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Research Article

MARRIAGE BETWEEN THE SAME SEXES IN THE REPUBLIC OF KOSOVO: COMPARATIVE OVERVIEW

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ABSTRACT

Background: *This article examines the constitutional guarantees regarding the LGBT community in Kosovo and the protection offered by international legal instruments, particularly those of the European Union. It explores the principle of equality and non-discrimination based on sexual orientation, highlighting the legal and social challenges that hinder the full recognition of the rights of the LGBT community.*

Methods: *This study employs a legal doctrinal research approach, analysing primary legal sources, including the Constitution of Kosovo, the Law on Family, and relevant international conventions such as the European Convention on Human Rights. A comparative legal analysis is also conducted to evaluate Kosovo's legal framework in relation to European Union standards. In addition, a socio-legal empirical component is integrated, drawing on survey data from 2015 and 2022 to measure social attitudes towards same-sex marriage and LGBT rights. This mixed-method approach allows for a comprehensive understanding of both legal norms and their practical impact on social acceptance.*

Results and Conclusions: *The research reveals a persistent gap between constitutional provisions that guarantee equality and legal norms that explicitly prohibit same-sex marriages. Survey data indicate a decline in social acceptance of same-sex marriage over the years, with increasing homophobia and resistance to legal changes. However, recent court decisions, such as those recognising gender identity within the right to privacy, indicate progress in the judicial sphere.*

Examining the internal legal acts of the Republic of Kosovo alongside those of the European Union highlights the interaction between constitutional guarantees and the creation of social norms as well as their broader impact on society. A key question arises: to what extent must a legal norm fit into society? Public acceptance, not only in Kosovo but globally, remains limited, particularly with respect to norms affecting the LGBT community. It requires a significant amount of work, especially in drafting norms related to this community.

While Kosovo's legal framework complies with international human rights standards in theory, social attitudes and specific legal provisions pose significant barriers to the recognition of same-sex marriage. Overcoming these gaps requires concerted efforts by policymakers, civil society, and international organisations to promote inclusiveness and reform of restrictive legal norms. The paper examines the interconnectedness of LGBT civil and political rights, prejudice, discrimination, homophobia, and LGBT health disparities. In addition, it also considers the societal consequences of the LGBT community's exclusion, emphasising how legal recognition and social acceptance are mutually reinforcing processes.

1 INTRODUCTION

Kosovo is still a state dependent on its past. Despite being a new state, having separated from Yugoslavia more than three decades ago and from Serbia for over two decades, it is still undergoing a transition.¹ Kosovo is a former communist country in transition. The democratisation of Eastern European countries has been seen as a significant victory for democracy as a form of government.

Within the framework of protecting human rights and freedoms, Kosovo has incorporated all international acts related to those freedoms. Article 22 of the Constitution of Kosovo lists these international instruments.² Fundamental freedoms and rights, including marriage as one of the fundamental freedoms, are governed by the second chapter of the Constitution of the Republic of Kosovo.

1 Enver Hasani, *Tema të Zgjedhura Nga e Drejta Kushtetuese* (Jalifat Publishing, Universiteti i Prishtinës "Hasan Prishtina" 2016) 300.

2 Constitution of the Republik of Kosovo No K-09042008 of 9 April 2008 (amendment 2020) <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 15 January 2025.

The Universal Declaration of Human Rights guarantees that "all" people enjoy freedom and equal rights.³ However, not all individuals benefit from these rights due to discrimination against various groups, including members of the LGBT Community.

Today, being part of this community based on sexual orientation or gender identity remains very difficult, especially in South-Eastern Europe. This is not primarily due to the mentality of the people, but rather because few individuals openly express their sexual identity.

In Kosovo, normative acts, particularly those concerning fundamental rights, strongly affirm that these rights are essential: they are inalienable, indivisible, and inviolable, forming the foundation of Kosovo's legal order.

2 METHODOLOGY

Within the framework of this research, a quantitative method was employed, utilising a citizen questionnaire (empirical part), followed by a legal doctrinal review, comparative legal analysis, analysis of court cases, and a review of legislation. To fulfil the research structure, in addition to conducting the empirical part (results obtained from the questionnaire) and the theoretical part, the analytical method (analysis) and comparative method were also used.

Moreover, the theoretical part was integrated with the quantitative method through analysis and comparison. The questionnaire contains 15 questions, of which 5 are technical (age, sex, ethnicity, nationality, level of education), while the remaining 10 pertain to the topic under discussion. Respondents answered by choosing one option or in some cases, two options.

A total of 225 respondents in 2015, and another 225 respondents in 2022, with demographic variation in terms of statistics, education, age and gender. The questionnaire was physically conducted with citizens, and the results were expressed as percentages alongside graphical representations. The questionnaire was designed to reveal views and gather information relevant to the topic.

3 SAME-SEX MARRIAGE ACCORDING TO THE CONSTITUTION OF THE REPUBLIC OF KOSOVO

In legal science, there are two groups of authors regarding the definition of marriage. The first group defines marriage as "a legal-civil contract, with which a man and a woman decide

3 Universal Declaration of Human Rights (UDHR) (adopted 10 December 1948 UNGA Res 217 A(III)) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 15 January 2025.

to live together for mutual assistance between them.”⁴ The second group defines marriage as a marriage between a man and a woman who decide on a common life sanctioned by law and which they cannot resolve on their own.⁵

The core legal components of marriage may be summarised as follows:

- Marriage is cohabitation between two people of different sexes.
- Marriage is a continuous living union.
- Marriage is an institution regulated by law.
- Marriage is a free union.⁶

According to the first component, marriage as a living community between two people of different sexes means that it is a heterosexual union. Cohabitation of two people of the same sex is not considered marriage. This definition derives from the purpose of marriage, which has remained consistent for centuries despite some recent alternative definitions. One of the natural purposes of marriage is the intimate relationship between spouses and the birth of children. Based on this purpose, same-sex marriages, universally known, cannot produce children except by adoption. Therefore, the fundamental condition for creating a family and having children is the relationship between a man and a woman. The difference between the sexes is a natural element that distinguishes marriage from other forms of human union.

The Constitution of the Republic of Kosovo is progressive in recognising fundamental human rights. The second chapter of the Constitution has foreseen a large number of fundamental freedoms and rights. Article 21 provides general principles for these rights, guaranteeing their implementation and affirming that they are “indivisible, inalienable, and inviolable.”⁷

This article also indicates that these rights apply to legal entities insofar as they are applicable, and that everyone is obliged to respect them. Article 22 reflects Kosovo’s openness by allowing the direct implementation of international agreements and instruments, listing eight (8) international acts, including the Universal Declaration of Human Rights, the European Convention for the Protection of Fundamental Human Rights and Freedoms and its Protocols, the International Convention on Civil and Political Rights and its Protocols, the Framework Convention of the Council of Europe for the Protection of National Minorities, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against

4 Haxhi Gashi, Abdulla Aliu and Adem Vokshi, *Komentar Ligji nr 2004/32 për Familjen i Kosovës* (GIZ 2012) 51.

5 *ibid* 51-2.

