

Respect and Protection of Labour Rights in Kosovo

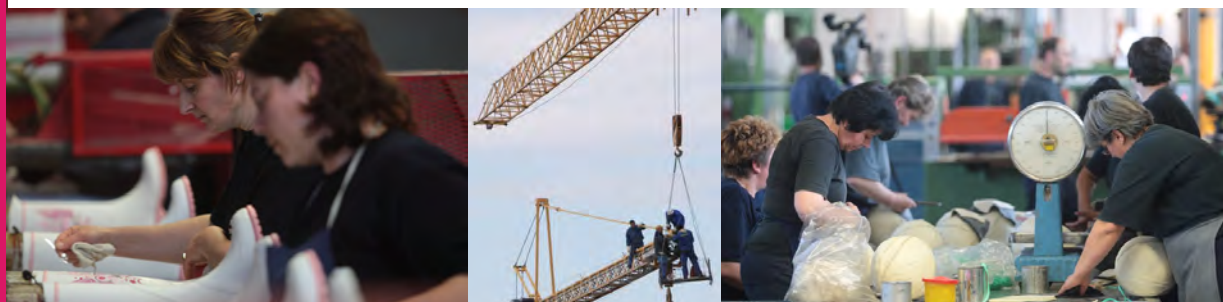


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CLARD, a local NGO founded in 2007 by Spanish Movement for Peace (MPDL), provides legal and social assistance and counseling to internally displaced persons, refugees, returnees, minorities and vulnerable groups. The team also monitors the implementation of legislation and has multiple awareness raising activities linked to social issues. For more information see <http://www.clardkosovo.org>

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In February 2011, a two year programme called "**Decent Work Balkan Network - Putting Equality and Solidarity at the heart of EU integration**" was launched by Olof Palme International Center (Sweden), SOLIDAR (Belgium), AGENDA Institute (Albania), Center for Democracy Foundation (Serbia), CLARD (Kosovo), STBIH (Commerce Trade Union in Bosnia Herzegovina), Progress Institute for Social-Democracy (Macedonia) and Progetto Sviluppo CGIL (Italy). The project is additionally supported by national associates and by the International Trade Union Confederation/Pan-European Regional Council (PERC). The key aim is to strengthen the capacity of trade unions, think tanks and NGOs to promote Decent Work and Quality Jobs in the Balkans together by developing national and regional networks, joint advocacy actions and public campaigns, formulating policy proposals and monitoring the implementation of the European socio-economic acquis. To read more see <http://www.solidar.org>



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Introduction

Kosovo¹ is the youngest, by some still contested, state in the Western Balkans region. It declared its independence from the Republic of Serbia on 17th February 2008. At the time of completion of this report, Kosovo has been recognised by 81 sovereign and independent states from all geographical regions, including 22 of the 27 Member States of the European Union (EU). The country has also taken its first steps in advancing its position on the global arena by becoming a member of the International Monetary Fund (IMF) and the International Bank for Reconstruction on 29th June 2009.

Despite not being recognised by all 27 EU Member States, Kosovo was granted potential candidate status by the EU in 2008.² The European Commission is offering the same instruments to Kosovo as to other Western Balkans countries, namely the European Partnership and Progress Reports, and provides financial assistance under the Instrument for Pre-Accession (IPA) programme, CARDS, the Instrument for Stability and other initiatives in order to help set up legal structures which comply with the EU legislative body - *acquis communautaire*. The next, much needed, step that should boost reforms is the signing of the Stabilisation and Association Agreement (SAA). At the moment, contractual relations with the EU are governed by the alternative Stabilisation and Association Process (SAP) Tracking Mechanism specially designed for Kosovo. The SAP Tracking Mechanism is essentially a substitute for the SAA which provides full access to its core elements, in particular, EU financial assistance, policy advice, and monitoring of EU standards and trade concessions.

As part of the EU integration process, in April 2010, the government established the Ministry of European Integration, which was essentially transformed from, and built upon the capacities of, the previously named Agency for European Integration within the Office of the Prime Minister. Significantly, given the requirement that all aspiring members harmonise their legislative framework with the EU's *acquis communautaire*, the government made it mandatory that every draft law prepared and proposed for adoption had to be checked for compliance with the *acquis*. This task, previously performed by the Agency for European Integration, is now a responsibility of the newly established Ministry which has to provide a Statement of Compliance for every draft piece of legislation.

Social and economic security are very important aspects of human security³. In this regard the right to work and the protection of rights at work, including appropriate working conditions and protection against discrimination and exploitation, are very important factors in ensuring human security⁴. Work also provides well-being, opportunities for self-determination, self-respect, self-fulfilment, etc. Thus, a lack of decent work and quality jobs can lead to personal insecurity, danger, unhealthy conditions and injustices causing disruptions that can give rise to instability in society. The role of social justice and good working conditions are thus an imperative for peace and development; a fact not to be underestimated⁵.

To deal with the difficulties arising from violations of labour norms and provisions there is a need for governments to coordinate their activities together with employers and employees, as tripartite constituents, to jointly shape policies and programmes promoting

¹ Under the UNSCR 1244/1999. Hereafter Kosovo in the text.

