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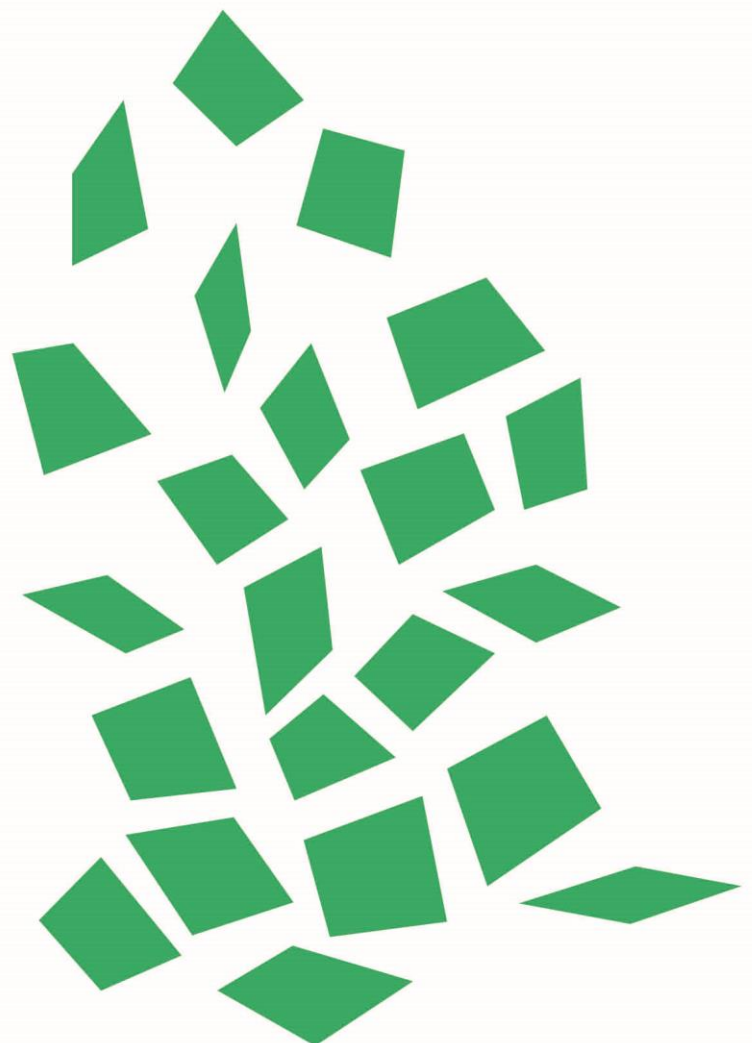
Country report

Non-discrimination

Albania

2019

including summary



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and Consumers*

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Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Albania

Irma Baraku

Reporting period 1 January 2018 – 31 December 2018

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CONTENTS

EXECUTIVE SUMMARY	5
INTRODUCTION	13
1 GENERAL LEGAL FRAMEWORK	15
2 THE DEFINITION OF DISCRIMINATION	16
2.1 Grounds of unlawful discrimination explicitly covered	16
2.1.1 Definition of the grounds of unlawful discrimination within the directives	17
2.1.2 Multiple discrimination	20
2.1.3 Assumed and associated discrimination	20
2.2 Direct discrimination (Article 2(2)(a))	20
2.2.1 Situation testing	21
2.3 Indirect discrimination (Article 2(2)(b))	22
2.3.1 Statistical evidence	23
2.4 Harassment (Article 2(3))	24
2.5 Instructions to discriminate (Article 2(4))	26
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)	26
3 PERSONAL AND MATERIAL SCOPE	30
3.1 Personal scope	30
3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)	30
3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)	30
3.1.3 Private and public sector including public bodies (Article 3(1))	31
3.2 Material scope	32
3.2.1 Employment, self-employment and occupation	32
3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))	32
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	33
3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))	33
3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))	33
3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	34
3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)	34
3.2.8 Education (Article 3(1)(g) Directive 2000/43)	35
3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)	38
3.2.10 Housing (Article 3(1)(h) Directive 2000/43)	38
4 EXCEPTIONS	40
4.1 Genuine and determining occupational requirements (Article 4)	40
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	40
4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)	41
4.4 Nationality discrimination (Article 3(2))	41
4.5 Work-related family benefits (Recital 22 Directive 2000/78)	41
4.6 Health and safety (Article 7(2) Directive 2000/78)	42

4.7	Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)	42
4.7.1	Direct discrimination	42
4.7.2	Special conditions for young people, older workers and persons with caring responsibilities	43
4.7.3	Minimum and maximum age requirements	44
4.7.4	Retirement.....	44
4.7.5	Redundancy	45
4.8	Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)	46
4.9	Any other exceptions.....	46
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78).....	47
6	REMEDIES AND ENFORCEMENT.....	50
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	50
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78).....	52
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)..	54
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78).....	56
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78).....	56
7	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43).....	58
8	IMPLEMENTATION ISSUES.....	67
8.1	Dissemination of information, dialogue with NGOs and between social partners	67
8.2	Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78).....	68
9	COORDINATION AT NATIONAL LEVEL.....	69
10	CURRENT BEST PRACTICES.....	71
11	Sensitive or controversial issues	72
11.1	Potential breaches of the directives (if any).....	72
11.2	Other issues of concern	72
12	LATEST DEVELOPMENTS IN 2018.....	73
12.1	Legislative amendments	73
12.2	Case law.....	73
	ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION.....	75
	ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS.....	77

EXECUTIVE SUMMARY

1. Introduction

Albania's current population is 2 870 324. After the 1990s, Albania entered a difficult period of transformation from a dictatorial system, where human rights and individual freedoms were limited (in that the individual was completely at the disposal of the state and the ruling ideology), to a democratic state. The respect for human rights is an essential condition in this long process of transformation. In order to achieve this goal, significant steps have been taken in the process of aligning the Albanian legislation on human rights and fundamental freedoms with the international standards for their protection and the establishment of mechanisms that ensure their effective protection.

In 2018, the key findings of the European Commission's 2018 report on Albania noted that:

'Albania has ratified most international human rights conventions and has developed its legal framework in line with European standards. Enforcement and monitoring of human rights protection mechanisms remain to be strengthened (...). Institutional mechanisms to protect the rights of the child and to tackle gender-based violence remain poor. Important steps were made to improve the legal framework for the respect for and protection of minorities, but relevant secondary legislation needs to be developed. Living conditions for Roma and Egyptians need to be improved.'¹

The Roma community in Albania was first mentioned in 1635, but for more than five centuries, there has been no accurate survey of the number of Roma living in Albania. The Roma minority are predominantly located in Tirana, Lezha, Fier and Elbasan.²

According to the European Commission's 2018 report on Albania:

'(...) there is noted progress in early childhood and primary education and in access to healthcare and labour market. (...) However, informal employment continues to be very high in the Roma community and unemployment rates have continued rising in recent years, reaching 55 % (...). The enrolment of Roma and Egyptian boys and girls in pre-school and basic education has increased considerably (from 4 996 in 2015 to 12 801 in 2016) but the gap between Roma and not Roma enrolment increased. Despite this progress, Albania has one of the lowest completion rates of compulsory education in the region (44 %). The limited number of enrolments in secondary education among Roma children also remains a challenge. Roma children benefit from free textbooks and transportation to remote schools. However, segregation in schools remains widespread.

The housing budget has increased but remains insufficient to meet the needs for housing and infrastructure, with residential segregation rising in Roma settlements. In 2017, 255 Roma families benefited from projects to improve housing conditions, a considerable increase from previous years (187 in 2016). Albania has the region's lowest rate of access by the Roma population to piped water (48 %) and electricity (84 %). Civil registration for Roma has improved but further efforts are needed, particularly to ease the transfer of registration between municipalities and ensure registration of children born abroad who are at risk of statelessness. Most unemployed Roma and Egyptians have difficulties accessing healthcare due to

¹ European Commission (2018) 'Key Findings of the 2018 Report on Albania', Brussels, 17 April 2018. Available at: [http://europa.eu/rapid/press-release MEMO-18-3403_en.htm](http://europa.eu/rapid/press-release_MEMO-18-3403_en.htm).

² http://www.minoritetet.gov.al/?page_id=1388.

complicated procedures for obtaining health cards. In fact, overall access to public services for Roma remains difficult, particularly in rural areas.³

According to the Commission's report, greater involvement of civil society organisations, as part of an inclusive policy dialogue, and improvement of the functioning of the National Council for Civil Society are key aspects of the work needed to improve respect for human rights in Albania.

2. Main legislation

The Albanian legislation offers general protection of human rights and especially of the principle of equality and non-discrimination. The Constitution is the highest law in Albania. It accepts international law as part of domestic law, and in the hierarchy of norms they stand immediately after the Constitution. Ratified international agreements are directly applicable, unless they are not enforceable and require the adoption of special laws. The Constitution provides for the equality of citizens before the law and protection against discrimination based on the grounds of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage. The Constitution does not explicitly protect all the grounds covered by the directives.

The constitutional provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

The Law on protection from discrimination (LPD) provides for the protection against discrimination in detail; the law states that its object is to regulate the implementation of and respect for the principle of equality in connection with a non-exhaustive list of grounds (gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other grounds). The LPD does comply with the directives regarding minimum protected grounds, definitions and forms of discrimination, effective, proportionate and dissuasive sanctions, use of statistical data, and dialogue with CSOs.

The equality body established by the law, the Commissioner for Protection from Discrimination (CPD), meets the requirements of Directive 2000/43.

Other amendments to national legislation such as the Labour Code, the Criminal Code, the Administrative Procedure Code, and the new Law on social housing are important steps in strengthening guarantees for victims of discriminatory behaviour.

3. Main principles and definitions

The LPD provides definitions in accordance with the directives for direct and indirect discrimination and also for other forms of discrimination, such as discrimination by association, harassment, instruction to discriminate, denial of reasonable accommodation and victimisation.

However, in addition, Article 3(1) of the LPD provides a general definition of discrimination as follows:

“discrimination” is any distinction, exclusion, restriction or preference, based on any ground mentioned in Article 1 of this law, which has as a purpose or

³ European Commission (2018), *Albania 2018 Report*, Strasbourg, 17 April 2018, SWD (2018) 151 final, p. 31. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>.

consequence hindering or making impossible the exercise in the same manner as others of the fundamental rights and freedoms recognised by the Constitution of the Republic of Albania, the international acts ratified by the Republic of Albania, as well as the laws in force.⁴

By thus connecting the definition of discrimination to fundamental rights and freedoms, this provision causes some confusion. On the other hand, Article 2 states that the law's purpose includes assuring equality of opportunities and effective protection from any form of discrimination. Segregation and multiple discrimination are not explicitly prohibited by the LPD.

The LPD prohibits discrimination based on an open list of grounds, going beyond the grounds covered by the constitutional provisions: gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other grounds.

The LPD provides for a general exception in cases when there is an objectively justifiable purpose supported on the basis of the Constitution, international acts or agreements ratified by the Republic of Albania and the legislation in force. Also, it provides for exemptions based on occupational requirements and when reasonable accommodation should be given.

The LPD (Article 10(2)) provides an exception in relation to conscience and religion, which may be permitted only if a reasonable and objective justification exists. Such an exception should be proportionate to the situation that has dictated the need for discrimination and may be imposed only by law, in the public interest or for the protection of the rights of others. It cannot violate the core of the rights and freedoms and in no case may it exceed the restrictions provided in the European Convention on Human Rights.

Positive action is another general exception from the requirement of equal treatment. The LPD provides for temporary measures aimed at speeding up the real establishment of equality, when the absence of equality has been caused by discrimination for any grounds protected by the law. Such measures must cease as soon as the objectives of the treatment and access to equal opportunities have been achieved.

During 2018, the Commissioner for Protection from Discrimination held consultations and asked for the opinion of civil society with the aim of drafting proposals for amending the Law on protection from discrimination.

4. Material scope

The Law on protection from discrimination (LPD) is applicable to all fields (including education, employment, goods and services, the exercise of freedom of conscience and religion, participation in politics, etc.), going beyond the fields covered by the directives. The LPD guarantees protection from discrimination for an open list of grounds and pays attention to specific fields in separate chapters of the law.

The Law on protection from discrimination (LPD) is applicable to both the private and public sectors and applies to all fields, including employment.

⁴ Albania, Law on protection from discrimination, No 10 221, 4 February 2010. Available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_178702.pdf.

The prohibition of discrimination in employment (as provided for by the LPD) applies to treatment of employees in the workplace, membership of trade unions and the opportunity to benefit from the facilities provided by such membership, prohibition of any kind of annoyance, including sexual harassment, by the employer against an employee or a job seeker or between employees. Furthermore, the Labour Code provides for the prohibition of discrimination on an open list of grounds, which has extended the number of explicitly protected grounds that are mentioned (gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious and philosophical beliefs, economic, educational or social situation, pregnancy, parental affiliation, parental responsibility, age, family situation or marriage status, civil status, place of residence, health condition, genetic predispositions, disability, living with HIV/AIDS, joining or having affiliation with a trade union organisation, affiliation with a special group or any other cause). This provision is completely in line with the requirements of the directives and is applicable for both private and public sectors.

Moreover, the law provides for the prohibition of discrimination regarding goods and services, including: healthcare; social protection schemes, including social assistance, social insurance, protection of children, disability benefits or any another scheme of social protection or other advantage offered to the public; education; housing; banking services and the opportunity to obtain grants, loans, bank deposits or financing; facilities for entertainment, relaxation and refreshment; facilities for transport or travel; and services of the free professions. This provision is applicable to both natural and legal persons.

5. Enforcing the law

The LPD provides several options for procedural protection, such as administrative, litigation and misdemeanour procedures, inspectorial control, and penal procedures.

The administrative procedure can be followed before the Commissioner for Protection from Discrimination. The procedure before the CPD is free of charge. The CPD deals with complaints from one person, groups of people and NGOs. The law gives the commissioner the responsibility for conducting administrative investigations after receiving reliable information on any violation of the law (ex-officio cases). When appropriate, the CPD seeks to reach a conciliation agreement between the complainant and the person against whom the complaint was submitted, through public hearings. The CPD's decision is made known to the parties. The CPD not only makes recommendations but can also impose sanctions. However, the law is not repressive, because it gives some opportunities to avoid sanctions where the discriminator ends the discrimination promptly.

According to the CPD's *Annual Report 2018*, structural discrimination, which applies not to an individual, but to a whole group or community, continues to present a problem. In 2018, the highest number of complaints came from the Roma and Egyptian communities. The CPD has shown that members of the Roma and Egyptian communities are not well informed about the rights and services they can claim or the legal means to ensure these services. The People's Advocate (the ombudsman) emphasises that sheltering and housing Roma people remains problematic, given that, in some cases, they have been forcibly evicted from their homes while state structures drag out the legal procedures.

Discrimination litigation proceedings can be initiated before ordinary courts and this right is not subject to the obligation to exhaust an administrative appeal to the Commissioner for Protection from Discrimination. According to the provisions of the Civil Procedure Code, if a procedure is raised before a court, no procedure can be raised before the CPD. It does not say what one does if parallel procedures are raised. The LPD sets a mutual relationship between the court and the commissioner, anticipating the court's obligation to notify the commissioner of the submission of every lawsuit about discrimination and

recognising the right of the court to require the commissioner to provide a written opinion, the results of his investigation – if an investigation is carried out – or any other information that is important for the case.

In Albania, NGOs are entitled to act on behalf of victims of discrimination (a person or/and a group of persons) before the CPD (with the written consent of the individuals or groups of individuals who claim that discrimination has occurred) and the court (consent must be given through a declaration before the court).⁵ In Albania, national law allows organisations/trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*). The national law on anti-discrimination is silent about the possibility of these entities acting in support of victims of discrimination. There is no evidence about this issue. However, the ordinary courts usually request that the commissioner attends the entire court proceedings as an interested party to the trial.

In addition to the general provision on positive measures, which does not make a distinction between grounds and fields, the LPD makes specific provisions in employment (encouraging equality, in particular, between men and women as well as between 'fully physical able persons' and those who have a disability) and education (in favour of women and girls, minorities, persons with a disability as well as persons who are or have more possibility of being the object of discrimination for all protected grounds by this law; respecting and assuring 'the right to education in the languages of minorities, as well as in appropriate manners⁶ for persons with a disability').

The Law on protection from discrimination does not fully explain the concept of burden of proof in the administrative investigation procedure followed by the commissioner. Referring to the right of subjects to appeal before the commissioner, the law determines that the applicant 'may file a complaint with the available evidence before the commissioner'. However the law refers to the Code of Administrative Procedure,⁷ which explicitly provides the reverse of the burden of proof in matters of discrimination.⁸ Public bodies must be guided by the principle of equality and anti-discrimination for grounds provided by law.

Regarding court proceedings, the anti-discrimination law provides for the shifting of the burden of proof. Once the claimant presents evidence on which he bases his claim on the basis of which the court may presume discriminatory conduct, the defendant must prove that the facts did not constitute discrimination under this law.

In its Decision 33/2007, the Albanian Constitutional Court made an interesting interpretation in a case on the repeal of Articles 141, 143, 144, and 146(1) of the Labour Code⁹ as unconstitutional and applied 'the reversal of the burden of proof in issues of discrimination'. This decision of the Albanian Constitutional Court later served as a basis for the primary courts to reverse the burden of proof in cases of discrimination related to labour relations and in other cases of discrimination. With the enforcement of the Law on administrative courts the question on the shifting of the burden of proof was further

⁵ Baraku, I. (2012), 'The antidiscrimination legal framework and the mechanisms that guarantee effective protection from the discriminatory behaviours', Presentation at International Conference, *Towards future sustainable development*, University of Shkodra, 16-17 November 2012.

⁶ 'Appropriate manners' refers to sign language and other relevant adaptations and tools for persons with disabilities.

⁷ Albania, Administrative Procedure Code, Law 44/2015, approved 30.04.2015 and entered into force on 28.05.2016.

⁸ Sigma (2018), *Commentary of the Code of Procedure Administrative of the Republic of Albania*, pp. 61-62; 372-374. Sigma is a joint initiative of the OECD and the EU, which supported the drafting of the CPA (Ministry of Justice and the Parliamentary Commission on Legal Affairs, Public Administration and Human Rights).

⁹ These articles provide for the: contract of undefined duration termination; notice deadlines following the probation period; procedure of employment contract termination by the employer; and termination of contract for no reasonable cause.

solved in dispositions regarding the principles of administrative adjudication. In the administrative conflict in court, the burden of proof falls on the public administration authority. This procedural principle is defined in Article 3(3) of the Albanian Law on administrative courts: 'The public administration, as a rule has the obligation to prove the merits in law and in fact of the activities committed by its bodies'.¹⁰

During court proceedings in cases of discrimination in employment, the burden of proof shifts to the defendant. The amendments to the Labour Code in 2015 provide that:

'In all the complaints procedures, followed according to the article on prohibition of discrimination, if the complainant or plaintiff presents facts from which it may be claimed that they have been discriminated against in the exercise of the right to employment and occupation, the person against whom the complaint is made or the defendant is obligated to prove that the principle of equal treatment is not infringed.'

The LPD, under the Article 34(1), sets out the right of the victim to make a 'criminal denunciation before the organs competent for criminal prosecution' (if the discriminatory behaviour constitutes a criminal offence).

The People's Advocate (ombudsman) can deal with cases related to unlawful and improper actions or failures to act by public administration bodies, as well as third parties acting on their behalf. Legally, the duty of the People's Advocate is to be the promoter of the highest standards of human rights and freedoms in the country.¹¹ All services rendered by the People's Advocate in relation to complaints, requests or notifications are free of charge. The People's Advocate, upon finding or suspecting that a right has been violated, will initiate an investigation (of the case), upon the complaint or request of the interested or affected person, or on his own initiative, if the case is in the public domain. Upon conclusion of an investigation, the People's Advocate makes recommendations on how to remedy the infringement. For serious violations, the People's Advocate will recommend that the relevant authorities, including the Assembly, dismiss officials under their jurisdiction. Under the organic Law on the People's Advocate, there is no legal obstacle for this institution to address issues of protection against discrimination and equality before the law. However, with the establishment of CPD, the People's Advocate has been careful to avoid discrimination cases and to address only those issues where allegations of the violation of other human rights have been raised.¹²

Albania has not adopted a general strategy on combating discrimination. However, there are sectorial strategies, such as: the *National Action Plan for LGBTI Persons in the Republic of Albania, 2016-2020*;¹³ *Social Protection Strategy*;¹⁴ *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*;¹⁵ *National Strategy on*

¹⁰ Hoxhaj, E. and Baraku, I. (2014) 'The burden of proof in the administrative process in Albania', *European Scientific Journal*, Vol.10, No 10, 2014.

¹¹ Albania, Law on the People's Advocate, No.8454, dated 04.02.1999, supplemented by law no. 8600, dated 10.04.2000, amended by law no. 9398, dated 12.05.2005, added to and as amended by law 155/2014, dated 27.11.2014.

¹² People's Advocate (2019), *Annual Report 2018*, p.24.

<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raport%20Vetor%202018.pdf>.

¹³ Government of Albania (2016), *National Action Plan for LGBTI Persons in the Republic of Albania, 2016-2020*, March 2016. <https://shendetesia.gov.al/wp-content/uploads/2019/01/Plani-LGBTI-2016-2020-KM.pdf>.

¹⁴ Government of Albania (2015), *National Strategy for Social Protection 2015-2020*, approved by the Council of Ministers Decision no. 1071, dated 23.12.2015. http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Strategjia_Kombetare_per_Mbrojtjen_Sociale_2015-2020.pdf.

