

The Treatment of Discrimination Cases in the Republic of Kosovo under the European Convention on Human Rights and the National Legal Framework

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ABSTRACT

The treatment of discrimination cases in judicial practice and the relationship between normative acts represent the implementation of the principle of non-discrimination. The relationship between the European Convention on Human Rights and the legal acts of the Republic of Kosovo are the main basis for resolving discrimination cases. The European Convention on Human Rights has been incorporated into the Constitution of the Republic of Kosovo as an international instrument, while regarding the rule of law on the issue of discrimination, Kosovo also applies other laws that enable the guarantee and respect of the principle of non-discrimination. Our study emphasizes the treatment of discrimination cases in practice in the Republic of Kosovo, and how such cases are resolved on the basis of the ECHR and the legal framework. But, is there a relationship between the relationship between the ECHR and other laws in the Republic of Kosovo?! To what extent is the principle of non-discrimination truly established as a constitutional principle? The well-integrated relationship between international acts and local laws reflects the path to achieving solutions to discrimination cases.

Keywords: digital capitalism, modern myth, Ernst Cassirer, philosophy of symbolic forms, symbolic literacy

INTRODUCTION

The entirety of binding rules within the European Union (EU) and the Council of Europe aimed at combating discrimination—through EU legislation and the national laws of European states—demonstrates the emergence of a coherent "European Law" that is effectively operational. This body of law functions both within the EU and in the positive legal systems of its Member States, as well as in those of the Council of Europe and the countries aspiring toward European integration.

The implementation of European Law, particularly in the field of anti-discrimination, is not confined to EU and Council of Europe Member States; rather, this obligation extends to all European countries, regardless of their membership status. In this context, the enforcement of the European Convention on Human Rights (ECHR) in cases of discrimination has become increasingly prevalent among judges and prosecutors. Its application has

become the norm across many European legal systems, often being employed even when not explicitly invoked by the parties involved.

The practical application of the ECHR by judicial institutions provides an opportunity to build a consistent body of case law that enhances our understanding of how protection against discrimination is achieved through this legal framework. As a result, the national legislations of European countries are increasingly oriented toward establishing legal foundations that ensure ongoing legal certainty in the protection against discrimination.

In conducting this study, a variety of methodologies will be employed to explore legal interpretations and resolve conceptual dilemmas. In addition to analytical and comparative approaches, the research also incorporates the examination of practical case studies.

Equality, Discrimination, and Forms of Discrimination

The concept of equality is rooted in the very nature of humanity, encompassing individuals as legal subjects differentiated by gender, social group, and status. Logically, distinctions have always existed and will continue to exist, as absolute equality in the material world is unattainable. Nevertheless, when referring to equality, it is essential to account for the specific characteristics of each legal subject, with the aim of balancing the protection of fundamental human rights and freedoms.

Equality is defined by shared features among individuals who make decisions. Human society is structured along gender lines, with each gender possessing unique rights related to their biological attributes. For example, women have specific rights related to pregnancy and childbirth. However, there are also universal rights applicable to all, such as the right to work, family life, and professional development. Ensuring equality, therefore, requires the identification of comparable criteria among individuals and circumstances that may be aligned. (Tutulani, 2013)

In the context of employment, equality begins with the announcement of job vacancies, continues through recruitment processes, and extends to the formal establishment of the employment relationship, all without discrimination. The principle of gender equality in employment must be reflected from the moment positions are advertised. Bias can emerge when job postings imply gender exclusivity—for example, requiring only “secretaries,” “assistants,” or “architects” without inclusivity.

Further, assessing gender equality in employment also involves examining how employment contracts are initiated and terminated. Disparities are particularly evident in the case of women, especially concerning contract extensions, working conditions, and fulfillment of job responsibilities. For instance, women are often disproportionately affected by layoffs, frequently losing their jobs due to company downsizing or restructuring. In some cases, dismissals occur through vague, unsubstantiated decisions that violate labor regulations

DISCRIMINATION

When discussing discrimination, it is essential to first address its origin, meaning, and definition. The term originates from the Latin word *discriminatio*, which denotes preferential treatment in behavior. Fundamentally, discrimination refers to prohibited forms of differentiation. In sociological terms, it is the marginalization or devaluation of foreign or minority groups within a particular society. More broadly, discrimination involves the unfair or prejudicial treatment of individuals or groups based on characteristics such as race, gender, age, or sexual orientation.

