



# Dealing with the Past Principles

**Principle: The identity of the victims and survivors and their family members must be protected**

**Case study**



## Dealing with the Past Principles

The Dealing with the Past Principles is a civic initiative, promoted by an informal coalition that consists of five organizations and one expert: Humanitarian Law Center Kosovo, Kosova Rehabilitation Centre for Torture Victims, Integra, Youth Initiative for Human Rights, BIRN Kosova and Nora Ahmetaj. The group has embarked on a joint initiative to chart and endorse a set of principles that will inform and guide political and public actors on how to engage with victims, survivors, painful pasts, and historical narratives. This initiative aims to prevent harmful discourse and actions related to the legacy of the conflict and will serve as a reference document to which anyone violating its principles will be held morally accountable. The aim is, therefore, to apply these principles and respect the values and sentiments they embody to ensure that victims and survivors are not harmed and that our actions on dealing with the past will contribute to the process of healing and reconciliation.<sup>1</sup> Now that the principles have been developed and arranged, as well as well properly elaborated, it is crucial to have them presented to the general public and promoted correctly. We believe that one way to get people to understand the importance of such principles is to talk about the harms, the consequences, and the pain that can be caused in situations where those principles are violated. Therefore, the coalition will publish some case studies compiled by the Humanitarian Law Center Kosovo (HLCK) and we will attempt to bring concrete examples from the past where the principles were appropriately used or even misused. One of those principles is “The identity of the victims and survivors and their family members must be protected.”

### **The identity of the victims and survivors and their family members must be protected**

Ensuring that victims and survivors are effectively protected from stigma, intimidation, and pressures that they might experience. There should be no public disclosure of the identity of the victims and survivors, nor their family members, unless they give their consent. Their privacy should be fully protected and respected by all means.

### **Introduction**

As a result of the recent war in Kosovo, according to preliminary data from the Humanitarian Law Center (HLC) and the Humanitarian Law Center Kosovo (HLCK), in total 13,535 persons were killed/forcibly disappeared in Kosovo during 1998-2000<sup>2</sup>. Victims and survivors of the war in Kosovo should be treated with respect and dignity by the whole society, but specifically “by the police, state prosecutors, judges, or other body conducting the criminal proceedings”<sup>3</sup> and any possibility of stigmatization and consequences thereof should be averted. They may exercise their legal right to report the crime to prosecuting authorities and to participate in criminal proceedings. According to the Criminal Procedure Code of the Republic of Kosovo (CPCRK) “The injured party has the status of a party to the criminal proceeding<sup>4</sup>”. An injured party or victim means “a person whose personal or property rights are violated or endangered by a criminal offense<sup>5</sup>”. Damages mean harm that directly or indirectly results from a criminal action, including loss of property, loss of profits, loss of liberty, physical harm, psychological harm, or the loss of life of a spouse or an immediate family member<sup>6</sup>. “The injured party has the right to a reasonable, court-ordered restitution from a defendant or defendants who have admitted to or been adjudged to be guilty for the financial, physical and emotional harm caused by the commission of a criminal offence for which the defendant or defendants have been adjudged guilty<sup>7</sup>”.

The protection of the identity of victims and survivors of wartime sexual violence in Kosovo should be applied

<sup>1</sup> Principi-Eng (vahr-ks.org)

<sup>2</sup> Humanitarian Law Center Kosovo, Kosovo Memory Book, <https://www.hlc-kosovo.org/en/what-we-do>

<sup>3</sup> Criminal Procedure Code of the Republic of Kosovo, Chapter VI, Article 62, Item 1.1, Page 24, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>

<sup>4</sup> Ibid.

<sup>5</sup> Criminal Procedure Code of the Republic of Kosovo, Article 19, Item 1.9, Page 6, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>

<sup>6</sup> Criminal Procedure Code of the Republic of Kosovo, Article 19, Item 1.14, Definitions, Page 6, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>

<sup>7</sup> Criminal Procedure Code of the Republic of Kosovo, Article 62, Item 1. 4, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>



when submitting written requests for protection of identity, as well as requests to the state prosecutor's office to protect the identity of victims, survivors, and their family members from the dangers they may face in the event of disclosure of identity. Such requests may be filed at any stage of criminal proceedings, by any of the parties to proceedings, and the identity of relatives of the victims can be protected since the disclosure of their identity would also reveal the identity of the person who by law is entitled to protection of identity guarantees.