6 Gani Oruçi, *E drejta Familjare (Ligjërata të autorizuar)* (Universitetit të Prishtinës “Hasan Prishtina” 1994) 37.

7 Constitution of the Republic of Kosovo (n 2) art 21.

Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.⁸

Article 7 of the Constitution states that “The constitutional order of the Republic of Kosovo is based on the principle of... Equality, respect for freedoms and human rights, non-discrimination... etc.”⁹ These provisions identify non-discrimination, the rule of law, equality, and respect for freedoms and rights as fundamental constitutional values.

One of the institutions protected by the Constitution is marriage and the family. The right to marriage and family is an act and a relationship between two people by mutual will. Marriage as a legal transaction requires the free will of two people of different sexes declaring their intention to take each other as husband and wife. At the same time, marriage as a relationship is a legal bond that can last until the death of one spouse, unless dissolved by divorce.¹⁰

The family unit comprises spouses and their immediate family, which encompasses the spouses' children and parents. The Constitution does not explicitly specify or restrict the gender of spouses, but allows this issue to be addressed through legislation. Article 14, paragraphs 1 and 2 of the relevant law clearly define who has the right to marry.

This law implies that marriage between persons of the same sex is not recognised as the creation of a family, and such unions are prohibited and sanctioned by law. The new Draft Civil Code of Kosovo similarly does not permit same-sex marriage.¹¹ Like the 2006 Law on the Family, the draft code restricts marriage to persons of opposite sexes.

According to Article 1164 of the Draft Civil Code, cohabitation of a man and a woman is a de facto relationship between an adult unmarried man and an adult unmarried woman who openly live together, characterised by joint life and work that presents a character of stability and continuity. This form of cohabitation grants rights and obligations equal to those of married spouses, including care, mutual financial support, and property rights as specified in this Code.

Paragraph 1 of Article 14 of the Law on the Family of Kosovo determines that marriage, apart from being a legally registered union, must be between two persons of different sexes.¹² According to the Law, marriage concerns only persons of opposite sexes and serves to fulfil natural (birth of children), sexual, economic, and cultural needs.¹³

8 *ibid*, art 22.

9 *ibid*, art 7.

10 Francesco Galgano, *E drejta Private* (Fondacioni SOROS, Shtëpia Botuese Luarasi 2006) 778.

11 Draft Civil Code of the Republic of Kosovo (*Ministry of Justice*, 2018) <<https://md.rks-gov.net/en/legislation/civil-code/>> accessed 15 January 2025.

12 Law of the Republic of Kosovo No 2004/32 ‘Family Law of Kosovo’ [2006] Official Gazette 4/1.

13 Gashi, Aliu and Vokshi (n 4) 51.

Until recently, marriage has been widely classified as a contract between two spouses of different sexes, a definition still maintained in many countries. Article 37, paragraph 1 of the Constitution of the Republic of Kosovo states: “Based on free consent, everyone enjoys the right to marry and the right to create a family by law.”¹⁴ This definition can be divided into three parts.

First, the phrase “Everyone enjoys the right to marry” does not specify the sex of the spouses, thus leaving room for interpretation.¹⁵ Second, “the right to create a family” requires a definition of family and its members.¹⁶ The family is formed by the persons who live together and their children, who constitute the family in the narrow sense. It is recognised that same-sex marriage does not biologically result in children, except through adoption. Third, the Constitution does not detail how marriage is conducted but indicates that it is regulated by law. The family “enjoys special protection of the state, in the manner regulated by law.”¹⁷

Article 14 of the Law on the Family of Kosovo, Law No. 2004/32, which entered into force on 16 February 2006, issued by the temporary institutions of self-government in Kosovo, de facto prohibits such marriage. It defines marriage as “a community legally registered between two persons of different sexes, through which they freely decide to live together to create a family.”¹⁸ This definition differs from the Constitutional definition, despite the Law predating the Constitution. Paragraph 2 of Article 14 specifies the sexes of those eligible to marry: “Man and woman have the right to marry and form a family without any restrictions based on race, nationality or religion, and they are equal during the marriage, a continuation of the marriage and its dissolution.”¹⁹

The Constitution of Kosovo, by not explicitly prohibiting marriage between two of the same sex, de facto applies the principle “What is not prohibited is permitted”. However, *de jure*, the Law prohibits such marriages. This raises the question of why, even twelve years after Kosovo declared independence and fourteen years after the issuance of the Law in question, no amendments have been made to address this issue.

Consideration of amendments to the Law has been ongoing for several years. However, on 11 March 2015, the Commission for Drafting the Civil Code (State Commission) was established by Decision No. 09/18, supported by the EU project *Support in the drafting of the Civil Code and the regulation of Property Matters*, which commenced on 1 July 2014 and

14 Constitution of the Republik of Kosovo (n 2) art 37.

15 Enver Hasani and Ivan Čukalović (eds), *Komentar: Kushtetuta e Republikës së Kosovës*, vol 1 (GIZ 2013) 129-30.

16 *ibid.*

17 *ibid.*

18 Law of the Republic of Kosovo No 2004/32 (n 12) art 14(1).

19 *ibid.*, art 14(2).

spanned 24 months. The Commission initiated the codification of civil law,²⁰ issuing several draft frameworks for the Civil Code, in which, in addition to the working group, four thematic subgroups were established to support this process:

- Thematic subgroup for the drafting of the General Part and the Law of Obligations;
- Thematic subgroup for the drafting of Property Law and other real rights;
- Thematic subgroup for the drafting of Family Law and Inheritance Law; AND
- Thematic subgroup for the drafting of Private International Law.²¹

In the area of family law, no amendments have been made to the definitions concerning marriage and family as legal institutions. Article 1138 of the Draft Civil Code defines marriage as “a legally registered union between two spouses of different sexes, through which they freely decide to live together as husband and wife. Marriage is a continuous life union of a man and a woman, legally regulated. Marriage is related to the consent of the husband and wife and their signature in front of the registrar.”

Furthermore, the article explicitly states that marriage can only be contracted between spouses of opposite sexes. Paragraph 3 further stipulates: “Men and women have the right to marry and form a family without any restrictions based on race, nationality or religion, as well as they are equal during the marriage, continuation of the marriage and its dissolution.”²²

The 2004 *Progress Report* published by the European Commission also addresses the LGBT community.²³ While the Constitution and laws are largely in line with international and European standards, in practice, lesbian, gay, bisexual, trans, non-binary, intersex, and queer (LGBTIQ) persons continue to face discrimination and have limited access to essential services, including healthcare, psychosocial, and legal support. Kosovo has yet to adopt a strategy or action plan on the rights of LGBTIQ persons, and no awareness-raising campaigns have been conducted.

Despite public governmental support for events such as Pride Week and the Pride Parade, institutional response to online hate speech and homophobia remains inconsistent. The pending adoption of the Civil Code, which could potentially enable legislation on same-sex unions, has not progressed. Parliamentary debates on this issue have triggered discriminatory language and hate speech. Additionally, no progress has been made in establishing a planned shelter for LGBTIQ victims of domestic violence. Additionally, the

20 ‘Civil Code’ (*Ministry of Justice*, 2018) <<https://md.rks-gov.net/en/legislation/civil-code/>> accessed 17 January 2025.

