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Kosovo: Treatment of sexual minorities, including legislation, state protection and support services (2011-2015)

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1. Treatment by Society

Sources describe homophobia in Kosovo as "widespread" (YIHR Nov. 2013, 5), "rampant" (ILGA16 May [2015], 1), "pervasive" and "deeply rooted in society" (OBC 21 Mar. 2013). In correspondence with the Research Directorate, the Ombudsperson Institution in Kosovo indicated that society in Kosovo is "very homophobic" (Kosovo 17 Sept. 2015). The same source stated that LGBT community members fear publicly expressing their sexual orientation, and when they do, they "face discrimination on every ground" and are "stigmatized" in every aspect of social life (ibid.). Kosovo 2.0, a Pristina-based media source [1] (Kosovo 2.0 n.d.), reports that society in Kosovo is "largely intolerant of LGBT individuals" and that LGBT people are commonly referred to as "sick, disgusting, or immoral" (ibid. 22 Aug. 2013). Sources report that there has not been public debate on LGBT rights (YIHR 2013, 5) nor on sexual diversity (OBC 21 Mar. 2013) in Kosovo. The Youth Initiative for Human Rights (YIHR), "a regional network of non-governmental organisations with programs on the territories of Serbia, Kosovo, Croatia, Montenegro and Bosnia and Herzegovina" (BIRN n.d.), says that there is "no visible signs of the LGBT community" in Kosovo (YIHR Nov. 2013, 7), while Heartefact, an organization based in Serbia that is dedicated to raising awareness in regards to human rights (Heartefact n.d.), notes "the invisibility of LGBT issues in Kosovo" (ibid. Jan. 2013, 3). Sources note the absence of gay bars or clubs in Kosovo (ibid.; YIHR Nov. 2013, 7; OBC 21 Mar. 2013).

Sources report that LGBT persons conceal their sexual orientation or gender identity due to societal pressures (US 25 June 2015, 35-36) or due to fear of being discriminated against or stigmatized (OBC 21 Mar. 2013). The Ombudsperson Institution similarly stated that they have

been told by NGOs that LGBT members "hide their sexual orientation[,] even from their families" (Kosovo 28 Sept. 2015). Sources indicate that leading a double life for LGBT people is common (Heartefact Jan. 2013, 2; Kosovo 2.0 22 Aug. 2013). The YIHR indicates that when an LGBT person "comes out," he or she may face the loss of their family support and may be kicked out of their homes (Nov. 2013, 7). Similarly, Heartefact reports that lesbians and gay men have been thrown out of their homes or suffered family violence or complete exclusion after revealing their sexual orientation (Jan. 2013, 2).

Kosovo 2.0 reports that according to a 2012 survey [2] conducted by the now closed NGO Libertas [founded in 2012, the organisation provided support and assistance to the LGBT community in Kosovo (Heartefact Jan. 2013, 10)], when respondents were asked: "How would you feel if you discovered that a member of your family was homosexual?", 82.5 percent "answered with the highest level of rejection and homophobia" (Kosovo 2.0 20 May 2015). The same survey reveals that 50.6 percent of respondents "suggested that homosexual[ity] should be prohibited and punishable by law" (ibid.).

Heartefact reports transgendered people to be the most "invisible" group within the LGBT community and that "generally, there is a huge lack of knowledge and information about transgender issues ... even within the LGBT community" (Jan. 2013, 5). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.1 Violence

Sources report that societal violence against LGBT people is a serious concern (US 25 June 2015, 1; ILGA 16 May [2015], 1; EU Oct. 2014, 3). Pink News, a UK-based gay news service (Pink News n.d.), reports that "widespread" hate crimes against LGBT have been noted in Kosovo (17 Oct. 2013). A 2015 report by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) notes that hate speech against the LGBT community occurs in schools, by religious figures such as Muslim imams and by sport fan clubs, as well as via social media and online media portals, where it "remains very common" (ILGA 16 May [2015], 3). ILGA reports that a parliamentary member from the Justice Party "has openly called homosexuality a disease and deviation and called upon others to stop supporting deviation in Kosovo" (ibid.).

