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# Country report

## Gender equality



Albania  
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# **Country report**

## **Gender equality**

How are EU rules transposed into  
national law?

## **Albania**

Entela Baci

Reporting period 1 January 2019 – 31 December 2019

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# 1 Introduction

## 1.1 Basic structure of the national legal system

The Republic of Albania (RoA) has a formal constitution, which has the highest legal power in the country.<sup>1</sup> The Constitution was adopted in 1998 with Law No. 8417, 'Constitution of the Republic of Albania'. So far, it has been revised five times.<sup>2</sup> None of the five constitutional reforms concerned gender equality.

The hierarchy of legal acts within the country is explicitly set out in Article 116(1) of the Albanian Constitution:

- a) the Constitution;
- b) ratified international agreements;
- c) laws;
- d) normative acts of the Council of Ministers.

The constitutional framework concerning gender equality/sex discrimination contains only one provision among the general principles of fundamental human rights and freedoms, Article 18, which refers to principle of equality and non-discrimination:

- '1. All are equal before the law.
- 2. No one can be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry.
- 3. No one may be discriminated against for reasons mentioned in Paragraph 2 if reasonable and objective legal grounds do not exist.'

As is clear, gender is mentioned explicitly as a protected discrimination ground in Article 18(2) of the Albanian Constitution. The list of the protected grounds mentioned in Article 18(2) is a closed list. In 2016, there was an initiative of at least one fifth of the parliamentarians to make this list an open one by adding several grounds of protection from discrimination. The Special Parliamentary Commission for the Justice Reform decided to request the opinion of the Venice Commission on the draft constitutional provisions.<sup>3</sup> The revised draft sent to the Venice Commission contained the following additional grounds:<sup>4</sup>

'gender identity, sexual orientation, social origin, birth, disability, (...) or for other reasons.'

However, the initiative was not passed, because it did not get the necessary approval by parliamentarians when the constitutional amendments of 2016 were discussed in the

<sup>1</sup> Constitution of the Republic of Albania, Law No. 8417, dated 21.10.1998, as amended, Article 4(2) 'The Constitution is the highest law in the Republic of Albania'. The English version available at: <https://euralius.eu/index.php/en/library/albanian-legislation/send/9-constitution/178-constitution-of-the-republic-of-albania-en>.

<sup>2</sup> The Albanian Constitution was revised five times with the following amending laws: Law No. 9675, dated 13.1.2007; Law No. 9404, dated 21.4.2008; Law No. 88/2012, dated 18.9.2012; Law No. 137/2015, dated 17.12.2015; and Law No. 76/2016, dated 22.7.2016.

<sup>3</sup> The Special Parliamentary Commission for Justice Reform in Albania created in 2014 a group of high level experts (national and international) who prepared a draft-revision law on the related constitutional provisions and asked to previously take the opinion of the Venice Commission. Thus, the Special Parliamentary Commission for Justice Reform with its Decision No. 17 dated 28.9.2015 sent a request for opinion to the Venice Commission on the draft constitutional revisions. These draft constitutional revisions concerned mainly the justice reform, but it was presented also an amendment to Article 18(2) of protected grounds for discrimination.

<sup>4</sup> European Commission for Democracy through Law, CDL-REF (2016)008. The draft amendments were submitted to the Venice Commission on 12.1.2016. A consolidated version of the Constitution of Albania integrating the draft constitutional amendments is available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2016\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)008-e).

Parliament. However, an open list of protected discrimination grounds is contained within Article 1 of the Law on protection from discrimination (LPD), which was approved in 2010.<sup>5</sup>

The international agreements ratified by the Albanian Parliament become part of the internal legal system after publication in the *Official Journal* of the Republic of Albania. They are implemented directly, except for cases when they are not self-executed and require transposition into a national law.<sup>6</sup>

The Albanian Parliament ratified the European Convention on Human Right (ECHR) and its Protocols Nos. 1, 2, 4, 7 and 11 in 1996.<sup>7</sup> Like all the other international ratified agreements, the ECHR has superiority over the laws of the country that are not compatible with it. However, as regards to the limits of constitutional rights and freedoms, the ECHR is on the same level as the Constitution. This derives from the wording of Article 17(2) of the Constitution:

'These limits cannot harm the essence of rights and freedoms and in no case can exceed the limits provided for in the ECHR.'

The Albanian Constitutional Court has referred to this provision and to the standards of the ECHR, stating that

'The Constitution, through referring to the ECHR, has given to this document the value of a constitutional standard as regards to the limits of constitutional rights and freedoms (...).'<sup>8</sup>

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

The obligation of Albania to conform with and transpose EU legislation began in July 2006, when the Albanian Parliament ratified the Stabilisation and Association Agreement (SAA) of European Communities and Member States with Albania.<sup>9</sup> A temporary agreement entered into force in December 2006.<sup>10</sup>

As gender equality is a fundamental right and a common value of EU Member States, for the purposes of eventual EU integration, Albanian legislation introduced after 2006 tends to be partially in conformity with the European gender equality directives. The main relevant Albanian legislation transposing and implementing EU directives on gender equality and prohibiting sex discrimination are:

- the Law on gender equality in society (LGE);<sup>11</sup>
- the Law on protection from discrimination (LPD);<sup>12</sup>
- the Labour Code of the RoA;<sup>13</sup>
- the Administrative Procedure Code;<sup>14</sup>

<sup>5</sup> Law on protection from discrimination, Law No. 10 221, dated 4.2.2010.

<sup>6</sup> Constitution of the Republic of Albania, Law No. 8417, dated 21.10.1998, as amended, Article 122(1).

<sup>7</sup> The ECHR was ratified by the Albanian Parliament with the Law No. 8137, dated 31.7.1996.

<sup>8</sup> Constitutional Court, Decision No. 9, (V-9/10) dated 23.3.2010.

<sup>9</sup> [http://www.gjk.gov.al/web/Vendime\\_perfundimtare\\_100\\_1.php](http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php).

<sup>10</sup> Law No. 9590, dated 27.7.2006 on ratification of SAA between the Republic of Albania and European Communities and Member States.

<sup>11</sup> [https://www.parlament.al/Files/Integrimi/marreveshja\\_e\\_stabilizim\\_asociimit\\_be\\_shqiperi\\_23381\\_1.pdf](https://www.parlament.al/Files/Integrimi/marreveshja_e_stabilizim_asociimit_be_shqiperi_23381_1.pdf).

<sup>12</sup> In June 2014, Albania was awarded candidate status by the EU, and in April 2018, the Commission issued an unconditional recommendation to open accession negotiations. Source:

<sup>13</sup> [https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/albania\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/albania_en).

<sup>14</sup> Law No. 9970, dated 24.7.2008.

<sup>15</sup> Law No. 10 221, dated 4.2.2010. English version of the Law available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

<sup>16</sup> Labour Code, Law No. 7961, dated 12.7.1995, as amended in 1996, 2003, 2008 and 2015.

<sup>17</sup> Administrative Procedure Code, Law No. 44/2015. Source:

<sup>18</sup> <https://euralius.eu/index.php/en/library/albanian-legislation/send/6-administrative-procedure-code/229-code-of-administrative-procedure-en>.



- the Law on administrative courts in the RoA;<sup>15</sup>
- the Law on social security in the RoA;<sup>16</sup>
- the Law on voluntary pension funds;<sup>17</sup>
- the Law on health and safety at work;<sup>18</sup>
- the Law on social assistance in the RoA;<sup>19</sup>
- the Law on legal assistance guaranteed by the state;<sup>20</sup>
- the Law on social care services;<sup>21</sup>
- the Law on social housing;<sup>22</sup>
- the Law on mental health;<sup>23</sup>
- the Law on employment promotion;<sup>24</sup>
- the Law on collection of mandatory contributions of social and health insurance in the RoA;<sup>25</sup>
- the Recast Decision of the Council of Ministers (DCM) No. 511, dated 24 October 2002, on the duration of work and leave in state institutions;<sup>26</sup>
- the DCM No. 634, dated 15 July 2015, on the introduction of measures regarding health and safety of pregnant workers and young mothers;
- the DCM No. 37, dated 21 January 2016, on the determination of monthly wage, for the purpose of calculating mandatory social security and health contributions for the persons registered as self-employed that perform professional economic activity and non-paid family employers that work and live with them.

### 1.3 Sources of law

The main sources of gender equality law in Albania are:

- i. the Constitution;
  - ii. international treaties;
  - iii. national legislation;
  - iv. case law of the Constitutional Court and of the Supreme Court;
  - v. opinions of the Commissioner for the Protection from Discrimination (CPD) as a quasi-judicial body.
- i. The Albanian Constitution provides for the principle of equality and non-discrimination in Article 18 (see Section 1.1, above).
  - ii. The most relevant international agreements ratified by the Albanian Parliament relating to gender equality/sex discrimination are listed below, in chronological order, starting with the earliest:
    - the Universal Declaration on Human Rights was ratified by Albania in 1991;<sup>27</sup>

<sup>15</sup> Law No. 49/2012.

<sup>16</sup> Law No. 7703, dated 11.5.1993 on social security in the Republic of Albania (*Per sigurimet shoqerore ne Republiken e Shqiperise*), as amended in 1995, 1998 (two times), 2000, 2001 (two times), 2002, 2003 (two times), 2005, 2006 (two times), 2007 (two times), 2009, 2011, 2014 (two times), 2015, 2016, 2017.

<sup>17</sup> Albania, Law No. 10 197, dated 10.12.2009. Source: <https://amf.gov.al/pdf/ligje/Law%20on%2010197.pdf>.

<sup>18</sup> Law No. 10 237, dated 18.2.2010.

<sup>19</sup> Law No. 57/2019.

<sup>20</sup> Law No. 111/2017.

<sup>21</sup> Law No. 121/2016.

<sup>22</sup> Law No. 22/2018.

<sup>23</sup> Law No. 44/2012.

<sup>24</sup> Law No. 15/2019.

<sup>25</sup> Law No. 9136, dated 11.9.2003, as amended in 2003, 2004, 2008, 2014, 2015, 2016, 2017.

<sup>26</sup> DCM No. 511, dated 24.10.2002, on the duration of work and leave in state institutions (*Për kohëzgjatjen e punës dhe të pushimit në institucionet shtetërore*), as amended by Decisions Nos. 726/2003, 315/2004, 783/2005, 328/2006, 456/2007, 527/2007, 54/2010, 463/2011, 286/2015. The updated version of recast DCM No. 511/2002 is available in Albanian: <http://www.kmshe.al/wp-content/uploads/2019/05/VENDIM-NR.-511-PËR-KOHËZGJATJEN-E-PUNËS-DHE-PUSHIMIT-NË-INSTITUCIONET-SHTETËRORE.pdf>.

<sup>27</sup> Law No. 7509, dated 8.8.1991.

- the International Covenant on Civil and Political Rights was ratified by Albania in 1991;<sup>28</sup>
  - the International Covenant on Economic, Social and Cultural Rights was ratified by Albania in 1991;<sup>29</sup>
  - the Convention on the Rights of the Child was ratified by Albania in 1992;<sup>30</sup>
  - the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was ratified by Albania in 1993;<sup>31</sup> meanwhile, its Additional Protocol was ratified in 2003;<sup>32</sup>
  - Convention on the Elimination of All Forms of Racial Discrimination was ratified in 1994;<sup>33</sup>
  - the ILO Convention No. 111 on Discrimination was ratified in 1996;<sup>34</sup>
  - the ECHR and its Protocols Nos 1, 2, 4, 7, 11 were ratified by Albania in 1996;<sup>35</sup> meanwhile Protocol No. 12 was signed in 2004 and ratified in 2005;<sup>36</sup>
  - the Framework Convention for the Protection of National Minorities was ratified in 1999;<sup>37</sup>
  - the Revised European Social Charter was ratified by Albania in 2002;<sup>38</sup>
  - the Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) was ratified by Albania in 2012;<sup>39</sup>
  - the Convention on the Rights of Persons with Disabilities was ratified by Albania in 2012;<sup>40</sup>
  - the ILO Maternity Protection Convention No. 183.<sup>41</sup>
- iii. In addition to the national laws transposing the EU gender equality directives mentioned above, there are provisions that relate to gender equality/sex discrimination in other national legislation:
- the Criminal Code;<sup>42</sup>
  - the Code of Criminal Justice for Juveniles;<sup>43</sup>
  - the Law on the organisation and functioning of prosecution in the RoA;<sup>44</sup>
  - the Law on pre-university education system;<sup>45</sup>
  - the Law on the rights and protection of the child;<sup>46</sup>
  - the Law on the inclusion of and accessibility for persons with disabilities;<sup>47</sup>
  - the Law on audio-visual media in Albania;<sup>48</sup>
  - the Law on civil servants.<sup>49</sup>

<sup>28</sup> Law No. 7510, dated 8.8.1991.

<sup>29</sup> Law No. 7511, dated 8.8.1991.

<sup>30</sup> Law No. 7531, dated 11.12.1991.

<sup>31</sup> Law No. 7767, dated 9.11.1993.

<sup>32</sup> Law No. 9052, dated 17.4.2003.

<sup>33</sup> Law No. 7768, dated 9.11.1993.

<sup>34</sup> Law No. 8086, dated 13.3.1996.

<sup>35</sup> Law No. 8137, dated 31.7.1996.

<sup>36</sup> Law No. 9264, dated 29.7.2004.

<sup>37</sup> Law No. 8496, dated 3.6.1999.

<sup>38</sup> Law No. 8960, dated 24.10.2002.

<sup>39</sup> Law No. 104, dated 11.8.2012.

<sup>40</sup> Law No. 108, dated 15.11.2012.

<sup>41</sup> Law No. 8829, dated 5.11.2001.

<sup>42</sup> Law No. 7895 dated 27.1.1995, amended in 2013.

<sup>43</sup> Law No. 37/2017.

<sup>44</sup> Law No. 97/2016.

<sup>45</sup> Law No. 69/2012, as amended in 2015.

<sup>46</sup> Law No. 69/2012, as amended in 2015.

<sup>47</sup> Law No. 93/2014.

<sup>48</sup> Law No. 97/2013.

<sup>49</sup> Law No. 152/2013, amended in 2014.

iv. The Albanian Supreme Court and Constitutional Court case law

The Albanian legal system recognises the Unifying Decisions<sup>50</sup> of the Supreme Court as secondary sources of law. However, so far there have been no such decisions relating to gender equality/non-discrimination.

Case law of the Constitutional Court has played an important role in its decision-making on issues of discrimination in employment, especially in the times when Albanian legislation had not yet shifted the burden of proof. In its Decision V-33/07, the Albanian Constitutional Court (ACC) made an interesting interpretation in a case with the object of repealing as unconstitutional Articles 141, 143, 144, 146/1 of the Labour Code and argued for the reversal of the burden of proof in discrimination cases. This decision of the ACC later served as a basis for the primary courts reversing the burden of proof in cases of (gender) discrimination related to employment relations.<sup>51</sup>

The ACC has referred to the principle of equality and non-discrimination in several decisions (V-19/12, V-48/13, V-60/16, V-34/17 and V-52/17), and has stated that:

'The principle of equality aims at ensuring that all are equal in law and before the law not only in the fundamental rights provided for in the Constitution but also in other legal rights. Equality in law and before the law does not mean that there are equal solutions for individuals or categories of persons who are in objectively different conditions. It presupposes the equality of individuals who are on equal terms.'<sup>52</sup>

iv. The opinions of the Commissioner for the Protection from Discrimination (CPD) as a quasi-judicial body play an important role in the reinstatement of rights that have been infringed, because the CPD can examine cases against public and private institutions, and has the power to issue recommendations and impose sanctions through its decisions.

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<sup>50</sup> Note that 'Unifying Decisions' are decisions taken by the Albanian Supreme Court, according to Article 141/2 of the Constitution, for the unification or amendment of the judicial practice by selecting particular judicial cases for review in the joint colleges.

<sup>51</sup> Hoxhaj, E., Baraku, I. (2014), 'The burden of proof in the administrative process in Albania', *European Scientific Journal*, ESI, Vol. 10, No. 10, pp. 428-429.

<sup>52</sup> In referring to decisions of the ACC, the first number relates to the decision number, while the second number refers to the year; for example, V-19/12 is Decision No. 19 of the year 2012. Decisions of the Albanian Constitutional Court available in Albanian language at: [http://www.gjk.gov.al/web/Vendime\\_perfundimtare\\_100\\_1.php](http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php).

## **2 General legal framework**

### **2.1 Constitution**

#### **2.1.1 Constitutional ban on sex discrimination**

The Albanian Constitution does not explicitly refer to sex as a protected discrimination ground, but uses instead the word 'gender'. Article 18(2) directly bans discrimination in the following grounds:

'(...) gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry'.<sup>53</sup>

It should be noted that Article 18 concerns the principle of equality and is part of the general principles contained within the second part of the Albanian Constitution on fundamental human rights and freedoms.

Article 17(2) of the Constitution refers to the standards of the ECHR with regard to the limits of constitutional rights and freedoms, for which the ECHR is on the same level as the Constitution.

#### **2.1.2 Other constitutional protection of equality between men and women**

The Albanian Constitution contains other provisions pertaining to equality between men and women, when providing for a general equality within the Article 18(1). Article 18(1) of the Constitution relates to the principle of legal equality, stating explicitly:

'All are equal before the law'.<sup>54</sup>

Through expanded legal interpretation, this constitutional provision also means equality between genders, and that men and women are equal before the law.

### **2.2 Equal treatment legislation**

Albania has specific equal treatment legislation. The two main Albanian laws specifically related to equal treatment are:

- i. the Law on gender equality in society (LGE), Law No. 9970, dated 24 July 2008;<sup>55</sup>
  - ii. the Law on protection from discrimination (LPD), Law No. 10 221, dated 4 February 2010.<sup>56</sup>
- i. The LGE regulates fundamental issues of gender equality in public life, and its main purpose is to provide effective protection from gender discrimination and any other form of behaviour that encourages gender discrimination.<sup>57</sup> The LGE is the first Albanian law that gives a definition of legal concepts for: gender equality, gender, gender-based discrimination, gender-based harassment and sexual harassment. The LGE prohibits gender discrimination and does not explicitly prohibit sex

<sup>53</sup> Constitution of the Republic of Albania, Law No. 8417, dated 21.10.1998, as amended, Article 18(2). English version available at: <https://euralius.eu/index.php/en/library/albanian-legislation/send/9-constitution/178-constitution-of-the-republic-of-albania-en>.

<sup>54</sup> Constitution, Article 18(1). English version available at: <https://euralius.eu/index.php/en/library/albanian-legislation/send/9-constitution/178-constitution-of-the-republic-of-albania-en>.

<sup>55</sup> Law No. 9970, dated 24.7.2008. English version of the law available at: <https://www.osce.org/albania/36682?download=true>

<sup>56</sup> Law No. 10 221, dated 4.2.2010. English version of the law available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

<sup>57</sup> Law No. 9970, dated 24.7.2008, Articles 1 and 2. English version of the law available at: <https://www.osce.org/albania/36682?download=true>.

discrimination. However, it provides for protection against 'gender-based harassment' and 'sexual harassment' in the field of employment in Articles 16(8), 16(9) and 18.

- ii. The LPD regulates the implementation of and respect for the principle of equality in relation to different grounds of discrimination. The LPD is the first Albanian law that gives the legal definitions for: discrimination, direct and indirect discrimination, instruction to discriminate and harassment.

The LPD prohibits discrimination based on 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.<sup>58</sup>

The LPD, in Chapter II concerning protection from discrimination in employment, in Article 12(2) explicitly prohibits every kind of harassment, including sexual harassment by an employer against an employee or an applicant for work or between employees.

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<sup>58</sup> Law No. 10 221, dated 4.2.2010, Article 1. English version of the law available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

### 3 Implementation of central concepts

#### 3.1 General (legal) context

##### 3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

Over the last five years, several reports and surveys that provide insights into the legal definition, implementation and limits of central concepts of gender equality and the non-discrimination laws have been published in Albania. These include:

- i. The National Report of the Republic of Albania under the third cycle of Universal Periodic Review (UPR) (2019);<sup>59</sup>
- ii. The Report of UNHCHR following the third cycle of Universal Periodic Review (2019);<sup>60</sup>
- iii. Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) on the fourth periodic report of Albania (2016);<sup>61</sup>
- iv. GREVIO's (Baseline) Evaluation Report Albania (2017);<sup>62</sup>
- v. National strategy and action plan (2016-2020) on gender equality;<sup>63</sup>
- vi. National action plan on LGBTI persons (2016-2020);<sup>64</sup>
- vii. Annual reports of the Commissioner for Protection from Discrimination (2014-2019);<sup>65</sup>
- viii. Sexual harassment and other forms of gender-based violence in urban spaces in Albania (Korca and Shkodra) (2019) a report prepared by IDRA Research and Consulting with the support of UN Women in Albania;<sup>66</sup>
- ix. 'Gender Brief in Albania 2016', an assessment done by UN Women and UNDP in Albania;<sup>67</sup>
- x. an Intersex Research Study (2018);<sup>68</sup>

<sup>59</sup> Albanian Government (2019), *National Report of the Republic of Albania under the third cycle of Universal Periodic Review*, A/HRC/WG.6/33/ALB/1, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>.

<sup>60</sup> UN Human Rights Council (2019), *Report of the Office of the United Nations High Commissioner for Human Rights – Compilation on Albania*, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>.

<sup>61</sup> Committee on the Elimination of Discrimination against Women (2016), *Concluding Observations on the fourth periodic report of Albania*, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En).

<sup>62</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), (2017) *GREVIO (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Albania*, available at: <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>.

<sup>63</sup> Ministry of Social Welfare and Youth (2016), *National strategy and action plan on gender equality (2016-2020)*, available at: <https://awenetwork.org/wp-content/uploads/2017/01/SKGJB-EN-web.pdf>.

<sup>64</sup> Ministry of Social Welfare and Youth (2016), *National action plan for LGBTI persons in the Republic of Albania, 2016-2020*, available at: <https://shendetesia.gov.al/wp-content/uploads/2019/01/Plani-LGBTI-2016-2020-KM.pdf>.

<sup>65</sup> These reports are available in Albanian at: <https://www.kmd.al/raporte-vjetore/>.

<sup>66</sup> IDRA Research and Consulting, United Nations Albania and UN Women in Albania (2019), *Sexual harassment and other forms of gender based violence in urban spaces in Albania (Korca and Shkodra)*, available at: [https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2019/05/english\\_web.pdf?la=en&vs=355](https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2019/05/english_web.pdf?la=en&vs=355); IDRA Research and Consulting is a spin-off of the Institute for Development Research and Alternatives: [www.idrainstitute.org](http://www.idrainstitute.org)

<sup>67</sup> UN Women Albania and United Nations Development Programme (UNDP) (2016), *Gender Brief Albania*, available at: [https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2016/10/unw%20gender%20brief%20albania%202016\\_en\\_web.pdf?la=en&vs=2652](https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2016/10/unw%20gender%20brief%20albania%202016_en_web.pdf?la=en&vs=2652).

<sup>68</sup> Randjelovic, C., Petkovic, N., Kumwenda, R., Macauley, J., Mladenovic, N., Konstantinov, B. (2018), *Intersex Research Study – Albania, Bosnia and Herzegovina, The Former Yugoslav Republic of Macedonia*

- xi. 'Gender responsive budgeting in Albania' (2019), a manual prepared by UN Women for the employees of central and local public administration;<sup>69</sup>
  - xii. 'How to support your intersex children' (2019), a manual prepared by IGLYO, OII Europe and EPA, translated into Albanian by the Tirana Legal Aid Service (TLAS), an Albanian NGO.<sup>70</sup>
- i. There are some UPR findings related to gender equality/non-discrimination concepts and laws that are presented in the following:<sup>71</sup>
    - Amendments to the Labour Code in December 2015 introduced new provisions that have a direct impact on women, including: an improved definition of sexual harassment in the workplace; the reverse of the burden of proof for sexual harassment; additional guarantees for women's return to work after their maternity leave; non-discriminatory remuneration for all, and not only for men and women, etc.
    - The new Code of Administrative Procedures (Law 44/2015) was approved by the Assembly of the RoA on 30 April 2015 and entered into force on 28. May 2016. An important step is the provision relating to the reverse of the burden of proof in matters of discrimination. Public bodies should be guided by the principle of equality and non-discrimination for grounds provided by law, including gender and gender identity.
    - On December 2017, the Assembly of the RoA approved the Resolution 'On combating violence against women and girls and increasing the effectiveness of legal mechanisms for its prevention', and established the Permanent Parliamentary Subcommittee on Gender Equality and the Prevention of Violence against Women.
    - The National Strategy on Gender Equality and Action Plan 2016-2020 provides specific objectives, indicators and budgets for each activity. The National Strategy and Action Plan on Gender Equality 2016-2020 provides for a comprehensive multi-sectorial response to gender-based violence and domestic violence and contains several measures on preventing and addressing violence against women, children and supporting the women and child victims.
    - In 2016, standards of services for victims of domestic violence were introduced. There is need for a multidisciplinary, rapid and effective approach and for national and local government bodies to increase their knowledge of budgeting for gender priorities and to apply for funding to provide social services for victims of domestic violence.
  - ii. The UNHCHR report following the Albanian UPR of 2019 includes the following findings:<sup>72</sup>

'The United Nations country team noted that despite legal developments to promote non-discrimination, discrimination against lesbian, gay, bisexual, transgender and intersex persons persisted, including denial of their right to marry and have a family, the right to gender reassignment surgery for transgender persons, and the right to

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and Serbia, publication of USAID and UNDP, available at:

<https://www.al.undp.org/content/albania/en/home/library/poverty/intersex-research-study.html>.

<sup>69</sup> UN Women (2019), 'Gender responsive budgeting in Albania' (*Buxhetimi i pergjithshem gjinor ne Shqiperi*), September 2019, available at: <https://albania.unwomen.org/en/digital-library/publications/2019/12/buxhetimi-i-pergjithshem-gjinor-ne-shqiperi>.

<sup>70</sup> TLAS (2019), 'How to support your intersex children' (*Si t'i mbështesni fëmijët tuaj intersex*), a manual prepared by IGLYO, OII Europe and EPA, adopted and translated in Albanian by TLAS, available in: [http://www.tlas.org.al/sites/default/files/MANUAL%20INTERSEX%20PER%20PRINDERIT\\_FINAL\\_0.pdf](http://www.tlas.org.al/sites/default/files/MANUAL%20INTERSEX%20PER%20PRINDERIT_FINAL_0.pdf).

<sup>71</sup> Albanian Government (2019), *National Report of the Republic of Albania under the third cycle of Universal Periodic Review*, A/HRC/WG.6/33/ALB/1, Paragraphs 34-35, 39 and 43-44, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/048/74/PDF/G1904874.pdf?OpenElement>.

<sup>72</sup> UN Human Rights Council (2019), *Report of the Office of the United Nations High Commissioner for Human Rights – Compilation on Albania*, Paragraphs 6 and 29, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/048/44/PDF/G1904844.pdf?OpenElement>.



self-determination in relation to bodily integrity for intersex persons. The country team also noted that there was an urgent need to improve the range of and access to high quality sexual and reproductive health services for lesbian, gay, bisexual, transgender and intersex persons. It recommended that Albania enforce the current legislation and national action plan and improve access to sexual and reproductive health services. The Office of the UNHCHR reported that it had led the “free and equal” campaign to promote equal rights for and fair treatment of lesbian, gay, bisexual, transgender and intersex persons, through the media and national events.’

‘The United Nations country team noted that legislation on gender equality, nondiscrimination and domestic violence had improved, and that Albania was implementing the third National Strategy on Gender Equality for 2016–2020. CEDAW Committee welcomed the amendment to the Labour Code that defined and reversed the burden of proof in cases of sexual harassment, but it recommends that Albania reverse the burden of proof in cases of alleged sex-based or gender-based discrimination, in favour of claimants.’

- iii. The relevant findings of the Concluding Observations of the CEDAW Committee on the fourth periodic report of Albania (2016) are:<sup>73</sup>

‘The Committee remains concerned, however, that the provisions of the Convention have been invoked only in one court case, which indicates that there is inadequate knowledge of the Convention among legal professionals, such as judges and lawyers, within society and among women themselves.’

‘The Committee notes that (...) further legislative improvements to promote and protect gender equality and non-discrimination in [Albania], in particular with regard to prohibiting gender-based violence and sexual harassment. The Committee is concerned, however, about the lack of implementation of the legislation on gender equality and non-discrimination, as well as about the lack of monitoring of implementation of such laws and policies.’

- iv. The relevant findings of GREVIO’s (Baseline) Evaluation Report Albania (2017) are:<sup>74</sup>

‘Limited data exists regarding violence against women and vulnerable group of women in Albania, although more than one report provides information concerning the heightened difficulties they encounter in reporting violence and accessing adequate protection and support services. In Albania, disadvantaged and marginalised groups of women include in particular older women, Roma and Egyptian women, women with disabilities, migrant women, lesbian, bisexual and transgender women, as well as asylum seeking women. These women are particularly vulnerable to gender-based violence and victims face compounded difficulties to escape from the vicious cycles of violence.’

‘GREVIO encourages the authorities to: add specific indicators relating to vulnerable groups of women and girls in data collection; integrate the perspective of such groups in the design, implementation, monitoring and evaluation of policies for preventing and combating violence against women; mainstream preventing and

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<sup>73</sup> Committee on the Elimination of Discrimination against Women (2016), *Concluding Observations on the fourth periodic report of Albania*, Paragraphs 8 and 10, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En).

<sup>74</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), (2017) *GREVIO (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Albania*, Paragraphs 16, 18, 27, Appendix 1, E5, 155 and 156, available at: <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>.



combating violence against women in programs which are tailored to the specific needs of such groups.'

'GREVIO urges the authorities to: promote a clear understanding within society of the gendered nature of violence against women which affects women not because of their educational level and socio-economic background, but because they are women; challenge attitudes in society which justify intra-family violence; have a clear gendered approach when developing targeted measures to address forms of violence against women other than domestic violence.'

'Recent studies on levels of sexual harassment in public administration show that the problem exists but that victims face considerable resistance to report it. Awareness on available mechanisms of redress is limited and victims stay silent for fear of damaging repercussions, including job loss.'

'GREVIO strongly encourages the authorities to: conduct studies to gain insight into the prevalence of sexual harassment in various settings and the main obstacles preventing this phenomenon from emerging; and based on their findings, take targeted actions to lift these obstacles; adopt codes of conducts on sexual harassment in the workplace at all levels of public administration and provide training accordingly; strengthen data collection regarding this form of violence against women, covering criminal, civil and disciplinary proceedings; reinforce the role of the People's Advocate and that of the Commissioner against discrimination in combating sexual harassment.'

- v. The guiding principles of the National strategy and action plan on gender equality (2016-2020) include:<sup>75</sup>

'Gender equality, a prerequisite for a fair and socio-economically developed society: the recognition of and respect for gender equality; improvement of the social, economic and health statuses of girls/women, especially girls/women suffering from multiple discrimination; their education, advancement and political engagement, being offered equal chances to boys/men, are prerequisites for the overall development of the country.'

