



REPUBLIC OF ALBANIA
COMMISSIONER FOR THE PROTECTION FROM DISCRIMINATION

SPECIAL REPORT

**For the protection and respect of the rights of
LGBTI community in Albania**

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Introduction

The protection of the fundamental rights and freedoms of the LGBTI community has basically an important principle according to which the LGBT people have the same human rights as all individuals, which include the right to non-discrimination in the enjoyment of these rights¹. Respect for the rights of this community has been constantly part of the obligations of Albania in the European integration process. "Strengthening the protection of the rights of person's gay, lesbian, bisexual and transgender" has been part of the Action Plan to address the recommendations on the Opinion of the European Commission on Albania and is part of the Action Plan for addressing the 5 priorities.

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 gender². Gender identity refers to each person's deeply felt in a gender, for instance being female or male, or in some cases none of them, which may be distinct from biological sex³. 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".⁴

Albania has already drafted the legislation in accordance with international acts and established mechanisms for the protection from discrimination of the LGBT community. Joining the concern of the Commissioner for Human Rights of the Council of Europe regarding the establishment of national institutions of equality and non-discrimination and defining a clear mandate for the review of complaints from this community, we could say that the Albanian lawmaker has overcome this difficulty. The Law "On Protection from Discrimination" has provided the establishment of the institution of the Commissioner for Protection from Discrimination, which *"ensures effective protection from discrimination and any form of behavior that encourages discrimination"* (article 21, paragraph 1). This institution has the power not only *"to make recommendations on any issue related to discrimination"* (article 32, paragraph f), but also *"to impose administrative sanctions as defined in this law"* (article 32, paragraph ç). The Commissioner provides protection from discriminatory behavior in three main fields: education, employment and the provision of goods and services.

The Commissioner for Protection from Discrimination exercises its powers in accordance with the Law 10 221 "On Protection from Discrimination". The powers of the Commissioner for Protection from Discrimination are in accordance with Directive 2006/54/EC of the European

¹ Council of the European Union: "Toolkit to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual and transgender (LGBT) people", pg 3.

See: http://www.hrea.org/erc/Library/display_doc.php?url=http%3A%2F%2Fwww.consilium.europa.eu%2Fuedocs%2FcmsUpload%2Fst11179.en10.pdf&external=N

² The Yogyakarta Principles, Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, adopted by a group of 29 human rights experts in November 2006 in Yogyakarta, Indonesia.

³ Definition according to rapporteur Gross on the resolution of CoE on *"Discrimination on the basis of sexual orientation and gender identity"*.

⁴ Commissioner for Human Rights "Human Rights And Gender Identity", Strasbourg, July 2009, pg. 5.

See: <http://www.coe.int/web/commissioner/>

Parliament and of the Council, which in Article 20, provides for the main powers that these equality bodies are entitled to and specifically:

1. Provide independent assistance to the victims of discrimination following their complaints related to discrimination;
2. Conduct independent surveys related to discrimination;
3. Publish reports and provide recommendations about every issue that is related to discrimination.

European Equality and Non-Discrimination bodies have determined several aspects that must be taken into account in dealing and monitoring the respect for the rights of LGBTI community⁵:

1. Legal Framework
2. The social context, perceptions and attitudes towards LGBT
3. Addressing issues of discrimination aiming at increasing the number of complaints
4. Drafting of policies and strategies and addressing them by equality and non-discrimination institution
5. Promoting the rights of the community and the communicative aspect

Precisely these will be the aspects treated in this report.

1. Legal Framework

1.1. International acts ratified by the Republic of Albania

In article 116, point 2, the Constitution of Albania provides that the normative acts that come after the Constitution for their judicial power, are the international agreements ratified by law. This gives the opportunity to refer to the very important international documents for the protection of human rights.

The Universal Declaration of Human Rights of 1948. This declaration has proclaimed the principle of equality and non-discrimination in a single provision (article 7) which provides that "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".

The International Covenant on Civil and Political Rights (ICCPR), adopted on 16 December 1966 by Resolution 2200A (XXI) of the General Assembly, emphasizes in article 26 that "...the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Convention on the Elimination of All Forms of Discrimination against Women was ratified by the Parliament of the Republic of Albania in 1994. While the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was ratified by

⁵ European Network of Equality Bodies "Equality bodies promoting equality & non-discrimination for LGBTI people", Brussels 2013.

the Parliament of the Republic of Albania in 2003. The Committee on the Elimination of Discrimination against Women has determined that discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as sexual orientation and gender identity⁶.

