



Republika e Kosovës • Republika Kosovo • Republic of Kosovo
Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

2023 Annual Report on the implementation of the Law on Protection from Discrimination in the Republic of Kosovo

Pristina, 10 december 2024

All rights reserved: Ombudsperson Institution, Kosovo



This report was produced with the financial support of the European Union and the Council of Europe, through the joint action “Combating Discrimination and Hatred”, that is a part of the joint programme "Horizontal Facility for the Western Balkans and Türkiye”. Its contents are the sole responsibility of the author(s). Views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe.

Foreword by the Ombudsperson

Equality before the law and protection from discrimination occupy a central place in the spectrum of human rights of democratic societies, part of which is the Republic of Kosovo. As consistently emphasized by the European Court of Human Rights, the principle of non-discrimination is of a fundamental nature and lies at the foundation of the European Convention on Human Rights, along with the rule of law and the values of peace and tolerance.

The legal order of the Republic of Kosovo provides strong constitutional and legal guarantees for protection against discrimination for all persons and segments of Kosovo society, without any distinction. Articles 3 and 24 of the Constitution, as well as the Law on Protection from Discrimination, since 2015, are the two main pillars of the normative framework for protection against discrimination in the Republic of Kosovo.

As an institution with a constitutional mandate on protection of human rights from violations by public authorities, the Ombudsperson Institution has a special and irreplaceable role and responsibility in the promotion and protection of the right to equality before the law and protection against discrimination. An important part of this function of the Ombudsperson is the supervision of the implementation of the Law on Protection from Discrimination. This includes the presentation of general reports, at least once a year, to the Assembly of the Republic of Kosovo on the implementation of this law - alongside special reports prepared by the Ombudsperson for this purpose.

It is the first time that the Ombudsperson submits to the Assembly of the Republic of Kosovo the report on the implementation of the Law on Protection from Discrimination for 2023. As such, this report represents a step forward in fulfilling legal obligations on protection from discrimination. More importantly, despite the fact that this Report covers the year 2023, it provides a comprehensive overview of the implementation of the Law on Protection from Discrimination, particularly emphasizing the effectiveness of institutional mechanisms for protection from discrimination.

As stated in this report, the main challenge in monitoring the implementation of the Law on Protection from Discrimination is the lack of institutional data on reported cases of discrimination. This is a consequence of systemic defects, i.e. lack of standard procedures for identifying cases of discrimination, in the judicial system, in law enforcement institutions or in other relevant institutions.

We hope that this Report will serve as a guide to all institutions that have legal responsibility for protection from discrimination, as well as other actors, to develop a clear perspective regarding their responsibility in the implementation of the Law on Protection from Discrimination. The Ombudsperson Institution will provide comprehensive support in this regard.

The Ombudsperson will continue to fulfill his constitutional and legal obligations in protection from discrimination, through professional and efficient handling of discrimination complaints, through *ex officio* investigation of cases and situations connected with discrimination, as well as preparation of reports with recommendations. The Ombudsperson will be particularly

engaged in raising institutional awareness of the necessity in identifying cases of discrimination.

In addition, the Ombudsperson is actively involved in the process of amending and supplementing the Law on Protection from Discrimination, which is expected to complete the public consultation phase during the second half of 2024.

We will continue and deepen our engagement in promotion equality and protection from discrimination, as sublime values embodied in the foundations of our state and our society.

Executive summary

Within the framework of Kosovo's legal system for protection from discrimination, the Ombudsperson is entrusted with Article 9 of the Law on Protection from Discrimination to systematically monitor the implementation of this law. Until now, the Ombudsperson has prepared regular annual reports on its activities, and has prepared special reports, *ex-officio* and on individual complaints, including reports on situations and cases related to discrimination.

The Ombudsperson's annual reports have included general information and data on cases of discrimination. However, the institution has yet to submit a special annual report to the Assembly on the implementation of the Law on Protection from Discrimination, as stipulated in Article 9 of the law. With the support of the Council of Europe, the Ombudsperson committed itself to issue the first annual report on the implementation of the Law on Protection from Discrimination in 2023.

Following specific monitoring matrix, which is to be implemented gradually, the Ombudsperson reached out to the various institutions in charge of implementing the Law on Protection from Discrimination in order to obtain the quantitative and qualitative data needed to proceed with the socio-legal analysis that is at the heart of any monitoring activity. Expectations were not high but, regrettably, the responses received are below the expectations.

Despite inability to provide a comprehensive overview of the implementation of the Law on Protection from Discrimination, based on indicators and data, this Report is essential in identifying current shortcomings and critical aspects that need to be addressed in order to enable effective monitoring of the implementation of the Law on Protection from Discrimination protection by the Ombudsperson, as part of a positive cycle that will improve the implementation of this law.

