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# **Violence against women and domestic violence in Albania and Kosovo: the incoherence between laws and traditions**

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*Dedico questa tesi a mia madre, a mio padre che da lassù mi segue in ogni mio passo, ed al mio fidanzato.*

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## ABSTRACT

Questa tesi mira ad analizzare la condizione delle donne in Albania e Kosovo. Questi ultimi sono stati presi in considerazione perché sono particolarmente accomunati da molteplici aspetti: storico, culturale, linguistico e soprattutto condividono la stessa esperienza. L'obiettivo di tale tesi è presentare la situazione delle donne in Albania e Kosovo, partendo da un quadro storico e poi soffermandosi sugli aspetti culturali e legislativi in modo da capire come le disparità di genere si siano trasformate progressivamente in violenza contro le donne. Di conseguenza, la tesi è divisa in tre parti.

Come è stato precisato precedentemente, la prima parte della tesi rappresenta un quadro storico dei due paesi, in modo da evidenziare cosa ha accomunato l'Albania ed il Kosovo per molti secoli e come mai si parla di "due paesi ed un unico popolo". In seguito, le situazioni interne di ognuno dei due paesi in questione sono stati affrontati separatamente, partendo dall'analisi delle origini della violenza contro le donne in entrambi i contesti.

L'occupazione ottomana, durata quasi cinque secoli, ha comportato forti conseguenze all'interno di questi paesi, portando ad uno sviluppo religioso e culturale diverso tra nord e sud. Questo fenomeno si è verificato in particolare in Albania; il nord era popolato da cittadini di religione cattolica che si sono rifiutati di sottoporsi alla conversione forzata imposta dagli Ottomani e che sono stati i fautori della resistenza durante gli anni di dominazione. È proprio in queste zone che nel quindicesimo secolo si sviluppò il cosiddetto Kanun, ovvero un codice di leggi consuetudinarie, le quali sono state parte della tradizione albanese. Queste leggi hanno avuto un forte impatto nello sviluppo della società albanese, ma soprattutto nella cultura e mentalità dei cittadini. È proprio in questo modo che è emerso il concetto di mentalità patriarcale, il quale ha avuto un'influenza consistente nello sviluppo di ruoli e stereotipi di genere a discapito delle donne. Invero, la donna è sempre stata considerata proprietà di suo marito, il quale aveva il diritto di controllare la vita della moglie e di parlarle in una condizione di subordinazione rispetto agli altri membri della famiglia. Il ruolo della donna era

confinato alle sue capacità riproduttive, diventando capro espiatorio dell'assenza di prole maschile. La donna aveva, inoltre, un'altra responsabilità all'interno del nucleo familiare, ovvero quello di mantenere l'onore della famiglia obbedendo al proprio marito e rispettando gli ospiti.

Successivamente, la condizione delle donne è messa a paragone in tre diversi periodi storici in cui si evidenziano trasformazioni importanti, ovvero gli anni prima, durante e dopo la dittatura.

Tra la fine degli anni '20 e l'inizio degli anni '30 emersero le prime organizzazioni per la promozione dei diritti delle donne e, allo stesso tempo, si sono affermati i primi tentativi di legge per ottenere la parità di genere. Nonostante ciò, prima dell'inizio della dittatura, i livelli di educazione femminile e di alfabetizzazione erano bassi a tal punto da limitare la partecipazione delle donne alla vita sociale e politica e le loro opportunità di lavoro.

La situazione delle donne albanesi sembrò subire un'evoluzione durante gli anni di comunismo (1945-1991) in seguito a delle riforme intraprese dal dittatore Hoxha. Tali riforme portarono alla riduzione dei livelli di analfabetismo delle donne e alla loro inclusione nella vita pubblica. Inoltre, durante il comunismo il Kanun venne severamente proibito, ragion per cui per circa mezzo secolo non si sentì più parlare di faide e questioni d'onore. Le donne erano ben integrate nella società e nel mercato del lavoro, diventando così economicamente indipendenti. Pur sembrando che le donne avessero più diritti nella vita pubblica, in quella privata continuavano ad essere soggette a discriminazioni. I ruoli di genere non si erano sradicati; quella mentalità che ha nutrito le attitudini degli albanesi da sempre non poteva essere cancellata facilmente.

Nel periodo post-comunista, la società albanese è stata soggetta a trasformazioni radicali di natura politica, economica, sociale e culturale. Negli anni '90, dopo 45 anni di restrizioni, migliaia di albanesi decisero di emigrare in Europa alla ricerca di una vita migliore ed un futuro più prospero. Tale processo, però, ha portato allo sviluppo di ulteriori fenomeni, quali il traffico di essere umani e la prostituzione, il cui obiettivo principale erano donne e ragazze. Quest'ultime, con il

desiderio di scappare dalla situazione di povertà a cui il processo di transizione ha portato, decisero volontariamente di essere coinvolte nella prostituzione. L'Albania divenne in tal modo un paese di transito e, allo stesso tempo, di origine del traffico di esseri umani. Tale fenomeno alimenta ulteriormente la violenza contro le donne, rendendole più vulnerabili ed esposte al rischio di essere abusate. Il gruppo di persone più affette da questo fenomeno è rappresentato dalle donne e ragazze delle comunità minoritarie rom ed egiziana. I gruppi etnici sono caratterizzati da una situazione sociale ed economica più sfavorevole; sono esclusi dalla vita sociale e pubblica e sono discriminati in tutti i campi, anche nel mercato del lavoro. Di conseguenza, le donne delle comunità rom ed egiziana sono costrette ad intraprendere la via della prostituzione, considerandola come l'unica possibilità di avere una remunerazione. Il riemergere di antiche norme consuetudinarie nell'Albania post-comunista porta ad un ritorno nel passato, in cui la donna è esclusa dalla vita pubblica ed è confinata in quella privata.

Un altro tema che è stato affrontato in questa prima parte della tesi è il fenomeno dei movimenti femministi durante i sopracitati periodi. Nel periodo antecedente all'avvento del comunismo, i movimenti femministi iniziarono i primi passi, fomentati dalle notizie del mondo occidentale in cui la situazione delle donne era di gran lunga migliore. Negli anni '30, sotto il regno di Zog I, nacquero anche le prime associazioni tra donne il cui obiettivo era principalmente aiutare le donne e le ragazze in difficoltà economiche. I movimenti femministi subirono un arresto con l'inizio della Seconda Guerra Mondiale. Le donne albanesi vennero coinvolte nella guerra e tale impegno venne loro riconosciuto in seguito dal dittatore Hoxha, il quale concesse loro il diritto di avere un partito che fosse associato a quello comunista. Con la caduta del regime comunista, la situazione femminile si capovolse e portò alla cosiddetta "addomesticazione" delle donne. Questo ridusse notevolmente anche la loro capacità di riunirsi, protestare e reclamare i propri diritti. Inoltre, si creò un senso di intimidazione da parte delle femministe a considerarsi tali, perché questo termine era negativamente associato agli ideali comunisti. Questo aspetto, in aggiunta alla

paura di disturbare lo status quo, ha sviluppato una natura poco irruente dei movimenti femministi dell'epoca contemporanea.

Per poter comprendere a fondo la condizione delle donne in Albania, sono state rappresentate le cause che si celano dietro agli atti di violenza commessi nei loro confronti. Le radici della violenza contro le donne in Albania sono un risultato di secoli di trasmissione di ideologie patriarcali, le quali sono diventate parte dello stile di vita dei cittadini, in particolare di coloro che popolano le zone rurali e nordiche. Tali convinzioni si trasformarono in atteggiamenti discriminatori nei confronti delle donne fino a diventare pratiche di violenza fisica e psicologica. Oltre al fattore culturale, ci sono anche altri aspetti che incidono sulla persistenza della violenza basata sul genere. Questi fattori si dividono in due categorie e riguardano, da una parte, le persone coinvolte in questo fenomeno, ovvero la vittima ed il perpetratore e, dall'altra, l'atmosfera sociale, quindi i comportamenti socialmente accettati.

Le forme di violenza e discriminazione nei confronti delle donne sviluppatasi in Albania sono svariate. Il concetto che sta alla base di qualsiasi forma di crimine commesso verso una donna è quello di disuguaglianza di genere. Quest'ultima pone il genere maschile e quello femminile sempre su due piani diversi, dove il secondo è sempre svantaggiato rispetto al primo. Questa realtà si riflette anche sulla limitata opportunità delle donne di partecipare alla vita politica e di essere incluse nei ruoli decisionali. Altri fenomeni di violenza sulle donne si riferiscono al traffico di esseri umani, il quale può svolgersi all'interno dei confini albanesi ma soprattutto all'estero con meta preferita l'Europa. Infine, la violenza domestica. Questo fenomeno rappresenta la forma di violenza più frequente e preoccupante nella realtà albanese. La tendenza è quella di conservare i fatti accaduti dentro le mura di casa, non denunciando la violenza subito perché spesso volte è più importante preservare l'onore della famiglia.

Per quanto riguarda il Kosovo, questo paese sta ancora affrontando le ripercussioni della guerra contro la Serbia avvenuta alla fine degli anni '90. Questa data ha segnato anche l'instaurazione della presenza internazionale sul territorio Kosovaro con lo scopo di fermare il conflitto e di assistere il paese nel suo processo verso la

democratizzazione. Nonostante nel 2008 il Kosovo si sia dichiarato indipendente, il suo status non è stato ancora riconosciuto dalla comunità internazionale. Questo, però, non ha scoraggiato il governo kosovaro a prendere come esempio i modelli internazionali per il suo processo di crescita sia da un punto di vista politico, economico e sociale sia da un punto di vista dei diritti umani.

La situazione delle donne in Kosovo non è molto diversa dalla realtà albanese. Anche qui l'influenza dei valori tradizionali ereditati dal Kanun ha contribuito allo sviluppo di stereotipi di genere. Le norme patriarcali sono evidenti in ogni aspetto della vita privata e pubblica delle donne kosovare. Quest'ultime hanno anche il peso delle violenze psicologiche, fisiche e sessuali subite durante la guerra contro la Serbia. Le vittime di violenza durante il conflitto non hanno ancora ricevuto giustizia per quello che hanno subito. Inoltre, nelle case dei cittadini kosovari è quasi un *taboo* per le donne parlare delle violenze a cui sono state sottoposte durante la guerra, motivo che le spinge al silenzio e alla non denuncia. La violenza domestica è la forma più frequente di violenza di cui le donne kosovare sono vittime. Altre forme di discriminazione in cui le donne rappresentano la categoria più affetta si riferiscono alla negazione dei diritti di proprietà, dato che secondo le norme tradizionali l'eredità deve essere trasmessa per legami di sangue, quindi solo ai figli maschi; la sottorappresentanza nel settore politico; l'accesso limitato al mercato del lavoro.

L'attivismo per i diritti delle donne in Kosovo ha avuto un percorso un po' differente rispetto a quello albanese. Esso è stato particolarmente legato ai crimini di guerra e, quindi, alle numerose violazioni di diritti commesse nei confronti dei cittadini. Tra queste si rivendicano i diritti delle persone scomparse durante la guerra e mai più ritrovate così come i diritti delle donne soggette ad abusi sessuali da parte delle forze armate serbe. I movimenti femministi partirono con l'idea di denunciare i crimini di guerra e, con il passare degli anni, le campagne iniziarono a puntare sull'emancipazione femminile.

La seconda parte della presente tesi esamina le misure e gli strumenti esistenti adottati dai paesi in questione a livello internazionale, regionale e nazionale in merito alla protezione delle donne dalla violenza. Per quanto riguarda l'Albania, essa ha

ratificato diverse convenzioni internazionali in ambito di diritti umani in generale, e per quanto riguarda le forme di violenza contro le donne, ha adottato la Convenzione sull'Eliminazione di Ogni Forma di Discriminazione della Donna (CEDAW). Quest'ultima è stata di fondamentale importanza per l'armonizzazione dei sistemi legislativi domestici agli standard internazionali. Nonostante ciò, i rapporti degli enti responsabili al monitoraggio hanno evidenziato varie lacune da parte del governo albanese sull'applicazione delle disposizioni del sopracitato trattato. Per quanto riguarda il Kosovo, invece, la situazione presenta risultati diversi. Come già spiegato, lo status di indipendenza del Kosovo non è stato riconosciuto da tutta la comunità internazionale. Di conseguenza, il Kosovo non ha la capacità e la possibilità di poter adottare strumenti giuridici internazionali. Questo, però, non ha limitato il governo kosovaro a prendere come modello di riferimento i trattati internazionali contro la violenza sulle donne ed i loro standard. Inoltre, in Kosovo è stato stabilito l'UNMIK, il quale aveva l'obiettivo principale di introdurre i principi internazionali dei diritti umani all'interno delle istituzioni pubbliche. Inoltre, il Piano di Ahtisaari ha ulteriormente contribuito alla creazione dello stato di diritto e della Costituzione del Kosovo, basati sugli standard internazionali. Nel 2000 il Consiglio di Sicurezza delle Nazioni Unite ha adottato la Risoluzione 1325 per il Kosovo con l'obiettivo di coinvolgere anche le donne nella prevenzione al conflitto e nel processo di pace. Tale strumento ha portato ad un ulteriore miglioramento della condizione delle donne, aumentando anche la loro partecipazione nei ruoli decisionali.

Anche a livello regionale ci sono stati vari strumenti presi in considerazione dal governo albanese e quello kosovaro. Per quanto riguarda il primo, esso ha adottato la Convenzione Europea dei Diritti dell'Uomo e delle Libertà Fondamentali e anche la Convenzione del Consiglio d'Europa sulla Prevenzione e la Lotta contro la Violenza nei Confronti delle Donne e la Violenza Domestica (Convenzione di Istanbul). La prima assicura ai cittadini albanesi la possibilità di poter presentare ricorso alla Corte Europea dei Diritti dell'Uomo nel caso in cui si ritenga che lo stato non abbia adottato le misure necessarie per provvedere alla protezione del cittadino. Questa opportunità, però, non è stata particolarmente sfruttata per quanto riguarda i casi di violenza

contro le donne o violenza domestica. Si conta, infatti, un unico caso di violenza di genere portato di fronte alla Corte. La Convenzione di Istanbul, invece, ha contribuito al riconoscimento di più forme di violenza contro le donne. Grazie a questo, la violenza domestica è riconosciuta come un crimine e, come tale, è punibile per legge. Questo, però, non è ancora avvenuto per le altre forme di violenza di genere nel sistema legislativo albanese. Inoltre, il governo albanese deve impegnarsi ulteriormente per migliorare le leggi e le istituzioni in modo da soddisfare gli standard previsti dalla Convenzione. Il Kosovo, invece, nonostante non abbia ratificato la Convenzione di Istanbul, è stato parte di un progetto lanciato dal Consiglio d'Europa con l'obiettivo di rafforzare le misure esistenti per combattere la violenza contro le donne e la violenza domestica, basandosi sugli standard della suddetta Convenzione. In aggiunta, in Kosovo è stato istituito l'EULEX, il quale ha continuato le mansioni dell'UNMIK, con il ruolo di affiancare le istituzioni locali nella crescita e nel loro processo verso la democratizzazione.

A livello nazionale entrambi i paesi in questione hanno adottato una serie di leggi per affrontare il fenomeno della discriminazione di genere e quello di violenza contro le donne e violenza domestica. Tali strumenti assicurano varie misure di protezione per le donne e anche di prevenzione alle varie forme di violenza. È il caso degli ordini di protezione, i quali garantirebbero alle vittime di violenza domestica la necessaria protezione dai perpetratori prima che il caso venga affrontato dalla giustizia. Queste misure, però, non sempre vengono emesse tempestivamente. Inoltre, il sistema giudiziario presenta diverse mancanze, le quali non permettono l'esecuzione di sentenze equivalenti all'offesa commessa nei confronti delle vittime.

L'ultima parte della tesi analizza le cause che incidono sull'inadeguata applicazione delle leggi per proteggere le donne da tutti i tipi di discriminazione e di violenza di genere. È per questo che si parla, dunque, di divario tra *de jure* e *de facto*. Tra le cause individuate si menzionano le convinzioni basate su tradizioni e norme patriarcali diffuse non soltanto nel contesto familiare e sociale, ma anche tra i professionisti che sono a diretto contatto con le vittime di abusi. Ciò ha delle conseguenze anche sulla corretta applicazione dei protocolli per poter assistere le

vittime. Oltre a questo, sono emerse anche una serie di altri fattori che influiscono sul divario *de jure-de facto*. L'Albania ed il Kosovo, pur essendo due paesi "giovani" sul contesto internazionale, sono stati in grado di recuperare, in pochi anni, gran parte dei progressi che gli altri paesi sviluppati hanno ottenuto in quasi un secolo. Va riconosciuta anche la loro volontà di adattarsi ai livelli internazionali e la loro ambizione nel diventare membri dell'Unione Europea. Tuttavia, prima di arrivare a questo passo, l'Albania ed il Kosovo devono affrontare una serie di questioni che minacciano il rispetto dei principi europei fondamentali, quali lo stato di diritto ed il rispetto per i diritti umani fondamentali. In quest'ultimo campo, i due paesi devono far fronte a problematiche interne che ostacolano l'adeguata applicazione delle leggi e delle norme nazionali ed internazionali. Le raccomandazioni degli enti europei fanno riferimento in particolare alla persistenza di fenomeni, quali la corruzione, il crimine organizzato, la mancanza di coordinazione tra agenzie ed istituzioni responsabili per la protezione dei diritti umani ed il malfunzionamento del sistema giudiziario.

Per poter approfondire questo divario tra *de jure* e *de facto*, diversi studiosi hanno dedicato la loro attenzione nell'enunciare le loro teorie in merito. Sono state prese in considerazione due correnti ideologiche differenti: da un lato Hafner-Burton e Tsutsui e dall'altro Beth A. Simmons. I primi sostengono che il regime internazionale non sia abbastanza forte da poter essere vincolante per i paesi che ratificano trattati internazionali sui diritti umani. Di conseguenza, i paesi firmatari si impegnano poco o per niente nell'adempiere i loro obblighi derivanti da tali trattati, portando al non rispetto dei diritti umani fondamentali. I due studiosi ritengono anche che la società civile, quando è cosciente e ben informata dei diritti a cui i cittadini sono intitolati, ha un ruolo fondamentale nell'incitare il governo ad assumere le proprie responsabilità in merito. Pertanto, questo migliora le pratiche del governo in tema di diritti umani. Contrariamente, Simmons crede fermamente nell'autorità del regime internazionale e sostiene che se i diritti umani non vengono rispettati correttamente, nonostante i paesi ratifichino i trattati internazionali, è dovuto ad una serie di mancanze nel sistema legislativo ed istituzionale domestico. Inoltre, la studiosa si oppone a quelle teorie secondo le quali gli stati ratificano i trattati internazionali per un secondo fine:

ottenere dei benefici che possono essere tangibili, ovvero benefici economici, oppure intangibili, ovvero ottenere l'approvazione e l'inclusione nella comunità internazionale. Nel caso dell'Albania e del Kosovo si possono prendere in considerazione aspetti di entrambe le teorie. È vero che ci sono dei difetti nella struttura interna dei due governi che necessitano di essere migliorati per poter garantire lo sviluppo delle pratiche dei diritti umani. È vero che la mobilitazione di attori domestici ha influito positivamente sull'operato del governo in questo contesto. È anche vero che la situazione dei due paesi riflette la logica secondo cui ratificare trattati internazionali non comporta benefici.

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## INTRODUCTION

This dissertation addresses the phenomenon of violence against women in Albania and Kosovo. The research is based on the analysis of the divergence between the existing legislative framework on the fight against violence towards women and domestic violence and the lack of its actual implementation. The thesis is structured into three parts: a first part envisaging the roots of violence against women and domestic violence in the Albanian and Kosovar contexts; a second part analysing the existing legislative instruments to fight violence against women at international, regional and national level; a final part dealing with the gap between *de jure* and *de facto*.

The first chapter envisages the history of the two countries in question in order to understand what the statement “two countries, one population” stands for. Albanians and Kosovars have been citizens of the same nation, until the advent of the Ottoman Empire changed their fate. Nowadays, Albania and Kosovo are two different countries, but they preserve the same traditions, language, culture and religions. For both the countries, the dissemination of a set of traditional norms contained in the so-called Kanun has been an influential aspect in the development of citizens’ mentality and behaviour. Consequently, the emergence of stereotyped roles has been inevitable. They have brought about gender discrimination, where women have been positioned several steps back compared to men. The condition of women has been analysed in different historical periods in both the contexts: in Albania there have been taken into account the years before, during and after the dictatorship; whereas in Kosovo there has been analysed the situation after the 1988-1989 conflict. From the research there have emerged manifold forms of violence that affect the Albanian and Kosovar women. However, the most appalling phenomenon is domestic violence. The latter is underreported, as patriarchal mentality has a strong influence on maintaining the occurrence of violence within the walls of the house in order not to tarnish the honour of the family. In addition to the widespread acceptance of patriarchal beliefs, the lack of trust on institutions and the judicial system leads victims not to report domestic

violence. The malfunction of the judiciary and the public sector do not contribute to the improvement of government's practices for the protection of victims of violence.

The second chapter analyses the existing legal instruments to combat violence against women and domestic violence in Albania and Kosovo. This analysis develops into three levels: international, regional and national. At international level, for Albania the ratification of the CEDAW has been a paramount instrument to combat all the forms of discrimination against women. On the other hand, in Kosovo the international presence represented by the UNMIK has brought about the advancement of the democratisation process and, at the same time, it has addressed also issues on human rights. Additionally, the Resolution 1325 of the UN Security Council has been an effort to include also women in the peace-building process and decision-making. At regional level the Istanbul Convention has been a guiding model for the improvement of the domestic legal framework of both the countries. Its provisions have been taken as guidelines from the two governments in order to harmonise their domestic legislation with the European standards. Nevertheless, Albania and Kosovo have to enforce their commitment in order to fulfil the requirements imposed by the Convention. At national level, both the countries have adopted a set of laws to fight gender inequality, violence against women and domestic violence. However, not all the forms of violence are adequately addressed by the existing laws, failing to meet the requirements of the international treaties. Therefore, there is needed a more overarching approach by policymakers, especially in Kosovo, where domestic violence is still not defined as a criminal offense.

Lastly, the third chapter is focused on the factors that cause the gap between *de jure* and *de facto*, namely the divergence between the existing legislative framework to combat violence against women and the lack of its effective implementation. The first aspect that emerges is the diffusion of traditional beliefs which continue to influence the behaviour of citizens but also the efficiency of professionals working close to the victims. This has negative repercussions on the process of assistance of victims of violence and on their psychological health. As a matter of fact, the tendency to pardon is frequently suggested as a solution to

maintain the family unity. Furthermore, what hampers the adequate implementation of international as well as national instruments to face gender-based violence is the lack of capacity of the Albanian and Kosovar government to cope with internal problems. These refer to the persistence of several practices, such as corruption within public institutions, but also to organised crime, the lack of multi-agency coordination and malfunction of the judicial system. In this concern several theories have been realised and they are based on different ideologies. From one hand, there are those theories that consider the international regime not sufficiently enforceable for states party to the treaties. Therefore, this incites ratifiers not to comply with their obligations. Additionally, according to the ideology of such theories, the mobilisation of domestic actors has a positive impact on the improvement of human rights practices from the governments that ratify treaties on this issue. On the other hand, other theories oppose to the aforementioned ideology as they firmly believe in the authority of the international regime. Accordingly, they argue that states lack to comply the obligations deriving from the treaties they ratify because they are affected by a series of deficiencies domestically that hinder the correct implementation of laws. In addition to this, these theories, based on empirical studies, exclude the possibility that states ratify international treaties on human rights with the purpose to obtain economic benefits or the acceptance and legitimacy by the international community. Therefore, the sole reason that induces states to be party to international instruments is because they are willing to respect and implement them with the duly commitment.

In order to respond to the research question, there have been consulted sources of different categories and nature.

For the first chapter there have been taken in consideration books of history as well as reports of women's association. The latter, coupled with the National Institute of Statistics (INSTAT) have been important tools to envisage data on the phenomena of violence affecting the Albanian and Kosovar women. Moreover, several papers of Albanian scholars on gender issues have been used as sources for understanding the roots, characteristics and causes of the manifold forms of violence towards women. The author of this dissertation has had the opportunity to directly communicate with

Ermira Danaj, who is an international scholar on gender issues, focused on the Albanian and Kosovar context. Danaj has written several papers on the nature of feminist movements and on the condition of women as well as on the political mechanisms of both Albania and Kosovo.

In the second chapter, as it was focused on the legislative sector, there have been studied and analysed the international, regional and domestic instrument that address gender disparities as well as gender-based violence against women.

As a matter of fact, for Albania the document of reference at international level is the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). At the same time, the reports of the Committee on the Elimination of All Forms of Discrimination Against Women had been paramount to analyse its recommendations and considerations. These have been useful to identify the critical points for the advancement of women's condition in the Albanian society. On the other hand, in the case of Kosovo, the UN Security Council Resolution 1325 has been taken into consideration in order to outline the improvements of the involvement of women into the public and political life. This document has been an important source of data concerning the representation of women in the army and leadership roles.

At regional level, a part from the Istanbul Convention, there have been considered the reports of the Council of Europe's bodies that monitor the implementation of the Convention in order to emphasise the distance of domestic levels from the European standards. For Kosovo, despite the fact that it is not a member of the Council of Europe and, thereby, it has not ratified the Convention, the latter's provisions have been directly applicable also in its legislative system. The problems of compliance to the Convention's requirements have been envisaged in a Council of Europe's report that aims at investigating on the services that support victims of violence in Kosovo.

Nationally, there have been analysed the provisions of the laws and codes that address gender discrimination and violence against women. The original text of the laws has been found in the website of the countries in question in the original

language. In the case of Albania, there have been mentioned the Law no. 9669 “on Measures against Violence in Family Relations”, Law no. 9970 “On Gender Equality in Society”, Law no. 10221 “On Protection from Discrimination”, Law no. 111/2017 “On State Guaranteed Legal Aid.” Additionally, there have been analysed different parts of the following national codes: the Family Code, Criminal Code, Labour code, Election Code and the Civil Procedural Code. In the case of Kosovo, deep analysis has been conducted on the provisions of the Law no. 2004/2 “On Gender Equality in Kosovo”, Law no. 03/L-182 “On Protection Against Domestic Violence”, Law no. 05/L-021 “On the Protection from Discrimination”, Law no. 02/L-17 “On Social and Family Services”, and Kosovo’s Criminal Code. The purpose was to highlight the contradictory aspects of the laws or their imperfections which represent an obstacle for the advancement of women’s rights. At the same time, it was necessary to understand which were the forms of violence addressed by the Albanian and Kosovar legislation, which of them were considered criminal offensive acts, how they are punished by the law and what are the rights that victims are entitled to.

Lastly, chapter three was developed following the reports of the European Commission which dwell on the deficiencies of the Albanian and Kosovar legislative and institutional systems, seriously affected by corruption and lack of adequate coordination. In this last part particular attention has been dedicated to the theories on the efficiency and capabilities of the international regime. There have been taken into consideration aspects of both the theory of “empty promises” of Hafner-Burton and Tsutsui and the theory of Beth A. Simmons. These theories have been an integrative tool for the conclusions of the thesis.

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## CHAPTER 1

# THE ROOTS OF VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN ALBANIA AND KOSOVO: THE PREVALENCE OF THE PATRIARCHAL MENTALITY

### 1.1. The history of Albania and Kosovo: two countries, one population

This paragraph is not aimed at making a detailed historic excursus of Albania and Kosovo. It is an introductory part in order to facilitate the reader's comprehension on what is the connection between these two countries and why there is used the word "Albanian" when referring to their citizens.

The history of Albanians starts since the Middle Palaeolithic age, when they were identified as Illyrians, a population that settled down in a vast territory that extends from the Danube to the Adriatic<sup>1</sup>. The region of the actual Albania has always been a land of interest for the surrounding populations – Greeks, Bulgarians, Slavs, Serbians– as well as for European powers such as the Roman Empire. Nevertheless, it has never been established a central power from these foreign invaders. It is for this defect that between the late fourteenth and early fifteenth century the Ottoman Empire was able to move forward progressively in the Balkan Region – however, not without the resistance of the settled populations – reaching Albanian territory after having expelled the presence of the Venetian Republic from northern areas. This is the beginning of a long-lasting domination during which the rebellious spirit of Albanian population has steadily showed its nature. The fight against the Ottomans started with the initiatives of the brave warrior Gjergj Kastrioti, also known as Skënderbeu. Despite the limited size of the Albanian army and the meagre support from foreign powers, Skënderbeu implemented a game of strategy by unifying Albanians and obtaining their loyal support. As a consequence, he was able to repel Turkish invaders in different occasions and establish Kruja as the stronghold of his independence process. His

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<sup>1</sup> Biagini, Antonello, *Storia dell'Albania dalle origini ai giorni nostri*, Bompiani, Milano, 1998, p. 10

struggle against the Ottomans lasted 35 years, until the economic and agricultural crisis, the famine as well as the internal turmoil provoked by the ottoman army and lords (the only part of the population that had never been willing to follow Skënderbeu) weakened his power. From that moment a long-lasting domination will involve the Balkan populations until the 1800s, the century of uprisings and two important events: the Congress of Vienna and the Congress of Berlin.

The Congress of Vienna, occurred in 1815, had as main purpose the establishment of the international order after the defeat of Napoleon Bonaparte, but the Balkan question was dealt with only marginally<sup>2</sup>. Additionally, this territory was the soil of conflict between two blocks: Turkey, France and England from one hand, and Austria with Russia from the other. At the same time, it has been the land of religious and ethnic conflicts between Christians and Muslims as well as between Slavic and non-Slavic populations. As concerns the latter, in the first part of the nineteenth century there arose the first Balkan revolts, with Serbia opening the curtain, followed by other neighbouring states, which successfully obtained their independence from the Ottoman Empire.

In front of this scenery, the German Chancellor Bismarck decided to put an end to the rebellious spirit of Balkan populations with the organisation of the Congress of Berlin in 1878 with the purpose to maintain the European equilibrium and, at the same time, impede the dissolution of the Ottoman Empire. Serbia, Montenegro and Romania obtained officially their independence. Nevertheless, for Albania this moment would come about several years later. Indeed, after the Congress of Berlin, Albania was still under the Ottoman rule.

This country is of particular relevance because it is considered a strategic point for the economic and military control over the Adriatic and Balkan peninsula. As a matter of fact, it would soon become a land of shared interests for Austria and Italy, which would further postpone the process of independence of Albania. Moreover, with the Berlin Congress, the city of Antivari – bordering with north-western Albania and being part of the Empire until that moment – was officially assigned to

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<sup>2</sup> Ivi, p. 29

Montenegro. Albanians were constantly in opposition to the decisions of the European powers, which aimed at drawing the new borders to satisfy their interests. The situation will overturn in the first decade of the nineteenth century with the two Balkan wars of 1909 and 1911, which will threaten the European order but at the same time, will pave the way to the Albanian independence. The liberation campaign was led by the Catholic rebels of northern Albania<sup>3</sup>, who decided to lay claim to the territories lost in the definition of borders with Montenegro. This first attempt, however, did not bring about positive results due to internal disorganisation and consequent conflicts. Another effort was made immediately by rebels in a second phase when they decided to advance from the north-western areas such as Koplik, Tuzi, Kastrat and Hot against the Ottomans. The latter, after being increased in number, complicated the march of locals, who were not as well-equipped as the former. As a matter of fact, they were constrained to retreat again in Montenegro and northern areas allowing the Turkish leader to enter in Shkodra and, thus, concluding this second phase of rebellion<sup>4</sup>. Soon thereafter, the direct clash between Albanians and Ottomans continued in the northern mountains, with the former being in a more favourable situation as they were able to take advantage of the geographic position. However, as no sign of concession or agreement between the two parts was showed, the then Italian Minister intervened with the publication of a *Manifesto*, which intended to give Albanians the right of having the unification of their territory with a central government, after almost five centuries of domination. In addition to that, the Malësorë published a Declaration with which they stressed their intention of regaining the ethnic Albania<sup>5</sup> and thus their determination of keeping arms until the goal had been achieved. The Turkish counterattack is not long in coming: the leader gave a five-days ultimatum to Albanian rebels to surrender; if they did not obey, the conflict would reanimate more fiercely. However, this move did not halted the determination

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<sup>3</sup> Northern clans, called Malësorë (literally meaning people from the mountains) have always resisted to the Ottoman dominion and especially to the process of islamisation of the indigenous population. Therefore, they have also preserved the Catholic religion, inherited from the Roman Empire. They were the rebels who brought about the uprising during 1909-1911

<sup>4</sup> See footnote 1, p. 51

<sup>5</sup> The ethnic Albania refers to the territory belonging to Albanians before the Ottoman domination

of rebels to continue. While the diplomatic and military attacks between local rebels and Ottomans continued without reaching any compromise, the other states did not meddle in the question. An exception was Montenegro, whose position has always been ambiguous: from one hand, it declared to be neutral; from the other, it secretly supported Albanian rebels with economic and army means. The Montenegrin government had also tried to involve Serbia in this project; however, the latter refused, as it thought this was a lost battle and did not totally trust in Montenegro's loyalty. International support to Albanian insurgents arrived also from Vienna, because it was interested in protecting Albanian Christians and it considered Turkish domination strongly repressive. This considerations, together with the support of Montenegro as well as Russia, obliged Turkish leaders to choose the diplomatic and political communication with Albania, abandoning the hostile behaviour.