According to Article 221 paragraph 3 of the CPCRK, "after receipt of the petition, the competent judge may order appropriate protective measures for an injured party, cooperating witness, or a witness..." An order for protective measures as well as an anonymity order shall be made in case there is a serious danger to the injured party, the cooperating witness, the witness, or their family members. The term "serious risk" means a warranted fear of danger to the life, physical or mental health or property of the injured party, cooperating witness, witness or a family member of an injured party or witness as an anticipated consequence of the injured party, cooperating witness or witness giving evidence during an examination or testimony in court<sup>8</sup>.

---

In this context, in an interview with HLCK, Drita Hajdari, Special Prosecutor and Head of the Department of War Crimes under the Special Prosecution of the Republic of Kosovo (SPRK), explained the legal steps followed by the prosecution in handling cases of wartime rape in Kosovo and provided some recommendations on how the identity of victims could be protected during criminal proceedings.

Prosecutor Hajdari noted that, despite the differences in legal status between the victim and the witness, in practice, there are cases where the crime victim appears also in the capacity of a witness. In some cases, such as wartime rape, even as the sole witness of events.

In such cases, during the first interview with the prosecution, the victim is informed of his/her rights as defined by CPCRK. Next, they are informed that they will also be examined as a witness in the case and are informed of their legal rights and obligations as a witness, such as the obligation of the witness to testify and to tell the truth. But in addition to these obligations, the witness is also cautioned of the right to remain silent in case his own statement would lead to self-incrimination. In such cases, we have a person appear in proceedings as a victim and at the same time as a witness, because this is imposed by the case itself. The victim must testify about the crime he or she has experienced and often, in cases such as wartime sexual violence, there are no eyewitnesses. In most such cases, we have indirect witnesses who can testify that the victim was taken by military or police forces, but who did not directly see what happened to the victim, or indirect witnesses who testify about the victim's condition after the commission of the crime against her, and such witnesses may be her family members, doctors, or hearsay witnesses. Therefore, in such cases, the same person often appears before the prosecution in the capacity of a victim, but also as the only witness in the case.

According to Prosecutor Hajdari, there is a solid legal basis for the protection of victims of sexual violence. Since victims of sexual violence have experienced a crime that leaves serious consequences to life and health, as well as to protect them from stigma and prejudice and not only the victims but also their families, the prosecution asks the court to issue an order for protective measures, using methods such as assigning aliases, redacting or leaving blank names, addresses, place of work, occupation or any other data or information that can be used to identify the injured party, cooperating witness or witnesses, the decision for a closed hearing, etc.

There were cases where the victims decided to testify but after reaching the prosecutor's office, they felt unprepared to relive their trauma and consequently refused to testify. The reason why this happens was explained by Special Prosecutor Hajdari, stating that every time the victim is questioned, she is re-traumatized and re-victimized.

The prosecutor also noted the passage of time and changing life circumstances as hurdles related to the testimony of victims of wartime rape. In practice, there have been cases where the victim refused to give testimony to avoid

---

<sup>8</sup> Criminal Procedure Code of the Republic of Kosovo, Chapter XIII, Protection of Injured Parties and Witnesses. Article 220, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>



re-victimization and re-traumatization. This happened because their life circumstances changed after the crime that they experienced and in many cases, the victim appears to have created a new family, i.e., got married and has children, but her family members are not aware of the case. Therefore, her involvement in criminal proceedings may lead to the disclosure of the event that she has kept secret and may have consequences for her life. In such cases, the victims opt to protect themselves and their families by not testifying in the case before the prosecution.

Under such circumstances, the prosecution formally closes the case, and it is up to the victim to re-initiate the case whenever she feels ready to testify. In this case, the rights and obligations attributed to the victim take precedence over the rights and obligations that the same person has as a witness. Which means that their obligation to testify (an obligation of the witness in criminal proceedings) is overruled at the moment when the same person in the role of victim refuses to testify, for the reasons mentioned above.

Prosecutor Hajdari also gave some recommendations, where according to her all participants in criminal proceedings should adhere to victim identity protection rules and also ensure there are appropriate mechanisms to protect the identity of the victim upon his/her arrival at the prosecution office, police, and court. According to the prosecutor, adequate public awareness activities should be organized to protect victims from stigma and other potential consequences. In this way, victims will be encouraged to report the crime to prosecution authorities and exercise their legal rights, which would eventually lead to having the perpetrators brought before justice, without any consequences for the victims.

There is still no exact number of victims of wartime sexual violence in Kosovo, as a considerable number remain in obscurity and never to be disclosed because the victims have decided not to speak and remain silent. To date, fifty cases of wartime rape in Kosovo have been filed with the prosecution<sup>9</sup>.

