

EQUAL OPPORTUNITIES FOR WOMEN AND MEN IN KOSOVO

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Executive Summary for Kosovo

INTRODUCTION

1. Legal Framework and Practice

Relevant legal framework with regard to the equal pay principle, equal treatment for women and men at the workplace, and pregnancy and motherhood protection

The Constitutional Framework ensures that “All persons in Kosovo shall enjoy human rights and fundamental freedoms without discrimination on any grounds and under full equality.”¹ However, the Constitutional Framework does not include any specific norms vis-à-vis the principle of equal pay for work of equal value. Article 12.5 of the Gender Equality Act (GEA) stipulates that “The employer shall provide equal pay to women and men for equal work and for work of equal value, and shall provide equal employment and work conditions, and equal rights of work.”² UNMIK Regulation No. 2001/27 of October 8, 2001 on the Essential Labor Act regulates employment in Kosovo, including terms of employment under which work or services are performed. Whereas Article 13 provides that “An employer shall pay equal remuneration, which includes the basic salary/wage and all additional entitlements or remuneration payable directly or indirectly, in cash or in kind, by the employer to the employee, to women and men for work of equal value.” Kosovo’s Essential Labor Act stipulates that Labor Inspectors are responsible for ensuring compliance with this statutory measure, as well as other relevant provisions of applicable law governing workplace conditions, working time, pay, safety, and health.³

There is a job classification system to set rates of pay in the Kosovo Civil Service, but no comparable system exists in the private sector. Article 16 of Administrative Directive 2003/2 implementing UNMIK Regulation 2001/36 on the Kosovo Civil Service provides that the Ministry of Public Services, “following consultations with the Ministry of Finance & Economy, recommends to the Government, and upon approval from the Government, shall issue the classification standards and rates of pay applicable Civil Service employees (...). Classification standards shall be reviewed from time to time, and at least every five years.”⁴

Article 16.1 of the Gender Equality Act stipulates that in the event that the employer violates paragraph 12.5 of the Act, which sets forth that the employer provide equal pay to women and men for equal work and for work of equal value, and guarantees equal conditions of employment and work and all equal rights of work, he/she will be liable to a fine in the amount of €1,000 - €5,000. The Antidiscrimination Act stipulates that complaints on grounds of discrimination be handled in compliance with applicable law by administrative bodies and competent courts of law with legal authority to rule on specific cases involved in the complaint. Both the aforesaid administrative bodies and the courts must act in compliance with provisions of the Antidiscrimination Act in rendering a decision. Under Article 25.1 of Regulation 2001/27 on the Essential Labor Act, when a labor

¹ Article 3.1, UNMIK Regulation 2001/9 on the Constitutional Framework of Self-Government in Kosovo

² Article 12.5, UNMIK Regulation 2004/18 on the Promulgation of the Gender Equality Act in Kosovo adopted by the Kosovo Assembly. Kosovo Assembly Act No. 2004/2 on Gender Equality

³ Article 24.4 UNMIK Regulation 2001/27 on the Essential Labor Act in Kosovo

⁴ Article 16 Administrative Direction 2003/2 implementing UNMIK Regulation 2001/36 on Kosovo Civil Service

inspector deems an employer to be in violation of a provision of the Regulation, he/she has the right to serve the employer in question with a written warning, or impose a fine as set forth in Articles 25.2 and 25.3. The Labor Inspectorate has the right to advise and to inform employees and their organizations, the security services at the workplace, as well as trade unions, on issues such as work, safety at work, implementation and termination of the Collective Bargaining Agreement. Workers who institute court proceedings in cases involving violation of the equal pay principle do not receive any legal assistance from the state. Citizens qualify for such aid only in criminal, but not civil cases.

Article 1.1 of the Gender Equality Act (GEA) protects, addresses, and establishes gender equality as a fundamental value for the democratic development of Kosovar society, providing equal opportunities for both men and women in Kosovo's political, economic, social and cultural life. Article 2.2 of GEA provides that equal treatment means the elimination of all forms of direct and indirect gender discrimination.

Article 2 of the Essential Labor Act prohibits all forms of discrimination and provides that discrimination in employment and occupation is prohibited. The meaning of the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. Article 2 provides that the concept of discrimination "includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, age, family status, political opinion, national or social origin, sexual orientation, language or union membership which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."

Article 2.3 and 2.4 of Kosovo's GEA defines direct gender discrimination as "the unequal treatment of an individual compared to another individual of the opposite gender in the same or similar conditions." On the other hand, "Indirect gender discrimination shall mean the placing of a certain individual in an unequal position with the neutral provisions, the standards or unequal treatment under the same or similar conditions, except in cases where such provisions, standards or treatment is indispensable and, furthermore, provided that such treatment can be justified by objective facts which are not based on any particular gender."⁵ Additionally, Article 2.5. of the GEA regards incitement of a person to engage in gender discrimination as an act of discrimination. Article 2.6 of the Gender Equality Act provides that "Harassment and sexual harassment constitute gender discrimination," while Article 2.7 goes into greater detail and stipulates that "Harassment shall include all forms of behavior that aims or constitutes a threat to personal dignity." The GEA defines sexual harassment as "any form of sexual, verbal, nonverbal, physical or symbolic behavior that constitutes a threat to personal dignity."

Kosovo's national legal framework incorporates women's right to keep their jobs and return to the same position after maternity leave. Article 13.13 of the Gender Equality Act stipulates that dismissal from work, temporary suspension, unfair treatment involving work safety, working conditions, or the recognition of the employee's work due to his/her complaint for sexual harassment, or gender-based discrimination is prohibited. Furthermore, article 13.8 of the Gender Equality Act sets forth that "Employers shall provide equal treatment for women and men in the labor force, and shall take measures to ensure that vacancies or positions are not classified specifically for women or men."

⁵ GEA, Article 2.4

In Kosovo's legal order there exist no statutory provisions in conformity with European directives to define the concepts of pregnant worker, worker who has recently given birth or worker who is breastfeeding. Besides the general provisions that regulate safety and health at work, Kosovo's legal order does not set forth specific provisions to guarantee occupational safety and health for pregnant or breastfeeding women. Women in Kosovo are entitled to a maternity leave of 12 weeks in both the public and private sector. While in the public sector women can take off time for antenatal checkups at full pay, in the private sector they are entitled to at least two-thirds thereof. International organizations present in Kosovo have their own regulations on work and employment. Labor laws on the books in Kosovo do not currently provide for paternal leave for a male employee to take care, either at birth or subsequently, of his baby. Pregnant employees have the right to regular prenatal checkups without any loss of pay if doctor visits must take place during working hours. Kosovo's legal order does not provide clear-cut legislative norms to prevent termination of the work contract of a pregnant woman, or of a mother with a child under three years old.

Kosovo's national legislation does not clearly define the term self-employed person. Provisions in Kosovo's national legislation for setting up and registering a business enterprise apply to all, regardless of marital status. Kosovo's national legislation provides no specific statutory provision for self-employed women whose operational activities have been interrupted due to pregnancy and birth. Self-employed women do not have social insurance coverage and Kosovo's social legislation does not comply with the provisions of equivalent EU Directives.

Practice

Although Kosovo's legal order embraces the equal pay principle, women are at a disadvantage in the country's labor market, where they receive lower average pay than men. One of several reasons for such pay inequity is that women are hardly ever employed in managerial positions. Employees do not have access to information about their rights, and specifically regarding their social rights. Public education campaigns to raise awareness and inform workers regarding their rights vis-à-vis equal pay for work of equal value are noticeably absent.

Even though trade unions could protect employee rights in Kosovo, including in cases involving the equal pay principle, and unions could ask employers to revoke decisions violating work related rights (economic and social) of their members in compliance with applicable law, unions in Kosovo have not yet understood their real value, and have failed to use the means available to them to protect employee interests. There are areas of work with no union representation at all, while others are served by more than one union.

The high pay differential between women's and men's incomes in Kosovo is the main reason why the Index of Gender Development in Kosovo is relatively low. Men make four times more money than women do (€134 versus €42 per month).⁶ Economic data shows that 13 percent of women and 41 percent of men live primarily on the personal incomes they make from their jobs. Economic

⁶ Citizen enhancement: Challenges and Opportunities: Report of Human Development in Kosovo 2004. Published by the United Nations Development Program, Pristina, Kosovo, 20.

dependence is twice as high among women than among men: 77 percent for women, and 33 percent for men living on funds they receive from the third person.⁷

The Gender Equality Act and other legislation in force do not differentiate between positions classified as female or male. However, employers sometimes specify their preference regarding the sex of the worker they prefer to hire. In some cases the gender suffix used in the Albanian language amounts to a tacit allusion to the sex of the worker desired for a specific position without actually articulating it directly. Due to stereotyping and traditional mentalities, specific positions and professions are associated with women (e.g. domestic help, nursing, teaching, assistants, etc.). To avoid misunderstandings arising out of above mentioned practices, it is recommended that job vacancy listings be confined to a person's education and professional skills and experience.

Women account for 60 percent of the unemployed, which means that about twice as many women are out of work as are formally employed (about 30 percent). By contrast, the ratio of unemployed men (48 percent) is approximately the same as that of men in gainful employment (52 percent).⁸ While the post-war situation and the high level of unemployment have affected Kosovar society in its entirety, the situation of women and men differs considerably in terms of labor market opportunities. Women generally are not present in economic decision making processes, including the crafting of the economic policies and programs. Women's needs and problems are not faithfully represented in the process of drafting and implementing initiatives. In consequence, women are poorly represented among beneficiaries of economic development.⁹

2. Gender Equality Institutional Mechanisms

A number of institutions in Kosovo are already working to safeguard and promote Gender Equality. Under Kosovo's Gender Equality Act, the principal responsibility therefor rests with the Office for Gender Equality. The Office for Gender Equality in Kosovo was established pursuant to Decision no. 5/31 of February 1, 2005 of the Kosovo Government. Despite the impressive list of tasks provided for by the law, the Office of Gender Equality does not provide any assistance to the victims of discrimination. The Office for Gender Equality is an executive body of the Government of Kosovo.¹⁰ Striving to establish efficient operations to better perform its activities and responsibilities, a Chief Executive Officer is at the helm to oversee three Directorates: the Directorate for Legislation, the Directorate for Cooperation, and the Directorate for Monitoring and Reporting. The Chief Executive Officer of the Office for Gender Equality is appointed by the Senior Public Appointments Committee and reports directly to Kosovo's Prime Minister.¹¹ The Office for Gender Equality is financed by the Kosovo Consolidated Budget within the Prime Minister's Office and avails itself of the administrative services of this office. Since the Office for Gender Equality has only recently been established no precise figures are available about its current financing.

3. Programs and Policies towards Gender Equality

⁷ Office of Gender Affairs-UNMIK. 2003. Women and men in Kosovo, Pristina., 2003, 108.

⁸ Ibid.

⁹ The Kosovo Action Plan for achieving gender equality. 27.

¹⁰ Article 2 Government Regulation no.2/2005 on the Establishment and Internal Organization of the Office for Gender Equality

¹¹ Cf. Article 5.2 Government Regulation no.2/2005 on the Establishment and Internal Organization of the Office for Gender Equality

According to the information provided by the National Monitoring Report, besides the 2004 UNDP Report on Human Development, there is no other research conducted in Kosovo on the gender pay gap. No research on the phenomenon of gender segregation in the labor market is available for Kosovo. There is no research in Kosovo on the status of women in the labor market once they reenter the labor force after maternity leave. In the absence of an institutionally organized child-care system, in particular the lack of kindergartens for children over 40 weeks old, has a detrimental effect on women's decision to return to work, being, as they are, often compelled to choose between their job and taking care of their children.

No research is being conducted to map up the issue of sexual harassment in Kosovo, and no information on the subject is available to the public, whose awareness of the issue is inadequate.