21 *ibid.*

22 *ibid*; Draft Civil Code of the Republic of Kosovo (*Ministry of Justice*, 2018) <https://kuvendikosoves.org/Uploads/Data/Documents/ProjektkodiciviliRepubliesseKosove_khgaTYWYf9.pdf> accessed 17 January 2025.

23 European Commission, Commission Staff Working Document: Kosovo* 2024 Report (SWD(2024) 692 final, 30 October 2024) 37 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52024SC0692>> accessed 17 January 2025.

Law on Civil Status, which would allow for legal gender recognition, remains under consideration but has yet to be adopted.

The Constitution and laws guarantee freedom of assembly and association, and their implementation is generally satisfactory. The LGBTIQ Pride Parade held in Pristina in June 2024 occurred without any reported incidents.²⁴ The Law on Freedom of Association, along with its implementing legislation, largely complies with international human rights standards. Recent amendments to this law established a new Appeals Commission to review decisions related to the freedom of association for non-governmental organisations. Ensure the independence of this Appeals Commission from executive influence remains a crucial concern.

4 THE READINESS OF SOCIETY TO ACCEPT SUCH MARRIAGES AND MEMBERS OF THE LGBT COMMUNITY

The primary function of a legal norm is to guide and organise society. Legal norms are established through various processes, with one of their fundamental objectives being the regulation of individual conduct. Consequently, legal norms are intended to apply universally, requiring adherence from all members of society. However, challenges arise when a majority of the population does not accept a particular norm.

In May 2015, an informal group of law students from the University of Pristina, *Hasan Prishtina, Gjilan Branch*, conducted a survey of different categories of society. The survey included 225 respondents, including primary school teachers, civil servants, pensioners, athletes, intellectuals, high school professors, students, Kosovo police officers, businessmen, journalists, university professors, religious communities (Muslim, Catholic, Protestant, Orthodox), doctors, court and prosecution officials, advocates and cultural figures. The survey focused on the topic of “*Marriage between two same sexes*.” The author of this article participated in the survey as a leader of a group of fifteen students.

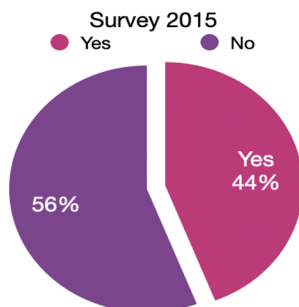
The same survey, targeting identical demographic categories and comprising the same number of respondents, was repeated seven years later in May 2022, also in the city of Gjilan. Participants ranged in age from 18 to 75 years. Gender distribution differed between the two surveys: in 2015, women constituted approximately 65 per cent of respondents and men 35 per cent, whereas in 2022, women accounted for 54 per cent and men 46 per cent.

The surveys conducted in 2015 and 2022 aimed to assess whether Kosovar society is prepared to accept members of the LGBT community. The following section presents graphical representations of selected questions from both surveys:

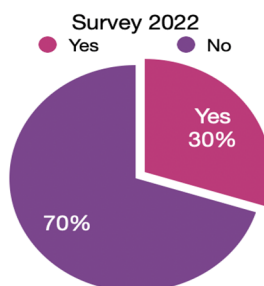
- *Question No. 3 - Do you accept same-sex marriage as something normal?* Questionnaire 2015 = A) 97 Yes B) 123 No; Questionnaire 2022 = a) Yes - 66 B) No - 155

24 *ibid* 34.

3. Do you accept same-sex marriage as something normal?



A) Yes 97
B) No 123

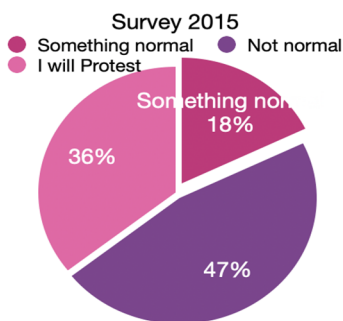


A) Yes 66
B) No 155

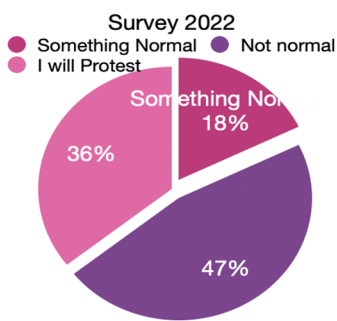
Here, we observe a noticeable change in responses: in 2015, approximately 44 per cent of citizens considered same-sex marriage to be normal, whereas by 2022, this figure had decreased to around 30 per cent.

- **Question No. 4** - If the Assembly of the Republic of Kosovo approves the law allowing same-sex marriages, How would you react? **Questionnaire 2015** = a) Something normal – 36 b) Not normal - 94 c) I will protest – 72 **Questionnaire 2022**= a) Something normal – 36 b) Not normal - 94 c) I will protest – 72

4. If the Assembly of the Republic of Kosovo approves the law allowing same-sex marriages, How would you react?



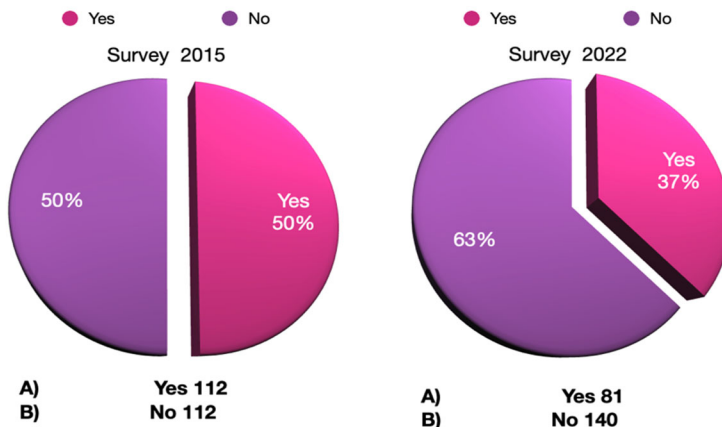
A) Something Normal 36
B) Not normal 94
C) I will Protest



A) Something normal 36
B) Not normal 94
C) I will Protest 72

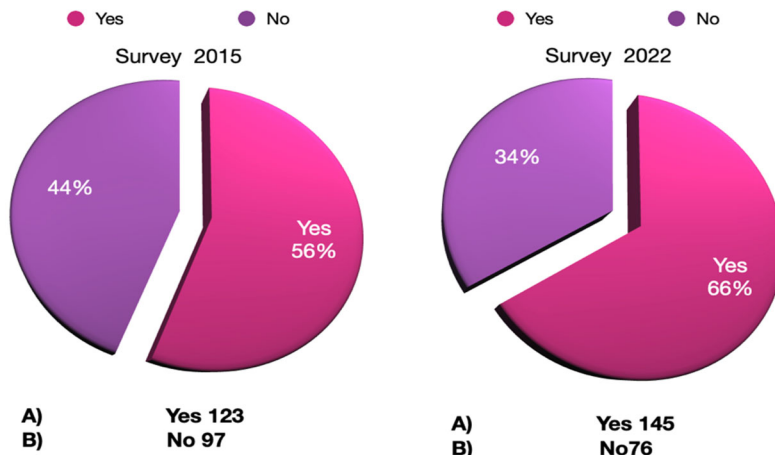
- **Question No. 5** - Should Kosovar society treat people who have such sexual orientation the same as other social communities? **Questionnaire 2015** = A) 112 Yes, B) 112 No, **Questionnaire 2022**= A) 81 Yes, B) 140 No

5 - Should Kosovar society treat people who have such sexual orientation the same as other social communities?