¹⁵ Government of Albania (2015), *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*, approved by the Council of Ministers Decision no.1072, dated 23.12.2015. http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_kombetar_i_veprimit_per_integrimin_e_Romeve_dhe_Egjiptianeve_2016-2020.pdf.

Gender Equality and Action Plan 2016-2020;¹⁶ and the *National Action Plan for Persons with Disabilities 2016-2020*.¹⁷ These strategic documents for social protection and protection against discrimination have been drafted through a long process of consultation with public institutions, independent bodies (the People's Advocate and the Commissioner for Protection from Discrimination) and NGOs, based on the procedures provided for by the Law on public consultation.¹⁸

The adoption of several laws and amendments to existing legislation is expected to guarantee a higher level of anti-discrimination legislation enforcement:

- The new Law No. 111/2017, on legal aid guaranteed by the state¹⁹ has included victims of discriminatory behaviour as beneficiaries of secondary assistance.
- Law No. 22/2018 on social housing, covers, among others, persons with disabilities, persons of the Roma and Egyptian communities, persons of the LGBT community, asylum seekers, victims of domestic violence, victims of trafficking and potential victims of trafficking, elderly people who have reached retirement age and are not selected to be sheltered in public social care institutions, individuals with orphan status, from the moment of exit from social care centres and up to the age of 30 (the points system for the priority of specified groups is based on different criteria, including family conditions).
- Law No. 9669/18.12.2006, on measures against violence in family relations, harmonises the definitions of some concepts with those of the Istanbul Convention, including the obligation that the implementation of the provisions of the law, in particular the measures for the protection of the rights of victims, must be provided without discrimination, for any reason provided by the legislation in force for the protection against discrimination.

6. Equality bodies

The Law on protection from discrimination, proposed by a group of MPs, in support of a request from civil society, provides for the establishment of an independent institution to be known as the Commissioner for Protection from Discrimination (CPD). The CPD began operating on 21 May 2010.²⁰ The CPD deals with both public and private sectors, takes decisions and can impose sanctions. The constitutional amendments of 2016 provided for the Commissioner for Protection from Discrimination as a legitimate party to take recourse to the Constitutional Court.

In Albania, the designated body does not form part of a body with multiple mandates. It is an independent institution, elected by the Assembly. The responsibilities of the commissioner are fully in compliance with the requirement of Article 13 of the Racial Equality Directive and they can be classified as follows:

- to examine complaints and conduct administrative investigations after receiving reliable information on violations of the law, file a written opinion based on a

¹⁶ Government of Albania (2016), *National Strategy on Gender Equality and Action Plan 2016-2020*, October 2016. <http://www.shendetesia.gov.al/wp-content/uploads/2018/06/SKGJB-AL-web.pdf>.

¹⁷ Government of Albania (2016), *National Action Plan for Persons with Disabilities 2016-2020*, approved by the Council of Ministers Decision no.483, dated 29.06.2016. http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_PAK_.pdf.

¹⁸ Albania, Law No. 146/2014, on notification and public consultation. <http://www.idp.al/legjislacionnjoftimi-dhe-konsultimi-publik/#>.

¹⁹ Albania, Law No.111/2017, on legal aid guaranteed by the state, adopted on December 14, 2017, entered into force on 1 June 2018. <http://www.qbz.gov.al/Botime/Akteindividuale/Janar%202017/Fletore%20241/LIGJ%20nr.%20111-2017,%20date%2014.12.2017.pdf>.

²⁰ Assembly of the Republic of Albania, Decision No. 33, dated 22.04.2010, on the election of the Commissioner for Protection from Discrimination and Decision No. 34, dated 20.05.2010, on approval of the structure, organisation and categorisation of job positions of the Office of the Commissioner for Protection from Discrimination.

- request of the court to examine the case, represent the applicant in judicial bodies with his consent in accordance with Article 34(3) of the law;
- to promote the principle of equality and non-discrimination, to be particularly aware of and informed on these issues, to monitor and conduct surveys concerning discrimination;
 - to make recommendations proposing the adoption of new legislation or reform of existing legislation, to publish reports and make recommendations on any matter relating to discrimination.

In 2018, changes to the structure of the CPD by the Assembly led to an increase in the number of employees and the budget of the institution, including the creation of regional offices.

7. Key issues

- The Law on protection from discrimination is fully in line with the requirements of the directives in relation to:
 - the definitions of direct and indirect discrimination;
 - the definitions of all forms of discrimination such as instruction to discriminate, harassment, discrimination by association, denial of reasonable accommodation;
 - the protected grounds, given that the LPD provides an open list of grounds and goes beyond the grounds covered by the directives;
 - the fields covered by law, where the LPD goes beyond the fields covered by the directives.
- The Law on protection from discrimination requires amendments to address the following issues:
 - provision of a standalone definition of discrimination, which is not limited to discrimination occurring in the context of other fundamental rights;
 - setting out definitions of the protected grounds, such as nationality (in sense of citizenship) and other forms of discrimination, such as segregation and multiple/intersectional discrimination;
 - shifting of the burden of proof in procedures before the Commissioner for Protection from Discrimination;
 - providing clear procedures to implement the duty to conduct conciliation procedures in practice.
- The Code of Civil Procedure requires an amendment regarding the shifting of the burden of proof in discrimination cases in the private sector, (not including those in the field of employment), such as discrimination cases in respect of goods and services offered by private bodies.

Good practice

The organisation of community open days by the Commissioner for Protection from Discrimination is a very positive action, which has helped to raise awareness in society in general and among the most vulnerable groups in particular, of the protection provided by the LPD and to make it possible for those who are in difficult economic and social conditions to file complaints, eliminating obstacles to addressing cases of discrimination.

INTRODUCTION

The national legal system

Albania is a parliamentary republic. The Republic of Albania is a unitary and indivisible state. Governance is based on a system of elections that are free, equal, general and periodic.

According to the Constitution, the law constitutes the basis and the boundaries of the activity of the state. The Constitution is the highest law in the Republic of Albania and is directly applicable, except when the Constitution provides otherwise. According to Article 5, 'The Republic of Albania applies international law that is binding upon it'. In the hierarchy of norms, international law stands immediately after the Constitution. According to Article 116 on normative acts, ratified international agreements are directly applicable, unless they are not enforceable and require the adoption of special laws. However, courts usually refuse to apply the international agreements directly and instead use them to interpret national law.

The system of government in the Republic of Albania is based on the separation and balancing of legislative, executive and judicial powers. The judicial system has two levels (first instance and appeal level) and the High Court operates as a third level.

The Constitutional Court decides, among other things, on: compatibility of the law with the Constitution or with international agreements; compatibility of international agreements with the Constitution, before their ratification; compatibility of normative acts of the central and local bodies with the Constitution and international agreements.

For example, the Constitutional Court of the Republic of Albania has argued that the concept of 'reasonable adaptation' and the terminology 'excessive burden' are reflected in the content of specific legal provisions (Article 3(7) of the LPD), without any distinction from the definitions given by the United Nations Convention on the Rights of Persons with Disabilities, Directive 2000/78 of the European Council, the jurisprudence of the European Court of Human Rights and anti-discrimination legislation in other countries in the region. Also, in the Court's assessment, the absence of criteria defining an 'excessive burden' in the law does not create any incompatibility with the Constitution, as there are implementing and monitoring bodies for the observance of this law, which will be able to interpret 'reasonable adaptation' on a case-by-case basis.²¹

List of main legislation transposing and implementing the directives

Albanian Constitution²² (date of adoption: 21.10.1998) – the grounds covered: closed-ended list of grounds - gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry. The material scope covers all fields.

Law on protection from discrimination (LPD) (date of adoption: 04.02.2010) – the grounds covered: open list of protected grounds (gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic

²¹ Constitutional Court of the Republic of Albania, *Albania's Blind Association and the National Council of People with Disabilities*, Decision No. 48 dated 15.11.2013 (V-48/13).
http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php.

²² Albania, Constitution of Republic of Albania, 1998, amended in 2007, 2008, 2012, 2015 and 2016.
<https://euralius.eu/index.php/en/library/albanian-legislation/send/9-constitution/178-constitution-of-the-republic-of-albania-en>.

predispositions, disability, affiliation with a particular group or for any other grounds). The material scope covers all fields (education, employment, goods and services).

Labour Code²³ (date of adoption: 12.07.1995) - the grounds covered: open list of protected grounds (gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parentage, parental responsibility, age, family or marital status, health status, genetic predispositions, disability, living with HIV/AIDS, union or affiliation with trade union organisations, affiliation to a particular group, or any other cause). The material scope covers employment.

Administrative Procedure Code²⁴ (date of adoption: 30.04.2015) – the grounds covered: an open list of grounds (gender, race, colour, ethnicity, nationality, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parentage, parental responsibility, age, family or marital status, place of residence, health status, genetic predisposition, disability, belonging to a particular group or any other grounds). The material scope covers all fields in the public sphere.

Law on the protection of national minorities in the Republic of Albania²⁵ (date of adoption: 13.10. 2017) – the grounds covered: cultural, ethnic, or linguistic grounds. The material scope: shall be entitled to equal and effective participation in public, cultural, social and economic life.

Law on the inclusion of and accessibility for persons with disabilities²⁶ (date of adoption: 24.07. 2014) – the grounds covered: disability. The material scope: all fields.

²³ Albania, Law No. 7961/1995, Labour Code, amended in 2003, 2008, 2015.

²⁴ Albania, Law No. 44/2015, Administrative Procedure Code.
<https://euralius.eu/index.php/en/library/albanian-legislation/send/6-administrative-procedure-code/229-code-of-administrative-procedure-en>.

²⁵ Albania, Law No.96/2017, on the protection of national minorities in the Republic of Albania.

²⁶ Albania, Law No.93/2014, on the inclusion of and accessibility for persons with disabilities.
<https://shendetesia.gov.al/wp-content/uploads/2019/01/Liqji-nr.-93-PËR-PËRFSHIRJEN-DHE-AKSESUESHMËRINË-E-PERSONAVE-ME-AFTËSI-TË-KUFIZUARA.pdf>.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Albania deals with non-discrimination in Article 18:

1. All are equal before the law.
2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage.
3. No one may be discriminated against for reasons mentioned in paragraph 2 without a reasonable and objective justification.²⁷

The Constitution provides a closed list of protected grounds, which does not include age, sexual orientation and disability. Despite the wording 'reasons such as...', the list of protected grounds is not open-ended. There is no relevant case law on the protected grounds.

In 2016, during the process of the implementation of the justice reform in Albania, the first draft of amendments to the Albanian Constitution introduced sexual orientation as a protected ground under the Constitution. This led to a strong reaction by the public and lawyers who linked the change to the possibility of allowing 'gay' marriage (as this could lead to the Family Code being challenged as unconstitutional, given its legal provision of the institution of marriage). This point of view was supported by some MPs who conditioned their vote on the constitutional changes on the removal of the relevant amendment from the draft.

The provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives, as the Constitution does not specify the areas but provides only a general obligation to respect the principle of equality and non-discrimination.

The provisions of the Constitution are directly applicable, except when the Constitution provides otherwise (Article 4).

'The fundamental rights and freedoms and the duties set out in the Constitution also apply to legal persons, so long as they comport with the general purposes of these persons and with the core of these rights, freedoms and duties' (Article 16(2)). [official translation]

²⁷ Albania, Constitution of Republic of Albania, 1998, amended in 2007, 2008, 2012, 2015, 2016. <https://euralius.eu/index.php/en/library/albanian-legislation/send/9-constitution/178-constitution-of-the-republic-of-albania-en>.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the main legislation transposing the two EU anti-discrimination directives:

- **The Albanian Constitution:**²⁸ Gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage.
- **The Law on protection from discrimination (LPD):** gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other grounds.
- **Labour Code:**²⁹ gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parentage, parental responsibility, age, family or marital status, health status, genetic predispositions, disability, living with HIV / AIDS, union or affiliation with trade union organisations, affiliation to a particular group, or any other cause.
- **Criminal Code:**³⁰ Article on crimes against humanity (Article 74) covers political, ideological, racial, ethnic and religious grounds; Article on insult based on racist or xenophobic motives through computer systems (Article 119(b)) covers ethnicity affiliation, race, religion; Article on violation of equality of citizens (Article 253) covers origin, sex, sexual orientation or gender identity, health status, religious and political beliefs, trade union activity, ethnic, national, racial or religious affiliation; Article on promoting hatred or strife (Article 265) covers race, ethnicity, religion or sexual orientation.
- **Administrative Procedure Code:**³¹ Article on the principle of equality and non-discrimination covers gender, race, colour, ethnicity, nationality, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parentage, parental responsibility, age, family or marital status, place of residence, health status, genetic predisposition, disability, belonging to a particular group or any other grounds (Article 17).
- **Criminal Justice Code for Juveniles:**³² Article on the principle of protection from discrimination covers gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social status, pregnancy, parentage, parental responsibility, family or marital status, marital status, place of residence, health status, genetic predispositions, disability, affiliation to a particular group and any other condition of the juvenile, parents or legal representatives of the juvenile (Article 11).
- **Law on the protection of national minorities in the Republic of Albania:**³³ The law prohibits discrimination against any person due to his or her affiliation to a national minority (Article 8(1)).
- **Law on the organisation and functioning of the prosecutor:**³⁴ Article on objectivity and equality covers gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, gender identity, sexual orientation, economic

²⁸ Albania, Constitution of Republic of Albania, 1998, amended in 2007, 2008, 2012, 2015, 2016.

²⁹ Albania, Law No. 7961/1995, Labour Code, amended in 2003, 2008, 2015.

³⁰ Albania, Law No. 7895 dated 27.1.1995, amended in 2013.

³¹ Albania, Law No. 44/2015, "Administrative Procedure Code in the Republic of Albania".
<https://euralius.eu/index.php/en/library/albanian-legislation/send/6-administrative-procedure-code/229-code-of-administrative-procedure-en>.

³² Albania, Law No. 37/2017, Criminal Justice Code for Juveniles.

³³ Albania, Law No. 96/2017, on the protection of national minorities in the Republic of Albania.

³⁴ Albania, Law 97/2016, on the organisation and functioning of the prosecutor.

- status, property, education, birth, disability, social origin, parentage or other grounds (Article 8).
- **Law on pre-university education system:**³⁵ Article on the right to education covers gender, race, colour, ethnicity, language, sexual orientation, political or religious beliefs, economic or social condition, age, residence, disability or other grounds as defined in Albanian legislation (Article 5(1)).
 - **Law on the rights and protection of the child:**³⁶ The article on general principles provides for: equality, non-discrimination and ensuring stability and continuity in the care, upbringing and education of children, bearing in mind the child's ethnic, religious, cultural and linguistic formation (Article 5(3) and 5(11)).
 - **Law on the inclusion of and accessibility for persons with disabilities:**³⁷ The article on principles provides for the non-discrimination of persons with disabilities.
 - **Law on social care services:**³⁸ Article on definitions covers gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parentage, parental responsibility, age, family status or marital status, health status, genetic predisposition, disability, affiliation to a particular group, or any other grounds (Article 3); Article on the principles covers any grounds provided by the legislation on the protection from discrimination in Albania (Article 4(ë)).
 - **Law on social housing:**³⁹ The article on the non-discrimination principle covers: gender, race, colour, religion, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational, social status, pregnancy, affiliation and/or parental responsibility, family or marital status, health, genetic predispositions, disability, belonging to a particular group, and any condition that has discriminatory consequences (Article 10).
 - **Law on legal assistance guaranteed by the State:**⁴⁰ Article on general principles provides for the principle of equality and non-discrimination, without specifying the protected grounds.
 - **Law on mental health:**⁴¹ Article on protection from discrimination, provides for the protection of persons with mental health disorders from discriminatory behaviour, based on this law and the legislation in this field (Article 8).
 - **Law on audio-visual media in Albania:**⁴² The law prohibits the transmission of programmes with content that promotes hatred based on race, gender, religion, ethnicity, nationality or any other form of discrimination.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

The protected grounds are only listed in Article 1 of the LPD, under the heading, 'Object'. However, having an open list of protected grounds ensures the ability to address cases of discrimination based on 'other grounds'.

Although the Law on protection from discrimination contains a section on definitions, there are no definitions for any of the grounds of discrimination protected by this law.

Albania has ratified many international treaties and documents such as: the European Convention on Human Rights, the Framework Convention on National Minorities, the United Nations Covenant on Civil and Political Rights, the United Nations Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of all Forms of

³⁵ Albania, Law 69/2012, on the pre-university education system in the Republic of Albania.

³⁶ Albania, Law 69/2012, on the rights and protection of the child.

³⁷ Albania, Law 93/2014, on the inclusion of and accessibility for persons with disabilities.

³⁸ Albania, Law 121/2016, on social care services.

³⁹ Albania, Law 22/2018, on social housing.

⁴⁰ Albania, Law 111/2017, on legal assistance guaranteed by the State.

⁴¹ Albania, Law 44/2012, on mental health.

⁴² Albania, Law 97/2013, on audio-visual media in Albania.

Discrimination Against Women, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

The authorities can take into consideration their interpretation of the discrimination grounds, including jurisprudence such as the case law of the Court of Strasbourg and the CJEU.⁴³

a) Racial or ethnic origin

Race, ethnicity, language are protected grounds under the Constitution, whereas the LPD also mentions colour, or affiliation to a particular group.

The national minorities in the Republic of Albania are the Greek, Macedonian, Aromanian, Roma, Egyptian, Montenegrin, Bosnian, Serbian and Bulgarian minorities. The definition of 'national minority' is provided by the Law on the protection of national minorities in the Republic of Albania:⁴⁴

'A national minority is a group of Albanian citizens residing in the territory of the Republic of Albania, who have early and stable ties with the Albanian state, exhibit distinctive cultural, ethnic, linguistic, religious or traditional characteristics and who are willing to express, preserve and jointly develop their distinct cultural, ethnic, linguistic, religious or traditional identity' (Article 3(2)).

The Law on the protection of national minorities in the Republic of Albania does not provide a definition for each specific minority. The law recognises the right of self-identification as a member of a minority. Information on some of the minorities can be found on the official website of the State Committee for Minorities.⁴⁵

Since the Law on the protection of national minorities was adopted in 2017, the lack of definitions has led to uncertainty in addressing discrimination cases. Similar cases of discrimination against Roma people have sometimes been considered on the ground of colour and sometimes on the ground of race or ethnicity. The Commissioner for Protection from Discrimination confirms that the largest number of complaints are for discrimination on the ground of race, predominantly raised by the Roma and Egyptian communities (colour is also a related ground of discrimination). These are classified as racial discrimination in the meaning of ECRI.⁴⁶

However, as the LPD provides an open list of protected grounds, any person can be protected from discriminatory behaviour, even if they do not belong to a recognised national minority.

b) Religion and belief

The term 'religion' is not defined in national law on discrimination.

The Republic of Albania has no official religion. Relations between the state and religious communities are regulated by agreements between their representatives and the Council of Ministers, which are ratified by the Assembly. Under Article 10(2) and (3) of the

⁴³ Baraku, I. and Hoti P. (2013), 'The concept of discrimination and other concepts related to it in the Albanian legislation – comparative overview with the EU directives in the anti-discrimination field', *4th International Conference on European Studies – Social, Economic and Political Transition of the Balkans*, EPOKA University, Tirana, 8-9 November 2013.

⁴⁴ Albania, Law No. 96/2017, on the protection of national minorities in the Republic of Albania. <http://www.qbz.gov.al/Botime/Akteindividuale/Janar%202017/Fletore%20196/Liqj%20nr.%20962017,%20date%2013.10.2017.pdf>.

⁴⁵ See http://www.minoritetet.gov.al/?page_id=1388 for Roma people.

⁴⁶ Commissioner for Protection from Discrimination (2015), *Annual Report 2014*, p. 33. <http://kmd.al/wp-content/uploads/2019/03/Raporti-Vietor-2014.pdf>.

Constitution, the state recognises the equality of religious communities, being neutral in questions of belief and conscience.

According to Article 24(1) and (2) of the Constitution, freedom of conscience and religion is guaranteed, including the right of everyone to choose or to change their religion or beliefs. Under the Constitution, everyone has the right to express their religion or beliefs, individually or collectively, in public or private life, through worship, education, practices or the performance of rituals. Furthermore, no one may be prohibited from or compelled to take part in a religious community or its religious practices or to make his beliefs or faith public (Article 24(2) and (3)). The state guarantees the freedom of expression of belief and conscience in public life (Article 10(2)).

The LPD has a similar provision regarding protection from discrimination on the ground of religious beliefs. Under Article 10 on 'Conscience and religion', discrimination is prohibited in connection with the exercise of freedom of conscience and religion, 'especially when it has to do with their expression individually or collectively, in public or private life, through worship, education, practices or the performance of rites'.

c) Disability

There is no definition of disability in the LPD. However, Article 3(11) of the Law on social care services⁴⁷ (based on Article 1 of the Convention on the Rights of Persons with Disabilities) stipulates that a 'person with disabilities' means an individual, child or adult, with physical, mental, intellectual or long-term sensory impairments, which in interaction with different barriers, may impede his/her full and effective participation in society just as the rest of society. Also, Article 3/9 of the Law on the inclusion of and accessibility for persons with disabilities⁴⁸ defines 'persons with disabilities' as individuals who have long-term physical, mental, intellectual or sensory impairments, which, in conjunction with various barriers, including environmental and residence, may hinder the full and effective participation of these persons in society, on equal terms with others. The law on the pre-university education system in the Republic of Albania defines a 'disabled student' as someone having a long-term physical, mental, sensual, attitude-related deficiency, or a combination thereof, which, in concert, may prevent him from fully and equally participating in education and social life (Article 2(16)).