² Communication from the Commission to the Council and the European Parliament, *Enlargement Strategy and Main Challenges 2008-2009*, 5 November 2008 (noting in relevant par. 12, p. 14, that "Kosovo has a clear European perspective, in line with the rest of the Western Balkans.").

³ Labour rights in Kosovo. Two legal studies to evaluate the legal compliance of the domestic legislation and practices with the applicable international standards. Edited in 2010, pg 2

⁴ Ibid, pg 2

⁵ Ibid, pg 2

decent work for all. In addition, abiding by standards and norms set out by the International Labour Organization (ILO)⁶ is another important element. So far, no ILO convention has been adopted by the Kosovar institutions.

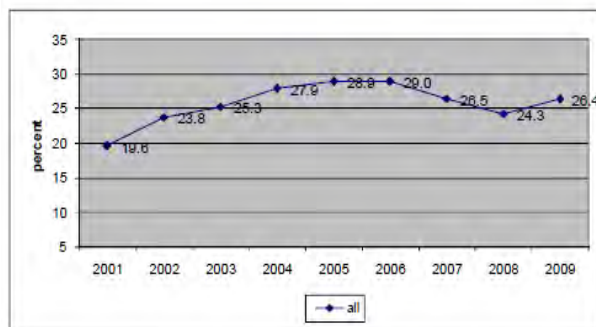
This case study intends to elaborate on the current situation regarding legislation adopted and implemented in the field of labour rights, the functioning of some of the key institutions and to highlight the difficulties and particular challenges in Kosovo and how to address them.

⁶ ILO is a tripartite structure where governments and social partners from 183 Member States can freely and openly debate and elaborate labour standards and policies.

1. Particular labour market situation

While Kosovo went through a series of complex political developments, socio-economic rights, including labour rights, were not addressed in an appropriate way neither under the United Nations administration nor after the country's independence. Today, Kosovo has the youngest population in the region and a population that is growing faster than any other in Europe. Young men and women under 25 years make up 49% of the population, of which 19.1% are aged between 15 and 24⁷. According to data conducted by the Statistical Office, the level of employment in the country slowly increased before independence, then decreased slightly in 2008. Currently it seems to follow an increasing trend but remains at the very low level of approx. 26%⁸.

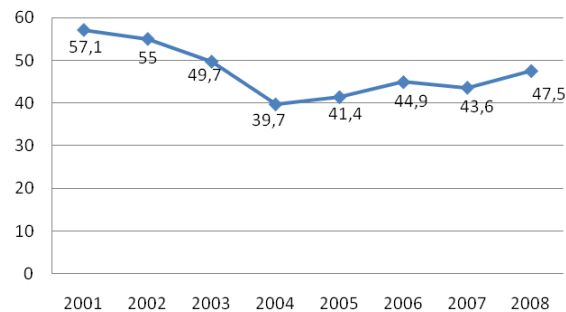
Employment 2001-2009



Graph 1. Statistical Office of Kosovo. Statistics of the Labour Market 2008

Another challenge is the high level of unemployment. The Statistical Office reported that unemployment has been varying slightly from year to year but continues to fluctuate at around 40% of the total labour force⁹ (see graph 2 below). This percentage is without doubt one of the highest in the region and in wider Europe.

Unemployment 2001-2008



When it comes to workers' rights, standards in both the public and private sector are not fully in line with international conventions and standards. But the situation of employees in the private sector, compared with the public sector, is much harder. A large share of employees in the private sector are part of the informal economy and black economy and are damaged by frequent fiscal evasions. Out of the approx. 400,000 employees in Kosovo¹⁰ around 30% are part of the informal economy. According to the Kosovo Trust Fund, there are 234,729 contributors¹¹ from both the public and private sectors to the Fund, plus an estimation of around 30% of self-employed and those in informal labour employment.

Most of the workers in the informal sector work without contracts, long working hours, without having the basic right to a daily, weekly or annual leave, without compensation for overtime, without insurance at work, without protective equipment and without the fundamental rights of national and international legal instruments. In addition, access for the unemployed to social protection and employability measures are limited¹². According

⁷ Statistical Office of Kosovo. More on http://esk.rks-gov.net/eng/index.php?option=com_docman&task=cat_view&gid=16&Itemid=8 – see Results of the Labour Force Survey 2009

⁸ Ibid. Statistical Office of Kosovo

⁹ Ibid. Statistics of the Labour Market 2008

¹⁰ Division of labour and employment. More on <http://mpms.rks-gov.net/sq-al/departmetet/departamentiipunësdhepunësimi/divizioniipunësimi.aspx>

¹¹ More on: http://www.trusti.org/TRUSTI/Portals/0/Dokumentet/Anglisht/Raportet%20vjetore/Annual_report_2010.pdf

¹² ETF - Working together, learning for life. The ETF in Kosovo (under UNSCR 1244/99)1 2010-2012. Pg. 6. More on:

to the World Bank's publication "Doing Business", Kosovo is rated 113 out of 183 preferred countries to do business in. However, when it comes to hiring and firing, Kosovo is in 34th place¹³ which illustrates the precarious situation of workers.