The UN Convention on the Rights of the Child (CRC) was ratified by the Parliament of the Republic of Albania in 1992. The Committee on the Rights of the Child in the General Comment No. 4 has explicitly foreseen sexual orientation, as a cause for which child protection is offered under this Convention.

Special Rapporteur of the United Nations expressed their concern about the situation of the LGBTI community. The UN Declaration on "Sexual orientation and gender identity" is signed by our country on December 18, 2008.

Convention no. 111 of the International Labour Organization (ILO) "On Discrimination in respect of employment and occupation".

The Declaration of Montreal on Lesbian, Gay, Bisexual, and Transgender Human Rights where it is proclaimed the recognition of the rights of LGBTI community in health, education and emigration. The statement also addresses various issues that threaten the global promotion of LGBTI rights.⁷

The European Convention on Human Rights and Fundamental Freedoms was ratified by Albania in 1996. Article 14 of the ECHR, Protocol no. 12 of the ECHR and the jurisprudence of the European Court of Human Rights support the right of non-discrimination on grounds of sexual orientation and gender identity, despite the fact that the latter often is meant by the term "sex".

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence was ratified by the Law no. 104/2012. The Convention aims to *contribute on the elimination of all forms of discrimination against women and promotion of substantial equality between men and women, including the empowering women*⁸.

The European Social Charter has sanctioned the principle of equality (article 20) by defining explicitly that "*All are equal before the law*" and the principle of non-discrimination (article 21). The European Social Charter, Revised, signed in 1998 is ratified by the Parliament of the Republic of Albania in 2002.

Recommendation CM/Rec (2010)5 of the Committee of Ministers of the Council of Europe to member states "On measures to combat discrimination on grounds of sexual orientation or gender identity", the Committee of Ministers recommends that states take measures to guarantee

⁶ Commissioner for Human Rights: "*Discrimination on grounds of sexual orientation and gender identity in Europe*", pg. 36. This publication refers to the Recommendation no. 28 of this Committee.

⁷ This Declaration is the product of the International Conference on the rights of LGBTI community in the first World Games, 29 July 2006.

⁸ The *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* entered into force on 1 August 2014.

the right to life, security and protection from violence of persons due to their sexual orientation or their gender identity.

1.2. Albanian legislation on the rights of LGBTI community

The Albanian legislation offers a general protection of the human rights and especially of the principle of equality and non-discrimination. The Constitution of the Republic of Albania aims to encourage the respect for the principle of equality and non-discrimination (mainly article 18, but also articles 16 and 20), while has foreseen that the limitations of the human rights cannot exceed those provided in the European Convention on Human Rights, ECHR⁹. ***The Albanian Constitution does not explicitly provide for sexual orientation and gender identity as grounds of discrimination. In a wide sense, gender identity can be understood by the notion “sex”.***

The adoption of the law No. 10 221 on 04.02.2010 "*For the Protection from Discrimination*" is a positive step for the protection of the rights of LGBTI community¹⁰. *This law contains a non-exhaustive list of grounds for which offers protection from discriminatory behaviors, but also expressly foresees among them sexual orientation and gender identity*¹¹. Moreover, the law gives the definitions and a series of very important concepts, such as direct discrimination, indirect discrimination, discrimination because of association, victimization, and harassment.

The Labour Code of the Republic of Albania¹² ***does not provide explicitly for the sexual orientation and gender identity as prohibited grounds of discrimination in recruitment procedures or occupation. This Code recognizes the distribution or shifting the burden of proof when addressing issues of discrimination in some aspects of the employment relations.*** The Labour Code, in article 115, paragraph 3 (equality between sexes in terms of reward), states that “*when the employee presents serious information, which imply the existence of discrimination, the employer is obliged to prove the contrary*”. Furthermore, in article 105/a,

⁹ Article 18 of the Constitution of the Republic of Albania provides: 1. All are equal before the law. 2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage. 3. No one may be discriminated against for the reasons mentioned in paragraph 2 without a reasonable and objective justification.

¹⁰ The law "*For the Protection from Discrimination*" is fully approximated with the EU directives in the field of non-discrimination, including: - Council Directive 2000/43/EC of 29 June 2000 “On the principle of equal treatment between persons irrespective of racial or ethnic origin”. - Council Directive 2000/78/EC of 27 November 2000 “Establishing a general framework for equal treatment in employment and occupation”. - Council Directive 2004/113/EC of 13 December 2004 “Implementing the principle of equal treatment between men and women in the access to and supply of goods and services”. - Directive of the European Parliament and of the Council 2006/54/KE of 5 July 2006 “On the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation”.

