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# Country report

## Non-discrimination

Albania

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including summary



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# **Country report**

## **Non-discrimination**

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

### **Albania**

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Reporting period 1 January 2019 – 31 December 2019

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## EXECUTIVE SUMMARY

### 1. Introduction

Albania's current population is 2 845 955.<sup>1</sup> 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.

The key findings of the European Commission's 2019 report on Albania noted that the country had developed its legal framework in line with European standards, although the overall implementation of those instruments still needed to be strengthened. The report acknowledges the adoption by the Albanian Parliament, in May 2018, of the new Law on social housing,<sup>2</sup> which aims to strengthen the protection of the right to housing for the most vulnerable members of the Roma and Egyptian communities,<sup>3</sup> as a positive step.

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.<sup>4</sup>

According to the European Commission's 2019 report on Albania, there is a need to review the national approach to employment because of a low level of employment and labour force participation among Roma. Despite the positive overall trend<sup>5</sup> in the field of education, the gap between Roma/Egyptians and non-Roma children living in the same areas remains significant, and the issue of segregation in schools should be systematically addressed.<sup>6</sup>

According to the same report, substantial efforts are needed to ensure meaningful and systematic consultation with civil society as part of an inclusive policy dialogue for reforms.<sup>7</sup>

Regarding the human rights institutions, the report concludes that 'The Ombudsman, the Commissioner for Protection against Discrimination and other independent institutions still face poor implementation of their recommendations by the Albanian administration'.<sup>8</sup>

### 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

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<sup>1</sup> See [http://www.instat.gov.al/media/6849/popullsia\\_me-1\\_janar\\_2020.pdf](http://www.instat.gov.al/media/6849/popullsia_me-1_janar_2020.pdf).

<sup>2</sup> Law No. 22/2018 on social housing also covers protection from forced evictions.

<sup>3</sup> European Commission (2019), 'Key Findings of the 2019 Report on Albania', Brussels, 29.05.2019, p. 5, available at: <https://europeanwesternbalkans.com/2019/05/29/key-findings-2019-european-commission-report-albania/>.

<sup>4</sup> See [http://www.minoritetet.gov.al/?page\\_id=1388](http://www.minoritetet.gov.al/?page_id=1388).

<sup>5</sup> Roma children continue to benefit from free textbooks and transportation to remote schools.

<sup>6</sup> European Commission (2019) 'Key Findings of the 2019 Report on Albania', Brussels, 29.05.2019, p. 32.

<sup>7</sup> European Commission (2019), *Albania 2019 Report*, Strasbourg, 29.05.2018, SWD (2019)215 final, pp. 10-11.

<sup>8</sup> European Commission (2019) 'Key Findings of the 2019 Report on Albania', Brussels, 29.05.2019.

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, such as age, disability and sexual orientation.

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

Law No. 10 221/2010 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 in May 2010, 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 Code of Administrative Procedure 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 protection and definitions in accordance with the directives for several forms of discrimination, including direct and indirect discrimination, harassment, victimisation, genuine occupational requirements, instruction to discriminate, and denial of reasonable accommodation. As envisaged under the Labour Code, employers have a duty to provide reasonable accommodation for people with disabilities. In addition, the Law on the inclusion of and accessibility for persons with disabilities contains a duty to provide reasonable accommodation, including in the field of employment and occupation.

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 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.<sup>9</sup>

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.

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<sup>9</sup> Law No. 10 221/2010 on protection from discrimination, 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](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_178702.pdf).



The LPD prohibits discrimination based on an open list of grounds, going beyond the grounds covered by the constitutional provisions.

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.

In September 2019, the Commissioner for Protection from Discrimination organised a round table with the aim of drafting proposals for amending the Law on protection from discrimination, which are expected to be proposed by a group of MPs.<sup>10</sup>

#### **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.

The LPD is applicable to both the private and public sectors and applies to all fields, including employment.

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 jobseeker 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.

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<sup>10</sup> On 20 February 2020, after the cut-off date for this report, the draft law on additions and amendments to Law No. 10 221, dated 04.02.2020, on protection from discrimination, was submitted to the Assembly.

Moreover, the LPD 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 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 2019*, structural discrimination, which applies not to an individual, but to a whole group or community, continues to present a problem. There has been an increase in the number of cases in which complainants claim discrimination for more than one ground, as well as in findings of multiple discrimination. Race is one of the most common grounds of discrimination claimed by complainants in relation to goods and services and in education.

The People's Advocate highlights the fact that housing for Roma people, who in some cases have been forcibly displaced (evicted) from their settlements, while government bodies have been dragging out procedures, remains a problematic area.

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).<sup>11</sup> Albanian 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 law on anti-discrimination is

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<sup>11</sup> 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.

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 grounds protected by the Law; respecting and assuring 'the right to education in the languages of minorities, as well as in appropriate manners<sup>12</sup> 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,<sup>13</sup> which explicitly provides for shifting the burden of proof in matters of discrimination.<sup>14</sup> Public bodies must be guided by the principle of equality and anti-discrimination for grounds provided by law.

Regarding court proceedings, the Law on protection from discrimination 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 the 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 Code<sup>15</sup> 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 the administrative courts and the adjudication of administrative disputes, the question on the shifting of the burden of proof was further 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 Law on the 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'.<sup>16</sup>

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

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<sup>12</sup> 'Appropriate manners' refers to sign language and other relevant adaptations and tools for persons with disabilities.

<sup>13</sup> Code of Administrative Procedure, Law No. 44/2015, approved 30.04.2015 and entered into force on 28.05.2016.

<sup>14</sup> 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).

<sup>15</sup> 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.

<sup>16</sup> Hoxhaj, E. and Baraku, I. (2014) 'The burden of proof in the administrative process in Albania', *European Scientific Journal*, Vol. 10, No. 10, 2014.

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 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.<sup>17</sup> The People's Advocate makes recommendations on how to remedy such infringements. 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.<sup>18</sup>

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*;<sup>19</sup> the *Social Protection Strategy*;<sup>20</sup> the *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*;<sup>21</sup> the *National Strategy on Gender Equality and Action Plan 2016-2020*;<sup>22</sup> the *National Action Plan for Persons with Disabilities 2016-2020*;<sup>23</sup> and the *National Policy Document on Aging 2020-2024 and Action Plan for its Implementation*.<sup>24</sup> 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.<sup>25</sup>

The *Mid-term Monitoring and Evaluation Report of the National Action Plan for People with Disabilities 2016-2018* was adopted in 2019.<sup>26</sup>

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<sup>17</sup> 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 No. 155/2014, dated 27.11.2014.

<sup>18</sup> People's Advocate (2019), *Annual Report 2018*, p. 24.

<sup>19</sup> <https://www.avokatipopullit.gov.al/media/manager/website/reports/Raport%20Vjetor%202018.pdf>.

<sup>20</sup> 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>.

<sup>21</sup> Government of Albania (2015), *National Strategy for Social Protection 2015-2020*, approved by the Council of Ministers in 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](http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Strategjia_Kombetare_per_Mbrojtjen_Sociale_2015-2020.pdf).

<sup>22</sup> Government of Albania (2015), *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*, approved by the Council of Ministers in 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](http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_kombetar_i_veprimit_per_integrimin_e_Romeve_dhe_Egjiptianeve_2016-2020.pdf).

<sup>23</sup> 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>.

<sup>24</sup> Government of Albania (2016), *National Action Plan for Persons with Disabilities 2016-2020*, approved by the Council of Ministers in Decision No. 483, dated 29.06.2016. [http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani\\_PAK\\_.pdf](http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_PAK_.pdf).

<sup>25</sup> Government of Albania (2019), *On the adoption of the National Policy Document on aging, 2020-2024, and the Action Plan for its Implementation*, approved by the Council of Ministers in Decision No. 864, dated 24.12.2019.

<sup>26</sup> Law No. 146/2014 on notification and public consultation. <http://www.idp.al/legjislacionnjoftimi-dhe-konsultimi-publik/#>.

<sup>27</sup> Government of Albania (2019), *Mid-term Monitoring and Evaluation Report of the National Action Plan for People with Disabilities 2016-2018*, March 2019, available at: <http://shendetesia.gov.al/wp-content/uploads/2019/04/Raporti20i20Vleresimit202016-2018.pdf>.

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 15/2019 on the promotion of employment expands the circle of beneficiaries and defines some essential concepts, such as special groups, the training and rehabilitation of persons with disability, reasonable accommodation and appropriate employment. It also provides for public employment policies, active labour market programmes, passive labour market programmes, and so on. However, in its legal recommendations, the CPD deemed the measures proposed under the draft law to be ineffective because of the proposal to double the total number of employees that an employer must have before being obliged to employ a person with a disability.
- Law No. 57/2019 on social assistance, adopted in 2019, sets out the rules and mechanisms for social assistance benefits, the responsible authorities and financial arrangements<sup>27</sup> for the provision of social assistance benefits. The Law sets out the principle of non-discrimination based on an open list of grounds, including race, colour, religion, ethnicity, language, gender identity, sexual orientation, religious or philosophical beliefs and disability (Article 5(d)). The Law does not include 'age' as an expressly protected ground, but we can deduce that this ground could be protected under 'any other grounds,' as the Law provides for a non-exhaustive list of grounds. Article 5(e)) sets out a principle of equality based on an open list of protected grounds. This article stipulates that 'social protection is provided to every individual in need, regardless of gender, religion, age, disability, etc'.<sup>28</sup>

## 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.<sup>29</sup> 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 of Albania. 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 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 LPD;
- 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.

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<sup>27</sup> Chapter VI of the Law provides for the financing of the social assistance programmes by the state budget.

<sup>28</sup> Article 5(e) states that 'equality is the principle that determines that social protection is provided to every individual in need, regardless of gender, religion, age, disability, etc', but without specifying which grounds fall under 'etc'.

<sup>29</sup> 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.

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:<sup>30</sup>
  - provision of a standalone definition of discrimination, protecting the right to equal treatment;
  - 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, although this is not required by the directives;
  - 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 (which continued to be organised during 2019) is a very positive practice, 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.

Over the years, the CPD has carried out actions which can be regarded as 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. In 2019, the Alliance Against Hate was established under a memorandum of cooperation between the CPD, the People's Advocate and the Audio-visual Media Authority (AMA).

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<sup>30</sup> These measures go beyond the requirements of the directives, and are aimed to guarantee the full implementation of national anti-discrimination law and the recommendations of international organisations such as ECRI.

## 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 Albania is based on the separation and balancing of legislative, executive and judicial powers.

The Albanian Assembly is the country's legislative body, and it has established two permanent committees dealing with human rights issues in general and issues of equality, non-discrimination and vulnerable groups:

- The Committee on Labour, Social Affairs and Health, which is responsible for labour relations, social affairs, social security, family, women and health and issues coming under the United Nations sustainable development agenda. There is also a Sub-committee on Gender Equality and the Prevention of Violence against Women.
- The Committee on Legal Affairs, Public Administration and Human Rights, which is responsible for the codes and organisation of the judiciary, the public administration, the administration of the judiciary, the organisation and functioning of local government, independent services in the justice system, human rights and issues relating to the United Nations sustainable development agenda. There is also a Sub-committee on Human Rights.

The judicial system has two levels (consisting of 29 first instance courts and 8 appeal courts),<sup>31</sup> and the High Court operates as a third level.<sup>32</sup> 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 accommodation' and the terminology 'excessive burden'<sup>33</sup> are

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<sup>31</sup> High Judicial Council (2018), *Report on the status of the judicial system and activity of the High Judicial Council for 2018*, Tirana, 03.05.2019, pp. 49-51, available at: <http://klqi.al/wp-content/uploads/2019/10/Raporti-Vjetor-KLGJ-2018-Anglisht-.pdf>.

<sup>32</sup> In accordance with Article 141 of the Constitution, the High Court shall examine issues concerning the meaning and application of the law in order to ensure the unification or development of judicial practice. Regarding the amendment of case law, the High Court shall review in the Joint Chambers specific judicial issues decided by the chambers, in accordance with the law. Under Article 124 of the Constitution, the Constitutional Court settles constitutional disputes and makes the final interpretation of the Constitution.

<sup>33</sup> 'Excessive burden' is the terminology used by the LPD. The Constitutional Court has found that the term 'excessive burden' is applied by the Law on protection from discrimination in accordance with the concept provided by the CRPD, in implementation of the principle of proportionality and balancing the interests of persons with disabilities with those of public or private entities, which must guarantee reasonable accommodation. Hence, 'excessive burden' is equivalent to 'disproportionate burden' (Decision No. 48 dated 15.11.2013 (V-48/13)).

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. 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 the law, which will be able to interpret 'reasonable accommodation' on a case-by-case basis.<sup>34</sup>

### **List of main legislation transposing and implementing the directives**

Albanian Constitution<sup>35</sup> (date of adoption: 21.10.1998) – grounds covered: closed-ended list of grounds - gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status<sup>36</sup> or ancestry.

Its material scope covers all fields.

Law on protection from discrimination (LPD) (date of adoption: 04.02.2010) – 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 predispositions, disability, affiliation with a particular group or for any other grounds).

Its material scope covers all fields (education, employment, goods and services).<sup>37</sup>

Labour Code<sup>38</sup> (date of adoption: 12.07.1995) - 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 status, 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).

Its material scope covers employment.

Criminal Code<sup>39</sup> (date of adoption: 12.07.1995) - covers the following: Article 74, on crimes against humanity, covers political, ideological, racial, ethnic and religious grounds; Article 119(b) covers insult based on racist or xenophobic motives through computer systems in relation to ethnic affiliation, race and religion; Article 253, on violation of equality of citizens, covers origin, sex, sexual orientation or gender identity, health status, religious and political beliefs, trade union activity, and ethnic, national, racial or religious affiliation; Article 265, on promoting hatred or strife, covers race, ethnicity, religion and sexual orientation.

Its material scope covers all fields covered by criminal law.

Law on the promotion of employment<sup>40</sup> (date of adoption: 13.03.2019) - covers disadvantaged jobseekers in the labour market, such as individuals with orphan status in difficult economic conditions, people with disabilities, parents of children with disabilities,

<sup>34</sup> Constitutional Court of the Republic of 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](http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php).

<sup>35</sup> Constitution of Republic of Albania (*Kushtetuta e Republikës së Shqipërisë*), 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>.

<sup>36</sup> There is no definition of the ground of 'social status'. However, based on some cases dealt by the CPD, we can deduce that this concept is used by the CPD in relation to persons who claim to have been discriminated against because they have a criminal conviction.

<sup>37</sup> According to the LPD, goods and services include social protection and social advantages.

