

JUDICIAL AND EXTRAJUDICIAL STRUCTURES ON HUMAN RIGHTS PROTECTION IN THE REPUBLIC OF KOSOVO

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Abstract

For as long as Kosovo is not a member of the UNO and other mechanisms yet, the latter cannot ratify international conventions on human rights. But, in its constitution (Chapter II, fundamental rights and freedoms), Kosovo has included international agreements and instruments which guarantee the principles and values of human rights and fundamental rights. Kosovo has a wide range of judicial and extrajudicial structures, be it at the central level or else at the local level, whose primary mandate should be advancement and protection of fundamental human rights and freedoms set forth by the Constitution, laws and sub-legal acts. Apart from these structures, there are also other institutions and bodies which could contribute directly or indirectly in fulfilling different obligations in meeting the standards set for the human rights, for instance in the field of good leadership, the rights of minorities and that of inclusion of gender-related aspects.

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1. Introduction

The fair trial right as a procedural right is different from the other guarantees of the substantial protection of the human rights, such as: the right for not being tortured or the freedom of expression and are subject of their interpretation regulations. Therefore, the rights for a fair trial do not fully comply to their categorization as absolute rights, nor as rights that allow for limitations.² Protection of human rights, therefore, starts but does not end with the right for fair trial.³

Judicial structures are composed of the regular judges – with competence in the field of the civic, penal and public right as well as acts that may have a full effect in exercising the human rights. It can also be a means for ensuring those rights.

2. Role of judicial structures

The system of the regular courts is composed of the Supreme Court as the highest judicial instance including Court of Appeals, Kosovo Agency for Immovable Property and Special Chamber of the Supreme Court, followed by the Court of Appeals, seven basic courts and twenty branches of the basic courts Kosovo wide⁴.

The competence of the Supreme Court is two-fold⁵:

- *The first one, it is authorized to decide upon harmonization of laws, provisions and the status of the municipalities based on the Constitution by a request of the Assembly of Kosovo, the President of the Republic, the Government and Institutions as protectors of the citizens of Kosovo (KPI);*
- *Besides, the Constitutional Court may decide upon the issues related to elections, extraordinary situations, referendum and agreements (by the request of the Assembly of Kosovo, the President of the Republic and the Government), for constitutionality of laws or other acts related to municipalities (by the request of municipality⁶).*

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² <http://slynn-foundation.org/wp-content/uploads/2016/03/Albania-HR-Manual-Albanian-Version.doc.>, consulted on 1.02.2021.

³ R. Clayton de H. Tomlinson *Fair Trial Rights*, Oksford: OUP, 2001.

⁴ Law no L-199 on Courts, (2010) and its amendments <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2700>, consulted on 1.02.2021. Law no. 04/L-171, (2012). Since January 4, 2013, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2862>, consulted on 1.02.2021.

⁵ Proposals of reforms outside the judicial institutions on human rights in Kosovo, (2014), General director's office on human rights and governmental rights of the Council of Europe, <https://rm.coe.int>, consulted on 1.02.2021.

⁶ Article 113.4 of the Constitution. https://www.kqz-ks.org/wp-content/uploads/2017/12/KUSHTETUTA_E_REPUBLIK%C3%8BS_S_S%C3%8B_KOSOV%C3%8BS.pdf, consulted on 1.02.2021.

The function of the courts in each functioning democracy is to enable rule of the right respectively human rights and freedoms. In order for the requirements to be met for such an effort, Law on courts has been amended and supplemented since its entry into force. The courts are organized as a part of three - phase design:

- *The lower degree is composed of seven basic courts spread in entire territory with an annex for an easier access.*

- *The Court of Appeals is used as a second degree and*

- *The Supreme Court which is responsible for unanimous interpretation of law⁷.*

The independent judicial system plays the most important and the main role in effective compensation when the human rights have been violated. Another important aspect of providing effective liability is that the national courts have the expertise for the courts as well as the technical capacity and deal with that violation of the fundamental human rights and freedoms. This way of dealing with this all also includes development of the human rights, publication of trials and providing citizens with access, ease for initiating such a judicial procedure, training of the personnel on the international standards as well as recognition of subjective human rights during court trials.

The Constitution of Kosovo obliges the institutions of Kosovo including their courts to make use of the judicial practice of the European Court on human rights as a basis for dealing with the fundamental human rights and freedoms constitutionally. Nevertheless, the judicial practice is not directly effective within the Kosovo Judicial System. Kosovo citizens cannot present a complaint in the court in Strasburg if they believe their rights have been violated by the state. Yet, a person may argument that interpretation of law or freedoms of the local courts have violated the constitution if the decision does not include reference to the explicit content of the court practice of the European Court on Human Rights.