Beyond academic definitions and legal interpretations, discrimination is often rooted in societal values, levels of education (both individual and collective), hegemonic tendencies, and the pursuit of individual or group goals. In essence, discrimination reflects both structural and interpersonal inequality.

Discrimination entails making or recognizing arbitrary distinctions among individuals, often driven by irrational suspicion or animosity. It typically targets specific groups such as women, or racial, ethnic, religious, and national minorities. While some international human rights instruments do not offer a single, unified definition of discrimination, most include provisions explicitly prohibiting it.

For instance, the Convention on Discrimination in Employment and Occupation (1958) defines discrimination in Article 1 as follows:

(a) Any distinction, exclusion, or preference based on race, color, sex, religion, political opinion, national or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

(b) Any other distinction, exclusion, or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, as may be determined by a Member State following consultation with representative organizations of employers and workers.

The European Convention on Human Rights (ECHR), under Article 14, prohibits discrimination in the enjoyment of the rights recognized by the Convention, although it does not offer an explicit definition of the term.

Article 14 is not considered a standalone provision on non-discrimination, which led to the adoption of Protocol No. 12. Article 1 of this protocol introduces a general prohibition of discrimination, extending the protection beyond the rights specifically enumerated in the ECHR to include all legal acts by public authorities and institutions of state parties.

The territorial application of Protocol No. 12 is formalized through a declaration made by the signatory state upon ratification, as administered by the Secretary General of the Council of Europe. Through this mechanism, the protocol ensures broader protection against discrimination within the jurisdiction of each state party.

A "discriminated person" refers to an individual or group denied rights guaranteed by domestic law or international legal instruments. Discrimination often begins with social or legal distinctions based on origin and is perpetuated by discriminatory rules, practices, or conditions that violate legal standards. In more extreme cases, individuals subjected to discrimination may also face lynching, social exclusion, ridicule, suppression, or threats (Official Gazette, 2015).

Causes of Discrimination

At its core, discrimination reflects a distortion of equality: unequal access for equals, and equal access for unequals. In employment, discrimination may manifest in various forms based on individual characteristics—such as race, political affiliation, physical appearance, or gender.

For example, hiring practices in retail often specify gender preferences, favoring either male or female sales associates, despite the fact that such positions can be performed equally well by both sexes. This type of gender-based preference undermines the principle of equality in employment.

A concerning trend in Kosovo relates to gender bias in job advertisements. According to a study analyzing 6,225 job titles posted on the "Kosovajob" platform in 2022, 59% of postings contained gender stereotypes. Among them, 73% used coded masculine language, while 27% used coded feminine language (GAP Institute, 2023).

Forms of Discrimination

When discussing forms of discrimination, it is important to note that legal protection mechanisms vary across countries. Not all states have adopted comprehensive anti-discrimination legislation. For instance, Switzerland has not enacted a Law on Obligational Relationships and has not ratified certain international conventions, such as the UN Convention on the Rights of Migrant Workers and Their Families or specific ILO norms. In the absence of such laws, Switzerland relies on collective labor agreements—such as those for the railway (SBB/CFF), postal services, Swisscom, and the construction sector (LMV/CN/KPZ)—negotiated with trade unions (Council of Europe, 2017).

Discriminatory practices can emerge in various aspects of daily life, both public and private. These include—but are not limited to—employment, education, healthcare, access to services, and political participation. Thus, understanding the multiple forms of discrimination is vital for crafting effective legal responses and advancing equality in practice.

Direct Discrimination

Direct discrimination arises when an individual or group is treated less favorably due to a particular personal characteristic, compared to others in the same or a similar situation. This form of discrimination is characterized by an explicit and direct connection between the action or omission and the protected characteristic. In other words, the discriminatory treatment is motivated by the individual's inherent trait, resulting in their placement in a disadvantaged or unfavorable position.

Example:

A judge nearing retirement is denied participation in judicial training, despite their expressed interest. The justification provided by the president of the Basic Court is that judges close to retirement do not require training, as it is not in the institution's interest. Such reasoning deprives the individual of professional development and constitutes direct discrimination based on age.