In addition to protecting the identities of victims, survivors, and their family members before the courts and during certain criminal proceedings, it is essential to protect their identities outside of justice institutions, except in cases where they give consent and agree to appear publicly.

Stigmatization of victims, most notably those of wartime sexual violence in Kosovo, emerges as the main barrier which drives these victims to hide, both their identity and their truth. Additionally, the protection of relatives of the victims from community and media pressure arises as one of the reasons preventing the victims from taking the necessary steps to tell their horror stories and claim the benefits provided by law for their pain and suffering.

This is evidenced by one of the direct victims of wartime rape in Kosovo. Her identity was kept secret by a media outlet that published her story, where the victim stated the reason why she had not applied for the status of wartime sexual violence victim. She stated “My family does not want my name listed anywhere. Now they have become a big family. Their sons and daughters have gotten married, and so the family has grown. They do not want anyone to talk about it<sup>10</sup>”.

With this statement, the victim in question showed that for the sake of protecting her family members, she is reluctant to claim the benefits that she is entitled to by law as a victim of sexual violence.

Additionally, “I am Anemone”, a book which powerfully features chronicles of wartime rape, by co-author Mirlinda Sada (representative of Medica Gjakova), argues that some victims hesitated to apply for the verification process, fearing potential isolation if they were publicly identified<sup>11</sup>. Vepror Shehu from Medica Kosova also stated that many victims of sexual violence were reluctant to apply for recognition of status, due to fear of stigma and isolation<sup>12</sup>.

<sup>9</sup> Interview with Drita Hajdari, Special Prosecutor and Head of the War Crimes Department under the Special Prosecution of the Republic of Kosovo.

<sup>10</sup> Balkan Transitional Justice, The Enduring Agony of Wartime Rape in Kosovo, 29.05.2017, <https://balkaninsight.com/2017/05/29/agonia-e-pafund-e-grave-t%C3%AB-mbijetuarat-t%C3%AB-dhun%C3%AB-s%C3%AB-luft%C3%AB-n%C3%AB-kosov%C3%AB-05-28-2017/?lang=sq>

<sup>11</sup> Balkan Insight, 02.12.2019, <https://balkaninsight.com/2019/12/02/libri-i-dhimbieve-te-mbijetuarat-e-perdhunimeve-te-luftes-ne-kosove-tregojne-historite-e-tyre/?lang=sq>

<sup>12</sup> Balkan Insight, 12.06.2018, <https://balkaninsight.com/2018/06/12/procesi-i-regjistrimit-t%C3%AB-viktimate-t%C3%AB-p%C3%ABrdhunimeve-t%C3%AB>



“So, it is not enough to work only with the survivors, because sexual violence is as much an individual wound as it is a wound to society. Society should have a better approach, understand their suffering, feel responsible, solidarize, and not stigmatize them<sup>13</sup>”.

It is particularly important that anyone who has the mandate to work with these categories of victims be extra cautious in terms of disclosing their identities. Their request for disclosing or not in any form their identity or that of their family members, should be respected to the maximum extent, so as not to be subject to potential stigma and other forms of pressure which could cause serious consequences to their life and health.

---

A publication by the Kosova Rehabilitation Centre for Torture Victims (KRCT), entitled *Right to Truth “Unnamed Victims,”* provides some of the reasons why the victims did not report their cases to the prosecuting authorities. Research conducted by KRCT found that about 232 victims have stated that they have not reported their cases to the prosecution authorities because “they fear prejudice, including disclosure of personal data, stigmatization from close and wide circle, confrontation in court and disclosure of identity<sup>14</sup>”.

In addition to this KRCT publication, on September 23, 2020, the same organization introduced the Protocol on the Documentation, Investigation, and Treatment of Cases of Wartime Sexual Violence in Kosovo<sup>15</sup>. The document provides the opportunity to be used to address, uphold, and represent the rights of survivors and witnesses of wartime sexual violence. Above all, this document provides recommendations on the use of protective measures for victims and survivors of wartime sexual violence in Kosovo. All practitioners involved in this field are instructed to ensure that the victim’s informed consent is sought and thus “create situations of genuine trust that will enable the victim/witness to agree freely and voluntarily or feel comfortable enough to refuse.” The victim should also be given time and the opportunity to understand “that they have a choice whether or not to speak to practitioners and that this choice can be exercised at any time throughout the process” and that “time given should take into account the significant and complex consequences of participation for victims, their families and communities<sup>16</sup>”.

