

LAW No. 05/L-021

ON THE PROTECTION FROM DISCRIMINATION

Assembly of Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

LAW ON THE PROTECTION FROM DISCRIMINATION

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

1. The purpose of this law is to establish a general framework for prevention and combating discrimination based on nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds, in order to implement the principle of equal treatment.

2. This law is in accordance with Council Directive 2000/43/EC of 29 June 2000 on implementing the principle of equal treatment between persons regardless of racial or ethnic origin of the Council of the European Union, Council Directive 2000/78/EC of 27 November 2000 on establishing a general framework for equal treatment in employment and occupation of the Council of the European Union, Council Directive 2004/113/EC of 13 December 2004 on implementing the principle of equal treatment between men and women in the access to and supply of goods and services of the Council of the European Union, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on implementation of the principle of equal opportunities and equal treatment of men and women related to employment and occupation (amended) of the European Parliament and the Council of the European Union.

Article 2

Scope

1. This law applies to all acts or omissions, of all state and local institutions, natural and legal persons, public and private sector, who violate, violated or may violate the rights of any person or natural and legal entities in all areas of life, especially related to:

1.1. conditions for access to employment, self-employment and occupation, including employment conditions and selection criteria, regardless of activity and at all levels of the

professional hierarchy, including promotions;

1.2. access to all types and levels of vocational guidance, vocational training, advanced vocational training and re-qualifications, including internship experience;

1.3. conditions of employment and working conditions, including discharge or termination of the contract and salary;

1.4. membership and involvement in organizations of workers or employers or any organization whose members exercise a particular profession, including the benefits provided for by such organizations;

1.5. social protection, including social assistance scheme, social security and health protection;

1.6. social advantages;

1.7. social amenities, including but not limited to humanitarian aid;

1.8. education;

1.9. access to housing, which is available to the public, and the access to other forms of property (movable and immovable);

1.10. access to and supply of goods and services which are available to the public;

1.11. fair and equal treatment in court proceedings and all other authorities administering justice;

1.12. access and participation in science, sports, art, services and cultural activities;

1.13. personal insurance;

1.14. participation in public affairs, including the right to vote and the right to be elected;

1.15. access to public places and

1.16. any other rights provided for by the legislation in force.

Article 3

The concept of discrimination

1. The principle of equal treatment shall mean that there shall be no discrimination, direct or indirect in the sense of any of the grounds set out in Article 1 of this Law.

2. Discrimination is any distinction, exclusion, restriction or preference on any ground specified in Article 1 of this law, which has the purpose or impact of depreciation or violation of the recognition, enjoyment or exercise of human rights and fundamental freedoms guaranteed by

the Constitution and other applicable legislations of the Republic of Kosovo.

Article 4

Types of unequal treatment

1. Types of unequal treatment are as follows:

1.1. **Direct discrimination** - shall be taken to have occurred where one person is treated less favourably than another is, has been or would be treated in a comparable situation based on one or more grounds such as those stated in Article 1 of the Law;

1.2. **Indirect discrimination** - is considered when a provision, criterion or impartial practice in appearance, has or will put the person in an unequal position compared with others, according to one or more of the grounds set out in Article 1 of this Law, unless the provision, criterion or practice can be objectively justified by a legitimate purpose and the means of achieving that purpose are appropriate and necessary;

1.3. **Harassment** - shall be deemed to be discrimination, when an unwanted conduct (including but not limited to unwanted conduct of sexual and/or psychological nature), which has the purpose or effect of violating the dignity of the person and of creating an intimidating, hostile, degrading, humiliating or offensive environment based on the grounds set out in Article 1 of this Law;

1.4. **Incitement to discrimination** - shall be prohibited when it amounts to promoting hatred based on one or more of the protected grounds listed in Article 1. of this law and when done intentionally;

1.5. **Victimization** - is deemed discrimination on the grounds set out in Article 1 of this Law, and occurs when a person suffers an adverse or negative consequences in response to a complaint or non-complaint (started procedures) or actions in order to apply the principle of equal treatment or when such person provides information, evidence or assistance in relation to the complaint procedure in case of discrimination;

1.6. **Segregation** - is deemed discrimination on the grounds set out in Article 1 of this Law including the protection of every individual who does not participate in a discrimination complaint but which is thought to have made it which occurs when a person or persons separated from others by natural persons, legal entities, or a combination of both, public sector, private sector or both, and this separation is done on one of the grounds defined in Article 1 of this law;