At this point the Albanian situation is critical; fragmentation and economic crisis overwhelmed the territory. First of all, the religious diversity clearly emerged and showed its peculiarities in several fields. Albanian Christians represented the most culturally developed part of the entire population, as they had been always in contact with the Western world and culture. However, there were different opinions among them. From one hand, the Christian population living in cities had a feeling of oppression and hate towards the sultan as well as a sense of inferiority compared to those who have been converted into the Muslim religion. It was this profound aversion that brought them to be the main exponents of the rebellious initiatives. From the other hand, Christians of the mountains and rural areas did not share the same feelings, as they had always enjoyed a condition of freedom due to the lack of interference from the sultan. They had been allowed to use their customary laws and maintain the patriarchal family structure. As a matter of fact, this category of Christians have supported more than once the Ottomans in wartime. As concerns the Muslim population, they had not a central base as they were spread out in the territory and were living in different conditions<sup>6</sup>. They were the subjects of the sultan; consequently, they had special privileges, such as being established in the main

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<sup>6</sup> See footnote 1, p. 71

governmental and military position in Constantinople. Therefore, they did not harbour nationalist sentiments. The only insurgences from Muslims emerged only when they feared to have their privileges limited. This was the more effective manner to achieve their purposes as the sultan always satisfied his subjects in these cases. In many occasions, these revolutions have erroneously been interpreted as independence initiatives.

This situation led to a deep cleavage of the population and society making the coexistence of Christians and Muslims almost impossible. It has to be observed that, actually, these divergences did not come from the religious credo, but from the different treatment these groups received from the government. Secondly, Albania was not witnessing a blossoming economic and agricultural development. Indeed, the rugged territory and the lack of infrastructures hindered the commercial activities within and out the country.

In the meanwhile, the Turkish government was engaged with other external issues, such as the contention of Libya with Italy. This, coupled with other wrong steps of the Young Turks reformist movement, was the perfect occasion for Albanians to rise up and defeat the Ottoman Empire. Nationalist leaders – among which Ismail Qemali and Hasan Prishtina – were raising their voice and steer toward the independence process. Despite the continuous efforts of the Sublime Porte<sup>7</sup> to obstacle this movement, the leaders continued their struggle in order to achieve the strongly-desired independence. Albanians were constantly supported in this project by Austria and Italy, which, in turn, had individual expansionist objectives. A further approval of Albanian independence came from the groups that opposed the Young Turks movement and from the representatives of Durrës, who have always been supporters of the Ottoman power. After having acquired an outstanding confidence and self-esteem, rebels headed toward Prishtina and Skopje – the latter representing the area inhabited by Albanians but in which they were considered as a minority community. The intervention of Austria was immediate; it did not want to allow neither Serbians nor Bulgarians seize these zones. As a matter of fact, Albania was the point of

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<sup>7</sup> The central government of the Ottoman Empire

contention among all the neighbouring countries, as it still had not obtained a recognised international status, a step that the others had already reached. Serbia, Montenegro, Bulgaria and Greece created the Balkan League with the intention of expelling Ottomans from the Balkan region, but actually the *raison d'être* of this collaboration had an expansionist nature. Montenegro had already occupied Shkodër; Serbia aspired to have a passageway for the Adriatic through Durrës; Bulgaria wanted a part of Ohrid; and Greece aimed at southern Albania.

However, Albania has always been neutral in this perspective and contrary to the several Balkan federation projects. In order to attenuate the risk of being occupied, the 28<sup>th</sup> of November 1912 the Albanian nationalist leader Ismail Qemali declared the independence of Albania in Vlorë. Austria and Italy intervened by highlighting the right of Albania to become an autonomous state and have its territories back as they were inhabited by non-Slavic populations. Meanwhile, the Turkish government invited the involved parties to sign an armistice, which will be signed the 3<sup>rd</sup> December of 1912 by Serbia, Montenegro and Bulgaria, but not by Greece. Balkans represented a menace for the equilibrium of all the European order, reason why it was said that '*Balkans were the powder keg of Europe.*'<sup>8</sup> Therefore, the international powers tried to limit as much as possible the Balkan crisis and support Albania because it was a factor of equilibrium and peace in the region. Consequently, the 12<sup>th</sup> of December 1912 was held the first Conference of London in which the parties of the Triple Alliance insisted on the recognition of the autonomous and neutral Albanian state and on the definition of its borders, which still were not defined. Another serious issue was the Serbian aspiration on having access to the Adriatic. There emerged three alternatives concerning the definition of borders: one proposed by the Balkan League according to which the Albanian territory had to be a limited littoral zone with the assignment of Vlorë to Greece and Durrës to Serbia; the second option was advanced from Russia, which was similar to the previous, but with larger geographical scopes; the last proposal was of Italy and Austria, which wanted the traditional ethnic and geographic borders to be set. Despite this, the decision was left in the hands of the ambassadors

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<sup>8</sup> Biagini, Antonello, *Storia dell'Albania dalle origini ai giorni nostri*, Bompiani, Milano, 1998, p. 81

of the Conference. The latter, decided that the Ottomans had to relinquish the western occupied zones (such as Adrianople and the Aegean Islands) and keep only Constantinople. With the election of the new government, the Sublime Porte declared that this conditions could not been accepted. From the other hand, the interests at stake of the Balkan allies were particularly strong and they would not renounce to achieve them. In this regard, they set several conditions that the Great Powers had to satisfy if they wanted the conflict to be halted. They demanded the annexation of the Aegean Islands, the definition of Albanian borders, the war compensations and they did not accept the assignment of Shkodër to Albania. The Great Powers could not meet these requests and led the allied to sign the second peace treaty. In this way the Ottoman Empire leaves its destiny in the hands of the London Conference ambassadors. The latter, once again, had to deal with the definition of Albanian boundaries. Nevertheless, there were taken into account only southern borders and in the text of the Treaty of London there was made no reference to the independence of Albania. Additionally, there was institutionalised an international Commission that had the duty to re-establish the internal administrative order, whereas the principality was selected as the governmental system. The 10<sup>th</sup> of April 1914 the international Commission officially recognises Albanian Statute as a result of the definition of borders with the Protocol of Florence, which definitively rejects Montenegrin's aspirations on Shkodër, those of Serbia on the Adriatic (yet in turn it concedes Serbia other cities among which Prizren) and lastly, Greece obtains Ioannina. Consequently, the international powers recognise *de iure* the state of Albania, followed also by the Balkan countries.

This situation was doomed to continue also during the first World War, when Albania was subject to ongoing menacing pressure and occupation. From one hand, there was the Italian presence in the territory with a protectionist role but maintaining the control over Vlora; from the other, Serbia, Montenegro and Greece were obstinately applying pressure on Shkodra and northern Epirus<sup>9</sup>. The administration of

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<sup>9</sup> Epirus was that geographical area between the actual southern Albania and north-western Greece. It was part of the ethnic Albania, but after the Congress of Berlin in 1878 when borders were reshaped, it became a question of contention between Albania and Greece. Afterwards, with the Conference of

the country was left to foreign rulers, and this worsened the situation as they were neither able to solve the complicate Albanian question nor to prioritise the interest of its citizens. With the evolution of war, each country involved in the conflict created alliances with others and, hence, the Albanian question was left to its own devices. Only in 1920, the Italian Prime Minister Giovanni Giolitti took the lead on the issue. Another Conference of Ambassadors between France, Great Britain, Italy and Japan was gathered with the purpose of finally tackling Albanian borderlines. As a result, there were allocated some territories in favour of Yugoslavia concerning Shkodër, Prizren and Dibra. However, there were reconfirmed the guidelines defined in the Conference of London with an additional point: Italy was selected as the guarantor of the independence of Albania.

To sum up, in all these historic events there has been made no use of the word ‘Kosovars’, but they are referred to as ‘Albanians’. The reason is that Kosovo was not a state<sup>10</sup> during the Illyrian period, the Ottoman Empire or when independence of Albania occurred. There neither existed the idea. The question of Kosovo commences when that share of the Albanian population – living in the ethnic territory before the Ottoman occupation – was left out due to the reshaping of borders by international powers. Albanians were not represented by these borderlines because they were by far more numerous and spread out than those living within the resized area drafted in the new geographic map. As a matter of fact, millions of citizens were deprived of their right to have a land that they could call ‘home’. These populations became part of other states that were competing with one another in order to obtain a piece of territory in Albania. This was the case of Kosovo; it has always been a point of

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Ambassadors in 1912, the Great Powers decided to assign northern Epirus to Albania – namely from Korça to Saranda – and southern Epirus to Greece, including also Janina, Preveza, Arta and Igoumenitsa, which were inhabited by Albanians. This was the beginning of the question of Çameria, namely the area including – among others – the aforementioned cities, from where thousands of Albanians were obliged to leave their houses. Part of this population decided to move within Albanian borders or migrate into other countries; the rest of it decided to stay and consequently was subject to oppression, exchange of population or even to ethnic cleansing.

<sup>10</sup> From a geographical and governmental point of view. Kosovo declared its independence from Serbia in 2008 and it has not still been recognized with consensus by international community. Up until now, only 114 countries expressed their recognition.

contention between Albania and Serbia. The latter occupied and annexed Kosovo in 1912 and then integrated it into the Kingdom of Yugoslavia without the consent of Kosovo Albanians. In the post-war Yugoslavia, Kosovo was an independent region and it had the veto power both for the federation and Serbian government issues. Kosovo was part of Serbia only as a formality, as it actually enjoyed an important status of autonomy. Moreover, Kosovo was inhabited for the 90% by ethnic Albanians and the rest are minorities, such as Serbs, Bosniaks, Turks, Roma, Ashkali and Egyptians<sup>11</sup>. However, this situation of autonomy was doomed to end soon after as in 1989 Belgrade adopted a repressive behaviour towards Kosovo<sup>12</sup>. Kosovo Albanians did not react; instead, the majority of them preferred to carry on a peaceful resistance which led to the creation of a “parallel government institutions” system. Nevertheless, this strategy was not sufficient to improve Kosovar-Serbian relations as Belgrade continued to maintain a severe position. As a consequence, in 1998 the unavoidable conflict occurred between Serbia and Kosovo, where the latter was led by the Kosovo Liberation Army. The intervention of NATO halted the conflict the year after, because it represented a serious threat for the international order. From that moment, in Kosovo, international and regional bodies have intervened in order to refurbish the territory from the war and give an identity to this state. The United Nations interventions in the political, military and administrative fields with the UN Interim Administration Mission have brought about the declaration of independence in 2008 and the creation of the Kosovo statehood. These objectives were brought forth by EULEX, which was a EU project. Despite this, Serbia has never recognised or accepted the independence of Kosovo; it has always considered it as a part of its territory.

## **1.2. The origins of violence against women in Albania**

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<sup>11</sup> Bertelsmann Stiftung, *BTI 2010 Country Report — Kosovo*, Gütersloh: Bertelsmann Stiftung, 2009, p.6

<sup>12</sup> Ivi, p.4

### 1.2.1. Albania before the communist era: the influence of the Kanun and the question of honour

The question of honour in Albanian society has always been part of its culture. It was the central issue in the so-called Kanun of Lekë Dukagjini, namely a customary code that emerged during the 1400s in north-eastern areas with the aim of keeping traditions and customs save from the Ottoman influence. The Kanun was orally transmitted until 1933, when a priest, Father Shtjefen Gjeçov, published the first written version. Furthermore, it is divided into 8 chapters, each one addressing a thematic aspect of citizens' life. In line with tradition, the family was seen as a clan and structured into a patriarchal model in which the father was its main component. The father, as the patriarch of the house, was the ruler and as such he deserved exceptional respect and all the other components had to obey him. If the head of the family died prematurely, the older son had to take his place. The loss of male figures was a frequent occurrence in the pre-ottoman society and it was mainly due to a tragic phenomenon: blood feud. The latter was explicitly sanctioned in the Kanun and, thus, it was a legitimate act. At the base of this concept stood the revenge of the death of a male member of the family. One life corresponded to another one; therefore, if a male component of the clan was killed, his life had to be revenged with another man of the offender's family. This was an ongoing situation which was doomed to last until the men of both families were extinguished. The blood feud could be temporary suspended only with a compromise, known as 'besa'<sup>13</sup> which was defined through the mediation of the elders of the village; it could even be halted if the family of the offender paid a compensation or gave for marriage a girl of the clan to a man of the victim's family<sup>14</sup>. Nevertheless, this alternative was not the most frequent for two main

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<sup>13</sup> *Besa* – literally meaning 'promise' – was the period of time in which the offender had the right to circulate freely throughout the village without the risk of being killed. It was a 24 hours permission that the family of the victim had to concede him. When the 24 hours had expired, the elders of the village could extend *besa* since one month. After that, the offender could have been killed in every moment, if he was caught out of the walls of the house. It is important to highlight that this promise was never breached, as Albanians fully believed in the word of honour.

<sup>14</sup> In this case the agreement was called '*pajtim i gjaqeve*' which means blood bond (this translation was made by the author).

reasons: in the majority of the cases people used to live in poverty, so that they did not have the sufficient quantity of money or goods required; alternatively, they did not want to collaborate with their *hasëm* (debtor of blood)<sup>15</sup>.

In addition to honour, another aspect is absolutely relevant here: that is hospitality. The guest had to be hosted and treated even more warmly than any other component of the family. It was not necessary to know the person in question; if he needed a shelter, the hosting house would become his home for the entire period of time he had the necessity to stay there. In this perspective, the role of the woman is essential. The latter is a central figure to almost all parts of the Kanun and her subservient condition is repeatedly highlighted. She has to preserve the honour of the family – or as it is written in chapter 7 of the code '*the wife is the honour of the family*' or '*a woman distinguishes a good house from a bad house*' – and a way to demonstrate this is by treating cordially the guests. If the woman does not fulfil this condition, her husband has the right to kill her<sup>16</sup>. This shows how relevant was the preservation of morals; it was even more important than one's wife life. Nevertheless, women – together with children – could not be subject to blood feud because '*the blood of a man is not equivalent to the blood of a woman*'<sup>17</sup>. Also in the part dedicated to the marital life, disparities between women and men are evident. Whereas the wife has to preserve the honour of the family and of her husband, by obeying him, not leaving him, cooking, cleaning and giving him healthy children – especially sons – men were not subject to such obligations. As a matter of fact, if a man decided to leave his wife, he would only lose the money he paid for the dowry. In addition, the man was considered the owner of his wife, having the right of beating or even killing her in case of dishonour. In chapter 3 there is addressed the right of inheritance, a benefit that belongs only to men and not to women neither from her father nor her husband. As it

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<sup>15</sup> Translation of the author.

<sup>16</sup> According to the Kanun, when the girl was given to her future husband, her family gives the groom a bullet with which he had the right to kill her in case she did not obey him or dishonoured the family. However, this had to be proved by the man, otherwise if he murdered his wife without any tangible reason, he could become a victim of blood feud with the bride's family.

<sup>17</sup> Dragovaja, M. and Stanfield David, *A comparative study of the customary laws of mountain communities in Albania and Dagestan*, Tirana, 1996

was previously mentioned, the ancient familiar system was structured into a patriarchal model; therefore, the inheritance was transmitted by following the family tree, based on blood relations. A daughter was not part of the family tree, as she would not maintain the surname of her father once she would be married; she did not have 'the same blood' as her father. On the other hand, neither as a wife the woman was entitled to inheritance rights. The head of the family always passed on their goods to their male children.

The Kanun of Lekë Dukagjini had an intense impact on the development of beliefs, customs and especially mentality of that era. It was from this period that the patriarchal mentality – that still predominates in Albania and Kosovo – emerges as a lifestyle that will have serious repercussions in the enhancement of society. An inevitable consequence is unquestionably the role of women and their backward condition. These concepts will be repeated in many circumstances in the following paragraphs and chapters, as they had a key role in women's life but also in particular moments when political transformations were in process.

This chapter is divided into three particular periods of time, namely the period before, during, and after communism because there can be noticed an evident transformation of women's situation throughout these years.

The totalitarian regime in Albania started in 1945 when Enver Hoxha – who at that time was the Secretary of the Labour Party – took power and held the political authority until his death in 1985. Before tackling this event, it is necessary to focus on the pre-communist reality and analyse the conditions women were subject to. During the late 1920s and early 1930s, Albanian society was witnessing a difficult situation due to a pronounced economic and political crisis. Moreover, in 1928 there has been made a change from the parliamentary government into a constitutional monarchy under the guidance of the King Zog I who received economic and military support from the Italian government. This cooperation gave to the latter the legitimacy to expand its control over the Albanian territory. However, this coexistence rapidly failed; it lasted until 1939 when Italian military forces invaded the country. During his reign, King Zog I adopted several reformist measures, among which the creation of the Civil Code, Penal

Code and Commercial Code, based on the French and Italian models. Therefore, traditional codes, such as the Kanun, were abolished; as for the marital life, there was introduced divorce, assigning to women same rights and responsibilities as men and also inheritance rights<sup>18</sup>. Another positive achievement for women was the establishment of the minimum marriage age at 16 for girls and 18 for boys in the Civil Code. Nevertheless, this right was not totally enjoyed by girls, who were frequently subject to premature or arranged marriages. This was a situation in which women were confined to the domestic life and considered as servants of their brothers (when they were nubile) and then of their husbands. However, in order to achieve *de facto* the recognition of their rights, women should have been literate and accomplish at least minimum levels of education and culture, as female illiteracy was up to 90%<sup>19</sup>. This represented also a restriction of the possibility for them to achieve emancipation and participate in political and social life. The aim of the feminist movement was to increase the number of educated women in society with the purpose to perceive an improvement of their contribution not only in social life but also in family life. They would be more reasonable and responsible wives in managing domestic economy and duties and, at the same time, excellent educators as mothers. They were responsible for the values and traditions transmitted to their children, as the former was the breeding ground for the cultivation of national sentiments and the growing of a literate generation. In this way, the woman was seen as a collaborator of her husband because she supports him in educating their children with the aim of achieving a more flourishing nation<sup>20</sup>. Thus, looking the situation from this perspective, women are equal to men in their contribution to the development of society. These were the premises for the creation of the “Albanian Woman” society, which was established by initiative of the Princess Sanije Zogu in the early 1920s with the aim of supporting the

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<sup>18</sup> Luku Esilda, “Aspects of the feminist movement in the Albanian Monarchy(1928-1939)”, *European journal of social sciences – education and research*, Vol. 1, Issue. 2 (2014), p. 286

<sup>19</sup> Kalaja, Daniela *Condizione, emigrazione e prospettiva di genere* in Devole, R. and Paravati, C. (a cura di) *Donne d’Albania: tra emigrazione, tradizione e modernità*, Edizioni com nuovi tempi, Roma, 2017, p.23

<sup>20</sup> See footnote 18, p. 287

activities of the feminist movement<sup>21</sup>. Nevertheless, the persistence of the patriarchal mentality was a significant obstacle for the achievement of this objective. Therefore, not only was this organisation concerned with the modernization of women's condition, but also with the fight against customs, traditions and men's mentality. In these years emerged also the first journals tackling the situation of Albanian women with the aim of denouncing their condition, as it was far from being comparable to that of the civilised countries. The "Albanian Women" society had a strong impact on society and it successfully spread out in twenty branches throughout the territory. Each of these centres contributed to the improvement of young women education as well as supported poor and orphan girls by providing them with coal or clothes. School was a means not only for the reduction of illiteracy but also for saving young girls from premature marriages. They also organised meetings for women in order to allow them know each other and share opinions. As a consequence, women would be more active in social life and their condition would progressively advance. However, shortly afterwards the women society encountered several difficulties due to the occurrence of fascism, economic crisis, slow social development, etc.; hence, it had to cease its activities. Moreover, the task of this organisation was taking a different direction: it was becoming a charitable entity rather than an institution focused on the progress of women's condition. This was also caused by the cleavage of the feminist movement, characterised by a double prospective: one towards the achievement of gender equality and the other towards the preservation of the archaic role of the woman. The influence of the Kanun and its principles of patriarchal mentality as well as the conception that woman is the property of her man were still influential. This made every progressive effort insignificant as the habits and stereotypes were difficult to eradicate.

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<sup>21</sup> Ivi, p.288.

### **1.2.2. Women's condition during communism: apparent situation of gender equality**

After the Second World War, the European and international scenario underwent a radical change that led to the emergence of the so-called blocks: East versus West. In this context, each country had to make a choice, whether to align with the United States' capitalist ideology – market economy and pluralist political system – or with the Soviet Union communist beliefs – controlled economy and a unique party political system. The latter was the mother cell for almost all the eastern countries, including Albania as well. This was a strategy of this insecure country, which was overwhelmed by economic crisis and continuous political pressures from its neighbours. In this way, aligning with Moscow, Albanian leader Enver Hoxha gained the protection from Belgrade, as Stalin was in conflict with the head of Yugoslavia, hence Tito. The latter encompassed also Albania in its project of building a federation of countries under the same driving power. This was another reason that convinced Hoxha to maintain sound relations with Stalin. He benefitted from the economic aid that Moscow addressed for the restoration of the most solid sectors. Despite this, economic stagnation was doomed to persist in Albanian society. The liaison between Moscow and Tirana showed its first signs of perplexity when the former started new contacts with Belgrade. As a consequence, Hoxha identified another possible ally, namely the communist China. After approximately ten years of collaboration, China – which was becoming an influential power in the international scenario – lost its interest towards Albania. This episode occurred in 1976 and from that moment, the Albanian dictator decided to free the state from foreign interference, reason why he closed the borders. He refused to have any contact with the outside world and to concentrate all its forces into the internal development. This resulted into a fierce pressure over citizens as well as intensive labour. The latter concerned especially women. They were inserted into workplaces and were given the possibility to study, reducing disproportionately the percentage of illiteracy that before communism amounted to more than 90%. While in the previous era women were confined into domestic life – being subject to unpaid

work – and excluded from decision-making and political life, Enver Hoxha decided to give them a voice.

During the 1974-1978 legislature women comprised 35,2% of the presence in Parliament<sup>22</sup>. Moreover, women had the right to divorce,<sup>23</sup> and arranged and premature marriages were outlawed. There was created the Women's Union, with the purpose of advancing female emancipation. Several initiatives were crucial for the Union, such as the organisation of congresses in which women had the right to gather and share common beliefs as well as to find the breeding ground for the achievement of gender equality. Hoxha was able to manage the contribution of women in an astute manner. He fomented their spirit of revenge and address them towards the idea that working equally to men – in terms of force and hours – would pave the way to gender equality. Nevertheless, for some aspects this theory could not be valid. First of all, work was unevenly distributed, geographically speaking. Rural communities remained immune from the efforts made towards women; the cultural situation in these areas was stagnant as people were still immersed in traditional ethics and archaic lifestyles. Secondly, campaigns for gender equality were beneficial only for paid employment, but it was not the same for unpaid work, namely housework<sup>24</sup>. Women had to face full-time work and, when at home, they had to manage household labour and dedicate to childcare. They had two professions: a social one being employees and a private one being wives and mothers. Women represented the reproductive machine of society whereas men were the productive force (breadwinners). Division of household labour was still not a matter of Hoxha's reforms. On the contrary, he abolished abortion and adopted other coercive measures so as to increase birth rates and, thus, the level of population. In the late 1980s the Albanian population grew of 2,3%<sup>25</sup>. This required women to make enormous sacrifices in order to be active both in domestic and public life. Moreover, traditional gender roles were perceptible in domestic reality, hindering the progress of women's condition in Albanian society and, at the same time,

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<sup>22</sup> See footnote 19, pp.24-25

<sup>23</sup> The right to divorce was also sanctioned in the Albanian Constitution of 1946

<sup>24</sup> Kushi, S., *Gendered legacies of Communist Albania: a paradox of progress*, Opendemocracy, 2015, p.3

<sup>25</sup> Ivi, p.4

incrementing the risk of domestic violence. These aspects would be the bases for the withdrawal of women from public life after the fall of communism.

### **1.2.3. Women in the transition period: a return to the patriarchal mentality**

The totalitarian regime falls with the death of the dictator Enver Hoxha in 1985. From that moment onwards, Albania had to deal with a serious and long-lasting situation of crisis. The political set-up was completely destroyed and stability was reached only in 1992 with the institutionalisation of a democratic system by Sali Berisha, who consequently took the presidency. In these empty years from 1985 to 1992 a chaotic society had to cope with unemployment, collapse of social and healthcare services, and especially poverty.

As concerns women, they were the category that mostly felt the effects of this deterioration. They retreated from labour market but also from political and public sphere. Scarce possibilities of employment and lack of childcare structures closed them within the walls of the house. Moreover, this created economic dependency on male figures – fathers or husbands – who were the only members of the family to have more access to the labour market. However, neither men could escape from the possibility of being victims of this critical moment. It was in this particular framework that gender stereotypes such as those according to which women had to be limited to their domestic life, whereas men could dedicate to public life, re-emerged with more intensity. Suddenly, Albanian society returned back to some decades ago, when patriarchy was the ruling value of citizens' life. It seemed as the progresses – even though they had been partial – made during communism had never been achieved. All sectors were male-dominated; this tendency affected also the political system and institutions. The number of women representatives in the Parliament drastically decreased in the first post-communist legislature. Nevertheless, the woman of the new era dedicated to an innovative sector, namely non-governmental organisations. Unsurprisingly, female NGOs did not meet a blossoming success in that particular historic moment due to lack of funds and raise of a new sentiment among the male

category: revenge. Men felt the menace of women's emancipation during the communist era. They had always been accustomed to the idea of being superior to women. For a man, working next to a woman, was a sign of minimisation of his authority. The female category was not considered a valid working force, albeit women had demonstrated to be able to face a double work. Therefore, women in their path towards emancipation had to struggle with the dominator, not only in society, but also at home, the place where they mostly risked to be abused and harassed.

As it can be conceived, men had the power in post-communist Albania. One of the causes of the female NGOs failure was related to the fact that men were not interested in this sector; in turn, they were focused on political and entrepreneurial careers<sup>26</sup>. The question of gender disparity started to be considered only between the end of 1990s and the beginning of 2000s. From 2006, a first set of laws on women's rights were issued. The gradual progress of the legislative framework had brought about several advantages; however, comparing Albania to other civilised countries, it can be noticed that for this country the path towards gender equality is still long. The transitional process has been a difficult obstacle for Albanian government – as for other post-socialist countries. Its effects are perceived also in the current era; despite the fact that Albania as a state has made remarkable efforts to fulfil a vast array of progresses and meet important international standards from different points of view, it has still much to accomplish.

#### **1.2.4. The (in)existence of feminist movements**

A curious aspect of the woman question in Albania is the noiseless path of feminist movements. The first women associations were set-up in early 1900 in urban areas with the aim of raising awareness about women's rights and highlighting the urgency to increase the levels of education. During the 1930s local newspapers reported the

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<sup>26</sup> Danaj, E., *Patriarchal norms and expectations cannot be brought down overnight*, in *Talking about feminism (part 2): prominent feminist from Albania talks about the neoliberal influence on the gender perspective*, Kosovo 2.0, Albania, 2018, p.4

advancement of western countries in respect of this issue and encouraged Albanian activists to undertake the same attitude in order to inform women about the existence and action of feminist movements<sup>27</sup>. At the same time, Princess Sanije Zogu launched the first organisation of women, called Albanian Women society with which she intended to help needy girls and women and to support the initiatives of the feminist movements. The women society spread out rapidly throughout the territory with the establishment of several branches in twenty different cities from north to south. It participated also in international women's congresses and achieved notable results. However, with the beginning of the Second World War these movements were suspended. Wartime women were depicted with weapons in their hands, fighting in the Anti-Fascism Liberating War. In this occasion, Albanian Women's Movement was created and it lasted also during the communist period when it was associated with the Communist Party. It was recognised as an award for partisan women's resistance during the war<sup>28</sup>. Nonetheless, as it was mentioned in the previous paragraph, the fall of communism brought back patriarchy in society after being abolished for 40 years, leading to the domestication of women. Obviously, in this historical period it was extremely difficult to see women marching and claiming their rights exposing provocative banners against sexism. This scene has never belonged to the memories of an Albanian citizen. Moreover, what discouraged women to engage in activism was the social tendency to stigmatise those who were associated to every form of feminist activities. This have had heavy repercussions in the long-term, leading to the transformation of activists' action into a silent struggle. Several surveys among NGOs, women shelters directors as well as activists have been made in order to deepen the causes of this phenomenon. From these researches has emerged that these people tended to distance themselves from being defined feminists. This reaction can be explained by the fact that the Albanian Women's Movement, that emerged during the totalitarian regime, was under the Communist Party. With the decline of communism, patriarchal family was the new ideal and image of the society. Men returned to be the

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<sup>27</sup> Danaj, E., *I am not a feminist but...: women's activism in post-1991 Albania*, Gender, Place & Culture, 25:7, 994-1009, 2018, p.4

<sup>28</sup> Ibidem

imposing figure and the public sphere belonged mainly to this gender. Therefore, it was an era in which it was difficult to overturn this position. As a matter of fact, as Ermira Danaj writes in her essay, feminists were seen as *'aggressive enemies of male privileges'*<sup>29</sup>. This connotations on feminists as communists and a menace for men became a stereotype after the decline of communism. Obviously, this weakened the enthusiasm and spirit of initiative of feminist movements. Additionally, the movements were shaped under a neoliberal approach, which means that women's meetings consisted more of conferences – passive efforts – rather than of protest – active efforts. Albanian community can be classified amongst those which had not sufficiently raise their voice in front of injustice and unacceptable conditions of women's life. There can be perceived a feeling of fear and intimidation in being associated to feminist activists, namely to people who do not want to disturb the *status quo*.

Another possible justification of the reluctance of feminists in being referred to as such, was the fact that among them there was missing the knowledge on what feminism actually is. Indeed, when interviewed, the majority of them was not even able to give a definition of this term. Moreover, the lack of female debate in society further augmented the ignorance over this theme not only among citizens but also among those institutions that directly deal with women's protection.

In this perspective, also the political party system has had an influence on the nature of social movements. In Albania, during the transition process there have emerged particularly two factions: the Democratic Party (the right) and the Socialist Party (the left, namely the successor of the Communist Party). Left and right in Albania have always been in contrast and competition with each other. The recurring internal cleavages within both of them has led to the formation of a further party, the Social Movement for Integration, which was a branch of the leftist group. However, it has not maintained a steady position throughout the course of the last legislatures, swinging its sympathy from the Socialist Party to the Democratic Party depending on electoral circumstances. In Albania both the left and the radical left ideologies exist; however,

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<sup>29</sup> Ivi, p.9

they do not coincide with each other due to divergent visions on social changes. The radical left has been the leading force of Albanian organisations and movements, which have a Marxist mark and aim to contrast neoliberalist reforms and policies, as well as the values and practices of the contemporary capitalist system<sup>30</sup>. Left-wing organisations' initiatives start from the idea of justice, equality, and human rights; however, these values do not apply to feminist issues and they are promoted only for electoral scopes. Moreover, protest has not a strong power in Albanian activism, as civil society does not engage in it for the reasons that have been defined in the first part of this paragraph. The issues that have to be brought forth from activists are usually handed by political actors for electoral purposes. In addition to this, sometimes occurs that also members of left-wing organisations engage in politics, threatening the founding nature of such organisations. The most famous movements that have recorded an important participation of the civil society is the protest against the destruction of nuclear weapons in Albania in 2013<sup>31</sup> and the students protest against the increase of university fees in December 2018.