This Report sets the basis for future monitoring activities, enabling the identification of practical and cultural obstacles that must be removed so that the Ombudsperson can fully fulfill its monitoring responsibilities in the application of the Law on Protection from Discrimination. In addition, the Report will serve as an orientation to the legislative body, with data that can help in the revision of the Law on Protection from Discrimination, which is currently being carried out, in order to reflect the changes necessary for a more effective implementation of this Law in practice

Most importantly, this Report underscores that the effective implementation of a law requires the collection of relevant information and data, in absence of which monitoring of its impact is not possible.

This Report presents six specific and actionable recommendations aimed at addressing the issue of partial implementation of the Law on Protection from Discrimination. It emphasizes that, in the absence of data on cases of discrimination collected by the competent institutions, it is impossible to determine whether the Law on Protection from Discrimination has been fully implemented. Furthermore, the report provides an opportunity for the Ombudsperson Institution to reaffirm its commitment to ensuring that discrimination does not occur within Kosovo society.

Table of contents

Foreword by the Ombudsperson.....	2
Table of contents.....	6
List of acronyms	7
Main report.....	8
1. Normative framework for protection from discrimination in the Republic of Kosovo	8
1.1 Major legal acts for protection from discrimination and equality before the law	8
1.2 Legal procedures for protection from discrimination.....	9
2. The obligation to apply and monitor the implementation of the Law on Protection from Discrimination.....	10
2.1 Institutional mechanisms with direct role in monitoring the implementation of the LPD	10
2.2 Interaction between practical implementation and systematic monitoring of the implementation of the Law on Protection from Discrimination.....	11
3. Current state of play in monitoring the implementation of the LPD	12
3.1 The development of the monitoring matrix and its implementation.....	14
4. Findings.....	16
4.1 Lack of institutional awareness about the need for monitoring implementation of the LPD	17
4.2 Lack of institutional structures.....	17
5. Conclusions and recommendations.....	17
Annex.....	19

List of acronyms

CoE	Council of Europe
EU	European Union
LPD	Law on Protection from Discrimination
OGG	Office for Good Governance within the Office of the Prime Minister
OIK	Ombudsperson Institution of Kosovo

Main report

1. Normative framework for protection from discrimination in the Republic of Kosovo

The normative framework for protection from discrimination in the Republic of Kosovo consists of two main components: normative acts that ensure equality before the law and prohibit discrimination, and legal provisions that offer remedies and procedures for individuals and legal entities to seek protection from discrimination.

1.1 Major legal acts for protection from discrimination and equality before the law

The legal order of the Republic of Kosovo provides multiple protections from discrimination and the right to equality before the law. These rights are guaranteed in the Constitution of the Republic of Kosovo, as well as in a series of organic laws. The Constitution attributes dual status to the right to equality before the law and protection from discrimination. *First*, the right to equality before the law and the prohibition of discrimination is sanctioned as a fundamental constitutional principle in articles 3 and 7 of Chapter I of the Constitution [Basic Provisions]. *Second*, equality before the law and protection from discrimination is guaranteed as an individual constitutional right in Chapter II [Fundamental Rights and Freedoms], respectively Article 24. Furthermore, as an individual right, the right to equality before the law and protection from discrimination is guaranteed by some of the major international human rights instruments, which, by the virtue of Article 22 of the Constitution, have direct application in the legal order of the Republic of Kosovo. Being among the most fundamental individual rights guaranteed by the Constitution, the principle of prohibition of discrimination is also encompassed and guaranteed by the Law on Protection from Discrimination, the Law on Gender Equality, as well as most of the basic laws including the Law on Labor, the Law on Public Officials, the Law on Pre-University Education, the Law on Higher Education, the Law on General Administrative Procedure.

Law No. 05/L-021 on Protection from Discrimination (hereinafter referred to as *LPD or the Law*), takes a central place in the legal framework for protection from discrimination. This Law, together with the Law on Gender Equality and the Law on Ombudsperson, were part of the so-called "Human Rights Legal Package," which came into force in 2015. As outlined in its Article 1, the LPD sets out a general normative framework for preventing and combating all forms of discrimination, and guarantees the right to equality before the law for all persons. In the spirit of Articles 3 and 24 of the Constitution, the LPD prohibits discrimination "on the basis of nationality or in relation to any community, social or national origin, race, ethnicity, color, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religious conviction and belief, political affiliation, political opinion or other opinions, social or personal situation, age, family or marital status, pregnancy, maternity, wealth, health condition, disability, genetic inheritance or any other basis, with a view to applying the principle of equal treatment. This LPD extends its protection to the public and private sector (Article 2), gives an inclusive definition of all forms of discrimination (covering direct discrimination, indirect discrimination, harassment, incitement to discriminate, victimization, segregation; discrimination based on association, non-provision of reasonable adaptation/accommodation for persons with disabilities, discrimination on the basis of

perception, multiple discrimination) and defines institutional responsibility for its enforcement. This is guaranteed at central and local level, and special role and prerogatives are entrusted to the Ombudsperson.