- **Question No. 6** - Do you think such sexual orientation is a mental disorder? **Questionnaire 2015** = A) 97 No, B) 123 Yes, **Questionnaire 2022** = A) 76 No, B) 145 Yes

6 - Do you think such sexual orientation is a mental disorder?



In question 6 of the questionnaire, there was a 10 per cent increase in the number of citizens who consider this sexual orientation to be a mental disorder. These findings indicate that significant doubts persist within society about whether the Constitution permits or prohibits same-sex marriage, while homophobia remains prevalent.

It is estimated that approximately 20 per cent of the global population identifies as homosexual, lesbian, bisexual, or transgender. Members of this community in Kosovo face substantial challenges. Kosovo is the country with the greatest homophobia in the entire Balkan region, according to organisations for the protection of community rights on the International Day against Homophobia.²⁵

A 2016 report by the National Democratic Institute (NDI) published prior to the first Pride in Prishtina in May 2017, revealed that only 3 per cent of respondents would accept a child as a member of the LGBT community, while 97 per cent would refuse to allow them to live at home as members of this community.²⁶

Norms that face strong societal opposition often fail to be fully implemented in practice. Kosovo, despite notable improvements in the implementation of freedoms and human rights, continue to struggle with violations in these areas.

A recent advancement within Kosovo's judicial system reflects progress in this regard. In the case of Judgment AA.nr.244/2019, the Court of Appeal's Administrative Department in Pristina²⁷ rejected a complaint filed by the Ministry of Internal Affairs—Department of Registration and Civil Status—after a party requested a legal change of gender and name from female to male. This ruling is among the first cases where the practice of the European Court of Human Rights is mentioned. However, the court does not say which specific case it is. The court's reasoning states: "Because the right to protect gender identity is protected within the right to privacy according to the judicial practice of the ECtHR. According to the ECtHR, the concept of the right to private life is a broad term and cannot be captured in a narrow definition because it includes the physical and mental integrity of a person. Sometimes it can also include aspects of physical and social identity, elements such as gender identification, name, sexual orientation, and sex life entered the personal sphere protected by Article 8 of the Convention."²⁸

25 Ariana Kasapolli-Selani, 'Kosova, vendi më homofobik në rajon' (*Radio Evropa e Lirë*, 17 May 2017) <<https://www.evropaelire.org/a/28493567.html>> accessed 17 January 2025.

26 *ibid.*

27 Case AA.nr.244/2019 (Court of Appeals of the Republic of Kosovo, 2 August 2019).

28 *ibid.*

5 MARRIAGE BETWEEN THE SAME SEXES AND INTERNATIONAL LAW

Marriage is not trivial. It is directly related to a person as a human being. Marriage has existed and continues to exist in every country, region, social class, race, religion, or secular society. People get married and create their own family life. It is a key to happiness—something that people constantly admire and aspire to. For many, marriage and the creation of a family are their main aspirations; however, in many countries of the world, this right has been denied to members of the homosexual community.

In 2000, at least 47,000 same-sex couples were cohabiting in the Federal Republic of Germany.²⁹ According to a study commissioned by the German Federal Ministry of Justice and conducted by Buba and Vaskovics in 2000, same-sex couples do not differ substantially from opposite-sex couples in their expectations of the partnership, its permanence, willingness to offer mutual support, and responsibility for each other.³⁰

The ECtHR has issued a considerable number of judgments regarding the positive obligation of states to legally recognise the partnership of same-sex couples. The concept of family life has evolved gradually over the Convention's lifetime and continues to evolve to account for social and legal changes. According to Article 12 of the European Convention on Human Rights (ECHR): "Men and women who have reached the age of marriage have the right to marry and create a family according to the national laws that regulate the exercise of this right."³¹ Even here, there is no room for comment as it has been decisively stated which parties constitute a marriage. Thus, the Charter has clarified that a man and a woman can marry if the legal conditions are met.

The right to marry and create a family is essential to family life. Article 16 of the Universal Declaration of Human Rights states that "Men and women of adult age have the right to marry and form a family, without any limitation in terms of race, nationality or religion. They have equal rights both in the case of marriage, during the marriage, and in the case of divorce."³² The second paragraph of this article states that "Marriage must be entered into only with the complete free consent of the persons to be married."³³

Civil marriage is a legal status recognised in all EU countries. A 2019 study provides data pertaining to the issue at hand: 18 European countries consider sexual orientation a criminal offence. These countries are Andorra, Belgium, Denmark, Estonia, France, Iceland, Ireland, Lithuania, Monaco, the Netherlands, Norway, Portugal, Romania, Slovenia, Spain,

29 Case 105 BverfGE 313 (Federal Constitutional Court of the Federal Republic of Germany, 17 July 2002).

30 Donald P Kommers and Russell A Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* (3rd edn, Revised and Expanded, Duke UP 2012) 606, doi:10.2307/j.ctv125jqj0.

31 Council of Europe, *European Convention on Human Rights: as amended by Protocols Nos 11, 14 and 15, supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16* (ECtHR 2021).

32 UDHR (n 3) art 16(1).

33 *ibid*, art 16(2).

Sweden, and the United Kingdom.³⁴ More than 18 years after the Netherlands became the first country in the world to legalise same-sex marriage, Northern Ireland has become the last European jurisdiction to allow gays and lesbians to marry. Northern Ireland is the 18th European country to legalise same-sex marriage.³⁵

When it comes to the recognition of same-sex couples, an East–West division can still be observed in Europe. Most countries in Western Europe have expanded the institution of marriage to same-sex couples. On the contrary, among countries of the former Socialist bloc, same-sex marriage is rather the exception. To the present day, only Estonia and Slovenia allow same-sex couples to get married. Some offer a different form of recognition, such as registered partnerships or cohabitation agreements. However, in several Eastern European countries, same-sex couples lack any formal recognition. These countries have become fertile land for the European Court of Human Rights (ECtHR) to explore whether or not providing any legal recognition to same-sex couples can amount to a violation of the European Convention on Human Rights (ECHR). In 2023, the ECtHR rendered five judgments on this issue.³⁶

In these first two decades of the 21st century, many countries have witnessed a remarkable development in terms of legislation, particularly regarding freedoms and human rights, with special attention to family life issues. As mentioned above, the ECtHR has issued a considerable number of decisions on family life between persons of the same sex. One well-known case is *Schalk and Kopf vs. Austria* from 2010.³⁷ Two applicants, a same-sex couple aged 48 and 50 respectively, lived in Vienna. In this decision, among other things, it was stated that same-sex relationships are considered "family life."³⁸

Following *Schalk and Kopf*, the European Court of Human Rights (ECtHR) addressed the right to legal recognition of same-sex couples in three important cases. The first, *Vallianatos and Others v. Greece*,³⁹ concerned a 2006 Greek law that introduced civil unions but limited them to opposite-sex couples. Same-sex couples argued that this exclusion violated Articles 8 and 14 of the European Convention on Human

34 Michael Lipka and David Masci, 'Where Europe Stands on Gay Marriage and Civil Unions' (*Pew Research Center*, 28 October 2019) <<https://www.pewresearch.org/fact-tank/2019/10/28/where-europe-stands-on-gay-marriage-and-civil-unions/>> accessed 17 January 2025.

