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Rochester Institute of Technology/American University in Kosovo
Master of Science in Professional Studies
Public Administration

Human Rights in Kosovo and EU Accession Conditionality

Arberita Kryeziu

May 16, 2012

“Submitted as a draft Capstone Project Proposal in partial fulfillment
of a Master of Science Degree in Professional Studies
at the American University in Kosovo”

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Acronyms

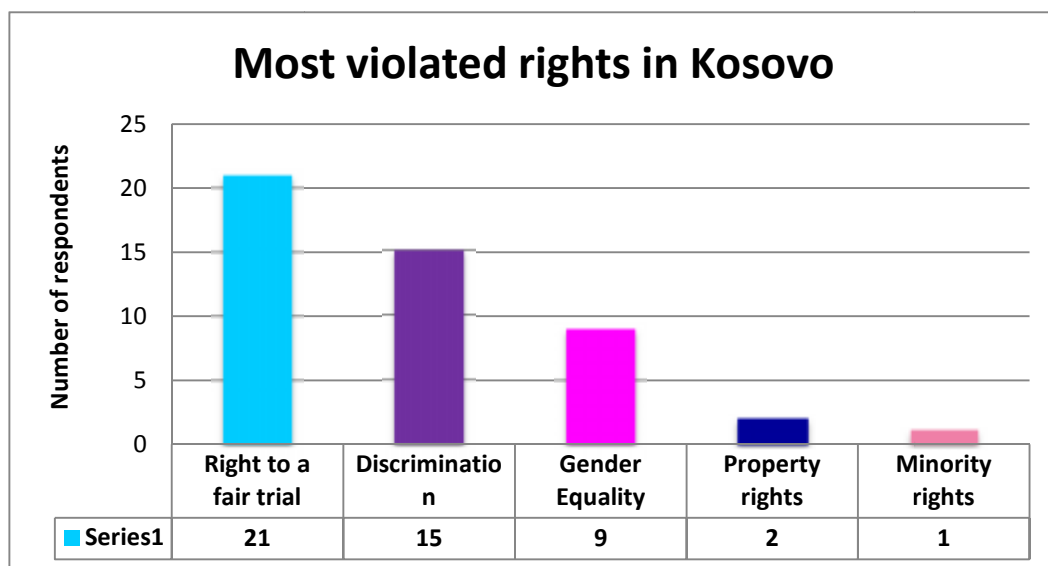
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CoE	Council of Europe
EU	European Union
EAEC	European Atomic Energy Community
EEC	European Economic Community
EUSR	European Union Special Representative
EULEX	European Union Rule of Law Mission in Kosovo
ECHR	European Convention on Human Rights
FRA	Fundamental Rights Agency
IPA	Instrument for Pre-Accession Assistance
LGBT	Lesbian, Gay, Bisexual and Transgender
OIK	Ombudsperson Institution of Kosovo
NGO	Non-Governmental Organization
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Cooperation in Europe
RAE	Roma, Ashkali, Egyptian communities
SAP	Stabilization and Association Process
SAA	Stabilization and Association Agreement
SIGMA	Support for Improvement in Governance and Management
TEU	Treaty on European Union
UNMIK	United Nations Interim Administration Mission in Kosovo
UN	United Nations
LGBT	Lesbian, Gay, Bisexual and Transgender

Executive summary

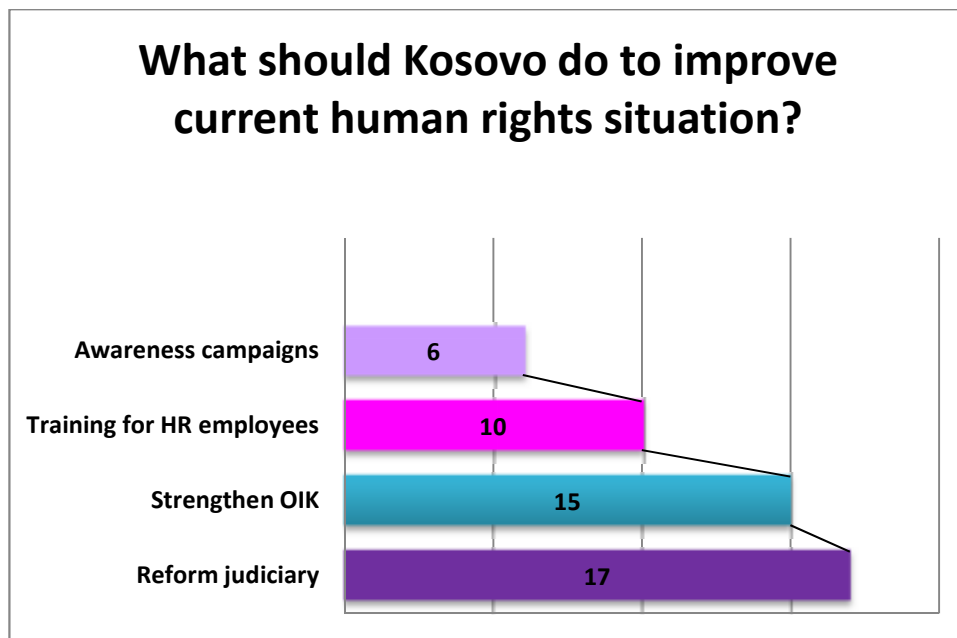
This capstone project addresses the problem of human rights protection in Kosovo. This protection is a condition for meeting the political Copenhagen criteria which requires stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Human rights are fundamental issues in the European Union and are a pre- condition for membership.

This project starts with a general overview of the current situation of human rights in Kosovo. It continues with an in-depth examination of the on-going European integration process in Kosovo. An analysis is provided of these two processes and their impact on the future of Kosovo. This project also assesses the place of human rights in the EU and in particular the EU human rights policy for enlargement and Kosovo-EU relations. Human rights in Kosovo and its legislation and institutions for protection of them are parallely appraised.

This project assesses the most violated rights in Kosovo and steps to be taken to improve the situation and facilitate the process of getting EU Accession. The project shows that three most violated rights are: 1) the right to a fair trial, 2) discrimination, and 3) gender equality. Hence the analysis of this project was focused more on these areas. Respondents of this survey were Human Rights Units' Coordinators in ministries and municipalities of Kosovo and also some representatives of different NGOs that deal with human rights.



This project makes some comparative analysis of the situation in two neighboring countries and then it concludes on the main findings by offering a number of policy recommendations on how the human rights protection can be in accordance with European standards.



The findings and recommendations aim to influence change in human rights protection in Kosovo. They underline the importance to (i) Ensure the implementation of legislation in practice, (ii) continue with the reform of the judiciary, which has to be one of the highest priorities for the Government, (iii) strengthen the Ombudsperson Institution of Kosovo as the only National Human Rights Institution, (iv) Reform human rights structures and make them functional, (v) fight discrimination at all grounds and establish an Office for Protection from Discrimination that will have binding power, (vi), train human rights employees in Human Rights issues and especially in EU human rights system, and (vii) raise awareness campaigns on human rights issues and existing institution for protection of citizens against any violation of their rights.

CHAPTER ONE

GENERAL ASPECTS OF HUMAN RIGHTS AND EU INTEGRATION

1.1 Introduction

Human rights are an important element in the external relations of the EU. They have become more significant after the Treaty of Maastricht¹ which contains specific provisions dealing with human rights in the EU's external relations. The EU has made the human rights situation a dominant factor in the nature of its relations with a country in the territory of Europe.

In the EU- Western Balkan Summit which was held in Thessaloniki on 21 June 2003, EU Member States confirmed that “the future for the Balkans is within the European Union”². However, the Western Balkan countries have to fulfill the Copenhagen Criteria for accession³ and the Luxembourg Council Conclusions⁴, so all countries among other issues must demonstrate a commitment to democratic reforms and complying with generally recognized standards of human rights and minority rights.

Figure 1.1 Map of Western Balkan countries waiting European Union membership



Nonetheless, human rights protection in Kosovo is still a challenge. Human rights have never been a priority to the Government of the Republic of Kosovo. The Ombudsperson of Kosovo although the only national human rights institution in Kosovo, despite the efforts to fulfill its mandate, it faces

¹ Treaty on European Union, 7 February 1992, Maastricht, available at: www.eurotreaties.com, January 21, 2012

² Western Balkans Summit, Thessaloniki, June 21, 2003, 10229/039 (presse 163) press release, available at: http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/sap/thessaloniki_summit_en.htm, accessed (10.12.2011)

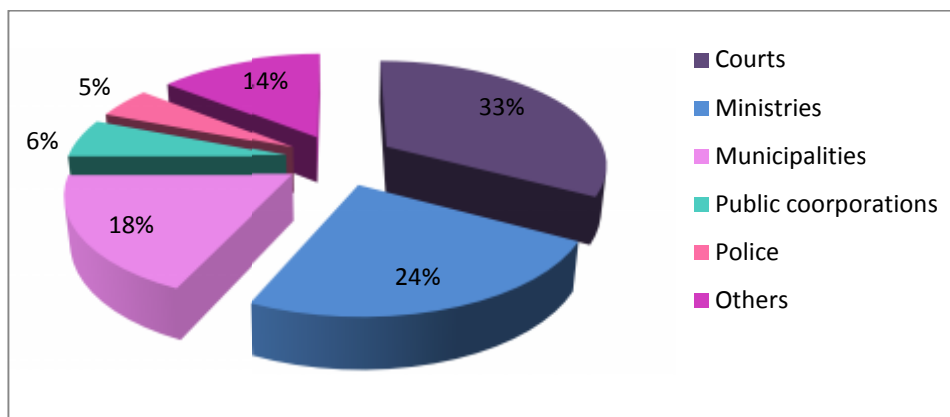
³ European Council conclusions, Copenhagen, 21-22 June 1993 :Available at: http://ec.europa.eu/bulgaria/documents/abc/72921_en.pdf, accessed on 10.12. 2011

⁴ European Council conclusions, Luxembourg, 12 and 13 December 1997, Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/032a0008.htm, Accessed on, December 15, 2011

many challenges due to the lack of political support to ensure its proper functioning and financial independence. The judicial system is still weak. Interference in the workings of justice persists, endangering its independence and impartiality.⁵ Laws are not well implemented in practice. Kosovo lacks good coordination among all human rights mechanisms: Courts, the Ombudsperson Institution, and Office for Good Governance, Human rights units within ministries and municipalities and NGOs that deal with human rights. Kosovo is not a member of Council of Europe and cannot make complaints to the European Court of Human Rights.

As a consequence of these problems many human rights violations occur in Kosovo. This is best shown in the statistical data of the Ombudsperson in Figure 1.2, which displays the percentage of complaints directed to different institutions in Kosovo, during the year 2011. Unfortunately, the guarantors of fundamental rights, courts, are in fact, considered the major violators.

Figure 1.2. Statistical data of the respondent parties of the investigated complains for human rights violations



Ombudsperson's Institution Eleventh Report

According to the Freedom House Report, Kosovo was designated as a *Partly Free* country regarding the political rights and civil liberties.⁶ This was reported because Kosovo continues to have problems with violations of political and civil rights and as well with economic, social and culture rights, and also minority rights. There are problems regarding the implementation of law on discrimination, law

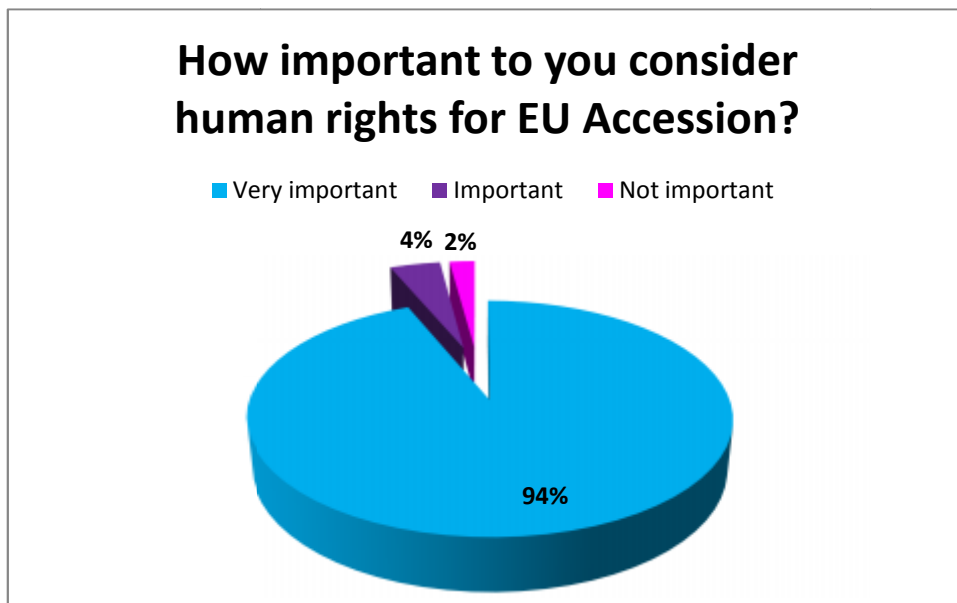
⁵ Kosovo- Progress Report 2011, Kosovo-Progress Report 2011, Available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf, (23.12.2011)

⁶ Freedom in the World 2012, http://freedomhouse.org/sites/default/files/inline_images/FIW%202012%20Booklet--Final.pdf, accessed on 19/02.2012

on the access to public documents, then freedom of expression, right of women in decision making processes, rights of RAE communities, and rights of LGBT community.

Fig.1.3. Importance of human rights for EU Accession (survey findings)



According to the research for this project as described in (Figure 1.3), human rights are considered very important in order to get EU Accession. Therefore, the situation of human rights needs to be improved in order to move forward with the European Agenda

1.2. Methodology

This report examines a range of problems regarding human rights that directly impact in Kosovo’s process towards EU integration. The information creating the basis of this report was gathered primarily by analyzing documents and other sources with the aim of process tracing. These documents included progress reports and official statements of European Commission and other EU institutions, statement reports of different stakeholders, Ombudspersons’ Reports and other NGO reports on human rights in Kosovo, Stabilization and Association Agreements, and some statistical data. Other sources included different literature related to Western Balkans, European Integration and EU enlargement conditionality and Kosovo’s role in the Balkans, without limitation to analysis of current legal framework and mechanisms and institutions for human rights protection.

Furthermore, interviews with key stakeholders were conducted, including Ombudsperson, Human Rights Parliamentary Committee, Council of Europe's Office in Kosovo and Office of Good Governance. Despite this, questionnaires were distributed in Human Rights Units within all municipalities and ministries of the Republic of Kosovo, without excluding NGOs that deals with human rights issues and EU integration in order to have their opinion in the impact of human right in the road of Kosovo towards EU accession.

This capstone project includes a comparative analysis of countries' experiences of Albania and Macedonia, in order to have a better picture on how is the situation of human rights and EU integration in neighborhood compared to Kosovo. Finally, the survey findings are presented and also recommendations are made on how Kosovo should do in order to meet the criteria and to facilitate the road to European Integration.

CHAPTER TWO

EU AND HUMAN RIGHTS

2.1 The EU Approach to Fundamental Human Rights Protection

The European Union sees human rights as universal and indivisible. It actively promotes and defends them both within its borders and when engaging in relations with non-EU countries. Human rights, democracy and the rule of law are core values of the European Union.⁷ They are embedded in its founding treaty and were reinforced when the EU adopted the Charter of Fundamental Rights in 2000. This was strengthened further when the Charter became legally binding with the entry into force of the Lisbon Treaty in 2009. Countries seeking to join the EU must respect human rights.

The Union's human rights policy encompasses civil, political, economic, social and cultural rights. It also seeks to promote the rights of women, of children, of those persons belonging to minorities, and of displaced persons.⁸ With the EU gradually developing from an economic into a political organization, human rights are becoming increasingly important, both in the internal and external relations of the Union, especially as a pre-condition for EU membership.⁹ Article 6(1) of the Treaty on European Union (TEU) provides: "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member States"¹⁰.

The European Union is a key player in human rights on a global level. Human rights are important within the European Union and its citizens; therefore they have become an internal part of the EU's external relations. The EU seeks to put in practice these concepts through various means, including financial assistance, training, human rights dialogues, "conditionality", and election observation.

⁷ The EU and Human Rights, http://eeas.europa.eu/human_rights/index_en.htm, 01.04.2012

⁸ Ibid

⁹ Manfred Nowak: "Human Rights' Conditionality' in Relation to Entry to, and Full Participation, in The EU and Human Rights, ed. Philip Alston with Mara Bustelo and James Heenen, (Oxford: UO, 1999), 697

¹⁰ TEU, Article 6, paragraph 1, in "European Union Consolidated Treaties", (Official Journal C 325), Brussels: EC Publications Office, 2003), 11

2.2. EU and Human Rights Mechanisms

The European Union has its own mechanisms that help it to perform the surveillance of human rights conditions of the candidate countries. “The epicenter of the human rights protection in Europe is doubtlessly *the European Convention on Human Rights (ECHR)* and the supervisory system sets in place thereby”.¹¹ A treaty reference to the ECHR can be found in Article 6, paragraph 3, which states that: “the Union shall respect fundamental rights, as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the member States, as general principles of Community law”.¹² While being a condition for membership of the Council of Europe, the Convention has become a pan-European human rights protection system that symbolizes not only its status as a unique and powerful propagator of civilized values and democratic growth, but also of the organization’s goal to have common standards among all the states in Europe.

The Republic of Kosovo has still not signed this Convention, but it is part of the Constitution and is directly applicable without having to be included into the national law and has priority over it.