The LPD is currently undergoing a process of review, which is in its early phase. The aim is to ensure its ability to respond to the challenges arising from changing societal needs and transformations, and further align it with the evolving standards of the CoE standards and the EU *acquis* in the areas of non-discrimination. This review process follows the Report on Ex-Post Evaluation of the Implementation of the Law on Protection from Discrimination, prepared by the Legal Office within the Office of the Prime Minister with the participation of key institutional actors in the field of non-discrimination, including the Ombudsperson.

1.2 Legal procedures for protection from discrimination

In light of the established normative framework, all individuals in the Republic of Kosovo have access to various procedures and remedies if they claim to have been discriminated against. These procedures may be administrative, minor offenses, or judicial nature.

According to the Law on General Administrative Procedure, alongside specific laws and sub-legal acts, any person who claims discrimination can initiate an administrative procedure. This begins with filing a complaint to the institution or body that committed the offense (in institutions of central and local government; law enforcement institutions and others). They may also initiate procedures with independent bodies like the Independent Oversight Board of the Civil Service of Kosovo or specific institutional mechanisms such as the Office of the Language Commissioner or the Labor Inspectorate.

The LPD stipulates that discrimination cases can also be addressed through mediation or reconciliation, as provided by current legislation (Article 21). It also sets the groundwork for initiating minor offences procedures, including imposing fines against individuals, legal entities, and institutions that engage in, incite, or support discriminatory activities (Article 23) and empowers the Ombudsperson to request competent bodies to initiate minor offence proceedings for discrimination (Article 9.2.4).

Additionally, various judicial procedures can be initiated in cases of discrimination. These include lawsuits for compensation of damages in civil procedures, lawsuits for administrative conflicts against actions or omissions of administrative organs involving discrimination, and criminal procedures through filing a criminal charge if the discrimination constitutes the criminal offense of "violation of the equal status of citizens and residents of the Republic of Kosovo."

Furthermore, individuals alleging discrimination can initiate proceedings with the Ombudsperson by submitting complaints. The Ombudsperson's role is briefly illustrated in the subsequent section of this Report.

Despite the comprehensive legal protections from discrimination provided by Kosovo's laws, gaps and deficiencies persist in their practical application. Two typical examples highlight these shortcomings. Firstly, there is a notable lack of application of the LPD's provisions regarding minor offenses procedures for discrimination. Secondly, in the limited number of judicial proceedings concerning discrimination, courts and judges have not consistently applied

the burden of proof provisions set forth in the LPD. This law explicitly states that the burden of proof in discrimination cases lies with the respondent. The failure to rigorously uphold this principle was evident in several court cases proceedings on damages from discrimination, filed by individuals with disabilities, in which the Ombudsperson was involved (e.g., Case C.nr.3663/18, F.K. v. Municipality of Pristina).

2. The obligation to apply and monitor the implementation of the Law on Protection from Discrimination

Firstly, it is important to distinguish between the legal obligation to implement the LPD and the legal obligation to monitor its implementation. Regarding the first aspect, equality before the law and protection from discrimination are both constitutional principles and individual rights. Consequently, each public institution has a constitutional and legal obligation to uphold the principles of equality before the law and non-discrimination, which means the implementation of the LPD. Furthermore, Article 2 paragraph 1 LPD stipulates that its provisions apply to all acts or omissions, of all local and state institutions and natural and legal persons, of the public and private sectors. Additionally, Article 8 specifically states that all institutions must act in accordance with the principles of this Law.

The LPD also establishes institutional mechanisms and specific procedures for monitoring its application. However, beyond the institutions that have a direct role in overseeing and reporting on the implementation of the LPD, an effective assessment of the implementation of this law requires inter-institutional cooperation and joint actions.

2.1 Institutional mechanisms with direct role in monitoring the implementation of the LPD

The institutional structure with a direct role in protection from discrimination and monitoring the implementation of the Law on Protection from Discrimination consists of three pillars:

- a) The Ombudsperson Institution, as an independent constitutional institution;
- b) Office for Good Governance (OGG) within the Office of the Prime Minister;
- c) Units or officials for protection from discrimination in ministries and municipalities.

a) Ombudsperson Institution

Article 132 para. 1 of the Constitution of the Republic of Kosovo stipulates that the Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.