[http://213.215.218.75/pubmgmt.nsf/\(getAttachment\)/8956DE7A3897E205C125770C0031CA8D/\\$File/NOTE84QCMV.pdf](http://213.215.218.75/pubmgmt.nsf/(getAttachment)/8956DE7A3897E205C125770C0031CA8D/$File/NOTE84QCMV.pdf)

¹³ Publication of World Bank. Doing Business 2010 - Kosovo.

2. Complex legal and policy framework for labour rights

Legislation in Kosovo, in general, remains a serious problem due its complexity and collision of norms. At the moment, the legislative framework consists of:

- Former-Yugoslav legislation;
- United Nations Mission in Kosovo (UNMIK) ¹⁴ regulations;
- Kosovo laws promulgated by UNMIK; and
- Kosovo laws following the country's independence.

a) International context

When it comes to international legislation, Kosovo has been struggling to adopt international conventions and norms which are important for protecting the rights of employees. ILO conventions, international mechanisms and norms in the labour field have not been included in the country's legislation. Moreover, neither the UNMIK Framework Constitution¹⁵ nor the Constitution of the Republic of Kosovo include any provision from the two main legal mechanisms for protection of labour rights and freedoms; International Covenant for Economic and Social Rights¹⁶ and the European Social Charter¹⁷. However, the Constitution of Kosovo, article 22 [Direct Applicability of International Agreements and Instruments], includes conventions of a more political nature.

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- (1) Universal Declaration of Human Rights;
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- (3) International Covenant on Civil and Political Rights and its Protocols;
- (4) Council of Europe Framework Convention for the Protection of National Minorities;
- (5) Convention on the Elimination of All Forms of Racial Discrimination;
- (6) Convention on the Elimination of All Forms of Discrimination against Women;
- (7) Convention on the Rights of the Child; and
- (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.¹⁸



Picture 1. Kosovo Minister of Labour with ILO officers
Source: Gallery of the Ministry

Hence, it can be concluded that many international treaties/mechanisms related to labour rights in particular, and in the economic and social sphere in general, still remain to be adopted to help ensure that rights of employees in Kosovo are fully respected and protected. To ensure further progress on its way to join the EU, it is also in Kosovo's own interest to continue to strive for membership of the ILO.

¹⁴ A mission of United Nations which was deployed in the territory of Kosovo based on Resolution 1244 of the Security Council of the United Nations.

¹⁵ An act parallel to the Constitution in normal situation/state.

¹⁶ An act adopted by the UN General Assembly in 1966 that entered into force upon the limit of signatories in 1976.

¹⁷ European Act adopted in 1966

¹⁸ Constitution of the Republic of Kosovo, Art. 22

b) National context

The abovementioned issues of abuse, violations and great uncertainty have become even more evident since the process of privatisation of state-owned enterprises started.¹⁹ The Law on Labour adopted in 2010 is seen not only as a positive sign for improving employment figures but also as a strong impetus towards providing more security and advancing the situation of workers. Its supervision and strict implementation remain, however, a real challenge for national institutions and trade unions, as well as civil society as a whole.

At the same time, there are concerns about its negative effects on the private sector, as all interviewed business associations expressed, even though it may be too early to estimate to what extent²⁰. First, the new law increases the cost of labour as working hours are shorter and holidays are longer. Second, the law increases the relative cost of hiring women due to longer maternity leave (up to one year). The latter, which presumably was meant to favour working women, is very likely to have the exact opposite effect - a discriminating one. When asked about the new law, one interviewed manager went so far as to state: “...it is *absurd for an employee to be away from the workplace for a year. If this law is not changed, we will not hire any more women in our firm*”²¹.

Nevertheless, the following table shows that provisions in the Kosovo Law on Labour are mostly in compliance with ILO standards and in line with regional practices.

¹⁹ Access to labour rights in the Balkans from regional perspective – Case of Kosovo, pg 3

²⁰ Briefing paper – Private sector development. Forum on economic policies. May 2001. More on <http://www.fes-prishtina.org/wb/media/pdf/ENGFEs-RiinvestPrivateSectorDevelopment18may2011-draft%282%29.pdf>

²¹ Ibid. pg 10

Country/International standard	Kosovo	ILO Convention	Albania	Montenegro	Macedonia	Serbia
Contract	Written	According to international laws and collective agreement	Written and verbal	Indefinite	Indefinite	Indefinite
Working hours	40h	40 h	40h	40h	40h	40h
Working week	Indefinite	n/a			40h	
Weekly leave	At least 24h	At least 24h			24h	
Maternity leave	365 days	14 weeks		365 days	9 months and 1 year for more than a child	365 days
Annual leave	20 days plus 1 day added for 5 years of experience	Not less than three weeks for one year employment	Min. 4 weeks	Min.18 days	Min. 18 days and max. 26 days	Min.18 days
Sick leave	10 paid days	n/a			Indefinite	
Overtime work	8 h per week	n/a	10h per week	Indefinite	Max.10h per week	20h per week
Probation period	6 months		3 months	Max. 6 months		Max. 6 months
Interns	6 months up to 1 year unpaid leave			6 months up to 1 year	Max 1 year	
Break during working hours	Min. 30 minutes			30 minutes	30 minutes	
Paid leave	2-3 days		5 days	7 days	7 days per year	5 days
Compensation for medical leave	70% of the salary	60%	80% of the salary for 14 days			

Table 1. Policy Brief. Regulating Employment in Kosovo. Labour law and its implementation.

