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Addressing Sexual Harassment in Public Universities

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Annex: Content of Draft Policy on Sexual Harassment

1. Introduction

The report addresses cases of sexual harassment within public universities of Kosovo however focusing on the University of Prishtina as the largest public university. Its overall aim is to analyze the existing trends on addressing sexual harassment in the university of Prishtina by also analyzing the existing response and proposing a set of recommendations to improve the existing handling of cases within Kosovo's public universities. The report also aims to provide concrete recommendations on developing appropriate mechanisms to increase reporting and handling of sexual harassment cases.

The research and analysis for the report started in September 2016 and ended in January 2017. There were a number of interviews with semi-structured questionnaires conducted with students from the University of Prishtina, educational staff as well as with institutional representatives.¹ Artpolis has also undertaken a number of awareness raising panels and information sessions with students in Prishtina, Gjakova, Prizren, and Mitrovica to explain the existing legal provisions and provide information on the laws and reporting procedures for students lacking sufficient knowledge on the existing set of rules and regulations within Kosovo public universities in reporting potential sexual harassment cases. Panels provided information also on the existing trends within universities in disseminating information on the existing procedures within universities, applicable law response in handling sexual harassment cases as well as provided information to students on how to identify, recognize and report sexual harassment cases. The aim of the panels where also to seek information from students on how public universities funded by Kosovo taxpayers money are responding to and treating potential claims of sexual harassment reports and what approaches are being used. During the panels more than 100 students were part of the open discussions and were willing to freely discuss on the sexual harassment issues facing students in public universities, discussions that are reflected also in the findings of this report.

The overall purpose of the report was to outline the inclusion in public universities of a functional mechanism in addressing sexual harassments cases, in order for students to

¹ Full list available with Artpolis.

attain knowledge, report cases and be provided with opportunities for a free and equal education and dignified treatment guaranteed by Kosovo Constitution and laws specifically. The report has looked into available existing mechanism in other countries with a tradition of responding more effectively, responding timely and compensating victims of sexual harassment claims. The aim of the proposed mechanism was to support the development of an accountable system within the Kosovo public universities in order to respond effectively to any potential reports or occurrences of sexual harassment cases. The report also proposes a draft policy on reporting sexual harassment cases for Kosovo Public universities to consider, enlisted in the annex part of the report.

2. Prevalence of sexual harassment cases in Kosovo: The existing response within the public universities

Generally, sexual harassment cases are minimally reported in Kosovo even though the prevalence of persons undergoing sexual harassment is not low. In the recently published Kosovo Women's Network report on sexual harassment cases in Kosovo, estimated **48.5%** of Kosovars have experienced some form of sexual harassment. In 2014 there were **45.2%** of respondent claiming that during that year, they have been exposed to or experienced some form of sexual harassment. From this number there are **64.1 cases of women** reported some form of sexual harassment opposite to **32.5% of men** cases reported.² Younger persons reported to have experienced sexual harassment more than older people.

As the most common forms of sexual harassment reported are unwelcome sexual comments, jokes with sexual meaning or sexual gestures especially when walking down the streets. Primarily harassment occurred by unknown persons, but also there were reports of harassment by acquaintances, co-workers, teachers and their partners. In these cases the victims and witnesses tend to ignore the harassment hoping for it to pass away. A minimal number of persons report these harassment cases with only 4.1% of all

² Kosovo Women's Network report "Sexual Harassment in Kosovo," 2016, pg.8-10. Available at <http://www.womensnetwork.org/documents/20160223185243349.pdf>

respondents ever reported cases to the authorities or had knowledge of someone who reported the case.³

In recognising what sexual harassment consists of differently a higher number of older men are aware of its characteristics when compared to older women. Younger women seem to have lesser knowledge than younger men of what acts constitute sexual harassment cases. Majority of **69.3%** respondents identify violent criminal offences as forms of sexual harassment cases with rape or attempted rape seen as most characteristic form of sexual harassment. Less than half of the respondents (**49%**) think that pressure for sexual favours, touching, pinching, or pushing and whistling at someone in the street (**43.8%**) can be defined as forms of sexual harassment.⁴

Overall there is low awareness and knowledge of what exactly can constitute acts of sexual harassment as such and may create challenges in identifying, reporting and using the existing laws.⁵ More than **74%** of respondents claimed to Kosovo Women's Network that victims are to be blamed when sexual harassment occurs if the woman is dressed or acts in a provocative manner.⁶ Slightly more women tended to agree with this statement than men with almost a third of Kosovars believing that people naturally harass others when they are attracted to them, with more men (**35.4%**) than women (**26.9%**) agreeing that the behaviour is acceptable, with almost **40%** claiming that women like being "harassed."⁷

With a culture offering generally impunity to street harassment acts and an overall approach to blame the victims if dressed "inappropriately and provocatively," Kosovo remains far behind in creating a safe and secure environment for its young women and men to be treated with dignity.

³ Kosovo Women's Network report "Sexual Harassment in Kosovo," 2016, pg.8-10. Available at <http://www.womensnetwork.org/documents/20160223185243349.pdf>

⁴ Ibid, pg. 8-10.

⁵ Ibid, pg. 8-10.

⁶ Ibid.

⁷ Supra note 3 at pg. 8-10.

The report has further looked into the phenomena of sexual harassment cases within the public University of Prishtina “Hasan Prishtina,” in order to get an overview of current understanding of the cases and the levels of awareness of the existing mechanisms to report potential cases of sexual harassment.