'Recognition, evaluation and respect for diversity among girls and women, boys and men, regarding age, skills, sexual orientation, gender identity, ethnical and social origin, religious practices and life choices.'

The strategy has four strategic goals:<sup>76</sup>

- economic empowerment of women and men;
- guaranteeing factual and equal participation of women in the political and public decision-making;
- reduction of gender-based violence and domestic violence;
- empowerment of the coordination and monitoring role of the National Gender Equality Mechanism, as well as awareness-raising of advancing gender equality.

<sup>75</sup> Ministry of Social Welfare and Youth (2016), *National strategy and action plan on gender equality (2016-2020)*, p. 8, available at: <https://awenetwork.org/wp-content/uploads/2017/01/SKGJB-EN-web.pdf>.

<sup>76</sup> Ministry of Social Welfare and Youth (2016), *National strategy and action plan on gender equality (2016-2020)*, pp. 22-24.

- vi. The National action plan on LGBTI persons (2016-2020) has three strategic goals:<sup>77</sup>
- to improve the legal and institutional framework and raise awareness on non-discrimination and protection of the rights of LGBTI people in compliance with international standards;
  - to eliminate all forms of discrimination against the LGBTI community;
  - to improve access to services: employment, education, healthcare, housing and sports services for LGBTI people by ensuring equal opportunities and rights.
- vii. The 2014-2019 annual reports of the Albanian Commissioner for Protection from Discrimination (CPD) include:<sup>78</sup>
- an overview of discrimination in Albania during the reporting year, covering the protected grounds of sexual orientation, gender identity and gender (2014, 2015, 2016); and sexual orientation and gender (2017); the reports of 2018 and 2019 do not include the above as particular reporting grounds (note that in 2019, among the 225 cases dealt with by the CPD, only two concerned gender);
  - legal and other recommendations related to discrimination issues – during 2014, the CPD sent five recommendations to the Albanian Ministry of Justice for amendments to the Albanian Criminal Code on articles related to equality and non-discrimination, mainly to introduce sexual orientation and gender identity to the list of protected grounds and during 2015, the CPD sent a recommendation to the Albanian Ministry of Internal Affairs for amendments to Articles 16 and 17 on residence of Law No. 10 129 on civil status, of 11 May 2009, in order to eliminate provisions that have gender discriminatory consequences;
  - statistical data on equality related case law in the framework of CPD activities or in Albanian courts: in 2014, the CPD examined three complaints of discrimination on the grounds of sexual orientation and gender identity and five complaints of discrimination on the ground of gender; in 2015, four complaints on the ground of sexual orientation, one complaint on the ground of gender identity, and nine complaints on the ground of gender; in 2016, five complaints on the ground of sexual orientation, two complaints on the ground of gender identity, and six complaints on the ground of gender; in 2017, three complaints on the ground of sexual orientation, one complaint on the ground of gender identity, and six complaints on the ground of gender; in 2018, two complaints on the ground of sexual orientation, two complaints on the ground of gender identity, and 17 complaints on the ground of gender; in 2019, two complaints of discrimination on the ground of gender;
  - studies and monitoring on discrimination issues: in 2014, the CPD published a study (special report) on the protection and respect of the rights of the LGBTI community in Albania, which also focused on gender identity and the family life of the LGBTI community;<sup>79</sup> in 2015, the CPD carried out a study on the situation of discrimination against women in Albania; in 2019, the CPD, in collaboration with UN Woman Albania, published a report on gender equality and discrimination in appointed local government bodies.<sup>80</sup>

<sup>77</sup> Ministry of Social Welfare and Youth (2016), *National action plan for LGBTI persons in the Republic of Albania, 2016-2020*, available (in Albanian) at: <https://shendetesia.gov.al/wp-content/uploads/2019/01/Plani-LGBTI-2016-2020-KM.pdf>.

<sup>78</sup> These reports are available in Albanian at: <https://www.kmd.al/raporte-vjetore/>.

<sup>79</sup> Albanian Commissioner for Protection from Discrimination (2014), *Special report for the protection and respect of the rights of LGBTI community in Albania*, available at: [http://www.archive.equineteurope.org/IMG/pdf/1419266680-special\\_report\\_lgbt\\_2013.pdf](http://www.archive.equineteurope.org/IMG/pdf/1419266680-special_report_lgbt_2013.pdf).

<sup>80</sup> Albanian Commissioner for Protection from Discrimination and UN Women Albania (2019), *Gender equality and discrimination in appointed local government bodies*, available at: <https://www2.unwomen.org/->

The 2014 CPD annual report gave definitions for the concepts of sexual orientation, gender identity and the difference between sex and gender, referring to the Yogyakarta Principles, rapporteur Gross on the resolution of CoE on 'Discrimination on the basis of sexual orientation and gender identity' and the Commissioner for Human Rights (UNCHR):<sup>81</sup>

'Sexual orientation refers to each person's capacity for profound emotional, affection and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or of the same gender or of more than one gender. Gender identity refers to each person's deeply felt [sic] in a gender, for instance being female or male, or in some cases none of them, which may be distinct from biological sex. To understand the concept of gender identity it is important to distinguish between the notions of "sex" and "gender". While "sex" primarily refers to the biological difference between women and men, "gender" also includes the social aspect of the difference between genders in addition to the biological element.'

- viii. Sexual harassment and other forms of gender-based violence in urban spaces in Albania (Korca and Shkodra) (2019), begins with a short glossary of terms, such as:<sup>82</sup>

'II. Gender shall mean the socially constructed roles behaviours, activities and attributes that a given society considers appropriate for women and men.  
(...)

VI. Sexual assault is understood as engaging in sexual activity by use of force with adult females or between spouses or cohabitants, without the consent of either of them.

VII. Sexual harassment is understood as the commitment of 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.'

A precursor to this study was carried out in 2018 in three municipalities in Albania: Tirana, Durrës and Fier. The main findings of the 2018 study include:<sup>83</sup> women and girls in public spaces of all selected areas in the three municipalities in Albania, face numerous forms of harassment, especially verbal ones; nearly half of the 750 respondents (44 %), have a friend or family member who has been subject to sexual harassment or sexual violence; 38 % of the respondents reported that they were at risk of/exposed to sexual harassment/violence around the age of 15 (some have experienced both); the culture of reporting violence, especially sexual harassment and sexual violence, is not widespread, for various reasons, mostly related to harmful patriarchal traditions and gender stereotypes or myths, lack of information on where to report and ask for help especially for specific forms of violence such as sexual violence, lack of trust in the responsible authorities and the fear of being labelled or judged – out of 286 reported cases, only 16 % asked for help and assistance, most of them by requesting help from their relatives and friends only.

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[/media/field%20office%20albania/attachments/publications/2019/05/web\\_kmd\\_gender\\_report\\_en.pdf?la=en&vs=3700](#).

<sup>81</sup> Albanian Commissioner for Protection from Discrimination (2014), *Special report for the protection and respect of the rights of LGBTI community in Albania*, p. 3, available at:

[http://www.archive.equineteurope.org/IMG/pdf/1419266680-special\\_report\\_lgbt\\_2013.pdf](http://www.archive.equineteurope.org/IMG/pdf/1419266680-special_report_lgbt_2013.pdf).

<sup>82</sup> IDRA Research and Consulting, United Nations Albania and UN Women in Albania (2019), *Sexual harassment and other forms of gender based violence in urban spaces in Albania (Korca and Shkodra)*, p. 2, available at: [https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2019/05/english\\_web.pdf?la=en&vs=355](https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2019/05/english_web.pdf?la=en&vs=355).

<sup>83</sup> IDRA Research and Consulting and UN Women in Albania (2019), *Sexual harassment and other forms of gender based violence in urban spaces in Albania (Korca and Shkodra)*, pp. 21-22.

- ix. 'Gender Brief in Albania 2016', an assessment done by UN Women and UNDP in Albania, presents some sex disaggregated data and gender statistics.<sup>84</sup> An important issue specifically addressed by this report regards the current statistical system, which it describes as being:<sup>85</sup>

'(...) characterised by a significant gap between data and information collected by institutions on the one hand, and indicators required at international level for monitoring gender equality on the other. Data are not standardised. Often they are not collected in rigorous and consistent ways, rendering it difficult to monitor the same indicator over time. Furthermore, new policy agendas need to introduce new indicators, including performance indicators, to complement classic indicators currently in use.'

- x. The *Intersex Research Study of 2018* contains the following findings:<sup>86</sup>

- There are positive developments, such as the adoption of a national action plan for work on LGBTI issues in Albania. However, the overall public awareness of the rights of LGBTI people remains low and legal provisions that can prevent discrimination against intersex people are not in place.
- The Ministry of Health receives information and statistics from the maternity hospitals on the number of intersex babies born each year. According to available information, the numbers vary every year; for example, nine intersex babies were born in 2013, two in 2014 and five in 2015.
- The human rights organisation, Tirana Legal Aid Society (TLAS) is in the process of engaging the legal system to legalise the status of two intersex children.
- In Albania, there are no provisions that specifically address the human rights of intersex people. In anti-discrimination law, sex characteristics are not listed as possible grounds of discrimination.

- xi. 'Gender-responsive budgeting in Albania' (2019), a manual prepared by UN Women for the employees of central and local public administration, defines the concepts of 'gender' and 'sex' and their difference, and the definition of 'gender identity' as follows:<sup>87</sup>

'(...) the word "gender" is randomly used in Albanian as a synonym of the word "sex". "Sex" (or what we generally call wrongly "gender") refers to the biological difference of being "male" and "female", a distinction that is made since the birth of a human being, due to the genitals. This is a universal biologic characteristic that refers to physical attributes with which we are born and does not change in space (thus, in different states there are no different definitions for a human being of the male or female sex), nor in time (hence, regardless of the time period we consider, as actually or before 20, 50 or more years, a human being of the male or female sex is defined in the same way as it is defined today).  
Meanwhile, the word "gender" has many meanings depending on the category of use.  
(...)

<sup>84</sup> UN Women Albania and United Nations Development Programme (UNDP) (2016), *Gender Brief Albania*, pp. 18-22, available at: [https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2016/10/unw%20gender%20brief%20albania%202016\\_en\\_web.pdf?la=en&vs=2652](https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2016/10/unw%20gender%20brief%20albania%202016_en_web.pdf?la=en&vs=2652).

<sup>85</sup> UN Women Albania and UNDP (2016), *Gender Brief Albania*, p. 19.

<sup>86</sup> Randjelovic, C., Petkovic, N., Kumwenda, R., Macauley, J., Mladenovic, N., Konstantinov, B. (2018), *Intersex Research Study – Albania, Bosnia and Herzegovina, The Former Yugoslav Republic of Macedonia and Serbia*, publication of USAID and UNDP, pp. 27-30, available at: <https://www.al.undp.org/content/albania/en/home/library/poverty/intersex-research-study.html>.

<sup>87</sup> UN Women (2019), *Gender responsive budgeting in Albania (Buxhetimi i pergjithshem gjinor ne Shqiperi)*, p. 7, available (in Albanian) at: <https://albania.unwomen.org/en/digital-library/publications/2019/12/buxhetimi-i-pergjithshem-gjinor-ne-shqiperi>.

When we refer to the developmental context or human rights, “gender” is the cultural concept created by society on the two biological sexes. Thus, if a human being since birth is defined as male or female referring to the genitals, the concept of gender goes beyond this definition and relates to the society’s expectations about status, position and role to be played by this innate male or female. Thus, “masculine” and “feminine” in this case are related to what is expected and what is allowed or accepted (or even forbidden) in a specific society about the behaviour, actions and relationships or position in the family and community of a boy/man and a girl/woman. This transition from “male sex individual to boy and man” or from “female sex individual to girl and woman” is not only socially determined but also variable by country and time; it is often accompanied by stereotypes that also change in certain societies, places and times.

(...).

It is essential to understand and keep in mind that if we discuss issues related to gender (in)equality, gender roles, gender discrimination, gender integration or responsible gender budgeting, we are no longer merely talking about males and females (as can be counted for the effect of statistical documentation), but about men/boys and women/girls given the position, roles, expectations and obligations that society has assigned to them.

(...).

Gender identity should also not be confused with sex or gender. It concerns how an individual feels inside and how he/she expresses gender through clothing, behaviour and appearance, regardless of whether he/she is of the male or female sex. Thus, sex and gender identity do not necessarily coincide: an individual even though born of the male sex, does not necessarily feel inside as if they are a boy or a man; also, an individual born of the female sex does not necessarily feel inside as though they are a girl or a woman. There are even individuals who may feel inside that they belong to both gender groups or none of them. Meanwhile, sexual orientation shows to which gender group you are sexually oriented (i.e. to girls/women or boys/men), and not to which gender group you feel internally.’

xii. The manual for parents ‘How to support your intersex children’ contains information on:<sup>88</sup>

- a. what does it mean to be intersex;
- b. parental advice on how to speak to intersex children;
- c. decision-making on the surgical intervention;
- d. some common questions and answers on intersex.

The term ‘intersex’, according to this manual, refers to:<sup>89</sup>

‘... atypical internal and/or external anatomical sexual characteristics, where sexual features that are considered male or female may appear simultaneously and be intertwined to some extent. This phenomenon in several newborns should be viewed as a natural change and not a medical condition.

For some intersex individuals, intersexuality appears and is evident at birth, for others, it appears during childhood, and for some others, these characteristics emerge during adolescence and/or adulthood. Some intersex people may never realize they are intersex because atypical sexual traits are minimal.’

<sup>88</sup> TLAS (2019), ‘How to support your intersex children’ (*Si t’I mbështesni fëmijët tuaj intersex*), a manual prepared by IGLYO, OII Europe and EPA, translated into Albanian by TLAS, available at: [http://www.tlas.org.al/sites/default/files/MANUAL%20INTERSEX%20OPER%20PRINDERIT\\_FINAL\\_0.pdf](http://www.tlas.org.al/sites/default/files/MANUAL%20INTERSEX%20OPER%20PRINDERIT_FINAL_0.pdf).

<sup>89</sup> TLAS (2019), ‘How to support your intersex children’, p. 2.

### 3.1.2 Other issues

There is nothing further to report.

### 3.1.3 General overview of national acts

Different Albanian laws have provisions that prohibit discrimination, some of which have gender, sex or sexual orientation as protected grounds from discrimination and are presented in the following:

- i. The LGE refers to gender equality as equality between women and men (Article 1). It prohibits gender discrimination in Article 6 as any treatment of a person less favourable because of his/her gender, compared with the treatment that is given, was given or would have been given to a person of the opposite gender in a similar situation, and defines indirect gender discrimination as:  
  
‘the compilation, implementation, encouragement, and the drafting of provisions, conditions, criteria or practices, which are apparently neutral, but put a person of a certain sex in a situation less favourable compared with persons of the opposite sex.’ In Articles 16(8), 16(9) and 18 it provides for protection against ‘gender based harassment’ and ‘sexual harassment’ in the field of employment.
- ii. Articles 1 and 5 of the LPD prohibit discrimination based on gender, gender identity, sexual orientation, or for any other reason. Chapters II, III and IV of the LPD provide for protection from discrimination in specific fields: employment, education and goods and services.
- iii. Article 9 of the Labour Code concerns prohibition of discrimination.<sup>90</sup> Protected discrimination grounds are: gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parentage, parental responsibility, age, family or marital status, health status, genetic predispositions, disability, living with HIV/AIDS, union or affiliation with trade union organisations, affiliation to a particular group, or any other cause.
- iv. Article 11 of the Administrative Procedure Code, concerns the principle of equality and non-discrimination.<sup>91</sup> Protected discrimination grounds are: gender, race, colour, ethnicity, nationality, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parentage, parental responsibility, age, family or marital status, place of residence, health status, genetic predisposition, disability, belonging to a particular group or any other grounds.
- v. Article 8 of the Law on the organisation and functioning of prosecution in the Republic of Albania concerns objectivity and equality.<sup>92</sup> Protected discrimination grounds are: gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, gender identity, sexual orientation, economic status, property, education, birth, disability, social origin, parentage or other grounds.
- vi. Article 5(1) of the Law on pre-university education concerns non-discrimination in relation to the right to education.<sup>93</sup> Protected discrimination grounds are: gender, race, colour, ethnicity, language, sexual orientation, political or religious beliefs,

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<sup>90</sup> Labour Code, Law No. 7961, dated 12.7.1995, as amended in 1996, 2003, 2008, and 2015.

<sup>91</sup> Law No. 44/2015. Source: <https://euralius.eu/index.php/en/library/albanian-legislation/send/6-administrative-procedure-code/229-code-of-administrative-procedure-en>.

<sup>92</sup> Law No. 97/2016.

<sup>93</sup> Law No. 69/2012, as amended in 2015.

economic or social condition, age, residence, disability or other grounds as defined in Albanian legislation.

- vii. Articles 3(19) and 4(ë) of the Law on social care services concern the definition of discrimination and the principle of non-discrimination respectively.<sup>94</sup> Protected discrimination grounds under Article 3(19) are gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parentage, parental responsibility, age, family status or marital status, health status, genetic predisposition, disability, affiliation to a particular group, or any other grounds. Meanwhile, Article 4(ë) covers any grounds provided by the legislation on the protection from discrimination in Albania.
- viii. Article 5(d) of the Law on social assistance concerns non-discrimination as a principle that determines the rights given by this law without any discrimination to each individual.<sup>95</sup> Protected grounds are: gender, race, religion, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parental affiliation and/or responsibility, family or marital status, health status, genetic predisposition, disability, affiliation to a particular group, or any other grounds. Article 5(e) of the Law on social assistance concerns equality as a principle that determines that social assistance is offered to every individual in need despite gender, religion, age, disability, etc.
- ix. Article 10 of the Law on social housing concerns the principle of non-discrimination.<sup>96</sup> Protected grounds from discrimination are: gender, race, colour, religion, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational, social status, pregnancy, affiliation and/or parental responsibility, family or marital status, health, genetic predispositions, disability, belonging to a particular group, and any condition that has discriminatory consequences.
- x. Article 11 of the Code of Criminal Justice for Juveniles concerns the principle of protection from discrimination.<sup>97</sup> Protected discrimination grounds are: gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social status, pregnancy, parentage, parental responsibility, family or marital status, place of residence, health status, genetic predispositions, disability, affiliation to a particular group and any other condition of the juvenile, parents or legal representatives of the juvenile.
- xi. Articles 253 and 265 of the Criminal Code concern the violation of equality of citizens and incitement of hatred or disputes respectively.<sup>98</sup> The grounds protected by Article 253 are: origin, sex, sexual orientation or gender identity, health status, religious and political beliefs, trade union activity, ethnic, national, racial or religious affiliation. Meanwhile, the grounds protected under Article 265 are: race, ethnicity, religion and sexual orientation.

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<sup>94</sup> Law No. 121/2016.

<sup>95</sup> Law No. 57/2019.

<sup>96</sup> Law No. 22/2018.

<sup>97</sup> Law No. 37/2017.

<sup>98</sup> Law No. 7895 dated 27.1.1995, amended in 2013.



### 3.1.4 Political and societal debate and pending legislative proposals

In Albania, there is continuing open social and political debate on marriages between same sex couples. Article 7 of the Albanian Family Code defines marriage by stating that 'Marriage can be concluded between a man and a woman (...).'<sup>99</sup>

The provision on non-discrimination in Article 18(2) of the Constitution contains a closed list of protected grounds, which does not include 'sex' or 'sexual orientation'.<sup>100</sup> That is the reason why, if Article 7 of the Family Code were changed to allow same sex marriages, it would be unconstitutional. Thus, in the context of the 2016 draft constitutional amendments, there was a proposal to add 'gender identity', 'sexual orientation' and 'other grounds' to the list of protected grounds provided for in Article 18(2) of the Constitution.<sup>101</sup> The proposal was not implemented because of the significant social debate in the country and because it did not get the necessary approval by some conservative MPs when the constitutional amendments of 2016 were discussed in the Parliament.

## 3.2 Sex/gender/transgender

### 3.2.1 Definition of 'gender' and 'sex'

'Gender' was defined as a legal concept for the first time in Albania in 2008, in Article 4(2) of the Law on gender equality (LGE):<sup>102</sup>

"'Gender' refers to the opportunities and the social attributes related with being a woman or man, as well as the relations between them."

The difference between 'sex' and 'gender' is explained in a special report of the CPD from 2014 (*Special report for the protection and respect of the rights of LGBTI community in Albania*) and refers to the UN Commission for Human Rights:<sup>103</sup>

'(...) While 'sex' primarily refers to the biological difference between women and men, 'gender' also includes the social aspect of the difference between genders in addition to the biological element.'

### 3.2.2 Protection of transgender, intersex and non-binary persons

The Albanian legislation protects transgender, intersex and non-binary persons from discrimination under the categories of gender identity, sexual orientation, and the phrase 'for any other reason, ground, cause' in open lists of protected grounds. There are several laws that contain relevant articles.

- Article 1 of the LPD prohibits discrimination based on 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.<sup>104</sup>

<sup>99</sup> Family Code, Law No. 9062, dated 8.5.2003, Article 7.

<sup>100</sup> Constitution, Article 18(2).

<sup>101</sup> European Commission for Democracy through Law, CDL-REF(2016)008, Consolidated version of the Constitution of Albania integrating the draft constitutional amendments, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2016\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)008-e).

<sup>102</sup> Law No. 9970, dated 24.7.2008. English version available at: <https://www.osce.org/albania/36682?download=true>.

<sup>103</sup> See: Albanian Commissioner for Protection from Discrimination (2014), *Special report for the protection and respect of the rights of LGBTI community in Albania*, p. 3, available at: [http://www.archive.equineteurope.org/IMG/pdf/1419266680-special\\_report\\_lgbt\\_2013.pdf](http://www.archive.equineteurope.org/IMG/pdf/1419266680-special_report_lgbt_2013.pdf).

<sup>104</sup> Law No. 10 221, dated 4.2.2010, Article 1. English version available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.



- Article 9 of the Labour Code concerns prohibition of discrimination.<sup>105</sup> Protected discrimination grounds are: gender, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parentage, parental responsibility, age, family or marital status, health status, genetic predispositions, disability, living with HIV/AIDS, union or affiliation with trade union organisations, affiliation to a particular group, or any other cause.
- Article 11 of the Administrative Procedure Code concerns the principle of equality and non-discrimination.<sup>106</sup> Protected discrimination grounds include: gender, gender identity, sexual orientation, or any other grounds.
- Article 8 of the Law on the organisation and functioning of prosecution in the RoA concerns objectivity and equality.<sup>107</sup> Protected discrimination grounds include: gender, gender identity, sexual orientation, or other grounds.
- Article 5(1) of the Law on pre-university education concerns non-discrimination in relation to the right to education.<sup>108</sup> Protected discrimination grounds include: gender, sexual orientation, or other grounds as defined in Albanian legislation.
- Articles 3(19) and 4(ë) of the Law on social care services concern the definition of discrimination and the principle of non-discrimination respectively.<sup>109</sup> Protected discrimination grounds under Article 3(19) include gender, gender identity, sexual orientation, or any other grounds. Meanwhile, Article 4(ë) covers any grounds provided by the legislation on the protection from discrimination in Albania.
- Article 10 of the Law on social housing concerns the principle of non-discrimination.<sup>110</sup> Protected discrimination grounds include: gender, gender identity, sexual orientation, and any condition that has discriminatory consequences.
- Article 11 of the Code of Criminal Justice for Juveniles concerns the principle of protection from discrimination.<sup>111</sup> Protected discrimination grounds include: gender, gender identity, sexual orientation, and any other condition of the juvenile, parents or legal representatives of the juvenile.
- Articles 253 and 265 of the Criminal Code concern the violation of equality of citizens and incitement of hatred or disputes respectively.<sup>112</sup> The grounds protected under Article 253 include: sex, sexual orientation or gender identity. Meanwhile, Article 265 protects the ground of sexual orientation.

Although the Albanian legislation protects intersex people from discrimination, it does not recognise the right to gender reassignment. In 2017, the Tirana Legal Aid Society (TLAS) started engaging the legal system to legalise changes in gender markers for intersex children (with reference to the manual translated and published by TLAS mentioned in Section 3.1.1.xii above). The decision of the Durrës first instance administrative court in December 2017,<sup>113</sup> is the first case in Albania where a court accepted a change to the

<sup>105</sup> Labour Code, Law No. 7961, dated 12.7.1995, as amended in 1996, 2003, 2008 and 2015.

<sup>106</sup> Law No. 44/2015. Source: <https://euralius.eu/index.php/en/library/albanian-legislation/send/6-administrative-procedure-code/229-code-of-administrative-procedure-en>.

<sup>107</sup> Law No. 97/2016.

<sup>108</sup> Law No. 69/2012, as amended in 2015.

<sup>109</sup> Law No. 121/2016.

<sup>110</sup> Law No. 22/2018.

<sup>111</sup> Law No. 37/2017.

<sup>112</sup> Law No. 7895 dated 27.1.1995, amended in 2013.

<sup>113</sup> First Instance Administrative Court of Durrës, Decision No. 1159, 29.12.2017. Note that a copy of the anonymised court decision was made available to the author of this report by TLAS, the Albanian NGO that gave free legal aid and represented the claimant to court. Albanian courts' decisions have not been published on the official website of the courts ([www.gjykata.gov.al](http://www.gjykata.gov.al)) since 2016 when the Minister of Justice issued Guidance No. 4059/2, dated 7.6.2016 on anonymization of personal data in court decisions

gender marker for an intersex child who had undergone surgery and whose sex assigned in the birth certificate did not comply with the sex assigned after surgery. The claimant, an intersex child, presented claims against the Civil Status Offices requesting:

- declaration of the inaccuracy in the sex section of the birth certificate by correcting it from 'male' to 'female', and
- changing of the name from masculine 'Y' to feminine 'X'.<sup>114</sup>

Part of the evidence presented in court was also a confirmation of the surgery by the health institution verifying that the child was hospitalised and underwent surgery to change the gender from 'male' to 'female'.

In its decision, the court was guided by the principle of the best interests of the child, provided for in Article 2 of the Albanian Family Code. In Paragraph 5.1, the court assessed certain points of relevance to its decision:

- domestic law does not provide another way for the legal definition this situation;
- a state of urgent need is dictated by the child's health, supervised for years and not the consequence of monthly transformations;
- the child's gender at birth was of ambiguous (dual) nature;
- a health intervention, although without the prior authorisation of the court (in the absence of legal provisions) was a fact determined before the trial;
- the typical feature of the legal remedy for recognising the falsity of the document (according to Albanian legislation: Article 32(c) of the Code of Civil Procedures and Article 43 of the Law No. 10129/2009 'On civil status') is the rule that the falsity of the act (document) exists at the time of creating the act and it is not created after the act.

The court stated explicitly:

'(...) The court, guided by the best interests of the child, deems it necessary to treat and resolve this case in a fair, and legally and morally acceptable manner, with a great priority of time, beyond any possibility that the "sanctity" of the spiritual and physical world of a child could be affected by the lack of detail or completion of legislation, which may never happen and, in any case, is beyond the control of the court.'

Thus, the decision of the court in this case was in favour of the claimant. The court ruled: the acceptance of the lawsuit; partial recognition of the falsity of the birth certificate of the claimant 'Y' issued by the Civil Status Office; and the obligation of the respondents to recognise as true the following data related to the birth certificate of the claimant – gender 'female' and name 'X'.

### 3.2.3 Specific requirements

There are no specific requirements under Albanian legislation to benefit from legal protection against discrimination.

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published on the electronic portal of courts (*Për anonimizimin e të dhënave personale në vendimet gjyqësore që publikohen në portalin elektronik të gjykatave*). This guidance was produced and issued right after the Albanian Commissioner for the Right to Information and Protection of Personal Data imposed an administrative fine on the Tirana First Instance District Court for publishing court decisions without respecting the right to protection of personal data. Ever since, Albanian courts do not publish court decisions on their official website and the author of this report supposes that this may happen because of a lack of administrative personnel to anonymize the personal data.

<sup>114</sup> Because of privacy issues of the claimant, the name is not mentioned in the report (neither their full name nor their real initials).

### 3.3 Direct sex discrimination

#### 3.3.1 Explicit prohibition

Direct sex discrimination is explicitly prohibited in the Albanian Criminal Code, with the 2013 amendment to Article 253.<sup>115</sup> Article 253 concerns the violation of equality of citizens, which is included in Chapter VII on 'Crimes against the state':

'Discrimination by a worker holding a state function or public service conducted because of his capacity or during its exercise, when the discrimination is based upon 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 in creating unfair privileges or in refusing a right or benefit deriving from law, is punishable by a fine or up to five years of imprisonment.'

The definition of direct discrimination is given in Article 3(2) of the LPD as:<sup>116</sup>

'(...) 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 cause mentioned in Article 1 of this law.'

In the view of the author of this report, this provision complies with Article 2(1)(a) of Directive 2006/54/EC.

#### 3.3.2 Prohibition of pregnancy and maternity discrimination

The Albanian legislation does not provide explicitly for pregnancy and maternity as forms of direct sex discrimination, rather as grounds of discrimination: pregnancy is provided for in the LGE and in six other laws listed below. Maternity is provided for only in the LGE.

Pregnancy is provided for as a protected ground from discrimination in the following legislation:

- Articles 17(2) and 21(e) of the LGE prohibit the employer from discriminating against a candidate during job selection or from dismissing an employees because of (...), potential pregnancy in the future, pregnancy, (...); the right of the employee not to be discriminated or dismissed from work because of (...), pregnancy, (...);
- Article 1 of the LPD concerns the object of the Law and protected discrimination grounds;<sup>117</sup>
- Article 9 of the Labour Code concerns the prohibition of discrimination and lists relevant grounds;<sup>118</sup>
- Article 11 of the Administrative Procedure Code concerns the principle of equality and non-discrimination;<sup>119</sup>
- Articles 3(19) and 4(ë) of the Law on social care services concern the definition of discrimination and the principle of non-discrimination respectively;<sup>120</sup>

<sup>115</sup> Law No. 7895 dated 27.1.1995, amended in 2013. English version available at: <http://rai-see.org/wp-content/uploads/2015/08/Criminal-Code-11-06-2015-EN.pdf>.

<sup>116</sup> Law No. 10 221, dated 4.2.2010, Article 1. English version available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

<sup>117</sup> Law No. 10 221, dated 4.2.2010, Article 1. English version available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

<sup>118</sup> Labour Code, Law No. 7961, dated 12.7.1995, as amended in 1996, 2003, 2008 and 2015.

<sup>119</sup> Law No. 44/2015. Source: <https://euralius.eu/index.php/en/library/albanian-legislation/send/6-administrative-procedure-code/229-code-of-administrative-procedure-en>.

<sup>120</sup> Law No. 121/2016.

- Article 10 of the Law on social housing concerns the principle of non-discrimination;<sup>121</sup>
- Article 11 of the Code of Criminal Justice for Juveniles concerns the principle of protection from discrimination.<sup>122</sup>

Maternity is a protected ground from discrimination that is provided for in Articles 17(2) and 21(e) of the LGE.<sup>123</sup> Articles 17(2) and 21(e) of the LGE refer explicitly to:

- the prohibition of employers to discriminate against a candidate during the job selection process or to dismiss an employee because of maternity;
- the right of employees not to be discriminated against or dismissed from work because of maternity.