There is no research on the status and rights of Kosovo's self-employed women. Kosovar women working in the public sector have more rights than women working in the private sector or self-employed women. Self-employed women and unemployed women do not have access to contributory social protection schemes. Kosovo's legal order is thus incompatible with EU Directives for this category of workers.

RECOMMENDATIONS

Principle of equal pay for work of equal value:

- The Collective Bargaining Agreement signed by the Tripartite Council – Kosovo Government, Kosovo Independent Trade Union, and Kosovo Chamber of Commerce should be implemented and specifically incorporate the principle of equal pay for work of equal value.
- The principle of equal pay for work of equal value should explicitly constitute the basis of new labor legislation to be adopted both in the public and private sectors.
- Unions should be better organized and ready to undertake and influence agreements relating to working conditions, social security, and implementation of the principle of equal pay for work of equal value.
- Research studies of and monitoring compliance with applicable law, specifically the enforcement of the principle of equal pay for work of equal value should be initiated and implemented.
- Kosovo's national legislation need to provide for trade union involvement in the signing and termination of work contracts.
- The Official Gazette of PISG should publish the final official texts of legislation adopted by the Kosovo Assembly and promulgated by SRSG.
- Information campaigns educating the public about employee rights, particularly about the principle of equal pay for work of equal value should be implemented.

Principle of equal treatment for women and men at the workplace:

- implement the Gender Equality Act and the Antidiscrimination Act, and adopt appropriate statutory measures therefore;
- explicitly incorporate into Kosovo's new Labor Code, currently being drafted, the principle of equal treatment for women and men;
- explicitly apply the principle of equal treatment for women and men to guarantee equal access to employment, vocational training and promotion, and working conditions;

- conduct research and collect statistical data on a continual basis with a view to monitoring equal access to professional training and educational opportunities, equal access to the labor market (both the private and public sector), as well as equal access to continuous job promotion;
- make it a specific legal obligation of employers that they inform employees about the principle of equal opportunities for women and men.

Pregnancy and motherhood protection:

- pass specific legislation to improve working conditions for pregnant workers, working women who have recently given birth, and workers who are breastfeeding. Pregnant workers, working women who have recently given birth, and workers who are breastfeeding must be considered a specific risk group, and measures must be taken with regard to their safety and health;
- pregnant workers, working women who have recently given birth, and workers who are breastfeeding must be granted the right to maternity leave of at least 14 continuous weeks, allocated before and/or after confinement, and they must benefit from a compulsory maternity leave of at least two weeks, allocated before and/or after confinement;
- harmonize Kosovo's national legislation with EU legal standards in the area of self-employment.

COUNTRY REPORT: KOSOVO

INTRODUCTION

Kosovo is a small country, with an area of 10,877 km,² located in the middle of the Balkan Peninsula, surrounded by Serbia, Macedonia, Albania and Montenegro. Even though Kosovo has unique historical, juridical, cultural, linguistic and territorial attributes, since 1999 it has been governed by an interim international administration. The international civil administration in Kosovo is led by the UN Interim Administrative Mission in Kosovo (UNMIK), and the International Security Forces in Kosovo (KFOR).

The Special Representative of the Secretary General (SRSG), pursuant to the powers conferred on him under United Nations Security Council Resolution 1244 (1999) adopted June 10, 1999 (UNSCR 1244 (1999))¹² to set up a meaningful self-governance in Kosovo pending a final settlement, has established the Provisional Institutions of Self-Government (PISG) in the legislative, executive, and judicial fields through the participation of the people of Kosovo in free and fair elections.

Kosovo's current legal order comprises regulations promulgated by the SRSG, subsidiary instruments issued thereunder, and legislation in force in Kosovo on March 22, 1989.¹³

On May 15, 2001, UNMIK Regulation 2001/9 for the Constitutional Framework for Provisional Self-Government of Kosovo (Constitutional Framework)¹⁴ was adopted, making thus possible the establishment of the PISG. These institutions are the Kosovo Assembly, the President of Kosovo, the Government, the Courts, and other bodies and institutions set forth in the Constitutional Framework.¹⁵

Article 5.7 of the Constitutional Framework stipulates that "The Provisional Institutions of Self-Government shall be responsible for aligning their legislation and practices in all areas of responsibility with relevant European and international standards and norms, with a particular view to facilitating closer economic, social and other ties between the people of Kosovo and other Europeans, and in awareness that respect for such standards and norms will be central for the development of relations with the Euro-Atlantic community."¹⁶

Article 25 of the Regulation on the Work of the Government streamlining the organization and the way the Kosovo Government works provides that anyone engaged in the drafting or review of a proposed act of law or other normative statutory provision, or of a proposed amendment to an act of law or normative statutory provision is required, at every stage of the process, to use their best professional judgment to ensure that such legal instruments comply with all applicable international standards, treaties, conventions, and obligations, conform with the relevant mandatory provisions of the EU *acquis communautaire* to the extent reasonably practicable given Kosovo's level of economic

¹² Cf., Resolution 1244 (1999) approved by the UN Security Council during its 4011th meeting on June 10, 1999

¹³ UNMIK Regulation No 1999/24 on the Law Applicable in Kosovo

¹⁴ UNMIK Regulation No 2001/9 on the Constitutional Framework for Provisional Self Government in Kosovo, May 15, 2001

¹⁵ Cf., *Ibid.*

¹⁶ *Ibid.*, Article 5.7

and administrative development, and do not contain prohibited discriminatory provisions.¹⁷ Accordingly, the applicable law in Kosovo vis-à-vis the equal treatment of women and men complies, for the most part, with prevailing EU legal standards.

UNMIK Regulation No.2000/38 of June 30, 2000 established the Ombudsperson Institution in Kosovo to safeguard and boost respect for human rights.¹⁸ The Ombudsperson's mission is to promote and protect the rights and freedoms of individuals and legal entities, and to ensure that all persons in Kosovo are able to exercise human rights and fundamental freedoms effectively. Issues of discrimination directly linked to gender are treated by the Unit for Gender Equality within this institution.

On 7 June 2004 the Gender Equality Act of Kosovo (GEA),¹⁹ through which gender equality is preserve, treat and established gender equality as a fundamental value for the democratic development of the Kosovo society, providing equal opportunities for both female and male participation in the political, economical, social and cultural and other fields of social life"(Article 1.1 of GEA). Gender equality is based on the principles of equal behavior and equal opportunities. Its implementation is exercised through the undertaking of positive measures and gender equality awareness policies (Article 1.4 of GEA)."²⁰

To further boost equal opportunities, the Antidiscrimination Act (ADA)²¹ was adopted and became effective in September 2004. The aim of the Act is to prevent and combat discrimination, to bolster equality in real life situations, and implement the principle of equal treatment of Kosovo citizens before the law.²²

Even though a number of legal institutions for equal opportunities, including specific institutions, have been established in Kosovo, more priority has been given to political issues (such as the solution of the final status of Kosovo) rather than to issues such as the equal treatment of women and men. This reflects the need for more social and institutional dialogue regarding gender equality and more engagement in promoting equal opportunities.

Both, the Law on one side and the practice on the other, are two different realities in Kosovo.

¹⁷ Article 25, Government Regulation 1/2005 on the Work of the Government

¹⁸ UNMIK Regulation 2000/38 on the establishment of the Ombudsperson Institution in Kosovo

¹⁹ UNMIK Regulation 2004/18 on the Promulgation of the Gender Equality Act in Kosovo approved by the Kosovo Assembly. Kosovo Assembly Act No.2004/2 on Gender Equality

²⁰ Ibid., Article 1

²¹ UNMIK Regulation 2004/32 on the promulgation of the Antidiscrimination Act adopted by the Kosovo Assembly. Kosovo Assembly Act No.2004/3 on Antidiscrimination

²² Ibid., Article 1

I. EQUAL PAY

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

SECTION 1:

National legal framework concerning the principle of equal pay for work of equal value
general provisions

Constitutional Framework

The Constitutional Framework ensures that “All persons in Kosovo shall enjoy human rights and fundamental freedoms without discrimination on any grounds and under full equality.”²³ However, the Constitutional Framework does not include any specific norms vis-à-vis the principle of equal pay for work of equal value.

Gender Equality Act

Article 12.5 of the Gender Equality Act (GEA) stipulates that “The employer shall provide equal pay to women and men for equal work and for work of equal value, and shall provide equal employment and work conditions, and equal rights of work.”²⁴

Essential Labor Act

UNMIK Regulation No.2001/27 of October 8, 2001 on Essential Labor Act,²⁵ regulates employment in Kosovo, including terms of employment under which work or services are performed. Whereas Article 13 provides that “An employer shall pay equal remuneration, which includes the basic salary/wage and all additional entitlements or remuneration payable directly or indirectly, in cash or in kind, by the employer to the employee, to women and men for work of equal value.”²⁶

Regulation on the Kosovo Civil Service

Work relations in Civil Service in Kosovo are regulated with UNMIK Regulation No.2001/36 on Kosovo Civil Service,²⁷ Administrative Direction 2003/2 on the enforcement of UNMIK Regulation 2001/36 on Kosovo Civil Service and on 12 administrative instructions on the enforcement of the Administrative Direction 2003/2 on the enforcement of UNMIK Regulation 2001/36 on Kosovo Civil Service. The equal pay principle is not set forth specifically in these legislative acts. However,

²³ Article 3.1, UNMIK Regulation 2001/9 on the Constitutional Framework of Self-Government in Kosovo

²⁴ Article 12.5, UNMIK Regulation 2004/18 on the Promulgation of the Gender Equality Act in Kosovo adopted by the Kosovo Assembly. Kosovo Assembly Act No.2004/2 on Gender Equality

²⁵ UNMIK Regulation 2001/27 on the Essential Labor Act in Kosovo, October 8, 2001

Terms of employment in public service, UNMIK, KFOR, and offices of embassies of foreign governments and international government organizations is not regulated hereunder

²⁶ Ibid., Article 13

²⁷ UNMIK Regulation 2001/36 on Kosovo Civil Service, December 22, 2001

nondiscrimination is one of the pivotal principles of the Civil Service in Kosovo, as set forth in Article 2.1(e) of UNMIK Regulation No.2001/36, where it provides, “there shall be no discrimination, direct or indirect based on gender, race, color, language, religion, political opinion, national, ethnic or social origin, association with a national community, property, birth, physical disability, family status, pregnancy, sexual orientation.”²⁸ Kosovo’s national legal framework thereby incorporates the equal pay principle from civil servant women and men.

Antidiscrimination Act

Article 2 of the Antidiscrimination Act defines the concept of equal opportunities, rooted in the principle of equal treatment, prohibiting any form of discrimination, direct or indirect, against a person, based on gender, age, marital status, language, physical or mental disability, sexual orientation, national origin, political opinion or conviction, religion or belief, ethnic or social origin, race, property, birth or other status.²⁹

As already noted, the equal pay principle is set forth in a number of statutory measures in Kosovo, and research for this country report found no legal discriminatory provision in contravention of the principle of equal pay for women and men.

SECTION 2:

Implementation of the principle of equal pay for work of equal value: legal foundations and institutional structures

2.1. General presentation

Although Kosovo’s legal order embraces the equal pay principle, women are at a disadvantage in the country’s labor market, where they receive lower average pay than men. One of several reasons for such pay inequity is that women are hardly ever employed in managerial positions.