Kosovo currently has six public universities, with the University of Prishtina being the largest having registered almost half of the overall number of students within the public universities.⁸ The University of Prishtina “Hasan Prishtina,” registered during 2015/2016 first year students of **11.524**.⁹ Out of this number there are **55%** of active students registered as women and **45%** active students as men.¹⁰

Education institutions are subject to the provisions of special laws. There are a set of legal provisions providing sufficient protection to the dignity and security of pre-university and university students within the Kosovo education system. Firstly, Kosovo Constitution guarantees and protects human dignity as inviolable and a basis of human rights and fundamental freedoms for its citizens.¹¹ Secondly, the Law on Pre-University Education, also states that access to all levels of university education and training should be provided in line with the requirements of the law without any discrimination based on gender, race, sexual orientation, and physical disability.¹² Further, Article 4 of this law also provides special provisions to protect vulnerable groups by stating that “A person employed in educational institutions, as established by this Law shall take all reasonable

⁸ University of Prishtina “Hasan Prishtina;” University of Prizren “Ukshin Hoti;” University of Gjakova “Fehmi Agani;” University of Mitrovica “Isa Boletini;” University of Peja “Haxhi Zeka;” and University of Gjilan “Kadri Zeka.”

⁹ Official Statistics of Kosovo Ministry of Education, Science and Technology, pg. 88. Available at <http://masht.rks-gov.net/uploads/2016/08/statistikat-e-arsimit-ne-kosove-shq.pdf>

¹⁰ Official Statistics of Kosovo Ministry of Education, Science and Technology, pg. 88. Available at <http://masht.rks-gov.net/uploads/2016/08/statistikat-e-arsimit-ne-kosove-shq.pdf>

¹¹ Kosovo Constitution, Article 23. Available at http://www.gjk-ks.org/repository/docs/Kushtetuta_RK_ang.pdf

¹² Republic of Kosovo, *The Law on Pre-University Education in the Republic of Kosovo*, Kosovo, 2011, at: <http://www.erisee.org/sites/default/files/Law%20on%20Pre-University%20Education%20in%20the%20Republic%20of%20Kosovo%20No.04-L%20%E2%80%933032.pdf>.

steps to ensure that students and staff are not hurt or exposed to offensive words and actions.”¹³

Furthermore, at the university level, sexual harassment is reportedly widespread and even though reporting of sexual harassment cases seems almost inexistent, in cases when reports were made, the majority of the reports remained unaddressed.¹⁴ Female students interviewed by Artpolis have also claimed to be commonly aware of the occurrence of sexual harassment cases however they do not report them as they distrust the institution. There were cases that students were persuaded not to take the cases further due to possible repercussions and/or public shame to be put on the student reporting the case.¹⁵

Generally, there is lack of data on the extent of the occurrence of the phenomena and there are no existing comprehensive analysis or anonymous polls conducted with students of public universities to further grasp the extent of the problem. Even though Codes of Conduct exist, there are no specifically drafted policies to address sexual harassment cases known as Sexual Harassment Policies. The public universities in Kosovo have only Codes of Conduct, however do not have specific sexual harassment policies that would offer definitions of what forms constitute sexual harassment in line with the applicable law, explain in details the reporting mechanisms, make such mechanism known and available to students, define the sexual harassment proceedings in line with the Shift of Burden of Proof Principle in line with the Anti-Discrimination Law¹⁶ as well as define in detail the procedures to be followed by academic and administrative staff after cases are reported and the appeals procedures.¹⁷ Artpolis has not been made aware that any of the public universities have monitored or evaluated the level of students knowledge and implementation of their existing rules and procedures related to Codes of Conducts including also of sexual harassment cases. Even though public universities are the largest educational institutions covered by Kosovo taxpayers money, they have so far lacked to

¹³ Ibid, Article 4.

¹⁴ Ibid.

¹⁵ Artpolis interviews with students of Public University of Prishtina, October-December 2016.

¹⁶ On the Shift of Burden of Proof, see analysis under Section 3 of this report.

¹⁷ See Draft Policy on Sexual Harassment, Annex of the Report.

show accountability towards its students in analysing the implementation of the existing codes of ethics nor have drafted so far any specific sexual harassment policies.

3. Kosovo applicable law related to sexual harassment

A plethora of laws address harassment cases in Kosovo, including of sexual harassment cases. Majority of the legal protections related to sexual harassment cases, are defined under the proceedings covered by civil laws.

The recently enacted Kosovo Law on the Protection from Discrimination, applies to all persons, including legal persons of both public and private bodies, and reacts towards any action or inaction which violates the rights of such persons in access or conditions of employment, vocational training, promotion or access to goods and services and also social protection.¹⁸ The Law on Protection from Discrimination further defines harassment as a form of discrimination of unwanted conduct not limited only to sexual unwanted conduct, with the purpose or effect in violating the dignity of the person and creating an intimidating, hostile, degrading, humiliating or offensive environment based on persons sex, gender or sexual orientation and other grounds of discrimination.¹⁹

On the other hand, Kosovo applicable law also considers the Convention on all Forms of Discrimination against Women (CEDAW) directly applicable in Kosovo and in cases of conflict its provisions are considered to have priority over the provisions of domestic laws as well as the acts of other public institutions.²⁰ Accordingly CEDAW protocols and recommendations are applicable in Kosovo's legal framework, with the CEDAW General Recommendation no. 19 defining sexual harassment against women specifically as forms of “[U]nwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words

¹⁸ Anti-Discrimination Law, Art. 2.