The Law on mental health⁴⁹ provides protection from discriminatory behaviour for persons with mental health disorders (Article 8). The law defines the terms 'mental health' and 'mental health disorder'.

d) Age

This term 'age' is not defined in national discrimination law or any other national legal act.

e) Sexual orientation

There is no definition for sexual orientation in national discrimination law (LPD) or any other national law. However, appendix 3 of the *National Action Plan for LGBTI people in the Republic of Albania, 2016-2020*, gives definitions of certain concepts such as gay, bisexual, heterosexual/straight, transsexual people, intersex people, gender identity, gender orientation.

⁴⁷ Albania, Law 121/2016, on social care services.

⁴⁸ Albania, Law No.93/2014 on the inclusion of and accessibility for persons with disabilities.

⁴⁹ Albania, Law 44/2012, on mental health.

Gender orientation describes the gender (or genders) to which a person is emotionally and physically attracted. For example, a person attracted to the opposite sex describes her sexual orientation as straight.⁵⁰

2.1.2 Multiple discrimination

In Albania, multiple discrimination is not prohibited in the law.

However, during 2018, the CPD dealt with cases in which the complainants claimed more than one ground of discrimination.⁵¹ The report does not provide information about the number of cases.

In Albania, there is no case law dealing with multiple discrimination.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Albania, discrimination based on a perception or assumption of a person's characteristics is partly prohibited in the LPD. The law does not explicitly define discrimination based on a perception or assumption of a person's characteristics as a type of discrimination. However, Article 3(4) of the LPD contains a prohibition of 'discrimination because of association' with persons who belong to the groups mentioned in Article 1 or 'because of a supposition of such an association'.

b) Discrimination by association

In Albania, discrimination based on association with persons with particular characteristics, is prohibited in national law. Article 3(4) of the LPD defines 'discrimination because of association' as a form of discrimination that occurs when there is a distinction, limitation or preference, because of association with persons who belong to the groups mentioned in Article 1 of the law, or because of a supposition of such an association.⁵²

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Albania, direct discrimination is prohibited in national law on discrimination. It is defined.

The definition set out under Article 3(2) of the LPD is as follows:

“Direct discrimination” is that form of discrimination that occurs when a person or group of persons is treated in a less favourable manner than another person or another group of persons in a situation that is the same or similar, based on any ground mentioned in article 1 of this law.’

That definition is in line with the requirements of the EU directives.

⁵⁰ Government of Albania (2016), *National Action Plan for LGBTI people in the Republic of Albania, 2016-2020*, p 49. <https://rm.coe.int/16806b51ca>.

⁵¹ Commissioner for Protection from Discrimination (2019), *Annual Report 2018* <http://kmd.al/wp-content/uploads/2019/03/RAPORTI-VJETOR-2018.pdf>.

⁵² Although Article 1 of the LPD lists grounds of discrimination rather than protected groups, Article 3(4) refers to 'persons who belong to the groups mentioned in Article 1'.

A study on the legislative framework on anti-discrimination in Albania, conducted in 2016, found that despite the fact that the forms of discrimination (harassment, victimisation, discrimination on the grounds of association, instruction to discrimination etc.) are completely in line with the requirements of the EU directives, they seem to be applied only as a source of interpretation for different forms of discrimination and not as standalone provisions. That is because the definition of 'discrimination' and the protection against discrimination are related to fundamental rights and freedoms. Article 3(1) of the LPD provides a general definition of discrimination as follows:

“Discrimination” is any distinction, exclusion, restriction or preference, based on any ground mentioned in Article 1 of this law, which has as a purpose or consequence hindering or making impossible the exercise in the same manner as others of the fundamental rights and freedoms recognised by the Constitution of the Republic of Albania, the international acts ratified by the Republic of Albania, as well as the laws in force.’

However there are other provisions that go beyond this limitation, in respect of the responsibilities of the Commissioner from Protection from Discrimination, which includes ensuring equality of the opportunities and effective protection from any form of discrimination (Article (2)).⁵³

b) Justification for direct discrimination

Article 6(1) of the LPD contains a general provision entitled 'Justified different treatment', which provides that the prohibition of discrimination is not applicable in cases where there is an objectively justifiable purpose. This article refers to the obligation that the different treatment has a basis in the Constitution, international acts or agreements ratified by the Republic of Albania and the legislation in force.

As mentioned above, there are tests that must be satisfied to justify such difference in treatment, which include: objective justification, proportionality, legitimate aim, appropriateness and necessity, and genuine and determining occupational requirement.

2.2.1 Situation testing

a) Legal framework

In Albania, the national law on discrimination (LPD) is silent regarding situation testing. It does not clearly permit or prohibit situation testing.

b) Practice

In Albania, situation testing is very rarely used in practice.

The Albanian Disability Rights Foundation (ADRF) decided to test the knowledge and implementation of the provisions of the Electoral Code in respect of people with disabilities. Initially, some people with disabilities were voluntarily selected to raise an issue before the CPD. A request was made to the municipality of Vlora, identifying people with disabilities and their need for a voting centre that was physically suitable. The letter was also sent to the Central Election Commission (CEC) at the same time. On election day, it was proven that no measures had been taken by the institutions regarding the application under the Electoral Code. One of the voting centres was on the second floor, contrary to CEC decisions. People with disabilities involved in the testing situation filed a complaint to the CPD and were assisted throughout the process by the ADRF. At the end

⁵³ Vorpsi, A. and Wladasch K. (2016), 'The legislative framework on anti-discrimination in Albania', December 2016, part of a joint EU/CoE Project entitled 'Enhancing the effectiveness of the Albanian system of human rights protection and anti-discrimination'.

of the administrative process, the commissioner found discrimination due to disability in relation to the right to vote.

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Albania, indirect discrimination is prohibited in national law. It is defined.

Article 3(3) of the LPD provides that,

“indirect discrimination” is that form of discrimination that occurs when a provision, criterion or practice, apparently neutral, would put a person or group of persons in unfavourable conditions, in connection with the grounds set out in article 1 of this law, in relation to a person or another group of persons, and also when that measure, criterion or practice is not objectively justified by a legitimate aim, or when the means of achieving that aim either are not appropriate or are not essential and in fair proportion with the condition that has caused it.’

The Commissioner for Protection from Discrimination dealt with a complaint of discrimination due to ‘disability’ and ‘economic status’ by the Electricity Distribution Operator (EDO). The complainant's family consists of four people, the spouses are unemployed, and their 15-year-old son suffers from autism. The income of this family consists of economic aid, as well as the payment of disability care assistance for their son. The complainant is the debtor of EDO and asked to be included in its mitigation schemes for vulnerable groups. The Supervisory Council of EDO includes the complainant in the category of a vulnerable group and thus a potential beneficiary of such schemes, but its decision no. 64, of 27 December 2017, provides for the implementation of these schemes only for debts created by 31 December 2016, thus excluding the family from the mitigation scheme, as the family’s debts were accrued after this date.

The CPD argued that families belonging to vulnerable categories with debts should be treated in the same way, regardless of the period during which they accumulated debts. In this context, the commissioner believes that decision No. 64 of the Supervisory Council of EDO on the approval of schemes for payment by instalment of electricity arrears by those under the category of vulnerable family/non-family clients has exposed the complainant as well as those families who receive economic assistance and have a person with disabilities, with debts accrued after 31 December 2016, to unfair, unequal and disadvantageous treatment.

The abovementioned decision of the Supervisory Council of EDO, in setting an unreasonable timeframe rather than fulfilling a specific purpose, meets the test of indirect discrimination. In the specific case, it is true that the time criterion affects all citizens without any distinction, but it is precisely the disadvantageous consequences that it has for the categories of people in need (whose only income is from state aid or who are unemployed), who are unable to pay the energy they consume and the debt they have accumulated for previously consumed energy, that makes it discriminatory.

The CPD has also taken into consideration the jurisprudence of the European Court of Human Rights (ECtHR) on issues such as *Biao v Denmark* or *DH and others v the Czech Republic* (2006). The CPD found indirect discrimination because of ‘disability’ and ‘economic status’ and ordered the provision of necessary measures to regulate the discriminatory situation by amendment of the decision or through the adoption of a new decision. The EDO implemented the decision of the commissioner by adopting a new decision (decision No. 41), which removed the discriminatory situation.⁵⁴

⁵⁴ Decision of CPD, No. 258, dated 20.12.2018

b) Justification test for indirect discrimination

The LPD makes no distinction between the justification of direct and indirect discrimination. Therefore, the same general and specific exceptions pertain to both types.

2.3.1 Statistical evidence

a) Legal framework

In Albania, there is legislation regulating the collection of personal data.

Under the Law on official statistics, the statistical service is provided by: the Institute of Statistics (INSTAT); statistical agencies as provided for by the Law on the production of official statistics; statistics departments in ministries and other central institutions; legal and physical persons.⁵⁵ Article 2 defines the term 'confidential data', which is data that allows direct or indirect identification of statistical units, thus revealing individual data. Also, under Article 4(d), the law provides, as a principle of official statistics, the prevention of the use of the data obtained for non-statistical purposes and prohibits their unauthorized disclosure. It provides that 'statistical confidentiality' is the protection of data related to specific statistical units, which are taken directly or indirectly for statistical purposes from administrative or other sources.

According to Article 35 of the Constitution, no one may be obliged to make public the data connected with his person; everyone has the right to become acquainted with data collected about him; the collection, use and making public of data about a person is done with his consent. Exceptions can be made for circumstances provided by law.

Albania adopted the Law on the protection of personal data in 2008.⁵⁶ The law has been amended several times since then. A definition of personal data is provided under Article 3:

- "Personal data" shall mean any information relating to an identified or identifiable natural person. Elements used to identify a person directly or indirectly are numbers or other factors specific to his physical, psychological, economic, social and cultural identity etc.
- "Sensitive data" shall mean any piece of information related to the natural person in referring to his racial or ethnic origin, political opinions, trade union membership, religious or philosophical beliefs, criminal prosecution, as well as with data concerning his health and sexual life.'

When handling a complaint for discrimination on the ground of sexual orientation (by publishing the sexual orientation of the complainant), the CPD requested the opinion of the Commissioner for Personal Data Protection regarding the responsibilities of the parties, the media and the Tirana Police on their rights to publish personal data. The Commissioner for Personal Data Protection stated that: 'As controller of personal and sensitive data of the complainant, the private televisions and the newspapers have processed the sensitive personal data of this subject in violation of Article 7 of Law no. 9887, dated 10.03.2008 on the protection of personal data'.⁵⁷

As mentioned, the definition of 'sensitive data' does not include genetic and biometric data, but does include data on a person's history of criminal prosecution.

⁵⁵ Albania, Law No. 17/2018 on official statistics.

⁵⁶ Albania, Law No. 9887 dated 10.03.2008 on the protection of personal data, amended by Law No. 48/2012, No. 120/2014

⁵⁷ Decision of the CPD, No. 97, dated 07.10.2013.

In Albania, the anti-discrimination law is silent on using statistical evidence in order to establish indirect discrimination. Therefore, it would be possible to use statistical evidence in discrimination cases. Statistical evidence is not mentioned in provisions regulating the procedure before the CPD or in other procedural laws.

b) Practice

In Albania, statistical evidence in order to establish indirect discrimination is used in practice (for example by the CPD).

When handling a discrimination complaint on the ground of sexual orientation (by publishing the sexual orientation of the complainant), the CPD monitored (during March 2013) the use of personal data of juvenile victims, suspects or wanted persons by three daily newspapers. The CPD identified 241 articles on criminal offences and civil cases. In 62 cases, the initials of juvenile victims, suspects or wanted persons were used, while in 174 cases the reported information contained their personal data. In five cases, two of the newspapers reported criminal offences and identified the personal data of the defendants and their personal characteristics (health condition and race). Based on the above data, the commissioner noted that the press (the newspapers monitored) had a tendency to publish information, using personal characteristics not only related to sexual orientation, but also to other personal characteristics, such as health status or affiliation with the Roma community, although these characteristics were not relevant to the offence. The Commissioner for Protection from Discrimination found that the practice established by these newspapers can contribute to the establishment of negative, aggressive and discriminatory attitudes against people or communities in Albania, based on their personal characteristics.⁵⁸

Statistics are widely used for drafting strategic policy documents and action plans.

Statistics are not used in litigation.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Albania, harassment is clearly prohibited in national law. It is defined.

Article 3(5) of the LPD sets out 'Annoyance' as a form of discrimination – it is undesirable conduct, when it is related to any of the protected grounds mentioned by the LPD, which has the purpose or effect of violating the dignity of a person and the creation of an intimidating, hostile, degrading, humiliating or offensive environment for that person, as well as in the case of a less favourable treatment performed as a result of an objection or failure to submit by the person affected by such a behaviour.

Article 17(3) of the LPD on prohibition of discrimination in education provides that, 'Every kind of annoyance is prohibited, especially annoyance of students, pupils and employees in educational institutions.'

The national law on discrimination (LPD) uses the term 'annoyance' (*shqetësim*), rather than 'harassment' (*ngacmim*). However, the definition of 'annoyance' has the same definition as 'harassment' and is completely in line with the directives.

⁵⁸ Decision of the CPD, No. 97, dated 07.10.2013.

Chapter VII of the Labour Code,⁵⁹ on 'Protection of personality' provides that the employer is liable to respect and protect the personality of the employee in work relations, as follows:

- It takes all the necessary measures to stop the moral harassment committed by him and other employees, and shall display the provisions on moral and sexual harassment and the relevant sanctions (Article 32(1)(b)).
- The employer is prohibited from taking any action that constitutes sexual harassment for the employees and does not allow such actions to be carried out by other employees (Article 32(2)).
- The employer is prohibited from harassing the employee with actions aimed at or resulting in the degradation of working conditions, to such a degree that it may lead to the violation of the rights and dignity of the person, to the impairment of his or her physical or mental health or to the detriment of his/her professional future (Article 32(3)).

The Labour Code (Article 32(2)) defines sexual harassment as any unwanted form of behaviour expressed in words or physical and symbolic actions of a sexual nature, which is intended or results in the violation of personal dignity, in particular when it creates a threatening, hostile, humiliating, contemptuous or offensive environment, carried out by the employer against an employee, a jobseeker for work or between employees.

The Labour Code guarantees the rights of the employee or any person who identifies or receives information from an employee who may have been subject to the prejudice of his/her rights. The employee must immediately alert the employer or the relevant structures. They must not be penalised for this reason, dismissed from work, discriminated against, or become victims of sexual harassment and annoyance (Article 32(6)). The law provides for the shifting of the burden of proof between the employer and the employee (Article 32(5)). According to this article, if the employee presents facts proving harassment, then the employer must prove that their actions did not aim to harass, and to indicate the objective elements that are not related to harassment or annoyance.

The Criminal Code, under Article 108(a) on sexual harassment, provides:

'Committing actions of a sexual nature which infringe the dignity of a person, by any means or form, by creating a threatening, hostile, degrading, humiliating or offensive environment, shall constitute a criminal offence and is punishable with one to five years of imprisonment. When this offence is committed in complicity, against several persons, more than once, or against children, it shall be punishable by three to seven years of imprisonment.'

In Albania, harassment does explicitly constitute a form of discrimination (Article 3(5) of the LPD).

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Albania the employer is required to respond effectively and in compliance with the LPD in response to complaints received.⁶⁰

⁵⁹ Albania, Law No. 7961, dated 12.7.1995, Labour Code of the Republic of Albania, amended by Law No. 8085/1996; by Law No.9125/ 2003; by Law No. 10053/2008; by Law No. 136/2015.

⁶⁰ Article 12(2) of the LPD on the prohibition of discrimination in employment provides that 'every kind of annoyance is prohibited, including sexual annoyance, by an employer against an employee or an applicant for work or between employees.' Article 13 on the obligations of the employer, provides that the employer is obliged:

'a) to implement, protect and encourage the principle of equality and the prohibition of every kind of discrimination; b) to take necessary measures, including disciplinary measures, for the protection of employees from discrimination and victimisation, within one month from receiving knowledge [of them]; c)

The same liability is provided by the Labour Code (LC). However, the LPD and the LC are silent as to whether an employer could be held liable to pay damages to an employee who has been the victim of harassment/annoyance by another employee.

There is a general provision in the law on external contractual liability of state administration bodies, according to which the employer (a public administration body) indemnifies the injured party (natural or legal persons) from the employee who acted in bad faith. The employer is then entitled to claim from the employee the compensation it has paid to the injured party.⁶¹

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Albania, instructions to discriminate are prohibited in national law. Instructions are defined.

Article 3(6) of the LPD defines instruction to discriminate as an instruction or a request based on hierarchical relations to discriminate against one or more persons on the basis of the grounds mentioned in Article 1 of the LPD.

A study on the legislative framework on anti-discrimination in Albania, conducted in 2016, found that the prohibition of instruction to discriminate is completely in line with the requirements of the EU directives.⁶²

As mentioned above, in Albania, instructions explicitly constitute a form of discrimination.

b) Scope of liability for instructions to discriminate

In Albania, the instructor and the discriminator are liable.

Article 35 of the LPD provides for individual responsibility, which does not exclude the liability of the state or a private legal person.

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Albania, the duty on employers to provide reasonable accommodation for people with disabilities is included in the law and is defined.

Article 5(2) of the LPD provides that 'the denial of adaptations and modifications that are appropriate and necessary for persons with a disability constitutes discrimination.' Article

to respond effectively and in compliance with this law to complaints received because of discrimination committed by his employees, within one month from receiving them; the employer is also obliged to raise awareness about this law by posting it in public premises of the workplace as well as enabling a full understanding of it by his own means or with the assistance of specialised subjects.'

Article 19 of LPD provides that the director of an educational institution is responsible for taking necessary measures, including disciplinary measures, for the protection of employees from discrimination and victimisation, within one month from receiving knowledge [of them] (Article 19(c)).

⁶¹ Albania, Law No. 8510, date 15. 7. 1999, on external contractual liability of state administration bodies, as amended.

⁶² Vorpsi, A. and Wladasch K. (2016), 'The legislative framework on anti-discrimination in Albania', December 2016, part of the joint EU/CoE Project entitled 'Enhancing the effectiveness of the Albanian system of human rights protection and anti-discrimination'.

3(7) of the LPD provides a definition of a denial of a reasonable accommodation, as a form of discrimination that happens whenever there is

'a denial of or objection to make necessary and appropriate changes or adjustments that are necessary in a particular case and do not impose an excessive burden, in order to ensure the enjoyment and exercise, on an equal basis, of the fundamental rights and freedoms of persons with disabilities or which occurred in other conditions referred to in Article 1 of this Law.'

The amendments to the Labour Code in 2015 pay particular attention to the treatment and conditions for the employment of disabled people, providing an obligation on employers to take temporary positive measures. The unjustified denial of reasonable accommodation by the employer constitutes discrimination. Under Article 9(8) on the prohibition of discrimination, the Labour Code states:

'The employer is obliged to ensure a reasonable adaptation of the workplace for persons with disabilities or persons under other conditions, mentioned in paragraph 2 of this Article.'

In order to ensure reasonable accommodation, the employer must make the necessary and appropriate modifications and adjustments that are needed in specific cases that do not impose an excessive burden on them, in order to guarantee to these persons the enjoyment or exercise of the right to employment and occupation under conditions equal with others. Such a burden is not considered excessive for the employer, when the level of reasonable accessibility required is guaranteed by the applicable legal and sub-legal acts.

The Law on the inclusion of and accessibility for persons with disabilities includes a reasonable accommodation duty. Article 3(6) provides a general definition of denial of reasonable accommodation, which is

'that form of discrimination that occurs when it is a denial or objection to making the necessary and appropriate changes or adjustments that are necessary in a particular case without imposing an excessive burden in order to guarantee that persons with disabilities may enjoy and exercise, on equal terms with others, the fundamental human rights and freedoms.'

According to Article 16(2), the Commissioner for Protection from Discrimination is responsible for monitoring the implementation of the law in accordance with the Convention on the Rights of Persons with Disabilities, in compliance with the obligations set out in Law on the protection from discrimination.⁶³

National law does not define what would constitute a 'disproportionate burden' for employers.

b) Practice and case law

In practice, the availability of financial assistance from the state must be taken into account in assessing whether there is a disproportionate burden in the public sector. There is no case law on the duty of employers to provide (individualised) reasonable accommodation to persons with disabilities.

However, some institutions that offer critical services, such as health services, have to take all measures necessary to guarantee reasonable accommodation in general. In 2018, the People's Advocate sent a recommendation to the director of the Kukës Health

⁶³ Albania, Law No. 10 221, 4.2.2010.

Centre and the director of Shkodra Regional Hospital on taking measures to realise physical accessibility for persons with disabilities at the main entrance of these institutions, through building adaptations. The recommendations of the People's Advocate have been taken into consideration and implemented by the respective institutions.⁶⁴

c) Definition of disability and non-discrimination protection

There is no definition of disability in the LPD.

However the Article 3(11) of the Law on social care services states that, a person with disabilities means 'an individual, child or adult, with physical, mental, intellectual or long-term sensory impairments, which, in interaction with different barriers may impede his/her full and effective participation in society just as the rest of society.'⁶⁵

Article 3(9) of the Law on the inclusion of and accessibility for persons with disabilities defines 'persons with disabilities' as individuals who have 'long-term physical, mental, intellectual or sensory impairments, which, in conjunction with various barriers, including environmental and residence, may hinder the full and effective participation of these persons in society, on equal terms with others.'⁶⁶

d) Failure to meet the duty of reasonable accommodation for people with disabilities

In Albania, failure to meet the duty of reasonable accommodation in employment for people with disabilities does count as discrimination.