### 3.3.3 Specific difficulties

There are no specific difficulties in Albania in applying the concept of direct sex discrimination.

## 3.4 Indirect sex discrimination

### 3.4.1 Explicit prohibition

The Albanian legislation prohibits indirect sex discrimination in Article 6(2) of the LGE:

'The compilation, implementation, encouragement, and the drafting of the provisions, conditions, criteria or practices, which are apparently neutral, but put a person of a certain sex in a situation less favourable compared with persons of the opposite sex, constitutes indirect gender discrimination and shall be prohibited. This prohibition shall not apply when such provisions, conditions, criteria and practices are justified by a legitimate purpose, and the means and ways to reach that purpose are necessary and appropriate.'

Furthermore, Article 3(3) of the LPD defines indirect discrimination as:<sup>124</sup>

'(...) 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 causes 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.'

In view of the author of this report, these provisions comply with Article 2(1)(b) of Directive 2006/54/EC.

### 3.4.2 Statistical evidence

So far, there has been no case law involving statistical evidence to establish a presumption of indirect sex discrimination.

<sup>121</sup> Law No. 22/2018.

<sup>122</sup> Law No. 37/2017.

<sup>123</sup> Law No. 9970, dated 24.07.2008. English version available at: <https://www.osce.org/albania/36682?download=true>.

<sup>124</sup> Law No. 10 221, dated 4.2.2010. English version available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

### 3.4.3 Application of the objective justification test

The ACC in Decision V-48/13 (Paragraph 14) recalled several decisions (V-34/05, V-39/07, V-4/10) where it has interpreted the principle of equality in Article 18 of the Albanian Constitution and stressed that this law relates to equality not only in respect of constitutional fundamental rights but also to other legal rights, and that only in exceptional cases and for reasonable and objective causes can the different treatment of certain categories of people that benefit from this right be justified.

Decisions V-48/13 (Paragraph 15) and V-34/17 (Paragraph 94) of the ACC argue the principle of equality in relation to justified differentiation as follows:

'(...) it is not sufficient only the justified differentiation, but also the tool chosen to achieve the legislator's scope should be reasonable and appropriate. The principle of equality does not prohibit differentiated treatment, thus the Court, in cases when subjects are treated equal, evaluates whether the law should have had provided for differentiation on a legitimate and objective cause because subjects are presented with different factual specifications.'

It should be noted that none of these ACC decisions (V-34/05, V-39/07, V-4/10, V-48/13, V-34/17) concern gender equality but refer to the general concept of equality regardless of the specific ground of discrimination.

### 3.4.4 Specific difficulties

There are no specific difficulties in Albania in applying the concept of indirect sex discrimination.

## 3.5 Multiple discrimination and intersectional discrimination<sup>125</sup>

### 3.5.1 Definition and explicit prohibition

Neither multiple discrimination nor intersectional discrimination is explicitly addressed to in Albanian legislation.

The organisation and structure of the LPD permits applicants to simultaneously invoke several grounds of discrimination in the same claim, because of the wording of several articles of the LPD, which, when referring to reasons for claiming discrimination, refer to 'causes' (in the plural) rather than 'one of the causes' or 'a cause':<sup>126</sup>

- Article 5(1): 'Discrimination is prohibited for the causes mentioned in Article 1 (...)';
- Article 6(2): 'Different treatment that is based on a characteristic related to the causes mentioned in Article 1 (...)';
- Article 9: 'Discrimination in the exercise of the right to vote, (...) for the causes mentioned in Article 1 (...)';
- Article 12(1): '(...) Discrimination includes every distinction, limitation or exclusion that is based on the causes mentioned in Article 1 (...)'.

In the view of the author of this report, the Albanian legislative framework for protection against discrimination favours the judicial recognition of multiple/intersectional discrimination.

<sup>125</sup> See for more information Fredman, S. (2016) *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>.

<sup>126</sup> Law No. 10 221, dated 4.2.2010. English version available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

### 3.5.2 Case law and judicial recognition

The CPD is a quasi-judicial equality body, and during the last five years has had several complaints on more than one ground (multiple discrimination cases) some of which were subject to court decisions.

During 2019, the CPD examined two complaints on gender discrimination.<sup>127</sup> The cases and respective CPD decisions are set out below.

- i. Decision No. 3, dated 7 January 2019: DK v. the Rector of the University of Tirana and the director of human resources at the Rectorate of the University of Tirana.

The claimant Mrs DK invoked two grounds of discrimination: philosophical beliefs and gender, because of which she claimed that:

- the Rector (her employer) had suddenly terminated her working contract, and previously ordered her to transfer to another office;
- the director of human resources had miscalculated her seniority at work for the effects of additional payment.

She also presented discrimination claims on situations created at the workplace from 2016, but the CPD informed her that these claims according to Article 33(4)(dh) of the LPD could not be admitted due to time limit, because they are out of legal limits. The content of the CPD decision does not reveal any other information regarding these claims.

At the beginning of the examination procedure by the CPD, the claimant Mrs DK changed one of the alleged grounds of discrimination from philosophical beliefs to discrimination because of association with Mrs AB (Mrs AB had previously in July 2018 won a CPD case against the Rector of the University of Tirana on discrimination on the grounds of gender and affiliation to a particular group).

Furthermore, during the hearing organised by the CPD as part of the investigative procedure, Mrs DK withdrew claims relating to the office transfer and miscalculation of her seniority at work. The Rector of the University, as respondent, gave proof that:

- as regards the office transfer, it was requested not only to Mrs DK, a specialist at the Directorate of Curricula but also to Mr ES, director of communication. Mr ES should have moved to the office where Mrs DK was with three specialists of the Directorate of Communication, direct subordinates of Mr ES. Noting the concern of Mrs DK in this respect, no further relocation to the designated office was required;
- as regards miscalculation of the seniority at work for the effects of additional payment, it had been a human error carried over from the beginning of her work at the Rectorate and was corrected immediately after her request and had therefore already been resolved.

As for the question of the immediate unjustified termination of the employment contract, the Rector gave objective justification that the reason for the dismissal of the claimant were the serious violations she had committed and the severe consequence it had on the university. Among the severe violations mentioned in this CPD decision referring to the information received by the Rector of the university, the main violation related to the matriculation numbers of the 2011-2012 PhD students of the Faculty of Economy. The matriculation numbers were delivered to the claimant DK on 6 May 2015 in writing by the competent authority (the Albanian National Exams Agency – NEA) and DK had an obligation to deliver them immediately to the Faculty of Economy, but she did not. The matriculation numbers were delivered to the Faculty of Economy three years later on 3

<sup>127</sup> These statistical data have been produced by the author on basis of the CPD Decisions of 2019 published on the Albanian CPD webpage, available at: <https://www.kmd.al/vendime-te-komisionerit-2019/>.

June 2018. It happened after another request submitted by the Faculty of Economy (on 31 May 2018). Earlier, during 2016 and 2017, Mrs DK had (i) wrongly stated, on behalf of the Rector, that the NEA had not delivered the matriculation numbers of the Faculty of Economy's PhD students, (ii) fulfilled and delivered the PhD certificates of these students only with the registry number and not the matriculation number.

This case did not raise any difficulty with the concept of multiple discrimination.

In the context of a single administrative procedure, the CPD evaluated each claim and ground of discrimination separately. The CPD found that the claimant DK had not been exposed to discriminatory treatment on the grounds of gender or affiliation to a particular group.

No comparator was used by the CPD in this case, because it remained only the question of dismissal, for which the employer gave an objective justification.

- ii. Decision No. 144, dated 15 October 2019: HXh v. the Albanian Ministry of Education, the General Directorate of Pre-university Education, and the local education office of Bulqiza.

The claimant, Mrs HXh, invoked several different grounds of discrimination: gender, health condition and any other cause, because of which she claimed that she was dismissed during the restructuring of the directorate where she worked.

Mrs HXh worked as a finance specialist in the local education office of Bulqiza (LEO of Bulqiza) from January 2008 until May 2019. In May 2019, by order of the Ministry of Education, the General Directorate of Pre-university Education (GDPE) began the procedure of restructuring/closure of the LEO of Bulqiza and released all employees from the civil service.

Mrs HXh alleges that in her working place, the GDPE appointed Mr PL, whose job position has been abolished. Thus, they preferred a man instead of her and did so in consideration of the fact that she had health problems because she had been operated on twice in 2015 at the Tirana Oncology Hospital and continues to need repeated medications and checks. She complained to the GDPE on her dismissal, and on 30 May 2015 she was offered a job with responsibility for the service sector in the LEO of Dibra, 45 km away from Bulqiza. On 05 June 2015, she presented herself at the LEO of Dibra and then notified the GDPE that, due to the distance and health condition, she could not continue working. She has been unemployed ever since.

This case did not raise any difficulty with the concept of multiple discrimination.

In the context of a single administrative procedure, the CPD evaluated each ground of discrimination separately. Referring to the documentation administered during the investigation process, the CPD evaluated the following:

- the restructuring of the LEO followed the same procedures for all employees who have worked at these organisations, including the claimant and Mr PL;
- as regards the structuring and development of the LEO of Bulqiza, the claimant's division was to be reduced from four to two job positions. Mrs HXH and Mr PL were both economists and, to secure the continuity of the office, one of them should have held the position of finance specialist of the LEO of Bulqiza. The GDPE, which was responsible for the selection of the employee, had previously selected some evaluation criteria: compliance of the diploma with the job; seniority at work and profession; qualifications of each employee; job evaluation. Based on these criteria, Mr PL had more years in seniority at work and profession and thus, he prevailed in the temporary appointment to the job.

Based on the above findings of the administrative procedure, the CPD concluded that the claimant Mrs HXh is not in the condition of equal fulfilment of the criteria set by the GDPE, meaning that the elements 'gender' and 'health condition' could not be taken into account for the comparative effect. Thus, the CPD found that Mrs HXh had not been discriminated against.

The CPD used no comparator in this case.

So far there has been no case law on intersectional discrimination either at the CPD or in the courts.

### **3.6 Positive action**

#### **3.6.1 Definition and explicit prohibition**

Positive action is explicitly defined in Article 11 of the LPD, which defines positive action as:<sup>128</sup>

'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.'

By wide legal interpretation, Article 11 of LPD includes:

- positive action even in the field of employment (vocational activity, professional careers, etc.) because it does not limit the field of implementation of positive action, and
- gender as one of the protected grounds because it is mentioned in the list in Article 1 of the LPD.

That is why, in the view of the author of this report, the definition complies with the definition found in Article 157(4) TFEU.

Positive action is also allowed in the following Albanian legislation:

- i. The LGE, Article 4(6) 'Definition of temporary special measures', Article 7(4) 'Necessary measures for ensuring gender equality', Article 8 'Temporary special measures', Article 9 'Special measures' and Article 22 'Temporary special measures in the area of job relations';<sup>129</sup>
- ii. The Labour Code, Article 9(7) 'Prohibition of Discrimination (temporary special measures)';<sup>130</sup>
- iii. The Law on protection of national minorities, Article 8(2) and (3) 'Prohibition of discrimination (necessary measures)'.<sup>131</sup>

Positive action, as provided for by these laws, complies with the definition found in Article 157(4) TFEU.

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<sup>128</sup> Law No. 10 221, dated 4.2.2010. English version available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

<sup>129</sup> Law No. 9970, dated 24.7.2008. English version available at: <https://www.osce.org/albania/36682?download=true>.

<sup>130</sup> Labour Code, Law No. 7961, dated 12.7.1995, as amended; Article 9 was amended by Law No. 8085, dated 13.3.1996 and Law No. 136/2015, dated 5.12.2015.

<sup>131</sup> Law No. 96/2017.



### 3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

Albanian legislation considers 'equal opportunities' not exclusively in the context of the concept of positive action, but also as a separate concept. An example that clearly shows 'equal opportunities' as a separate concept from positive action can be found in the LGE, Article 4(1) on 'Definitions', where 'gender equality' is defined as:<sup>132</sup>

'(...) the equal participation of women and men in all spheres of life, equal position among them, equal opportunities and chances, in order to enjoy their rights and to fulfil their obligations towards the society, by equally benefiting from the achievements from its development.'

### 3.6.3 Specific difficulties

The Albanian legislation does not present any specific difficulties in relation to positive action.

### 3.6.4 Measures to improve the gender balance on company boards

Measures to improve the gender balance on public company boards in Albania were taken in 2008 with Article 15(1)(a) and (b) of the LGE, which requires:<sup>133</sup>

- representation of above 30 % of both genders in the steering organs of public institutions;
- equal observation of competition procedure and criteria for both genders to ensure appointment to these organs.

Such measures do not imply nor oblige state-owned companies and private company boards, and at the moment there are no related pending proposals.

### 3.6.5 Positive action measures to improve the gender balance in other areas

Article 15 of the LGE requires respect for gender balance (representation of over 30 % for both genders) in all legislative, executive and judicial organs, as well as in other public institutions and sets a fine to be imposed on political parties that do not respect this Article. As for political candidate lists and electoral management organs, Article 15 of the LGE provides for:

'(c) participation of more than 30 % of both genders in the list of candidates for the local government elections;  
(ç) participation of no less than 30 % of each gender in the candidate proportional system list presented by the political parties for the General Assembly Elections;  
(d) participation of above 30 % of each gender in the central and local elections process administration organs.'

Further positive action related to the implementation of the above provisions was undertaken with the regulations in the new Albanian Electoral Code, approved in December 2008.<sup>134</sup> Article 67(6) of the Electoral Code provides for the following positive measures:

<sup>132</sup> Law No. 9970, dated 24.7.2008. English version available at: <https://www.osce.org/albania/36682?download=true>.

<sup>133</sup> Law No. 9970, dated 24.7.2008.

<sup>134</sup> Law No. 10 019, dated 29.12.2008, the Electoral Code of the Republic of Albania, amended in 2012, 2015, English version available at: <https://www.eurallius.eu/index.php/en/library/albanian-legislation/send/14-electoral-code/245-electoral-code-en>.

- i. Using the gender balance set by the LGE:  
 'For each electoral zone, at least 30 % of the multi-name list (...) shall belong to each gender'.
- ii. Setting the ranking order for the multi-name list at national elections:  
 '(...) one of the first three names on the multi-name list shall belong to each gender.'
- iii. Setting the ranking order for the multi-name list at local elections:  
 'For elections for local government bodies, for each municipal council, one in every two consecutive names in ranking shall belong to the same gender.'

### **3.7 Harassment and sexual harassment**

#### **3.7.1 Definition and explicit prohibition of harassment**

The Albanian legislation explicitly prohibits harassment in the following legislation.

- i. Article 12(2) of the LPD:<sup>135</sup> Every kind of harassment is prohibited, including sexual harassment, by an employer against an employee or an applicant for work or between employees.
- ii. Article 17(3) of the LPD:<sup>136</sup> Every kind of harassment is prohibited, especially harassment of students, pupils and employees in educational institutions.
- iii. Article 18(1) of the LGE:<sup>137</sup> Any discrimination, harassment or sexual harassment in the working place committed by the employer and/or employee, is prohibited.
- iv. Article 32(1)(b) of the Labour Code: The employer is obliged to respect and protect the personality of the employee in work relations, and take all necessary measures to stop moral harassment by him or other employees. The employer must display the provisions on moral and sexual harassment and their respective punishments.

The definition of 'harassment' is explicitly provided in Article 3(5) of the LPD as:<sup>138</sup>

'that form of discrimination that occurs in the case of an undesirable conduct, when it is related to any of the causes mentioned in Article 1 of this law, 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.'

This definition closely follows the wording of Article 2(1)(c) of EU Directive 2006/54.

#### **3.7.2 Scope of the prohibition of harassment**

Harassment as prohibited in Article 12(2) of the LPD, Article 18(1) of the LGE and Article 32(1)(b) of the Labour Code is related to working life and the workplace.

However, it is defined in Article 3(5) of the LPD as a form of discrimination, which is broader and also covers education and goods and services.

<sup>135</sup> Law No. 10 221, dated 4.2.2010. English version available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

<sup>136</sup> Law No. 10 221, dated 4.2.2010.

<sup>137</sup> Law No. 9970, dated 24.7.2008. English version available at: <https://www.osce.org/albania/36682?download=true>.

<sup>138</sup> Law No. 10 221, dated 4.2.2010.

### 3.7.3 Definition and explicit prohibition of sexual harassment

Sexual harassment is explicitly prohibited by the following Albanian legislation.

- i. Article 12(2) of the LPD:<sup>139</sup> Every kind of harassment is prohibited, including sexual harassment, by an employer against an employee or an applicant for work or between employees.
- ii. Article 18(1) of the LGE:<sup>140</sup> Any discrimination, harassment or sexual harassment in the workplace committed by the employer and/or employee, is prohibited.
- iii. Article 32(1)(b) of the Labour Code: The employer is obliged to respect and protect the personality of the employee in work relations, and to take all necessary measures to stop moral harassment by him or other employees. The employer must display the provisions on moral and sexual harassment and their respective punishments.

The definition of 'sexual harassment' is explicitly given in Article 4(10) of the LGE as:<sup>141</sup>

'any kind of unwelcome conduct, by means of words or actions, physical or symbolic, of a sexual character, which aims at or leads to the violation of personal dignity, especially when creates a threatening, hostile, humiliating, disparaging or insulting environment.'

This definition closely follows the wording of Article 2(1)(d) of EU Directive 2006/54.

### 3.7.4 Scope of the prohibition of sexual harassment

Sexual harassment as prohibited in Article 12(2) of the LPD, Article 18(1) of the LGE and Article 32(1)(b) of the Labour Code is related to working life and the workplace.

Meanwhile, the prohibition set out in Article 17(3) of the LPD is for every kind of harassment especially harassment of students, pupils and employees in educational institutions.<sup>142</sup> Thus, sexual harassment is also prohibited in the field of education.

### 3.7.5 Understanding of (sexual) harassment as discrimination

Article 3(5) of the LPD specifies that (sexual) harassment is:<sup>143</sup>

'that form of discrimination that occurs (...), 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.'

This wording is very close to the wording of Article 2(2)(a) of EU Directive 2006/54.

### 3.7.6 Specific difficulties

The Albanian legislation does not present any specific difficulties in applying the prohibition of (sexual) harassment.

<sup>139</sup> Law No. 10 221, dated 4.2.2010. English version available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

<sup>140</sup> Law No. 9970, dated 24.7.2008. English version available at: <https://www.osce.org/albania/36682?download=true>.

<sup>141</sup> Law No. 10 221, dated 4.2.2010.

<sup>142</sup> Law No. 10 221, dated 4.2.2010.

<sup>143</sup> Law No. 10 221, dated 4.2.2010.

### **3.8 Instruction to discriminate**

#### **3.8.1 Explicit prohibition**

An instruction to discriminate is explicitly defined in Article 3(6) of the LPD as:<sup>144</sup>

‘an instruction or a request based on hierarchical relations to discriminate against one or more persons on the basis of the causes mentioned in Article 1 of this law.’

This form of discrimination is prohibited by the wording of Article 5(1) of the LPD, which prohibits discrimination ‘for the causes mentioned in Article 1 of LPD, according to the causes mentioned in Article 3’.

#### **3.8.2 Specific difficulties**

The Albanian legislation does not present any specific difficulties in relation to the concept of instructions to discriminate.

### **3.9 Other forms of discrimination**

The LPD also provides for the prohibition of other forms of discrimination that are defined in Article 3(4), (7) and (8):

- i. association discrimination: a form of discrimination that occurs when there is a distinction, limitation or preference, because of association with persons who belong to the protected groups, or because of a supposition of such an association;
- ii. denial of a reasonable accommodation: a form of discrimination that happens 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 the purpose of assuring the enjoyment and exercise, on an equal basis, of the fundamental rights and freedoms for persons with a disability or which occurred under other conditions mentioned in Article 1 of the LPD;
- iii. victimisation: unfavourable treatment or an adverse consequence that comes as a reaction to a complaint or to a proceeding the purpose of which is to implement the principle of equality.

### **3.10 Evaluation of implementation**

The main Albanian laws on sex/gender equality and anti-discrimination, the LGE and the LPD, were created to be in conformity with EU legislation. However, as shown by the analysis in this report, ‘gender identity’ is not a constitutionally protected discrimination ground. However, it is protected in the other laws, as mentioned in Section 3.2.2 above.

The Albanian legislation does not recognise the right to gender reassignment or cohabitation of or marriage between same sex couples. As reported above in Section 3.2.2, a human rights organisation, TLAS, engaged the legal system in 2017 to legalise the status of two intersex children, of whom only one was recognised by the court as having the right to gender reassignment.

There have been several proposals on these topics, which ‘stayed in the drawer and didn’t see the light’, such as the 2012 proposals to amend the Family Code to introduce a provision on cohabitation and to amend the Law on civil status to introduce the right to gender reassignment.

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<sup>144</sup> Law No. 10 221, dated 4.2.2010.

The most recent, tentative proposal, made at the time of the draft constitutional amendments of 2016<sup>145</sup> was to add 'gender identity', 'sexual orientation' and 'other grounds' to the protected grounds listed in Article 18(2) of the Constitution. This could have led to a further amendment to the marriage provisions of the Family Code, which is the reason why the proposal encountered strong opposition from a conservative parliamentary party and did not pass.

Had the proposals been introduced and agreed to, the constitutional provisions would guarantee both that gender identity is a protected discrimination ground (Article 18(2)) and that everyone has the right to marriage (...) regulated by law (Article 53(1)(3)). Thus, Article 7 of the Family Code providing that:

'Marriage can be between a man and a woman (...)',

would be unconstitutional and could be challenged on constitutional grounds at the ACC. However, the draft constitutional amendments to Article 18(2) were not passed and the situation is currently on hold.

### **3.11 Remaining issues**

There is nothing further to report.

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<sup>145</sup> Note that the 2016 constitutional amendments were related to the justice reform, and were introduced in a political context of too much international pressure, demanding the highest agreement across the parliamentary spectrum.

## 4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)

### 4.1 General (legal) context

#### 4.1.1 Surveys on the gender pay gap and the difficulties of realising equal pay

Over the last five years, several reports and surveys that explain the gender pay gap (GPG) or the realisation of equal pay for women and men have been published in Albania. Some of these reports/surveys are listed below.

- i. The UNHCHR report on Albania following the third UPR (2019);<sup>146</sup>
- ii. Concluding Observations of the Committee on the Elimination of Discrimination against Women on the fourth periodic report of Albania (2016);<sup>147</sup>
- iii. The National strategy and action plan (2016-2020) on gender equality;<sup>148</sup>
- iv. National Employment and Skills Strategy (NESS) (2019-2022);<sup>149</sup>
- v. Sectorial strategy on the management of public finances 2019-2022;<sup>150</sup>
- vi. Statistical data of the Albanian Institute of Statistics (INSTAT) in the report, *Women and men in Albania 2019*;<sup>151</sup>
- vii. Annual Report of the CPD (2017);<sup>152</sup>
- viii. *Gender Brief in Albania 2016*, an assessment by UN Women Albania and UNDP;<sup>153</sup>
- ix. A pilot study, *Public Perceptions and Attitudes toward Gender Equality in Albania (2016)*.<sup>154</sup>

- i. The UNHCHR report following the Albanian UPR of 2019 relates the GPG to the informal labour market in the following finding:<sup>155</sup>

'The [CEDAW] Committee was concerned about the concentration of women in the informal labour market without adequate labour and social protection, the significant gender wage gap, particularly in the private sector, and the extremely low minimum wage that disproportionately affected women. The United Nations country team raised similar concerns.'

<sup>146</sup> UNHRC (2019), *Report of the Office of the United Nations High Commissioner for Human Rights – Compilation on Albania*, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>.

<sup>147</sup> Committee on the Elimination of Discrimination against Women (2016), *Concluding Observations on the fourth periodic report of Albania*, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En).

<sup>148</sup> Ministry of Social Welfare and Youth (2016), *National strategy and action plan on gender equality (2016-2020)*, available at: <https://awenetwork.org/wp-content/uploads/2017/01/SKGJB-EN-web.pdf>.

<sup>149</sup> Ministry of Finance and Economy (2019), *National employment and skills strategy 2019-2022*, published in the *Official Journal*, No. 144 of 25.10.2019, available at: <https://qbz.gov.al/eli/fz/2019>.

<sup>150</sup> Albania, DCM No. 824, dated 18.12.2019 on the approval of the sectorial strategy on the management of public finances 2019-2022 (*Për miratimin e Strategjisë sektoriale të menaxhimit të financave publike 2019-2022*), published in the *Official Journal* No. 176, dated 23.12.2019, available at: <https://qbz.gov.al/eli/fz/2019/176/00211fed-b8d1-427a-b503-63b98196924c>.

<sup>151</sup> INSTAT (2019), *Women and men in Albania*, available at: <http://www.instat.gov.al/al/publikime/librat/2019/burra-dhe-grat%C3%AB-n%C3%AB-shqip%C3%ABri-2019/>.

<sup>152</sup> Commissioner for Protection from Discrimination (2017), *Raport vjetor (Annual Report)*, available at: <https://www.kmd.al/raporte-vjetore/>.

<sup>153</sup> UN Women Albania and UNDP (2016), *Gender Brief Albania*, available at: [https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2016/10/unw%20gender%20brief%20albania%202016\\_en\\_web.pdf?la=en&vs=2652](https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2016/10/unw%20gender%20brief%20albania%202016_en_web.pdf?la=en&vs=2652).

<sup>154</sup> Dauti, M., Zhllima, E. (2016), *Public Perceptions and Attitudes toward Gender Equality in Albania (A Pilot Study)*, supported by UNDP Albania and the Government of Sweden, available at: [https://www.undp.org/content/dam/albania/docs/STUDIMI\\_PERCEPTIMET\\_eng.pdf](https://www.undp.org/content/dam/albania/docs/STUDIMI_PERCEPTIMET_eng.pdf).

<sup>155</sup> UNHRC (2019), *Report of the Office of the United Nations High Commissioner for Human Rights*, Paragraph 34, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/048/44/PDF/G1904844.pdf?OpenElement>.

- ii. The Concluding Observations of the CEDAW Committee on the fourth periodic report of Albania (2016) include the following findings:<sup>156</sup>

'The Committee notes with concern women's concentration in the informal labour market, especially in the textile and shoe industries, without adequate labour and social protection, and the lack of disaggregated data on the number of women in the informal economy. It is also concerned that the gender wage gap, notwithstanding reported positive developments, remains significant, in particular in the private sector, and that the minimum wage remains extremely low (approximately \$180 a month), disproportionately affecting women. The Committee is further concerned about the limited access to the formal labour market for women belonging to ethnic and linguistic minorities and women with disabilities, as well as about the lack of sex-disaggregated information on labour migration to third countries.'

'The Committee recommends that the State party (...) take measures to better estimate and reduce the gender wage gap, in particular in the private sector, by implementing effectively the principle of equal pay for work of equal value, and increase the minimum wage.'

- iii. The *National strategy and action plan (2016-2020) on gender equality* set as objective 1.1 under strategic goal No. 1: increased participation of women in the labour market and a reduction in the GPG.<sup>157</sup> The following outcomes are expected in realising this objective, within the achievements of the strategy:<sup>158</sup>

- increased participation of women and girls in the labour market as a result of the implementation of the *National strategy on employment and skills 2014-2020* under the gender perspective, based on the measures provided for in this specific objective;
- increased access of women and men to employment programmes;
- calculation of the GPG based on the Wage Structure Survey;
- more effective implementation of the objectives of the National Action Plan for Women Entrepreneurs from 2014 to 2020;
- increased involvement of women in science and innovation as an opportunity for their economic empowerment.

- iv. The *National Employment and Skills Strategy (NESS) 2019-2022* does not focus on the GPG. The Albanian Government adopted it on 10 October 2019. It continues with the same four strategic priorities as the previous NESS (2014-2018) because, in the midterm evaluation of the implementation of NESS 2014-2018, it was assessed that these strategic goals were still relevant.

*NESS 2019-2022* focuses on the following four strategic priorities:

- a. stimulating the possibilities of decent work through fruitful labour market policies;
- b. offering quality education and vocational training for young people and adults;
- c. promoting social inclusion and territorial cohesion;
- d. strengthening the governance of the labour market and qualification systems.

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<sup>156</sup> Committee on the Elimination of Discrimination against Women (2016), *Concluding Observations on the fourth periodic report of Albania*, Paragraphs 30 and 31(b).

<sup>157</sup> Ministry of Social Welfare and Youth (2016), *National strategy and action plan on gender equality (2016-2020)*.

<sup>158</sup> Ministry of Social Welfare and Youth (2014), *National employment and skills strategy 2014-2020*.

*NESS 2019-2022*, in the analysis of the strategic objectives, stipulates that the creation and implementation of an active employment policy is the main element of the approach and solution to employment problems:<sup>159</sup>

'Policies aimed at improving employment prospects should have a broader scope of action. At the same time, programmes should target those who are most disadvantaged in the labour market, especially individuals with low levels of education and qualifications, women, young people, other vulnerable groups and those who live in areas not covered by employment services. Therefore, the new framework for employment promotion will be designed to ensure the use of more efficient policies and more resources for the labour market based on the Law No. 15/2019 on employment promotion.'

Concerning equality issues, *NESS 2019-2022* states:<sup>160</sup>

'Equality issues require particular interventions to address the needs of individuals at risk of poverty and social exclusion through better access to education, employment and social services, as well as greater employment and income opportunities. The coordination of social assistance programmes and active labour market measures will enable activation strategies based on a common system of obligations. (...)

Due to specific economic and employment structures in the country, and the low demand for jobs, many graduates of higher education cannot find jobs that meet their qualifications. This results in relatively higher levels of unemployment among higher education graduates, especially women.'

- v. The Sectorial strategy on the management of public finances 2019-2022 (SSMPF 2019-2022) was adopted by the Albanian Government on 18 December 2019 and aims to serve as a framework that will guide the implementation of all the Albanian Government's reforms for the management of public finances until the end of 2022.

The framework of the specific objectives of the strategy and the interventions set out in its Chapter II, especially 'Specific objective No. 2 - well-integrated and efficient planning', provides for gender-based budgeting:<sup>161</sup>

'It is a positive fact that gender-based budgeting in Albania has progressed rapidly over the last five years. The latest changes to the organic law on budgeting, in 2016, as well as the law on local finances adopted in 2017, have made it mandatory for all central and local government institutions to manage all policies and budgets, in full compliance with the principle of gender equality. However, considerable challenges remain to fully implement gender-based budgeting in the management of public finances cycle, both at the central and local levels.'

To this end, the action plan for the implementation of the SSMPF 2019-2022 provides relevant activities in the framework of specific objective No. 2. Some of these activities include:<sup>162</sup>

- supporting new policy initiatives as part of the mid-term budgetary plan process, which aim to close gender financial gaps – this activity is planned for the whole of 2022;

<sup>159</sup> DCM No. 659, dated 10.10.2019 on the approval of the national and employment and skills strategy 2019-2022 and its action-plan', in the *Official Journal* No. 144/2019, p. 11.976.

<sup>160</sup> DCM No. 659, pp. 11.974-11.975.