Other national legislation, apart from the Law on Labour, applicable in the field include:

- a. UNMIK Regulation Nr. 2001/36 on the Kosovo Civil Service, which was among the first regulations adopted by the United Nations Mission in Kosovo regarding the regulation of the rights and obligations of civil servants, meaning public officers only;
- b. Collective Contract signed in 2005²², drafted and signed by the tripartite committee during

- c. the period when an international administration was deployed in Kosovo;
- c. UNMIK Regulation Nr. 2003/33 on Occupational Safety, Health and Working Environment - a piece of legislation which aims to protect and ensure occupational, healthy and proper working environment for employees in Kosovo;

²² An act signed by the tripartite committee: Kosovo Ministry of Labour and Social Welfare, Union of Independent Trade Unions of Kosovo and the Kosovo Chamber of Commerce.

Due to the lack of financial capacities, practical implementation has been continuously obstructed.

- d. Law on the Labour Inspectorate of Kosovo, Nr. 03/L-017²³; and
- e. Law on Vocational Ability, Rehabilitation and Employment of People with Disabilities Nr. 03/L-019

Despite having adopted a number of laws, there are a number of obstacles to their proper implementation such as:

- Employees, employers and civil society are still not very familiar with the newly adopted Labour Law and its implications;
- UNMIK Regulations in most of their provisions need to go through amendments to reflect changes in the field of labour rights, and there is a list of subsidiary acts which have to be drafted in order to make all these acts operational and functional. Public and private companies need to draft their respective rules of procedure to organise, respect and protect the rights of workers and make them functional;
- Weak institutional oversight of employment policy where development, management, monitoring and evaluation of the latter need to be strengthened;
- Very small number of labour inspectors and a lack of institutional support to adequately perform their job;
- Court system to resolve the issues of labour nature is very important. In the former system Courts of the Common Work were functional. Such courts dealt with labour contests only. It was very useful as most of the cases, especially the most complex ones, were addressed on time and professionally. The lack of such a court instance is seen as very problematic as there are many files pending in the court offices. Out of the total number of 217,758 unresolved cases in the courts of Kosovo, 204,119 or 93.7% are still waiting to be dealt with by municipal courts²⁴;

²³ Legislation which establishes the body to supervise the implementation of the provisions in the labour law and other labour aspects in Kosovo.

²⁴ Secretariat of the Kosovo Judicial Council. Statistics of the regular courts.

- Independent Oversight Board (IOB) for civil servants²⁵ needs to have more support from the authorities. The main concern about the decisions taken by IOB remains their implementations. Irrespective of the fact that decisions of the IOB are compulsory, practice shows a different situation. Out of 192 complaints approved during 2010, employers implemented only 91, whereas 61 of them remained unimplemented²⁶.

As such, these issues are identified and considered to be serious obstacles for the full respect and promotion of labour rights, although Kosovo's Employment Strategy 2010–2012²⁷ foresees, in the long term, "Improvement of the functioning of the labour market through better institutions of the labour market, policies and procedures". Other objectives of this strategy are employment protection measures²⁸. To conclude, supervision of the implementation of provisions prescribed by the Labour Law will be a key issue in the coming months and years. This is due to the fact that its supervision may produce two positive effects: better protection and respect of workers' rights on the one hand whilst also identifying possible amendments on the other hand. In this regard, the role of the labour inspectorates remains fundamental.

²⁵ A body in charge of resolving disputes of civil servants only.

²⁶ IOB report 2010. More on https://kpmk.rks-gov.net/document/shqip/publikime/raporti_2010.pdf

²⁷ Kosovo Employment Strategy 2010–2012 adopted in December 2009, pg. 20

²⁸ Ibid. pg 27

3. Labour inspectorate

Another weak element, in the sphere of labour rights, is the Executive Body of the Labour Inspectorate²⁹ that was established by the UNMIK Regulation on Essential Labour Law by a separate Law on Labour Inspectorates adopted in 2002 and amended in 2008. Since the beginning, the Inspectorate has faced many difficulties in fully performing its assigned competences and functioning as a structural organisation, as well as not being properly supported. Therefore, it has not managed to fulfil its obligations and functions as foreseen under domestic legislation as well as ILO standards, namely ILO Convention Nr.81 and its Protocol from 1995³⁰. Article 3.1.a. of the Convention stipulates that labour inspection shall “secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors”. This of course requires full support from the central authorities, first and foremost, by creating adequate working conditions and optimal logistical support. The following table³¹ summarises the abovementioned issues by showing the number of businesses covered by the staff of the Labour Inspectorate across the different municipalities.

