



PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

Law No.2004/ 3

THE ANTI-DISCRIMINATION LAW

The Assembly of Kosovo

Pursuant to the Regulation No. 2001/9, of 15 May 2001, on the Constitutional Framework for Provisional Self-Government of Kosovo, in particular on the provisions of Chapters 3.1, 3.2 and 5.7 and further,

Bearing in mind the importance of supporting coexistence, protection of human rights, fair representation of people of Kosovo in the development process of democratic Self-governing institutions, and to provide opportunities for equal treatment and ensuring that the issuance of rules on these issues will be in accordance with relevant European and international standards and norms.

Adopts:

THE ANTI-DISCRIMINATION LAW

CHAPTER I

GENERAL PROVISIONS

Article 1
Purpose

The purpose of this Law is prevention and combating discrimination, promotion of effective equality and putting into effect the principle of equal treatment of the citizens of Kosovo under the rule of Law .

Article 2
Principles

The regulation of the issues dealing with non-discrimination is based on these principles:

- a) The principle of equal treatment shall mean that there shall be no direct or indirect discrimination against any person or persons, based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status;
- b) The principle of fair representation of all persons and all the members of communities to employment in the frame of public bodies of all levels.
- c) Good understanding principle and interethnic tolerance of the citizens of Kosovo.

Article 3 Terms

For the purposes of Article 2 (a), the terms below are defined as follows:

- (a). Direct discrimination shall be taken to have occurred where one person is treated less favourably than another is, has been or would be treated in a comparable situation based on one or more grounds such as those stated in Article 2(a);
- (b). Indirect discrimination shall be taken to have occurred where an apparently neutral provision, criterion or practice would put persons, on the basis of one or more grounds such as those stated in Article 2(a), at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
- (c). Harassment shall be deemed to be discrimination within the meaning of Article 2(a) when an unwanted conduct takes place (including but not limited to unwanted conduct of a sexual and/or psychological nature) based on grounds such as those stated in Article 2 (a) which has the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment, as determined by that person;
- (d). An instruction to discriminate against persons based on grounds such as those stated in article 2(a) shall be deemed to be discrimination within the meaning of Article 2(a).
- (e). Victimisation shall be deemed to be discrimination within the meaning of Article 2(a) and shall be taken to have occurred when any person suffers any adverse treatment or adverse consequence as a reaction to a complaint, or to proceedings, which are aimed at enforcing compliance with the principle of equal treatment as defined in Article 2(a), and/or to the provision by such person of information, evidence or assistance in connection with such complaint or proceedings.
- (f). Segregation shall be deemed to be discrimination within the meaning of Article 2(a), and shall be taken to have occurred when a person or persons are separated from others by any natural or legal person or persons, or any combination thereof, who are from either the public or private sector or both, when such separation is made on the basis of one or more grounds such as those stated in Article 2(a), unless such separation shall be objectively justified by a legitimate aim and the means of achieving that aim are proportionate and necessary.

Article 4 Implementation Scope

This Law shall apply to all natural and legal persons as regards both the public and private sectors, including public bodies, in relation to any action or inaction which violates the right or rights of any natural or legal person or persons, to:

- (a) conditions for access to employment, self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) employment and working conditions, including dismissals and pay;
- (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
- (e) social protection, including the Social Assistance Schemes, social security and healthcare.
- (f) social advantages, including but not limited to humanitarian assistance;
- (g) education;
- (h) access to housing, and to all other forms of property (both movable and immovable)
- (i) access to and supply of goods and services which are available to the public;
- (j) fair treatment before tribunals and all other organs administering justice;
- (k) personal security;
- (l) participation in public affairs, including the right to vote and be voted for.
- (m) access to public places; and
- (n) any other right set forth by applicable laws.

Article 5

Real and determining occupational requirements

Notwithstanding Articles 2(a), 3(a) and 3(b), a difference of treatment which is based on a characteristic related to one or more grounds such as those stated in Article 2(a), shall not be defined as discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a real and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

Article 6

Positive Action

6.1. With a view to ensuring full equality in practice, a measure to prevent or compensate for disadvantages linked to one or more grounds such as those stated in Article 2(a), shall not be deemed to be discrimination, provided that it is also in compliance with international human rights standards.

6.2. All persons exercising a public function shall ensure that those parties to whom they award a public contract, loan, grant or other benefit, will execute a document which states that they will act in compliance with this Law and will respect and promote a non-discrimination policy, as they carry out their obligations related to such a public contract, loan, grant, or other benefit.