¹¹ Article 1 of the law stipulates that its purpose is “***the implementation of and respect for the principle of equality in connection with*** 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, disability², affiliation with a particular group or for any other reason”.

¹² The Labour Code of the Republic of Albania in article 9 prohibits “*any kind of discrimination in the field of employment and occupation*”. The Code provides as grounds of discrimination “*race, colour, sex, age, religion, political beliefs, nationality, social origin, family relation, physical or mental disability that threaten the individual right to be equal in employment and treatment*”.

paragraph 2 (women's employment protection) provides that "in case of termination of the contract of employment by the employer, when the woman is at work during pregnancy or is returned to work after childbirth, according to Article 30 of this Code, the employer is responsible to prove that the cause of dismissal was neither pregnancy nor childbirth".

The Code of Administrative Procedures of the Republic of Albania provides for the principle of equality and anti-discrimination as one of the general principles on which is based the activity of public administration. Article 11 of this Code states that "In the relations with individuals, the Public Administration is guided by the principle of equality, in the sense that no one should be privileged or discriminated on grounds of gender, race, religion, language, political, religious or philosophical beliefs, economic, education or social situation or parentage". **So, the Code of Administrative Procedures does not explicitly foresee sexual orientation and gender identity as grounds for the protection from discriminatory behaviours.**

In Albania, until 2001, homosexuality was considered a criminal offense by Article 116 of the Criminal Code. Homosexuality was decriminalized in 2001, by amendments made to the Criminal Code, under Law no. 8733, on 24.01.2001. The Law no. 144/2013 "On some amendments to the law no. 7895, on 27.01.1995 "The Criminal Code of the Republic of Albania", amended, has done some additions/reformulations to which the Commissioner has given its relevant recommendations.

The Commissioner for Protection from Discrimination has identified that should be interfered in the existing legal framework to realize an approximation of the existing legislation with the Law No. 10 221 on 02.04.2010 "On Protection from Discrimination", which will increase the legal guarantees for the protection of the LGBTI community rights. Even in the EU Progress Report for Albania 2013 it is explicitly stated that: *In the area of anti-discrimination policies, some legislation is in place - e.g. regarding the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons - and some is lacking, e.g. regarding the Roma community. The Albanian authorities need both to apply the existing legislation and to draft new legislation in the area of anti-discrimination.*¹³

The Commissioner for Protection from Discrimination, through the official letter No. 175 Prot, on 07.03.2013 "On some amendments to the law No. 7895 Prot, on 27.01.1995 "Penal Code of the Republic of Albania", as amended:

- Assessed the reformulation of article 50, letter "j" of the Penal Code, where there were included, as aggravating circumstances, other prohibited grounds of discrimination foreseen in the Law "On Protection from Discrimination".¹⁴
- Recommended the reformulation of article 84/a of the Penal Code or to add an article with the aim to predict as a specific criminal offense the intimidation because of sexual orientation and gender identity of the person (**not included in the amendments to the Criminal Code**).

¹³ Albania 2013 Progress Report *accompanying the document* Communication from the Commission to the European Parliament and the Council, page 10

¹⁴ Implemented through the Law no. 144/2013 "On some amendments to Law no. 7895, dated 27.1.1995 "Criminal Code of the Republic of Albania".

- Recommended the reformulation of article 119/a, “*Distribution of racist or xenophobic material through computer systems*” or to add new articles and reformulation of article 119/b, “*Insults motivated by racism or xenophobic through computer system*” in order to criminalize the distribution of homophobic materials and insults through computer systems based on sexual orientation and gender identity of the person (**not included in the amendments to the Criminal Code**).
- Recommended that in section III of the Penal Code, entitled “*Criminal offenses against public order and safety*”, behind article 265 “*Inciting national, racial or religious hatred or conflict*” add a new aiming to criminalize the inciting of hatred because of sexual orientation ¹⁵ gender identity (**not included in the amendments to the Criminal Code**).
- Recommended the reformulation of article 253 “*Denying equality of the citizens*” in order to include all grounds of discrimination as provided on the law “*For the Protection from Discrimination*”, aiming to guarantee a wider protection of persons against discriminatory grounds, based on which a public service employee could make any difference on treatment of citizens, thereby violating the principle of equality¹⁶.