Indirect Discrimination

Indirect discrimination occurs when seemingly neutral provisions, criteria, or practices put certain individuals or groups at a disadvantage due to their personal characteristics. Unlike direct discrimination, which involves

explicit differential treatment, indirect discrimination manifests in rules or practices that appear impartial but, in practice, result in unequal outcomes.

The aim of regulating indirect discrimination is to ensure equitable access to material resources and opportunities to enjoy fundamental rights and freedoms. It may target not only natural persons but also legal entities.

Is Every Difference Discrimination?

Not all differences constitute discrimination. Discrimination refers specifically to unjustified and unnecessary distinctions that lead to the denial or restriction of fundamental rights. Societal distinctions based on objective differences—such as physical ability, biological sex, or the nature of the work performed—do not inherently amount to discrimination if the differentiation is reasonable and proportionate.

Examples:

- Reserved parking or accessible infrastructure for individuals with disabilities.
- Gender-specific sports competitions and facilities due to physical differences.
- Equal rewards and recognition for women's sports teams advancing in competitive leagues, despite different structures.

Such distinctions are based on legitimate aims and do not constitute discriminatory treatment

Legal and Judicial Mechanisms for Protection from Discrimination in Kosovo

The legal foundation for anti-discrimination in Kosovo is firmly embedded in the Constitution of the Republic of Kosovo, which directly incorporates international human rights instruments. The Constitution recognizes human rights and fundamental freedoms as indivisible, inalienable, and inviolable, forming the cornerstone of the legal order. Article 22 ensures the direct applicability of international human rights agreements, while Article 24 explicitly guarantees protection from discrimination (Kushtetuta e Republikës së Kosovës, 2008).

Further elaboration is provided by Law No. 05/L-021 on the Protection from Discrimination, which defines various forms and types of discrimination in Article 4. This law applies universally to public and private institutions, which are held accountable for both actions and omissions that violate the rights of individuals or legal entities.

Complementary Legal Instruments Include

- The Law on Gender Equality, which ensures equal treatment regardless of gender.
- The Criminal Code of Kosovo, particularly Article 141, which criminalizes incitement to hatred, division, and intolerance, explicitly including gender identity and sexual orientation as protected categories. The maximum penalty under this article is five years of imprisonment.

The Labour Law of Kosovo is grounded in ILO Conventions, EU legislation, and the principles of an open labor market. Both direct and indirect discrimination in employment are prohibited. However, challenges persist due to informality in the labor market, which often leads to job insecurity and violations of workers' rights.

The Labour Law, enacted in 2010, regulates employment relations, defines employee rights and employer responsibilities, and addresses issues such as family planning and special protections for pregnant and breastfeeding women. Nevertheless, it remains subject to criticism for several gaps:

- Lack of comprehensive provisions on sexual harassment, which is a recognized form of direct gender-based discrimination.
- Insufficient mechanisms for enforcement, leaving the Labour Inspectorate and other institutions under-resourced.
- Inadequate maternity leave compensation, which does not fully meet the socio-economic needs of working mothers.

Concerns Regarding Parallel Legal Procedures

An additional legal challenge arises when both administrative and judicial procedures are pursued simultaneously. Such practice may compromise legal certainty, especially when administrative bodies delay responses, prompting applicants to initiate parallel court proceedings due to perceived judicial backlog.

This issue has led to the contestation of Article 94 of the Labour Law, which is evaluated against the principles of:

- Equality before the Law (Articles 3 and 24)
- Right to a Fair and Impartial Trial (Article 31)
- Right to Work and Professional Engagement (Article 49)
- Judicial Protection of Constitutional Rights (Article 54)

(See: Judgment of the Constitutional Court of Kosovo, GJK-KO27/21-AKGJ, 2022).

Administrative Institutions

The Role of the Ombudsperson

The Ombudsperson Institution of Kosovo plays a central role in promoting equality and combating discrimination. Its mandate includes not only the protection of fundamental rights but also the active investigation, issuance of recommendations, and participation in judicial proceedings as *amicus curiae* in cases involving discrimination and inequality. According to the Law on Protection from Discrimination, the Ombudsperson is recognized as the competent authority for the examination of discrimination complaints, in line with its legally established responsibilities.