<sup>161</sup> DCM No. 824, dated 18.12.2019 on the approval of the sectorial strategy on the management of public finances 2019-2022, in the *Official Journal* No. 176/2019, p. 13.303.

<sup>162</sup> DCM No. 824, p. 13.346.



- training and learning for local management teams to effectively introduce gender-based budgeting to their mid-term budgetary plans – this activity is planned for 2020, 2021 and 2022;
  - supporting women's NGOs and community-based organisations in participatory budgeting processes – this activity is planned for 2020, 2021 and 2022.
- vi. The statistical report, *Women and men in Albania 2019*, includes figures on the GPG:<sup>163</sup>
- 'During 2018, based on the data of the General Tax Directorate, the gender pay gap amounted to 10.7 % compared to 10.5 % in 2017. During this year, in the economic sector, the sector with the highest GPG, namely 24.4 %, is the manufacturing sector, while in the economic sector the GPG is the lowest in the commerce, transport, hospitality, as well as business and administrative services, by 3.0 %. Viewed from the main groups and professions perspective, the gender pay gap is highest for craftsmen and equipment and machinery monitoring employees, by 27.1 %. The lowest GPG is noted for the armed forces employees, by 2.3 %.'
- vii. The 2017 annual report of the CPD, when stating that gender discrimination is a phenomenon that is not limited only at wages, also stresses that:<sup>164</sup>
- 'GPG is a good indicator to evaluate gender discrimination in employment, because it cannot be fully explained by different choices of men and women and their time away from work/home. (...) However, GPG is not measured exactly because of informal economy or activities within the country, but there is a general agreement that a considerable part of the unexplained GPG can be attributed to gender discrimination.'
- viii. *Gender Brief in Albania 2016*, an assessment carried out by UN Women Albania and the UNDP offers the following explanation for the GPG:<sup>165</sup>
- 'Women dominate the sectors of manufacturing and non-market services, a trend that has increased in recent years. It is worth mentioning that the wages in these sectors tend to be significantly lower compared with other sectors such as construction, mining, and transport. Women are concentrated in sectors such as health and education, and to some degree represented in services, retail, and trade. In the sectors of construction, transport, and telecommunications, women's participation is very low. Vertical occupational segregation is evidenced by the low level of women among lawmakers and in senior and executive positions: women represent only 14.6 % of total employees in these categories.'
- ix. The pilot study, *Public Perceptions and Attitudes toward Gender Equality in Albania* (2016) investigates attitudes toward gender equality including in relation to employment and income.<sup>166</sup> Among the findings of this study, one concerned salary satisfaction: more than 50 % of employed respondents reported that their salary

<sup>163</sup> INSTAT (2019), *Women and men in Albania*, available at: <http://www.instat.gov.al/al/publikime/librat/2019/burrrat-dhe-grat%C3%AB-n%C3%AB-shqip%C3%ABri-2019/>.

<sup>164</sup> Commissioner for Protection from Discrimination (2018), *Raport vjetor 2017* (Annual Report 2017), p. 25, available at: <https://www.kmd.al/raporte-vjetore/>.

<sup>165</sup> UN Women Albania and UNDP (2016), *Gender Brief Albania*, available at: [https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2016/10/unw%20gender%20brief%20albania%202016\\_en\\_web.pdf?la=en&vs=2652](https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2016/10/unw%20gender%20brief%20albania%202016_en_web.pdf?la=en&vs=2652).

<sup>166</sup> Dauti, M., Zhllima, E. (2016), *Public Perceptions and Attitudes toward Gender Equality in Albania (A Pilot Study)*, supported by UNDP Albania and the Government of Sweden), available at: [https://www.undp.org/content/dam/albania/docs/STUDIMI\\_PERCEPTIMET\\_eng.pdf](https://www.undp.org/content/dam/albania/docs/STUDIMI_PERCEPTIMET_eng.pdf).

does not reflect their qualifications. There were no differences between women and men.<sup>167</sup>

#### 4.1.2 Surveys on the difficulties of realising equal treatment at work

A few reports over the last five years provide insights into specific factors that prevent the realisation of equal treatment at work in Albania. These include:

- i. The Report of UNHCHR following the third cycle of UPR (2019);<sup>168</sup>
  - ii. Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) on the fourth periodic report of Albania (2016);<sup>169</sup>
  - iii. GREVIO's (Baseline) Evaluation Report Albania (2017);<sup>170</sup>
  - iv. National strategy and action plan on gender equality (2016-2020);<sup>171</sup>
  - v. National Employment and Skills Strategy (NESS) (2019-2022);<sup>172</sup>
  - vi. Mid-term Review of National Employment and Skills Strategy (NESS) (2014-2020);<sup>173</sup>
  - vii. *Gender Brief in Albania 2016*, an assessment by UN Women Albania and the UNDP.<sup>174</sup>
- i. The report of the UNHCHR under the third cycle of UPR (2019), concerns the concentration of women in the informal labour market and the limited implementation of related positive measures at local level:<sup>175</sup>
- '35. The Committee welcomed the adoption of the action plan for supporting women entrepreneurs for 2014–2020 and the amendment made in 2014 to the Law on Social Assistance and Social Services, which provided for social assistance to be paid directly to women. Nevertheless, the Committee noted with concern the limited implementation of those measures, in particular at the local level and with regard to women and girls belonging to disadvantaged or marginalised groups.'
- ii. The *Concluding Observations of CEDAW Committee on the fourth periodic report of Albania* (2016) addresses the following recommendations to the Republic of Albania, relating to work-life balance:<sup>176</sup>

<sup>167</sup> Dauti, M., Zhllima, E. (2016), *Public perceptions and attitudes toward gender equality in Albania (A pilot study)*, p. 33.

<sup>168</sup> UNHCHR (2019), *Report of the Office of the United Nations High Commissioner for Human Rights*, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>.

<sup>169</sup> Committee on the Elimination of Discrimination against Women (2016), *Concluding Observations on the fourth periodic report of Albania*, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En).

<sup>170</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), (2017) *GREVIO (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Albania*, available at: <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>.

<sup>171</sup> Ministry of Social Welfare and Youth (2016), *National strategy and action plan (2016-2020) on gender equality (2016-2020)*.

<sup>172</sup> Ministry of Finance and Economy (2019), *National employment and skills strategy 2019-2022*.

<sup>173</sup> Ministry of Finance (November 2018), *Mid-term Review of National Employment and Skills Strategy (NESS) 2014-2020*.

<sup>174</sup> UN Women Albania and UNDP (2016), *Gender Brief Albania*.

<sup>175</sup> UNHCHR (2019), *Report of the Office of the United Nations High Commissioner for Human Rights*, Paragraph 35, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>

<sup>176</sup> Committee on the Elimination of Discrimination against Women (2016), *Concluding Observations on the fourth periodic report of Albania*, Paragraph 31, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En).

- '(a) Improve its statistical analysis to cover all areas, including the informal sector, in which women are concentrated, and improve the labour and social protection of women working in the informal sector, in particular in the textile and shoe industries; (b) Take measures to better estimate and reduce the gender wage gap, in particular in the private sector, by implementing effectively the principle of equal pay for work of equal value, and increase the minimum wage; (c) Ensure equal access to the formal labour market for women belonging to linguistic and ethnic minorities and women with disabilities, including by introducing temporary special measures in line with Article 4(1) of the Convention.'
- iii. *GREVIO's (Baseline) Evaluation Report Albania* (2017) seeks an improved work environment as a method of preventing violence against women, stating that:<sup>177</sup>  
'GREVIO invites the authorities to seek the involvement of employers in the prevention of violence against women. To this end, employers should be encouraged to take part in the implementation of policies such as awareness-raising campaigns, as well as to foster a work environment where violence against women is openly condemned and victims feel that they can be heard and supported.'
- iv. The *National strategy and action plan on Gender Equality 2016-2020*, when discussing the principle of having an equal treatment strategy, stresses that 'equality must not be confused with uniformity':<sup>178</sup>  
  
'The principle of Strategy: Sensibility towards and equal treatment of special needs of both genders – girls/ women and boys/men have different needs and are faced with different forms of violence and discrimination. Consequently, the planned actions should offer opportunities for the kind of treatment that is in compliance with these needs and experiences – equality must not be confused with uniformity: we are different, but should be equal, not similar.'
- v. NESS 2019-2022 states:<sup>179</sup>  
  
'Equality issues require particular interventions to address the needs of individuals at risk of poverty and social exclusion through better access to education, employment and social services, as well as greater employment and income opportunities. The coordination of social assistance programmes and active labour market measures will enable activation strategies based on a common system of obligations. (...)  
  
Due to specific economic and employment structures in the country, and the low demand for jobs, many graduates of higher education cannot find jobs that meet their qualifications. This results in relatively higher levels of unemployment among higher education graduates, especially women.'
- vi. *Gender Brief in Albania 2016* provides the following data on the gender gap in employment:<sup>180</sup>  
  
'In 2015, employment was 60.5 % for men and 45.5 % for women. Registered unemployment was roughly 17.5 % for both women and men. Almost half (45 %) of

<sup>177</sup> Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), (2017) *GREVIO (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Albania*, Paragraph 77, available at: <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>.

<sup>178</sup> Ministry of Social Welfare and Youth (2016), *National strategy and action plan (2016-2020) on gender equality*.

<sup>179</sup> Ministry of Finance and Economy (2019), *National employment and skills strategy 2019-2022*, p. 11 974, 11 975.

<sup>180</sup> UN Women Albania and UNDP (2016), *Gender Brief Albania*, p. 49.

the female population aged 15-64 years was out of the labour market, compared to 26.6 % of men. Compared to 2014, this represents an improvement of almost 4.5 %. This finding requires further investigation, however, since it is a significant shift compared to labour market statistics of the past three years. Nonetheless, the significant gender gap in labour participation of 18 % has remained unchanged over the past four years. In addition, women are 1.3 times more likely than men to work as “contributing family workers”, which does not involve payment and is classified by the ILO as informal employment.’

- vii. The *Mid-term Review of NESS 2014-2020* made the following assessment of equal pay for equal work:<sup>181</sup>

‘There are only two outputs of the NESS that can be considered as Successfully Completed: annual rate of participation in the Active Labour Market Programme, and equal pay for equal work pursued in National Employment Service using sex-disaggregated wage statistics.’

There has been no political and/or societal debate on these findings as yet.

#### 4.1.3 Other issues

*NESS 2019–2022*, adopted in October 2019, gives some relevant data on the labour market in Albania:<sup>182</sup>

‘The employment rate in Albania for persons aged 15-64 in 2018 grew to 59.5 % from 50 % estimated in 2013, yet it is lower than the average one in EU countries. It has improved significantly for women: from 40 % in 2013 to 52.5 % in 2018. However, gender equality remains problematic because men’s employment is 14 % higher than women’s employment. This is potentially a reflection of cultural norms regarding family structure and limited alternatives for child and elderly care. (...)

The performance of the labour market partly reflects the structure of the Albanian economy, where agriculture continues to dominate with 37.4 % of the total employment, while production and services are not yet fully developed. This element explains the relatively low rate of employment and the prevalence of self-employment and agreements for informal and part-time jobs.’

#### 4.1.4 Political and societal debate and pending legislative proposals

There is nothing relevant to report.

### 4.2 Equal pay

#### 4.2.1 Implementation in national law

The principle of equal pay for equal work or work for equal value is implemented in Albanian legislation in Article 16(7) of the LGE and Article 115(1) of the Labour Code.

Article 115(1) of the Labour Code states:<sup>183</sup>

<sup>181</sup> Ministry of Finance (November 2018), *Mid-term Review of National Employment and Skills Strategy (NESS) 2014-2020*, p. 43.

<sup>182</sup> Ministry of Finance and Economy (2019), *National employment and skills strategy 2019-2022*, published in the *Official Journal*, No. 144 of 25.10.2019, pp. 11973-11974, available at: <https://qbz.gov.al/eli/fz/2019>.

<sup>183</sup> Labour Code, Law No. 7961, dated 12.7.1995, as amended in 1996, 2003, 2008 and 2015. Note that Article 115 was amended in 2015.

'The employer pays the employees equally, for the same work or the same work value, without discriminating for any of the causes mentioned in Article 9(2) of this Code.'

Article 16 of the LGE states:

'In order to actively promote equality between females and males, before and during work relations, the employer and any other individual acting on behalf of the employer, at the capacity of the mediator, agent or representative shall be obliged to:

(...)

7. Provide equal payment for equal value work.'

'Work of equal value' is defined in Article 4(8) of the LGE as:

'(...) the paid activity which, compared to the same indicators or unit of measure of another activity, displays similar or equal knowledge and professional abilities in carrying out the same or almost the same amount of physical and intellectual efforts.'

#### 4.2.2 Definition in national law

The concept of pay is defined in the Albanian Labour Code, Article 109(1'): 'Pay means basic salary as well as permanent allowances'.<sup>184</sup>

However, the Albanian legislation does not limit the definition of pay merely to this provision, but further defines equal pay in Article 115 as:

'2. (...) Equal pay, without discrimination, is the pay that:

a. for the same standardised work is calculated in base of the same unit of measurement;

b. for the same time rates is the same for the same work position.

3. For the purpose of this Article, pay is referred to the ordinary base or minimum salary, or to the salary and any other payment, whether in cash or in kind, which the worker receives directly or indirectly, by his employer, for his accomplished work.'

The definition of pay in the Albanian Labour Code, Articles 109(1) and 115(2) and (3), complies with the wording of the definition given in Article 157(2) TFEU.

The author of this report is not aware of any related case law.

#### 4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

Article 115(2) and (4) of the Albanian Labour Code implements Article 4 of Recast Directive 2006/54 and has a broader scope, because it refers to any ground protected by discrimination provided for in Article 9 of the Labour Code, and not only sex.

The first sentence of Article 115(2) prohibits direct and indirect discrimination, according to Article 9 of the Labour Code, in relation to all the aspects and conditions of remuneration for the same work or for work with the same value. Meanwhile, the wording of Article 115(4) provides that it will not be considered discrimination in pay, if the differences in payment are based on objective criteria set in this subsection, especially those related to the nature of the work, quality and quantity of work, work conditions, vocational training and work experience, physical and intellectual endeavours, experience and responsibility.

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<sup>184</sup> Labour Code, Law No. 7961.

#### 4.2.4 Related case law

The author of this report is not aware of any relevant case law.

#### 4.2.5 Permissibility of pay differences

Article 115(4) of the Albanian Labour Code explicitly allows pay differences based on objective determined criteria:

'Equal work or equal valued work is based on all related criteria, especially the nature of the work, quality and quantity of work, work conditions, vocational training and work experience, physical and intellectual endeavours, experience and responsibility. Pay differences that are based in the objective criteria, determined in this subsection, shall not be considered discrimination in payment.'

The author of this report is not aware of any related case law.

#### 4.2.6 Requirement for comparators

In the view of the author of this report, the Albanian Labour Code sets two hypothetical comparators for measuring equal pay:

- i. unit of measurement;
- ii. work position.

These comparators follow from the logical interpretation of the second sentence of Article 115(2) as follows:

- '(...) Equal pay, without discrimination, is the pay that:
- a. for the same standardised work is calculated in base of the same unit of measurement;
  - b. for the same time rates is the same for the same work position.'

The author of this report is not aware of any related case law.

#### 4.2.7 Existence of parameters for establishing the equal value of the work performed

The parameters for establishing the equal value of the work performed are listed in Article 115(4) of the Labour Code, which refers to them as 'objective criteria' of equal work or equal valued work. They are:<sup>185</sup>

- nature of the work;
- quality and quantity of work;
- work conditions;
- vocational training and work experience;
- physical and intellectual endeavours; and
- experience and responsibility.

There is case law in relation to the parameters for equal pay. Decision V-34/17 of the Constitutional Court used some parameters as regards the equal pay of judges: the nature of work and the wage level of a high-level civil servant. The explicit expression of these parameters in Paragraph 95 of the ACC decision was:

'(...) the wage of judges must correspond to the dignity of this profession and an appropriate wage is necessary to protect judges from inappropriate external

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<sup>185</sup> Labour Code, Law No. 7961.

interference. (...) it should be comparable with the wage level of higher civil servants. The wage should be based on a general standard, objective and transparent criteria and not on the evaluation of the individual performance at work of the judge. Bonuses that include elements of discretion should be excluded.'

#### 4.2.8 Other relevant rules or policies

In the view of the author of this report, according to regulations provided for in the Albanian Labour Code, ordinary base salary must be seen as an additional parameter for establishing the value of equal value of the work performed.

Ordinary base salary is a base unit when calculating pay/salary, because explicit provisions of the Labour Code refer to it:

- Article 115(3) 'Equal pay': 'For the purpose of this Article, pay is referred to the ordinary base or minimum salary, or to the salary and any other payment, whether in cash or in kind, (...)';
- Article 18/5(4) 'Temporary agency work': 'If the employee is hired for an indefinite duration, during the time that he is not employed in the host enterprise is paid at least 50 % of his/her ordinary base salary, (...).'

The provisions of Labour Code on pay and salaries refer to the collective bargaining agreement. Article 110(1) of the Labour Code states:

'The employer pays to the employee the salary according to the collective bargaining agreement or individual contract, and in their absence, the employer is obliged to pay the ordinary salary for that given job.'

This means that 'ordinary salary' is at least 'minimum salary' and refers to the minimum salary given to other employees for that given job.

#### 4.2.9 Job evaluation and classification systems

The Albanian legislation provides for job evaluation and classification systems only in the Law on civil service and two DCMs issued on its basis, listed in the following:

- i. the Law on civil service;
  - ii. the recast DCM No. 109/2014 on evaluating the results of the work of civil servants (the recast DCM on job evaluation of civil servants);
  - iii. the recast DCM No. 1037/2015 on the procedures of civil servants' evaluation for obtaining and updating of additional knowledge (the recast DCM on job evaluation for additional knowledge).
- i. The Albanian Law on civil service, concerning job evaluation, states in Article 62 (1, 1/1 and 4) respectively that:<sup>186</sup>

'1. Evaluation of results at work is the process of verifying the overall realisation of the objectives set at the beginning of the evaluation period, as well as the skills and weaknesses of the employee in performing the tasks that are performed every 6 months. (...).

1/1. In addition to the evaluation, according to point 1 of this Article, the employees are evaluated periodically, according to determinations by DCM, also for obtaining and updating additional knowledge necessary for their realisation of functions, (...).

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<sup>186</sup> Law No. 152/2013, as amended, Article 62, 'Job evaluation'.

4. The Council of Ministers approves the detailed procedure for the evaluation of work results and the competences for the evaluation.'

As regards classification in job evaluation, Article 62(2) of the Law on civil service states that the civil servant can be evaluated as having performed at one of the following levels:<sup>187</sup> very well, well, satisfactory, non-satisfactory.

- ii. The recast DCM No. 109/2014 on job evaluation of civil servants sets the procedure for the job evaluation of civil servants working at the institutions of the state administration, independent ones and the local government units. This DCM also regulates the system of evaluation of the results at work in Chapter II. It sets guidance on job evaluation and its components: assessment of the realisation of objectives at work and assessment of professional ethics. For example, as regards the assessment of professional behaviour, this DCM in Chapter II (Articles 10 and 11) sets different evaluating elements for executive civil servants of low and middle management category, and others for those in the senior management category.
  - The assessment of professional ethics for the executive civil servants of low and middle management has to do with the evaluation of: mistakes/accuracy in the work performed; timely implementation of work; the collegiality of relations; readiness for group work; requests for advice; and managerial skills.
  - The assessment of professional ethics for the senior management has to do with the evaluation of leadership skills, managerial abilities (technical, conceptual), the ability to establish collaborative relationships and the ability to adapt to changes.

The recast DCM No. 109/2014 contains specific elements of the evaluation form in Chapter 4 and two guiding models of job evaluation forms for senior management civil servants in Annex 1 and executive civil servants in the low and middle management category in Annex 2.<sup>188</sup>

These job evaluation forms in the annexes of the recast DCM No. 109/2014 later served as guidance for job evaluation in other public institutions, whose employees are not civil servants. The basis for their evaluation is set on internal regulations of institutions and/or individual work contracts. The author of this report is not aware of the use of these forms by private institutions or businesses, although for example banks and universities use diverse forms of job evaluation for their employees and professors.

- iii. The recast DCM No. 1037/2015 on job evaluation for additional knowledge sets the procedures for the assessment of civil servants for obtaining and updating of additional knowledge according to the functions and the field in which they operate. This process includes prior testing, and, where necessary, training of civil servants for the new knowledge affecting their field. At the end of the training, there is a written test on the knowledge gained during the training.

#### 4.2.10 Wage transparency

The Law on right to information of 2014 provides an obligation on wage transparency for public institutions. As yet there is no law that imposes such an obligation on the private sector.

<sup>187</sup> Law No. 152/2013, as amended, Article 62, 'Job evaluation'.

<sup>188</sup> Please note that these guidance evaluation forms are available at the webpage of the Albanian Department of Public Administration at: <http://dap.gov.al/legjislacioni/udhezime-manuale/59-formular>.



According to Article 7(1)(d), every public institution, in the context of the programme for transparency, should publish on its webpage, in an easily understandable and accessible format, information related to:<sup>189</sup>

'(...) salaries of officials having the obligation to declare property and assets according to the law, salary structures for other employers, (...).'

So far, there is no case law on wage transparency, either at the CPD or the courts.

#### 4.2.11 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

The Law on local government finances, No. 68/2017, provides for gender budgeting in Article 2(8): to ensure that the creation and distribution of local financial resources accelerates and realises gender equality.

The author of this report is not aware of any other transparency measures.

#### 4.2.12 Other measures, tools or procedures

There is nothing further to report.

### 4.3 Access to work, working conditions and dismissal

#### 4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

Albanian legislation defines the personal scope in relation to access to employment, vocational training, working conditions, etc. in several provisions of the Labour Code, the LGE and the LPD.

According to Article 9(1) of the Labour Code, any form of discrimination against all employees or groups of employees in relation to the right for employment and to a profession, as provided for in the Labour Code and the LPD, is prohibited. According to expanded legal interpretation of Article 115(1) of the Labour Code, discrimination is prohibited by the employer of employees performing same work or same value work for any of the causes listed in Article 2 of the Labour Code, which is an open list of grounds protected from discrimination.

Article 12(1) and (2) of the LPD, refers to several subjects, such as any person, the employer, the employee/s, when prohibiting:

'the discrimination of any person related to his right for employment, based on any distinction, limitation or exclusion based on the grounds of discrimination listed in Article 1 of LPD and concerning: announcements of vacancies; recruitments and selection of employers; treatment of employers at the workplace, including their treatment during settlement or change of work conditions, pay, benefits and working environment, treatment related to vocational trainings or during the disciplinary process, dismissal or termination of work contract; membership in worker organisations and possibility to benefit from facilities provided by this membership; any kind of harassment, including sexual harassment, from the employer against an employee or job-seeking person or among employees.'

Article 17 of the LGE refers to different subjects, such as the employer in the public or private sector, as discriminating against:

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<sup>189</sup> Law No. 119/2014.

- i. the employee because of his/her gender, when with his actions used different standards and or/procedures towards employees with regards to: recruitment, training, retraining, promotion, professional encouragement, work management and distribution, duration and terms of the probation, social insurance and benefits in case of retirement, unemployment, illness, disability, incapability to work, the right to leave and paid leave, protection of health and safety at work, payment for equal value work, participation in worker organisation, etc.;
- ii. a candidate during job selection process or an employee for dismissing her because of maternity, potential pregnancy in the future, pregnancy, etc.;
- iii. employees when breaking gender equality during reorganisation or reformation of job positions.

The definition of 'employee' in Albanian legislation is given in Article 5(18) of the Law on security and health at work, as follows:<sup>190</sup>

'Employee is any person employed by an employer, including interns for the purposes of formation or introduction to the labour market, except for domestic employees.'

A similar definition is given in Article 3(4) of the Law on mandatory insurance of healthcare in the RoA: "Employed persons" are all persons employed by an employer.<sup>191</sup>

#### 4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

Albanian legislation defines the material scope in relation to access to employment, vocational training, working conditions, etc. in several provisions: Article 9(1) and (5) of the Labour Code, Article 12(1) and (2) of the LPD and Article 17 of the LGE.

Article 9 of the Labour Code states:

'1. Any form of discrimination in the exercise of the right to employment and profession, provided for in this Code and the special legislation for protection from discrimination, is prohibited.

(...)

5. For the purposes of this Article, the prohibition of discrimination and the application of the principle for equal treatment in the exercise of the right to employment and profession shall apply in relation to:

- a) possibility of employment, self-employment and profession, including selection and recruitment criteria, and promotion;
- b) access to all types and all levels of vocational training, training and advanced vocational re-training, including practical work experience;
- c) work and employment conditions, including dismissal as well as pay;
- d) membership of, and involvement in, worker and employer organisations, or any organisation, whose members exercise a certain profession, including the benefits provided by such organisations.'

Article 12 of the LPD states:

'1. Discrimination against a person in connection with his right to employment is prohibited.

Discrimination includes every distinction, limitation or exclusion that is based on the causes mentioned in Article 1 of this law and which, among other things, is related to:

- a) the announcement of free places of work;

<sup>190</sup> Law No. 10 237, dated 18.2.2010.

<sup>191</sup> Law No. 10 383, dated 24.2.2011, amended by Law No. 126/2013, dated 25.4.2013, Law No. 184/2013, dated 28.12.2013, Law No. 141/2014, dated 23.10.2014, Law No. 145/2015, dated 17.12.2015 and Normative Act No. 1, dated 25.1.2017.

- b) the recruitment and selection of employees;
- 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, treatment related to professional training or during the disciplinary process or related to dismissal from work or the dissolution of a labour contract;<sup>192</sup>
- d) membership of labour unions and the possibility of benefiting from the facilities that this membership secures.

2. Every kind of annoyance is prohibited, including sexual annoyance, by an employer against an employee or an applicant for work or between employees.'

Article 17 of the LGE states:

'1. The actions of the employer in the public or private sector shall be discriminatory if based on gender the employer:

- a. Uses differentiated standards and/or procedures towards employees with regards to recruitment, training, retraining, promotion in duty, professional encouragement, work management and distribution, duration and terms of the probation period, social insurance and benefits in case of retirement, unemployment, illness, disability, incapability to work, the right to leave and paid leave, protection of health and safety at work, payment for equal value work, participation in trade union organisations, other than for objective and justified reasons provided in Article 9 of this law;
- b. Creates differentiated working conditions for employees of the same level;
- c. Takes disciplinary measures against an employee, changes the working conditions, transfers that employee into another job, makes redundancies, dismisses or removes from work or terminates the employment contract;
- d. Places the employee in a disadvantaged position because of a complaint against the above actions of the employer.

2. It shall be prohibited to discriminate against a candidate in the job selection process or dismiss an employee from work because of maternity, potential pregnancy in the future, pregnancy, parental responsibility, civil status, family responsibilities. It shall not be considered as discrimination, if the work position is classified by the Council of Ministers as dangerous for the health of breastfeeding mothers and pregnant women.

3. In the process of reorganisation and reformation of job positions, the employer shall observe the rules of equal gender representation in terminating the work relations.'

The material scope of the Albanian legislation is broader than the scope of Article 14(1) of Recast Directive 2006/54.

#### 4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

In Albania, the exception on occupational activities provided for in Article 14(2) of Recast Directive 2006/54 has been implemented in Article 9(4) of the Labour Code and Article 12(3) of the LPD.

Article 9(4) of the Labour Code recognises exceptions when, because of the nature of professional activities or because of the conditions in which the profession or the activity is exercised, these characteristics constitute an indispensable real and professional

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<sup>192</sup> Note that the disciplinary process is the procedure related to disciplinary measures.

requirement provided that the scope of different treatment is legitimate and the requirements are proportionate.

Article 12(3) of the LPD recognises exceptions for the purpose of speeding up equality in the field of employment. 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.

#### 4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

Albanian legislation has provided for protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity, as follows:

- i. Article 9(2) of the Labour Code provides for pregnancy and/or maternity as protected grounds from discrimination; thus, it is prohibited to discriminate in the field of employment because of pregnancy and/or maternity;
- ii. Article 1 of the LPD also provides that pregnancy is a protected discrimination ground;
- iii. Article 17(2) of the LGE, prohibits discrimination against a candidate in the job selection process or the dismissal of an employee from work because of maternity, potential pregnancy in the future, pregnancy, parental responsibility, civil status, family responsibilities, (...).

#### 4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

Article 9 of the LGE provides the exception on the protection for women in relation to pregnancy, childbirth, new mothers and care for disabled members of the family, as non-discriminatory when the state takes special measures, including legal provisions, which are aimed at their protection.<sup>193</sup>

#### 4.3.6 Particular difficulties

There are no difficulties with this exception.

#### 4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

In order to ensure full equality in practice between men and women in working life, Albanian legislation includes the following provisions:

- Articles 8 and 9 of the LGE, on temporary and special measures to achieve factual equality among men and women, provide for a general regulation of positive action measures related to gender equality, without specifying working life;
- Article 9(9) of the Labour Code obliges the employer to take necessary and special measures that aim at accelerating the reach of real equality in employment and profession, when the lack of equality is caused by discrimination.

### 4.4 Evaluation of implementation

The Albanian legal framework in relation to equal pay for equal valued work is satisfactory. However, wage transparency measures are still to be implemented. The transparency

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<sup>193</sup> Law No. 9970, dated 24.7.2008.

measures applicable to the public sector are sufficient, but the issue of wage transparency in private businesses is problematic, although there is no relevant case law as yet.

As regards equal treatment, the legal framework is satisfactory: it sets two hypothetical comparators for measuring equal pay (unit of measurement, work position) and the 'objective criteria' as parameters for establishing 'equal value' (nature of the work, quality and quantity of work, work conditions, vocational training and work experience, physical and intellectual endeavours, experience and responsibility).

#### **4.5 Remaining issues**

There are no further issues to report.

## 5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)<sup>194</sup>

### 5.1 General (legal) context

#### 5.1.1 Surveys and reports on the practical difficulties linked to work-life balance

Several reports and surveys have been published in Albania over the last five years that provide insights into difficulties that workers face in practice in relation to work-life balance. These include:

- i. The National report of Albania under the third cycle of Universal Periodic Review (2019);<sup>195</sup>
- ii. National strategy and action plan on gender equality (2016-2020);<sup>196</sup>
- iii. National Employment and Skills Strategy (NESS) (2019-2022);<sup>197</sup>
- iv. National Employment and Skills Strategy (NESS) (2014-2020);<sup>198</sup>
- v. *Gender Brief in Albania 2016*, an assessment by UN Women and UNDP in Albania.<sup>199</sup>

- i. The Albanian national report under the third cycle of UPR provides relevant information on the implementation of recommendations from the second cycle of UPR review as follows:<sup>200</sup>

'34. Amendments of the Labour Code in December 2015 introduced new provisions, with direct impact in women, including: an improved definition of sexual harassment in the work place; the reverse of the burden of proof for sexual harassment; additional guarantees for women's return to work after their maternity leave; non-discriminatory remuneration for all, and not only for men and women, etc.'