Article 5/2 of LPD provides that 'the denial of adaptations and modifications that are appropriate and necessary for persons with a disability constitutes discrimination.' According to the LPD, the denial of reasonable accommodation is provided as a free-standing form of discrimination. Under Article 9(8) of the Labour Code, the denial of reasonable adjustment by the employer constitutes discrimination. As mentioned above, the Labour Code provides for the shifting of the burden of proof in cases where the employee claims to have been a victim of discrimination in the exercise of the right to employment and profession (Articles 9(9) and 10).

The sanctions are provided by the LPD and do not differentiate between the several forms of discrimination prohibited by the law.

e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Albania, there is a legal duty to provide reasonable accommodation for people with disabilities outside the area of employment.

The article on the duties of the Council of Ministers and the Minister of Education and Science in the LPD places an obligation on these institutions to take measures for 'respecting and assuring the right to education in the languages of minorities, as well as in appropriate manners for persons with a disability' (Article 18(2)(ç)).

The LPD states that:

'It is prohibited for a natural or legal person who offers goods and services to the public not to accept or to oppose the realisation of changes or accommodations that are necessary and appropriate, which aim at enabling a person with a disability to benefit from those goods and services, so long as the modifications or adjustments

⁶⁴ People's Advocate (2019), *Annual Report 2018*, p.51.

⁶⁵ Albania, Law No. 121/2016, on social care services.

⁶⁶ Albania, Law No. 93/2014, on the inclusion of and accessibility for persons with disabilities.

do not impose a disproportionate or unlawful burden on the person who offers the goods and services' (Article 20(3)).

The law on the pre-university education system in the Republic of Albania, under Article 6(3) on general principles, states that 'protection against any form of action or omission, which may cause discrimination, maltreatment or moral harm, shall be provided to students and educational employees in the pre-university educational system.' Article 63(2) and (3), on the principles for the education of disabled children provides that the involvement and integration of disabled children in kindergartens and in initial education at ordinary schools will be a priority. The law also provides for deaf and dumb students to be guaranteed the right to communicate in sign language and for blind students to use Braille. According to Article 65(4), the relevant basic unit of local government must provide for an appropriate teaching and learning environment for disabled students, in accordance with the standards set out by the relevant ministry.

f) Duties to provide reasonable accommodation in respect of other grounds

In Albania, there is a legal duty to provide reasonable accommodation in respect of other grounds in the public and private sectors.

There is a general provision (Article 3(7) of the LPD) on the 'denial of a reasonable accommodation' as that form of discrimination that takes place whenever there is a

'denial of or objection to making essential and appropriate regulations or changes that are necessary in a particular case and do not impose an excessive burden ... for persons with a disability ... which occurred under other conditions mentioned in article 1 of this law.'

This provision is applicable to all grounds and all fields provided by this law.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Albania, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives.

Article 16(1) of the Constitution provides that 'the fundamental rights and freedoms and the duties contemplated in this Constitution for Albanian citizens are also valid for foreigners and stateless persons in the territory of the Republic of Albania, except for cases when the Constitution specifically attaches the exercise of particular rights and freedoms with Albanian citizenship.' Therefore, the Constitution provides for a legal reserve for the exemption from specific rights. Based on this constitutional provision, the Law No. 152/2013 on civil servants, under the Article 21 on the general requirements for admission to the civil service, provides that citizenship is a specific requirement to be part of the public administration as a civil service.⁶⁷

The provisions of the Law on the People's Advocate also apply to the protection of foreigners' rights, including the rights of refugees, asylum seekers and stateless persons.⁶⁸

Article 4 of the LPD states:

- '1. This law is applicable to all persons who live and stay in the territory of the Republic of Albania.
2. Albanian citizens with a temporary or permanent residence outside the borders of the Republic of Albania enjoy the protection that this law offers in relations with the Albanian state organs.
3. Natural and legal foreign persons with a residence, domicile or headquarters outside the territory of the Republic of Albania enjoy the protection that this law offers in relations with the Albanian state organs.'

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Albania, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination. The LPD does not distinguish between natural and legal persons. Article 7(1) provides that

'every action or failure to act of the public authorities or of natural or legal persons who take part in the private or public sectors and life, which creates bases for the denial of equality against a person or group of persons, or which expose them to an unfair, unequal treatment when they are in the same or similar circumstances in comparison with other persons or other groups of persons constitutes discrimination.'

The anti-discrimination law provides the right of 'a person or group of persons' to make a complaint (Article 33(1)) but does not define the concept of 'person' or 'group of persons'.

⁶⁷ Albania, Law No. 152/2013 on civil servants (amended).

⁶⁸ Albania, Law No. 8454/1999, on the People's Advocate (amended).

The (LPD) is silent about the personal scope of anti-discrimination law regarding the Albanian legal subject. However, under Article 4(3), the personal scope of anti-discrimination law covers 'natural and legal foreign persons with a residence, domicile or headquarters outside the territory of the Republic of Albania ... in relations with the Albanian state organs.'

b) Liability for discrimination

In Albania the personal scope of anti-discrimination law covers natural and/or legal persons for the purpose of liability for discrimination.

Under Article 33(13) of the LPD, both natural or legal persons can be found liable. The anti-discrimination law makes a distinction between natural and legal persons, by providing for different sanctions.

The LPD provides for the responsibility of the individual and states:

'every person has responsibility on the basis of the provisions of this law, when by his actions or failures to act, he has committed a discriminatory act within the meaning of this law. Individual responsibility does not exclude the liability of the state or a private legal person' (Article 35).

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Albania, the personal scope of national anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination.

Article 7(1) provides that

'every action or failure to act of the public authorities or of natural or legal persons who take part in the private or public sectors and life, which creates bases for the denial of equality against a person or group of persons, or which expose them to an unfair, unequal treatment when they are in the same or similar circumstances in comparison with other persons or other groups of persons constitutes discrimination.'

Article 33(1) states that

'a person or group of persons who claim that they have been discriminated against, or an organisation with legitimate interests that claims discrimination in the name of a person or group of persons, may submit a complaint together with available evidence to the commissioner, in writing or in exceptional cases orally, so that minutes can be taken.'

b) Liability for discrimination

In Albania, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination.

Article 35 of the LPD, on 'Individual responsibility', provides that

'every person has responsibility on the basis of the provisions of this law, when by his actions or failures to act, he has committed a discriminatory act within the

meaning of this law. Individual responsibility does not exclude the responsibility of the state or a private legal person.'

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Albania, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, military service and holding statutory office, for all protected grounds provided by the LPD, including explicitly race, ethnicity, sexual orientation, age and disability.

Under Chapter II of the anti-discrimination law (LPD), protection from discrimination is provided regarding the employment field, prohibiting discrimination against a person in connection with his right to employment (Article 12(1)) and in connection with the conditions for acceptance into a profession and the receipt of licences to exercise a profession, especially when the persons are self-employed (Article 16). The employer is obliged to take necessary measures to protect employees from discrimination (Article 13).

There is a strong relationship between the Labour Code and the LPD with regard to prohibiting discrimination in the field of employment, given that the roles of each legal framework and the interplay between the two are clearly regulated.⁶⁹ The amendments to the Labour Code in 2015 provide that any form of discrimination, as set out in the code and the particular legislation on the protection against discrimination (the LPD), in exercising the right to employment and occupation is prohibited. The amended Labour Code also expands the prohibited grounds of discrimination, to include living with HIV/AIDS, and membership of or affiliation with trade union organisations.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Albania, national legislation prohibits discrimination in the following areas: conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, for the five grounds, in both private and public sectors, as described in the directives.

According to Article 12(1)(c) of the LPD,

'discrimination includes every distinction, limitation or exclusion that is based on the grounds mentioned in article 1 of this law and which, among other things, is related to: the announcement of free places of work; the recruitment and selection of employees; the treatment of employees in the workplace, including their treatment during the establishing or changing of working conditions, compensation, benefits and the work environment, treatment related to professional training or during the disciplinary process or related to dismissal from work or the dissolution of a labour contract; membership in labour unions and the possibility of benefiting from the facilities that this membership secures.'

Article 9(5)(a) of the Labour Code is completely in line with the directives. This article provides that:

⁶⁹ Baraku, I. (2017) 'The protection from discrimination in the employment field from the perspective of the amendments to the Labour Code', presentation at International Scientific Conference on the challenges and perspectives of private law, 21 October 2017.

'the prohibition of discrimination and the application of the principle of equal treatment in the exercise of the right to employment and profession shall apply in respect of (...) opportunity for employment, self-employment and occupation, including the selection criteria and recruitment conditions, of any branch of activity and at all levels of the professional hierarchy, and promotion.'

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Albania, national legislation prohibits discrimination in working conditions including pay and dismissals, for all five grounds and for both private and public employment. This is explicitly provided by Article 9(5)(c) of the Labour Code.

According to Article 12(1) of the LPD,

'discrimination includes every distinction, limitation or exclusion that is based on the grounds mentioned in article 1 of this law and which, among other things, is related to (...)

c) the treatment of employees in the workplace, including their treatment during the establishing or changing of working conditions, compensation, benefits and the work environment, (...) the disciplinary process or related to dismissal from work or the dissolution of a labour contract'.

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Albania, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

In this context Article 9(5)(b) of the Labour Code is fully in line with the provisions of the directives. This article provides that:

'the prohibition of discrimination and the application of the principle of equal treatment in the exercise of the right to employment and profession shall apply in respect of (...) access to all types and levels of professional orientation, vocational training, advanced vocational training and retraining, including work experience in practice'.

According to Article 12(1)(c) of the LPD,

'discrimination includes every distinction, limitation or exclusion that is based on the grounds mentioned in article 1 of this law and which, among other things, is related to (...) treatment related to professional training'.

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Albania, national legislation prohibits discrimination in the following area: membership of, and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.

The Labour Code provisions are fully in compliance with the directives; Article 9(5)(c) states that 'the prohibition of discrimination and the application of the principle of equal treatment in the exercise of the right to employment and profession shall apply in

respect of (...) membership and activism in trade union organisations and employers' organisations, or any organisation, whose members exercise a particular profession, including the benefits provided by these organisations'.

According to Article 12(1) of the LPD,

'discrimination includes every distinction, limitation or exclusion that is based on the grounds mentioned in article 1 of this law and which, among other things, is related to (...) membership in labour unions and the possibility of benefiting from the facilities that this membership secures.'

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Albania, national legislation prohibits discrimination in social protection, including social security and healthcare, extending the protection to all protected grounds provided by the LPD.

According to Chapter IV of the LPD on 'Prohibition of discrimination in the field of goods and services', the law provides that the prohibition of discrimination is especially applicable to the ability to receive or to benefit from goods and services that have to do with health, the contribution and possibility to benefit from goods from social protection schemes, including social assistance, social insurance, protection of children, disability benefits or any another scheme of social protection or other advantage offered to the public (Article 20(2)(b) and (c)).

a) Article 3(3) exception (Directive 2000/78)

The LPD, under Article 20(5) states that 'Distinctions in compensation and benefits, established because of the grounds mentioned in article 1 of this law, do not constitute discrimination when the distinctions are reasonable and in proportion to a risk that is assessed on the basis of current and statistical data that can be verified and are closely linked to the risk.' A study on the legislative framework on anti-discrimination in Albania, conducted in 2016, found that the exemptions for accessing goods and services could be problematic in light of the European directives.⁷⁰ However, in the opinion of the author of this report, this legal provision is in compliance with the scope of the directive, given that Directive 2000/78 does not apply to payments of any kind made by state schemes, including state social security or social protection schemes.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

In Albania, the LPD prohibits discrimination in social advantages as formulated in the Racial Equality Directive. According to Article 20(1), 'a natural or legal person who offers goods or services to the public, whether or not for payment, is prohibited from discriminating against another person who seeks to achieve or use them' by a refusal based on grounds mentioned in Article 1 of the LPD (including race and ethnicity). This provision is especially applicable to social advantages (Article 20(2)(c)). According to Article 20(4) such a refusal also includes 'situations when the refusal in fact is based on the grounds mentioned in article 1 of this law, but other reasons are declared by the discriminating subject or no reason is declared as a reason for the refusal.'⁷¹

Chapter IV of the Constitution, on 'Economic, social and cultural rights and freedoms', provides that employees have the right to employment social insurance and the

⁷⁰ Vorpsi, A. and Wladasch, K. (2016) 'The legislative framework on anti-discrimination in Albania', December 2016, part of the joint EU/CoE Project entitled 'Enhancing the effectiveness of the Albanian system of human rights protection and anti-discrimination'.

⁷¹ Article 1 of LPD on 'Object' provides the protected grounds of discrimination.

provisions pay special attention to persons who are unemployed for reasons that are independent of their will and when they do not have other means of livelihood by providing assistance under the conditions provided by law (Article 52). The Constitution also prohibits discrimination on grounds of race and ethnicity, among others

The Law on social care services in the Republic of Albania provides that social services are administered on the basis of universal principles in the field of human rights protection, including the principle of non-discrimination.⁷² Beneficiaries are: asylum seekers; persons with disabilities; adults with social problems, victims of violence, trafficking, drug addiction and alcohol addiction; pregnant girls or single parents of a child up to the age of one year; juveniles and juveniles in conflict with the law, who have completed the sentence period and need social care services for the purpose of reintegration into society; those who enjoy international protection by decision of the responsible authority for asylum and refugees in the Republic of Albania; and the elderly in need.

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

In Albania, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive.

According to Article 17(1) of the LPD,

'Every distinction, limitation or exclusion is prohibited based on the causes mentioned in article 1 of this law and which, among other things, is related to:

- a) the creation of public or private institutions that offer educational or professional services;
- b) the financing of public institutions that offer educational or professional services;
- c) the content of principles and criteria of educational activity, including teaching programmes and teaching methods;
- d) the treatment of students or pupils, including acceptance, evaluation, application of disciplinary measures or their expulsion.'

Furthermore, according to Article 17 of the LPD:

'2. It is prohibited for a person or group of persons to be refused acceptance into a public educational institution for the causes mentioned in article 1 of this law.

3. Every kind of annoyance is prohibited, especially annoyance of students, pupils and employees in educational institutions.

4. The implementation of special and temporary measures, based on the causes mentioned in article 1 of this law, for the purpose of speeding up equality in education, is not considered discrimination. The implementation of such measures can in no case mean permanently maintaining unequal or different standards, and these measures are interrupted when the objective of offering equal opportunities and treatment is achieved.'

Article 18 on the duties of the Council of Ministers and the Minister of Education and Science, provides:

'1. The Council of Ministers and the Minister of Education and Science are each responsible for taking measures of a positive nature in order to fight discrimination in connection with the right to education.

2. The Council of Ministers and the Minister of Education and Science, among other things, each take measures for:

⁷² Albania, Law No. 121/2016 on social care services.

- a) raising consciousness about this law in the educational system, among other things, including information about it in teaching programmes;
- b) including concepts and actions against models of discriminating behaviour in teaching programmes;
- c) educating the entire population, in particular, by taking measures in favour of women and girls, minorities, persons with a disability as well as persons who are or have more possibility of being the object of discrimination for the grounds mentioned in article 1 of this law;
- d) respecting and assuring the right to education in the languages of minorities, as well as in appropriate manners for persons with a disability.'

The provision covers all grounds required by the directive and more.

The national anti-discrimination law (LPD) provides for the 'duties of the director of an educational institution' under Article 19. According to this provision, the director of an educational institution is responsible for taking measures of a positive nature in the institution, in order to fight discrimination in connection with the right to education, such as:

- 'a) raising awareness about this law within the institution, among other things by posting the law in a visible place;
- b) the fight against models of discriminating behaviour that constitute or encourage discrimination within the institution;
- c) taking necessary measures, including disciplinary measures, for the protection of employees from discrimination and victimisation, within one month from receiving knowledge;
- d) the effective handling of complaints about discrimination in the institution, examining every complaint within 30 days from its submission;
- e) imposing disciplinary measures against any person who is verified to have performed a discriminatory act when such a thing is appropriate, proportional and in conformity with the competences of the director.'

a) Pupils with disabilities

In Albania, the general approach to education for pupils with disabilities does not raise problems, especially the legal framework.

The law on the pre-university education system in the Republic of Albania, adopted in 2012, guarantees and promotes the inclusion of more children with disabilities in ordinary schools. It has introduced several innovations, including: outlining an understanding of disability according to international standards; providing the principle of non-discrimination of children with disabilities in the exercise of the right to education; and enabling the involvement of many stakeholders in education issues, especially disabled children and their parents, but also psychologists and social workers.

The Normative Dispositions on the pre-university education system were approved in 2013; they provided detailed procedures and rules for the education of children with disabilities.⁷³ According to these rules, the local educational unit should establish a commission that contains doctors, psychologists, teachers and specialists for children with disabilities to provide the relevant recommendations for the child's attendance in an ordinary educational institution or a specialised facility. However, it is up to the parents to decide. The integration of children with disabilities into every aspect of teaching and the education process requires active and dedicated directors of educational institutions and teachers. They are legally charged with developing personalised programmes for

⁷³ Baraku, I. and Hoxhaj, E. (2015) 'The integration in educational system of children with disability - a philosophy and a legal obligation', presentation at 4th International Conference on Social Sciences, Bucharest, 27 February 2015, published in *Scientific Journal- EJSER*.

students with disabilities in collaboration with the parents and children. The guidelines state that providing inclusion includes giving the support provided by law for teachers who have children with disabilities or special needs in their class and that this support can be accorded by making available additional teachers, creating a class with a smaller number of students, etc.

However, there are many problems in practice. According to the Commissioner for Protection from Discrimination, the majority of discrimination cases in the field of education relate to refusals or failure to integrate children with disabilities in ordinary schools. Such obstacles are related to the mentality of the society, the fact that the majority of educational institutions do not comply with the requirement of accessibility, the lack of appropriate training for teachers and the underfinancing of the education system.

The Law on higher education⁷⁴ does not contain a special provision on the principle of non-discrimination. The law aims to provide equal opportunities to benefit from higher education (Article 1(c)) on the basis of merit, for all individuals who wish to attend higher education studies (Article 2(dh)). The National Agency for Higher Education Financing is entitled to allocate public funds to support students from social groups in need through bursaries.

b) Trends and patterns regarding Roma pupils

In Albania, there are no specific trends or patterns in education regarding Roma pupils, such as segregation. However, sporadic cases are reported by NGOs and addressed by the Commissioner for Protection from Discrimination and the People's Advocate.

The LPD provides for special duties for the Ministry of Education, which has an obligation to issue bylaws for the elimination of discrimination in the field of education. Despite the fact that the Law on the pre-university education system and its relevant bylaws facilitate the registration of Roma children in schools, even without a birth certificate, the CPD found that primary schools have hesitated to enforce this rule. The Commissioner for Protection from Discrimination has identified some cases of schools that have refused to admit students belonging to these communities (Roma pupils).⁷⁵

Education institutions need to be attentive to avoid segregation that may occur because a Roma community is located in certain areas, and their children go to the same school. In 2013, the Commissioner for Protection from Discrimination conducted an evaluation of the distribution of Roma children in the primary schools in Tirana. The commissioner found that there was not a tendency to separate or concentrate Roma children in a single school, but made a recommendation to the relevant institutions to pay particular attention to the trend of registration in specific schools in order to prevent segregation.⁷⁶

The national anti-discrimination law does not provide for segregation as a form of discrimination.

⁷⁴ Albania, Law No. 80/2015 on higher education and scientific research in higher education institutions in the Republic of Albania. <https://euralius.eu/index.php/en/library/albanian-legislation/send/66-higher-education/168-law-on-higher-education-en>.

⁷⁵ Commissioner for Protection from Discrimination (2019), *Annual Report 2018*, p. 37. <http://kmd.al/wp-content/uploads/2019/03/RAPORTI-VJETOR-2018.pdf>.

⁷⁶ Commissioner for Protection from Discrimination (2014), 'Study on the problem of discrimination against the Roma community in Albania', December 2014, p.16.

3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Albania, national legislation prohibits discrimination in access to and supply of goods and services as formulated in the Racial Equality Directive.

According to Article 20(1):

'A natural or legal person who offers goods or services to the public, whether or not for payment, is prohibited from discriminating against another person who seeks to achieve or use them:

- a) by refusing to give a person or group of persons goods or services for the causes mentioned in article 1 of this law;
- b) by refusing to offer a person goods or services in a similar manner, or with similar qualities, or in conditions similar to those in which the goods or services are offered to the public in general.'

This provision is especially applicable to: the ability to enter into a place where the public is permitted to enter or to use a place that is permitted to be used by the public; the ability to receive or to benefit from goods or services that have to do with health; the contribution and possibility to benefit from goods from social protection schemes, including social assistance, social insurance, protection of children, disability benefits or any another scheme of social protection or other advantage offered to the public; the opportunity to use or enter into an educational institution; systemisation in a place where housing is offered; the sale or renting of residences and other premises; banking services and the opportunity to obtain grants, loans, bank deposits or financing; facilities for entertainment, relaxation and refreshment; facilities for transport or travel; services of the free professions.

According to Article 20(4), refusal also includes 'situations when the refusal is based on the grounds mentioned in article 1 of this law, but other reasons are declared by the discriminating subject or no reason is declared as a reason for the refusal.'⁷⁷

- a) Distinction between goods and services available publicly or privately

In Albania, national law does not distinguish between goods and services that are available to the public (e.g. in shops, restaurants, banks) and those that are only available privately (e.g. limited to members of a private association).

