

# Compensation to Victims of Crime: Response to Domestic Violence and Human Trafficking cases in Kosovo

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## Policy Report

### Compensation to Victims of Crime: Response to Domestic Violence and Human Trafficking cases in Kosovo

Authors: Ariana Qosaj-Mustafa and Donjeta Morina

Research Supported by: Blend Zyrap

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Kosovar Institute for Policy Research and Development  
Major Mehmet Bushi, No. 1  
Prishtina 10 000, Kosovo  
Website: [www.kipred.org](http://www.kipred.org)  
E-mail: [info@kipred.org](mailto:info@kipred.org)  
Tel/fax.: +381 38 542 778

Group for Legal and Political Studies  
Rexhep Luci str. 16/1  
Prishtina 10 000, Kosovo  
Website: [www.legalpoliticalstudies.org](http://www.legalpoliticalstudies.org)  
E-mail: [office@legalpoliticalstudies.org](mailto:office@legalpoliticalstudies.org)  
Tel/fax.: +381 38 234 456

Artpolis – Art and Community Centre  
Str. Zenel Salihu Z4 -S3 00022  
10 000 Prishtina, Kosova  
Website: [www.artpolis-ks.com](http://www.artpolis-ks.com)  
Tel/fax.: +381 38 221 512

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## Table of Contents

Acronyms .....	4
I. Executive Summary .....	5
II.a) Introduction .....	6
II.b) Methodology .....	9
III. International Legal Framework .....	9
IV. The Victim Compensation Programme in Kosovo .....	12
V. Situation Analysis on Domestic Violence and Human Trafficking in Kosovo .....	15
a) Domestic Violence .....	15
b) Human Trafficking .....	18
VI. Victim compensation programme in Kosovo: Gaps, problems, and areas for improvement ...	20
a) Outreach and Utilisation .....	20
b) Capacities of officials and institutions .....	22
c) Unclear provisions under the Victims of Crime Compensation Law .....	24
d) Funding the Victim Compensation Programme .....	26
VII. Other findings .....	28
VIII. Conclusion and Recommendations .....	30
References .....	34

## Acronyms

BiH	Bosnia and Herzegovina
CEDAW	Convention for the Elimination of all Forms of Discrimination Against Women
CPC	Criminal Procedure Code
CRSV	Conflict Related Sexual Violence
DV	Domestic Violence
EU	European Union
GBV	Gender Based Violence
GoK	Government of Kosovo
HT	Human Trafficking
KChD	Kosovo Chamber of Doctors
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
KWN	Kosovo Women's Network
MLSW	Ministry of Labor and Social Welfare
MoF	Ministry of Finance
MoJ	Ministry of Justice
OPDAT	Office for Prosecutorial Development Assistance and Training
OSCE	Organization for Security and Cooperation in Europe
SOP	Standard Operating Procedures
US	United States
VA	Victim Advocates

## **I. Executive Summary**

As of May 2017 Kosovo has a functional state compensation programme for victims of crime. This report aims to provide an analysis of the programme in order to pre-emptively address problems that may exist within the law, compensation procedures and the proceedings of the commission. Specifically, the report aims to analyse whether compensation procedures may provide specific difficulties for victims of domestic violence and human trafficking. The report presents a review of the international and national legal framework related to crime compensation. It also provides an analysis of the current victim compensation law in Kosovo, its procedures and requirements.

The report also presents a situation analysis of Domestic Violence and Human Trafficking in Kosovo, as phenomena particularly affecting more vulnerable individuals in Kosovo such as women and children. This report identifies several gaps and problems in the victim compensation law, procedures and the commission itself. An added value is that it identifies these gaps very early in the process and how they can be improved with commitment and effort, particularly since the commission should ideally become a permanent mechanism.

One of the main identified gaps relates to insufficient outreach and awareness raising of citizens on the existence of the compensation programme. This limited outreach could lead to potential underutilization of the programme in the future. Another issue is the limited capacities of relevant officials and institutions and the insufficient capacity building conducted so far. Limited knowledge of professionals on the law and the process for compensation could lead to inaccurate and partial information being transferred to applicants. There are also unclear provisions concerning the eligibility of children witnessing Domestic Violence to apply to the programme. Difficulties in collecting the necessary documents by applicants have also been identified, particularly in obtaining receipts for funeral and medical expenses. Another identified procedural difficulty relates to applications by Domestic Violence survivors including the legal requirement that the survivor is eligible for compensation only after the perpetrator of the domestic violence act has been found guilty in criminal proceedings with a punishment of minimum one year. This rarely happens in Kosovo as sentencing of domestic violence perpetrators with imprisonment hardly ever occurs. Additionally, the lack of a unique definition of domestic violence in the Criminal Code of Kosovo makes indictments of domestic violence acts almost inexistent. Another identified issue relates to the funding of the programme itself. As of December 2017 there are no sustainable means to support the funding. As per Kosovo's

legislation the funding of the programme should come from sentences of judges and taxes issued against perpetrators of the crimes of murder, trafficking of persons, rape, sexual abuse of children and also criminal offences falling within the definition of domestic violence under the Law on Protection against Domestic Violence.

Other issues have also been identified, including the lack of a digitalized database for the secretariat and the commission, outdated phrasing of the Criminal Procedure Code and insufficient victim centered approach by the Kosovo Commission on Victim Compensation.

The report ends with a set of recommendations on how to address the identified problems below in order to assist the process of Kosovo setting up a functional victim's compensation programme. These concrete recommendations are aimed at specific institutions, donors and other relevant stakeholders in implementing the law.

## **II.a) Introduction**

The state's responsibility for compensating victims<sup>1</sup> of crime was recognized worldwide recently. The importance of compensating victims is firmly vested in social-welfare arguments, whereby it is considered that it is the state's responsibility to ensure the safety and security of their citizens. If it fails to do so, it needs to provide compensation to those affected by crimes that could not be prevented by state mechanisms. Victim compensation differs from restitution, in that it refers to payments that the government makes to a crime victim, instead of payments by the perpetrator of the crime to the victim.<sup>2</sup> Most western countries have established crime victim compensation programmes during the 1960s. The United States (U.S) for instance, enacted its first legislation providing compensation in 1965, when the state of California ratified its first programme for providing financial assistance to victims of crime.<sup>3</sup> Gradually, within 30 years all U.S states had a similar programme for compensating victims of crime.<sup>4</sup> A similar

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<sup>1</sup> Referring to persons who have suffered violent crimes the terms "victim" and "survivor" are frequently used. In this report the term "victim" refers to persons who have suffered one of the following crimes: murder, trafficking in persons, rape, sexual abuse of children and Domestic Violence. Many of the victims consider themselves as survivors and often referring to survivors does not diminish the agency of the concerned. Nevertheless, the report uses the term "victims" in accordance to the current legal terminology used in Kosovo offering specific rights to victims.

<sup>2</sup> Ibid.

<sup>3</sup> Greer, Desmond S., A transatlantic Perspective on the Compensation of Crime Victims in the United States, *Journal of Criminal Law and Criminology*, Volume 85, Issue 2, 1994, at: [scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6815&context=jclc](http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6815&context=jclc)

<sup>4</sup> Ibid.

pattern was followed during the 1960's in Great Britain, Northern Ireland, Canada, New Zealand and Australia,<sup>5</sup> by adopting legislation providing compensation to victims of crime.

On the other hand, the European Union (EU) has several mechanisms and legal frameworks that guarantee the right of victims of crime to compensation also reviewed under the "International Legal Framework" section of this report. Each member state of the European Union should develop a system for compensating victims of crime and there is compensation reciprocity among different Member States.<sup>6</sup> Differently, Balkan countries have begun to follow in the footsteps of their international counterparts although with a slower pace. For instance, in 2004 Albania has ratified the European Convention on the compensation of victims of crimes.<sup>7</sup> The Republic of Croatia even though a EU Member State, finalized a victim compensation act in 2011.<sup>8</sup> In Macedonia, there is no state compensation programme or fund for victims of crime in general and one exists only for victims of trafficking who are minors.<sup>9</sup> Serbia similarly lacks a specific law for compensating victims of crime.<sup>10</sup> While Montenegro has a law on the compensation of victims of crime, it has a reservation clause stating that the law does not go into force until Montenegro becomes an EU Member.<sup>11</sup>

However, what is common across all countries within the Balkan region is that none of them have a functional victim compensation programme in place, with an assigned budget and existing compensation commission. Legally, Kosovo stands out as an exception to the rule. However, it faces substantial challenges in implementing its legislation.