Whereas, *the Charter* was solemnly proclaimed by the Commission, Parliament and the Council and was politically approved by the Member States in December 2000, during the Nice European Council.¹³ The Charter has no legal effect as it has not been yet incorporated in any of the Treaties, though it represents a giant step forward in the protection of human rights in the EU. The charter brings together in a single document rights previously found in a variety of legislative instruments, such as in national and EU laws, as well as in international conventions from the Council of Europe, the United Nations (UN) and the International Labour Organisation (ILO). By making fundamental rights clearer and more visible, it creates legal certainty within the EU.¹⁴ The question then arises, what is the relationship between the Charter and the European Convention on Human Rights? The relationship between the two is regulated in Articles 52, paragraph 3 and 53 of the Charter.¹⁵ Article 52, paragraph 3,

¹¹ Deirdre Curtin, “the’ EU Human Rights Charter” and the Union legal Order: The ‘Banns’ Before the Marriage?”, in: *Liber Amicorum Gordon Slym* (Kluwer, 2000) 307.

¹² TEU, Article 6, paragraph 1, in “European Union Consolidated Treaties”, (Official Journal C 325), Brussels: EC Publications Office, 2003, 12

¹³ Paul Craig, Graine de Burca: “EU Law Text, Cases and Material”, Oxford, University Press, 2003, third edition

¹⁴ Charter of Fundamental Rights, available at:

http://europa.eu/legislation_summaries/justice_freedom_security/combating_discrimination/133501_en.htm, (assessed on April 10, 2012)

¹⁵ Lemmens Paul, “The Relationship between the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights- Substantive aspects” *Maastricht Journal*(2001), 54.

indeed, intends to ensure that the Charter and the Convention, when dealing with the same rights, are interpreted the same way.¹⁶

2.3 EU and Human Rights Institutions

There are different institutions in the European Union that deals with human rights, such as: the Council of Europe, European Court of Human Rights, Organization for Security and Cooperation in Europe, and Fundamental Rights Agency. They work on protection and promotion of fundamental rights and many countries aspire to get membership. The current numbers of countries that are member in these organizations are presented in Fig. 2.1

Fig.2.1. CoE, EU, OSCE, UN Member States table

COE MEMBERS STATES	EU	OSCE	UN	COE MEMBERS STATES	EU	OSCE	UN
Albania		★	★	Andorra		★	★
Armenia		★	★	Austria	★	★	★
Azerbaijan		★	★	Belgium	★	★	★
Bosnia and Herzegovina		★	★	Bulgaria	★	★	★
Croatia		★	★	Cyprus	★	★	★
Czech Republic	★	★	★	Denmark	★	★	★
Estonia	★	★	★	Finland	★	★	★
France	★	★	★	Georgia		★	★
Germany	★	★	★	Greece	★	★	★
Hungary	★	★	★	Iceland		★	★
Ireland	★	★	★	Italy	★	★	★
Latvia	★	★	★	Liechtenstein		★	★
Lithuania	★	★	★	Luxembourg	★	★	★
Malta	★	★	★	Moldova		★	★
Monaco		★	★	Montenegro		★	★
Netherlands	★	★	★	Norway		★	★
Poland	★	★	★	Portugal	★	★	★
Romania	★	★	★	Russian Federation		★	★
San Marino		★	★	Serbia		★	★
Slovakia	★	★	★	Slovenia	★	★	★
Spain	★	★	★	Sweden	★	★	★
Switzerland		★	★	"The former Yugoslav Republic of Macedonia"		★	★
Turkey		★	★	Ukraine		★	★
United Kingdom	★	★	★				

Source: www.coe.int

¹⁶ Ibid

2.3.1 The Council of Europe

The Council of Europe was founded on 5 May 1949. It is based in Strasbourg (France) and has 47 member countries. It is considered to be a guardian of human rights, democracy and rule of law. Furthermore, the Council of Europe has the mandate” to promote social cohesion, cultural diversity and democratic citizenship, to combat racism and intolerance, to promote intercultural dialogue and to find common solutions to major problems and plays a crucial part in helping to form a stable, functional and cohesive Europe”¹⁷.

The European Convention on Human Rights is the main foundation on which it works. Despite this, it also has the Commissioner for Human Rights, who plays a key role in monitoring and evaluating the protection and promotion of human rights in the member states of the Council of Europe. “It is an independent and non-judicial institution that was created in 1999 to promote awareness of and respect for human rights, but also can conduct active dialogues” with member states on pressing issues”¹⁸.

No country has ever joined the EU without first belonging to the Council. According to Article 3 of the Statute of the Council in order to get membership” Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council”¹⁹.



Source: www.coe.int

Protection of human rights is core to all the functions of the Council of Europe. In the context of the European Convention on Human Rights (ECHR) important institutions within CoE are: the European Court of Human Rights , the European Commission on Racism and Intolerance (ECRI), the Committee

¹⁷ The Council of Europe- 800 million citizens, January 2012, www.coe.int (assessed on April 8th, 2012)

¹⁸ Ibid

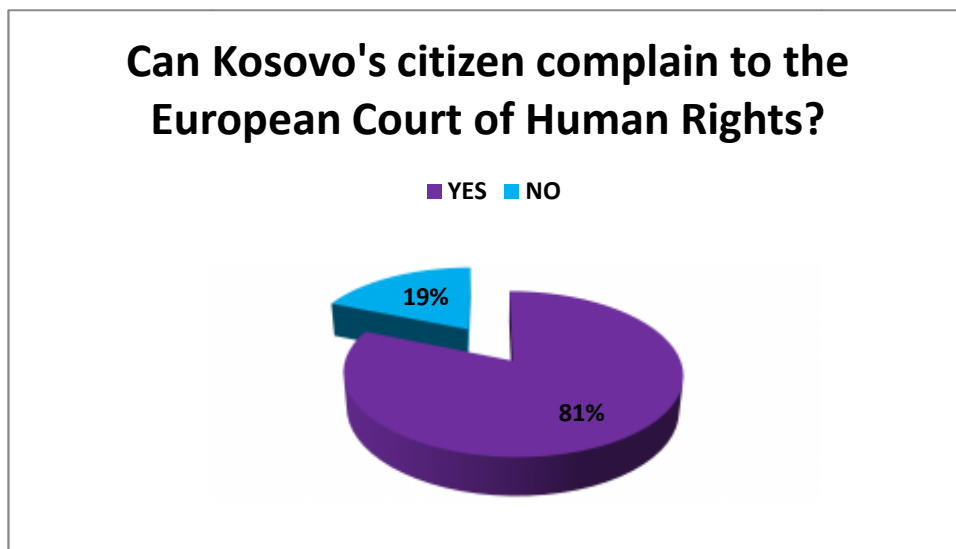
¹⁹ Statute of the Council of Europe, London, 5.V.1949, <http://conventions.coe.int/Treaty/en/Treaties/html/001.htm>, (assessed on April 8th, 2012)

on the Prevention of Torture (CPT), the Vienna Commission and the Office of the Council of Europe Commissioner for Human Rights.

The European Court of Human Rights (ECHR) is the permanent judicial body responsible for monitoring compliance with the European Convention on Human Rights. Its role is to ensure respect for the rights safeguarded by the Convention, to which the 47 member states of the Council of Europe are contracted. The Court is composed of a number of judges equal to that of the Contracting States.

According to an interview of Mr. Petrit Selimi, Deputy Minister of Foreign Affairs, for the newspaper SETimes, Kosovo, although after four years of independence is still not member of the Council of Europe, due to unresolved state recognition. “Kosovo will seek membership in the Council of Europe (CoE), but becoming a member may take up to four years once the country submits a formal application. This is not an easy process”.²⁰ Kosovo citizens are in favour of CoE membership because it will enable them to petition the ECHR over various violations within Kosovo. Only citizens of CoE member states -- all are ECHR signatories -- can submit a case to the court. Also, all domestic legal remedies must be exhausted before the court will take on a case, and the issue must be a violation of an ECHR guarantee.

Fig.2.2 Kosovo’s citizen cannot file a complaint to the European Court of Human Rights



²⁰ Council of Europe membership is years away for Kosovo, ,Muhamet Brajshori
http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/03/19/feature-03 , 19/03/2012

The problem is that Kosovo still lacks qualified people to work for protection and promotion of human rights. Respondents for the survey of this project were all human rights units' coordinators in ministries and municipalities of Kosovo and also some NGOs working on human rights. As it can be seen from the chart above (fig. 2.2) , 81% of them said that Kosovo can complain to the European Court of Human rights, that is a wrong answer, and only 19% of them gave a correct answer. Therefore, Kosovo should work seriously to employ qualified and experienced people in human rights institution, so they can do their duties properly and this way help our country to improve the situation of human rights in Kosovo. If our human rights officers are not aware for human rights institutions and mechanisms in Kosovo and Europe, we cannot expect from citizens of Kosovo to know it.

2.3.2 Organization for Security and Co-operation in Europe

Another body dealing with human rights issues is the Organization for Security and Co-operation in Europe (OSCE). The OSCE is the largest security organization, with 56 participating states from North America, central Asia, and Europe. The OSCE is a primary instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation in its area.²¹ Participating States commit to aim to ensure full respect for human rights and fundamental freedoms. The OSCE, through its Office for Democratic Institutions and Human Rights (ODIHR) is actively engaged throughout the OSCE area in the fields of election observation, human rights, tolerance and non-discrimination, and rule of law.

The OSCE is working in mission in Kosovo. It is mandated with the promotion of human rights and good governance. It focuses on different field like: the protection of community rights, safety and freedom of movement, property rights, non-discrimination, participation in public life, access to education and other services; rule of law and human rights monitoring within the municipalities, courts and the police; support further development of independent institutions working with human rights, rule of law and elections. The Mission also supports the work of the human rights units in various ministries in Kosovo and has helped to establish such units in the municipalities.²²

²¹ Organization for Security and Cooperation in Europe , <http://www.osce.org/who>, (assessed on April 5, 3012

²² Organization for Security and Cooperation in Europe, Kosovo website: <http://www.osce.org/kosovo/43381>, (assessed on April 20, 2012)

2.3.3 European Union Fundamental Rights Agency

The European Union is increasingly moving forward into the field of human rights. It established a Fundamental Rights Agency (FRA) in 2008. The FRA is based in Vienna, Austria. It provides the relevant institutions and authorities of the European Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights to support them to fully respect fundamental rights when they take measures within their respective spheres of competence.

The FRA helps to ensure that fundamental rights of people living in the EU are protected. It does this by collecting evidence about the situation of fundamental rights across the European Union and providing advice, based on evidence, about how to improve the situation. The FRA also informs people about their fundamental rights. In doing so, it helps to make fundamental rights a reality for everyone in the European Union.²³

Kosovo will not be able to engage in FRA's activities because only member states of the European Union are members of this important agency for human rights.

²³ The European Union Agency for Fundamental Rights, available at: http://fra.europa.eu/fraWebsite/about_fra/about_fra_en.htm (assessed on April 10, 2012)

CHAPTER THREE

HUMAN RIGHTS AND ACCESSION CRITERIA

3.1 Human Rights Agenda for EU enlargement

The European Union has set extremely strict rules for the candidate member countries. Those rules are part of “acquis communautaire”, the legislation of the European Union. The future members are required to have a good record in respect for human rights. A country that lacks fulfillment of these standards concerning human rights issues is never granted accession to the European Union. Hence, there is no choice left for these prospective countries, but meeting the criteria set by the European Union, in order to be able to gain accession in this big European family.

Next, it is attempted to explain the human rights as a condition for EU membership. It will be seen how strict the EU is regarding the protection of human rights for the countries aspiring for EU membership. After the accession of Bulgaria and Rumania, the Western Balkans is at the top of the enlargement countries, and this is seen in the case of Croatia which got the membership approval in the beginning 2012. Countries that abolished the communist system not very long ago, find it difficult to cope with the level of protection of human rights required by the EU. On the other hand, these stringent conditions will contribute to upgrading the level of human rights protection in these countries.

3.2 The Human Rights as EU Accession Conditionality

Until the Amsterdam Treaty entered into force, Article 49 of the TEU did not contain any formal requirement, apart from being a European state.²⁴ In addition to the relevant economic and legal criteria, the June 1993 Copenhagen Council decided on a number of ‘political criteria’ for accession to be met by the candidate countries in CEE.²⁵ The 1997 Amsterdam Treaty added a new open clause to Article 6 TEU, explicitly noting human rights as a “founding principle” of the EU.²⁶ In this case a strict adherence to the same principles must be required of any state seeking EU membership.²⁷ Especially, human rights accession ‘conditionality’ is formally stipulated in two separate EU texts: the “political criteria”

²⁴ Novak Manfred: “Human Rights ‘Conditionality’ in Relation to Entry to, and Full participation in EU”, in *The EU and Human Rights* ed. Philip Alston, Mara Bustelo and James Heenen, 691

²⁵ Ibid

²⁶ Rangelow Iavor, “Bulgaria’s struggle to make sense of EU Human Rights Criteria”, http://www.soros.org/resources/articles_publications/articles/bulgaria-roma-rights-20011001/bulgaria-roma-rights-20011001.pdf, (Assessed on April 5, 2012)

²⁷ Ibid

established by the Copenhagen European Council and Article 49 TEU, another Amsterdam innovation²⁸ which stipulates that “ any European State which respects the principles set out in Art. 6(1) may apply to become a member of the Union”.²⁹

Article 49” repeals the respective provisions of Article 98 of the ECSC Treaty, Article 237 of the EEC Treaty and Article 205 of the EAEC Treaty”³⁰ As a result, the accessions to the Communities of 1973(of Denmark, Ireland and the United Kingdom), the 1981 (of Greece) and 1985(of Portugal and Spain) were based on specific rules contained in each of the Community Treaties , whereas the 1995 accession (of Austria, Finland and Sweden) and the 2004 one (of Cyprus, Estonia, the Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, and Slovakia) were based on Article 49 TEU.³¹

The question now arises how far does Art 6(1) go? “ In view of the fact that *indivisibility and independence of all human rights*³² have rapidly been confirmed by EU Member States, most importantly in the Vienna Declaration and Programme of action of 1993, we would nevertheless conclude that the term ‘ human rights and fundamental freedoms’ in Article 6(1) goes beyond the narrower term ‘ fundamental rights’ in Article 6(2). In principle, it also includes all human rights presently recognized by the EU Member States in context of the UN, the OSCE and the CoE.³³ In addition, the “ Copenhagen criteria” provide the membership conditions that CEE states should fulfill to become EU members. In order to join the EU, they must have achieved stability of the institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.³⁴

In order to meet the Copenhagen criteria, all states wishing to join the EU should take measures to fulfill these requirements, which imply that they should take legislative measures for approximating national law with Union’s law. The progress made is examined through the framework of the mechanisms established under the SAP, notably the Annual Progress Reports presented by the Commission.

²⁸ Ibid

²⁹ TEU Title V Article 49, in *European Union Consolidated Treaties*, (Official journal C 325), Brussels: EC Publications Office. 2003, 31

³⁰ Van Nuffel, Lenaerts, *Constitutional Law of the European Union*, 357

³¹ Ibid

³² Novak Manfred: “ Human Rights ‘Conditionality’ in Relation to Entry to, and Full participation in EU”, in *The EU and Human Rights* ed. Philip Alston, Mara Bustelo and James Heenen, 694

³³ Ibid

³⁴ Ibid 691.

States wishing EU membership are not expected only to promise to cope with these criteria or only take legislative measures, but also respect them in practice. The Commission strictly analyzes the manner in which the candidate countries respect human rights conventions, in particular the ECHR. As for minority rights and the protection of minorities, the particular attention is paid to the implementation of the CoE Framework Convention for the Protection of National Minorities.

At this point it is vital to emphasize that the EU, as stated by the Amsterdam Treaty, provides for a remedy against the states that violate human rights, even after they become EU members. As de Burca points out in her paper “ the addition of Article 7 to the TEU by the Amsterdam Treaty, providing for the possible suspension of rights of a Member State which is found to be in a serious and persistent breach of the Article 6, was evidently perceived as a necessary safeguard clause to provide for urgent action should one of the newest democracies , after its admission as a member, collapse or significantly fail to meet standards asserted by the EU.”³⁵ This, however, does not only apply to the new members as was the fear and perhaps one of the reasons for including this Article in the Treaty, but it also applies to all EU members.

We may conclude that human rights standards for EU future membership are compatible with human rights standards respected by the EU Members. Consequently, human rights protection provided by the Institutions and the EU Member States will also have to be provided by the states joining the EU and will also be obliged to respect all human rights all the way through post-accession period.

3.3. Western Balkans towards EU integration

In the EU- Western Balkan Summit held in Thessaloniki on June 21, 2003, the EU Member States’ Heads of States and Governments confirmed that” the future for the Balkans is within the European Union”³⁶ This agenda opened a way for European partnership with Western Balkan countries as a key element of Stabilization and Association Process (SAP). Furthermore, they stated that the Thessaloniki Agenda” represents a new important step in the privileged relationship between EU and

³⁵ De Burca, Grainne, ‘The Charter: How Enlargement has Enlarged The Human Rights Policy of the European Union’, Fordham International Law Journal(Vol.27.697-714(2005)696

³⁶ Western Balkans Summit,Thessaloniki, June 21, 2003, 10229/039 (presse 163) press release, available at: http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/thessaloniki_summit_en.htm, accessed (10.12.2011)

Western Balkans. Its content shall be considered as our shared agenda, and we all commit to its implementation.”³⁷

Despite the promise for a future integration, the EU leaders also made it clear that “ progress of each country toward EU will depend on its own merits in meeting the Copenhagen Criteria and the conditions set for in the SAP and confirmed in the final declaration of the November 2000 Zagreb Summit.”³⁸ Thus shows that the EU is taking the integration of these countries into the big European family seriously. The EU is also willing to give assistance for meeting the criteria as a stable Balkans will contribute to the Stable Europe. They will also, however, apply strict conditions in this regard.