<sup>38</sup> Law No. 7961/1995, the Labour Code (*Kodi i Punës*), amended in 2003, 2008 and 2015.

<sup>39</sup> Law No. 7895, the Criminal Code (*Kodi Penal*), 27.1.1995, amended in 2013.

<sup>40</sup> Law No. 15/2019 on the promotion of employment (*Për nxitjen e punësimit*).



persons over the age of 55, persons from the Roma and Egyptian communities, long-term unemployed jobseekers, unemployed jobseekers having immigrated not more than two years previously, minors and young people in conflict with the law, young people under the age of 29, victims of gender-based violence and domestic violence and mothers under the age of 18.

Its material scope covers employment.

Code of Administrative Procedure<sup>41</sup> (date of adoption: 30.04.2015) – 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 status, pregnancy, parentage, parental responsibility, age, family or marital status, place of residence, health status, genetic predispositions, disability, belonging to a particular group or any other grounds).

Its material scope covers all fields in the public sphere.

Law on the protection of national minorities in the Republic of Albania<sup>42</sup> (date of adoption: 13.10. 2017) – grounds covered: cultural, ethnic, or linguistic grounds.

Its material scope covers the entitlement to equal and effective participation in public, cultural, social and economic life.

Law on the inclusion of and accessibility for persons with disabilities<sup>43</sup> (date of adoption: 24.07. 2014) – grounds covered: disability.

Its material scope covers all fields.<sup>44</sup>

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<sup>41</sup> Law No. 44/2015, the Code of Administrative Procedure (*Kodi i Procedurave Administrative*), <https://euralius.eu/index.php/en/library/albanian-legislation/send/6-administrative-procedure-code/229-code-of-administrative-procedure-en>.

<sup>42</sup> Law No. 96/2017 on the protection of national minorities in the Republic of Albania (*Për mbrojtjen e pakicave kombëtare në Republikën e Shqipërisë*).

<sup>43</sup> Law No. 93/2014 on the inclusion of and accessibility for persons with disabilities (*Për përfshirjen dhe aksesueshmërinë e personave me aftësi të kufizuara*). <https://shendetesia.gov.al/wp-content/uploads/2019/01/Ligji-nr.-93-PËR-PËRFSHIRJEN-DHE-AKSESUESHMËRINË-E-PERSONAVE-ME-AFTËSI-TË-KUFIZUARA.pdf>.

<sup>44</sup> Other legislation also covers non-discrimination, including:

The Law on the pre-university education system (date of adoption: 21.06.2012) - grounds covered: gender, race, colour, ethnicity, language, sexual orientation, political or religious beliefs, economic or social status, age, residence, disability or other grounds as defined in Albanian legislation (Article 5(1)).

Material scope: education.

The Law on social care services (date of adoption: 24.11.2016) - grounds covered: open list of grounds (gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social status, pregnancy, parentage, parental responsibility, age, family status or marital status, health status, genetic predispositions, disability, affiliation to a particular group, or any other grounds) (Article 3 - Definitions); this article on the principles covers any grounds set out by the legislation on protection from discrimination in Albania (Article 4(ë)).

Material scope: social care services.

The Law on social housing (date of adoption: 3.05.2018) - grounds covered: gender, race, colour, religion, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or 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).

Material scope: housing.

The Law on social assistance (date of adoption: 13.10.2017) - grounds covered: gender, race, colour, religion, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social status, pregnancy, affiliation and/or parental responsibility, marital or family status, civil status, health status, genetic predispositions, disability, belonging to a particular group, or any other reason (Article 5(2)).

Material scope: economic assistance.

## 1 GENERAL LEGAL FRAMEWORK

### **Constitutional provisions on protection against discrimination and the promotion of equality**

The Constitution of Albania deals with non-discrimination through a general disposition, 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.<sup>45</sup>

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 implementation of justice reforms in Albania, the first draft of amendments to the Albanian Constitution introduced sexual orientation as a protected ground under the Constitution. At this time, the Venice Commission adopted an opinion welcoming the addition of sexual orientation as a prohibited ground of discrimination to Article 18 of the existing Constitution. The Commission also recommended making an open list of grounds, or potentially rephrasing the relevant article to include other opinions, gender identity, social origin, property, birth or other status, etc.<sup>46</sup>

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.<sup>47</sup>

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).

These provisions can be enforced against private individuals as well as against the state. According to the Albanian Constitution, '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]

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<sup>45</sup> 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>.

<sup>46</sup> Venice Commission (2015), Opinion No. 824, *Interim opinion 'On the draft constitutional amendments on the judiciary of Albania'*, adopted by the Venice Commission at its 105th Plenary Session, Venice, 18-19 December 2015, p. 4: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2015\)052-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2015)052-e).

<sup>47</sup> There are currently no moves to include sexual orientation among the protected grounds provided by the Constitution.

## 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** (listed in the Introduction, the main legislation transposing and implementing the directives) transposing the two EU anti-discrimination directives:

- **The Albanian Constitution:**<sup>48</sup> Gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage.
- **The Law on protection from discrimination (LPD):**<sup>49</sup> 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:**<sup>50</sup> gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social status, 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 with a particular group, or any other cause.
- **Criminal Code:**<sup>51</sup> 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 ethnic 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.
- **Law on the promotion of employment:**<sup>52</sup> This Law covers disadvantaged jobseekers in the labour market, such as individuals with orphan status in difficult economic conditions, people with disabilities, parents of children with disabilities, persons over the age of 55, persons from the Roma and Egyptian communities, long-term unemployed jobseekers, unemployed jobseekers having immigrated not more than two years previously, minors and young people in conflict with the law, young people under the age of 29, victims of gender-based violence and domestic violence, mothers under the age of 18, etc. (Article 3(4)).
- **Code of Administrative Procedure:**<sup>53</sup> 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 status, pregnancy, parentage, parental responsibility, age, family or marital status, place of residence, health status, genetic predispositions, disability, belonging to a particular group or any other grounds (Article 17).
- **Law on the protection of national minorities in the Republic of Albania:**<sup>54</sup> The Law prohibits discrimination against any person due to his or her affiliation to a national minority (Article 8(1)).

<sup>48</sup> Constitution of Republic of Albania, 1998, amended in 2007, 2008, 2012, 2015 and 2016.

<sup>49</sup> Law No. 10 221/2010 on protection from discrimination.

<sup>50</sup> Law No. 7961/1995, the Labour Code, amended in 2003, 2008 and 2015.

<sup>51</sup> Law No. 7895, the Criminal Code (*Kodi Penal*), 27.1.1995, amended in 2013.

<sup>52</sup> Law No. 15/2019 on the promotion of employment (*Për nxitjen e punësimit*).

<sup>53</sup> Law No. 44/2015, the Code of Administrative Procedure of the Republic of Albania, <https://euralius.eu/index.php/en/library/albanian-legislation/send/6-administrative-procedure-code/229-code-of-administrative-procedure-en>.

<sup>54</sup> Law No. 96/2017 on the protection of national minorities in the Republic of Albania.

- **Law on the inclusion of and accessibility for persons with disabilities:**<sup>55</sup> The article on principles provides for the non-discrimination of persons with disabilities.

### **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 conventions, including 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 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 the definitions of the discrimination grounds provided by the international treaties and conventions mentioned above, as well as jurisprudence such as the case law of the Strasbourg Court and the CJEU.<sup>56</sup>

#### **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. Albanian legislation does not contain definitions for racial or ethnic origin.

Before the adoption of the Law on the protection of national minorities in 2017, there was no definition of the concepts of national or ethnic minority, nationality, etc. This issue has been highlighted by the Constitutional Court. In a decision, it declared provisions that obliged citizens to state their 'nationality' in civil status registers to be incompatible with the Constitution. The Court has made a detailed analysis of the concept of nationality understood as citizenship and nationality understood as belonging to an ethnic minority or national origin, referring to international acts and conventions.<sup>57</sup>

The national minorities in 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:<sup>58</sup>

'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)).

<sup>55</sup> Law No. 93/2014 on the inclusion of and accessibility for persons with disabilities.

<sup>56</sup> 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.

<sup>57</sup> Constitutional Court, Decision V-52/11 of 1.12.2011, paragraphs 15-19, [http://www.gjk.gov.al/web/Lista\\_e\\_Vendimeve\\_92\\_1.php](http://www.gjk.gov.al/web/Lista_e_Vendimeve_92_1.php).

<sup>58</sup> 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>.

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.<sup>59</sup>

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.<sup>60</sup> In a case dealt in 2019, the CPD has clarified again that 'ethnicity' will fall within the understanding of the 'racial discrimination' covered by ECRI Recommendation No. 7, CRI (2003) 8.<sup>61</sup>

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 anti-discrimination law.

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 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. The LPD covers protected grounds such as 'political, religious or philosophical beliefs', which means political beliefs, or religious beliefs or philosophical beliefs (Article 1).

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'.

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<sup>59</sup> See [http://www.minoritetet.gov.al/?page\\_id=1388](http://www.minoritetet.gov.al/?page_id=1388) regarding Roma people.

<sup>60</sup> Commissioner for Protection from Discrimination (2015), *Annual Report 2014*, p. 33, <http://kmd.al/wp-content/uploads/2019/03/Raporti-Vjetor-2014.pdf>.

<sup>61</sup> CPD, Decision No. 29, *J. H. v. Tirana Municipality and the Economic Centre for the Development and Education of Children*, dated 04.03.2019, <https://kmd.al/wp-content/uploads/2019/05/Vendim-Nr.-29-dat%C3%AB-04.03.2019-J.-H.-kund%C3%ABr-Bashkis%C3%AB-Tiran%C3%AB.pdf>.

### c) Disability

There is no definition of disability in the LPD. However, the courts can use the definitions provided by the Convention on the Rights of Persons with Disabilities (CRPD) when interpreting or applying the LPD, because the Convention is part of national legislation in Albania and is directly enforceable.<sup>62</sup> However, Article 3(11) of the Law on social care services<sup>63</sup> (based on Article 1 of the CRPD) 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 disabilities<sup>64</sup> 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 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 health<sup>65</sup> provides protection from discriminatory behaviour for persons with mental health disorders (Article 8). The Law defines the terms 'mental health' and 'mental health disorder'.

In a case dealt during 2019, the CPD carried out a detailed analysis of the association of unequal treatment of a patient with severe haemophilia A with the grounds of disability, the latter being understood and interpreted by the commissioner as an interaction between physical or intellectual impairment with the various barriers that hinder people with disabilities from enjoying their rights in the same way as others.<sup>66</sup>

### d) Age

This term 'age' is not defined in national anti-discrimination law (the LPD) or any other national legal act.

However, Article 3(4) of Law No. 18/2017 on the rights and protection of the child provides a definition of 'Child' as being any person under 18 years of age. In Article 3(f), Law No. 75/2019 on youth states that 'youth' refers to persons who are between the ages of 15 and 29.

Article 3(22) of Law No. 121/2016 on social care services provides a definition of 'Person of working age' as an individual who, at the time of assessment of eligibility criteria for social services, is over the prescribed minimum working age for that year under the social security legislation in force.

Through case law, the CPD gives a broad interpretation of this ground.

The commissioner found discrimination on the ground of age in a case against the Council of Ministers and the Ministry of Education, Sport and Youth during 2019. A job announcement for security officers at pre-university institutions included an age limit of

<sup>62</sup> Committee on the Rights of Persons with Disabilities (2017), Initial report submitted by Albania under article 35 of the Convention, due in 2014, available at: <https://digitallibrary.un.org/record/1308045?ln=en>.

<sup>63</sup> Law No. 121/2016 on social care services.

<sup>64</sup> Law No. 93/2014 on the inclusion of and accessibility for persons with disabilities.

<sup>65</sup> Law No. 44/2012 on mental health.

<sup>66</sup> CPD, Decision No. 143, *K.M. v. Ministry of Health and Social Protection and the University Hospital Centre of Tirana (UHCT)*, <https://www.kmd.al/wp-content/uploads/2019/12/Vendim-nr.-143-date-10.10.2019-K.M.-kunder-MSH-QSUT.pdf>.



40 as a disqualifying criterion. According to the commissioner, setting a maximum age of 40 as a criterion in the recruitment announcement constituted discrimination, because the applicants' physical condition could be tested through a physical test proportionate to the functions of security officers, and the relevant institutions failed to establish a legitimate and objectively justified purpose.<sup>67</sup>

e) Sexual orientation

There is no definition for sexual orientation in national anti-discrimination law (the LPD) or any other national law.

However, appendix 3 of the *National Action Plan for LGBTI people in the Republic of Albania, 2016-2022*,<sup>68</sup> gives definitions of certain concepts such as gay, bisexual, heterosexual/straight, transsexual people, intersex people, gender identity and gender orientation. According to the definition provided by this document, 'gender orientation' is equivalent to 'sexual orientation'.<sup>69</sup>

In 2014, in a special report on LGBTI community rights, the commissioner provided a definition of sexual orientation with reference to the Yogyakarta Principles and a definition of gender identity with reference to the definition provided by the rapporteur Andreas Gross for the Council of Europe resolution on 'Discrimination on the basis of sexual orientation and gender identity'.<sup>70</sup>

### 2.1.2 Multiple discrimination

In Albania, multiple discrimination is not prohibited in the law, and there is no case law dealing expressly with multiple discrimination.

However, during 2019, out of 55 cases in which the CPD found discrimination, 9 cases were for more than one ground of discrimination. The decisions were based on the LPD, international conventions and national laws.

Based on the decisions of the commissioner, it has been established that, in some cases, there is no pattern as to the combination of grounds concerned (for example, the claimed discrimination grounds may be political beliefs and health status). However, in other cases, there is a pattern to the combination of grounds concerned (for example, the complainants claimed discrimination based on genetic predispositions and disability, on health status and disability, or on race and residence).

On 23 September 2019, the CPD organised a roundtable discussion with key actors operating in the field of human rights on the necessary changes to the Law on protection from discrimination. The draft provisions prepared by the CPD, which provide for the introduction of multiple discrimination as a separate form of discrimination, are expected to be presented to the Assembly on the initiative of a group of MPs.<sup>71</sup>

A 2016 study on the legal aspects and practice of multiple discrimination, which analyses the CPD's decision-making in detail, finds that the commissioner has followed a

<sup>67</sup> CPD, Decision No. 43, *M.K. v. Council of Ministers and the Ministry of Education, Sport and Youth*, 19.03.2019. <https://kmd.al/wp-content/uploads/2019/05/Vendim-nr.-43-date-19.03.2019-M.-K-kunder-KM-dhe-MASR.pdf>.

<sup>68</sup> Government of Albania (2016), *National Action Plan for LGBTI people in the Republic of Albania, 2016-2020*, p 49. <https://rm.coe.int/16806b51ca>.