Institutional Mechanisms for Protection Against Discrimination

Pursuant to Government Regulation No. 03/2017 on Institutional Mechanisms for Protection from Discrimination in Government and Municipalities, a set of institutional mechanisms have been established to strengthen the infrastructure for the prevention and elimination of discrimination at both central and local levels:

- Office for Good Governance (OGG);
- Units for Protection from Discrimination within Ministries;
- Anti-Discrimination Officers in Municipalities;
- Office for Gender Equality (subsequently transformed into the Agency for Gender Equality);
- Officers for Gender Issues in Ministries and Municipalities;
- Inter-Ministerial Working Group for Human Rights and Gender Equality;
- Human Rights Units at the Ministry and municipal levels.

These mechanisms aim to ensure effective implementation of anti-discrimination policies and foster equal treatment through administrative oversight and proactive engagement.

Legal Procedure and Burden of Proof

Under Law No. 2004/3 Against Discrimination, both administrative and judicial bodies are competent to review complaints related to discriminatory practices. Kosovo also recognizes mediation as a post-war innovation and alternative dispute resolution mechanism. In discrimination cases, mediation may be pursued if both parties consent, in accordance with the Law on Mediation. This approach can expedite resolution and reduce the burden on courts.

Importantly, in cases of alleged unequal treatment brought before administrative or judicial bodies, the burden of proof lies with the respondent, who must demonstrate that there has been no violation of the principle of equal treatment.

Employment Discrimination and Institutional Challenges

Although the Constitution and Kosovo's legal framework formally guarantee equal treatment in employment relationships, practical implementation remains problematic. The Law on Gender Equality prohibits discrimination in hiring and promotion processes across all levels of the employment hierarchy. However, reports from civil society organizations indicate persistent discriminatory practices in job advertisements, particularly in the private sector, which often specify gender preferences—contrary to legal standards.

Gender-Coded Language in Job Descriptions

Job advertisements frequently use gendered language that perpetuates occupational stereotypes. For instance, job titles such as civil status officer, registration officer, transport officer, or cashier are often linguistically coded in masculine forms, while administrative or assistant roles may be gender-coded as feminine. This subtle form of indirect discrimination can deter individuals from applying and reinforces traditional gender roles. A notable example includes the Secretary General of the Ministry of Industry, Entrepreneurship and Trade (MINT), where the job description uses explicitly masculine-coded terminology, potentially discouraging female applicants.

Delays in Judicial Protection and Disparities in Public Employment

Long-standing delays in court proceedings and legal uncertainties in the implementation of laws, such as the Law on Salaries, continue to undermine the effective enforcement of anti-discrimination provisions. One critical area is the inequity in salaries among employees with equal qualifications and in the same roles.

Example of Salary Discrepancies

Employees promoted before and after the entry into force of the Law on Salaries are subject to different compensation schemes, despite identical duties, schedules, and qualifications. Such inconsistencies often arise from the transition phase of legal reforms, revealing systemic weaknesses in harmonizing new legislation with existing employment contracts and regulations.

Legal instruments implicated in such cases include:

- The Labour Law of Kosovo;
- Law on Protection from Discrimination;
- The Statute of the University (in cases involving academia);
- The Regulation on Appointment, Reappointment and Promotion of Academic Staff;
- Employment contracts and relevant administrative guidelines.

Judicial Practice and ECHR Standards

The domestic jurisprudence on non-discrimination in Kosovo remains limited, often due to the reluctance of victims to pursue lengthy and uncertain court procedures. In some cases, a judicial decision has taken nearly a decade:

- Basic Court of Prishtina, Case No. C.nr.1265/19 – Lawsuit filed on 12.10.2010; settlement reached on 06.02.2020. The case concerned compensation for workplace discrimination. The protracted timeline illustrates the broader issue of inefficiency and undermines public confidence in the judiciary (Commission, 2022).
- Basic Court of Prishtina, Case No. C.nr.744/15 – Lawsuit filed on 27.03.2015; preparatory session held on 09.08.2019; still pending second-instance review as of the latest data. This delay violates the right to a trial within a reasonable time, as guaranteed by Article 6 of the European Convention on Human Rights.

Kosovo's judicial system continues to suffer from case backlogs and insufficient judicial capacity, significantly affecting the timely resolution of discrimination claims. The European Court of Human Rights has consistently held that unjustified delays in proceedings constitute violations of fundamental rights, as illustrated in *Hamitaj v. Albania* (ECtHR, 2023).