The US Department of State's Country Reports on Human Rights Practices for 2014 notes that in October and November 2014, the Center for Equality and Liberty (CEL), an NGO based in Pristina that aims to empower LGBT people in Kosovo and advocates for equal rights in accordance with the constitution (CEL n.d.), reported that its members had received several online death threats due to their sexual orientation, and that as of December 2014, the Kosovo police had not located the perpetrators (US 25 June 2015, 35). ILGA states that online hate speech, including death threats, occurred following the European Integration Minister's involvement in a march celebrating the International Day Against Homophobia and Transphobia (IDAHOT) in May 2014 (2015, 99). Human Rights Watch reports that in 2014, according to the Centre for Social Emancipation (Qendra per Emancipim Shoqëror, QESH), a Pristina-based association aiming to create a safe, tolerant, gay-friendly environment for LGBTQ people in Kosovo (ILGA n.d.), the LGBT community faced physical attacks, as well as threats via online media and the radio (Human Rights Watch 29 Jan. 2015, 475). Human Rights Watch notes that QESH further reported an assault against a gay man by three individuals in August 2014, verbal abuse and threats towards a 17 year-old transsexual by three boys his age in June 2014, and verbal abuse towards an 18 year-old gay man by his teacher (ibid.). According to a 2013 report [3] by the YIHR that documents the lives of LGBT persons in Kosovo, 40 percent of LGBT people interviewed indicated that they were verbally abused publicly and approximately 10 percent were beaten or threatened (Nov. 2013, 5).

Sources report that on 14 December 2012, the magazine Kosovo 2.0 launched an event in Pristina for their publication of an edition on sexuality, gender and LGBT rights in Kosovo (Kosovo 2.0 May 2015; ILGA 16 May [2015], 2). Sources indicate that during the launch party, the event was attacked by approximately 20 (Heartefact Jan. 2013, 13) to 30 (Freedom House 28 Jan. 2015) men. Sources indicate that they destroyed the venue and physically assaulted one of the Kosovo 2.0's staff members (ibid.; Heartefact Jan. 2013, 13; ILGA 16 May [2015], 2). Sources report that action was taken against some perpetrators, as some were "arrested and imprisoned" (Kosovo 28 Sept. 2015), and, according to some sources, perpetrators were convicted (ILGA 16 May [2015], 2; Freedom House 28 Jan. 2015). ILGA specifies that in March 2014, three of the accused were found guilty of violating the Equal Status of Residents in Kosovo, Preventing or Hindering a Public Meeting and Damage to Moveable Property provisions, and received a 14-month imprisonment sentence for the crimes committed (ILGA 16 May [2015], 2).

ILGA reports that according to NGOs, following the attack on the Kosovo 2.0 event, seven cases of violence were reported, including an attack on the LGBT NGO Libertas (16 May [2015], 3). Sources similarly report that Libertas was attacked in December 2012, two days following the attack on Kosovo 2.0 (YIHR Nov. 2013, 7; Heartefact Jan. 2013, 13), and that one person was severely beaten by approximately 3 to 4 men (ibid.). It was reported that these incidents were investigated by police (ibid.; ILGA 16 May [2015], 3), but that the case regarding Libertas was dismissed due to "lack of evidence" (ibid.).

1.2 Discrimination

A 2014 report financed by Sweden on gender differences in Kosovo [4] indicates that LGBT persons face discrimination "at all levels," including social, family and state (Färnsveden et al. Nov. 2014, 1). In a 2013 interview with the Osservatorio Balcani e Caucaso (OBC), a "think tank focused on South-East Europe, Turkey and the Caucasus " that provides reports on socio-political and cultural development (OBC n.d.), a representative of the project Challenging Homophobia - Building Support Systems for LGBT People in Kosovo, an initiative financed by the EU, indicated that members of the LGBT community face widespread discrimination in the public sphere and from their families (OBC 21 Mar. 2013). ILGA says that cases of discrimination in bars and coffee shops have been reported and that "members of the LGBT community have been denied access or kicked out" (16 May [2015], 1).