2.1. The role of the extrajudicial structures

The spread of extrajudicial structures which deal with the human rights is much wider than the spread of the judicial structures. Their roles vary from the development of sector policies through implementation and promotion, transfer, compensation for the violation to submission of reports. According to the rule, every structure has more than one particular role.

Out of all these structures, the following can be considered more important authorized structures⁸:

- *Civic Protection Institution (CPI);*
- *Good leadership office (GLO), human rights, equal opportunities and nondiscrimination; and*
- *Gender Equality Agency (GEA)⁹.*

Out of these institutions, the Civic Protection Institution is the only independent institution whereas the other two institutions operate under the cabinet of the Prime Minister.

The Civic Protection Institution has the authorization set forth by the Constitution and law which should be followed by deal with and protect the rights of the individuals from the illegal or unfair procedures or omissions by the public bodies. The institution:

- *Conducts investigation;*
- *Announces reports;*
- *Entails existence of problems through media;*
- *Provides judicial services;*
- *Deals with public representation of the human rights¹⁰.*

It also solves issues related to individual petitions submitted directly to the Civic Protection Office as well as it may process complaints independently without the complaints or petitions being

⁷ Ismajli, Dr.sc Sedat & Leka, Dr. sc. Shkumbin, *Human Rights*, OM, Prishtine, p. 388.

⁸ Proposal of reforms of extrajudicial institutions on Human Rights in Kosovo, (2014), General director office on human rights and Government rights of the Council of Europe, <https://rm.coe.int>.

⁹ <https://rm.coe.int/16806a853c>, consulted on 1.02.2021.

¹⁰ Ismajli, Dr.sc Sedat & Leka, Dr. sc. Shkumbin, *op. cit.*, p. 388.

applied (this means according to the official duty). If, during the investigation, it finds out that human right has been violated, the Institution, through different channels, may legally recommend respective bodies to undertake acts or mediate in the contests between the appellant and the respective bodies. In extreme cases, the Institution is authorized to apply for a temporary measure in order to offer protection to the appellant. In order to enable everyone, access to the institution, including the members of minority communities, their lawyers pay regular visits to the municipalities, prisons and detention centers¹¹. He may request that the Constitutional Court approves the decision for the constitutionality of the law, decree, regulation or the municipal act¹².

The Office for Good Leadership (OGR), human rights, equal opportunities and nondiscrimination plays a revisor and advise-giving role related to the work of Government in four fields specified explicitly in their name. The office:

- *Plays the given role in building capacities of public representation by enabling creation of other mechanisms, organize public awareness raising campaign as well as involve in the civic society.*
- *Apart from this, the office should play the role of the Secretary Office as well as Coordinating unit for different government bodies and mechanisms, as well as serve as a secretary office for a number of committees and national advice within the scope of human rights and good leadership. The role of the office also includes responsibilities in giving directions on the works of the units for human right at central or at municipal level.*

Gender Equality Agency is responsible for:

- *Supervision on implementation of gender equality law;*
- *Development and proposal of policies in sectors to the central level institutions as well as;*
- *Content of the awareness raising campaigns for provision of gender equality and representation.*

The director of the Agency is also the chair of the Inter-ministry board for gender equality from all the ministries. This board is authorized to supervise implementation of the program on gender equality in Kosovo and give recommendations for drafts laws that affect gender equality¹³.

3. Conclusion

Extrajudicial structures on human rights have given particular contribution in ensuring human rights in Kosovo, especially when it comes to development of action plans and review, if not solution, individual complaints. Yet, one thing remains important on human rights-related issues that no one has solved, or they have not been corrected substantially as well as lack of the feeling of some victims whose rights, given by the Constitution or other mechanisms, have been violated and those rights should have been ensured.

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¹¹ Articles 132-135 of the Constitution (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>, consulted on 1.02.2021); Law no. 03/L-195 on Ombudsperson, (2010) (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2704>, consulted on 1.02.2021).

¹² Ismajli, Dr.sc Sedat & Leka, Dr. sc. Shkumbin, *op. cit.*, p. 389.

¹³ Gender Equality Agency was established in February 2005 as 'Office for Gender Equality' in accordance with the law no. 2004/2 on Gender Equality in Kosovo, (2004) <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2457> (consulted on 1.02.2021). The office has become an agency since September 1,2006. See regulation no. 16/23 on organizative structure of the Prime Minister's office, (2013) <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8695>, (consulted on 1.02.2021) on the current duties and responsibilities of the GEA.