After the process of decentralisation 37 municipalities were created. Labour inspectors have not yet been assigned to the new municipalities and neither to the municipalities founded earlier, such as Fushë Kosova, Istogu, Suhareka, Shtërpca, and Novo Bërda³². Even

the largest municipalities, such as Ferizaj and Lipjan, are covered by only one inspector. The municipality of Pristine has the highest number of labour inspectors totalling 6³³. Moreover, the overall low number of inspectors decreased from 58 to 49 after 9 inspectors left work due to low pay³⁴.

Taking into consideration the lack of capacity of trade unions to exercise their power and the weak inspectorates that should supervise and observe employers, it is clear that there is plenty of room for rights violation and abuse. Therefore, in the following part of the study we analyse some of the most often violated provisions, such as those concerning maternity leave, social security, termination of contracts, hours of work and night work by comparing the real situation with what is stipulated by international and domestic laws and then give recommendations on how to improve the situation.

²⁹ It is a body within the Ministry of Labour and Social Welfare led by the Chair of the Agency and supported by three deputies in charge of specific fields linked to labour.

³⁰ ILO Convention Nr. 81 and its Protocol from 1995 on optimal working conditions for Labour Inspectors.

³¹ Policy Brief. Regulating Employment in Kosovo. Labour law and its implementation. Pg 17. More on <http://www.fes-prishtina.org/wb/media/pdf/Labouranalysis.pdf>

³² Ibid. pg 17

³³ Ibid. pg 17

³⁴ Ibid. pg 17

Municipalities	Nr. of registered businesses**	Nr. of labour inspectors**	Average nr. of businesses to be inspected by each inspector	
			Per year	In a day (220 work days)
Deçan	1492	3	497.3	2.2
Gjakovë	5510	5	1102	5.0
Drenas	2426	1	2426	11.0
Gjilan	6191	3	2063	9.3
Dragash	891	1	891	4.0
Kaçanik	2049	1	2049	9.3
Klinë	1754	1	1754	7.9
Kamenicë	1799	2	899.5	4.0
Mitrovicë	4672	4	1168	5.3
Leposavic	806	2	403	1.8
Lipjan	2811	1	2811	12.7
Obiliq	947	1	947	4.3
Rahovec	1963	1	1963	8.9
Peje	6277	5	1255	5.7
Podujevë	3195	2	1597	7.2
Prishtine	23789	6	3965	18.0
Prizren	8914	2	4457	20.2
Skenderaj	1680	1	1680	7.6
Shtimje	1151	1	1151	5.2
Ferizaj	7436	1	7436	33.8
Viti	2328	1	2328	10.5

Table 2. Labour inspectorates in Kosovo

Source: Policy Brief. Regulating Employment in Kosovo. Labour law and its implementation/shortened

4. Important labour provisions from international mechanisms and their applicability in Kosovo

a. European Social Charter

Provisions of the European Social Charter ³⁵	Domestic legal provisions ³⁶	Remarks and recommendations with regard to practical implementation
Part I, par 8: “Employed woman, in case of maternity, has the right to special protection”.	1. Collective Contract - no legal provisions foresee special protection of a pregnant employed woman. 2. Law on Labour - contains no provision with regard to the special protection of woman in case of maternity but does stipulate rights and obligations.	The ratified international agreement and legally binding norms of international laws have superiority over national laws ³⁷ . Recommendation: The Charter needs to be ratified and become applicable in Kosovo.
Part I, par 12³⁸ “All workers and their dependants have the right to social security”	1. Collective contract – no provision foresees workers’ and their dependants’ right to social security 2. Law on Labour - does not mention health insurance at all	Social insurance in all its forms has not been included in any law dealing with employment relationships in Kosovo. Recommendation: The Law on Health Insurance and Law on the establishment of the Fund for Disability and Pensions must urgently be approved.
Article 24, par. a)³⁹ “...the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct, or based on the operational requirements of the undertaking, establishment or service”	Article 71.2 of Kosovo’s Labour Law The employer may terminate an employment contract for a fixed term with thirty (30) calendar days notice. The employer who does not intend to renew a fixed term contract must inform the employee at least thirty (30) days before the expiry of the contract. Failure to do so entitles the employee to an extension of employment with full pay for thirty (30) calendar days.	In the private sector, employers often do not give notice about the reasons for contract termination, neither orally nor in written form, as the law requires. <i>See appendix example of company “X”</i> Public servants do receive a written notice about the contract termination within the time limits foreseen by the law. Recommendation: The Labour Inspectorate must monitor regularly, in particular the private sector, and identify workplaces where the abuses occur. Hence, its capacities need to be reinforced so that the organ can operate more efficiently.

³⁵ Since the European Social Charter covers to a large extent the provisions of the labour law, we consider it very useful to compare its provisions with the domestic ones.

³⁶ Our analysis concentrates on the provisions of these domestic legal acts: Collective contract, Kosovo Labour Law, UNMIK Regulation Nr 2001/36, as well as Administrative Instruction Nr 2003/2 for the implementation of UNMIK Regulation Nr 2001/36.