The Commissioner for Protection from Discrimination, related to the draft law "On some amendments to Law no. 7961, 12.07.1995 "The Labour Code of the Republic of Albania, as amended", (through the official letter No. 360 Prot, on 14.09.2012), has recommended the following amendments:

- In the definition of discrimination provided by the Labour Code, the Commissioner has proposed to add the grounds of discrimination as provided in the Law “*For the Protection from Discrimination*”
- To add other forms of discrimination as provided by the law “*For the Protection from Discrimination*”, such as: “*instruction to discriminate*”, “*harassment*”, “*victimization*”, “*discrimination because of association*”, and “*denial of a reasonable accommodation*”, or a reference to the law regarding these predictions should be done to this law.

***The Commissioner for Protection from Discrimination, through the official letter No. 691/1 Prot, on 30.12.2013, has sent* recommendations regarding the draft-law “*The Administrative Procedures Code of the Republic of Albania*”, as follows:**

- Since that in the reformulation of the main principles that guide the *Administrative Procedures Code* was not reflected the principle of equality, the CPD recommended the **reformulation of article 5 of the draft law or the addition of a separate article**, where should be formulated the principle of equality and non-discrimination, as important principles that should guide the activity of each public or private entity, that exercises public functions. The protected grounds of discrimination should be in accordance with Article 1 of the Law 10221/2010 “*For the protection from discrimination*”.
- In the framework of the European integration process and harmonization of legislation with the *acquis communautaire*, regarding the burden of proof, it is required that, in cases where

¹⁵ Implemented through the Law no. 144/2013 “*On some amendments to Law no. 7895, dated 27.1.1995 "Criminal Code of the Republic of Albania"*”.

¹⁶ Implemented through the Law no. 144/2013 “*On some amendments to Law no. 7895, dated 27.1.1995 "Criminal Code of the Republic of Albania"*”.

the request presented before authorities public, but not only (private entities in the field of employment, private entities that offer goods and services to the public) has to do with the violation of the principle of equality, is required to shift the burden of proof. As above and in order to approximate the legislation to the EU acquis and harmonization of domestic legislation, the CPD recommends: **The addition of an article in Title V, Chapter 4, Section 2, to regulate the burden of proof in discrimination cases, with the following content:** *"In cases where interested parties claim for the violation of the principle of equal treatment, they have the obligation to bring facts and evidence from which it may be presumed that there has been discrimination, then it shall be the obligation of the other party to prove that there was no violation of the principle of equal treatment"*.

2. The social context, perceptions and attitudes towards LGBTI community

In order to ensure better protection against discrimination, we need to know the situation of discrimination and the effects of the implementation of legal instruments in the country. In Albania there is not a unique and standardized system of registration, collection and analysis of data on discrimination. Consequently, it is difficult to make an objective reflection of protection of the principle of equality and non-discrimination, or to define the types and causes. This paper is based on various sources available, reports from international organisms, NGOs and the activity of the Commissioner for Protection from Discrimination. Discrimination against LGBTI persons is related to their external appearance or behavior. Persons, who do not behave or live according to the social "norms", are often victims of discrimination in all areas; family, school, work, streets and public environment.

In order to achieve a more accurate and comprehensive reflection we will address the following issues:

2.1. Protection from the violent actions against LGBTI community

Community members become victims of hate-based incidents (in public places and families). Sometimes they face harassment from the police even when actually required protection or their service. Reports on harassment of LGBTI persons and brutal behaviors by police against transgender sex workers have been verified.¹⁷ The Commissioner has identified several cases of family violence or verbal and physical violence by unidentified persons. There have also been submitted complaints to the Commissioner's Office from the community against police officers representatives for not providing the services required or getting those only after the intervention of NGOs that provide assistance to these persons. We want to emphasize that transgjendër community, presents major problems relating to housing, employment, education and especially health care.¹⁸ These have also brought non-referral of discriminatory behavior.

Crimes based on sexual orientation and gender identity are not reflected as homophobic crimes in the official statistics; only in May 2013 it was explicitly stipulated as a criminal offense (article 265) or as aggravating circumstance (article 50/j). But *"at a basic minimum, statistical data should be collected and published on the number of incidents pertaining to hate crime reported by the*

¹⁷ Human Rights Report - Albania (May 24, 2012), US Embassy.