¹⁹ Other grounds of discrimination are defined further in Article 1 of the Law on Protection from Discrimination, No. 05/L-021. Available at <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-021%20a.pdf>

²⁰ Constitution of the Republic of Kosovo, 2008. Available at <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>.

or actions.”²¹ Further, the Law on Protection from Discrimination in Kosovo (the Anti-Discrimination Law) is in line with a number of EU Directives related to the implementation of the treatment of equal treatment, including in employment and occupation; implementation of the principle of equal treatment between men and women in the access to and supply of goods and services; and in accordance to the principle of equal opportunities and equal treatment of men and women related to employment and occupation.²² The EU Directives put an emphasis in defining sexual harassment in order to offer women and men equal opportunities in exercising their rights to equal employment, occupation and also in access to and supplying with goods and services.

Furthermore, the definition of sexual harassment described in the EU directives refer to instances when “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.” These acts are considered discrimination on the grounds of sex within EU member states that are encouraged in prohibiting such forms of discrimination.²³ Also further victimisation is forbidden by the EU Directives and the Kosovo Law on Anti-Discrimination in cases when the person reporting a discrimination claim suffers from adverse or negative effects and/or when such a procedure is initiated or when the person might offer evidence on the breach of the principle of equal treatment in relation to the

²¹ UN CEDAW, General Recommendation No. 19 on Violence against Women, Para. 9, at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

²² See Council Directive 2000/43/EC of 29 June 2000 on implementing the principle of equal treatment between persons regardless of racial or ethnic origin of the Council of the European Union, Council Directive 2000/78/EC of 27 November 2000 on establishing a general framework for equal treatment in employment and occupation of the Council of the European Union, Council Directive 2004/113/EC of 13 December 2004 on implementing the principle of equal treatment between men and women in the access to and supply of goods and services of the Council of the European Union, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on implementation of the principle of equal opportunities and equal treatment of men and women related to employment and occupation (amended) of the European Parliament and the Council of the European Union. Available at <http://eur-lex.europa.eu/>.

²³ See European Directive 2002/73/EC on Equal Treatment in Employment for Women and Men, supplemented by the European Directive 2006/54/EC, 5 July 2006 on Implementing the Principle of Equal Treatment of Women and Men in Employment and Occupation, at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32002L0073>. Additionally, the European Directive 2004 on implementing the principle of equal treatment of men and women in access to service delivery and use of goods details further the access of women and men equally to services based on the principle of non-discrimination.

complaint procedure in cases of discrimination.²⁴ The new anti-discrimination law also offers a novelty by foreseeing the possibility for a group of individuals to file and submit a lawsuit in the competent court of law and not only to individuals, the right to jointly claim discrimination cases based on the discrimination grounds as defined under Article 1 of the Law.²⁵ These discrimination grounds are related to nationality, community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds.²⁶

Worth noting is the principle of *shifting the burden of proof*, foreseen under the Anti-Discrimination law in line with the requirements of the EU Directives. This provision is also an obligation to be implemented by any administrative body as well as the courts. Under Article 20 of the Anti-Discrimination Law the shift of burden of proof should be used in all cases when individuals claim discrimination cases and claim violations of the right to equal treatment. In these cases persons submit their claims to protect their rights before administrative authority or a competent court. In these cases the burden of proof for discrimination claims will go to the respondent (responding party), who should prove that there has been no breach of the principle of equal treatment. In these cases the person claimed to have discriminated against the victim (the respondent) should provide proof that the act of discrimination has not occurred with the burden of proof shifted to the respondent.²⁷

The shift of burden of proof should be used in civil proceedings as it goes against the criminal principle of presumption of innocence until proven guilty. Therefore the shift of burden of proof in discrimination claims can not be used in criminal nor in criminal offence cases.²⁸ However, in all proceedings at administrative levels and in courts

²⁴ The Law on Protection from Discrimination, Article 4, paragraph 1.4.

²⁵ Anti-Discrimination Law, Art. 1 and Article 13.

²⁶ Anti-Discrimination Law, Article 1.

²⁷ See the Anti-Discrimination Law, Article 20, paragraph 2.

²⁸ Anti-Discrimination Law, paragraph 3.

working with civil proceedings it is a general rule to be applied in accordance to the Anti-Discrimination law. Additionally, the law also understands the sensitivity of prompt response to discrimination cases as undue delays may cause victims to withdraw their discrimination claims or delays might be used to persuade victims by the accused or other persons involved not to pursue further their claims, and therefore requests that all discrimination cases are to be handled in an urgent procedure, as per the requirements of the Law on Contested Procedure.²⁹ During interviews, Artpolis has not been made aware of any cases that the procedure of shifting the burden of proof or use of urgent procedures were used by any of the public universities. In majority of cases students agree that harassment cases exist, however there is minimal reporting of such cases. In cases when claims of harassment are reported or discussed, there have been cases reported that the institution pushed for reconciliation and persuaded the potential victim not to pursue the case further.³⁰

The new Anti-Discrimination Law adopted in 2015 also foresees fines to be issued for discrimination claims ranging from €400 up to maximum of € 1,350.³¹ The fines have been critiqued as not adequate and remaining low as pecuniary measures especially when considering the sensitive claims of sexual harassment that may occur and consequences for the victims.³² Under the Anti-Discrimination Law also reconciliation and mediation procedures are foreseen if individuals prefer to use such proceedings.³³ During the interviews with students and the discussion panels, Artpolis has not come across of any cases reported on sexual harassment with courts issuing the fines in line with the requirements of the Anti-Discrimination law.³⁴

Other violations of discrimination cases, including criminal proceedings are dealt under the Kosovo Criminal Code. Kosovo criminal offences dealt within the criminal proceedings are not defined explicitly under the Anti-Discrimination Law. The law only

²⁹ Anti-Discrimination Law, Art. 16.