Moving closer towards the EU is based on observance of the Copenhagen criteria and the stabilisation and association process (SAP) that includes: 1) regional cooperation, 2) good neighborly relations, 3) full cooperation with the International Criminal Tribunal for the former Yugoslavia, 4) achieving the priorities set out in the partnerships, and 5) concluding and implementing stabilisation and association agreements (SAAs).

On the other hand, “The Western Balkan countries welcome the decision by the EU to strengthen its Stabilization and Association policy towards the region and to enrich it forward with elements from the experience of the enlargement.”³⁹ This decision was a big step forward in the future of these countries, as it is clear that these countries have a future in the EU. The Copenhagen Criteria, however, are rather strict and require painful reforms to be undertaken by these countries in order to join the EU. Among others, they include protection of fundamental human and minority rights as part of the Copenhagen political criteria. At the moment, Croatia is an acceding country, Iceland, The former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey are candidate countries, whereas Albania, Bosnia & Herzegovina and Kosovo are potential candidate countries.

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

CHAPTER FOUR

EUROPEAN UNION AND KOSOVO

4.1. EU- Kosovo Relations

The Republic of Kosovo is currently recognized by 22 out of 27 member states of the European Union, whereas the remaining five member states continue to consider it as a province of the Republic of Serbia. EU- Kosovo relations has been developed extensively throughout of the last decade. Kosovo has no specific contractual relations with EU, but it benefits from different EU financial and technical instruments assisting with the fulfillment of the requirements for EU membership. From March 2003 until October 2009, the main instrument for political dialogue between the government of Kosovo and the European Commission in the framework of the EU's Stabilization and Association Process is "Stabilization and Association Tracking Mechanism – STM". The communication "Kosovo - Fulfilling its European Perspective", which was adopted by the European Commission in October 2009 launched an intensified and important political dialogue, which is called the Stabilization and Association Process Dialogue.

The main purpose of the SAP Dialogue meeting was to accompany and monitor Kosovo's reforms and the EU approximation process, with a special emphasize to the priorities defined in the European Partnership adopted by the European Council on 18 February 2008. These meetings are co-chaired by the European Commission and the Government of the Republic of Kosovo. Each meeting results in jointly agreed follow up actions to be taken by the Kosovo authorities. This is a very good process for Kosovo.

Plenary Stabilisation and Association Process Dialogue(SAPD) meetings are held once a year before the summer break. Seven sectoral SAPD meetings have been set up in order to deepen technical discussions in the different areas The SAPD sectoral meetings take place once a year, alternating between Prishtina and Brussels. The dialogue with Kosovo continues between and after meetings. The time between the meetings allows for the implementation of the recommendations and agreed follow up actions.⁴⁰

The EU is very present in Kosovo in various forms and it is the largest per capita donor. EU, continues to financially support institutional building and the infrastructure modernization of Kosovo. This can be seen in the Table 4.1 below, which shows the trend of financial assistance for Kosovo from

⁴⁰ European Union Information and Cultural Centre website ,http://www.euicc-ks.com/en/eu_and_kosovo/eu-kosovo_relations, (assessed on April 10, 2012)

2007 until 2013. In this context, authorities of Kosovo has also played their part in creating structures to take part in the EU integration process, although a lot of work and endeavour is needed for Kosovo to complete its EU aspirations.

Table 4.1 Kosovo - Financial Assistance from Instrument for Pre- Accession (IPA)

Component	2007	2008	2009	2010	2011	2012	2013
■ Transition Assistance and Institution Building	68,300,000	184,700,000	106,100,000	66,100,000	66,900,000	65,870,995	70,712,269
■ Cross-border Co-operation	0	0	0	1,200,000	1,800,000	2,929,148	2,987,731
TOTAL	68,300,000	184,700,000	106,100,000	67,300,000	68,700,000	68,800,143	73,700,000

Source: www.europa.eu

Recently, the European Commission launched a visa liberalisation dialogue with Kosovo on 19 January. The aim of this dialogue is to eventually lift the visa obligation for citizens of Kosovo. This will only be possible, however, once the Government of Kosovo has implemented substantial reforms in key areas, among them also human rights and fundamental freedoms. In previous years, the EU launched visa liberalisation dialogues with five Western Balkans countries in order to allow their citizens to travel to the EU without a visa.⁴¹

4.2. Kosovo and Stabilisation and Association Process

The policy of the European Union in its Enlargement Policy towards the Western Balkans is known as the Stabilisation and Association Process. This is a strategy with the aim of establishing peace, stability and economic development in the Western Balkans region and establishing a long term vision for membership of Western Balkan countries into the EU. The SAP used during enlargement sets the foundations for moving towards a clearer vision for EU integration. The SAP sets common goals and economic policies for all Western Balkan countries, and then it measures progress made by each country individually. The countries that participate in the SAP, including Kosovo are subject to different reforms aimed at consolidating democracy and the rule of law, as well as creating a functioning market economy through a gradual approach to Community legislation in their national law.

⁴¹Enlargement- Kosovo, available at: <http://ec.europa.eu>, (assessed on April 10, 2012)

The Stabilisation and Association process entails: 1) the drafting of stabilisation and association agreements, with a view to accession to the European Union once the Copenhagen criteria are fulfilled; 2) the development of economic and trade relations with the region and within the region, 3) the development of the existing economic and financial aid; 4) aid for democratisation, civil society, 5) education and the development of institutions; 6) cooperation in the field of justice and home affairs; 7) the development of political dialogue.⁴²

4.3. Stabilisation and Association Process Instruments

SAP includes different instruments with the purpose of guiding and facilitating the European perspective for Kosovo. These instruments are the European Partnership, Progress Report, and Financial Assistance, Regional cooperation, community programmes and political dialogue. They help Kosovo in implementation of the necessary political, economic, legislative and institutional reforms.

The "Thessaloniki Agenda" of June 2003 identifies ways and means of intensifying the stabilisation and association process, including the drawing-up of partnerships. *The European partnerships* provide a framework covering the priorities resulting from the analysis of each of the partners' differing situations, on which preparations for further integration into the European Union must concentrate in the light of the criteria defined by the European Council, and, where appropriate, the progress made in implementing the stabilisation and association process including stabilisation and association agreements, and in particular regional cooperation. They are regularly revised on the basis of the progress made by each country and any new priorities identified. The Council decides by qualified majority and on a proposal from the Commission the principles, priorities and conditions to be contained in the European partnerships, as well as any subsequent adjustments.

Until now, there have been three European Partnerships for Kosovo, one in June 2004, one in January 2006 and another in February 2008. These Partnerships included a list of priorities for the short and medium term (two to four years) to be handled by the Western Balkan countries. The latest European Partnership included 157 priorities according to Copenhagen criteria.

Another SAP instrument is *the progress report*, which is issued by the European Commission in order to assess the specific situation in areas such as democracy, rule of law, human rights, protection of

⁴²The Stabilization and Association Process, available at: http://europa.eu/legislation_summaries/enlargement/western_balkans/r18003_en.htm, (assessed on April 12, 2012)

minorities and regional cooperation. This report is issued in November of each year and show the progress of Kosovo towards the European Union.

Since 2002, the European Commission regularly reports to the Council of the EU and the European Parliament on the progress achieved by Kosovo's authorities towards European integration. Through these reports they present political and economical situation in Kosovo and the legislative reforms undertaken. The European Commission prepares the progress report based on information and resources collected through: the European Commission representatives in Kosovo, various European missions in Kosovo, regular reports of Kosovo institutions, EU Member State representatives in Kosovo, international organizations, but also from civil society organizations.

Instrument for Pre-Accession (IPA) is another instrument in this process. Its main objective is to help Kosovo with challenges of European integration, implementation of the required reforms set out in the SAP and to lay the foundations for fulfilling the Copenhagen criteria for EU membership. The EU assistance in Kosovo is dedicated to developing a democratic society based on respect for human rights, the rule of law and protection of all communities living in Kosovo.

4.4 EU Presence in Kosovo

The European Union is present in Kosovo through:

- The European Union Office in Kosovo/European Union Special Representative (EUSR)
- The European Union Rule of Law Mission in Kosovo (EULEX)

The EU Office plays the most important role in realising the European agenda in Kosovo with the aim to promote Kosovo's approximation to the European Union. This office ensures that a permanent political and technical dialogue is maintained with the Brussels institutions. The EUSR offers advice and support to the Government of Kosovo in the political process; provides overall coordination for the EU presences in Kosovo; and contributes to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo.

Following the entry into force of the Lisbon Treaty, the European Commission Liaison Office jointly with the EUSR mandate became the European Union Office in Kosovo. Before merging into the

European Union Office in Kosovo, the European Commission Liaison Office has been functioning since September 2004, and the EUSR since 2008.⁴³

The European Union Rule of Law Mission in Kosovo (EULEX) is the largest civilian established mission under the European Security and Defense policy. Its objectives are in helping and supporting rule of law institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability, and also developing and strengthening an independent judiciary, police and customs.

The European Union established the *Human Rights Review Panel* on 29 October, 2009 with a mandate to review alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate. The Panel is an independent, external accountability body which performs its functions with impartiality and integrity.⁴⁴

⁴³European Union Office in Kosovo, available at:
http://eeas.europa.eu/delegations/kosovo/eu_kosovo/political_relations/index_en.htm

⁴⁴ Human Rights Review Panel Annual Report 2011, published on 8 February 2012

CHAPTER FIVE

HUMAN RIGHTS LEGISLATION AND INSTITUTIONS IN KOSOVO

5.1 Human Rights Legislation in Kosovo

The Constitution of the Republic of Kosovo stipulates that “*Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo*”.⁴⁵ Furthermore it sets forth that “human rights and fundamental freedoms have to be guaranteed by the following international agreements and instruments that are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- 1) Universal Declaration of Human Rights;
- 2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- 3) International Covenant on Civil and Political Rights and its Protocols;
- 4) Council of Europe Framework Convention for the Protection of National Minorities;
- 5) Convention on the Elimination of All Forms of Racial Discrimination;
- 6) Convention on the Elimination of All Forms of Discrimination Against Women;
- 7) Convention on the Rights of the Child;
- 8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.”⁴⁶

These international human rights documents are directly applicable without having to be included into the national law. This means that, all public institutions exercising power in Kosovo’s territory, including courts, have constitutional obligations to apply these instruments. Also, the Constitutional Court of the Republic of Kosovo by being a main arbiter for interpretation of constitutional provisions has marked a decisive step for assessment, reviewing and implementation of legality of the actions of public authorities in Kosovo.

Although Kosovo has a good normative base and established mechanisms for protection of human rights and fundamental freedoms, the public authorities of the Republic of Kosovo, at central and municipal level, still continue to be negligent towards implementation of the citizens’ rights and freedoms. This situation is a consequence of inadequate implementation of laws.

⁴⁵ Constitution of the Republic of Kosovo, <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>, (assessed on April 8, 2012)

⁴⁶ Ibid

Kosovo lacks an Administrative Court, which would have improved human rights situation in our country and standards for effective legal remedies for resolution of administrative conflicts. Another problem, which is continuously, is a problem for the judicial system in Kosovo is lack of knowledge on the international human rights standards. Unacceptable shortcomings are noticeable during the interpretation of local legal norms based on the case law of the European Court of Human Rights and European Convention on Human Rights as sanctioned by the Article 53 of the Constitution of the Republic of Kosovo.

The Republic of Kosovo is not a signatory party to the European Convention on Human Rights, but the Constitution in the Article 53 obliges the state authorities to “*interpret the human rights and freedoms guaranteed by the law and constitution in harmony with the judicial decisions of the European Court of Human Rights*”. Also, the Article 22 of the Constitution of the Republic of Kosovo clarifies the obligation and requests the authorities to “*directly implement*” the human rights and freedoms foreseen by international instruments and standards and “*in the case of collision*”, the international instruments and standards are superior over “*legal provisions and other legal acts adopted by the public institutions*” in the Republic of Kosovo.⁴⁷

5.2 Human Rights Institutions in Kosovo

The Republic of Kosovo has established different human rights institutions which has the mandate to protect promote and guarantee human rights and fundamental freedoms. However they are not always functional due to different challenges and problems that they face while performing their mandate.

5.2.1 Courts

Judicial power in the Republic of Kosovo is exercised by the courts.⁴⁸ Courts are an important factor for protection of human rights. Every country needs a judicial system that is independent, effective and protects the rights of all citizens and upholds the law. However,” *the judicial system in Kosovo is still weak and need to be enhanced*”⁴⁹.

⁴⁷ Constitution of the Republic of Kosovo

⁴⁸ Constitution of the Republic of Kosovo, Article 102, paragraph 1

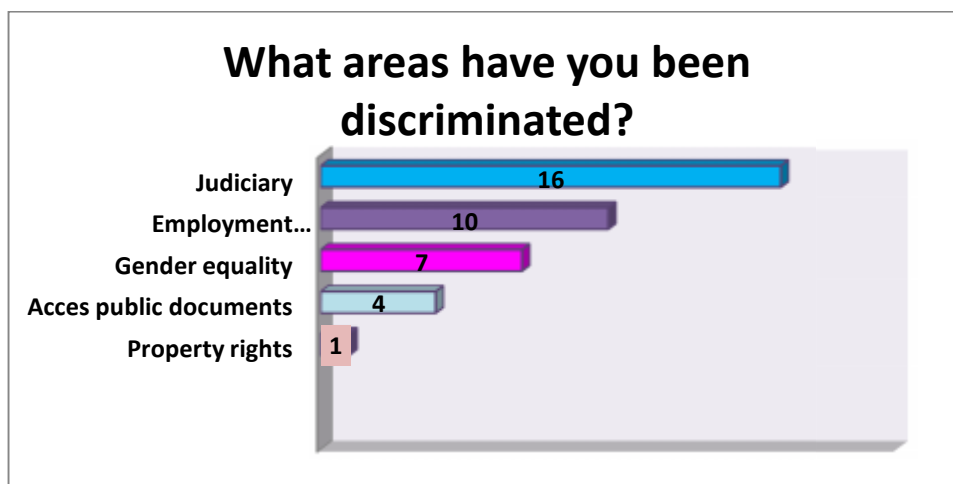
⁴⁹ Progress Report 2011, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf, (12.04.2012)

The structure of the judiciary in Kosovo is as following: The Supreme Court, The High Court of minor offences, 5 (five) District Courts, Economic Court, 26 Municipal Courts, and 25 Municipal Courts for minor offences. The Prosecutors are organized in a unique Public Prosecution of the Republic of Kosovo, five (5) District Public Prosecutions and seven (7) Municipal Public Prosecutions. There is also the Constitutional Court of the Republic of Kosovo which is active since September 2009.

The judiciary is facing many difficulties in exercising their mandate, as it is foreseen in the Constitution of the Republic of Kosovo. Citizens lost confidence in judicial system and rule of law for the following reasons: non-functionality of the judicial power in all the territory of Kosovo, excessive duration of criminal and civil procedures, a big number of old unresolved cases, the low rate of enforcement of judicial decisions, the big number of judicial decisions changed upon an appeal (around 60%); corruptive elements in the courts, practical non-implementation of the European Convention on Human Rights, as well lack of interpretation of decisions of the European Court of Human Rights in the judicial decisions.⁵⁰

According the Ombudsperson Institution, the highest percentage, 33% of complaints received during the year 2011 was directed to Courts. This can also be shown from data based on the survey of this project, which reveals that responded were most discriminated from the judiciary, that is 16 persons, out of 37 of them. They complained about having to wait for years until the court take a decision on their case. However, the fact the we have this situation is not only the fault of courts , but also of the Government of Kosovo, for not ensuring appropriate financial and human resources for judiciary in Kosovo.

Figure. 5.1 Most discriminated fields of rights in Kosovo (based on the survey)



⁵⁰ Tenth Annual Report, Ombudsperson Institution of Kosovo, www.ombudspersonkosovo.org.

Judiciary in Kosovo is facing problems with many other issues as well. According to the last progress report⁵¹, it has a weak data and case management. There are still reported threats and intimidation against judges. This is a serious concern as regards *impartiality* of judiciary. Therefore, government should take appropriate security and protection measures to provide judges and court staff with a secure working environment and effective safeguards against threats or intimidation. Political interference in the work of the judiciary is still a concern. Also, people lost trust in the judiciary that is perceived as corrupted, inefficient, ineffective and biased.