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<sup>5</sup>Galaway and Rutman, Victim Compensation: An Analysis of Substantive Issues, Social Service Review, Vol 48, No. 1, 1974

<sup>6</sup> European Commission Website, "Justice: Building a European Area of Justice, "Compensation", website accessed on 20.12.2017, at: [ec.europa.eu/justice/criminal/victims/compensation/index\\_en.htm](http://ec.europa.eu/justice/criminal/victims/compensation/index_en.htm)

<sup>7</sup>Republic of Albania, Notification of Ratification of the European Convention on the Compensation of Victims of Violent Crimes, 2005, at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=321052&SecMode=1&DocId=817110&Usage=2>

<sup>8</sup>Assembly of the Republic of Croatia, The Victim's Rights Pursuant to the Crime Victim's Compensation Act, Official Gazette 80/08 and 27/11, 2011, at: <https://pravosudje.gov.hr/UserDocImages/dokumenti/Iz%20pravosudnog%20sustava/podrska%20zrtvama%20i%20svjedocima/Brochure%20The%20victims'%20rights%20pursuant%20to%20the%20crime%20victims%20compensation%20act.pdf>

<sup>9</sup>Association for Emancipation, Solidarity, and Equality of Women, CEDAW Observation Report, 2015, at: [www.esem.org.mk/pdf/Voved/Monitoring%20na%20chovekovi%20prava/Izveshtai%20vo%20senka/CEDAW/Follow%20up%20Report%20on%20CEDAW%202015%20-%20ESE.pdf](http://www.esem.org.mk/pdf/Voved/Monitoring%20na%20chovekovi%20prava/Izveshtai%20vo%20senka/CEDAW/Follow%20up%20Report%20on%20CEDAW%202015%20-%20ESE.pdf)

<sup>10</sup>European Commission, Commission Staff Working Document, Serbia 2016, Report, 2016, at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_serbia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf)

<sup>11</sup>U.S Department of State, Office to Monitor and Combat Trafficking in Persons, Montenegro 2017, at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271246.htm>

The law was initiated as a result of the EU requirements for Kosovo. For example, the 2014 Progress Report focused on trafficking victims and stated that Kosovo needs to focus on the right of victims to be compensated.<sup>12</sup> In particular, the EU-Kosovo Stabilization Association Process Dialogue has explicitly required the Government of Kosovo (GoK) to adopt a law on compensating victims of crime.<sup>13</sup> Accordingly, as of 2015 Kosovo has set up a programme for compensating victims of crimes. The basis for this programme was also laid out in the Criminal Procedure Code of 2012 which foresaw the creation of a special fund to compensate victims of crime.<sup>14</sup> Further, since the Criminal Procedure Code provision on special fund to compensate victims failed to become functional, the Government of Kosovo (GoK) drafted the Kosovo Law Nr. 05/L-036 on Compensation of Victims of Crime which was adopted in 2015. This law regulates the right to financial compensation for victims of crimes as well as of their dependents.<sup>15</sup> According to the law, a series of different crimes are to be compensated including murder, human trafficking, rape, sexual abuse of children and Domestic Violence acts as defined under the Law on Protection against Domestic Violence. Following the law, the Commission for Compensation of Victims of Crimes was set up in 2015.<sup>16</sup> However, it became functional only in May 2017 and was officially launched on 22<sup>nd</sup> of May 2017. As of December 2017, the Commission has offered compensation to only one person. Until now, no in-depth analysis of the programme and its implementation has been conducted. Moreover, considering the specificity and sensitiveness of Domestic Violence and human trafficking cases, this report sets out to analyse whether the current programme has drawbacks and problems specifically for these victims. Further, the report looks at the entire programme and provides recommendations accordingly.

Specifically, the report looks at a) Identifying overall the shortcomings of the current victim compensation programme in Kosovo; b) Identifying specific shortcomings that could impact Domestic Violence and Human Trafficking victims; c) Analysing the alignment between the compensation programme in Kosovo and national, EU and international Domestic Violence

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<sup>12</sup> European Commission, Kosovo\* Progress Report 2014, 2014, at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2014/20141008-kosovo-progress-report\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf)

<sup>13</sup> European Commission, Sectoral Committee on Justice, Freedom and Security, EU Stabilization Association Process Dialogue, Brussels, January 2015, at: [eeas.europa.eu/archives/delegations/kosovo/documents/press\\_corner/2015/20150223\\_final\\_sapd\\_jls\\_follow-up\\_actions.pdf](https://eeas.europa.eu/archives/delegations/kosovo/documents/press_corner/2015/20150223_final_sapd_jls_follow-up_actions.pdf)

<sup>14</sup> Assembly of the Republic of Kosovo, Criminal Procedure Code, 2013, at: <https://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf>

<sup>15</sup> Assembly of the Republic of Kosovo, Law No. 05/L-036 on Crime Victim Compensation, 2015, at: <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-036%20a.pdf>

<sup>16</sup> Ibid. Article 23



legislation and d) Reviewing the implementation of the programme so far by relevant institutions including the victim compensation commission, victim advocates, judges and prosecutors.

## **II.b) Methodology**

The report employs desk research, legal analysis and interviews with key stakeholders in Kosovo working on issues related to victims of crime. The report included a review of international and regional frameworks, legal analysis, their applicability in the Kosovo context and a number of semi-structured interviews with stakeholders. The legal analysis inquired the international and national legislation in order to see whether the Kosovo programme has been aligned to international conventions, laws as well as policies on Domestic Violence and Human Trafficking. Interviews with key stakeholders were conducted during October, November and December 2017.<sup>17</sup> Recommendations on concrete actions for relevant actors are provided in the last chapter of this paper by identifying the ways forward to overcome the difficulties and problems with the current victim compensation programme. The recommendations offered at the end of the report are anticipated to improve the implementation of the new law on victim's compensation and avoid challenges regarding implementation particularly for Domestic Violence and Trafficking in Human Beings survivors.

## **III. International Legal Framework**

Globally, there are several international conventions, frameworks and directives governing the states responsibility for victim compensation. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is the ground-breaking international document on compensating victims of crime. The declaration calls for the implementation of social, educational, economic and health policies in order to prevent crime, reduce victimization and provide assistance to victims.<sup>18</sup> The declaration further calls on all states to regularly review their existing legislation including victim compensation according to changing circumstances.<sup>19</sup> It further sets out the basis for providing such compensation by upholding that it is necessary to adopt international and national legislation to ensure the recognition and respect of the rights of

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<sup>17</sup> Interviewees included several members of the Compensation Commission, the Secretariat of the Commission within the Ministry of Justice, Victim's Advocate's, the U.S Embassy, the Ombudsperson Institution etc.

<sup>18</sup> Ibid. Paragraph 4a

<sup>19</sup> Ibid. Paragraph 4c

victims of crime.<sup>20</sup> It also states that when compensation is not available from other sources such as the offender, the state is responsible for providing that compensation.<sup>21</sup> In that case, the state should provide compensation to the victim who has experienced significant mental or physical impairment from the crime committed. In the case that the victim has died or become incapacitated because of the crime, the state should provide compensation to the family and/or dependents of the direct victim.<sup>22</sup> The Declaration further encourages all states to expand national funds for compensating victims of crime.<sup>23</sup>

The European Convention on the Compensation of Victims of Violent Crimes was drafted in 1983 and has been in force as of 1988.<sup>24</sup> The Convention currently has 17 signatures and is open for further signatures in the future.<sup>25</sup> Signatory states to the convention commit to cover at least loss of earnings, loss of maintenance in regards to dependents, as well as medical and hospitalization expenses and funeral expenses.<sup>26</sup> In 2004, the Council of Europe adopted Directive 2004/80/EC relating to compensation of crime victims, which was based on the Convention on the Compensation of Victims of Violent Crimes.<sup>27</sup> The Directive acknowledges that frequently victims of violent crimes will not be able to receive compensation from the offender for various reasons, including their lack of funds and means to compensate the victim but also in cases where the offender cannot be identified.<sup>28</sup> The Directive also refers to international crimes such as terrorism<sup>29</sup> and cross-border cases.<sup>30</sup> According to the directive, all member states shall ensure proper information dissemination in order to inform all potential applicants about the possibility of applying for compensation.<sup>31</sup>

Compensation is guaranteed by other international legal mechanisms as well. One of these mechanisms is the Convention on preventing and combating violence against women and

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<sup>20</sup>United Nations General Assembly, A/RES/40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Paragraph 12, 1985, at: [www.un.org/documents/ga/res/40/a40r034.htm](http://www.un.org/documents/ga/res/40/a40r034.htm)

<sup>21</sup>Ibid. Paragraph 12.

<sup>22</sup>Ibid.

<sup>23</sup>Ibid. Paragraph 13

<sup>24</sup>Council of Europe, European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 1983, at: <https://rm.coe.int/1680079751>

<sup>25</sup>European Judicial Network in civil and commercial matters, Website Accessed on 4.12.2017, at: [http://ec.europa.eu/civiljustice/comp\\_crime\\_victim/comp\\_crime\\_victim\\_int\\_en.htm](http://ec.europa.eu/civiljustice/comp_crime_victim/comp_crime_victim_int_en.htm)

<sup>26</sup>Ibid. Article 4

<sup>27</sup>Council of Europe, Council Directive 2004/80/EC relating to compensation of crime victims, 2004, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0015:0018:en:PDF>

<sup>28</sup>Ibid. Article 10

<sup>29</sup>Ibid. Paragraph 4

<sup>30</sup>Ibid. Paragraph 7

<sup>31</sup>Ibid. Chapter 1, Article 4

Domestic Violence also known as the Istanbul Convention.<sup>32</sup> The Istanbul Convention seeks to protect women and girls from all forms of violence, to prevent violence as well as prosecute and eliminate all Domestic Violence and other forms of violent acts against women specifically.<sup>33</sup> It also instructs states to award compensation to victims of Domestic Violence. Specifically, the convention states that “adequate state compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or state-funded health and social provisions. This does not preclude parties from claiming compensation from the perpetrator..<sup>34</sup> The Istanbul Convention recognizes that women and girls are at a higher risk of gender-based violence including Domestic Violence.

