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Executive Summary

This study aims to analyze the implementation of Labor Law in Kosovo, with a particular attention towards Article 49th which regulates the issue of maternity leave. Labor Law in Kosovo has been in force only for a year, and as such it has been a matter of discussion because of the challenges that have hampered its successful implementation.

The study begins with an analysis of the chronological order of labor documents that aimed to regulate labor relationships in Kosovo. Moreover the analysis continues with the exploration of developments of the new Labor law and challenges that is facing while being implements in both public and private sector.

Labor Law regulates the labor relationships in both private and public sector in Kosovo. Drafting of Labor Law in Kosovo has been considered a positive process towards establishing legal guidelines in order to ensure sustainable employment relationships in Kosovo. Moreover, the purpose of this law was to provide a legal document which would have the power to fill all the gaps that were left by the previous UNMIK regulation in regards to labor relationships. However, despite the positive expectations that were created towards this law, several challenges that are encountered during its implementation process have consequently produced negative effects in the society where we live.

Therefore, when referring to the issue of maternity leave, there are several factors that are harming its successful implementation. Thus, the maternity leave system (6+3+3), together with the limited resources of labor inspectorate, lack of a health insurance fund, and weak judicial system are constantly affecting the success of this regulation in public and private sector in Kosovo. Moreover the confusion between the application of Labor Law and Civil Service law in terms of maternity leave has been another barrier of the proper implementation of this law.

According to Article 49 of the labor law, women in Kosovo have the right of 12 months of maternity leave. While analyzing the legal provisions of this regulation, the 12 month period which is prescribed by law ranks Kosovo among countries with the highest maternity leave period. However, the most challenging part of this regulation remains the compensation plan

which is divided between the employer and the Government of Kosovo. According to the compensation plan (6+3+3) the first 6 months are paid by the employer with the compensation of 70% of basic salary, and the following 3 months are paid by the government with the compensation of 50% of the average salary in Kosovo. This formula seems to be the root of many problems. Employees in this case are the ones that feel that are discriminated by such a regulation by paying 70 % of the basic salary. Moreover, at the same time they incur additional costs when implementing this regulation, since replacement of the worker who receives maternity should also be paid as well.

Taking into consideration all these concerns, majority of businesses have decided to be very selective while hiring people, consequently violating the rights of women. As such, double contracts, contracts with an undetermined period, and other illegal forms are used in order to discourage women that are pregnant to continue working. On the other hand, labor inspectorate which has the authority to supervise the implementation process of the labor law lacks the necessary resources to do so. Some of the barriers that are preventing labor inspectorate to perform their job are: limited number of labor inspectors, insufficient budget, and limited technical resources. Moreover, another challenge it is considered the low capacity of the Municipal Court of Prishtina to deal with cases from all regions of Kosovo that derive from labor relationships.

Thus, in the end of the study, further recommendations are presented which need to be implemented in the short-run in order to ensure the successful implementation of labor law. Thus, increase in awareness about the labor law and its regulations in Kosovo should be done in order for employers and employees to be better informed ; creation of the health insurance fund is an urgent need and as such the success story of Albania and other countries in the region are taken into consideration; Strengthening monitoring mechanism that control the implementation of the labor law in private and public sector is needed; and finally the creation of labor courts is considered essential for the successful implementation of the labor law and maternity leave in Kosovo.

Key terms: Maternity leave, labor law, regulation, implementation, monitoring, employment relationships, health insurance.

JEL Classification: K3, K31, I1, I13, I18, J0, J00, J01, J08, J13, J16

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1. Background to Problem

1.1 Statement of the Problem

**Difficulties in the application of maternity leave are hampering successful implementation of the new labor law.*

Even though the new labor law has been seen as a positive step towards creating a legal and sustainable employment relationship, still many problematic issues came along its implementation. There are many articles of this law that are facing difficulties in implementation. Thus, I will be more critical to Article 49 of this law which regulates the issue of maternity leave. The main difficulties related with this regulation have to do with its implementation. Hence, the following factors are considered to be hampering the implementation process of maternity leave:

- a) Maternity leave compensation system (6+3+3);
- b) Limited fund of maternity leave;
- c) Insufficient capacities of the Labor Inspectorate (human, financial and technical) to monitor the implementation of maternity leave;
- d) Inability of the Prishtina Municipality to deal with cases deriving from the labor law;

Taking into consideration all these factors, this paper aims to analyze each of them and finding solutions on how to overcome their negative effects. Moreover, labor law being one of the most basic laws with respect to the rights of employed citizens in Kosovo, has been amended and approved by the Kosovo Assembly in the 1st of November 2010. It represents the main legal authority that regulates employment relationships in Kosovo, and as stated in the document of this law “the provisions of this law refer to public and private sector employers and employees in the Republic of Kosovo (Kosovo labor law 1).

On the other hand, the issue of maternity leave has been subject of various discussions because it hasn't been implemented properly, and as such it represents a concern for women

entering the labor market, as well as those that are inside. Furthermore, women syndicates, trade unions, women's network organizations, representatives of the civil society, believe that the position of women is threatened day-by-day in our society if the current trend of maternity leave continues.

Article 49 of the new labor law of the Republic of Kosovo states that, "employed women have the right of 12 months of maternity leave" (23). However, the key factor which is significantly challenging the implementation of maternity leave is the current compensation formula. This compensation system obligates the employer to pay 70% of the basic salary of the employee and as such is causing major problems. Consequently, employers are trying to find ways to avoid the payment of this compensation, which on the other hand is affecting women in Kosovo. Thus, this analysis will try to address the above mentioned factors, and encourage better practices in order to implement this law properly.

1.2 Background Information

Labor law is one of the most crucial laws necessary to establish the rights and obligations of the employer and employee. Moreover, it is a guide to establish sustainable employment relationships within a democratic society. However, when referring to the case of Kosovo, laws in general have suffered from the lack of implementing and monitoring mechanisms. That being said, circumstances in Kosovo after the war, also its undefined status has constantly prevented the country from creating a legitimate legal system, which would ensure a comfortable environment for all. Precisely, the process of drafting the labor law in Kosovo has gone through several phases until finally it was concluded in a proper law, which is today approved by the Assembly of Kosovo.