³⁷ Constitution of the Republic of Kosovo, Article 19, par 2

³⁸ European Social Charter, I part, point 12

³⁹ Ibid, article 24, paragraph (a)

b. Hours of Work (Commerce and Office) Convention, 1930, (ILO)

Provisions of the Hours of Work (Commerce and Office) Convention, 1930 ⁴⁰	Domestic Legal Provisions ⁴¹	Remarks and recommendations with regard to practical implementation
<p>Article 3 “The hours of work of persons to whom this Convention applies shall not exceed forty-eight hours in the week and eight hours in the day, except as hereinafter otherwise provided”</p> <p>Article 4 “The maximum hours of work in the week laid down in Article 3 may be so arranged that hours of work in any day do not exceed ten hours”</p>	<p>Labour Law foresees: Article 20 Setting Working Hours</p> <ol style="list-style-type: none"> 1. Working hours means a period of time, during which, the employee performs labour or services for the benefit of the employer; 2. Full time working hours shall be forty (40) hours per week, unless it is defined otherwise by this Law. 3. Full time working hours for an employee, less than eighteen (18) years of age, shall not exceed thirty (30) hours per week. 	<p>In the private sector working hours exceed what is written in the convention and national provisions. Employees are obliged to work 12 hours as a daily minimum and have only one day break during the week.</p> <p>Recommendation: The Labour Inspectorate must monitor regularly, in particular the private sector, and identify workplaces where working hours are not respected as foreseen by the law. Where an abuse is identified, it needs to proceed with the punishments in accordance with the law provisions. Hence, its capacities need to be reinforced so that the organ can operate more efficiently.</p>

c. Night Work Convention 1990, (ILO)

Provisions of the Night Work Convention, 1990 ⁴²	Domestic Legal Provisions ⁴³	Remarks and recommendations with regard to practical implementation
<p>Article 8 “Compensation for night workers in the form of working time, pay or similar benefits shall recognise the nature of night work”</p>	<p>Law on Labour, Article 27 Night Shifts</p> <ol style="list-style-type: none"> 1. Working hours between 22:00 and 6:00 shall be considered as night shifts. 2. If the labour is organised in shifts, it is necessary to organise shifts in such a form in order to prevent an employee from working a consecutive one (1) week in night shifts without a day off. 3. Night shifts shall be prohibited for persons less than eighteen (18) years of age and pregnant employees and breastfeeding women. Night shifts may be performed by single parents and women with children younger than three (3) years of age or with children with permanent disabilities only with their consent. 	<p>Compensation for night workers in the form of working time, pay or similar benefits is not recognised.</p> <p>Recommendation: The Law on Labour needs to be amended to take into consideration the above.</p>

⁴⁰ Hours of Work (Commerce and Office) Convention was taken as an international instrument to be analysed. Articles 3 and 4 were under the scope of analyse

⁴¹ Kosovo Law on Labour and UNMIK Administrative Instruction 2003/02 on the working hours of civil servants has been used as a reference

⁴² Night Work Convention is an important international instrument for this research. In particular we analysed Article 8.

⁴³ Law on Labour, article 27 is analysed to compare and ensure compliance with international standards

	<p>4. If the health condition of an employee working on night shifts worsens as a result of the labour performed, after the assessment of a competent health body, the employer is obliged to find an appropriate job for that employee during the day.</p>	
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5. Social partners

a) Union of Independent Trade Unions of Kosovo

The Union of Independent Trade Unions of Kosovo (UITK) has existed for more than 20 years. Starting its activities by protecting the rights and freedoms of ethnic Albanians in Kosovo in former-Yugoslavia, it was transformed into an organisation which raises its voice against all kinds of violations against workers irrelevant of their ethnic, religious, gender or any other background. It is also a crucial stakeholder in the social dialogue. Today, the Union consists of several branches:

1. United Union of Education, Science and Culture of Kosovo (SBASHK);
2. Federal Union of Health (FSSHK);
3. Kosovo Police Union (SPK);
4. Independent Energy Union of Kosovo (SPEK);
5. Independent Union of Jurisprudence of Kosovo (SPJK);
6. Independent Union of Administration (SPAK);
7. Independent Union Agrokompleks of Kosovo (SPAgK);
8. Independent Metal Union of Kosovo (SPMK);
9. Independent Trade Union of Municipal Housing Operations of Kosovo (SPVKBK);
10. Independent Union of Construction and Design of Kosovo (SPNPK); and
11. Federation of Metallurgy and Chemical Industry of Kosovo (FMIKK)⁴⁴.



Picture 2. The Union of Independent Trade Unions of Kosovo

⁴⁴ UITK branches at <http://www.bspk.org/english/aboutus.html>

However, due to its lack of organisational capabilities and efficiency - structural, organisational and functional, it has not been able to effectively protect workers' rights. These weaknesses became particularly evident with rising job uncertainty caused by the privatisation process during which many new owners did not comply with norms and legal provisions. The examples in the Appendix illustrate some of the typical cases. In addition, the newly created Kosovo Trade Union Confederation, a division of UITK, does not seem to be actively working.