1.7. **Discrimination based on association** - is deemed discrimination on the grounds set out in Article 1 of this Law, targeting people who do not belong to a particular group but are third parties that are associated with those groups;

1.8. **Failure of a reasonable adaptation/accommodation for persons with disabilities** - in accordance with their specific needs, is deemed discrimination on the grounds set out in Article 1 of this Law, unless when is an undue burden on the person who is obliged to provide and this is not in contradiction with the legislation in force, by considering due to this purpose such factors as the use of available public resources, participation in social and public life and ensuring access to the workplace and suitable working conditions;

1.9. **Discrimination based on perception** - shall be considered discrimination according to Article 1 of this Law placement of targeted persons who do not belong to a certain group, but third persons who are percept that belong to the group;

1.10. **Multiple discrimination** occurs when discrimination is based on any combination of the grounds covered by this law. Multiple discrimination and multiple grounds shall be construed accordingly.

2. Violation of the principle of equal treatment of basis mentioned in Article 1, of this Law shall be deemed to be discrimination.

Article 5

Severe forms of discrimination

Discriminatory behaviour that is motivated by more than one ground or which is committed more than once, or which has lasted for a long period of time or had harmful consequences especially for the victim, is considered severe form of discrimination.

Article 6

Other justified treatments

Notwithstanding Articles 3 and 4 of this law it is not deemed a discrimination a distinction in treatment which is based on differences provided on grounds of Article 1 of this Law, but which as such represents real and determinant characteristic upon employment, either because of the nature of professional activities or of the context in which such professional works are conducted, if that provision, criterion or practice is justified by a legitimate purpose and there is a reasonable relationship of proportionality between the means employed and the targeted aim.

Article 7

Affirmative actions

1. Affirmative actions are undertaken measures in order to prevent or compensate unfavourably groups or persons related to any of the grounds specified in Article 1 of this Law.

2. Affirmative action may apply, including but not limited in cases of:

2.1. targeted group shall be underrepresented in the corresponding position;

2.2. underrepresented group candidate must have the same qualifications as those of his/her counter candidate in terms of eligibility, ability and professional performance;

2.3. application of each candidate undergoes an objective assessment which must take into account all the criteria that are typical to each individual candidate;

2.4. giving priority to underrepresented group candidate cannot be automatic and unconditional but, can be ignored if the specific reasons for an individual candidate may be in his/her favour.

3. Affirmative actions are not considered discrimination under this law and shall apply only until

the achievement of the purposes for which those measures are set.

Article 8

Responsibilities of institutions of the Republic of Kosovo

All institutions should act in accordance with the principles of this Law during the exercise of their duties and drafting of policies and legislation.

Article 9

Ombudsperson

1. The Ombudsperson is state institution for equality, for promotion and protection of human rights. The Ombudsperson shall handle cases related to discrimination under the relevant Law on Ombudsperson.

2. The Ombudsperson has the following competences:

2.1. receives and investigates submissions of persons, gives opinions and recommendations on concrete cases of discrimination;

2.2. provides assistance to victims of discrimination during preparation of complaints from discrimination and provides essential information to persons who have filed a complaint for discrimination with regard to their rights, obligations and opportunities of the court, as well as other protective tools;

2.3. the Ombudsperson shall have an authority to investigate or act on any claim filed or with self-initiative (ex-officio) when there is reason to suspect that there has been discrimination by public entities;

2.4. addresses directly to investigation and prosecution bodies with a request to initiate an investigation of criminal offenses and requires to initiate the applicable disciplinary proceedings;

2.5. informs the public about cases of discrimination and undertakes measures to promote equality, human rights and non-discrimination;

2.6. monitors the implementation of this law and initiates the amendments of provisions for implementation and advancement of protection from discrimination;

2.7 provides advices, guidance and support to subjects of public and private sector, on best practices in the promotion of equality, adapting to diversity and combating discrimination on the grounds covered by the relevant Law on Gender Equality and this Law, and shall provide recommendations to take measures to promote equality, adapting to diversity and /or combating discrimination;

2.8. provides advices, support and guidance to non-governmental organizations and social partners on good practices and effective to combating discrimination and promoting equality, in particular organizations dealing with issues of equality and non-discrimination;