Thus, before actually having a labor law, in 2001 UNMIK had established a regulation with the purpose to create better employment relationships in Kosovo (Gap Institute 3). Meanwhile, a draft of this law was prepared (which includes several parts of the new labor law) in order to better address the rights of public and private employees in Kosovo. However, this draft was analyzed and then further efforts were made in order to create the labor law, a proper

legal document that would fill gaps that were negatively affecting employment relationship in Kosovo. Despite the government that was constantly trying to postpone the approval of this law justifying itself by referring to the low budget, with the pressure of labor unions, associations, women syndicates, representatives of the civil society, in 1st of November 2010 labor law was approved by the Assembly of Kosovo. Thus according to a study by Kalo and Associates in regards to the developments of the labor law in Kosovo, it was stated that:

“The recently approved labor law regulates the rights and obligations deriving from the employment relationship for employees and employers in the private and public sector in the Republic of Kosovo” (142).

However, having a labor law approved by the Kosovo Assembly, but not implementing it correctly became a serious matter. Moreover, the presence of the Civil Service Law has been another barrier towards the implementation process of labor law, specifically for the issue of maternity leave. On the one hand we have private employees receiving maternity leave with the system 6+3 under which the first 6 months are paid by the employer with the compensation of 70% of basic salary, and the following 3 months are paid by the government with the compensation of 50% of the average salary in Kosovo. On the other hand we have civil service employees receiving maternity leave of 6 months, 3 months paid by the employer with the compensation of 30 % of basic salary, and 3 following months are paid by a special fund of the consolidated budget of Kosovo. In this case we can conclude that there has been a clash between the Labor law and the Law on Civil Service, and as such they created confusions about the validity of labor law and its legal provisions (Administrative Manual No.05/2007).

According to an interview with Jeton Mehmeti, who is a Policy Analyst in Institute for Advanced Studies- Gap, Labor law is a basic law and it is the only legal document that has powers over all other documents with respect to employment relationships. Further he believes that Civil Service Law has been using “double standards” in terms of maternity leave application. Mr. Mehmeti continues by saying that “it was Gap Institute that raised attention on this issue and pressured the Government in order to end this type of “discrimination” between public and private servants”. Moreover, according to Lumnije Hashani who is Senior Official for Legislation on Economic Matters at Kosovo Chamber of Commerce, Labor law prevails in comparison to Civil Service Law in regards to the issue of maternity leave. She refers to the

Article 2 of the Labor law that states that “provisions of the law on employment apply to all employees and employers, whose employment is regulated with a specific law, if the special law does not foresee solutions to specific cases in the employment relations” (Labor law). This means that Labor law is applicable to civil servants also, taking into consideration the fact that the Law on Civil Service doesn’t foresee any specific solution to the issue of maternity leave. Consequently, on April 20th 2011, the Ministry of Labor adopted the Administrative Manual No.05/2011, which determines equal specifications of maternity leave for both public and private employees under the Labor law.

Even though the new labor law aimed to provide better legal solutions to the current situation, still there are many challenges that are preventing its success. Let’s have an illustration of the issue of maternity leave and a short introduction of all challenges that are hampering successful implementation of this regulation.

2. Investigations Conducted

2.1 Methodology

The research methods that I used while writing this paper consist of primary and secondary research methods on the topic. Taking into consideration that labor law was approved a year ago by the Kosovo Assembly, and came into force on December 16th 2011, the availability of secondary data (studies, papers, and reports) was limited, and thus it was significant for this study to rely on primary data. Thus, meeting with people who were closely engaged in the drafting process of this law, its implementation and also with representatives from different organizations that indirectly monitored the implementation process of this law, was very helpful for this research.

2.2 Stakeholders

Stakeholders that were involved in the research are:

1. Labor Inspectorate
2. Kosovo Chamber of Commerce
3. Ministry for Labor and Social Welfare
4. The Union of Independent Unions of Kosovo
5. Friedrich Elbert Stiftung-FES
6. Council for Protection of Human Rights
7. Kosova Women's Network
8. Human Rights Centre
9. Gap Institute
10. Kosovar Gender Studies Center

Below is provided the literature review which gives a detailed explanation of the information gathered. Also conducted interviews on the topic are analyzed in the following section.

2.2.1 Labor Inspectorate

The data in regards to the labor inspectorate and its role to monitoring the implementation of labor law were taken by Mr. Basri Ibrahimimi who is the Director of Kosovo Labor Inspectorate. He was opened to all addressed questions and he showed his willingness to provide additional information on the topic. The issues that were discussed during the interview were: a) the perspective of the labor inspectorate in regards to implementation of maternity leave/labor law; b) the obstacles that labor inspectorate has while conducting its work; c) monitoring process of maternity leave; e) weather they inspected cases of violations of the right to maternity leave.

2.2.2 Kosovo Chamber of Commerce

While conducting the research I also was interested to know more about the perspective of Kosovo Chamber of Commerce as being the only legal representative of interests of the business community in Kosovo. Thus, I conducted an interview with Ms. Lumnije Hashani who is Senior Official for Legislation on Economic Matters at Kosovo Chamber of Commerce. Ms. Hashani explained the role of Chamber of Commerce and the activities that the Chamber was engaged in helping business interests to be better addressed. She also provided me with additional information on the topic.

2.2.3 Ministry for Labor and Social Welfare

Besides gathering information from the business community and civil society, my intention was to also have the perspective of the Ministry of Labor and Social Welfare in regards to challenging factors that hampered the labor law implementation. The person that I've interviewed in regards to this, were Gjylnaze Novoberdaliu-Golaj, who is the Head of Division for Drafting and Harmonizing the Legislation within the Legal Department in MSLW, Minire Begaj-Balaj who is the Head of Division for Supervising the Implementation of Laws within Legal Department in MLSW, and Safete Veseli officer in the Department of Labor and Employment.

In the interview with Ms. Golaj we discussed one of her latest reports on Labor law and implications of the regulation on maternity leave. Moreover, she helped me by giving certain advices on how to continue my research and also people that I should meet in order to present a comprehensive research.