Picture 3. The Union of Independent Trade Unions of Kosovo

b) Kosovo Chamber of Commerce

The Kosovo Chamber of Commerce⁴⁵ is a leading business association in Kosovo. It was established, at the Assembly of Kosovo in 1962, as the legal representative of the business community's interests. The Chamber is a non-profit and independent organisation with no political affiliation that aims to improve the market economy, entrepreneurial culture and to trigger competition among its members. It seeks to advocate, represents its members, provides advice to business start-ups and professional assistance to members, in particular when it comes to promoting investments and economic

⁴⁵ The Chamber is led by its President. The assembly of the Chamber organises elections every four years. The Chamber also has a Steering Council composed of 27 members.

development. As a social partner, the Chamber plays a crucial role in the protection of workers' rights since it is publicly authorised to provide arbitration services in economic and legal disputes between national companies themselves or between national and international companies⁴⁶. The Chamber also directly assists in drafting and in amending government legislation⁴⁷.

c) Kosovo Alliance of Businesses

The Kosovo Alliance of Businesses is the largest alliance of business associations and individual businesses in Kosovo. Founded in 2002, the Alliance managed to attract 28 business associations with over 9,500 members. The foundation has worked to increase the level of cooperation between the private and public sectors and involved civil society and donor organisations active in Kosovo. As a social partner, the Alliance aims to bring together all business associations and influential actors in the economic policy field to create sustainable partnerships between the public and private sector in order to increase the employment level and fulfil consumers' needs.

Nevertheless, despite having adopted laws, established state bodies and social partners, workers' rights are often put at risk, abused and violated as illustrated by the examples in the Appendix.

⁴⁶ Kosovo Chamber of Commerce – Arbitrage. More on <http://www.oek-kcc.org/en/services/arbitrage>

⁴⁷ Ibid. more on <http://www.oek-kcc.org/en/services/arbitrage>

6. Conclusions and recommendations

The analysis shows that although some progress has been made in the field of labour rights in Kosovo, there are still many challenges to overcome. This is partly due to complex legislation as a whole and partly due to its weak implementation. As seen earlier, conflicting norms remain a serious obstacle for full implementation of legal provisions and often create unclear situations and uncertainty regarding the protection of employees' rights. The newly adopted Law on Labour is thus very important for clarifying and securing employees' rights, and for providing security and better protection of workers overall. As mentioned earlier, the existing laws need to be complemented with subsidiary acts which go into more detail and open up the path for their proper implementation and applicability in practice. Furthermore, to ensure full compliance with the provisions in the Law on Labour, it will also be important that authorities, as well as companies, draft and implement their respective rules of procedure and other legal instructions. Overall, it will be crucial to adopt, as soon as possible, the relevant international legal instruments.

Public authorities must become much more active in promoting and monitoring the respect of workers' rights. The Labour Inspectorate, the Independent Oversight Board, the Courts, social partners as well as civil society will have to actively contribute to this. At the same time, the administrative institutions such as the Labour Inspectorate as well as judicial institutions, namely courts, lack the capacity to oversee the implementation of applicable laws and to perform their duties according to their competencies due to problems with staffing, financial support and adequate equipment, which is a fundamental issue. Taking into consideration the lack of capacity among trade unions to exercise their power and the weaknesses mentioned above, it is clear that the supervision, and strict implementation of the labour law in particular, remain a real challenge for domestic institutions, social partners as well

as civil society as a whole, making this a key issue in the coming months and years.

With this in mind, we would like to make the following recommendations:

- National authorities, namely the government and the parliament, need to organise legal capacities and draft subsidiary acts foreseen by the relevant laws in the field. Wider attention must be paid to ensure the required expertise, mainly with legal staff, to draft the needed legislation and supervise its implementation.
- Ministry of Labour and Social Welfare, Labour Inspectorate must draft and implement their respective rules of procedure to ensure the organisation and full respect of workers' rights whereas private companies must fully comply during implementation.
- National authorities should ensure coherence and compliance with international norms and standards, such as EU legislation, the European Social Charter, UN and ILO conventions. Thus a debate and negotiations to adopt the international mechanisms needs to be initiated.
- National authorities should urgently adopt Laws on Health Insurance and the establishment of the Fund for Disability and Pensions.
- Government needs to ensure that the provisions in the Collective Contract are implemented in full.
- At the court level, a chamber should be created to deal with labour issues only, thereby decreasing the existing backlog and the costs of lengthy processes. The new Law on Courts should thus be amended to take this into account.

- Central and local authorities need to offer full support to the institutions in charge of implementing and supervising legislation, such as the Labour Inspectorate and Independent Oversight Board (IOB), by creating adequate working conditions and optimal logistical support. In particular, the number of inspectors needs to be increased as soon as possible. In addition, the Government and Parliament must be more active in enforcing IOB decisions.
- Kosovo Privatisation Agency⁴⁸ needs to become more efficient and timely in checking the implementation of provisions deriving from the privatisation contracts of state-owned enterprises. It also has to be more determined in taking measures against those who breach the contracts.
- Public campaigns should be organised to increase awareness among employees and employers about their rights and obligations, in particular about the newly adopted Labour Law and its implications.
- UITK as a social partner must be more active and contribute by:
 - Taking part in working groups during the drafting and amending processes of legislation (e.g. the Law on Labour)
 - Supervising the implementation of legal provisions, especially the Law on Labour.
- By uniting and coming forward with one single voice, the social partners, in particular trade unions, could achieve better results and improve the situation concerning workers' rights.
- Kosovo Chamber of Commerce and Kosovo Alliance of Businesses, as social partners, must continue to play their role, not only in the business sphere, but also when it comes to the protection of workers' rights. Apart from their fundamental role, they should insist on the strict implementation and full respect of the legal provisions relating to labour rights (e.g. the Collective Contract).
- As Kosovo is in the early stages of adopting and implementing legislation in this field, the project could largely contribute by serving as a watchdog when it comes to the implementation of legal provisions and raise awareness through advocacy actions based on round tables, conferences, seminars and academic research which could contribute to improving existing capacities and the situation as a whole.

