



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Albania
<b>Title:</b>	First Instance Administrative Court confirms the Decision of the Commissioner for Protection from Discrimination (CPD) "on the discrimination of convicted or detained persons due to their social status, in the field of employment"
<b>Date:</b>	19 February 2019
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	Discriminatory treatment for convicted or detained persons due to their social status, in the field of employment
<b>Grounds of discrimination:</b>	Other ground (Social status)
<b>Field of application:</b>	Employment
<b>Source:</b>	First Instance Administrative Court of Tirana, Decision No. 4172/19.11.2018; Decision of Commissioner for Protection of Discrimination, No.100/5.04.2018
<b>Applicable law:</b>	Law "For Protection from discrimination", 10 221/2010; Decisions of the Council of Ministers (DCM), 228/ 1993, 437/2015 and 396/200)

### Content

**Case development:** The First Instance Administrative Court of Tirana reviewed the lawsuit of the General Directorate of Prisons which aimed at abrogating the "decision of the Commissioner for Protection from Discrimination on the ascertainment of discrimination of convicted or detained persons due to their social status, in the field of employment". In the penitentiary institutions, two different practices have been established on remuneration of the work of these persons, referring to different legal acts: through financial payment and reduction of the punishment.

The issue was brought to the attention of the Commissioner by the Albanian Helsinki Committee, who claims that the remuneration through the reduction of the punishment is contrary to the legal provisions and is based on a presidential decree of many years ago (there is no legal act that has abrogated expressly this decree), contrary to the law and other bylaws adopted subsequently. Following this practice (which has been objected by the General Prosecutor since 2004), convicted or detained persons in some of the penitentiary institutions are treated unfavourably compared to those in other institutions. In addition, they are subjected to unfavourable and discriminatory treatment compared to any other employee, contrary to the obligation deriving from the Labour Code and the applicable legislation on the employment of these persons.

**Decision of the court:** The court clearly decided to reject the lawsuit, stating that the Commissioner for Protection from Discrimination has rightly found that the convicted or detained persons are placed in an unfavourable position compared to the category of

employees outside these institutions, denying them the opportunity to benefit under the respective legal provisions, *which constitutes discrimination on grounds of social status*.

**Key points of analysis:** The court's decision is important not only to uphold the decision of a national institution on equality and non-discrimination, but because clearly rejecting any arguments of the General Directorate of Prisons. This decision identifies the need for unification of the practices followed by the penitentiary institutions in Albania. The Court (same as the Commissioner) stated that:

- These persons, regardless of their freedom, are not deprived of the ability to gain rights and to assume obligations.
- The working conditions of convicted or detained persons should be similar to those in a free society and defined by the Labor Code, which stipulates that the remuneration is the wage, and this means a financial reward. The salary for these persons cannot be lower than the minimum wage.
- This discriminatory behaviour affects also the recognition of the period of pension insurance and work accidents.

During the court sessions, the representatives of the General Directorate of Prisons expressed their willingness to take into consideration the recommendations of the Commissioner for Protection from Discrimination, the Albanian Helsinki Committee and the People's Advocate (Ombudsman) during the drafting process of the forthcoming Decision of the Council of Ministers "On promotion and reward for work of prisoners".

**Internet link source:** Information received from the Commissioner for Protection from discrimination and the staff (Website is under construction).