<sup>69</sup> The action plan for LGBTI people states that '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'.

<sup>70</sup> CPD (2014), *Special report - For the protection and respect of the rights of the LGBTI community in Albania*, Tirana, p. 2.

<sup>71</sup> There is no information on when the MPs may present this proposal.

comprehensive approach, listing all the grounds of discrimination whose causes are linked naturally with each other. This tendency is most evident in cases where the CPD has started ex officio cases.<sup>72</sup>

### **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 not 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.

#### **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.<sup>73</sup>

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

#### **a) Prohibition and definition of direct discrimination**

In Albania, direct discrimination is prohibited in anti-discrimination law. 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.

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.’

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<sup>72</sup> Centre for Civic Legal Initiatives (2016), Multiple discrimination and legal mechanisms to prevent it (Legislation, Practice and Role of NGOs), Tirana, p. 20.

<sup>73</sup> 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'.



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)).<sup>74</sup>

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.

In cases that it has addressed over the years (referring to the ECHR and the jurisprudence of the ECtHR), the CPD recalls that the right to protection from discrimination includes not only an obligation of equal treatment of persons in similar conditions but treating persons whose situations are different differently.

### **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).<sup>75</sup> 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 assistance, 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

<sup>74</sup> 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'.

<sup>75</sup> Decision of CPD No. 258, dated 20.12.2018.

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 those raised in *Biao v. Denmark* and *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.

#### b) Justification test for indirect discrimination

The Law on protection from discrimination (LPD) is silent on using statistical evidence in order to establish indirect discrimination. Statistical evidence is not mentioned in provisions regulating proceedings before the CPD or in other procedural laws. The LPD states that the complainant 'may submit a complaint together with available evidence to the commissioner', without specifying if statistical evidence can be considered as such. 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, statistical services are provided by the Institute of Statistics (INSTAT), the Bank of Albania, statistical agencies in other public authorities, and legal and physical persons.<sup>76</sup> 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 unauthorised 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.

According to Article 32(4) of the LPD, information provided by the public and by private subjects must be treated in compliance with the Law on the protection of personal data.

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<sup>76</sup> Law No. 17/2018 on official statistics.

Albania adopted the Law on the protection of personal data in 2008.<sup>77</sup> 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.’

Although the above law does not provide expressly for sexual orientation as ‘sensitive data’, in the practice of the Commissioner for Personal Data Protection and the CPD, sexual orientation is considered to fall under the term ‘sensitive data’ for the purposes of Article 3.

In 2013, 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’.<sup>78</sup>

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.

Pursuant to the National Plan for European Integration (PKIE) 2018-2020, the Commissioner for the Right to Information and Protection of Personal Data has foreseen the adoption of a new law on the protection of personal data and the transposition of the GDPR in the third quarter of 2020.<sup>79</sup> However, the draft of the new law has not yet been prepared, and we do not have any evidence on the inclusion of ‘sexual orientation’ as ‘sensitive data’.

Article 11 of the Civil Procedure Code states that ‘Evidence is data taken from the sources and under the rules provided for in this Code and other laws, which prove or reject the claims or defences of the participants to the proceedings’. According to Article 13 of the Code, ‘the universally known or officially recognised facts need not be proven’.

#### b) Practice

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

In March 2013, when handling a discrimination complaint on the ground of sexual orientation (by publishing the sexual orientation of the complainant), the CPD monitored 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

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<sup>77</sup> Law No. 9887, dated 10.03.2008, on the protection of personal data, amended by Law No. 48/2012 and Law No. 120/2014.

<sup>78</sup> Decision of the CPD No. 97, dated 07.10.2013.

<sup>79</sup> Commissioner for the Right to Information and Protection of Personal Data (2019), *Annual Report 2018*, p. 51.

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.<sup>80</sup>

In 2019, the commissioner found that there had been indirect discrimination against a complainant and other applicants during recruitment procedures at a public university connected with their educational status, through the setting of preferential criteria that were irrelevant to the post.<sup>81</sup>

Despite the fact that the LPD is silent on using statistical evidence in order to establish discrimination, the CPD has used it in cases where a person has been subjected to unequal and unfavourable treatment in order to decide (after considering other elements of direct discrimination, including by making a comparison with persons in the same conditions or establishing the existence of any justification) whether there is proof of direct discrimination against the complainant.

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 Law on protection from 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.

Chapter VII of the Labour Code,<sup>82</sup> on 'Protection of personality' provides that the employer is liable to respect and protect the personality of the employee in work relations, as follows:

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<sup>80</sup> Decision of the CPD No. 97, dated 07.10.2013.

<sup>81</sup> Decision of the CPD No. 166, dated 14.11.2019.

<sup>82</sup> Law No. 7961, dated 12.7.1995, the Labour Code of the Republic of Albania, amended by Law No. 8085/1996, Law No. 9125/ 2003, Law No. 10053/2008 and Law No. 136/2015.

- 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 explicitly constitute a form of discrimination (Article 3(5) of the LPD).

#### b) Scope of liability for harassment

In Albania, where harassment is perpetrated by an employee, the employer and the employee are liable.

Although the LPD provides for individual liability in cases of discrimination, the employer is required to respond effectively and in compliance with the LPD in response to complaints received.<sup>83</sup> The same liability is provided by the Labour Code.

<sup>83</sup> 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) to respond effectively and in compliance with this law to complaints received because of discrimination

The LPD and the Labour Code are silent on whether an employer could be held liable to pay damages to an employee who has been the victim of harassment or annoyance by another employee. There is no case law on the matter.

However, there is a general provision in the Law on the 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.<sup>84</sup>

## **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.<sup>85</sup>

The Criminal Code provides for punishment by imprisonment from 2 to 10 years for the incitement of hatred and disputes because of race, ethnicity, religion or sexual orientation, and for preparation, dissemination or preservation of material for the purpose of disseminating writing with such content. (Article 265)

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

### **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.

According to Article 86 (Torture), a person who, in the exercise of public functions, intentionally commits acts as a result of which a person is subjected to severe physical or mental suffering, or who incites or approves such acts openly or in silence for any purpose based on any form of discrimination, shall be punished by imprisonment of 4 to 10 years.

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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 the 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)).

<sup>84</sup> Law No. 8510, dated 15.7.1999, on the external contractual liability of state administration bodies, as amended.

<sup>85</sup> 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'.

## **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.

The duty to provide reasonable accommodation for people with disabilities in the area of employment is contained in three separate acts:

- The Labour Code;
- The Law on protection from discrimination;
- The Law on the inclusion of and accessibility for persons with disabilities.

It is important to emphasise that, while the Labour Code clearly contains a duty to provide reasonable accommodation for people with disabilities in the area of employment, the other two acts do not provide expressly for this duty in employment.

- 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 reasonable accommodation 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.

National law does not define what would constitute a ‘disproportionate burden’ for employers. However, according to Article 9(8) of the Labour Code, such a burden is not considered excessive for the employer when the level of reasonable accommodation required is guaranteed by the applicable legislation and regulations.

- The LPD includes ‘the denial of reasonable accommodation’ as a form of discrimination based on any protected grounds that the law covers, without mentioning any specific field. As the LPD covers protection from discrimination in three fields (employment, education and goods and services), we can conclude that this duty also includes employment.
- The Law on the inclusion of and accessibility for persons with disabilities contains a duty to provide reasonable accommodation, aimed to guarantee persons with disabilities the enjoyment or exercise, on equal terms with others, of all human rights and fundamental freedoms, which include the right to employment and occupation).

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 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 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.' The Law also provides a definition of 'reasonable accommodation', understood as 'the necessary and appropriate modification and adjustment, where necessary, without imposing an excessive burden, to guarantee persons with disabilities the enjoyment or exercise, on equal terms with others, of all human rights and fundamental freedoms' (Article 3(11)).

According to Article 16(2) of the Law on the inclusion of and accessibility for persons with disabilities, 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.<sup>86</sup>

#### 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 reasonable accommodation to persons with disabilities.

In 2013, in dealing with a case on the constitutionality of Article 3(7) of the LPD, the Constitutional Court confirmed that the obligation to ensure 'reasonable accommodation' only to the category of persons with disabilities is a constitutional differentiation (i.e. legitimate and objective) in order to guarantee the application of the principle of equality to this category of persons.

In addition, the Court has ascertained that the term 'excessive burden' under the LPD was used in accordance with the provisions of the CRPD, in the context of the principle of proportionality and the balancing of the interests of persons with disabilities with those of public or private entities, which must guarantee reasonable accommodation.<sup>87</sup>

However, some institutions that offer critical services, such as health services, have to take all measures necessary to guarantee reasonable accommodation. In 2018, the People's Advocate sent a recommendation to the director of the Kukës Health 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.<sup>88</sup>

#### c) Definition of disability and non-discrimination protection

There is no definition of disability in the LPD. However, according to Article 1 of this Law, disability is a protected ground for claiming protection from discrimination.

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<sup>86</sup> Law No. 10 221 on protection from discrimination, 4.2.2010.

<sup>87</sup> 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), pp. 25-28  
[http://www.gjk.gov.al/web/Vendime\\_perfundimtare\\_100\\_1.php](http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php).

<sup>88</sup> People's Advocate (2019), *Annual Report 2018*, p. 51.



There is no definition of disability in the Labour Code either, but disability is a protected ground for claiming protection from discrimination in employment and occupation.

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.'<sup>89</sup>

The definition of a disability for the purposes of requesting a reasonable accommodation is the same as for seeking protection from discrimination in general.

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 counts as discrimination.

The LPD provides a general disposition. Article 5(2) 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 accommodation 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).

Arguing on the term 'excessive burden'<sup>90</sup> (as an essential element to determine if there is a case of denial of reasonable accommodation), the Constitutional Court confirmed in 2013 that 'the lack of defining criteria in the LPD for the term "excessive burden" does not create incompatibility with the Constitution, as law enforcement agencies will make this interpretation depending on the nature of the allegations and the possibility of making adjustments / changes by the subject on which the obligation of adaptation falls and on which no disproportionate burden should be imposed'.<sup>91</sup>

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 LPD and the Law on the inclusion of and accessibility for persons with disabilities set out a reasonable accommodation duty with regard to the enjoyment and exercise of the fundamental rights.

The LPD provides for protection from discrimination in three fields: employment, education, and goods and services.

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<sup>89</sup> Law No. 93/2014 on the inclusion of and accessibility for persons with disabilities.

<sup>90</sup> 'Excessive burden' was understood by the court to mean a disproportionate burden.

<sup>91</sup> 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), pp. 26-27.  
[http://www.gjk.gov.al/web/Vendime\\_perfundimtare\\_100\\_1.php](http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php).

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 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 education 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 deaf students and students who unable to speak with a guaranteed right to communicate in sign language, and allows 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.

Furthermore, the Law on the promotion of employment,<sup>92</sup> under Article 12(4), provides that, for persons with disabilities, elements of reasonable accommodation should be applied for specific training programmes, with curricula adapted to the degree and type of disability, and trainers or teachers should be able to provide special training for this category of persons.

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 (including race, ethnicity, age, religion and beliefs and sexual orientation) 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 ... or persons that are under other conditions mentioned in article 1 of this law.'

According to this article, other grounds would fall under the conditions mentioned in Article 1 of the LPD.

This provision is therefore applicable to all grounds, in addition to disability (including race, ethnicity, age, religion and beliefs and sexual orientation) and in all fields covered by the Law.

Article 9(8) of the Labour Code states that the employer is also obliged to ensure a reasonable accommodation at the workplace for persons under other conditions (apart

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<sup>92</sup> Law No. 15/2019 on the promotion of employment.

from people with disabilities), as set out in paragraph 2, which provides for an open list of protected grounds.

### **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 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.<sup>93</sup>

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.<sup>94</sup>

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 their relations with the organs of the Albanian state.
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 their relations with the organs of the Albanian state.'

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

###### **a) Protection against discrimination**

In Albania, the personal scope of the Law on protection from discrimination (LPD) covers natural persons for the purpose of protection against discrimination.

- The LPD 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';
- Article 4(2) provides protection from discrimination for Albanian citizens with a temporary or permanent residence outside the borders of Albania in their relations with the organs of the Albanian state.

The LPD is silent about the personal scope of anti-discrimination law regarding Albanian legal subjects.

- Article 4(1) provides that 'this law is applies to all persons who live and stay in the territory of the Republic of Albania', without defining the concept of 'person'.

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<sup>93</sup> Law No. 152/2013 on civil servants (*Për shërbimin civil*), as amended.

<sup>94</sup> Law No. 8454/1999 on the People's Advocate, as amended.

Under Article 4(3) of the LPD, 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 organs of the Albanian state.'

Legal interpretation is required as to whether legal persons are protected under the LPD. According to Article 16(2) of the Constitution, the fundamental rights and freedoms as well as the obligations provided under this fundamental act also apply to legal entities.

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.

According to Article 7(1) of the LPD:

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

Under Article 33(13) of the LPD, both natural and legal persons can be found liable. The LPD makes a distinction between natural and legal persons, by providing for different sanctions.<sup>95</sup>

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).

Under Article 253 (Violating the equality of citizens), the Penal Code states:

'Discrimination conducted by a person holding a state function or in public service during the exercise of his duty, based on origin, sex, sexual orientation or gender identity, health situation, religious or political beliefs, trade union activity or because of belonging to a particular ethnic group, nation, race or religion, which consists of creating unfair privileges or refusing a right or benefit deriving from the law, is punishable by a fine or up to five years of imprisonment.'

### **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, for the purpose of protection against discrimination.

The LPD is silent about the personal scope of anti-discrimination law regarding Albanian legal subjects, including public bodies, and judicial interpretation is needed. However, as explained above, the LPD provides explicitly for the protection of foreign legal persons with a residence, domicile or headquarters outside the territory of Albania in their relations with the organs of the Albanian state.

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<sup>95</sup> According to Article 33(16) of the LPD, any subject who is punished by means of a fine has the right to appeal to the competent court under the Code of Civil Procedure.

Article 33(1) of the LPD 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.'

According to Article 7(1) of the LPD:

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

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.

According to Article 7(1) of the LPD:

'Every action or failure to act by the public authorities or by natural or legal persons who take part in the private or public sectors and life that creates bases for the denial of equality against a person or group of persons, or which exposes them to 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 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.'

Other articles of the LPD cover the responsibility of central institutions (Articles 14 and 18), heads of educational institutions (Article 19), employers (Article 13) and entities that provide goods and services (Article 20).

It is also important to take into account Article 33(13) and (16), as elaborated above.