Article 12.1 of GEA provides that: public and private sector undertakings and legislative and executive institutions shall provide equal rights and opportunities for females and males in labor and employment sector.³⁰

Kosovo’s Essential Labor Act stipulates that Labor Inspectors are responsible for ensuring compliance with this statutory measure, as well as other relevant provisions of applicable act of law governing workplace conditions, working time, pay, safety, and health.³¹

The terms employer and employee are set forth in UNMIK Regulation No.2001/27 for the Essential Labor Act in Kosovo, (Article 9, paragraphs 9.2 and 9.3) and in UNMIK Regulation No.2001/36 on the Kosovo Civil Service (Article 1 on Civil Servant and Hiring Authority). Whilst Article 1 of UNMIK

²⁸ Ibid., Article 2.1

²⁹ Article 2 UNMIK Regulation 2004/32 on the Promulgation of the Antidiscrimination Act adopted by the Kosovo Assembly

³⁰ Article 12.1 UNMIK Regulation 2004/18 on the Promulgation of the Gender Equality Act in Kosovo adopted by the Kosovo Assembly. June 7, 2004. Kosovo Assembly Act No.2004/2 on Gender Equality

³¹ Article 24.4 UNMIK Regulation 2001/27 on the Essential Labor Act in Kosovo

Regulation 2002/4 on Personal Income in Kosovo defines the term “Pay,” which “means any amount paid by an employer either in cash or in kind, as compensation for service rendered by an employee in the course of employment, whether or not under a written contract or hire. Pay can mean salary, remuneration, bonus, commission, or any other form of employment-related payment.³²”

The Office for Gender Equality, established under Articles 5 and 6 of GEA, enforces and monitors the provisions of the Act and the regulations adopted based thereunder. In performing its duties, the OGE coordinates its activities with the Advisory Office for Good Governance, Human Rights, Equal Opportunity and Gender within the Office of the Prime Minister. Issues of sex-based discrimination are addressed by the Gender Equality Unit within the Ombudsperson Institution, which also handles reviews of draft legislation, commenting on compliance with GEA and other legislation in force as they relate to gender issues. In short, the Office for Gender Equality, the Advisory Office for Good Governance, Human Rights, Equal Opportunity and Gender within the Office of the Prime Minister, and the Gender Equality Unit within the Ombudsperson Institution are responsible for monitoring compliance with the principle of equal pay for work of equal value.

Based on Statistical Office of Kosovo (SOK) data, pay from local employment accounts for 60 percent an average family’s income in Kosovo, followed by remittances of cash money from abroad (15 percent). Pensions contribute about six percent, social assistance about 2 percent to the average incomes.³³

A large part of the Kosovo population, some 400,000 to 700,000 Kosovars live in diaspora around the world, sending in an estimated 500 million dollars a year.³⁴

2.2. Job classification system

There is a job classification system to set rates of pay in the Kosovo Civil Service, but there is no comparable system in the private sector.

Article 16 of Administrative Directive 2003/2 implementing UNMIK Regulation 2001/36 on the Kosovo Civil Service provides that the Ministry of Public Services, “following consultations with the Ministry of Finance & Economy, recommends to the Government, and upon approval from the Government, shall issue the classification standards and rates of pay applicable Civil Service employees. Rates of pay may be reviewed from time to time by the Ministry of Public Services in consultation with the Ministry of Finance & Economy, and may be revised by the Ministry following Government approval. Classification standards shall be reviewed from time to time, and at least every five years.”³⁵

The current job classification system (2005) sets forth ten rates of pay for Kosovo Civil Servants (Parliament, President’s and Prime Minister’s Office, cabinet ministries, and municipal administration). Pay is set for each position regardless of gender. The highest coefficient 10 is for heads of departments, 9 for heads of divisions and directors of municipal directorates, 8 for heads of sections, and so forth. Permanent secretaries of state at cabinet ministries, chief executives of

³² UNMIK Regulation 2002/4 on Personal Income in Kosovo, February 20, 2002

³³ SOK. 2004. Kosovo in figures, 22.

³⁴ Cf., Strategy of USAID Assistance to Kosovo 2004-2008, (Pristina, July 2003)

³⁵ Article 16 Administrative Direction 2003/2 implementing UNMIK Regulation 2001/36 on Kosovo Civil Service

municipalities and executive agencies are not subject to this Civil Service job classification system, despite their status as civil servants, owing to the higher rate of pay they enjoy. A new Civil Service job classification system is currently in the pilot/closing phase, with several new rates of pay having been introduced. Solely the nature of job, not gender or any other variable determined the criteria for crafting the new system.

For 2006, the Annex to the Collective Contract has set minimum pay at €120.

2.3. Available legal procedures in cases involving the violation of the principle of equal pay for work of equal value

Article 16.1 of GEA provides that in the event that the Employer violates paragraph 12.5 of the Act (which stipulates that the Employer pay equal pay to women and men for equal work and for work of equal value, and guarantees equal conditions of employment and work and all equal rights of work), he/she will be liable to a fine in the amount of €1,000 - €5,000. In the event of a breach of paragraph 12.5 of the Act, the perpetrator will be punishable with a fine in the amount of €500 - €1,500.

Article 18.1 of GEA provides for guarantees of judicial protection of gender equality.

The Antidiscrimination Act stipulates that complaints on grounds of discrimination be handled in compliance with applicable act of law by administrative bodies and competent courts of law with legal authority to rule on specific cases involved in the complaint. Both the aforesaid administrative bodies and the courts must act in compliance with provisions of the Antidiscrimination Act in rendering a decision. A natural person or legal entity, or a combination thereof, who has violated the Antidiscrimination Act, will be subject to a fine of €500 - €2,000, depending on the nature and degree of the violation.

Article 24.4 of Regulation 2001/27 on Essential Labor Act in Kosovo provides that the Labor Inspector be in charge of enforcing compliance with the Regulation and the other relevant provisions of applicable law governing workplace conditions, working time, pay, health and safety.

Under Article 25.1, when a labor inspector deems an employer to be in violation of a provision of the Regulation he/she has the right to serve the employer in question with a written warning, or impose a fine as set forth in Articles 25.2 and 25.3. Violation of Article 13 on Equal Pay for Women and Men is punishable with a fine of up to 10,000 DM (€5,000). Article 5.4 stipulates that an employer is entitled to request from the Department, or the authority that will succeed it, to review the labor inspector's decision to impose a fine on the employer. An employer has the right to appeal to a competent court of law in Kosovo for a review of the decision rendered by the Department, or the authority that will succeed it.

Workers who institute court proceedings in cases involving violation of the equal pay principle do not receive any legal assistance from the state. Citizens qualify for such aid only in criminal, but not in civil cases.

2.4. Out of court alternatives

In the event of our of court procedures, the Ombudsperson, the Labor Inspectorate³⁶, the Independent Supervisory Council of Kosovo, the Office for Gender Equality, and the Office for General Auditing³⁷ also have the right to review cases related to violation of the equal pay principle.

The Ombudsperson has the legal right to accept and investigate complaints from any person or entity in Kosovo alleging violation of human rights and deeds constituting misuse of power by the Provisional Civil Administration and/or any local central institution, as may be the case.³⁸

Article 2 of the Kosovo Labor Inspectorate Act³⁹ authorizes the Labor Inspectorate to oversee implementation of the labor law, conditions of work and protections at work. The Head of the Labor Inspectorate enforces compliance with decisions rendered as the result of violations of the Essential Labor Act, regulations setting forth work protections, as well as sanctions set forth in Article 25 of UNMIK Regulation 2001/27 of the Essential Labor Act.

In the event of violation of provisions set forth in applicable law, all civil servants or prospective civil service employees, who have exhausted appeals procedures within the employing authority, have the right to appeal in writing to the Independent Supervisory Council of Kosovo, which is an autonomous unit within the Ministry of Public Service.⁴⁰

The entry into force in 2001 of the Regulation on Kosovo's Civil Service was accompanied by establishment of the Independent Supervisory Council of Kosovo. The Council was founded in 2004, but, to date (September 2005), not a single complaint has been reviewed. This has rendered employees' position more difficult, for when they file appeal with a competent court of law to resolve their case, it is rejected on grounds of "non exhaustion of internal administrative procedures."

Article 12.12 of GEA provides that "Dismissal of an employee shall be prohibited in cases when she/he demands enforcement of the Gender Equality Act." This provision of the Act remains on paper, and, to date, no employee in Kosovo has mustered up courage to demand enforcement of the Act, given this total absence of protections. Employers, too, are more than aware of this lack of protective mechanisms.

2.5. Means of informing employees of their right to equal pay for work of equal value

Employees as well as all citizens may obtain free of charge current legislation from the databases of UNMIK, the Kosovo Assembly and the Kosovo Government. All respective regulations and acts of law are available both in the database catalogues and in employment offices⁴¹.

³⁶ UNMIK Regulation 2003/4 of February 21, 2003 on the Promulgation of the Act approved by the Kosovo Assembly on the Independent Supervisory Council of Kosovo

³⁷ UNMIK Regulation 2002/18 on the establishment of the Office for General Auditing and the Kosovo Auditing Office

³⁸ Cf., Ombudsperson Institution in Kosovo: Information and Regulations, Pristina, 2002, pp. 35-38.

³⁹ UNMIK Regulation 2003/4 on the Promulgation of the Act adopted by the Assembly of Kosovo on the Labor Inspectorate of Kosovo

⁴⁰ Cf., UNMIK Regulation 2001/36 on Kosovo Civil Service and the Administrative Instruction 2005/02-MPS – Regulations and procedures of Complaints in the Independent Supervisory Council of Kosovo

⁴¹ All UNMIK Regulations and Administrative Directions – all the essential and secondary UNMIK legislation – is available at www.unmikonline.org/regulations/index.htm. Acts of law approved by the Kosovo Assembly are available on

The Official Gazette published by UNMIK also includes the Regulations and Administrative Directives of UNMIK issued pursuant to the authority of SRSG. However, there is not yet a PISG-issued Official Newsletter which would publish legislation enacted by the Kosovo Assembly in compliance with the Act on the Official Gazette.

The Labor Inspectorate has the right to advise and to inform employees and their organizations, the security services at the workplace, as well as trade unions, on issues such as work, safety at work, implementation and termination of the Collective Contract.

The Independent Supervisory Council of Kosovo must determine whether Civil Service employers comply with the transparency principle set forth for the Kosovo Civil Service in UNMIK Regulation No.2001/36.

In actual fact, however, and especially in municipalities with limited or no access at all to Internet, employees do not have access to information about their rights, and specifically regarding their social rights. Public education campaigns to raise awareness and inform workers regarding their rights vis-à-vis equal pay for work of equal value are noticeably absent.

2.6. Role of trade unions

Every employee, female or male, is entitled to become a member and have an active role in trade unions of employees or employers, or in any other professional organization, including taking advantage of the benefits arising from this membership as set forth in Article 12.10 of GEA.

While Article 5.1 of UNMIK Regulation No.2001/36 on the Kosovo Civil Service provides that "Civil Servants shall have the right to join a trade union." Article 5.1 of the Essential Labor Act of Kosovo stipulates that "Employees and employers shall be entitled to establish, and, subject to the rules of the organization(s) concerned, join organization(s) of their own choosing without previous authorization. Employees' organizations shall include unions."

Even though unions could protect employee rights in Kosovo, including in cases involving the equal pay principle, and unions could ask employers to revoke decisions violating work related rights (economic and social) of their members in compliance with applicable law, unions in Kosovo have not yet understood their real value, and have failed to use the means available to them to protect employee interests. There are areas of work with no union representation at all, while others are served by more than one union. On the other hand, there are very few unionized employees, and very few employee groups are lucky to boast an active union.