- ii. The *National strategy and action plan on gender equality (2016-2020)*, under Strategic Goal No. 1 entitled 'Economic empowerment of women and men' sets an objective to reduce the unpaid work of women within the family by increasing the quality of and access to social services. The projected outcomes are:<sup>201</sup>

- reduction by 10 % of the unpaid work of women due to increased access to social services such as kindergartens, services for the elderly (especially for older women), services for women and children with disabilities, Roma and Egyptian women and women from marginalised groups;

<sup>194</sup> See Masselot, A. (2018) *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb> and McColgan, A. (2015) *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/3631-reconciliation>.

<sup>195</sup> Albanian Government (2019), *National Report of the Republic of Albania under the third cycle of Universal Periodic Review*, A/HRC/WG.6/33/ALB/1, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>.

<sup>196</sup> Ministry of Social Welfare and Youth (2016), *National strategy and action plan (2016-2020) on gender equality*, available at: <https://awenetwork.org/wp-content/uploads/2017/01/SKGJB-EN-web.pdf>.

<sup>197</sup> Ministry of Finance and Economy (2019), *National employment and skills strategy 2019-2022*.

<sup>198</sup> Ministry of Social Welfare and Youth (2014), *National employment and skills strategy 2014-2020*, available at: [http://financa.gov.al/wp-content/uploads/2018/06/Strategjia\\_Kombetare\\_per\\_Punesim\\_dhe\\_Aftesi\\_Plani\\_Veprimit.pdf](http://financa.gov.al/wp-content/uploads/2018/06/Strategjia_Kombetare_per_Punesim_dhe_Aftesi_Plani_Veprimit.pdf).

<sup>199</sup> UN Women Albania and UNDP (2016), *Gender Brief Albania*, available at: [https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2016/10/unw%20gender%20brief%20albania%202016\\_en\\_web.pdf?la=en&vs=2652](https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2016/10/unw%20gender%20brief%20albania%202016_en_web.pdf?la=en&vs=2652).

<sup>200</sup> Albanian Government (2019), *National Report of the Republic of Albania under the third cycle of Universal Periodic Review*, Paragraphs 34 and 94.

<sup>201</sup> Ministry of Social Welfare and Youth (2016), *National strategy and action plan (2016-2020) on gender equality*.

- assessment of services offered by local government authorities on the basis of their new remit and functions in the framework of the administrative-territorial reform.
- iii. *NESS 2019-2022*, during the analysis of the strategic objectives, stipulates that the creation and implementation of an active employment policy is the main element of the approach and solution to employment problems:<sup>202</sup>
- 'Policies aimed at improving employment prospects should have a broader scope of action. At the same time, programmes should target those who are most disadvantaged in the labour market, especially individuals with low levels of education and qualifications, women, young people, other vulnerable groups and those who live in areas not covered by employment services. Therefore, a new framework for employment promotion will be designed to ensure the use of more efficient policies and more resources for the labour market based on Law No. 15/2019 on employment promotion.'
- iv. *NESS 2014-2020* stressed the following difficulties related to work-life balance:<sup>203</sup>
- 'The lack of support and limited offer of state care turns women into caregivers for children, sick persons and elderly. Due to the fact that women are responsible for the birth and care of children and because of weak politics for providing child care, the female labour force is characterised by the discontinuity of employment, especially during the childbearing period, leading to an average time of five years of less working experience during the active life cycle, compared to men. This affects further negatively the female position in the labour market. Another factor, that affects negatively in low remuneration of women, is also their low involvement in private businesses as self-employed.'
- v. *Gender Brief in Albania 2016* shows the need for sex-disaggregated data on the beneficiaries of maternity and paternity leave in order to monitor the proportion of mothers and fathers who actually go on maternity or paternity leave – such monitoring is the responsibility of the Social Insurance Institute.<sup>204</sup> Other findings relate to women's access to social benefits in rural areas:<sup>205</sup>
- Women's work in agriculture is predominantly informal, and as a result, women tend to be excluded from the social protection and insurance system. For instance, in 2015, only 32 % of women giving birth to a child received a maternity allowance, indicating very low rates of social insurance coverage in general. The share of rural women receiving a maternity leave allowance is significantly less than that of women in urban areas.
  - Women's informal status in agriculture reduces their access to entitlements, productive resources, and services, while the lack of economic and educational opportunities further limits social and economic development. Such imbalances are also reflected in the unequal distribution of power at the household level. Women's rights to own and inherit land as well as determine its use in rural areas is limited. Furthermore, domestic violence, a clear indicator of the status of women in any given society, is widespread and socially tolerated in rural areas.

### 5.1.2 Other issues

There is nothing further to report.

<sup>202</sup> Ministry of Finance and Economy (2019), *National employment and skills strategy 2019-2022*, p. 11.976.

<sup>203</sup> Ministry of Social Welfare and Youth (2014), *National employment and skills strategy 2014-2020*, p. 22.

<sup>204</sup> UN Women Albania and UNDP (2016), *Gender Brief Albania*, p. 52.

<sup>205</sup> UN Women Albania and UNDP (2016), *Gender Brief Albania*, p. 56.

### 5.1.3 Overview of national acts on work-life balance issues

At constitutional level, pregnant women and new mothers enjoy protection under Article 18 on equality and non-discrimination on grounds of gender, and special protection under Part II 'Fundamental Human rights and freedoms', Chapter IV 'Economic, social and cultural rights and freedoms', Article 54(1):

'Children, young people, pregnant women and new mothers have the right to special protection by the state.'

Pregnancy, maternity and/or family or marital condition are protected grounds from discrimination in several laws, such as: the Labour Code, Article 9; the LGE, Articles 17(2) and 21(e); the LPD, Article 1; the Administrative Procedure Code, Article 11; the Law on social care services, Article 3(19); the Law on social housing, Article 10; and the Code of Criminal Justice for Juveniles, Article 11.

The Labour Code provides for specific forms of protection in the event of pregnancy, childbirth, and for breastfeeding mothers:<sup>206</sup>

- special protection to work-life (Articles 18/5(2), 55(5), 90(3/1), 104);
- special work conditions (Article 54(2);
- maternity leave (Article 105);
- protection of employment (Article 106);
- night work (Article 108).

The Law on social security regulates relations in the field of social security.<sup>207</sup> The general system of social security, as provided for in Article 1 of this Law, is composed of the following components:

- compulsory social security;
- voluntary social security;
- supplementary social security;
- special state pensions;
- social pensions;
- professional funds and voluntary pension funds.

The Law on social security has several provisions regulating insurance and benefits for pregnancy/maternity.<sup>208</sup>

The Law on health and safety at work also contains several provisions (Articles 4, 12, 31, 33–35) concerning the special protection of pregnancy, maternity, and/or breastfeeding mothers and related employer's obligations.<sup>209</sup>

The Law on social care services, Article 6(ç), provides for pregnant women and the parent of a single child as beneficiaries of the social care services.<sup>210</sup>

The Law on social housing provides for special protection for pregnant and single mothers with no financial income (Articles 16, 34, 58 and 62).<sup>211</sup>

The Law on employment promotion focuses on 'special groups', which, according to Article 3, include single heads of households with children, parents of children with disabilities,

<sup>206</sup> Labour Code, Law No. 7961, dated 12.7.1995, as amended in 1996, 2003, 2008 and 2015.

<sup>207</sup> Law No. 7703, dated 11.5.1993, as amended.

<sup>208</sup> Note that the Law on social security uses a single term in Albanian '*barrelindje*' which means both 'pregnancy' and 'maternity'.

<sup>209</sup> Law No. 10 237, dated 18.2.2010.

<sup>210</sup> Law No. 121/2016.

<sup>211</sup> Law No. 22/2018.



trafficking victims/possible trafficking victims, victims of gender violence and domestic violence, mothers under the age of 18, etc.<sup>212</sup> Article 20 provides for positive measures in relation to employment for persons belonging to special groups.

The Law on civil servants provides for special protection in employment for pregnancy and maternity.<sup>213</sup>

In addition to national acts on work-life balance issues there are Decisions of the Council of Ministers (DCM), which are also relevant, such as: DCM No. 634, dated 15 July 2015 on the introduction of measures regarding the health and safety of pregnant workers and young mothers.

#### 5.1.4 Political and societal debate and pending legislative proposals

During the reporting period there has been no related debate or pending legislative proposals.

## 5.2 Pregnancy and maternity protection

### 5.2.1 Definition in national law

DCM No. 634, dated 15 July 2015, on the introduction of measures regarding the health and safety of pregnant workers and young mothers, provides definitions for:

- pregnant workers;
- workers who have recently given birth; and
- workers who are breastfeeding.

The definitions are:

'A pregnant worker is every worker that is pregnant and informs the employer on her state in accordance with the legislation in force, antenatal (prenatal) clinical care guidelines and practical protocols in primary health care.

A worker who has recently given birth is every worker that has given birth and is back at work before the child reaches the age of one, and informs the employer on her state in accordance with the legislation in force, postnatal clinical care guidelines and practical protocols and wellbeing of the child under primary health care.

A breastfeeding worker is every worker who is breastfeeding her baby till the age of one, and informs the employer on her state in accordance with the legislation in force, guidelines and protocols on breastfeeding of the child under primary health care.'

### 5.2.2 Obligation to inform employer

Article 5(1) of DCM No. 634, providing regulations regarding the health and safety of pregnant workers and young mothers, provides that the employee must give the employer verification through a medical report.

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<sup>212</sup> Law No. 15/2019.

<sup>213</sup> Law No. 152/2013, as amended 2014.

### 5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is a decision of the District Court of Shkodra in *A.K. v. the Regional Hospital of Shkodra*.<sup>214</sup> The court in this case considered that a working woman during pregnancy cannot be considered incapable of work.

The claimant A.K. was the director of the hospital and was dismissed when she was pregnant. One of her claims concerned payment for the period of temporary incapability for work, because she was five months pregnant when she was dismissed. The court refused this request because:<sup>215</sup>

'The claimant has been dismissed during the time when she was effectively at work and not during a period of incapability to work. The right to be paid for the period of temporary incapability at work is given to the persons that are in a work relationship and not to those that are dismissed. (...). The law provides for the prohibition to solve the work contract during the time when the employee is at temporary incapability to work or on leave that is covered by social security, including the maternity leave or when the employee is incapable to work. During pregnancy, the working woman cannot be considered incapable to work.'

### 5.2.4 Implementation of protective measures (Articles 4-6 of Directive 92/85)

According to the Labour Code, Article 104(6), the Council of Ministers determines the non-exhaustive list of the factors, processes and work conditions that could harm the safety or health of the mother and/or the child, and special rules on working conditions for pregnant woman, those that have recently given birth and breastfeeding mothers.

DCM No. 634 approves the Regulation on the introduction of measures on the health and safety at work for pregnant women and young mothers and its Annexes I ('Non-exhaustive list of agents, processes and work conditions') and II ('Non-exhaustive list of agents and work conditions for cases in which it is forbidden to expose workers during pregnancy, maternity and/or breastfeeding to risks').

These provisions fully implement Articles 4-6 of Directive 92/85.

### 5.2.5 Case law on issues addressed in Article 4 and 5 of Directive 92/85

There has been no relevant case law so far.

### 5.2.6 Prohibition of night work

Article 108(1) and (2) of the Labour Code, as amended in 2008 and 2015, provides a prohibition on the employer ordering pregnant workers, workers who have recently given birth and until the child reaches one year old and/or breastfeeding workers to undertake night work:

'1. The employer cannot order a pregnant woman or a woman who has recently given birth, up until the child reaches one year of age, to undertake night work, if this would be harmful for the safety and health of the woman and/or the child, certified by a medical report.

<sup>214</sup> District Court of Shkodra, Decision No. 326, 9.2.2009.

<sup>215</sup> Semini – Tutulani, M., (2014), *Konfliktet gjyqesore te marredhenieve te punes pare nen kendveshtrimin gjinor* (Judicial conflicts in employment from a gender perspective), UN Women Albania and the Swedish Government, p. 69, available at: <https://www.undp.org/content/dam/albania/docs/misc/Konfliktet%20gjyqesore%20te%20marredhenieve%20te%20punes%20nen%20kendveshtrimin%20gjinor.pdf>.

2. When a pregnant woman or a breastfeeding woman who returns to work after the 63-day post-partum period, is unfit to work at night, as certified by a medical report, but it is not inappropriate for her to work during the day, she shall be transferred to a similar day job, which is appropriate.'

In the view of the author of this report, this is a correct implementation of Article 7 of Directive 92/85.

#### 5.2.7 Case law on the prohibition of night work

There has been no relevant case law so far.

#### 5.2.8 Prohibition of dismissal

The Albanian Labour Code provides for employer's rights and obligations related to dismissal of employee during pregnancy/maternity in two respects:

- i. the prohibition on terminating the contract during pregnancy/maternity/adoption leave;
- ii. permission in exceptional cases to dismiss an employee during her pregnancy or when she has returned to work after having given birth to her child.
- i. Article 107(1) provides that the termination of a contract during pregnancy/maternity/adoption is invalid:

'The termination of a contract of employment announced by the employer during the period during which the employee claims to benefit from social security income in the event of birth or adoption is invalid.'

According to the Law on social security, Article 27(2), the benefit period in the event of birth refers to pregnancy/maternity and is 365 calendar days, including a minimum of 35 days ante-partum and 63 days post-partum; meanwhile, for the adopting mother of a child up to the age of one, the benefit period will be from a minimum of 28 days to 330 days.

- ii. The second issue is provided for in Article 105/a(2) as follows:

'In cases where the employment contract is terminated by the employer, when the woman is at work during her pregnancy or has returned to work after the birth of the child, according to Article 105 of this Code, it is up to the employer to prove that the reason for dismissal was not pregnancy or childbirth.'

There is no legal authentic interpretation of the wording 'during her pregnancy', but by literal interpretation we can deduce that this implies 'from the beginning to the end of the pregnancy'.

Article 105 refers also to the Law on social security. According to Article 27 of Law on social security the protection period of maternity leave is until the child reaches the age of one.

As provided for in Article 10(1) of Directive 92/85, the Albanian legislation according to the provisions of Article 105/a(2) permits dismissal in exceptional cases on the condition that the employer proves that 'the reason for dismissal was not pregnancy or childbirth'.

#### 5.2.9 Redundancy and payment during maternity leave

The benefits for maternity leave are paid by the social security obligatory fund, thus when an employee is made redundant during her maternity leave, the payment for maternity

leave does not cease.

#### 5.2.10 Employer's obligation to substantiate a dismissal

Article 105/a(2) of the Labour Code explicitly provides for the obligation of employer:

'(...) to prove that the reason for dismissal was not pregnancy or childbirth'.

Thus, the employer must indicate substantiated grounds for dismissal.

#### 5.2.11 Case law on the protection against dismissal

There have been several cases on the protection against dismissal.

The decision of the District Court of Shkodra in *A.K. v. the Regional Hospital of Shkodra*, is described in Section 5.2.3, above. The court ruling made the following point in relation to dismissal:

'The claimant has been dismissed during the time when she was effectively at work and not during a period of incapability to work. (...). The law provides for the prohibition to terminate the work contract during the time when the employee is at temporary incapability to work or on leave that is covered by social security, including the maternity leave or when the employee is incapable to work.'<sup>216</sup>

In 2019, the CPD had a case concerning the claim of a pregnant woman dismissed during her pregnancy through a collective dismissal during the restructuring of the enterprise – *DD v. Albpetrol SA*.<sup>217</sup>

The claimant, Mrs DD, invoked two grounds of discrimination: pregnancy and health condition, for which she claimed that she was dismissed during the restructuring of the enterprise where she worked.

Through investigative proceedings made available on the case, the CPD evaluated that the claimant DD had not been exposed to unfair and unfavourable treatment by Albpetrol SA. Thus, it found that Mrs DD had not been discriminated against by Albpetrol SA on the grounds she claimed, as a result of her involvement in the collective dismissal implemented by this company.

However, the CPD paid attention to the fact that during the process of terminating the employment contract, Mrs DD had been pregnant. The Commissioner stated that international agreements ratified by the RoA, especially Article 8 of the ILO Maternity Protection Convention No. 183 and Article 8(2) of the Revised European Social Charter:<sup>218 219</sup>

'(...) consider illegal the termination by the employer of the pregnant woman's employment contract, without making any distinction as to whether the dismissal is individual or collective.

Regarding the above, the CPD considers that despite the implementation of the collective dismissal, the fact that Mrs D.D. has been pregnant constitutes illegality in the actions of Albpetrol SA, which has started the procedure for terminating the employment relationship with this employee. The pregnancy of Mrs D.D. has been a well-known fact also as a result of the reports of temporary incapability for work, which the claimant has submitted almost every month.'

<sup>216</sup> District Court of Shkodra, *A.K. v. the Regional Hospital of Shkodra*, decision No. 326, 9.2.2009.

<sup>217</sup> CPD Decision 129, dated 27.9.2019, *DD v. Albpetrol SA*.

<sup>218</sup> As regards the ratifying laws please refer to Section 1.3 of this report.

<sup>219</sup> CPD Decision 129/2019, pp. 11-12.

## 5.3 Maternity leave

### 5.3.1 Length

The length of maternity leave is provided for in the Law on social security, as amended. Article 127(2) on 'Income for maternity leave' states:

'The benefit period will be 365 calendar days, including a minimum of 35 days ante-partum and 63 days after the birth of the child. For a woman who is bearing more than one child, the benefit period will be 390 calendar days, including a minimum of 60 days ante-partum and 63 days after giving birth to the children.'

### 5.3.2 Obligatory maternity leave

Obligatory maternity leave is provided for in Article 127(2) of the Law on social security, when referring to the minimum period of benefiting from ante and post-partum income for maternity leave.

The obligatory maternity leave is also explicitly set in Labour Code, Article 109(1), as follows:

'The work of a pregnant woman 35 days before childbirth and 63 days after childbirth shall be prohibited. When a pregnant woman bears more than one child, the first period becomes 60 days.'

### 5.3.3 Legal protection of employment rights (Articles 5, 6 and 7 of Directive 92/85)

Albanian legislation has transposed EU legislation related to employment rights referred to in Articles 5, 6 and 7 of Directive 92/85.

Article 104(2-5) of the Labour Code regulates the prohibition of heavy and harmful work for pregnant women and new mothers and provides for the adoption of timetables and conditions of work for them. If moving the woman to another job is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds, the worker concerned will be granted leave in accordance with the legislation on social security for the whole of the period necessary to protect her and/or her baby's health and safety.

### 5.3.4 Legal protection of rights ensuing from the employment contract

Article 105/a(1) of the Labour Code ensures the pregnant woman's right to have paid leave, in agreement with the employer, to attend medical visits, when these are necessary, during the woman's working hours.

On allowances during maternity leave, Article 26 of the Law on social security ensures employees rights related to pregnancy/maternity for which the relevant branch/fund<sup>220</sup> pays for:

- 'a. benefits for pregnancy/maternity;
- b. benefits for compensation of maternity/paternity because of a change of workplace;
- c. childbirth allowance.'

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<sup>220</sup> The Albanian term used in the law is translated as 'branch', but its meaning in the law is 'fund'. That is because the obligatory social services fund is divided into several branches that provide for separate social security fields: illness; pregnancy/maternity; pensions, etc.

### 5.3.5 Level of pay or allowance

The pregnancy/maternity income for the insured woman, according to the Law on social security, Article 27(3), is calculated as follows:

- '(a) 80 % of the daily average of the estimated net wage of the last twelve months from the date of entitlement to payment for the prenatal period and for the 150 calendar days after birth;
- (b) 50 % of the daily average of the estimated net wage of the last twelve months from the date of entitlement to payment for the subsequent period.'

Sick leave may be lower; according to Article 22, sick leave takes the daily average of the estimated net wage of the last six months from the date of entitlement to payment and is calculated as:

- 80 % for those having more than 10 years insurance;
- 70 % for those having up to 10 years of insurance;
- 50 % when the employee is hospitalised.

### 5.3.6 Additional statutory maternity benefits

Maternity benefits are paid not by the employer, but by the social security services; that is why there is no additional statutory maternity benefit supplemented by the employer.

### 5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

The conditions for eligibility for pregnancy/maternity allowance are set out in Article 27(1) of the Law on social security:

- 'The pregnancy/maternity income is paid to the insured woman for the pregnancy and birth of the child when she has a 12 months insurance period, for any benefit case. An exception from the rule of insurance period is the case when the right to payment for the next childbirth occurs within 24 months from the date of the birth of the previous child.'

### 5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

According to Article 105(4) of the Labour Code, after finishing maternity leave, the employee has the right to return to the same workplace or an equivalent one, in conditions that are no less favourable to her, and to benefit from any improvement of employment conditions that would have benefited her during her absence.

### 5.3.9 Legal right to share maternity leave

After the obligatory 63 days of maternity leave, it is up to the woman to decide whether to return to work or to benefit from social security.

If she decides to return to work after the 63-day post-partum period, according to Article 105(3) of the Labour Code, she has the right to share leave in agreement with the employer, to breastfeed the baby until the age of one, and can choose to take maternity leave on a part-time basis.

Article 105(3) of the Labour Code sets out the basis on which part-time maternity leave is taken in agreement with the employer:

- '(a) a paid break of two hours during normal work life; or

- (b) work life reduced by two hours with the same salary as if she had worked for the daily normal work life.'

As 'daily normal work life' is no more than 8 hours (Article 78(1) of the Labour Code), part-time maternity provided for in Article 105(3) means that the breastfeeding mother will be paid by the employer as if she had worked for eight hours, although she will only work for six hours, for example:

- (a) work from 8.00 to 16.00 and have a break of two hours, or
- (b) work from 8.00 to 14.00.

Paternity leave is provided for in Article 27(7) of the Law on social security, after the 63-day post-partum period, as a right of the insured father or adoptive father to care for the children, if this right is not exercised by the mother or there are no conditions for the mother to benefit. Thus, the right to paternity leave for the father or adoptive father only exists in the event of the mother not taking leave after the 63 days.

### 5.3.10 Case law

There is some case law in relation to maternity leave, employments rights and/or return after maternity leave: in these cases the employer waited until the leave had formally finished, then dismissed the employee some days after she had returned from maternity leave.

In 2019, the CPD had two cases of dismissal during maternity leave: CPD Decision No. 44/2019 and No. 168/2019. In the first case, the claimant was dismissed right after she had taken the maternity leave; the CPD decided to interrupt the procedure because the aim for which it had been started had been achieved. The second case concerned the termination of the employment contract during maternity leave, and the CPD gave a decision of discrimination.

- i. Albania, Decision of the District Court of Shkodra No. 1924, dated 16 July 2012;
  - ii. Albania, Decision of the District Court of Tirana No. 6443, dated 10 June 2013.
  - iii. Albania, CPD Decision No. 44, dated 27 March 2019;
  - iv. Albania, CPD Decision No. 168, dated 18 November 2019.
- i. Albania, Decision of the District Court of Shkodra No. 1924, dated 16 July 2012: *LD v. the Forest Service Directorate of Malesi e Madhe*.

The claimant was dismissed by the Forest Service Directorate of Malesi e Madhe in October 2010 for the unjustified reason of job cuts; the dismissal decision, which coincided with the time when the claimant was on maternity leave, was not communicated to her at all. The court decided on the absolute invalidity of the administrative act of dismissal and the return of the parties to their previous situation.<sup>221</sup>

- ii. Albania, Decision of the District Court of Tirana No. 6443, dated 10 June 2013: *AZ v. the Ministry of Economy*.

The claimant worked at the Ministry of Economy as archivist on a fixed term contract, which had been renewed several times. She was dismissed immediately after returning from maternity leave, through a verbal order of the employer who gave as the reason the fact that the maternity leave was finished. The court decided that the employer was obliged

<sup>221</sup> Semini – Tutulani, M. (2014), *Konfliktet gjyqesore te marredhenieve te punes pare nen kendveshtrimin gjinor* (Judicial conflicts in employment from a gender perspective), UN Women Albania and the Swedish Government, p. 70, available at: <https://www.undp.org/content/dam/albania/docs/misc/Konfliktet%20gjyqesore%20te%20marredhenieve%20te%20punes%20nen%20kendveshtrimin%20gjinor.pdf>.

to compensate the claimant for the termination of the employment contract without reasonable and justified reasons but did not decide in favour of her request to return to work.<sup>222</sup>

- iii. Albania, CPD Decision No. 44, dated 27 March 2019: *IS v. Central Real Estate Registration Office (CRERO)*;

The claimant Mrs IS was appointed 'specialist' of the card digitalisation sector of CRERO on 5 February 2018 and signed a six-month contract. She was in her sixth month of pregnancy at the time of signing the contract. She took the pregnancy leave on 1 June 2018, while on 1 August 2018 she was verbally notified by her colleagues about the termination of the work relationship because of the expiry of her six-month contract. However, she did not receive any written notification on this fact. The claimant alleges that the dismissal was selective because all the other employees with six-month contracts had their work contract renewed and continued work, while she was notified of dismissal right after beginning maternity leave, and she has reasons to believe that she was dismissed because of this fact (meaning her status as being on maternity leave). Subsequently, on 20 September 2018, she presented to the CPD a claim for discrimination on the grounds of pregnancy.

The CPD on 26 September 2018 sent a request for information on the claims of Mrs IS to the CRERO.

The information and claims of the CRERO are presented briefly below.

- Mrs IS was contracted to work on a specific project of the office. She was notified by letter No. 6485, dated 31 July 2018, that the financial and employment relationship ends on 5 August 2018 according to the deadline specified in the employment contract. The CRERO claimed that the employment contract had ended on 5 August 2018 and not at the time when it learned of the employee's pregnancy on 1 June 2018 proved with the maternity medical report.
- The project for which IS worked is a project that is approved for certain periods and objectives by the Board of Directors of the CRERO, which is why the contracts are short term.
- Following its submissions, the CRERO emphasised the fact that at the end of the maternity leave, upon request, Mrs IS can ask to be employed on the same project if its continuity as a project in the CRERO continues.

The CPD asked the CRERO for further information on the total number of employees with a temporary contract, the number of employees in the same project as the claimant and copies of their contracts, the number of contracts renewed with the continuation of the project, etc.

Following on from this, Mrs IS sent a request to be employed at the CRERO in an on-going project after finishing the maternity leave. She informed the CPD that her request is presumed to be fulfilled on 12 April 2019, and emphasised that if it were not she would present a new claim to the CPD. In the meantime, she requested that the CPD interrupt its investigating procedure.

In these conditions, the CPD considered that the effect and purpose for which the claim had been initiated had been achieved. Thus, he decided to terminate the investigation procedure and to adjourn the examination of the claim of Mrs IS.

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<sup>222</sup> Semini – Tutulani, M. (2014), *Konfliktet gjyqesore te marredhenieve te punes pare nen kendveshtrimin gjinor* (Judicial conflicts in employment from a gender perspective), UN Women Albania and the Swedish Government, p. 70.



- iv. Albania, CPD Decision No. 168, dated 18 November 2019: *JH v. Cadastral State Agency (former CRERO)*.

The claimant Mrs JH had worked as a cartographic specialist at one of the sectors of the former CRERO (which now is the Cadastral State Agency – hereinafter CSA) since 21 February 2017. She had a fixed-term contract with the CRERO. On 23 April 2018 she took pregnancy leave that ended on 12 April 2019. She claims that on 8 April 2019 before the end of the maternity leave, she sent a request to the CSA to return to work upon the expiry of the maternity leave. She did not receive any answer and, considering that it was a continuation of the employment relationship, she presented herself as usual at work in the directorate where she had previously worked. She claims that she was asked to meet the director of human resources and was notified that she was no longer part of the project and that her working contract had expired in December 2018, when she was still on maternity leave. She also claims that she asked for the dismissal order, the procedure and the notice of the termination of the employment contract, but she has not received any official response yet.

Mrs JH claimed that the dismissal had been selective and that other employees in the same working conditions had actually continued in an employment relationship with the CSA as a result of the renewal of their six-month contracts. Thus, she requested that the CPD find that there had been discrimination against her by the employer due to pregnancy and instruct the CSA that she should return to her previous job.

Through the investigative procedure, the CPD ascertained that the CSA acted contrary to Article 107(1) of the Labour Code, which states 'It is invalid the termination of the employment contract notified by the employer during the period during which the woman claims to receive income from social securities in the case of birth or adoption.' The employer, the CSA, was aware that the claimant was on maternity leave.

By declarations of the claimant, Mrs JH, and her written correspondence with the CSA resulted that she asked to come back to work after the expiration of the maternity leave because her contract is considered to terminate on 13 April 2019; meanwhile, the representatives of the CSA answered that it had expired without preliminary solution since 3 July 2018 within the deadline set in the individual employment contract with Mrs JH.

The CPD in his decision made no reference to the CJEU *Jiménez Meglar* C-438/99 case, but he referred to the position of the ECJ in two cases:

'(...) in the *Hoffman* case, Article 2(3) of the Directive 76/207/EEC, the Court recognizes the legitimacy, from the point of view of the principle of equal treatment, of the protection of the biological condition of women during and after pregnancy. In the case of non-renewal of a fixed-term contract, the ECJ found that, nevertheless, non-renewal due to pregnancy constituted discrimination in itself.

(...).

(...) in the case *Nadine Paquay v. Hoet & Minne*, the ECJ decided that the Directive 92/85/EC extends its protection not only for workers that are on maternity leave but even for workers who have been dismissed after returning from this leave when the employers have taken preparatory measures for such a decision before the end of the maternity leave period.'

The CPD also stressed the fact that the arguments and information sent to him by the CSA that the claimant JH has the right to apply to the protocol office of the CSA for the vacancies made public by the CSA, does not stand, because she delivered a protocol request on 16 April 2019, for which she received an answer on 20 September 2019, more than five months later.

Based on all the above, the CPD decided that:

‘the claimant JH has been discriminated in grounds of pregnancy by the CSA; the CSA should take the measures to rectify the consequences as regards the claims of Mrs JH for the employment at the CSA’.

## **5.4 Adoption leave**

### **5.4.1 Existence of adoption leave in national law**

The Albanian legislation provides for adoption leave in the Labour Code and the Law on social security.

Article 106(1) of the Labour Code provides for adoption leave in cases of the adoption of a newborn baby, for which the employee has the right to leave as provided for by the social security legislation. The adoption leave can be taken by only one of the adoptive parents – the adoptive mother or father.

Article 106(2) and (3) of the Labour Code provides legal guarantees for the employee who takes adoption leave, which are the same as the guarantees given to an employee on maternity leave:

- during this period the employer cannot oblige one of the adoptive parents that is benefiting from adoption leave to work;
- when adoption leave finishes, the employee has the right to return to his/her workplace, or another equivalent workplace on conditions that are not less favourable for them, and benefit from every improvement of workplace conditions that they would had benefited from during their absence.

Length of and payments for the adoptive leave are provided for in the Law on social security, Article 27. The calculations for adoptive leave are the same as the pregnancy/maternity leave calculations.

The Law on social security, Article 27(5), provides for the length of the leave for the adoptive mother of a child up to the age of one, and who has been insured no less than 12 months. The leave:

‘(...) begins the day of adoption, but not before the day after the 63<sup>rd</sup> day of the child’s birth, and goes on for no more than 330 days from the day of the child’s birth. The minimum leave period for the adoptive mother is 28 days.’