Meanwhile in the interview with Ms. Balaj, I was able to learn about some cases when the right of maternity leave was violated to some women. Further Ms. Balaj gave her perspective on the payment compensation formula of maternity leave, thus explaining the effect of this system on women in the Kosovar society today. Nevertheless, she explained the significant role of the inspectorate in this process.

On the other hand, in the interview with Safete Veseli who is an officer in the Department for Labor and Employment, statistics in regards to the cases of paid maternity leave were discussed. Ms. Veseli provided me with the exact number of cases of women that received the payment of maternity leave within the private and public sector from 2010-2012. Also she provided me with other information, which was useful for my study.

2.2.4 The Union of Independent Unions of Kosovo

In the interview with Ms. Shukrie Rexhepi who is the Head of Women Syndicate within the Union of Independent Unions of Kosovo, was discussed the impact that the current maternity leave had on women. Moreover, Ms Rexhepi explained how the compensation plan should change and a completely new method of payment should be done. Besides, she provided me with a short report of the Union of Independent Unions of Kosovo in regards to Labor law (a year after coming into force).

2.2.5 Friedrich Elbert Stiftung-FES

I also had the chance to meet with Alush Berisha who is a Coordinator for Labor and Social Issues Activities in FES. In this interview was discussed a study on labor law that was conducted by the team of FES. Moreover, Mr. Berisha argued about the discrimination of women which is caused by the regulation on maternity leave.

2.2.6 Council for Protection of Human Rights

One of the key stakeholders while conducting my research was Mr. Behxhet Shala who is the Head of Council for Protection of Human Rights. During the interview were discussed the cases of women whose right to maternity leave was limited or not given at all. According to Mr. Shala, labor inspectorate should be more active with inspections in the private sector since there are a lot of cases of violations of this right.

2.2.7 Kosova Women's Network

In the interview with Igballe Rogova, who is the Head of Women's Network, we discussed about the role of Women organizations such as the one that she leads, and Women Syndicate in addressing the requests of women and their concerns in regards to the issue of maternity leave. Furthermore, Ms. Rogova argued about the possible solutions on improving the position of women in the Kosovo.

2.2.8 Human Rights Centre

I also interview the Director of Human Rights Centre, Ms. Valon Murati, who argued about the implications of the new labor law. Moreover he showed his perspective in regards to the maternity leave compensation plan, which he believes to be discouraging for women. Moreover he helped me to create a better structure of my research since he provided me with some reports in regards to the labor law and helped me find several experts on this field.

2.2.9 Institute for Advanced Studies-Gap

I also had the chance to meet Mr. Jeton Mehmeti who is a Research Analyst in Gap. He gave me a thorough summary about employment relationships in Kosovo. Ms. Mehmeti also argued about the challenges of the process of implementation of maternity leave, and provided some solutions how to overcome those challenges. Moreover he provided me with one of the Gap's studies on labor law, which is mentioned in the following paragraphs.

2.2.10 Kosovar Gender Studies Center

Another person that I interviewed was Ms. Sibel Halimi who is a Project Manager in the Kosovar Gender Studies Center. During the interview, Ms. Halimi discussed about the discrimination of women that has been indirectly caused by the violation of their right to maternity leave. Also she gave me one of the latest reports of Kosovar Gender Studies Center towards the impact of the labor law on women in Kosovo.

2.3 Legislative Review

This part of research consists of legal documents, precisely certain laws of Kosovo and Albania which were essential for the understanding of the topic. Thus, these laws were analyzed and are mentioned in the following sections of this paper:

2.3.1 Kosovo Labor Law

A brief analysis of this law was conducted in order to understand the rights of employees on one side, and obligations of employers on the other. Hence, Article 49 of this law was carefully analyzed since it specifically determines the provision of this law in regards to maternity leave.

2.3.2 Kosovo Civil Service Law

Provisions of this law in regards to employment relationship in the Civil Service were taken into consideration. Moreover, the analysis on this law was focused on finding regulations within this law in regards to maternity leave. However, legal provisions in regards to maternity leave were not specified under the law on Civil Service.

2.3.3 Code of Labor of Albania

Since I chose the case of Albania as an example that Kosovo could follow in the future, Code of Labor was the main document that helped me understand the way that maternity leave

functions in Albania. Moreover Article 109 of this law helped me to create a better overview of the regulations in regards to the employment relationship in Albania.

2.3.4 Health Insurance Law in Albania

In addition to the Labor Code, another valuable document was the Law on Health Insurance in Albania. Especially the content of Article 27 of this law was a significant input for my research on the case of Albania and its regulations in terms of maternity leave.

2.4 Additional Information on Labor Law and Maternity Leave in Kosovo

In addition, my research on this topic includes data provided by some reports and studies in regards to the Kosovo Labor Law. Even though there are quite limited studies in regards to the developments of this law (those that are available are very general), I found some of them useful during my research:

2.4.1 Friedrich Ebert Stiftung Reports

Reports on Labor law such as “Labor Law: its implementation in the first six months” and “Labor Rights in Kosova Context” as provided by FES were two helpful reports that informed me about the current situation of labor law in Kosovo and the challenges that this law is facing through its implementation.

2.4.2 Institute for Advanced Studies-Gap- Policy Brief on Labor Law

One of the key documents that helped my structure my research as well as the content of my paper is study that Institute for Advanced Studies-Gap has done in regards to the Labor law and its implications in the society in Kosovo. Even though it is a report published only six months after this law was approved, it provides a general overview of this law, by explaining the challenges and potential recommendations towards improving its implementation.

2.4.3 KGSC- Impact of the Labor Law on Women in Kosovo

A study which was published by the Kosovo Gender Studies Center on the impact of the labor law on Women in Kosovo helped me develop a perspective in regards to the position of women being threatened by the current situation of this law.