Because of the role unions used to play during the former communist era, trade union activism in Kosovo is deemed a relic of the past. Additionally, the unions in Kosovo have not yet discovered an approach or organizational form comparable to their sister organizations in Europe, not to mention their significantly lower status.

www.kuvendikosoves.org/. Some of the Administrative Instructions issued by the Kosovo Government including the ministries are available on www.ks-gov.net/

SECTION 3:

Factual background with regard to the principle of equal pay for work of equal value: related research and statistics

There has not been a census in Kosovo since 1981 due to several historical events (Kosovo Albanians boycotted the census organized in 1991 after Albanian employees were dismissed from work by the Serbian regime), and there it is impossible to obtain reliable population data. "There exists no recent official assessment of Kosovo's population. The population is estimated at about 1.7-2.4 million, depending also on the meaning of the term 'Kosovo population'. The resident population (persons who live in Kosovo) is generally estimated between 1.8 and 2.0 million. The best estimate is supposed to be 1.9 million inhabitants. According to LSMS 2000 (Living Standard Measurement Survey), 2000, 88 percent of the Kosovo population is ethnic Albanian. The Serb population is estimated at seven percent, while other ethnic groups together comprise five percent of the general population."⁴²

The age structure in Kosovo is exceptional in comparison with the rest of Europe: about one third of Kosovars (32.3 percent) is under the age of 15, while six-and-a-half percent of the population is over 65 years old. The gender structure of Kosovo's population is 52 percent female and 48 percent male.⁴³

The high pay differential between women's and men's incomes in Kosovo is the main reason why the Index of Gender Development in Kosovo is relatively low. Men make four times as much money than women do (€134 versus €42 per month), and, generally speaking, jobs for women pay less than those for men.⁴⁴

Economic data shows that 13 percent of women and 41 percent of men live primarily on the personal incomes they make from their jobs. Economic dependence is twice as high among women than among men: 77 percent for women, and 33 percent for men living on funds they receive from the third person.⁴⁵

Data on the remuneration of women and men are available in specific publications of the Statistical Office of Kosovo (SOK), the Ministry of Labor & Social Welfare, and sometimes in the daily publications of other public and private institutions.

In 2002 average private sector pay was €220.17 per month compared with €167.95 per month in the public sector. Women's pay was about 14 percent lower than men's. This is not due to salary disparity for same positions, but to a higher ratio of men in better paid positions.⁴⁶

During the first three months of 2000, women received 81.3 percent of the pay of men, while the comparable figure during the first three months of 2001 was 88 percent.

⁴² SOK. 2004. Kosovo in Figures, 9.

⁴³ Office of Gender Affairs-UNMIK. 2003. Women and men in Kosovo, Pristina, 116.

⁴⁴ Citizen enhancement: Challenges and opportunities: Report of Human development in Kosovo. 2004. Published by the United Nations Development Programme, Pristina, Kosovo, 20.

⁴⁵ Office of Gender Affairs-UNMIK. 2003. Women and men in Kosovo, Pristina, 108.

⁴⁶ Ibid., p.33.

In the private sector, especially in organizations where terms of employment are subject to a two-way contract between employer and employee, with no collective contract in force, violation of the equal pay principle may occur.

SECTION 4:

Conclusions. Areas of concern. Recommendations

Conclusions

- The principle of “equal pay for work of equal value” is not explicitly incorporated into national legislation, but it can be derived from the main equality principle enshrined by the Constitution and common law provisions.
- The national legal framework does not provide the requisite legal means to enable employees who believe they have been discriminated against via violation of the equal pay principle to pursue their claims before court of law. Consequently, these workers do not receive legal assistance from the State.
- The national legal framework does not specifically stipulate that employers bring to employees’ attention available enforcement options and complaint mechanisms in regard to the equal pay principle.
- Collective Bargaining Agreements do not explicitly incorporate the principle of equal pay for work of equal value.
- Pay disparity between women and men does not legally exist in Kosovo. However in practice the latest available data shows that women received 88 percent of men’s pay.
- The average salary of women in Kosovo is lower than that of men due to several reasons including the fact that women are employed in leadership position only in specific cases.

Areas of Concern

- The institutional structures provided for by applicable legislation in Kosovo to protect the principle of equal pay for work of equal value are not as active as they should be and there is clash of competences among them.

Recommendations

- The Collective Contract signed by the Three-sided Council – Kosovo Government, Kosovo Independent Trade Union, and Kosovo Chamber of Commerce must be implemented and specifically incorporate the principle of equal pay for work of equal value.
- The principle of equal pay for work of equal value must explicitly constitute the basis of new labor legislation to be adopted both in the public and private sectors.

- Unions must be better organized and ready to undertake and impact agreements relating to working conditions, social security, and implementation of the principle of equal remuneration for work of equal value.
- Research studies and monitoring of compliance with applicable law, specifically the enforcement of the principle of equal pay for work of equal value must be initiated and implemented.
- Union intervention in cases of signing and termination of work contract to be foreseen in the Kosovo legislation.
- The Official Gazette of PISG with the final official texts of legislation adopted by the Kosovo Assembly and promulgated by SRSG should be issued.
- Information campaigns educating the public about employee rights, particularly about the principle of equal pay for work of equal value should be implemented.

II. EQUAL TREATMENT AT THE WORKING PLACE: EMPLOYMENT, TRAINING AND WORKING CONDITIONS

Council Directive 76/207/EEC of February 9, 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. Amended on September 23, 2002 through Directive 2002/73/EEC of the European Parliament and of the Council.

SECTION 1

National legal framework concerning the principle of equal treatment for women and men

1.1. General provisions

Constitutional framework

Kosovo's legal order guarantees equal rights for women and men. Article 3.1 of the Constitutional Framework provides that "All persons in Kosovo shall enjoy human rights, fundamental freedoms, and full equality without discrimination on any grounds."⁴⁷

Although the Constitutional Framework does not specifically articulate a definition for equal opportunities, Article 3.2 thereof stipulates that "The Provisional Institutions of Self-Government shall observe and guarantee internationally recognized human rights and fundamental freedoms, including rights and freedoms set forth in the Universal Declaration of Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; the International Covenant on Civil and Political Rights and the Protocols thereto; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of

⁴⁷ Article 3.2, UNMIK Regulation 2001/9 on the Constitutional Framework of Self-Government in Kosovo

Discrimination Against Women (CEDAW); the Convention on the Rights of the Child; the European Charter for Regional or Minority Languages; and The Council of Europe's Framework Convention for the Protection of National Minorities. The provisions on rights and freedoms set forth in these instruments shall be directly applicable in Kosovo as part of this Constitutional Framework."⁴⁸ This is a crucial step in the right direction and a pivotal constitutional principle enabling, as it does, a smooth harmonization of Kosovo's domestic legal order with prevailing international standards by providing the latter with an opportunity to implement legal norms based on a wealth of legal experience far richer than that of Kosovo.⁴⁹

Gender Equality Act

Article 1.1 of the Gender Equality Act (GEA) protects, addresses, and establishes gender equality as a fundamental value for the democratic development of Kosovar society, providing equal opportunities for both men and women in Kosovo's political, economic, social, cultural, and other walks of life. Article 1.2 of GEA establishes the conditions and opportunities for gender equality via policies in support of overall development, especially for the improvement of women's status, in order that they be able to take their rightful place in family and society. It is the duty of society as a whole to provide equal rights, and it requires the elimination of all barriers standing in the path of gender equality, as set forth in Article 1.3 of GEA.

The Article 2.2. of GEA provides that equal treatment means the elimination of all forms of direct and indirect gender discrimination.

Under GEA equal gender participation for both will have been attained in the event that the ratio of either gender at organizations, institutions, or at decision making level reaches 40 percent.⁵⁰

Antidiscrimination Act

The Antidiscrimination Act (ADA) applies to all natural and legal persons in both the public and private sector, including public bodies, in relation to any action or inaction that violates the right or rights of any natural or legal person or persons vis-à-vis access to employment, self-employment, and profession, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; employment and working conditions, including dismissal and pay.⁵¹

Article 2 of UNMIK Regulation No.2000/54 amending UNMIK Regulation No.1999/1, with authorization from Kosovo's interim civil administration, provides that "in exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards and shall not discriminate against any person on any ground

⁴⁸ Ibid., Article 3

⁴⁹ Cf., Besim M. Kajtazi. 2005. Know Your Rights. GASGE, Pristina, 2005

⁵⁰ GEA, Article 3

⁵¹ ADA, Article 4

such as sex, race, color, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status.”⁵²

Meanwhile, Article 2.3 UNMIK Regulation No.2000/45 on the Self-Government of Kosovo Municipalities stipulates that “All organs and bodies of a municipality shall ensure that inhabitants of the municipality enjoy all rights and freedoms without distinction of any kind, such as race, ethnicity, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and that they have fair and equal employment opportunities in municipality service at all levels.”⁵³

UNMIK Regulation No.2005/15 of March 16, 2005 amending UNMIK Regulation No. 2001/19 on the Executive Branch of Provisional Institutions of Self-Government in Kosovo sets forth under Article 1.7 that “Within the scope of their functions and responsibilities, Ministers shall ensure that their Ministries provide credible and transparent services without discrimination of any kind, such as on grounds of ethnicity, social origin, sex, physical limitation, religion, political opinion or any other opinion.”⁵⁴

Despite the legal and institutional guarantees for equal opportunities, in actual fact women and men find themselves in rather unequal situations in the labor market.

1.2. The concept of discrimination on grounds of sex: definitions and legal sanctions

Article 2 of the Essential Labor Act prohibits all forms of discrimination. Paragraph 1 of the Article provides that discrimination in employment and occupation is prohibited. The meaning of the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. Article 2 defines discrimination as a term that “includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, age, family status, political opinion, national or social origin, sexual orientation, language or union membership which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”

Articles 2.3 and 2.4 of Kosovo’s GEA defines direct gender discrimination as “the unequal treatment of an individual as compared with another individual of the opposite sex in the same or a similar set of conditions.”⁵⁵ On the other hand, “Indirect gender discrimination shall mean the placing of a certain individual in an unequal position with the neutral provisions, the standards or unequal treatment under the same or similar conditions, except in cases where such provisions, standards or treatment is indispensable and, furthermore provided that such treatment can be justified by objective facts which are not based on any particular gender.”⁵⁶ Additionally, Article 2.5. of GEA regards incitement of a person to engage in gender discrimination as an act of discrimination.⁵⁷

⁵² UNMIK Regulation No.2000/54 amending UNMIK Regulation No.1999/1, as amended on the authority of interim administration of Kosovo

⁵³ UNMIK Regulation No.2000/45 on the Self-government of Kosovo Municipalities, Article 2.3

⁵⁴ UNMIK Regulation No.2005/15 amending the UNMIK Regulation No.2001/19 on the Executive Branch of Provisional Institutions of Self-government in Kosovo, Article 1.7(c)

⁵⁵ GEA, Article 2.3

⁵⁶ GEA, Article 2.4

⁵⁷ GEA, Article 2.5

The Gender Equality Act defines what is to be regarded as direct or indirect discrimination. Article 3 (a) and (b) provides that “Direct discrimination shall be taken to have occurred where one person is treated less favorably than another, has been or would be treated in a comparable situation based on one or several grounds such as those set forth in Article 2(a)”⁵⁸; “Indirect discrimination shall be taken to have occurred where an apparently neutral provision, criterion or practice would put persons, on the basis of one or more grounds such as those set forth in Article 2(a), at a particular disadvantage compared with other persons, unless said provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving said aim are appropriate and necessary.”⁵⁹

While Kosovo’s Constitutional Framework provides all Kosovar citizens, without discrimination on any grounds, equal rights and fundamental human freedoms, Article 158(1) of the Provisional Criminal Code of Kosovo, applicable to any criminal offence within the territory of Kosovo, provides that “Whoever unlawfully denies or limits the freedoms or rights of a resident of Kosovo as set forth in the Constitutional Framework and applicable law, on the grounds of difference of race, color, sex, language, religious belief or non-belief, political or other opinion, national or social origin, property, birth, education, social status or other personal characteristics, or affiliation to an ethnic, religious or linguistic community in Kosovo, or whoever unlawfully grants a resident of Kosovo any privilege or advantage on the grounds of such a difference or affiliation shall be punishable with imprisonment from six months to five years.” Additionally, paragraph (4) of Article 158 provides that when the offence specified in the Article is committed by an official person in the exercise of his or her duties, the perpetrator will be punishable with imprisonment from one to seven years in the event of an offence specified in paragraph 1, or with imprisonment from six months to three years in the event of an offence specified in paragraph (3).⁶⁰

Penal retribution for violation of employment and gender equality rights is set forth in Article 182 of the Provisional Criminal Code of Kosovo “Whoever knowingly fails to comply with the law or a collective contract with respect to employment or labor relations, pay or other income, the length of working hours, vacation or absence from work, protections for women, children or disabled persons, or overtime work or night shifts, thereby denying or restricting employee rights shall be punishable with a fine or imprisonment of up to one year.”⁶¹ Further, Article 183(1) of the Provisional Criminal Code provides: “Whoever denies or restricts the right of persons to free employment under equal conditions determined by acts of law shall be punishable with a fine or imprisonment of up to one year.” “Whoever, in violation of the law, obstructs or renders impossible for a worker to exercise his or her right to participate in management or abuses said rights shall be punishable with a fine or imprisonment of up to one year,” as set forth in Article 184 of the Criminal Code.