³⁰ Artpolis interviews and student panels, June-December 2016.

³¹ Anti-Discrimination Law, Art. 23.

³² See Kosovo Women's Network report "Sexual Harassment in Kosovo," 2016. Available at <http://www.womensnetwork.org/documents/20160223185243349.pdf>.

³³ Anti-Discrimination Law, Art. 21.

³⁴ Artpolis interviews and student panels, June-December 2016.

refers to the Criminal Code for such offences generally.³⁵ Compensation of material or non-material damages is also foreseen under the Anti-Discrimination Law with the return to the previous situation before the discrimination case occurred, measures to be ordered by the civil court. However, the level of compensation damages are not specified under the Anti-Discrimination Law.³⁶ The law itself provides discretionary opportunities for responsible institutions, to also undertake a number of measures and define internally the procedures to implement the law.³⁷ Accordingly, none of the regulations adopted by Kosovo Public Universities monitored by Artpolis, have drafted their rules related to reporting and addressing of sexual harassment cases, in line with the requirements of the newly enacted Anti-Discrimination Law.³⁸ Further, these regulations also fail to mention the procedures foreseen for discrimination claims including the *shift of burden of proof* in sexual harassment cases, as foreseen by the new Anti-Discrimination law adopted in June 2015 or the previous law adopted in 2004.

The cases of sexual harassment are also defined in the new Kosovo Law on Gender Equality also adopted in 2015.³⁹ The new Gender Equality Law prohibits sexual harassment, by defining it as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.”⁴⁰ In line with the Anti-Discrimination Law victimisation is also forbidden under the gender equality law and any negative consequences for the claimant are not allowed if sexual harassment cases are reported.⁴¹

The punitive measures foreseen by the Law on Gender Equality are low ranging from 300 € up to a maximum of 900 € with all collected fines foreseen to be transferred to the

³⁵ See Article 17 of the Anti-Discrimination Law.

³⁶ Anti-Discrimination Law, Art. 16.

³⁷ Article 8 of the Anti-Discrimination Law.

³⁸ Kosovo enacted the first Anti-Discrimination Law in 2004, that also included the definition of the shift of burden of proof in discrimination cases in line with the requirements of the EU Directives. See former version of the law at No. 2004.03, the Anti-Discrimination Law.

Available at www.assembly-kosova.org/common/docs/ligjet/2004_3_en.pdf

³⁹ See Kosovo Law on Gender Equality, Law No. 05/L -020. Available at: <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-020%20a.pdf>.

⁴⁰ Kosovo Law on Gender Equality, Art. 3, paragraph 1.12.

⁴¹ Law on Gender Equality, Article 3, paragraph 1.19.

Kosovo budget. The law has been critiqued to lack clarity related to acts of direct and indirect discrimination reported and sanctioned by the competent court.⁴² The Law does not define specifically the violation procedures, remaining as a serious threat in the implementation of the law. The procedures foreseen to report any violations covered under the law, remain unclear and in comparison to the Anti-Discrimination Law lack clarity. These procedures should be further elaborated and explained under Administrative Instructions foreseen to be enacted by the Law on Gender Equality.⁴³

Previous monitoring has not identified any cases in administrative or legal practice of employers or perpetrators within public bodies to have been issued fines for sexual harassment in line with the requirements of the Anti-Discrimination Law nor the Law on Gender Equality.⁴⁴ Overall, the reporting of sexual harassment cases remains very low. Furthermore, Artpolis monitoring has also not come across of any cases reported by students in line with the requirements of the laws mentioned above.

Criminal Proceedings Related to Sexual Harassment Cases

The new Criminal Code of Kosovo that has entered into force in 2013, does not offer a separate definition of sexual harassment, however it enlists a number of definitions under several different articles. Until 2014, there were only three cases reported, initiated by public prosecutors that requested punitive measures in cases related to sexual harassment.⁴⁵ Students have also claimed to have faced difficulties in reporting sexual harassment cases to the Kosovo Police due to the lack of a specific definition of sexual harassment within the Kosovo Criminal Code.⁴⁶

⁴² Supra note at 19 Kosovo Women's Network Report, 2016. Available at <http://www.womensnetwork.org/documents/20160223185243349.pdf>

⁴³ Article 24, of the Kosovo Law on Gender Equality, No.05/L-020. Available at <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-020%20a.pdf>

⁴⁴ See, Norma, *Research and Monitoring the Implementation of the Law on Gender Equality*, Prishtina: Norma, 2011, p. 18. Also, see Luljeta Demolli for Kosovar Gender Studies Centre (KGSC), *Perceptions of Civil Servants regarding Sexual Harassment in the Workplace*, Prishtina: KGSC, 2010, p. 10. Quoted in Kosovo Women's Network Report, *Sexual Harassment in Kosovo*, 2016. Available at <http://www.womensnetwork.org/documents/20160223185243349.pdf>

⁴⁵ See Kosovo Women's Network Report, 2016 report "Sexual Harassment in Kosovo," 2016. Available at <http://www.womensnetwork.org/documents/20160223185243349.pdf>

⁴⁶ Artpolis interviews with female students, June-December 2016.