The role and mandate of the Ombudsperson Institution are specified by the package of human rights laws that includes, in addition to the LPD, Law 05/L-019 on the Ombudsperson and Law 05/L-020 on Gender Equality.

Article 9, Article 12 and Article 18 LPD prescribe the competencies of the Ombudsperson on its implementation. Specifically, Article 9, paragraph 2.6, stipulates that Ombudsperson monitors the implementation of this Law and initiates the amendments of provisions for implementation and advancement of protection from discrimination. Paragraph 2.12 of the same Article requires the Ombudsperson to submit a report at least annually to the Assembly

of the Republic of Kosovo on the implementation of this Law and may also draft special reports on its implementation. Furthermore, Articles 16 and 18 outline a range of responsibilities for the Ombudsperson regarding protection from discrimination and, specifically, the implementation of the LPD (see part 2.3 for a summary of the Ombudsperson's main activities in combating discrimination during 2023). The Department for Protection from Discrimination of Ombudsperson plays a critical role in monitoring and implementation of the LPD. The Department for Protection from Discrimination of the Ombudsperson Institution plays a crucial role in monitoring and implementing the LPD. This Department will be strengthened to further enhance its capacities in the fight against discrimination and in ensuring equality before the law

b) Office for Good Governance

Under the LPD, the OGG within the Office of the Prime Minister has direct responsibility in monitoring the implementation of this Law. Article 10 LPD specifically defines its responsibility and actions, which also include the submission of annual reports to the Government of the Republic of Kosovo on its implementation.

c) Units and officers for protection from discrimination in the ministries and municipalities

Article 11 LPD stipulates that all ministries and municipalities are obliged to appoint the relevant unit or official to coordinate and report the implementation of this law. This highlights the importance of the role that the government and municipalities play in monitoring the implementation of the LPD, particularly at the local level.

d) Other institutions role

Although the Ombudsperson, the OGG, and the units/officials for protection from discrimination in ministries and municipalities are directly responsible for monitoring the implementation of the LPD, these institutions can only fulfill this task through cooperation with other relevant institutions. This is especially true regarding the collection and analysis of relevant data.

2.2 Interaction between practical implementation and systematic monitoring of the implementation of the Law on Protection from Discrimination

While the implementation of the LPD is a shared obligation among various institutional mechanisms, the responsibility for monitoring its implementation, as mentioned earlier, has been assigned to only a limited number of bodies. This is understandable, given that the purpose of implementing the LPD is to ensure the practical realization of the constitutional right of individuals to protection from discrimination in all areas of life. Monitoring, on the other hand, is an institutional activity aimed at ensuring the proper enforcement of the relevant legal framework. The goal of monitoring is to identify, with the help of specific indicators, the level of understanding of the legal obligations arising from the LPD and their adherence by various actors, in order to pinpoint areas that require improvement. Since indicators can be structural, process, or outcome-based, monitoring, or oversight, will result in various recommendations to address the identified shortcomings in the protection against discrimination.

Although two distinct processes, the practical implementation and the monitoring of the implementation of the LPD are intertwined and mutually reinforcing. Thus, the practical implementation of the LPD can benefit from the recommendations arising from its systematic monitoring. On the other hand, the monitoring of the LPD's implementation cannot be carried out without the data provided by the bodies responsible for enforcing this Law. This is because the monitoring of the implementation of a law is a systematic process of collecting, analyzing, and using information, which is only partially accessible to various institutional actors. Therefore, it is clear that, without reliable data and records, the Ombudsperson Institution cannot fully fulfill its obligations related to protection from discrimination. In other words, the monitoring of the Law's implementation cannot be conceived in isolation or as belonging solely to one institution (in this case, the Ombudsperson Institution). Instead, this process is the result of an inclusive activity in which all institutional entities responsible for implementing the LPD have a role to play, with one institution (the Ombudsperson Institution) ultimately taking final responsibility. This role is not merely passive (where institutional actors are informed of the results of the monitoring activity of the LPD's implementation), but requires, at a minimum, the provision of reliable, objective, and subjective data, which are essential for carrying out the oversight process of the Law's implementation.

Only by having complete and reliable data, the institution in charge of monitoring the implementation of the LPD can evaluate them, in comparison with the general standards of human rights, and thus draw conclusions regarding the implementation of the LPD. Therefore, in the absence of data, any obligation related to monitoring the implementation of LPD would be ineffective and meaningless.