Scope of the European Convention on Human Rights and Freedoms

The European Convention on Human Rights (ECHR) primarily guarantees civil and political rights, including the right to life, privacy, family life, freedom of expression, thought, conscience, and religion. However, through the jurisprudence of the European Court of Human Rights (ECtHR), the scope of the Convention has gradually expanded to also encompass certain economic and social rights, especially when these are linked to civil and political dimensions (Fribergh & Kjaerum, 2010).

When cases of discrimination arise, Article 14 of the ECHR becomes central. Although it does not provide a general guarantee of non-discrimination, it ensures that all rights and freedoms set forth in the Convention are enjoyed without discrimination. Therefore, for Article 14 to apply, the claim must relate to the enjoyment of another substantive right under the Convention. Yet, the ECtHR has established that even in the absence of a violation of a substantive right, it may still find a violation of Article 14 if the issue falls within the ambit of a right protected by the ECHR (see *Thlimmenos v. Greece*, 2000).

Relationship with EU Law and the EU Charter of Fundamental Rights

While the EU Charter of Fundamental Rights explicitly prohibits discrimination (Article 21), its application is limited to matters within the scope of EU law. The European Union does not possess autonomous enforcement power over its Member States in areas where no competence has been delegated. This means that the Charter is only binding when Member States are implementing Union law (Article 51 of the Charter). Consequently, there exists a fragmentation of legal protection across the EU when it comes to anti-discrimination guarantees, depending on whether an issue falls within or outside EU competence.

Protocol No. 12 to the ECHR: Toward a General Prohibition of Discrimination

A significant advancement in the scope of non-discrimination under the ECHR was achieved with the adoption of Protocol No. 12, which entered into force in 2005. Unlike Article 14, which is accessory in nature, Protocol No.

12 introduces a freestanding prohibition of discrimination, applicable to the enjoyment of any right set forth by law, including rights under national legislation. Article 1 of the Protocol provides:

“The enjoyment of any right set forth by law shall be secured without discrimination on any ground...”

This extension means that even public authorities (as defined under paragraph 2 of Article 1) must refrain from discriminatory conduct, irrespective of whether the right in question is recognized by the ECHR or arises solely from national law (Council of Europe, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 177, 2005). However, not all Member States of the Council of Europe have ratified Protocol No. 12, resulting in unequal levels of protection across Europe.

Interaction with EU Anti-Discrimination Legislation

The EU Racial Equality Directive (2000/43/EC) is another cornerstone in the European anti-discrimination framework. It prohibits discrimination based on racial or ethnic origin in employment, education, social protection, and access to goods and services. Referred to as a “horizontal directive”, its influence extends across various sectors. However, unlike Protocol No. 12, its scope is limited to specific grounds (race and ethnic origin) and specific areas, leaving gaps in protection for other categories such as age, religion, or sexual orientation outside the workplace.

Material Rights and the Prohibition of Discriminatory Treatment

The ECHR and its protocols create a foundation for a comprehensive human rights framework, where the right to life, dignity, privacy, and non-discrimination are interlinked. The principle that human life is inviolable and that any arbitrary deprivation of life is strictly prohibited underscores the importance of legal protection. Furthermore, inhuman or degrading treatment, slavery, and forced labor are expressly forbidden under Articles 3 and 4 of the ECHR.

Discrimination in the workplace may also intersect with prohibitions on inhuman treatment, especially in cases involving modern slavery or extreme forms of exploitation. The ECtHR has recognized that states have positive obligations to protect individuals from such treatment, even when the abuse is committed by private actors (*Siliadin v. France*, 2005).

Diplomatic Immunity and Discrimination: Emerging Challenges

Another complex legal issue arises when discriminatory practices intersect with the doctrine of diplomatic immunity, governed by the Vienna Convention on Diplomatic Relations (1961). According to Article 31, diplomats enjoy immunity from civil and criminal jurisdiction. However, emerging jurisprudence has suggested that diplomatic immunity may not constitute an absolute shield in civil cases of severe labor rights violations, especially in cases of exploitation and discrimination against domestic workers. This evolving approach reflects a broader understanding of non-derogable human rights, which cannot be nullified by diplomatic status alone.

