a safe location for more than 6 months, therefore the state must provide shelters without timeline for victims, increase the budget and concentrate in the reintegration of victims in society, be more supportive and not allow these shelter which exist to close down because of lack of donation. While the shelters which are accessed for victims of violence for a half year maximumly for each of them to stay in, there are no shelters which provide habitation, to LGBTI+ community in Kosovo, in case they must leave the house due to mistreatment. Few advocators of human rights, many NGO-s, and citizens has address dynamically the violation of human rights, by daring to speak out loud about gender-based violence, and raising their voice towards injustice, by joining one billion rising since 2013, marching for woman's rights in the international day of woman with the slogan "We march, not celebrate", and protesting as a form of disagreement for the low sanctions which were given to murders (husbands) of many victims (wives). With the same intensity improvement

of the justice system is required, and public interest must lead the way towards justice, and what else is in the public interest if not the healthy society where each victim is socially reintegrated and rehabilitated, criminal act is properly treated as a case, with humanly principles and properly punished, and by punished the author means not to wait until the right to live is violated to punish the culprit, but with the first attempt to take into a serious consideration the case and proceed with cautious while both of them, the victim and the perpetrator are still alive. Civil society must engage in open discussions, in debates, end victim blaming culture and prevent any use of force or any type of violence whenever they witness it, and go forward towards a peaceful way of living where each individual respect and guarantees the fundamental rights of one another.

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