## **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 Law on protection from discrimination (LPD), protection from discrimination is provided in the field of employment, 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.<sup>96</sup> 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 (Article 9(5)(a)).

### **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 relation to 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 and 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:

'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.'

The new Law on the promotion of employment,<sup>97</sup> which was adopted in 2019, is aimed at increasing the employability of the workforce through the provision of public services and programmes of employment, self-employment, and vocational training (Article 2).

The Law defines some essential concepts, such as:

- The 'training and rehabilitation of persons with disability', which is understood to involve support services and disability assessment assistance. These services will

<sup>96</sup> 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.

<sup>97</sup> Law No. 15/2019 on the promotion of employment (*Për nxitjen e punësimit*), 13.03.2019.

be provided through information, vocational counselling, an evaluation of professional skills, the development of relevant programmes, vocational training, additional qualifications, etc. (Article 3(1)).

- 'Special groups' including disadvantaged jobseekers in the labour market, such as individuals with orphan status in difficult economic conditions, people with disabilities, parents of children with disabilities, persons over the age of 55, persons from Roma and Egyptian communities, long-term unemployed jobseekers, unemployed jobseekers having immigrated not more than two years previously, minors and young people in conflict with the law, young people under the age of 29, victims of gender-based violence and domestic violence, and mothers under the age of 18. (Article 3(4))

According to Article 7, the responsible ministry shall take all necessary measures to provide the necessary infrastructure and human and material resources in the relevant regional or local body to ensure the provision of specialised services to specific groups of people requiring assistance for their inclusion in the labour market.

### **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 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'.



According to Article 1(c) of the Law on Higher Education,<sup>98</sup> the mission of higher education is, among others, to provide equal opportunities to benefit from higher education and lifelong learning.<sup>99</sup> Article 82 of the Law sets out the conditions for the organisation of continuing education study programmes as a form of lifelong learning. The Law recognises the right of persons who fulfil the eligibility criteria in a first cycle study programme, an integrated study programme, or a professional study programme, regardless of their financial means to pay the tuition fee. It also recognises the right to higher education for persons who enjoy this right through special laws.

### **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 relation to 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)(ç) 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.'

The Law on trade unions<sup>100</sup> was adopted in 1991 and was amended in 1992 and 1994. Although it does not explicitly cover the principle of non-discrimination, the Law contains several provisions that are essentially intended to guarantee non-discrimination because of trade union participation and to provide members of trade unions with protection from unequal and discriminating treatment. Under Article 3, all employees have the right to join trade unions, regardless of their political, ideological or religious beliefs. Persons who have retired or who are in receipt of social assistance have the same right. The Law provides members and leaders of trade unions with protection from employer actions on the grounds of belonging to this particular group. In particular:

- According to Article 10, their rights as employees cannot be restricted, including by dismissal due to union membership;
- Under Article 11, the elected members of a trade union may not be removed or transferred during the performance of their duties without the prior consent of the trade union organisation concerned, unless violations of the legislation and the collective labour contract are observed.

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<sup>98</sup> Law No. 80/2015 on higher education and scientific research in higher education institutions in the Republic of Albania.

<sup>99</sup> The Law provides a definition of 'lifelong learning', understood as 'the attending of activities and/or learning programmes in different periods of life, aiming to expand knowledge to enhance study and/or professional skills'.

<sup>100</sup> Law No. 7516/1991 on trade unions in the Republic of Albania, amended in 1992 and 1994.

### **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, as formulated in the Racial Equality Directive. It extends the protection to all protected grounds covered by the LPD.

Chapter IV of the LPD, on 'Prohibition of discrimination in the field of goods and services', states 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)**

Article 20(5) of the LPD 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.<sup>101</sup> 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) of the LPD, '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, ethnicity, age, religion and beliefs and sexual orientation). This provision is especially applicable to social advantages (Article 20(2)(c)), which covers 'contribution to and the possibility to benefit from social protection schemes, including through social assistance, social insurance, child protection, disability benefits or any another scheme of social protection or other advantage offered to the public'. 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.'<sup>102</sup>

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 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

<sup>101</sup> 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'.

<sup>102</sup> Article 1 of the LPD on 'Object' provides the protected grounds of discrimination.

protection, including the principle of non-discrimination.<sup>103</sup> 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 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 (including racial/ethnic origin, sexual orientation, age, religion and beliefs, and disability) 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:
  - 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

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<sup>103</sup> Law No. 121/2016 on social care services.

- 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 (racial/ethnic origin, religion and beliefs, age, disability, sexual orientation) and more grounds such as gender, pregnancy, parentage, and economic, educational or social status.

The Law on protection from discrimination (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.'

The Law on the pre-university education system expressly stipulates the principle of non-discrimination in the right to education for the following grounds: gender, race, colour, ethnicity, language, sexual orientation, political or religious beliefs, economic or social status, age, residence, disability and other grounds provided by Albanian legislation. Interpreting this provision, the various institutions, including private institutions, mainly refer to the LPD, which guarantees protection against discrimination in the field of education for an open list of protected grounds. Meanwhile, as mentioned previously, according to the Law on Higher Education, the mission of higher education is, among other things, to provide people with equal opportunities to benefit from higher education and lifelong learning.

In 2014 the CPD found that there had been direct discrimination in the field of education related to the religious beliefs of the complainant (a 16-year-old girl who wore a headscarf) by the regional education directorate and the general high school that the girl attended. These institutions had denied her the right to attend classes wearing a headscarf, contending that the state is secular, and that, for this reason, religious symbols cannot be allowed in public educational institutions. However, the Law on the pre-university education system and its bylaws do not contain any provisions that prohibit this.<sup>104</sup>

#### a) Pupils with disabilities

In Albania, the general approach to education for pupils with disabilities does not give rise to problems, especially as far as the legal framework is concerned. However, the implementation of the legal framework is sometimes difficult.

<sup>104</sup> CPD, Decision No. 14, *J.R. v. Regional Education Directorate of Korça & General High School 'Muharrem Çollaku' Pogradec*, dated 29.01.2015.

The Law on the pre-university education system, 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 bylaws under the pre-university education system were approved in 2013; they provided detailed procedures and rules for the education of children with disabilities.<sup>105</sup> 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 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 for children with disabilities in 2019 related to the integration of children with disabilities in ordinary schools and the appointment of teaching assistants with the appropriate training for children with disabilities. 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.

Albania has ratified the Convention on the Rights of Persons with Disabilities through Law No. 108, dated 15.11.2012, which entered into force on 11 February 2013.<sup>106</sup> The concluding observations of the Committee on the Rights of Persons with Disabilities on the initial report of Albania confirm that the Committee is concerned about the lack of information on the health-care and educational assessment procedures in place and that individualised support and accommodations are not consistently provided for those children with disabilities in mainstream schools who need them. The Committee therefore recommended that Albania:

- Ensure that health-care and educational assessment procedures are in line with the Convention and the human rights-based approach to disability and that experts from multiple disciplines are involved in such procedures;
- Adopt a legally defined procedure for the provision of reasonable accommodation at all levels of education and allocate the resources necessary to guarantee reasonable accommodation according to individual requirements in consultation with the child concerned.<sup>107</sup>

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<sup>105</sup> 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 the *European Journal of Social Science Education and Research (EJSER)*.

<sup>106</sup> The Albanian Government prepared the initial report in 2014, which was received by the CRPD on 4 December 2015. The CRPD considered the report in August 2019 and adopted its concluding observations on 16 September 2019.

<sup>107</sup> Committee on the Rights of Persons with Disabilities (2019), *Concluding observations on the initial report of Albania*, adopted by the Committee at its twenty-second session (26 August–20 September 2019), paragraph 16(c)(d).

The Law on higher education<sup>108</sup> 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).<sup>109</sup>

Education institutions need to be careful to prevent 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.<sup>110</sup>

Another case was brought in 2015 by two NGOs, Qëndistarët and the European Roma Rights Centre (ERRC), which filed a complaint to the CPD. In accordance with a decision of the Council of Ministers,<sup>111</sup> the Naim Frashëri school in Korça has been offering food and school supplies for Roma and Egyptian children since 2012, with the intention of increasing the number of children from these communities attending the school regularly. Due to unequal treatment (because they did not receive free meals despite coming from families with financial problems), other children gradually moved away to other schools. After three years, the school only had Roma and Egyptian children.

Despite the fact that the head of the Naim Frashëri school had informed the Regional Directorate of Education about this unwanted effect of the implementation of the decision of the Council of Ministers, the Regional Directorate did not inform the Ministry of Education and did not take any measures to prevent the segregation of Roma and Egyptian pupils. Moreover, the Ministry of Education never analysed the effects of the implementation of this positive measure, and consequently did not take any measures to stop the segregation of Roma and Egyptian pupils.

On 22 September 2015, the Commissioner for Protection against Discrimination, through Decision No. 145, found that the situation (the segregation of Roma/Egyptian pupils) constituted indirect discrimination on grounds of race and ethnicity and urged the

<sup>108</sup> Law No. 80/2015 on higher education and scientific research in higher education institutions in the Republic of Albania, available at: <https://euralius.eu/index.php/en/library/albanian-legislation/send/66-higher-education/168-law-on-higher-education-en>.

<sup>109</sup> Commissioner for Protection from Discrimination (2019), *Annual Report 2018*, p. 37, available at: <http://kmd.al/wp-content/uploads/2019/03/RAPORTI-VJETOR-2018.pdf>.

<sup>110</sup> Commissioner for Protection from Discrimination (2014), 'Study on the problem of discrimination against the Roma community in Albania', December 2014, p. 16.

<sup>111</sup> Decisions of the Council of Ministers No. 700/2012, No. 665/2013 and No. 678/2014.

authorities to take measures to end this segregation.<sup>112</sup> On 14 April 2017, the Ministry of Education sent a letter to the commissioner and to the complainants, setting out the steps to be taken to ensure desegregation of the school. The measures were as follows:

- Reviewing the bylaws for the registration of pupils in the pre-university education system;
- A review by the Regional Education Directorate, the Municipality of Korça and Roma and Egyptian community organisations of the distribution of pupils based on the nearest residential areas;
- Reorganising the process of education through the redistribution of pupils in the two schools closer to the community;
- Reviewing the decision of the Council of Ministers, extending support to other schoolchildren.

As the segregation of the school persists, and the quality of teaching is poor, an application has been submitted to the European Court of Human Rights.<sup>113</sup> There are two questions which the Court has put to all parties:

- Have the applicants exhausted all effective domestic remedies, as required by Article 35(1) of the ECHR?
- Have the applicants suffered discrimination, contrary to Article 1 of Protocol 12 to the Convention? Furthermore, did the authorities implement the desegregation measures and reconfigure the school, as proposed in the letter from the Ministry of Education of 14 April 2017?

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

### **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 the 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.'

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<sup>112</sup> Albania ratified to the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) on 11 May 1994, and Article 3 of ICERD is applicable. See Committee on the Elimination of Racial Discrimination (2003), Fourth periodic reports of States parties due in 2001-Albania, paragraphs 51 and 129-131. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAgHkb7yhsgCaATibnswFLs9akKGp2A%2FfCO4NetpniPJyiHzAKK8O%2Fm5yl99YTOOf1MKpvKAE5RcZBbYeqDVxznSrcGEf2w%2BVEB9cffpbEaCGOv2WkVg>.

Albania has been a member of UNESCO since 1958 and ratified the Convention against Discrimination in Education on 21 November 1963.

<sup>113</sup> *X and Others v. Albania*, No. 73548/17, 5 October 2017, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-192816%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-192816%22]}).

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 (Article 20(2)(a)); the ability to receive or to benefit from goods or services that have to do with health (Article 20(2)(b)); 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)(c)); the opportunity to use or enter into an educational institution (Article 20(2)(ç)); systemisation in a place where housing is offered (Article 20(2)(d)); the sale or renting of residences and other premises; banking services and the opportunity to obtain grants, loans, bank deposits or financing (Article 20(2)(d), (h) and (e)); facilities for entertainment, relaxation and refreshment; facilities for transport or travel (Article 20(2)(f)); services of the free professions (Article 20(2)(g)).

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

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.'<sup>114</sup>

Under Article 20(6), the LPD provides that costs related to pregnancy and motherhood may not be used as a reason for distinctions in compensation or benefits for the individual.

The Law on consumer protection<sup>115</sup> does not contains any provisions on non-discrimination.

#### 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. those restricted 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.

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

- stay in a temporary or permanent residence is inviolable;

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<sup>114</sup> Article 1 of the LPD on 'Object' provides the protected grounds of discrimination.

<sup>115</sup> Law No. 9902/2008 on consumer protection (*Për mbrojtjen e konsumatorit*).



- 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 or social status, pregnancy, parental affiliation and/or 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 authority, 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).<sup>116</sup>

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.<sup>117</sup> 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.<sup>118</sup>

<sup>116</sup> See [www.parlament.al/ProjektLigje/ProjektLigjeDetails/44781](http://www.parlament.al/ProjektLigje/ProjektLigjeDetails/44781).

<sup>117</sup> Government of Albania (2016), *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*, approved by the Council of Ministers in 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](http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_kombetar_i_veprimit_per_integrimin_e_Romeve_dhe_Egjiptianeve_2016-2020.pdf).

<sup>118</sup> 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 Article 9(4) provides that:

'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'.<sup>119</sup>

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

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<sup>119</sup> 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 of recruitment and physical abilities.<sup>120</sup>

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.'<sup>121</sup> However, the Law on protection from 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 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)).

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<sup>120</sup> Law No. 9210 on the military status of armed forces of the Republic of Albania, 23.3.2004, amended in 2009.

<sup>121</sup> 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.

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

### **4.6.1 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, 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 anti-discrimination law (the LPD) and the Labour Code provide for justifications for discrimination on the ground of age.

According to Article 6(2), the justifications for discrimination on all protected grounds by the LPD (including the ground of age) are related to the nature of the professional activities or the conditions in which the profession or activity is conducted, for which those characteristics constitute an essential real and professional requirement. The different treatment shall be justified and the requirement shall not exceed that which is essential to realise it. There is no case law yet regarding the justifications for discrimination on the ground of age.

#### **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.

#### **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 insurance 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.

#### **4.6.2 Special conditions for young people and older workers**

In Albania, there are special conditions set by law for older and younger workers in order to promote their vocational integration.

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 the promotion of employment places an obligation on the relevant authorities to draft public employment policies covering employment services and active and passive labour market programmes aimed at promoting the employment of jobseekers and the integration and social inclusion of specific groups.

#### **4.6.3 Minimum and maximum age requirements**

In Albania, there are exceptions permitting minimum and maximum age requirements in relation to access to employment 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 insurance<sup>122</sup> 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.