- 2.9. provides opinions to draft normative acts on the protection from discrimination;
- 2.10. collects statistical and other data, conducts studies, researches and trainings regarding discrimination;
- 2.11. cooperates with social partners, non-governmental organizations that deal with the promotion and protection of human rights, with other countries respective mechanisms dealing with the promotion and protection of human rights, and with institutions and religious communities registered in the Republic of Kosovo;
- 2.12. submits the report at least once a year, to the Assembly of the Republic of Kosovo on the implementation of this Law and can also draft special reports related to its implementation;
- 2.13. Ombudsperson may be presented in the quality of a friend of the court (*amicus curiae*) in proceedings related to issues of equality and protection from discrimination;
- 2.14. may draft the Codes of Good Practices for combating discrimination and promoting equality, which, can be used as a reference point in cases of discrimination.

Article 10

Promotion and cooperation for the advancement of human rights

1. The Office for Good Governance within the Office of the Prime Minister, for implementation of this law, is responsible to:
 - 1.1. provide advices to the Government, on issues related to protection from discrimination and the promotion of equality;
 - 1.2. monitor implementation of the Ombudsperson`s recommendations;
 - 1.3. shall draft policies, strategies and action plans on issues of protection from discrimination;
 - 1.4. provide opinions on draft legislation prepared by the Government, in accordance with the applicable standards of human rights and good governance practices, in cooperation with the Legal Office of the Office of the Prime Minister and advises and provides recommendations to the Prime Minister and relevant Ministries in accordance with circumstances;
 - 1.5. collect statistical and other data, establish Data Bases for main vulnerable groups, conducts studies, researches and trainings on issues related to protection from discrimination;
 - 1.6. cooperate with respective governmental bodies from other countries, and international organizations on issues of protection from discrimination;
 - 1.7. submit report annually, to the Government of the Republic of Kosovo, on implementation of this Law and may also draft special reports on its implementation;
 - 1.8. cooperate and support other institutions of the Republic of Kosovo to draft and implement action plans for equality and non-discrimination, equality integration and initiatives to promote equality and combat discrimination.

2. The Government establishes cooperation with non-governmental organizations which are interested on contributing to protection from discrimination with emphasis in the promotion of equal treatment principle.

Article 11

Institutional mechanisms for protection from discrimination in the Ministries and Municipalities

1. All ministries and municipalities are obliged to assign the appropriate unit or official to coordinate and report on the implementation of the Law.

2. Government according to the proposal of the Office on Good Governance, with the secondary legislation shall determine the method of coordination, reporting and cooperation with the Office on Good Governance, institutional mechanisms for protection from discrimination.

CHAPTER II

PROCEDURES IN THE COMPETENT BODIES

Article 12

Complaints against discrimination to the Ombudsperson

1. Any person or group of persons may file a complaint to the Ombudsperson regarding the discriminatory behaviour on the grounds mentioned in Article 1 of this law.

2. Submission and treatment of a complaint from discrimination, by the Ombudsperson, are conducted in accordance with the procedures specified in the Law on Ombudsperson.

3. Submission of an appeal to the Ombudsperson it is not a condition to file a lawsuit and does not constitute an obstacle to the injured party to address the court or criminal prosecution bodies.

4. Associations, organizations or other legal entities may initiate or support complaints on behalf of the claimants, with their consent, to develop procedures at the Ombudsperson.

Article 13

Lawsuits on discrimination disputes

1. Any person or group of persons, who claim that they have been discriminated on the grounds mentioned in Article 1 of the Law, may submit a lawsuit in the competent court.

2. Associations, organizations or other legal entities may initiate or support legal procedures on behalf of the claimants, with their consent, for the development of administrative or judicial procedures foreseen for the implementation of obligations set in this law.

Article 14

Court Procedures

1. The lawsuit is submitted to the competent court pursuant to the legislation in force, by the person or group of persons who complain of being discriminated on the grounds set out in Article 1 of this Law.
2. The Basic Court in Pristina is competent for non-resident persons, whether they are temporary or permanent.
3. The subjects may submit lawsuits on discrimination pursuant to this law, not later than five (5) years from the day the damaged party becomes aware of this violation.
4. The plaintiff may defend the case of discrimination by the use of any evidence and legitimate method, including but not limited to, statistical data that may prove discriminatory behaviour.

Article 15

Accountability

1. Any action carried out by a person during employment, in any case submitted based on this Law, shall be treated, for the purposes of this Law, as if committed by an employer of a person, regardless, whether it is performed with or without the knowledge or approval of the employer.
2. In a case filed under this Law from the employer for an act allegedly committed by an employee of the employer, protection for the employer will prove that an employer has taken reasonable and practical steps to prevent the employee from performing that action or doing such actions.