As concerns gender equality movements, from 1998 an organisation called "Today for the future" is focused, among other objectives, on the emancipation of women, gender equality and domestic violence issues. A part from assisting young girls and women victims of domestic violence (especially in northern areas) with psychological, legal aid as well as providing them with information and protection, this network has been promoter of various aware-raising campaigns. Its initiatives are supported by a vast number of international organisations, among which the United Nations and European Union as well as local entities. Among the campaigns led by the "Today for the future" Network there is the recurrence of the Orange Day the 25<sup>th</sup> of every month in which there are organised activities that recall the importance of preventing domestic violence and protecting women victims of abuses and harassments. Another initiative led by this organisation is the adherence to the international 16 Days of Activism Campaign Against Gender-Based Violence which

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<sup>30</sup> Këlliçi, K. and Danaj, E., *Radical left in Albania and Kosovo: differences and similarities*, De Gruyter Open, 2017, p.8

<sup>31</sup> Ivi, p.17

lasts from the 25<sup>th</sup> of November to the 10<sup>th</sup> of December<sup>32</sup>. Additionally, the International Women Day is always celebrated and, with the mediation of media, it becomes an occasion in which women's emancipation and rights are promoted with the aim of informing the society about these issues and fomenting their interest. This organisation acts as a springboard for the contemporary women's movement in Albania. Nonetheless, this effort is not sufficient to raise the voice of this category as more political support is needed.

#### **1.2.5. Causes of violence: the perpetrator and the general atmosphere of society**

As it has been asserted in many occasions, the roots of gender stereotypes in Albanian society are the outcome of centuries of patriarchal ideologies that have been transformed into a way of living, especially for rural populations. The Kanun has been the Bible that has ruled their behaviour and has been respected even more than state laws. The backwardness of citizens' mentality has been reinforced also by the promotion and exaltation of the male figure as central to the public sphere. The consequent exclusion of women from this field has led to the transmission of the message that men are superior to women and the public-private task division is made on the basis of gender. The transformation from gender stereotypes into gender discrimination has been immediate. What was an ideology has become a practice in daily life. Women are explicitly discriminated and this act has been gradually assimilated as a normal custom, an habit, as something that women deserve because they do not meet men's expectations. What is appalling is that this belief belongs also to victims, namely women and this has made them a prey of men's abuses. This is what has legitimised the situation of disparity for so long in Albania. As the General Recommendation no. 19 of the United Nations Committee on the Elimination of Discrimination Against Women mentions "*Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread*

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<sup>32</sup> <http://www.cdc-tff.org/web/en/category/campaign/>

*practices involving violence or coercion such as family violence and abuse, forced marriage, dowry deaths [...]*<sup>33</sup>. Furthermore, there is a widespread vision of public opinion according to which violence towards women occurs due to volatile socio-economic conditions. What is disturbing is that this theory is also shared by professionals whose work is to protect citizens, but in particular, women (for instance, police, legal practitioners and health care professionals). However, they ignore other factors that adversely affect women and worsen their situation, such as political, cultural, religious, ideological and environmental features. As a matter of fact, UNICEF Albania together with The National Committee of Women and Family has conducted a survey in order to deepen the causes that lie behind the acts of violence towards women.

The causes of violence have been divided into two categories: the first concerns people who commit and experience violence, respectively perpetrators and women; the second one refers to the general atmosphere of society, hence mentality and socially accepted behaviours<sup>34</sup>. In the first case, it has been noted that in the 80% of the cases what triggers violence is alcoholism. The latter is then followed by jealousy (76%), unemployment (52%), poor living conditions (50%), stress (43%), sexual impotence (22%), various inferiority complexes within the couple (16%), intellectual, educational, professional rivalry within the couple (19.62%), professional incompetence (9%), unwanted pregnancies (10%)<sup>35</sup>. Moreover, other factors can be added to the abovementioned, such as the fact that offenders become abusers because they have been witnesses or victims of violence in the past. Other causes can be related to the negative relationships between partners leading to lack of communication and respect among one another. From this list cannot be excluded property disputes, unstable mental health or depression of the offenders, and also insignificant motives.

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<sup>33</sup> Committee on the on the Elimination of Discrimination Against Women, General Recommendation No. 19, par.11

<sup>34</sup> The National Committee on Women and Family and UNICEF, *Mapping of existing information on domestic violence in Albania*, Tirana, 2000, p.11

<sup>35</sup> Ibidem

On the other hand, within the second category of causes of violence there are included first and foremost patriarchal mentality and traditions deriving from ancient codes of conduct (Kanun). They highlight the position of inferiority of women and the idea that the latter is a property of men; these are aspects that have been inherited until current days. High rates of female unemployment is a factor that is worth to be included in this list. In the majority of the cases, men are the only members of the family who have a salary and, therefore, this inevitably creates a relation of dependency between wife and husband, a phenomenon that is also known as economic violence<sup>36</sup>. A possible form that economic violence takes is the domestication of women, namely the situation in which she is confined into household labour (unpaid work) without having the opportunity to participate in work market and public life. The lack of economic independency leads women to withdraw from reporting their perpetrators. First of all, if a woman decides to divorce from her husband she has to face economic difficulties due to unemployment, hence she would not be able to support herself and – if the case – her children; secondly, she would not be able to cope with legal expenses; and lastly, she would run the risk of not being accepted by her parents anymore, as they may be worried about the others' prejudice. This statement is reinforced by another significant factor that emerges when studying the influence that public opinion has in the behaviour of victims of violence. It refers to the tendency to promote forgiveness of perpetrators. This means that during the denunciation and legal process, women are frequently persuaded to pardon their offenders in order to keep family together and respect traditional family values. The police, judges and also family members are those who try to convince women not to denounce, as it is common currency to consider domestic violence as a private issue<sup>37</sup>.

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<sup>36</sup> Sara De Vido in her book *Donne, violenza e diritto internazionale: La Convenzione di Istanbul del Consiglio d'Europa del 2011* when analysing the different dimensions and forms of violence defined in the Istanbul Convention, mentions also economic violence. It refers to all the acts committed by a man towards a woman that lead the latter to be economically dependent on the former (p.40).

<sup>37</sup> The public/private divide is a question that appears to be actual in Albanian society. This situation corresponds to the post-war era for European countries in which the private sphere of individuals was not a duty of the state. With the advancement of international law, the distinction between public and private sphere was overcome. However, this result cannot be associated with Albanian reality, in which there is still a long path ahead.

Therefore, women have to bear a double burden: discrimination within the familiar context and stigmatisation from the public opinion. As it can be conceived, for Albanians public opinion is more relevant than the safety of victims. The question of honour is still a prevailing phenomenon and it hampers the respect of human rights.

#### **1.2.6. The most common forms of discrimination and violence towards women in Albanian society**

In Albania, as in developed countries, exist disparate forms of discrimination against women. In this paragraph will be described from the minor form of discrimination to the most serious one. Having said that, the first issue to be dealt with is gender inequality. It may appear to be an obvious and insignificant phenomenon compared, for instance, to honour killings. Nevertheless, gender inequality stands at the basis of every crime – serious or not – committed against a woman. It transpires in everyday life and in almost every field, from domestication to unequal salaries. Positioning women behind men, distancing them one step backward, deprives them from giving their contribution to society. Including women into those sectors in which they are not considered suitable, would give evidence that their participation is paramount for the well-functioning of the public machinery. This statement can be further reinforced if we consider education rates, in which women increase the average by representing the highest percentage of students who conclude academic studies. Moreover, inclusion of women would improve the interaction between genders, as women and men would have the opportunity to work together, exchange views, and evaluate each other's capacities.

In this context it can also be taken into account the minimal participation of Albanian women in political life and decision-making. This has always been an obstacle for the advancement of female emancipation in Albania. The inclusion of women in public life and in political positions has been a matter of discussion of several NGOs against the government. Several efforts have been made to introduce this issue among the political priorities, resulting in the drafting of a law that provides minimum quotas

of women in leading positions. Despite this, currently in Albania, as in other countries, women are still under-represented in politics. In 2013 only 15% of women were members of the Parliament, ranking Albania among those countries with low female representatives in national parliaments<sup>38</sup>. This percentage is gradually increasing; for instance, in 2017 it reached 23%. However, these numbers do not satisfy the standards required by Albanian legislation on gender equality and also by the international measures that the government has adopted throughout the years. Another aspect that has to be enlisted among the reasons why women have been distanced from the political field is the aggressive nature of this sector. The latter, having been dominated by male representatives, has become a difficult environment for women, characterised by violent behaviours and language. Therefore, despite improvements that have been made in theory (adoption of laws), there is a need to transform them into concrete results (implementation of laws).

The phenomenon of *burrënesha*<sup>39</sup> is an interesting issue worth to be mentioned which is not usually dealt with in legislative texts, but it is a popular theme in the Albanian literature. In northern areas, namely those in which traditional customary laws have always predominated, the presence of a male figure in family was essential. In this context, blood relations and inheritance through the family tree (involving only male children) were founding values. For this reason, when boys were born it was a day to celebrate; on the contrary, it was less enthusiastic when girls were brought into the world. Daughters were not seen as members of the family, because one day they would marry and, thus, would become their husbands' property. Therefore, it was fundamental to have only male children in order to bring forth the family surname<sup>40</sup>. If this was not possible, apart from denigrating the woman for not "being able to give birth to a boy", it was necessary that a girl became the man of the family. The former

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<sup>38</sup> United Nations Women, *Women's participation in politics and decision making in Albania: public perception survey 2012-2013*, UN Women, 2013, p.6

<sup>39</sup> In Italian "vergini giurate", in English "sworn virgin"

<sup>40</sup> Only men maintained the original surname because when women got married they had to take the surname of their husband

had to abandon her life as a female person and completely act as a man<sup>41</sup>. Therefore, she had to swear that she would never have sexual relationships with a man and that from that moment she assumes the role and responsibilities of a man. This is why they are referred to as sworn virgins.

Human trafficking is another appalling phenomenon that has been particularly threatening for the safety of Albanian women. All started with the end of the authoritarian regime, during the '90s. This event represented the end of 45 years of closure and impositions, and when it occurred Albanian citizens took the opportunity to cross the borders aiming at Europe. The desire to escape from a critical economic, social and political situation, to leave the country for a more prosperous life, caused a sequence of effects that went against the well-being of citizens. It was in this context that human trafficking emerged as a practice of exploitation of young girls and women. Albania was categorised in the second Tier, namely as a country of origin and – as it was not the only in the region – transit of human beings, transporting women in Western Europe for prostitution<sup>42</sup>. Therefore, human trafficking has three different forms: internal trafficking, referring to prostitution that develops within national borders; external trafficking, namely the transportation of victims in European countries; and recycling of victims, which is the result of repatriation of trafficked victims from the countries of destination.

As concerns internal trafficking, it has usually been considered by national entities as a voluntary activity, reason why victims can be subject to conviction, as they are considered responsible for illegal crimes. However, prostitution cannot be considered voluntary for several reasons. First of all, it is an act punished by the law, therefore women could risk to be sentenced. Secondly, they would be pilloried by society and would have a stain on their reputation. They would be no more considered women worth marrying and would not be the symbol of the family's honour, as tradition requires. Thirdly, the main reason why they decide to be involved in

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<sup>41</sup> They used to smoke and drink alcohol, sit in the men's room (*oda e burrave*), they were allowed to hold a weapon and had to carry out men tasks.

<sup>42</sup> Psycho-social center "VATRA", *Annual study report 2006: Study of trafficking in human beings*, Vlore, 2007, p.8

prostitution is poverty. Indeed, victims come from difficult economic situations and this is viewed as the only chance to have an income and maintain themselves. As a matter of fact, the majority of them generally belongs to the group age 19-25, from rural areas, and from the Roma and Egyptian communities (50.2%)<sup>43</sup>. Lastly, they may be exposed to high risks of being abused or even killed from their exploiters<sup>44</sup> or clients, who are usually people that make use of drugs and alcohol. This further increases the risk of contracting sexual diseases and the possibility of unwanted pregnancies. If the profile of the victim is taken into account, it can be noticed that for internal trafficking, women and girls are also from the group age 30-40, and their salary is considerably low as it adapts to the economic level of the country.

On the other hand, external trafficking has some different characteristics. In early 2000s this phenomenon easily extended due to the lack of border controls, especially those between Albania and Greece, Macedonia and Kosovo. As a matter of fact, from 2000 to 2006 the ratio between internal and external trafficking was 20% to 80%<sup>45</sup>. Nevertheless, with the adoption in April 2006 of the Moratorium for banning motor vessels from all the points of the coastline from which women were transported, the phenomenon was drastically reduced<sup>46</sup>. Indeed, the ratio between internal and external trafficking rapidly changed: in 2009 it reached 50% to 50% and in 2010 it was 70% to 30%<sup>47</sup>. Moreover, after being urged by the countries of destination, Albanian government took also other measures for border controls and repatriation of victims<sup>48</sup>. As a result, in 2006, 117 women were repatriated, 28 of them being

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<sup>43</sup> Committee on the Elimination of Discrimination Against Women *Shadow report on situation of women and girls in the Republic of Albania*, Albania, 2007, p.26

<sup>44</sup> Albanian traffickers were categorised as extremely violent; they only started to change their behaviour in 2006 when the government issued new laws on the punishment of human traffickers. Apart from becoming smother, they also used to provide exploited women with a salary and to protect them. As a consequence, the number of reports towards traffickers also decreased.

<sup>45</sup> Psycho-social center "VATRA", *Annual report 2010*, Vlore, 2010, p.17

<sup>46</sup> Psycho-social center "VATRA", *Annual report 2009: Analysis of the actual situation of the trafficking in human and domestic violence in Albania*, Vlore, 2009, p.21

<sup>47</sup> Ivi, p.17

<sup>48</sup> Repatriation breaches the principle of non-refoulement sanctioned in article 33(1) of the UN Convention on the Status of Refugees, according to which refugees cannot be returned in a "territory where his or her life is threatened for reasons of race, religion, nationality, membership to a particular

clandestine and the rest trafficked women and girls<sup>49</sup>. Nevertheless, this attempt negatively affected the persons involved due to the fact that identification of victims in borderlines was inaccurately conducted. Victims of human trafficking had the right to be identified and assisted before being taken back home. This was clearly enshrined in the Palermo Declaration, according to which countries of origin and those of destination have to provide adequate treatment and assistance to trafficked victims during the repatriation process. However, only United Kingdom, Germany, France and Belgium have fulfilled these duties<sup>50</sup>. External trafficking victims come mainly from rural areas and there exist several manners in which they are usually recruited. From 1997 to 2000 traffickers used to physically coerce women and girls to engage in prostitution. However, due to the reinforcement of laws pursuant to which they could risk to be condemned from 20 to 25 years, they abandoned this behaviour and adopted other tactics. The major percentage of victims has declared to engage voluntarily in external trafficking. From the other factors there can also be enlisted false engagement, which means that traffickers used to marry a young girl and then involve her in trafficking. A similar deceit was used by promising these women a job abroad and a more prosperous life. Lastly, there have been noticed cases of kidnapping and also cases when girls were sold by their families in turn of low monetary compensations. The first efforts to fight human trafficking were launched in the early 2000s with the creation of several national strategies and state structures against the exploitation of women. As a consequence, Albania lost the status of country of transit of victims, but it still remained a country of origin due to corruption and other problems related to human trafficking. As a matter of fact, it was true that the external trafficking rates were decreasing, but at the same time those of internal trafficking were inevitably going at extreme levels.

Moreover, the repatriation of trafficked women led to the creation of the third form of human trafficking, namely the re-cycling process. Indeed, once deported in

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social group or political opinion.” Therefore, without correctly identifying victims, there is not possible to understand which was the reason behind the emigration into an European country.

<sup>49</sup> See footnote 42, p.13

<sup>50</sup> See footnote 45, p.22

homeland, the victims do not find adequate institutions for their protection, work opportunities or a welcoming society. In the first years, even though there entered into force a law for the protection of victims, it was not properly implemented. There did not exist solid reintegration programmes; those adopted initially required high costs to be put into action. Furthermore, exploiters have created solid criminal networks and relationships with politicians, that made them enjoy a safe position. Therefore, victims tended to lose the trust on the state and its institutions. Another negative aspect that discourages women to leave prostitution and engage in a normal life is, again, mentality. Public opinion is a plague of Albanian society that impedes women to have, as in this case, a second chance. Indeed, they are marginalised and discriminated, they are labelled as criminals or as dishonoured persons. This environment is the same under which the children of exploited women are subject to. There do not exist structures, shelters or legal measures aimed at their protection and reintegration into society. Moreover, professionals that should deal with the protection of victims, such as police, lawyers and judges have discriminatory behaviours towards victims. Therefore, in front of this situation, women prefer to resume illegal activities, possibly distant from homeland. The widespread criminal networks in the local territory makes the recycling process occur with no effort. In 2006, 45% of trafficked women and girls re-engaged in trafficking more than once<sup>51</sup>. The other annual reports of the Psycho-social centre VATRA, have depicted a similar situation on this concern for the following years. Indeed, in 2009 Albania was still included in the second Tier, namely among those countries of origin of human trafficking. The situation remained unchanged due to corruption, weak political and economic development as well as the malfunction of the judicial system. According to the National Strategy for the Fight Against Human Beings and the Trafficking of Children of 2016, despite the government has adopted several measures to counter and prevent trafficking of humans, the situation in Albania has not been subject to significant improvements. Indeed, the number of victims (especially those of internal trafficking) is still constant. Moreover, other social aspects, such as internal migration

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<sup>51</sup> See footnote 42, p.16

and economic disparities in the national territory have fomented this phenomenon especially in the Centre and in the South<sup>52</sup>. Also international migration has developed – not necessarily resorting to regular channels – making these people even more vulnerable to human trafficking. Therefore, there are needed further efforts to eliminate this phenomenon. The government has to enact the existing laws, create livelihood options, adopt measures for protection of and assistance to victims and their children; there are needed raising-awareness campaigns, increase of the availability of information in the entire territory, as well as further collaboration among state-run institutions and NGOs.

Human trafficking is strongly related with another form of gender-based violence in Albanian society, that is domestic violence. The latter is also considered as the circumstance that precedes human trafficking. Women want to escape from a situation of abuses which they are subject to in the domestic context by engaging in trafficking networks with the hope of going through more positive living conditions. However, they only fall prey of violent traffickers, being exploited for forced labour or prostitution. Human trafficking and domestic violence have in common the different forms of violence exercised on victims. An array of psychological and physical abuses are committed towards women for different reasons, on the basis of which stands the backward mentality. Before tackling domestic violence, it is necessary to give a definition of this concept. According to article 3, paragraph 1 of law no. 9669 on “Measures against violence in family relations” of 2006, violence is any act or omission committed by an individual against another person which, as a result, leads to the violation of physical, moral, psychological, sexual, social and economic integrity of the person<sup>53</sup>. Domestic violence is the most widespread, disturbing and ancient form of violence against women in Albania (not only, also children and elderly are victims of this phenomenon), caused mainly by family members or partners. The first studies on this concept were undertaken in the early 1990s especially by foreign bodies, as

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<sup>52</sup> Internal Organisation for Migration, *The national strategy on the fight against trafficking of human beings and the trafficking of children 2014-2017: including the national action plan*, PEGI, Tirana, 2016, p.9

<sup>53</sup> Translation made by the author

national institutions were still weak and underdeveloped in that period. For instance, in 1996 the Minnesota Advocates for Human Rights wrote a report on domestic violence in Albania and on governmental efforts in response to it. Data was collected through vis-à-vis interviews and they were also a result of collaborations with local NGOs and women's associations, such as "Refleksione". However, data was not totally reliable as the mechanisms of survey were not sufficiently efficient due to a tendency of untrue declarations. Following the results of this investigation, it emerged that domestic violence was not an issue which Albanian legislation was concerned with. As a matter of fact, in 1996 there did not exist any law on this phenomenon as it was neither considered a public issue nor a punitive act. Violence in family relations was considered a private question and, as such, neither police nor the judicial system was responsible for the protection of victims. Indeed, these institutions were only concerned about "*crimes that are dangerous to society as a whole*"<sup>54</sup>. Therefore, it can be deducted that women did not receive any assistance, form of protection or recognition of their rights. Moreover, violence towards women was seen as a normal practice in marital life and this belief was also impressed on women's mind. Thus, the problem neither existed, or better, was concealed because the majority of cases of domestic violence were not even reported by victims.

Violence is an act which every category of women is subject to, regardless the educational level, age, religion, geographical area or employment status. There are different forms in which these acts can be expressed; a national survey in 2009 enlists them and shows statistics on how many women are involved for each variety, considering a total of 2'590 victims aged 15-49. The most frequent form of violence is emotional abuse, counting 50.6% (1'311 out of 2'590) of women affected by it<sup>55</sup>. Emotional violence occurs in a relationship between partners or spouses, in which the woman is neglected, humiliated in public, object of supposed jealousy and insults, accused of adultery without any reason, made feel guilty for acts that she has not

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<sup>54</sup> Minnesota Advocates for Human Rights *Domestic violence in Albania*, United States of America, 1996, p.17

<sup>55</sup> Institute of Statistics in Albania (INSTAT), *Dhuna ne familje ne Shqiperi: Vrojtim kombetar me baze popullaten*, United Nations Development Programme Albania, 2009, p.25

committed from her husband or partner. Women that have been subject to emotional violence have faced at least one of the aforementioned offences in their lifetime<sup>56</sup>. Moreover, the profile of the victims mainly affected by this phenomenon is characterised by the following factors: she has medium education levels, lives in rural areas and is unemployed.

The second form of domestic violence that mostly occurs in Albanian society is psychological abuse, with the 39.1% (1'013 out of 2'590) of women involved<sup>57</sup>. Psychological violence refers to those acts of control that the partner commits with the intention of striking terror into her mind and limiting her familiar and friendship relations as well as her public life. These circumstances have serious consequences also on the victim's mental and physical health and increases the risk of suicide attempts. The profile of the victim of psychological violence is characterised by no educated and divorced or separated women<sup>58</sup>.

The third form of domestic violence refers to physical abuse, namely to the use of force towards a person, hurting her or him. This refers to those acts such as beating, punching, kicking, kidnapping, attempting to suffocate or burn or attacking with weapons a person. In 2009, 31.2% of women (808) mainly belonging to the age group 30-33 were affected by physical violence<sup>59</sup>. The majority of victims has elementary educational levels, comes from rural areas, is divorced or separated.

Last, but not least, sexual abuses is another form of domestic violence which affects the 12.7% of interviewed women (330)<sup>60</sup>. Sexual violence refers to undesired sexual relations and to forced humiliating and undesired sexual acts. The victim's profile corresponds to a woman from 26 to 29 years old, mainly being divorced or separated.

With the passing of years, more information was found out on victims of domestic violence and with the initiatives of NGOs it was possible to see some improvements. Considerable pressure was applied on government to activate

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<sup>56</sup> Ivi, p. 26

<sup>57</sup> Ivi, p. 29

<sup>58</sup> Ivi, p. 31

<sup>59</sup> Ivi, p. 32

<sup>60</sup> Ivi, p. 36

mechanisms and structures for the protection of victims of violence. The results, even though were not perceptible at first sight, were coming up with the institutionalisation of several bodies, such as the Committee for Equal Opportunities set up in 1998, the People's Advocate (Ombudsman) in 2000 as well as the adoption of several international instruments and conventions on human rights by the Albanian government<sup>61</sup>. Nevertheless, these achievements result to be such only in paper, as concretely they have not showed any sign of evidence and the situation of women victims of domestic violence continues to be unchanged. This is also confirmed by statistics as a result of many studies, interviews and *ad hoc* visits undertaken by local organisations or institutes as well as by the United Nations and also European Union bodies, such as GREVIO. The Albanian Women Empowerment Network (AWEN) is one of the most active organisations concerning women's right in Albania. Every year there is made a report on the advancement of women's condition and violence against them. AWEN's 2016 report has revealed that in 2013, 59.4% of women participants in the survey have declared to have experienced domestic violence in their lifetime and 53.0% of them were still in a situation of domestic violence<sup>62</sup>. According to the Institute of National Statistics in Albania 2013 report, the 58.2% of women participating in the survey have experienced psychological domestic violence in their lifetime, 23.7% physical domestic violence, 7.9% sexual abuses and 24.6% have experienced both physical and sexual abuses, with no improvements of the actual situation in the majority of the cases<sup>63</sup>. Nevertheless, women are not the only category of persons harmed by domestic abuse. From the same statistics it has emerged that also men have been subject to this phenomenon. As a matter of fact, in 2014, of the total number of victims, 3'090 were women and 1'031 were men<sup>64</sup>. These numbers have decreased over the last years; indeed, in 2015 there were registered 2'725

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<sup>61</sup> Committee on the Elimination of Discrimination against Women, Initial and second periodic report of state parties, New York: United Nations, 2002, pp. 14-16

<sup>62</sup> Albanian Women Empowerment Network, *Report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Albania*, 2016, p.24

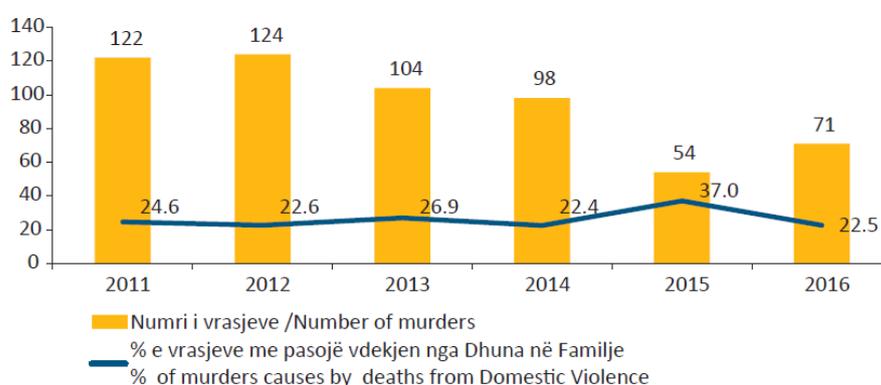
<sup>63</sup> Institute of Statistics in Albania (INSTAT), *Dhuna ne familje ne Shqiperi: Vrojtim kombetar me baze popullaten*, 2013, p.33

<sup>64</sup> See footnote 62, p.25

women and 817 men victims of domestic violence<sup>65</sup>; in 2016, the number of female victims amounted to 1'204, whereas male victims were 554<sup>66</sup>. Moreover, in many cases, even though in a limited percentage, the episodes of domestic violence end up into death. The following graph of the Albanian Institute of Statistics shows the data gathered from the Directorate of State Police concerning deaths as a result of domestic violence.

**Përqindja e vrasjeve me pasojë vdekjen nga Dhuna në Familje, 2016**

Percentage of murders causes by deaths from Domestic Violence, 2016



Source: Directorate of State Police

From this graph it emerges that, from the total number of murders, the percentage of those caused by domestic violence has been almost constant from 2011 to 2014 with a rise in 2015, which then reverted into “normality” in 2016<sup>67</sup>. Another category of victims of domestic violence – even though indirectly – are children, who are referred to as victims of assisted violence<sup>68</sup>. Children in many cases are witnesses of different forms of violence committed on their mothers and this has serious consequences on the development of their behaviour and on their mental health. As a matter of fact, children witnesses of domestic violence are more vulnerable to abuses or to be neglected in family and they can have social, emotional and development problems. At

<sup>65</sup> Ibidem

<sup>66</sup> Institute of Statistics in Albania (INSTAT), *Women and men in Albania 2017*, Tirana, 2017, p.96

<sup>67</sup> Ivi, p.99

<sup>68</sup> De Vido, S., *Donne, violenza e diritto internazionale: La Convenzione di Istanbul del Consiglio d'Europa del 2011*, Milano: Mimesis Edizioni, 2016, p. 175

the same time, being repeatedly subject to such acts, increases the possibility for children to be the future generations of potential perpetrators of violence.

### **1.3. The origins of violence against women in Kosovo**

#### **1.3.1. Political and socio-economic situation: the path of a newborn state towards democratisation**

Kosovo has declared its independence from Serbia the 17<sup>th</sup> of February 2008. From this date its process of democratisation gained momentum. In this phase the Kosovan government has worked side by side the United Nations to build a democratic country following the international standards. In 2007 there were held the general elections in which dominated the Democratic Party. The latter was followed by the Democratic League with which created a coalition government<sup>69</sup> that has been voted for three times in a row. The political representatives have the right to govern but with the supervision of the international bodies. The constitutional system sanctions the division of power into three branches, namely the legislative, executive and judiciary. Actually, these powers are unlikely to be effectively exercised for manifold factors.

First of all, corruption is a plague in Kosovan society, being spread in every sector and especially in the political and judiciary system. Albeit there were set up many anti-corruption mechanisms and agencies, this phenomenon still persists in Kosovan public life and negatively affects the well-functioning of the national machinery.

Secondly, the judiciary system is not able to operate autonomously as it is continuously under political influence and depends on government. As a matter of fact, the Assembly does not have the sufficient capacities to adopt legislation as this process has been conducted by the Ahtisaari's plan, which passed laws with a special procedure<sup>70</sup>. Moreover, the cases of serious crimes are dealt with by the EULEX judges as the local ones lack of vocational training and adequate skills to manage sensitive

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<sup>69</sup> Bertelsmann Stiftung, *BTI 2010 Country Report — Kosovo*, Gütersloh: Bertelsmann Stiftung, 2009, p.7

<sup>70</sup> Ivi, p.9

lawsuits<sup>71</sup>. The deficiency of the judicial system is intensified by other flaws in the management of cases in terms of time and efficiency, by the lack of cooperation at different levels and lack of protectionist measures for witnesses.

Thirdly, there are many interest groups that act in contrast to the government's policies. It is the case of Kosovo-Serbs of northern areas<sup>72</sup> and opposition parties and/or movements, such as the Vetëvendosje movement (Self-determination). The former tends to boycott local elections and refuse political decisions made by the Kosovan institutions as a form of rejection of Kosovo's independence. The latter makes use of protest to express its opposition to any form of dialogue or cooperation with Belgrade.

As the democratic nature of a state requires, the Kosovan Constitution guarantees freedom of association, assembly and expression in articles 43 and 44<sup>73</sup>. Nevertheless, these principles coupled with other civil rights have been breached in several occasions by legislative and institutional mechanisms. The legislative framework actually exists on this concern, but it is not appropriately implemented due to lack of resources and political commitment. Freedom of association takes the form of NGOs, whose aims are minority rights, environmental issues and the fight against corruption. However, interference in their activities remains a persistent problem. Moreover, as this sector is structured on the basis of donor-oriented models, they totally depend on foreign contributions. Political parties are not interested in their activities and there is scarce civil society engagement. The amount of NGOs has increased throughout years (in 2010 they were 4'600<sup>74</sup> and in 2015 they were 8'000<sup>75</sup>) but only in number because only a small part of them is concretely active. Concerning freedom of expression, media is frequently subject to political influence and also

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<sup>71</sup> According to the 2018 Bertelsmann Stiftung's Transformation Index report, actually in Kosovo there are 350 local judges and 39 EULEX judges.

<sup>72</sup> In northern Kosovo there are several ethnic Serb communities which have always been incited from Belgrade against Kosovo government as it has never accepted the declaration of independence of Kosovo. However, in Kosovo they also exist other Serbs who have acted peacefully as they believe that more can be achieved with cooperation rather than with conflict.

<sup>73</sup> Bertelsmann Stiftung, *BTI 2018 Country Report — Kosovo*, Gütersloh: Bertelsmann Stiftung, 2018, p.11

<sup>74</sup> See footnote 69, p.15

<sup>75</sup> See footnote 73, p.17

threat and intimidation. Therefore, there is still much to improve in order to have basic rights respected in the Kosovan society. At the same time, institutions even being built on the basis of democratic standards, they still face serious difficulties in their functions. The lack of cooperation and harmonisation with other institutions represents an important obstacle to their efficiency. Moreover, the ongoing opposition of local movements and northern Kosovo-Serbs has brought about a meagre contribution of these institutions into the enhancement of the democratic process.

The socioeconomic situation in Kosovo has always been difficult and quite stagnant, ranking Kosovo among the poorest countries in the southeast Europe. In 2007, 45% of the population lived below the poverty line<sup>76</sup> and in 2018 this percentage has fallen to 30%<sup>77</sup>. This conditions are a result of high unemployment rates (from 2001 to 2015 it amounts to 45%<sup>78</sup>) that affect a large share of the population, especially in rural areas, among large families and people with low levels of education. Labour market does not offer sufficient opportunities for young people, women, minorities and unskilled workers. In front of such a backward society, people prefer to migrate both internally and externally. At first impact, this situation may appear disadvantageous from a social and economic perspective. Nonetheless, emigrated people tend to invest in homeland especially in real sector, fomenting the local economy. Other foreign direct investments and remittances have led to a gradual economic growth.