#### **4.6.4 Retirement**

##### **a) State pension age**

In Albania, there is a 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 wishes to work beyond the state pension age, 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 a standard 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.

The Law on social insurance establishes the general retirement age, which is 65 years for men and 60 years and 10 months for women (Article 31 in relation to Article 92).

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.<sup>123</sup>

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

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<sup>122</sup> Law No. 7703 on social insurance in the Republic of Albania, dated 11.05.1993.

<sup>123</sup> Law No. 80/2015 on higher education and scientific research in higher education institutions in the Republic of Albania, Article 65.

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 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 CJEU case law regarding mandatory retirement age.

#### **4.6.5 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.
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.'

#### **4.7 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.

#### **4.8 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 an open-ended list of grounds, including race, ethnicity, religion or belief, disability, age or sexual orientation.

The Law on protection from discrimination (LPD), under Article 11 on 'Positive actions', provides 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 Opportunities<sup>124</sup> 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 indicates the measures that should be implemented, including: raising awareness about

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<sup>124</sup> In the Government formed after the general elections of 2017, the ministry responsible is now the Ministry of Health and Social Protection.

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 under the 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,<sup>125</sup> access to teaching assistants,<sup>126</sup> 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 and the National Action Plan for LGBTI Persons in the Republic of Albania 2016-2020, organised awareness-raising activities in Tirana high schools 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. There have been controversies linked with the campaign involving politicians, analysts, representatives of religious communities, parents and others.

#### b) Quotas in employment for people with disabilities

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

The Law on the promotion of employment obliges employers to employ one disabled person for their first 25 employees (Article 20(1)(a) and one additional person for each of the next 50 employees of the enterprise.<sup>127</sup> 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 the 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.<sup>128</sup> Article 24 of the Civil Code defines legal persons as public and private subjects.

Article 21 of the Law on the promotion of employment 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 Social Employment Fund an amount equal to the minimum monthly wage for every person that they should have employed (Article 20(2)). This income is used for the employment, self-employment, job rehabilitation, vocational training and rehabilitation of persons with disability, for careers guidance and counselling, support services, work placements and social reintegration programmes, and to promote the employment of family members of persons with disabilities. (Article 21(4)).

Through a legal recommendation<sup>129</sup> for the draft law on the promotion of employment, the CPD considered the measures proposed by the bill to be ineffective because of the

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<sup>125</sup> Decision of the Council of Ministers No. 837, on the recognition of sign language, dated 3.12.2014

<sup>126</sup> Law No. 69/2012 on the pre-university education system, Article 65.

<sup>127</sup> Law No. 15/2019 on the promotion of employment.

<sup>128</sup> Law No. 7850, the Civil Code, dated 29.7.1994, amended in 1999, 2001, 2012 and 2013.

<sup>129</sup> The Commissioner for Protection from Discrimination has the competence to make recommendations to the competent authorities, especially by supporting new legislation or the amendment or reform of existing legislation.

proposal to double the total number of employees that an employer must have before being obliged to employ a person with a disability.

According to Article 22 on penalties, an employer who violates the provisions of the law shall be fined by the state inspectorate covering the field of work, in accordance with the provisions of the applicable labour inspection legislation. The State Labour Inspectorate has the right to monitor the employment of persons with disabilities.<sup>130</sup> 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.<sup>131</sup> 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.

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.<sup>132</sup>

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<sup>130</sup> Law No. 9634 on labour inspection, dated 30.10.2006.

<sup>131</sup> State Labour Inspectorate (2019), *Annual Report 2018*, p. 8. <http://inspektoriatipunes.gov.al/wp-content/uploads/2019/01/Raport-vjetor-2018-ISHPSHSH-update.pdf>.

<sup>132</sup> Decision of the Council of Ministers No. 243, on admission, parallel movement, probation period and appointment in the executive category, dated 18.03.2015, amended by Decision No. 746 of 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 administrative procedure*

According to the LPD, 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 the law is not limited 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). For example, 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.<sup>133</sup>

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 Law on protection from discrimination (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](http://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).

There are similar proceedings before the CPD for employment in the public and private sectors.

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.<sup>134</sup> Article 16

<sup>133</sup> Law No. 9634 on labour inspection, dated 30.10.2006, Articles 1, 2(3) and 6.

<sup>134</sup> 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 amended by Law No. 155/2014, dated 27.11.2014.

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 such infringements and where serious violations have occurred, can suggest that the relevant authorities, including the Assembly, dismiss officials under their jurisdiction (Article 21).

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.

#### *Civil procedures*

LPD - Under Article 34(1), civil proceedings can be initiated before ordinary courts. 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)). The Law sets out a mutual relationship between the court and the commissioner, anticipating the court's obligation to notify the commissioner of the submission of every lawsuit concerning discrimination (Article 36(3)). However, it recognises that the court may require the commissioner, at any stage of the 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)).

Civil Procedure Code – According to Article 12, if proceedings are brought before a court, no proceedings can be brought before another institution. The Code does not say what one does if proceedings are brought before the CPD and further proceedings are commenced before a court before the proceedings before the CPD have ended.

There are different procedures for employment in the public and private sectors.

Labour Code – Courts are the competent authority to resolve disputes in labour relations in cases of immediate termination of employment contracts, with or without justified reasons (Articles 153(4) and 155(4)). Courts also have the authority to settle any individual or collective dispute concerning the implementation of collective contracts (Article 172). In addition, the Labour Code recognises the right of any organisation of employees to approach the court for the protection of the interests of each of its members, as provided for by collective and individual contracts of employment (Article 182).

According to Article 9(9), when a person claims to have been violated by the non-application of the principle of equal treatment in the exercise of the right to employment and profession, the appeal procedure shall be as defined in the special law on protection against discrimination (implying LPD).

The termination of a contract by the employer shall be considered to have no reasonable causes if, *inter alia*, it violates the prohibition of discrimination set out in the Labour Code and the LPD (Article 146(1)(c)). This process shall be invalid, and the employer shall be obliged to pay the employee damages totalling up to one year's salary, to be added to the salary he/she shall receive during the notice period.

In the public administration, where there is an irrevocable court decision on a person returning to the same workplace, the employer is obliged to execute this decision (Article 146(3)).

The Law on the administrative courts and the adjudication of administrative disputes.<sup>135</sup> - Article 7(ç) stipulates that administrative courts are competent to resolve disputes in the labour relations of civil servants, judicial civil servants, civil servants of prosecution offices, and state servants whose labour relations are governed by special arrangements under the organic law.

This article provides an exception for public administration employees at courts or prosecution offices, whose labour relations are regulated by the Labour Code.

### *Mediation*

The Law on mediation in dispute resolution<sup>136</sup> – Mediation can be used to resolve all disputes in civil, commercial, labour and family law, disputes concerning intellectual property and consumer rights, and disputes between public administrative bodies and private subjects. Mediation can also be used in criminal cases, in disputes examined by the court at the request of the accusing victim, or upon a complaint by the injured party,<sup>137</sup> and it can also be used in any other cases as allowed by special legislation (Article 2(2) and (3)). The process of mediation should be based on the will of the parties and arranged in accordance with the following principles: equality of the parties, the confidentiality of information, a prohibition against using the data, respect for flexibility and transparency of the proceedings (Articles 3(1) and 20). The process is conducted by the mediator, which acts as a natural or legal person, following registration in the Register of Mediators, in accordance with the Law (Article 4(1)). When the parties agree on an acceptable resolution of the dispute, together with the mediator, they sign an agreement, which shall be binding and enforceable in the same way as arbitration decisions (Article 22(1)).

### *Criminal procedures*

The LPD grants victims a right to make a criminal denunciation before the criminal prosecution authorities (if the discriminatory behaviour constitutes a criminal offence) (Article 34(1)).

The Criminal Code contains the following provisions:

- Article 50(j) includes 'the commission of the offence due to motives related to gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical convictions, health status, genetic predispositions or disability' as aggravating circumstances.
- Article 74, on crimes against humanity, provides that certain actions (including murder, enforced disappearance, extermination, enslavement, internment, expulsion or any other kind of human torture or violence) committed against a group of the civil population for political, ideological, racial, ethnic or religious motives, constitute a criminal offence.

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<sup>135</sup> Law No. 49/2012, as amended, on the administrative courts and the adjudication of administrative disputes.

<sup>136</sup> Law No. 10 385/2011, as amended, on mediation in dispute resolution.

<sup>137</sup> In criminal cases, mediation should be used in accordance with the Code of Criminal Procedure, Articles 59 (The accusing victim) and 284 (The criminal complaint).

- Article 84(a) establishes that any serious threat of murder or to cause serious injury to a person through computer systems due to their ethnicity, nationality, race or religion constitutes a criminal offence.
- Article 119(a) sets out that the public offering or deliberate distribution to the public, through computer systems, of materials of racist or xenophobic content constitutes a criminal offence.
- Article 119(b) states that intentionally and publicly insulting a person because of their ethnicity, nationality, race or religion through a computer system constitutes a criminal offence.
- Article 133, on obstructing religious ceremonies, states that banning religious ceremonies or creating obstacles hindering persons from participating in such ceremonies or freely expressing religious beliefs constitutes a criminal misdemeanour.
- Article 253, on violation of the equality of citizens, provides that unequal treatment by the state or by a public service employee based on grounds of origin, sex, health status or religious, political or trade union activity or because of belonging to a particular ethnicity, nation, race or religion by creating unfair privileges or refusing a right or benefit deriving from the law constitutes a criminal offence.
- Article 265 prohibits the encouragement of hatred and contention because of race, ethnicity, religion or sexual orientation, as well as the preparation, dissemination or preservation of such content written using any means or in whatever form.
- Article 266, on 'calls for national hatred', prohibits the endangering of public peace by inciting hatred against parts of the population, insulting or defaming them, or calling for the use of violence or arbitrary actions against them.

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) sometimes have found difficulties 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,<sup>138</sup> there are now three regional offices, which have become part of the institution's structure, following changes made by the Albanian Parliament.<sup>139</sup>

For some years, the CPD has been identifying several issues in relation to the length of court proceedings: complainants are subject to administrative taxes, they must engage a lawyer and proceedings can take a long time.<sup>140</sup>

Law No. 111/2017 on legal aid guaranteed by the state contains measures to address one of these issues. The victims of discriminatory behaviour (based on the decision of the relevant body, according to the legislation in force for protection against discrimination) are excused from paying court fees and from prepaying the fee for secondary legal assistance (Article 25). During 2019, the Ministry of Justice approved application forms for legal aid, for exclusion from payment of tariffs and legal expenses, for self-declaration by special categories of beneficiaries, and for appealing against the court's decision to reject a request for secondary legal aid.

<sup>138</sup> The CoP and EU project: Enhancing the effectiveness of the Albanian system of human rights protection and anti-discrimination.

<sup>139</sup> Decision of the Assembly of the Republic of Albania No. 60/2018.

<sup>140</sup> In a case in which the Commissioner for Protection from Discrimination found discrimination in September 2014 (Decision No. 146), Kruja District Court took until April 2018 to deliver its ruling (Decision No. 152), ordering the respondent to pay compensation to the claimant for the non-material damages incurred, to a total value of EUR 48 370 (ALL 6 046 326).

According to a report on the monitoring of the implementation of Law No. 111/2017, published in November 2019,<sup>141</sup> citizens still did not have sufficient knowledge of the new legislation on free legal aid guaranteed by the state, and they did not have copies of forms or requests to seek primary legal aid from the responsible bodies. Of the 451 citizens interviewed, 64 % were beneficiaries of the Law on legal aid.<sup>142</sup> However, the report does not give any data about the number of people who were interviewed who were victims of discriminatory behaviour.<sup>143</sup>

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.<sup>144</sup>

c) Number of discrimination cases brought to justice

In Albania, statistics on the number of cases related to discrimination that have been brought to justice, based on figures in the Statistical Yearbook, are published by the Ministry of Justice and in the annual report of the Commissioner for Protection from Discrimination.

Referring to the Statistical Yearbook 2018,<sup>145</sup> no data are provided regarding the civil and administrative cases related to discrimination that have been handled by the courts. The same data source confirms, however, that there have been no court decisions on criminal cases that constitute discriminatory conduct in categories such as: dissemination of racist or xenophobic materials through computer systems (Article 119(a)); insulting persons due to racist or xenophobic motives through computer systems (Article 119(b)); obstructing religious ceremonies (Article 133); violating the equality of citizens (Article 253); or incitement of hatred or disputes (Article 265).<sup>146</sup>

d) Registration of discrimination cases by national courts

In Albania, discrimination cases (civil and administrative 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 in proceedings on behalf of victims of discrimination (representing them)

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

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<sup>141</sup> Albanian Helsinki Committee and the Open Society Foundation for Albania (2019), *Monitoring the implementation of the law on legal aid guaranteed by the state, in the context of providing primary legal aid*.

<sup>142</sup> These were persons with low or insufficient income and persons included in the special category of beneficiaries, regardless of income or wealth.

<sup>143</sup> Albanian Helsinki Committee and the Open Society Foundation for Albania (2019), *Monitoring the implementation of the law on legal aid guaranteed by the state, in the context of providing primary legal aid*, pp. 15-16.

<sup>144</sup> Commissioner for Protection from Discrimination (2014), *Annual Report 2015*, pp. 72-73. <http://kmd.al/wp-content/uploads/2019/03/Raport-Vjetor-2015.pdf>.

<sup>145</sup> The Statistical Yearbook 2019 has not been published yet.

<sup>146</sup> See <http://drejtesia.gov.al/wp-content/uploads/2019/07/Vjetari-Statistikor-2018-PDF.pdf>.



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).

The Albanian Helsinki Committee provided court representation to residents who required the responsible authorities to supply drinking water to their neighbourhood. The court found discrimination in June 2018 and decided to compensate the residents.<sup>147</sup>

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.<sup>148</sup>

b) Engaging in proceedings 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.<sup>149</sup> Furthermore, the Commissioner for Protection against Discrimination is

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<sup>147</sup> See <https://ahc.org.al/jepet-vendimi-i-pare-gjyqesor-ne-shqiperi-per-mungesen-e-ujit-te-pijshem-per-banoret-e-fshatit-visoke/>.

<sup>148</sup> 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.

<sup>149</sup> 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.'

usually requested by courts to attend the entire court proceedings as an interested party to the trial.

c) *Actio popularis*

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

According to Article 90 of the Civil Procedure Code,<sup>150</sup> no one may represent the rights of others in a civil trial, unless otherwise provided by the law.