Article 16

Actions in the contested procedure

1. Any person who claims to be a victim of discrimination, under the provisions of Article 1 of this Law, has the right to file suit against the defendant and to take all legal actions to the competent court.
2. The Court after receiving relevant facts and arguments, verifies that the respondent has committed discrimination actions or non-actions towards the plaintiff, may decide to:
 - 2.1. prohibit performing activities which violate or may violate the right of the defendant, or to compel the defendant to eliminate all discriminatory actions from the plaintiff;
 - 2.2. compensate the material or non-material damage caused by the infringement of the rights protected by this Law according to compensation on lawsuit;
 - 2.3. order temporary measures in accordance with the provisions of the relevant Law on Contested Procedure (if the plaintiff has proven credible, that his/her right for equal treatment is violated, and if deemed necessary to order a measure with the aim of eliminating the risk of irreparable damages, especially for severe violations of the right on equal treatment, or with the aim of preventing violence);

2.4. order a shorter deadline of execution than defined in the Law on Enforcement Procedure;

2.5. publish in the media the court decision, through which it is proven the violation of the right for equal treatment;

3. Unsatisfied party may file a complaint from the first instance decision within seven (7) days in the Court of Appeal according to the Law on Contested Procedure.

4. Requirements from paragraph 1. of this Article may be submitted together with the requirements for protection of other rights, on which is established a contested procedure, if all requests are mutually related and if the court has the same competence regarding thereto, notwithstanding whether for those requirements is determined a decision-making in a general or particular contested procedures.

5. The court upon decision related to the height of indemnity applies the relevant law on relations binding, while upon the execution of a final decision applies the provisions of the relevant Law on Enforcement Procedure.

6. Compensation includes, among others, correction of legal violations and their consequences, through a return to the previous situation, appropriate compensation for material and immaterial damages, or through other appropriate measures

7. During the determination of the amount of indemnity for immaterial damage, the court should consider whether the case involves serious forms of discrimination.

8. The court during the implementation of this law appropriately applies the relevant Law on Contested Procedure.

9. Judicial procedures in the cases of discrimination should be dealt urgently.

Article 17

Discrimination cases which constitute a criminal offense

Violations of the provisions of this Law, in cases of criminal offenses are punished according to the Criminal Code of the Republic of Kosovo.

Article 18

Discrimination cases affecting groups of people

1. Cases of discrimination affecting groups of people may be treated through a group actions undertaken on their behalf by a non-governmental organization or by the Ombudsperson, in such cases, the consent of the members of the group is not required.

2. These legal actions shall be submitted to the competent Court, by following allegations:

2.1. to decide that such behaviour has violated the right to equal treatment in relation to members of the group;

2.2. to stop conducting activities which violate or may violate the right to equal treatment, or

perform activities that eliminate discrimination or its consequences in relations to members of the group;

2.3. to publish in the media the decision which confirms the violation of the right to equal treatment with the respondent expenses.

3. In these proceedings, the Court decides according to the allegations in paragraph 2. of this Article and cannot request compensation for damages, but according to the judgement in the case of group action, person's part of the group in question may submit a claim and ask for compensation for damage.

Article 19

Reasonable accommodation on employment of persons with disabilities

1. In order to guarantee the principle of equal treatment in relation to persons with disabilities, reasonable accommodation in employment should be provided for persons with disabilities.

2. Employers should take appropriate measures when necessary in exceptional cases to enable the person with disabilities to have access, to participate or advance in employment, training, unless this measure constitutes a disproportionate burden for the employer.

Article 20

Burden of proof

1. When persons who consider that the principle of equal treatment has not been applied to them, submits before an administrative authority or a competent court, proofs from which it may be presumed that there has been direct or indirect discrimination.

2. Burden of proof shall be upon the respondent, who should prove that there has been no breach of the principle of equal treatment.

3. Paragraph 1. of this Article shall not apply to criminal and offense proceedings.

Article 21

Mediation or reconciliation procedure

Any mediation or reconciliation procedure envisaged by legislation in force may be used at the discretion of the applicant's request, to address violations according to this Law.

Article 22

Public contract

1. The public contract by a public authority should be declared invalid by the authority which shall declare the winners in those cases where the contractor in question has violated any of the provisions of this Law.