6.3. If the party, which obtains a public contract, loan, grant or other benefit as referred to in paragraph 6.2, violates any of the, provisions of this law, such public contract, loan, grant or other benefit shall be declared null and void by the body that awarded it.

CHAPTER II

PROCEDURES AND SANCTIONS

Article 7 Procedure

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.

7.2 Such administrative bodies and courts act in accordance with provisions of this law in order to determinate a claim.

7.3. Upon completion of the procedure upon a claim of discrimination under the applicable law on general administrative procedure, a claimant who is unsatisfied may bring a claim in accordance with the Chapter entitled Special Provisions in the Law on Administrative Disputes at the court which is competent under the applicable law.

7.4. Any mediation or conciliation procedures which are available under the applicable law may be utilized, at the option of the claimant or the claimants, in order to address violations of this Law.

7.5. The use of procedures under Article 7.4 shall not preclude the claimant from filing a claim with the appropriate administrative organ or court of competent jurisdiction at any time.

7.6. Associations, organisations or other legal entities may institute or support legal actions either on behalf of a claimant or claimants, with their consent, for utilising any judicial and/or administrative procedure for the enforcement of obligations under this Law.

Article 8 Burden of proof

8.1. When persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

8.2. Paragraph 8.1 shall not prevent the introduction of rules of evidence, which are more favourable to plaintiffs. Further, a complainant may establish or defend their case of discrimination by any means, including on the basis of statistical evidence.

8.3. Paragraph 8.1 shall not apply to criminal proceedings and minor offences proceedings.

Article 9
Sanctions

9.1. A court of competent jurisdiction or an administrative body which has determined that a violation of this Law has occurred may impose sanctions, depending on the nature and scope of the violation and its impact on the victim or victims.

9.2. Sanctions foreseen in a decision of the competent body against a natural or legal person or persons violating the provisions of this Law include:

- (a). Compensation for both pecuniary and non-pecuniary damages, suffered by victims of violations which compensation may include restitution of all rights and other remedies, provided within the applicable Law which the competent body deems appropriate; and
- (b). A natural or legal person or persons, or any combination thereof, that has been found to be in violation of this Law will be fined based upon the nature and scope of the violations in accordance with the following ranges:
 - (i) a natural person - from 500 Euro to 1.000 Euro
 - (ii) an independent contractor - from 1000 Euro to 5.000 Euro
 - (iii) a legal person - from 1000 Euro to 1.0000 Euro
 - (iv) a natural person within a legal person who is responsible for a violation – from 500 Euro to 2.000 Euro
 - (v) a person exercising a public function who is responsible for a violation – from 500 Euro to 2.000 Euro.

9.3. The court, at its option, may impose judicial imposition of positive measures.

9.4. All monies collected through the imposition of the penalties mentioned in paragraph 9.2.(b) 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.

9.5. All monies collected pursuant to paragraph 9.2 b, should be administrated by and administrative or juridical body pending the establishment of the Centre for Equal Treatment.

9.6. The imposition of any sanctions under this Law shall not preclude the imposition of any other sanctions available under any other law within the applicable law in Kosovo.

CHAPTER III
BODIES FOR THE PROMOTION FOR EQUAL TREATMENT

Article 10

Existing body

An authorised body to receive and investigate complaints concerning violations of rights based on discrimination is the Ombudsperson of Kosovo, which will review cases in compliance with his or her authority according to the legislation in force.

CHAPTER IV
TRANSITIONAL AND FINAL PROVISIONS

Article 11

11.1 When this law come into effect it supersedes all previous applicable laws of this scope.

11.2. The provisions of the legislation introduced or into force for the protection of the principle of equal treatment are still valid and should be applied if they are more favourable than provisions in this Law.

Article 12

Implementation of the Law

12.1. Nothing in this Law may be interpreted as implying for the Provisional Institutions of Self-Government, any group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth in the applicable law or at their limitation to a greater extent than is provided for in the applicable law.

12.2. The restrictions permitted under this Law to the said right and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

12.3. For the implementation of this Law, The Government of Kosovo can issue relevant by-laws.

Article 13

Entry into force

13.1.This law shall enter into force thirty days after its adoption by the Assembly and promulgation by the SRSG.

13.2.The Government shall conduct a public awareness programme with regard to the Law immediately upon its promulgation.

Law No. 2004/3
19 Februar 2004

President of Assembly

Academic Nexhat Daci