Article 16.1. of GEA provides that employers violating paragraph 12.5 of the Act (stipulating that employers pay women and men equally for equal work and for work of equal value and provide equal employment and working conditions and rights.) are subject to a fine from €1,000 to €5,000. Violation of paragraph 12.5 carries a fine of €500 to €1,500 for the perpetrator.

⁵⁸ ADA, Article 3(a)

⁵⁹ Ibid., Article 3(b) Refer also to Administrative Instruction No. MPS/DCSA 2003/12 on Procedures of Equal Opportunities

⁶⁰ Article 58 (1) UNMIK Regulation No.2003/25 on the Provisional Criminal Code of Kosovo, July 6, 2003

⁶¹ Article 182, Provisional Criminal Code of Kosovo

All natural persons and legal entities, or any combination thereof, who have violated the provisions of the Antidiscrimination Act, are subject to fine of €500 to €2,000, depending on the nature and degree of thereof.

According to Article 24.4 of UNMIK Regulation No.2001/27 of the Essential Labor Act in Kosovo, a labor inspector is also responsible for performing the following functions: enforce compliance with the Regulation as well as other relevant provisions of applicable law governing working conditions, working hours, pay, safety and health.

In the event that a labor inspector determines that under Article 25.1 an employer is in violation of a provision of said Regulation, she/he may issue a written warning to the employer or impose a fine as set forth in Articles 25.2 and 25.3. Violation of Article 13 on Equal Pay for Men and Women is punishable with a fine of up to 10,000 DM (€5,000). Under Article 25.4 an employer may request that the Department, or the authority that will succeed it, review the labor inspector's decision to fine the employer. An employer has the right to appeal to a competent court of law in Kosovo for a review of the decision made by the Department, or the authority that will succeed it.

1.3. Legal status of harassment and sexual harassment

Article 2.5 of the Gender Equality Act provides, "Harassment and sexual harassment constitute gender discrimination," while Article 2.7 goes into greater detail and stipulates, "Harassment shall include all forms of behavior that aims or constitutes a threat to personal dignity."

The GEA defines sexual harassment as "any form of sexual, verbal, nonverbal, physical or symbolic behavior that constitutes a threat to personal dignity."

The Antidiscrimination Act defines harassment in Article 2/c: "Harassment shall be deemed to be discrimination within the meaning of Article 2(a) in the event that unwelcome conduct occurs (including but not limited to unwelcome conduct of a sexual and/or psychological nature) based on grounds such as those set forth in Article 2(a) that have the purpose or effect of violating a person's dignity, and of creating an intimidating, hostile, degrading, humiliating, or offensive environment, as determined by the said person."⁶²

SECTION 2

Implementation of the principle of equal treatment for women and men: legal foundations and institutional structures

2.1. General presentation

Article 1.4 of GEA provides that gender equality is based on the principle of equal behavior and equal opportunity. Its implementation is exercised through the undertaking of positive measures and gender equality awareness policies. Article 3.1. of GEA provides that: The implementation of legal and affirmative measures establish equal participation for both females and males in legislative,

⁶² GEA, Article 2/c

executive, judicial bodies of all levels and in public institutions, so that representation of both genders in these institutions high its level of their representation in the general population of Kosovo.

Article 4.1 of GEA provides that “The Kosovo Assembly shall observe the principles of equal gender representation during the establishment of working groups and delegations pursuant to its rules of procedure.” The executive branch as well as the Kosovo Government are likewise obliged to comply with the gender equality principle: “The government and the ministries shall promote and provide for equal gender rights” (Article 4.7). In addition, Article 4.14 provides, “Local government bodies shall promote and establish equal opportunities, shall draft their policies with due consideration for gender equality, shall approve any necessary measures, and take the requisite action to provide equal opportunities for both women and men.

At 30 percent, the ratio of women in Municipal Assemblies and in the Kosovo Parliament is the highest in the region, and, indeed, higher than in most Western European countries. This does not, however, translate into leadership positions in government for Kosovar women. Currently, the Kosovo Government has only one female cabinet-level minister –a permanent undersecretary of state - out of a total of 13; one Chief Executive Officer (of the Gender Affairs Office); 33 women deputies in the Kosovo Parliament, two women serving as Chairpersons of Parliamentary Commissions; one woman in the capacity of head of a parliamentary group; one female city manager; and two female deputy city managers.

2.2. Available legal procedures in cases involving the violation of the principle of equal treatment for women and men

GEA sets forth general and specific steps vis-à-vis implementation of equal rights, and likewise stipulates responsibilities of every individual. Article 4.16 of the Act provides that a Gender Affairs Officer in each municipality review all local government decisions prior to endorsement.

Article 10 of the Antidiscrimination Act, provides that in the course of investigating a complaint filed on grounds of gender discrimination, “The Ombudsperson of Kosovo shall, as the authorized institution therefor, receive, investigate, and review complaints concerning violations of rights arising from alleged gender discrimination, in compliance with his or her powers pursuant to legislation in force.”⁶³

Article 8.1 of the Antidiscrimination Act sets forth that “When persons who consider themselves wronged due to lack of compliance with the principle of equal treatment as applicable to their situation substantiate their claim before court of law or other competent authority, presenting evidence from which the fact of direct or indirect discrimination may be established, the burden of proof shall fall on the respondent to show that there no breach of the equal treatment principle had occurred. Paragraph 8.1 shall not prevent the introduction of rules of evidence that are more favorable defendants. On the other hand, a complainant may substantiate or defend his/her allegation of discrimination by any means, including on the basis of statistical evidence.”⁶⁴ This complaint investigation procedure, which incorporates the application of the equal treatment principle for women and men in employment situations, professional training, job promotion, and working

⁶³ Article 10 UNMIK Regulation No.2004/32

⁶⁴ Ibid., Article 8.

conditions, renders the plaintiff's situation easier, creating favorable conditions for them, since they do not have to produce documentary or any other evidence from the persons who have allegedly violated the equal treatment principle, as this would be extremely difficult to obtain.

As set forth under the national legal framework, associations, organizations, and other legal entities are not obligated to meet the criterion of having a legitimate interest in enforcing compliance with the principle of equal treatment for women and men.

2.3. Protective measure with regard to women's participation in the labor market

Kosovo's national legal framework incorporates women's right to keep their jobs and return to the same position after maternity leave.

2.4. Prohibition of dismissal

Article 13.13 of GEA stipulates that dismissal from work, temporary suspension, unfair treatment involving work safety, working conditions, or the recognition of the employee's work due to his/her complaint for sexual harassment, or gender-based discrimination is prohibited.

The Article 13.12 of the GEA stipulates that "Dismissal of an employee shall be prohibited in the event that said employee demands implementation of laws on the books."

Despite existing legislation in force, the lack or malfunctioning of institutional mechanisms hinder Kosovar citizens from protecting their fundamental rights and freedoms.

2.5. Women's and men's jobs

Article 13.8 of the GEA sets forth that "Employers shall provide equal treatment for women and men in the labor force, and shall take measures to ensure that vacancies or positions are not classified specifically for women or men."⁶⁵

The GEA and other legislation in force do not differentiate between positions classified as female or male. However, employers sometimes specify their preference regarding the sex of the worker they prefer to hire. In some cases the gender suffix used in the Albanian language amounts to a tacit allusion to the sex of the worker desired for a specific position without actually articulating it directly. Due to stereotyping and traditional mentalities, specific positions and professions are associated with women (e.g. domestic help, nursing, teaching, assistants, etc.). To avoid misunderstandings arising out of above mentioned practices, it is recommended that job vacancy listings be confined to a person's education and professional skills and experience.

SECTION 3

Gender equality bodies

3.1. Gender equality bodies

⁶⁵ GEA, Article 13.8

A number of institutions in Kosovo are already working to safeguard and promote Gender Equality. Under Kosovo's Gender Equality Act, the principal responsibility therefor rests with the Office for Gender Equality.

The Office for Gender Equality in Kosovo was established pursuant to Decision No.5/31 of February 1, 2005 of the Kosovo Government.

3.2 Legal basis of functioning of the body

The Kosovo Office for Gender Equality was established in compliance with Article 5.1 of UNMIK Regulation no.2004/18 on the promulgation of the GEA in Kosovo adopted by the Assembly of Kosovo, which states, "The Kosovo Government shall establish the Office for Gender Equality as a separate government body. Activities and internal organization thereof shall be subject to Regulation 2/2005 on the Establishment and Internal Regulation of the Office for Gender Equality."

3.3. Mandate and the objectives of the body

Pursuant to Article 5 of GEA, the Office for Gender Equality is responsible for:

- implementing and monitoring compliance with GEA provisions and the regulations adopted in accordance therewith;
- proposing to the Government and cabinet ministries the compilation, alteration, and amendment of laws and regulations, as well as the approval of other measures;
- drafting policies to promote gender equality, and supervising its implementation;
- overseeing the implementation of international laws and treaties on gender equality;
- compiling reports on the implementation thereof, approved by the Government;
- coordinating the preparation of the Kosovo Program on Gender Equality, and monitoring its implementation;
- cooperating with the Gender Affairs Officers of cabinet ministries and local governments;
- working together with non-governmental organizations to promote gender equality, and providing partial funding for their projects or activities;
- joining forces with public institutions and providing partial funding for their projects or activities;
- proposing conditions and criteria for partial funding subject to government deliberation;
- coordinating activities to facilitate implementation of general gender regulations, including enabling access to professional assistance to develop appropriate methods and techniques;
- proposing research and analysis initiatives in the gender equality field;

- bolstering gender equality awareness;
- reporting to the government on the activities of the Office for the prior year, no later than at the end of March.

The Office of Gender Equality does not provide any assistance to the victims of discrimination.

3.4. Level of independence

The Office for Gender Equality is an executive body of the Government of Kosovo.⁶⁶

Striving to establish efficient operations to better perform its activities and responsibilities, a Chief Executive Officer is at the helm to oversee three Directorates: the Directorate for Legislation, the Directorate for Cooperation, and the Directorate for Monitoring and Reporting.

The Chief Executive Officer of the Office for Gender Equality reports directly to Kosovo's Prime Minister.⁶⁷

The Chief Executive Officer is appointed by the Senior Public Appointments Committee.

The Chief Executive Officer is supported by the following structures: the Directorate for Legislation; the Directorate for Cooperation, and the Directorate for Observation and Reporting. Internal committees of the Prime Minister's Office appointees the above mentioned structure in compliance with the Civil Service Act.