The Ombudsperson Institution reports that discrimination and violence against LGBT youth by their peers is of concern (Kosovo 31 Mar. 2015, 118). The same source notes that members of LGBT organizations have reported that teachers harass and discriminate against students on the basis of sexual orientation (ibid.). The YIHR notes that in regards to the education system, the most reported type of abuse against LGBT is verbal abuse (YIHR Nov. 2013, 22). The same source notes that some respondents reported "sub-standard" medical treatment, denial of promotion in the workplace, bullying, difficulty finding employment or having been fired due to their sexual orientation (ibid.).

Sources report that few cases of discrimination against LGBT are reported (Heartefact Jan. 2013, 11; US 25 June 2015, 36; YIHR Nov. 2013, 6), despite the "high" prevalence of LGBT abuse (ibid.). The OBC indicates that the reason why few cases are reported is because LGBT people do not trust the authorities (21 Mar. 2013).

Country Reports 2014 indicates that there was "no official discrimination" against LGBT people in employment, housing, determination of statelessness, or access to education or health care (US 25 June 2015, 35). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.3 2014 Pride March and Other LGBT Public Events

Sources report that on 17 May 2014, Kosovo's first pride march was held in Pristina to mark the day against homophobia (EU Oct. 2014, 19; US 25 June 2015, 35; Kosovo 2.0 20 May 2015). Kosovo 2.0 reports that the event was organized by three LGBT rights organizations, which are the Centre for Equality and Liberty (CEL), QESH and the Centre for Social Development/Elysium (CSGD), and that it was the first time that people publicly demonstrated with rainbow flags (20 May 2015). The same source indicates that the event was purposefully not publicized and that uniformed and secret policemen were at the event (Kosovo 2.0 20 May 2015). Sources report that some government officials attended the event (ibid.; US 25 June 2015, 35). Sources say that no violent incidents occurred (ibid.; Kosovo 2.0 20 May 2015; Kosovo 31 Mar. 2015, 117) and that the police provided "optimal protection" (ILGA 2015, 99).

The US Agency for International Development (USAID) reports that in honor of the 2014 International Day Against Homophobia and Transphobia (IDAHOT), QESH successfully held a public awareness campaign that included the distribution of promotional material, the release of coloured balloons in Pristina, and with the government's cooperation, lighting a government building in rainbow pride colors for the evening (US 23 July 2015).

2. State Protection

2.1 Legislation

ILGA reports that homosexual acts are legal in Kosovo (2011, 9).

Kosovo's Anti-discrimination law (Law No. 2004/3) has been in force since September 2004 (YIHR Nov. 2013, 10). Article 2 of Kosovo's Anti-discrimination law states the following:

The principle of equal treatment shall mean that there shall be no direct or indirect discrimination against any persons, based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation... (Kosovo 2004)

Sources note that Kosovo's legislation does not include protection against discrimination based on "gender identity" specifically (US 25 June 2015, 35; Heartefact Jan. 2013, 8).

Article 9 of the law states the following regarding the sanctions for discrimination:

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 competent deems appropriate; and

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:

a natural person - from 500 Euro [approximately C\$740] to 1.000 Euro [approximately C\$1,483]

an independent contractor - from 1000 Euro to 5.000 Euro [approximately C\$7,421]

a legal person - From 1000 Euro to 1.0000 Euro [approximately C\$14,845]

a natural person within a legal person who is responsible for a violation -from 500 Euro to 2.000 Euro [approximately C\$2,969]

a person exercising a public function who is responsible for a violation - from 500 Euro to 2.000 Euro. (Kosovo 2004)

Sources report that the definition of marriage in the constitution does not make specific reference to gender, but that it refers to the Family Law of Kosovo (Law no. 2004/32) (Heartefact Jan. 2013, 7; YIHR Nov. 2013, 11), "where marriage is defined to be between a man and a woman" (ibid.).