¹⁸ The Commissioner for Human Rights has highlighted the lack of data on the situation of transgender people. See: The Commissioner for Human Rights *"Human Rights and Gender Identity"*, 29 July 2009.

*public and recorded by the authorities; the number of convictions of offenders; the grounds on which these offences were found to be discriminatory”.*¹⁹

In many cases, the debate on the rights of LGBTI community is accompanied by debates until the use of "hate speech". We note that "hate speech" against gay, lesbian, bisexual and transgender persons (LGBTI community), deals with all forms of expression, widespread as through the media, as well as via the Internet, which spread, incite, promote or justify hatred, discrimination or hostility against LGBTI people.²⁰ The assessment of whether certain expressions or statements will be considered "hate speech" should be done in accordance with the freedom of expression guaranteed in Article 10 of the ECHR. A "hate speech" like this should be prohibited and publicly challenged whenever it happens. All measures must respect the fundamental right to freedom of expression, in accordance with Article 10 of the Convention and the jurisprudence of the Court.²¹

Bringing to the attention offensive and denigration attitudes used by two representatives of a political party (one Deputy Minister of Defence) to the LGBTI community. In defence of the LGBTI community (after these statements denigrating), there were statements by the Prime Minister, the Ombudsman, the Commissioner for Protection from Discrimination and representatives of international organizations.

We bring to the attention the offensive and denigrating attitudes towards two representatives of a political party (one Deputy Minister of Defence) to the LGBTI community. In defence of the LGBTI community (after these denigrating statements), there were statements by the Prime Minister, the Ombudsman, the Commissioner for Protection from Discrimination and representatives of international organizations. The Commissioner initiated two cases, one of which was a complaint by 2 NGO-s: Alliance Against Discrimination and United Pro LGBT Cause. In one case it could not be concluded for discriminatory behavior. The NGO-s, that submitted the complaint to the CPD, also made a denunciation in prosecution of inciting hatred on ground of sexual orientation, which was not accepted by the prosecution, arguing that it is not a criminal offense under the Criminal Code of the Republic of Albania. Given this, the Commissioner for Protection from Discrimination under proposed changes to the Criminal Code, proposed: To add a new article behind article 265 *“Inciting hatred or disputes between nationalities, races and religions”* aiming to criminalize the inciting of hatred because of gender identity. This proposal is partly reflected in the amendments to the Criminal Code of the Republic of Albania, adopted in May 2013.

¹⁹ European Union Agency for Fundamental Rights “Making hate crime visible in the European Union: acknowledging victims ‘rights’”, Luxembourg, 2012, pg. 11.

²⁰ The Committee of Ministers recommends that states take action to safeguard the right to life, security and protection from violence, to people because of their sexual orientation or their gender identity. In the framework of guarantee of this right, it is recommended that: *“Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons”*.

²¹ Irma Baraku *“Hate crime and Hate speech”* in the panel *“The five concrete commitments governments must take to improve gender equality”*.

See: http://ec.europa.eu/enlargement/taix/dyn/taix-vents/library/detail_en.jsp?EventID=53050

2.2. Freedom of assembly and association and freedom of expression

In Albania there are no legal obstacles to LGBTI to be organised in association. There are four NGO-s representing LGBTI community or have focused their activities in defence of this community. The realization of activities and assembly is not legally prevented.

However the exercise of the above mentioned rights has seen a positive development. While on 17 May 2010, the International Day against Homophobia, a group of civil society representatives came together at a press conference, in 2012 and 2013 carried out activities in public, with representatives from the LGBTI community, representatives of the international community in Albania and representatives of independent and government institutions.

Initially there were no real opportunities for representatives of the community to make present before the public institutions the opinions and problems of this community.

The Commissioner for Protection from Discrimination has handled the complaint of LGBT PRO/PINK Embassy, on the prevention of participation of representatives of the LGBT PRO/PINK Embassy, in hearings with stakeholders on the International Day against AIDS, organized by the Commission on Labour, Social Issues and Health, held on 01.12.2010. PRO LGBT Albania has sent to the Parliamentary Commission on Labour, Social Affairs and Health an official request for organizing an open hearing session for the health, welfare, situation and respect of the rights of persons living with HIV/AIDS in Albania. In the request it is underlined the scope of the hearing by them "... to discuss about the health, welfare, the situation and respect of the rights of people living with HIV/AIDS in Albania." The public hearing with stakeholders on the International Day against AIDS was conducted by 30.11.2010. It results that were invited 2 (two) representatives of the Institution of Public Health, 1 (one) representative of the Association of Thalassemia and 1 (one) representative of the Association of People Living with HIV/AIDS.