5.2.2 Ombudsperson Institution of Kosovo (OIK)

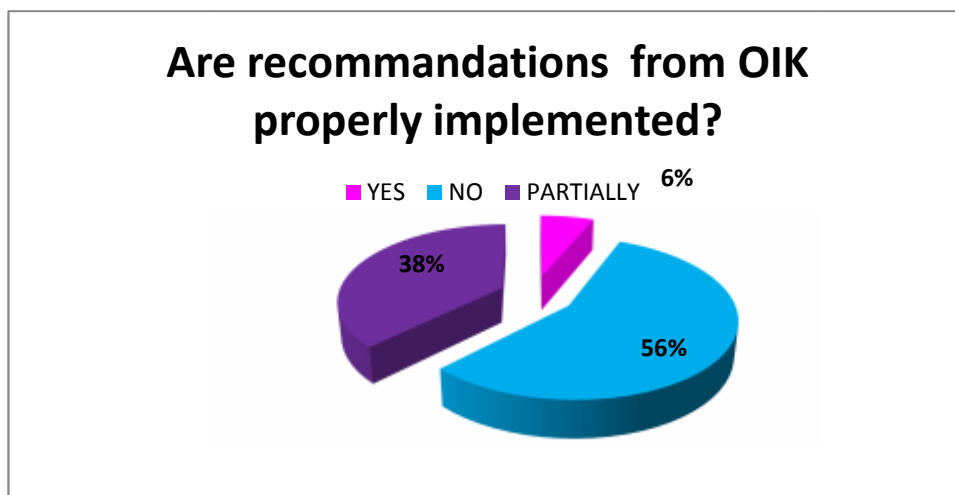
The Constitution of the Republic of Kosovo sets forth the role and competencies of the Ombudsperson. It monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities. The Ombudsperson conducts investigations, issues recommendations, publishes reports, and provides services free of charge and public advocacy to all citizens of Kosovo. In the cases when the investigations conducted by the OIK legal advisers result with the conclusion that the violation of the human rights have occurred, the institution may seek additional information by the public authorities. It may also issue recommendations for the public authorities concerned and to publish reports for different issues. In particular cases, the Ombudsperson may do so through Media.⁵²

This is an especially important institution for promotion and improvement of human rights protection in Kosovo. However, government institutions have continued to defy letters and recommendations addressed by the Ombudsperson. Based on the research of this project in the survey done with Human Rights Units in Ministries and Municipalities and the question if ministries and municipalities in Kosovo properly implement the recommendations of the OIK, 56% answered no, 38% partially and only 6% answered positively. (Fig 5.2). This result is very worrying, if 56% of ministries and municipalities don't implement recommendations of the Ombudsperson, then we have a big problem with human rights in Kosovo.

⁵¹ Progress Report 2011, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf, (12.04.2012)

⁵² Ombudsperson Institution of Kosovo website: <http://www.ombudspersonkosovo.org/new/?id=1,107,107,107,e,0>, (Assessed on April 20, 2012)

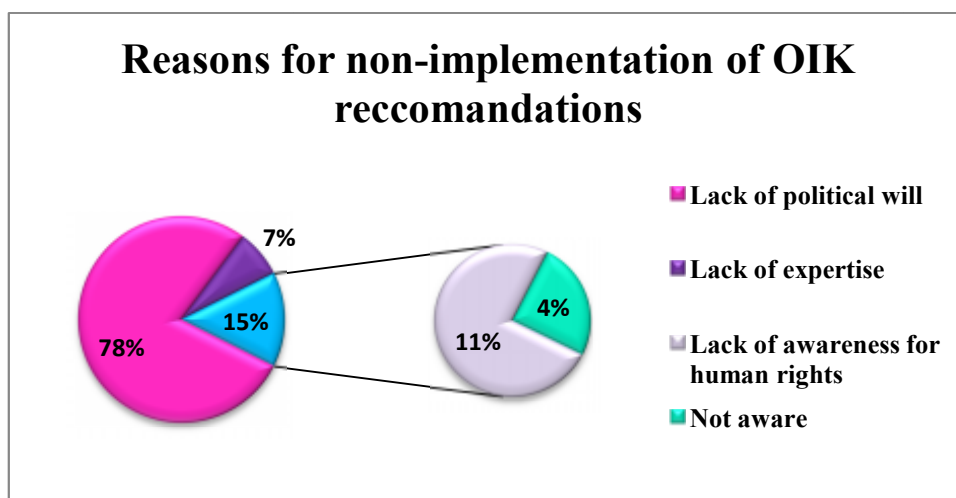
Fig.5.2 Level of implementation of Ombudsperson’s recommendations



The Ombudsperson Institution has also five regional offices, in Peja, Prizren, Gjilan, Gracanica and two offices in Mitrovica, one in the northern part of the city and another in the south part of the city. In order to ensure access by all citizens Ombudsperson officials regularly visit all municipalities and also prisons and detention facilities.

The Ombudsperson of Kosovo remains an institution with big challenges, due to the lack of political support to ensure its proper functioning and financial independence. This is also shown from the research, which from the answers of respondents reveals that the main reason for non-implementation of recommendations addressed from OIK is lack of political will from different stakeholders in central and local government.(Fig. 5.3)

Fig.5.3 Reasons for non-implementation of Ombudsperson’s recommendations



5.2.3. Office for Good Governance and Human Rights Units

The Office for Good Governance operates within the Prime Minister's Office. It functions since March 2002 and has a broad mandate regarding human rights in Kosovo. It is responsible for developing policy and issue guidelines in the areas of good governance, human rights, equal opportunity and gender equality; Review draft legislation to ensure its compliance with applicable human rights standards and practices of good governance; and advise and make recommendations to the Prime Minister and relevant Ministers accordingly; Assist in the development and implementation of public information campaigns and other promotional schemes to promote public awareness of international human rights standards.⁵³

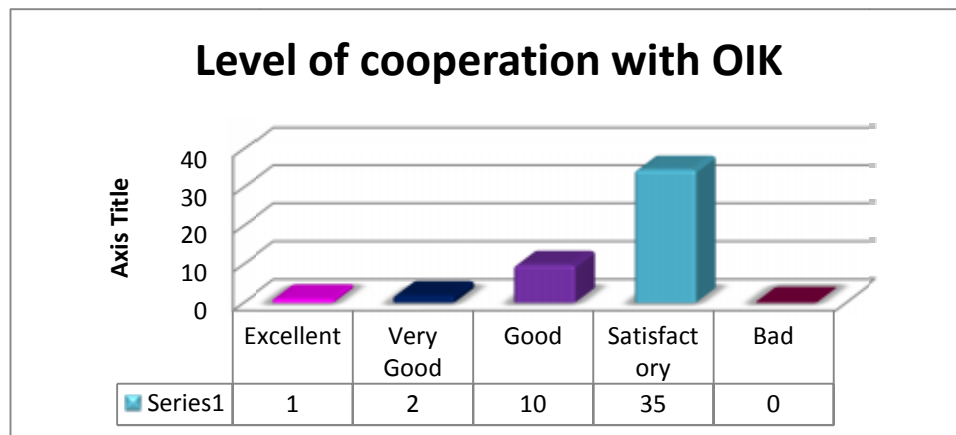
It was not good to find out that although this office has produced different human rights strategies and action plan, none of them is available in their website, so that citizens and other interested parties can access them.

The Government of Kosovo has also created *Human Rights Units* in all the ministries and municipalities in the Republic of Kosovo. The ministerial and municipal human rights units are responsible for the protection and promotion of human rights at the ministerial/municipal level. "As a result, they have the duty to monitor the compliance of municipal regulations, policies and other activities with human rights standards, especially in the following fields: equal opportunities, non-discrimination, gender equality, children's rights, the rights of persons with disabilities, the rights of communities, the use of languages and anti-trafficking."⁵⁴ They have the mandate to closely cooperate and oversee the implementation of the recommendations of the Ombudsperson Institution. Based on the survey done with human rights units in ministries and municipalities, regarding the level of cooperation with the Ombudsperson, from 48 respondents, 35 people said that this cooperation is satisfactorily and should be improved. This is very low level of cooperation that should be improved in the future.

⁵³Website of the Office for Good Governance, www.humanrights-ks.org (assessed on 20.04.2012)

⁵⁴ Website of the Ministry of Justice, <http://www.md-ks.org/?page=1,25>, (assessed on 20.04.2012)

Fig.5.4 Level of cooperation between Human Rights Units and the Ombudsperson



Therefore we can say that Kosovo’s institutions for human rights are not properly coordinated. These findings were provided from the progress report which states: *“The range of institutions and bodies dealing with human rights at central and municipal levels is too dispersed and at times overlapping. Communication and coordination between the different institutions and bodies dealing with human rights at central and local levels and with the Ombudsperson are weak. These bodies need to be streamlined and their mandate clarified in order to make better use of their limited expertise and resources”*.

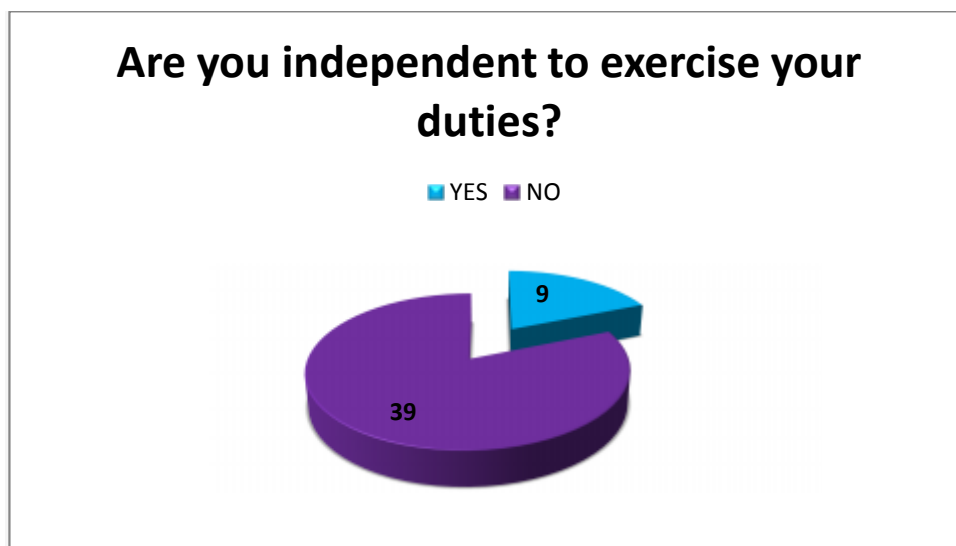
Based on the interview with an official from Office of Good Governance the question for the steps taken from this office to review the current structures of human rights in the Republic of Kosovo they stated *“that they took on consideration progress report findings for human rights mechanisms in Kosovo in central and municipal level and was concluded that it is necessary to start restructuring them. Office for Good Governance and Legal Office of the Prime Minister are in the process of creating a regulation, which will define clearly the organizational structure of these mechanisms”*⁵⁵.

Another responsibility of these units is also to monitor implementation of human rights within ministries/municipalities, but this can be a problem due to the fact that they report directly to the Permanent Secretary within that institution. Therefore, as you can see in Figure 5.5 and the answers of respondents, they are not independent to exercise their duties without interference from their supervisors. This is the reason that it is being discussed to reform these units, so that they can report directly to the

⁵⁵ Interview with S.D, Office for Good Governance,05.04.2012

Office for Good Governance, and be able to perform their duties independently without interference from the ministry or municipality supervisors.

Fig. 5.5. Human rights units are not independent in exercising their mandate.

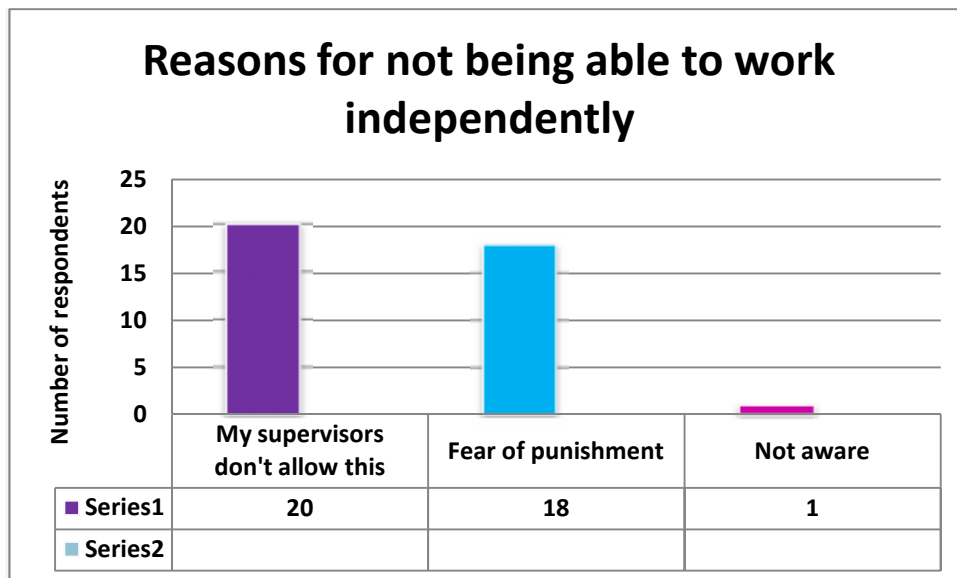


*“The institutional set-up promoting and enforcing human rights needs to be simplified. Appropriate resources need to be allocated. Efforts to enhance monitoring and reporting mechanisms need to be stepped up and to focus on improving the enforcement of existing legislation and policies. Ensuring full respect for human rights is a key European Partnership priority.”*⁵⁶ It is evident that Government of Kosovo has created mechanisms for human rights just to fulfill the criteria, but they are not functional and they are not performing as they should and do not contribute to the awareness of protection of human rights situation in central and municipal level.

Given the fact that it was shown that a big number of them are not independent to work independently, they were also asked for the reasons of this condition, and most of them answered that they are not allowed from their supervisors and they fear any punishment, as it can be seen in Figure 5.6. Working in a country where approximately half of the population is unemployed it is difficult to report any violation, and to not suffer any consequences like remaining without job.

⁵⁶ Progress report 2011, Kosovo, European Commission

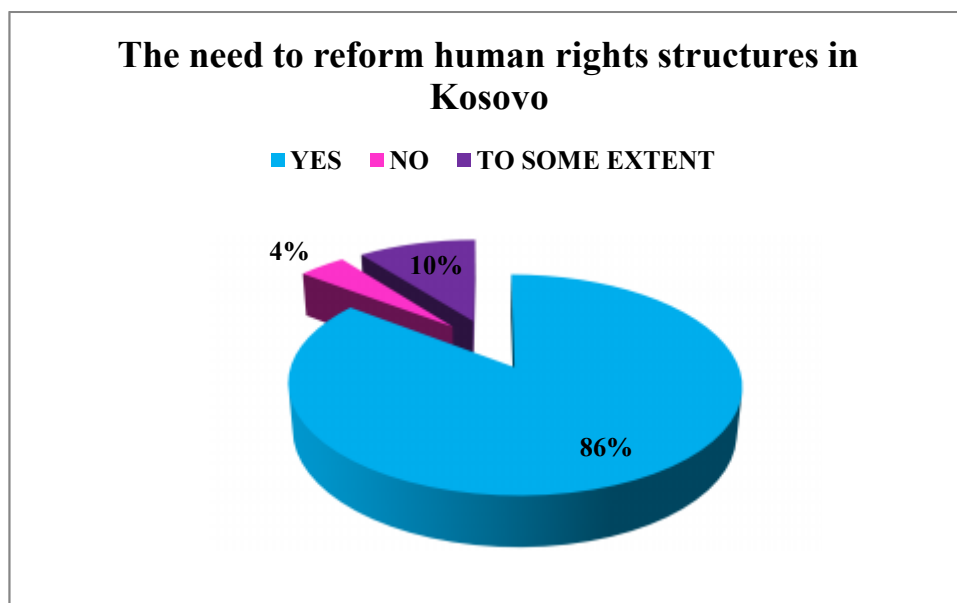
Fig.5.6. Reasons why human rights units cannot work independently



5.2.4 Other human rights agencies and institutions

Republic of Kosovo has created a modern human rights infrastructure. There are a lot of other institutions, despite those presented above, that deals with different fields of human rights according to international standards. However, according to the research survey these mechanisms should be reformed, as they are not functioning well and are not properly coordinated.

Fig. 5.7. Is there a need to reform human rights structures in Kosovo



Agency for Gender Equality functions within the Office of the Prime Minister. It was established by law to ensure gender equality in Kosovo. The agency plays an advisory role to the government and does not accept direct complaints from individuals. However, if they see there is a pattern of discrimination, then they are obliged to take any measures within their mandate to address such discrimination effectively.⁵⁷

Furthermore, in every municipality it is created an *Office for Gender Equality* which has the responsibility to work towards achieving gender equality as well as mainstreaming gender issues into all municipal policies, legislation, and practices. They are responsible to contribute in the promotion, advancement and protection of human rights, with a particular focus on gender issues.

Despite this, one of the permanent committees of the Assembly of Kosovo is also the *Committee on human rights, gender equality, missing persons and petitions*, which is mandated with the role of formulation of draft laws, and monitoring the implementation of the law. Its scope of interest includes human rights, gender equality, missing persons and the right to make petitions, that is to raise a concern about any issue to the Kosovo Assembly. If an individual makes a petition to the Assembly of Kosovo, it will be passed on to this committee. Following its consideration, the committee will recommend to which institution the petition should be sent. It does not substantively address individual petitions.

A special focus in our country is paid for minority rights as well. Therefore, among other ministries it is also the *Ministry of Communities and Returns* that is mandated to develop policies and implement legislation for the promotion and protection of the rights of communities and their members, including in relation to the right to return. As well, there is a *communities committee* in each municipality in Kosovo. This committee is responsible for monitoring the law and ensuring that community rights and interests are fully respected. It can recommend to the municipal assembly measures that considers necessary to ensure implementation of provisions related to the needs of communities and works to promote and protect their rights.⁵⁸

⁵⁷ Agency for Gender Equality website: <http://abgj.rks-gov.net> , assessed on 20.04.2012

⁵⁸ Ministry for Community and Return website: <http://www.mkk-ks.org>, assessed on 20.04.2012

CHAPTER SIX

HUMAN RIGHTS SITUATION IN KOSOVO

Kosovo has experienced many human rights violation before the war and had many difficulties to improve the situation after it. Although after the independence with the help of international community, Kosovo has made some progress regarding human rights situation, there is still a lot of work to do in order to meet the EU criteria and to get accession, especially regarding the right to a fair trial, equality before the law and also gender equality.