The Convention further recognizes that gender-based violence is a mechanism that forces women into subordination and one of the most pertinent human rights violations that inhibits equality among men and women.<sup>35</sup> Albeit not explicitly mentioned in the Constitution of the Republic of Kosovo, the Istanbul Convention is directly applicable to Kosovo. The Constitution states that the governing principles of the Republic of Kosovo are to be conducted “with full respect for internationally recognized fundamental human rights and freedoms.”<sup>36</sup>

Another legal mechanism specifically governing compensation for victims of trafficking is the EU Directive 2011/36 on preventing and combating trafficking of human beings and protecting its victims.<sup>37</sup> The Directive seeks the prevention and combating of human trafficking as well as the protection of the rights of trafficking victims.<sup>38</sup> Amongst others, the directive encourages Member states to ensure that victims of trafficking have access to compensation.<sup>39</sup> It states that “Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.”<sup>40</sup> The majority of the legal provisions defined under Kosovo law are in line with the international legal framework analysed above.

The following chapter looks at the Kosovo victim compensation programme in greater detail.

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<sup>32</sup> Council of Europe, Convention on preventing and combating violence against women and Domestic Violence, Istanbul, 2011, at: <https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e>

<sup>33</sup> Ibid. Article 1.

<sup>34</sup> Ibid Article 30, paragraph 1.

<sup>35</sup> Ibid. Preamble

<sup>36</sup> Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo, Article 3.2, 2008, Prishtina

<sup>37</sup> European Parliament, Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA,

<sup>38</sup> Ibid. Article 4.

<sup>39</sup> Ibid. Article 12.2

<sup>40</sup> Ibid. Article 17.

#### IV. The Victim Compensation Programme in Kosovo

The option of providing state compensation to victims of crime in Kosovo was first offered under the legal provision drafted under United Nations Mission in Kosovo. Accordingly, under UNMIK Regulation 2001/4 on the Prohibition of Trafficking in Persons adopted in 2001, Kosovo should create a victims reparation fund that would receive funds from confiscation of property from the crime of human trafficking and also from donor contributions.<sup>41</sup> Additionally, a Victims Assistance Coordinator was to be appointed to oversee the management of the fund.<sup>42</sup> Only after 11 years in 2012, the GoK drafted and adopted the new Criminal Procedure Code that set out the legal basis for state funded victim compensation programmes. The Code defines the Victim Compensation fund as “a fund to which forfeited bail and other authorized assets under the law is deposited. Payments from the victim compensation fund shall be used to compensate crime victims as authorized under the law”.<sup>43</sup> Moreover, the code asserts that in cases where courts cannot order restitution from the defendants due to different reasons,<sup>44</sup> the injured party or the victim can be referred for compensation to the coordinator of the victim compensation fund.<sup>45</sup>

Kosovo institutions also drafted a set of policy documents to enhance implementation of legal obligations. Accordingly, the Standard Operating Procedures (SOP's) for Victim Protection and Assistance within the State Prosecutor's Office also strengthen the basis for victim compensation in Kosovo. These SOP's state that in the event that victims are not able to obtain compensation from the defendant they have the option of seeking compensation from the state.<sup>46</sup> Moreover, the SOP's list the European Directive on the Compensation of Victims of Violent Crimes as a relevant international document.<sup>47</sup> The SOP's also define the Victim Compensation fund as a programme drafted to assist victims with expenses which result directly from a crime that is not

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<sup>41</sup>UNMIK, Regulation No. 2001/4 on the Prohibition of Trafficking in Persons in Kosovo, 2001, at: [www.unmikonline.org/regulations/2001/reg04-01.html](http://www.unmikonline.org/regulations/2001/reg04-01.html)

<sup>42</sup> Section 6 and 9 of the UNMIK Regulation 2001/04 on the Prohibition of Trafficking in Persons in Kosovo.

<sup>43</sup> Assembly of the Republic of Kosovo, Criminal Procedure Code, Article 19.1.26, 2013, at: <https://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf>

<sup>44</sup> Reasons can range from inability to pay, lack of means, death of the defendant, and lack of jurisdiction by the court.

<sup>45</sup> Assembly of the Republic of Kosovo, Criminal Procedure Code, Article 62.1.5, 2013, at: <https://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf>

<sup>46</sup> State Prosecutor's Office, Standard Operating Procedures for Victim Protection and Assistance Office, Article 2.1.5, 2013, at: [www.psh-ks.net/repository/docs/No.1202.2013\\_Directive\\_on\\_SOP\\_FOR\\_THE\\_VPAO.pdf](http://www.psh-ks.net/repository/docs/No.1202.2013_Directive_on_SOP_FOR_THE_VPAO.pdf)

<sup>47</sup> Ibid. Article 4.3.4

covered through other sources.<sup>48</sup> These operating procedures also state that a respective authority is responsible for determining whether candidates are eligible for state compensation.<sup>49</sup> Even though the Criminal Code and the SOP's were finalized in 2013, the "Coordinator of the Victim Compensation Fund", mentioned in the Criminal Code, and the "Responsible authority" mentioned in the SOP's were not established nor made functional. Only in 2015 with the adoption of the Law 05/L-036 on Crime Victim Compensation concrete steps were undertaken to compensate victims of crime.<sup>50</sup>

The Kosovo Law 05/L-036 on Crime Victim Compensation regulates the right to financial compensation for victims of violent crimes as well as their dependents. The Law was adopted in 2015 listing the violent crimes that are compensated by the victim compensation fund. The crimes to be compensated include human trafficking, rape, the sexual abuse of children, murder, and Domestic Violence crimes as defined under the law on Protection from Domestic Violence.<sup>51</sup>

However, the Commission on victims of crime compensation may decide positively on applications beyond these cases, if they find particular vulnerability of the victim of crime.<sup>52</sup> The list of damages to be compensated includes serious physical injuries and disturbances to mental health, losing the capacity to work, hospitalization expenses and expenses related to other medical aspects, funeral expenses and damages for destroyed medical devices as well as procedural expenses for filling out the compensation application.<sup>53</sup> The law also highlights that any of the above mentioned injuries must be serious in nature and also have serious consequences.<sup>54</sup>

In order to be eligible for compensation applicants must fulfil certain formal and material conditions. All eligible applicants must be citizens or permanent residents of either Kosovo, a

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<sup>48</sup> Ibid. Article 32.1

<sup>49</sup> Ibid. Article 32.2

<sup>50</sup> Assembly of the Republic of Kosovo, Law No. 05/L-036 on Crime Victim Compensation, 2015, at: <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-036%20a.pdf>

<sup>51</sup> Ibid. Article 6.1

<sup>52</sup> Ibid. Article 6.2

<sup>53</sup> Ibid. Article 12.1

<sup>54</sup> Ibid. Article 12.2. According to Article 13 of the Law, the following are considered "serious" physical injuries lasting more than six (6) weeks, which result in incapacity to work or to perform daily tasks; injuries with long-term or permanent visible or functional consequences; injuries which were objectively life-threatening. Similarly, according to Article 14 the following are considered serious disturbances to mental health: impairment of freedom; violation of sexual integrity; disfigurement; continuous torture; other injuries which may have an impact on the condition, behaviour and personality of the victim.

country with which Kosovo has reciprocity or an EU Member state.<sup>55</sup> The formal conditions on the other hand also include the following conditions: a) the crime committed against the victim must be punishable with at least one year of imprisonment; b) the crime must be committed within the territory of Kosovo; c) it must have been officially reported and dealt with as a criminal offence; d) it must have resulted in either serious bodily or mental injury/disturbance, or in the death of the victim and e) the applicant was not able to obtain compensation through other means including insurance.<sup>56</sup>

The law strictly prohibits double compensation. Firstly, Article 8 lists the inability to obtain compensation from other sources as a key eligibility criterion for receiving compensation. Secondly, in line with Article 10 of the Law on Compensation of Victims of Crime persons applying for compensation, should request compensation also from the defendant in accordance with the Criminal Procedure Code.<sup>57</sup> If compensation is not provided for different reasons the applicant becomes eligible to apply for the compensation fund.<sup>58</sup> If partial compensation is provided the applicant may apply for the part that has not been compensated. Further, a final judgment from prior criminal proceedings must exist before being able to apply for compensation.<sup>59</sup>

There are a few exceptions to this general rule as outlined in Article 9. Some victims such as children and victims of human trafficking have immediate access to the victim compensation fund. In cases where the victim happens to be either a child or a foreign victim of trafficking and the perpetrator has not been identified for a period of three months from the reporting of the

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<sup>55</sup> Ibid. Article 7.1