3. Current state of play in monitoring the implementation of the LPD

Within Kosovo's institutional framework, the OI plays a key role in the systematic monitoring of the implementation of the LPD. To date, the IAP has provided regular annual reports on its activities. Over the years, this institution has also prepared special reports, *ex-officio* reports, and case reports initiated by parties, including those related to discrimination. The annual reports submitted by the OI to the Assembly include a section dedicated to equality before the law, which outlines the institution's work as a mechanism for protection from discrimination. The descriptions provided in the annual reports, which cover various grounds of discrimination, are based on specific cases. The data and statistics presented in these reports (under the section "Equality Before the Law") are not detailed or extensively addressed. Such a general overview is appropriate for an annual report, but it has never been considered sufficient to fully meet the obligations arising from Article 9, paragraph 2.6 of the LPD.

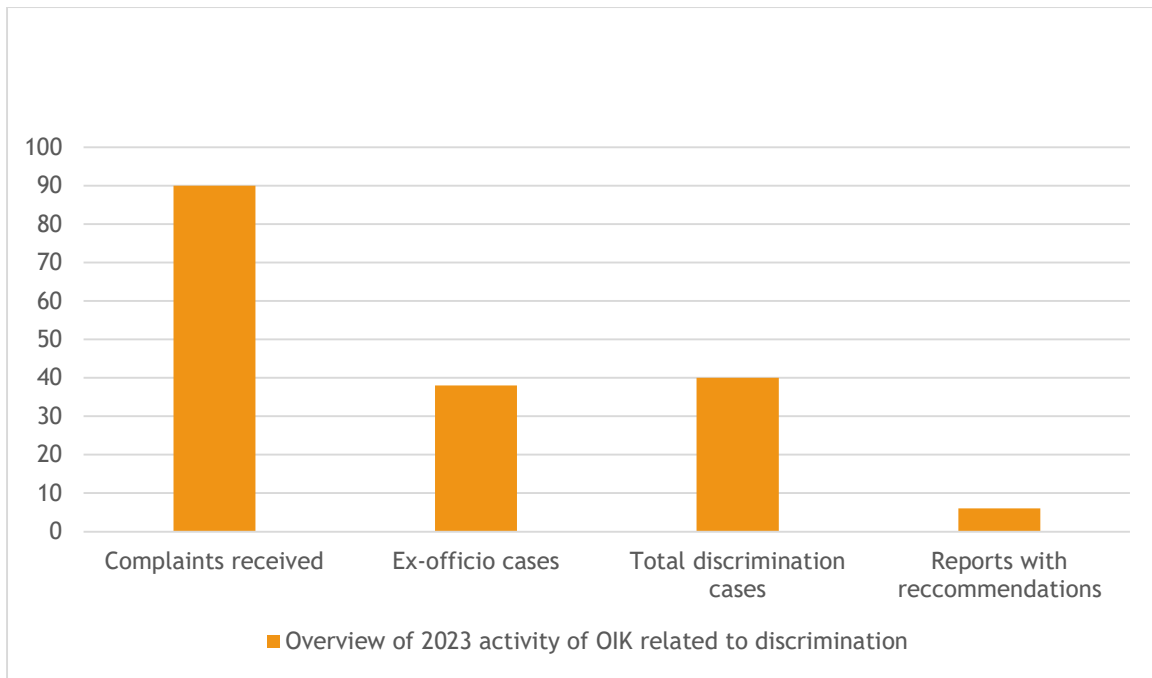
During 2023, the OI has continued investigation of individual complaints on discrimination and has initiated cases *ex-officio*. OIK has been dealing with the rights of communities and their members, discrimination of contribution-payer pensioners, re-evaluation and determination of procedures for recognition of the status and rights of paraplegic and tetraplegic persons, implementation of special measures defined by the Law on Gender Equality for equal representation of women and men at all levels of the public sector, as well as the issue of gender quotas in the lists of candidates under the Law no. 08/L-228 on the General Election.

On the other hand, over that same period, the Ombudsperson has organized significant number of promotional activities, through workshops, conferences and direct meetings with citizens and other relevant stakeholders, as well as through presentations in electronic and written media, where the its findings and recommendations on protection from discrimination and equality before the law were presented.

In accordance with its constitutional mandate, the OI has reviewed and made recommendations regarding the compliance with the principle of non-discrimination in a number of normative acts, referring some of them for review by the Constitutional Court. These include: Law No. 08/L-196 on Salaries in the Public Sector (for which the Constitutional Court has found that certain provisions of this law are in contradiction with the principle of equality before the law); Article 28 of Law No. 08/L-228 on General Elections in the Republic of Kosovo; and Law No. 08/L-248 on Amendments and Additions to Law No. 04/L-131 on State-Funded Pension Schemes.