2. Any provision of a public contract which is contrary to the principle of equal treatment under this Law shall be repealed.

3. Any provisions opposing the principle of equal treatment, included in collective or individual agreements or contracts, internal rules of the agreement, rules governing profit-making or non-profit associations and rules regulating employers, employees and independent occupations organizations, are or may be declared invalid or altered.

Article 23

Offence provisions

1. A fine of four hundred (400) up to six hundred (600) Euros shall be imposed to natural entity for offense, who performs, calls for or instigates discrimination and assist in discriminatory activities, on the grounds of discrimination set out in Article 1 of this Law.

2. A fine of one thousand and fifty (1050) up to one thousand three hundred fifty (1350) Euros, shall be imposed to legal entity for offense, who while performing its activity calls for or instigates discrimination and assist in discriminatory activities, on the grounds of discrimination set out in Article 1 of this Law.

3. A fine of seven hundred fifty (750) up to one thousand and fifty (1050) Euros shall be imposed for offenses from paragraph 1. of this Article to person in charge of the legal entity, state and local institutions or a body with public authorization, or an individual who according to the registered profession shall perform certain activities on the grounds of discrimination set out in Article 1 of this Law.

4. A fine of four hundred fifty (450) up to seven hundred fifty (750) Euros shall be imposed to every person for offenses who conceals facts or information required by the Administrative body or the competent Court.

5. A fine of one thousand and fifty (1050) up to one thousand three hundred fifty (1350) Euros shall be imposed to every person for offenses who does not implement the decision of the Court based on grounds of discrimination set out in Article 1 of this Law.

6. A fine of four hundred fifty (450) up to seven hundred fifty (750) Euros shall be imposed to every person for offenses, who violates the dignity of certain person or for the creation, access or application of intimidating, hostile, humiliating or frightening environment.

7. A fine of four hundred fifty (450) up to seven hundred fifty (750) Euros shall be imposed to every person for offenses, who would bring in unfavourable condition the person who filed a complaint on discrimination or in any other form participated in the action for discrimination.

8. A fine of four hundred fifty (450) up to seven hundred fifty (750) Euros shall be imposed to every person for offenses, who purposely would bring in unfavourable condition a person who was a witness in the action for discrimination or has rejected the order for discriminatory behaviour.

9. The funds collected from fines shall be deposited in the Budget of the Republic of Kosovo.

Article 24

Individual responsibility

Any person is responsible under the provisions of this Law, when under his/her acts or omissions,

committed a discriminatory act under this Law. Individual responsibility shall not exclude the responsibility of state institutions or private legal person.

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

Article 25

Public awareness

1. Government shall be obliged to launch a promotion campaign and draft a program on public awareness related to this Law, by latest six (6) months upon the entry into force of this Law.
2. All institutions shall be obliged to publish on their websites the data regarding notification of citizens on their rights which they may accomplish in different competent institutions.
3. All public bodies shall publish on their websites information regarding the possibility to submit a complaint of the Ombudsperson regarding discrimination, by providing personal contact information.

Article 26

Issuance of secondary legislations

For implementation of this Law, the Government with the proposal of the Office on Good Governance and Legal Office, under the Office of the Prime Minister, adopts secondary legislations, within six (6) months after the entry into force of this Law.

Article 27

Repeal

1. This Law shall repeal:
 - 1.1. Law no. 2004/3 Against Discrimination;
 - 1.2. Provisions of UNMIK Regulation no. 2001/19 of 13 September 2001 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, which define the scope of the Advisory Office on Good Governance, Human Rights, Equal Opportunities and Gender Issues within the Office of Prime Minister of the Republic of Kosovo;
 - 1.3. Administrative Instruction No.8/2005 on description of duties of Human Rights Unit;
 - 1.4. Administrative Instruction no.04/2007 on Human Rights Unit within the Government of Kosovo;
 - 1.5. Administrative Instruction -MLGA-No.08/2007 on establishment of Human Rights Unit in the Municipalities, and

1.6. Administrative Instruction (AI) No. 04/2006 on implementation of the Law Against Discrimination.

2. Any provision which is in contradiction to the principle of equal treatment under this Law shall be repealed.

Article 28
Entry into force

The Law shall enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo.

Law No. 05/L-021
28 May 2015

Promulgated by Decree No.DL-014-2015, dated 15.06.2015, President of the Republic of Kosovo Atifete Jahjaga