<sup>56</sup> Ibid. Article 8

<sup>57</sup> Also under Paragraph 30 of the Victim Assistance Standard Operating Procedures, Restitution in criminal proceedings can be provided when “the defendant admitted to or has been adjudged to be guilty for causing financial, physical or emotional harm to the victim; The victim at the early stage of the investigation and latest 60 days after the filing of the indictment may file a ‘Declaration of damages; Victim advocate may assist victims in preparing and filling such declaration. The same declaration may serve as a property claim as well.” According to paragraph 31, on the other hand, Restitution in Civil Court can be provided “If a victim is not awarded restitution in the criminal case the Victim Advocate shall advise the victim that he or she may seek restitution in civil court with the assistance of Legal Aid, a private attorney or self-representation.” Available at: [www.psh-ks.net/repository/docs/No.1202.2013\\_Directive\\_on\\_SOP\\_FOR\\_THE\\_VPAO.pdf](http://www.psh-ks.net/repository/docs/No.1202.2013_Directive_on_SOP_FOR_THE_VPAO.pdf)

<sup>58</sup> Article 11 of the law outlines the acceptable reasons as to why victims could not obtain compensation from the perpetrator/defendant. These include: “if a person was a victim but two (2) years have passed since the discovery of the offense and there was no file of indictment; if determined that the person was a victim, but the defendant is acquitted as he was the wrong person, while the perpetrator remains unknown; if the Court has determined that the defendant in the criminal matter is not criminally liable; if the defendant in that criminal case is deceased; if the of the court procedure for the defendant to pay restitution is not possible or when for other reasons foreseen by the legislation in force, the same cannot be executed.

<sup>59</sup> Ibid. Article 32.3.1

crime, the victim is eligible to apply even if there has been no court verdict.<sup>60</sup> The requirement for foreign victims is that they cooperate with Kosovo authorities during the investigation of the crime.<sup>61</sup>

The law also sets the basis for the creation of the Victim Compensation Commission that decides on the compensation of victims of criminal acts and reviews applications (hereafter the Commission).<sup>62</sup> The Commission is appointed by the Government and includes the chair person who is always a Supreme Court Judge and is proposed by the Kosovo Judicial Council (KJC), one Prosecutor proposed by the Kosovo Prosecutorial Council (KPC), one member of the Assembly of Kosovo, who is proposed by the Committee on Legislation, two medical experts in the field of psychiatry and traumatology, proposed by the Kosovo Chamber of Doctors (KChD) and one representative from civil society experienced in human rights issues proposed by civil society organizations.<sup>63</sup> The Commission is supported in its administrative and logistical work via the Secretariat of the Commission in the Ministry of Justice (MoJ).<sup>64</sup> Ultimately, the GoK has set up a compensation programme that has already begun reviewing applications.

## **V. Situation Analysis on Domestic Violence and Human Trafficking in Kosovo**

### **a) Domestic Violence**

Domestic Violence in Kosovo remains both widespread and underreported. Data shows that while it is a general problem for the population including children and men, it remains a specific form of Gender Based Violence (GBV) disproportionately affecting women. Research shows that up to 68% of women in Kosovo have experienced some form of Domestic Violence in their lifetime.<sup>65</sup> However, the number of reported cases to the police remains much lower, indicating

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<sup>60</sup> Ibid. Article 9.1

<sup>61</sup> Ibid. Article 9.2

<sup>62</sup> Ibid. Article 3.1.10

<sup>63</sup> Ibid. Article 23.

<sup>64</sup> Ibid. Article 27

<sup>65</sup> Kosovo Women's Network, No More Excuses: An analysis of attitudes, incidence, and institutional response to Domestic Violence, 2015, at: <https://womensnetwork.org/documents/20151124105025622.pdf>

that Domestic Violence cases are not always reported to the police. In 2017, for instance, 1092 Domestic Violence cases were reported to the police.<sup>66</sup>

Nevertheless, Kosovo has several legal and institutional mechanisms in place to prevent and deal with cases of Domestic Violence. First and foremost, the Convention for the Elimination of All forms of Discrimination against Women (CEDAW) is directly applicable in Kosovo.<sup>67</sup> CEDAW calls for the elimination of all forms of discrimination against women and girls, which also includes the abolition of all forms of violence including Domestic Violence.<sup>68</sup> CEDAW also establishes the Committee on the Elimination of Discrimination against Women, which has so far offered several recommendations on how CEDAW should be interpreted.<sup>69</sup> General Recommendation 19 on Violence against Women specifically relates to Domestic Violence. Accordingly, CEDAW Committee defines gender based violence as a form of discrimination.<sup>70</sup> This recommendation highlights that the prohibition of discrimination under this convention is not restricted only to government actions, it also includes the states responsibility for private acts as well. Specifically, therecommendation states that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.<sup>71</sup> Yet, even though the constitutional clause to implement CEDAW exists, it has almost never been used in courts in Kosovo.<sup>72</sup>

Domestic Violence is not a criminal offence according to the Criminal Code of the Republic of Kosovo. Under the Law on Protection against Domestic Violence, definitions of acts of domestic violence are offered in order to issue protection orders only in civil proceedings.<sup>73</sup> Among others, the law also provides for a number of protection mechanisms for Domestic

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<sup>66</sup> Data send by the Kosovo Police, December 2017

<sup>67</sup> Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo, Article 22, 2008, at: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

<sup>68</sup> United Nations General Assembly, Convention on the Elimination of all Forms of Discrimination Against Women, 1979, at: <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

<sup>69</sup> Ibid. Articles 17-20

<sup>70</sup> CEDAW Committee, General Recommendation No.19 on Violence Against Women, 1991, at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

<sup>71</sup> Ibid. Article 9

<sup>72</sup> KWN, No More Excuses: An analysis of attitudes, incidence, and institutional response to Domestic Violence, 2015, at: <https://womensnetwork.org/documents/20151124105025622.pdf>

<sup>73</sup> See Country Gender Profile, An Analysis of Gender Differences At All Levels in Kosovo, Orgut Consulting for Kosovo Agency for Gender Equality. Available at [http://www.swedenabroad.com/ImageVaultFiles/id\\_20757/cf\\_2/Orgut\\_Kosovo\\_Gender\\_Profile\\_FINAL\\_2014-05-08.PDF](http://www.swedenabroad.com/ImageVaultFiles/id_20757/cf_2/Orgut_Kosovo_Gender_Profile_FINAL_2014-05-08.PDF). See also Assembly of the Republic of Kosovo, Law No.03/L-182 on Protection Against Domestic Violence, 2013, at: [www.assembly-kosova.org/common/docs/ligjet/2010-182-eng.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2010-182-eng.pdf).



Violence victims and defines three different types of protection orders.<sup>74</sup> Additionally, the Standard Operating Procedures (SOP's) support institutions in following their legal responsibilities related to Domestic Violence. The SOP's were adopted in 2013 under the lead of the Kosovo Coordinator against Domestic Violence (NCADV). They specify the relevant institutions that have to deal with Domestic Violence victims and procedures outlining their responsibilities and also defining the chain of responsibilities.<sup>75</sup>

Many problems regarding Domestic Violence persist due to Domestic Violence acts not being criminalized and acknowledged as a criminal offence. Institutional capacities on properly treating Domestic Violence cases are lacking including within the Kosovo Police, Prosecution and Courts.<sup>76</sup> Also, institutional officials are insufficiently trained to work with Domestic Violence cases as apparent by their persisting Victim-Blaming attitudes. Victim-Blaming attitudes by citizens and officials continue to persist, whereby the victim of violence is frequently considered to have been the one who provoked or deserved the violence.<sup>77</sup> Officials often steer the victim and the perpetrator towards reconciliation instead of properly dealing with the cases not in line with the legal requirements in Kosovo.<sup>78</sup> Ultimately, while having set up strong institutions and mechanisms to deal with this problem, Domestic Violence remains a pertinent issue. In particular, weak implementation of indictments and accordingly judgments of perpetrators for acts of domestic violence continue to substantially impact the aim of the law.<sup>79</sup> Accordingly, judges and prosecutors continue to use the Law on Protection against Domestic Violence to issue protection orders, rather than work with criminal proceedings to put perpetrators behind bars including recidivists. Therefore, weak implementation of criminal proceedings impacts the rights of victims of domestic violence.

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<sup>74</sup> First, it defines a "Protection Order" as an order issued by a court decision providing protection measures for the victim. Second, it defines Emergency Protection Orders as orders that are issued temporarily through a court decision. Third, it defines Temporary Emergency Protection Orders as orders issued outside working court hours.