In 2023, the Department for Protection from Discrimination of the IAP opened investigations into 90 complaints received from citizens, as well as two ex-officio cases. Of the 90 complaints, 38 relate to allegations of discrimination, which, together with the two ex-officio cases, total 40 discrimination cases investigated. The IAP has published 6 reports with recommendations and findings on discrimination. The grounds for discrimination alleged in the received complaints include ethnic affiliation, gender, age, disability, political beliefs, language, health status, workplace discrimination, professional practice, and other reasons. The ex-officio cases concern Regulation No. 02/2023 on the Supplementary Conditions for the Labor Market, issued by the Ministry of Finance of Kosovo, and the Use of Official Languages in Commercial Banks.

According to the activities of the OI for the year 2023, it appears that the majority of complaints and claims of discrimination were related to the following areas: employment relations, property, access to justice, and access to the social and healthcare systems. On the other hand, some of the most vulnerable categories include people with disabilities, women, LGBTQI+ individuals, and ethnic communities (especially the Roma, Ashkali, and Egyptian communities).



The annual reports of the Ombudsperson, despite their comprehensive nature, do not allow for an assessment of progress in the realization of the right to non-discrimination, considering that data from other institutions are missing. Even when objective and measurable indicators related to discrimination are included (such as the number of complaints received and resolved), they are limited and only provided for the reporting period of the OI and not beyond it. This makes it impossible to dynamically assess the general trends in the implementation of the LPD, as well as the practical manifestation of all forms of discrimination. As mentioned above, any comprehensive report on the implementation of a law, including the LPD, requires the systematic collection of data across institutions and other bodies, which has been lacking so far. Even when some quantitative data related to discrimination are provided, the findings of the Ombudsperson's annual report cannot be considered sufficient to identify the legal and institutional gaps that need to be addressed in order to reduce cases of discrimination. It should be noted that, according to Article 9, paragraph 2.10, of the LMD, the OI is obligated to collect statistical data and other relevant information, as well as to carry out studies, research, and training related to discrimination.

3.1 The development of the monitoring matrix and its implementation

In order to support the Ombudsperson in fulfilling his responsibilities for implementation of LPD and to assist him in drafting the first report on the LPD, in 2023 the CoE created a monitoring matrix, which was completed in coordination with the OI. The matrix, which can be found as an annex to this report, is based on the provisions of the LPD. It is quite comprehensive and includes not only qualitative indicators but also their sources; that is, the institutions that should be able to use it for the collection and processing of data on discrimination. This highlights once again that the process of monitoring the implementation of the LPD requires inter-institutional cooperation. Thus, the success of this process can be significant depending on the significance of the data it contains.

The shared responsibility in the monitoring process is reflected in the matrix that, next to the indicators, also lists the source of information. As the matrix, at first, has appeared complex and overly ambitious, it was agreed that the Ombudsperson would implement it gradually, selecting only a limited number of actors and relative indicators, particularly amongst those that could be more easily available and accessible.

In order to prepare this report (and within the framework of the monitoring matrix), during the period from February to May 2024, the OI requested both qualitative and quantitative information from a number of institutional stakeholders regarding the practical implementation of the LPD. These are the institutions that have a legal obligation to handle discrimination cases and play a crucial role in protecting individuals from discrimination in various areas. In this regard, the Ombudsman's Institution sent a written request to the following institutions:

- Kosovo Judicial Council
- Constitutional Court
- Kosovo Police
- Ministry of Local Government Administration
- OGG
- Labour Inspectorate
- Language Commissioner

These institutions were asked for information with the assumption that, in accordance with their mandates and competencies, they identify and maintain records of reported cases of discrimination in the relevant areas. Conceptually, the monitoring activity of a law such as the LPD should include a socio-legal analysis that combines indicators of various types (analysis of literature and legal documents, as well as quantitative and qualitative data). However, in preparing this report, it was decided to begin this first reporting effort by focusing on quantitative data. The assumption was that such data on reported cases of discrimination would be systematically recorded by the institutions in question. In fact, the legal protection of human rights is linked to the availability of significant official statistics on violation cases. Such statistics play a crucial role in supporting evidence-based policymaking and in the overall assessment of civil, political, economic, and social rights.

Despite the fact that the respondent institutions were duly contacted, some of the mentioned institutions did not respond at all to the Ombudsperson's request; other institutions provided general information about their activities. Very few of the relevant institutions responded, and none was able to provide complete data regarding the implementation of the LPD, which can be used as a basis for the activity of monitoring the implementation of this law.