3. Analysis of Results

3.1 Maternity Leave in Kosovo

The issue of maternity leave has been regulated according to the Article 49 of the Kosovo Labor law, which says that “the employed woman in Kosovo has the right of 12 months maternity leave” (Labor law 23). According to this article the payment for maternity leave is done by the employer (70% of the basic salary) and the government (50% of the average salary). Even though the maternity leave system of 6+3+3 has been considered as very encouraging for women in comparison to the old system, still there are some difficulties that are harming its implementation. According to Mr. Mehmeti, the most challenging part when it comes to the implementation of this regulation is the compensation part, especially that from the side of the employer (for six months). According to Mr. Mehmeti, there are 2 reasons why employers are hesitating to implement this system:

“1) For small businesses it is very costly to compensate the employee for six months and also hiring a replacement who at the same time will have to be paid;

2) Most of the businesses think that it is unfair for them to pay 70 % of an employee’s basic salary, while the government pays only 50 % of the average salary. Thus, based on the current statistics the estimated average salary in Kosovo is 345 Euro, which means that 50% of the average is 145 Euro, and consequently the mother should in total be paid only 517.5 Euro for three months by the government, whereas the 3 remaining months of the one year maternity leave are not compensated”.

On the other hand, in comparison to small businesses, large private companies are more generous in terms of the compensating policy of maternity leave, and are implementing the law accordingly. However, Ms. Hashani believes that businesses are not willing to pay the maternity leave, and as such private sector it is considered as the most threatening sector since the law is

not implemented properly. Moreover, Ms. Hashani states that, “in one of the recent meetings organized by the Kosovo Chamber of Commerce, in regards to this issue, the employers have said that if this trend continues, they will not employ women any more or they will employ less”.

Thus, this is a very concerning fact that affects the position of women and their efforts towards career building. Also employers lately have been using different means just to avoid the compensation plan for maternity leave. According to Alush Berisha, who is a Coordinator for Labor and Social Issues Activities in Friedrich Ebert Stiftung Prishtina, employers are being more selective while hiring people. That being said, women that are in a relationship, or plan to get married are constantly discriminated and are short of job opportunities, since employees are trying to use all legal remedies in order to avoid the payment of the costs of maternity leave.

3.2 Application of Labor Law in the Private and Public Sector

3.2.1 Women in Private Sector

Taking into consideration the current behavior of businesses and the situation in the private sector, we could say that it is very difficult for a woman to build a career as well as to take care of her child. In this regard, Valon Murati who is the Director of Human Rights Center says that “women in Kosovo especially those that are young, educated and ambitious, either will hesitate to become a mother or to be employed”. Moreover, another barrier for women today is the fact that kindergartens in Kosovo accept children over the age of one year only, making it even more difficult for a mother to raise the child. Further, breastfeeding of the child is another right of women that is being violated by the current implications of maternity leave. According to the Law on Gender Equality, “The employer cannot quit the contract of employee that breastfeeds the child and is on maternity leave due to rights regulated on this law” (“Impact of the Labor Law on Women in Kosovo”).

In addition, a report published by the Union of Independent Unions of Kosova, has concluded that the biggest violations of legal provisions of Labor Law come from the private sector (“Labor Law, a year after came into force”). That being said, employees today are using different methods in order to not pay the compensation payment of maternity leave. Thus, employing people without a contract, issuing short contracts such as 1 month contracts (not

allowed by the Kosovo Labor Law), contracts for an undetermined period, double contracts, and other illegal methods have been used by employees in private sector.

In this regard, Mr. Behxhet Shala who is the Head of Council for Protection of Human Rights, when asked if he had to deal with cases when women right of maternity leave was violated, he replied: “there are so many cases of women that weren’t given the maternity leave or were fired by their employer as soon as he/she understood that the woman was pregnant”.

One that I thought to be very intriguing was the case with double contracts. According to Mr. Shala, this is a case of existing private company in Prishtina, where the employer had taken certain illegal measures towards one of her employees, after he immediately understood that she was pregnant. Meanwhile when the labor inspectorate had visited the company, the employer had already prepared 2 contracts, one for the employer and one especially prepared for the inspectors, which is in compliance with the labor law. In that case the women had no proves as to show that there has been a violation of her right to maternity leave. All these factors are effecting the position of women in our society specifically the employment of women. Therefore, this has discouraged women to start a family, and at the same time it has reduced birth rate in Kosovo.

3.2.2 Women in Public Sector

On the other hand, inefficient implementation of maternity leave has caused some adverse effects in public sector as well. According to the Mr. Shala, women working in public institutions face similar challenges with those working in the private sector; however he believes that the situation is worst in the private sector. Ms. Shala thinks that Kosovo being one of the least developed countries has borrowed a system of maternity leave from most developed countries, which has shown that is not effective and can’t be applied to the case of Kosovo.

He mentioned a case of a women working in a public institution, when as soon as the employer heard that the she was pregnant he fired her. As soon as labor inspectorate inspected the case, the employer had declared that the employee didn’t fulfill her duties, and her performance was weak. In those circumstances the declaration of employee was of no good. She couldn’t present her case to authorities and prove the truth, because the employer had already

covered everything legally by showing a completely different contract that the employer was not aware of.

Thus, taking into consideration all these acts, Mr. Shala considers that there is a need for a more generous maternity leave plan, where women would be treated fairly and their rights would be respected. In this case, he mentioned a system in which the payment of the compensation plan is described below:

“ The payment of maternity leave to an employee working in the public sector would be done 100% by the government, whereas for employees who work in the private sector a compromise between the government and employer is needed to fully implement this law. To women working in large private entities compensation should be done 100% by the employer, if the employee has shown dedication and commitment to her job. In this case since the employer compensates 100% the employee, the government should subsidize the business by lowering a certain amount of taxes that the business pays”.

3.3 Challenges of the Maternity Leave

Based on the current developments of maternity leave, it is considered that there are several factors that are hampering the successful implementation of this regulation in Kosovo. Thus, “the basic problem appears to be the very dysfunctional relationship between legislation, executive mechanisms, and real labor rights violation, as well as virtual social protection in a poor society with near half of the population unemployed”(The Labor Rights in Kosova Context 28). Hence, following is a list of challenges that are encountered while trying to implement this regulation in Kosovo.

3.3.1 Limited funds of Maternity Leave

One of the biggest challenges in implementing the labor law is considered to be the small budget that has been given to the fund for maternity leave. According to the analysis conducted by the Gap Institute, it is estimated that the fund that the government has put in regards to

maternity leave is only 300.000 euro (Policy Brief 6). Given the fact that maternity leave has been increased from 12 weeks (UNMIK regulation) to 12 months (Labor law), the costs of covering such a regulation have increased, whereas the budget has remained the same. Consequently, the current budget of 300.000 euro that is available for maternity leave expenses has to cover all maternity leave payments to women currently working in both private and public sector.