<sup>75</sup> Agency for Gender Equality, Standard Operation Procedures for Protection from Domestic Violence in Kosovo, 2013, <https://abgj.rks-gov.net/Portals/0/Procedurat%20Standarte%20të%20Veprimit%20për%20Mbrojtje%20nga%20Dhuna%20në%20Familje.pdf>

<sup>76</sup> Kosovo Women's Network, No more Excuses, 2015.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ministry of Justice of the Republic of Kosovo, Evaluation Report of the Kosovo Program Against Domestic Violence and Action Plan 2011-2014, at: [https://abgj.rks-gov.net/Portals/0/Ambasada\\_Raporti%20anglisht.pdf](https://abgj.rks-gov.net/Portals/0/Ambasada_Raporti%20anglisht.pdf)

## **b) Human Trafficking**

Kosovo has developed a number of legal and institutional mechanisms to prevent and protect human trafficking victims and ensure their rights. The Criminal Code of the Republic of Kosovo foresees fines and imprisonment of 5 to 12 years for persons who engage in human trafficking.<sup>80</sup> The sentences may go up to 20 years in cases of organising a group of persons to commit the crime of human trafficking.<sup>81</sup>

As of 2013 Kosovo also drafted and adopted a separate law on preventing and combating human trafficking.<sup>82</sup> The law was adopted even though Kosovo had a separate chapter on Trafficking in Persons within the Criminal Code in line with the requirements of the EU towards Kosovo to “adopt and implement legislation on the prevention, investigation and prosecution of trafficking in human beings.”<sup>83</sup> The Law was aligned with the EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims.<sup>84</sup> Among others, the law defines human trafficking, outlines relevant institutions and their responsibilities. It defines the constituting elements of trafficking as: transportation, recruitment, reception or harbouring of persons, abduction, use of threat or coercion, deception, fraud, abuse of power, giving or receiving payments to receive the consent of a certain person for the purpose of exploitation.<sup>85</sup>

It further defines the National Authority against Human Trafficking, which is composed of several governmental and non-governmental organizations.<sup>86</sup> The exact composition, responsibilities and competencies of the Authority are outlined in detail also in the Administrative Instruction 17/2013 by defining the composition, responsibilities and order of functioning by

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<sup>80</sup> Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo, Code No.04/L-082, Article 171, 2012, at: [www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf](http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf)

<sup>81</sup> Article 171, paragraph 3 of the Criminal Code of Kosovo.

<sup>82</sup> Assembly of the Republic of Kosovo, Law No. 04/L-218 on Preventing and Combating Trafficking in Human Beings and the Protection of Trafficking Victims, 2013, at: <https://www.kuvendikosoves.org/common/docs/ligjet/Ligji%20per%20parandalimin%20dhe%20luftimin%20e%20trafikimit%20me%20njerez.pdf>

<sup>83</sup> See Visa Liberalisation with Kosovo Roadmap, pg.11. Available at [https://eeas.europa.eu/sites/eeas/files/visa\\_liberalisation\\_with\\_kosovo\\_roadmap.pdf](https://eeas.europa.eu/sites/eeas/files/visa_liberalisation_with_kosovo_roadmap.pdf)

<sup>84</sup> European Parliament, Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA,

<sup>85</sup> Ibid. Article 5

<sup>86</sup> According to Article 6 and 7 of the law this covers The Ministry of Internal Affairs, the Kosovo Police, the Ministry of Justice, the Kosovo Judicial Council, the Kosovo Prosecutorial Council, the Ministry of Education, Science, and Technology, the Ministry of Local Administration, the Ministry of Culture, Youth and Sports, the Ministry of Labour and Social Welfare, the Ministry of Health, the Ministry of External Affairs, the Agency for Gender Equality, the Kosovo State Prosecutor's Office, Courts, the Municipalities, the Office for Victim's Advocates, Non-governmental Organizations.

the authority. The National Coordinator office chairs the national authority against human trafficking.<sup>87</sup> Additionally, Kosovo also drafted an Administrative Instruction (AI) 01/2014 on early identification of victims by border, consular or labour officials. The AI 01/2014 defines in details what indicators should be used to conduct early identification of victims of trafficking and also potential victims of trafficking.<sup>88</sup> Also, in 2017, an Administrative Instruction on indicators for formal identification of trafficking victims was adopted.<sup>89</sup> The purpose of this AI is to identify and present a list of indicators for the identification of Human Trafficking victims by relevant institutions including judiciary, social services, police and other institutions dealing with criminal cases.

In 2017, there were 22 cases of Human Trafficking reported to the Kosovo Police.<sup>90</sup> Nevertheless, the GoK has been increasing its efforts towards the identification and protection of Human Trafficking victims.<sup>91</sup> In total, 36 human trafficking victims were identified during 2016. From this number there were 26 victims of sexual exploitation identified, nine were victims of forced labour and one was a victim of slavery and servitude.<sup>92</sup> Overall, implementation of legislation, weak prosecution and sentencing of human trafficking perpetrators as well as lack of longer-term solutions to empower and reintegrate victims in the Kosovo society are repeatedly reported as problems remaining in Kosovo.<sup>93</sup> The section below offers an analysis of the existing victims of crime compensation programme and analyses the current trends in gaps and problems, particularly focusing on victim compensation for domestic violence and human trafficking cases.<sup>94</sup>

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<sup>87</sup> Government of the Republic of Kosovo, Administrative Instruction 17/2013 for the formal composition, competencies, responsibilities, and manner of functioning of the national authority against trafficking in human beings", 2013, at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10313>

<sup>88</sup> Government of the Republic of Kosovo, Administrative Instruction No. 01/2014 for Early identification of victims of trafficking with human beings from consular services, border police, and the labour inspectorate, 2014, at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10279>

<sup>89</sup> Office of the Prime Minister, Administrative Instruction No. 10/2017 on the List of Indicators for Formal Identification of victims of trafficking in human beings, 2017, at: [www.kryeministri-ks.net/repository/docs/UDHËZIM\\_ADMINISTRATIV\\_\\_QRK\\_-\\_NR.\\_10.2017\\_PËR\\_LISTËN\\_E\\_TREGUESVE\\_PËR\\_IDENTIFIKIMIN\\_ZYRTAR\\_TË\\_VIKTIMAVE\\_TË\\_TRAFIKIMIT\\_ME\\_NJERZË.pdf](http://www.kryeministri-ks.net/repository/docs/UDHËZIM_ADMINISTRATIV__QRK_-_NR._10.2017_PËR_LISTËN_E_TREGUESVE_PËR_IDENTIFIKIMIN_ZYRTAR_TË_VIKTIMAVE_TË_TRAFIKIMIT_ME_NJERZË.pdf)

<sup>90</sup> Data sent to KIPRED by the Kosovo Police, December, 2017

<sup>91</sup> US Department of State, Trafficking in Persons Report, June 2017, page 238, at: <https://www.state.gov/documents/organization/271339.pdf>

<sup>92</sup> Ibid, page 238.

<sup>93</sup> Ibid, Chapter on Kosovo.

<sup>94</sup> Under the European Union's IPA Programme for Kosovo, EU Office in Kosovo funded the Manual "Moving Forward: Promoting Greater Efficiency and Effectiveness in the Fight against Trafficking in Human Beings in Kosovo, implemented by the Family and Childcare Center (KMOP). The manual provides a comprehensive and overall analysis of the operational procedures of the Crime Victim Compensation in relation to Human

## **VI. Victim compensation programme in Kosovo: Gaps, problems, and areas for improvement**

Kosovo has successfully set up the first functional victim compensation programme in the region. The Law was adopted in 2015 and the Commission for reviewing applications was set up in 2016. However, only in 2017 the programme became functional when the Ministry of Finance (MoF) allocated the first budget of 100.000 EUR. This late allocation came as a result of disagreements on where exactly the money for victim compensation should come from and lack of interest by the Government to take financial responsibility.<sup>95</sup>

By December 2017 one application was successfully reviewed of a murder case and there were two other cases under review. By finalizing the programme and making it functional, the GoK has finally started showing commitment in its responsibility to compensate victims of crimes. This commitment should continue in line with the legal responsibilities undertaken by GoK and the political willingness to implement the victim's compensation law. In particular this report urges the state institutions to provide priority for victims of domestic violence and human trafficking, as so far they have been practically denied any rights of compensation by the state.<sup>96</sup> Several gaps and problems with the victim compensation law, procedures as well as the commission were identified during the course of drafting this report. All identified problems can be improved, especially since they have been identified this early in the process.

### **a) Outreach and Utilisation**

Informing potential applicants on the possibility of state compensation is crucial in order to maximize the utilisation of the programme by crime victims. Article 28 of the Victim Compensation Law specifies the obligations of relevant institutions to provide information to victims who could potentially qualify for compensation.<sup>97</sup> First, the law requires that institutions

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Trafficking cases and is a very useful resource for explaining procedures in detail related to victim's claims for compensation. The manual provides background information on the Commission itself, application procedures and deadlines etc. It further provides very detailed information on cross-border trafficking cases and their access to victim compensation. An electronic copy of the Manual is available with KIPRED.

<sup>95</sup> KIPRED interviews with several stakeholders, November and December 2017.

<sup>96</sup> The Commission has recently in January 2018, compensated a victim of human trafficking. The report encourages the Commission to continue and provide specifically as a priority support to victims of domestic violence and human trafficking. KIPRED source from official of GoK, January 2018.