3.5. Financial sources

The Office for Gender Equality is financed by the Kosovo Consolidated Budget within the Prime Minister's Office and avails itself of the administrative services of this office. It was established and functions pursuant to provisions of the Civil Service of Kosovo, as set forth in UNMIK Regulation No.2001/36 on the Civil Service of Kosovo.

The Office for Gender Equality is funded by the Office of Prime Minister and will receive additional monies, as needed.

Since the Office for Gender Equality has only recently been established no precise figures are available about its current financing.

3.6. Role and function

The Office for Gender Equality is responsible for ensuring compliance with the Gender Equality Act.

3.7. Details on the functioning of the Office

The Office for Gender Equality coordinates its duties and activities vis-à-vis gender issues with the Advisory Office of Good Governance, Human Rights, Equal Opportunities and Gender, established

⁶⁶ Article 2 Government Regulation No.2/2005 on the Establishment and Internal Organization of the Office for Gender Equality

⁶⁷ Refer to Article 5.2 Government Regulation No.2 on the Establishment and Internal Organization of the Office for Gender Equality

pursuant to Annex (I) of UNMIK Regulation No.2001/19, while issues of discrimination related directly to gender are reviewed by the Gender Affairs Unit within the Ombudsperson Institution established in compliance with UNMIK Regulation No.2000/38, the Unit having been assigned the responsibility to review draft legislation and to comment on the application of the existing gender-related statutory measures.⁶⁸

There are other institutional structures for gender equality within the Commission of the Kosovo Assembly, such as the Committee for Judicial and Legislative Issues; the Constitutional Framework with subcommittees for Gender Equality, Petitions, and Public Complaints and Missing Persons;⁶⁹ Committees for Gender Equality in Municipal Assemblies. Additional institutional mechanisms in Kosovo include: representatives of the Ministries for Gender Affairs, as well as Gender Affairs Officers in Kosovo Municipalities.

The Kosovo Government has established an Inter-ministerial Group to coordinate the activities of institutions involved with gender issues.

In 2004 the Kosovo Government adopted a National Action Plan for Achieving Gender Equality, which includes recommendations that address specific problems and issues of gender discrimination in Kosovo. The Action Plan has been designed as a mechanism for achieving gender equality in a manner best suited to Kosovar women's needs. Its goal is to reflect national efforts within the context of international movements towards advancement of the status of women as well as to articulate direct proposals for concrete steps that must be undertaken in Kosovo to create a level playing field for development.

To protect and advance human rights, Kosovo's Prime Minister has adopted a decision to establish Human Rights Units within each Ministry of the Kosovo Government. In tandem with the Advisory Office of Good Governance, the Human Rights Units will provide for the implementing of measures approved by the Kosovo Government and Assembly, and will be directly responsible for compliance with recommendations of the Ombudsperson Institution vis-à-vis application of respective human rights laws. The Units will play an important role in drafting additional documents for human rights in direct support of compliance with Kosovo Standards and the process of reporting on the status of human rights in Kosovo. Accordingly, on August 11, 2005 the Prime Minister of Kosovo signed Administrative Instruction No.8/2005 on the Duties of Human Rights Units at Cabinet Ministries of the Kosovo Government. Officials at Human Rights Units are responsible for the following human rights issues: equal opportunities (related to the implementation of the Antidiscrimination Act); gender equality (in compliance with the Gender Equality Act); children's rights; minority (community) rights; the rights of disabled people; and issues related to combating trafficking.⁷⁰

On October 11, 2005, the Kosovo Government adopted an Action Plan for Implementing the Antidiscrimination Act (Decision No.4/170) which "sets forth criteria for activities within a limited time frame, responsibilities of actors/institutions involved in the process, as well as proposals for a

⁶⁸ UNMIK Regulation No. 2004/18 on Promulgation of the Gender Equality Act in Kosovo adopted by the Assembly of Kosovo

⁶⁹ www.kuvendikosoves.org/

⁷⁰ The Office of Prime Minister: The Office for Good Governance, Human Rights, Equal Opportunities and Gender: Three monthly reports on activities related to issues against discrimination, corruption, trafficking of human beings, and human rights, July-September 2005, September 2005, Pristina, 31.

detailed draft of the funding required for implementing the Plan of the Consolidated Kosovo Budget, therein also including donors.”⁷¹

SECTION 4

Factual background with regard to the principle of equal treatment for women and men: related research and statistics

4.1. Research and statistics on women’s access and presence in the labor market

While the post-war situation and the high level of unemployment have affected Kosovar society in its entirety, the situation of women and men differs considerably in terms of labor market opportunities. Women generally are not present in economic decision making processes, including the crafting of the economic policies and programs. Women’s needs and problems are not faithfully represented in the process of drafting and implementing initiatives. In consequence, women are poorly represented among beneficiaries of economic development.⁷²

Article 8 of GEA provides, “All data and statistical and non-statistical information collected, verified, and processed by central and local bodies, public services and institutions, public and private undertakings and other entities shall be presented according to their gender structure.”

The majority, (69 percent) of Kosovar women are not present in the labor force of rural regions, where three out of four women are not formally employed.⁷³

According to Ministry of Labor and Social Welfare data, 287,265 persons are on the Ministry’s list of registered unemployed, 45.5 percent of whom are women. Only 36 percent of women are in gainful employment, versus 59 percent of men. Women are principally employed in the public sector, as well as in educational and health institutions. About 50 percent of the staff of these sectors are women.⁷⁴

Women account for 60 percent of the unemployed, which means that about twice as many women are out of work as are formally employed (about 30 percent). By contrast, the ratio of unemployed men (48 percent) is approximately the same as that of men in gainful employment (52 percent).⁷⁵

In 2001 72.6 percent of Kosovar women were classified as economically non-active persons, whilst the figure for female unemployment for the same year stood at 69.9 percent.⁷⁶

The following statistical information was presented at the Conference on Women in the Economy, convened in Pristina in November 2001: women account for 70 percent of people living in poverty in Kosovo; 50 percent of girls aged between 15 and 18 attend secondary schools, compared with 75

⁷¹ Cf., the Decision of the Kosovo Government No.4/170, October 11, 2005 that approves the All-Inclusive Action Plan for Application of the Antidiscrimination Act

⁷² The Kosovo Action Plan for Achieving Gender Equality, 27

⁷³ Empowering the citizen: challenges and opportunities: Report of the human development Kosova. 2004. Published by United Nations Development Program, Pristina, Kosovo

⁷⁴ Strategy for Empowering Women in Political Decision Making. Pristina, Kosovo. June 18 and 19, 2004), 210.

⁷⁵ Refer to Office of Gender Affairs-UNMIK. 2003. Žene i muškarci na Kosovu (Women and men in Kosovo), Pristina, 108.

⁷⁶ Ibid., 81.

percent of boys the same age. Women own a mere 6 percent of Kosovo businesses, even as the number of women business owners rose by 150 percent in 2004. Unemployment rates for women were 65-70 percent higher than for men.⁷⁷

The renowned gender equality activist Igballe Rogova said in her introductory comments to “Strategy for Empowering Women in Political Decision Making” that “Forging ahead step by step, and on the path of cooperation between men and women, our women will attain the positions that we as women want, that is, decision making positions.”⁷⁸

4.2. Women after maternity leave in the labor market

There is no research in Kosovo on the status of women in the labor market once they reenter the labor force after maternity leave.

The length of the maternity leave in Kosovo’s Civil Service is set forth in Article 23.1 of Administrative Direction 2003/02 implementing UNMIK Regulation No.2001/36 on the Kosovo Civil Service as follows: “Female civil servants are entitled to twelve (12) weeks paid maternity leave for the birth of each child, paid at the normal rate of the salary, on fact of motherhood being certified by a recognized medical practitioner. At the request of the civil servant, additional unpaid maternity leave may be granted, at the discretion of the employing authority, subject to a maximum of an additional forty (40) weeks.”

In the absence of an institutionally organized child-care system, in particular the lack of kindergartens for children over 40 weeks old, has a detrimental effect on women’s decision to return to work, being, as they are, often compelled to choose between their job and taking care of their children.

4.3. Discriminatory job advertisements

Article 13.2 of GEA provides that “Vacancies shall be available equally for women and men.” Paragraph 3 of Article 13 elaborates further: “Announcement of job vacancies shall not contain any words or expressions that might give rise to gender discrimination. This paragraph shall not be applicable to cases where such announcements or declarations are published to achieve gender balance in a certain professional sector, provided however that such intention is clearly stated in therein.” Further, paragraph 4 of Article 13 stipulates that “Selection criteria and conditions for vacancies in any field or sector, and at all professional levels in the private and public sector alike shall take gender equality into account.”

Administrative Instruction No. MPS/DCSA 2003/01 on Recruitment Procedures sets forth recruitment procedures vis-à-vis advertised jobs listings, herein including the following statement that must be included in all job listings for the Kosovo Civil Service: “The Kosovo Civil Service serves all the people of Kosovo and welcomes applications from all men and women, as well as from all Kosovar communities.”

⁷⁷ Women in Economy (Completed by the Kosovo Women Network, Women NGO-s, International NGOs and International Governmental Organizations), 39.

⁷⁸ Rogova, Igballe 2004 Introductory word. Strategy for empowering women in political decision making. Pristina, Kosovo, June 18 and 19, 2004, 135.

The Ministry of Public Services, the Department of Civil Services Administration (DCSA), and the Independent Supervisory Council of Kosovo are institutions that oversee the Civil Services in Kosovo. They have the mandate to supervise job recruitment procedures and job advertising in accordance of principle of non-discrimination. Additionally, they have the legal mandate to sanction noncompliance with the principle of nondiscrimination.

4.4. Sexual harassment

While Kosovar legislation has set forth the definition of sexual harassment at the workplace, there is a lack of policies to specifically address the issue of sexual harassment at institutions and organizations either in the private or the public sector.

For instance, the Civil Service of Kosovo, which has a staff of 70,000 employees, has no detailed policy or plan to define forms of sexual harassment and the responsibility of a person who commits such an act, nor does it inform victims of sexual harassment the complaint procedure therefore, despite Article 30.1(g) of Administrative Direction 2003/02 implementing UNMIK Regulation No.2001/36 on the Kosovo Civil Service, which stipulates that “Sexual harassment of another civil servant, defined as any verbal or physical conduct of sexual nature infringing the dignity of women and men at work that is unwelcome by or offensive to the recipient, which is made a condition of employment or which creates a hostile, threatening or intimidating working environment for that person.”

Further, no research is being conducted to map up the issue of sexual harassment in Kosovo, and no information on the subject is available to the public, whose awareness of the issue is inadequate.

SECTION 5

Conclusions. Areas of concern. Recommendations.

Conclusions

- The general principle of equal rights for women and men is guaranteed via Kosovo’s general legal framework.
- The principle of equal treatment for women and men is set forth explicitly in Kosovo’s national legal framework.
- The concepts of direct and indirect discrimination on grounds of sex are incorporated into the national legal framework.
- Harassment and sexual harassment are defined in the national legal framework as forms of sex-based discrimination.
- The national legal framework does not contain specific legal provisions to guarantee genuine and effective compensation for the loss and damages sustained by a person wronged by discrimination on the grounds of sex.

- There are no specific legal measures in Kosovo's legal framework to prevent job classification based specifically on the employee's sex.
- The Government Office for Gender Equality has no legal obligation to provide assistance to the victims of discrimination.
- Kosovo women continue to be discriminated against in the labor market, underrepresented in decision making bodies, and burdened with being the primary performers of unpaid domestic duties.
- Men have higher employment rates than women, more men than women are employed in executive jobs and positions of leadership.