6.1 Human rights in Kosovo before and after the war

A brief description with basic characteristics and constituents of the Republic of Kosovo needs to be made in order to be able to comprehend human rights and democratization situation in Kosovo and make a comparison between the past and the present.

Before the war, Kosovo under the Milosevic regime experienced many human rights violation. Despite this, Kosovar Albanians resisted with a peaceful resistance movement under the leadership of Ibrahim Rugova, former President of Kosovo.

Fig. 6.1. Kosovar refugees pass a two year-old child over a barbed wire fence as they flee Kosovo into Albania



Photo by Carol Guzy

All this time, despite many reports from human rights investigators and international diplomats on gross and systematic human rights violations against Kosovar Albanians, the international community did nothing. As the situation was getting worse, Kosovo Liberation Army (KLA) stood up publicly and started to fight in order to be free. Therefore, Milosevic increased his troops in Kosovo and began to destroy many villages in his attempt to wipe out the KLA. But for each village destroyed, more KLA members would sprout up in defiance. In January 1999, Serb forces killed 41 civilians in the Kosovo village of Racak. This was a massacre that was proved by international mediators, although Milosevic claimed that these villagers were actually KLA terrorists in civilian clothes.

In October 1998, US special envoy Richard Holbrooke has negotiated with Milosevic in order to allow 2,000 unarmed observers to monitor the human rights situation and to attempt to stop further violence. As they were not effective, the violence continued to escalate. After that, the international community started the Rambouillet⁵⁹ negotiation between Kosovo and Serbia. They made appeals to Kosovars to disarm and Milosevic to reduce his military troops and to restore the autonomy for Kosovo.

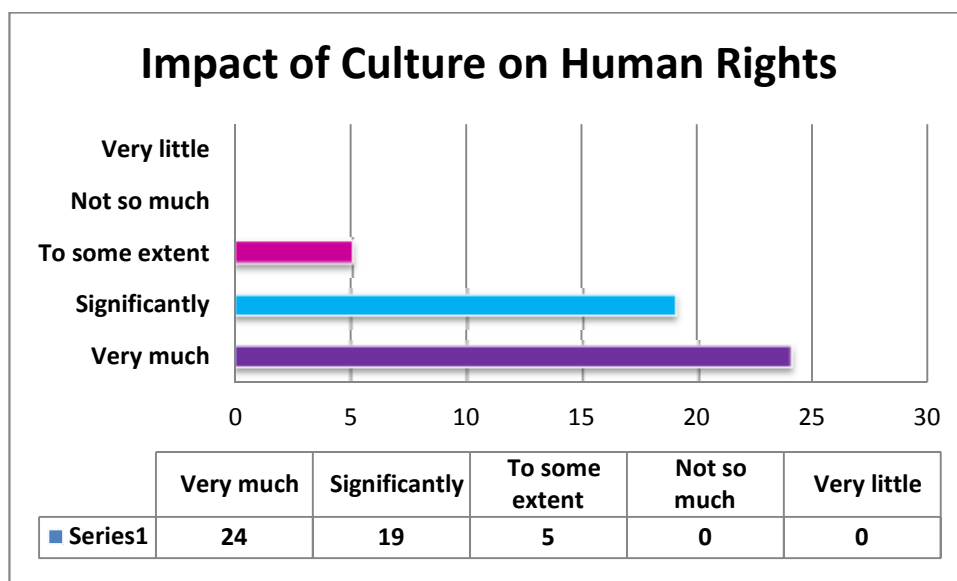
NATO threatened to bomb Serbia if they did not sign, or completely abandon the Kosovars if they did not accept the plan. Therefore, although Kosovars agreed to sign the agreement, Milosevic refused. On March 24, NATO launched an air campaign against Serb military targets. In the meantime, Milosevic responded to ethnically cleansing of Kosovo's Albanian population, killing many of them and destroying all their properties. After 78 days, Milosevic capitulated. UN Security Council adopted Resolution 1244, which suspended Belgrade's governance over Kosovo and established the United Nations Interim Administration Mission in Kosovo (UNMIK) which authorized a NATO peacekeeping to serve in Kosovo. This resolution also had the power to determine the future status of Kosovo.

In 2001, UNMIK established the Provisional Institutions of Self-Government (PISG) and new institutions in municipal and central level, held free elections and this way they took many competencies to govern the state. After many standards were fulfilled as required from international community, Kosovo declared its independence from Serbia on February 17, 2008. In this declaration of independence, Kosovo committed itself to fulfill its obligations under the Ahtisaari Plan and embraced multi-ethnicity as a fundamental principle of good governance.

⁵⁹ Rambouillet agreement, http://www.state.gov/www/regions/eur/ksvo_rambouillet_text.html, (assessed on 20.04.2012)

Although, after independence Kosovo has created modern legal framework and institutions that protects and promotes human rights and fundamental freedoms, a lot remains to be done, due to the fact that the legislation is not always implemented in practice. Another problem that remains a challenge is the impact of culture in respect for human rights. People of Kosovo being occupied from the Serbian regime didn't have any possibility to be informed about human rights and their importance. Based on the research for this project, it was shown that culture impact very much human rights protection in a country.(Figure 6.2)

Fig. 6.2.The impact of culture in respect for human rights (research findings)

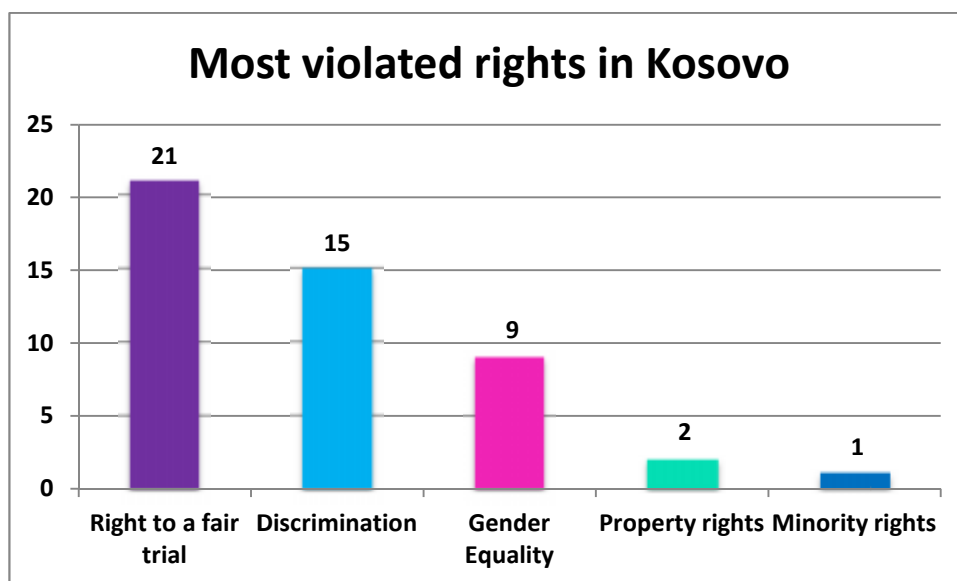


6.2. Most violated rights in Kosovo

As it can be seen from Fig. 6.3 the most violated rights in Kosovo, based on the findings from the questionnaire with human rights units in ministries and municipalities in Kosovo and also some NGOs working in the field of human rights, remains:

1. Right to a Fair Trial
2. Equality Before the Law
3. Gender Equality issues

Fig.6.3. Most violated right in Kosovo



6.3 Right to a fair trial

The concept of fair trial is a basic component of the wider notion of the separation of powers: it attributes to the judiciary - one of the three powers of the State – its distinct character from the other two, by determining which qualities - independence and impartiality - and which procedures make it an element of protection and security for those who are under the omnipotent jurisdiction of the State.⁶⁰

Right to a fair trial is enshrined in Article 6 of the European Convention on Human Rights (ECHR), which in its paragraph 1 sets forth that “*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice*”⁶¹.

⁶⁰ *Judicial Studies Institute Journal*, The right to a fair trial in civil cases, Christos Rozakis

⁶¹ European Convention on Human Rights, article 6, available at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457_5C9014916D7A/0/CONVENTION_ENG_WEB.pdf, assessed on April 20, 2012)

The right to a fair trial by an independent and impartial tribunal is a cornerstone to governance systems based upon democracy and the rule of law.⁶² The right is foreseen in the article 31 of the Constitution of the Republic of Kosovo. Therefore, everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

Fig. 6.4. What does the right to a fair trial guarantees?



Source: 60 years of the European Convention on Human Rights leaflet, www.echr.coe.int

Since the Republic of Kosovo is not a signatory party to the ECHR, this prohibits the citizens of Kosovo to file a complaint to the European Court of Human Rights, if they consider that their right to a fair trial is violated from Kosovo's authorities.

Furthermore, this right is guaranteed by the Universal Declaration on Human rights, which in its article 10 states: *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against*

⁶² Independence is fundamental both to rule of law and the right to a fair trial because it fills a gap between a number of judiciary-related human rights principles and their implementation. See Preamble, Basic Principles on the Independence of the Judiciary (Basic Principles), adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Later adopted by the United Nations General Assembly, UNGA Resolutions 40/32 and 40/146 (1985). Available online at: <http://www2.ohchr.org/english/law/indjudiciary.htm> (accessed April 22, 2012).

him. "Nonetheless, although the legal framework is set in place, we still have problems with human rights violation of this nature.

According to the Ombudsperson Institution of Kosovo and its statistical data, the biggest number of complaints that were received during 2011 was addressed against courts. The right to a fair trial falls on top 5 violated rights as observed by the Ombudsperson and based on the complaints they receive every year. As it can be seen on the table below the largest number of complains, 111 complains were categorized on the right to a fair trial, especially the right of trial within a reasonable time.

Table 6.5. Categorized complaints received (2011) from the Ombudsperson Institution

COMPLAINT	NO.
Right to fair and impartial trial	111
Right to work and exercise profession	102
Protection of property	81
Health and social protection	81
Right to legal remedies	76
Equality before the law	21
Judicial protection of rights	18
Prohibition of torture	14
Rights of the child	13
Right to education	12
Responsibility for the environment	11
Right of access to public documents	10
Right of freedom and security	7
Right to marriage and family	7
Right of the accused	5
Limitations of human rights and freedoms	5
Right to life	4
Freedom religion	4
Human dignity	3
Freedom of movement	3
Right to personal integrity	1
Freedom of association	1
Freedom of election and participation	1

Source: Interview with a legal Assistant in charge for statistical data in the Ombudsperson Institution of Kosovo

According to this institution, there were also complaints about the doubts on the objectivity of decisions, and failure to enforce judicial decisions by the courts, as well as delays in delivering

judgments. Usually, citizens' complaint of excessive delays in judicial proceedings which usually lasts until 5 to 6 years. The Ombudsman after investigated the cases and requested information from the courts, related to the actions taken to resolve these issues, he were not satisfied at all from the majority of the responses that was receives which states "*that the case will be reviewed when it will come its turn*" or "*that the case is in queue for review.*"⁶³

The courts of Kosovo, as it was raised above, are currently facing a number of difficulties that affect the administration of justice in general and right to a fair trial in particular. The efficiency of the judicial system is low and the judicial institutions have made little progress in delivering an effective service in order to reduce the existing backlog and poor case management.

Therefore, it is considered that the establishment of an independent and accountable judiciary is the best guarantee for the rule of law in Kosovo. The reform of the judicial system, and a significant improvement of its functionality, is necessary and inevitable. Judges in Kosovo must have the necessary level of the safety and appropriate so that they are motivated to perform their legal obligations and to be fully independent from any external influence.

6.3 Equality before the law- fight against discrimination

The principles of equal treatment and non-discrimination are at the heart of the European Social Model. They represent a cornerstone of the fundamental rights and values that underpin today's European Union.⁶⁴

The right to non-discrimination is recognized by the Universal Declaration of Human Rights, the UN Covenant on Civil and Political Rights, the UN Convention on Economic, Social and Cultural Rights, the UN Convention on the elimination of racial discrimination and also Protocol 12 to the Convention for the Protection of Human Rights and Fundamental which in its first article sets forth that "*The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*"⁶⁵

⁶³ Interview with Mr. Kurteshi, Ombudsman of the Republic of Kosovo, April 20, 2012

⁶⁴ Equality and non-discrimination in an enlarged European Union, Commission of the European Communities, Brussels, 28.05.2004

⁶⁵ Protocol no. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, article 1

Fig. 6.6. A photo against discrimination at all grounds



Source: NGO "Little People of Kosovo"

The general principle of equality and non-discrimination is a fundamental element of international human rights law. However, discrimination continues to be a daily reality for millions of people who live and work in Europe in general and in Kosovo in particular.

The Constitution of the Republic of Kosovo provides that *"All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination."*⁶⁶In February 2004, Anti-Discrimination Law has also been adopted in Kosovo. Its main purpose was to prevent and combat discrimination, promote effective equality and put into effect the principle of equal treatment for citizens of Kosovo under the rule of law. However in order to ensure an effective implementation, the legal protection framework must be flexible enough to allow protection of all victims of discrimination. The Assembly of Kosovo should ensure that legislation is compliant with the provisions contained in European and international Conventions and case-law of the European Court of Human Rights. The law needs not only to exist on paper, but also to be practiced.

Unfortunately, so far, there is no significant improvement as regards implementation of this law in Kosovo and the main problem is that it does not contain clear description in the second chapter for

⁶⁶ Constitution of the Republic of Kosovo, article 24, paragraph 1

procedures of initiation of discriminatory cases and does not specify sanctions. Article 7⁶⁷, paragraph 1, lacks clarity; it does not specify where the discriminatory cases shall be handling, in regular courts or any other administrative bodies. Also Article 9, paragraph 4 stipulates that” *monies collected through the imposition of the penalties mentioned in paragraph shall be placed in a fund which will be established for the purposes of supplying free legal assistance to natural or legal persons who claim violations of the right to equal treatment under this Law*”⁶⁸, but there are no clarifications regarding the procedure that has to be initiated for requesting material compensation.

Consequently, based on what was stated above, it is impossible to have appropriate implementation of this law, neither by administrative bodies, nor by regular courts. This is the reason that it is considered that this law should be amended, in order to clarify procedures and sanctions related to cases of discrimination.

There are a lot of cases of discrimination in Kosovo in different aspects of rights and this will briefly described the most discriminatory ones.

Discrimination from judiciary continues to be present in Kosovo. Although some progress was made in reforms of the judiciary and completion of legal framework on courts and prosecutorial offices, but also reducing the case backlog⁶⁹, but citizens still are discriminated in different aspects from judiciary. The small number of judges and prosecutors appointed, and their working environment that is inadequate and nonfunctional causes a growing number of pending cases, factors that almost paralyzed the judicial system in Kosovo.

Unfortunately, it has to be emphasized that the Special Chamber of the Supreme Court of Kosovo during its work violates the rights of the citizens which are guaranteed by the Constitution and law. Although the use of the official languages is regulated by Article 5 of the Constitution of the Republic of Kosovo and the Law on the Use of Languages, Kosovo citizens are obliged to submit their lawsuits to the Special Chamber of the Supreme Court of Kosovo in English Language.

According to the Ombudsperson Report⁷⁰, given the fact that translated of documents is expensive; often citizens of Kosovo hesitate to access this Court in requesting of their rights. In this case,

⁶⁷ Law on Anti-Discrimination, Article 7.1” *Any claim of discrimination under this Law shall be decided or adjudicated in accordance with the applicable law by administrative bodies and courts of competent jurisdiction, which have jurisdiction over the concrete issue covered by the claim*”

⁶⁸ Ibid, article 9

⁶⁹ European Partnership Action Plan 2012, December 2011, pg 8

⁷⁰Tenth Annual Report, Ombudsperson Institution of Kosovo

citizens are not only discriminated on the use of languages, but also on the right to appeal, which is guaranteed by the Constitution.

Nepotism is another phenomenon that is causing discrimination in the field of employment in Kosovo, especially in public institutions. Nepotism is the practice of appointing relatives and friends in one institution or organization to positions for which outsiders might be better qualified⁷¹. In Kosovo's public institutions this practice is very common and is directly related to the recruitment process. This phenomenon is considered to be the cancer of our society.

In a small country like Kosovo, it is impossible to disregard the family linkages. According to SIGMA's Report, "the civil service in Kosovo remains highly politicised and hindered by nepotism. In spite of the apparent legality in the recruitment procedure, it is nearly impossible to be employed without political or affiliated linkages"⁷².

This problem was addressed from European Commission's progress reports annually. It makes an unfair working competition in Kosovo, and as a consequence, citizens have lost trust on public institutions.

The persons with disabilities still remain a category vulnerable to all forms of discrimination. They lack adequate infrastructure for easier movement, proper education, health care and employment. The necessary infrastructure for their movement is not regulated even in the most frequented public institutions such are: hospitals, schools, courts and Municipal Assemblies.⁷³ As a consequence, many persons with disabilities who depend on means for movement are prevented from enjoying their basic rights, which are guaranteed by the Constitution and laws.

According to Mr. Sami Kurteshi, Ombudsman of the Republic of Kosovo, the fact that the Covenant on Persons with Disabilities is not included in our Constitution, makes things even difficult to offer them a direct protection of their rights.⁷⁴

Another *discriminated category* are *Roma, Ashkali and Egyptians communities*, which continue to encounter discrimination and marginalization in different aspects of life, including access to education, healthcare, employment and social protection.