<sup>97</sup> Assembly of the Republic of Kosovo, Law No. 05/L-036 on Crime Victim Compensation, Article 28. 2015, at: <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-036%20a.pdf>

coming into contact with the victims are obliged to inform the victims of their right on compensation under the law.<sup>98</sup> This includes the police, victim advocates, social and health institutions, courts and the prosecution. The law further states that all these institutions need to post information on the compensation programme in a public area within their offices.<sup>99</sup> KIPRED has monitored various institutions during October, November and December 2017.<sup>100</sup> However, none of the above institutions had posted any public information on the victim compensation programme in their offices. The failure to post this information in public areas may lead to inadequate information by citizens, misunderstanding of the procedures and ultimately the underutilization of the programme itself.

In general, there is agreement that citizens already lack awareness of the compensation programme and that there is insufficient public information on where to apply, there is no address, victims do not know what to do and whom to turn to.<sup>101</sup> There is a misunderstanding of the procedures, requirements and the timeline in which the law applies to. The Secretariat has received requests by survivors of sexual violence during the war.<sup>102</sup> The survivors of sexual violence during the war are covered as applicants through an entirely different commission led by the Ministry of Labour and Social Welfare (MLSW) under a different law.<sup>103</sup> Moreover, the commission has received compensation requests for crimes committed in the year 2002 also not compensated through this law.<sup>104</sup> These illustrative examples show how ill-informed citizens are on the law and the responsibilities of the commission. One Victim Advocate stated that his client did not have any information that such an opportunity for compensation exists until the victim advocate informed him.<sup>105</sup> Thus far no media campaign has been delivered to properly inform citizens on what the programme is, who qualifies to apply and what the application procedures are. Majority of the Civil Society Organizations (CSO's) have not been actively involved in the process of raising awareness towards citizens yet. According to the Kosovo Ombudsperson Mr.

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<sup>98</sup> Ibid. Article 28.1

<sup>99</sup> Ibid.

<sup>100</sup> This included the main office of Victim's Advocate's in Prishtina, the Supreme Court, the Kosovo State Prosecutor's Office, the Ministry of Justice, the Ombudsperson Institution, the Commissions Secretariat Office.

<sup>101</sup> KIPRED Interview with Member of the Commission for Victim Compensation, Interview conducted on 22.11.2017

<sup>102</sup> KIPRED Interview with Head of the Commission's Secretariat, Interview conducted on 16.11.2017

<sup>103</sup> See Law Nr. 04/L-172 of the Law on amending and supplementing the Law no. 04/L-054 on the status and the rights of the martyrs, invalids, veterans, Members of Kosovo Liberation Army, sexual violence victims of the war, civilian victims and their families. Available at <http://www.kuvendikosoves.org/?cid=2,191,1082>

<sup>104</sup> See Article 31 on the deadline for submitting the application stated as 6 months after the date of the last criminal act, reported or six months after the final decision. Also interview with Commission Member, Conducted on 22.11.2017

<sup>105</sup> KIPRED Interview with Victim's Advocate conducted on 11.12.2017

Hilmi Jashari the widespread lack of knowledge from citizens is not surprising. In his view with over 100 laws being adopted and amended in Kosovo on annual basis, there is rarely a chance for the government to promote appropriately a new law and raise awareness accordingly on the new responsibilities foreseen by the law.<sup>106</sup>

It has not yet been a full year since the commission for victim compensation begun its work. To some extent, the insufficient and inadequate information of citizens is understandable. However, proper steps should be taken to inform all citizens as to avoid the underutilization of the programme in the future.

## **b) Capacities of officials and institutions**

All institutions that come in contact with victims of crimes have to inform the victims of the existing victim compensation programme. This includes victim advocates, social and health institutions, the prosecution and the judiciary.<sup>107</sup> In order for this information to be properly distributed, all above institutions must also have knowledge of the law, the application procedures and the eligibility requirements.

Upon the publication of the law and the formation of the commission the U.S Embassy and the Organization for Security and Cooperation in Europe (OSCE) organized several roundtables aimed at informing relevant institutions and officials on the law.<sup>108</sup>

The available data analyzed by KIPRED shows that only 8.8% of all judges and 25.8% of all prosecutors have been directly trained on the victims of crime compensation programme. The data also shows that only 52.1% of victim advocate have attended the meetings. KIPRED was also informed that victim advocate's underwent internal information sharing and training on the compensation programme.<sup>109</sup> So far all three cases referred to the commission as of November

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<sup>106</sup> KIPRED Interview with Mr. Hilmi Jashari, Ombudsperson of the Republic of Kosovo, Interview conducted on 7.11.2017

<sup>107</sup> Victim Compensation Law, Article 28

<sup>108</sup> According to KIPRED correspondence with the US Embassy and OSCE Offices in Kosovo, The U.S Embassy has organized discussion tables in Prishtina, Gjiilan, Ferizaj, and Gjakova. During the discussions there was always at least one member of the commission present. Further, OSCE organized two awareness raising meetings in Peja and Prizren in October 2017 which were attended by Judges, Prosecutors, Victim Advocates, but also NGO's. A total of 7 roundtables were organized to increase awareness of professionals on the victim compensation programme. They were attended by a total of 40 Judges, 52 Prosecutors and 12 Victim Advocates.

<sup>109</sup> Interviews with Office Manager for Victim Advocate's and Victim's Advocate in the region of Mitrovica. Conducted in November and December 2017.

2017 have come through victim advocates.<sup>110</sup> However victim advocates face different problems including being heavily overworked, understaffed and under budgeted. There are currently only 23 victim advocate's covering 38 Municipalities and seven regions. For instance, in the Mitrovica region there are only three victim advocates covering 7 municipalities.<sup>111</sup>

Victim advocate's, the prosecution and the judiciary are the main mechanisms in the referral scheme for the compensation programme. Current data shows that many judges and prosecutors might not be aware of the law and might thus not refer victims correctly. Additionally, the current Criminal Procedure Code does not acknowledge the Compensation Programme, as the Code is older than the current Law. The Code currently refers to the compensation mechanism as a "coordinator of the victim compensation fund".<sup>112</sup> This phrasing coupled with the limited awareness raising that has been done with judges and prosecutors could lead to the risk of judges and prosecutors misinforming potential candidates. The on-going amendments of the Criminal Code and Criminal Procedure Code under the lead of Ministry of Justice<sup>113</sup> should also address this issue and potentially resolve this situation by aligning the criminal procedure with the existing legal provisions defined under the law on the victims of crime compensation law. Additionally, the Academy of Justice does not foresee specific trainings and capacity building on the victim compensation programme for the year 2018,<sup>114</sup> even though it would have been an opportunity to inform prospective judges and prosecutors on the programme and its procedures.

Further, the Law on Victim Compensation specifies that all institutions in contact with victims should refer victims to the compensation programme.<sup>115</sup> However, thus far all awareness raising activities have focused on a small segment judicial component leaving out health and social institutions.<sup>116</sup> So far no outreach activities have been developed and delivered for medical personnel, even though the law obliges them to refer potential victims to the commission and the vast majorities do not possess basic knowledge on the procedures.<sup>117</sup> No outreach activities

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<sup>110</sup> Interview with Commission member conducted on 3.11.2017

<sup>111</sup> KIPRED Interview with Victim Advocate conducted on 11.12.2017

<sup>112</sup> Criminal Procedure Code, Article 62.1.5

<sup>113</sup> Ministry of Justice of the Republic of Kosovo Website, "Workshop to Review Criminal Code and Criminal Procedure Code, website accessed on 22.11.2017, at: <https://md.rks-gov.net/page.aspx?id=1%2C39%2C1758>

<sup>114</sup> Academy of Justice, Training Program for 2018, at: [https://ad.rks-gov.net/Uploads/Documents/ProgramiTrajnues\\_2018En\\_.pdf](https://ad.rks-gov.net/Uploads/Documents/ProgramiTrajnues_2018En_.pdf)

<sup>115</sup> Assembly of the Republic of Kosovo, Law No. 05/L-036 on Crime Victim Compensation, Article 28. 2015, at: <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-036%20a.pdf>

<sup>116</sup> KIPRED Interviews with several stakeholders including donors and commission members.

<sup>117</sup> KIPRED Interview with Commission Member conducted on 24.11.2017

have specifically targeted social workers either, which also impacts their ability to properly refer victims, including domestic violence victims.<sup>118</sup>

Majority of the interviewees agreed that there is legal obligation to build upon the existing institutional capacities as well as conduct awareness raising sessions for the institutions working with victims of crimes. The current limited understanding of professionals on the law and process for compensation could lead to inaccurate and partial information being transferred to potential applicants and the future denial of the rights of the victims of crime to compensation.

### **c) Unclear provisions under the Victims of Crime Compensation Law**

A long process of research, consultations and working groups had preceded the current law and programme for victim's compensation. The process was heavily led and supported by the US Embassy in Kosovo and the Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) in close cooperation with the Ministry of Justice in 2013. The law was based on several different existing laws particularly that of Slovenia, but also existing laws and practices from Croatia and Bulgaria.<sup>119</sup> While most provisions of the law are straightforward and clear, there are some unclear provisions that could pose problems during the implementation of the law, particularly for victims of Domestic Violence.