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

In Albania, national legislation prohibits discrimination in the area of housing as formulated in the Racial Equality Directive.

According to Article 20(2), the provision that prohibits discrimination of a person by a natural or legal person who offers goods or services to the public, whether or not for payment, is especially applicable to: the contribution and possibility to benefit from goods from social protection schemes, allocation in a place where housing is offered; the sale or renting of residences and other premises.

The Albanian Parliament adopted Law No.22/2018 on social housing, which is the most important act for the implementation of social housing programmes.

⁷⁷ Article 1 of the LPD on 'Object' provides the protected grounds of discrimination.

The law provides for the principle of security of residence, which means:

- stay in a temporary or permanent residence is inviolable;
- the eviction of individuals/families from their place of residence is prohibited;
- the relocation of individuals/families from their place of residence is prohibited, except for the cases provided by law (Article 5).

The law provides for the principle of non-discrimination based on: gender, race, colour, religion, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational, social status, pregnancy, affiliation and/or parental responsibility, family or marital status, health, genetic predispositions, disability, belonging to a particular group, and any condition that has discriminatory consequences (Article 10(1)). Article 10 does not explicitly provide for age as a protected ground of discrimination. It provides an exception for social housing programmes that are specifically planned and implemented to assist individuals or groups in need.

According to Article 17(1), the local self-government body, in cooperation with the ministry implementing the public investment and the ministry responsible for housing, exercises powers to facilitate the relocation of individuals/families and to provide adequate alternative housing.

The Law on social housing has expanded and strengthened the support for persons with disabilities, persons of the Roma and Egyptian communities, persons of the LGBT community, asylum seekers, victims of domestic violence, victims of trafficking and potential victims of trafficking, and elderly people who have reached retirement age and are not selected to be sheltered in public social care institutions, among others (Article 16).⁷⁸

However, before the adoption of the new law, the Commissioner for Protection from Discrimination and the People's Advocate dealt with several cases of eviction (as a result of development projects on public or private land), mostly of Roma families, who had been established in a particular area for several years.

a) Trends and patterns regarding housing segregation for Roma

In Albania, there are patterns (societal, rather than legal) of housing segregation and discrimination against the Roma.

Roma and Egyptians live in difficult housing conditions, often lacking in sanitation facilities, in separate suburbs, without infrastructure, in sub-standard flats. People often suffer from insecure tenancies: they do not possess documents that prove their right to live in the property, putting them at risk of leaving the house and returning to find themselves homeless. Roma people often do not benefit from housing programmes because they fail to meet the specified level of income from legitimate sources. Because of the type of building, they are often unable to benefit from the legalisation process.⁷⁹ The Law on the legalisation, urbanisation and integration of illegal constructions aims to legalise informal and illegal buildings, transfer the ownership of a construction parcel, where the illegal construction was built, and to urbanise areas and blocks of informal constructions.⁸⁰

⁷⁸ www.parlament.al/ProjektLigje/ProjektLigjeDetails/44781.

⁷⁹ Government of Albania (2016), *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*, approved by the Council of Ministers Decision no.1072, dated 23.12.2015. http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_kombetar_i_veprimit_per_integrimin_e_Romeve_dhe_Egjiptianeve_2016-2020.pdf.

⁸⁰ Albania, Law No. 9482, on the legalisation, urbanisation and integration of illegal constructions, dated 03.04.2006.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Albania, national legislation provides for an exception for genuine and determining occupational requirements.

Article 6(2) of the LPD on 'Justified different treatment' establishes that:

'Different treatment that is based on a characteristic related to the causes mentioned in article 1 of this law does not constitute discrimination when because of the nature of the professional activities or the conditions in which the profession or activity is conducted, those characteristics constitute an essential real and professional requirement, provided that the purpose of the different treatment shall be justified and the requirement shall not exceed that which is essential to realise it.'

The Labour Code, under the Article 9(4) provides:

'Differences, restrictions, exclusions or preferences based on a characteristic related to the grounds referred to in paragraph 2 of this Article do not constitute discrimination when, because of the nature of the professional activities or the conditions in which the profession or activity is exercised, these characteristics constitute an indispensable, genuine and professional requirement, provided that the purpose of the different treatment is justified and the requirement does not overcome what is necessary for its realisation.'

The exception for genuine and determining occupational requirements is related to all grounds protected by the LPD and the Labour Code, including the grounds provided by the directives.

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Albania, national law does not provide for an exception for employers with an ethos based on religion or belief. According to Article 10(2) of the LPD, an exception regarding conscience and religion may be permitted only if a reasonable and objective justification exists. In this case the exception should be proportionate to the situation that has dictated the need for discrimination and may be imposed only by law, for a public interest or for the protection of the rights of others. It cannot violate the core of the rights and freedoms and in no case may it exceed the restrictions provided in the European Convention for Human Rights.

A study on the legislative framework on anti-discrimination in Albania, conducted in 2016, found that there was no possibility for organisations with an ethos based on religion or belief, 'to establish specific requirements in line with their ethos for their employees'.⁸¹

In Albania, there is no specific case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination.

⁸¹ Vorpsi, A. and Wladasch, K., (2016) 'The legislative framework on anti-discrimination in Albania', December 2016, part of the joint EU/CoE Project entitled 'Enhancing the effectiveness of the Albanian system of human rights protection and anti-discrimination'.

4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)

In Albania, national legislation does not provide explicitly for an exception for the armed forces in relation to age or disability discrimination. However the Law on the military status of armed forces of the Republic of Albania contains criteria regarding the age and physical abilities.⁸²

Article 4(dh) of the law states that citizens who are 19-30 years old can be recognised as active members of the military in the armed forces. According to Article 4(c) on admission to the armed forces, one of the criteria for admission to the armed forces is 'to possess the necessary health and physical abilities for the service'.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Albania, national law does not explicitly include exceptions relating to difference of treatment based on nationality.

In Albania, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law (the LPD).

The European Commission against Racism and Intolerance has noted that 'Citizenship is missing in the open-ended list of discrimination grounds in Article 1 LPD. The authorities consider that citizenship can be covered by the ground of ethnicity. There is no case law on this issue.'⁸³ However, the national law on anti-discrimination is applicable to all persons who live and stay in the territory of the Republic of Albania and to natural and legal foreign persons in relations with the Albanian state institutions (Article 4(1) and (3)).

b) Relationship between nationality and 'racial or ethnic origin'

Given that most of the complaints come from minorities who are also Albanian citizens, there is no overlap in case law between discrimination on the ground of nationality and ethnicity.

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

a) Benefits for married employees

In Albania, it does constitute unlawful discrimination in national law if an employer provides benefits only to those employees who are married. 'Marital status' is a protected ground of discrimination provided by the LPD. The anti-discrimination law (LPD) does not provide an explicit exception for work-related family benefits for married employees.

b) Benefits for employees with opposite-sex partners

In Albania, it does not constitute unlawful discrimination in national law if an employer provides benefits only to those employees with opposite-sex partners. The Constitution neither explicitly recognises nor prohibits opposite-sex partnership. According to Article 53(3) of the Constitution, 'The entering into and dissolution of marriage are

⁸² Albania, Law No. 9210, on the military status of armed forces of the Republic of Albania, 23.3.2004, amended in 2009.

⁸³ European Commission against Racism and Intolerance (2015), *ECRI Report on Albania*, Fifth monitoring cycle, adopted on 19 March 2015, published on 9 June 2015, p 13.

regulated by law'. Albanian legislation (the Family Code) does not recognise cohabitation and marriage between persons of the same sex.⁸⁴

4.6 Health and safety (Article 7(2) Directive 2000/78)

In Albania, there are exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive.

According to Article 90(3)(1) and (2) of the Labour Code, it is forbidden to require persons with disabilities to perform additional hours of work where there are objectively justified reasons for this related to their degree of disability and the nature of work for which additional hours are required (Article 90(3)(1) and (2)).

4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.7.1 Direct discrimination

In Albania, national law does not provide for specific exceptions for direct discrimination on the ground of age.

However, Article 6(1) of the LPD on 'Justified different treatment' provides that

'the prohibition of discrimination described by this law is not applicable in cases when there is an objectively justifiable purpose supported on the basis of the Constitution, international acts or agreements ratified by the Republic of Albania and the legislation in force.'

Therefore, the national anti-discrimination law permits objective justification for direct discrimination on all protected grounds.

Article 9(4) of Labour Code provides a general provision that justifies the different requirements in employment.

a) Justification of direct discrimination on the ground of age

In Albania, national law on anti-discrimination (the LPD) and the Labour Code provide for justifications for discrimination on the ground of age (Article 6(2) of the LPD and Article 9(4) of the Labour Code).

b) Permitted differences of treatment based on age

In Albania, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78.

Article 78(2) of the Labour Code provide an exception based on age, ensuring the protection of employees under 18 years of age, for whom the daily work time must be no more than 6 hours per day. The Labour Code provides other exceptions based on age, under Article 98 on minimum age and Article 99 on 'easy jobs'. According to the Labour Code, an 'easy job' is a job, which due to the inseparable nature of the duties and the special conditions under which it is performed, does not impinge: the safety, health and development of children; the participation of children in school, in instructive vocational or training programmes, or the capacity of the children to benefit from this education.

⁸⁴ Commissioner for Protection from Discrimination (2013), *Special Report: For the protection and respect of the rights of LGBTI community in Albania*, Tirana 2013, p. 48.

- c) Fixing of ages for admission or entitlement to benefits of occupational pension schemes

In Albania, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2) of Directive 2000/78.

Article 20(7) of the LPD provides that the prohibition of discrimination is not applicable to the setting of a particular age for access to social benefits, goods, facilities and services, if reasonable and objective criteria exist for the determination, without infringing the core of the right to benefits and when the determination aims at achieving a lawful purpose for a public interest, or to protect the rights of others, always in a fair proportion to the situation that has caused the determination.

The Law on social assurance in the Republic of Albania establishes the general pension age, which is 65 years for men and 60 years and 10 months for women. At least 15 years of pension contributions are required. The pensionable age for women will increase every year until it reaches 65 years in 2044.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

In Albania, there are special conditions set by law for older and younger workers in order to promote their vocational integration, and/or for persons with caring responsibilities to ensure their protection.

Article 78(2) of the Labour Code, provides an exception based on age, ensuring the protection of employees under 18 years of age, for whom the daily work time must be no more than 6 hours per day.

The Labour Code provides other exceptions based on age under Article 98 on minimum age and Article 99 on 'easy jobs' (see section 4.7.1.b above).

According to Article 98 of the Labour Code, the employment of children under 16 years of age is prohibited. There is an exception for children from 15 to 16 years of age, who may be employed during school vacations, although only in 'easy jobs'. They may undertake paid vocational training, according to the rules stipulated by a decision of the Council of Ministers. Children under 15 years of age or children who are in mandatory full-time education may be employed for the purposes of cultural activities or similar activities. This article provides that the special provisions of the Labour Code that are enforced for employees under 18 years of age will be enforced for as much as possible for any legal relation of the employee who wants employment or a job in whichever type of profession.

Under Article 99, the Labour Code provides that:

'Children from 16 to 18 years of age may be employed in easy jobs, according to the stipulations in this article; The Council of Ministers defines the easy jobs and sets specific rules for the maximum duration and conditions of performing the job for children and for the maximum duration and conditions on performing the job for adult employees, over 18 years of age.'

Article 100 of the Labour Code provides that only adults over 18 years of age may be employed to carry out 'difficult jobs' or 'jobs that pose a danger to their health or character'.

The Law on employment promotion, provides an obligation on the relevant authorities to draft employment policies by:

- developing programmes for creating new jobs and vocational training;
- offering professional experience for jobseekers who have completed secondary or higher education (the employment office finances the employer);
- providing financial support to jobseekers who attend vocational training courses;
- providing vocational rehabilitation services for people with disabilities.⁸⁵

4.7.3 Minimum and maximum age requirements

In Albania, there are exceptions permitting minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training.

The employment of children under 16 years of age is prohibited (Article 98 of the Labour Code).

There are minimum age requirements with regard to a limited circle of positions, such as the President, who must be at least 40 years old.

The Law on social insurance⁸⁶ establishes the general retirement age, which is 65 years for men and 60 years and 10 months for women. At least 15 years of pension contributions are required in order to claim a full state pension.

4.7.4 Retirement

a) State pension age

In Albania, there is state pension age, at which individuals must begin to collect their state pensions. The Law on social insurance establishes the general retirement age, which is 65 years for men and 60 years and 10 months for women. At least 15 years of pension contributions are required in order to claim a full state pension.

According to the Law on social insurance, if an individual wish to work longer, the pension can be deferred. A person who defers retirement by continuing to pay contributions and a person who receives the pension, but interrupts it to go back to work and pay contributions, will receive a supplement to the pension at the rate of 0.5 % for each month of deferment or interruption.

An individual cannot collect a pension and continue to work in the public sphere.

A person who has paid the contribution for voluntary insurance, after fulfilling the conditions set out in the Law on social insurance, is a beneficiary, of full old-age pension, partial old-age pension, reduced old-age pension, or invalidity pension.

b) Occupational pension schemes

In Albania, there is an age (65 years for men and 60 years and 10 months for women) when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. If an individual wish to work longer, payments from such occupational pension schemes can be deferred. An individual cannot collect a pension and continue to work.

c) State imposed mandatory retirement ages

In Albania, in the public sector there is a general state-imposed mandatory retirement age (corresponding to the general pensionable age), although there are some exceptions.

⁸⁵ Albania, Law No. 7995/1995, on employment promotion, as amended.

⁸⁶ Albania, Law no. 7703, on social insurance in the Republic of Albania, dated 11.05.1993.

Academic staff may continue in post until the age of 68 (professors) or 65 (associate professors). However, based on the needs of the higher education institution and with the academic's consent, they may continue to work beyond that age, on contracts with a duration of up to one year, which can be repeated, as defined in the statute of the higher education institution.⁸⁷

In 2010, the Council of Ministers adopted Decision No. 478, according to which, public administration bodies (including central institutions, subordinate institutions and state-owned enterprises and companies) should immediately terminate the employment relationships of employees when they meet the conditions required to benefit from the state pension scheme.

In Albania, there is no state-imposed mandatory retirement age in the private sector. Decision of the Council of Ministers No. 478 does not apply to private entities where employees can receive their retirement pension and continue to work by paying compulsory contributions (based on the Decision of the Council of Ministers No. 551, dated 8 November 1993).

d) Retirement ages imposed by employers

In Albania, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

e) Employment rights applicable to all workers irrespective of age

The provisions of the Labour Code on protection against dismissal and other laws protecting employment rights do apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age.

f) Compliance of national law with CJEU case law

In Albania, national legislation is in line with the CJEU case law on age regarding mandatory retirement.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Albania, national law permits seniority to be taken into account in selecting workers for redundancy. If someone has passed the retirement age, his/her dismissal is possible without providing reasons.

b) Age taken into account for redundancy compensation

In Albania, national law does provide for compensation for redundancy. Such compensation is not affected by the age of the worker. According to Article 145 of the Labour Code:

1. 'The employee shall benefit the seniority-related reward, if the employer terminates the contract, and the labour relations have lasted not less than three years. The employee shall lose the right to the seniority-related reward, if his/her dismissal from work is of immediate effect and based on reasonable causes.

⁸⁷ Albania, Law No. 80/2015, on higher education and scientific research in higher education institutions in the Republic of Albania, Article 65.

2. The seniority-related compensation equals at least the salary of 15 days of work for each complete working year, which is calculated on the bases of the salary existing at the end of the termination of Labour relations. If the salary is changeable, the reward shall be calculated on the average salary of the preceding year, and it shall be indexed.

3. The seniority-related reward shall be added to the reward, which is given in the case of the termination of contract for reasonable causes, or in the case of the termination of contract of immediate effect for no reasonable causes.'

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Albania, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

4.9 Any other exceptions

In Albania, other exceptions to the prohibition of discrimination (on any ground) provided in national law are listed below.

The Constitution provides that:

'1. Limitations of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion to the situation that has dictated it.

2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.' (Article 17)

According to Article 20(5) of the LPD:

'Distinctions in compensation and benefits, established based on grounds mentioned in article 1 of this law, do not constitute discrimination when the distinctions are reasonable and in proportion to a risk that is assessed on the basis of current and statistical data that can be verified and are closely linked to the risk.'

According to Article 20(7) of the LPD:

'The prohibition of discrimination is not applicable to the setting of a particular age for the possibility of social benefits, goods, facilities and services, if reasonable and objective criteria exist for the determination, without infringing the core of the right to benefits and when the determination aims at achieving a lawful purpose for a public interest, or to protect the rights of others, always in a fair proportion to the situation that has caused the determination.'

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Albania, positive action is permitted in national law in respect of education and employment for an open-ended list of grounds, including race, ethnicity, religion or belief, disability, age or sexual orientation.

The national law on discrimination (LPD) provides under the Article 11 on 'Positive actions' that:

'A particular temporary measure that aims at speeding up the real establishment of equality, when the absence of equality has been caused by discrimination for any cause mentioned in article 1 of this law, is considered a positive action and does not constitute discrimination according to this law. This measure is interrupted as soon as the objectives of the treatment and offering of equal opportunities have been achieved.'

In addition to the general provision on positive measures, which does not make a distinction between grounds and fields, the LPD makes specific provisions in employment and education.

The chapter of the LPD on protection from discrimination in employment (under Article 12(3)) provides that:

'The implementation of special and temporary measures, based on the grounds mentioned in article 1 of this law, for the purpose of speeding up equality in the field of employment, is not considered discrimination. The implementation of such measures can in no case mean maintaining unequal or different standards in a permanent manner, and the special measures are interrupted when the objective of the offering of equal opportunities and treatment is achieved.'

Article 14 places an obligation on the Council of Ministers, the Minister of Labour, Social Issues and Equal Opportunities⁸⁸ and the Interior Minister to take positive measures to fight discrimination in connection with the right to employment such as: raising awareness about the law with employees and employers, and establishing special and temporary policies to encourage equality, on the basis of all the grounds protected by the LPD. The provision highlights the particular need to encourage equality between men and women and between 'fully physical able' persons and those who have a disability.

The chapter on protection from discrimination in education states:

'The implementation of special and temporary measures, based on the grounds mentioned in article 1 of this law, for the purpose of speeding up equality in education, is not considered discrimination. The implementation of such measures can in no case mean permanently maintaining unequal or different standards, and these measures are interrupted when the objective of offering equal opportunities and treatment is achieved.' (Article 17(4))

Article 18 places an obligation on the Council of Ministers and the Minister of Education and Science to take positive measures to fight discrimination in connection with the right to education. The provision pays special attention to women and girls, minorities, disabled people and other people who come under the protected grounds. Article 18

⁸⁸ In the Government formed after the general elections of 2017, the ministry responsible is now the Ministry of Health and Social Protection.

indicates the measures that should be implemented, including: raising awareness about the law; including concepts and actions against models of discriminating behaviour in teaching programmes; educating the entire population, in particular, by taking measures in favour of women and girls, minorities, persons with a disability as well as persons who are or have more possibility of being the object of discrimination for all protected grounds by this law; and respecting and assuring the right to education in the languages of minorities, as well as in appropriate ways for persons with a disability (including sign language,⁸⁹ access to teaching assistants,⁹⁰ adapted tools etc).

In 2018, the Ministry of Education and Sports, in cooperation with civil society organisations and in implementing the gender equality strategy 2016-2020, organised in Tirana high schools awareness-raising activities on bullying and discrimination against the LGBTI community. Teacher training and information activities with parents, with purpose of eliminating gender stereotypes and discrimination as a result of sexual orientation, have taken place. The campaign has been accompanied by numerous debates and controversies by politicians, analysts, representatives of religious communities, parents and so on.

b) Quotas in employment for people with disabilities

In Albania, national law provides for a quota for people with disabilities in employment.

The Law on employment promotion obliges employers to employ a disabled person for every 25 employees on their staff (Article 15(1) and (2)).⁹¹ An employer can employ one person with severe disability (its determination is made by the relevant ministry) instead of five persons with 'easy handicap' (mild disability).

This obligation applies to both public and private employers. According to Article 2(6) of this law, 'employers' are enterprises and persons who provide to other persons paid employment, understanding 'enterprise' as a legal entity as provided by the Civil Code.⁹² Article 24 of the Civil Code defines legal persons as public and private subjects.

Article 16 of the Law on employment promotion provides incentives for encouraging the employment of persons with disabilities such as: the employer may apply for a subsidy from the relevant employment office to properly equip the workplace and prepare the employee for the job; and the salary of a person with a disability is exempted from taxes to a certain extent determined by the Council of Ministers. An employer who fails to meet this obligation must pay the National Employment Fund an amount equal to the minimum wage every month for every person that they should have employed. This income is used to create new jobs for people with disabilities (Article 16(3)).

According to Article 27 on penalties, an employer who violates the provisions of the law can be fined up to EUR 8 000 (ALL 1 000 000) per case. The State Labour Inspectorate has the right to monitor the employment of persons with disabilities.⁹³ During 2018, the State Labour Inspectorate carried out inspections of 27 296 job positions in private entities, where it found 234 disabled workers, of whom 32 % were women.⁹⁴ It is evident that the number of employed persons with disability is very low and is not in compliance with the quota provided by the law.

⁸⁹ Decision of the Council of Ministers No. 837, on the recognition of sign language, dated 3.12.2014

⁹⁰ Albania, Law No. 69/2012, on the pre-university education system, Article 65.

⁹¹ Albania, Law No. 7995/1995, on employment protection, amended in 1999, 2002, 2006 and 2009.