Heartefact indicates that the criminal code of Kosovo does not define hate crimes or speech and that the laws on hate and violence "do not refer to sexual orientation or gender identity" (Jan. 2013, 7).

Sources indicate that the implementation of the anti-discrimination legislation remains a challenge (EU Oct. 2014, 20; Heartefact Jan. 2013, 5; ILGA 16 May [2015], 1). The Ombudsperson Institution stated that they "ha[ve] not received any complaint from persons belonging to the [LGBT] community, because there is a perception of fear among members of this community of having their sexual orientation exposed to their family and society at large" (Kosovo 28 Sept. 2015). Heartefact notes that the Prime Minister's Office of Good Governance (OGG), which, under the Ombudsperson's supervision, is responsible for the protection of human rights in Kosovo reported "difficulties in enforcing the Anti-[d]iscrimination Law, mainly because of resistance from certain judges and police officers" (Jan. 2013, 8). The OBC indicates that few cases of discrimination against LGBT are followed-up by the authorities (21 Mar. 2013).

2.2 Efforts by Government Agencies

Heartefact reports that according to the head of the Committee for Human Rights and Petition within the Parliament of Kosovo, in 2012, a first public hearing took place on "the action plan for the implementation of the Anti-[d]iscrimination Law and Gender Equality Law, based on the European Commission progress report" (Heartefact Jan. 2013, 8). The same source notes that the committee was rated as the most successful within Parliament, and that it is "very friendly" toward LGBT people (ibid.). Heartefact adds that the OGG and the Ombudsperson were to meet LGBT activists and include their issues in future action plans and strategies (ibid., 8-9). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources report that in December 2013, the government established an Advisory and Coordinating Group in order to promote the rights of the LGBT community (EU Oct. 2014, 19; US 25 June 2015, 35), which met four times in 2014 (ibid.). The Ombudsperson Institution indicated that the purpose of the Advisory and Coordinating Group is to establish "a regular partnership and cooperation between local and international institutions and the non-governmental organizations [s] engaged in [the] protection and promotion of LGBT community rights" (Kosovo 28 Sept. 2015). The same source further noted that the group "enhances the planning efforts and enables the dissemination and exchange of information, and the coordination and cooperation in the area between various stakeholders" (ibid.).

Country Reports 2014 notes that the government supported the LGBT community by sponsoring "numerous" events, including the IDAHOT events, and illuminating the main government building with rainbow colors (US 25 June 2015, 35).

The Ombudsperson Institution reports that special emphasis has been placed on the inclusion of LGBT rights in the education system (Kosovo 31 Mar. 2015, 118).

2.3 Treatment by Police

Sources report that there has been progress in regards to the training of police staff in protecting LGBT rights (Kosovo 31 Mar. 2015, 117; Kosovo 2.0 20 May 2015). ILGA reports that in 2014, QESh trained over 80 police officers, prosecutors and judges on topics including sexual orientation and gender identity (2015, 99-100). Heartefact notes that although there have been

positive changes in regards to the relations between police and LGBT community members, "it is still impossible to evaluate their enforcement, as there are only a few cases reported to the police" (Jan. 2013, 8).

ILGA reports that in 2014, the government and police "demonstrated professionalism in dealing with members of the LGBTI community" and in dealing with issues related to sexual orientation and gender identity (ILGA 2015, 98). In contrast, Country Reports 2014 notes that when LGBT persons reported a crime to the Kosovo Police, the officers were not sensitive to their needs (US 25 June 2015, 36). The OBC reports that many employees of the police force and judicial system demonstrate "prejudice" and "homophobic behavior," as they refuse to take reported cases seriously or to follow-up on crimes committed against LGBT people (OBC 21 Mar. 2013).

The European Commission (EC) indicates that reported cases of hate speech against sexual minorities are "rarely investigated" (EU Oct. 2014, 19). The YIHR indicates that according to their study, in regards to five reports of abuse against LGBT people that were submitted to the police, two were followed-up with inappropriate comments by the police (Nov. 2013, 22). The same source reports that although "legal remedies are available, lack of training among law enforcement bodies combined with the low trust in the law-enforcement agencies by LGBT persons, make these remedies ineffective" (ibid., 33).