*Actio popularis* is accepted before the administrative courts. According to the Law on the organisation and functioning of the administrative courts and the adjudication of administrative disputes,<sup>151</sup> the right to bring a lawsuit is recognised for any association or interest group that claims a lawful public interest has been infringed by a normative or administrative act, if such a right is recognised by law (Article 15). 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,<sup>152</sup> 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 engage a special power of attorney to represent a person or group of persons.

During court proceedings, a person or group of persons affected by discrimination can be represented by an organisation, giving their consent through a special power of attorney or a declaration before the court (Article 34(3)).

Organisations have no obligation to go through the commissioner for class actions.

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

In Albania, national law requires 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

<sup>150</sup> Law No. 8116/1996, as amended – the Civil Procedure Code (*Kodi i Procedurave Civile*), <https://euralius.eu/index.php/en/library/albanian-legislation/send/51-civil-procedure/257-civil-procedure-code-en>.

<sup>151</sup> Law No. 49/2012 on the organisation and functioning of the administrative courts and the adjudication of administrative disputes.

<sup>152</sup> According to the Code of Administrative Procedure, 'A party to the administrative procedure are also the holders of public interests authorized by law, as well as holders of collective interests or of broad interests of the public, in case these interests might be affected by the outcome of the administrative procedure.' (Article 33(2))

determined that the applicant 'may submit a complaint with the available evidence to the commissioner' (Article 33(1)).

The Code of Administrative Procedure,<sup>153</sup> 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 reversal of the burden of proof in matters of discrimination.<sup>154</sup> 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.'

In court proceedings, the Law on protection from discrimination (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 the 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 the 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.'<sup>155</sup>

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.<sup>156</sup>

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.

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<sup>153</sup> Code of Administrative Procedure, Law No. 44/2015, approved by the Assembly of the Republic of Albania on 30.04.2015 and entered into force on 28.05.2016.

<sup>154</sup> 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).

<sup>155</sup> Hoxhaj, E. and Baraku, I. (2014) 'The burden of proof in the administrative process in Albania', *European Scientific Journal*, Vol.10, No. 10, 2014.

<sup>156</sup> United Chambers of the Supreme Court, unifying Decision No. 19, dated 15.11.2007.

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.<sup>157</sup> 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.<sup>158</sup>

#### **6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

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

The Law on protection from discrimination (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

Administrative sanctions

The Law on administrative misdemeanour<sup>159</sup> - According to Article 8, administrative sanctions may be imposed by:

- the competent administrative authority for the review of an administrative misdemeanour, which shall impose a fine or other administrative penalties, depending on the provisions of the special law;
- the court, which may impose a fine or imprisonment of up to 30 days.

The Law on protection from discrimination - 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 sets out four categories: a natural person (fines of approximately EUR 80 to 480); a legal person (fines from EUR 480 to 4 800); 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 the Law (fines from EUR 240 to 640). In addition, the commissioner may require the relevant

<sup>157</sup> Law No. 38/2017 on 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.

<sup>158</sup> Commissioner for Protection from Discrimination (2013) *Annual Report 2014*, p. 95. <http://kmd.al/wp-content/uploads/2019/03/Raporti-Vjetor-2014.pdf>.

<sup>159</sup> Law No. 10279/2010 on administrative misdemeanour.

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)).

These sanctions are the same for the public and private sectors.

#### Civil sanctions

The Law on protection from discrimination - According to Article 37(1) of the LPD, on the 'Decision of the court', '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'. In Article 38, the LPD 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.

Labour Code - Under Article 202, the Labour Code provides for civil sanctions by fine, as follows:

- Punishment by a fine amounting to 100 times the minimum monthly wage for the violation of: Article 9 (prohibition of discrimination); Article 98 (the minimum age); Article 100 (difficult or dangerous jobs); Article 101 (night work for employees under 18 years of age and those recognised as invalids); Article 103 (medical checks for employees under 18 years of age); Articles 104 and 108 (prohibition of work for pregnant women and young mothers, and night work); Article 181(3), (5) and (7)(a), (b) and (c)) on trade union freedoms, prohibition of discrimination against trade union representatives, prohibition against changing the conditions of employment contracts of representatives of organisations of employees, and the obligation of the employer to create all the necessary conditions and facilities so that the elected representatives of organisations of employees may properly exercise their functions; and Article 182, on the right of trade union organisations to protect the interests of each of its members before the courts.
- Punishment by a fine amounting to 50 times the minimum monthly wage for the violation of: Article 78(3), prohibiting employees under 18 years of age from working for more than six hours a day; Article 99(1) on easy jobs for children between the ages of 16 and 18; Article 105(a) prohibiting the imposition of pregnancy tests before starting employment; Article 197(2)(3), prohibiting the recruitment of new employees when a strike is taking place; Article 146(1)(c), on termination of a contract for no reasonable cause, which violates the prohibition of discrimination according to the stipulations of the Labour Code and the LPD.

Where a violation recurs to the detriment of several employees, the total amount of fines issued will not be greater than five times the maximum fine. The employer shall be held accountable for fulfilling the obligation brought about by the employee to whom he or she has assigned certain tasks for the purpose of managing the enterprise.

The violations of the provisions of the Labour Code will be punished in compliance with the provisions of the Penal Code if they amount to criminal offences.

## Criminal sanction

The Criminal Code provides for the following sanctions:

Article 74 provides that computer-based dissemination of materials advocating genocide or crimes against humanity are punishable by three to six years of imprisonment.

According to Article 84(a), making a threat for racist and xenophobic motives via computer systems is punishable by a fine or by up to three years' imprisonment.

Based on Article 108(a), sexual harassment is punishable by one to five years of imprisonment; when this offence is committed in complicity, against several persons, more than once, or against children, it is punishable by three to seven years of imprisonment.

The dissemination of racist or xenophobic materials or of insults for racist or xenophobic motives via computer systems (Article 119(a)(b)) is punishable by a fine or imprisonment up to two years.

Article 133 provides a punishment by a fine or up to one year of imprisonment for the obstructing of the religious ceremonies.

Article 253 states that the violation of the equality of citizens is punishable by a fine or up to five years of imprisonment.

The incitement of hatred or disputes is punishable by imprisonment of two to ten years (Article 265).

According to Article 266, 'calls for national hatred' are punishable by imprisonment of two to eight years.

### b) Compensation - maximum and average amounts

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.

### 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, these sanctions are proportionate but not dissuasive or effective, because 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.

## **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.<sup>160</sup> It started operating on 21 May 2010.<sup>161</sup> In April 2018, the new commissioner was elected by the Assembly of the Republic of Albania.<sup>162</sup> The CPD deals with cases of discrimination for an open list of grounds in both the public and private sectors, takes decisions and can impose sanctions.

- b) Political, economic and social context of 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. The Government has increased the budget, from ALL 36 458 400 (EUR 303 820) in 2018 to ALL 47 450 000 (EUR 395 416) in 2019.

- 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. From 2018, the structure of the CPD provided for 34 employees.<sup>163</sup>

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.

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<sup>160</sup> Commissioner for Protection from Discrimination (2011), *Annual Report 2010*, <http://kmd.al/wp-content/uploads/2019/03/Raporti-vjetor-KMD-2010.pdf>.

<sup>161</sup> 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.

<sup>162</sup> Assembly of the Republic of Albania, Decision No. 60, dated 05.04.2010.

<sup>163</sup> 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 commissioner is a public legal person.

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. 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).<sup>164</sup>

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 commissioner has his own independent budget, which is financed from the state budget and various donations.<sup>165</sup>

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

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<sup>164</sup> The first Commissioner for Protection from Discrimination was elected by the Assembly in May 2010. On 4 April 2018, a 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 for applications, assesses the candidates and holds hearings with them. Civil society organisations sent a letter of support for one of the civil society candidates. However, the Assembly elected a candidate with an academic background as commissioner.

<sup>165</sup> According to the annual reports of the CPD, funding for its activities has been donated through the EU's Instrument for Pre-Accession Assistance (IPA) programme and projects implemented by the Council of Europe in Albania, UNDP, UN Women and the OSCE.



ii) Independence of the body

The independence of the commissioner is clearly stipulated in the Law on protection from discrimination (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 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.

The legal framework provides for budgetary independence. 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. In practice, the CPD also deals with nationality.

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.<sup>166</sup>

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

i) Independent assistance to victims

In Albania, the Commissioner for Protection from Discrimination has the competence to provide independent assistance to victims of discrimination. The CPD provides independent assistance to victims in addressing their complaints, and provides information about their right of protection from discrimination and the legal means available for this protection (Article 32(1)(j)).

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<sup>166</sup> Commissioner for Protection from Discrimination (2019), *Annual Report 2018*, p. 79. [www.kmd.al/wp-content/uploads/2019/03/RAPORTI-VJETOR-2018.pdf](http://www.kmd.al/wp-content/uploads/2019/03/RAPORTI-VJETOR-2018.pdf).

In our view, the CPD is able to give independent assistance free of charge 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 (Articles 32(1)(i) and 34). In practice, the CPD has never used this power. The LPD does not provide the CPD with the right to exercise the power provided by Article 34 independently; it allows the CPD to exercise it only as a representative of the presumed victim of discriminatory behaviour.

ii) Independent surveys and reports

According to the LPD, the commissioner has a duty: to encourage the principle of equality and non-discrimination, especially by raising awareness and disseminating information on these issues (Article 32(1)(d)); to monitor and carry out surveys in connection with discrimination (Article 32(1)(dh) and (e)); and to publish reports (Article 32(1)(f)). In practice, this duty is effectively exercised in an independent manner through:

a. Conducting monitoring such as:

- Monitoring with focus the discriminatory behaviour in the education system and the level of knowledge of Law No. 10 221/2010 on protection from discrimination.<sup>167</sup>
- Monitoring of the tendency towards the segregation or concentration of Roma children in the education system.<sup>168</sup>

b. Publishing numerous leaflets, manuals, brochures and studies, including:

- 'Gender equality and discrimination in the appointed organs of local government', 2019
- 'Combating discrimination and hate speech in election campaigns'<sup>169</sup>
- '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)
- '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)
- Information brochure on 'Protection of Minorities in Albania under the Law Protection from Discrimination'

<sup>167</sup> Commissioner for Protection from Discrimination (2014), *Discrimination in education from the perspective of the Commissioner for Protection from Discrimination*, Tirana 2014, p. 20.

<sup>168</sup> Commissioner for Protection from Discrimination (2014), 'Summary of the Decisions of the Commissioner for Protection from Discrimination', p. 16.

<sup>169</sup> CPD and EQUINET (2019), *Rekomandim mbi luftën kundër diskriminimit dhe gjuhës së urrejtjes në fushata zgjedhore (Combating discrimination and hate speech in election campaigns)*, available at: <https://equineteurope.org/2019/05/14/combating-discrimination-and-hate-speech-in-election-campaigns/>.

- Development of an information brochure 'On employment in the public and private sectors'
- Information brochure 'On the provision of goods and services'.
- 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 supporting new legislation or the amendment or reform of existing legislation.

The CPD issued 4 recommendations in 2012; 2 recommendations in 2013; 7 recommendations in 2014; 3 recommendations in 2015; 5 recommendations in 2016; 7 recommendations in 2017; 13 recommendations in 2018; and 6 recommendations in 2019.

In 2019, the CPD issued recommendations on:

- The draft law on the promotion of employment.
- Reviewing or amending the legislation related to transport facilities and benefits on an equal basis for all categories of persons with disabilities and their carers, regardless of disability type.
- Improvement of the legal framework so that carers of persons with disabilities may receive benefits on an equal basis and without discrimination based on the type of disability.
- Bylaws pursuant to Law No. 22/2018 on social housing.
- Improving the legal framework for convicts and detainees so that they may receive benefits on an equal basis and without discrimination.

The CPD submitted recommendations on the draft law on the promotion of employment concerning:

- Careful assessment of the right of foreign or stateless persons to benefit from the services provided under the law.
- Measures proposed under the draft law that the commissioner deems ineffective. The draft law provides for doubling the total number of employees that an employer must have before being obliged to employ a person with a disability and halves the amount that an employer must pay if it fails to meet the above obligation.
- Clarity that the rights and obligations under the law apply to both public and private employers.

### iv) Other competences

The CPD has other powers under the LPD:

- to promote the principle of equality and non-discrimination, especially by raising awareness and providing information about those issues and by providing written information about the Law (in the FAQs section of the official CPD website<sup>170</sup> and in an online newspaper)<sup>171</sup> in the Albanian language, in minority languages and in formats usable by persons with a disability;<sup>172</sup>
- to address the public directly about any issue related to discrimination by issuing recommendations and press releases and giving media interviews (the commissioner has publicly condemned the use of hate speech by former parliamentarians against people with disabilities and repeated incidents in stadiums

<sup>170</sup> See <https://www.kmd.al/f-a-q/>.

<sup>171</sup> See <https://www.kmd.al/newsletter/>.

<sup>172</sup> See <https://www.kmd.al/publikime-te-komisionerit/>.

connected with ethnic and racial affiliation, as well as the insulting of vulnerable groups such as Roma, Egyptians and members of the LGBTI community in social media);<sup>173</sup>

- to contribute to reporting and, as the case may be, to submit reports to international and regional bodies, as the UN mechanisms 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);
- to support best practice in the anti-discrimination field. This included engaging in actions against hate speech in 2019. The Commissioner for Protection from Discrimination, the Ombudsman, the AMA and the Albanian Media Council have established the Alliance Against Hate, which aims to identify possible mechanisms to combat hate speech, based on European best practices.

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, according to the LPD, the Commissioner for Protection from Discrimination has legal standing to:

- bring discrimination complaints on behalf of identified victims (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<sup>174</sup> (although the CPD has never used this competence in practice);
- intervene in legal cases concerning discrimination, for example as an *amicus curiae*, subject to the court's decision.<sup>175</sup>

On the basis of the LPD, the Commissioner for Protection from Discrimination does not have legal standing to:

- bring discrimination complaints to court on behalf of non-identified victims;
- bring discrimination complaints to court *ex officio*.

#### h) Quasi-judicial competences

In Albania, the Commissioner for Protection from Discrimination is a quasi-judicial institution (Article 32 LPD). 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 LPD also covers 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

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<sup>173</sup> CPD Newsletter No. 8, August 2019, available at: <https://www.kmd.al/wp-content/uploads/2019/09/Newsletter-KMD-gusht-2019.pdf>.

<sup>174</sup> LPD, 4 February 2010, Article 34(3).

<sup>175</sup> LPD, 4 February 2010, Article 36(4).

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.<sup>176</sup> 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)).

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 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 courts. The commissioner's annual report contains a specific section on participation in court proceedings.

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. 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.<sup>177</sup> Under the Law on the right to information, any person may request

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<sup>176</sup> 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.