The Kosovo Criminal Code under Article 186, offers a general definition of harassment, not specifically of sexual harassment. Overall, the sexual harassment acts are referred to and fall under proceedings instituted under the Anti-Discrimination Law and the Law on Gender Equality. Only in cases of sexual acts, by persons abusing their position or authority and by abusing his or her control over the educational circumstances of the other person, acts against sexual integrity of one person, are punishable from one to five years of imprisonment. Sexual acts are defined as penetration however slight of any part of the body of a person with a sexual organ or with any object or any other part of the body.⁴⁷ Additionally, abuse of authority or position, including of educational circumstances of the other person, may happen also when subjecting another person to a sexual act and touching.⁴⁸ In these cases if a person abuses his or her position and touches another person for a sexual purpose, the person shall be punished by imprisonment of six months to three years.⁴⁹ In these circumstances only, criminal offences against sexual integrity of one person should be prosecuted.

On the other hand, the Criminal Code also defines the cases of harassment as "...[A] pattern of repeated and unwanted attention or communication with the intent to harass, intimidate, injure, damage property or kill another person or his or her children, family, relatives or pets or whoever places another under surveillance with the intent to harass, intimidate, injure, damage property or kill another person or his or her children, family, relatives or pets; and in the course thereof, places that person in reasonable fear of death, grievous bodily injury, serious damage to property or substantial emotional distress."⁵⁰ Further, the attention or communication under the definition of harassment in the

⁴⁷ Article 228, paragraph 3 defines sexual act as "...penetration however slight of any part of the body of a person with a sexual organ, or the penetration however slight of the anal or genital opening of a person with any object or any other part of the body." Kosovo Criminal Code, available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>

⁴⁸ Article 228, defines "Subjecting another person to a sexual act, as a"...commission of a sexual act on another person by the perpetrator, or inducing another person to commit a sexual act on the perpetrator or a third person or inducing a third person to commit a sexual act on another person; or the term touching as "...any direct or indirect contact, where there is no penetration, between the body of a person with any part of the body of another person or with an object," paragraphs 4 and 6. Criminal Code of Kosovo, available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>

⁴⁹ Ibid, Article 228.

⁵⁰ Article 186, of the Kosovo Criminal Code No. 04/L-082. Available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>

Criminal Code foresees “following or laying in wait; repeatedly appearing at the home, school, work or recreation place; making repeated phone calls; sending or leaving messages; sending text messages, mail or emails; or, leaving or sending unwanted gifts or other items.”⁵¹ For criminal offences related to harassment persons can be sentenced up to three years imprisonment or a fine.⁵² Under Article 198, claims related to mistreatment by persons in their official duties or public authorisations, abusing position or authority, mistreatment and intimidation as well as gravely insulting the dignity of another person, officials in such cases shall be punished by imprisonment of up to three years.⁵³

However, the definition of mistreatment by persons exercising official duties is not clearly defined in the criminal code as well as how a persons dignity is violated is not clearly stated.⁵⁴ Considering legal gaps in the existing definition of harassment within the Kosovo Criminal Code, the previous report of the Kosovo Women’s Network recommended revising the definition, to also include the specific definition of sexual harassment cases and also including of sanctions.

Other relevant criminal provisions are also foreseen for more vulnerable categories such as children and in these cases when the perpetrator is a teacher or a person entrusted with a person’s upbringing or care with position of authority over the person, imprisonment is foreseen for ten years to life imprisonment in cases when the sexual assault leads to the death of the child, i.e. person until the age of 18.⁵⁵ The Criminal Code of Kosovo also recognises the exploitation of a situation in which a person is unprotected or the perpetrator is in a position of authority over the person as a teacher, offences such as rape, sexual assault, and degradation of sexual integrity are sanctioned and have imprisonment sentences ranging from two to fifteen years.⁵⁶ Failure to report preparation

⁵¹ Criminal Code of Kosovo, Art. 186, paragraph 4.

⁵² Under Article 186 if such an offence is conducted against a former or current domestic partner, the perpetrator shall be punished by imprisonment of six months to five years. Kosovo Criminal Code. Available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>.

⁵³ In cases related to violations against children, these circumstances are considered an aggravating circumstance for the perpetrator and imprisonment is longer, ranging from six months to five years. Criminal Code of Kosovo, Art. 198.

⁵⁴ See Kosovo Women’s Network report “Sexual Harassment in Kosovo,” 2016. Available at <http://www.womensnetwork.org/documents/20160223185243349.pdf>.

⁵⁵ Criminal Code, Art. 232, para. 3.10.

⁵⁶ See Kosovo Criminal Code Article 230, para. 4.10; Article 232, para. 3.10; and Article 233, para.3.10.

of a criminal offence or a criminal offence witnessed is also punishable with a fine and up to three years imprisonment and any officials are responsible to report criminal offences when they witness it.⁵⁷

In conclusion, the criminal provisions provided have advanced protections against vulnerable victims, including victims of sexual abuse. However, they fail to offer a specific definition of sexual harassment *per se*. As stated, by previous reports including by Kosovo Women's Network reporting have shown minimal results in cases prosecuted for sexual harassment and are overall affecting the reporting and the protection of victims from sexual harassment. In 2014 there were only seven cases reported to the police and recorded by the police.⁵⁸ Overall, the numbers of perpetrators accused of sexual harassment cases foreseen in line with the definitions of the criminal code, remain almost as inexistent.