The answers received by the Ombudsperson were as follows:

1. Kosovo Judicial Council has not responded to the request of the Ombudsperson on the judicial cases with discrimination;¹
2. Kosovo Police answered that has no data on any reported case of discrimination by police;
3. OGG provided to the Ombudsperson the “Report on the implementation of the Law on Protection from Discrimination based on cases reported on the national platform for protection from discrimination for Roma, Ashkali and Egyptian communes”;
4. Ministry of Administration of Local Governance provided a document titled "Functioning of the Human Rights Unit in the Municipality." The document does not contain data on the number of cases of discrimination in municipalities but information on the structure and activities of these units.
5. The Office of the Language Commissioner did not respond to the request of Ombudsperson regarding complaints about discrimination on the use of languages;
6. Constitutional Court answered by informing only about the judgments were violation of the right to equality before the law was found by this Court, in three separate laws. No information was given about individual constitutional complaints lodged at the Constitutional Court about discrimination.

In addition to the requests made to the relevant institutions, the OI has analyzed the official websites of all central institutions and municipalities in order to assess the importance they pay for the LPD and the information they offer to the public regarding the exercise of their rights under this law—including the provision on advice and support for addressing claims and complaints of discrimination. Only the websites of judicial institutions provide some general information and guidance on the practical implementation of the LPD. All other institutional websites that were analyzed do not contain any information or data, either on the LPD or on discrimination in general.

Even in cases where the websites of certain institutions contain information about victims of discrimination (such as the case of the OGG National Platform against Discrimination of the Roma, Ashkali and Egyptian communities), they do not contain the necessary instructions for the possibility of initiating proceedings to the OI.

4. Findings

Although it was not possible to conduct a comprehensive socio-legal analysis as initially planned, this report is of fundamental importance because it identifies gaps and critical aspects that need to be addressed in order to enable the effective monitoring of the implementation of the LPD by the OI, as part of the efforts to enforce this law. Based on these findings, specific recommendations have been provided, which are listed at the end of this report.

¹ Unofficial information suggests that KJC has no data regarding the cases of discrimination.

4.1 Lack of institutional awareness about the need for monitoring implementation of the LPD

The responses from central and local institutions, as reported above, highlight a significant lack of institutional awareness regarding the necessity of collecting data and recording cases of discrimination. It should be emphasized that the absence of institutional evidence regarding violations of the LPD does not reflect the actual situation of discrimination cases. It is well known that reports and complaints of discrimination, both in the public and private sectors, are frequent; as are administrative and judicial procedures initiated by individuals who claim to be victims of violations of the right to equality before the law and non-discrimination. These are publicly known facts. Therefore, there is a clear discrepancy between alleged discrimination cases and official evidence of them.

Over the years, the OI has regularly engaged in awareness-raising activities related to the LPD, with a primary focus on public institutions. However, this has not been sufficient. As noted in the Ex-Post Evaluation of the LPD's Implementation, the mechanisms for protection from discrimination, at both local and central levels, have not functioned in accordance with Regulation No. 03/2017 on Institutional Mechanisms for Protection from Discrimination in Government and Municipalities. This includes the non-implementation of provisions related to the reporting of units/officers responsible for protection from discrimination in ministries and municipalities, as well as insufficient financial and other forms of support for these officers/units

4.2 Lack of institutional structures

As noted in the 2023 Annual Report of the OGG, a number of municipalities still have not appointed an officer for protection from discrimination, and there is also a lack of standardization in the job descriptions of the units and officers responsible for protection from discrimination at the ministry and municipal levels. Considering that LPD came into force nearly a decade ago, the absence of some fundamental elements of the overall system for preventing and protecting against discrimination is concerning and impacts the implementation of the LPD.

Based on the above facts, it appears that discrimination cases are not systematically recorded. These cases are neither marked nor identified as such in judicial or administrative procedures. In practice, such cases are recorded according to general registers/templates used to document cases in judicial or administrative procedures, where there are no distinguishing marks to identify discrimination cases.

5. Conclusions and recommendations

When the OI, with the support of the CoE, engaged in fulfilling its obligation to report on the monitoring of the implementation of the LPD, it was clear that its first report would inevitably be incomplete due to insufficient data and the limited scope of reporting. However, the results of the efforts made to draft this report fall far short of initial expectations. This is because, in addition to the data available to the OI and those included in the OGG report, none of the relevant institutions contacted were able to provide either quantitative or qualitative data regarding discrimination cases.

Despite the challenges and limitations mentioned above, this report is of essential importance for the following reasons:

- a) It serves as a cornerstone for future reports on the implementation of the Law on Protection from Discrimination;
- b) It identifies obstacles that must be eliminated in order for the OI to fully carry out its responsibilities under the LMD;
- c) It highlights the fact that promoting and protecting from discrimination cannot be seen as the responsibility of just a few public institutions, but rather as the result of a collective and coordinated effort of all state mechanisms;
- d) It provides important data, facts, and suggestions for the legislative process of reviewing the LPD, which is currently in process.