A part from the above, there are manifold aspects of Kosovar society that do not allow this country to take off. At the basis of the Kosovar citizen behaviour and the government's policy stands a solid ethnic discrimination, nourished after the 1998-1999 conflict. Even though Kosovars adopted a soft position initially with the intention of finding a diplomatic solution for the Kosovar-Serb coexistence, this did not halted them from developing national sentiments. The latter was further fomented with the subsequent oppression that Belgrade still exercises and the opposition that ethnic Serb minorities have expressed in different forms. Moreover, throughout years, the

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<sup>76</sup> See footnote 69, p.15

<sup>77</sup> See footnote 73, p.18

<sup>78</sup> Ibidem

intervention of United Nations has also been aimed at alleviating the tensions among the two governments in order to avoid any possibility for further conflicts. For this reason, Kosovo and Serbia have signed the Brussels Agreement with the purpose of finding a peaceful communication with each other. Nevertheless, this act was said to be mostly a formality as the majority of the population have demonstrated to be totally against it. Therefore, interethnic clashes are an everyday occurrence. Ethnic discrimination does not refer only to Serb minorities but also to other communities that live in Kosovo, even though they represent a limited share of the population. Roma, Egyptians, Bosniaks, Ashkali are the most marginalised communities in society and they are excluded from public life, political participation, labour market and so forth. As a consequence, they become a problem for society as they have no other choice than engaging in criminal networks. The government has implemented the Convention on the Protection of Minorities and also the Law against Discrimination in order to guarantee minority communities the same rights of the rest of the population. However, minority groups are not the first target of protection or equal opportunities in a society as the Kosovar one, which is strongly attached to traditions and the nationalist ideologies.

Education is another critical issue. In its first steps as an independent state, the Kosovar government had more disruptive questions on which to focus its attention. The establishment of a democratic republic, government, and institutions, the preservation of a sound and stable political system as well as the introduction of new laws and international instruments in the domestic legislative framework needed particular dedication in terms of finance, energy and time. Therefore, education was among those sectors whose improvements took several years to be visible and they still are ephemeral. The educational system in Kosovo has a structure that can be associated to the western models: preschool education, primary school, secondary education and higher education<sup>79</sup>. The schooling quality in Kosovo has not been considered to be at high levels. Deficiencies in the teaching system owing to the lack of vocational training of professors, the uneven distribution of schools in the territory as

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<sup>79</sup> Bertelsmann Stiftung, *BTI 2010 Country Report — Kosovo*, Gütersloh: Bertelsmann Stiftung, 2009, p.23

well as the dubious reliability of university diplomas have hindered the prosperity of this sector. In the last years the Kosovar government has taken an array of measures in order to increase the level of education, such as the Education System Improvement Project and vocational training programs for teachers, raising the public spending in this sector of 4.95% in 2015<sup>80</sup>. The number of both private and public universities has increased the last years, even though the dropout rates are considerable. However, education remains among the most underdeveloped fields. This has had consequences also in the uncertainty of the labour market. Youth represents the 38% of the population; young people can be the most attractive individuals for job market, however they actually belong to the unemployed categories (52.7% in 2017)<sup>81</sup>. In addition, with the selling-buying diploma phenomenon, universities offer more graduates than the market can afford. It has also to be taken into account that they may also not have the necessary skills and preparation that labour market requires. Therefore, if the government invested more in education, results would be visible also from other perspectives.

The welfare regime is another aspect that further increases social problems. The delivery of pensions is one of the services that functions more in this sector, even though shortage of benefits does not miss from the list. It has been installed a system that complies with European standards. Pensions are offered also to disabled people (mainly those involved in the 1998-1999 conflict), veterans of the conflict and also households. The basic pension for the elderly is only €45 and for disabled is €40, whereas people affected by the war receive higher pensions.<sup>82</sup> However, other services such as maternity and unemployment benefits are ephemeral. As concerns the health care service, it has been noted that from one hand it is not guaranteed in every part of the territory; from the other, where existing it does not work efficiently and effectively. Health care services are mainly based in urban centres, whereas rural and peripheral areas (which are the parts of the country where the majority of the

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<sup>80</sup> Bertelsmann Stiftung, *BTI 2018 Country Report — Kosovo*, Gütersloh: Bertelsmann Stiftung, 2018, p.27

<sup>81</sup> Agjencia e Statistikave te Kosoves, *Grate dhe burrat ne Kosove 2016-2017*, 2018, p.6

<sup>82</sup> Orgut Consulting, *Country gender profile: an analysis of gender differences at all levels in Kosovo*, Kosovo, 2014, p.18

population lives) are void of basic medical treatments. In addition to this, the underdeveloped infrastructure networks further worsen the conditions of people.

As it can be conceived, a Kosovar citizen do not have a privileged life. They have to face daily difficulties and frustration is what predominates in their frame of mind. Dissatisfaction from the weak opportunities that the government offers further foments criticism among citizens. These sentiments transform into protest in many occasions as a form of dissent on the government's policies. At the same time, Kosovars do not make any significant effort in order to substitute the policy-makers whose decisions they disagree on. As a matter of fact, Kosovars do not actively participate when is their turn to express a political preference. In the last elections, less than 50% of citizens have voted<sup>83</sup>. They are not even interested in becoming candidates in order to be party members and bring forth fair policies.

### **1.3.2. Violence against women and women's situation**

Kosovo is one of the areas in which the Kanun found major support and expansion. The traditional laws that this code dictates have been preserved in the Kosovar society and have developed the behaviour of men. Gender stereotypes in present society are a by-product of the preservation of such beliefs that are still difficult to eradicate. Patriarchal norms are evident in any aspect of the private and public life of Kosovar women.

In the private sphere, the woman is considered as the 'honourkeeper' of the family. She has to obey the patriarch, being he the father or the husband. She has to dedicate to children and elderly care, thus being an employee of an unpaid job. Women can be beaten, abused, raped at home and this passes as a normal event in a domestic context. One third of Kosovars believes that it is normal that the woman is subject to violence in a marital relationship<sup>84</sup>. A part from this, she cannot declare to be a victim of violence, otherwise the honour of the family – or better, the honour of the man – would be tarnished. Moreover, in many cases it occurs that people are not

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<sup>83</sup> Ivi, p.29

<sup>84</sup> Republic of Kosovo - Ministry of Justice, *National Strategy on Protection from Domestic Violence and Action Plan 2016-2020*, Prishtina, 2016, p.29

even able to identify a situation of violence, or better, they do not believe that marital rape, a man beating her wife when he is under the effect of alcohol or is unemployed are acts of violence. Part of Kosovar women have to endure a double burden: domestic violence – being it psychological, physical or sexual – and the psychological consequences of the acts of violence that they were subject to during the 1998-1999 conflict. As a matter of fact – even though there do not exist accurate data – during the war many Albanian Kosovars have been abused and/or killed by Serbian militants. Sexual abuses have been perpetuated both towards women and men, but the former has been the most targeted group. Although twenty years have passed from the war, there is still silence on this issue. The Kosovar government has not institutionalised a system of compensation for victims of violence, despite several laws have been drafted on their rights. Moreover, what is disturbing is that the respect of traditional norms have led to the omission of such injustice from the victims themselves. Men prohibit their wives from saying that they have experienced sexual abuses in the past as shame and public opinion would have a strong impact on their lives. In several cases it occurs that women have not even the courage to make their husband aware about this excruciating experience, as they would put at risk their reputation and also their marriage. Speaking about violence in the family is a taboo. Male relatives '*command that survivors of sexual violence take their suffering to the grave.*'<sup>85</sup>

This situation is similar to that of domestic violence. Women are discouraged from reporting cases of violence and the reasons behind this behaviour are manifold. First of all, the domestic environment is not favourable to women as the respect of patriarchal rules are the basis for the solution of any sort of problem that emerges within (and also without) the walls of the house. This means that even when the woman is the victim, she is never treated as such; on the contrary, she has to sacrifice her rights for the well-being of the family. Indeed, when a woman complains about her subservient condition or about being abused, she is not assisted and saved from that situation from her parents or other persons close to her, but she is convinced that this is a normal practice. Furthermore, a part from public opinion, the fear of losing their

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<sup>85</sup> Kushi, S., *Women of Kosovo: a mirage of freedom and equality*, Opendemocracy, 2015

children and economic aid, constrains women to choose silence. This is the reason why the majority of them do not even report abuses to the police. Secondly, the impaired judicial system does not represent a means which women can rely on in order to receive justice and, especially, be protected. The bodies responsible for the assistance to women victims of violence, such as the police, judges, and doctors are not sufficiently trained to recognise the cases of violence and follow the appropriate procedure to deal with victims. Additionally, a part from their inexperience on this issue, they are influenced by patriarchal beliefs and, thus, they are more prone to suggest women to withdraw charges towards their perpetrators rather than undertaking a judicial process. At the same time, high rates of poverty and a relationship of economic dependency on their husbands, do not allow women to cope with the legal expenses. Therefore, they prefer not to escape from this situation because they do not see other possible alternatives they could benefit from. Thirdly, in many cases the obstacle to report violence is the victim herself. Women are frequently prone to influence from the male figures but also the social environment they live in. Moreover, they are not completely able to identify the seriousness of the situation and, as a consequence, they are inclined to justify the male behaviour. Justification evolves in feelings of self-critique and self-accuse; women tend to take the blame and believe that what they undergo is something that they deserve because they may not have met the expectations of their husbands. This process further intensifies the vulnerability of victims and creates a vicious cycle from which women hardly can flee. Furthermore, it occurs that women are not always aware of their rights and the manner in which they can benefit from them. The lack of equal distribution of information reduces accessibility (especially in rural areas) to the knowledge of the laws and measures in favour of women. As a consequence, there are needed more raising-awareness campaigns on this issue as well as more involvement of women (but also men) in such activities.

Nevertheless, in the last years, survey's data show that there has been noticed an improvement from this perspective. There still remains a low reporting tendency and trust on the judicial system, but women are more aware about their rights and

the services available for their protection. As a consequence, more cases of violence have been dealt with by the Kosovar institutions, especially the police, Office of the Prosecutor, shelters, social work centres, registering an ongoing increase of the number of cases treated.

There are different forms of gender-based violence in Kosovo in which women represent the major victim. The most common, concealed and disturbing variety is domestic violence, being it related to psychological, physical, sexual or economic harm inflicted to women. According to a survey conducted by the Kosovo Agency of Statistics for the two-years period 2016-2017, it emerges that all individuals are affected by violence in the domestic context; however, women and children are the most vulnerable individuals. In 2016, of 1247 cases of domestic violence reported to the police, 80% were female victims<sup>86</sup>. However, these statistics are not totally accurate as a huge part of cases go unreported. In 2008, 90% of cases is believed to be not reported<sup>87</sup>. Moreover, in a survey conducted by Kosovo Women's Network based on in-depth interviews, it has emerged that 68% of female respondents and 56% of the surveyed men have declared to have experienced domestic violence in their lifetime<sup>88</sup>. The most common forms of domestic violence that people have undergone in Kosovo are psychological, physical, sexual and economic violence. In each of these categories, women represent the highest percentage of victims.

The public sphere represents both a mirage and frustration for Kosovar women. It is a mirage because women in Kosovo are considerably under-represented in any field of public life compared to men and developed countries' situation. As it was depicted in the previous paragraph, the socio-economic situation in Kosovo is critical for the entire population. Nevertheless, in this circumstance, female citizens suffer more the plight than the opposite sex. This is also confirmed by statistics showing that gender disparities are a recurrent practise in manifold sectors, especially in the labour market and decision-making. Concerning the former, it can be said that women are

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<sup>86</sup> Council of Europe, *Mapping support services for victims of violence against women in Kosovo*, 2017, p.3

<sup>87</sup> Ibidem

<sup>88</sup> Ibidem

positioned amongst the categories of social groups with highest rates of unemployment. The Kosovar Agency of Statistics annual reports depict an unchanged situation every year, even though it is progressively improving. In 2015, 38.7% of male population belonging to the age group 45-54 was employed compared to the 11.5% of the female part<sup>89</sup>. Gender gap in employment rates has been subject to reduction in the last years, but it still persists in Kosovar society due to gender stereotypes, leading also to unequal salaries at the disadvantage of women. There is a widespread tendency to underestimate women because of their sex. They are considered more productive and competent in the private sphere rather than in the public one.

The limited access to labour market leads to the reduction of opportunities for women in political participation and decision-making positions. As concerns the former, from the Agency for Gender Equality emerges that the presence of women in political seats has always been meagre or even inexistent. In the 2007 parliamentary elections only 43% of women were elected, a percentage that appears relevant but that subsequently was subject to decrease, amounting to 37% in 2011<sup>90</sup>. Nevertheless, in the same lapse of time there has never been registered a woman as the Head of the Parliament or as the President of the National Assembly. The same situation arises when other seats both in national and local institutions are taken into account. The public sector is predominately male-led in Kosovo.

Property rights is also a controversial issue that further intensifies gender-based discrimination and stereotyped roles in the Kosovar society. Women are entitled to the law that guarantees them equal property rights to men. Nevertheless, surveys show data that women actually do not always enjoy this right. In 2016, the United States Agency for International Development (USAID) has conducted a survey in Kosovo in order to assess the situation of inheritance rights from a gender perspective. It has emerged that men are more likely to own a property compared to women. As a matter of fact, during the interviews, the 82% of male respondents have declared to own houses or apartments, whereas 64% of female respondents have declared the

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<sup>89</sup> Agjencia e Statistikave te Kosoves, *Grate dhe burrat ne Kosove 2014-2015, 2016*, p.54

<sup>90</sup> Orgut Consulting, *Country gender profile: an analysis of gender differences at all levels in Kosovo*, Kosovo, 2014, p.33

same. Moreover, 65% of men have stated to be a landowner, compared to 42% of women landowners. Lastly, 24% of women have declared to not own any property, while only 11% of men asserted the same<sup>91</sup>. This disparity is a result of the traditional norms that were inherited from the Kanun, according to which only men are entitled to succession. This is also confirmed by the above mentioned survey, in which 42% of interviewed women have declared to have inherited property from parents or other relatives compared to the 63% of male respondents<sup>92</sup>. However, this declarations do not always reflect the reality, as only 45% of respondents that stated to be property owners have actually the properties registered in their names. There is also the tendency to have only one registered property owner per family and in the vast majority of the cases is a man (more than 80%). This situation results to be improved in respect of the previous years; however, women still continue to be discriminated due to deeply-rooted patriarchal mentality. Considering children inheritance, there still exists a widespread acceptance and support of gendered disparities in property succession. Indeed, some of the survey respondents (mainly men) believe that daughters should inherit less or even no property from their parents. As a result, there are mainly women who claim for their property rights, supported by institutions, whereas men are not always interested and engaged in this struggle. According to the survey, fathers and especially brothers are the least supportive groups of equal property rights. Among the causes of gender gaps in this issue, it emerges that the most influential one is the patriarchal culture in Kosovo. The other obstacles for women to enjoy the rights they are entitled to refer to social stigma when women engage in legal action against the property owners in family; hostility that emerges in case of legal action; lack of information about the rights to inherit property<sup>93</sup>. These factors particularly influence the psychology of women, leading the latter to renounce their inheritance rights (45%).

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<sup>91</sup> Joireman, S., *Midterm National Survey on Property Rights in Kosovo*, USAID & Tetra Tech, 2017, p.13

<sup>92</sup> Ivi, p.15

<sup>93</sup> Ivi, p.22

### 1.3.3. Women's rights activism in Kosovo

Kosovo women's movement path has gone through important changes during the years, depending on the historical events occurred in this country. In 1989 Kosovo was annexed to the Republic of Serbia. Therefore, the '90s represented the period of rebellion of citizens in general and women's activists in particular. The latter felt the necessity to create an independent organisation that could represent the voice of every Kosovar women and be far from the political influence. As a matter of fact, the Women's Association of the Democratic League of Kosovo gained momentum as a separate entity that was achieving consistent success among feminist activists.

Subsequently, the beginning of the 1998 war between Kosovo and Serbia contributed to the writing of a new chapter for the women's rights movement history. In this period of time, the cases of violation of human rights towards Kosovars by the Serbian forces have been manifold and of various nature. The themes that have been strong matters of debate at national and international level refer, undoubtedly, to the high number of persons disappeared during the conflict and the survivors of sexual violence. These appalling issues have influenced the direction that social movements took in the early 2000s. Furthermore, after the war, the Kosovar government decided to implement a passive resistance, with the purpose of reaching a peaceful agreement with Belgrade. This was the trigger of a massive flow of protests from the Kosovar citizens, who engaged in important social movements with the aim of applying pressure on the government in order to undertake an act of independence from the Serbian rule. It was in this period that the Self-determination Movement (Lëvizja Vetëvendosje) emerged, with firm nationalistic ideologies. The main focus of this movement was to contrast every form of cooperation and agreement between Kosovo and Serbia. The agenda of this movement included also violation of human rights, especially those of war survivors and also women<sup>94</sup>. Self-determination, emerging in a particular historic moment for Kosovars, who felt oppressed and not represented by the then government, gained currency in a rapid manner. As a matter of fact, it was

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<sup>94</sup> Women's question is one of the manifold priorities of the Self-determination movement. It is the 79<sup>th</sup> point of its political program.

able to meet a large success to the point it became a political party, gaining 12 seats in the Parliament after the 2010 elections<sup>95</sup>.

Among the most active movements of the past decade, women-led activism stood out with a strong determination agenda in order to do justice for the thousands of abused and raped women by Serbs during the war, who used sexual violence as an instrument of 'ethnic cleansing'<sup>96</sup>. March 1998 was the month of the first fierce protests of feminist activists who marched among the streets of Prishtina denouncing the violation of rights towards women and children and asking for the intervention of international community and humanitarian organisations<sup>97</sup>. These was a turning point for the women's movement which was gaining important membership and support. This flow of protests was maintained through the years, becoming a tradition especially in the International Women's Day. During the early 2000s, women activism was more oriented towards the raising-awareness campaigns and strikes on missing people due to the war. This environment was the leading force of women's movements until the 2006 negotiations for the independence of Kosovo. In this occasion, feminist activists advanced the demand of involving also women in the negotiation process. The Kosovar government, despite an initial promise, did not satisfied this requirement, causing a harsh reaction from activists. The latter was now focused on women empowerment, positioning it at the centre of the agenda and protest; however, the demand of justice for the victims of the war have never disappeared from the list of the movements' objectives. With the declaration of independence in 2008 and the intervention of United Nations administration, women's rights movement demanded the government to introduce legislative measures for gender equality and women empowerment. Additionally, the UNMIK and EULEX presence in Kosovo was seen as an advantage from feminist activists and also survivors to address war crimes and the violation of human rights that have occurred between 1998 and 1999. Nevertheless, after having reported their experience to UNMIK, sexual

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<sup>95</sup> Këlliçi, K. and Danaj, E., *Radical left in Albania and Kosovo: differences and similarities*, De Gruyter Open, 2017, p.20

<sup>96</sup> Halili, D., *Three decades of protest: a history of women led activism on March 8, Kosovo 2.0*, 2018

<sup>97</sup> Ibidem

survivors have gone through a process of isolation and stigmatisation in family and also society. Women's activists did not stop their struggle on this issue and advanced further requirements, such as the right of survivors to reparations and compensations<sup>98</sup>. This requirement successfully evolved the last year into an amendment to the existing legislation, guaranteeing victims the possibility to apply for reparations.

The last six years have represented the cover of an important stage in the story of women's rights movements. First of all, they have contributed into the breaching of certain taboos, that have been preserved due to traditional norms and mentality. These taboos refer to public discourse on domestic violence, war sexual crimes and breast cancer. Secondly, from 2016 among Kosovo's streets, women were flanked by men, who firmly claimed for gender equality, more rights to women and women empowerment. Thirdly, women's movements were subject to decentralisation, expanding their influence in other cities of the country, not only in the capital.

Women's rights movements in Kosovo have played an important role in the improvement of women's condition. They have raised awareness with their traditional marches every year in occasion of the International Women's Day claiming for their rights even when Kosovo had not achieved its independence yet. They were under the Serbian forces gunsight when protesting; however, this did not stopped their determination, ambition and willpower. Feminist activists were able to fight those barriers created by patriarchal norms rooted in the Kosovar society and face issues that the government was not intended to take into account. The advancement of women's condition in Kosovo can be particularly associated to feminist movements. Nevertheless, the path towards gender equality and the elimination of gender-based violence is still laborious in Kosovo. The commitment of the government into the implementation of the existing legislation is fundamental to guarantee women rights and protection from every form of violence.

Activists initiatives have been considerably supported by NGOs action. The latter has always been financially supported by foreign donors as the Kosovar

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<sup>98</sup> Ibidem

government has given a limited contribution to this sector. The most active NGO is the Kosovo Women's Network (KWN), which emerged as an informal coalition that supported the protests after the war. From 2003, the KWN has brought forth strong objectives for the achievement of gender equality and empowerment at all levels<sup>99</sup>. Every year, the KWN publishes a report that assesses the situation, highlighting the fulfilment of the preset goals as well as the challenges that still have to be faced. These reports are fundamental as they depict statistics and data on the situation of women in Kosovo and there is the will to improve the accuracy of such numbers.

#### **1.4. Conclusions: similarities and differences between the Albanian and Kosovar woman**

Albanian and Kosovar women have significant aspects in common concerning their condition but, at the same time, in their similarities they have witnessed different circumstances. They both come from the same cultural, religious and linguistic background, but history is what distinguishes them most. It is true that they are children of the same land, as history teaches; it is true that when referring to Kosovar citizens there is made a distinction between Albanian Kosovars/ethnic Albanians and Serbian or minorities Kosovars; however, the past three decades have posed Albanian and Kosovar women to different challenges. The latter is a survivor of a conflict that has aggravated her condition, making her a vulnerable individual of sexual and physical abuses. The Kosovar women are referred to as survivors of violence rather than victims – as in the case of Albanian women – as they underwent ongoing sexual abuse during the war from the Serbian forces. They were used as the “means” for ethnic cleansing attempts by hand of Serbs who wanted to eliminate the Albanian identity of Kosovars. They survived from the war and from the atrocities committed against them. Moreover, the concept of survivors of Kosovar women victims of violence during the war is further reinforced by the fact that they had to bear the burden of this

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<sup>99</sup> <https://womensnetwork.org/kwn-held-its-16th-annual-membership-meeting/>

experience without having the opportunity to stake their claim or to denounce what they suffered. This event has had significant repercussions on the evolution of women's behaviour both in the public and private life. The subsequent tendency to conceal the atrocities they have been subject to and the fear of being victims of social stigmatisation have led them to resignation. On the other hand, the Albanian woman has been the child of dictatorship, witness of the consequent social transformation during the democracy-building process and the protagonist of the contemporary passive activism. It cannot be attributed a linear path to Albanian women's condition, being it in ascension or decline. It has gone hand in hand with historical, political and economic transformations. Despite several fluctuations during the 20<sup>th</sup> century and an apparent improvement of gender equality in communist Albania, women have always been a step back compared to men. These changes have depicted the female figure as a housekeeper taking care of children and elderly, cooking and obeying the husband; subsequently, as a fighter during the liberation process and, lastly, again a victim of domestication and domestic violence.

As it can be conceived, to the Kosovar woman can be attributed the adjective of survivor, whereas to the Albanian woman the term of victim. They both have been subject to every form of violence, but from different circumstances. What unites them under the same perspective is that they are victims in a dual process: victims of violence and social stigma. The latter occurs both in Kosovar and Albanian society as they are based on a patriarchal culture that has serious repercussions on the denial of women's rights. The conception of the woman as a property of the male figure (father or husband) has been alleviated throughout years, but not totally eliminated.

Another point of divergence between the two contexts is the effort applied by the institutions in the elimination of a single or multiple form of violence towards women. This refers to the fact that in Kosovo there is addressed only domestic violence among the other forms of violence. There have been achieved considerable results on this concern, also due to the determination of female activists who have aimed to transform domestic violence from a private issue into a public one. In this endeavour, they have started a battle against the cultural barriers and social stigma

that affect women. However, this phenomenon needs further attention from responsible institutions and government in order to make domestic violence punishable by the law. On the other hand, in Albania this situation has been successfully overcome as there exist multiple legal instruments in this concern. Furthermore, in Albania also other forms of violence have been a matter of interest, such as human trafficking. The latter has been a significantly disturbing and worrying phenomenon in the '90s which has forced Albanian government to take action in the long term.

Kosovo has been supported by United Nations and European programs in its democratisation process. The institutional, political and social frameworks have been established according to international standards. This process has occurred almost automatically and more rapidly in terms of time than the transition process in Albania. Albania has passed through several difficult stages before achieving the status of democratic country. Additionally, Albania has not been subject to foreign aid from international community in a substantial manner as Kosovo has. Nevertheless, it has to be taken into account that the Kosovar situation was more dramatic due to war consequences. Furthermore, Kosovo has not received the recognition of its statehood from the entire international community. As a consequence, this has hampered its competences at international level, especially concerning the adoption of international instruments. Apart from this, both Kosovo and Albania own a solid legal framework on human rights and especially on the protection of vulnerable categories, such as women. What is frustrating is that laws are not appropriately implemented. As a matter of fact, even though women are entitled to several rights *de jure*, this does not occur *de facto*. This is the critical point that obstacles the advancement and empowerment of women in Albanian and Kosovar society.

In addition to the misuse of laws, there can be highlighted a lack of assistance and reintegration services for victims of violence in both countries. The largest share of efforts in this concern are made by NGOs or other non-state institutions. They consist of women centres and shelters that temporarily assist the victims of violence. However, the lack of support and interest from the government as well as the lack of

funds have not allowed these centres to function efficiently. They are unevenly distributed in the territory, they can deal only with a restricted number of victims and are managed by scarcely trained staff. In this concern, according to the 2017 Council of Europe Baseline report on the violence against women and domestic violence in Kosovo, it emerges that among the participants of the survey there is 58% of services that provide staff training on discrimination and equality<sup>100</sup>. Nevertheless, this percentage does not necessarily reflect the reality and, thus, there is needed more attention on the capacity-building and training processes among shelters. Moreover, the staff of shelters and centres has to improve their knowledge on the existing legislation concerning women's rights so as to raise awareness among victims on the services and instruments they can benefit from to escape situations of violence. A factor of divergence between Albania and Kosovo in this concern is the fact that in Kosovo women's shelter do not host only women victims of violence but also their children and in several cases they also deal with perpetrators. This is a positive aspect if we consider that it is necessary to work with both parts in order to eliminate gender disparities, gender-based stereotypes, discrimination and violence. There are needed reintegration programs also for abusers of violence. It is necessary to understand what stands behind an abusive behaviour of a perpetrator and, at the same time, assist him in order to avoid recidivism. However, it has been noticed that – even though several shelters have declared to work jointly with victims and perpetrators – in Kosovo they do not even exist perpetrator programs, neither rehabilitation nor counselling services.

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<sup>100</sup> GREVIO, *Baseline evaluation report: Mapping support services for victims of violence against women in Kosovo*, Council of Europe, 2017, p.48

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## CHAPTER 2

### THE EXISTING LEGISLATIVE FRAMEWORK IN ALBANIA AND KOSOVO AT DIFFERENT LEVELS

#### 2.1. Legislative framework at international level

Since its membership into the United Nations in 1955, the Republic of Albania has been committed to the adoption of a series of international instruments concerning human rights. In 1991 Albania has ratified the International Covenant on Civil and Political Rights (coupled with its Optional Protocols in 2007, the second of which concerns the abolition of death penalty) and the International Covenant on Economic, Social and Cultural Rights<sup>101</sup>. In 1992 Albania has ratified the Convention on the Rights of the Child and in 2008 also its protocols concerning the involvement of children in armed conflict; on the sale of children, child prostitution and child pornography; and the Optional Protocol on a communications procedure in 2013<sup>102</sup>. Albania is also part of the International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1994), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1994), the International Convention for the Protection of All Persons from Enforced Disappearance (2007), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Family (2007), and the Convention on the Rights of the Persons with Disabilities (2013)<sup>103</sup>. Furthermore, the Albanian Republic has been engaged in the improvement of the legal framework concerning violence against women and domestic violence by adopting the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, its Optional Protocol and its General Recommendation no. 19.

On the other hand, as concerns Kosovo the question is more complex. Kosovo has declared its independence in 2008. However, from that moment it has not

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<sup>101</sup> [www.indicators.ohchr.org](http://www.indicators.ohchr.org)

<sup>102</sup> Ibidem

<sup>103</sup> Ibidem

achieved the recognition of its statehood by the entire international community. As a matter of fact, many countries have expressed their opposition to this declaration of independence, including several member states of the United Nations and European Union. Indeed, Kosovo is not a member of the United Nations and, as such, it does not have the full international legal capacity to ratify international conventions and adopt other international instruments. Despite this, in its reconstruction and democratisation process, the international presence in Kosovo (UNMIK and EULEX) has been based on international standards in the creation of the Constitution, in the setting up of democratic institutions and of the legislative framework. International instruments have been “constitutionalised” within the domestic legal framework as they are part of the latter, directly applicable and considered binding documents within the jurisdiction of Kosovo<sup>104</sup>. Additionally, Kosovo has been assisted and supervised in its democratic-building process by the international community. In this concern, the adoption of the United Nations Security Council Resolution 1244 has led to the establishment of the Ahtisaari Plan. The latter has been significantly efficient for the drafting of Kosovo’s constitutional framework as well as for the reconstruction of its institutions on the grounds of international standards. As concerns women’s rights and gender equality, the United Nations Security Council Resolution 1325 has been adopted with the aim of including women in the creation of a peaceful situation after the conflict in Kosovo.

### **2.1.1. Albania: the United Nations Convention on the Elimination of All Forms of Discrimination Against Women**

In 1993 Albania ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its optional protocol in 2003<sup>105</sup>. The

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<sup>104</sup> De Hert, P. and Fisnik Korenica, *The new Kosovo Constitution and its relationship with the European Convention on human rights: constitutionalisation “without” ratification in post-conflict societies*, 2016, pp. 152-153

<sup>105</sup> Home Office, *Country policy and information note - Albania: Women fearing domestic abuse*, 2017, p.13

CEDAW Convention enshrines 16 key articles<sup>106</sup> that have to be implemented by State Parties. Each of the latter has the duty to harmonise its domestic legal framework with the international standards provided for by international documents it ratifies, as in this case is required by the CEDAW Convention. Moreover, State Parties have to submit a report on the measures adopted in order to give effect to the provisions of the Convention and on the improvements made concerning women's rights. Subsequently, the Committee on the Elimination of All Forms of Discrimination Against Women<sup>107</sup>, after having remarked the positive results achieved and the remaining challenges, issues a report in which envisages several recommendations that the State in question has to take as guidelines in specific situations. The general recommendations of the Committee that address gender-based violence and domestic violence are, respectively, the General Recommendation number 19 On Violence Against Women and Recommendation number 21 On Equality In Marriage and Family Relations. The main purpose of the CEDAW is to reinforce the domestic law of State Parties in order to eliminate all the forms of violence and discrimination against women. Moreover, as the Convention is an international document, it forms part of the domestic legislative framework of State Parties and is directly applicable. In addition to this, whether they emerge contrasts between domestic laws and the provisions of the Convention, the latter has the priority and prevails over the former.

In 2014 the Albanian government submitted the fourth (and, for now, the last) report to the EDAW Committee, giving information and data about the situation on violence and discrimination against women in Albania. Several institutions took part to the drafting of this report in order to fulfil article 18 of the CEDAW, pursuant to which State Parties have the duty to submit a periodic report. In its fourth periodic report Albanian government highlighted several aspects that have been subject to significant enhancement since the last reporting period, namely in 2010. These progresses were also stressed by the Committee which, at the same time, focused also in the

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<sup>106</sup> The total number of the articles is 30: the first 16 articles concern women's rights and the others focus on the functioning and administration of the Convention.

<sup>107</sup> Hereinafter EDAW Committee

deficiencies of the Albanian judicial, legislative and executive bodies that impede the correct fulfilment of women's rights.