CONCLUSION

The Republic of Kosovo, as a new and evolving democracy, has demonstrated its formal commitment to the protection of human rights and fundamental freedoms through its constitutional and legal framework, which incorporates key international human rights instruments. Article 7 of the Constitution of Kosovo declares the state to be based on the principles of equality and respect for human dignity, while Article 22 incorporates directly into domestic law international human rights treaties, including the European Convention on Human Rights (ECHR) and its protocols.

Building upon this normative foundation, Kosovo has adopted several key legal instruments that address the prohibition of discrimination. The Law on Protection from Discrimination offers broad legal safeguards against discriminatory practices in both the public and private sectors, extending protection to all persons irrespective of ethnicity, origin, religion, gender, or other status. Additionally, the Law on Gender Equality enshrines the principle of equal treatment between women and men as a universal legal standard.

Despite these normative advances, practical implementation remains a significant challenge. Discriminatory practices, especially in employment and public sector recruitment, continue to be among the most frequently reported violations. Complaints of unequal treatment during hiring processes—ranging from job announcement procedures to final candidate selection—highlight persistent gaps between legal norms and institutional practice. This is particularly concerning in public institutions, where neutrality and meritocracy should be pillars of governance.

The Labor Law of Kosovo, which explicitly prohibits discrimination at every stage of the employment relationship, is often underutilized or unevenly enforced. Mechanisms for addressing violations—whether administrative, civil, or criminal—are available but are often perceived as ineffective, overly bureaucratic, or subject to political influence.

In this regard, decisions from the European Court of Human Rights (ECtHR) offer important guidance and comparative insight. While Kosovo is not yet a member of the Council of Europe and thus not under the direct jurisdiction of the ECtHR, its case law provides interpretative authority that can and should inform domestic judicial and administrative practice. Similarly, the Constitutional Court of Kosovo and regular courts have a crucial role in applying these principles, especially in cases of discrimination in employment and access to public services.

In sum, Kosovo has formally aligned itself with international human rights standards but must do more to translate legal commitments into effective practice. This includes:

- Strengthening institutional accountability mechanisms;
- Enhancing judicial independence and efficiency in adjudicating discrimination claims;
- Promoting public awareness and legal literacy on anti-discrimination protections;
- Systematically integrating ECHR jurisprudence into the reasoning of Kosovo's domestic courts.

Only through such multi-level reforms can Kosovo ensure not just *de jure* equality, but also *de facto* protection of human rights and fundamental freedoms for all its citizens

Research Objectives

1. To analyze the effectiveness of Kosovo's legal and institutional mechanisms in combating discrimination: This objective seeks to evaluate the practical functionality of Kosovo's domestic legal instruments, such as the Law on Protection from Discrimination and the Law on Gender Equality, as well as the performance of institutional bodies like the Ombudsperson, courts, and labor inspectorates. The goal is to determine whether these frameworks and institutions provide real, accessible, and enforceable protection against discriminatory practices, especially in the public sector.

2. To assess how European standards, particularly the ECHR and Protocol No.12, influence national practices: This objective focuses on exploring the normative and practical impact of European human rights instruments—specifically Article 14 of the European Convention on Human Rights and Protocol No. 12—on Kosovo's legal system. It examines the extent to which these instruments are incorporated into Kosovo's constitutional order, interpreted by national courts, and reflected in administrative decision-making and legal enforcement practices.

3. To identify gaps in the implementation of anti-discrimination laws, with focus on employment practices: This objective aims to identify and critically assess the shortcomings in the enforcement of anti-discrimination laws, particularly in the field of employment. Special attention is paid to discriminatory job postings, unequal treatment in recruitment and promotion, and judicial or administrative inefficiencies that hinder victims' access to justice. It also considers the mismatch between the legal framework and its day-to-day application by public institutions and courts

METHODOLOGY

This study employs a qualitative legal research approach, integrating multiple methods to ensure a comprehensive analysis of both the normative framework and its practical implementation in Kosovo. The methodological tools are outlined as follows:

Doctrinal (normative) legal analysis: A systematic review and interpretation of relevant international and domestic legal instruments was undertaken to establish the normative basis for non-discrimination protections. This includes the European Convention on Human Rights (ECHR)—especially Article 14 and Protocol No. 12—the Kosovo Constitution (notably Articles 7 and 22), and key domestic legislation such as the Law on Protection from Discrimination, the Law on Gender Equality, and the Labor Law. This analysis aims to identify the rights guaranteed under these instruments and the duties they impose on state institutions.