⁹² Albania, Law No. 7850, Civil Code, dated 29.7.1994, amended in 1999, 2001, 2012, 2013.

⁹³ Albania, Law No. 9634, on labour inspection, dated 30.10.2006.

⁹⁴ State Labour Inspectorate (2019), *Annual Report 2018*, p. 8. <http://inspektoriaipunes.gov.al/wp-content/uploads/2019/01/Raport-vjetor-2018-ISHPSHSH-update.pdf>.

Decision of the Council of Ministers No. 243 on admission, parallel movement, probation period and appointment in the executive category, provides for the criteria for ranking candidates for the civil service who have equal points, by giving priority to any candidate included in the category of persons with disability.⁹⁵

⁹⁵ Albania, Decision of of the Council of Ministers (DCM) No. 243, on admission, parallel movement, probation period and appointment in the executive category, dated 18.03.2015, amended with DCM No. 746 dated 19.12.2018.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) Available procedures for enforcing the principle of equal treatment

In Albania, the following procedures exist for enforcing the principle of equal treatment.

The Law on protection from discrimination provides several options for procedural protection such as: administrative, litigation and misdemeanour procedures. The administrative procedure can be followed before the Commissioner for Protection from Discrimination. It should be noted that the right of subjects to be protected from discriminatory behaviour by this law is not limited only to the Office of the Commissioner. The law provides obligations for employers and heads of educational institutions not only to examine complaints, but also to take disciplinary measures for the protection of employees from discrimination and victimisation, within one month of receiving the complaint or having knowledge of the behaviour. In the field of employment, the LPD does not limit the right to complain to special institutions created in various sectors of employment, as provided by Article 15(1). The State Labour Inspectorate ensures the implementation of labour law (including the Labour Code, which provides for the principle of non-discrimination), protecting the employee in the exercise of their profession.⁹⁶

The procedure before the CPD is free of charge. The CPD can deal with complaints from one person, groups of people and NGOs (Article 32(1)(a) and (b)). The anti-discrimination law (LPD) does not expressly recognise the right of the commissioner to initiate an investigation, but Article 32(1)(c) provides the commissioner with the responsibility for conducting administrative investigations after receiving reliable information on a violation of the LPD. The Office of the Commissioner may initiate an ex officio investigation based on the information that comes from civil society organisations and the media. When appropriate, the CPD seeks to reach a conciliation agreement between the complainant and the person against whom the complaint was submitted. The CPD takes a decision which is made known to the parties within 90 days from the date of receipt of the complaint or, if a public hearing session has been held, within 90 days from the day of the session. The LPD does not place a legal obligation on the CPD to publish the decisions. However, CPD publishes them on its official website (www.kmd.al) in accordance with the Law on the right to information and the transparency programme, protecting the personal data of the subjects.

The CPD not only makes recommendations, but also has the power to impose sanctions. However, the law is not repressive, because it provides some opportunities to avoid sanctions where the discriminator ends the discrimination promptly of their own volition (spontaneous restoration of the violated right).

Litigation proceedings can be initiated before ordinary courts, under Article 34(1) of the LPD. It is worth noting that this right is not subject to the obligation to exhaust the administrative appeal to the commissioner (Article 34(2)) nor the obligation to notify the commissioner before submitting a lawsuit for discrimination in court (Article 36(2)). Based on the provisions of the Civil Procedure Code, if the procedure is raised before a court, no procedure can be raised before the CPD. It does not say what one does if a procedure is raised before the CPD, and after that another procedure is started in front of a court before the procedure to the CPD has ended. The law sets a mutual relation between the court and the commissioner, anticipating the court's obligation to notify the commissioner of the submission of every lawsuit about discrimination (Article 36(3)). However, it recognises that the court may require the commissioner, at any stage of the

⁹⁶ Albania, Law No. 9634, on labour inspection, dated 30.10.2006, Articles 1, 2(3) and 6.

proceedings, to submit a written opinion, the results of his investigation - if the investigation is carried out - or any other information that is important for the case (Article 36(4)). The claimant must present the arguments on which the court can presume discrimination (Article 36(5)), but this provision is accompanied by an obligation on the defendant to prove that the facts presented do not constitute discrimination (Article 36(6)).

The LPD provides for the right of the victim to make a criminal denunciation before the organs competent for criminal prosecution (if the discriminatory behaviour constitutes a criminal offence) (Article 34(1)).

The People's Advocate (ombudsman) safeguards the rights, freedoms and lawful interests of individuals from unlawful and improper actions or failures to act by public administration bodies, as well as third parties acting on their behalf. He has a duty to promote the highest standards of human rights and freedoms in the country.⁹⁷ Article 16 of the Law on the People's Advocate provides that all services rendered by the People's Advocate with reference to complaints, requests or notifications are free of charge. The People's Advocate, upon finding or suspecting that a right has been violated, will initiate an investigation of the case, following a complaint or request by the interested or affected person, or on his own initiative if the particular case is in the public domain (Article 13). Upon conclusion of an investigation, the People's Advocate makes recommendations on how to remedy the infringement and where serious violations have occurred, can suggest that the relevant authorities, including the Assembly, dismiss officials under their jurisdiction (Article 21).

The national law does not regulate the relations between the procedures in front of the People's Advocate and the CPD, in cases of overlap. This issue has been resolved by a memorandum of understanding between the two institutions. The object of this agreement is the formalising of the relationship between the CPD and the People's Advocate for providing mutual assistance in facilitating the exchange of information and cooperation between the two institutions, in the context of guaranteeing human rights and freedoms, particularly in the field of non-discrimination and equality before the law, and promotion of the rights, freedoms and legitimate interests of individuals. In practice, this agreement is implemented not only in the context of coordinating joint initiatives but also by forwarding individuals complaints to the appropriate institution.

b) Barriers and other deterrents faced by litigants seeking redress

Since its establishment in 2010, the Commissioner for Protection from Discrimination has had a central office to receive complaints, but also to carry out all its functions. Although the body offers several ways of making a complaint (by email, online, by mail), citizens (who, in many cases have significant economic and social problems) have found it difficult to realise the right to complain. For this reason, every year the commissioner holds community open days. Through a project implemented by the Council of Europe and funded by the European Union,⁹⁸ there are now three regional offices, which have become part of the institution's structure, following changes made by the Albanian Parliament.⁹⁹

There are issues in relation to court proceedings: they are subject to administrative taxes, complainants must engage a lawyer and proceedings can take a long time. For example, in a case in which the Commissioner for Protection from Discrimination found

⁹⁷ Albania, Law No.8454 on the People's Advocate, dated 04.02.1999, supplemented by Law No. 8600, dated 10.04.2000, amended by Law No. 9398, dated 12.05.2005, added to and as amended by Law 155/2014, dated 27.11.2014.

⁹⁸ The CoP and EU project: Enhancing the effectiveness of the Albanian system of human rights protection and anti-discrimination.

⁹⁹ Albania, Decision of the Assembly of the Republic of Albania, No. 60/2018.

discrimination in September 2014,¹⁰⁰ the Kruja District Court took until April 2018 to deliver its ruling,¹⁰¹ ordering the respondent to pay compensation to the claimant for their non-material damage, to a total value of EUR 48 370 (ALL 6 046 326).

The CPD has identified several issues for attention, including: recognition and enforcement of the legal obligation for judges to notify the CPD on issues subject to discrimination; in the process of drafting the lawsuit, the lawyer should decide on the application for ascertainment of discrimination; in cases where, despite being not directly required in the petition, the whole process is invested in the issue of discrimination, the judge should include the commissioner as a third party to the judicial process.¹⁰²

However, the commissioner has found that the courts have paid increased attention to discrimination issues during 2018.

c) Number of discrimination cases brought to justice

In Albania, there are available statistics on the number of cases related to discrimination brought to justice based on the annual report of the Commissioner for Protection from Discrimination.

The commissioner's annual report contains a specific section on participation in court proceedings. In 2018, the CPD participated in 66 court proceedings (in 33 cases as the respondent, in 27 cases as interested person/third party and in 6 cases the CPD requested the issue of execution orders). In 2018, the courts issued 58 decisions in cases to which the CPD was a party, out of which 44 court decisions were given by the first instance, civil and administrative courts, and 8 court decisions were issued by the appeal courts.¹⁰³

Out of 44 court decisions given by the first instance courts, there were 14 court decisions that confirmed the decision of the CPD (from 24 decisions in proceedings in which CPD participated as the defendant, i.e. appeals), and 11 court decisions that found discrimination (from 20 decisions in proceedings in which the CPD participated as a third party).

From eight court decisions issued by the appeal courts, three decisions (out of four decisions in proceedings in which the CPD participated as a third party) found discrimination.

There are no statistics on the field and the protected grounds in these decisions.

d) Registration of discrimination cases by national courts

In Albania, discrimination cases are not registered as such by national courts. The CPD publishes the above statistics within its annual report.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging on behalf of victims of discrimination (representing them)

¹⁰⁰ The CPD, Decision No.146, dated 24.09.2014.

¹⁰¹ Kruja District Court, Decision No. 152, dated 10.04.2018.

¹⁰² Commissioner for Protection from Discrimination (2014), *Annual Report 2015*, pp. 72-73. <http://kmd.al/wp-content/uploads/2019/03/Raport-Vjetor-2015.pdf>.

¹⁰³ Commissioner for Protection from Discrimination (2019), *Annual Report 2018*, p. 47. www.kmd.al/wp-content/uploads/2019/03/RAPORTI-VJETOR-2018.pdf.

In Albania, associations/organisations/trade unions are entitled to act on behalf of victims of discrimination.

Article 32(1)(b) of the LPD empowers the commissioner 'to examine complaints from organisations that have a legitimate interest to act on behalf of and with the written consent of the individuals or groups of individuals who claim that discrimination has occurred.' The law defines that organisations with a legitimate interest as 'those organisations, which are registered in the Republic of Albania and the declared object of their activity is the protection of human rights, or to provide assistance to victims of discrimination' (Article 3(9)).

The LPD regulates in detail the legal status of NGOs in the complaints review process:

'A person or group of persons who claim that they have been discriminated against, or an organisation with legitimate interests that claims discrimination in the name of a person or group of persons, may submit a complaint together with available evidence to the Commissioner, in writing or in exceptional cases orally, so that minutes can be taken.' (Article 33(1))

The LPD differentiates between the representation of victims of discrimination before the commissioner and before the courts. Under Article 34(3), which stipulates entities that have the right to submit a claim for discrimination, the law provides that:

'An organisation with a legitimate interest or the commissioner may file a lawsuit on behalf of a person or group of persons, provided that the commissioner or the organisation shall have the consent by a special power of attorney **or declaration before the court** of person or group of persons affected by discrimination' (emphasis added).

However, according to Article 33(2) of the LPD, during the administrative proceeding before the CPD, the right of organisations with a legitimate interest is conditional on the obligation to present a special power of attorney to represent the person or group of persons (a declaration is not given as an option). This has financial consequences for the complainant and violates his or her right to be represented by a CSO.

Considering the necessity and obligation to achieve effective protection against discriminatory behaviour, and bearing in mind that in most cases the complainants belong to the most vulnerable groups in society, representation of the complainant before the commissioner should be subject to the same legal provision as for cases before the courts.¹⁰⁴

b) Engaging in support of victims of discrimination (joining existing proceedings)

In Albania, it is unclear whether associations and organisations are entitled to act in support of victims of discrimination, as the law is silent in this regard. However, trade unions are entitled to act in support of their members, according to Article 182 of the Labour Code.¹⁰⁵ Furthermore, the Commissioner for Protection against Discrimination is usually requested by courts to attend the entire court proceedings as an interested party to the trial.

¹⁰⁴ Baraku, I. (2012) 'The anti-discrimination legal framework and the mechanisms that guarantee effective protection from the discriminatory behaviours', presentation at International Conference *Towards future sustainable development*, University of Shkodra, 16-17 November 2012.

¹⁰⁵ According to Article 182 of Labour Code 'Any organisation of employees, which is recognised as a legal entity may approach the court for the protection of the interests of each of its members, to achieve the application from the employer of the legal provisions, collective and individual contracts of employment.'

c) Actio popularis

In Albania, national law allows organisations/trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

This is not expressly provided under the LPD, but the Commissioner for Protection from Discrimination has established good practice. Article 32(3) of the LPD provides that 'for the examination of complaints addressed to him, the commissioner applies the norms provided in the Code of Administrative Procedures, except for the procedures that are provided for by this law', which allows for the possibility of the CPD accepting *actio popularis* claims.

d) Class action

In Albania, national law allows associations/organisations/trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

Article 32(1)(b) of the LPD gives the commissioner the power to examine complaints from organisations that have a legitimate interest to act in the name and with the written consent of individuals or groups of individuals who claim that discrimination has occurred. As mentioned above, the organisation has a duty to submit a special power of attorney to represent the person or group of persons. However, during court proceedings, it is sufficient that a person or group of persons affected by discrimination give their consent through a declaration before the court.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Albania, national law requires/permits a partial shift of the burden of proof from the complainant to the respondent.

The Law on protection from discrimination does not fully explain the concept of burden of proof in the administrative investigation procedure followed by the commissioner. Referring to the right of subjects to appeal before the commissioner, the law has determined that the applicant 'may submit a complaint with the available evidence to the commissioner' (Article 33(1)).

The Code of Administrative Procedure,¹⁰⁶ despite the obligation on the public body to make available the proofs to the parties and the right of the parties to seek them (Article 82(1)(3)(4)), explicitly provides for the reverse of the burden of proof in matters of discrimination.¹⁰⁷ According to Article 82(2):

'In cases where the party presents evidence on which it bases claims for discrimination, and based on which it may be presumed that there was discrimination, the other party and/or the public organ shall be obliged to prove that the facts do not constitute discrimination, regardless of the duty of the administration to make available to the parties the evidence under its possession. The public body should be guided by the principle of equality and anti-discrimination for grounds provided by law.'

¹⁰⁶ Albania, Code of Administrative Procedure, Law 44/2015, approved by the Assembly of the Republic of Albania on 30.04.2015 and entered into force on 28.05.2016.

¹⁰⁷ Sigma (2018), *Commentary on the Code of Administrative Procedure of the Republic of Albania*, pp. 61-62; 372-374. Sigma is a joint initiative of the OECD and the EU, which supported the drafting of the Code of Administrative Procedure (Ministry of Justice and the Parliamentary Commission on Legal Affairs, Public Administration and Human Rights).

In court proceedings, the anti-discrimination law (LPD) provides that the claimant 'has the obligation to provide evidence to support the claim, using any legitimate evidence that can prove discriminatory behaviour.' Once the claimant has presented evidence for their claim on the basis of which the court may presume discriminatory conduct, the defendant must prove that the facts did not constitute discrimination under the law (Article 36 (5) and (6)).

The Albanian Constitutional Court, in decision 33/2007 came to an interesting interpretation in a case with the object of repealing as unconstitutional Articles 141, 143, 144 and 146(1) of the Labour Code: the Court applied 'the reversal of the burden of proof in issues of discrimination'. This decision of the Albanian Constitutional Court later served as a basis for the primary courts to reverse the burden of proof in cases of discrimination related to labour relations and in other cases of discrimination. With the enforcement of the Law on administrative courts, the question of the burden of proof was further solved in dispositions regarding the principles of administrative adjudication. In an administrative conflict in court, the burden of proof falls on the public administration authority. This procedural principle is defined in the third paragraph of Article 3 of the Law on administrative courts: 'The public administration, as a rule has the obligation to prove the merits in law and in fact of the activities committed by its bodies.'¹⁰⁸

The United Chambers of the Supreme Court have argued that the law protects employees regarding the burden of proof in substantial court claims concerning the employment contract, only in cases provided for in Article 146(1), on abusive cases of termination of the contract by the employer. Claiming the existence of one (or more) of causes of the abuse will always come from the employee, who must, prima facie, prove that the termination of the contract was made without reasonable cause. Naturally, the employer must prove the contrary and that there was another reason for the termination of the contract.¹⁰⁹

During court proceedings, in cases of discrimination in employment, if the claimant makes a prima facie case, it is clear that the burden of proof shifts to the defendant.

The amendments to Labour Code (made in 2015) provide that:

'In all the complaints procedures, followed according to paragraph 9 of this article [on prohibition of discrimination], if the complainant or plaintiff presents facts from which it may be presumed that [he/she] has been discriminated against in the exercise of the right to employment and occupation, the person against whom the complaint or the defendant is obligated to prove that the principle of equal treatment is not infringed.' (Article 9(10))

Given that the Code of Administrative Procedure and the recent amendments to the Labour Code have already adjusted the distribution of the burden of proof in relation to discrimination issues in the public sector and private sector (regarding employment), in 2014 the CPD made a recommendation for amendments to the Civil Procedure Code on the shifting of the burden of proof for discrimination cases. The recommendation was not taken into consideration in the amendments made to the Civil Procedure Code by Law No. 38/2017.¹¹⁰ The proposal relied on the argument for the need to extend the shift of the burden of proof in the private sector, regarding cases of discrimination in goods and services.¹¹¹

¹⁰⁸ Hoxhaj, E. and Baraku, I. (2014) 'The burden of proof in the administrative process in Albania', *European Scientific Journal*, Vol.10, No. 10, 2014.

¹⁰⁹ United Chambers of the Supreme Court, unifying decision No. 19, dated 15.11.2007.

¹¹⁰ Albania, Law No. 38/2017 on some additions and amendments to Law no. 8116 of 29.3.1996. The Code of Civil Procedure of the Republic of Albania, as amended, is published in the Official Gazette no. 98, 5 May 2017. Amendments to the Civil Procedure Code entered into force in November 2017.

¹¹¹ Commissioner for Protection from Discrimination (2013) *Annual Report 2014*, p. 95. <http://kmd.al/wp-content/uploads/2019/03/Raporti-Vjetor-2014.pdf>.

6.4 Victimization (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Albania, there are legal measures of protection against victimisation.

The national anti-discrimination law (LPD) states that victimisation is a form of discrimination under Article 3(8) and defines 'victimisation' as 'an unfavourable treatment or adverse consequence that comes as a reaction to a complaint or to a proceeding that aims at the implementation of the principle of equality.'

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

According to Article 33 of the LPD, the commissioner may impose sanctions through a fine and set a reasonable time within which the fine must be paid. The amount of the fine depends on the status of the defendant. The law provides four categories: a natural person (fines of approximately EUR 80 to 480); a legal person (fines from EUR 480 to 4800); a natural person within a legal person who is responsible for the violation (fines from EUR 240 to 640); a person who exercises a public function and is responsible for the violation on the basis of this law (fines from EUR 240 to 640). In addition, the commissioner may require the relevant authorities to remove or suspend the licence or authorisation of the natural or legal subject to conduct his activity. This is a final means to be used especially when the natural or legal subject does not comply with the decision of the commissioner or does not pay the fine within three months of the time period set by the commissioner and the sanction has not been objected to in court. This decision is binding.

The LPD is not repressive, because it gives the defendant some opportunities to avoid the sanctions by prompt restoration of the violated right. The fine is repealed if the person against whom the complaint was submitted implements the decision within seven days after the sanction was imposed (Article 33(11)). The punishment by fine can be appealed before the relevant court, according to the Code of Civil Procedure (Article 33(16)) and the fine is deposited into the state Budget (Article 33(17)).

According to Article 37(1) of the LPD on the 'Decision of the court', the law provides that 'the decision of the court sets the indemnification, if the court decides that there is a violation of this law, also including a time period for making the indemnification'. The LPD, through the Article 38 provides a definition of 'indemnification', which includes, among other things, the correction of the legal violations and their consequences through return to the prior situation, appropriate compensation for the property and non-property damages or through other appropriate measures.

b) Ceiling and amount of compensation

There are no limits stipulated by law, and the amount of compensation fully depends on the court verdict. In other areas of compensation (such as traffic accidents), court practice is to relate the sum of compensation to the living standard in the country.

In 2018, Kruja District Court found discrimination against E.H. and imposed a duty on the defendant to indemnify the claimant and her family for the non-material damage suffered on the basis of the psychological report, to a total value of EUR 48 370 (ALL 6 046 326). The interruption to employment relations was made four months before the end of the employment contract, during which period the claimant was on maternity leave and the

notification (on the interruption of the employment relations) was made when the mother and the child had serious health problems.¹¹²

c) Assessment of the sanctions

The LPD provides for different amounts of fees and places a duty on the CPD to take into consideration: the nature and field of action of the violation and the effect on the victim; the personal and financial circumstances of the violator, especially taking into account all sources of income, and if the violation is committed by a private legal person, the balance sheet assets and profit are taken into account, as well as the total payroll; the same violation discriminates against several persons, only one fine is imposed, but taking into account the requirements of being a proportionate measure.

In the opinion of the author, the value of the sanctions is low and sometimes the parties that have committed discriminatory behaviour prefer to pay the fine instead of enforcing the legal obligation and decision of the CPD.

¹¹² *Kruja District Court, Decision No. 152, dated 10.04.2018. Earlier, the commissioner found discrimination through Decision No. 146, dated 24.09.2014.*

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

Before the adoption of the Law on protection from discrimination, the People's Advocate (ombudsperson) was the only institution entitled to protect the principles of equality and non-discrimination based on a broader mandate for the protection of human rights in the public sector.

The Law on protection from discrimination, proposed by a group of MPs in support of requests by civil society organisations, establishes an independent institution as the Commissioner for Protection from Discrimination (CPD). The establishment of this institution came as a result of the EU requirements for Albania's progress in the European integration process and reflected the commitment of the Albanian authorities to respecting human rights, equality and non-discrimination.¹¹³ It started operating on 21 May 2010.¹¹⁴ In April 2018, the new commissioner was elected by the Assembly of the Republic of Albania.¹¹⁵ The CPD deals with both public and private sectors, takes decisions and can impose sanctions.