Based on the information provided by Safete Veseli, officer in the department of Labor and Employment in the Ministry of Labor and Social Welfare, in regards to the maternity leave payments, the Government has managed to pay the maternity leave to 917 women who applied during 2010 only from the public sector. To continue with the next year, the government paid maternity leave to 128 women coming from the private sector, while it managed to pay maternity leave to 256 women coming from the public sector. This year, up to now, the Government has paid maternity leave to 38 women coming from the private sector and to 115 women coming from the private sector.

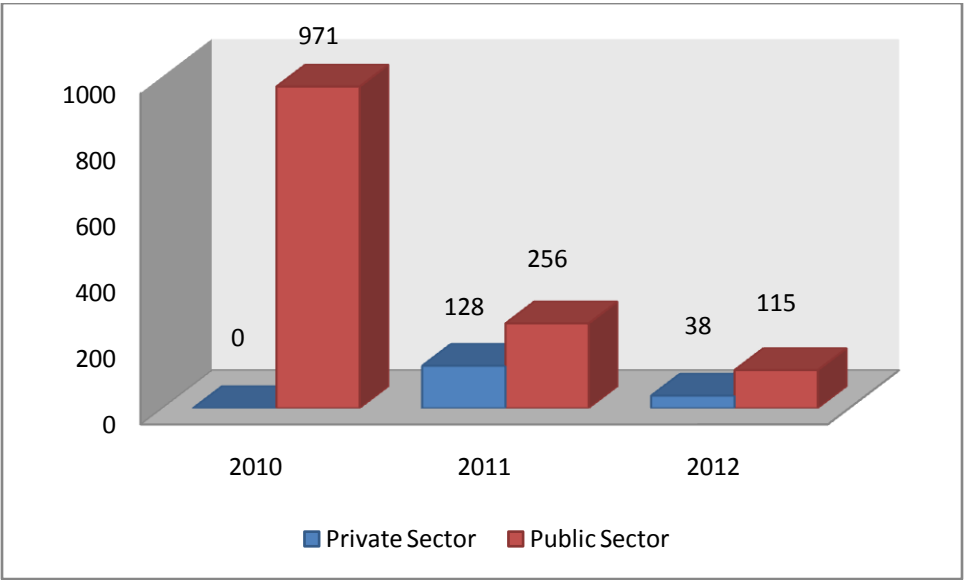


Figure 1 MLSW: Payments to maternity leave in private and public sector

3.3.2 Lack of Resources of the Labor Inspectorate to Monitor Labor Law

3.3.2.1 Lack of Labor Inspectors

In order to supervise labor law and to ensure the applicability of ILO (International Labor Standards), Kosovo Assembly approved the law on Labor Inspectorate. This law states that:

“The Authority of Labor Inspectorate shall uniquely apply to all workplaces, irrespective of the applicable legal provisions relating to conditions of work, irrespective of the applicable legal provisions relating to conditions of work, occupational safety and health protection of all workers in general” (qtd. in “The Labor Law in Kosova Context”²⁶)

However, the lack of resources of Labor Inspectorate to monitor the implementations of maternity leave is a key factor that is paving a lot of space to violations to this law. That is to say that the limited number of inspectors with limited technical and financial capacities are making this process even more difficult. There is currently staff of 4 people working in the Labor Inspectorate, whereas 52 inspectors conduct inspections in municipalities around Kosovo. Kosovo today has 37 municipalities, however there are only 52 labor inspectors that make sure the labor law is being implemented and the employee-employer relationship is at its adequate level (qtd. in Ministry of Labor and Social Welfare). Thus, the limited number of inspectors around Kosovo is harming the effective implementation of this process. Moreover there are municipalities that don't have inspectors at all, such as the municipality of Istog and Suhareke, meanwhile the municipality of Ferizaj and Lipjan which are covered only by one inspector (Policy Brief 11). The table above demonstrates the number of inspectors in each municipality and the number of inspections conducted within a year by the labor inspectorate.

Municipalities	Nr. of registered Businesses*	Number of labor Inspectors*	Average of Businesses to be inspected by each inspector/Per Year
Decan	1578	3	526
Gjakove	5762	4	1152.4
Drenas	2552	1	2552
Gjilan	6820	3	2273.3
Dragash	966	1	966
Istog	1905	0	
Kacanik	2170	1	2170
Kline	1851	1	1851
Fushe Kosove	2681	1	
Kamenice	1900	2	950
Mitrovice	5012	3	1253
Leposavic	825	1	412.5
Lipjan	118	0	118
Novo Berde	1024	1	1024
Obiliq	2115	1	2115
Rahovec	6537	5	1307.4
Peje	3316	2	1658
Podujeve	25842	5	4307
Prishtine	9475	2	4737.5
Prizrem	1744	1	1744
Skenderaj	1245	1	1245
Shtime	535	1	535
Shterpce	1887	1	
Suhareke	7946	1	7946
Ferizaj	2498	1	2498
Viti	2898	1	2898
Vushtrri	361	0	361
Zhubin Potok	447	1	447
Malisheve	1550	1	1550
Gracanica		1	

Figure 2 Gap: Labor Inspectors in Municipalities of Kosovo

Even though the limited number of inspectors is a weakness of labor inspectorate, Mr. Basri Ibrahim, Head of the Labor Inspectorate, thinks that with the current inspectors labor

inspectorate is covering the whole region of Kosovo. Further, he mentioned that in order to be more transparent, rational and not bias, the inspectorate has decided that inspectors should switch municipalities by showing an example: “for example inspectors of Prizren will monitor the Municipality of Prishtina, whereas those from Prishtine will do the same in Prizren”. Whereas, in regards to the municipalities that do not have inspectors at all, Mr. Ibrahim said:” Municipalities that don’t have inspectors will be inspected by inspectors coming from Prishtina, who are less bias than inspectors coming from their own municipality”. He believes that this way labor inspectorate is more effective while performing their duties.