35 *ibid.*

36 Carlos Santaló Goris, 'The European Court of Human Rights: Advancing Legal Recognition of Same-Sex Couples across Europe?' (*European Institute of Public Administration (EIPA)*, 4 July 2024) <<https://www.eipa.eu/blog/the-european-court-of-human-rights-advancing-legal-recognition-of-same-sex-couples-across-europe/>> accessed 17 January 2025.

37 *Schalk and Kopf v Austria* App no 30141/04 (ECtHR, 24 June 2010, final 22/11/2010) <<https://hudoc.echr.coe.int/fre?i=001-99605>> accessed 17 January 2025.

38 Council of Europe, *Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe* (2nd edn, Commissioner for Human Rights 2011).

39 *Vallianatos and Others v Greece* App nos 29381/09, 32684/09 (ECtHR, 7 November 2013) <<https://hudoc.echr.coe.int/fre?i=001-128294>> accessed 17 January 2025.

Rights (ECHR). The Court sided with the applicants, stating that the denial of access to civil partnerships was unjustified. It stressed that legal recognition, regardless of its practical implications, has intrinsic value for same-sex couples.

This reasoning was further supported by the European Court of Human Rights' decision in *Oliari and Others v. Italy*.⁴⁰ The case expanded the scope of the Court's jurisprudence. Unlike Greece, Italy did not have a civil union regime—not even for opposite-sex couples. The Court ruled that this violated Article 8 of the ECHR, referring to previous calls by the Italian Constitutional Court for the recognition and public support of same-sex unions. The ECtHR concluded that Italy had failed to fulfil its positive obligation to provide a legal framework for same-sex unions.

In the case of *Orlandi and Others v. Italy*,⁴¹ the Court addressed Italy's refusal to recognise same-sex marriages performed abroad. Although the ECtHR did not find that the right to marry (Article 12) had been violated, it did find a violation of Article 8 due to the failure to recognise these unions. Although Italy had passed laws on civil unions before the judgment, the Court focused on the absence of such legislation at the time of the couple's application.⁴²

The *Fedotova* case⁴³ marked a significant moment in the European Court of Human Rights' (ECtHR) consideration of same-sex couples' rights. Similar to *Oliari*, a group of same-sex couples complained that Russia did not recognise their marriages. However, the ECtHR took a bold step forward by recognising that States Parties have a positive obligation to provide legal recognition and protection to same-sex couples. It held that States are obliged to provide legal recognition to these couples, justifying this position by referring to the growing trend of legal recognition in other European countries.

Despite this progress, *Fedotov* has been criticised. First, the Court did not fully examine whether discrimination against same-sex couples occurred within the meaning of Article 14 of the European Convention on Human Rights. Critics argue that the Court's emphasis on positive obligation resulted in the question of whether unequal treatment of same-sex couples constitutes discrimination not being addressed directly. Second, the ruling did not specify the rights that same-sex couples would enjoy once legally recognised. This ambiguity allows states to grant limited or token recognition without providing full marriage rights.

Overall, the ruling represents an improvement for same-sex couples. However, the lack of clarity on discrimination and rights leaves room for further legal challenges. Future

40 *Oliari and Others v Italy* App nos 18766/11, 36030/11 (ECtHR, 21 July 2015, final 21/10/2015) <<https://hudoc.echr.coe.int/fre?i=001-156265>> accessed 17 January 2025.

41 *Orlandi and Others v Italy* App nos 26431/12, 26742/12, 44057/12, 60088/12 (ECtHR, 14 December 2017, final 14/03/2018) <<https://hudoc.echr.coe.int/eng?i=001-179547>> accessed 17 January 2025.

42 *Goris* (n 36).

43 *Fedotova and Others v Russia* App nos 40792/10, 30538/14, 43439/14 (ECtHR, 13 July 2021) <<https://hudoc.echr.coe.int/eng?i=001-211016>> accessed 17 January 2025.

decisions could provide more clarity on the scope of same-sex couples' rights and potentially resolve the issue of marriage recognition.⁴⁴

In these cases, it was clarified that the European Convention on Human Rights requires some form of legal recognition for same-sex couples; however, the question remained whether this applies to all member states. This issue was later discussed in *Fedotova v. Russia*.

A stable and cohabiting same-sex couple falls within the notion of "family life" as well as "private life" under Article 8 of the ECHR. However, the Convention does not oblige member states to allow same-sex marriage, and Austria's decision to delay the introduction of registered partnerships for same-sex couples did not constitute a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8.⁴⁵

In the chapter titled "Global Equality, Global Counterattack, 2001–2020" of *The International LGBT Rights Movement: A History*, author Laura A. Belmonte describes how advances in LGBTQ+ rights in the early 21st century have spurred both global progress and fierce opposition. She begins by noting that LGBT rights are increasingly institutionalised in international frameworks such as the United Nations and the European Union. The most significant legal victories, such as the legalisation of same-sex marriage in many countries, have been driven by activism, shifts in public opinion, and court decisions based on human rights law.⁴⁶

However, Belmonte notes that these movements have provoked a well-organised backlash, led by religious conservatives, populists, and authoritarian regimes. These actors have portrayed LGBT rights as a threat to traditional values, national identity, and religious freedom. Countries such as Russia and several African and Middle Eastern countries have adopted restrictive legislation, including anti-propaganda laws and criminalisation measures, which directly violate international norms.⁴⁷

The chapter highlights how populist leaders in various regions have used fears of "Western liberalism" to consolidate power and mobilise support, often using anti-LGBT rhetoric as a means of political polarisation.⁴⁸ Belmonte also criticises the limitations of international institutions in addressing such violations, emphasising their dependence on state cooperation and political will.

The author concludes that while the global LGBT movement has achieved remarkable visibility and some lasting reforms, it remains highly contested and vulnerable to political manipulation and ideological backlash.⁴⁹

44 *ibid.*

45 *ibid.*

46 Laura A. Belmonte, *The International LGBT Rights Movement: A History* (New Approaches to International History, Bloomsbury 2021) 144–55.

47 *ibid.* 150.

48 *ibid.* 153.

49 *ibid.* 155.