Article 27(7) of the Law on social security provides for paternity leave for the father or adoptive father after the 63-day post-partum period, as a right to care for the children of the insured father or adoptive father, if this right is not exercised by the mother or there are no conditions for the mother to benefit.

### **5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)**

Albanian legislation has transposed provisions of Article 16 of Directive 2006/54/EU in similar provisions in the Labour Code, Article 106(2, 3) on adoption leave, as follows:

- during this period the employer cannot oblige one of the adoptive parents who benefits from adoption leave to work;
- when adoption leave finishes, the employee has the right to return to his/her workplace, or another equivalent workplace, on conditions that are not less favourable for him/her, and benefit from every improvement of workplace conditions that would had benefited them during their absence.

### 5.4.3 Case law

The author of this report is not aware of any relevant case law.

## 5.5 Parental leave

### 5.5.1 Implementation of Directive 2010/18

Albania has partly implemented EU Directive 2010/18, when the Labour Code was amended in 2015 (Law No. 136/2015). Article 132/1 on parental leave was added to the provisions of the Labour Code for this purpose.

### 5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

Albanian Labour Code provisions are applicable to public and private sector workers, except for, according to Article 4, the employment of persons regulated by a special law.

### 5.5.3 Scope of the transposing legislation

The personal scope of Article 132/1 of Albanian Labour Code concerns employees that have more than one year of uninterrupted work with the same employer.

It does not include contracts of employment or employment relationships relating to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency, who are not entitled to parental leave.

### 5.5.4 Length of parental leave

Provision regarding length of parental leave does not differ between the public and the private sector. According to Article 132/1(1) of the Labour Code, the length of parental leave:

- is determined through agreement between the employee and the employer;
- cannot be less than four months until the child reaches the age of six;
- can be divided into separate periods, but no less than one week can be taken per year.

### 5.5.5 Age limits

Workers are entitled to parental leave until their child reaches six years old. In cases of adoption, parental leave can be given within 6 years following the date of adoption, but no later than when the child reaches the age of 12.

### 5.5.6 Individual nature of the right to parental leave

According to explicit wording in Article 132/1(1) of Labour Code:

‘The right to ask for parental leave is individual for each parent (...)’

### 5.5.7 Transferability of the right to parental leave

Parental leave is not transferable, except for cases where one of the parents dies.

#### 5.5.8 Form of parental leave

Article 132/1 provides for the following forms of parental leave:

- 'full time' in the cases where the employee asks for unpaid leave for no less than four months;
- 'separated in time' or 'in periods': 'The leave can be given separately, for no less than one week per year'.

The final determination of timeframes for parental leave requires mutual consultation and agreement between the employee (who presents the request in writing) and the employer (whose consent is needed).

#### 5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

In order to benefit from parental leave, as provided for in Article 132/1 (first sentence) of the Labour Code, the employee should have worked for more than one uninterrupted year with the same employer. The wording used in Article 132/1 does not exclude successive fixed-term contracts with the same employer, but excludes part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.

#### 5.5.10 Notice period

Article 132/1(3) of Labour Code provides for notice periods between employees and employers when setting and agreeing on the timeframes of parental leave:

'The employee must notify, in writing, the employer, at least two weeks before the beginning of parental leave. The employer, after consulting with the employee, has the right to postpone the date of beginning of the leave up to six months, if the employee could not be temporarily replaced, (...). The employer gives notice to the employee in writing for the reasons of the leave's postponement within two weeks from receiving the request.'

#### 5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

The employer can postpone parental leave for the following reasons:

- the employee could not be temporarily replaced;
- parental leave was asked by many employees in the same time; or
- the employee's workplace is of particular importance.

#### 5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

The provisions on the application of parental leave in Albania have no special arrangements on small firms.

#### 5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

The provisions on the application of parental leave in Albania have no special arrangements addressing the needs of parents of children with a disability or a long-term illness.

#### 5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

Article 132/1(2) of the Labour Code explicitly provides that, in cases of adoption, parental leave can be given within 6 years following the date of adoption, but no later than when the child reaches the age of 12.

#### 5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

There are no provisions protecting workers against less favourable treatment or dismissal when exercising parental leave.

#### 5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

The provisions on the application of parental leave in Albania do not have specific regulations related to the right to return to the same or equivalent job. However, there is no impediment if it is provided for in the parental leave agreement or the individual work contract.

#### 5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

The provisions on the application of parental leave in Albania do not have specific regulations related to the maintenance of rights acquired or in the process of being acquired by the worker.

#### 5.5.18 Status of the employment contract or relationship during parental leave

Because the parental leave is taken in agreement with the employer, the employment contract is suspended during parental leave.

#### 5.5.19 Continuity of entitlement to social security benefits

Parental leave is not covered by obligatory social security schemes.

#### 5.5.20 Remuneration

The employer does not pay for parental leave. However, there is no impediment if it is provided for differently in the parental leave agreement or the individual work contract.

#### 5.5.21 Social security allowance

There is no provision on any allowance for parental leave by social security system.

#### 5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

The parental leave conditions provided in Albanian legislation are not more favourable than the provisions of EU Directive 2010/18.

#### 5.5.23 Case law

The author of this report is not aware of any relevant case law.

## 5.6 Paternity leave

### 5.6.1 Existence of paternity leave in national law

Paternity leave is provided for in the following Albanian legislation:

- i. the Law on social security, Article 27(7);
- ii. the Labour Code, Article 96(3);<sup>223</sup>
- iii. the Recast DCM No. 511/2002, point 9(c).

Article 27(7) of the Law on social security, provides for paternity leave after the 63-day post-partum period, as a right of the insured father or adoptive father to care for the children, if this right is not exercised by the mother or there are no conditions for the mother to benefit.

Thus, when on paternity leave, the employee is entitled to social security benefits. Parental leave can begin after the 63<sup>rd</sup> day following the birth and can last for 267 days.

In the event of childbirth, a three-day paid paternity leave is provided for the consort or the cohabitant under the Labour Code, Article 96(3). Note that the Labour Code is applicable to employees of both public and private entities.

A three-day paternity leave for civil servants and employees of state institutions is also provided in point 9(c) of the Recast DCM No. 511/2002 on the duration of work and leave in state institutions:

- '9. The civil servant or the employee of a state institution has the right of a paid leave on the occasions as follows:  
(...)  
c. 'childbirth for fathers 3 days'.

### 5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

At the end of paternity leave, according to Article 105(4) of the Labour Code, the employee has the right to return to his own job or an equivalent one, in conditions that are no less favourable to him, and to benefit from any improvement of employment conditions that he would have benefited from during his absence.

### 5.6.3 Case law

The author of this report is not aware of any relevant case law.

## 5.7 Time off for *force majeure*

### 5.7.1 Time off for *force majeure*

The Albanian legislation provides for time off from work for *force majeure* for urgent family reasons in cases of sickness or accident in the following:

- i. the Labour Code, Articles 96(1,2) and 131;
  - ii. the Recast DCM No. 511/2002, points 9(ç,dh) and 10.
- 
- i. The Labour Code, Article 96(1) provides for the right of the employee for five days of paid leave on the occasion of loss of consort/cohabitant, his direct predecessor or

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<sup>223</sup> This provision was introduced in the Labour Code by the amendments in Law No. 136/2015.

descendants. Meanwhile, Article 96(2) provides for the right of up to 30 days' unpaid leave in cases of severe sickness of family members, cohabitant, or his direct predecessor or descendants, confirmed by a medical report.

Article 131 of the Labour Code provides for the absences at work of the employee in cases of an accident at work or a professional disease: when the employee cannot work for these reasons, the employee is entitled to benefits compensation from social securities.<sup>224</sup> In this case, there is no time limit set by the legislator; meanwhile, the detailed rules or further specifications are set by the Law on social security.

The Law on social security provides for: benefits in cases of sickness (Articles 20-25), payments for the insurance of accidents at work and professional diseases (Articles 43-52).

- ii. The Recast DCM No. 511/2002 on the duration of work and leave in state institutions, points 9(ç,dh) and 10 provide for, respectively, a paid leave of a few days for civil servants and state institutions' employees, and up to 30 days' unpaid leave for civil servants, in the following cases:

'9. The civil servant or the employee of a state institution has the right of a paid leave on the occasions as follows:

(...)

ç. the loss of parents, grandparents, consort, children, brothers, sisters, 5 days;

dh. Severe diseases of children, parents or grandparents, confirmed by a medical report, 5 days;

(...).

10. The civil servant has the right, in special cases, to seek unpaid leave for health reasons, for himself, the children, consort or parents. The duration of this leave is determined, upon the proposal of the direct superior, by the head of the institution. The maximum duration of all unpaid leave within a calendar year should not exceed 30 days.'

#### 5.7.2 Case law

In 2019, the CPD heard a claim for discrimination in the form of victimisation on grounds of health condition – CPD Decision No. 52, dated 16 April 2019: *EG v. National Library*, which also included a claim for time off for *force majeure*. This case is analysed at Section 5.8.2 below.

The claims of Mrs EG in her request for a finding of discrimination presented to the CPD included a claim against her employer (the National Library) in relation to a request for time off for *force majeure*:

'(...) on 31.08.2017 she asked by e-mail to the employer: a) (...); b) distress leave in July 2017; c) (...).'

The distress leave was not given to EG by her employer who alleged to the CPD, through written communications in the first phase of the CPD investigative procedure, that:

'Through written document nr. 152/3 prot., dated 25.09.2017, the Library answered to the claimant that, after evaluating her request, argued that: (...); she cannot benefit 5 days of paid leave due to family disasters that happened in July 2017, as

<sup>224</sup> Note that 'benefits compensation from social securities' is the exact wording used in Article 131 of the Labour Code, but the real meaning is that it can benefit from social security schemes as provided for in the Law on social securities. Thus, he does not take 'compensation', but 'social security payment because of invalidity'.

her request was made on 31 August 2017, because this leave is taken in cases the disaster occurs and not later.'

## **5.8 Care leave**

### **5.8.1 Existence of care (or carers') leave in national law**

Albanian legislation provides for care (or carers') leave in the following legislation:

- i. Labour Code, Article 132: care for children under responsibility;
  - ii. DCM No. 511/2002, points 9(dh) and 10: care for children, consort or parents.
- 
- i. In case of care leave for children – Article 132 of Labour Code – the employee benefits from his wage for a period of up to 12 days of absence per year; when the child is below three years old and sick, the employer can take up to 15 paid days of absence from work, and an extended period of no more than 30 unpaid days of absence per year.

The conditions for care leave for children are, by analogy, the same as for sickness leave provided for in Article 130(2) and (3) of the Labour Code:

- the employee has to confirm his inability to work through a medical report issued by the doctor;
  - at request of the employer, the employee is obliged to undergo examination by another doctor appointed by the employer;
  - if there is inconsistency in the views designated by the two doctors, the employee will be subject to an examination by a doctor appointed by the Labour Inspectorate.
- 
- ii. As regards DCM No. 511/2002, points 9(dh) and 10: care for children, consort or parents, the relevant articles, beneficiary subjects, conditions of access to such time off from work and payment conditions, see Section 5.7.1 above.

### **5.8.2 Case law**

In 2019, the CPD heard a claim for discrimination in the form of victimisation on grounds of health condition – CPD Decision No. 52, dated 16 April 2019: *EG v. National Library*. Among the claims of Mrs EG, she alleges that she twice claimed care leave from her employer and did not get the permission to take care leave in either case.

The claimant Mrs EG had worked since 2001 in different positions at the Albanian National Library; she objected administratively and judicially to her transfer on 15 February 2017 to another position and sector within the institution. Tirana District Court Decision No. 9787, dated 21 November 2017, considered this transfer an immediate unjustified termination of the employment contract. She also took a claim to the CPD on 21 June 2017 for discrimination on the ground of 'health condition' in relation to her transfer, for which the CPD gave a decision finding discrimination on grounds of health condition and ordered her employer to return her to her former job (Decision No. 43, dated 07 February 2018). Subsequently, CPD Decision No. 43/2018 underwent judicial review at the Tirana Administrative Court of First Instance, which in Decision No. 1790, dated 10 May 2018, upheld the discrimination decision but rejected the regulatory measure ordering the library to return her to her former job. This court decision has been appealed by both parties and is still proceeding (at least till the end of the decision making of the CPD on claims for victimisation).

Concerning the case of Mrs EG for discrimination in the form of victimisation, the claims of Mrs EG concerning care leave are presented chronologically below:



- on 3 October 2017 she sent an e-mail to the employer asking for her annual leave for the year 2017 and 30 days of unpaid care leave because of the severe sickness of her mother. The employer did not give her the permission for unpaid leave to care for her sick mother, alleging that she should have attached the medical reports to the request for care leave;
- on 10 November 2017 she sent another e-mail to the employer with the medical reports of her sick mother asking for 30 days' unpaid care leave. Mrs EG claims that, later, the employer did not justify her absence at work on 20 November 2017 and considered it as an abandonment of work and issued a dismissal order on 6 December 2017.

The claimant alleges that she became a victim of the complaint made by her to the CPD on her work-position transfer and that the employer used abandonment of work as justification to conceal the true cause of the discriminatory behaviour, as a result of her response in seeking to have her rights recognised by the CPD.

During the investigative procedure of the CPD, the National Library, as respondent, presented the following claims:

- first, as regards the claims of Mrs EG for discrimination through the denial of the unpaid care leave for her sick mother, the claimant made several requests through email on 31 August 2017 and on 3 October 2017, asking for annual leave and 30 days' unpaid leave to take care of her sick mother; she did not attach to her requests any medical report or documents to prove the serious health condition of her mother;
- from 20 November 2017 to 11 December 2017, the claimant did not appear at the institution nor did she inform the institution of the reasons for her absence from work; she did not present any written document, medical report or written request regarding this fact; thus, she abandoned the working relationship;
- the Library also claimed to the CPD that the case was being considered judicially and for this reason asked the CPD to stop the administrative investigation.

By the review of the documents administered and the chronology of events, the CPD evaluated that:

'The claim of Mrs EG for discrimination by the Library was submitted to the CPD on 21.06.2017. The dismissal order was issued on 11.12.2017. Decision No. 43 of the CPD was issued on 07.02.2018; through this decision, the CPD found that EG was discriminated by the National Library in grounds of health condition as regards her transfer of work position. Thus, it is clear that the claimant was finally dismissed as a result of this complaint, while her case was still under consideration and before the CPD expressed his final decision. (...) Thus, the CPD created reasonable suspicion and assessed that Mrs EG had been exposed to unfair treatment in the form of victimization by the National Library.'

## **5.9 Leave in relation to surrogacy**

There are no provisions related to surrogacy.

## **5.10 Flexible working time arrangements**

### **5.10.1 Right to reduce or extend working time**

- There is not yet a provision in Albanian Law that provides workers with a legal right to request a temporary extension of working time; this right is provided for employers in Article 89 of the Labour Code, for as long as is possible and necessary, taking into account the personal and family conditions of the employee.

- The right to ask to temporarily reduce working time is provided for in Article 105(3) of Labour Code, as a right of breastfeeding mothers returning from maternity leave.

Article 105(3) of the Labour Code provides the breastfeeding mother with a legal right to temporarily reduce her working time upon agreement with the employer.

Only breastfeeding mothers are entitled to this right.

There is a limit to the right: it can be requested after the 63<sup>rd</sup> day following the child's birth until the baby reaches the age of one. This right can be exercised for one purpose only: breastfeeding the baby. The right is tied to a specific trigger: the employee's return to work from maternity leave after the 63<sup>rd</sup> day following the child's birth.

The size of the employer is not a qualifying condition.

Employers are obliged to comply with flexible working requests, including:

- a paid leave of two hours during normal work life; or
- work life reduced by two hours with the same salary as if she had worked for the normal work life.

The right to return to prior working arrangements is provided for in Article 105(4) of the Labour Code.

There are no measures in place specifically to encourage men to make use of such a legal right.

#### 5.10.2 Right to adjust working time patterns

Albanian law does not provide workers with a legal right to adjust their working time patterns on request.

#### 5.10.3 Right to work from home or remotely

Article 15 of the Labour Code provides workers with a legal right to work from home or remotely upon agreement by contract with the employer. According to the law, all workers are entitled to such a right if it is agreed by contract between a worker and an employer.

There are no eligibility criteria or purposes for which this right can be exercised. There is no time limit for requesting such a right and it is not tied to a specific trigger.

The size of the employer is not a qualifying condition. Employers are not obliged to comply with flexible working requests. There is no special right to return to prior working arrangements. Everything must be agreed in the employment contract. There are no measures in place specifically to encourage men to make use of such a legal right.

#### 5.10.4 Other legal rights to flexible working arrangements

There are no other legal rights to flexible working arrangements, nor arrangements by which workers can 'bank' hours to take time off in the future.

#### 5.10.5 Case law

The author of this report is not aware of any relevant case law.

### **5.11 Evaluation of implementation**

The Albanian legal framework in relation to pregnancy/maternity is satisfactory and there is no formal implementation problem. However, there are still some uncertainties to be solved: Article 27(3)(a) of the Law on social security refers to benefits to be paid for 150 calendar days, paid on a monthly basis upon presentation of a medical certificate; meanwhile, there continues to be uncertainty in the social security offices, which execute the payments on the basis of working days per month, using an average of 20-22 calendar days and not paying for official holidays.

Only employees working for more than one uninterrupted year with the same employer are entitled to parental leave. Part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency are excluded from the right to parental leave.

### **5.12 Remaining issues**

There are no remaining issues to report.

## 6 Occupational social security schemes (Chapter 2 of Directive 2006/54)

### 6.1 General (legal) context

#### 6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues

Several surveys and reports have been published in Albania over the last five years that provide insights into the difficulties workers face in practice in relation to social security issues. Some of these surveys/reports and the respective findings are the following:

- i. *National political document on ageing 2020-2024* (the Ageing Document 2020-2024);<sup>225</sup>
  - ii. *National strategy on social protection 2020-2023* (NSSP);<sup>226</sup>
  - iii. Decent Work Country Programme (DWCP) of Albania 2017-2021, published by the International Labour Organisation;<sup>227</sup>
  - iv. Labour Status in Albania – Analysis of the economic and social effects of self-employment practice (2017);<sup>228</sup>
  - v. A research report, Labour standards in Albania (2016).<sup>229</sup>
- i. The Ageing Document 2020-2024 was adopted by the Albanian Government on 24 December 2019. It provides a brief description of the economic situation, health and social condition of the elderly, including some statistics:<sup>230</sup>
- there are 400 000 elderly people in Albania, which is 14 % of the population;
  - 60 % of the elderly live in isolated areas of the country;
  - 8 % of the elderly have no contact with family members and/or friends, testifying to the complete social isolation of this category of the elderly;
  - the rate of social exclusion is somewhat higher among women (8.7 %) compared to men (7.7 %), and is much higher among the very elderly compared to those who are younger.

As a conclusion of the analysis in the Ageing Document, it is estimated that single seniors, in need of services and with insufficient income, are most deprived of participation in the basic political, economic and social functions of Albanian society. Exclusion and denial of rights are closely linked. The elderly are denied the following rights:<sup>231</sup>

‘The right of the elderly to be free from discrimination, through denial of access to services or other factors, such as gender, ethnicity or disability; (...).’

<sup>225</sup> DCM No. 864, dated 24.12.2019 on the approval of the national political document on ageing 2020-2024 and its action-plan (*Për miratimin e Dokumentit strategjik për moshimin 2020-2024 dhe planit e veprimet për zbatimin e tij*), published in the *Official Journal* No. 183, dated 30.12.2019, available in: <https://qbz.qov.al/eli/fz/2019/183/774b51fc-d02e-4d75-94e3-7652c5d4bab4>.

<sup>226</sup> DCM No. 866, dated 24.12.2019 on the approval of the national strategy on social protection 2020-2023 and its action-plan (*Për miratimin e Strategjisë kombëtare për mbrojtjen sociale 2020-2023 dhe planit e veprimet për zbatimin e saj*), published in the *Official Journal* No. 184, dated 31.12.2019, available in: <https://qbz.qov.al/eli/fz/2019/184/6130d327-d5de-432d-9f88-9549a0e80f33>.

<sup>227</sup> ILO (2017), *Decent Work Country Programme of Albania 2017-2021*, April 2017, available at: [https://www.ilo.org/europe/projects/WCMS\\_555313/lang--en/index.htm](https://www.ilo.org/europe/projects/WCMS_555313/lang--en/index.htm).

<sup>228</sup> Instituti i Studimeve Sociale dhe Humane (2017), *Statusi i Punës në Shqipëri – Analizë e efekteve ekonomike dhe sociale të praktikës së vetëpunësimit* (Labour Status in Albania – Analysis of the economic and social effects of self-employment practice), available at: <http://isshe.al/wp-content/uploads/2017/12/STATUSI-I-PUNES-N-SHOIPRI-draft-final1.pdf>.

<sup>229</sup> Institute for Democracy and Mediation (2016), *Labour Standards in Albania – Research Report*, available at: [http://idmalbania.org/wp-content/uploads/2016/12/IDM\\_LabourStandards\\_ENG.pdf](http://idmalbania.org/wp-content/uploads/2016/12/IDM_LabourStandards_ENG.pdf).

<sup>230</sup> DCM No. 864, dated 24.12.2019 on the approval of the national political document on ageing 2020-2024 and its action-plan, in the *Official Journal* No. 183/2019, pp. 14946- 14948.

<sup>231</sup> DCM No. 864, p. 14949.

Priority policies on ageing, according to the Ageing Document 2020-2024 are:<sup>232</sup>

- social protection and inclusion;
- social and health integrated services;
- promotion of health/wellness and society awareness.

Gender equality is one of the main principles on which this document is based. The policies and specific objectives of this document are in line with some objectives of sustainable development, which include achieving gender equality and empowering woman.<sup>233</sup>

- ii. The NSSP 2020-2024 was adopted by the Albanian Government on 24 December 2019.

This strategy aims to develop an integrated and functional system of social care services for every man, woman, boy and girl, which promotes choice, independence and encourages full and effective participation in society, according to an equal approach for all citizens requiring services.<sup>234</sup>

The first part of NSSP 2020-2024 sets out an analysis of the current situation. On the provision of social services, it states that:<sup>235</sup>

'To date, there are 199 public and non-public social services (119 and 80, respectively), which, for the first time, have a community-based approach and have diversified the provision of services, including areas such as psychological support, awareness and advocacy. These services for the first time increase the range of service delivery for different beneficiaries: children without parental care and those with social problems, rehabilitation of people with disabilities and the elderly, trafficked persons and counselling for women and girls. Currently, local staff need to work on integrating money transfer schemes with social care services, based on an assessment of individual/family needs.'

There are three strategic priorities provided for in NSSP 2020-2024:

- alleviating poverty;
- improving the quality of life of disabled persons;
- developing social care services.

Through the policies envisaged in the realisation of the third strategic objective for the development of social care services, the outcome by 2023 is that every man, woman, boy and girl will have equal opportunities to benefit from a functional and integrated system of social care services, based on the principles of decentralisation, deinstitutionalisation and diversification of social care services.<sup>236</sup>

- iii. The DCWP and its priorities and outcomes are agreed upon after an extensive process of consultation with ILO's constituents in the country. The strategic priorities and outcomes will be pursued during the period 2017-2021 through the joint action of the authorities and social partners in Albania and the ILO.<sup>237</sup> The relevant findings of this DCWP are:

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<sup>232</sup> DCM No. 864, dated 24.12.2019 on the approval of the national political document on ageing 2020-2024 and its action-plan, in the *Official Journal* No. 183/2019, p. 14954.

<sup>233</sup> DCM No. 864, p. 14953.

<sup>234</sup> DCM No. 866, dated 24.12.2019 on the approval of the national strategy on social protection 2020-2023 and its action-plan, in the *Official Journal* No. 184/2019, p. 15051.

<sup>235</sup> DCM No. 866, p. 15058.

<sup>236</sup> DCM No. 866, p. 15068.

<sup>237</sup> Source: [https://www.ilo.org/europe/projects/WCMS\\_555313/lang--en/index.htm](https://www.ilo.org/europe/projects/WCMS_555313/lang--en/index.htm).

'High instances of informal employment have various negative effects on the economy, on working conditions generally and on the policy-making process. Low tax revenues, due to the non-payment of payroll taxes, constrain the Government's capacity to introduce effective labour market and social protection policies. In addition, the large informal economy and widespread practice of under-reporting of wages create serious problems for the coverage and financing of social security systems, thereby rendering these workers and their families unprotected against substantial social risks.'

'For employees, working in the informal economy means being confined in an activity which is low paid, precarious and unsafe as occupational safety and health standards are often neglected. The lack of training opportunities prevents informal economy workers from claiming better paid positions in the formal sector. The rights of workers are difficult to enforce in the informal economy. Many women working in informal jobs do so as the flexibility of hours allow them to also carry out unpaid family and household duties, of which they perform an unequal share.'<sup>238</sup>

- iv. The 2017 study, *Labour Status in Albania – Analysis of the economic and social effects of self-employment practice* lists the lack of social security protection as one of the risks and problems of self-employment.<sup>239</sup>

Taking into consideration the movement of self-employed income, the social and health security payments of self-employed persons are usually irregular although the law in Albania obliges them to pay a monthly minimum contribution depending on their activity (agricultural or non-agricultural). Because of the lack of regular payments for these contributions, the self-employed are left out of health and social security schemes.<sup>240</sup>

Data taken from the Social Security Institute for the year 2016 shows that 20 % of self-employed people do not pay social security contributions. The main reason for the lack of regular payments is related to low income from their economic activity, sometimes even resulting in the impossibility of enjoying an old-age pension. However, the solution to these problems cannot consist in directly obstructing self-employment, but in applying adequate labour market policies that address the problem of unemployment.<sup>241</sup>

- v. The research report on labour standards in Albania has several findings on the difficulties faced by workers in relation to social security:<sup>242</sup>
  - Working conditions deal with the social insurance standard, focusing on two important issues: payment of social and health insurance contributions by the employer and the wage used to pay these contributions. First, while it has been a developing process in Albania, the social insurance system reform continues to be an issue calling for urgent attention in practice, particularly from the viewpoint of ensuring adequate benefits and establishing a system of long-term sustainability. According to the survey on the amount of the wage declared for the purposes of social and health security payments, 15 % of interviewees in

<sup>238</sup> ILO (2017), *Decent Work Country Programme of Albania 2017-2021*, p. 10, available at: [https://www.ilo.org/europe/projects/WCMS\\_555313/lang--en/index.htm](https://www.ilo.org/europe/projects/WCMS_555313/lang--en/index.htm).

<sup>239</sup> Instituti i Studimeve Sociale dhe Humane (2017), *Statusi i Punës në Shqipëri – Analizë e efekteve ekonomike dhe sociale të praktikës së vetëpunësimit*, (Labour Status in Albania – Analysis of the economic and social effects of self-employment practice) p. 35.

<sup>240</sup> Instituti i Studimeve Sociale dhe Humane (2017), *Labour Status in Albania*, p. 35.

<sup>241</sup> Instituti i Studimeve Sociale dhe Humane (2017), *Labour Status in Albania*, pp. 35-36.

<sup>242</sup> Institute for Democracy and Mediation (2016), *Labour Standards in Albania – Research Report*, pp. 35, 55-56, 86-87, available at: [http://idmalbania.org/wp-content/uploads/2016/12/IDM\\_LabourStandards\\_ENG.pdf](http://idmalbania.org/wp-content/uploads/2016/12/IDM_LabourStandards_ENG.pdf).

- the mining sector, 4 % in the 'façon industry',<sup>243</sup> and 11 % in the construction sector declared that their employer did not pay insurance contributions. Some of the employees – 14 % in the construction sector and 11 % in the façon industry – do not know whether their contributions are even paid at all.
- Respondents declaring that their employer had paid their social and health insurance were further asked about the basis of these contributions and whether this matched their real wage. Findings reveal the evasion of social insurance contributions as an endemic abuse across the sectors studied, jeopardising the social protection of these employees when the latter are no longer economically active in the labour market:<sup>244</sup>
    - 15 % of employees in the mining sector and 11 % in the construction sector declare that their employer does not pay their insurance contributions;
    - 74 % of employees in the mining sector and 68 % in the façon industry, declare that their contributions are paid on minimal wage, even though in most cases the minimum wage does not match their real salary;
    - 14 % of the façon employees declare that, while their contributions are paid on the minimum wage, their paycheck is lower than the minimum wage.
  - The survey revealed some problems related to informality in the labour market. Informal payment of employees is one of these problems. The full wage declaration was done only for part of the interviewed workers: 59 % of workers in the textile and footwear industry sector, 54 % in the mining sector and 44 % in the construction sector). The rest of employees face various situations of informality in the labour market.<sup>245</sup>
  - The most common form of manipulation of employment declaration is the statement of a different wage from the real one. Thus, employers declare they have hired workers on a minimal or smaller wage than the salary they really pay to them, resulting in the following problems:<sup>246</sup>
    - the amount to be paid for social and health insurance is smaller on a low wage – this situation affects the level of wage, the standard of equal opportunities and treatment and, above all, the standard of social insurance;
    - violation of the social insurance standard directly affects the standard of protection of pregnant women and new mothers since their income earned during maternity leave are linked with and determined by the Law on Social Insurance.

#### 6.1.2 Other issues related to gender equality and social security

The Document of Social Inclusion Politics (DSIP) 2015-2020 refers to inequalities in health sector due to inequalities in health and social insurance.<sup>247</sup> According to DSIP, from the demographic and health survey carried out in 2009, only half of adult men and one fifth of women interviewed answered that they have state health insurance. Some findings in DSIP related to inequalities in the health sector include:<sup>248</sup>

- health insurance coverage is particularly low in rural areas - because of this low coverage, approximately one million persons of working age make informal

<sup>243</sup> The term 'façon industry' is used in Albania to refer to the inward processing industries of textile, garments and footwear manufacturing.

<sup>244</sup> Institute for Democracy and Mediation (2016), *Labour Standards in Albania – Research Report*, p. 85.

<sup>245</sup> Institute for Democracy and Mediation (2016), *Labour Standards in Albania – Research Report*, p. 85.

<sup>246</sup> Institute for Democracy and Mediation (2016), *Labour Standards in Albania – Research Report*, pp. 85-86.

<sup>247</sup> Ministry of Social Welfare and Youth (2015), *Document of Social Inclusion Politics 2015-2020 (Dokumenti i Politikave të Përfshirjes sociale 2015-2020)*, p. 122, available at: <https://shendetesia.gov.al/wp-content/uploads/2019/01/Dokumenti-i-Politikave-per-Perfshirje-Sociale-2015-2020-drafti-final.pdf>.

<sup>248</sup> Ministry of Social Welfare and Youth (2015), *Document of Social Inclusion Politics 2015-2020*, p. 122.

- payments for health services, such as ambulatory or hospital services, increasing the social gap of inequality and injustice;
- reforms to the primary health care service have led to only minor reductions of informal payments;
- limited resources and Government failures in healthcare are the main reason for the practices of informal payments; even the increased wage of healthcare workers has had little influence on informal payments; vulnerable groups of the population still remain the least protected from these payments and health policy measures have failed to reach the most deprived regions of the country.