There were several areas in which the Committee issued recommendations to the Albanian government. The first issue was related to the inadequate knowledge and understanding of the CEDAW and its protocol's contents among legal professionals. In the report<sup>108</sup> submitted by Albanian government, there was specified that the Ministry of Social Welfare and Youth is responsible for the implementation of the Convention. At the same time, the government has undertaken several efforts in order to increase the training on the knowledge of the Convention's contents. Indeed, the School of Magistrates as well as the School of Public Administration are contributing to the enhancement of capacities and skills of the judiciary and law enforcement personnel in order to maximise their familiarisation with the domestic legislation on gender equality. However, data show that during the reporting period, only in one court case there has been invoked the CEDAW<sup>109</sup>. Therefore, this means that more efforts are needed on the subject in order to increase the level of preparation of legal professionals. The Committee also stresses the importance of respecting women's right to access to justice without obstacles, as it has been noted that there is a shortage of a widespread knowledge about the right of free legal aid for victims of violence. If women were adequately informed about their rights, the number of cases of violence reported to the responsible institutions would further increase, as one of the main reasons why victims withdraw from judicial processes is related to the legal expenses. In the abovementioned report, the Albanian government has highlighted several programs aimed at providing legal aid to victims of violence. Nonetheless, the CEDAW Committee has realised that women face several obstacles in applying for legal aid as well as other barriers in gaining access to justice. Moreover, corruption and malfunction of the judicial system further complicates the situation.

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<sup>108</sup> Committee on the Elimination of Discrimination against Women, *Fourth periodic report of Albania* [CEDAW/C/SR.1413], Geneva: United Nations, 2016

<sup>109</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations of the fourth periodic report of Albania* [CEDAW/C/ALB/CO/4], United Nations, 2016, p.3

Another impediment to the advancement of substantive gender equality in Albania is the lack of financial resources allocated to the national machinery. As a matter of fact, the latter's achievements heretofore (as well as those of the non-profit sector) have been a result of the contribution received from international donors. This was also confirmed by the Albanian government in its fourth periodic report<sup>110</sup>, in which there was emphasised the contribution that United Nations agencies have given in this concern. Nevertheless, this donor-oriented system has not been sufficient to provide an efficient function of the national machinery and, thus, to the advancement of gender equality. Moreover, the EDAW Committee has highlighted that the financial resources allocated to the national machinery for the enhancement of gender equality have decreased in 2016.

An important endeavour recognised to the Albanian government has been the temporary special measures for the improvement of women's access to leadership roles. This refers especially to police force and political positions. As concerns the former, there has been increased the number of female officers in the 2011-2013 period; however, there have been noted no progresses in this concern in the subsequent years<sup>111</sup>. The government has received the UN support for the training of police officers on coping with sexual harassment and for the facilitation of women's access to leading roles. As far as political positions are concerned, in its periodic report, Albanian government has underlined the amendments to the Electoral Code pursuant to which there is ensured an equal percentage of gender quotas in political and decision-making bodies as well as in the public administration. Despite this, the government itself recognises that more efforts are needed to increase such temporary special measures, as it still results that women are underrepresented, *inter alia*, in the political system.

A substantive plague in Albanian society that seriously affects the situation of women is the persistence of gender stereotypes inherited by traditional norms and codes (Kanun). These practices refer especially to forced, arranged or early marriages, forced abortion as well as honour-based violence and killings. These are worrying

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<sup>110</sup> See footnote 108

<sup>111</sup> Ibidem

issues that continue to be underlined also by the EDAW Committee in its observations and recommendations. The Committee has required to the State Party to address gender stereotypes and also those serious forms of violence that mostly affect women in Albania, namely domestic violence and human trafficking. The former is the most widespread form of violence which Albanian women are subject to and that, despite it has been considered a crime by the law, continues to affect women disproportionately. At the same time, trafficking of women and girls for sexual exploitation and forced labour is a phenomenon that ranks Albania among the countries of transit and origin. The Albanian government in its report enlisted several efforts made in the dedication to awareness-raising campaigns and in the improvement of domestic legislation, such as the amendment of existing laws and the adoption of the Istanbul Convention. In this concern, a significant progress has been achieved, namely the inclusion of men in campaigns organised by state institutions in collaboration with UN agencies as well as local NGOs. Moreover, there has been created a legal redress mechanism for victims of human trafficking and violence. Several programs for the advance of female empowerment and entrepreneurship have been launched. More shelters for victims of domestic violence and human trafficking have been set up, receiving also funds from the government<sup>112</sup>. Furthermore, there has been noted an increase in the number of reported cases of domestic violence; however, this phenomenon still remains underreported as the number of complaints does not reflect the real situation. The EDAW Committee has sufficient information to hand that prove the evidence that actually the aforementioned efforts are not efficiently implemented. The project on the provision of free legal aid to victims of domestic violence and trafficking has not been enacted owing to shortage of funds. Furthermore, there exist restrictive criteria for the allocation of legal aid and there is given particular priority to victims of domestic violence. The deficiencies in the judicial system bring about further gaps in the enactment of protection measures to victims and appropriate prosecution of perpetrators of violence and trafficking in persons. The other worrying phenomenon occurring in Albania is human trafficking, which is difficult to eradicate particularly

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<sup>112</sup> In the fourth periodic report submitted by Albania in 2016, there was specified that €20.000 have been allocated to the renovation of a shelter for victims of human trafficking.

because there have not been created sufficient programs of protection and reintegration of victims. As a consequence, this leads the latter to reengage in such networks, making trafficking in persons a never-ending phenomenon.

The EDAW Committee is also concerned with another practice that is not as widespread as the abovementioned phenomena, but that is still persistent in Albanian society, namely the sex-selective abortions. Male offspring preferences are typical in a society where a patriarchal culture leads to the conviction that having a son automatically implies carrying on the surname of the family and thereby the inheritance tradition. This phenomenon remains a problem due to lack of tangible data and details. This practice is particularly common in rural and remote areas as well as among Roma and Egyptian communities which have a limited access to health-care services<sup>113</sup>. The latter minorities are also the most subject to child marriage, despite the law sanctions the minimum age of marriage to 18 years. This phenomenon remains underreported due to illegal marriages. What is appalling is the fact that in some cases the authorities connive at the age of the girls, making an exception to the law. As mentioned before, property rights is another issue in which discrimination of women is evident. Despite the law guaranteeing same inheritance rights in marriage, women do not enjoy it as patriarchal norms prevail over any other law. As the Committee has not observed any improvement in this concern, has urged the State Party to take action in order to guarantee equal ownership rights to women.

### **2.1.2. Kosovo: the United Nations Interim Administration Mission in Kosovo, the Ahtisaari Plan and the Resolution 1325**

In 1999, after the dramatic situation of Kosovo during the conflict against the armed forces of Yugoslavia (Serbia and Montenegro) in which the population was under repression and subject to violation of human rights, the United Nations Security Council (UNSC) adopted the Resolution 1244. The latter recognised all the acts committed against the Kosovar population by hand of the Yugoslav and Serbian forces

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<sup>113</sup> See footnote 109, p.9

and aimed at alleviating the situation in Kosovo as it represented a serious threat to international peace and security<sup>114</sup>. The resolution sanctioned the deployment of international civil and security presences in Kosovo as an attempt to respond to the humanitarian emergency as well as to confine the conflict. As a matter of fact, in the resolution it is clearly sanctioned the demilitarisation of all the parts (Yugoslav, Serbian and Kosovo Albanian armed forces involved in the conflict). Additionally, there was guaranteed to refugees and displaced persons to return to their home safety and without impediments<sup>115</sup>. The objective of the aforementioned presences was to create an interim administration for Kosovo in order to guarantee Kosovo's autonomy from the Federal Republic of Yugoslavia and subsequently supervise the establishment of democratic self-governing institutions<sup>116</sup>. Once the latter had been set up, the international civil presence had the duty to transfer its administrative responsibilities to local institutions. Furthermore, international civil presence, in attendance to the security presence, had to cope with the establishment of the necessary bases for the determination of Kosovo's status. In this concern, a part from the ceasefire from the Federal Republic of Yugoslavia<sup>117</sup>, the Security Council required also the collaboration of the latter with international humanitarian aid organisations in order to accelerate the process of aid delivery in Kosovo<sup>118</sup>.

In this way, the Resolution 1244 launched and established the United Nations Interim Administration Mission in Kosovo (UNMIK). The purpose of UNMIK was to set up international human rights instruments cooperating with public institutions. The local authorities were, therefore, bound by international instruments, being the latter directly applicable. In 2001 the international and local authorities set up the Constitutional Framework for Kosovo which was an informal constitution based on international standards<sup>119</sup>. As a consequence, all local authorities as well as courts had

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<sup>114</sup> The maintenance of international peace and security is the main duty of the UN Security Council

<sup>115</sup> United Nations Security Council, *Resolution 1244 [S/RES/1244]*, 10 June 1999

<sup>116</sup> *Ibidem*

<sup>117</sup> This requirement was directed to all the member states

<sup>118</sup> One of the provisions of the Resolution 1244 demanded also the cooperation of the International Tribunal for the Former Yugoslavia with the international security presence in Kosovo

<sup>119</sup> See footnote 104, p.150

to apply international human rights instruments, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols. In addition to this, the Constitutional Framework established in 2007, by mandate of the UNSC, the Ahtisaari Commission led by the UN Special Envoy Martti Ahtisaari who proposed a solid plan which was the basis for the creation of the new polity and the future Constitution of Kosovo<sup>120</sup>. The Ahtisaari Plan was, from one hand, aimed at creating the basis for the rule of law in Kosovo, which had in turn to fully commit with the Plan's provisions in its democracy-building process; from the other hand, its purpose was to protect the Kosovo non-Albanian minorities' rights and guarantee them total inclusion in public life. Therefore, according to the Ahtisaari Plan, Kosovo has to be a multi-ethnic state, where Albanian and Serbian are the official languages, – representing the largest shares of the population – based on international standards and with the right to conclude international agreements as well as be part of international organisations. Furthermore, article 5 of the Ahtisaari Comprehensive Status Proposal<sup>121</sup> is focused on missing persons, namely those persons who disappeared during the 1998-1999 conflict between Albania and Serbia. The latter two have to cooperate, according to the Plan, in order to provide information about the missing persons. Therefore, Albanian and Serbian governments are called upon in order to maintain a peaceful and collaborative relationship so as to preserve peace and order in the Region as well as in the international community.

In 2000 the UN Security Council adopted the Resolution 1325 with the purpose to set up a Women, Peace and Security agenda, namely to involve also women in the prevention of conflicts and in the peace-building efforts<sup>122</sup>. Intertwining gender issues with security affairs was an opportunity to increase women's participation in public and political life as well as combat phenomena of gender-related violence, particularly domestic violence. In 2013 there was set up an Action Plan in order to verify the implementation of the Resolution 1325 in Kosovo for the period 2013-2015. The first

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<sup>120</sup> Ibidem

<sup>121</sup> The Ahtisaari Plan comprised two documents: the Report of the Special Envoy of the Secretary-General on Kosovo's Future Status and the Comprehensive Proposal for the Kosovo Status Settlement

<sup>122</sup> Chantzi, E., *Security Council Resolution 1325's impact on Kosovo's post-conflict framework*, E-International Relations Students, 2018

report in this concern was prepared by the Technical Group, coordinated by the Agency for Gender Equality and supported financially and technically by UN Women<sup>123</sup>. This report was focused on three main issues of research in which several targets were outlined. Firstly, there was noted an increased participation of women in decision-making and peace-building/keeping processes as during the reporting period there were achieved 33% of the activities foreseen in this concern. At the same time, 33% of activities were in progress and another 22% were not launched<sup>124</sup>. The second purpose was the integration of a gender perspective in security affairs, whose activities were either completed or in progress for the 63.6% and the remaining 36.3% of the activities had not started yet<sup>125</sup>. Lastly, there was taken into account the improvement of women's participation in the security forces, and the access to protection, justice, rehabilitation and re-integration services for survivors of sexual violence, torture and other forms of violence associated with conflict. This improvement amounts to 38.4% of the targets of the activities achieved, with 46.2% in progress and the remaining 7.7% not initiated yet<sup>126</sup>. These results show that in Kosovo women's participation in government positions has increased over the years; however, they do not fully satisfy the standards established in the Kosovo Program for Gender Equality. Moreover, there is a substantive gap between women's representation at central and local level. Leadership positions and senior leadership continue to be under the male domain and in many cases there are not even seats available for women. The engagement of women in political parties is also limited due to the widespread patriarchal beliefs also in this field. Political parties do not offer sufficient opportunities to women to give their contribution as they are believed to be inadequate in this sector. Furthermore, there are not provided training programs for women so as to prepare them for leadership roles. Women are also underrepresented in the security sector. Albeit there has been included a gender equality perspective in this sector, women still face barriers in being part of security forces. The Kosovar government does not comply with

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<sup>123</sup> Republika e Kosovës, *Raporti i pare monitories per progresin e implementimit te planit te veprimit per zbatimin e Rezolutes 1325 "Grate, Paqja dhe Siguria" 2013-2015*, p.46

<sup>124</sup> *Ivi*, p. 48

<sup>125</sup> *Ibidem*

<sup>126</sup> *Ibidem*

the NATO's standards according to which the percentage of female representation should not be below 10-20%; indeed in Kosovo in 2013 only 8.16% of women were included<sup>127</sup>. As far as the Kosovo Police is concerned, it can be stated that it has made significant efforts in order to incorporate in its system several laws against gender-based discrimination and on the promotion of gender equality. As a matter of fact, the Kosovo Police has adopted the principles of the Resolution 1325 in order to increase the participation of women and combat every form of violence towards them. Despite this, gender equality is still a mirage in the Kosovar society as the main impediment is represented by traditional norms that are deeply entrenched in the culture and attitudes of Kosovar men. The latter is the figure of the public domain and, therefore, there is still room for improvement as concerns gender equality.

## **2.2. Legislative framework at regional level**

When referring to Albania and Kosovo, the legislation at regional level is related to the instruments provided by the European institutions. At this level there are several instruments that Albania has adopted and incorporated in its domestic legislation. With reference to human rights in general, in 1996 Albanian government has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR) and its protocols, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1996), the European Social Charter (revised) in 2002, the Council of Europe Convention on Action Against Trafficking in Human Beings (2007), and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2009)<sup>128</sup>. With a viewpoint towards gender equality, the Albanian government has adopted the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention).

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<sup>127</sup> See footnote 120, p.4

<sup>128</sup> [https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country/ALB/RATIFIED?p\\_auth=FoekYI2f](https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country/ALB/RATIFIED?p_auth=FoekYI2f)

As concerns Kosovo, it is not a member state of the Council of Europe and, thus, it can not ratify its Conventions. However, despite not being part of the the European Convention on Human Rights, the latter has been constitutionalised in Kosovo's domestic legal framework. The Convention's provisions are thereby implemented by national courts. The Istanbul Convention is another instrument that has not been adopted by the Kosovar government but that has been followed as a model for the setting up of the legal framework on the protection of women from violence and domestic violence.

### **2.2.1. Albania: the European Convention on Human Rights and the Istanbul Convention**

Albania has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1996. The Convention enshrines the rights that an individual is entitled to and, when they are breached by the state, the former can bring the case before the European Court of Human Rights (hereinafter ECtHR). The last years there have been filed several applications concerning Albania. In 2018 the Court had to deal with 42 applications, 19 of which were declared inadmissible or struck out by the Single Judge and 17 by the Chamber; only 6 of the applications were delivered<sup>129</sup>. Throughout the years there were presented several cases in which human rights have been violated by the Albanian state. However, as concerns violence against women there can be mentioned the case of *Teršana v. Albania*. Dhurata Teršana is an Albanian citizen who was subject to an acid attack in 2009 and submitted an application to the ECtHR against the Albanian state for lack of authorities' response. After the attack, Teršana denounced the fact to the police and the prosecutor opened a criminal investigation on the assailant as she had declared she did not recognise him. However, she believed that this attack was organised by her former husband with the intention to revenge and perpetuate the acts of violence he had initiated in the domestic unit. Moreover, the victim set forth a civil action against the Ministry of

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<sup>129</sup> European Court of Human Rights, *Press country profile: Albania*, Council of Europe, Strasbourg, January 2019, p.1

Justice for the offence she underwent in order to seek a compensation from the State. She was obliged to withdraw from the process owing to lack of economic resources to bear court fees. Therefore, the case coupled with the criminal investigation were suspended by the court. As a consequence, the 30<sup>th</sup> of June 2014 Dhurata Tershana lodged an application to the ECtHR as she complained under articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life), and 13 (right to an effective remedy) of the Convention. Furthermore, she also complained that the authorities have failed to efficiently investigate, identify and condemn the author of the offence committed against her. The application has been communicated to the Albanian government but it is still pending. The Court has focused the attention on Articles 3, 8, 13 and 35 (admissibility criteria) of the ECHR. Every year in Albanian society occur a considerable number of cases of violence against women and domestic violence, being them reported or not. The deficiencies in the judicial and institutional system do not correctly address these issues and do not appropriately guarantee the protection of women's rights. Despite this, the fact that in the last years only one case of violence against women has been presented before the ECtHR and no cases of domestic violence appear in the list of complaints automatically implies that Albanian women are still not prepared to face their struggle at these levels.

Another paramount instrument that the Albanian government has adopted at pan-European level is the Istanbul Convention. The latter was signed by Albania in 2011, ratified in 2013 and entered into force in 2014. In order to monitor the implementation of the Convention, there exist two mechanisms: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and the Committee of the Parties. GREVIO is an independent expert body that monitors the country's situation. In the case of Albania, after having received the report submitted by local authorities and the information provided for by NGOs and after the dialogue with the country's representatives, GREVIO carried out an on-site visit. Subsequently, GREVIO issued a report in which there was envisaged the status of implementation of the Istanbul Convention with final suggestions and proposals to the local authorities.

Following the GREVIO's evaluation report for Albania, there are highlighted all the divergences between the Albanian legal framework and the provisions of the Istanbul Convention. It has to be kept in mind that domestic laws have to adapt to the standards of the Convention in the definition of all the forms of violence and on the measures foreseen in response to gender-based violence and domestic violence.

The Istanbul Convention is based on four pillars (the "four Ps"), namely prevention, protection, integrated policies and prosecution<sup>130</sup>. Whilst the first three aspects are included in the Law no. 9669 "On Measures Against Violence In Family Relations", prosecution is addressed by the Albanian Criminal Code in which domestic violence is considered an offence and, thus, prosecuted by law. The scope of the Istanbul Convention extends to all the forms of violence against women. Nevertheless, in the Albanian legislation there is a divergence in the definition of domestic violence and this has been highlighted also in the GREVIO's report. From one hand, the criminal law includes in the definition of domestic violence all the acts that harm the physical, psychological and economic integrity of the victim. From the other hand, the civil law (law no. 9669) refers to it only from a sexual point of view. As a consequence, it may occur that in the courts domestic violence is not correctly interpreted or identified by judges during legal proceedings. Additionally, Albanian legislation does not dedicate the appropriate importance to the fact that women are the most targeted category subject to domestic violence. Indeed, children, elderly and disabled persons are considered the most vulnerable individuals of domestic violence; however, data show that women represent the largest share of victims affected by this phenomenon.

Article 4 of the Istanbul Convention tackles fundamental rights, equality and non-discrimination. From this perspective, as it has been noted in the GREVIO's report, Albanian government provides several measures, such as Article 18 of the Constitution that guarantees gender equality, the Law no. 9970 "On Gender Equality in Society" adopted in 2008 and the Law no. 10221 "On Protection from Discrimination" issued in

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<sup>130</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*, Council of Europe, Strasbourg, 24 November 2017, p. 12

2010. Additionally, there exist a National Strategy and Action Plan on Gender Equality and two institutions that focus on human rights, namely the Commissioner against Discrimination and the People's Advocate<sup>131</sup>. Despite this, *de facto* women are discriminated both in the private and public spheres and there is a scarce knowledge among citizens and public professionals about the seriousness of gender-based violence and the fact that it is a violation of human rights. According to the Convention, there are several groups of women that are more prone to discrimination. In Albania these groups refer to Roma and Egyptian women as well as older or disabled women, women with different sexual orientation and asylum seeking women<sup>132</sup>. Despite the policies carried out by the government, there do not exist sufficient measures that address and combat violence against these vulnerable categories.

Article 9 of the Convention is concerned with non-governmental organisations and civil society. In Albania NGOs have played a substantive role in the progresses achieved heretofore on the protection and advancement of women. Through the activities of NGOs it has been possible to built several shelters that accommodate victims of violence and their children; there have been launched various programs for the assistance and rehabilitation of victims and perpetrators of violence and there have been organised the most impactful awareness-raising campaigns. The aforementioned efforts should have been carried on by state institutions. However, in Albania there is a considerable reliance and dependence on civil society's initiatives. Additionally, the women's NGOs sector has been financially supported by foreign donors so far as the contribution of the state has been ephemeral.

The third chapter of the Convention deals with its second pillar, namely prevention. Prevention measures consists of changing social norms, stereotypes, beliefs and behaviours that lead to gender-based discrimination and violence against women, thus hindering gender equality. The purpose of such measures is to involve all individuals, women and men together, in reaching gender equality through awareness raising campaigns, training programs for professionals who deal with violence against

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<sup>131</sup> Ivi, p.14

<sup>132</sup> Ivi, p. 15

women and domestic violence as well as programs for perpetrators of violence<sup>133</sup>. However, the persistence of gender stereotypes is still evident in Albanian society owing to entrenched traditional values. The latter represents also an obstacle to the successful implementation of the prevention principle. As a matter of fact, traditional norms lead to the tendency to consider violent acts as a normal practice in the domestic sphere and, therefore, make them accepted also by victims. What aggravates the situation of domestic violence is the impact that it has on indirect victims, namely children. In this concern, GREVIO in its report recommends Albanian government to further increase the efforts in campaigns so as the victims – even those that live in rural areas in which the access to information is more limited – can be aware about the rights and services they can benefit from. Following article 14 of the Istanbul Convention, GREVIO emphasises the relevance that education has in the preventive process. From the report submitted by Albanian government to GREVIO it emerges that there have been conducted various initiatives in the primary and secondary schools in order to educate students on the existence of violence against women. Moreover, there also exist training programs for teachers on gender issues. Nevertheless, what GREVIO notes in this respect is that there is only a general knowledge of such issues without lingering on the multi-faceted nature of gender-based violence. A similar situation concerns also professionals in the legal and healthcare fields. Several training activities have been set up for them; however, these trainings are specifically focused on domestic violence and less on the other forms of violence.

Protection and support constitute another founding pillar of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. The fourth chapter is focused on protection measures for victims of all the forms of violence covered by the Convention. In this concern, Albania has set up a referral mechanism at municipal level; however only 29 municipalities out of 61 are provided with this service. What distinguishes Albania from the other countries of the Region is the strong cooperation among agencies in the response to domestic

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<sup>133</sup> Ivi, p. 26

violence<sup>134</sup>. Despite this, the community response system lacks an efficient legal basis, a system that provides information on the rights and services victims are entitled to as well as a wide scope on the forms of violence, covering only several categories. Protection measures can be provided through two types of services: general and specialist support services. Both general and specialist services are widespread in Albania and provide victims of domestic violence with social and economic assistance. What impairs the actions of these services to advance is the shortage of financial resources that the state should allocate to this sector. Taking into account the first set of support services, it can be stated that in the healthcare field many problems emerge, as emphasised in the GREVIO report. Professionals of this sector are not appropriately trained on the application of minimum standards. Moreover, they interrupt the referral mechanism or reduce the possibilities for victims to report the violence they experience as they are not able to identify the seriousness of the problem and believe that such incidents belong to the private life of individuals. Hospitals and health care centres are responsible for the recognition of victims of violence as they have to transmit these cases to the right authorities. Nonetheless, rarely do this practice occur in Albania, as in many occasions victims prefer to disguise the truth behind their injuries and health care practitioners contribute in this silent procedure by ignoring the evidence. Furthermore, as for the other services and sectors, there does not appear any significant endeavour on the treatments dedicated to victims of other forms of violence than domestic violence. As concerns specialist support services, they are aimed at responding to specific needs of the victims. Shelters and telephone helplines belong to this category. Apart from accommodating victims of violence and their children, shelters include in their services also psychological, legal and counselling assistance. The number of shelters is, however, limited and does not fulfil the Council of Europe's standards according to which there should be one family place per 10'000 head of population<sup>135</sup>. Moreover, emergency shelters in Albania are informal, as they have not been established necessary facilities for victims who need an immediate shelter during the period of time before the

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<sup>134</sup> Ivi, p. 34

<sup>135</sup> Ivi, p. 39

protection order is issued by the court. On the other hand, a national telephone helpline already exists in Albania and it is opened to all women victims of violence.

From the legal perspective, Albanian government has made considerable progress when it has adopted the Law “On Measures against Violence in Family Relations”, pursuant to which applications can be made for emergency barring orders (EBOs) and protection orders (POs). The former is an immediate and temporary measure to protect victims of domestic violence and can be issued within 24 or 48 hours from the application. Within 15 days from the issuance of the EBO, the victim has the right to prolong it by applying for a PO. In Albania this mechanism has been subject to improvements and it has been noted that victims are more aware about it as the number of applications has grown in recent years. Nonetheless, this system lacks an efficient function owing to an inappropriate implementation of the law on these measures. As a matter of fact, according to the Law no. 9669, after the PO is issued, the perpetrator is required to abandon the house that he shares with his partner because he has to take a certain distance from the victim. The lack of law implementation leads to the violation of POs as in many cases judges – influenced by traditional beliefs and mentality – do not want to leave perpetrators homeless<sup>136</sup>. Moreover, the deadlines for the issuance of POs are not always respected.

In Albania, when the Istanbul Convention entered into force, the women’s organisation “Refleksione” launched a project with the purpose to bring the Convention’s provisions at the local level, specifically in 10 municipalities<sup>137</sup>. The intention was to apply the protection measures for victims of gender-based violence and domestic violence as well as the preventive mechanism in order to reduce such phenomena. The first steps of this project consisted of establishing several referral mechanisms for victims of violence and domestic violence. Subsequently, the referral mechanisms staff was provided with the duly training on the Convention’s provisions in order to have sufficient skills to apply them when dealing with victims. The Refleksione’s project particularly addresses the representatives of the institutions that are responsible for the functioning of the referral

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<sup>136</sup> Ivi, p. 57

<sup>137</sup> Ruci, A., *Bringing the Istanbul Convention to the local level*, Refleksione, Albania, 2017

## 2.2.2. Kosovo: European Union's initiatives and the Council of Europe project based on the model of the Istanbul Convention

The first European Union projects for Kosovo were set up after 1999, when the conflict ended. These projects were aimed at reconstructing the country after the conflict. According to European principles, gender equality stands at the basis for a sustainable social development. Moreover, it is defined as a requirement for those countries who aspire to access the European Union. Nevertheless, in the post-conflict Kosovo, European Union projects treated gender equality as a cross-cutting issue and dedicated to it a limited part of their provisions and funds; for instance, in the Action Plan for Implementation of European Partnership for Kosovo and Gender Inclusion (2007-2010) gender issues represented the 2% of the overall priorities and they were dealt with in general terms<sup>138</sup>. It can be asserted that also the other pan-European initiatives in Kosovo, such as the European Agency for Reconstruction which was set up in the post-conflict period, were characterise by the same nature. The European Agency for Reconstruction was launched by the European Commission with a financial basis of €127.000.000 all allocated into the reconstruction process, leaving gender issues out of the plans<sup>139</sup>. Additionally, since 1992 the European Commission Humanitarian Office was established in order to support the Western Balkan countries in difficulty and to respond to the crises they were facing in that period. The Office's funds in Kosovo were earmarked until 2002 with the aim to support the victims of the Kosovar crisis; however, among the victims there was no inclusion to those who have been subject to sexual violence during the war<sup>140</sup>. With the European Instrument for Human Rights and Democracy there were outlined several programs in Kosovo with the purpose to promote democracy and protect human rights. These programs addressed particularly those areas in which violation of human rights occurred. Within this general framework there were included – even though they did not represent the

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<sup>138</sup> Kosovar Gender Studies Centre, *Gender audit of European Union: Projects in Kosovo*, 2010, pp. 24-25

<sup>139</sup> Ivi, p. 30

<sup>140</sup> Ivi, p. 33

most prioritised and emergency problems of the list – also issues related to women’s rights, to which organisations were allocated the 22% of the funds<sup>141</sup>.

One of the most influential projects in Kosovo at European level has been the European Rule of Law Mission (EULEX). EULEX received officially its mandate the 4<sup>th</sup> of February 2008 from the UN Security Council, inheriting the legal authority that until that moment was held by the UNMIK<sup>142</sup>. Its main objective has been to assist the Kosovar government in the building of the rule of law, focusing particularly on police, justice and customs. Furthermore, EULEX exercises executive powers in order to tackle serious crimes such as organised crime, terrorism, interethnic crimes, corruption, etc., as the Kosovar judicial system is not ready yet to deal with such issues. Within its agenda there are also included women’s rights which belong to the human rights category. In principle, the reports of EULEX did not leave important space to gender issues as no substantive data or recommendations were provided in this concern. Subsequently, domestic violence became a point of focus specifically when referring to the collaboration between EULEX and women’s organisations. In this concern it can be stated that EULEX has participated in many awareness raising campaigns, such as the “16 Days of Activism Against Gender-Based Violence” campaign as well as the “Hear Me Too” campaign. EULEX is one of the main institutions that support women’s organisations and contribute to the empowerment of Kosovar women. The activities of this entity have to be based on the principle of non-discrimination and gender mainstreaming. Nevertheless, the elimination of gender disparities in all the fields is still a mirage in Kosovo. As a matter of fact, even in the EU civilian missions such as EULEX there persists a form of gender discrimination as women are underrepresented. Only 23% of women have management roles in EULEX<sup>143</sup>; therefore, this sector, as others, is male dominated and it is not a positive representation of gender equality, being it an EU mission.

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<sup>141</sup> Ivi, p. 43

<sup>142</sup> Bertelsmann Stiftung, *BTI 2010 Country Report — Kosovo*, Gütersloh: Bertelsmann Stiftung, 2009, p. 3

<sup>143</sup> <https://www.eulex-kosovo.eu/?page=2,11,900>

### 2.2.2.1. The doctrine of the Istanbul Convention

The Istanbul Convention is a regional instrument that aims at eliminating and preventing all the forms of violence against women and, particularly, domestic violence. This Convention has been commended for its extension in scope including a wide range of forms of violence against women and for its universal nature; at the same time, it has been object of criticism for other aspects that were ignored when it was drafted.

As concerns the key points that outline the singularity of the Istanbul Convention, a reference can be made to its universal nature, meaning that also non-Member States of the Council of Europe have the possibility to ratify it<sup>144</sup>. This is possible only when the non-Member State is invited by the Committee of Ministers and this decision has to be supported by the majority of two-thirds of Ministers as well as by unanimity among the State Parties of the Convention<sup>145</sup>. At the same time, non-Member States of the Council of Europe that have not ratified it yet have the possibility to improve their domestic legislation by setting their objectives on the basis of the standards provided for by the Istanbul Convention. This was the case of Kosovo, whose government has taken as a model the Convention in order to reinforce its legislative framework on the elimination of all the forms of violence and to improve the preventive, protection and prosecution measures of the country.

Another point in favour of the Istanbul Convention is that its applicability extends also to situations of conflict. Article 2 of the Convention defines the scope of the latter in which there is specified that when referring to war crimes there are included also acts of sexual violence and rape committed against women<sup>146</sup>. Therefore, when other international legislation fails on addressing these crimes occurring in war times, the Istanbul Convention's scope allows its provisions to be applied in defence of victims. Moreover, as affirmed by Sara De Vido, differently from other treaties, the

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<sup>144</sup> De Vido, S., *Donne, violenza e diritto internazionale: La Convenzione di Istanbul del Consiglio d'Europa del 2011*, Milano: Mimesis Edizioni, 2016, p. 183

<sup>145</sup> Council of Europe, *Explanatory report to the Council of Europe Convention on preventing and combating violence against women and domestic violence*, Istanbul, 2011, par. 376

<sup>146</sup> See footnote 144, par. 38

applicability of the Istanbul Convention can also extend to those crimes committed towards women during conflicts that are not necessarily categorised as war crimes, such as domestic violence or psychological violence and also in emergency and post-conflict situations<sup>147</sup>. This aspect of the Convention is strongly related to the situation of survivors of violence in Kosovo. They underwent a double infringement of their rights. From one hand, they were victims of sexual abuse and rape during the war by Serbian forces. From the other hand, they were victims of stigmatisation in the post-conflict society precisely because they were subject to sexual violence during the war. They were denied the right to denounce these violations by their family members and this was one of the causes that further fomented the practices of domestic violence and psychological violence against Kosovar women. If the Istanbul Convention was applied in this circumstance, Kosovar women would be entitled both to protection measures and redress mechanism. Nevertheless, as the Republic of Kosovo has not ratified the Istanbul Convention, the latter can not provide for obligations towards the former in this respect. It is only followed as a model for the improvement of the domestic legal framework.