On the other hand, the “International Protocol on the Documentation and Investigation of Sexual Violence in Conflict” provides specifically for the principle of “informed consent,” which is introduced as a requirement when collecting information related to sexual violence. “All victims and witnesses must give their informed consent to each applicable stage or process, which may include any of the following: to be interviewed and/or examined, to be photographed, to have their information recorded, to be referred to any support services, to have their information and contact details shared with third parties<sup>17</sup>”.

According to these publications, we find that victims of wartime sexual violence have the right to give or refuse consent, completely voluntarily, in terms of giving testimony in relation to the events that involved them. All institutions, or even practitioners, who have the duty to identify and document these types of crimes, must respect the free will of the victims in terms of giving any statement.

---

Serbeze Haxhiaj, an investigative journalist from the Balkan Investigative Reporting Network (BIRN) and RTK, in response to HLCK regarding the issue of protecting the identity of victims of sexual violence, stated that

---

[luft%C3%ABs-i-l%C3%ABkundur-06-11-2018/?lang=sq](https://www.kurir.com.mk/news/luft%C3%ABs-i-l%C3%ABkundur-06-11-2018/?lang=sq)

<sup>13</sup> I am Anemone, Medica Gjakova, Page 10

<sup>14</sup> KRCT, Right to Truth “Unnamed Victims,” 10.3. Reasons why the case was not reported to the institutions of justice. Page 72, <https://drive.google.com/file/d/1st18cwFgQNe0-eCxuP574q6ENLZvCPax/view>

<sup>15</sup> Anadolu Agency, 23.09.2020, Kosovo, Introduction of Protocol on the Protection of Identity for Victims of Wartime Sexual Violence, <https://www.aa.com.tr/en/balkani/kosovë-prezantohet-protokolli-për-mbrojtjen-e-identitetit-të-viktimave-të-dhunës-seksuale-në-luftë/1983029>

<sup>16</sup> Kosova Rehabilitation Centre for Torture Survivors, Protocol on the Documentation, Investigation and Treatment of Cases of Wartime Sexual Violence in Kosovo

<sup>17</sup> International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, UK Foreign & Commonwealth Office with contributions of practitioners and other organizations, 6.1. Informed Consent, Page 45,

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/598335/International\\_Protocol\\_2017\\_2nd\\_Edition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf)



“reluctance to talk to the media, for academic research, or other purposes for fear of disclosure of identity, is still quite common.” According to Haxhiaj, the victims of sexual violence now are in their fifties, or even older, and as time goes on, fear of stigma takes deeper roots. They do not want their identity blown not only because of their community and their spouses but often also because of their children. In many cases, children do not accept the fact of rape or do not want their mothers or fathers to talk about the rape. Many of them have lived through the most traumatic moments that have been crucial to their lives by internalizing the truth about the rape and now do not want to talk anymore. The other victims who spoke openly gave them the courage to move forward but there was not much motivation to speak in public.

Haxhiaj also shared about a case where the victim had strangled her child born as a result of rape and was imprisoned at the time. In 2000, she had refused to talk to BIRN, but confirmed what had happened, stating “you realize that you are ruined, and nothing will ever be normal again” and claimed that she would kill herself if her name was revealed.

This is another proof of the importance of the fact that the identity and will of the victims of sexual violence must be protected at all costs.

### Recommendations

Primarily, we recommend that the “Dealing with the Past Principles”<sup>18</sup> should be respected and adopted by all political and public actors involved in dealing with the past.

According to the Law on the status and the rights of the martyrs, invalids, veterans, members of Kosovo Liberation Army, civilian victims of war, and their families, the deadline for submitting applications for claiming their rights is five years from the inception and launch of the Government Commission for the recognition and verification of persons that were subject to wartime rape<sup>19</sup>. Therefore, we recommend that this deadline be extended further, to provide additional time to the victims to submit their applications.

We recommend the media not to disclose the identity of individuals belonging to any category of victims, without informed consent.

*This project is implemented with the support of the Swiss Embassy in Kosovo and the British Embassy in Pristina through the United Nations Development Program (UNDP) in Kosovo, and the content of this case study does not reflect their views.*

---

<sup>18</sup> [Principi-Eng \(vihr-ks.org\)](http://Principi-Eng(vihr-ks.org))

<sup>19</sup> The Commission has formally set February 5, 2018, for the start of the application process for acknowledgment of status of wartime sexual violence victim in Kosovo.

 @dwpkosovo

 @dwpkosovo

 @dwpkosovo

 dwpkosovo