The above issues relate to geographical inequalities, (which is why the findings refer mostly to rural areas) rather than gender implications, but they carry over to gender inequalities due to different factors: informality in the Albanian economy over many years, the lack or tolerance of state control authorities in the most deprived regions, and the situation highlighted in the 2009 survey data mentioned above, that only half of adult men and one fifth of women have state health insurance. Note that the lack of state control in respect of farming economy and insurance meant that most farmers did not pay compulsory contributions and when they were 'forced' to do so (because of their fear of state authority when the Albanian economy gradually began to return to a formal basis), contributions were declared and paid for the householder (man) of the family and not for the women. Gender equality is being introduced through state policies to subsidise the payment of social security for a certain period (generally up to one year) for women working in agriculture, fishing and so on.

### 6.1.3 Political and societal debate and pending legislative proposals

The informal economy and informal payments are the most discussed issue in relation to social security benefits. Because of informal jobs due to low awareness of employers, in the near future many employees will be unable to claim a retirement pension.

This situation has been addressed by an intermediate measure, the introduction in 2015 of the social pension, which is the right to benefit from retirement payments at an older age (70 years) for those not having the necessary insurance for a regular pension.

## 6.2 Direct and indirect discrimination

The Albanian legislation on occupational social security schemes has no provision that refers to direct or indirect prohibition of discrimination on the ground of sex. The related benefits from social security schemes concern contributions, the specific law on which also does not refer to any direct or indirect prohibition of discrimination on the ground of sex.<sup>249</sup>

Contributions are calculated on the basis of the wage, which in theory does not lead to inequality on the ground of sex, because of the principle of 'equal pay for equal valued work'.

Furthermore, institutions operating in relation to occupational social security schemes are public administration institutions that, in the course of their activities, have to act in conformity with the principle of equality and non-discrimination, set out in an open-ended list of forbidden grounds of discrimination in Article 17 of the Administrative Procedure Code:

'gender, (...), economic or social condition, (...) or any other grounds.'

<sup>249</sup> Law No. 7703, dated 11.5.1993, on social security in RoA (*per sigurimet shoqerore ne RSH*), as amended; Albania, Law No. 9136, dated 11.09.2003, on collection of mandatory contributions of social and health insurance in RoA (*Per mbledhjen e kontributeve te detyrueshme te sigurimeve shoqerore e shendetesore ne RSH*), as amended.



### **6.3 Personal scope**

The personal scope of Article 6 of the Law on social security is the same as the scope specified in Directive 2006/54. Article 6 of the Law on social security covers all economically active persons: workers, employers and the self-employed.

### **6.4 Material scope**

The material scope of compulsory social security schemes in Albania covers:

- all economically active persons in the event of a reduction of benefits because of: pregnancy/maternity; old age, invalidity and loss (death) of householder;
- all employees in the event of a reduction of benefits because of: temporary inability to work because of illness; accident at work and professional illness; unemployment.

This is more restricted than the material scope provided for in Article 6 of Directive 2006/54, because Albanian law does not provide for 'the other social benefits' provided for in Article 6(1)(b) of Directive 2006/54.

### **6.5 Exclusions**

Albanian law has not applied any exclusion from the material scope.

### **6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54**

There are no laws or case law that would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54.

### **6.7 Actuarial factors**

Sex is not used as an actuarial factor in occupational social security schemes in Albania.

### **6.8 Difficulties**

There are no specific difficulties in Albania in relation to occupational social security schemes.

### **6.9 Evaluation of implementation**

The Albanian legal framework in relation to occupational social security schemes is satisfying and there is no formal implementation problem. The material scope of compulsory social security schemes in Albania is more restricted than the material scope provided for in Article 6 of Directive 2006/54.

There is no formal unequal treatment, but in practice, the social security system is very weak. The system's weakness affects women in particular, given that they will often need greater social security than men (due to maternity, loss of household income and so on).

### **6.10 Remaining issues**

Apart from compulsory social security, the Albanian law also recognises the possibility of paying social security contributions on a voluntary basis and for a wider group of subjects than those provided for in relation to compulsory insurance. In 2016, Law No. 65/2016 on social enterprises was passed, which aims to ensure equal treatment, protection and social inclusion for vulnerable groups.

## 7 Statutory schemes of social security (Directive 79/7)

### 7.1 General (legal) context

#### 7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)

Over the last five years, several surveys and reports have been published in Albania that provide insights into the difficulties that workers face in practice in relation to social security issues (in connection with Directive 79/7).

- i. Decent Work Country Programme (DWCP) of Albania 2017-2021, published by the ILO;<sup>250</sup>
- ii. A research report on labour standards in Albania (2016).<sup>251</sup>
- i. The DCWP and its priorities and outcomes are agreed upon after an extensive process of consultation with the ILO's constituents in the country. The strategic priorities and outcomes will be pursued during the period 2017-2021 through joint action of the authorities and social partners in Albania and the ILO.<sup>252</sup> Relevant findings of this DCWP are:
  - The pension system plays a central role in income security for the elderly and persons with disabilities. However, the Albanian pension system is facing a number of challenges, notably the low social security coverage and weak collection of social security contributions.<sup>253</sup>
  - Evasion of social insurance contributions has been widespread. The non-payment of social security contributions will directly result in larger numbers of the population receiving low social security benefits or no benefit rights at all, thereby increasing the poverty risk.<sup>254</sup>

The DCWP makes some recommendations:<sup>255</sup>

- it is important to develop a legal definition of the informal economy in Albania. Reducing informality implies addressing the problem through different entry points, namely a better enforcement of the law through strengthened labour inspection, cross-checking of databases and the application of adequate penalties;
  - the re-definition and simplification of the regulatory framework;
  - the development of incentives to formalise by offering better and easier access to social security, business development services and credit;
  - the promotion of public awareness around the individual and collective benefits of formalisation.
- ii. The research report on labour standards in Albania presents several findings about the difficulties of workers in relation to social security:<sup>256</sup>
    - The pension scheme has serious financial problems. Evasion of social insurance contributions is widespread and the low participation rate of the active

<sup>250</sup> ILO (2017), *Decent Work Country Programme of Albania 2017-2021*, available at: [https://www.ilo.org/europe/projects/WCMS\\_555313/lang--en/index.htm](https://www.ilo.org/europe/projects/WCMS_555313/lang--en/index.htm).

<sup>251</sup> Institute for Democracy and Mediation (2016), *Labour Standards in Albania – Research Report*, available at: [http://idmalbania.org/wp-content/uploads/2016/12/IDM\\_LabourStandards\\_ENG.pdf](http://idmalbania.org/wp-content/uploads/2016/12/IDM_LabourStandards_ENG.pdf).

<sup>252</sup> Source: [https://www.ilo.org/europe/projects/WCMS\\_555313/lang--en/index.htm](https://www.ilo.org/europe/projects/WCMS_555313/lang--en/index.htm).

<sup>253</sup> ILO (2017), *Decent Work Country Programme of Albania 2017-2021*, p. 12.

<sup>254</sup> ILO (2017), *Decent Work Country Programme of Albania 2017-2021*, p. 12.

<sup>255</sup> ILO (2017), *Decent Work Country Programme of Albania 2017-2021*, pp. 19-20.

<sup>256</sup> Institute for Democracy and Mediation (2016), *Labour Standards in Albania – Research Report*, pp. 35, 55-56, 86-87.

population in the scheme will result in a growing number of elderly people with no or a low level of pension, which in turn would increase the need for social assistance.

- Employees in Albania contribute to a social and health insurance system that does not really encourage them to contribute at all, because benefits provided by this system are unsatisfactory, unpredictable and insecure. Thus, the healthcare service of people who do not contribute to the health insurance scheme or give insignificant contributions hardly differs from that of those who pay high rates of contributions based on their higher wages. Furthermore, social insurance contributors pay for a scheme that undergoes frequent changes affecting their insecurity to predict the benefits from this scheme after retirement or to plan for other benefits.<sup>257</sup>

#### 7.1.2 Other relevant issues

There are no other relevant issues to report

#### 7.1.3 Overview of national acts

The relevant national acts include:

- Law on social security;<sup>258</sup>
- Law on collection of mandatory contributions of social and health insurance;<sup>259</sup>
- Labour Code;
- Law on protection from discrimination;
- Law on gender equality in society.

#### 7.1.4 Political and societal debate and pending legislative proposals

There are no debates or proposals to report.

### **7.2 Implementation of the principle of equal treatment for men and women in matters of social security**

There is only one provision in statutory social security regulations in Albania concerning gender equality: Article 92 of the Law on social security, which provides for the gradual extension of the retirement age and insurance period until 2056, when they will be the same for men and women: 67 years of age and 40 years of insured work period.

### **7.3 Personal scope**

The personal scope of Albanian law relating to social security schemes is the same as that specified in Article 2 of Directive 79/7: workers, employers and self-employed.

### **7.4 Material scope**

The material scope of the Albanian Law on social security, Article 2, covers the material scope provided for in Article 3(1)(a) of Directive 79/7: sickness, invalidity, old age, accidents at work, occupational diseases, and unemployment. The Albania law is wider than the directive because it also covers reduction of pay and benefits due to: pregnancy/maternity and loss (death) of house holder.

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<sup>257</sup> Institute for Democracy and Mediation (2016), *Labour Standards in Albania – Research Report*, p. 87, available at: [http://idmalbania.org/wp-content/uploads/2016/12/IDM\\_LabourStandards\\_ENG.pdf](http://idmalbania.org/wp-content/uploads/2016/12/IDM_LabourStandards_ENG.pdf).

<sup>258</sup> Law No. 7703, dated 11.5.1993, as amended; Albania, Law No. 9136, dated 11.9.2003, as amended.

<sup>259</sup> Law No. 9136, dated 11.9.2003, on collection of mandatory contributions of social and health insurance in RoA, as amended in 2003, 2004, 2008, 2014, 2015, 2016, 2017.

The Albanian Law on social security provides for benefits/cover in relation to pregnancy/maternity and loss (death) of house holder under the provisions set out below.

- Article 26 provides that pregnancy/maternity insurance includes:
  - pregnancy benefits;
  - maternity allowance/compensation benefits when the job is changed;
  - childbirth allowance;
- Article 40 provides that persons who are economically dependent on the dead person (who was eligible for one of the types of pensions or was receiving a pension) are entitled to a 'family pension'; such beneficiaries can be:
  - the widow, provided that:
    - she/he is the parent of a child who was under the care of the deceased,
    - is unable to work or
    - has reached the age of 55 for women and 60 for men;
  - an orphan, provided that he or she was dependent on the deceased and is under 18 years of age, or up to 25 years of age if studying or unable to work;
  - parents, when they have reached the age of 65 or are unable to work, the parents of the parents, the stepfather and stepmother, when they do not have persons who are obliged to support them, if it is proven that they lived in the same family as the deceased, not less than one year before the moment of death and have reached the age of 65, or are unable to work;
  - grandchildren, when they are in the care of the deceased and were part of the same family as him. In such a case they are treated as orphans.

It should be noted that the widower/widow loses his/her right to the 'family pension' if he/she remarries.

The Albanian Law on social security does not provide for any exclusion from the material scope, as it is provided for in Article 3(2) of Directive 79/7 for survivors and family benefits. The Albanian law also does not provide for the exclusion of benefits for these categories from the statutory schemes.

The material scope of the Albanian Law on social assistance, Article 6, is somewhat different compared to the material scope provided for in Article 3(1)(b): apart from invalidity (which is provided for in Article 3(1)(a,b) of Directive 79/7), it also covers offering and guaranteeing social assistance for individuals and families in need, economic aid and immediate financial assistance for the mothers of newborn children.

## **7.5 Exclusions**

The last sentence of Article 6 of the Law on social security provides for exclusions that can be made by decision of the Council of Ministers on other fields of protection related to:

- 'a) seasonal and temporary employees;
- b) self-employed in agriculture;
- c) unpaid employees of the family of self-employed;<sup>260</sup>
- g) trainees and students for the time of teaching practice, who are insured by the employer only for accidents at work.'

These exclusions from the material scope are very different from those specified in Article 7 of Directive 79/7.

## **7.6 Actuarial factors**

There are no actuarial factors.

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<sup>260</sup> Meaning life partners (referred to in Section 8.3.4 below).

## **7.7 Difficulties**

There are no specific difficulties in Albania in relation to implementing Directive 79/7.

## **7.8 Evaluation of implementation**

The Albanian legal framework has no special act on equal treatment in social security schemes and there is poor implementation of Directive 79/7, except for the principle of 'equal pay, equal treatment' in the Labour Code and equal treatment in social security and contributions. However, the social security system is very weak in practice: there has been for many years – and still persists – informality in the Albanian economy. The informal economy has been translated into informal workers, which has led to lower social security contributions. This has affected women in particular, as they need more social security benefits than men, such as for maternity/pregnancy, childcare or loss of household. There has been some improvement in this area in the old-age pension and social assistance.

## **7.9 Remaining issues**

There are no further issues to report.

## **8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)**

### **8.1 General (legal) context**

#### **8.1.1 Surveys and reports on the specific difficulties of self-employed workers**

There are no relevant surveys to report.

#### **8.1.2 Other issues**

There are no other issues to report.

#### **8.1.3 Overview of national acts**

The relevant national acts include:

- Law on social security;<sup>261</sup>
- Law on collection of mandatory contributions of social and health insurance;<sup>262</sup>
- DCM No. 37, dated 21.1.2016 on the determination of monthly wage, for the purpose of calculating mandatory social security and health contributions for the persons registered as self-employed that perform professional economic activity and unpaid family employees that work and live with them;
- Labour Code;
- LPD;
- LGE.

#### **8.1.4 Political and societal debate and pending legislative proposals**

There are no debates or proposals to report.

### **8.2 Implementation of Directive 2010/41/EU**

There is no Albanian law that on purpose transposed the Directive 2010/41/EU; however, there are several laws that have similar provisions to those of the Directive and relate to equal treatment and non-discrimination of men and women engaged in self-employment:

- Labour Code: Articles 9(2,5(a));
- LGE: Article 18;
- LPD: Articles 2, 12-16, 21;
- Law on social security: most of the law, especially articles related to compulsory social security contributions of the self-employed and the respective benefits as a result of pregnancy/maternity, old age, invalidity and loss (death) of householder;
- Law on collection of mandatory contributions of social and health insurance: most of the law, especially articles related to compulsory social security and health contributions of self-employed workers;<sup>263</sup>
- DCM No. 37, dated 21 January 2016 on the determination of monthly wage, for the purpose of calculating mandatory social security and health contributions for persons registered as self-employed who perform professional economic activity and unpaid family employees that work and live with them, directly addresses the issue, as shown in the title of the DCM.

<sup>261</sup> Law No. 7703, dated 11.5.1993, on social security in RoA, as amended; Albania, Law No. 9136, dated 11.9.2003, on collection of mandatory contributions of social and health insurance in RoA, as amended.

<sup>262</sup> Law No. 9136, dated 11.9.2003, as amended in 2003, 2004, 2008, 2014, 2015, 2016, 2017.

<sup>263</sup> Law No. 9136, dated 11.9.2003, as amended in 2003, 2004, 2008, 2014, 2015, 2016, 2017.

## 8.3 Personal scope

### 8.3.1 Scope

The personal scope of the Labour Code, the Law on social security and the Law on collection of mandatory contributions, covers all economically active persons in Albania, including the self-employed.

The personal scope of DCM No. 37, dated 21 January 2016, concerns self-employed workers and unpaid family employees who work and live with them.

### 8.3.2 Definitions

The definition of 'self-employed' in Albanian legislation is given in several laws for the purposes of the specific law. Two examples are given below.

- The old Law on employment promotion, Article 2(9):<sup>264</sup> a 'self-employed person' is a person who exercises authorised activity in accordance with Albanian legislation in this field, on his behalf, in exchange for a payment or another form of remuneration;
- The Law on collection of mandatory contributions of social and health insurance, Article 2(8):<sup>265</sup> 'self-employed' means a taxpayer registered in the National Centre of Registration and in tax offices as a 'physical person'. The self-employed can exercise economic activity with the status of: 'single self-employed', 'self-employed with employees', 'self-employed with employees and unpaid family employees', 'self-employed without employees, but with unpaid family employees'. For the purposes of this definition, the term 'self-employed' does not include the self-employed person in agriculture.

### 8.3.3 Categorisation and coverage

Self-employed persons are part of the same category as the workers mentioned in Section 8.3.2 above and are covered.

However, for the purposes of determining the rate of social and health contributions, the law sometimes makes use of particular categories, for example in the categorisation given in Article 2(8) of the Law on collection of mandatory contributions of social and health insurance.

Self-employed persons in agriculture are excluded from some provisions of the Law on social security in order to favour the contribution rates or time of payment (according to Article 90(2) of the Law, the rate of contribution for self-employed persons in agriculture will be gradually raised until 2018, when it will equal the level of other self-employment contributions), as they are also excluded from the categorisation of self-employed persons for the purposes of the Law on collection of mandatory contributions of social and health insurance.

### 8.3.4 Recognition of life partners

Albanian legislation recognises life partners of self-employed persons and uses a broader term: 'unpaid family employee'.

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<sup>264</sup> Law No. 7995, dated 20.9.1995, as amended in 1999, 2002, 2006, 2009.

<sup>265</sup> Law No. 9136, dated 11.9.2003, as amended in 2003, 2004, 2008, 2014, 2015, 2016, 2017.

## **8.4 Material scope**

### **8.4.1 Implementation of Article 4 of Directive 2010/41/EU**

Article 4 of Directive 2010/41/EU is implemented in several Albanian laws:

- Labour Code: Article 9(2,5(a));
- LGE: Article 18;
- LPD: Articles 2, 12-16.

### **8.4.2 Material scope**

The material scope of Albanian legislation related to equal treatment in self-employment covered by the Labour Code, LGE and LPD refers to the following protected grounds: gender, harassment, sexual harassment and 'other grounds'.

The material scope of Albanian legislation is wider than that given in Article 4 of Directive 2010/41/EU.

## **8.5 Positive action**

The Albanian Government has taken the following positive action measures on gender through legal means:

- DCM No. 339, dated 19 June 2014, *Action Plan Supporting Entrepreneurial Women (2014-2020)* and DCM No. 592 dated 10 September 2014: in 2014, a four-year fund (EUR 217 000 or ALL 26 500 000) was set up to provide support for entrepreneurial women, covering up to 50 % of the interest on loans, changing the procedures for financing projects of entrepreneurial women, giving a bonus to all the projects proposed by the women entrepreneurs, and setting a profit by 5 points more (in the evaluation process of the winning projects) if the applicants for the programme fund for agriculture and rural development are women farmers;<sup>266</sup>
- DCM No. 375, dated 11 June 2014 on changes and amendments to DCM No. 904: concerning the introduction of the exclusive right of women to withdraw the social economic aid.

## **8.6 Social protection**

Compulsory social security schemes in Albania cover self-employed workers in the event of a reduction of benefits because of:

- pregnancy/maternity;
- old age, invalidity and loss (death) of householder;

The Law on social security also recognises the option of insurance in voluntary social security schemes and covers more benefit areas.

According to Article 9 of the Law on social security, the self-employed person pays compulsory social contributions for pregnancy/maternity and retirement on the basis of the minimum wage for the unpaid family employee who works and lives with him.

## **8.7 Maternity benefits**

Article 8 of Directive 2010/41/EU regarding maternity benefits for self-employed workers has been implemented in Albanian legislation, as follows:

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<sup>266</sup> Instruction No. 4/2014 on the procedures and method of administering the programme fund for agriculture and rural development.



- the self-employed or unpaid working spouse of a self-employed person must pay compulsory social security contributions that cover reduction of benefits because of 'pregnancy/maternity' (Articles 2(b), 6 and 9 of the Law on social security);
- income for 'pregnancy/maternity' is paid to the woman insured for the 'pregnancy/maternity' for a period of 12 months (Article 27(1) of the Law on social security);
- after 63 days post-partum, the insured father or adoptive father can take paternity leave as a right for care for the children, if this right is not exercised by the mother or there are no conditions for the mother to benefit (Article 27(7) of the Law on social security). The requirement for a minimum of 12 months insurance also applies to the father/adoptive father.

Social security contributions for pregnancy/maternity are mandatory. The pregnancy/maternity income for the insured woman, according to the Law on social security, Article 27(3), is calculated as follows:

- '(a) 80 % of the daily average of the estimated net wage of the last twelve months from the date of entitlement to payment for the prenatal period and for the 150 calendar days after birth;
- (b) 50 % of the daily average of the estimated net wage of the last twelve months from the date of entitlement to payment for the subsequent period.'

Albanian law also provides for the father to take paternity leave if this right is not exercised by the mother or there are no conditions for the mother to benefit (Article 27(7) of the Law on social security). The income of the father/adoptive father is calculated the same way as in Article 27(3) for the insured woman.

## **8.8 Occupational social security**

### **8.8.1 Implementation of provisions regarding occupational social security**

Albania has implemented the provisions regarding occupational social security for self-employed persons. According to Articles 2 and 6 of the Law on social security, the self-employed are part of compulsory occupational social security schemes that cover: pregnancy/maternity; old age, invalidity and loss of family holder.

### **8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)**

Albanian law did not make use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54.

## **8.9 Prohibition of discrimination**

Article 14(1)(a) of Recast Directive 2006/54 has been implemented as regards self-employment in the following Albanian legislation:

- Article 9(5) of the Labour Code prohibits discrimination and provides for the implementation of the principle of equal treatment in the exercise of the right to employment and profession and in relation to access to employment, to self-employment and profession, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion.
- Article 12(1)(c) of the LPD prohibits discrimination against a person in connection with his right to employment, even those who are self-employed, which:

'includes every distinction, limitation or exclusion that is based on the causes mentioned in article 1 of this law and which, among other things, is related to: (...) c) the treatment of employees in the work place, 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.'

### **8.10 Evaluation of implementation**

The Albanian legislative framework implements the gender equality protection of self-employed workers in a satisfactory way, through the realisation of gender equality standards in occupational social security schemes and in statutory provisions guaranteeing gender-based equal treatment for self-employed and dependent workers.

The legislation may lead to financial burdens and put the activities of self-employed workers at risk. There is some case law on the issue: the ACC Decision V-60/16 declared unconstitutional a provision in the amendments of 2015 to the Law on collection of mandatory contributions of social and health insurance. The case concerned an unequal burden on advocates as free professionals and the Court stated that the new regulation had violated the essence of the principle of equality because:

'it has not only allowed different treatment of self-employed workers pursuing professional economic activity although they are in the same conditions, but has attempted to treat self-employed workers pursuing unprofessional economic activity equal with public sector employees, regardless of their different conditions.'

### **8.11 Remaining issues**

There are no further issues to report.

## **9 Goods and services (Directive 2004/113)<sup>267</sup>**

### **9.1 General (legal) context**

#### **9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services**

There have been no surveys or reports in this area.

#### **9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy**

The regulations of the LGE and LPD refer to equality in both public and private sectors, but there has been no case law referring to the online market economy so far.

#### **9.1.3 Political and societal debate**

There is no political or societal debate to report.

### **9.2 Prohibition of direct and indirect discrimination**

Prohibition of discrimination in the field of goods and services is a specially protected field from discrimination under Article 20 of the LPD. In addition, Article 1 provides for an open list of grounds protected from discrimination and thus discrimination on grounds of gender/sex is prohibited.

### **9.3 Material scope**

The material scope of the LPD in relation to access to goods and services is broader than specified in Article 3 of Directive 2004/113, because it also covers the opportunity to use or enter into an educational institution. The LGE also has a special chapter on equal treatment and protection against gender-based discrimination in education and training.

### **9.4 Exceptions**

Albanian law has applied the exceptions from the material scope in Article 20(7) of the LPD, according to which:

'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.'

### **9.5 Justification of differences in treatment**

Article 20(5) of the LPD provides for justified differences in treatment in the provision of goods and services in relation to compensation and benefits if '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.'

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<sup>267</sup> See e.g. Caracciolo di Torella, E. and McLellan, B. (2018) *Gender equality and the collaborative economy*, European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb>.

## **9.6 Actuarial factors**

Article 20(6) of the LPD provides for costs related to pregnancy and motherhood that should not result in differences in the individual's compensation and benefits.

## **9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113**

Following the *Test-Achats* ruling of the CJEU on the use of sex as a factor in the calculation of premiums and benefits, the LPD has excluded costs related to pregnancy/maternity as a reason for differences in calculations for compensation and benefits.

## **9.8 Positive action measures (Article 6 of Directive 2004/113)**

No positive action measures have been adopted in relation to access to and the supply of goods and services.

## **9.9 Specific problems related to pregnancy, maternity or parenthood**

There are no specific problems to report.

## **9.10 Evaluation of implementation**

Access to and supply of goods and services legislation has been implemented satisfactorily in the LPD. However, a relevant unresolved issue remains the burden of proof in discrimination claims for access to and supply of services and goods by private subjects: the burden of proof is not shifted in civil court hearings.

## **9.11 Remaining issues**

There are no further issues to report.

## 10 Violence against women and domestic violence in relation to the Istanbul Convention

### 10.1 General (legal) context

#### 10.1.1 Surveys and reports on issues of violence against women and domestic violence

Several surveys and reports have been published in Albania over recent years that give insights into issues of violence against women and domestic violence:

- i. National Report of the Republic of Albania under the third cycle of Universal Periodic Review (UPR);<sup>268</sup>
  - ii. The report of the UNHCHR under the third cycle of Universal Periodic Review (2019);<sup>269</sup>
  - iii. GREVIO's (Baseline) Evaluation Report Albania (2017).<sup>270</sup>
- i. The relevant findings of Albanian UPR (2019) are presented in the following:
- There have been several initiatives to improve related legislation.<sup>271</sup>
    - Law No. 47/2018 on measures against violence in family relations, has been amended to ensure compliance with the Istanbul Convention and CEDAW.
    - Several protection measures, particularly related to domestic violence, are included in Law No. 18/2017, in relation to: prevention and reduction of cases of domestic violence; prediction of the preliminary emergency protection order; participation of a psychologist and the preparation of a report to the police; increasing the efficiency and cooperation of the responsible structures; and increasing qualified judicial support for victims of domestic violence.
    - Amendments have been made to the Criminal Code, recognising domestic violence, sexual violence, engagement in sexual activity by use of force between spouses or cohabitants and enforced disappearance against pregnant women, children and unprotected persons as a criminal offence.
    - The Law on legal aid, which entered into force on 1 June 2018, provides access to justice for individuals in economic difficulty, including disadvantaged groups. This law specifically provides as beneficiaries of state-guaranteed legal aid, regardless of their income and property, victims of domestic violence, sexually abused victims and victims of trafficking in human beings, 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.
    - Law No. 22/2018 on social housing provides for priority to be given to securing social housing for victims of domestic violence, victims of trafficking and potential victims of trafficking.
  - There are six non-public centres providing residential services (two in Tirana, one in Berat, one in Korca, one in Elbasan, and one in Vlora). These centres

<sup>268</sup> Albanian Government (2019), *National Report of the Republic of Albania under the third cycle of Universal Periodic Review*, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>.

<sup>269</sup> UNHCHR (2019), *Report of the Office of the United Nations High Commissioner for Human Rights*, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>.

<sup>270</sup> GREVIO (2017) *GREVIO (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Albania*, available at: <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>.

<sup>271</sup> Albanian Government (2019), *National Report of the Republic of Albania under the third cycle of Universal Periodic Review*, Paragraphs 38, 40-41, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>.

are called 'shelters'. In December 2018, a crisis management centre for victims of sexual violence, 'Lilium Centre', was opened on the premises of the Tirana University Hospital Mother Theresa Centre. This centre provides 24/7 integrated services to victims of sexual violence by a multidisciplinary team. The standards of the centre were approved by Instruction of the Minister of Health and Social Protection in November 2018.<sup>272</sup>

ii. The report of the UNHCHR under the third cycle (2019) of UPR presents several relevant findings. The UN country team:<sup>273</sup>

- 'noted that legislation on gender equality, non-discrimination and domestic violence had improved, and that Albania was implementing the third National Strategy on Gender Equality for 2016–2020';
- 'highlighted that women from disadvantaged groups faced additional barriers to accessing services. It recommended strengthening the capacities of service providers and the judiciary to enforce the legal and policy framework on domestic violence and gender-based violence, and providing adequate resources for prevention and rehabilitation services for all victims of violence, including victims from rural areas and disadvantaged groups. It also recommended ensuring the necessary legal and policy amendments to institutionalize specialized support services for victims of sexual violence';
- 'noted the adoption of a law on the protection of the rights of the child in 2017, but noted that the Government was yet to adopt secondary legislation and yet to effectively implement an inter-sectorial approach to child protection. It stated that children in Albania were exposed to violence at home, in institutions, at school, in the community and on the Internet. It recommended that Albania accelerate the implementation of its legal and policy framework on child protection to ensure full geographic coverage with qualified child protection workers and to build the capacities of the entire child protection workforce'.

iii. GREVIO's (*Baseline*) *Evaluation Report for Albania* (2017) provides an assessment of the implementation measures taken by the Albanian authorities with regard to all aspects of the Istanbul Convention. Its findings include:<sup>274</sup>

- 'public opinion in Albania lacks a gendered understanding of violence against women and tends to view violence restrictively as a by-product of low socio-economic development. Many professionals share this vision as well. Thus, the notion that violence is mostly confined to poverty-stricken parts of the country, underprivileged neighbourhoods and poorly educated women is common currency. Such a notion erroneously implies that violence spares women and girls not falling into any such situation. It disregards widespread evidence that women's position in society and their susceptibility to violence are affected by a combination of political, cultural, social, religious, ideological and environmental considerations, and are not determined by economic factors alone. Moreover, there is a tendency in Albania to promote forgiveness under the pretext of traditional family values, and women and girls themselves believe to a large degree that they should tolerate violence to keep the family together. This makes women vulnerable to intra-family violence. Hence, more

<sup>272</sup> Albanian Government (2019), *National Report of the Republic of Albania under the third cycle of Universal Periodic Review*, Paragraph 49, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>.

<sup>273</sup> UNHCHR (2019), *Report of the Office of the United Nations High Commissioner for Human Rights*, Paragraphs 29-30 and 36, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx>.

<sup>274</sup> GREVIO (2017) *GREVIO (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Albania*, pp. 7, 14-16, available at: <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>.

should be done to raise awareness within society, the professionals concerned and amongst women, about the gendered nature of violence against women and its unacceptability under whatsoever pretext’.