- b) Political, economic and social context for the designated body

Generally, public and political debates are supportive of the body. In 2018, the Assembly and the Albanian Government took some measures to ensure the fulfilment of the CPD's mandate, such as: locating the office in a building in the centre of the city with the necessary space; changing the structure, which led to an increase in the number of employees; and increasing the budget.

- c) Institutional architecture

In Albania, the designated body does not form part of a body with multiple mandates. It is an independent institution, elected by the Assembly.

From 2010 to 2018, the institution had 23 employees, 17 of them dealing directly with discrimination cases. In 2018, the changes to the structure of the CPD by the Parliament led to an increase in the number of employees from 23 to 34.¹¹⁶

The organisational structure of the Office of the Commissioner has also been amended through a decision of the Parliament. In the new structure, the Office of the Commissioner has five directorates:

- reception of complaints directorate (including three regional offices);
- administrative investigation directorate;
- legal directorate;
- monitoring, reporting and communication directorate;
- supporting services directorate.

¹¹³ Commissioner for Protection from Discrimination (2011), *Annual Report 2010*, <http://kmd.al/wp-content/uploads/2019/03/Raporti-vjetor-KMD-2010.pdf>.

¹¹⁴ Assembly of the Republic of Albania, Decision No. 33, dated 22.04.2010, on the election of the Commissioner for Protection from Discrimination and Decision No. 34, dated 20.05.2010 on approval of the structure, organisation and categorisation of job positions of the Office of the Commissioner for Protection from Discrimination.

¹¹⁵ Assembly of the Republic of Albania, Decision No. 60, dated 05.04.2010.

¹¹⁶ Assembly of the Republic of Albania, Decision No. 88, dated 23.07.2018.

d) Status of the designated body/bodies – general independence

i) Status of the body

The Commissioner for Protection from Discrimination is an independent body. It is not subordinated to any other body within the administrative system. The institution is supported by the Office of the Commissioner for Protection from Discrimination, which has the necessary personnel and equipment to support the commissioner in fulfilling the duties assigned by law. The employees of this office have the status of civil servants (Article 21(2) and (3)). The commissioner is able to recruit his staff independently, based on the Law on civil servants. The commissioner has their own independent budget, which is financed from the state budget and various donations.

On April 4, 2018, the new commissioner was elected following a transparent procedure based on the Rules of Procedure of the Assembly of Albania. The Assembly issues a public call, examining candidates and holding hearings with them. Civil society organisations sent a letter of support for one of the civil society candidates. However, the Assembly elected as the commissioner one of the candidates from an academic background.

According to Article 26 of the LPD on reporting, the commissioner submits a report at least once a year before the commissions of the Assembly, which must include an analysis of the implementation of the law in general, as well as the work of the commissioner and the office.

ii) Independence of the body

The independence of the commissioner is clearly stipulated in the national anti-discrimination law (LPD) under Article 22. The commissioner is independent in the exercise of their duty and is subject only to the Constitution and the law.

According to Article 23 of the LPD, the commissioner is elected by a majority of all the members of the Assembly, based on the possible candidates proposed by a group of deputies. Potential candidates can be every Albanian citizen who meets the following requirements: a) having high moral qualities and distinguished activity in the community; b) having a university diploma; c) having distinguished activity and knowledge in the field of human rights and freedoms and law; d) having not been convicted by a final decision for the commission of a criminal offence; and e) not being a deputy in the legislature of the Assembly that proposes or elects him. According to Article 30, the commissioner is prohibited from being part of a political organisation or party, from carrying out political, state and professional activity, and from taking part in the leading organs of social, economic and commercial organisations. He may carry out teaching activities and publish literary and scientific works, without affecting the exercise of his functions in a normal manner.

Under Article 25, the commissioner can be elected for a term of five years, with the right to be re-elected only once. The Assembly elects a new commissioner within one month from the post becoming vacant. When the five-year term of the commissioner ends, he stays in office until the new commissioner is elected (Article 29, LPD).

According to Article 28, the commissioner can be dismissed (based on a motion for discharge by no fewer than one third of the deputies of the

Assembly and with the decision by a majority of the votes of all the members of the Assembly) only under very specific conditions:

- a) he has been convicted by a final court decision for the commission of a criminal offence;
- b) he is mentally or physically incapable of exercising his functions;
- c) he commits activity in opposition to the provisions of this law, with the Constitution or with the legislation in force.

The legal framework provides for budgetary independence. The commissioner is a public legal person. The commissioner has his own independent budget, which is financed from the state budget and various donations. However, the Assembly decides on the pay of the commissioner, the organisational structure and the classification of payment for the employees of the Office of the Commissioner for Protection from Discrimination.

No reports or debates (Assembly Resolution, Progress Reports for Albania, reports of international organisations, civil society) show any apparent concern about the independence of the commissioner in the exercise of his functions.

e) Grounds covered by the designated body/bodies

The Commissioner for Protection from Discrimination ensures the effective protection from discrimination and from every other form of conduct that incites discrimination based on an open-ended list of protected grounds provided by Article 1 of the LPD: gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other grounds.

According to the *Annual Report 2018*, most cases for discrimination handled by the CPD related to race (62), political beliefs (62), economic situation (43), disability (31), health status (21), gender (20), any other grounds (20), affiliation with a particular group (18), education situation (17), ethnicity (16), age (14), and social situation (10).

However, the number of discrimination cases for other grounds are so low that this logically means that there is underreporting for these grounds: gender identity (2), sexual orientation (4), colour (4), religious beliefs (2), philosophical beliefs (1), pregnancy (1), parentage (5), parental responsibility (2), civil status (6), residence (6), and genetic predispositions (1).

No case law has been developed on the enforcement of the law regarding migration disputes, although the legal framework guarantees the same treatment on the protection from discriminatory behaviour. In the context of the IPA project on increasing the effectiveness of the Albanian system of human rights protection and anti-discrimination, the staff of the commissioner completed an online course on 'Asylum and the European Convention on Human Rights' on the HELP Platform - Human Rights Education for Legal Professionals.¹¹⁷

f) Competences of the designated body/bodies – and their independent exercise

- i) Independent assistance to victims

¹¹⁷ Commissioner for Protection from Discrimination (2019), *Annual Report 2018*, p.79. www.kmd.al/wp-content/uploads/2019/03/RAPORTI-VJETOR-2018.pdf.

In Albania, the Commissioner for Protection from Discrimination has the competence to provide independent assistance to victims through:

- examining complaints and conducting administrative investigations after the receipt of credible information about a violation of the LPD (Article 32(1)(a),(b) and (c));
- providing written opinions on any kind of issue related to discrimination based on the request of the court (Article 32(1)(gj));
- representing a complainant in the judicial bodies in civil cases, with their approval (Article 34).

In practice, the CPD never used the latter power. The LPD does not provide the right of CPD to exercise this power independently but to exercise it only as a representative of the presumed victim of discriminatory behaviour.

ii) Independent surveys and reports

The commissioner has a duty to encourage the principle of equality and non-discrimination, especially by raising awareness and disseminating information on these issues; to monitor and carry out surveys in connection with discrimination; and to publish reports. This duty is effectively exercised in an independent manner, in practice through:

a. Conducting monitoring such as:

- Monitoring with focus the discriminatory behaviour in the education system and the level of knowledge of Law No. 10 221 on protection from discrimination.¹¹⁸
- Monitoring of the tendency towards the segregation or concentration of Roma children in the education system.¹¹⁹

b. Publishing a lot of leaflets, manuals, brochures, studies, including:

- 'Protection from Discrimination - Handbook for NGOs', 2013.
- Summary of CPD Decisions and Expert Board Opinions (2014)
- 2015, 2017, Summary of CPD Decisions
- Summary of decisions of the Court of Justice of the European Union, European Court of Human Rights and Equality Bodies (2014)
- 'Study on the issue of discrimination of the Roma community in Albania' (2014)
- Discrimination in education from the perspective of the Commissioner for Protection from Discrimination.
- 'Special Report on the Protection and Respect of LGBTI Community Rights in Albania' (2014).
- Study- 'On the Situation of Women Discrimination in Albania' (2014)
- 'Guide for protection from gender discrimination in the economic sector' (2012, 2014)
- Handbook for Training of Educational Institutions, for School Psychologists and Social Workers (2011)
- An information brochure 'Protection of Minorities in Albania under the Law Protection from Discrimination'

¹¹⁸ Commissioner for Protection from Discrimination (2014), *Discrimination in education from the perspective of the Commissioner for Protection from Discrimination*, Tirana 2014, p.20.

¹¹⁹ Commissioner for Protection from Discrimination (2014), 'Summary of the Decisions of the Commissioner for Protection from Discrimination', p.16.

- Development of an information brochure 'On employment in the public and private sectors'.
- An information brochure 'On the provision of goods and services'.
- An information brochure 'On the provision of education'.

iii) Recommendations

The commissioner has the power to make recommendations about any kind of issue related to discrimination, including legal recommendations by proposing the approval of new legislation or the amendment or reform of existing legislation.

The CPD sent in 2012 - 4 recommendations; in 2013 - 2 recommendations; in 2014 - 7 recommendations; in 2015 - 3 recommendations; in 2016 - 5 recommendations; in 2017 - 7 recommendations; in 2018 - 13 recommendations.

The CPD has sent recommendations to the Ministry of Urban Development (the body covering housing issues) in the context of the review of the draft law on social housing. The CPD made a recommendation for incorporating the principle of non-discrimination. The CPD also recommended that: '... in the categories that have priority in obtaining lease subsidy, the category of elderly should be included, as (...) the exclusion of this category, puts them in positions of discriminatory treatment compared to the other categories included in the draft law'. The draft law on social housing considered by the Albanian Parliament, took into consideration the recommendation made by the Commissioner for Protection from Discrimination in respect of this particular provision.

iv) Other competences

In Albania, the CPD has other powers provided by the LPD, such as: to encourage the principle of equality and non-discrimination, especially by sensitizing and informing about those issues, also including the offering of written information among other things about this law, in the Albanian language, in the languages of minorities, as well as in formats usable by persons with a disability;

- to address public opinion directly about any issue related to discrimination through sending recommendations, issuing press releases and giving media interviews;
- to contribute to reporting and, as the case may be, to submit reports to international and regional bodies, as the UN mechanism on human rights (CEDAW, CERD, UPR on Human Rights), Council of Europe, in the Framework of European Integration Process (Meeting of the Stabilisation and Association Committee, EU-Albania, Sub-Committee Meeting on Justice, Freedom and Security, EU-Albania Subcommittee Meeting on Innovation, Information Society and Social Policies; Roadmap on the Five Key Priorities).

The commissioner has yet to draft a report on the implementation of the CRPD. The new structure of the CPD (based on the *National Action Plan for Persons with Disabilities 2016-2020*) designates two employees to conduct the monitoring of the implementation of CRPD.

g) Legal standing of the designated body/bodies

In Albania, the Commissioner for Protection from discrimination does have legal standing to:

- bring discrimination complaints on behalf of a person or group of persons to court, but the commissioner must have the consent by a special power of attorney or by declaration before the court by the person or group of persons injured by the discrimination; (in practice the CPD has never used this competence)
- intervene in legal cases concerning discrimination, such as *amicus curiae*, according to the court decision.

h) Quasi-judicial competences

In Albania, the Commissioner for Protection from Discrimination is a quasi-judicial institution. Guaranteeing the right to equal treatment and non-discrimination is mainly realised through the recognition of the right to make a complaint.

The complaint has to fulfil certain legal requirements such as including the applicant's name, the entity to which the appeal is brought, the explanation of the alleged discrimination, the measures required by the commissioner (Article 33(3)), which are reflected in the form of the complaint. The law also provides for cases where complaints cannot be accepted such as: anonymous complaint, the expiry of the deadline for the submission of the complaint, complaints of discrimination referring to facts that occurred prior to the law coming into force, etc. (Article 33(4)). The law recognises two ways to submit a complaint: in writing and, in exceptional cases orally, in which case minutes must be taken.¹²⁰ The complaints can be submitted to the central and three regional offices, or online. Mail and email are the main ways that citizens submit complaints, according to the Office of the Commissioner.

The natural or legal persons against whom the complaint has been submitted have the right to be notified in writing by the commissioner within 15 days from the day of receipt of the complaint. The commissioner has to verify the facts, asking the complainant and the person against whom the complaint was filed to submit written presentations within 30 days from the day the parties receive the notice. The commissioner may also take information from any other person or source. If appropriate, the commissioner holds a public hearing session and invites the parties and every other interested person. If appropriate, the commissioner seeks to reach a conciliation agreement between the complainant and the person against whom the complaint was submitted (Article 33(5), (7), (8) and (9)).

Figure 1: Commissioner for Protection from Discrimination – complaints by activity.

Year	Public Hearings	Investigation Inspections	Requests for information
2017	52	16	200
2018	47	32	364

At the conclusion of the administrative proceeding, the commissioner takes a decision, which is made known to the parties within 90 days from the date of receipt of the complaint or, if a public hearing session has been held, within 90 days from the day of the hearing. The CPD publishes only the decision, within which there is a detailed information on the inspections. The decision contains appropriate measures and protocols, as well as setting a period for implementing them. Under Article 33(12), the

¹²⁰ Baraku, I. (2012) 'The antidiscrimination legal framework and the mechanisms that guarantee effective protection from the discriminatory behaviours', presentation at International Conference *Towards future sustainable development*, University of Shkodra, 16-17 November 2012.

commissioner must ensure that any measures required in the decision will be effective, preventative and proportionate with the situation that caused the imposition of the measure.

The decisions of CPD are binding. It has the power to impose sanctions through fines. As a last resort, especially when the natural or legal subject does not comply with the decision of the commissioner or does not pay the fine within three months after the time period set by the commissioner and the sanction has not been objected to in court, the commissioner may ask the relevant authorities to remove or suspend the licence or authorisation of the natural or legal subject to conduct their activity (Article 33(13)).

The decision of the CPD can be appealed. In general, decisions of the CPD are appealed to the court (during 2018, the CPD participated in 66 court proceedings, of which 33 were appeals and the CPD was the defendant). If the decision is not appealed nor fulfilled promptly, the commissioner can make an application for court enforcement orders, following the procedures for the execution of fines through public bailiffs (19 such procedures were pursued during 2018). Under Article 33(16), a natural or legal subject against whom a measure of punishment by fine is taken has the right to appeal to the court according to the Code of Civil Procedure.

i) Registration by the body/bodies of complaints and decisions

In Albania, the CPD registers the number of discrimination complaints and decisions by ground, field, type of discrimination, etc. These data are available to the public through the publication of the annual report and decisions of the commissioner on the official website.¹²¹ Under the Law on the right to information, any person may request information received by the commissioner.¹²² The institution has fulfilled its legal obligation by publishing its programme of transparency and request register and by assigning an employee as information coordinator.

Figure 2: Number of complaints and decisions of the Commissioner for Protection from Discrimination, by year.

Year	Number of complaints	Ex- officio investigation	Administrative decisions	Decisions establishing discrimination
2010	4	0	1	0
2011	15	1	8	1
2012	90	14	21	7
2013	166	25	135	16
2014	172	8	209	32
2015	180	17	184	41
2016	120	11	197	57
2017	166	7	142	24
2018	197	8	241	49

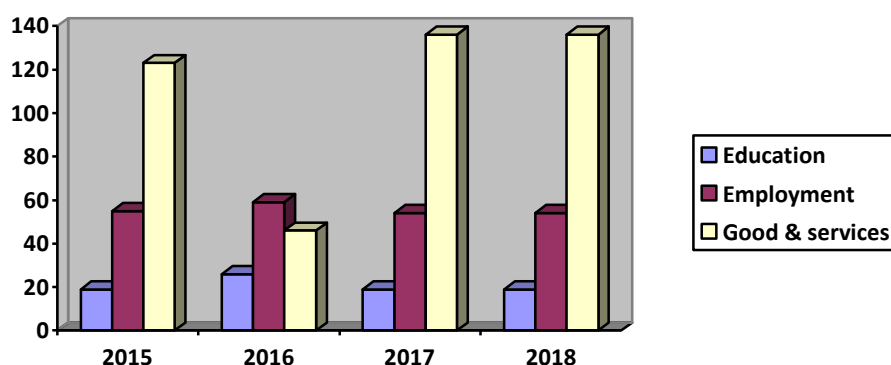
The number of complaints is the number of new complaints registered during the respective year; the number of administrative decisions includes the administrative decisions for all the cases concluded during the relevant year.

The LPD provides for the protection from discrimination in education, employment and goods and services (including housing, social services, etc.) in three specific chapters.

¹²¹ For annual reports, see: <http://kmd.al/raporte-vjetore/>; for decisions of the commissioner, see <http://kmd.al/vendime-te-komisionerit-2018-2/>.

¹²² Albania, Law No. 119/2014, on the right to information.

Figure 3: Number of complaints by field, per year.



j) Stakeholder engagement

In Albania, the Commissioner for Protection from Discrimination engages with civil society, international organisations, public institutions, independent bodies, the media, employer networks, local government entities and trade unions as part of implementing their mandate.

Every year, the commissioner organises an annual conference and brings together stakeholders to discuss discrimination issues. The commissioner is also part of some working groups, which have been formed to draft strategies and action plans for gender equality and vulnerable people, such as disabled people, LGBTIQ people, Roma, children, etc. On October 29 2018, the Commissioner for Protection from Discrimination organised the third regional conference of equality institutions on the topic of the independence of equality institutions, with the support of the OSCE Mission in Albania. In addition, the commissioner participates in 50 to 70 activities organised by other stakeholders every year.

k) Roma and Travellers

In Albania, the commissioner treats Roma and Travellers as a priority issue.

The *Strategic Plan 2012-2015* and the *2012 Anti-Discrimination Commissioner's Action Plan* set as strategic priorities, 'Increasing the number of complaints addressed to the CPD by the Roma community and the Egyptian community in the area of provision of goods and services, such as housing, and in the field of employment'.¹²³

The highest number of cases dealt by the commissioner are in the field of goods and services (in housing, economic benefits), and are mostly from Roma people. The CPD has also dealt with cases of discrimination in employment. In education, the commissioner dealt with the refusal of some directors of education institutions to register Roma and Egyptian children or to provide free textbooks for school (although there are bylaws that guarantee these rights).

The commissioner and the People's Advocate are involved in some cases in relation to people facing eviction from their house (most of them Roma people) as a result of development of public or private land.

During 2018, two TV spots that addressed the Roma community's issues were broadcast for two months, on two national television channels, with high visibility. Every year, the commissioner has organised open days with the Roma and Egyptian communities, aiming

¹²³ Commissioner for Protection from Discrimination (2011), *Annual Report for 2012*, p.7.

to raise awareness about protection from discrimination and ways in which to make a complaint before the equality body and the court.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

Since its establishment, the CPD has made efforts to fulfil its responsibility to make society aware of the protection offered by the LPD. This has been realised through many activities such as: the organisation of community open days, the publication and dissemination of awareness and training materials, and the organisation of open lectures, seminars and conferences. The preparation of some advertising spots brought to public attention, not only the appeal to address cases to the commissioner, but also the positive cases dealt with in relation to the discrimination of vulnerable groups, such as Roma, people with disabilities, women and LGBT persons.

The CPD has an official website www.kmd.al, which provides simple information about: the LPD (grounds, the forms of discrimination, fields, procedures before the CPD and the court); decisions of the commissioner; the activities of the institutions; the publications, the law in minority languages; the way to make a complaint online; and the complaint form, etc.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

Most of the activities are organised through projects, with the support and in collaboration with international organisations and NGOs. The CPD has signed a memorandum of agreement with over 80 NGOs, the People's Advocate, public institutions and local authorities.

In Albania, the Agency for the Support of Civil Society is the central, public budgetary institution with the mission of promoting civil society, through financial assistance and sustainable development.¹²⁴ There is also the National Council for Civil Society, which aims to guarantee institutional cooperation between civil society organisations in Albania.¹²⁵

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

The CPD has promoted and encouraged dialogue with and between social partners, such as institutions, the Union of Chambers of Commerce Industry of Albania, media and civil society organisations.

- d) Addressing the situation of Roma and Travellers

Albania does not have a central interdisciplinary body coordinating the Roma integration policy.¹²⁶

The Ministry of Health and Social Protection is responsible for the administration and presentation to the Government of information on the monitoring of the implementation

¹²⁴ Albania, Law No. 10093, dated 09.03.2009. <http://www.amshc.gov.al/web/ pergjigje-pyetjeve.php>.

¹²⁵ Albania, Law No. 119/2015, on the establishment and functioning of the National Council for Civil Society. <https://drive.google.com/file/d/1IkoJW3ev3TLV6dJAD73y6DaRDuy8ZN4G/view>.