⁷¹ As defined by the Business Dictionary, www.businessdictionary.com

⁷² Kosovo Public Service and the Administrative Framework Assessment, SIGMA, May 2008

⁷³ Tenth Annual Report, Ombudsperson Institution of Kosovo

⁷⁴ Koha Ditore, "Barazi per te gjithë ne ligje, por jo edhe ne praktike", www.koha.net, accessed on May, 1 2012

In regards to education, there is a universal system of data of minority pupils and this makes it difficult to establish numbers of minority children who are not able to realise their right to education, particularly at compulsory age level, due to various reasons. Furthermore, access to healthcare at point of service also remains difficult for minorities, which is a discriminatory practice on the part of the authorities.

Such discrimination is further exacerbated by the pressured repatriation of such communities from Western countries, which returns people, even that they know that it will be difficult to reintegrate them in Kosovar society, there are children that don't speak a word in Albanian and they are returned without any guarantee that the government will provide them housing, education, healthcare and basic necessities. This is primarily because their return makes them particularly vulnerable to human rights abuses.

In not any better position are also *LGBT Communities* in Kosovo. Although the legislative framework is set in place and prohibits discrimination on the basis of sexual orientation, its implementation continues to remain a concern; especially since negative attitudes at times have prevailed in the press characterising LGBT citizens as 'mentally ill'⁷⁵.

According to the Ombudsperson Institution in Kosovo, although a special unit on the rights of LGBT has been established, there are no complaints received from this community for different human rights abuses, although they think that they are discriminated. Therefore, there is a need for raising awareness on these issues.

The European Parliament has recommended Kosovo to do more to tackle anti-LGBT discrimination. It should "implement a broad anti-discrimination strategy" that is inclusive of sexual orientation and gender identity⁷⁶.

⁷⁵ US Department of State- Human Rights Report 2010

⁷⁶ European Parliament Urges Candidate Countries To Better Protect LGBT Community, available at : <http://thinkprogress.org>, Zack Ford, April 3, 2012

6.4 Gender Equality

The concept of gender based discrimination includes every distinction based on the gender, which may cause exclusion, restriction, endangering or prevention from enjoying and using, human rights and fundamental freedoms in different aspect of life.

The Constitution of the Republic of Kosovo emphasizes equality before the law for all citizens and the right to legal security without discrimination, despite the gender, language, religious and political orientation, cultural and ethnic background, social and economic status, sexual orientation or any other citizen's status.⁷⁷ It also obliges all institutions to ensure implementation of the international conventions for human rights, including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).⁷⁸ As well, protection against gender based discrimination is regulated by the Law on Gender Equality.⁷⁹

Nonetheless, when anybody speaks regarding the gender equality in Kosovo, that is equality between women and men, in Kosovo this is translated as speaking for women's rights, as this is the most gender based discriminated category.

Republic of Kosovo, with the aim of achieving gender equality, has established different institutional mechanisms. The Assembly of Kosovo has created the informal group of women, which has the mandate to protect and improve the position of women in our society.

There are also other mechanisms like:

- Agency for Gender Equality,
- Ombudsperson Institution of Kosovo- Gender Equality Unit
- Gender Equality offices in ministries and municipalities
- Inter-ministerial Council for Gender Equality

⁷⁷ “The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life”, Constitution of the Republic of Kosovo, article 7.2

⁷⁸ Ibid, Article 22, paragraph 6

⁷⁹ The Law no. 2004/2, on Gender Equality, adopted by the Assembly of the Republic of Kosovo, on 7 June 2004

Fig.6.7. Gender Equality for women and men



Source: The Constitution protects you, Agency for gender Equality leaflet

Although Kosovo has a good legal infrastructure to guarantee gender equality, there are still big challenges in achieving gender equality and equal participation for both men and women. According to the Law on gender Equality “*Equal gender participation of both females and males is achieved in cases where the participation of the particular gender in the institutions, bodies or at the level of authority is 40%.*”⁸⁰ The number of women employees in public institutions and private institutions in Kosovo is not yet proportional with the percentage of population, as it is foreseen by the law.⁸¹ This proportion is even lower in **decision- making positions**, although it has been reported some progress. According to European Commission’s progress report 2011 “*The position of women in politics has improved with the election of Ms Atifete Jahjaga as the Kosovo President and the appointment of three women as Deputy Prime Ministers, including the negotiator in the Belgrade/Pristina dialogue and the Minister for European Integration*”⁸².

⁸⁰ The Law no. 2004/2, on Gender Equality, article 3.2

⁸¹ Ibid , article 3.1” The implementation of legal and affirmative measures establish equal participation for both females and males in legislative, 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”

⁸² Kosovo-progress report 2011, European Commission

What is truly interesting is that the youngest state of the Balkans, Kosovo, is above the average of the world, EU, and in full compliance with the directives of the United Nations, complying with the 30% mark since 2007, increasing it to 33.3% in 2010 elections. In fact, studies show that younger states have an easier time complying with the United Nations criteria compared to more established countries, nevertheless Kosovo is a very good example to follow for all the countries of our region and even further.⁸³

Table 6.8. Female representation in National Assembly

	2007	2008	2009	2010
European Union	23.4	23.6	23.7	24.2
Hungary	10.4	11.1	11.1	9.1
Turkey	9.1	9.1	9.4	9.1
Montenegro	8.6	11.1	6.2	11.1
Romania	11.2	9.4	11.4	11.4
Slovenia	12.2	13.3	13.3	14.4
Slovak Republic	19.3	19.3	19.3	15.3
Albania	7.1	7.1	16.4	16.4
Greece	16.0	14.7	14.7	17.3
Bosnia and Herz.	14.3	11.9	11.9	19.0
Bulgaria	22.1	21.7	20.8	20.8
Serbia	20.4	21.6	21.6	21.6
Macedonia, FYR	28.3	31.7	28.3	32.5
Kosovo	30.8	33.3	33.3	33.3

Source: World Bank

Representation of women at the municipal level is not satisfactory, in both the executive and the legislative branch of the municipality. Regarding the executive, there are still no women leading specific municipalities; they extend only to the management of various municipal directorates. In general, no special attention has been paid to gender equality at the municipal level and it is not on their agenda as an issue to be addressed.⁸⁴

The right to inherit property and participate in the economy is one of the biggest challenges for women rights in Kosovo. Laws guarantee equal rights for men and women in Kosovo, but the influence

⁸³ Kosovo, a good example in the region for women's representation in Parliament, Open Data Albania, March 2012

⁸⁴ Made in Kosova, Fridrich Ebert Stiftung, October 2011

of culture, tradition, economic conditions and the level of education has restricted achieving equality prescribed by the law.⁸⁵

Inheritance of property and other elements of family law are heavily influenced by the traditional Albanian notions of law incorporated into the *Kanun*⁸⁶ (“*Leke Dukagjini Kanun*”⁸⁷). In this traditional code, women’s rights were severely restricted and it foresees a subordinate role of women and details the fact that women cannot inherit property. In many Albanian families throughout Kosovo, especially in rural areas, women cannot inherit property upon the death of their fathers or husbands. In most cases, in the absence of a brother or a son, the property goes to closest male relative. While, in the cases when the female family members receive their part of inheritance, this in most cases becomes a cause of disruption of family relationships in the Kosovan patriarchal family.⁸⁸

Family violence is also present in Kosovar society. This represents one of the worst violations of the human rights and is one of the aspects of discrimination of women. The concept of violence primarily is associated with physical violence, but today it is also regarded and treated in the economic, psychological, sociological and cultural aspect. Women in Kosovo being economically and emotionally dependent with the perpetrator of the violence, very often happens that they don’t even report the case to relevant authorities.

Another important problem and serious obstacle as regards reporting the cases of family violence to the relevant authorities is the fact that the family violence in Kosovo is recognized as a private issue, not as a public issue and as such it must remain within the family.⁸⁹

In order to reduce these problems, Government should continue to raise awareness on gender issues and to promote laws and the rights of women, and this will help in fulfillment of the standards for EU integration.

⁸⁵ Kosovar Centre for Gender Studies, “ Women’s inheritance rights in Kosovo, March 2011

⁸⁶ Edward Tawil, *Property Rights in Kosovo: A Haunting Legacy of a Society in Transition (2009)*, International Center for Transitional Justice

⁸⁷ Kanun of Leke Dukagjini is customary law of Albanians.

⁸⁸ Tenth Annual Report, Ombudsperson Institution of Kosovo

⁸⁹ Ibid

CHAPTER SEVEN

COMPARATIVE ANALYSIS OF COUNTRIES' EXPERIENCES

In the previous chapters it was described the current situation of Kosovo regarding human rights protection and how far has it gone with implementation of requested standards for EU integration, and also what are the gaps that needs special attention and improvement from now on. In order to find out were Kosovo stands with EU integration and human rights in particular, comparative analysis of Albania and Macedonia, as neighborhood countries will be presented below.

7.1. Albania

Albania's EU integration process represents perhaps one of the most debated matters in the national public and political discourse. Yet, almost 15 years after the first contractual relationship with the European Union, Albania seems to be only half way from its strategic goal – EU membership.⁹⁰

Currently, Albania is a potential candidate country for EU accession. The Stabilisation and Association Agreement (SAA) with the country was signed on 12 June 2006 and entered into force on 1 April 2009. As from 15 December 2010 visa liberalisation for Albania citizens travelling to the Schengen area entered into force.⁹¹

As other countries that want to join EU, also Albania is obliged to fulfill Copenhagen Criteria, which require stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Albania has many problems regarding the fight against corruption and organised crime, but also with respecting of human rights.

Right to a fair trial in Albania is guaranteed by Constitution, which in its article 42, sets forth that *“Everyone, to protect his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law”*.⁹² Any one, with the aim of protecting his constitutional and legitimate rights, freedoms and interests, or in case of charges raised against him, is entitled to a due and public trial, within a reasonable time limit and by an independent and impartial court defined by the law.

⁹⁰ Relations of Albania with the EU, *Gjergji Vurmo, Institute for Democracy and Mediation, June 2008*

⁹¹ http://ec.europa.eu/enlargement/potential-candidates/albania/relation/index_en.htm, accessed 5/5/2012

⁹² Constitution of the Republic of Albania, article 42.2

According to the report of the People's Advocate of Albania, during the year 2011, they received 96 complaints regarding the right to a fair trial. Citizens most complaints about unfair and unjustified judicial decisions, pending cases in the courts and also influence of corruption in judges.⁹³

Whereas, the European Court of Human Rights (ECHR) delivered eight judgments concerning the country. These cases largely concerned the right to a fair trial within a reasonable time, the right to an effective remedy, and the right to peaceful enjoyment of possessions. As of September there were 287 cases pending before the ECHR regarding Albania.

In progress report 2011, it was emphasized that” *There is a risk that unjustified and persistent delays in proceedings prevent fulfillment of the principle of a fair trial as enshrined in the Albanian constitution.*”

As it can be seen, Albania stands in a much better position than Kosovo regarding respect to the right to a fair trial, maybe because citizens of Albania has the right to complain to the European Court of Human Rights, and Kosovo cannot as it still did not sign the European Convention on Human Rights.

Whereas, **equality before the law-fight against discrimination** in Albania is regulated by Law on protection from Discrimination and article 18 of the Constitution of the Republic of Albania which states” *All are equal before the law. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry*”⁹⁴.

Currently in Albania, exists a good legal basis against discrimination, what in 2010 established also the Commissioner for Protection from Discrimination, which is an independent equality body with binding decision powers. This office has carried out several awareness-raising campaigns and training events. The Office has been consulted on draft legislation. So far, only eight cases of alleged discrimination have been submitted to the Office, with two of them leading to recommendations from the Commissioner. General awareness, particularly at the local level, of the provisions of the Law on Protection from Discrimination among the public and key professional groups remains low.

Regarding the issue of discrimination, Albania still has some problems in different aspects of discrimination. One of them is rights of persons with disabilities. “*The law mandates that new public buildings be accessible to persons with disabilities, but the government only sporadically enforced the*

⁹³ Raport 2011, People's Advocate of Albania, www.avokatipopullit.al, accessed May 2, 2012

⁹⁴ Constitution of the Republic of Albania, article 18

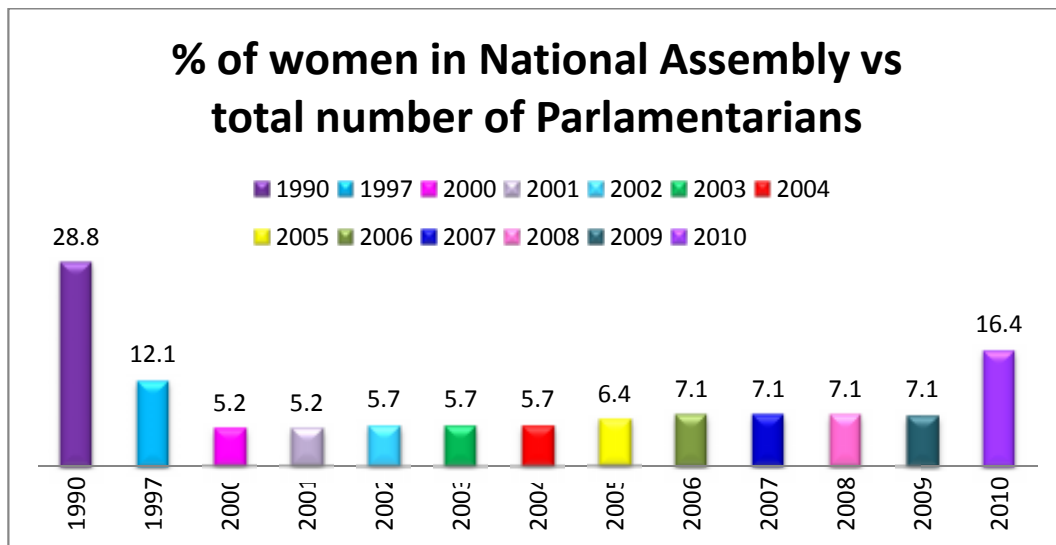
law. Widespread poverty, unregulated working conditions, and poor medical care posed significant problems for many persons with disabilities”⁹⁵.

Another problem raised from the People’s Advocate in his last report⁹⁶ is also the issue of Roma Rights, which lacks proper education, housing and civil registration and also LGBT rights, which are not respected “Several cases of violence and ill-treatment targeting the transgender community have been reported. Homophobia remains widespread, including on the part of public service professionals.”⁹⁷

With regard to **Gender Equality**, which comprise the core of social policies of the EU member countries and one of the requirements to be fulfilled by the countries that have joined the European integration process, Albania has made some progress, but there is also place for improvement.

Albanian women continue to be discriminated in access to certain fields and to be under-represented in the labour market and politics. During the local elections in May 2011, the gender quota was not respected throughout the country.⁹⁸

Fig.7.1. Women participation in National Assembly of Albania 1990-2010



Source: United Nations

Paradoxically, given that the percentage of seats held by women in the National Assembly helps to judge the democracy of a country, in Albania the highest participation of women in parliament has been before '90(28.8%). Whereas later the number decreased, and now it is just 16.4 % as it can be

⁹⁵ Albania- US Department of State Human Rights Report 2010,

⁹⁶ Report 2011, People’s Advocate of Albania

⁹⁷ Progress Report 2011, Albania, European Commission

⁹⁸ Ibid

seen on the figure below, that is not enough⁹⁹. Studies have shown that countries that have less than 30% of parliamentary seats held by women are less democratic and more discriminating.

Domestic violence is a serious problem in Albania. The transition to a free market has left women in a particularly vulnerable position, as they have become increasingly economically dependent on men due to a lack of jobs and social support. According to government figures, there were 1,744 cases of domestic violence reported during the year, compared with 1,063 in 2009. Often the police do not have the training or capacity to deal with domestic violence cases¹⁰⁰, and this usually happens as a result of traditional social norms that considered women to be subordinate to men.

Albania still needs improvement in this aspect, as this will be necessary and a pre-condition for EU Accession.

7.2 Macedonia

The former Yugoslav Republic of Macedonia was granted candidate country status for EU membership in 2005. On 18 February 2008 the Council adopted the Accession Partnership for the country, thus updating the previous European Partnership of January 2006. Whereas, since 19 December 2009 Macedonians have not needed visas to visit most EU member states - those in the Schengen zone.

Like other countries in the Western Balkans, also Macedonia has different problems regarding human rights. Three categories of them will be described, right to a fair trial, fight against discrimination and gender equality, so that comparative analysis can be made with Kosovo and Albania.

Right to a fair trial is one of the basic rights of any legal state that guarantees to its citizen's equal access to justice. They strengthen the trust of the citizens in the judiciary which on the other side has to be a guarantor of fundamental human rights and freedoms.

The European Convention on Protection of Human Rights and Fundamental Freedoms, through the European Court for Human Rights guaranties and protects the right to fair and public trial and foresees the right to a trial in a reasonable time limit for each person, before an independent and unbiased court, established on legal basis.

⁹⁹ Participation of Women in politics, Open Data Albania, February 2012

¹⁰⁰ Albania- US Department of State Human Rights Report 2010

Republic of Macedonia as a UN member country, member of the Council of Europe, signatory of a number of international instruments for human rights protection, has incorporated the standards on fair and righteous trials in the national legislation, most importantly in the Constitution and Code on Criminal Procedure.¹⁰¹

Besides the voluminous reforms implemented in the judicial system, the situation with respect of the principle of a trial in a reasonable time limit, consequently access to justice, one of the basic problems for realization of the constitutional and legal rights of the citizens of the Republic of Macedonia remains, which is the reason for the constant increase of request for protection of the right to a trial within a reasonable time limit both before the Supreme Court of the Republic of Macedonia and the Human Rights Court in Strasbourg.¹⁰²

Discrimination is an issue of concern in Macedonia, as well. There is a strong legal infrastructure for protection from discrimination that are completely harmonised with EU legislation, with which Macedonia fulfilled another key requirement for EU accession.