The Istanbul Convention deals also with cultural practices that evolve into acts of violence against women. In this concern, mention can be made of forced abortion, forced marriage and honour crimes which are phenomena that have affected also Kosovar women.

As concerns forced abortion, according to the Explanatory Report, article 39 of the Convention considers this practice as a criminal offence and it refers to "*the intentional termination of pregnancy without the prior and informed consent of the victim.*"<sup>148</sup> Therefore, before deciding to interrupt the pregnancy, women have to express their consent and have to be informed about the risks that abortion brings about on their health<sup>149</sup>. Nevertheless, the Istanbul Convention does not envisage any provision on the right to abortion, namely the right a woman has to decide on her

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<sup>147</sup> See footnote 143, p. 208

<sup>148</sup> See footnote 144, par. 204

<sup>149</sup> See footnote 143, p. 138

sexual and reproductive health<sup>150</sup>. This shortage is coupled with other problems that subsequently hamper women to enjoy their rights. From one hand, there does not exist a uniform legislation at international level on the right to abortion as several states may be against abortion or it may occur that there do not exist adequate health services to ensure safe abortion. Forced abortion is a common – even though not particularly widespread – practice also in the Kosovar society mainly due to male offspring preferences. Moreover, there do not exist measures that the Kosovar government has adopted at national or international level that address forced abortion; even the Criminal Code does not criminalise this act. At the same time, information about the consequences and the risks of this practice are not available.

Forced marriage is another practice that goes to the detriment of women and girls and that the Istanbul Convention addresses in article 37. This concept is strongly related to premature marriages, which involves girls below the age of 18 (but also 15 or 16) that are forced by parents or whoever exercises paternal authority on them to marry a man without their consent. These phenomena, coupled with arranged marriage, are a consequence of traditional norms and values that characterise a patriarchal society as Kosovo. Girls are deprived from their right of freedom, they would have limited possibilities to access education and would be more exposed to the risk of being subject to domestic violence as well as to undesired pregnancies<sup>151</sup>. The singularity of the Istanbul Convention in this concern, in addition to the fact that it criminalises the abovementioned phenomena, consists of the fact that its extraterritorial nature allows its application also in the cases when the early marriage is celebrated abroad<sup>152</sup>.

Article 42 of the Convention criminalises all the acts of violence that are justified as cultural practices and beliefs, namely the crimes committed in the name of “honour”<sup>153</sup>. Therefore, using customs, religion, social or traditional norms as a justification for the commission of acts of violence against women are not accepted. A

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<sup>150</sup> Ivi, p. 140

<sup>151</sup> See footnote 143 pp. 118-119

<sup>152</sup> Ibidem

<sup>153</sup> See footnote 144, par. 216

tangible example is the persistence of honour killings against women that in Kosovo have been practiced due to the influence of the customary laws sanctioned in the Kanun. Women are the main target of these crimes as they are considered the honour-keepers of the house. Failing to obey their husband, to comply with the rules of hospitality, or desiring to divorce are some of the justifications used for honour killings committed against women. These phenomena are not criminalised by the Kosovar Criminal Code; therefore, the Istanbul Convention could be a positive model to follow in order to eliminate and prevent such crimes that constitute also a form of violence and discrimination against women.

Despite the above, compared to other documents on gender issues, the Istanbul Convention is a recent instrument. Therefore, it leaves room for further improvements and/or amendments in order to be more accessible and effective on the fight against domestic violence and violence against women. De Vido has emphasised several limits of the Convention which refer mainly to the forms of violence against women that still are not covered by its scope. As a matter of fact, prostitution and technology-based violence are not addressed by the provisions of the Convention and, as such, they are not considered as acts of violence against women on which the State Parties have obligations. Nevertheless, there are some aspects of these phenomena in which the jurisprudence of the Convention can be implemented. Concerning prostitution, the sexual and psychological acts committed against victims of this phenomenon constitute a sphere in which the Convention can exercise its applicability<sup>154</sup>. As victims of violence, prostitutes have the right to benefit from the services of assistance, rehabilitation and integration that are provided for by the Convention. De Vido has suggested the creation of a protocol for the Convention that could address violence committed against prostitutes<sup>155</sup>. In this way the applicability of the Convention would extend also to psychological and physical violence committed against prostitutes both indoor and outdoor and would also tackle the phenomenon of sexual tourism, which affects mainly children<sup>156</sup>.

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<sup>154</sup> See footnote 143, p. 224

<sup>155</sup> Ibidem

<sup>156</sup> Ibidem

On the other hand, cyber-violence is another form of violence towards women that is not covered by the Convention's scope. It is a phenomenon that is evolving rapidly as it goes hand in hand with the enhancement of the technological sector. It develops in different forms which fall under the categories of cyber-harassment and cyber-stalking<sup>157</sup>. During the drafting process of the Convention there were not taken into account the forms of violence against women in the virtual world. However, this does not exclude the possibility to criminalise those aspects of technology-based violence against women that fall under the Convention's scope, namely stalking, sexual harassment and psychological violence. The Council of Europe Explanatory Report on the Istanbul Convention, when dealing with the definition of stalking provided for by article 34 of the Convention, highlights the aspects that are included within this definition. As a matter of fact, stalking refers also to the attempts to create a communication with the victim through the technological tools. It is also stressed that "*setting up false identities or spreading untruthful information online*" constitute threatening behaviours towards the victim<sup>158</sup>. In this concern, the Istanbul Convention can represent an inspiring instrument for the improvement of preventive and contrasting measures for cyber-violence.

#### **2.2.2.2. The application of the Istanbul Convention's standards in Kosovo**

The Republic of Kosovo is not a member state of the Council of Europe and, as such, it can not adopt the instruments and documents it issues. This has not hindered, however, the European Union to apply its instruments in Kosovo as a model for reaching international standards on gender issues. This is the case of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). This effort was aimed at reinforcing the legislative framework of Kosovo to eliminate all the forms of violence covered by the Convention and improve the preventive, protection and prosecution measures of the

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<sup>157</sup> Ivi, p. 226

<sup>158</sup> See footnote 144, paras. 182-183

country. The Istanbul Convention promotes a gendered understanding of violence against women and requires that the services offered to victims are based on this principle. As concerns services, according to the Convention they can be distinguished into two categories: general support services outlined in article 20 of the Convention and specialist support services (article 22). The differences between the two consist of the fact that the first category is mainly provided by state-run institutions and are opened to the general public whereas the second category refers to victims of specific forms of violence or domestic violence and the majority of them are offered by NGOs. Amongst the latter category, mention can be made of shelters (as foreseen by article 23 of the Convention), telephone helplines (article 24) and support for victims of sexual violence (article 25). Shelters have the main task to accommodate women victims of violence and domestic violence as well as their children guaranteeing them the level of safety that they can not enjoy in their family context. This service has to respond to the Convention's requirements in terms of number and accessibility. Accordingly, there has to be provided one family place per 10'000 people in order to be in line with the Convention's standards. Telephone helplines should be accessible 24/7 and free of charge for all victims of violence and domestic violence. Furthermore, the centres for sexual violence victims have to be widespread even in the rural areas and according to the Convention's standards there has to be available one per 200'000 inhabitants<sup>159</sup>. In addition to this, in order to fully commit with the Convention's requirement, Kosovo has to provide also services for children witnesses of violence with adequate counselling support; victims have to be followed by trained professionals during the legal proceedings in order to make them aware and benefit from the rights they are entitled to; at the same time, they have to be provided programs for perpetrators of domestic violence and those of other sex offences.

There has been made a survey based on the provisions of the Istanbul Convention with the intention to analyse the quality of support services provided in Kosovo both by NGOs and the government and to collect data in this field. In the first part of the survey, which consisted of a questionnaire, there participated 53 support

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<sup>159</sup> Council of Europe, *Mapping support services for victims of violence against women in Kosovo*, 2017, p. 14

services, 12 being NGOs organisations and the rest state institutions<sup>160</sup>. There were 25 female respondents and the remaining 28 were men<sup>161</sup>. The second part of the survey was structured into interviews which were aimed at ascertaining how the provisions of the Convention are understood and implemented. From the survey it has emerged that of 20 interviewed participants, only 14 of them declared to be aware about the Istanbul Convention<sup>162</sup>. Moreover, when the object of the interviews becomes the nature of general and specialist support services there emerged a widespread confusion among respondents as they have declared that in many cases the tasks of one category are conducted also by the other. Therefore, it can be assumed that there is not a precise knowledge about the distinction between the general and specialist support services. Respondents also declared to offer several services, such as dealing with victims of sexual violence, with all forms of violence enshrined in the Istanbul Convention, or providing programs for perpetrators; however, they are not in line with the Convention's standards and scope. Even though they affirm to be versatile in nature, the majority of service providers address mainly domestic violence. Despite this, when asked during the survey, they were not able to give a definition of this phenomenon. On the other hand, not all the service providers offer trainings to their staff. Only 58% of them have declared to provide training to their staff concerning gender-based discrimination and violence as well as other issues related to the empowerment of women and the knowledge of the existing international and domestic legislation<sup>163</sup>. Nonetheless, only a restrictive part of service providers interviewed have stated to provide additional training to the personnel especially referring to marginalised groups. NGOs and state-run institutions that provide services to victims of violence and domestic violence have the duty to inform women about the rights and services they are entitled to.

Support services have to be economically, linguistically and physically accessible according to the Istanbul Convention's standards as well as be delivered on the basis of

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<sup>160</sup> Ivi, p. 17

<sup>161</sup> Ibidem

<sup>162</sup> Ivi, p. 20

<sup>163</sup> Ivi, p. 48

the non-discrimination principle<sup>164</sup>. As concerns the latter, it can be asserted that actually it is not duly respected by Kosovar organisations and institutions as they deal mainly with women, excluding male victims from their activities. Specialist services are more inclusive than general services in this perspective, giving the opportunity to men to access them. For NGOs and state-run institutions, being economically accessible means that they have to deliver services free of charge to all service users. As a matter of fact, through the survey it has emerged that 77% of them respect this requirement, whilst 11% of them are free of charge to most service users and one NGO has declared that its services are not free of charge<sup>165</sup>. Linguistic accessibility refers to the capacity of service providers to offer multilingual services. This requirement is fulfilled by 81% of them including Albanian and Serbian as primary languages. The geographical accessibility of service providers has been difficult to assess as among participants there were not representatives of all the categories. Nevertheless, it can be stated that there has been set up one women shelter and Violence Advocate per region and there is granted the presence of Police Domestic Violence Investigation Units and Centres for Social Work in all the municipalities<sup>166</sup>. Moreover, it has emerged also that, from a geographical perspective, the Convention's scope on all the forms of violence against women has not been reflected as specialised support is offered mainly to victims of domestic violence. A part from this, the number of present women's centres and shelters do not suffice to accommodate victims of violence due to lack of space, resources or capacity.

Service providers have to adopt a gender perspective in their work. Considering gender-based violence against women as a form of discrimination is the appropriate direction to follow the guidelines of the Council of Europe in general and the Istanbul Convention in particular. Nevertheless, when interviewed, some of the Kosovar service providers have declared that gender equality does not have an impact in their work. Only a limited part of service providers have declared that equal treatment of men and women stands at the basis of their activities. In order to reinforce the gender-based

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<sup>164</sup> Ivi, p. 51

<sup>165</sup> Ivi, p. 53

<sup>166</sup> Ivi, p. 54

perspective of violence among service providers it is necessary also to have a female staff. As a consequence, this would increase the level of confidentiality between the victim and the personnel. In this concern, during the survey it has emerged that a considerable number of participants have declared to offer this opportunity. Despite this, the Kosovar service providers are not mentally prepared to incorporate a gender-based understanding of violence in their behaviour and work. As a matter of fact, during the interviews there have never been tackled issues such as patriarchal mentality and gender stereotypes which are the causes that lie behind violence against women and domestic violence phenomena.

Overall, it can be asserted that there exist several aspects of the service providers in Kosovo that do not comply with the Istanbul Convention's requirements. The most evident obstacle is represented by the fact that the domestic legal framework does not sanction domestic violence as a violation of women's rights. At the same time, Kosovo's policies and laws do not provide an overarching framework that addresses all the forms of violence against women. As a consequence, both state-run institutions and non-governmental organisations focus their attention on domestic violence, leaving no room to the other phenomena covered by the Istanbul Convention. Therefore, support services lack a uniform and holistic framework of standards, procedures and practice that can guide them in the response to all the forms of violence against women<sup>167</sup>. This approach by Kosovo government, institutions and organisations is also reflected in the behaviour of service providers' professionals. In addition to this, the lack of capacity-building and training initiatives has further aggravated the situation. Lastly, another aspect that hampers the efficiency of service providers' work is the shortcoming of funds they are entitled to. Indeed, NGOs lack financial support from the government; they are mainly supported by international donors. Therefore, this impairs their opportunity to be more complete and efficient in terms of provision of services.

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<sup>167</sup> Ivi, p. 75

## 2.3. Legislative framework at national level

### 2.3.1. Albanian Constitution and existing laws on the forms of gender discrimination and gender-based violence

Being a member state of international institutions and having adopted international instruments creates several obligations for Albanian government. This entails that Albania has to adapt its domestic legislative framework to international standards. As a matter of fact, Albanian government has made substantive efforts in the field of gender issues improving its existing legislation and issuing new laws.

Article 18 of the 1998 Albanian Constitution sanctions that everyone is equal before the law. Discrimination on the basis of gender, race, religion, ethnicity, language, political, religious or philosophic beliefs, economic, education or social situation or parentage is prohibited and sanctioned by the law. This principle has been the guideline for the drafting of new laws on equality and non-discrimination.

The most far-reaching effort in this concern has been the Law no. 9669 “On Measures against Violence in Family Relations” of 2006. The latter is a by-product of a petition signed by 20’000 Albanian citizens that the Parliament welcomed and then successfully transformed into law. It has been subject to several amendments in 2008<sup>168</sup>, in 2010<sup>169</sup> and in 2018<sup>170</sup>. The scope of the Law no. 9669 is to reduce violence in the domestic context as well as to protect the victims from this phenomenon. Whereas before 2018, the article 1 of Law no. 9669 considered the most vulnerable victims of domestic violence the elderly, children and disabled, with the last amendment there was added that every individual addressed by this law who need special protection support is entitled to protection<sup>171</sup>. In order to achieve its objective,

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<sup>168</sup> By Law No. 9914, on 12.05.2008 “On some addenda to Law No. 9669, dated 18.12.2006 “On measures against violence in family relations”

<sup>169</sup> By Law No. 10329 on 30.09.2010 “On Some Addenda and Amendments to Law No. 9669 “On measures against violence in family relations”

<sup>170</sup> By Law No. 47/2018 on 23.07.2018 “On Some Addenda and Amendments to Law No. 9669 “On measures against violence in family relations”

<sup>171</sup> Ligj Nr. 47/2018 “Për Disa Shtesa dhe Ndryshime Në Ligjin Nr. 9669, date 18.12.2006, “Për Masa Ndaj Dhunës Në Marrëdhënjet Familjare”, të ndryshuar

the law enlists several steps that refer to the creation of the mechanisms as well as to the assignment of duties to the responsible authorities, structures and institutions for the protection and support of the victims of domestic violence as well as for the adoption of preventive measures. Article 3 outlines the definition of various concepts among which that of domestic violence. The latter has been improved with the amendments of law no. 47/2018 and it refers to *“any act of violence pursuant to point one of this article that occurs within the family or the domestic unit, committed between persons who are or used to be in a family relation, regardless the fact that the perpetrator shares or has shared the same house with the victim”*<sup>172</sup>. Furthermore, improvements of this law concern also the addition of article 3/1 in which there is stressed the fact that Law no. 9669 is based on the standards of the international instruments that the Albanian Republic has ratified, such as the CEDAW and the Istanbul Convention. Pursuant to article 5, the authorities both at local and central level are responsible for the implementation of this law, with the Minister Responsible for Gender Issues as the leading authority. The local authorities have the duty to set up efficient structures and mechanisms in response to domestic violence as well as to combine their policies in order to combat domestic violence in all its forms. Chapter three of the same law enshrines the protection measures against domestic violence and among them there is the possibility for victims to apply for protection orders (POs) or emergency protection orders (EPOs) that are issued on the court’s decision. Both the EPOs and the POs may be petitioned, a part from the victims themselves as well as their legal representative, also by the police or the prosecutor. The significant achievement of this law is that, as sanctioned in article 13 part four, when the petition of an EPO or PO is made by the police or the prosecutor, the judicial process will continue notwithstanding that the victim withdraws from the case. Moreover, the petitioner is assisted during the application process by a legal representative and free of charge. At the same time, the petitioner is exempt from court fees (article 14, parts 3 and 4). Every person who proves with evidence that has been subject to domestic violence has the right to apply to the District Court for an EPO. The latter is issued

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<sup>172</sup> Translation made by the author

within 24 (when minors are involved) or 48 hours. The time limit of the EPO expires when a PO issued by the court enacted. Before the PO is issued, there is necessary for the court to hear the parts interested and this has to occur within 15 days from the application for the petition. Once the PO is authorised, it has a time limit of 12 months with the possibility for the victim to extend it. The perpetrator is immediately notified about the court's decision and he has to leave the house that used to share with his cohabitating partner or former cohabitating partner and also to keep a certain distance from the house.

Apparently, this system is complete and efficient. However, reports from several authorities and institutions (domestic and international) have revealed that actually there is a lack of adequate implementation of law no. 9669. Protection orders and emergency protection orders are not issued within the deadlines established, failing in providing immediate protection to victims of domestic violence. On the other hand, the authorities responsible for the functioning of this mechanism have not brought about positive results neither in fulfilling their duties nor in interconnecting their policies with each other.

Another significant achievement of the Albanian government with regard to gender issues has been the adoption of the Law no. 9970 "On Gender Equality in Society", dated 24.07.2008. This law aims at achieving equal treatment and opportunities for women and men without being subject to any form of discrimination<sup>173</sup>. Therefore, this law is based on the principles of equality and non-discrimination in all the spheres of private and public life of citizens. Pursuant to article 6 of the Law No. 9970, gender-based discrimination is prohibited in all its forms. Gender inequalities can be eradicated through temporary special measures that support citizens of both genders from an economic and educational point of view as well as for employment opportunities<sup>174</sup>. The purpose here is to advance the empowerment of women and men at same levels so as not to have differences in treatment or discriminations. Law No. 9970 foresees also special measures which consist of support and assistance to women who are pregnant, to mothers and to

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<sup>173</sup> Law no. 9970 "On Gender Equality in Society", as amended, articles 1 and 2

<sup>174</sup> Ivi article 8

women who dedicate to the care of elderly or disabled persons in family. The central body that deals with gender issues is the National Council on Gender Equality, which is chaired by the Minister Responsible for Gender Equality Issues and its members are appointed both by the government and by the civil society”<sup>175</sup>. It is an advisory organ of the government for the setting-up and improvement of policies and programs that aim at attaining gender equality. With the adoption of the Istanbul Convention, the National Council on Gender Equalities is responsible also for the monitoring, implementation and coordination of policies and strategies on the fight against all the forms of violence covered by the Convention. Furthermore, it collaborates with the Minister Responsible for Gender Issues, being the latter the lead responsible authority for the implementation of Law no. 9970. Together these organs propose to the Council of Ministers amendments on the existing legislation on gender equality and women’s rights<sup>176</sup>. The Minister Responsible for Gender Issues is a supportive force for NGOs and gives its contribution also to the evolution of the awareness-raising process as well as of training and educational programs. Equal gender participation in decision-making process is another pillar of the Law no. 9970 “On Gender Equality in Society”. It includes equal representation of both genders in the judicial, executive and legislative bodies as well as in all the public institutions. Article 15 states that it has to be ensured more than 30% of both genders in the list of candidates for local and central elections. The Law no. 9970 addresses gender discrimination also in the workplace and in labour relations. Employees have to be recruited without discrimination and their qualities should be evaluated on the basis of equal criteria. Women and men have to be guaranteed equal salary for work of equal value. The employer is responsible for the protection of his or her employees from sexual harassment or discrimination in the working place. Therefore, the employer is obliged by this law to take the necessary prevention and protection measures in order to avoid any discriminatory or violent act in the workplace. Article 23 of this law focuses on unpaid work and within this category there are included the children care, elderly care and care of the wellbeing of the family conducted by women. It is considered as a contribution to the society and the

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<sup>175</sup> Ivi, article 11, par. 2

<sup>176</sup> Ivi, article 13/b

family; however, it is the only work for women who in turn do not receive a financial profit. From the other hand, the fifth part of the law no. 9970 deals with equal treatment in education and qualification. Pursuant to article 24/1, discrimination that occurs in these fields and generated from their respective institutions is prohibited. Teachers and subjects who prepare the necessary material and programs in the education field have to assume an equal approach in their work and to contribute in destroying barriers to gender equality in Albanian society. The subsequent part of the Law no. 9970 “On Gender Equality in Society” tackles the principles of equal treatment and non-discrimination in the media. Article 25 penalises the use of discriminatory terminology and material used or published by the media towards women or men. The role of the media is essential particularly when referring to raising awareness on the cases of violence against women and domestic violence. It is common currency that the media use discriminatory and inappropriate language or attitude when reporting cases of violence against women.

Notwithstanding the abovementioned aspects, the Law no. 9970 “On Gender Equality in Society” is not duly implemented. Gender-based discrimination and inequalities are an actual practice in Albanian society, going particularly to the detriment of women. The latter is underrepresented at all levels of the public sphere, as it is demonstrated by the data reported in the previous chapter. Gender roles and stereotypes have represented a significant part of gender disparities overwhelming Albanian society. Moreover, the public sphere is strongly male dominated, where men occupy the leading roles, violating the principle of equal opportunities. Women belong to the category of social groups that have limited access to the labour market because of their gender and also because they are not sufficiently supported by state institutions. As a matter of fact, they tend to be subject to unpaid work, dedicating to the domestic life and care for children and elderly. This further foments the discriminatory attitudes and mentality towards women. Therefore, more efforts are needed in this concern.

In addition to the aforementioned laws, there are other laws constituting the Albanian legislation that prohibit gender discrimination and ensure *de jure* gender

equality. In 2010 there entered into force the Law no. 10221 “On Protection from Discrimination” that in article 1 prohibits every discriminatory act committed on the basis of, *inter alia*, gender and gender identity<sup>177</sup> in several sectors such as employment, education as well as in the field of goods and services. The implementation of this law is monitored by an equality body, namely the Commissioner for the Protection from Discrimination. It is a public legal person that has the duty to ensure protection from discrimination as sanctioned in article 1 of the law no. 10221<sup>178</sup>. It offers legal assistance to the victims of discrimination during the process. Concerning domestic violence, it has dealt with cases of discriminatory treatment of victims from the services offered by the “Mechanism for the Coordination of Work for the Referral of Cases of Violence in Family Relations and Ways of its Proceedings”<sup>179</sup>. Nevertheless, there are no provisions of this law addressing discrimination against ethnic minorities, such as the Roma and Egyptian people. They are the most marginalised communities and albeit the government has been inclined to the adoption of international conventions on this issue, it has not showed any reference to Roma’s and Egyptians’ rights. The law no. 10221 states that no discrimination on the basis of race, colour and ethnicity should occur as the concept of equality comprises also these aspects. Despite this, Roma and Egyptians are explicitly excluded from public life, leadership roles, labour work and healthcare services. Moreover, a deep form of racism is strongly entrenched in the citizens’ mentality that further impairs the inclusion of minorities into society.

From 1998 the Albanian government has adopted a series of codes focusing on specific areas of the citizens’ life and rights. Among the provisions of these codes there exist articles that refer to the rights of women and to the cases of violence. This legislation has been subject to several amendments in order to adapt to the international standards outlined by the international instruments that the government has adopted throughout the years. For instance, the Family Code of 2003 in the section dealing with rights and obligations of marriage, article 62 foresees the right of the

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<sup>177</sup> Law no. 10221 dated 4.2.2010 “On Protection from Discrimination”, as amended, article 1

<sup>178</sup> [www.equineteurope.org/CommissionerforProtectionfromDiscrimination](http://www.equineteurope.org/CommissionerforProtectionfromDiscrimination)

<sup>179</sup> Ibidem

spouse who is subject to domestic violence to require the court an urgent measure in order to remove the author of offences from the marital residence. Moreover, the Criminal Code outlines the punishment for the commission of sexual crimes. Article 100 of the same code penalises sexual or homosexual crimes relations with minors (particularly with a female child who has not reached sexual maturity) with imprisonment from seven to fifteen years. Sexual assault by use of force with an adult is also a matter of the Criminal Code. Article 101 outlines *“Engagement in sexual activity by use of force with adult females or between spouses or cohabitants, without the consent of either of them, shall be punishable by three to ten years imprisonment.”* If the violence brings about suicide or death of the victim, the imprisonment of the perpetrator extends from ten to twenty years. Furthermore, article 105 of the Criminal Code punishes the sexual violence generated from persons who abuse of their job position with an imprisonment up to three years. Sexual violence is sanctioned as a criminal offence by article 107/a of the Criminal Code. These acts include violence committed on the body of another person with the use of objects. The imprisonment provided for in this case is from three to seven years and it increases when minors are involved or when the action has as a consequence the suicide or death of the victim. In 2013, with the Law no. 144 there was added article 108/a which sanctions sexual harassment. The latter refers to *“actions of a sexual nature which infringe the dignity of a person, by any means or form, by creating a threatening, hostile, degrading, humiliating or offensive environment”* and they are punishable from one to five years of imprisonment. As concerns human trafficking, it is mentioned in article 110/a of the Criminal Code that has been amended frequently<sup>180</sup>. Trafficking in human persons for sexual exploitation, forced labour and other forms of exploitation within and beyond the Albanian borders is punishable from eight to fifteen years of imprisonment. If the victim is a woman the imprisonment is from ten to fifteen years. Also who benefits from the services provided by trafficked persons are subject to condemnation that may last from two to five years. Section seven of the Albanian Criminal Code focuses on criminal acts against morality and dignity. Among the latter can be mentioned

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<sup>180</sup> This article was added with Law no. 8733, dated 24.01.2001; it was amended by Law no. 9188, dated 12.02.2004 and also by Law no. 144, dated 02.05.2013

prostitution<sup>181</sup>, exploitation of prostitution<sup>182</sup>, and stalking<sup>183</sup>. The following section (number 9) of the Criminal Code tackles criminal acts against children, marriage and family. In 2012 the Law no. 23/2012 added article 130/a which sanctions domestic violence as follows:

*“Battering and any other act of violence against a person who is a spouse, former spouse, cohabitant or former cohabitant, close relative or close relative in-law to the perpetrator of the criminal offence, resulting in violation of his or her physical, psycho-social and economic integrity, shall be punished by imprisonment of up to two years.*

*A serious death threat or serious injury, against a person who is a spouse, former spouse, cohabitant or former cohabitant, close relative or close relative in-law to the perpetrator of the criminal offence, resulting in violation of his or her physical, psycho-social and economic integrity, shall be punished by imprisonment of up to three years.*

*Intentional injury committed against a person who is a spouse, former spouse, cohabitant or former cohabitant, close relative or close relative in-law to the perpetrator of the criminal offence, resulting in a temporary disability for work for more than nine days, shall be punished by imprisonment of up to five years.*

*The same offences which are committed repeatedly or in the presence of minors, shall be punishable by one to five years of imprisonment.”<sup>184</sup>*

Victims of domestic violence as well as human trafficking and sexually abused victims are entitled to legal aid pursuant to Law no. 111/2017 which was approved in 2017 and entered into force the 1<sup>st</sup> of June 2018. As a matter of fact, article 11 of this law foresees legal aid for the victims of the abovementioned categories regardless their income and property. Legal aid consists of exemption

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<sup>181</sup> Article 113 of the Albanian Criminal Code, as amended

<sup>182</sup> Article 114 of the Albanian Criminal Code, as amended

<sup>183</sup> Article 121/a of the Albanian Criminal Code, as amended

<sup>184</sup> Euralius Consolidation of the Justice System in Albania, *Criminal Code of the Republic of Albania*, 2015

from court taxes, fees and expenses. Victims of domestic violence, human trafficking and sexual abuse are also entitled from one hand, to primary legal aid, namely the representation before administration bodies as well as assistance and the provision of information, counselling and advice on the legal system and the procedures; from the other hand, they are entitled to secondary legal aid, which refers to the assistance they receive during the process of compilation of necessary documentation and their representation and defence before the court<sup>185</sup>. Sexual harassment is prohibited also in the work field and provisions in this respect are outlined in the Labour Code, as amended. According to article 32, the employer is held responsible for the protection of her or his employees and thereby has to provide the protection and preventive measures in order to avoid cases of sexual harassment or acts that violate the integrity of employees committed by the employer or other employees. An employee has the right to complain if she or he has been harassed and, in addition, she or he is safeguarded by this law in order not to be dismissed from work, discriminated or become a victim of sexual harassment.

As it has been emphasised in several occasions in the previous chapter, women in Albanian society at present time are underrepresented in the participation to political life and decision-making. In this concern, Albanian government has made, *de jure*, a significant progress towards gender equality by amending the Electoral Code. As a matter of fact, the amendments made to article 67 has led to the introduction of gender quotas in the list of candidates of parties and party coalitions. Accordingly, *“For each electoral zone, at least thirty per cent of the multi-name list and one of the first three names on the multi-name list shall belong to each gender [...] For elections for local government bodies, for each municipal council, one in every two consecutive names in ranking shall belong to the same gender.”*<sup>186</sup> If these provisions are not respected, the Electoral Code as amended provides for sanctions related to gender equality.

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<sup>185</sup> Law no. 111/2017 “On State Guaranteed Legal Aid”, article 3

<sup>186</sup> Translation made by the Organisation for Security and Co-operation in Europe, Presence in Albania, *The Electoral Code of The Republic of Albania*

Article 175 penalises the electoral subject who does not comply with the provisions of article 67 and thus is punishable with a fine of ALL (Albanian Lekë) 1,000,000<sup>187</sup>. Furthermore, point 2 of the same article provides an additional sanction according to which in those areas in which the violation has been committed, for each vacancy in the list of the subject that commits the violation the next list of candidates has to include the least represented gender in order to reach the required gender quotas.

### **2.3.2. Kosovo Constitution and existing laws on gender quality, violence against women and domestic violence**

The Kosovo legal framework addressing domestic violence and gender-based violence and discrimination is particularly similar to the Albanian one. In 2004 there entered into force the Law no. 2004/2 “On Gender Equality in Kosovo”. This law aims at eliminating barriers that obstacle gender equality in the Kosovar society as well as at creating the appropriate social environment for the advancement of women’s condition free from discrimination. It outlines the right of individuals of both genders to be equally treated and represented in the judicial, executive and legislative institutions as well as their participation into local and central government bodies. The authorities and institutions responsible for the attainment of gender equality are manifold. The Assembly of Kosovo is responsible for the implementation of the Kosovo Program for Gender Equality (KPGE)<sup>188</sup>. The latter aims at combining and supporting the efforts of different actors interested in gender issues such as state actors and institutions at local and central level, civil society, foreign donors and the community<sup>189</sup>. The government is the authority that mostly holds the burden of the positive functioning of the KPGE and its achievements in respect to gender equality. At the same time, the government has to contribute into the attainment of the purposes

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<sup>187</sup> The fine is established pursuant to article 510 of the Civil Procedure Code

<sup>188</sup> Law no. 2004/2 “On Gender Equality in Kosovo”, section 4

<sup>189</sup> Agency for Gender Equality, *Kosovo Program for Gender Equality*, Design House, Kosovo, 2006, pp. 101-102

of the Law no. 2004/2 “On Gender Equality in Kosovo” as well as to provide for the necessary measures outlined in this law. A part from the Kosovo’s Assembly and government, the ministries have also their role in the enactment of this law. They have to collaborate with the Office of Gender Equality as well as among each other in order to formulate the necessary policies and improve the existing laws so as to transform the Kosovar society into an environment free of stereotypes, discrimination and disparities based on gender. The Office of Gender Equality – which is the main focus of section 5 of the Law no. 2004/2 – is a separate government institution that has to implement and monitor the provisions of this law, the international documents adopted by the government as well as the KPGE. It has also to launch initiatives that aim at promoting gender equality and raising awareness. The Law no. 2004/2 provides obligations also for local government bodies which have to take the necessary measures and draft their policies in compliance with this law and based on the principle of offering equal opportunities and treatment to women and men. Lastly, the Gender Equality Attorney is another body that is responsible for the implementation of this law<sup>190</sup>. It tackles particularly the cases of violation of this law, thereby cases of discrimination committed by state institutions and staff as well as by individuals. It acts as a mediator body from the victim to the competent institutions. The Law no. 2004/2 “On Gender Equality in Kosovo” addresses also gender disparities in the fields of employment<sup>191</sup>, education<sup>192</sup>, and media<sup>193</sup>. In section 16 there are outlined the provisions concerning equality and rights in marital life. In this concern paragraph 5 foresees that forced marriage are punishable by law. As concerns property rights it is stated that in a marital relationship the property is common and has to be registered in the name of both partners. Moreover, both male and female children are entitled by this law to enjoy same inheritance rights. Despite the above, data show the evidence that these rights are guaranteed only theoretically; the implementation of the aforementioned laws is a process that still has not been realised in Kosovo.