In relation to street harassment, Kosovo Women's Network report has also shown the minimal use of the Kosovo Law on Public Peace and Order. The law has been critiqued for a vague definition in addressing verbal attacks which is defined as persons who in public places insult with words with the intention to provoke a breach of public peace and order.⁵⁹ Verbal attacks as such are considered minor offences punishable with fines from 30 € up to 500 € or imprisonment of 40 days if fines are not executed.⁶⁰ Until beginning of 2016, no cases of individuals using this law have been found in Kosovo courts,⁶¹ as these cases were not taken seriously by police and thus were not referred to the relevant courts.

In conclusion, there are a number of laws that can be used in harassment cases ranging from civil, criminal and minor offence proceedings. The definition of sexual harassment

⁵⁷ Article 385 and 386 of the Criminal Code.

⁵⁸ Kosovo Women's Network report "Sexual Harassment in Kosovo," 2016, pg.8-10. Available at <http://www.womensnetwork.org/documents/20160223185243349.pdf>

⁵⁹ Ibid, KWN Report quoting the Kosovo Law on Public Peace and Order, No. 03/L-142, 2009.

⁶⁰ Kosovo Law on Public Peace and Order, No. 03/L-142, 2009, at: <http://www.kuvendikosoves.org/common/docs/ligjet/2009-142-sh.pdf>.

⁶¹ See Kosovo Women's Network Report, 2016. Available at <http://www.womensnetwork.org/documents/20160223185243349.pdf>

addressed in the Law on Gender Equality specifically coupled also with the provisions of harassment of the Anti-Discrimination law are sufficient legal definitions related to reporting of sexual harassment cases. Lack of a specific definition of sexual harassment in the Kosovo Criminal Code has substantially hampered the use of criminal provisions related to sexual harassment with not many cases prosecuted in recent years. So far Artpolis and previous reporting of Kosovo Women's Network have not found any evidence or records of victims of sexual harassment using the provisions from the Anti-Discrimination Law and the Law on Gender Equality, or have collected information on the cases of fines issued in line with the Kosovo applicable law.

The novelties offered by the Anti-Discrimination Law in line with the EU Directives such as the shift of burden of proof including in sexual harassment cases, are solutions foreseen to put victims forward in reporting cases of sexual harassment. In these cases public institutions should also try to address the requests of victims in outmost anonymity and aim to create a set of rules and procedures to ease the reporting and handling of cases of harassment. Until proceedings are not developed in each public institution including public universities to offer specific sexual harassment policies with procedures, mechanisms and complaints mechanisms detailed, the low number of reports will continue to be prevail as a reality. In cases when such reports do exist also procedures to record and keep information by respecting the victims privacy should be developed in detail by public institutions.

4. Prishtina Public University Regulation related to Sexual Harassment Reports

A number of code of ethics have been drafted and adopted by public universities of Kosovo to address issues related to ethical behaviour of students and/or academic staff. These regulations are relatively new with the latest being in 2016 by the University "Ukshin Hoti" in Prizren. Differently, Prishtina Public University "Hasan Prishtina,"

drafted and adopted its Code of Ethics for Academic Staff only in 2013.⁶² Also the University of Gjilan “Kadri Zeka,” has a regulation addressing disciplinary measures of academic staff and students.⁶³

The University of Prizren “Ukshin Hoti” adopted an ethics code for both students and staff by offering specific and detailed definition of what constitutes sexual harassment in Article 10 of the Ethics Code.⁶⁴ Sexual harassment cases are further defined as grave violations, foreseeing also a number of disciplinary measures to be undertaken. However, its reporting and appeals procedures fall under general disciplinary measures for all violations foreseen under the code of ethics.⁶⁵ These violations range from disciplinary violations of students when copying exams, intentional destruction of university property and include also sexual harassment cases. In all cases the disciplinary proceedings are the same except the measures foreseen that range from light to grave measures depending on the violations.⁶⁶ The disciplinary measures to be issued for academic staff range from disciplinary measures up to dismissal from work. In cases of trying to commit sexual harassment cases the code states that academic staff can not be elected to leading or managerial positions of the University. The ethics code also states that sexual harassment cases may go beyond disciplinary measures and be referred to criminal proceedings and criminal prosecution.⁶⁷ However, the code does not offer an explanation in what ways are these referrals made.

Further, the Prizren Ethics Code states under Article 17 that all “...Students have the right and the obligation to report, in trust and without any fear from repercussion, any

⁶² Code of Ethics for the Academic Staff of the Public University of Prishtina, 2013 Available at [http://uni-pr.edu/getattachment/Kerkime-Shkencore/Rregulloret/Rregulloret-e-Senatit/Kodi-i-Etikës-i-stafit-akademik-te-Universitetit-te-Prishtines-Hasan-Prishtina-\(1\).pdf.aspx](http://uni-pr.edu/getattachment/Kerkime-Shkencore/Rregulloret/Rregulloret-e-Senatit/Kodi-i-Etikës-i-stafit-akademik-te-Universitetit-te-Prishtines-Hasan-Prishtina-(1).pdf.aspx)

⁶³ University Kadri Zeka Gjilan, “Regulation on measures and disciplinary proceedings for academic staff and students.” Available at <http://uni-gjilan.net/dokumente-relevante/>

⁶⁴ Ethics Code of University “Ukshin Hoti,” Prizren, adopted February 2016. Available at <http://uni-prizren.com/sq/kodi-i-etikes>

⁶⁵ See Ethics Code of University “Ukshin Hoti,” Prizren, adopted February 2016. Available at <http://uni-prizren.com/sq/kodi-i-etikes>. See also Regulation on Disciplinary Procedures, available at http://uni-prizren.com/repository/docs/Rregollore_procedur_disip_541877.pdf

⁶⁶ Ethics Code of University “Ukshin Hoti,” Prizren, adopted February 2016. Available at <http://uni-prizren.com/sq/kodi-i-etikes>.