An unclear provision might be particularly problematic for victims of Domestic Violence. It remains unclear from the law whether children exposed to Domestic Violence qualify for compensation. According to the victim compensation law there are certain cases where family members/dependents can apply for compensation. However, this is the case only when the crime committed has resulted in the victim's death.<sup>120</sup> Nevertheless, the law states clearly under Article 6, paragraph 2 that the Commission may decide on applications received also by individuals that have undergone other violent crimes and due to the consequences of the crimes are justifiable in particular cases of vulnerable victims. Under the Kosovo Criminal Code children are defined as vulnerable victims.<sup>121</sup> These legal provisions become perplexed during implementation according to relevant actors interviewed. Because the existing provisions are not concrete enough and refer to the criminal code definitions, they allow for wider interpretation.

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<sup>118</sup> KIPRED Interviews with several stakeholders, November and December 2017.

<sup>119</sup> KIPRED Interview with, Legal Specialist at the U.S State Department and Responsible Officer for the programme for victim protection at the U.S Embassy, Interview conducted on 10.11.2017

<sup>120</sup> Victim Compensation Law, Article 8.2

<sup>121</sup> Article 120, paragraph 37 "**Vulnerable victim** - A child, a physically or mentally handicapped person, a person suffering from diminished capacity, a pregnant woman, or a domestic partner." Available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>.



Therefore, conflicting information was provided by concerned officials in their interpretations of whether children are eligible to be covered by the law.

According to one commission member interviewed, children who were only exposed to Domestic Violence but did not directly experience domestic violence would not qualify for victim compensation according to the existing law.<sup>122</sup> One of the victim advocates interviewed stated to KIPRED that they are unsure and do not have that information but consider that children exposed to violence should be compensated as they are victims.<sup>123</sup> Further, according to representatives of the U.S Embassy, children exposed to Domestic Violence should be considered eligible.<sup>124</sup> Additionally, when victims of domestic violence apply for protection orders including children as protected party even though not directly physically abused and in line with the definition of the vulnerable victim foreseen under the Criminal Code of Kosovo, children are eligible to protection under the Domestic Violence Law due to their emotional and psychological distress.<sup>125</sup> The widespread misunderstanding of this particular legal provision may impact the applicant's access to justice without clear knowledge of the law. Accordingly, this clarification of the eligibility of children for compensation should be promptly addressed by the commission and the Ministry of Justice.

Additionally, the existing law and procedures may pose certain difficulties for eligible victims. One major difficulty concerns required documents that need to be attached to the application form in order to consider it complete. Several documents need to be submitted with the application form. This list of documents includes medical certificates and documents that evidence that the crime sustained resulted in bodily injury, impairment of health or suffering.<sup>126</sup> This necessary documentation also includes receipts for funeral costs.<sup>127</sup> This could be particularly difficult for eligible candidates due to the religious nature of burial services in Kosovo. Religious Communities rarely give receipts for their services in Kosovo which makes it very difficult for dependents of the victims to justify burial services.<sup>128</sup> Also the individuals often pay burial services to imams, priests and pastors directly.<sup>129</sup> Additionally, the Draft Law on

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<sup>122</sup> KIPRED Interview with Commission Member conducted on 3.11.2017

<sup>123</sup> KIPRED Interview with Victim Advocate's conducted on 11.12.2017

<sup>124</sup> KIPRED Interview with U.S Embassy 10.11.2017

<sup>125</sup> According to Article 120, Paragraph 37 of the Criminal Code of Kosovo, vulnerable victim is defined as "A child, a physically or mentally handicapped person, a person suffering from diminished capacity, a pregnant woman, or a domestic partner". Also see Article 124 of the Law on Protection against Domestic Violence, Nr. 03/L-182. Available at <http://www.assembly-kosova.org/common/docs/ligjet/2010-182-eng.pdf>.

<sup>126</sup> Victim Compensation Law, Article 32.

<sup>127</sup> Victim Compensation Law, Article 12.

<sup>128</sup> KIPRED Interview with Victim Advocate Manager and Commission member, November 2017.

<sup>129</sup> KIPRED internal source.

Freedom of Religion needs to be adopted in order to also regulate the religious communities' responsibilities in Kosovo including taxation and undocumented payments including burial receipts in Kosovo.

There are several procedural issues that may also prevent eligible Domestic Violence victims from applying for and receiving compensation. Firstly, the re-victimization faced by victims of Domestic Violence during the application procedure should be considered. As Domestic Violence is still not considered a criminal offense under the Kosovo Criminal Code due to lack of definition of all acts of domestic violence covered under the Law on Protection against Domestic Violence. This impacts Domestic Violence cases directly with victims covered mainly under civil proceedings. However, in order to be eligible for compensation under the victim compensation law, the offence must have been reported and dealt with as a criminal charge<sup>130</sup> and a final criminal judgement must exist.<sup>131</sup> As most Domestic Violence cases end up in civil proceedings anyways, most Domestic Violence victims practically will not be eligible to apply for compensation in the first place.

The legal and implementation difficulties identified in this section could ultimately make it very difficult, if not impossible, for Domestic Violence victims to apply and seek effective compensation by the state in the first place. Therefore, urgently addressing the criminalisation and full definition of the domestic violence act in the Kosovo Criminal Code under the current amendments is crucial in order to afford victims of domestic violence their right to compensation.

#### **d) Funding the Victim Compensation Programme**

The victim compensation law came into force in 2015 and the commission only became functional in 2017. Only in 2017 did the commission receive funding both for administrative and logistical support as well as for the compensations itself. The Commission received a total of EUR 100.000, transferred by the Ministry of Finance directly to the Ministry of Justice.

The main problems so far for the commission have been the financial challenges. According to the victim compensation law, the programme is to be financed through the annual law on the

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<sup>130</sup> Victim Compensation Law, Article 8.1.3.

<sup>131</sup> Ibid. Article 32.3.1.

budget by the Ministry of Finance.<sup>132</sup> It further states that there may be other sources of funding such as support from donors or other voluntary contributions.<sup>133</sup>

The budgetary cycle for victim compensation follows courts collection of taxes from the perpetrators of crimes. Crimes adjudicated by General Departments are taxed at 30 Euros, while crimes adjudicated by Serious Crimes Departments are taxed at 50 Euros.<sup>134</sup> These taxes are supposed to make up for a part of the compensation fund. However, the funds collected from taxes cannot go directly into the compensation programme as such a thing is not allowed by the MoF.<sup>135</sup> The collected funds, both from the taxes and the Agency for the Management of Sequestered and Confiscated Assets, first need to be poured in the general Kosovo budget and then be transferred to the programme via the Ministry of Justice. Subsequently, MoJ sends an annual budget request to the MoF according to standard procedures, in order for them to fund the budget line for the victim compensation programme. According to the law, the request “shall have into consideration the projections for the revenues.”<sup>136</sup> In general, the amount of the budget shall be based on the taxes collected, but also revenues from available assets that were confiscated including bail.<sup>137</sup>

Some judges have stated that they allegedly request the perpetrators to pay the tax via their final judgement decision,<sup>138</sup> however, an official decision by the KJC on collecting this tax does not exist and judges were not officially informed about this new legal requirement. Moreover, a specific budget code where the collected taxes can be gathered has not existed until January 2018. Only in January 2018, the Head of the Commission for Victim’s Compensation stated that the KJC began to collect taxes according to the law and distributed a budget circular to all courts in Kosovo instructing them on the collection of taxes and created a specific budget code to collect the taxes.<sup>139</sup>

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<sup>132</sup> Victim Compensation Law, Article 39.1

<sup>133</sup> Ibid, Article 39.2

<sup>134</sup> Ibid. Article 39.3.

<sup>135</sup> Assembly of the Republic of Kosovo, Law No. 03/L-048 on Public Financial Management and Accountability, Article 2.3, 2008, at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2524>

<sup>136</sup> Supra note at 134. Article 39.4.

<sup>137</sup> Ibid. Article 39.5.

<sup>138</sup> KIPRED Interview with, Legal Specialist at the U.S State Department and Responsible Officer for the programme for victim protection at the U.S Embassy, Interview conducted on 10.11.2017

<sup>139</sup> Stated at the KIPRED Launching of the Publication “Compensation to Victims of Crime: Response to Domestic Violence and Human Trafficking Cases in Kosovo,” 28<sup>th</sup> of February 2018 in Prishtina.

## VII. Other findings

Several other findings were identified that should be tackled immediately in order to ensure the smooth work of the commission.

A technical issue that was identified is that the current Criminal Procedure Code does not acknowledge the Compensation Fund, as the Code was drafted and entered into force before the current Law. Nevertheless, the Code refers to the compensation mechanism as a “coordinator of the victim compensation fund.”<sup>140</sup> The SOP’s for Victim Protection and Assistance within the State Prosecutor’s Office also contain inadequate phrasing and refer to the commission as the “respective authority.” The phrasing in both documents needs to be amended as soon as possible to avoid the risk of judges and prosecutors misinforming potential candidates.