According to data presented by the Director of the Institute of Public Health, it results that in Albania predominates the mode of transmission of HIV-AIDS through sexual contact in total 92% of which 81% belongs to heterosexual and 11% homo-bisexual contact. These data are highly significant, especially in terms of significant percentage of homo-bisexual transmission of HIV-AIDS.

Considering the direct involvement that the LGBTI representatives of LGBTI PRO/PINK Embassy had in this case, the considerable number of people infected with HIV/AIDS, as a result of homo-bisexual transmission of the virus, and wish that they had shown to participate in this hearing,

Having regard that: Article 36, paragraph 1, of the Regulation of the Parliament of the Republic of Albania provides: "*The Commission may hold public hearings with members of the Council of Ministers, high representatives of state or public institutions, experts, representatives of civil society, representatives of interest groups, and other interested groups. The Commission is obliged to conduct a hearing, as defined in this section, when one third of all members of the commission request it motivated and in writing*".

Based on article 32, letter f) of the Law no. 10 021, dated 04.02.2010 "*On Protection from*

Discrimination”, where is expressly provided the powers of the Commissioner to make recommendations on any type of issue related to discrimination, as well as aiming the good faith in itself and establishing normal relationships, based on the principle of equality and non-discrimination between LGBTI Community and state institutions, **the Commissioner for Protection from Discrimination RECOMMENDED:**

1. Avoid discriminatory statements in the future, which affect the creation of an atmosphere of tense and unfriendly to LGBTI community in Albania.
2. Granting all possible guarantees that the thoughts, opinions and words be heard, evaluated and taken into consideration when they are directly involved in particular issues to help this community enjoy normally their the rights and freedoms.

But over the years this attitude has changed. At the meeting of the Commission on Labour, Social Affairs and Health of 09.12.2013, LGBTI community representatives were part of the hearing for the prevention and control of HIV/AIDS. The initiative of representatives of civil society or community were associated with numerous debates "pros" and "cons", by overcoming in some cases the legal limits of the exercise of freedom of expression by the debaters.

2.3. Gender identity and family life

2.3.a. Is partnership recognized?

Albanian legislation does not recognize cohabitation and marriage between persons of the same sex. The debate on this topic has been strong. ECHR jurisprudence has emphasized the right of LGBTI people to have a family life without discrimination because of sexual orientation or gender identity²².

2.3.b. Is the right to change gender recognized?

The law No.10 129/11.5.2009 "On Civil Status", amended in 2013, provides for the possibility of "Changing the data of the act of birth". Article 44 says that "*The content of the act of birth, reflected in the National Registry of Civil Status may be changed only in the cases stipulated in this law*". Gender is a variable component, but this law is not about the sex changing procedure.

During the implementation of the Council of Europe project on LGBTI, acknowledged experts in the field of justice and human rights has made a study of existing legislation, the Family Code and the law No. 10 129/11.5.2009 "On Civil Status" by giving the relevant recommendations for the need of legislative amendments.

2.4. Access to health care, education and employment

Education. One of the innovations of the Law "*On Pre-University Education in the Republic of Albania*", adopted in 2012, is that on the grounds is also included "sexual orientation" besides many other causes²³. This article, although it does not include all the protected grounds of discrimination set out in Article 1 of the Law "*On Protection from Discrimination*". has left enough space for its implementation by the pre-university education system. Children and teenagers learn "sexual education" only in two subjects during 12 school years. School curricula

²² Vallianatos and Others v. Greece [GC] - [29381/09](#) and [32684/09](#), 7.11.2013.

²³ Article 5/1 of the Law no. 69/2012 "*On Pre-University Education in the Republic of Albania*"

continue to remain very conservative in relation to issues of sexuality as a right, natural state or social issue. Sexual orientation and gender identity are not addressed in the current education system. Numerous reports from the community indicate that, not only students but also teachers are often discriminatory towards LGBTI persons. It often happens that they legitimize homophobic and discriminatory behavior towards LGBTI children or teenagers.²⁴ Community treatment and manifestations of bullying in the educational institutions remains a problematic. The Commissioner has conducted a monitoring on the recognition of the law by teachers and students, which revealed sexual orientation as one of the causes of discrimination in educational institutions²⁵. From this monitoring, which was conducted in the form of a questionnaire, it was highlighted that the main causes that students ranked for discrimination was sexual orientation with 17%. That percentage came out from the survey conducted in 6 pre-university schools in six municipalities.