Case study method: Selected case law was examined to explore how anti-discrimination norms are interpreted and applied in practice. This includes judicial decisions from the Basic Court in Pristina (e.g., Case C.nr.1265/19 and C.nr.744/15) and key rulings of the European Court of Human Rights (ECtHR), particularly the case of *Hamitaj v. Albania* (2023), which concerns the right to a fair trial within a reasonable time. These case studies illustrate both the enforcement challenges and the judicial reasoning in matters involving discrimination and procedural rights.

Comparative analysis: A comparative perspective was used to evaluate how Kosovo's legal and institutional mechanisms align with EU standards on anti-discrimination, including the EU Charter of Fundamental Rights, the

Racial Equality Directive (2000/43/EC), and broader European human rights norms. This comparative lens helped contextualize Kosovo's progress and highlight gaps relative to regional best practices.

Documentary analysis: A wide range of official and non-governmental reports were reviewed, including:

Regulations such as the Regulation No. 03/2017 on Institutional Mechanisms for Protection from Discrimination; Annual and thematic reports by the Kosovo Ombudsperson Institution; European Commission Progress Reports on Kosovo (2022–2023);

Reports by non-governmental organizations (NGOs) active in the fields of gender equality, labor rights, and human rights. **Sources and materials:** Both primary and secondary legal sources were consulted. Primary sources included:

- o Decisions of Kosovo's courts, particularly in cases involving labor disputes and claims of unequal treatment;
- o Constitutional provisions and national legislation;
- o Judgments of the ECtHR relevant to the right to non-discrimination and procedural fairness.

Secondary sources included

- o Legal commentaries and academic publications;
- o NGO policy papers on discrimination in employment;
- o EU institutional reports evaluating Kosovo's alignment with European human rights standards.

Through this multi-method approach, the study aims to offer a detailed picture of both *de jure* and *de facto* protection from discrimination in Kosovo, enabling a critical assessment of existing gaps and recommending measures for improving legal and institutional performance in line with European standards.

Key Findings

1. Normative Alignment with ECHR:

- o Kosovo's Constitution incorporates the ECHR and its core human rights instruments as directly applicable law (Article 22).
- o The Law on Protection from Discrimination and the Law on Gender Equality provide a modern legal basis for equality.

2. Institutional Gaps in Implementation:

- o Administrative institutions, including the Ombudsperson and anti-discrimination units, have limited enforcement capacity.
- o Mediation is underutilized, despite legal provisions supporting its use in discrimination cases.

3. Employment Discrimination is Pervasive:

- o Gender-based job descriptions and unequal salaries persist in both public and private sectors.
- o Legal recourse is hindered by slow court procedures, discouraging victims from pursuing justice.

4. Judicial Practice Lags Behind Legal Standards:

- o Domestic case law on discrimination remains weak due to long case durations and limited precedents.
- o Kosovo courts are slowly adopting ECtHR standards, but delays (e.g., cases pending for nearly a decade) violate the right to a fair trial.

DISCUSSION

The findings of this study underscore the existence of a solid normative framework in the Republic of Kosovo for the protection against discrimination, largely aligned with European standards, particularly those of the European Convention on Human Rights (ECHR) and its Protocol No. 12. However, the implementation of this framework remains inconsistent, particularly in the area of employment discrimination, which continues to be among the most prevalent forms of unequal treatment reported.

Firstly, Kosovo's legal framework, including the Constitution and laws such as the Law on Protection from Discrimination and the Law on Gender Equality, provides comprehensive protection against discrimination on various grounds. These laws are directly informed by international human rights norms, particularly Article 14 of the ECHR and the broader guarantees of Protocol No. 12, which extends the prohibition of discrimination beyond the rights enumerated in the Convention to include all rights guaranteed by law. However, the practical enforcement of these provisions suffers from limited institutional capacity, lack of proactive monitoring, and insufficient public awareness.

The analysis of case law reveals a systemic issue in the judiciary—namely, the delays in adjudicating discrimination cases, which undermine the right to an effective remedy. Cases such as C.nr.1265/19 and C.nr.744/15 demonstrate that victims of discrimination often wait for years to receive a decision. This violates the principle of a “reasonable time” as guaranteed by Article 6 of the ECHR and reaffirmed by the ECtHR in *Hamitaj*

v. Albania (2023). These delays discourage victims from initiating legal proceedings and contribute to a climate of impunity for discriminatory practices, especially in public sector employment.