⁶⁷ Ibid, Article 25.

violation of this Code or any other academic policy and administrative policy of the University to academic managers and/or administrative managers within the University. For this purpose an Ethical Council should be formed or cases can be reported to the Rector.⁶⁸ However, the ethics code does not go into further detail on how cases of sexual harassment should be handled by guarantying anonymity of the cases reported and its sensitive handling.

The Prishtina Public University “Hasan Prishtina,” under Article 7 of its Statute obliges the university to “...Create equal opportunities for all without any discrimination on the grounds of gender, race, sexual orientation, marital status, language, religion, political beliefs or any other grounds, as national belonging, ethnical and social status, wealth or birth status or any other status.”⁶⁹ Further, Prishtina University only in 2013, defined a set of rules in the code of ethics for academic staff. The handling of sexual harassment cases are also foreseen under this code of ethics known as the Code of Ethics for the Academic Staff of the Public University of Prishtina.⁷⁰ The rules defined however, are applicable only to potential violations of the academic staff. The Prishtina Code of Ethics does not offer rights and obligations specifically for administrative staff or students of the Prishtina University.

The code itself is much weaker in definitions and proceedings if compared for example to the Code of Ethics of Prizren University. The only procedures foreseen are in reference to the Governing Council of the University of Prishtina, to adopt rules and regulations in accordance to the statute on the measures and disciplinary procedures for academic staff.⁷¹ Under Article 2 of the Prishtina University Code of Ethics, academic staff should agree to continuously respect the ethical principles and act to respect the dignity of

⁶⁸ Supra note at, Article 17, paragraph d.

⁶⁹ See Prishtina University Statute. Available at www.uni-pr.edu.

⁷⁰ Available at [http://uni-pr.edu/getattachment/Kerkime-Shkencore/Rregulloret/Rregulloret-e-Senatit/Kodi-i-Etikës-i-stafit-akademik-te-Universitetit-te-Prishtinës-Hasan-Prishtina-\(1\).pdf.aspx](http://uni-pr.edu/getattachment/Kerkime-Shkencore/Rregulloret/Rregulloret-e-Senatit/Kodi-i-Etikës-i-stafit-akademik-te-Universitetit-te-Prishtinës-Hasan-Prishtina-(1).pdf.aspx)

⁷¹ These disciplinary measures were easily available by search on the website of the Economic Faculty of the University of Prishtina, however not easily accessible on other faculty websites. See <https://ekonomiku.uni-pr.edu/getattachment/Vendimet/4Rregullore-per-proceduren-disiplinore.pdf.aspx>

students, colleagues and professional interests.⁷² Sexual harassment is also forbidden, however a specific and detailed definition of what constitute acts and forms of sexual harassment are not defined under the its Code of Ethics. Furthermore, the Code does not offer confidentiality clauses and does not specify ways on offering protection from repercussions to students in reporting cases of sexual harassment nor defines how students should be protected from further victimisation. In interviews with Artpolis majority of the students showed distrust in the institution and in reporting cases of sexual harassment due to their sensitivity and generally showed lack of knowledge and procedures on how to report the cases. Similar lack of procedures were observed with few educational staff interviewed.⁷³ Overall, there is insufficient visible information related to the Code of Ethics within University premises in order for students to be made aware of how to report cases and use the rights offered under the University Code of Ethics. Information is generally not widely disseminated.

The collection of evidence for reported sexual harassment cases are not specifically defined nor procedures are appropriately defined on how to collect evidence or use the *shift of burden of proof* principle as foreseen under EU directives and Kosovo Anti-Discrimination Law. In this cases specific policies on sexual harassment should be drafted within each of the Kosovo public universities. Artpolis has found that none of the public universities in Kosovo have specifically drafted or adopted such sexual harassment policies.

Different approaches in various public universities suggest that the existence of a set of specific rules defined to address sexual harassment claims are a necessity to identify, increase students knowledge and accordingly encourage reporting of cases of sexual harassment. Policies would also define in detail the handling of information in a confidential manner, necessary to guarantee and encourage students to report the sensitive cases of harassment. Commonly, cases of sexual harassment are followed by public pressure and the shame and stigma associated with the victims. Therefore many

⁷² Article 2. Available at [http://uni-pr.edu/getattachment/Kerkime-Shkencore/Rregulloret/Rregulloret-e-Senatit/Kodi-i-Etiket-i-stafit-akademik-te-Universitetit-te-Prishtines-Hasan-Prishtina-\(1\).pdf.aspx](http://uni-pr.edu/getattachment/Kerkime-Shkencore/Rregulloret/Rregulloret-e-Senatit/Kodi-i-Etiket-i-stafit-akademik-te-Universitetit-te-Prishtines-Hasan-Prishtina-(1).pdf.aspx)

⁷³ Artpolis interviews with University of Prishtina Academic Staff, June-December 2016.

public universities elsewhere offer such confidentiality clauses and special harassment policies. For example, the University of Vermont offers specifically in its Sexual Harassment and Misconduct Policy definitions of acts of sexual harassment by defining what constitutes coercion, consent and acts of domestic, relationship violence and student-teacher misconduct.⁷⁴