⁴⁸ A successor of Kosovo Trust Agency under the United Nations Administration.

APPENDIX I – Practical examples

Case I: “X” Construction Company

In 2006 during the seventh wave of privatisation in Kosovo, Construction Company “X” finished the process of privatisation by creating a special spin-off. The new owner promised to re-hire 236 workers out of the 420 previously employed and to invest €2.8 million. Apart from not investing the amount promised, even though several calls were made to the Observation office⁴⁹, the new owner also decided to hire only 120 workers in total, out of which only 84 were previously employed. The others received neither reimbursement nor justification. Thereby, the new owner violated the conditions set out in the privatisation contract.

Unsatisfied with this situation, workers claimed their rights and asked for the implementation of the provisions foreseen in the contract by organising a wave of protests and strikes in April 2011. The police forcefully put an end to these strikes. The new owner threatened to fire the protesters and issued a decision for terminating the contracts based on the Labour Law (article 67, par 1.3) which stipulates that the “contracts might be terminated upon the end of the contract duration”^{50 51}. In practice, this was not possible since the workers still had valid contracts.

The owner’s behaviour was also completely in contradiction with the Law on Strikes (article 13, par. 1 and 2). The first paragraph of the abovementioned article stipulates that “For organisers of strikes, towards the strike participants and towards other employees that support the strike, can not be taken disciplinary or material measures and the working term cannot be terminated”⁵². The second paragraph

is even more direct and clear by stressing that “During the organised strike, according to the conditions determined by this Law, the employers cannot employ new employees who would substitute the participants on strike”.

The above highlights how workers’ rights were violated in this case as the owner stopped paying salaries for the respective month from day one of the strikes. Also, according to the official report drafted by the Labour Inspectorate, the representatives of the trade union showed two contracts of newly recruited staff during the period of the strike which was in contradiction with the law mentioned above⁵³.

The workers decided to send the case to court⁵⁴.

Case II: Working Hours⁵⁵

A.J. worked as a cashier at a supermarket during 18 months, between 2008–2009. Reportedly she worked extra working hours on a regular basis with an average of 13 hours per day, without being entitled to any compensation. She also claims that she could never know her working schedule in advance. In this case, both international and national provisions have been violated since the employer did not respect the number of working hours regulated by the law and the convention stating that “In extraordinary cases, with the increase of volume of work and other necessary cases, on request of the employer, an employee shall work extended working hours (overtime) for a maximum of eight (8) hours per week”⁵⁶.

⁴⁹ Body of the Kosovo Trust Agency in charge for the privatisation of state owned enterprises

⁵⁰ Kosovo Law on Labor. More on <http://www.assembly-kosova.org/common/docs/ligjet/2010-200-pdf>

⁵¹ The owner gave “decisions” to 34 workers i.e. fired them. The decisions, contracts, list of workers and other materials can be found with the Company X’s trade union.

⁵² Kosovo Law on Strikes. More on <http://www.assembly-kosova.org/common/docs/ligjet/2010-200-pdf>

⁵³ Official report of the Labour Inspectorate, date 25.05.2011

⁵⁴ An indictment was drafted with the support of CLARD – an NGO for legal aid.

⁵⁵ Identified by Clard Kosovo, edited in MPDL, 2010.

⁵⁶ UNMIK Regulation Nr 2001/27 on Essential Labour Law, article 16.6: Kosovo Labour Law, Art 21, paragraph 1.

Case III: Safe Working Conditions, Protection of Employees' Health and Working Environment⁵⁷

Due to various types of injury at work, 49 former employees in a public company were receiving monthly compensation after being declared partially handicapped by a medical commission. It was the company that proposed they stop working and to settle for a monthly compensation until the establishment of the National Fund for Disability Insurance.

Then the company decided, unilaterally and without prior notification, to interrupt the payments, although the Fund has not yet been established in Kosovo. At the moment, there is no ongoing protection of the employees in the abovementioned scenario which means that provisions of the Law on Safe Working Conditions, Protection of the Employees' Health and Working Environment Nr. 2003/19 (article 2.1) stipulating that "The employer shall be obliged to create conditions for occupational safety, health and working environment of his/her employees. The employer shall be liable for payment of any expenses associated with treatment of work-related accidents and illnesses..." have been violated.

⁵⁷ Ibid, Clard – MPDL

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