The lack of a systematized digital database could also be a problem in the long-run. The Secretariat of the Commission currently maintains all data in hard copies and not digitalized.<sup>141</sup> It is important for the secretariat to have an electronic database whereby they could manage cases and keep information detailed in the long term. There is a need to develop a system that would include very detailed information including correspondence between victim advocate’s, the secretariat and the commission.<sup>142</sup>

Another issue identified concerns the way the commission works itself. It is important for a commission mandated to support compensation to victims of crime to consistently be focused and use a victim centred approach.<sup>143</sup> In order for the commission to accept applications, a criminal trial must already be finished and a final judgement should exist. As discussed above, only victims who have not been fully compensated are eligible to apply to the commission. Hence, when victims apply to the commission they have already experienced the crime itself and have undergone through the long and tiring criminal proceeding. Putting them through further complicated procedures may potentially harm them and re-victimize them.

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<sup>140</sup> Criminal Procedure Code, Article 62.1.5.

<sup>141</sup> KIPRED Interview with member of Commission Secretariat conducted on 16.11.2017

<sup>142</sup> Ibid.

<sup>143</sup> The Office for Victims of Crime Training and Technical Assistance Center defines Victim-Centered approach as: “the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. A victim-centered approach seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their traffickers brought to justice.”

As one respondent stated, *“sometimes the judges and prosecutors in the commission have a strictly legal and professional attitude. We need to remember that we are not in a court-room. We need to have a victim-centred and pro-victim approach. We need to support the victim and avoid re-victimization”*.<sup>144</sup> Another respondent further stated that *“we are working with human beings who have already gone through a lot. Sometimes humane arguments are stronger than professional, legal arguments. We are working with very sensitive cases. We need more flexibility in our work as a commission, I think in many cases human rights should be above the law.”*<sup>145</sup>

The current work of the Commission should set an example for future commission members to be appointed. Ideally, they should be setting an example and setting up an institutional memory by using a victim centred approach. The victim centred approach of the Commission members may also be enhanced by appointing members with experience in working with vulnerable groups including domestic violence and human trafficking. It has come to the attention of KIPRED, that the selection of the civil society member to the Commission did not undergo formal selection or proposal by CiviKos, a platform of cooperation between the GoK and civil society. Nor did this selection go through a network that is known and reputable in working with and advocating on the rights of victims of gender-based violence.<sup>146</sup> In particular, the role of civil society in this commission is crucial and experienced members working with victims of domestic violence and human trafficking should be part of the Commission. There are a number of licensed professionals working with victims of gender-based violence in Kosovo as for example service providers working with victims in providing daily care and support to victims.<sup>147</sup> Therefore a more victim-centred approach would enhance the effective approach and understanding of the Commission towards more sensitive cases including human trafficking and domestic violence.

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<sup>144</sup> KIPRED Interview with Commission Member conducted on 22.11.2017

<sup>145</sup> KIPRED Interview with Commission Member conducted on 24.11.2017

<sup>146</sup> KIPRED e-mail communication with CiviKos platform representative, December 2017. See also Memorandum of Cooperation in between Government of Kosovo and CiviKos Platform. Available at [http://www.civikos.net/repository/docs/Memorandum\\_i\\_bashkepunimit\\_Anglisht\\_63841.pdf](http://www.civikos.net/repository/docs/Memorandum_i_bashkepunimit_Anglisht_63841.pdf)

<sup>147</sup> Ministry of Labour and Social Welfare has extensively licensed a number of shelter providers throughout Kosovo, offering services to victims of gender based violence in Kosovo regions. Currently Kosovo has a number of shelter providing support to victims of domestic violence and human trafficking in Prishtina/Pristina, Peja/Peć, Gjakova/ Đakovica, Gjilan/Gnjilane, Prizren, etc. See for example Country Gender Profile, An Analysis of Gender Differences At All Levels in Kosovo, Orgut Consulting for Kosovo Agency for Gender Equality. Available at [http://www.swedenabroad.com/ImageVaultFiles/id\\_20757/cf\\_2/Orgut\\_Kosovo\\_Gender\\_Profile\\_FINAL\\_2014-05-08.PDF](http://www.swedenabroad.com/ImageVaultFiles/id_20757/cf_2/Orgut_Kosovo_Gender_Profile_FINAL_2014-05-08.PDF).

## VIII. Conclusion and Recommendations

In conclusion, the Government of Kosovo has finally begun to show commitment in fulfilling their state responsibilities to compensate victims of crime. In the past three years the law on compensation has been finalized, the commission has been set up and the budget was allocated for the compensation of victims. Nevertheless, several gaps and problems continue with the existing programme as identified in this report. The commission so far has been able to review not many cases and has provided compensation only to one murder case and recently one human trafficking case. In order to tackle the identified gaps and problems by also enhancing its victim centred approach and focus on vulnerable groups including domestic violence and human trafficking, The report ends with a set of recommendations to key stakeholders in order to enhance their current response to cases and to implement the law.

### **Recommendations for the Government of Kosovo:**

#### ***To Ministry of Justice:***

- Amend the Kosovo Criminal Procedural Code to accurately refer to the Victim Compensation Programme. Also amend the Kosovo Criminal Procedural Code and the Kosovo Criminal Code to include Domestic Violence as a Criminal Offence. Foresee punishment of over one year in order for more Domestic Violence victims to be eligible to apply for compensation;
- Establish a digitalized database and a tracking mechanism for monitoring compensation cases. The database should preferably include detailed information of the cases, reporting mechanisms and final decisions of the commission. The information would also be useful for monitoring purposes and be of use by the national coordination office against trafficking and also the National Coordinator against domestic violence;
- Conduct additional trainings for the Commission particularly in relation to human rights of victims of domestic violence and human trafficking, by including a Victim Centred approach;
- Print out and publicly post information on the victim compensation programme across public spaces within MoJ offices and other government institutions;
- Clarify whether children exposed to Domestic Violence, and their eligibility to compensation is being promptly addressed by the commission in close cooperation and support by the Legal Office of the Ministry of Justice;

### ***For the Commission:***

- In close cooperation with civil society organisations and the Ministry of Justice work towards devising and distributing a targeted media campaign on the victim compensation programme.
- When reviewing applications use a victim centred approach in order to avoid victimising applicants, in particular vulnerable groups of domestic violence and human trafficking in line with the legal requirements;
- The upcoming law on religious communities in Kosovo should urgently be adopted and address the immediate need for religious communities to issue receipts overall. Additionally, the commission should follow up and conduct information sessions with representatives of religious communities encouraging issuance of burial receipts;
- In order to guarantee a more victim-centered approach, the Commission should ensure that the civil society representative is selected amongst NGO's working directly with victims of human trafficking and domestic violence. The selection process of the civil society representative should be done through networks that are known and reputable in working or advocating on the rights of victims of gender-based violence.

### ***For the Kosovo Prosecutorial Council:***

- Amend the Standard Operating Procedures (SOP's) for Victim Protection and Assistance Office within the State Prosecutor's Office, to update and provide information related to the Victim Compensation Programme and the work of the Commission;
- Print out and publicly post information on the victim compensation programme in public spaces across offices of victims advocates and prosecutors;
- Ensure that all civil and criminal prosecutors are aware of the victim compensation programme, the law and the work of the commission. If necessary, distribute electronic information across all prosecutorial offices and organize trainings for all prosecutors through the Academy for Justice;
- Increase the number of Victim Advocate's in all regions of Kosovo by also increasing the budget resources for financial remuneration of victims advocates;

***For the Kosovo Judicial Council:***

- Continue with the the collection of taxes from the perpetrators of violent crimes. In accordance with the Victim Compensation Law, crimes adjudicated by General Departments of Courts are taxed at 30 E, while crimes adjudicated by Serious Crime Departments are taxed at 50E;
- Ensure that all civil and criminal judges are aware of the victim compensation programme, the law and the commission. If necessary, distribute electronic information across all prosecutorial offices and organise trainings for all judges in cooperation with Academy of Justice;
- Print out and publicly post information on the victim compensation programme in public spaces across all courts in Kosovo.

***For the Academy of Justice:***

- Ensure that training curricula on victim protection are integrated within the curricula of the Academy of Justice. These modules should contain specific information on the victim compensation programme, the victim compensation law, eligibility criteria and required procedures. Integrating the victim compensation programme in the training curricula of the justice academy would ensure sustainable and systematized information sharing for judges and prosecutors;
- The Academy of Justice should recruit trainers experienced in working with vulnerable victims such as women and children. The Academy should also organize multi-disciplinary trainings with judges and prosecutors with victim's advocates and members of the Commission to elaborate and discuss in detail the contents of the law.

***For the Kosovo Chamber of Doctors:***

- Ensure that all medical personnel in direct contact with victims of violent crimes are aware of the victim compensation programme, the law and the work of the commission;
- Print out and publicly post information on the victim compensation programme across public spaces within hospitals in Kosovo;



***For Donors:***

- Support Ministry of Justice in establishing a digitalized database and a tracking mechanism for compensation cases;
- In close cooperation with civil society organisations, Ministry of Justice and the Commission for Compensation, support the development and delivery of a targeted media campaign on the victim compensation programme;
- Support the KJC and KPC in organizing trainings for civil and criminal judges and prosecutors across Kosovo on the Victims Compensation Law;
- Support the Ministry of Justice to train Commission members on using a human rights and a victims centred approach including for vulnerable groups eligible for compensation.

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