¹²⁶ European Commission (2018), *Albania 2018 Report*, Strasbourg, 17 April 2018, SWD (2018) 151 final, p. 31. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>.

of the *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*.¹²⁷

In addition, the Commissioner for Protection from Discrimination treats Roma and Travellers as a priority issue.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Mechanisms

In Albania, the principles of '*lex specialis derogat legi generali*' (special rules prevail over general rules) and '*lex posteriori derogat legi priori*' (more recent rules prevail over less recent rules) apply.

b) Rules contrary to the principle of equality

Repeatedly during 2013 and 2014, the CPD made recommendations for amendments to the Criminal Code, in respect of protection against discrimination based on sexual orientation and gender identity. The amendments to the Criminal Code in 2013 took into consideration some of recommendations made by the CPD.¹²⁸ However, some of the CPD's recommendations were not reflected in the amendments of the Criminal Code,¹²⁹ such as:

- Adding to Article 84(a) of the Criminal Code (on 'Threat due to racist and xenophobic motives through the computer system') threats based on sexual orientation and gender identity as a specific criminal offence;
- Criminalisation of insults and distribution of homophobic materials through computer systems based on sexual orientation and gender identity;
- Reformulation of Article 265, on 'Encouragement of hatred or quarrel', to include gender identity;
- Rewording Articles 101-107 of the Criminal Code, to remove the word 'homosexual' from legal provisions on sexual crimes.¹³⁰

¹²⁷ Albania (2015), *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*, approved by the Council of Ministers Decision No. 1072, dated 23.12.2015.

http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_kombetar_i_veprimit_per_integrimin_e_Romeve_dhe_Egjiptianeve_2016-2020.pdf.

¹²⁸ Albania, Law No. 144/2013, on some amendments to Law No. 7895, the Criminal Code of the Republic of Albania.

¹²⁹ Albania, Law No. 7895, the Criminal Code of The Republic of Albania, amended by Law No. 36/2017 and Law No. 89/2017. <https://euralius.eu/index.php/en/library/albanian-legislation/send/10-criminal-code/11-criminal-code-en>.

¹³⁰ Commissioner for Protection from Discrimination (2018), *Annual Report 2017*, pp. 49-51. <http://kmd.al/wp-content/uploads/2019/03/raporti-vietor-2017.pdf>.

9 COORDINATION AT NATIONAL LEVEL

Since 2017, the Government has tasked the Ministry of Health and Social Protection with, among other things, the mission of guaranteeing constitutional rights for protection and social inclusion and social care and equal chances.¹³¹ There is a deputy minister who is responsible for non-discrimination issues. The ministry's structure has a general department of policies and health social protection development, which includes a department of policies and health social protection development, under which the policies and strategies for social inclusion and the Gender Equity Unit operate.¹³²

The Ministry of Health and Social Protection

The Ministry of Health and Social Protection is the body responsible for monitoring the implementation of the *Social Inclusion Policy Paper 2015-2020*, where one of the main indicators is 'social inclusion and human rights'.¹³³ It has a coordinating role in the implementation of the *National Action Plan for LGBTI Persons in the Republic of Albania, 2016-2020*,¹³⁴ which includes as strategic goals: improving the legal and institutional framework, as well as raising awareness of non-discrimination and protection of LGBTI people's rights in accordance with international standards; elimination of all forms of discrimination against the LGBTI community; improving access to employment, education, health, housing and sports services for LGBTI people, and guaranteeing equal opportunities.

The ministry is responsible for the administration and presentation to the Government of the information on the monitoring of the implementation of the social protection strategy,¹³⁵ the strategic goals of which include: mitigating and alleviating poverty; improving the quality of life of people with disabilities; and the development of social care services.

The ministry is responsible for the administration and presentation to the Government of the information on the monitoring of the implementation of the *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*.¹³⁶ The plan's strategic goals include: facilitating opportunities for the equal use of civil registration services and justice for Roma and Egyptians; Roma and Egyptians are eligible to full access and inclusion in qualitative education without being subject to discrimination and segregation; providing equal opportunities for formal employment for Roma and Egyptians; ensuring accessible, affordable and equitable healthcare for Roma and Egyptians; and improving housing conditions for Roma and Egyptians.

The ministry has a coordinating role in the implementation of the *National Strategy on Gender Equality and Action Plan 2016-2020*.¹³⁷ It also has a coordinating role in the

¹³¹ <http://www.shendetesia.gov.al/misioni-2/>.

¹³² <http://www.shendetesia.gov.al/wp-content/uploads/2019/01/Structure-of-the-Ministry-of-Health-and-Social-Protection.pdf>.

¹³³ Government of Albania (2015), *Social Inclusion Policy Paper 2015-2020*, June 2015. <http://www.shendetesia.gov.al/wp-content/uploads/2019/01/Dokumenti-i-Politikave-per-Perfshirje-Sociale-2015-2020-drafti-final.pdf>.

¹³⁴ Government of Albania (2016), *National Action Plan for LGBTI Persons in the Republic of Albania, 2016-2020*, March 2016. <https://shendetesia.gov.al/wp-content/uploads/2019/01/Plani-LGBTI-2016-2020-KM.pdf>.

¹³⁵ Government of Albania (2015), *National Strategy for Social Protection 2015-2020*, approved by the Council of Ministers Decision no. 1071, dated 23.12.2015. http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Strategjia_Kombetare_per_Mbrojtjen_Sociale_2015-2020.pdf.

¹³⁶ Government of Albania (2015), *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*, approved by the Council of Ministers Decision no.1072, dated 23.12.2015. http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_kombetar_i_veprimit_per_integrimin_e_Romeve_dhe_Egjiptianeve_2016-2020.pdf.

¹³⁷ Government of Albania (2016), *National Strategy on Gender Equality and Action Plan 2016-2020*, October 2016. <http://www.shendetesia.gov.al/wp-content/uploads/2018/06/SKGJB-AL-web.pdf>.

implementation of the *National Action Plan for Persons with Disabilities 2016-2020*.¹³⁸ The plan's strategic goals include: ensuring equal access to services and information for persons with disabilities; guaranteeing access to the justice system for all persons with disabilities; improving participation in the labour market and promoting equal opportunities for decent work for persons with disabilities; providing quality and inclusive education for all children with disabilities; improving the quality of life of persons with disabilities by providing accessible and affordable services/benefits which are client-focused and community-based; providing accessible, affordable and equal healthcare for persons with disabilities; enabling persons with disabilities to represent their interests and to participate in public and political life in Albania; and creating synergy among various sectors with a view to promoting the integration of persons with disabilities in an inclusive, continuous and sustained fashion.

The Minister of Justice, the Free Legal Aid Directory,¹³⁹ the National Chamber of Advocates and the relevant courts are the institutions responsible for the enforcement of Law No. 111/2017 on legal aid guaranteed by the state.¹⁴⁰ The Free Legal Aid Directory was scheduled to be set up in September 2018.¹⁴¹ The law was adopted in the context of judicial reform, with the aim of enhancing access to justice for individuals with economic difficulties and for specific categories, including disadvantaged groups. The law also protects foreign nationals, stateless persons and asylum seekers. The novelty of this law is the exclusion from the payment of court fees and the exemption from the obligation to prepay the fee for executing the execution order of persons benefiting from secondary legal assistance (Article 25). This law explicitly provides, as beneficiaries of state-guaranteed legal aid, regardless of their income and property, victims of domestic violence, sexually abused victims and victims of human trafficking, in addition to other categories such as child victims and juveniles in conflict with the law, persons in social care, persons without legal capacity to act and victims of discriminatory behaviour (based on the decision of the relevant body, according to the legislation in force for protection against discrimination). The People's Advocate recommended to the Minister of Justice and the Parliamentary Committee on Legal Affairs, Public Administration and Human Rights, that victims of discrimination should be included as beneficiaries of this legal right, based on the recommendations of the European Commission against Racism and Intolerance (ECRI).

¹³⁸ Government of Albania (2016), *National Action Plan for Persons with Disabilities 2016-2020*, approved by the Council of Ministers Decision No.483, dated 29.06.2016. Available at: http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_PAK_.pdf.

¹³⁹ Article 36 of Law 111/2017 provides for the termination of the activity of the State Commission for Legal Aid and the creation of the Free Legal Aid Directory within three months from the entry into force of the law.

¹⁴⁰ Albania, Law No.111/2017 on legal aid guaranteed by the state, adopted on 14 December 2017, entered into force on 1 June 2018. <http://www.qbz.gov.al/Botime/Akteindividuale/Janar%202017/Fletore%20241/LIGJ%20nr.%20111-2017,%20date%2014.12.2017.pdf>.

¹⁴¹ The office was finally created after the cut-off date of this report, based on the Order of Prime Minister No. 59, dated 25.03.2019.

10 CURRENT BEST PRACTICES

Over the years, the CPD has examples of best practice in dealing with hate speech based on grounds of ethnicity, language, sexual orientation and gender identity, under the prohibition of harassment as a form of discrimination.

The Egyptian-Roma Youth Movement association made a discrimination complaint on grounds of race by the social media account 'Jeta Osh Qef' (its account in Facebook). On March 17 2018, the platform published material through which it transmits the message of a person who explicitly expresses discrimination against the Roma community, calling them '*arixhinj, gabel, race e zezë*' (terminology based on prejudices about this community). The CPD immediately sent a notice and request for information to 'Jeta Osh Qef'. Despite the fact that the notice was sent several times, in diverse ways, including to the official address, the electronic address and social account on Facebook, the subject did not provide any information.

The commissioner, evaluating that all measures had been taken to inform the subject of the complaint, to give them the opportunity to make explanations and take measures to remove the message from their page and deactivate public access to the published material, on 5 June 2018, made a complaint to facebook.com, and requested that Facebook remove the message. The request was completed within the same day.

The commissioner considers that the language used was a flagrant case of violation of the dignity, fundamental rights and freedoms and impunity of such openly discriminatory behaviour would undermine the reason for the existence of Law 10221/2010 on protection from discrimination.¹⁴² The commissioner found discrimination through hate speech, as harassment as a form of discrimination prohibited by the LPD.

¹⁴² Commissioner for Protection from Discrimination, Decision No.135, dated 13.06.2018.
<https://kmd.al/wp-content/uploads/2019/02/Vendim-nr.-135-date-13.6.2018-LRER-kunder-portalit-JOO.pdf>.

11 Sensitive or controversial issues

11.1 Potential breaches of the directives (if any)

As mentioned, the Law on protection from discrimination is fully in line with the requirements of the directives regarding: the definitions of direct and indirect discrimination; the definitions of all forms of discrimination; the protected grounds as the LPD provides for an open list of grounds and goes beyond the grounds covered by the directives; the fields covered by law, if the provision goes beyond the fields covered by the directives; and compensation for damages.

However, there are still some outstanding issues that need to be addressed:

- an amendment of the shifting the burden of proof in procedures before the Commissioner for Protection from Discrimination;
- amendment of the Code of Civil Procedure regarding the shifting of the burden of proof in cases of discrimination in the private sector outside employment.

11.2 Other issues of concern

The Law on protection from discrimination has to be amended regarding the following issues:

- to provide a standalone definition of discrimination, which is not related to the fundamental rights;
- to provide definitions of the protected grounds, such as nationality (in the sense of citizenship) and other forms of discrimination, including segregation and multiple/inter-sectorial discrimination;
- to provide procedures regarding the power to put conciliation procedures into practice.

The Law on social housing has to add age to the list of protected grounds.

The Law on the pre-university education system has to include 'philosophical beliefs' in the list of protected grounds.

12 LATEST DEVELOPMENTS IN 2018

12.1 Legislative amendments

The new Law No. 111/2017, on legal aid guaranteed by the state was adopted in the context of judicial reform, with the aim of enhancing access to justice for individuals with economic difficulties and for specific categories, including disadvantaged groups.¹⁴³ The law also protects foreign nationals, stateless persons and asylum seekers. The novelty of this law is the exclusion from the payment of court fees and the exemption from the obligation to prepay the fee for executing the execution order of persons benefiting from secondary legal assistance (Article 25). This law explicitly provides, as beneficiaries of state-guaranteed legal aid regardless of their income and property: victims of domestic violence, sexually abused victims and victims of human trafficking, in addition to other categories, such as child victims and juveniles in conflict with the law, persons in social care, persons without legal capacity to act and victims of discriminatory behaviour.

The Albanian Parliament adopted Law No. 22/2018 on social housing, which is the most important act for the implementation of social housing programmes. The law has expanded and strengthened the support for persons with disabilities, persons from the Roma and Egyptian communities, members of the LGBT community, asylum seekers, victims of domestic violence, victims of trafficking and potential victims of trafficking.¹⁴⁴

12.2 Case law

Name of the administrative institution: The Commissioner for Protection from Discrimination

Date of decision: 18.12.2018

Name of the parties: *A group of Roma people v Municipality of Korça*

Reference number: 252

Address of the webpage: <https://kmd.al/wp-content/uploads/2019/02/Vendim-Nr.-252-datë-18.12.2018-Banorët-e-ish-konviktit-kundër-Bashkisë-Korçë.pdf>

Brief summary: The CPD dealt a complaint by a group of people against the Municipality of Korça, claiming discrimination because of 'race, colour, economic situation, educational status, social status and health status'. Due to construction projects, 35 families made up of 130 people have been displaced from their homes. After the reconstruction of a building in the administration of the municipality, the families were placed in this building for a temporary period. Meanwhile, in 2017, Korça Municipality applied to the Ministry of Urban Development for funding to build a block of flats for the Roma and Egyptian community of Korça. Despite the measures taken by the municipality, the spaces were not sufficient for the number of families. Each of the families used a living room, as well as a shared toilet for five families. Referring to the inspections carried out and the findings of the Regional State Health Inspectorate and the Regional Health Directorate, the building did not meet the minimum hygienic and sanitary conditions.

Despite the explicit request of the commissioner, the municipality did not provide any information on the construction or measures taken regarding the maintenance of the building or the intervention to improve the living conditions in this building, in order to prevent situations that could pose a risk to the lives or the health of the inhabitants (as explicitly requested by the commissioner). Referring to the burden of proof, the Korça Municipality had to prove that the complainants were not treated unequally and less favourably, because of their race or social status, in relation to the right to an adequate

¹⁴³ Albania, Assembly of the Republic of Albania, Law No.111 / 2017 on legal aid guaranteed by the state, adopted on December 14, 2017, entered into force on 1 June 2018.

<http://www.qbz.gov.al/Botime/Akteindividuale/Janar%202017/Fletore%20241/LIGJ%20nr.%20111-2017.%20date%2014.12.2017.pdf>.

¹⁴⁴ www.parlament.al/ProjektLigje/ProjektLigjeDetails/44781.

standard of living for themselves and for their family. As the municipality did not bear its burden of proof, the commissioner found discrimination against the complainants, due to their race and social status, by the Korça Municipality.

Name of the court: The Judicial District Court of Tirana

Date of decision: 10.04.2018

Name of the parties: *A.L. and Albanian Helsinki Committee v Ministry of Health and Social Protection, the "Mother Teresa" University Hospital Centre, and the Compulsory Health Care Fund*

Reference number: -

Address of the webpage: -

Brief summary: The Commissioner for Protection from Discrimination has participated, as a third party, in a court case of a minor, diagnosed with severe hearing problems, in both ears. The minor was treated with conventional hearing aids and had undergone intensive therapy, but no progress had been noted. The Infantile Surgery Service recommended a cochlear implantat (CI) - a surgically implanted electronic device - as the only solution for correcting the hearing problem of the minor. The institutions responsible are the Ministry of Health and Social Protection, the Mother Teresa University Hospital Centre, and the Compulsory Health Care Fund.

Through a written opinion, the Commissioner for Protection from Discrimination concluded that the 'necessary and appropriate regulation' needed in the case of a minor, does not impose an excessive burden on the responsible institutions, since the determination of the obligation by a sub-legal act also presupposes the possibility of funding the device and implantation process. The Administrative Court of First Instance of Tirana¹⁴⁵ decided that the inactivity of the health institutions responsible had caused discrimination on the ground of health status against the minor in the form of 'denial of a reasonable adjustment', ordering the taking of measures for damages caused by discriminatory behaviour, correction of legal violations and incidental consequences, by performing actions for the provision and placement of the cochlear implant for the minor and the compensation of health damage at the amount of ALL 6 838 590 (about EUR 55 000).

Trends and patterns in 2018 in cases brought by Roma and Travellers

According to the *Annual Report 2018* of the CPD, structural discrimination that does not refer to an individual, but relates to the whole group or community, continues to be an issue. During 2018, the highest number of complaints came from the Roma and Egyptian communities. The CPD has shown that members of the Roma and Egyptian communities are not well informed about the rights and services that they are entitled to or the legal ways to provide these services. During 2018, out of 43 cases dealt with by the commissioner, discrimination was found only in 6 cases. The People's Advocate highlights the fact that housing for Roma people, who in some cases have been forcibly displaced (evicted) from their settlement, while state structures drag the procedures out, still remains problematic.

¹⁴⁵ Administrative Court of First Instance of Tirana, Decision No. 1250 (80-2018-1281), dated 10.04.2018.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Albania

Date: 31 December 2018

<p>Title of the law: Constitution of the Republic of Albania Abbreviation: Constitution Date of adoption: 21.10.1998 Latest relevant amendment: 22.07.2016 Entry into force: 28.11.1998 Web link: http://www.parlament.al/Files/Informacione/kushtetuta-perditesuar-2.pdf Grounds covered: gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage Constitutional act Material scope: all areas of life Principal content: protection from discrimination, the right of People's Advocate and the Commissioner for Protection from discrimination to initiate a case in Constitutional Court</p>
<p>Title of the law: The protection from discrimination Abbreviation: LPD Date of adoption: 04.02.2010 Latest relevant amendment: N/A Entry into force: 13.03.2010 Web link: https://www.kmd.al/wp-content/uploads/2018/05/1508498700-broshura.pdf Grounds covered: open list of the grounds/ gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other reason. Civil and mainly administrative: Material scope: all areas of life Principal content: prohibition of direct and indirect discrimination, denial of reasonable accommodation, victimisation, instruction to discriminate, harassment etc.; creation of a specialised body; shift of the burden of proof; court procedures, sanctions of discrimination</p>
<p>Title of the law: Labour Code Abbreviation: LC Date of adoption: 12.07.1995 Latest relevant amendment: 05.12.2015 Entry into force: 23.08.1995 Web link: https://qbz.gov.al/preview/799d2105-c45c-413b-bee3-e92c3138e9b0 Grounds covered: gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parental responsibility, parental responsibility, age, family or marital status, health status, genetic predispositions, disability, living with HIV / AIDS, union or affiliation with trade union organizations, affiliation to a particular group, or any other cause. Civil law Material scope: employment and occupation Principal content: protection from discrimination, protection from sexual harassment, shifting of the burden of proof, reasonable accommodation, compensation</p>

Title of the law: Penal Code

Abbreviation: PC

Date of adoption: 27.01.1995

Latest relevant amendment: 02.05.2013

Entry into force: 1.06.1995

Web link: <https://qbz.gov.al/preview/a2b117e6-69b2-4355-aa49-78967c31bf4d>

Grounds covered: Article on crimes against humanity (Article 74) covers political, ideological, racial, ethnic and religious grounds; Article on insulting based on racist or xenophobic motives through computer systems (Article 119/b) covers ethnicity affiliation, race, religion; Article on violation of equality of citizens (Article 253) covers origin, sex, sexual orientation or gender identity, health status, religious and political beliefs, trade union activity, ethnic, national, racial or religious affiliation; Article on promoting hatred or strife (Article 265) covers race, ethnicity, religion or sexual orientation.

Criminal law

Material scope: all fields covered by criminal law

Principal content: crimes against humanity; insulting based on racist or xenophobic motives through computer systems; violation of equality of citizens; promoting hatred or strife

Title of the law: On the Protection of National Minorities in the Republic of Albania

Abbreviation: Law of minorities

Date of adoption: 13.10.2017

Latest relevant amendment: N/A

Entry into force: 24.11.2017

Web link: <https://qbz.gov.al/eli/fz/2017/196/23dfc0be-d3a1-4f26-8ace-9eb38a1e9237>

Grounds covered: any person due to his or her affiliation to a national minority

Civil and administrative law

Material scope: all areas of life

Principal content: protection from discrimination, the right to education, the right to good and services, employment

Title of the law: On the Inclusion and Accessibility of Persons with Disabilities

Abbreviation: Accessibility of Persons with Disabilities

Date of adoption: 24.07.2014

Latest relevant amendment:

Entry into force: 12.09.2014

Web link:

<http://shendetesia.gov.al/wp-content/uploads/2019/01/Liqji-nr.-93-PËR-PËRFSHIRJEN-DHE-AKSESUESHMËRINË-E-PERSONAVE-ME-AFTËSI-TË-KUFIZUARA.pdf>

Grounds covered: disability

Civil law:

Material scope: all areas of the life

Principal content: protection from discrimination, reasonable accommodation

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Albania

Date: 31 December 2018

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	13.07.1995	31.07.1996	No	Yes	Yes, theoretically
Protocol 12, ECHR	26.05.2003	26.05.2004	No	Yes	Yes, theoretically
Revised European Social Charter	21.09.1998	14.11.2002 Oct	Albania did not accept: Article 9, 10,12,13,14,15 ,16,17,18,23,27,30,31	Ratified collective complaints protocol? No	Yes, theoretically
International Covenant on Civil and Political Rights	Accession	8.08. 1991	No	Yes 17.04.2003	Yes, Theoretically
Framework Convention for the Protection of National Minorities	29.06.1995	3.06.1999	No	N/A	Yes, theoretically
International Covenant on Economic, Social and Cultural Rights	Accession	8.08.1991	No	No	Yes, theoretically
Convention on the Elimination of All Forms of Racial Discrimination	Accession	11.05.1994	No	N/A	Yes, theoretically
Convention on the Elimination of Discrimination Against Women	Accession	11.05.1994	No	Yes 17.04.2003	Yes, theoretically

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
ILO Convention No. 111 on Discrimination	Accession	13.03.1996	N/A	N/A	Yes, theoretically
Convention on the Rights of the Child	26.01.1990	11.12.1992	No	Yes 29.05.2013	Yes, theoretically
Convention on the Rights of Persons with Disabilities	22.12.2009	15.11.2012	No	No	Yes, theoretically

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