Areas of concern

- Lack of compliance with existing legislation and the lack of functioning of institutional mechanisms for implementing the principle of equal opportunities in Kosovo.
- Lack of awareness and institutional policies to address the issue of sexual harassment at work.
- Lack of study, research, and statistical information on equal opportunities and on sexual harassment at work.
- Insufficient legal mechanisms to protect women once they return to their jobs after maternity leave, as well as insufficient legal protection for women on maternity leave in terms of making sure that they benefit, upon return to the labor force, from improvements in working conditions they are entitled to but made during their absence.

Recommendations

- To implement the Gender Equality Act and the Antidiscrimination Act, and to adopt appropriate statutory measures therefor.
- To explicitly incorporate into the draft for Kosovo's new Labor Code the principle of equal treatment for women and men.
- To explicitly apply the principle of equal treatment for women and men to guarantee equal access to employment, vocational training and promotion, and working conditions.
- To conduct research and collect statistical data on a continual basis with a view to monitoring equal access in professional training and educational opportunities, equal access to the labor market (both the private and public sector), as well as equal access to continuous job promotion.

- To make it a specific legal obligation of employers that they inform employees about the principle of equal opportunities for women and men.

III. PREGNANCY AND MOTHERHOOD PROTECTION

1. Council Directive 92/85/EEC of October 19, 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

2. Council Directive 86/613/EEC of December 11, 1986 on the application of the principle of equal treatment between women and men engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

Measures and improvements at work of pregnant workers, workers who have recently given birth or are breastfeeding

SECTION 1

Legal and conceptual framework

In Kosovo's legal order there exist no statutory provisions in conformity with Council Directives to define pregnant employee, employee who has recently given birth, and breastfeeding employee.

Kosovo legislation provides only general definitions thereof. A case in point is Article 2.5 of the Labor Act, which provides, "Discrimination, direct or indirect, against a female employee arising from her pregnancy or childbirth shall be prohibited. Article 19 of the said Act stipulates, "A female employee shall be entitled to at least 12 weeks paid maternity leave upon the birth of a child. This leave shall be regarded as working time and shall be paid by the employer at the rate of no less than two-thirds of the woman's earnings."

Further, Article 23.1 of the Administrative Direction 2003/02 implementing Regulation 2001/36 on the Kosovo Civil Service provides, "Female civil servants shall be entitled to twelve (12) weeks paid maternity leave at the birth of each child, paid at the normal rate of salary, upon the fact of motherhood being certified by a recognized medical practitioner. At the request of the civil servant, additional unpaid maternity leave may be granted, at the discretion of the employing authority, subject to a maximum of an additional forty (40) weeks." Article 23.3 sets forth the rights of female civil servants upon resumption of work after parental leave as follows: "After resumption of work, subsequently to paid or unpaid maternity leave, a female civil servant may be granted a total of two (2) paid hours reduction of working hours daily during the first six (6) months for breast feeding and one hour daily thereafter until the end of the ninth month after childbirth."

SECTION 2

Assessing the risk to the safety or health of a pregnant worker and employer's obligations

2.1. Assessing the risk to the safety or health of a pregnant worker

The aim of the Safety, Health, and the Working Environment Act is to prevent occupational injuries and disease at the work place and to protect the working environment.⁷⁹ Article 3 of the Act sets forth employee rights and responsibilities, under which said employees are entitled to occupational safety, health, and a safe and healthy working environment. Employees, for their part, are responsible for compliance with measures safeguarding occupational safety, health, and a safe and healthy working environment, for protecting their own safety and health as well as that of other persons affected by their work, and for proper use of safety and personal protection equipment, using them carefully and maintaining them in good working order. Employees are also responsible for ensuring the safety and health of all persons affected by their work.

Article 4 of the Safety, Health, and the Working Environment Act sets forth that “Employees under 18 years of age, pregnant women, and disabled persons shall not be assigned to particularly hard manual work, work beyond working hours, and night work.”⁸⁰

2.2. Employer's obligations

Article 2 of the Safety, Health and the Working Environment Act provides for employers' obligations and responsibilities. Accordingly, employers must create workplace conditions for their employees that comply with occupational safety, health, and working environment standards set forth in the Act. The employer will be liable for payment of any expenses associated with treatment of work-related accidents and illnesses. The establishment of a social security scheme for all employees funded by employers' contributions relieve them from paying transport expenses transfer. The employer is, under the Act, responsible for instituting all measures necessary for occupational safety, health, and a safe and healthy working environment, including the prevention of risks at work, offering information, training, provision and maintenance of machinery, instruments, equipment, tools, work premises and access to them. The employer is responsible for designing and implementing measures for occupational safety, health, and a safe and healthy working environment. Additionally, the employer must monitor the efficacy of such protective measures, and make improvements, as needed. A company with 50 or more employees must hire a part-time safety officer. A company with 250 or more workers must appoint a full-time safety officer. The employer must perform a detailed risk assessment for each workplace.

Article 2.7 of the Safety, Health and the Working Environment Act provides, “The employer shall inform the employee of dangers of the job performed by the employee. The employer shall inform as soon as possible the employee to be exposed to a high risk about the risks and appropriate protective measures in order to minimize said risk. In the event of immanent risk on his/her life and the life of other employees, the employer shall be allowed to enforce suitable countermeasures in the event that a supervisor is not present. Making consideration for training received and availability

⁷⁹ UNMIK Regulation 2003/33 on the Promulgation of the Act approved by the Kosovo Assembly on the Safety, Health and the Working Environment Act, Article 1, November 6, 2003

⁸⁰ Ibid.

of technical resources, employees shall not suffer detrimental consequences therefor, except in cases of flagrant negligence or deliberate sabotage. Article 15 of the Act sets forth fines of between €100 and €20,000 for employers who violate the Act's provisions.

SECTION 3

Cases in which exposure is prohibited for pregnant workers and workers who have recently given birth

Besides the general provisions that regulate safety and health at work, Kosovo's legal order does not set forth specific provisions to guarantee occupational safety and health for pregnant or breastfeeding women.

SECTION 4

Night Work

In Kosovo, work performed between 10 a.m. and 5 p.m. is regarded as night work. Kosovo's legal order does not provide for the transfer of women working night shifts prior to their pregnancy to a daytime job during their pregnancy or when they are breastfeeding.

SECTION 5

Maternity leave and time off for ante-natal examination

Women in Kosovo are entitled to a maternity leave of 12 weeks in both the public and private sector. While in the public sector women can take off time for antenatal checkups at full pay, in the private sector they are entitled to at least two-thirds thereof. International organizations present in Kosovo have their own regulations on work and employment. Labor Acts on the books in Kosovo do not currently provide for paternal leave for a male employee to take care, either at birth or subsequently, of his baby.

In Kosovo the term "paternal leave" is defined in Article 23 of the Administrative Direction 2003/2 implementing UNMIK Regulation 2001/36 on Kosovo Civil Service, which provides, "Female civil servants shall be entitled to twelve (12) weeks paid maternity leave at the birth of each child, paid at the normal rate of pay, upon the fact of motherhood being certified by a recognized medical practitioner. At the request of the civil servant, additional unpaid maternity leave may be granted, at the discretion of the employing authority, subject to a maximum of an additional forty (40) weeks." At the same time, "Male civil servants shall be entitled to two (2) days paternity leave at the birth of each child. At the request of the male civil servant, additional unpaid paternity leave may be granted, at the discretion of the employing authority, subject to a maximum of an additional five (5) days." Article 19 of the Essential Labor Act defines Maternity Leave and provides that "A female employee

shall be entitled to at least 12 weeks paid maternity leave upon the birth of a child. This leave shall be considered as working time and shall be paid by the employer at a rate of no less than two-thirds of the woman's pay."⁸¹

Pregnant employees have the right to regular prenatal checkups without any loss of pay if doctor visits must take place during working hours.

The frequency of the medical checkups during pregnancy varies. Based on the MNS questionnaire for Kosovo in 2001, 33.3 percent of pregnant women attend only one prenatal checkup during their pregnancy, 21.8 percent attend two, 19.9 percent attend three visits, and a mere 25.1 percent attend three or more, which is considered the optimal number of medical visits during pregnancy.⁸²

SECTION 6

Prohibition of dismissal and defense rights

Article 13.9 of the Gender Equality Act provides that "Employers take all necessary measures to enable women and men to fulfill both their professional and family obligations. In accordance with labor market requirements as well as employees' family needs, work schedules shall be organized in a manner that female employees can return to their previous posts after maternity leave, parental leave, abortion leave, sick leave, or after the time spent away from the job due to family emergencies or professional training."

Kosovo's legal order does not provide clear-cut legislative norms to prevent termination of the work contract of a pregnant woman, or of a mother with a child under three years old.

Kosovo's Provisional Criminal Code provides for legal retribution in cases of dismissal or denial of women labor rights, as set forth in Article 182: "Whoever knowingly fails to comply with the law or a collective contract relating to employment or labor relations, pay or other income, the length of working hours, vacation or absence from work, protection of women, children or disabled persons, or overtime work or night shifts, and in this way denies or restricts the rights to which an employee is entitled shall be punished by a fine or imprisonment of up to one year."⁸³

⁸¹ Article 23 Administrative Direction 2003/2 implementing UNMIK Regulation 2001/36

⁸² Strategy for the Empowerment of Women in Political Decision-Making. Pristina, Kosovo, June 18-19, 2004), 209.

⁸³ Article 182 Criminal Code

SECTION 7

Conclusions. Areas of concern. Recommendations

Conclusions

- The concepts of pregnant worker, worker who has recently given birth, and worker who is breastfeeding are not defined by the national legal framework.
- Besides general provisions concerning the protection of workers, Kosovo's national legal framework provides no special supplementary protective measures vis-à-vis working conditions for pregnant workers or working women who are breastfeeding.
- Kosovo's national legal framework does not provide a list of specific hazardous agents and working conditions to which pregnant workers and working women who are breastfeeding may not be exposed to under any circumstances in performing their work duties.
- The employer is not legally obliged to assess the nature, degree and duration of exposure to hazardous agents, processes and working conditions involving specific risks on the safety and health of pregnant and breastfeeding workers.
- In the event that any risk to the safety and health of pregnancy or breastfeeding comes to light, the national legal framework does not legally oblige the employer to take the necessary measures to temporarily adjust the working conditions and the working hours of the employees affected by such risks. Consequently, the national legal framework does not provide for the employer's obligation to transfer such employees to another job.
- Kosovo's national legal order does not provide statutory protections for pregnant workers, working women who are breastfeeding, and workers who have recently given birth from performing night work during pregnancy and for a period following childbirth.
- The duration of maternity leave lags behind the standard established by the EU Directives.
- National legislation in Kosovo does not set forth clearly defined legal norms to prevent dismissal of a pregnant woman or the mother of a child less than three years old.

Problematic Priorities

- Legislative norms related to women's health focus on the protection of reproductive functions but neglect reproductive rights.
- By EU legal standards for pregnancy and motherhood protection, Kosovo's legal protection of pregnant workers, working women who have recently given birth, and workers who are breastfeeding are inadequate and largely confined to declarations without and follow up for implementation.

Recommendations

- To pass specific legislation to improve working conditions for pregnant workers, working women who have recently given birth, and workers who are breastfeeding. Pregnant workers, working women who have recently given birth, and workers who are breastfeeding must be considered a specific risk group, and measures must be taken with regard to their safety and health.
- Pregnant workers, working women who have recently given birth, and workers who are breastfeeding must be granted the right to maternity leave of at least 14 continuous weeks, allocated before and/or after confinement, and they must benefit from a compulsory maternity leave of at least two weeks, allocated before and/or after confinement.

IV. PROTECTION OF SELF-EMPLOYED WOMEN DURING THEIR PREGNANCY AND MOTHERHOOD

SECTION 1

National legal framework on self-employment. General provisions

Kosovo's national legislation does not clearly define the term self-employed person. However, the principle of equal treatment set forth under the GEA also applies to self-employed workers.