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<sup>190</sup> Law no. 2004/2 “On Gender Equality in Kosovo”, section 6

<sup>191</sup> Ivi, section 13

<sup>192</sup> Ivi, section 14

<sup>193</sup> Ivi, section 15

Another paramount measure adopted by the Kosovar government has been the Law no. 03/L-182 “On Protection Against Domestic Violence” of 2010. As the name itself suggests, the purpose of this law is to eliminate and prevent all the forms of violence that occur in the family unit, where the most vulnerable categories are the elderly, disabled and children. However, once again women are not categorised as individuals that are more prone to domestic violence. This law addresses also the other side of this phenomenon, namely the perpetrators of domestic violence<sup>194</sup>. Domestic violence is defined pursuant to this law as “*one or more intentional acts or omissions committed by a person against another person with whom he or she has been in a domestic relationship*”<sup>195</sup>. Domestic violence is associated with other forms of violence such as physical, psychological, emotional and economic violence. This law foresees the right for victims to apply for an emergency protection order and protection order to the court. The former is issued on decision of the court within 24 hours and it expires when, after the hearing, the court decides to issue a protection order; whereas the latter is issued within 12 days and it lasts 12 months with the opportunity to be extended no more than 24 months<sup>196</sup>. Both of these protection measures have immediate effect and are notified to the author of domestic violence. In addition to the aforementioned orders, law “On Protection Against Domestic Violence” foresees also a temporary emergency protection order which is the opportunity for a victim of domestic violence to receive protection during those hours when the court does not operate<sup>197</sup>. The petition for the temporary emergency protection order is submitted to the police and lasts until the court takes on the case. If the protection order, emergency protection order or the temporary emergency protection order are not duly respected by the perpetrator, the latter can receive a fine from 200 to 2000 Euros or can be condemned up to six months of imprisonment<sup>198</sup>. Moreover, the law no. 03/L-182 outlines protection measures for psycho-social treatment of perpetrators of domestic violence in article 4. Among protective measures there belong also the

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<sup>194</sup> Law no. 03/L-182 “On Protection Against Domestic Violence”, article 1

<sup>195</sup> Ivi, article 2

<sup>196</sup> Ivi, artiche 15-18

<sup>197</sup> Ivi, article 22

<sup>198</sup> Ivi, article 25

prohibition for the perpetrator of approaching the victim in order to avoid the repetition of domestic violence<sup>199</sup>. This is strongly related with what is stated in article 7, according to which the perpetrator may be removed from the living premises shared with the victim.

In 2015 the Kosovar government has adopted the Law no. 05/L-021 “On the Protection from Discrimination” whose purpose is to protect individuals from any form of discrimination, among which also the discrimination on the basis of gender. The scope of this law extends to all the areas of citizens’ public life<sup>200</sup>. Discrimination is defined as *“any distinction, exclusion, restriction or preference on any ground specified in Article 1 of this law, which has the purpose or impact of depreciation or violation of the recognition, enjoyment or exercise of human rights and fundamental freedoms guaranteed by the Constitution and other applicable legislations of the Republic of Kosovo.”*<sup>201</sup> The institution responsible for the implementation of this law is the Ombudsperson. The latter deals with cases of discrimination and supports the victims during the preparation of their complaints and provides them with information on their rights. The Ombudsperson also focuses on research and collection of data on discrimination issues as well as cooperates with other bodies concerned with this law. A part from the aforementioned institution, also the Office for Good Governance and the Office of the Prime Minister are responsible for the implementation of the Law no. 05/L-021 “On the Protection from Discrimination.”<sup>202</sup> These two Offices have the duty to set the necessary measures and policies in order to ensure the protection from any form of discrimination and also gender equality in society. Additionally, they act as advisory entities to the government in drafting and implementing action plans and strategies for equality and non-discrimination.

A paramount element of the Kosovar legal framework on gender issues is also the Law no. 02/L-17 “On Social and Family Services” of 2005. The individuals that can

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<sup>199</sup> Ivi, article 5

<sup>200</sup> Law no. 05/L-021 “On the Protection from Discrimination”, article 2

<sup>201</sup> Ivi, article 3

<sup>202</sup> Ivi, article 10

benefit from these services belong to the category “person in need”<sup>203</sup>. Among the latter there are enlisted also victims of domestic violence and human trafficking. The delivery of such services to persons in need is organized by the Ministry of Labour and Social Welfare, which annually allocates financial funds for it. The providers of social services are municipalities or other government or non-government organizations. These service providers have to comply with directives, procedures and regulations outlined by the Ministry of Labour and Social Welfare. This law does not provide for specific services for victims of domestic violence or human trafficking. In article 12 there are mentioned the services that adults in need generally are entitled to. The Ministry of Social Welfare has the duty to set up shelters and emergency shelters for them. At the same time, pursuant to law no. 02/L-17 the persons in need have to constantly receive the visit of a responsible person, who has to monitor their situation in order to secure their safety<sup>204</sup>. If a person has been exploited or abused by others and for that reason is vulnerable to the point that she or he is not able to act on her or his own behalf, the Director of a Centre for Social Work has the duty to apply to the court a Guardianship Order or an Emergency Protection Order<sup>205</sup>. The latter is an instrument that can be issued when the safety and wellbeing of a vulnerable person is at risk and only when this circumstance is evident shall the court issue the order. With the protection order, the victim has the right to be transferred to a centre where she or he can receive the adequate physical and psychological treatment. The EPO, as article 13/12 sanctions, lasts seven days and subsequently the case can be brought into the court.

Sexual offences are considered crimes and, as such, they are punishable by the law, specifically by the Kosovo’s Criminal Code. As a matter of fact, Chapter 20 of the Criminal Code sanctions criminal offences against sexual integrity. Accordingly, rape is punishable with two to ten years of imprisonment<sup>206</sup>. Making use or procuring sexual services of a victim of trafficking is condemned from three months to five years of

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<sup>203</sup> Law no. 02/L-17 “On Social and Family Services”, article 1/e

<sup>204</sup> Ivi, article 12

<sup>205</sup> Ivi, article 13

<sup>206</sup> Criminal Code of the Republic of Kosovo, article 230, par. 1

imprisonment<sup>207</sup>. Moreover, committing sexual harassment against another person is a criminal offence that is punished by a fine or by imprisonment of up to one year<sup>208</sup>. If this offence has as a consequence the death of the victim, the author of such crime shall be condemned to more than ten years or to life imprisonment<sup>209</sup>. Among the list of sexual offences there is included also degradation of sexual integrity which is punished with a fine or with an imprisonment from six months to one year<sup>210</sup>. Such offences are subject to heavier sentences when committed towards a person under the age of sixteen years. Accordingly, when the victim is under sixteen years old, the author that commits rape against the minor is condemned from five to twenty years of imprisonment; using sexual services of a victim of trafficking is punishable with an imprisonment from five to twenty years; sexual assault with five to ten years; and degradation of sexual integrity is punished by imprisonment from five to ten years<sup>211</sup>. The Kosovo's Criminal Code sanctions also forced marriage with a sentence from one to eight years<sup>212</sup>. When the victim's age is from fourteen to sixteen years old and the persons who compels her or him to marry are parents or whoever exercises parental authority over her or him, the imprisonment foreseen by article 246 paragraph 3 is from five to ten years. When such sexual violence acts, such as rape, sexual slavery, enforced prostitution, etc. are committed against any civilian populations it is the case of a crime against humanity, as stipulated in article 149, paragraph 1.7. Nonetheless, the Kosovo's Criminal Code does not provide for any provision sanctioning domestic violence and thereby not recognised as a criminal offence. In Kosovo, domestic violence is not even considered a violation of human rights, as international instruments require. Therefore, the Kosovar government has to put more efforts in order to be in line with international documents and to attain the status of candidate for accession to the European Union.

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<sup>207</sup> Ivi, article 231

<sup>208</sup> Ivi, article 232, par. 1

<sup>209</sup> Ivi, article 232, par. 4

<sup>210</sup> Ivi, article 233

<sup>211</sup> Ivi, article 235, paras. 1.1-1.4

<sup>212</sup> Ivi, article 246

## CHAPTER 3

### LACK OF LEGISLATIVE IMPLEMENTATION: WHAT LIES BEHIND THE LOGIC OF NON-RESPECT OF LAWS

#### 3.1. Causes behind the disrespect of laws in Albania and Kosovo: from patriarchal mentality to the malfunction of the judicial system

What emerges from the previous chapters is that both Albania and Kosovo are countries that are undergoing a process of growth from different perspectives. Their political and socioeconomic situation is currently evolving, either due to national efforts or to international aid. This progress has been reflected also in the capacity and willingness of these governments to adopt several laws in order to ensure the wellbeing of citizens and align to international and European standards. Nevertheless, research and data collected both in Kosovo and Albania have showed that the status of implementation of laws is at low levels<sup>213</sup> and, thereby, this leads to an interruption of the development process. The area of analysis of this dissertation refers to women's rights and it can be firmly stated that also in this concern domestic laws in both countries are not adequately implemented. Consequently, also the functioning of the responsible bodies, structures and institutions on the protection of women's rights has been affected by this meagre system.

In Albania and Kosovo an influential factor that contributes to the stagnation of social progress is the backwardness of people's mentality. The persistence of traditional norms has led to the creation of a male-oriented society, where the propagation of gender stereotypes has been inevitable<sup>214</sup>. Stereotypes transform into discrimination and discrimination into violence, where women represent the most vulnerable category. Statistics show that women are among the category of people that enjoy restricted opportunities to access the labour market as they are confined in the domestic sphere<sup>215</sup>. This occurs, from one hand, because women are discriminated

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<sup>213</sup> See chapter 2, paras. 2.3.1 and 2.3.2

<sup>214</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations of the fourth periodic report of Albania* [CEDAW/C/ALB/CO/4], United Nations, 2016, par. 20

<sup>215</sup> Agjencia e Statistikave te Kosoves, *Grate dhe burrat ne Kosove 2014-2015*, 2016, p.54

in the work field because of their gender and, thus, their abilities and skills are underestimated; from the other hand, the lack of efficient social services for children and the elderly in rural and peripheral areas obliges women to sacrifice their life and dedicate to their care. Women are also underrepresented in leadership and decision-making roles as this sector is particularly male-dominated<sup>216</sup>. Additionally, such sectors particularly concerning the political field, are considered inadequate for women as in many cases they may result to be violent environments. Nevertheless, if women were included in such fields, the latter would be more safe and order would be more rigorous. Women may demonstrate to possess even more adequate skills than men holding such positions. Moreover, if male and female individuals had the opportunity to work together, share and exchange ideas as well as points of view, their contribution into society would be more complete, efficient, and inclusive. Women would not feel inadequate or worthless and their subordinate condition would extremely decrease. However, the present environment in which Albanian and Kosovar women live, makes them fall prey of violence and abuses within the domestic unit and this situation, in the majority of the cases, does not go beyond the walls of the house. Hardly are cases of domestic violence reported, not only due to the idea that denouncing the partner would bring about serious harm on his reputation and honour as well as the possibility for women of being socially stigmatised, but also because women are not sufficiently informed about their rights. The lack of impactful awareness-raising campaigns in all the areas, comprising those in which women have more difficulties to access information, leads women to resignation.

Lack of confidence in the judiciary further foments the tendency to withdraw from legal processes or even not to report the violence experienced. If a woman victim of violence decides to denounce her perpetrator – if we refer to domestic violence, the author of the offense is principally the partner – there are different possible scenarios in which the consequences may develop. First of all, it may occur that the complaint is filed by the Police and then transmitted to the responsible institutions until reaching

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<sup>216</sup> United Nations Women, *Women's participation in politics and decision making in Albania: public perception survey 2012-2013*, UN Women, 2013, p.6

the court. The perpetrator may be found guilty and convicted for the offenses he has committed; however, in the majority of the cases the sentences are not equivalent to the seriousness of the criminal offense that the victim undergoes. Therefore, perpetrators may be released after a short time in prison and continue to represent a menace for women.

Secondly, it may occur that a victim of domestic violence applies for an Emergency Protection Order and it is not issued within the deadline by the law, leading to the deterioration of the situation and to the risk for the victim of being further abused. Alternatively, the Emergency Protection Order or the Protection order may not even be issued by the court as the judge (man) would prefer not to oblige the perpetrator (man) leaving the house he shares with the victim<sup>217</sup>. Therefore, giving voice to sexist mentality rather than protecting vulnerable persons may be preferred.

Thirdly, the victim may decide to withdraw as an afterthought for several reasons: lack of economic resources to bear the expenses of the legal process due to the relation of dependency on the partner; the will to keep the family unified for the wellbeing of children is superior to the “bruises” on her skin; the victim is influenced by the tendency to pardon. Victims are constantly under the pressure of family members but also of professionals responsible for their protection to dismiss their accuses and forgive their perpetrators. They are convinced with the idea that this is the most suitable solution women have, because if they decide to continue their legal path, this would have negative consequences on the honour of the family and on their lives. Therefore, under family’s and professionals advice, denouncing is more dangerous and inadequate than silence. The logic behind this belief is that domestic violence is a private issue and as such it has to be dealt with within the walls of the house by the persons involved.

A part from the above, what has emerged is that high levels of corruption have affected also the judicial sector. The sentences that judges issue not always reflect the reality. Public servants in general do not receive high salaries compared to their roles

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<sup>217</sup> Group of Experts on Action Against Trafficking in Human Beings, *Report concerning the implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by Albania*, Second evaluation round, Council of Europe, Strasbourg, 2016, par. 184

and positions; therefore, accepting money in return for favouritism is a common practice to make up their wages. As a consequence, victims of violence are discouraged from starting the legal process against their perpetrators.

### **3.1.1. Albania's path towards the EU membership: results and challenges**

Albania's path towards the membership into the European Union has initiated in 2009 when it submitted its application. The latter was not accepted as the Albanian government had to fulfil several key priorities before the negotiations were opened. In 2012 Albania attained the status of Candidate State. However, until current times the negotiations for accession have not been opened as the Albanian government has not fulfilled yet the priorities recommended by the EU; thereby, as it has been asserted in the European Commission's report "*it has not adopted and implemented the *acquis communautaire**"<sup>218</sup>. There are still Five Key Priorities that the Albanian government has to address in order to become a EU Member State. These priorities refer to the improvement of the public administration, judicial institutions, the fight against corruption and organised crime as well as the reinforcement of the protection of human rights<sup>219</sup>.

The reform for the public administration is a focal point because it is necessary to enhance professionalism and de-politicisation in this field. The latter has been deficient particularly because the recruitment procedures of civil servants have lacked transparency and a merit-based criteria. Consistent progress has been observed in the implementation of the reform of public administration. Nonetheless, the Albanian government has still to address adequately other recommendations that the European Commission has provided for in this concern.

Another key priority for Albania is the necessity to improve the efficiency of the judicial sector. In this concern, there has been taken into account the reform on the judicial system which addresses the fight against corruption within the responsible institutions, the decrease of the parliament and the executive's influence over the

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<sup>218</sup> European Commission, *Commission staff working document: Albania report 2018*, SWD(2018) 151 Final, Strasbourg, 2018, p. 7

<sup>219</sup> Ivi, pp. 3-5

judiciary, the increase of effectiveness, independence, transparency and impartiality of the Courts, the increase of accountability of judges and prosecutors and the improvement of the access to justice<sup>220</sup>. Having an efficient and functioning judicial system is a core value of the European Union, coupled with the respect for fundamental rights *de jure* and *de facto*. The judicial sector is being assessed through a re-evaluation process, also known as vetting. The latter aims at monitoring and investigating – through the operation of the vetting institutions – on the professionals of the judiciary. As a consequence, during the last investigation period several judges were suspended or dismissed from their duty as they lacked professionalism or were found guilty of corruption. In this concern there has been set up a mechanism of investigation, prosecution and conviction of the judiciary officials. The number of officials convicted or referred to the prosecution due to involvement in corruption activities has increased. As a matter of fact, in 2017 there were convicted 331 low and middle-level officials compared to the 316 in 2016 and 286 of 2015<sup>221</sup>. As concerning the referred cases to the prosecution, in 2017 there were 2342 against 1910 in 2016<sup>222</sup>. Furthermore, convictions, suspensions and arrests have involved also high-level state officials of the judicial sector involved in corruption, whose number has been subject to increase compared to the previous years. Despite this, there is still room for improvements in this concern as the number of final convictions does not correspond to the actual number of officials involved in such activities.

As provided by the reform, judges and prosecutors have to declare their assets annually in order to keep their activities controlled and to identify any potential linkage to organised crime. There has been emphasised a substantive number of officials that were found out guilty for such activities as well as officials who refused to declare their assets<sup>223</sup>. Several professionals have been removed from their posts; they were identified as criminal offenders because they have been engaged in organised

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<sup>220</sup> Ibidem

<sup>221</sup> Ivi, p. 22

<sup>222</sup> Ibidem

<sup>223</sup> The state officials can not withdraw from declaring their assets or make false declarations; otherwise, they will be condemned. Despite this, there have been several cases in which they have dismissed their duty so as not to declare their assets

crime, corruption or have refused to declare their assets, have found the manner to hide them or have provided for false declarations. Nevertheless, the system of investigation, prosecution and conviction in the corruption activities, as stated in the Commission's report on Albania, has to be furthered in order to be more effective. An online system for assets declaration is still lacking and it will not be operational until 2022<sup>224</sup>. Albanian government has to further commit in implementing international conventions and laws adopted with the aim to fight corruption in the public institutions. Additionally, it has also to be more efficient in fulfilling the recommendations issued by European bodies for the fight against corruption. Corruption does not concern only the judiciary but also, for instance, the public administration and other sectors such as education, health, etc..

Other aspects of the judicial reform refer to the measures that have to be taken in order to ensure the impartiality, independence and transparency of the judiciary. In this concern it can be stated that notable progress has been made due to the fact that the reform foresees the setting up of two independent bodies – the High Judicial Council and the High Prosecutorial Council – which are responsible for the selection and evaluation of judges and prosecutors<sup>225</sup>. The recruitment of the latter is based on merit criteria in order to ensure a high quality of professionals and to alleviate the political influence.

Albeit the reform on the judiciary has brought about substantive results, there are still aspects that need to be improved in the Albanian judicial system. First of all, the number of judges and prosecutors in Albanian territory does not fulfil the European standards. As a matter of fact, in Albania there are 13 judges per 100'000 inhabitants and 11 prosecutors per 100'000 inhabitants; whereas the European standards provide for 21 judges and 11 prosecutors per 100'000 inhabitants<sup>226</sup>. Secondly, the quality of the judicial infrastructure is meagre as it has not been a matter of concern of budget allocations. Moreover, judges and prosecutors are trained by the

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<sup>224</sup> European Commission, *Commission staff working document: Albania report 2018*, SWD(2018) 151 Final, Strasbourg, 2018, p. 24

<sup>225</sup> Ivi, p. 18

<sup>226</sup> Ivi, p. 20

School of Magistrates; however, the shortcomings of funds to this institution have reduced its capacities and responsibilities. Thirdly, the courts should submit reports on their activities monthly and annually; however, there is a lack of capacities of the courts to produce reports within the deadlines. As a consequence, also the provision of data is not reliable. Another aspect that needs to be addressed concerns the efficiency of the judiciary. The scarce level of human resource in the courts seriously affects the length of proceedings, the clearance rates as well as the number of pending cases<sup>227</sup>.

The respect of fundamental human rights is another requirement for Albania to reflect the European standards. In this concern it can be asserted that the Albanian government has made substantive progress *de jure* by ratifying several international conventions on human rights, but *de facto* these are not adequately implemented. Concerning the promotion of human rights, this activity has been positively conducted by the Ombudsperson, which addresses particularly the violations of vulnerable individuals' rights (women, children, elderly, persons with disabilities). Concerning discrimination, Albanian government has taken several measures in order to reach European standards. Nevertheless, the legislative framework in this concern needs to be further enforced. As a matter of fact, despite the existence of laws addressing discrimination, there has been noted that there are different categories in Albanian society that are subject to discrimination, such as homosexuals, Roma and Egyptians as well as women. The latter category has been addressed by the Albanian government by issuing a set of laws for their protection and empowerment. This has led to substantive progress of women's conditions to the point that also their participation in political life has increased. However, domestic violence is the most appalling phenomenon that affect women particularly and that still is not adequately addressed by Albanian policymakers. The number of cases of domestic violence reported to the police is constantly increasing and this, from one hand, is a positive signal as it implies that victims have gained faith in institutions; from the other hand, it means that this phenomenon is still widespread in the society. Therefore, this leads to the conclusion

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<sup>227</sup> Ibidem

that the mechanisms, institutions and laws responsible for the protection of women's rights are not duly functioning and thereby further efforts are needed in this field.

Women victims of violence and human trafficking are also entitled to legal aid, specifically to health, psychological and legal assistance as well as access to information. Nevertheless, this mechanism is lacking efficient functioning as well as financial allocations. Furthermore, minority communities are marginalised and stigmatised in Albanian society. They face serious discrimination *de facto*, being excluded from public life and activities as well as *de jure*, due to the fact that the infringements to their rights have not been adequately addressed. Vulnerable groups, including women and minorities, are mainly assisted by non-governmental organisations, which rely on international donors. Human trafficking is another phenomenon that does not allow Albanian government to become an EU Member State. As it has been repeatedly stated, Albania is still a country of origin of this phenomenon. In addition, the criminal justice system needs to be improved in order to be more efficient in the conviction of persons who stand behind the trafficking of women and girls.

### **3.1.2. Kosovo's path towards the EU membership: results and challenges**

Kosovo's efforts "*to ensure the implementation of the acquis*" as mentioned in the European Commission's report are still in progress<sup>228</sup>. There are several sectors in which the Kosovar government has to focus in order to ensure their positive functioning and to align with the EU standards. One of these is the judicial system, which has been a matter of concern for various deficiencies. First of all, the government has adopted a series of laws in 2015 for the improvement of the judiciary; however, they have not been implemented so far due to the lack of a coordinating mechanism among responsible institutions. Judges and prosecutors are selected by the President of Kosovo under the proposal of the two responsible bodies, namely the

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<sup>228</sup> European Commission, *Commission staff working document: Kosovo\* report 2018*, SWD(2018) 156 Final, Strasbourg, 2018, p. 6

Judicial and the Prosecutorial Councils<sup>229</sup>. The two Councils have to ensure transparency and impartiality within the judicial system, particularly concerning the recruitment of judges and prosecutors. In this concern, it can be firmly asserted that these two principles are not always respected. The Councils have the duty to evaluate the performance of judges and prosecutors, who have a three-year mandate. However, it has been noted that this procedure lacks clearance on the criteria used and it is subject to delays due to the lack of capacity of the Councils to produce timely reports. Scarce levels of training of judges and prosecutors is another factor that hinders the advancement of Kosovo's judicial system. The Academy of Justice offers annual training to such professionals as well as to their staff once they are appointed. The overall service of training offered is positive as it is decently supported with financial funds. Nevertheless, there are needed more adequate trainings which can have a comprehensive approach and address also those delicate areas, *inter alia* gender based violence, in which judges and prosecutors need to be prepared. Moreover, it occurs that the knowledge acquired through the training sessions is not properly implemented in the courts. The Kosovar judicial system enjoys a prosperous staff, composed of an average of 22.6 judges and 11.1 prosecutors per 100'000 inhabitants, being fully in line with the EU requirements<sup>230</sup>. What is encouraging in this concern is that since 2017 there have been integrated also Kosovo Serb judges and prosecutors in the Kosovar justice system. Nonetheless, this is not sufficient for the high number of cases the courts have to deal with. As a matter of fact, the cases of minor offences are superior to the most serious cases. This situation creates obvious delays in proceedings and leads judges to be less efficient in dealing with high-level offence cases. The IT tools are not adequate to provide neither online services nor updated statistical data.

War crimes – among which also sexual violence against women – committed during the 1998-1999 conflict between Kosovo and Serbia are phenomena that concern the Kosovar government as well as the international community. Since February 2018 the victims of sexual abuse during the conflict have the right to apply

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<sup>229</sup> Ibidem

<sup>230</sup> Ivi, p. 16

for the recognition of their status and enjoy several benefits, such as pensions<sup>231</sup>. Nevertheless, war crimes are not duly addressed due to lack of written documents proving the facts as well as due to lack of cooperation between the Kosovar and Serbian prosecutor's offices. This deadlock in the solution of the past facts is caused also by the complicate relationship between Prishtina and Belgrade. The conflicts of interest are by far more intense than the willingness of the two parts to actively participate in the prosecution of criminals, being them Kosovars or Serbs. Therefore, any occasion in which the two governments are involved transforms into a question of pride where nationalistic behaviours come up.

The fight against corruption is another important requirement for the Kosovar government in order to be in line with the European standards. Corruption is a practice that is entrenched also in public institutions and political system, where officials are among the most corrupted figures due to their unjustified wealth and assets. Even though there exists a system of assets declaration that leads to confiscation, the cases of final confiscation actually are insignificant<sup>232</sup>. This entails that the prosecution of cases of corruption are scarcely executed. Moreover, among the cases of prosecution there emerge also offenses such as non-reporting or false reporting of assets from officials. In northern Kosovo the situation is more complicate, as officials do not collaborate in submitting their assets declarations. In this concern, the Anti-corruption Agency has a paramount role, which has the task to monitor and verify the proceeding of assets of officials at all levels of the public and political sphere. The Agency has to report cases of corruption; however, in the majority of the cases its recommendations are not considered and thereby the criminal offenders are not prosecuted. As a matter of fact, there is needed a more efficient mechanism of inter-institutional cooperation which can further improve the system of investigation, monitoring and prosecution of corruption-related offences. The political parties are also suspected for their unjustified income and the expenditures made during the elections. At the same time, they are accused of violating several laws, among which the law against money

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<sup>231</sup> Ivi, p. 17

<sup>232</sup> Ivi, p. 18

laundering and the tax law<sup>233</sup>. Therefore, the assessment mechanism in these fields has to be improved as the anti-corruption agencies and institutions are not adequately prepared and their staff not sufficiently trained to fulfil their duties, particularly concerning high-level corruption cases. The Kosovar legislative framework on the fight against corruption is generally in line with European standards. Nevertheless, it needs to be further enhanced and enforced as public officials who have been accused for being involved in corruption activities still maintain their posts. Additionally, there is urged the necessity to adopt a system of investigation of the proceeding of all public officials' assets, particularly for those that are excessive and do not have a valid justification. Subsequently, the confiscation procedure has to be put into practice in order to tangibly remove from the hand of public servants the wealth and property deriving from illegal activities. There actually exists also a strategy and action plan for the fight against corruption in Kosovo approved in March 2018<sup>234</sup>. Nonetheless, the government does not dedicate the necessary funds and attentions to such initiative.

Another paramount aspect which is taken into account to assess the alignment of Kosovo government with the EU *acquis* is the respect of fundamental human rights. In this concern, there have been noted relevant achievements due to the adoption of several legislative measures. Even though Kosovo has not the possibility to ratify international treaties on human rights, these have been integrated into Kosovo's legal framework and they are also directly applicable. As a matter of fact, the Kosovar government has conformed to the European measures and standards when developing its domestic laws. In 2016 there has been established the Inter-Ministerial Coordination Group for Human Rights with the purpose to coordinate the efforts on the protection of human rights<sup>235</sup>. Adequate measures have been taken by the Kosovar government as regards the protection from discrimination, the achievement of gender equality, the protection of minorities and the elimination of human trafficking.

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<sup>233</sup> European Commission, *Commission staff working document: Kosovo\* report 2018*, SWD(2018) 156 Final, Strasbourg, 2018, p. 19

<sup>234</sup> Ivi, p. 20

<sup>235</sup> Ivi, p. 21

The non-discrimination principle is fulfilled *de jure* but not *de facto*. There already exist national measures to contrast this phenomenon; however, their implementation remains a challenge. The lack of coordination of the responsible institutions is the main factor that hinders the efficient functioning of the mechanisms for the protection of vulnerable groups from discrimination. This is reflected, for instance, on the fact that several groups, such as minorities and women, are still subject to discrimination in the Kosovar society. The latter category is both subject to discrimination in the public institutions such as the police, in the labour market as well as in the judiciary and subject to domestic violence<sup>236</sup>. The measures for the protection of women from discrimination and violence actually exist, such as the Law on Gender Equality and the several strategies and action plans in this concern; however, they lack a substantive implementation. It is needed a more overarching approach of the legal framework on violence against women as well as further amendments in the Criminal Code in order to penalise also domestic violence and sexual harassment<sup>237</sup>. The training of officials that deal with women's issues has to be strengthened so as to be prepared on the procedures they have to follow. Furthermore, as it is emphasised in the European Commission's report, there are needed more efforts in the advancement of centres that accommodate women victims of violence and human trafficking as well as the reintegration programmes. Victims of trafficking in human beings have been also a matter of focus from the Kosovo government. Several mechanisms and strategies for the prevention of this phenomenon are in place as Kosovo is ranked among those countries of origin, transit and destination of human trafficking, particularly for sexual purposes. On the other hand, minority communities represent another category of discriminated persons. Roma, Egyptian and Ashkali people suffer from exclusion and underrepresentation in the public life, labour market and health care services. This situation is even more serious for women who are subject to a dual infringement of their rights: the right to participate in the public sphere and the right to live a life without gender discriminations within the domestic unit.

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<sup>236</sup> *Ivi*, p. 25

<sup>237</sup> *Ibidem*

Overall, there is needed more commitment from the government in improving the existing measures to protect such vulnerable categories and ensuring their implementation in order to meet the European requirements.

### **3.2. Overall results achieved and remaining challenges: further efforts needed in order to combine *de jure* and *de facto* situation**

The Republic of Albania and the Republic of Kosovo are countries that have a restricted experience in the international scene compared to other European states. Their history has allowed them to have a relationship with the international society only in recent years.

As far as Albania is concerned, it was one of the last countries in the Balkan region to obtain its independence. It had undergone a long period of dictatorship that has led to the closure of its borders. In the early years of dictatorship Albania had the opportunity to strengthen its ties with other communist countries. Nevertheless, soon thereafter the dictator Enver Hoxha decided to avoid the contact with the outside and this situation persisted until the early '90s. Therefore, Albania has missed the most important steps that the western world has gone through. Albania was known to the western states in the late 1990s, when the first migrants flows reached Europe. Albania's path towards democratisation starts from that moment. Albania has tried to realise in twenty years what the other states have developed in almost a century. This is the reason why Albanians are a step back in terms of economic, social and political progress. This is, however, a typical situation of the post-communist countries; they had to deal with instabilities that the period of transition has brought about. These changes have had serious consequences also in the current society, categorising Albania as a developing country. The endeavours that the latter has made in order to stay in line with the western countries' levels of progress have been significant. This strong commitment has been awarded with the attainment of the status of Candidate Country for the accession to the European Union. The progress that the Albanian

government has made towards the protection of human rights is notable from a theoretical point of view; however, it does not correspond to the real practice. This gap between *de jure* and *de facto* achievements creates several obligations that the Albanian government has to fulfil so as to ensure the protection of its citizens' rights. In order to provide a more defined picture of the position of Albania in this concern, there will be envisaged from one hand, the achievements of the government in respect to women's rights; from the other hand, there will be treated the challenges that the Albanian government has to face in order to improve the women's condition and meet the international requirements.