In Germany, on 16 February 2001, after many months of hearings and reports, the law known as the Civil Partnership Act was approved by the Bundestag. The Act aimed to reduce discrimination against same-sex couples by allowing their relationships to be recognised as registered civil partnerships. The case was initiated by the Land Governments of Bavaria and Saxony in the Constitutional Court. According to the first Senate of the German Federal Court, the law in question is in full compliance with the Basic Law.⁵⁰

The Constitutional Court held that the introduction of the legal institution of registered civil partnership for same-sex couples does not violate Article 6.1 of the Basic Law. The special protection of marriage in Article 6.1 of the Basic Law does not prevent the legislature from providing rights and duties for same-sex civil partnerships equal or similar to those of marriage. The institution of marriage is not threatened by any danger from an institution directed at persons who cannot marry each other.⁵¹ Therefore, it does not violate Article 3.1 of the Basic Law that persons of different sexual orientations cohabit with each other, and groups of people related to each other and living together do not have the opportunity to become a registered civil partner.⁵² It must be added that, in Germany, LGBTQ+ people enjoy complete legal equality. Same-sex marriage has been legal since 2017, and transgender people can legally change their gender without undergoing surgery. Due to full legal equality, same-sex couples are entitled to the same tax breaks and social security benefits as heterosexual couples.⁵³

The Constitution of the Republic of Albania, like that of Kosovo, does not decisively state which sexes may enter into marriage. However, it emphasises: "Everyone has the right to marry and have a family."⁵⁴ The second paragraph states: "Marriage and family enjoy the special protection of the state." By contrast, the Constitution of Kosovo states that the issue of marriage is regulated by law: "The marriage and dissolution of marriage are regulated by law."⁵⁵

According to Article 7 of the Family Code of the Republic of Albania: "Marriage can be concluded between a man and a woman who has reached the age of 18."⁵⁶ From all this, it is clear that Albania does not permit marriage between couples of the same sex. Under the Constitution and the law in question, the family enjoys constitutional protection regardless of how it came to be part of the community. In this sense, constitutional protection applies to any family created through the cohabitation or "free union" of two people of different genders.⁵⁷

50 Kommers and Miller (n 30) 606.

51 Case 105 BverfGE 313 (n 29).

52 Kommers and Miller (n 30) 606.

53 'LGBTQ+ in Germany [History, Rights, Marriage]' (*Expatrio*, 12 June 2025) <<https://www.expatrio.com/about-germany/lgbtq-germany-history-rights-marriage>> accessed 14 June 2025.

54 *Kushtetuta e Republikës së Shqipërisë* (Qendra e Botimeve Zyrtare 2000).

55 Constitution of the Republik of Kosovo (n 2) art 37(2).

56 Law of the Republic of Albania No 9062 'Family Code' [2003] Official Journal 49/1907.

57 Luan Omari and Aurela Anastasi, *E drejta Kushtetuese* (Dajti 2000 2017) 164.

In *The Emotions of LGBT Rights and Reform: Remaking the Law*, Senthorun S. Raj offers a rich and emotionally engaging analysis of the LGBT community and its interaction with the law and legal reforms. Raj frames emotions not only as individual or private feelings, but as political and legal forces that shape LGBT identities, rights discourse, and lawmaking. The author criticises mainstream legal narratives that often portray LGBT people as either victims deserving of protection or as threats to normative values. Raj emphasises how such legal constructs are imbued with emotions such as fear, pride, shame, and love, which influence public perception and legal outcomes.⁵⁸ He explains that the law has historically marginalised LGBT individuals by pathologising or criminalising their identities. Yet contemporary reforms, while aiming for inclusion, often impose normative expectations on queer subjects—such as the requirement that they conform to heteronormative standards of love, family, or monogamy to be considered "worthy" of legal protection. This inclusion can therefore become conditional, assimilating LGBT people only if they suppress difference and conform to dominant emotional registers.

For example, while gay marriage reforms are celebrated as emotional victories of love, they often neglect queer people's more radical critiques of legal recognition and justice.⁵⁹ Raj also challenges the notion that legal reforms are neutral, arguing that they are embedded in affective economies that distribute feelings unevenly. The "emotional labour" of queer communities—navigating between visibility and vulnerability—is central to how the law is experienced and contested. He calls for reimagining the law not merely as a site of rights but as a space of affective engagement where queer desires, anxieties, and solidarity can be affirmed without being instrumentalised or sanitised.⁶⁰ In short, Raj's work challenges scholars and legal activists to rethink LGBT rights through a lens that acknowledges the emotional complexities of queer lives and the legal systems that claim to represent them.⁶¹

Another element is that, due to social diversity and differing opinions, many LGBTQ+ people do not openly express their sexual identity in their home countries. A recent study found that 12 per cent of LGBTQ+ employees believed they had been fired or laid off because of their identity. Nearly a third of LGBTQ+ employees (31 per cent) disagreed that they could be themselves at work. Of these, 53 per cent reported experiencing discrimination—such as verbal or physical abuse, or exclusion. The study goes on to show that two in five (39 per cent) still feel the need to hide the fact they are LGBTQ+ at work, and over a third of employees (36 per cent) have heard discriminatory comments made about an LGBTQ+ colleague. More than one in four LGBTQ+ people (26 per cent) experienced negative comments or conduct from customers or clients because of their identity. Furthermore, three

58 Senthorun Sunil Raj, *The Emotions of LGBT Rights and Reforms: Repairing Law* (Edinburgh UP 2025) 1-5.

59 *ibid* 9-11.

60 *ibid* 19.

61 *ibid* 21.

in ten LGBTQ+ employees (31 per cent) would not feel comfortable reporting discrimination if they experienced homophobic or biphobic bullying or harassment.⁶²

This research highlights the persistently high levels of discrimination and fear that LGBTQ+ employees still face, with two in five (39 per cent) still feeling they must hide their identity at work. More than one in four LGBTQ+ people (26 per cent) reported verbally abusive conduct from customers or clients due to their identity. As many organisations scale back their commitments to diversity, equity and inclusion, these statistics are a stark reminder that inclusion remains essential—not only for fairness but also for attracting and retaining the best talent.⁶³

Another study shows that 77 per cent of LGBTQ+ young people have experienced workplace sexual harassment. Unwanted sexual attention and behaviour remain a persistent problem in many workplace cultures, and sexual harassment of LGBTQ employees is often overlooked.⁶⁴

Historically, sexual harassment has been framed in heterosexual terms, in which male bosses target female employees with unwanted sexualised behaviours. This perspective of workplace sexual harassment has been enshrined in film, from the 1980s' *9 to 5* to 2019's *Bombshell*. However, harassment affects LGBTQ+ workers across all employment sectors.⁶⁵

The most common sectors identified were:

1. Accommodation and food service;
2. Retail trade;
3. Administration and support services;
4. Financial and insurance services.⁶⁶

Perpetrators were primarily men, typically older than those they harassed, and often acting alone. In 46 per cent of cases, harassment came from co-workers at the same employment level, while clients or customers were the perpetrators in 31 per cent of cases.⁶⁷

Author Angela Dwyer, examining the historical emergencies of the LGBT community and its relations with the institutions of order, critically examines the historical and

62 'New Research Shows Almost 40% of LGBTQ+ Employees Still Hide their Identity at Work' (*Stonewall*, 31 January 2025) <<https://www.stonewall.org.uk/news/new-research-shows-almost-40-of-lgbtq-employees-still-hide-their-identity-at-work>> accessed 20 March 2025.

63 *ibid.*

64 Luis Hansel, 'New Research: 77% of LGBTQ Young People Have Faced Workplace Sexual Harassment' (*The Conversation*, 2 December 2024) <<https://theconversation.com/new-research-77-of-lgbtq-young-people-have-faced-workplace-sexual-harassment-244735>> accessed 20 March 2025.