Kosovo's legal framework does not specifically set forth social rights for the spouses of self-employed workers.

SECTION 2

Social rights of spouses of self-employed workers

2.1. Formation of companies by spouses

Provisions in Kosovo's national legislation for setting up and registering a business enterprise apply to all, regardless of marital status.

2.2. Recognition of the work of spouses

Article 13.15 of the GEA provides, "Unpaid work of women and men shall be regarded as a contribution to the growth of family and society in cases of: a) care for family welfare; b) care for children; c) care for other members of the family; d) work in agriculture and the family economy, etc. The rights established by the present paragraph shall be implemented in compliance with social insurance legislation, policies, and other measures."

Article 15.8 of the GEA stipulates, "Joint work of spouses through which joint wealth is accumulated, shall be regarded as equal contribution towards the creation thereof."

2.3. The rights of self-employed workers whose operational activity is interrupted due to pregnancy and motherhood

Kosovo's national legislation provides no specific statutory provision for self-employed women whose operational activities have been interrupted due to pregnancy and birth.

Self-employed women do not have social insurance coverage and Kosovo's social legislation does not comply with the provisions of equivalent EU Directives.

SECTION 3

Legal means of redress

Article 8.1 of Kosovo's Antidiscrimination Act provides, "In the event that a person who considers himself/herself wronged due to an employer's failure to comply with the equal treatment principle in his/her situation substantiates before court of law or other competent authority, the fact of direct or indirect discrimination, the defendant shall bear the burden of proof to establish that no breach of said principle had occurred."

SECTION 4

Related research and statistics

4.1. Social perception of self-employed women and men

Kosovar women are almost totally absent from new developments in the country's economy, including the establishment of small businesses. Statistical data from June 2002 show a very small number of businesses registered by women owners (6.1 percent), which is 1.1 percent lower than in 2001. According to the type of business activity, the majority of businesses owned by women are financial services (15.2 percent), educational services (15 percent), health and social protection (10 percent), and retail and wholesale commerce (8.2 percent).⁸⁴

No statistical information is available in Kosovo either on the number of self-employed women and men, or on couples who co-own businesses.

4.2. Research on women and agriculture

Kosovo remains primarily a rural country with almost 60 percent of the population living in rural areas prior to the war of 1999. According to 2001 data, men account for 52 percent of the rural population, women for 48 percent. Only 14 percent of people in rural domestic economies are actively employed, with the number of formally employed men three times higher than that of formally

⁸⁴ Refer to Office of Gender Affairs-UNMIK. 2003. Women and men in Kosovo, Pristina, 114.

employed women. In consequence, the majority of the unemployed are presumably engaged in agriculture or other temporary economic activities.⁸⁵

As members of farming families, women make a special contribution to family earnings by participating in a great deal of manual agricultural labor. Statistical information published in 2001 shows that women's labor accounts for 20 percent of the care of livestock, 37 percent of vegetable production, 84 percent of raising poultry, 82 percent of child care, 79 percent of care for the elderly, and up to 96 percent of cooking and cleaning. Women are less involved in working on the land. Ninety percent of land cultivation is done by men, with women's role mainly a symbolic one in this area.⁸⁶

The lack of gender equality in the rural economy is understandable if we factor in the reality that men predominantly own principal economic resources such as the land, housing, and equipment. Men also, for the most part, control rural finances. Women only play a very formal role in financial decision making.⁸⁷

4.3. Research on the status and rights of self-employed women

There is no research on the status and rights of Kosovo's self-employed women.

Kosovar women working in the public sector have more rights than women working in the private sector or self-employed women. Self-employed women and unemployed women do not have social protection. Kosovo's legal order is thus incompatible with EU Directives for this category of workers.

SECTION 5

Conclusions. Areas of concern. Recommendations

Conclusions

- The concept of self employed workers is not defined in the national legal framework.
- The national legal framework does not specifically refer to the social rights of the spouses of self-employed workers.
- Kosovo's national legislation sets the same rules for setting up business companies for all, regardless of marital status.
- There is no contributory social security system for self-employed workers in Kosovo. Spouses of self-employed workers are not able to join a contributory social security scheme voluntarily.

⁸⁵ Ibid., p.120

⁸⁶ Ibid., pp.122-123

⁸⁷ Ibid., p.126

- There is no statistical information in Kosovo with respect to the number of self-employed women.
- There is lack of research and statistical information on the rights and status of self-employed women during pregnancy and after childbirth.

Area of concern

- Inadequate social protections for self-employed women

RECOMMENDATIONS

- Kosovo's national legislation needs to be harmonized with EU legal standards in the area of self-employment.
- Kosovo's national legislation needs to be harmonized with EU directives.
- Institutional mechanisms for enforcing the Gender Equality Directive and the Antidiscrimination Act need to be beefed up and appropriate statutory provisions for their implementation need to be adopted.
- A new Labor Act is needed to clearly set forth the principles for equal treatment in the work place; likewise, provisions for the principle of equal pay for equal work or for work of equal value also need to be enacted.
- The Collective Contract, signed by the Tripartite Council – the Kosovo Government, the Independent Trade Union of Kosovo, and the Kosovo Chamber of Commerce - needs to be implemented and completed with new provisions in conformity with EU directives.
- Unions need to adapt to the new conditions created in Kosovo so they be able to take effective measures vis-à-vis working conditions, social security, and implementation of the principle of equal treatment in the work place and that of equal pay for work of equal value.
- Research studies and monitoring of enforcement of applicable law, in particular the enforcement of the equal treatment principle in the work place need to be initiated and conducted by the government in cooperation with civil society.
- The applicable law for publishing an Official PISG Gazette with the final official texts of laws to be enforced.
- Information campaigns are needed to educate people about employee rights, particularly about the principle of equal pay for work of equal value and on that of equal treatment in the work place - to be conducted by the appropriate institutions, employers, and unions.
- Institutional and civil society. Stakeholders need to conduct studies and gather statistical data on a continuous basis for the monitoring of equal treatment in professional training and

schooling opportunities, as well as in employment (both in the public and private sector) as well as for continuous professional advancement.

- Kosovo's lawmakers need to make an effort to improve work standards for all employees instead of trying to change women.
- Legislation on maternity leave needs to be changed to provide 6 months instead of 12 weeks including the right for paternal leave with the supplemental provision that such leave must be available during the pregnancy and before the child is born. Additionally, the labor law should change accordingly to offer adequate and regular leave during working hours to allow working mothers to breastfeed their children.
- Public awareness campaigns on the problem of sexual harassment in the work place need to be initiated by the appropriate institutions and civil society.
- Effective policies and mechanisms against sexual harassment need to be drafted and enforced by the appropriate institutions both in the public and private sector.

Annex A-List of legislation drafted by the legislative authority

Annex B- List of documentation drafted

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List of Legislation Screened

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- UNMIK Regulation No.1999/1 of 25 June 1999 on the Authority of the Interim Administration in Kosovo
- UNMIK Regulation No.1999/24 of 12 December 1999 on the Law Applicable in Kosovo
- UNMIK Regulation No.1999/25 of 12 December 1999 amending UNMIK Regulation No.1999/01, On the Authority of the Interim Administration in Kosovo
- UNMIK Regulation No.2000/4 of 1 February 2000 on the Prohibition Against Inciting to National, Racial, Religious or Ethnic Hatred, Discord or Intolerance
- UNMIK Regulation No.2000/38 of 30 June 2000 on the Establishment of the Ombudsperson Institution in Kosovo
- UNMIK Regulation No.2000/45 of 11 August 2000 on Self-Government of Municipalities in Kosovo
- UNMIK Regulation No.2000/47 of 18 August 2000 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo
- UNMIK Regulation No.2000/54 of 27 September 2000 amending UNMIK Regulation 1999/01 of 25 July 1999, as Amended, on the Authority of the Interim Administration in Kosovo
- UNMIK Regulation No.2000/59 of 27 October 2000 amending UNMIK Regulation 1999/24 of 12 December 1999 on the Applicable Law in Kosovo
- UNMIK Regulation No.2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo
- UNMIK Regulation No.2001/19 of 13 September 2001 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo
- UNMIK Regulation No.2001/27 of 8 October 2001 on Essential Labor Act in Kosovo
- UNMIK Regulation No.2001/36 of 22 December 2001 on the Kosovo Civil Service
- UNMIK Regulation No.2002/18 of 4 October 2002 on the Establishment of the Office of the Auditor-General of Kosovo and the Audit Office of Kosovo
- UNMIK Regulation No.2003/4 of 21 February 2003 on the Promulgation of the Act adopted by the Assembly of Kosovo on the Labor Inspectorate of Kosovo

- UNMIK Regulation No.2003/8 of 15 April 2003 amending UNMIK Regulation 2000/38, on the Establishment of the Ombudsperson Institution in Kosovo
- UNMIK Regulation No.2003/25 of 6 July 2003 on the Provisional Criminal Code of Kosovo
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- UNMIK Regulation No.2004/18 of 7 July 2004 on the Promulgation of the Gender Equality Act in Kosovo adopted by the Assembly of Kosovo. Kosovo Assembly Act 2004/2 on Gender Equality
- UNMIK Regulation No.2004/32 of 20 August 2004 on the Promulgation of the Antidiscrimination Act adopted by the Assembly of Kosovo. Kosovo Assembly Act 2004/3 on Antidiscrimination
- UNMIK Regulation No.2005/15 of 16 March 2005 amending UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo
- UNMIK Regulation No.2005/25 of 12 May 2005 on the Promulgation of the Act on the Official Gazette adopted by the Assembly of Kosovo

UNMIK ADMINISTRATIVE DIRECTIVES

- Administrative Directive 2000/16 of 20 July 2000 implementing UNMIK Regulation 1999/1, as amended, on the Authority of the Interim Administration in Kosovo
- Administrative Directive 2001/23 of 14 December 2001 implementing UNMIK Regulation 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo
- Administrative Directive 2003/2 of 25 January 2003 implementing UNMIK Regulation 2001/36 on the Kosovo Civil Service
- Administrative Directive 2003/25 of 1 October 2003 implementing UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo

- Administrative Directive 2004/18 of 16 July 2004 implementing UNMIK Regulation. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government

KOSOVO GOVERNMENT REGULATIONS

- Government Regulation 1/2005 on the Work of the Government (Cleared Text)
- Government Regulation 2/2005 on the establishment and internal organization of the Office for Gender equality
- Administrative Instructions
- Prime Minister's Administrative Instruction 8/2005 on the description of tasks for the Human Rights Unit (11 August 2005)
- Administrative Instruction MPS/DCSA 2003/01 recruitment procedures
- Administrative Instruction MPS /DCSA 2003/02 contract procedures
- Administrative Instruction MPS/DCSA 2003/03 probation period procedures
- Administrative Instruction MPS/DCSA 2003/05 procedures for complaint
- Administrative Instruction MPS/DCSA 2003/06 procedures for the interruption of work relations
- Administrative Instruction MPS/DCSA 2003/10 leave procedures
- Administrative Instruction MPS/DCSA 2003/12 procedures for equal opportunities
- Administrative Instruction 2005/01 MPS Rules of work for the Independent Supervisory Council of Kosovo
- Administrative Instruction 2005/02 MPS Rules and procedures for complaints to the Independent Supervisory Council of Kosovo

International documents as part of the Constitutional Framework:

- Universal Declaration on Human Rights;
- European Convention for the Protection of Human Rights and Fundamental Freedoms and Its Protocols;
- International Convent on Civil and Political Rights and its Protocols;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- United Nations' Convent on Children's Rights;
- European Charter for Regional or Minority Languages;
- European Framework Convent ion for the Protection of National Minorities.