Furthermore, the gender dimension of employment discrimination in Kosovo remains critical. Although legal norms prohibit gender-based discrimination in recruitment and promotion, gender-coded job descriptions, the use of masculine language in vacancy announcements, and disparities in salary among employees of the same rank persist, particularly in public institutions and universities. The current Law on Salaries has generated further inequality by creating discrepancies in pay between professors promoted before and after the law's entry into force, despite their equal qualifications and job responsibilities. This is a clear deviation from the principle of equal treatment, as guaranteed by both domestic and international law.

Institutional mechanisms, including the Ombudsperson Institution, Office for Good Governance, and Human Rights Units in ministries and municipalities, play a key role in promoting equality. However, their impact is limited by insufficient authority, lack of follow-up mechanisms, and inconsistent coordination among various bodies. While the Ombudsperson has been active in issuing recommendations and acting as *amicus curiae*, the implementation of its recommendations remains non-binding and often ignored by public authorities.

In terms of alignment with European Union standards, Kosovo has made legal progress but still lacks full approximation with the EU Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC). Unlike many EU Member States, Kosovo has not yet established specialized independent equality bodies with legally mandated enforcement powers. The country also has not ratified Protocol No. 12, which, although referenced in the legal discourse, is not legally binding within its domestic system.

The study also notes a lack of strategic litigation and low public trust in legal institutions, both of which hinder the effectiveness of anti-discrimination enforcement. There is an urgent need for capacity-building in the judiciary, training for public officials, and greater engagement from civil society organizations to monitor and report discriminatory practices, especially in areas such as employment, education, and access to public services.

In summary, while Kosovo has adopted a progressive legal framework on paper, its practical implementation is uneven, marked by institutional weaknesses, judicial delays, and limited public accountability. These gaps not only affect individuals' access to justice but also undermine the broader principle of rule of law and equal treatment, which are essential for Kosovo's democratic consolidation and European integration.

Contribution to the Field

This article contributes significantly to the fields of human rights law, comparative constitutional law, and European legal harmonization, with a specific focus on post-conflict and transitional societies such as Kosovo.

Firstly, the paper provides a comprehensive legal and institutional analysis of Kosovo's anti-discrimination framework. By assessing both national legislation and institutional mechanisms, the study presents a clear picture of how Kosovo addresses discrimination in theory and in practice. This goes beyond the traditional normative approach, integrating doctrinal, institutional, and case-based methods to offer a multidimensional understanding of the challenges and gaps in the current system.

Secondly, the article serves as a bridge between international standards and national implementation, particularly in the context of Article 14 of the European Convention on Human Rights (ECHR) and Protocol No. 12. The analysis highlights how these instruments, although formally recognized, are inconsistently applied in Kosovo's legal and judicial practice. This is especially relevant for scholars and policymakers examining how European human rights standards are operationalized in non-EU countries aspiring to EU integration.

Thirdly, the paper adds to the field by examining concrete jurisprudence, both from the courts of Kosovo and the European Court of Human Rights (e.g., *Hamitaj v. Albania*), offering an empirical layer that is often missing in theoretical or abstract studies. These case analyses demonstrate how institutional delays, gendered job descriptions, and inconsistent salary structures contribute to structural discrimination—insights that are essential for reform initiatives.

Moreover, the study makes a forward-looking contribution by offering practical policy and institutional recommendations, such as:

- Strengthening the role and independence of the Ombudsperson and equality bodies;
- Expanding the use and accessibility of mediation and conciliation procedures in discrimination cases;
- Improving judicial training and awareness on the ECHR's anti-discrimination standards;
- Ensuring better implementation and enforcement of employment laws in both public and private sectors.

Lastly, this paper contributes to comparative constitutional discourse by demonstrating how a young constitutional democracy like Kosovo navigates its obligations under international human rights law. It highlights the importance of not only adopting legal norms but also ensuring their effective implementation through institutional accountability, political will, and public awareness.

In sum, the article offers both diagnostic and prescriptive value—identifying what works, what does not, and what reforms are needed. This makes it a valuable resource for legal scholars, practitioners, civil society actors, and international organizations working on equality, access to justice, and democratic consolidation in the Western Balkans and beyond.

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