<sup>177</sup> For annual reports, see: <http://kmd.al/raporte-vjetore/>; for decisions of the commissioner, see <https://www.kmd.al/vendime-te-komisionerit-2019/>.

information received by the commissioner.<sup>178</sup> The institution has fulfilled its legal obligation by publishing its programme of transparency and request register and by assigning an employee as information coordinator. A total of 47 requests for information were registered at the Office of the CPD in 2019.

Table 1: 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
2015	180	17	184	41
2016	120	11	197	57
2017	166	7	142	24
2018	197	8	241	49
2019	163	8	171	55

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.

Table 2: Commissioner for Protection from Discrimination – complaints by activity.

Year	Public Hearings	Investigation Inspections	Requests for information
2017	52	16	200
2018	47	32	364
2019	65	24	534

Based on the data provided by the Office of the CPD, most discrimination cases registered during 2019 related to political beliefs (57), race, ethnicity, colour and language (37), disability (20), economic situation (14), health status (14), any other grounds (17), affiliation with a particular group (14), education situation (14), social situation (7) and sexual orientation (7).<sup>179</sup>

The number of discrimination cases for other grounds are very low. Logically, this means that there is underreporting for these grounds: gender (2), gender identity (4), age (4), religious beliefs (1), philosophical beliefs (1), pregnancy (3), parentage (0), parental responsibility (4), civil status (0), residence (4), and genetic predispositions (1).

<sup>178</sup> Law No. 119/2014 on the right to information.

<sup>179</sup> Commissioner for Protection from Discrimination (2020), *Annual Report 2019*, p. 37. <https://www.kmd.al/wp-content/uploads/2020/05/Raporti-vjetor-2019-KMD.pdf>.

Table 1: Decisions of the CPD during 2019, by 5 grounds.

Decision Grounds	Discrimination	Non-discrimination	Others	Sanctions by fine
Race, ethnicity, colour	13	11	-	4
Age	3	2	-	1
Disability	25	6	-	3
Religion / belief	-	1	-	-
Sexual orientation and gender identity	6	4	-	-

During 2019 the CPD registered 38 cases against private subjects and 133 cases against public authorities. The complainants were as follows: 104 men, 84 women, 13 groups and 14 NGOs.

The LPD provides for protection from discrimination in education, employment and goods and services (including housing and social services) in three specific chapters. During 2019, the CPD registered 19 complaints regarding education, 90 complaints regarding employment and 62 complaints regarding goods and services.

Table 3: Decisions of the CPD during 2019, by field.

Decision Field	Discrimination	Non-discrimination	Others	Total
Education	3	2	5	<b>10</b>
Employment	30	32	28	<b>90</b>
Goods & services	22	17	34	<b>73</b>

Out of 55 decisions where the CPD found discrimination during 2019, only three have been ascertained as involving indirect discrimination.

In the course of 2019, the commissioner took 14 decisions resulting in sanctions by fine, of which 10 were for the non-implementation of previous decisions, while 4 were issued to individuals who had not given the information requested by the CPD.<sup>180</sup>

In 2019, the CPD participated in 86 court proceedings (in 52 cases as the respondent and in 31 cases as an interested or third party; in 3 cases, the CPD requested the issuing of orders). In 2019, the courts issued 54 decisions in cases to which the CPD was a party, of which 36 decisions were given by the first instance, civil and administrative courts, and 18 decisions were issued by the appeal courts.<sup>181</sup>

<sup>180</sup> In Article 32(2), the LPD obliges public institutions and private subjects to support the commissioner in the fulfilment of his or her duties, especially by supplying information that he or she may need. In addition, under Article 33(13), any person who violates the provisions of this law shall be punished by a fine.

<sup>181</sup> Commissioner for Protection from Discrimination (2019), *Annual Report 2018*, p. 47. [www.kmd.al/wp-content/uploads/2019/03/RAPORTI-VJETOR-2018.pdf](http://www.kmd.al/wp-content/uploads/2019/03/RAPORTI-VJETOR-2018.pdf).

Out of 36 decisions given by the first instance courts, 26 confirmed the decisions of the CPD (out of 27 decisions on proceedings in which the CPD participated as the defendant, i.e. appeals), and 6 decisions found discrimination (out of 9 decisions on proceedings in which the CPD participated as a third party).

Out of 18 decisions issued by the appeal courts, 6 decisions (out of 8 decisions on proceedings in which the CPD participated as a defendant party) confirmed the decisions of the CPD; in 6 decisions (out of 10 decisions in proceedings in which the CPD participated as a third party), discrimination was found to have taken place.

There are no statistics on the fields or protected grounds in these decisions.

During 2019, the CPD pursued six cases involving the issuing of fines by public bailiffs.

#### 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.

The CPD regularly engages in dialogue in connection with issues of discrimination with the relevant social groups, including non-governmental organisations (Article 32(1)(k)) and conducts educational activities (Article 32(1)(l)).

The commissioner organised two training sessions in 2019. The commissioner also attends some working groups, which have been formed to draft and monitor strategies and action plans for gender equality and vulnerable people, such as disabled people, LGBTI people, Roma and children. The CPD has established collaborations with institutions and national and international organisations and has participated in various inter-institutional groups. In 2019, the CPD participated in 38 such activities. In addition, the CPD participated in 52 activities organised by other stakeholders in 2019.

#### k) Roma and Travellers

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

For some years, the most cases dealt with by the commissioner have been in the field of goods and services (including housing and economic benefits), and have mostly involved Roma people. In 2019, the highest number of cases dealt with by the commissioner continued to involve racial discrimination, including discrimination by race, colour and ethnicity (36 out of 171 complaints), and once again they mostly concerned Roma people. In education, the CPD dealt with discriminatory behaviours related to the exclusion of communities in need from school and kindergarten registration fees (Roma pupils and students being beneficiaries) and the phenomenon of segregation of students from the Roma community in 9-year schools (middle schools).

For some years, the commissioner and the People's Advocate have been involved in a number of cases relating 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 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 LGBTI persons.

The CPD has an official website, [www.kmd.al](http://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 green number;<sup>182</sup> how to make a complaint online; the complaint form, etc. The CPD also has a social media presence, including on Facebook.

- 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.<sup>183</sup> There is also the National Council for Civil Society, which aims to guarantee institutional cooperation between civil society organisations in Albania.<sup>184</sup> The process of dialogue and consultation in this Council is based on three important principles: counselling, transparency and consultation with stakeholders.

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

For years, the CPD and the People's Advocate have been promoting and encouraging dialogue with and between social partners, such as institutions, the Union of Chambers of Commerce Industry of Albania, media and civil society organisations.

In 2019, the CPD collaborated with the media and NGOs to promote the fight against discrimination, to combat and prevent hate speech, and to protect and respect fundamental human rights and freedoms. The commissioner has organised and participated in several activities, forums and seminars, raising awareness of the issue of discrimination against Roma and Egyptian people, children, people with disabilities, members of the LGBTI community and others.

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<sup>182</sup> This is an information line.

<sup>183</sup> Law No. 10093, dated 09.03.2009, <http://www.amshc.gov.al/web/pergjigje-pyetjeve.php>.

<sup>184</sup> Law No. 119/2015 on the establishment and functioning of the National Council for Civil Society. <https://drive.google.com/file/d/1IkoJW3ev3TLV6dJAD73y6DaRDuy8ZN4G/view>.

d) Addressing the situation of Roma and Travellers

Albania does not have a central interdisciplinary body coordinating the Roma integration policy.<sup>185</sup>

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 of the *National Action Plan*<sup>186</sup> for the Integration of Roma and Egyptian Communities 2016-2020.<sup>187</sup>

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

## **8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

a) Compliance of national legislation (Articles 14(a) and 16(a))

Albania has taken some measures to ensure that laws, regulations and administrative provisions that are contrary to the principle of equal treatment are abolished. Several amendments have been made to the existing legislation, including the Labour Code (Article 9) and the Criminal Code (Articles 50(j), 253 and 265). New laws have also been approved by the Assembly, including the Administrative Procedures Code (Article 17(2)) and the Law on the inclusion of and accessibility for persons with disabilities.

Usually the Government or the Assembly initiates the legislative process, and then the human rights institution (the People's Advocate or the Commissioner for Protection from Discrimination) and NGOs become involved during the consultation process.

During the drafting of new legislation, the Government takes into consideration the recommendations previously issued by the human rights institution.

However, despite these measures, there are still provisions in force that are not in compliance with the principle of equal treatment.

For some years, the CPD had exercised its competence to make recommendations to the relevant authorities, especially by supporting new legislation or the amendment or reform of existing legislation.

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.<sup>188</sup> However, some of the CPD's recommendations were not reflected in the amendments to the Code (despite the fact that the Code has been amended several times).<sup>189</sup> These include:

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<sup>185</sup> European Commission (2018), *Albania 2018 Report*, Strasbourg, 17 April 2018, SWD (2018) 151 final, p. 31, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>.

<sup>186</sup> Albania (2015), *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*, approved by the Council of Ministers in 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](http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_kombetar_i_veprimit_per_integrimin_e_Romeve_dhe_Egjiptianeve_2016-2020.pdf).

<sup>187</sup> For additional information regarding this document, see Section 9.

<sup>188</sup> Law No. 144/2013 on amendments to Law No. 7895, the Criminal Code of the Republic of Albania.

<sup>189</sup> Law No. 7895, the Criminal Code of the Republic of Albania, as 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>.

- Adding to Article 84(a) of the Criminal Code (on 'Threat due to racist and xenophobic motives through computer systems') 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.<sup>190</sup>

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

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.

Therefore, any contracts, collective agreements, internal rules of businesses and the rules governing independent occupations, professions, workers' associations or employers' associations that are contrary to the principle of equal treatment may be declared null and void.

The amendments to the Labour Code guarantee a strong protection for employees. According to Article 159(3) of the Code, a 'collective agreement may not contain provisions that are less favourable for the employees than those of the laws and subordinate legislation in force, with the exception of the cases expressly defined by the law'. Theoretically, then, collective agreements should not contain discriminatory provisions.

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<sup>190</sup> Commissioner for Protection from Discrimination (2018), *Annual Report 2017*, pp. 49-51. <http://kmd.al/wp-content/uploads/2019/03/raporti-vjetor-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.<sup>191</sup> 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.<sup>192</sup>

**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'.<sup>193</sup> The vision of this document is to guarantee a system for monitoring and measuring social inclusion in all areas of poverty reduction, in social protection policy and in policies on employment, skills for entrepreneurship, education and training, health, housing and basic needs; to encourage participation in human rights; and to promote transparency and accountability in how social inclusion is measured and is used to inform the performance of social services.

It has a coordinating role in the implementation of the *National Action Plan for LGBTI Persons in the Republic of Albania, 2016-2020*,<sup>194</sup> 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,<sup>195</sup> 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*.<sup>196</sup> 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.

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<sup>191</sup> <http://www.shendetesia.gov.al/misioni-2/>.

<sup>192</sup> <http://www.shendetesia.gov.al/wp-content/uploads/2019/01/Structure-of-the-Ministry-of-Health-and-Social-Protection.pdf>.

<sup>193</sup> 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>.

<sup>194</sup> 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>.

<sup>195</sup> Government of Albania (2015), *National Strategy for Social Protection 2015-2020*, approved by the Council of Ministers in 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](http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Strategjia_Kombetare_per_Mbrojtjen_Sociale_2015-2020.pdf).

<sup>196</sup> Government of Albania (2015), *National Action Plan for the Integration of Roma and Egyptian Communities 2016-2020*, approved by the Council of Ministers in 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](http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_kombetar_i_veprimit_per_integrimin_e_Romeve_dhe_Egjiptianeve_2016-2020.pdf).

The ministry has a coordinating role in the implementation of the *National Strategy on Gender Equality and Action Plan 2016-2020*.<sup>197</sup> It also has a coordinating role in the implementation of the *National Action Plan for Persons with Disabilities 2016-2020*.<sup>198</sup> 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 thematic group on social inclusion, within the structure of the Group on Integrated Policy Management (GMIP)**<sup>199</sup> are responsible for monitoring the implementation of the *National Policy Document on Aging 2020-2024 and Action Plan for its Implementation*,<sup>200</sup> which includes the following strategic goals: protection, social inclusion and appropriate and integrated social care and health services for the elderly; and promoting the health and welfare of the elderly and raising public awareness on aging. This document provides for the improvement of public information on aging, with a specific objective of discouraging all forms of prejudice and discrimination.

**The Minister of Justice, the Free Legal Aid Directory,**<sup>201</sup> **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.<sup>202</sup> The Free Legal Aid Directory was scheduled to be set up in September 2018.<sup>203</sup> 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 the 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). The Law explicitly provides for 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) as beneficiaries of state-guaranteed legal aid, regardless of their income or property status. The People's Advocate recommended to the Minister of Justice and the Parliamentary Committee on Legal Affairs, Public

<sup>197</sup> 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>.

<sup>198</sup> Government of Albania (2016), *National Action Plan for Persons with Disabilities 2016-2020*, approved by the Council of Ministers in Decision No. 483, dated 29.06.2016, available at: [http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani\\_PAK\\_.pdf](http://www.shendetesia.gov.al/wp-content/uploads/2018/06/Plani_PAK_.pdf).

<sup>199</sup> Adopted under Prime Ministerial Order No. 157, dated 22.10.2018.

<sup>200</sup> Government of Albania (2019), *On the adoption of the National Policy Document on aging, 2020–2024, and the Action Plan for its Implementation*, approved by the Council of Ministers in Decision No. 864, dated 24.12.2019.

<sup>201</sup> Article 36 of Law No. 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.

<sup>202</sup> 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>.

<sup>203</sup> The office was finally created after the cut-off date of this report, in accordance with Order of Prime Minister No. 59, dated 25.03.2019.

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).

## 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. In 2019, the Alliance Against Hate was established under a memorandum of cooperation between the CPD, the People's Advocate and the Audio-visual Media Authority (AMA), which have committed themselves to working together to promote and advocate the fight against hate speech and discrimination in Albania. The Alliance Against Hate constitutes a united approach in seeking to:

- develop communication and information materials to raise awareness and promote diversity and freedom of expression, including brochures, reports and campaigns using public service announcements so that they reach their target audience and wider society;
- boost collaboration with strategic partner organisations and agencies with important roles in the fight against discrimination, such as the Ministry of Education, Youth and Sports, internet service providers (ISPs), journalist organisations, civil society organisations, and consumer protection organisations.
- support partners in identifying effective mechanisms to combat hate speech based on European best practices;
- identify mechanisms for the enhancement of information sharing and staff training.<sup>204</sup>

In a 2019 press release, the Commissioner for Protection from Discrimination reacted to online hate speech that had been directed at compatriots.<sup>205</sup> He welcomed the State Police action to investigate and prosecute two cases of online hate speech concerning the religious beliefs of Albanians in Northern Macedonia and Kosovo<sup>206</sup> that were made public in the media. The CPD reconfirmed its willingness to cooperate with institutions with the aim of preventing the use of discriminatory expressions that affect human dignity.<sup>207</sup>

The Commissioner for Protection from Discrimination also condemned the use of hate speech in repeated incidents in stadiums connected with ethnicity and race, and in insults made via social media against vulnerable groups such as Roma, Egyptians and representatives of the LGBTI community.