In the light of the above, the OI makes the following recommendations

1. All institutions that have an obligation to implement the Law on Protection from Discrimination must provide training for their personnel, regarding discrimination and the content of this Law, in both formal and practical terms;
2. The personnel of these institutions must be aware of the responsibility of the Ombudsperson Institution in monitoring the implementation of the Law on Protection from Discrimination. Also, the institutions in question must be ready and committed to cooperate with the Ombudsperson Institution in the process of monitoring the implementation of the Law on Protection from Discrimination;
3. All institutions that have an obligation to implement the Law on Protection from Discrimination must create a system for the systematic collection of data related to discrimination;
4. Appointments of officials and/or operationalization of units for protection from discrimination in ministries and municipalities must be completed within the next 12 months;
5. The personnel of all relevant institutions must undergo training to be able to collect data on discrimination, to enable proper monitoring of the Law on Protection from Discrimination by the Ombudsperson Institution;
6. The classification system of judicial cases should be changed in order to include separate data on discrimination in its various forms.



Republika e Kosovës • Republika Kosovo • Republic of Kosovo
 Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

Annex

Type of indicator	Methods/Sources of data collection				Disaggregation
	Literature	Administrative/official data	Observation	Focus groups/feedback	
S1. Title and date of entry into force in Kosovo of international human rights instruments relevant to non-discrimination (after the first baseline report only variations in the reporting period will be singled out)	✓	✓			Protected ground/group
S2. Title and date of entry into force in Kosovo of domestic legislation (civil, criminal, administrative) relevant to non-	✓	✓		✓	Protected grounds/groups

discrimination in the reporting period (after the baseline report only variations in the reporting period will be singled out)					
S3. Number, entry into force and coverage of mechanisms to protect from discrimination introduced in the reporting period (after the baseline report only variations in the reporting period will be singled out)	✓	✓		✓	Protected grounds/group
S4. Title, type, date of adoption and validity of national policies, strategies and other plans relevant to non-discrimination (after the baseline report only variations in the reporting period will be singled out)	✓	✓		✓	Protected ground/group
S5. Title, coverage and date of entry into force of secondary legislation to prevent discrimination in the public and private sector) (after the baseline report only variations in the reporting period will be singled out) (article 26 LPD)	✓	✓		✓	Protected ground/group

S6. Title, type, date of adoption of secondary legislation/guidelines/regulations regulating coordination, reporting and cooperation with the OGG (art. 11.2 LPD) (after the baseline report only variations in the reporting period will be singled out)		✓		✓	Protected ground/group
S7. Number of MoUs concluded with NGOs involved in the promotion and protection from discrimination, including AoR if not Kosovo-wide (after the baseline only variations in the reporting period will be singled out)	✓	✓	✓		Protected ground/group, focus
S8. Title, coverage and date of entry into force of any voluntary regulatory frameworks to prevent discrimination (including in relation to affirmative actions) in the public or private sectors in the reporting period (after the	✓	✓		✓	Protected ground/group

baseline report only variations in the reporting period will be singled out)					
S9 Codes of Good Practices for combating discrimination and equality (article 9.2.14 LPD) (after the baseline report only variations in the reporting period will be singled out)	✓	✓		✓	
S10. Number of Ministries (measured against the total number of Ministries) having appointed a non-discrimination Unit/Officer (art. 11.1) (after the baseline report, only variations in the reporting period will be singled out)		✓	✓		
S11. Staffing of Ministerial HRU – including functional title, tasks, time devote to this role (in case of mixed functions) (after the baseline report, only variations in the reporting period will be singled out)		✓	✓		
S12. Number of HRU established at the level of municipality (measured against the total number of municipalities) (after the baseline report, only variations in the reporting period		✓	✓		

will be singled out) (article 11.1 LPD)					
S13. Staffing of Municipal HRU – including functional title, tasks, time devote to this role (in case of mixed functions) (article 11.1 LPD) (after the baseline report, only variations in the reporting period will be singled out)		✓	✓		
S14. Accessibility of MHRU (including presence of placards, indications, website, opening hours) and physical/language accessibility (article 11. 1 LPD) (after the baseline report, only variations in the reporting period will be singled out)		✓	✓	✓	Language, disability (ie. braille, sign language), age
S15. Availability on relevant public institutions’ webpages of information about citizens’ rights and possibility to submit complaints to OIK concerning discrimination (article 25.2 LPD) (after the baseline report, only variations in the reporting period will be singled out)		✓	✓	✓	Language, disability (ie. enhanced readability, audio..)

S15 Share of public budget devoted to the implementation of the LPD (after the baseline report, only variations in the reporting period will be singled out)		✓	✓		By institution, by activity
---	--	---	---	--	-----------------------------