65 *ibid.*

66 *ibid.*

67 *ibid.*

contemporary relations between the police on the one hand and the community on the other. She argues that many antagonisms affect relations with the community and their support, including political, legal, cultural, and social factors. Rather than seeing a linear progression from historical oppression to contemporary partnership, Dwyer emphasises how moments of pain and progress appear and reappear in unpredictable ways.⁶⁸

In contrast to more progressive states such as the Republic of Kosovo and Albania, Serbia is considered more radical in terms of the rights of this community. For years, anti-LGBT parades have been held in Serbia. Among them was the most recent parade in September 2022, when thousands of Serbs occupied the squares of Belgrade to protest against the community in question, which was expected to hold its own parade later that month. As reported: “Thousands of religious and right-wing activists marched through Serbia's capital on Sunday, calling on authorities to ban a Gay Pride march planned for next weekend. The protesters - who carried a massive Serbian flag - included groups who also shouted slogans supporting Serbia's long-term ally Russia, as well as nationalist and far-right causes.”⁶⁹

A different perspective is provided by the book *Trauma, Resilience, and Health Promotion in LGBT Patients*, which highlights the unique challenges faced by LGBT people due to systemic discrimination, social stigma, and minority stress. It highlights how these factors contribute to poor health outcomes, substance use, and barriers to health care. The book also highlights the importance of affirmative, inclusive, and trauma-informed care within LGBT communities to promote equity in care. The authors advocate for an intersectional approach to LGBT data, addressing both individual and systems issues to promote knowledge and well-being.⁷⁰

In 2023, the European Parliament published a study titled *LGBT Rights in the European Union*, which revealed Parliament's work on behalf of the community and its broader path of “support” for the LGBTI community. The European Union (EU) legal framework strongly promotes the prohibition of discrimination and the protection of human rights, including those of LGBTI individuals. Despite legal progress, LGBTI people in the EU still face discrimination, verbal abuse and violence. Although EU law recognises sexual orientation as a ground for discrimination, protection in this regard remains limited, particularly in areas such as education, healthcare and social services.

68 Angela Dwyer, ‘Pleasures, Perversities, and Partnerships: The Historical Emergence of LGBT-Police Relationships’ in Dana Peterson and Vanessa R Panfil (eds), *Handbook of LGBT Communities, Crime, and Justice* (Springer 2014) 149, doi:10.1007/978-1-4614-9188-0_8.

69 ‘Thousands March in Belgrade against Planned Gay Pride Parade’ (*Reuters*, 11 September 2022) <<https://www.reuters.com/world/europe/thousands-march-belgrade-against-planned-gay-pride-parade-2022-09-11/>> accessed 17 January 2025.

70 Kristen L Eckstrand and Jennifer Potter (eds), *Trauma, Resilience, and Health Promotion in LGBT Patients: What Every Healthcare Provider Should Know* (Springer 2017) 3-10, 17-20, doi:10.1007/978-3-319-54509-7.

Family and marital status remain under the jurisdiction of national authorities, resulting in inconsistencies among Member States. Some recognise same-sex marriages and partnerships, while others do not—affecting rights such as adoption, assisted reproduction and mobility within the EU. Studies show that discrimination and hate crimes are still widespread, especially against transgender and intersex people.

EU institutions have taken steps through legislation, funding and declarations such as the 2021 LGBTI Freedom Zone. However, progress is hindered by significant differences in national laws. Efforts continue to close loopholes and improve equality for LGBTI people across Europe. The European Parliament's LGBTI Intergroup, along with organisations such as ILGA-Europe, Amnesty and the TGEU, strongly support LGBTI rights, including marriage equality and freedom of movement. However, strong resistance persists in some countries, particularly in matters of marriage and family, often rooted in cultural and religious factors.

EU law does not explicitly prohibit discrimination on the grounds of gender identity or sexual characteristics. Some Member States interpret discrimination against transgender people as a form of sex discrimination, drawing on the case law of the Court of Justice of the EU (CJEU) covering gender reassignment cases. Others treat it as discrimination on the grounds of sexual orientation, while some do not recognise either ground, creating tangible consequences for the legal protection of transgender people.

For intersex people, EU law remains unclear, and there is a lack of relevant CJEU case law. The concept of “sexual characteristics” as a protected characteristic remains underdeveloped in most EU Member States' national laws. Under the Employment Equality Directive, Member States are not obliged to amend civil status laws. However, CJEU case law has established that where a form of union comparable to marriage exists, same-sex partners should not be treated differently in an arbitrary manner.

The European Court of Human Rights (ECtHR) expanded on this in *Fedotova v. Russia* (2023), ruling that a legal framework for the recognition and protection of same-sex couples is necessary.⁷¹

At the EU level, 17 Member States have legalised same-sex marriage, while others allow alternative forms of legal partnership. However, five countries—Bulgaria, Lithuania, Poland, Romania and Slovakia—offer no legal recognition to same-sex couples.

Key directives relevant to LGBTI rights include:

- a) Free Movement Directive: Challenges remain in the recognition of “spouse” and “family members” across all Member States.
- b) Family Reunification Directive: Covers LGBTI third-country nationals.

71 David de Groot, ‘The Rights of LGBTI People in the European Union’ (EPRS, *European Parliament*, 6 June 2024) <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2024\)762325](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762325)> accessed 17 January 2025.

- c) Asylum Qualification Directive: Lists sexual orientation and gender identity as grounds for persecution in the country of origin.⁷²

In the *Coman* case (C-673/16), the CJEU ruled that Member States must respect the right of residence of same-sex spouses even if they do not recognise same-sex marriages. In the *V.M.A.* case (C-490/20), the Court requested that the country of origin issue identity documents to a child whose two mothers are legally registered.

The European Commission has adopted a comprehensive strategy to:

- a) Combat discrimination;
- b) Increase the safety of LGBTIQ people;
- c) Build inclusive societies;
- d) Promote the rights of LGBTIQ people worldwide.⁷³

This strategy includes legislative and non-legislative measures, supported by funding through programmes such as CERD, Erasmus+ and the European Instrument for Democracy and Human Rights (EIDHR). The 2023 progress report confirms strong institutional commitment, but also underlines the need to fully implement the proposed measures. The European Parliament remains one of the most active institutions in defending LGBT rights.⁷⁴

6 CONCLUSION

In conclusion, Kosovo's constitutional norms, which guarantee human rights and protection against discrimination, have not been implemented in practice. Research shows that Kosovar society remains largely unprepared for the acceptance of people with different sexual orientations, and homophobia continues to persist. However, there are signs of gradual change, suggesting that same-sex marriages are likely to be adopted in the future—although significant barriers remain. Addressing these challenges requires a multifaceted approach, involving legislative reform, public awareness, judicial training and cultural dialogue.

To bridge the gap between constitutional guarantees and social realities, Kosovo must undertake legislative reforms that harmonise domestic laws with the standards of human rights, including those outlined in the European Convention on Human Rights and the Universal Declaration of Human Rights. Revising the Family Law to explicitly recognise

⁷² *ibid* 7.

⁷³ 'LGBTIQ Equality Strategy 2020-2025' (European Commission, 2025) <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025_en> accessed 17 January 2025.

⁷⁴ European Commission, *Implementation of the 2020-2025 LGBTIQ Equality Strategy: Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions* (Publication Office of the EU 2023).

same-sex marriages would be a major step towards equality and non-discrimination. Given the political sensitivities surrounding this issue, such legislative reforms should be accompanied by strong policymaking.