Despite legislation set in place, it has been established also the Commission for Prevention and Protection against Discrimination, where any citizen who believes he or she has suffered illegal discrimination has a right to file a complaint with within three months of the Macedonian law prohibits discrimination on the basis of ethnicity, gender, race, social status, language, citizenship, religious conviction, political affiliation or disability.

The majority of the complaints received from the Commission, were on political and ethnic grounds. However, the law on anti-discrimination remains to be fully aligned with the *acquis*. Discrimination on grounds of sexual orientation is still omitted. Also, the capacities of the Commission need to be strengthened. The Lesbian, Gay, Bisexual and Transgender (LGBT) community continue to be subjected to discrimination and stigmatisation. University and high school text books treat homosexuality as a disease. There is a major need to raise awareness not only of the new provisions contained in the enacted law, but also with reference to the principles of respect and tolerance of diversity.¹⁰³

¹⁰¹ National Mechanism on Human Rights Protection ,Coalition of civil associations „All for fair trials“, September 2011, Skopje,

¹⁰² Annual Report 2011, Ombudsman of the Republic of Macedonia

¹⁰³ Progress Report 2011, Macedonia, European Commission

Regarding the *Gender Equality in Macedonia*, implementation of the national strategy against domestic violence has continued. Awareness of domestic violence among the population improved and some initiatives have been undertaken to respond better to the needs of victims. The capacity of the national coordination body for the national strategy to combat domestic violence was strengthened. Some progress was made to address women's health needs. The equal opportunity issue is not a political priority of the government. Discriminatory customs, traditions and stereotypes are widespread and undermine women's basic rights.¹⁰⁴ Participation of women in political life at local level remains low, as it can be seen in the figure below, in the Assembly there are just 34 women, out of 134 seats. Roma women and girls still suffer from both racial and gender discrimination. Some very limited actions targeting Roma women have been implemented and a more pro-active approach is needed to implement the existing national action plans.

Fig.7.2. Gender participation in Assembly of the Republic of Macedonia



Source: Global Database of Quotas for Women

¹⁰⁴ Ibid

CHAPTER EIGHT

ASSESSMENT OF HUMAN RIGHTS IN KOSOVO ACCORDING TO THE SURVEY

8.1. Summary of the survey

In order to understand the current situation of human rights in Kosovo from the perspective of human rights officers in ministries , municipalities and also some NGOs that work in the field of human rights, a survey was distributed and answers were collected.

The questionnaire was comprised from twenty questions, all of them with multiple choices in order to make it easier for the respondents. Questions were focused human rights situation in Kosovo and challenges and importance of them for integration in European Union.

The questionnaires were distributed through email, and the answers were expected to be returned within two weeks time. The findings of the survey was used in different parts of this capstone project in order to have a perspectives from outside sources, but also from respondents with are directly involved in human rights issues and are faced with different challenges everyday during their work.

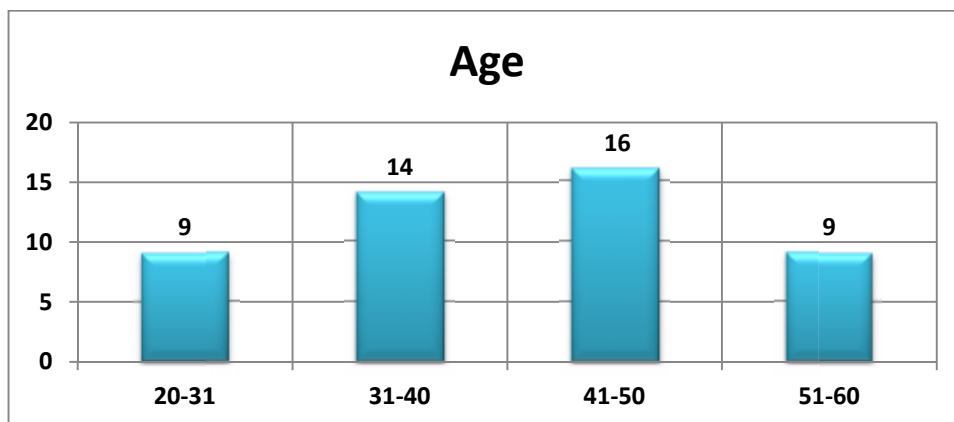
As it can be seen in Table 8.1, participants of the survey were human rights unit coordinators in ministries and municipalities of Kosovo and also some NGOs working on human rights. A total of 57 participants were invited to take part in the survey, but only 48(36 females and 12 males) of them returned the questionnaire with the answers. The questionnaire was confidential; the participants were not required to write the name or personal details, just their position and institution where they work. This is the reason why many of them didn't hesitate to respond to it.

Table 8.1. Respondents, their institutions, positions, and the number of questionnaires

INSTITUTION	POSITION	NO. OF QUESTIONNAIRE
Human rights Units in ministries	Unit Coordinators	17
Human rights Units in ministries	Unit Coordinators	30
NGOs working on Human Rights	Members of NGOs	10

Participants were of different age, but most of them were from 30-50 years old. This can be seen on the figure below. On the other hand, respondents were well educated, 70% bachelor degree and 21% were with advanced studies.

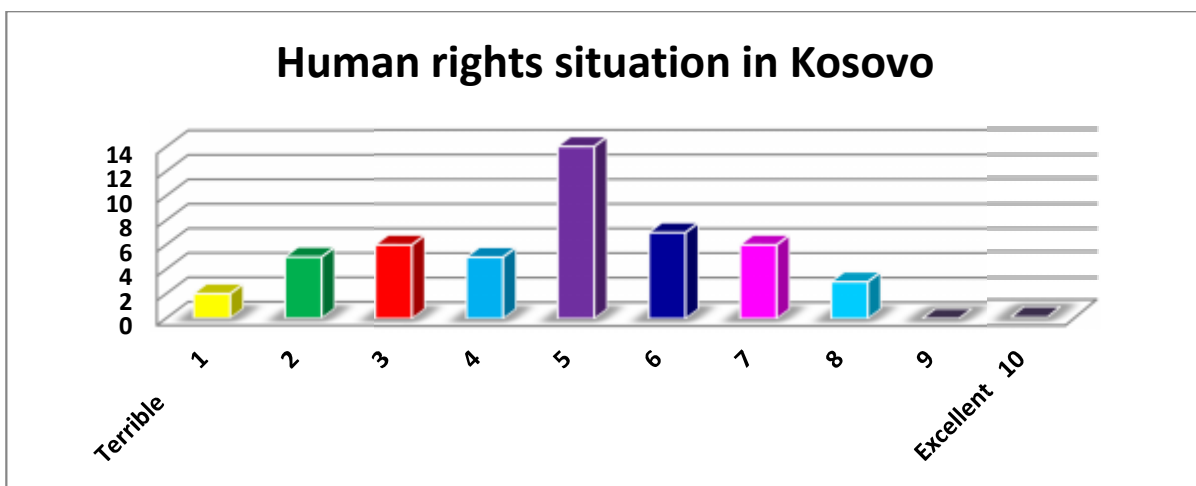
Fig .8.2. Age of the questionnaire’s respondents



8.2. Survey findings

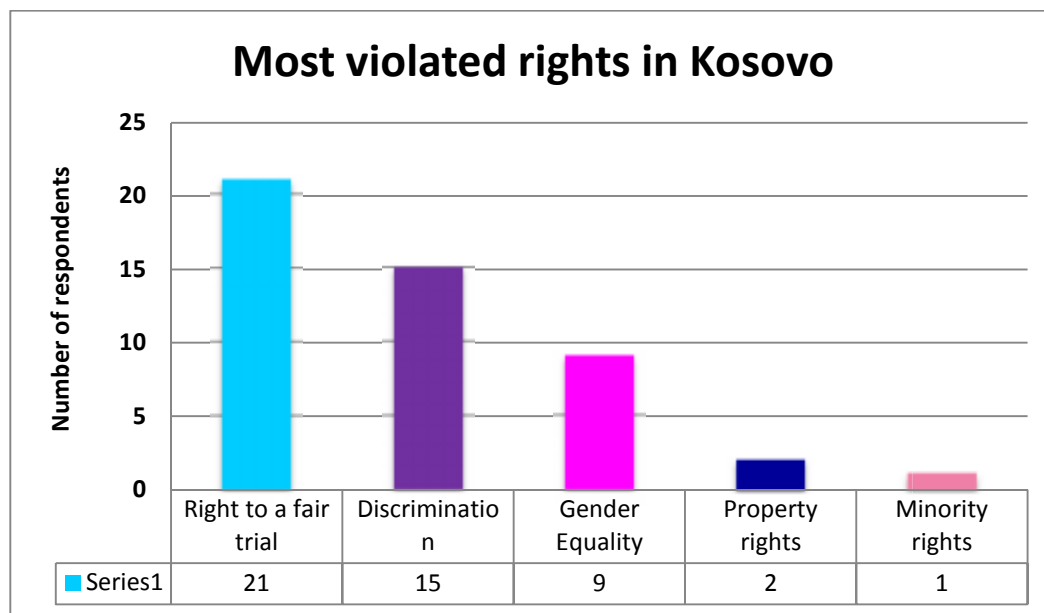
Findings from the research shows the current situation of human rights and challenges and necessary measures that has to be taken in order to fulfill the Copenhagen criteria which is a pre condition to EU Accession . However, figures below present the responses of 48 respondents from different ministries and municipalities to the questions on the subject of this research.

Fig.8.3. In a scale from 1- 10, where does Kosovo stands, regarding human rights protection?



Being interested to know what human rights officials in main institutions of the Republic of Kosovo think about the current level of Human rights in Kosovo (level 1 being terrible and level 10 excellent), most of the respondents answered that the situation is at level five, 14 of all respondents, and this is not enough if we want to achieve our objectives in being an European Union member state.

Fig. 8.4. Please prioritize three most violated rights in Kosovo?



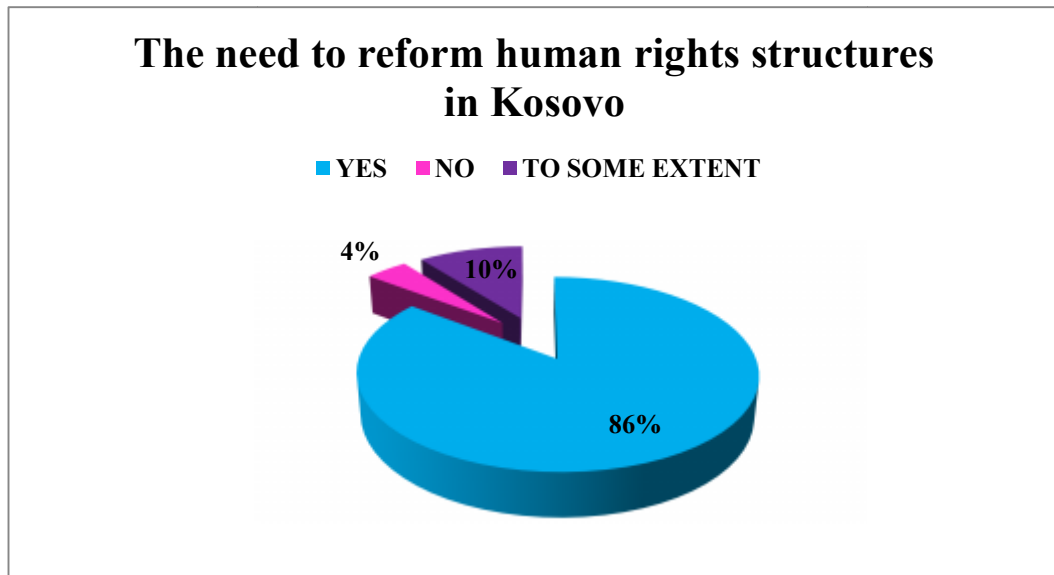
In the question which are the most violated rights in Kosovo, as it can be seen from Figure 7.4, it was revealed that most respondents think that most violated rights are:

- ❖ Right to a fair trial- first most violated right,
- ❖ Discrimination at all grounds- second place,
- ❖ Gender equality- third place,
- ❖ Property rights
- ❖ Minority rights(with special emphasize to Roma, Ashkali and Egyptian Communities.

All three most violated rights were elaborated in a separate chapter above, in order to tackle these problems in a more detailed manner.

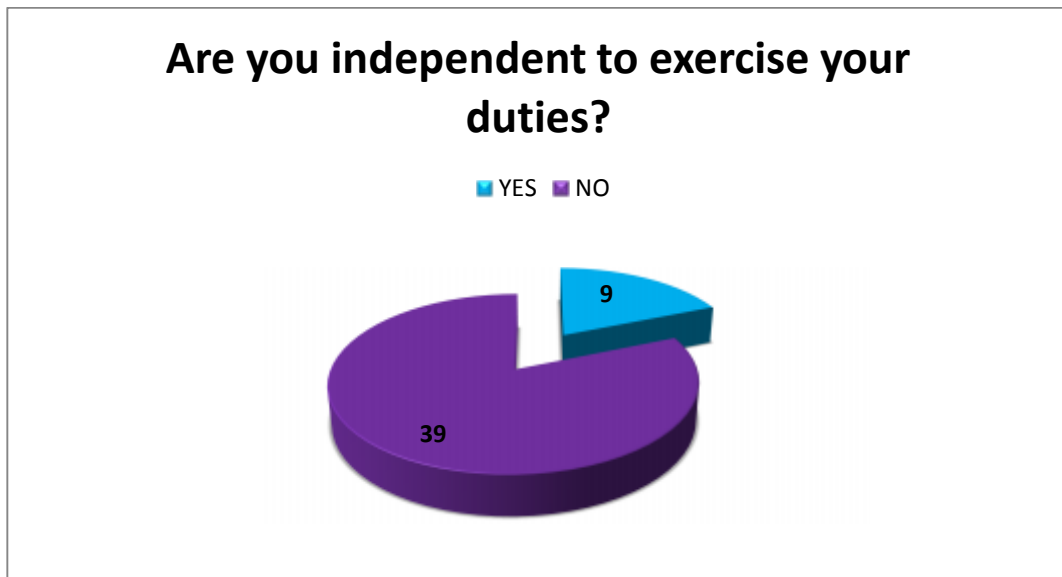
The Republic of Kosovo has created modern human rights institutions and mechanisms. However, according to the research survey these mechanisms should be reformed, as they are not functioning well and are not properly coordinated. In the question if these structures need to be reformed, 86% of respondents answered “yes”, from them 10% said “to some extent” and just 4% of them said “no”(Fig. 8.5)

Fig. 8.5. Is there a need to reform human rights structures in Kosovo?



As it can be seen Figure 5.5 and the answers of respondents, 39 out of 48 respondents answered that they are not independent to exercise their duties without interference from their supervisors. This is the reason that it is being discussed to reform these units, so that they can report directly to the Office for Good Governance or any other body and be able to perform their duties independently without interference from the ministry or municipality supervisors. It is necessary for them to be financially independent as well

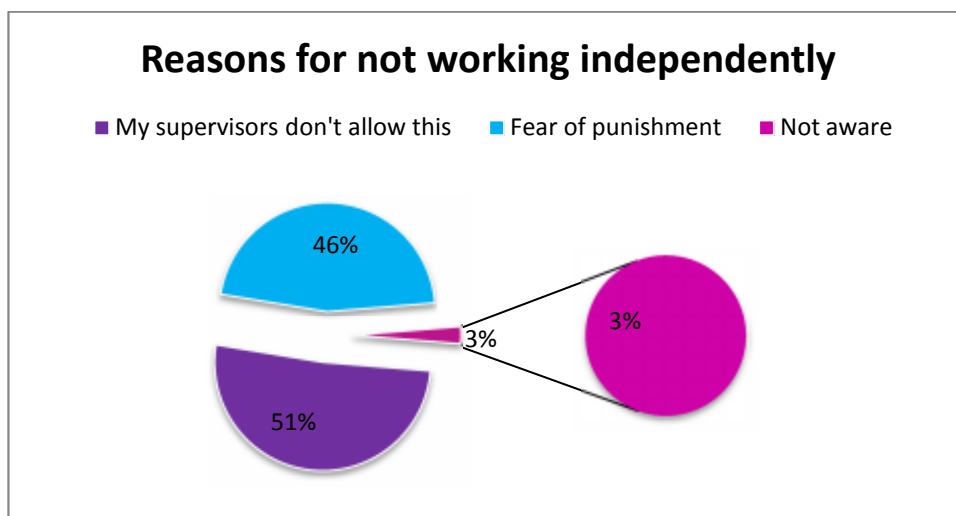
Fig. 8.6 Human rights units are not independent in exercising their mandate.



It is evident that the Government of Kosovo has created mechanisms for human rights just to fulfill the criteria, but they are not functional and they are not performing as they should and do not contribute to the awareness of protection of human rights situation in central and municipal level.