2.3.1 Police Response During Public Events

ILGA reports that during two public LGBT events organized by QESh in 2014, which were a photo exhibition on the LGBTI community in March, and the Diversity week, which was held in October, and to which approximately 200 to 300 people participated, the police provided "adequate protection" at each event (ILGA 2015, 99). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.4 Judiciary

The Sweden-financed report on gender differences in Kosovo indicates that "legislation has been weakly implemented and no track record exists of [LGBT] cases using the law in courts" (Färnsveden et al. 2014, 13). The YIHR reports that there is a discrepancy between the number of violations suffered by members of the LGBT community and the number that have been reported, "leading to having only few cases ending up in the hands of the judiciary" (YIHR Nov. 2013, 23). The same source further notes that judicial professionals lack training on LGBT issues (ibid., 25). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Support Services

Heartefact reported in January 2013 that there were three LGBT organizations in Kosovo, all of which were in Pristina and all of which were reported to "provid[e] a space for freedom of expression, social acceptance, and shelter": the CSGD, QESh and Libertas (Heartefact Jan. 2013, 9). Heartefact indicates that the CSGD is a local NGO established in 2002 whose work focuses mainly on men who have sex with men and HIV/AIDS prevention (Heartefact Jan. 2013, 9). Heartefact notes that there are no reported NGOs working in support of the LGBT community in the North of Kosovo (ibid.).

Sources note that Libertas closed (ILGA 16 May 2015, 3; Slate 1 Apr. 2014) after a case of vandalism and assault of their activists in December 2012 (ibid.). ILGA reports that activists from Libertas opened a new organization called the Center for Equality and Liberty (CEL), with the objective of strengthening the LGBT community (ILGA 16 May [2015], 3). The CEL website

indicates that it was formed in July 2013 and that it has three main goals: the empowerment of the LGBT community, raising awareness among the general population and advocacy by strengthening the rule of law (CEL n.d.a). The CEL offers group discussions, conferences, workshops and training sessions, as well as a drop-in center (ibid. n.d.b) that "offers a safe haven and welcome space where members of the community can gather" (ibid. n.d.c).

Heartefact noted in 2013 that CSGD, QESh and Libertas were "generally under-resourced and lack[ed] the capacities to design and implement strategically oriented programs toward the more significant social changes" (Jan. 2013, 9). The same source further noted that although these NGOs provided drop-in services, the number of LGBT people who were making use of these services was low because most tend not to seek assistance due to fear of being recognized (ibid., 11).

In May 2014, the EU funded a two-year project aimed at tackling homophobia by improving the capacity of the "police, judiciary, educators and the media" (Finland 27 May 2014; GlobalGayz 29 May 2014). USAID has partnered with QESh on a project to conduct LGBT rights awareness and to monitor, report, and document cases of LGBT discrimination, conduct sensitivity training and liaise with relevant government officials to facilitate the creation of procedures and legal assistance for LGBT victims (US 23 July 2015).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] Kosovo 2.0 receives funding from foreign government bodies, including the Swiss Agency for Development and Cooperation and the Austrian Development Cooperation, as well as from international organizations, such as the Kosovo Foundation for Open Society and the Friedrich Ebert Stiftung (Kosovo 2.0 n.d.).

[2] Kosovo 2.0 indicates that the research was conducted by the NGO Libertas and that 755 Kosovo citizens were surveyed (20 May 2015).

[3] The YIHR report consisted of primary and secondary research involving semi-structured interviews with 308 respondents and a review of already existing research (YIHR Nov. 2013, 9). Interviewees included 88 members of the LGBT community, duty bearers and service providers (including judges, lawyers, police officers, human rights officials and medical professionals) (ibid.).

[4] Research for this report was conducted between January and April 2014 and included individual interviews, focus groups and group interviews with 197 "diverse representatives of government institutions, civil society organizations, international actors, academia and the private sector" (Färnsveden et al. 2014, 1).

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