Public awareness campaigns are essential for promoting inclusion and challenging deep-rooted prejudices. Civil society institutions and the media should collaborate to inform the public about LGBT rights, debunk myths, and combat misinformation that fuels homophobia. Changing public attitudes is a result of successful legal reforms.

Training is another key component of progress. Legal professionals, including lawyers, must be well-versed in human rights and jurisprudence. Strengthening partnerships with foreign organisations can provide technical assistance and advocacy, further strengthening legal protection for the LGBT community.

Engaging with religious and cultural leaders can also help reconcile traditional values with human rights principles. Creating platforms for open dialogue can encourage mutual understanding, reduce resistance to legislative changes, and promote integration of different perspectives. Constructive discourse among different groups can contribute to a shared commitment to human dignity and equality.

Ultimately, Kosovo has the potential to advance LGBT rights by implementing these comprehensive reforms. By aligning its legal framework with external standards, raising public awareness, enhancing judicial capacities, and promoting cultural dialogue, Kosovo can position itself as a regional leader in human rights protection and inclusion.

REFERENCES

1. Belmonte LA, *The International LGBT Rights Movement: A History* (New Approaches to International History, Bloomsbury 2021).
2. de Groot D, 'The Rights of LGBTI People in the European Union' (EPRS, *European Parliament*, 6 June 2024) <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2024\)762325](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762325)> accessed 17 January 2025.
3. Dwyer A, 'Pleasures, Perversities, and Partnerships: The Historical Emergence of LGBT-Police Relationships' in Peterson D and Panfil VR (eds), *Handbook of LGBT Communities, Crime, and Justice* (Springer 2014) 149, doi:10.1007/978-1-4614-9188-0_8.
4. Eckstrand KL and Potter J (eds), *Trauma, Resilience, and Health Promotion in LGBT Patients: What Every Healthcare Provider Should Know* (Springer 2017) doi:10.1007/978-3-319-54509-7.
5. Galgano F, *E drejta Private* (Fondacioni SOROS, Shtëpia Botuese Luarasi 2006).
6. Gashi H, Aliu A and Vokshi A, *Komentar Ligji nr 2004/32 për Familjen i Kosovës* (GIZ 2012).

7. Hasani E, *Tema të Zgjedhura Nga e Drejta Kushtetuese* (Jalifat Publishing, Universiteti i Prishtinës “Hasan Prishtina” 2016).
8. Hasani E and Čukalović I (eds), *Komentar: Kushtetuta e Republikës së Kosovës*, vol 1 (GIZ 2013).
9. Kommers DP and Miller RA, *The Constitutional Jurisprudence of the Federal Republic of Germany* (3rd edn, Revised and Expanded, Duke UP 2012) doi:10.2307/j.ctv125jqj0.
10. Lipka M and Masci D, ‘Where Europe Stands on Gay Marriage and Civil Unions’ (*Pew Research Center*, 28 October 2019) <<https://www.pewresearch.org/fact-tank/2019/10/28/where-europe-stands-on-gay-marriage-and-civil-unions/>> accessed 17 January 2025.
11. Omari L and Anastasi A, *E drejta Kushtetuese* (Dajti 2000 2017).
12. Oruçi G, *E drejta Familjare (Ligjërata të autorizuar)* (Universitetit të Prishtinës “Hasan Prishtina” 1994).
13. Raj SS, *The Emotions of LGBT Rights and Reforms: Repairing Law* (Edinburgh UP 2025).
14. Santaló Goris C, ‘The European Court of Human Rights: Advancing Legal Recognition of Same-Sex Couples across Europe?’ (*European Institute of Public Administration (EIPA)*, 4 July 2024) <<https://www.eipa.eu/blog/the-european-court-of-human-rights-advancing-legal-recognition-of-same-sex-couples-across-europe/>> accessed 17 January 2025.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ШЛЮБ МІЖ ОСОБАМИ ОДНІЄЇ СТАТІ В РЕСПУБЛІЦІ КОСОВО: ПОРІВНЯЛЬНИЙ ОГЛЯД

Шейназе Гагіца, Берат Дермаку* та Дукаджін Лека

АНОТАЦІЯ

Вступ. У цій статті розглядаються конституційні гарантії щодо ЛГБТ-спільноти в Косові та захист, який надають міжнародно-правові інструменти, зокрема інструменти Європейського Союзу. Також за допомогою висвітлення правових та соціальних проблем, які перешкоджають повному визнанню прав ЛГБТ-спільноти, досліджується принцип рівності та недискримінації за сексуальною орієнтацією.

Методи. У цьому дослідженні використовується доктринальний дослідницький підхід, здійснено аналіз первинних правових джерел, зокрема Конституції Косова, Закону про сім'ю та відповідних міжнародних конвенцій, таких як Європейська конвенція з прав людини. Також проводиться порівняльно-правовий аналіз для оцінки законодавства Косова стосовно стандартів Європейського Союзу. Крім того, інтегровано соціально-правовий емпіричний компонент, що ґрунтується на даних опитувань 2015 та 2022 років для вимірювання суспільного ставлення до одностатевих шлюбів та прав ЛГБТ. Такий змішаний методологічний підхід дозволяє отримати всебічне розуміння як правових норм, так і їхнього практичного впливу на соціальне сприйняття.

Результати та висновки. У результаті дослідження було виявлено сталий розрив між конституційними положеннями, що гарантують рівність, та правовими нормами, які прямо забороняють одностатеві шлюби. Дані опитування свідчать про зниження соціального сприйняття одностатевих шлюбів протягом багатьох років, зі зростанням гомофобії та опору правовим змінам. Однак нещодавні судові рішення, такі як ті, що визнають гендерну ідентичність згідно з правом на приватність, свідчать про прогрес у судовій сфері.

Вивчення внутрішніх правових актів Республіки Косово разом з актами Європейського Союзу підкреслює взаємодію між конституційними гарантіями та створенням соціальних норм, а також їх ширший вплив на суспільство. Виникає ключове питання: якою мірою правова норма повинна вписуватися в суспільство? Суспільне сприйняття, не лише в Косові, а й у світі, залишається обмеженим, особливо щодо норм, що стосуються ЛГБТ-спільноти. Це вимагає значної роботи, особливо під час розробки норм, що стосуються цієї спільноти.

Хоча законодавство Косова теоретично відповідає міжнародним стандартам у сфері прав людини, соціальні установки та конкретні правові положення створюють значні перешкоди для визнання одностатевих шлюбів. Подолання цих розривів вимагає узгоджених зусиль політиків, громадянського суспільства та міжнародних організацій для сприяння інклюзивності та реформування обмежувальних правових норм. У статті досліджується взаємозв'язок громадянських та політичних прав ЛГБТ, а також упередження, дискримінація, гомофобія та нерівність ЛГБТ у сфері охорони здоров'я. Крім того, у ній також розглядаються суспільні наслідки виключення ЛГБТ-спільноти, підкреслюється, що юридичне визнання та соціальне прийняття є процесами, що взаємно підсилюють один одного.

Ключові слова: ЛГБТ-спільнота, дискримінація, одностатеві шлюби, громадянські права, політичні права, гомофобія.