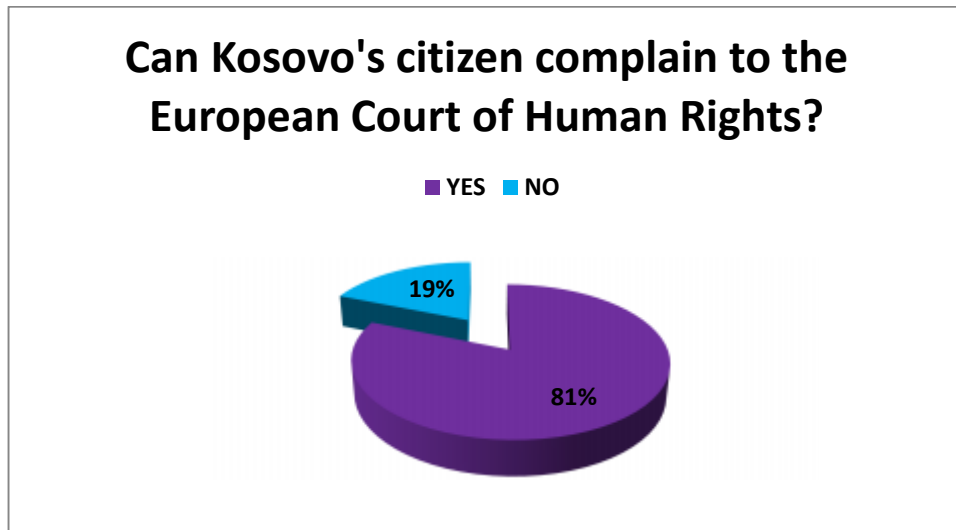
Given the fact that it was shown that a big number of human rights units coordinators are not independent to work independently, they were also asked for the reasons of this condition, and 51% answered that their supervisors don't allow this, 46 % said that they fear any punishment if they speak against their ministry or municipality and 3% of them said that they are not aware. (Figure 8.7) Working in a country where approximately half of the population is unemployed it is difficult to report any violation, and to not suffer any consequences like remaining without job.

Fig.8.7. Reasons why human rights units cannot work independently



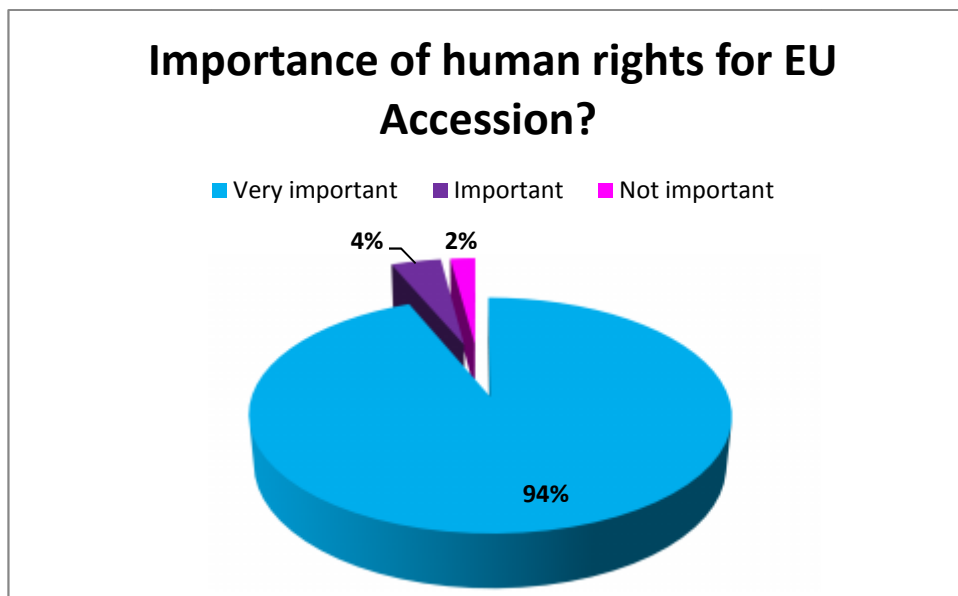
In the question if Kosovo's citizens can complain to the European Court of Human Rights, it was so bad to find out that Kosovo still lacks qualified people to work for protection and promotion of human rights. As it was mentioned before, respondents of this survey were all human rights units' coordinators in ministries and municipalities of Kosovo and also some NGOs working on human rights. However in the question, 81% of them said that Kosovo can complain to the European Court of Human rights, that is a wrong answer, and just 19 % of them gave me the right answer.(Figure 8.6)

Fig.8.6. Can Kosovo’s citizen complain to the European Court of Human Rights



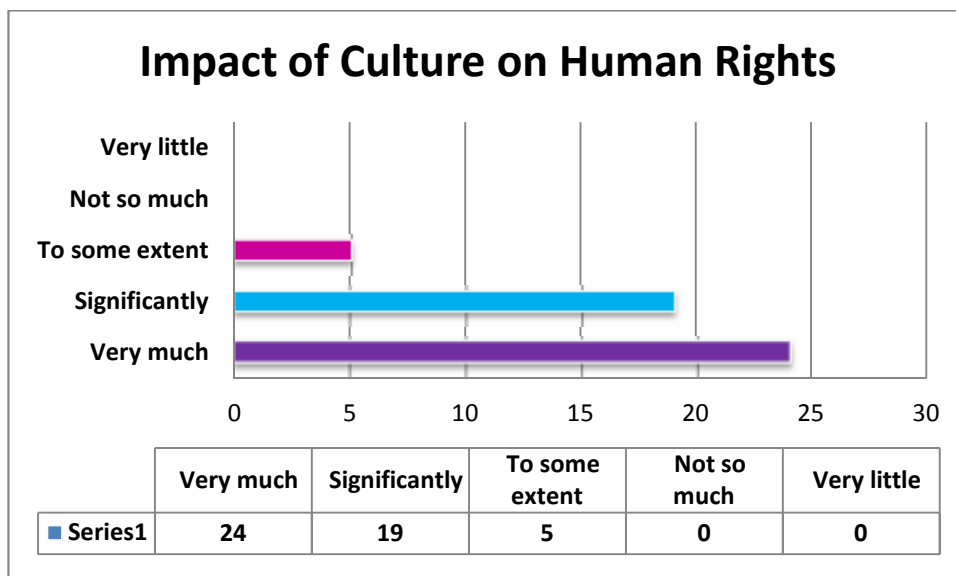
European Union ‘is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles that are common to the Member States’ and emphasizes in article 49 that the respect of these principles also is required by countries who apply for EU membership. In order to find out what our human rights officer thinks on the importance of human rights, 94 % of them answered that human rights are very important for EU Accession, from them 4% said that they are important, but they don’t have to be a priority, and just 2% of them said that human rights are not important in this process.

Fig. 8.7 How important do you consider human rights for EU Accession?



Although, after independence Kosovo has created modern legal framework and institutions that protects and promotes human rights and fundamental freedoms, a lot remains to be done, due to the fact that the legislation is not always implemented in practice. Another problem that remains a challenge is the impact of culture in respect for human rights. People of Kosovo being occupied from the Serbian regime didn't have any possibility to be informed about human rights and their importance. Based on Figure 8.8, it was shown that culture impact very much human rights protection in a country.(Fig. 8.8) And, living in an age of human rights, a change is necessary that would make people of Kosovo more aware of their rights and rights of others, in order to have a mutual respect of them.

Fig. 8.8.The impact of culture in respect for human rights



CHAPTER NINE

FINAL DISCUSSIONS AND RECOMMENDATIONS

9.1. Final discussions

This capstone project aimed to examine and assess human rights in Kosovo, as one of the Copenhagen Criteria for EU membership. It is beyond any doubt that the protection of human rights and fundamental freedoms is a founding principle of the EU, what is also recognized from the Treaty on European Union. Also, at the moment, the EU provides for a high level of human rights protection by encompassing the most important international and European Convention on Human Rights and other instruments of Council of Europe. As far as enlargement is concerned, the EU applies strict conditions for countries wishing to join this family, asking them to provide at least equivalent protection of human rights as they provide for internally.

Being a young country, Kosovo, step by step established institutions for protection of human rights, like courts and Ombudsperson. Recently it was established also the Constitutional Court that has huge importance. However, despite these achievements, efforts and constitutional and institutional guarantees for protection of human rights, human rights protection in practice appears to be rather unsatisfactory in fulfilling EU human rights conditionality. While, there is respect for certain rights, there are cases when certain other rights are not being protected to a satisfactory extent. In this respect, the right to a fair trial, the right to be equal before the law and gender equality are still not respected in practice.

The courts of Kosovo, which are supposed to be the guardians of human rights, have not been as efficient and effective. Even though there is a good will of the judges to respect international instruments and European Court of Human Rights' case law, not all of them have accordingly done so in practice due to the case overloads as well as lack of knowledge.

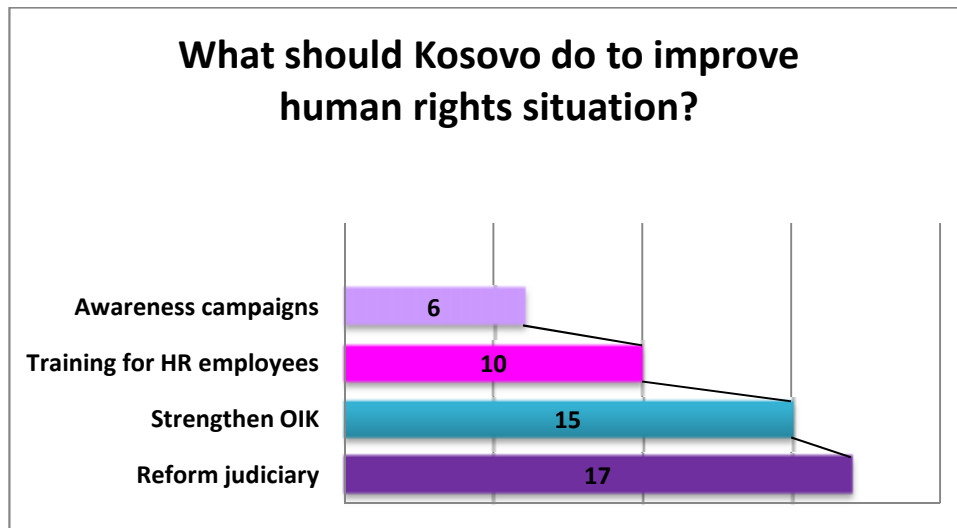
The Ombudsperson, despite its great contribution so far, has no executive powers and it is being faced with different problems and lack of political support to strengthen it and to implement its recommendations. On the other hand, although Human rights units were established in ministries and municipalities of Kosovo, they are not independent to exercise their duties and most of them are not functional at all.

Most importantly, citizens have no legal remedy against Kosovar Courts in the European Court of Human Rights, because Kosovo has not yet signed the European Convention on Human Rights. This being said, it is clear that Kosovo, although in the right track, is far from meeting the necessary criteria for EU membership. There is also a desperate need for a reform of human rights structures in Kosovo in order to have a satisfactory protection of human rights in practice.

9.2. Recommendations

Taking into consideration the commitment of the Government of Republic of Kosovo towards EU integration and importance of meeting human rights criteria in order to facilitate this process and also based on survey findings(see figure 9.1) of this capstone project following recommendations has to take place:

Fig. 9.1 What should Kosovo do in order to improve human rights situation?



1. Ensure implementation of legislation in practice

Assembly and the Government of the Republic of Kosovo should ensure that the adopted legislation will be implemented in practice. It is not enough just to adopt laws and to draft strategies for protection and promotion of human rights, but they should consequently be implemented in practice. Very often laws are copy-pasted from legislation of different European countries, they are modern, but not always they can be applicable in Kosovo, due to differences that can exist, thus many laws remain just on paper.

However, in order to achieve this, a good political will of the central and local public institutions of the Republic of Kosovo is necessary and inevitable. Furthermore, it is necessary that the Covenant for Economic, Social and Cultural Rights to be included in the Constitution.

2. Continue with the reform of the judiciary

A competent, independent and impartial judiciary is absolutely fundamental to the rule of law in Kosovo. Economic stability, security, and the protection of human rights in Kosovo depend upon the proper administration of justice which in turn depends on the ability of the judiciary to render its decisions unaffected by improper influence.¹⁰⁵ Government should take appropriate security and protection measures to provide judges and court staff with a secure working environment and effective safeguards against threats or intimidation and political interference. The staff problems and other problems of the courts, which are the main causes of delays in decision making process, are not and cannot be acceptable reasons for violation of the right for review of the case within a reasonable time. This right is also guaranteed by the Constitution and European Convention on Human Rights.

Kosovo Judicial Council, the Government and the Assembly of the Republic of Kosovo should ensure extension of judicial power in the entire territory of the country including the northern part of Mitrovica and other Municipalities as foreseen by the Constitution of the Republic of Kosovo

3. Strengthen Ombudsperson Institution of Kosovo

Ombudsperson Institution of Kosovo as the only national human rights institution in Kosovo is currently facing many difficulties due to the lack of political support to ensure its proper functioning and financial independence. Furthermore, Government of Kosovo should ensure that recommendations of the Ombudsperson are implemented properly by public institutions. In order to strengthen this important institution for protection and promotion of human rights, adequate human and financial resources and working premises should be provided. It is also necessary that all legal measures to be undertaken in aiming to respect the institutional independence of this institution by all state bodies.

¹⁰⁵ Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions January, 2012, OSCE Mission in Kosovo

4. Reform human rights structures

It is evident that Government of Kosovo has created mechanisms for human rights just to fulfill the criteria, but they are not functional and they are not performing as they should and do not contribute to the awareness of protection of human rights situation in central and municipal level.

The range of these human rights mechanisms is too much dispersed and at times overlapping. There is no adequate communication and coordination between human rights units at central and local level and with the Ombudsperson Institution. Therefore, this institutional set-up needs to be simplified and appropriate resources need to be allocated. Given the fact that based on the survey it was shown that big number human rights units are not allowed to work independently, because they report to the ministry or municipality where they work, it is important for a human rights structures reform that would regulate the communication, coordination and independence and adequate resources to perform their mandate.

5. Fight discrimination at all grounds

Anti- Discrimination Law doesn't have substantive progress it needs review and clarity especially in its chapter II and III. There is a lack of awareness about discrimination within the public and the civil service, therefore necessary measures should be taken to address this problem. Elimination of discrimination cannot be a de jure issue only, at all times it needs to be eliminated de facto and public institutions are legally responsible to take a lead on this. Among others, there are still problems with RAE Communities' rights, LGBT communities' rights and also gender equality.

It is also recommended that necessary steps be taken in order to establish **an Office for Protection from Discrimination**, as Albania and Macedonia, our neighbor countries did, that will have binding power and will ensure implementation of law against discrimination and also raise awareness on these issues.

6. Raise awareness on human rights

It is also important to raise awareness among people, regarding human rights, especially in rural areas of Kosovo. Many citizens still are not aware of their rights and the existing institutions where they can complain for their violated rights. Therefore, doing a human rights campaign will be of outmost benefit to Kosovo.

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Appendix I : Questionnaire for Human rights Units in the ministries/municipalities of the Government of Kosovo

Background information

Institution: _____

Position: _____

Gender: Female

Male

Age:

20 - 31

31- 40

41- 50

51- 60

Education:

High School

Bachelor's Degree

Advanced Studies

Questions

1. In your opinion, in a scale from 1- 10 (1=terrible, 10=excellent), where does Kosovo stands, regarding human rights protection in general?

2. According to your opinion, which are the most violated rights in Kosovo?

Transparency of courts,

Gender Equality

Discrimination

Minority Rights

Property rights

Others (Please Specify)

3. Do you believe that there is a need to reform human rights structures and mechanisms in Kosovo?

Yes

No

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To some extent

4. If your answer is yes to the question 3, how this can be done?

- Issue an administrative instruction
- Allocate more budget
- Changing a law or certain constitutional article
- I don't know

5. What below mentioned level is your cooperation with the Ombudsperson Institution regarding human rights?

- Excellent
- Very good
- Good
- Satisfactorily
- Bad

6. Are the recommendations of the Ombudsperson properly implemented from your ministry/municipality?

- Yes
- No

7. If you answered no in question number 6, what are the reasons that these recommendations are not implemented?

- Lack of political will
- Lack of expertise
- Lack of awareness on the importance of human rights
- Not aware

8. Are you independent to exercise your duties without any interference?

- Yes
- No

9. If your answer is no to question number 8, what are the problems?

- My supervisors don't allow this
- Fear of punishment
- Other (Please specify)

10. What are the biggest human rights challenges that you face during your work?

- Lack of financial resources

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- Lack of political will to improve the situation
- Culture impact on respect for human rights
- Other(Please specify)

11. Do you have any cooperation with local human rights NGOs?

- Yes
- No

12. Can Kosovo's citizen access European Court of Human Rights?

- Yes
- No

13. To what extent does culture impact respect for human rights?

- Very much
- Significantly
- To some extent
- Not so much
- Very little

14. To what extent does a person's level of education impact their respect for human rights?

- Very much
- Significantly
- To some extent
- Not so much
- Very little

15. Have you personally experienced any discrimination of human rights?

- Yes
- No

16. If you answered yes to question 15, in what areas have you been discriminated?

- Employment procedures
- Court transparency
- Property rights
- Right to access public documents
- Other. Please specify.

17. If you answered yes to question 15, did you take any action?

- Yes
- No

18. If you answered yes to question 17, what steps did you take?

- Exhausted all legal remedies
- Complained to the Ombudsperson Institution
- Nothing

19. How important do you consider human rights in order to gain EU accession?

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- Very important
- Important
- Not important

20. What should be done to improve the situation of human rights in Kosovo?

- Training for HR employees
- Reform judiciary
- The situation is good
- Awareness campaigns
- Nothing