3.3.2.1 Increased Number of Registered Businesses

According to the Kosovo Business Registration Agency, in 2011 the number of registered businesses was 106,555 (Policy Brief 11). In addition, seeing the progress that has been made in regards to easing business registration procedures, we could assume that it will be even more difficult for labor inspectorate to monitor the range of all businesses in Kosovo, with such a limited number of inspectors. According to Mr. Ibrahim, labor inspectorate in 2010 completed 6,937 inspections. If we compare the number of inspections with the number of registered businesses (106,555), then estimations show that Inspectorate has visited only 6.51 % of the businesses in Kosovo (Policy Brief 10). 5

3.3.2.2 Limited Budget of the Labor Inspectorate

A very concerning issue for the labor inspectorate is the limited budget that they have in order to cover all the expenses while conducting the monitoring process of maternity leave. The limited budget of labor inspectorate is the main cause of insufficient human and technical capacities of the inspectorate. According to Mr. Ibrahim the budget of Labor Inspectorate for this year is higher compared to the last year’s budget. However this increase in budget comes as a result of wage increase from the government and does not have capacity to improve the bad situation of labor inspectorate. However, Mr. Ibrahim seems to be convinced that the limited budget is a result of the small budget that Kosovo has. He continued by saying that “The Ministry of Labor together with the Government are willing to increase the budget of the inspectorate, but taking into consideration the small budget of Kosovo, it is impossible to do so”. Based on the data provided by Mr. Ibrahim in 2011 Labor Inspectorat had a budget of 453,921 Euro whereas the budget for 2012 is 565,074.

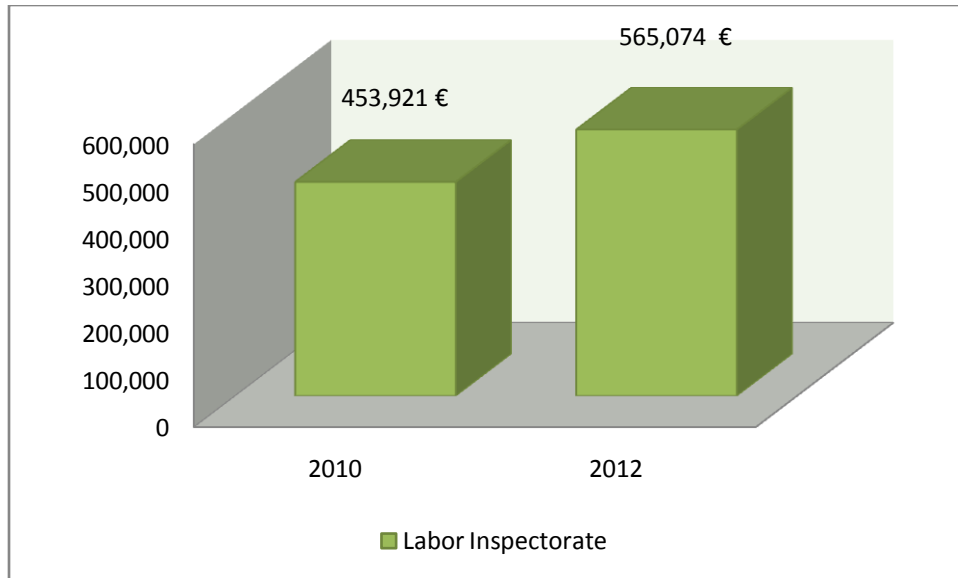


Figure 3. Labor Inspectorate: Budget of the Labor inspectorate for 2011, 2012

3.3.3 Weak Judicial System

According to Article 78 of the Labor Law, employees are guaranteed with the right to complain in written form if they feel that their rights have been violated (Kosovo Labor Law 20). If there is such case, the employer is obliged to reply in written form to the employee. To continue, if the employee is not satisfied with the reply for the employer, he has the right to send the case to the Municipal Court (Policy Brief 8). However there is confusion in regards to the law on courts in Kosovo, since it does not specify clearly which court deals with cases deriving from the labor law. However, up to know, cases that have derived from the labor law have been considered as administrative cases, and as such they are exclusively assigned to the Prishtina Municipal Court. This means that all cases that deal with the labor law have to be sent to the Prishtina Municipal Court. Having this in mind, we can conclude that the Court of Prishtina which is the only court that has the department for economic and administrative issues, and the only authority that can deal with such problems, cannot manage to treat all the cases. According to the study conducted by Gap Institute, there have been 133,000 cases that were brought in front of courts, whereas only around 14,000 have been solved (15).

Consequently there is a need for a court which would exclusively give priority to cases or disputes based on the labor law. On the other hand, with the current situation, employees are discouraged to send their cases in courts, since the Municipal Court of Prishtina is loaded with a large amount of cases.

4. Lessons Learned from a Successful story

4.1 The case of Albania

While Kosova is struggling with the implementation of the labor law and its regulations, Albania has created a more sustainable legal frame work in order to regulate the relationship between the employer and employee. According to the Article 105 of the Code of Labor in Albania in regards to maternity leave, benefits from birth are determined by the law on health insurance (55). Having such a policy, the country is contributing to a better implementation of the Labor Code; as well it is avoiding the burden of payment between the employer and employee. Based on the law on health insurance, maternity benefits are regulated in according to the principle “Pay as you go” of the Compulsory Social Insurance. According to this principle people are more responsible and prepared for risks that future might bring. That being said, an individual “pays today in order to benefit tomorrow”. Based on the law on health insurance of the Republic of Albania, the compulsory social insurance in regards to maternity leave covers:

- a) Benefits from the birth of a child;
- b) Compensation of benefits when changing place of work;
- c) Awards for giving birth to a child (Article 26).

According to the Article 27 of the law on health insurance, the maternity benefit is paid when the mother has a 12 month insurance period (365 days), and it includes 35 days before and 45 days after the birth of child (Law on Health Insurance). Further the law specifies the amount of maternity benefits as stated in Article 27: “maternity benefits for the insured women are: 1)80% of the average daily base for the before birth period and 150 days after birth; 2) 50% of the average daily base for the period afterwards. Moreover, the law on health insurance compensates insured women who change their working place for pregnancy reasons. Thus, this compensation can only be done if the employee has been in that working place for no less than 12 months. The amount that is compensated equals the difference between the payment of the previous job and the payment of the new job (29).