- ‘priority issues requiring further action by the Albanian authorities to comply fully with the Convention’s provisions: ensure that measures taken in accordance with the Istanbul Convention address all forms of violence against women, in a holistic and comprehensive fashion; follow a clear gendered approach in the response to violence against women; ensure stable and sustainable funding levels for women’s NGOs working to support victims and prevent violence; set up rape-crisis centres and/or sexual violence referral centres, in the frame of a multi-sectorial response aiming at encouraging reporting and responding to the needs of victims; step up efforts to support and protect child witnesses, in particular with reference to court decisions on the exercise of custody and visitation rights, as well as within the procedure applying to the issuance of protection orders’.
- GREVIO strongly encourages the Albanian authorities to:
  - take all necessary measures, including legislative measures, to harmonise its definition of domestic violence in domestic law with the Convention and to ensure the effective application of such a harmonised definition in practice. The authorities should further introduce a clear gendered approach in their legislation to acknowledge fully the gendered nature of domestic violence which predominantly affects women and girls;
  - continue to ground their efforts to combat violence against women on policies in favour of empowering women in the private and public sphere and ensuring substantive equality between women and men;
  - study possible means to heighten awareness around the discriminatory nature of violence against women and enhance the role of the Peoples’ Advocate and that of the Commissioner against Discrimination as defenders of victims of violence against women;
  - add specific indicators relating to vulnerable groups of women and girls in data collection;
  - integrate the perspective of such groups in the design, implementation, monitoring and evaluation of policies for preventing and combating violence against women;
  - mainstream preventing and combating violence against women in programmes which are tailored to the specific needs of such groups.

#### 10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

Provisions on violence against women, domestic violence and issues related to the Istanbul Convention are contained in the following Albanian legislation:

- Law on measures against violence in family relations (the Law against violence in the family);<sup>275</sup>
- Law No. 111/2017 on state-guaranteed legal aid;
- LPD;
- LGE.

The Law against violence in the family is the first law to be initiated by a civic legal initiative of 20 000 citizens. It was approved in 2008 to prevent and reduce violence in families through appropriate legal measures. It was revised in 2018 to comply with the Istanbul Convention: an important amendment was the introduction of the provision of ‘other necessary measures’ among the measures to be taken against violence in the family.

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<sup>275</sup> Law No. 9669, dated 18.12.2006, amended in 2008, 2010 and 2018.

Some important provisions of this law concern: the drafting of curricula for high schools regarding the rules of conduct within the family; the preparation of textbooks and other complementary materials for the education of pupils and/or students to end violence in family relations.

Related legislative proposals on amendments to the law were presented to the Parliament by the CPD in 2018 and are still pending. The proposals are to:<sup>276</sup>

- add a definition of 'violence against women' in order to bring the law in line with Article 3 of the Istanbul Convention;
- add an explicit open list of protected grounds from discrimination, as provided for in the LPD.

The Law on state-guaranteed legal aid, among the special categories of those benefiting from legal aid, regardless of their income and wealth, includes: persons whose rights have been discriminated against based on the decision of the competent body according to the legislation in force on protection from discrimination; victims of family violence; and persons who are beneficiaries of social protection schemes.

The LPD contains anti-discrimination provisions addressing gender-based and domestic violence and a special chapter concerning the prohibition of discrimination in education, specifying the practical tasks of the Council of Ministers and the Minister of Education to incorporate information on discrimination in teaching programmes.

#### 10.1.3 National provisions on online violence and online harassment

The author of this report is not aware of any legal provision on online violence and harassment.

#### 10.1.4 Political and societal debate

There is no political or societal debate to report.

### 10.2 Ratification of the Istanbul Convention

Albania signed the Istanbul Convention on 19 December 2011. The Assembly of Albania ratified the IC with Law No. 104, dated 8 November 2012. The Convention was adopted by the Committee of Ministers of the Council of Europe on 7 April 2011 and took effect on 1 August 2014.

The pre-existing legal framework in Albania in general can be considered to be in compliance with the obligations under the Istanbul Convention.

The Convention has been ratified without any reservation.

Following Albania's accession to the Istanbul Convention, Law No. 111/2017 on state-guaranteed legal aid was approved in 2017 and in 2018, amendments to the Law against violence in the family were introduced.

The author of this report is not aware of plans to introduce any further legal provisions.

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<sup>276</sup> Commissioner for Protection from Discrimination (2018), *Raport vjetor 2017* (Annual Report 2017), p. 56, available in Albanian version at: <https://www.kmd.al/raporte-vjetore/>.



## **11 Compliance and enforcement aspects (horizontal provisions of all directives)**

### **11.1 General (legal) context**

#### **11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress**

Several reports contain information on issues relating to legal remedies and access to justice:

- i. GREVIO's (Baseline) Evaluation Report Albania (2017);<sup>277</sup>
  - ii. Study report on access to justice for vulnerable groups;<sup>278</sup>
  - iii. Report on the assessment of legal needs in Albania.<sup>279</sup>
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- i. GREVIO's report presented several findings and recommendations in relation to the difficulties that victims of gender discrimination face in obtaining legal redress in practice.<sup>280</sup>
    - 'Albania has developed a solid legislative framework to address domestic violence, in the fields of both civil and criminal law. (...) Overall, however, divergent interpretation of laws in Albania tend to do a disservice to victims and to deny them an effective access to justice, for instance by promoting a narrow interpretation of the offence of domestic violence or by introducing mandatory conciliation in the procedure applying to emergency barring orders. Thus, improved awareness amongst legal practitioners and judicial officials is needed as regards the fundamental principles, which should guide any intervention in cases of violence against women'.
    - There are a number of priority issues requiring further action by the Albanian authorities to comply fully with the provisions of the Istanbul Convention: review legal provisions applying to emergency barring orders – referred to under Albanian law as immediate protection orders – to ensure that in situations of immediate danger, such orders can be issued without undue delay in order to ensure the victim's safety; and establish and fund appropriately an effective system of legal aid for the victims of all the forms of violence against women covered by the Convention.
    - GREVIO strongly encourages the Albanian authorities to:
      - ensure that victims are systematically informed of their right to claim compensation and the procedures to be followed, in accordance with Article 58(1)(g) of the Albanian Code of Criminal Procedure;
      - enable victims to exercise their right to compensation by guaranteeing them effective access to legal assistance and legal aid;
      - strengthen the capacity of law practitioners to help victims claim compensation and incorporating the issue of compensation in training

<sup>277</sup> GREVIO (2017) *GREVIO (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Albania*.

<sup>278</sup> Komiteti Shqiptar i Helsinkit (Albanian Helsinki Committee) (2019), 'Raport studimor per aksesin ne drejtesi te grupeve vulnerable' (Study report on access to justice for vulnerable groups), available at: [http://www.ahc.org.al/wp-content/uploads/2019/02/Studimi-legal-aid-KShH\\_Shkurt-2018.pdf](http://www.ahc.org.al/wp-content/uploads/2019/02/Studimi-legal-aid-KShH_Shkurt-2018.pdf).

<sup>279</sup> TLAS (Tirana Legal Aid Society) and ELSA (European Law Students Association) Albania (2018), *Vleresimi i nevojave ligjore ne Shqiperi* (Report on the assessment of legal needs in Albania), available at: <https://www.tlas.org.al/sites/default/files/VLER%C3%8BSIMI%20I%20NEVOJAVE%20LIGJORE%20N%C3%8B%20SHQIP%C3%8BRI%20%281%29.pdf>.

<sup>280</sup> GREVIO (2017) *GREVIO (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Albania*, Paragraphs 8, 14-16, 33-36, available at: <https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>.

- programmes aimed at members of the law enforcement agencies and the judiciary;
  - ex officio enquire whether in case of a request for a protection order for a victim of domestic violence there are children involved and examine whether a protection order should be issued for them as well;
  - issue, within the framework of any decision, a protection order or any other relevant court decision settling family matters where there has been/is violence (for instance, in cases of separation or divorce), make the appropriate determinations regarding custody and visiting rights, having due regard to the violence and to the best interest of the child based on a case-by-case assessment;
  - remedy any gap that might exist in the law as to settlement of custody and visiting rights in the course of any judicial proceedings, such as in the case of appeal against a divorce ruling;
  - ensure that implementing contact orders will not expose victims and their children to the risk of further harm;
  - monitor the courts' practice in this field and measure progress.
- ii. The Albania Helsinki Committee's study on access to justice for vulnerable groups made several relevant findings:<sup>281</sup>
  - From judicial-administrative information (in six judicial cases monitored at the District Court of Tirana), lawyers appointed by the State Commission on Legal Aid have rendered their intellectual services, but the lack of bylaws, especially for the payment of free legal services by private lawyers, has created confusion and uncertainty for lawyers, or unwillingness for quality protection due to uncertainty about the remuneration for the work performed. In court files there is only documentation available for resolving the underlying case and it is difficult to identify the request or the application of the law on legal aid, although verbal communication shows that there was free legal defence.
  - The AHC has monitored<sup>282</sup> the legal and practical implementation of the schemes for free legal aid, and, as a result, recommends:
    - Maximising and accelerating efforts and action by the bodies responsible for issuing the necessary bylaws according to Law No. 111/2017 on legal aid, with the aim of ensuring effective access to justice for the people with low or insufficient income. Any delay reflects negatively on the correct implementation of the law. The lack of adoption of bylaws has, to some extent, also affected the case law itself.
    - Dialogue within the courts on the interpretation and application of the provisions of Law No. 111/2017 on legal aid, in a uniform and consolidated manner, in order to avoid different interpretations at legal level, but also to achieve a legal interpretation that would meet the standards required by the jurisprudence of the ECtHR.
- iii. The Report on the assessment of legal needs in Albania reaffirms that access to justice for people in need should remain a priority. People with economic difficulties remain vulnerable to legal problems: 70 % of the people from this group who were interviewed experienced a concern of this type during the last year. People from the Roma community and women face the most difficulties. Some of these problems are caused by the lack of legal assistance.<sup>283</sup>

The report notes two other issues that should be addressed:<sup>284</sup> First, the lack (full or

<sup>281</sup> Komiteti Shqiptar i Helsinkit (2019), 'Raport studimor per aksesin ne drejtesi te grupeve vulnerable', Paragraphs 60 and 69.

<sup>282</sup> AHC (or KSHH in Albanian) is the acronym for the Albanian Committee of Helsinki.

<sup>283</sup> TLAS and ELSA Albania (2018), *Vleresimi i nevojave ligjore ne Shqiperi*, p. 59.

<sup>284</sup> TLAS and ELSA Albania (2018), *Vleresimi i nevojave ligjore ne Shqiperi*, p. 60.

partial) of information on free legal aid providers can be a significant barrier for the effective solution of legal problems – more than 63 % of people who had financial problems but had not asked for legal aid had no idea (or only had partial information) on the possibility of having legal aid guaranteed by the state or the relevant NGOs. Secondly, the variety of legal problems, their consequences and solution require a multifaceted, integrated and complete approach to access to justice: it should be multifaceted to include different types of strategies in order to meet the different needs of the community; it should be integrated to offer intensive assistance on legal services and extra-legal ones because the needs caused by the legal problems can lead to the request for extra-legal help; and primary legal aid providers must have knowledge about the variety of needs and act in an appropriate way.

#### 11.1.2 Other issues related to the pursuit of a discrimination claim

A discrimination claim can be presented in different courts according to the personal and material scope of the claim, depending on whether it is against a public or a private institution, or for the protection of a right related to the field of employment, education or goods and services.

If the discrimination claim is against a public institution or a public employee due to the exercise of their public functions, the competent court would be the administrative court, which would ask for proofs according to Article 82(2) of the Administrative Procedure Code or Article 3(2) of the Law on Administrative Courts. The burden of proof is dependent on the public body.

If the discrimination claim (sex/gender discrimination and other grounds) is against a public or private subject in relation to employment, the competent court would be the administrative court for a case against a public institution or the district court for the case of claims against a private subject. However, for both courts, the applicable legislation will mostly be the Labour Code, according to which in Article 9(10) the burden of proof is shifted to the respondent; even in cases in the administrative court where the applicable law is the Law on civil servants, the discrimination claim will be judged in accordance with the demands of Article 82(2) of the Administrative Procedure Code, because the employer is a public body.

However, there are still some issues related to discrimination claims against private subjects in the field of goods and services, for which the competent court is the civil court and the applicable law is the Civil Procedure Code, Article 12 of which places the burden of proof on the claimant. Thus, in such cases there is no shift of the burden of proof to the respondent.

#### 11.1.3 Political and societal debate and pending legislative proposals

There has been no recent political or societal debate or pending legislative proposals.

On the issue of the burden of proof in discrimination cases (based on sex/gender and other grounds), in 2014, the CPD presented to the Ministry of Justice a proposal on amendments to the Civil Procedure Code in order to shift the burden of proof to the respondent.<sup>285</sup> Other amendments were made to the Civil Procedure Code in 2008, 2012 and 2013, but the proposal on the shift in the burden of proof has not yet been adopted.

### 11.2 Victimisation

Victimisation is among the definitions of forms of discrimination in Article 3(8) of the LPD. It is defined as:

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<sup>285</sup> Albanian Commissioner for Protection from Discrimination (2017), *Raporti vjetor 2016* (Annual Report 2016), p. 19, available at: <https://kmd.al/wp-content/uploads/2019/03/RAPORTI-VJETOR-2016.pdf>.

'(...) an unfavourable treatment or adverse consequence that comes as a reaction to a complaint or to a proceeding that aims at implementation of the principle of equality.'

The LPD obliges the employer and/or the director of an educational institution, according to provisions in Article 13(1)(b) and 19(c):

'(...) to take necessary measures, including disciplinary measures, for the protection of employees from discrimination and victimisation, within one month from receiving knowledge [of them].'

The provisions on victimisation in the LPD comply with Article 24 of Directive 2006/54/EC.

In 2019 the CPD considered two cases in which he found discrimination in the form of victimisation: Decisions No. 13/2019 and No. 52/2019. The case related to CPD Decision No. 52/2019 is analysed in Section 5.8.2 above, while the case related to CPD Decision No. 13/2019 is briefly presented below. Although this case is on the ground of political beliefs, the author of this report introduces it in this section because it is interesting in relation to the issue of victimisation.

CPD Decision No. 13, dated 24 January 2019: *AH v. Albpetrol SA*.

The claimant AH worked as director of the legal department at the administration of Albpetrol SA from 4 November 2013 to 15 January 2018, when he was dismissed from the position of director, his work contract was dissolved, and he was further appointed as a specialist in the legal department of Albpetrol SA. The claimant objected to these actions of Albpetrol SA on 17 April 2018 at the Fier District Court, claiming discrimination on the ground of political beliefs. The CPD was called as a third party to the case.

On 18 July 2018 AH was notified by Albpetrol SA that according to a High State Control report of 31 December 2017 – protocolled at Albpetrol SA on 2 February 2018 – he is the debtor of approximately EUR 2 500 (ALL 308 000) for the period March 2016-December 2017 for benefiting unfairly from a payment for the title of Master of Science. This was in contrast to eight other employees who were not notified within six-month limit for repayment. AH claims that he was mistreated and discriminated against in the form of victimisation by Albpetrol SA in relation to the other eight employees, due to his appeal to the Fier District Court.

The CPD investigative procedures revealed that, as the other employees of the Albpetrol SA were notified after the legal deadlines for the return of the damage caused, it creates a reasonable suspicion that this action was premeditated and was done so that the other employees did not have to return the money to the company. Since this request was made within the deadline only to the claimant AH, there is reasonable doubt that he was treated differently in comparison with the other employees who were in the same situation as him.

The different treatment of the claimant AH from the other employees, while he was the only one who had appealed against the company to the court, creates a reasonable suspicion that this behaviour was carried out solely because of his claim by putting him in the position of a victim.

In conclusion, the CPD found that the claimant AH had been discriminated against in the form of victimisation by Albpetrol SA because of his claim to the Fier District Court.

When ruling on the above cases, the CPD did not use CJEU case law as a comparator. However, their rulings comply with the relevant EU directives, because the LPD was created to be in conformity with them and provides for victimisation as a form of discrimination.

### 11.3 Access to courts

#### 11.3.1 Difficulties and barriers related to access to courts

There are no legal barriers in access to court for alleged victims of sex discrimination. Under Article 34 of the LPD, the right to submit a lawsuit to the competent court is given to:

- every person or group of persons who claim that discrimination has been exercised against them for one of the causes mentioned in Article 1 of the LPD;
- an organisation with a lawful interest or the CPD, provided that the CPD or the organisation has the consent by special power of attorney or by declaration before the court of the person or group of persons injured by the discrimination.

Under Article 11 of the Law on state-guaranteed legal aid, the special categories of those benefiting from legal aid, regardless of their income and wealth, include: persons whose rights have been discriminated based on the decision of the competent body according to the legislation in force on protection from discrimination; victims of family violence; and beneficiaries of social protection schemes.

In practice, there are difficulties related to the right to approach the court. According to a recent study:<sup>286</sup>

- the lack of financial resources explains why legal aid was not required for 61 % of cases (no legal aid was provided due to the lack of financial resources of the state);
- 30 % of the subjects concerned do not seek legal assistance due to a lack of trust in the relevant institutions (including private lawyers, appointed lawyers and NGOs providing free legal aid).

#### 11.3.2 Availability of legal aid

The Law on state-guaranteed legal aid, Article 11, grants legal aid to victims of gender discrimination, regardless of their income and wealth. Such victims are listed as follows: victims of domestic violence; sexually abused victims and victims of trafficking in human beings at any stage of criminal proceedings, (...).

Legal aid is given in the following forms: primary legal aid; secondary legal aid; exemption from payment of court fees and costs, and from the obligation to prepay the fee of the execution order.

Primary legal aid concerns: giving information on the Albanian legal system, normative acts in force, right and duties of the subjects of the law and the methods for exercising these rights in the judicial and extra-judicial process; providing advice on mediation procedures and alternative dispute resolution; providing advice in drafting the necessary documents to set in motion the state administration or to ask for secondary legal aid; representation before administrative bodies; giving all the other necessary legal aid assistance that is not considered secondary legal aid.

Secondary legal aid concerns: the legal service that is offered for the drafting of the necessary acts to set in motion the court; offering advice, representation and defence before the court for administrative, civil and criminal cases, for which the obligatory protection according to criminal procedural legislation is not applied.

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<sup>286</sup> TLAS and ELSA Albania (2018), *Vleresimi i nevojave ligjore ne Shqiperi*, p. 9.

## **11.4 Horizontal effect of the applicable law**

### **11.4.1 Horizontal effect of relevant gender equality law**

There is no difficulty with regard to the direct horizontal effect of gender equality laws.

### **11.4.2 Impact of horizontal direct effects of the charter after *Bauer***

The enforcement of gender equality in Albania is based mainly on national law. References of court rulings to international law relate to international ratified agreements directly applicable in Albania and/or to the ECHR to the extent that it is on the same level as the Albanian Constitution.

The CPD, when considering claims, takes into account the spirit of EU directives and CJEU case law in analysing the issues (generally on new topics, such as denial of reasonable adoption) although compliance is not yet compulsory.

## **11.5 Burden of proof**

The shift of the burden of proof in sex discrimination cases is provided for in Article 82(2) of the Administrative Procedure Code, and Article 9(10) of the Labour Code.

These provisions comply with EU law.

The Law on Administrative Courts (Article 3(2)), places the burden of proof on the public body.<sup>287</sup>

The Civil Procedure Code (Article 12), does not shift the burden of proof, which remains on the claimant.

Article 82(2) of the Administrative Procedure Code is applicable in discrimination claims in administrative proceedings conducted by a public body, including the CPD: when the claimant presents evidence on which to base the allegation of discriminatory conduct and on the basis of which it may be presumed that there has been discrimination, the other party and/or the public body is obliged to prove that the facts do not constitute discrimination.

Article 9(10) of the Labour Code is applicable in claims of discrimination in employment: if the claimant presents facts that may be alleged to show that he or she has been discriminated against in the exercise of his right to employment and profession, the respondent is obliged to prove that the principle of equal treatment has not been violated.

Article 12 of the Civil Procedure Code is applicable in discrimination claims against a private subject (except in cases of discrimination in employment) and places the burden of proof on the claimant (the burden of proof does not shift).

## **11.6 Remedies and sanctions**

### **11.6.1 Types of remedies and sanctions**

The Albanian legal framework provides for several remedies and sanctions (compensation, administrative fines, criminal sanctions, etc.), for breaches of gender equality:

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<sup>287</sup> Law No. 49/2012 on the organisation and functioning of administrative courts and the judgment of administrative disputes (*Per organizimin dhe funksionimin e gjykatave administrative dhe gjykimin e mosmarreshjeve administrative*), amended by Law No. 100/2014.

- Article 253 of the Criminal Code (as referred to in Section 3.3.1 above), provides for punishment by fine or up to five years of imprisonment in the event of the violation of equality of a citizen by a worker holding a state function or public service conducted because of his capacity or during its exercise, when the discrimination is based upon sex, sexual orientation or gender identity, (...).
- Article 33(13)(15) of the LPD provides the following:
  - Every person who violates the provisions of LPD is punished by a fine as follows: a natural person, from EUR 80 to EUR 500 (ALL 10 000 to ALL 60 000); a legal person, from EUR 500 to EUR 5 000 (ALL 60 000 to ALL 600 000); a natural person within a legal person who is responsible for the violation, from EUR 240 to EUR 650 (ALL 30 000 to ALL 80 000); a person who exercises a public function and is responsible for the violation on the basis of this law, from EUR 240 to EUR 650 (ALL 30 000 to ALL 80 000).
  - As a final means, especially when the natural or legal subject does not comply with the decision of the CPD 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 competent authorities to remove or suspend the license or authorisation of the natural or legal subject to conduct his activity.
- Articles 37(1)(3) and 38 of the LPD provides for the right of the court to decide on an indemnification if it finds that there is a violation of the LPD; the imposition of measures according to the LPD does not exclude the imposition of measures according to other laws; indemnification 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.
- Articles 640-647 of the Civil Code provide for compensation for the damages caused.

#### 11.6.2 Effectiveness, proportionality and dissuasiveness

The legal framework regarding remedies and sanctions is satisfactory but case law is still poor.

### 11.7 Equality body

The Commissioner for Protection from Discrimination (CPD) is an equality body created by the LPD; website: <https://www.kmd.al/>.

The discrimination grounds covered by the CPD are listed in 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 reason.<sup>288</sup>

The CPD competences are listed in Article 32 of the LPD. The commissioner is the public body responsible for examining complains of discrimination against public and private institutions. They can decide on cases, impose administrative fines, take cases to court, monitor the implementation of the LPD, and make recommendations to the authorities involved in their investigations and proceedings. The procedure before the CPD is free of charge.

<sup>288</sup> Law No. 10 221, dated 4.2.2010, Article 1. English version available at: <https://kmd.al/wp-content/uploads/2019/06/law-brochure-english.pdf>.

## 11.8 Social partners

Article 134(1)(h) of the Albanian Constitution provides for organisations as subjects who have the right to set in motion the Constitutional Court. In addition, the Albanian Administrative Procedure Code, Article 33(2), provides for the right of NGOs to act as protectors of the public interest in certain cases (*actio popularis*) related to gender equality/anti-discrimination enforcement.

Article 13 of Law No. 111/2017 on state-guaranteed legal aid provides for the right of authorised NGOs to offer primary legal aid.

NGOs in Albania can present claims before the CPD (LPD, Article 33(2) and 34(3)) or the court (Law No. 49/2012 on Administrative Courts, Article 15(d)) by acting on behalf of victims of discrimination (person or group of persons), with the victim's consent. In recent years, several cases have been presented to the CPD by NGOs, including the Centre for Civic Initiatives and the Albanian Helsinki Committee. An example of the presentation of claims in court is the proceedings undertaken by TLAS on behalf of two intersex children in respect of their legal gender (referred to in Sections 3.1.1 and 3.1.10 above).

## 11.9 Other relevant bodies

The People's Advocate (Ombudsman) is a constitutional body with a duty to be the promoter of the highest standards of human rights and freedoms in the country. He deals 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; thus, he can also deal with cases related to human rights breaches in relation to gender equality. According to Article 63(3) of the Constitution, the People's Advocate can make recommendations and propose measures when he notes violations of human rights and freedoms by public institutions.

Several structures within the Albanian Parliament address gender equality:

- Commission on Labour, Social Affairs and Health (responsible for employment relations, social issues, social security, family, women and health);
  - a subcommittee on gender equality and prevention of violence against women.<sup>289</sup>
- Committee on Legal Matters, Public Administration and Human Rights (addresses human rights related issues, including gender equality).<sup>290</sup>
- Alliance of Women MPs (AWMP) (promotes gender equality in the Parliament and advocates for the implementation of gender mainstreaming in laws).<sup>291</sup>

The National Council on Gender Equality is gender equality body created by the LGE. It is an inter-institutional advisory body providing opinions and recommendations on gender equality related to legal and sub-legal gender-related acts. It also discusses reports on monitoring gender equality implementation and provides recommendations to central and local institutions.

## 11.10 Evaluation of implementation

The system is generally in conformity with the EU directives. Although the legal improvements with the new Law on state-guaranteed legal aid creates a better situation

<sup>289</sup> See at: <https://www.parlament.al/atribut/nenkomisioni-per-barazine-gjinore-dhe-parandalimin-e-dhunes-ndaj-gruas/>.

<sup>290</sup> See at: <https://www.parlament.al/atribut/komisionet/komisione-te-perhershme/komisioni-per-ceshtjet-ligjore-administraten-publike-dhe-te-drejtat-e-njeriut/>.

<sup>291</sup> See info at: <https://www.parlament.al/konstituohet-aleanca-e-grave-deputete-per-legjislaturen-e-ix-ne-kuvendin-e-shqiperise>.



in relation to enabling access to court, there remains a need for related awareness and dialogue within courts on uniform interpretation and the application of the relevant legal framework (in terms of support for victims of gender discrimination acts).

The CPD, when considering claims, takes into account the spirit of EU directives and CJEU case law in analysing the issues (generally on new topics, such as denial of reasonable adoption) although compliance is not yet compulsory.

The burden of proof in sex discrimination cases is shifted in cases where proceedings are regulated by the Administrative Procedure Code, Article 82(2), and the Labour Code, Article 9(10); these provisions comply with EU law.

However, the burden of proof is not shifted in discrimination claims against a private subject (except in cases of discrimination in employment) where the applicable law is Civil Procedure Code, Article 12.

#### **11.11 Remaining issues**

There are no further issues to report.

## 12 Overall assessment

This report mentions the following specific transposition problems:

1. Gender balance is obligatory for public company boards, but not for state-owned company boards, or private company boards;
2. Lack of implementation of the transparency measures set out by the European Commission's Recommendation of 7 March 2014: wage transparency measures are still to be implemented; the transparency measures applicable to the public sector are sufficient, but the issue of wage transparency in private businesses is problematic, although there is no relevant case law as yet;
3. Partial implementation of EU Directive 2010/18 by the Albanian legislation concerning parental leave:
  - a. only employees working for more than one consecutive year with the same employer are entitled to parental leave. Part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency are excluded from the right to parental leave;
  - b. there are no special arrangements for small firms;
  - c. there are no special arrangements addressing the needs of parents of children with a disability or a long-term illness;
  - d. there are no provisions protecting workers against less favourable treatment or dismissal when exercising parental leave; there is no specific regulation related to the right to return to the same or equivalent job. However, there is no impediment if it is provided for in the parental leave agreement or the individual work contract;
  - e. there are no specific regulations related to the maintenance of rights acquired or in the process of being acquired by the worker;
  - f. it is not covered by obligatory social security schemes; there is no provision on any allowance for parental leave by the social security system.
4. Albanian law does not provide workers with a legal right to adjust their working time patterns on request;
5. The material scope of the Albanian Law on social assistance, Article 6, is different to the material scope provided for in Article 3(1)(b) of Directive 79/7. Apart from invalidity (which is provided for in Article 3(1)(a,b) of Directive 79/7, it covers offering and guaranteeing social assistance for individuals and families in need, economic aid and immediate financial assistance for the mothers of newborn children;
6. The last sentence of Article 6 of the Albanian Law on social security provides for exclusions from the material scope that are different from those specified in Article 7 of Directive 79/7, and concern other fields of protection related to: seasonal and temporary employees; self-employed workers in agriculture; unpaid employees of the family of self-employed workers; trainees and students for the time of teaching practice, who are insured by the employer only for accidents at work;
7. There is no Albanian law that explicitly transposes Directive 2010/41/EU; however, there are several laws that have similar provisions to those of the Directive and relate to equal treatment and non-discrimination of men and women engaged in self-employment (for more, see Section 8.2 above);
8. No positive action measures have been adopted in Albania concerning access to and the supply of goods and services, as provided for in Article 6 of Directive 2004/113;
9. A relevant unresolved issue remains the burden of proof in discrimination claims for access to and supply of services and goods by private subjects: the burden of proof is not shifted in civil court hearings.

The Albanian legal framework is generally in conformity with most of the EU gender equality directives; however, there is no particular act on equal treatment in social security schemes, and there is poor implementation of Directive 79/7, except for the principle of

'equal pay, equal treatment' in the Labour Code and equal treatment in social security and contributions.

Some key issues, including those relating to poor implementation, as well as some recommendations to address them, are listed below:

- the constitutional list of protected discrimination grounds is a closed one, although other laws provide for open lists of discrimination grounds – legislation must be revised to allow and facilitate the right to gender reassignment and other related problematic issues;
- the legal framework in relation to equal treatment at work sets two hypothetical comparators for measuring equal pay (unit of measurement, work position) and the 'objective criteria' as parameters for establishing 'equal value' (nature of the work, quality and quantity of work, work conditions, vocational training and work experience, physical and intellectual endeavours, experience and responsibility);
- provisions on parental leave should be revised in order to make it possible for part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency to take such leave;
- there is no formal unequal treatment in relation to statutory and occupational social security schemes, but in practice, the social security system is very weak because of the informal economy and casual employees – this affects women, who often need more social security than men (due to maternity, loss of household income etc.) in particular;
- the failure to provide for a shift in the burden of proof in discrimination claims for access to and supply of services and goods by private subjects (in civil court hearings the burden of proof is not shifted) remains an issue;
- there is poor reference in case law to CJEU case law (judges should have greater awareness of such cases) and the CPD should not only use ECtHR as a comparator, but should also make greater reference to CJEU case law;
- although the legal improvements with the new Law on state-guaranteed legal aid creates a better situation in relation to enabling access to court, there is a continued need for related awareness and dialogue within courts on uniform interpretation and the application of the relevant legal framework (in terms of support for victims of gender discrimination acts);
- the decisions of Albanian courts have not been published on the official website of the courts ([www.gjykata.gov.al](http://www.gjykata.gov.al)) since 2016.<sup>292</sup> The Albanian courts should publish their decisions, in accordance with the law on the protection of personal data, on the official website of the courts ([www.gjykata.gov.al](http://www.gjykata.gov.al)), not only for transparency reasons, but also to enable the study of good practice by researchers and advocates.

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<sup>292</sup> In 2016, the Minister of Justice issued Guidance No. 4059/2 on anonymisation of personal data in court decisions published on the electronic portal of courts (*Për anonimizimin e të dhënave personale në vendimet gjyqësore që publikohen në portalin elektronik të gjykatave*). This guidance was produced and issued right after the Albanian Commissioner for the Right to Information and Protection of Personal Data imposed an administrative fine on the Tirana First Instance District Court for publishing court decisions without respecting the right to protection of personal data. Ever since, Albanian courts have not published court decisions on their official website and the author of this report supposes that this may be because of a lack of administrative personnel to anonymise the personal data.

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