As concerns the results achieved so far, mention can be made of the willingness and capacity of the Albanian government to adopt the international measures necessary for the fight against violence towards women and domestic violence, namely the United Nations Convention on the Elimination of All Forms of Discrimination Against Women as well as the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. These measures have been paramount for the harmonisation of the Albanian domestic legal framework to international standards. This has led to the dissemination of information on the provisions of such treaties, particularly among responsible institutions. As a consequence, the definition of the tasks of the authorities and structures that deal with women victims of violence has been clearer. Training programmes of professionals have also been structured in such a way that they could respond to international requirements. Furthermore, as a necessity to conform to international requirements, there have been adopted several laws<sup>238</sup> that have included more forms of gender-based violence within the jurisdiction of Albanian courts. A substantive result in this concern has been the fact that domestic violence is not considered a private issue anymore as it used to be in the past, but it is seen as a phenomenon that affects the society as a whole. Therefore, the cases of gender-based violence and domestic violence are not considered civil cases but penal cases for which the perpetrator is subject to conviction. The amendments to the Electoral Code have led to

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<sup>238</sup> See chapter 2, paragraph 2.3.1

the increase of the participation of women in the political field and in leadership roles. The improvements attained in the legislative framework have also entitled victims of violence to more benefits and protection measures. It is the case of legal assistance in the courts and protection orders. The contribution of the NGOs into the creation of shelters and in the assistance of women victims of violence and domestic violence has been essential. NGOs' presence has been paramount also for the launch of several awareness-raising initiatives that have helped women to be conscious of the rights they are entitled to. Campaigns have been a key tool for the involvement of the male category into such activities with the purpose to reduce the number of perpetrators and increase that of collaborators.

Albeit the aforementioned efforts have positively signed the reputation of Albania into the international community, the same country has been subject to criticism for the lack of adequate implementation of the measures adopted. As a matter of fact, the status of Albania as a Candidate State rather than a Member State of the European Union reflects its internal deficiencies, that the government has to address with the necessary policies.

The first aspect that has to be emphasised is the insufficient commitment of the Albanian government to the issues related to women's condition. This is demonstrated by the fact that, a part from formally showing the interest in combating gender-based violence phenomena, the government does not translate this interest into concrete action. As a matter of fact, the lack of sufficient human and financial resources both at central and municipal level hampers the efficient functioning of the institutions and services responsible for the protection of victims of violence<sup>239</sup>. The duties that should be taken on by the state-run institutions are actually managed by the non-governmental organisations. This occurs due to the persistence, for instance, of a widespread perception of domestic violence as a responsibility of the society and

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<sup>239</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*, Council of Europe, Strasbourg, 24 November 2017, p. 67

NGOs rather than of the government<sup>240</sup>. This further discourages the engagement of the government in making policies and agenda in which gender-based violence phenomena represent a priority. By acting in this manner, the Albanian government fails to meet the international requirements it has been committed to through the ratification of international treaties on women's rights. Furthermore, the financial support of NGOs is not a key priority in the national budget plans, leading this sector to rely on international donors. Despite the efforts to address as many forms of violence against women as possible extending the scope to psychological and economic violence, there is still necessity to adopt an overarching approach in this concern. This attitude should be assumed particularly by officials and authorities working in public institutions, which in some cases lack an appropriate behaviour towards women and victims of violence. Unfortunately, it occurs that they are not even able to identify cases of gender-based violence or domestic violence. As a consequence, they fail to fulfil their tasks on assisting and supporting victims and orienting them to the adequate structures. Albanian authorities need to adopt a gendered perspective also in the establishment, monitoring, and implementation of measures aimed at preventing and combating violence against women<sup>241</sup>. Furthermore, authorities are responsible for the collection of data on the cases of violence against women and domestic violence. If data was more accurate, it would be easier to provide a response to such issues. As it is well-known, the aforementioned phenomena are underreported; thereby, public officials have to increase their efforts in order to encourage women as much as possible to report cases of infringement of their rights and cases of violence. Nevertheless, the influence of traditional norms affects also public officials and this makes them less fair in their tasks. Therefore, instead of promoting gender equality and contributing to the empowerment of women, public servants represent an obstacle for satisfying the needs of this vulnerable category.

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<sup>240</sup> Refleksione Women Association, *Developing a sustainable system for addressing violence against women in Albania*, Albania, 2014, p. 35

<sup>241</sup> See footnote 247, p. 66

Education is another sector that needs to further address gender-based violence against women by introducing such phenomena in the school curricula and by organising awareness-raising activities<sup>242</sup>.

The quality of training programs of professionals is not harmonised with international standards. As a matter of fact, professionals such as legal officers and those in the healthcare sector lack regular and updated training sections on gender issues and gender-based violence against women.

Shelters accommodating women victims of violence and domestic violence are established in several municipalities. Nevertheless, they do not correspond to the international standards. From one hand, they are not expanded in the entire territory; therefore, they are not accessible to victims in rural and peripheral areas. From the other hand, they are not sufficient in terms of number in order to accommodate all the victims. Furthermore, the existing women's centres are overcrowded as they host more persons than they can physically afford and this is related to lack of crisis shelters. Despite this, it is also necessary to emphasise the fact that in Albania there do not exist centres that deal with perpetrators of violence. The assistance to men who commit acts of violence towards women is underestimated. In order to prevent the cases of domestic violence as well as other forms of violence towards women, it is necessary to create appropriate programs that aim at supporting psychologically perpetrators of violence. Working on the psychology of perpetrators is a tool that brings about decrease of violent behaviour and minimisation of recidivism<sup>243</sup>.

The media and the private sector are also actors that do not adequately address gender issues. On the contrary, in some cases the media has been a factor of fomentation of discrimination towards women, using inappropriate language and attitude when reporting cases of violence. This occurs due to the restricted knowledge of media representatives and the private sector on issues such as gender disparities and gender stereotypes that affect women disproportionately. These two sectors have the capacity to be promoters of gender equality and launch awareness-raising

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<sup>242</sup> Ivi, p. 69

<sup>243</sup> Ibidem

initiatives<sup>244</sup>. The media, particularly, can be used as a direct tool to disseminate information nationally. Nevertheless, these sectors are not considered as actors that can positively contribute to the attainment of gender equality in the Albanian society.

The case of Kosovo is not extremely distant from Albanian reality. What is different is the position of the Republic of Kosovo in the international community. It has to be kept in mind that Kosovo does not enjoy a full recognition of its statehood at international level. As a matter of fact, in many official documents Kosovo is marked with asterisk, meaning that there are not prejudices to its status as there exist opposing positions in this concern. Despite this, Kosovo's path towards democratisation is in progress and its willingness to be in line with European levels and be an EU Member State has been duly expressed. Indeed, the pressure for the European Union *acquis* has positively affected the commitment of the Kosovar government into institutionalising the laws and reforms that ensure the core European values and principles. Moreover, the international presence in Kosovo has been a catalyst for the advancement of the Kosovar legislative framework. Nevertheless, the practices concerning the respect of fundamental human rights, specifically referring to women's rights, have not always been in line with European requirements. There are several challenges that hamper the full respect of women's rights. As in the case of Albania, the *de facto* implementation of laws, strategies, plans and mechanisms for the protection of women from violence is currently lacking. Additionally, a comprehensive legal framework has still to be elaborated as not all the forms of violence against women are addressed by the institutions responsible for the protection of victims of violence. The problem stands at the basis of the Kosovar legislation, which does not provide for a definition of violence against women and, thereby, this phenomenon is not considered neither a form of discrimination nor a violation of human rights<sup>245</sup>. As a consequence, there do not exist standardised mechanisms, policies and practices that offer an overarching and uniform response to

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<sup>244</sup> Albanian Women Empowerment Network, *Report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Albania*, 2016, pp. 31-32

<sup>245</sup> Council of Europe, *Mapping support services for victims of violence against women in Kosovo*, 2017, p. 78

all the forms of violence<sup>246</sup>. The intervention system addresses mainly domestic violence, leading to the negligence of the other forms of violence that are committed against women. As a matter of fact, victims of domestic violence are prioritised compared to the victims of other forms of violence, such as sexual violence. Shelters accommodating victims of domestic violence are more widespread, even though they are below the number required by the Istanbul Convention; whereas crisis centres for victims of rape and sexual harassment do not even exist in Kosovo<sup>247</sup>. Actually, there exists a 24/7 telephone helpline aimed at advising victims on the services they can resort to; however, it does not cover all the forms of violence and all the geographical areas of Kosovo<sup>248</sup>.

Also service providers, being them specialist or general, do not cover all the forms of violence against women. Studies and research envisage that service providers' staff are neither able to give a definition of domestic violence nor to identify the victims of other forms of violence than domestic violence. A widespread gender-perspective also among professionals who work close with victims of violence is missing. The absence of a comprehensive approach of professionals is worsened by the fact that they do not undergo specific and consistent training on the wide range of gender-based violence against women existing in the Kosovar society. The government does not allocate substantive funds on the training programs, leading to a drastic shortage of specialist professionals who can tackle particular needs of the victims.

Another aspect that affects public officials as well as professionals working in women's centres whose duty is to assist and help victims of violence and domestic violence is the influence of patriarchal norms. These cultural beliefs negatively affect the professionalism of such figures as well as the objective of the institution or structure they represent. They tend to make use of family counselling and mediation practices so as to encourage victims to reconciliation.

In the list of challenges affecting the Kosovar government, mention can be made of the fact that perpetrators do not represent a category worth receiving

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<sup>246</sup> Ivi, p. 74

<sup>247</sup> Ivi, p. 76

<sup>248</sup> Ibidem

psychological treatment in *ad hoc* centres. This is demonstrated by the fact that in Kosovo do not exist centres for the assistance of offenders of domestic violence and sex offenders. There exists a restricted number of women's centres that deals with perpetrators; however, they only focus on drug and alcohol addiction or psychological disorders<sup>249</sup>. The majority of service providers, even though they are not sufficient in terms of number so as to make all the victims of violence beneficiaries of their services, are free of charge. They meet the requirement of being linguistically accessible as they provide services in the two official languages, namely in Albanian and Serbian<sup>250</sup>. Furthermore, the majority of service providers make female staff member available if it is necessary for the victims. It has been noted that female staff is preferred as it leads to an increase of the level of confidentiality between assistant and victim. Service providers are established in the most developed centres; thereby, the scarce infrastructure conditions do not guarantee the equal access to all the victims. They provide victims with the necessary information concerning their rights and they offer an evaluation system for the quality of services they offer; however, there lacks a standardised evaluation system which follows specific guidelines and criteria. Support service providers also contribute in the process of data collection; however, more efforts are needed in this concern as the levels of reporting remain low.

### **3.3. The theories on the compliance of states with international treaties on human rights and the effects on domestic legislation**

As it was mentioned in the previous paragraph, one of the causes of Albanian and Kosovar women's subservient condition is the lack of adequate implementation of laws on the protection of their rights. Despite the consistent number of national laws as well as international measures that these governments have adopted and followed as a model of development, the effects of their implementation are not particularly encouraging. There are several schools of thought that analyse the behaviour of states

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<sup>249</sup> Ibidem

<sup>250</sup> Ivi, p. 80

party to international conventions on human rights and their actual commitment to such measures. From one hand, there are theories arguing that states do not always fully comply with their obligations after having ratified an international treaty for different reasons. From the other hand, there are theories supporting the authority of the international regime and the idea that it is a powerful tool for the improvement of the domestic legal system of ratifiers. In order to explain the situation of Albania and Kosovo on the status of implementation of national and international instruments for the protection of human rights, there have been taken into account the positions of scientists such as Hafner-Burton and Tsutsui and that of the scholar of international law Beth A. Simmons. There are several aspects of both the theories that have been useful to deepen the analysis of the causes that lie behind the tendency not to duly respect the laws for the protection of human rights by the Albanian and Kosovar governments.

Hafner-Burton and Tsutsui have developed the theory of “the paradox of empty promises”. These two scientists try to understand the influence that the international human rights regime has on the government’s human rights practices. After the Second World War a consistent number of treaties has been set up with the aim to create obligations on State Parties for the protection of human rights. The second half of the nineteenth century has been the most prolific period for the creation of international documents in which a vast number of international actors engaged with the purpose to avoid the repetition of the past events. The treaties and conventions on human rights have been a conducive force for the improvement of national legal framework for single states. Nevertheless, according to this theory, State Parties to international treaties fail to comply with their obligations; additionally, they tend to infringe the same human rights for which they ratified international documents and to adopt a repressive behaviour towards citizens<sup>251</sup>. Therefore, there is emphasised a gap between states’ commitment to international obligations and their practices. In this concern several scholars of international relations have supported different theories on the compliance of sovereign states with international law. From one hand, some

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<sup>251</sup> Hafner-Burton, Emilie M. and Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises 1*, American journal of sociology 110, no. 5 (2005): 1373-1411, p. 1374

scholars argue that engaging in international treaties does not automatically entail that they are respected by ratifying states. Therefore, governments adopt such treaties only formally, namely for the sole reason to satisfy their national interests without any intention to implement the agreement *per se*. On the other hand, others believe that adopting international treaties on human rights has a positive effect on the practices of governments. They believe that the international legal regime encourages inter-state cooperation and limits their tendency to repression<sup>252</sup>. There is also another school of thought according to which the compliance of a state with the international regime depends on the mobilisation of local actors<sup>253</sup>.

When taking into account these approaches, Hafner-Burton and Tsutsui criticise them for ignoring the idea that if states fail to comply with their international obligations on human rights is because, from one hand, they do not have any intention to implement the treaties they ratify; from the other hand, they are aware of the fact that the international regime does not provide for enforcement and monitoring mechanisms. Furthermore, the abovementioned theories do not consider the effects that the international regime has on stakeholders of human rights, namely civil society and NGOs<sup>254</sup>.

Lastly, there is another theoretical approach that has gained currency among many areas of social scientific research, namely the neoinstitutionalism theory which focuses on the organisational behaviour. According to this theory, organisations tend to follow standardised models only because they are considered legitimate<sup>255</sup>. This approach has been inspiring for another theory, namely the world society approach. The latter argues that policymakers tend to conform to accepted norms and standards at international level in order to set up domestic policies that harmonise with the international regime<sup>256</sup>. However, according to the world society approach, this system consists of separating policies from practices; namely, the fact that policymakers conform their national policies to the international standards does not imply that this

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<sup>252</sup> Ibidem

<sup>253</sup> Ibidem

<sup>254</sup> *Ivi*, p. 1381

<sup>255</sup> *Ivi*, p. 1382

<sup>256</sup> Ibidem

has tangible effects on their practices. As a matter of fact, this approach argues that in an international context, states ratify international treaties only for formality as they want to appear amenable and thereby to attain legitimisation in international society<sup>257</sup>. Consequently, the ratification for a state does not automatically translate into being interested in the content and provisions of the treaty. It is only a strategy to obtain the respect from the international community in order to benefit from possible support and cooperation.

The abovementioned theories were useful for Hafner-Burton and Tsutsui to realise their own theory, according to which the lack of a monitoring and enforcement mechanism in the international regime leads states not to comply with international treaties. Moreover, being a ratifier is used as a justification from the governments for the repressive and violent behaviours used towards their citizens. Therefore, what occurs is a process of “decoupling” between the policy of governments and their actual practices<sup>258</sup>. This process was subject to further accentuation (radical decoupling) due to the fact that states were aware that they would not undergo any consequences if they did not fulfil their obligations. Additionally, ratifying an international treaty would be only a positive action for the state because it would gain legitimacy in the international society. At this point, the two authors argue that the ratification of international agreements leads to a negative effect, which is opposite to what the treaties were supposed to bring about.

According to Hafner-Burton and Tsutsui an important factor has to be considered in this concern. They argue that what incentivises governments to comply with their commitments is the pressure of the civil society<sup>259</sup>. Non-governmental organisations have a strong impact in pressuring the government towards its obligations. They publicise the occurrence of the violation of human rights in order to expose to serious risk the legitimacy of the state in front of the international society. As a consequence, this leads governments to abandon their repressive behaviours and be more interested in protecting human rights, thus respecting the obligations that

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<sup>257</sup> Ivi, p. 1383

<sup>258</sup> Ibidem

<sup>259</sup> Ivi, p. 1385

treaties provide over them. As it can be assumed, the most influential is the presence of civil society in a country the more efficient will be its commitment to the respect of human rights.

Hafner-Burton and Tsutsui have also individualised the factors that affect the practices of governments on human rights and that they took into account for their analysis. The features of a repressive government are outlined by internal situations that lead it to be more violent towards its citizens and, thus, more prone to violate human rights. Economic deficiencies seriously affect the level of repressiveness of states; that is, developing countries are more inclined to internal conflicts and this leads the government to adopt a repressive behaviour. Additionally, developing countries usually tend to depend on the economic support of the most advanced countries. This dependency relationship prompts developing countries to commit human rights infringements. It has also been observed that democratic regimes are more prone to positive practices rather than totalitarian regimes. In wartimes governments tend to be more coercive as they exert the control over the state and their citizens. Therefore, the possibilities for violations of human rights are higher when the state is involved in an international conflict or a civil war. The profile of a repressive government is also balanced for the size of its population. As a matter of fact, the states with a consistent population are more prone to assume an authoritarian behaviour and, thus, being more coercive<sup>260</sup>.

After having conducted their analysis, Hafner-Burton and Tsutsui have confirmed the abovementioned characteristics reaching the conclusion that states ratify international treaties on human rights but do not concretely implement them. Therefore, the theory of empty promises confirms the existence of a gap between international obligations of state parties to international treaties and their actual commitment. This theory also emphasises the paradox in this system as the authors have found out that actually those countries that have ratified more international treaties are the most fierce violators of human rights and the most repressive countries towards their citizens.

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<sup>260</sup> Ivi, pp. 1387 - 1388

Nevertheless, the theory of “empty promises” has been severely criticised by other theories that strongly believe in the positive functioning of the international human rights norms and their effects on actual practices. In this case, mention can be made of Beth A. Simmons, who has focused her studies on the implementation of human rights standards in domestic law. She took into account the spiral model based on the theory of “The Power of Human Rights” (PoHR)<sup>261</sup> which gives an explanation of the process from commitment to compliance with human rights norms. Accordingly, she argues that international human rights norms positively affect the domestic human rights practices<sup>262</sup>. Nevertheless, Simmons argues that the commitment to treaties is not the only factor that contributes to the enhancement of human rights<sup>263</sup>; there are necessary several structural changes domestically. Moreover, she argues that in order to obtain a successful treaty compliance, domestic agencies have to adopt a human rights approach when establishing and applying the strategies for their internal social and political change<sup>264</sup>. This entails that the level of states’ commitment to such obligations is mainly correlated to the quality of their domestic legal system, rule of law, political agencies as well as to their legal and judicial capacities<sup>265</sup>. Therefore, a state that ensures independent legal and judicial institutions as well as access to fair trial is more prone to protect civil rights. The role of the constitutional courts and that of the legal system is fundamental. Those states that have weak institutions of governance and accountability are not able to improve their practices on human rights. Additionally, improvements in human rights can occur only when there is ensured political liberalisation<sup>266</sup>.

The PoHR theory studies the role that transnational civil society groups have on the progress of human rights. According to this theory, the existence of and awareness about human rights of domestic actors is a powerful tool that characterises civil

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<sup>261</sup> Simmons B. A., *From ratification to compliance: quantitative evidence on the spiral model*, in: *The persistent power of human rights: from commitment to compliance*, Cambridge University Press, 2013

<sup>262</sup> *Ivi*, p. 44

<sup>263</sup> Schmitz, H. P., *Mobilizing for human rights: international law in domestic politics by Beth A. Simmons*, in: *Perspective on politics*, Vol. 8/No. 3, 2010, p. 994

<sup>264</sup> *Ivi*, p. 995

<sup>265</sup> See footnote 261, p. 45

<sup>266</sup> *Ibidem*

society's force to put pressure on the government<sup>267</sup>. Civil society controls the actions of the government in order to ensure that the latter complies with its obligations on the protection of civil rights. Therefore, it has been noted that membership in national as well as international non-governmental organisations brings about positive practices on human rights. Beth A. Simmons shares this view when she refers to the costs that the ratification of human rights treaties bring about not only at international level but also domestically. These costs, referred to as "audience costs" are represented by the reaction of local citizens when they emphasise the responsibility of the government on its promises<sup>268</sup>. Indeed, she argues that "*when people are aware of the existence of an international legal commitment, they hold their governments accountable to these commitments.*"<sup>269</sup> Furthermore, Simmons argues that there are no strategies behind the willingness of the states to ratify international human rights treaties as they are "*sincere ratifiers or non ratifiers.*"<sup>270</sup> In this concern, she has conducted a study in order to verify if there exists any tendency of the states to ratify human rights treaties with the aim to obtain tangible or intangible benefits. In the first case, Simmons refers to the economic benefits that a state could receive as a reward for ratifying an international treaty with the aim to protect human rights<sup>271</sup>. In the second case, she refers to the positive impression that ratifiers would leave on the international community and thereby to acceptance, inclusion and legitimacy<sup>272</sup>. She has conducted an empirical study with which she proves that there emerges no evidence that states receive benefits after ratification of international treaties on human rights, neither tangible rewards nor intangible rewards<sup>273</sup>.

As it can be conceived, there are different points of view on the efficiency of the international regime, its effects, and the role of the actors. There have been taken

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<sup>267</sup> Ivi, p. 46

<sup>268</sup> Simmons, B. A., *Reflections on Mobilizing for human rights*, *Journal of International Law and Politics*, 2012, 44: 729-750, p. 737

<sup>269</sup> Ivi, p. 738

<sup>270</sup> Ivi, p. 741

<sup>271</sup> Simmons, B. A., Nielsen R. A., *Rewards for ratification: payoffs for participating in the international human rights regime?*, *International Studies Quarterly*, Forthcoming, 2014, p. 4

<sup>272</sup> Ivi, p. 6

<sup>273</sup> Ivi, p. 25

into account opposing theories in order to understand which are the aspects that can reflect the situation in Albania and Kosovo concerning the respect of human rights, specifically women's rights.

First of all, it can not be stated that the international conventions that Albania has ratified and that Kosovo has taken as models of progress have not had any effect on the domestic legal system. On the contrary, since the CEDAW and the Istanbul Convention have become part of the Albanian and Kosovar legislation, there have been adopted several laws by these governments which have been progressively amended in order to adapt to international standards. The international instruments adopted offer also systems of monitoring of the situation in order to identify the problems that governments need to address so as to comply with their obligations. There have been issued also reports in which there have been made recommendations to the country in question for the areas and issues that need to be improved. As a matter of fact, as concerns the implementation of the CEDAW, the Committee has issued the periodic report for Albania in 2016, highlighting the positive results that the government has achieved from the adoption of the Convention; however, there have been also emphasised the areas that still represent a challenge for the women's condition. Furthermore, the Group of Experts on Action against Violence against Women and Domestic Violence has issued a report in 2017 after having visited the country and collected the necessary information on the situation of women. Therefore, also in this case the Albanian government has been informed about the deficiencies that hamper the full compliance with the Istanbul Convention's requirements.

In the case of Kosovo, in 2017 the Council of Europe has launched the project "Reinforcing the fight against violence against women and domestic violence in Kosovo." There have been analysed the institutional and legal aspects that concern women's rights, based on the Istanbul Convention's standards. It has emerged that there are several structures, institutions and laws that do not reflect the Convention's requirements.

Therefore, it is clear that the Republic of Albania and the Republic of Kosovo are two countries that are seriously committed and willing to overcome the obstacles that distance them from the European standards and, thereby, that do not allow them to be European Member States. Nevertheless, before having the opportunity to access the EU, these countries have an important pathway to follow and it refers to the structural improvements on their legislative and institutional systems. These aspects are also emphasised by the European Commission which supervises their process of growth. As it has been envisaged in the previous paragraphs, the European Commission's reports on Albania and Kosovo clearly recommend the countries to tackle problems such as corruption, organised crime, lack of multi-agency cooperation, insufficient measures to address gender-based discrimination and violence against women. Therefore, the correct implementation and respect of international human rights norms will occur only when these countries will overcome the deficiencies in their internal structure. This would not only lead to the advancement of human rights, but also to the enhancement of the domestic practices in this concern.

It has also to be taken in mind that Albania and Kosovo are not the only countries in which the different forms of violence against women are inadequately addressed. Indeed, there are also developed countries and EU Member States that fail to protect women's rights. Otherwise, phenomena such as gender-based violence against women and gender inequalities would not exist. Nor would there exist women that resort to the European Court of Human Rights as the states they come from fail to protect them timely or to ensure the appropriate measures to prevent violence towards them. This is the reason why several countries have been hold responsible for lacking due diligence.

Secondly, it is also true that the presence of domestic actors and their pressure on the government has positively affected the latter's commitment to human rights practices. For instance, the Albanian Law no. 9669 "On Measures against Violence in Family Relations" has been the outcome of civil society's mobilisation<sup>274</sup>. Also in Kosovo the government's passive behaviour in the post-conflict era has triggered the

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<sup>274</sup> Law no. 9669 of 18.12.2006 "On Measures against Violence in Family Relations"

reaction of the civil society bringing about the creation of the Self-determination Movement<sup>275</sup>. Consequently, the Kosovar government has been more active in addressing the war crimes that the citizens were subject to during the conflict with Serbia. A particular issue of focus has been the disappearance of thousands of Kosovar citizens, the physical abuse committed against the population and the sexual violence experienced by women. Therefore, both the theory of Hafner-Burton and Tsutsui as well as the “Power of Human Rights” theory mentioned by Simmons have been reflected in the importance of civil society’s contribution into the achievement of better rights practices.

Thirdly, there is also confirmed the theory of Simmons according to which ratification of international treaties does not bring about neither tangible rewards nor intangible benefits to states. As a matter of fact, despite Albania has ratified several conventions on the protection of civil rights and also on the rights of specific categories of vulnerable people (women, children, disabled persons, etc.), it has not perceived particular benefits. Albania continues to be out of the European Union, it does not belong to particular Preferential Trade Agreements and does not receive a preferential treatment from the international community.

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<sup>275</sup> Këlliçi, K. and Danaj, E., *Radical left in Albania and Kosovo: differences and similarities*, De Gruyter Open, 2017, p.20

## CONCLUSION

This dissertation had the aim to respond to the question “Why does a solid legislative framework exist in Albania and Kosovo, but it is not adequately implemented and respected?” In order to develop the response to this question, the research has been conducted into three thematic fields: the roots and nature of the existing forms of violence against women; the existing legislative instruments to combat such phenomena; and the status of implementation of the laws and international treaties. Therefore, the question “Are women adequately protected in Albania and Kosovo?” emerges spontaneously. In order to reach a conclusion on the answer, it is necessary to recall the main steps of this research.

The historical background that has accompanied the first part of the thesis has been proposed in order to identify the breeding ground of gender stereotypes. It can be firmly asserted that stereotypes on the basis of gender are an outcome of centuries of traditional norms practiced under an authoritarian customary code referred to as the Kanun of Lekë Dukagjini. The preservation of these norms has influenced the development of the citizens’ ideology and behaviour. Treating the woman as an offspring machine, as the servant of the house and the person who has to honour the family has been socially accepted for several generations. Such practices have always belonged to the citizens’ lifestyle and mentality; the social, political and economic advancements have not particularly contributed to the changes of these cultural aspects. As a matter of fact, the eradication of gender stereotypes, roles and discrimination has been a difficult process to go through. A male-oriented society, such as the Albanian and Kosovar reality, has represented an obstacle to the empowerment of women and the achievement of gender equality. Additionally, this aspect has influenced the slow development and the passive nature of feminist movements. Neither impetuosity nor aggressiveness have been an identifying characteristic of women’s rights movements due to the repercussions that historical events have had on women’s condition. Associating gender equality only to the equal assignment of labour positions, does not entail that women are entitled to same rights as men. Nor

does the establishment of a democratic society automatically bring about equal opportunities, treatment and rights to women compared to men both in public and private life.

The structural analysis addressing the national machinery system has involved different fields. The functioning and efficiency of public institutions, the judicial system, and civil society as well as the legal instruments have been the main targets of the second part of this dissertation. The agenda of the two governments in question do not position gender issues at the top of their priorities' list. They are not sufficiently prepared to deal with such issues as they do not have the necessary structures, strategies, and financial resources to respond to all the forms of violence against women and to be flawless in providing for preventive and protection measures towards them. The openness towards external models such as the United Nations and European Union has represented a turning point in the advancement process of Albania and Kosovo. For these two countries, being willingness to conform to international standards has reflected their intention to overcome the limits on the domestic legal framework. This is confirmed by the fact that there have been adopted several laws with the purpose to protect women from violence and discrimination both in private and public life. Furthermore, both the Albanian and Kosovar laws are continuously being amended in order to meet international requirements. Nevertheless, international and European monitoring bodies have noticed that there is still room for further improvement in this concern. In public life women are not totally represented nor are given the opportunity to share their contribution in leadership roles and decision-making. Women's capacities are frequently underestimated due to gender preferences. Moreover, even though laws ensure them discrete levels of protection, the courts do not implement these measures due to the lack of trained staff or to extensive-length procedures which hamper the prompt and efficient response to violence.

The third part of this dissertation has focused on its key point: the causes that lied behind the lack of adequate implementation of the existing legislation. Reports of European bodies talk about corruption as well as lack of financial and human resources

in the institutions responsible for the advancement of women's rights. Reports of women's associations mention also patriarchal norms among causing aspects. In addition to data and reports envisaging the subordinate condition of women in the Albanian and Kosovar society, the theories took into account have been paramount tools to reach a conclusion.

It is true that the Albanian and the Kosovar governments are not at the same levels as other western countries in terms of development and human rights practices. It is true that these two countries are still not members of the European Union. It is also true that they are categorised as countries of origin and transit of trafficking in human being. Nevertheless, it can not be ignored the fact that their past has had serious consequences that are perceived also in contemporary times. Albania and Kosovo have been penalised since the years of the Ottoman Empire, when the population has been fragmented and constrained to spread in neighbouring countries, renouncing the opportunity to be united and affirm as a stable entity. The late achievement of independence and the establishment of a totalitarian regime for Albania have further postponed the process of democratisation. In Kosovo, the repression from the Yugoslav Federation and the Serbian forces has blocked its ambitions of freedom. Therefore, we can not talk about development process in Albania and Kosovo before the late 1990s. In the meanwhile, western democracies have advanced at certain levels that they became the guiding and supportive force for the less developed countries, such as Albania and Kosovo. Nevertheless, the willingness of these states to reach those western models considered as examples of well-being and growth has never lacked. This force has induced the Albanian and Kosovar governments to adapt to international standards and, thereby, improve their national machinery following these guidelines. When gender issues are taken into account, it can be asserted that substantive progress has been observed in the Albanian and Kosovar legislative frameworks. The laws have been amended in order to meet the international and regional instruments' requirements. What creates the gap between *de jure* and *de facto* is related to the absence of a strong rule of law, an efficient and well-equipped judicial system as well as to the lack of management of the

responsibilities among institutions, bodies and structures. The adoption of a comprehensive approach as well as gender mainstreaming by policymakers is also missing. The role of civil society has been fundamental in increasing the governments' commitment to their obligations and human rights practices. It can be affirmed that NGOs have given a fundamental contribution to the assistance of victims of violence and it is necessary that the Albanian and Kosovar governments consider the collaboration with such entities.

Even though it may appear that the condition of women in Albania and Kosovo is drastic, it is not the case. These two countries have been subject to important progress in this concern and this has been possible due to the power and influence of the international regime. Despite the fact that the latter has been criticised for being weak from certain perspectives, it has to be born in mind that without the international law system there would not even be possible to talk about gender equality, women's emancipation and women's rights. It is also true that relying only on the international regime is equivalent to hoping into a miracle. The structural domestic changes have to be integrative efforts to the implementation of international treaties.

Albania and Kosovo are expected to demonstrate important results in the coming years concerning the improvement of human rights in general, and women's rights in particular. The fact that Albania has attained the status of European Union Candidate State and that Kosovo has been supported by international presence are obviously positive resolutions.

Being an Albanian or a Kosovar citizen means to be a person that is strongly attached to the family, homeland, traditions; it means being respectful and hospitable to the neighbour; and being proud of the respective roots. This does not have to be erroneously associated with the perpetuation of those traditional aspects that have led to the transmission of gender stereotypes from generation to generation. Rather, it has to be associated with the fact that Albania is becoming a preferred touristic destination for its natural beauties and for its hospitality; it has to be associated with the fact that Kosovo, despite the past experiences, is trying to maintain stable

relationships with Serbia. Therefore, I strongly believe that these two countries will soon compete with those powers that since yesterday have been their mentors.

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