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<sup>204</sup> See <https://www.coe.int/en/web/tirana/-/-no-hate-alliance-a-joint-approach-against-discrimination-and-hate-speech>.

<sup>205</sup> See <https://www.kmd.al/wp-content/uploads/2019/09/Newsletter-KMD-gusht-2019.pdf>.

<sup>206</sup> This designation is made without prejudice to positions on status, and is in line with UN Security Council Resolution 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

<sup>207</sup> More information on these cases is not available.

## **11 Sensitive or controversial issues**

### **11.1 Potential breaches of the directives at the national level**

There are still some outstanding issues that need to be addressed:

- An amendment to the LPD is required to shift the burden of proof in proceedings before the Commissioner for Protection from Discrimination. As Article 10(1) of Directive 2000/78/EC and Article 8(1) of Directive 2000/43/EC require a reversal of the burden of proof before a court or other competent authority, the author is of the opinion that expressly providing for a reversal of the burden of proof during proceedings before the CPD will guarantee full implementation of the directives.
- Amendment of Article 12 of the Code of Civil Procedure regarding the shifting of the burden of proof in cases of discrimination in the private sector outside employment is needed in order to fulfil the requirements of the two directives, as mentioned above.

### **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 should add 'age' to the list of protected grounds.

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



## 12 LATEST DEVELOPMENTS IN 2019

### 12.1 Legislative amendments

The new Law on the promotion of employment<sup>208</sup> is aimed at increasing the employability of the workforce through the provision of public services and employment programmes, self-employment, and vocational training (Article 2). According to Article 4, the beneficiaries of services provided under the Law are jobseekers and employers registered by the regional or local authorities, foreign nationals and stateless persons residing legally and for employment purposes in Albania, and foreigners who have obtained the status of refugees and asylum seekers. The Law defines some essential concepts, such as special groups, training and rehabilitation of disabled persons, reasonable accommodation and appropriate employment, and it provides for public employment policies, active labour market programmes, passive labour market programmes, and so on. In its previous legal recommendations for the draft law on the promotion of employment, the CPD deemed the measures proposed under the draft law to be ineffective because of the proposal to double the total number of employees that an employer must have before being obliged to employ a person with a disability.

Law No. 75/2019 on youth<sup>209</sup> covers the required actions, mechanisms and responsible authorities for the protection and promotion of young people's rights in Albania and among the young people of the diaspora, as well as for the funding of youth activities in the context of the right of young people to special protection by the state. The draft law has been opposed by some youth organisations, which have described the draft as an attempt to bring civil society organisations for young people under government control at the local and national levels. Furthermore, the President has not decreed the law,<sup>210</sup> which has been again approved by the Assembly and was published in the *Official Journal* on 27 December 2019.

The Law on social assistance adopted in 2019<sup>211</sup> sets out the rules and mechanisms for social assistance beneficiaries and the authorities responsible for guaranteeing this right, as well as the arrangements for funding and providing social assistance benefits. The Law supports the non-discrimination principle based on an open list of grounds: gender, race, colour, religion, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social status, pregnancy, parental affiliation and/or responsibility, family or marital status, civil status, health status, genetic predispositions, disability, belonging to a particular group, or any other ground (Article 5(d)). Furthermore, Article 5(e) of the Law provides for the principle of equality and stipulates that 'social protection is provided to every individual in need, regardless of gender, religion, age, disability, etc'.

### 12.2 Case law

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

**Date of decision:** 16.12.2019

**Name of the parties:** CPD v. K.GJ. (ex officio)

**Reference number:** 185

**Address of the webpage:** <https://www.kmd.al/wp-content/uploads/2020/01/Vendim-Nr.-185-datë-16.12.2019-ex-officio-Gjuha-e-përdorur-nga-ana-e-K.-G-kunder-komunitetit-LGBTI-në-media.pdf>

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<sup>208</sup> Law No. 15/2019 on the promotion of employment.

<sup>209</sup> Law No. 75 on youth, dated 4.11.2019.

<sup>210</sup> According to Article 85 of the Constitution of the Republic of Albania, the President of the Republic has the right to return a law for review only once. The decree of the President for the review of a law loses its effect when a majority of all the members of the Assembly vote against it.

<sup>211</sup> Law No. 57 on social assistance in the Republic of Albania, dated 18.07.2019.

**Brief summary:** The CPD has dealt ex officio with a case of discrimination against the LGBTI community by a parliamentarian using hate speech in the TV show '360 Gradë' (360°) on Ora News Television. During the debate with a representative of the LGBTI community, the parliamentarian, among others, said: 'you got the money there with some of yours, those of your group that sponsors destruction, subsidiarity in the world, so you're just diarrhoea, and you need Pampers too'.

According to the commissioner, the ignorance of issues related to sexual orientation and gender identity and attitudes towards these issues come about as a result of the fact that they have remained invisible, unexposed and forbidden for a long time.

On the basis of international law and jurisprudence, the commissioner considers 'hate speech' against the LGBTI community to refer to all forms of expression used in the media or on the internet that spread, promote, or justify hatred, discrimination or hostility towards this community. According to the commissioner's argument, the assessment of whether certain expressions or statements shall be considered 'hate speech' must be made in accordance with freedom of expression.

The commissioner took into consideration the fact that Ora News Television is a national television channel, that '360 Gradë' is a programme with high visibility, and that its participants are public people. Therefore, public officials have a greater responsibility and should be more careful and avoid language that promotes intolerance and discrimination.

Albanian legislation (the LPD and Decision No. 61/2018 on the Code of Conduct of Members of the Assembly of the Republic of Albania) explicitly prohibits discrimination on the grounds of sexual orientation and gender identity, and the Regulations of the Assembly of the Republic of Albania provide for penalties in cases where these provisions are breached.

The parliamentarian responded very quickly (before the CPD took any decision), posting an apology on his Facebook page, as well as making known his attitudes in 'Thumb On,' a programme on Ora News Television.<sup>212</sup> In this situation, the CPD declared the administrative procedure that had been initiated ex officio to be completed, because the purpose and effect for which the investigative procedure was initiated had been achieved.

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

**Date of decision:** 05.12.2019

**Name of the parties:** *Egyptian-Roma Youth Movement v. Sh. N.*

**Reference number:** 181

**Address of the webpage:** <https://www.kmd.al/wp-content/uploads/2020/01/Vendim-Nr.-181-datë-05.12.2019-Lëvizja-Rinore-Egjptiane-Rome-kundër-gazetarit-Sh.-N..pdf>

**Brief summary:** The CPD dealt a complaint from the Egyptian-Roma Youth Movement (LRER) claiming discrimination on the ground of race against the Egyptian community during the TV show 'Top show' broadcast on 10.09.2019.

During the show, one of the guests, Mr Sh. N., used discriminatory expressions against this community, saying: 'He would not use his cousin to hide the traces, but would find an "evgjit" [a derogatory term for members of the Egyptian community] in the neighbourhood to do it.' According to the complainant, this reinforces prejudice and stereotypes regarding the Egyptian minority, treating them as the most insignificant part of society.

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<sup>212</sup> Dealing with similar cases, the commissioner has strongly condemned the use of insulting language and intolerance against a particular community by individuals involved in public life.

Despite respecting the right of every individual to express their thoughts and opinions, the commissioner considered the language used as an excess of freedom, as freedom of expression cannot violate the dignity of others.

The commissioner highlighted the need to prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance. This takes into account the fact that audiovisual media is viewed by many people and that the programme's guests are public persons who may influence viewers.

The commissioner found discrimination against the Egyptian community on the ground of race in the form of discrimination by harassment.<sup>213</sup> The commissioner asked Mr. Sh. N. to make a press statement, distancing himself from the language of obvious prejudice, which violates the dignity of the Egyptian community.

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

**Date of decision:** 04.03.2019

**Name of the parties:** *J. H. v. Tirana Municipality and the Economic Centre for the Development and Education of Children*

**Reference number:** 29

**Address of the webpage:** <https://kmd.al/wp-content/uploads/2019/05/Vendim-Nr.-29-datë-04.03.2019-J.-H.-kundër-Bashkisë-Tiranë.pdf>

**Brief summary:** Through Decision No. 40/2018, the Municipal Council of Tirana defined some categories of persons who may benefit from kindergarten services for their children free of charge. These services are provided to children with orphan status, children with disabilities and children of families granted economic assistance, among others. This decision does not include children from families belonging to the Roma or Egyptian community as beneficiaries.

For this reason, the complainant, J. H., a member of the Roma community, could not register her child in a kindergarten as she could not afford the tariff set by the municipal council, due to her difficult financial circumstances.

The commissioner brought it to the attention of the parties that Albanian legislation and important political documents give significant educational advantages to children coming from families in need or from the Roma or Egyptian communities.

The National Action Plan for Roma and Egyptian Integration 2016-2020 contains an obligation for local government institutions to create opportunities for children from these communities to attend kindergarten. Furthermore, the Municipality of Tirana has drafted the *Plan for the Development of the Local Roma/Egyptian Community 2017-2020*.

The commissioner assessed that the children of the Roma and Egyptian communities were treated in an unfavourable manner compared with other groups, although the Municipality of Tirana had undertaken commitments regarding this category of persons. The justification made by the municipality that the children of the Roma and Egyptian communities would become beneficiaries as children of families granted economic assistance does not stand, however, as this criterion is related only to the economic situation of the beneficiaries, while members of the Roma/Egyptian community experience wider problems which hinder their integration into society.

The CPD found substantive discrimination on the part of the Municipality of Tirana against a child from the Egyptian community, based on ethnicity, in the area of goods and services. The municipality, in excluding Roma and Egyptian children from the beneficiary

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<sup>213</sup> The commissioner has taken into consideration the definition of 'harassment' provided by Directive 2000/78 and the interpretation of this concept provided by the European Union Civil Service Tribunal (CST).

categories for free kindergarten services, failed to make an exception to the rule for Roma and Egyptian children, even though it was aware of the current situation of these communities and was committed to their integration.

**Name of the court:** The Judicial District Court of Tirana

**Date of decision:** 22.07.2019

**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:** 2690

**Address of the webpage:** -

**Brief summary:** The Directorate of Hospital Services (DHS) for the district of Mat repealed the CPD's Decision No. 51, dated 15.04.2019, which had found discrimination against D.O. due to their educational status and age.

In its Decision No. 51, the CPD ascertained that:

- The complainant was dismissed as a cashier at DHS Mat with the aim of restructuring the institution and because the complainant had failed to meet the higher education criteria and did not hold an economics diploma.
- It turns out that the complainant was dismissed a year after the change of structure and that no higher education criterion was provided in any job description document.
- Moreover, the organisation where the complainant worked did not undergo any change in the number of employees, their duties or their appointments.
- The complainant would have reached retirement age after two years and was replaced by another employee aged 26.
- DHS Mat did not bring any evidence to prove that the dismissal was for justifiable and objective reasons.

CPD has determined that DHS Mat treated the complainant in an unfair and discriminatory manner, because of 'educational status' and 'age'.

The Court also found that D.O. had been subjected to unfair and unequal treatment. In its conclusion, the Court confirmed the CPD's decision.

**Name of the court:** The Judicial District Court of Gjirokastra

**Date of decision:** 10.10.2019

**Name of the parties:** *D.Q. v. Regional Hospital of Gjirokastra*

**Reference number:** 506

**Address of the webpage:** -

**Brief summary:** In 2019, Gjirokastra District Court found discrimination by victimisation based on political beliefs against D.Q. and imposed a duty on the defendant (the Regional Hospital of Gjirokastra) to indemnify the claimant for the non-material damage suffered on the basis of the psychological report, to a total value of EUR 28 771 (ALL 3 481 319). D.Q. had previously been subjected to discriminatory behaviour by the Regional Hospital by being demoted on the basis of his political beliefs.<sup>214</sup> He had made a complaint to the Commissioner for Protection from Discrimination. The commissioner had found that the complainant had been downgraded at work, without any disciplinary measures having been taken against him and contrary to his educational qualifications. The Gjirokastra Regional Hospital Directorate had not provided any justification for its actions.

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<sup>214</sup> D.Q. is a member of the Socialist Movement for Integration, a political entity, and is the delegate elected to represent the members of this group in the city of Gjirokastra for the movement's Electoral Convention. The Director of the Regional Hospital of Gjirokastra is a member of the Socialist Party, which currently has a majority in the Assembly.

Two months after making the complaint, the Regional Hospital suspended the employment relationship with D.Q. The commissioner then confirmed that D.Q. had been discriminated against by victimisation, based on political beliefs.<sup>215</sup>

### **12.3 Cases brought by Roma and Travellers**

According to the CPD's *Annual Report 2019*, structural discrimination that does not refer to an individual, but relates to a whole group or community, continues to be an issue. There has been an increase in the number of cases in which complainants claim discrimination on more than one ground, as well as in the number of multiple discrimination findings. Race is the one of the most common grounds of discrimination claimed by complainants (who in most cases are people from the Roma community) in the field of goods and services and in education.

Out of the 33 cases on discrimination on the ground of race (usually claimed by Roma and Egyptians) that were dealt with by the commissioner in 2019, discrimination was found in 13 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.

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<sup>215</sup> CPD, Decision No. 81, dated 19.03.2018.

## ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

**Country:** Albania

**Date:** 31 December 2019

<b>Title of the law: Constitution of the Republic of Albania</b>
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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

<b>Title of the law: The protection from discrimination</b>
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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

<b>Title of the law: Labour Code</b>
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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 status, 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

<b>Title of the law: Penal Code</b>
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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 goods 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: N/A

Entry into force: 12.09.2014

Web link:

<http://shendetesia.gov.al/wp-content/uploads/2019/01/Ligji-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: INTERNATIONAL INSTRUMENTS

**Country: Albania**

**Date: 31 December 2019**

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
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
ILO Convention No. 111 on Discrimination	Accession	13.03.1996	N/A	N/A	Yes, theoretically



<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
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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