In addition, this law provides awards to insured women who give birth to a child. According to the provisions of this law, the award for giving birth to a child is given to one of

the parents that has health insurance and has been contributing in it for a year. However, the award is given only once and its amount is 1500 Leke (Albanian currency).

On the other hand, Kosovo could also regulate the issue of maternity leave like Albania if the law on health insurance would exist. Up to now only private companies have provided health insurance to the citizens of the Republic of Kosovo. Until now Health Insurance Law has been considered a challenge for the budget of Kosovo because of its high cost. However, the current Minister of Health, Mr. Fehrid Agani in a media conference declared that: “A draft of this law has already been prepared by experts of the Ministry of Health, but taking into consideration the implication that this law has on the fiscal and budgetary stability, we are still waiting recommendations of the World Bank and International Monetary Fund to give their green light” (RTV 21 6). Further he believes that after receiving recommendations, the health insurance law will be very soon approved by the Assembly and will become into force starting March 2012.

5. Maternity Leave in Countries of the Region

In order to have a better overview of the maternity leave and practices that Kosovo could borrow in order to improve the current situation, other countries are taken into consideration. Thus, the table below provides information in regards to maternity leave, and its legal provisions as prescribed in the labor law of the respective countries.

<p>Croatia</p>	<p><i>Maternity leave in Croatia is 12 months, which includes 45 days before giving birth to child. If giving birth to twins, or to the third child, maternity leave consist of a 3 year period. In Croatia the initial six first months of the maternity leave are obligatory, but after 6 months the woman can be requested to return to work. Maternity leave can be given to the father of the child as well. The payment of maternity leave is done through the Health Insurance Fund.</i></p>
<p>Bosnia& Herzegovina</p>	<p><i>Maternity leave in Bosnia and Herzegovina is one year (12 months). If giving birth to twins or the third child, maternity leave consist of 18 months. The payment of maternity leave is done through the Health Insurance Fund.</i></p>
<p>Montenegro</p>	<p><i>Maternity leave in Montenegro is one year (12 months) without any interruption during this period. The payment of maternity leave is done through the Health Insurance Fund.</i></p>
<p>Serbia</p>	<p><i>Maternity leave in Serbia is one year (12 months) without any interruption during this period. The payment of maternity leave is done through the Health Insurance Fund.</i></p>

Figure 4 MLSW: Maternity leave in countries of the region

Moreover, countries such as : Albania, Bosnia and Herzegovina, Macedonia, Croatia, Kosovo, Slovenia, and Serbia have decided to make the compensation of maternity leave by using the fund of Health Insurance, which has proven to be a more effective alternative for the implementation of maternity leave. On the other hand Kosovo lacks the health insurance fund and as such is having difficulties in the implementation of this regulation. The table below shows the current percentages allocated to the Health Insurance fund from the budget of these countries.

Albania	24.8	75.2	100
Bosnia & Herzegovina	96.5	4.4	100
Macedonia	96.1	3.9	100
Croatia	88.3	11.7	100
Kosovo	0	100	100
Slovenia	91.4	8.6	100
Serbia	75.7	24.3	100

Table 1.KDI: Maternity leave in countries of the region

6. Conclusion and Recommendations

As mentioned above the problem which is thoroughly discussed as going through different parts of this paper refers to the challenges that are encountered while implementing regulation in regards to maternity leave in the private and public sector in Kosovo. Consequently, after a comprehensive research through reading, comparing different perspectives of the experts in the field, and analyzing the current and future implications of the labor law in Kosovo, I came up with some conclusions and recommendations.

6.1 Increase awareness about the labor Law and its regulations in Kosovo

I believe that first of all, citizens of Kosovo, especially those that are employed need to be better informed about the Labor Law in Kosovo and its regulations. This way they would be aware of their rights and obligations as described in the document of this law. On the other hand employers will better know their obligations within the employment relationship. Moreover, this initiative would help to decrease the number of cases when the rights of one party are violated. Therefore, having more knowledge about this law and the potential legal remedies that might be undertaken in case of a violation, would encourage people to send their cases to the authorities. On the other hand we would also decrease the information asymmetry between the employee and employer that is currently happening in Kosovo. Thus, the Ministry together with other actors involved in the implementation of labor law could contribute in this perspective.

Helpful Initiatives would be awareness campaigns, conferences, workshops, meetings, media involvement, and debates around municipalities of Kosovo. In those initiatives representatives from the Government, Ministry, Civil Society, Business Association and Media should participate and freely debate about most threatening challenges of maternity leave.

6.2 Creation of the “Health Insurance Fund”

After analyzing the development and the implications of maternity leave in Kosovo until now, I believe that the main problem is the compensation formula. According to the current compensation system of maternity leave, employers have to pay 70 % of the basic salary of employee which represents a high cost for them as compared to the 50 % of the average salary that the government pays. In addition employer has another cost which is the salary of the replacement that he/she has to hire until the returning of the employee who receives the maternity leave. Based on this we can conclude that the implementation of maternity leave regulation is threatened in private sector by employers who are not willing to pay the part of the compensation, since they believe they have been discriminated. That being said, I believe that there is an urgent need for the creation of Health Insurance Fund, which would help the effective implementation of this regulation.

This alternative provides a solution which would benefit both the employer and employee; moreover it will put the burden of payment neither on the government nor on the employer. Therefore, employer’s pockets will not be touched, meaning that the employer would be willing to give to the employee maternity leave without a cost incurred. On the other hand, the government would not have to continuously harm the budget of Kosovo which is considered to be threatened by the compensation formula of the maternity leave. The government has already started the process of drafting the Law on Health Insurance. After the law is approved, the fund on Health Insurance would solve the problem of payment since the payment of the compensation of maternity leave would be done through this fund, and would not impose any cost in the employer. According to an analysis of the World Bank on the creation of Health Insurance fund in Kosovo, it is estimated that this fund will cost to the budget of Kosovo 117 million. Moreover the project is seen to be implemented in a timeline of 3years (Kosova Democratic Institute 13).