Further, educational institutions funded by public money, are recommended not to use a “head in the sand approach” meaning that the lack of existence of sexual harassment policies is commonly defined as an approach of not handling cases nor making regulations available to students to report by trying to ignore or recognise the problem.⁷⁵ Further, public educational institutions should outreach by having higher standard of institutional liability as the risk from harm is better to be placed on the educational institution rather than the young student.⁷⁶ This would also encourage the educational institutions to have heightened vigilance and students should not be seen as the only “policing authority.” It is the duty of the public educational institution to reach out and have a higher liability standard.⁷⁷ Therefore, the existence of sexual harassment policies are a must for universities to show that they have effective and accessible sexual harassment procedures in order to provide an environment free from sexual harassment of students.⁷⁸ This approach is also seen as a preventative tool as it will also encourage universities to monitor the implementation of such policies. So far in Kosovo no monitoring of the existing codes of ethics nor regulations has been found. Therefore, it is necessary that universities accordingly will develop, implement and enforce measures in order to provide for accountability and liability for sexual harassment cases.

⁷⁴ The University of Vermont, Sexual Harassment and Misconduct, United States. Available at http://www.uvm.edu/policies/general_html/sexharass.pdf

⁷⁵ Pg. 53 of 55, “The University’s Liability for Professor-Student Sexual Harassment under Title IX, Henry Seiji Newman.” In Fordham Law Review Volume. 66, 1998

⁷⁶ See US Case Law *Leija v. Canutillo Independent School District*, the district court imposed strict liability against an educational institution for a Title IX teacher-student hostile environment sexual harassment claim. Quoted in Pg. 31 of 55, “The University’s Liability for Professor-Student Sexual Harassment under Title IX, Henry Seiji Newman.” In Fordham Law Review Volume. 66, 1998.

⁷⁷ Pg. 31 of 55, “The University’s Liability for Professor-Student Sexual Harassment under Title IX, Henry Seiji Newman. In Fordham Law Review Volume. 66, 1998

⁷⁸ *Ibid*, pg.46.

Furthermore, as previously stated under Kosovo applicable law i.e. the Anti-Discrimination Law and the Law on Gender Equality and other recent revisions of the human rights package law in Kosovo, require Kosovo institutions to draft and adopt new sub-legal acts or policies in order to ease the implementation of these laws. Therefore educational institutions should be encouraged to draft clear procedures to handle reports of sexual harassment by adopting sexual harassment policies. Specifically these acts should also define the criminal proceedings to be undertaken, when sexual harassment acts are of criminal nature in line with the requirements of the Kosovo applicable law.

5. Recommendations

In ending, many laws and policies exist in Kosovo to address claims of sexual harassment. However, procedures to claim these reports within public universities remain ambiguous due to lack of specific sexual harassment policies, lack of knowledge of students on using the existing mechanism as well as lack of the expressed will of educational officials to develop concrete and effective mechanisms including sexual harassment policies to increase the reporting and handling of sexual harassment cases.

In order to enhance the effective and liable response of Kosovo publicly funded universities, this report recommends the following steps to be undertaken:

- Prishtina Public University “Hasan Prishtina” should draft a sexual harassment policy. The measures within the policies should include clearly defined and unambiguous definitions of what constitute sexual harassment acts, explain in detail the grievance procedures to encourage students to report and also a prevention program encompassing sexual harassment training and education for professors and students. The same example should also be followed by other five public universities of Kosovo immediately;
- The University of Prishtina should also develop sexual harassment monitoring projects before faculties receive a report of sexual harassment and monitor the handling of cases after the complaint is received and the measures undertaken;

- The adopted sexual harassment policies should also incorporate the use of the principle of *shift of burden of proof* in line with the requirements of the Kosovo Anti-Discrimination Law;
- The University of Prishtina should ensure the university's effective application of the measures under the sexual harassment policy to be drafted and adopted in order to prevent and eliminate sexual harassment attempts;
- The Kosovo Government in line with Article 10 requirements of the Anti-Discrimination Law should assist upon request, the work of public Universities of Kosovo to draft sexual harassment policies;
- Kosovo government with the support of donors should support the work of the NGO's to monitor the level of implementation of handling of sexual harassment cases on continuous basis within Kosovo's educational institutions;
- Furthermore, a set of educational campaigns after the drafting and the adoption of the sexual harassment policies within Kosovo public universities should be conducted under the lead of each university.
- Kosovo Criminal Code should adopt a specific and detailed definition of sexual harassment cases by also defining in detail what constitutes the acts and sanctions foreseen.

Annex on proposal Content of Draft Policy on Sexual Harassment:⁷⁹

Define the acts of sexual harassment;

Define what constitutes coercion, consent and acts of domestic, relationship violence and student-teacher acts of sexual harassment and misconduct;

Define in detail what constitutes gender-based stalking of students as well as defines incapacitation of students to make decisions be it mental or physical incapacitation including under use of alcohol or drugs;

The policy should use in detail the provision of the Kosovo Law on Anti-Discrimination and Law on Gender Equality including the use of the principle of *shift of burden of proof*;

Preponderance of the evidence, collection of evidence and procedures on handling of cases, including the use of anonymity or confidential handling of cases;

Define the respondent and the obligations of the university employees and measures to be undertaken in detail;

Appeals procedures defined in detail;

Define the monitoring and evaluation of the policy measures to be undertaken by the university.

⁷⁹ Based on the Vermont University Sexual Harassment and Misconduct Policy. Available at http://www.uvm.edu/policies/general_html/sexharass.pd

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