6.3 Increase Monitoring Mechanisms to Control the Implementation Process in the Private Sector

A key factor in the implementation process of the regulation on maternity leave in the private sector is the lack of sufficient mechanisms to control and monitor this process. In this case the responsibility to monitor the implementation of labor law and its regulation resided in the Kosovo Labor Inspectorate. However, in order for the inspectorate to have a full control over the process of implementation, it should operate with sufficient resources. That being said, labor inspectorate should have sufficient human, financial and technical resources in order to perform effectively. Labor inspectorate in Kosovo is in difficult situation since its current capacities are very limited. There are several additional resources that this inspectorate needs:

1. Increase the number of inspectors to monitor municipalities of Kosovo. Currently there are only 52 inspectors; however there are municipalities that are not inspected at all and have no inspector that controls the businesses around. Thus I believe that inspectorate should not only increase the overall number of inspectors, but it should also increase the number of inspectors in each municipality. Taking into consideration that within a municipality in Kosovo there are several villages included such as the case of the municipality of Prizren in which Suhareke and other regions are included, more businesses are needed to be inspected. As such, I believe that it is impossible for only one inspector to inspect all of them. Based on this I believe that there should be 3-5 inspectors for each municipality. Therefore, I believe that based on the number of municipalities, which is 37 (each municipality to have 3-5 inspectors), the total number of inspectors should be increased to 111- 185.
2. The low budget of labor inspectorate is another barrier in order to ensure a profound monitoring process. The budget of labor inspectorate is dependent on the collection of fines and certificates given to business for operating in compliance with the law. I believe that there should be a Memorandum of Understanding between the Ministry of Labor and the Labor Inspectorate, which would conclude that a certain amount of the budget of the Ministry of Labor to be allocated to labor inspectorate budget. Moreover, this Memorandum would give the right to inspectors to use the logistical resources of the Ministry such as: cars, offices, computers in order to be more effective.

3. The inspectorate should develop a database of all registered businesses in Kosovo with all the registered employees and their work contracts. This would help them to easily identify businesses that try to not show the accurate number of employees and their contracts and consequently violate the labor law.

6.4 Creation of Labor Courts

The Municipal Court of Prishtina is the only court in Kosovo that is authorized to deal with cases deriving from the labor law. That is why, all cases that derive from labor law are considered as administrative issues and as such courts around Kosovo don't have the authority to deal with them. On the other hand, the Municipal Court in Prishtine is loaded with other disputes and cases despite those coming from the labor law. Thus I am very skeptic that this court is able to commit itself to the cases deriving from the labor law. Consequently, I think that Kosovo lacks Labor Courts, which would be a significant input for the implementation of this process. These courts will exclusively deal with cases that represent disputes from employment relationships, and as such they would be more effective than the Municipal Court of Prishtina.

On the other hand, with the establishment of Labor Courts employees would be more encouraged to send their cases to courts since this court exclusively deals with disputes from the labor law.

6.5 Future work outline with funding needs

Increase the number of inspectors per 3 in each Municipality			
Recommendation	Cost per unit	Quantity	Total Cost
New inspectors	€ 345.00	111	€ 38,295.00
Increase the number of inspectors per 5 in each Municipality			
Recommendation	Cost per unit	Quantity	Total Cost
New inspectors	€ 345.00	185	€ 63,825.00
Recommendation	Cost per unit	Quantity	Total Cost
Creation of Health Insurance Fund	€ 117,000,000.00	1	€ 117,000,000.00
Public Awareness Campaign			
Recommendation	Cost per Unit	Quantity	Total Cost
Public Debate	€ 300.00	37	€ 11,100.00
30 seconds TV ad	€ 750.00	2	€ 1,500.00
30 second radio ad	€ 250.00	2	€ 500.00
Posters	€ 1.68	10000	€ 16,800.00
Flyers	€ 0.50	10000	€ 5,000.00
Total			€ 34,900.00
Overall total costs for the proposed recommendations:			€ 117,098,725.00

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8. Appendix- 1

INTERVIEWEE	INSTITUTION
1. Jeton Mehmeti	Research Analyst Institute for Advanced Studies-Gap
2. Valon Murati	Director of Human Rights Centre
3. Behxhet Shala	Head of the Council for Protection of Human Rights
4. Gjylnaze Novoberdaliu-Goja	Head of Division for Drafting and Harmonizing the Legislation within the Legal Department Ministry of Labor and Social Welfare
5. Basri Ibrahim	Head of the Labor Inspectorate
6. Alush Berisha	Coordinator for Social Activities Friedrich Ebert Stiftung
7. Minire Begaj-Balaj	Head of Division for Supervising the Implementation of Laws within Legal Department Ministry of Labor and Social Welfare
8. Lumnije Hashani	Senior Official for Legislation on Economic Matters at Kosovo Chamber of Commerce Kosovo Chamber of Commerce
9. Igballe Rugova	Head of the Kosovo Women's Network
10. Shukrie Rexhepi	Head of the Women Syndicate he Union of Independent Unions of Kosovo/Women Syndicate
11. Filiz Halimi	Project Manager Kosovar Gender Studies Center
12. Safete Veseli	Office in the Department for Employment and Labor

9. Appendix- 2

List of Interview Questions:

1. What do you think about the labor law in Kosovo?
2. Has labor law been fully implemented in private and public sector in Kosovo?
3. What are the main challenges that this law is facing while being implemented?
4. What challenges has the Labor Inspectorate encountered while monitoring the implementation of the maternity leave regulation?
5. During inspections, have you encountered any cases when the right to maternity leave was violated?
6. Which sector do you think is more threatened from the negative effects that this regulation might have?
7. What has Kosovo Chamber of Commerce done in order to address business's interests in regards to the labor law?
8. Do you think that Ministry of Labor and Social Welfare should undertake certain measures in order to improve the implementation of the regulation on maternity leave?
9. What are some statistics in regards to payments made to women in private and public sector in regards to maternity leave?
10. Do you believe that women are discriminated by the current developments of the labor law?
11. Do you think the current maternity leave system is effective?
12. Do you think that the current maternity leave system should be changed?
13. What payment compensation system should be established in order for the regulation of maternity leave to be implemented?
14. What initiatives has Women's Syndicate undertaken in order to improve the position of employed women?
15. What studies Institute Gap has conducted in regards to implementation of labor law?
16. Why do you think that there has been an unequal treatment of Civil Service Workers and Private Sector workers?
17. What impact does the Labor Law have on women in Kosovo?