One of the priorities of the EU is the decriminalization of sexual relations between persons of the same sex. The World Health Organization (WHO), since 1990 has removed homosexuality from the International Classification of Disease Statistics and Health Problems. However people with different sexual orientation are considered and still continue to be considered unfairly as people suffering from an illness. Expressions like "homosexuality is a disease" are unfounded and misinforming public opinion. Moreover, in some textbooks, homosexuality is treated as a disease. We do not have a study on discrimination against the LGBT community in the content of the curricula of all levels, but neither on the involvement in these programs of informations about this community.

The Commissioner for Protection from Discrimination has handled a case on discriminatory content of one of the literatures used by two Faculties in developing a university curricula module.²⁶

Healthcare. LGBTI community, especially transgender people continue to suffer from discrimination and have difficulties in accessing health and social services.²⁷ Health conditions of LGBTI persons (mental and physical) remains unknown because a considerable number of the community refuses to admit publicly their sexual orientation. The only data available are the on the MSM in the framework of fighting against HIV/AIDS. European institutions emphasize the necessity that in the health plans should be included measures on health studies, training curricula and health policy that take into consideration LGBTI people and their needs.²⁸

Employment

There are no reports or statistics about the situation of LGBT people related to the employment. Currently, the diversity policies are not implemented for issues of sexual orientation and gender

²⁴ Taken from the publication of PINK Embassy/LGBT Pro Albania. *Financed by: MATRA Program, Ministry of Foreign Affairs of the Kingdom of the Netherlands.*

²⁵ See pages 21 & 22 of this report.

²⁶ Decision no. 11, dated 08.02.2013

²⁷ Taken from: Albania 2012 Progress Report *accompanying the document* Communication from the Commission to the European Parliament and the Council.

²⁸ European Union Agency for Fundamental Rights "EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey", Luxembourg, 2013, pg 10.

identity. European institutions emphasize the importance of awareness focused on the rights of the LGBTI community in vocational training courses, support of trade unions and employers in their efforts to protect the rights of LGBTI community in employment, development and implementation of equal treatment policies through the adoption of a Code of Behaviour, sharing best practices in community support. Currently, no institution or business has developed specific policies on LGBTI people.²⁹ It is important that in strategies for equality between men and women that contribute to combat stereotypes and discrimination and gender-based violence, are included also programs to combat stereotypes and discrimination on grounds of sexual orientation and gender identity.³⁰ The Commissioner has prepared with the support of UN Women “Source Guide for the Protection from Gender Discrimination in the Economic Sector”. Its purpose is to offer as many practical information as possible related to the understanding of discriminatory behavior, the forms of their manifestation, the addressing of gender discrimination, the legal mechanisms for protection from discrimination, as well as the instruments of monitoring and reporting of gender-based discriminatory behavior in the economic sector.³¹ There are no statistics to show if LGBTI persons openly declare their sexual orientation or gender identity in the working environment. Individual cases are successful but negative, too. LGBTI community reports discriminatory behaviors in the working environment. NGOs have reported several times discrimination and loss of jobs due to sexual orientation.

Goods and services

We note that there is homophobia, not only in school or work environments, but also in service provision. Especially the medical service should be a priority, whereas the service was often denied to LGBT persons, constituting obvious discrimination against this community. Discrimination against LGBT persons is connected with their external appearance or behavior. Persons who do not behave or do not live according to the social "norms", are often victims of discrimination in all environments, family, school, work, roads and public facilities. The community has reported discriminatory behavior in commercial services units, through hostile attitudes or denial of service provision.³²

The Commissioner (by letter No. 367 Prot, on 01.07.2013) brings to attention that the Law no. 10221 dated 04.02.2010 "On protection from discrimination" provides the obligation of the Ministry of Education and Science, not only to eliminate discriminatory provisions in existing curricula at all levels, but also to include information about the law on protection from discrimination and the concepts and actions against discriminatory behavior patterns. Based on the Cooperation Agreement signed between the two institutions, one of the commitments is precisely the cooperation towards eliminating discriminatory provisions that may exist in various texts of the education system.

As above, the Commissioner recommended:

- The Ministry of Education and Science takes all the necessary measures to guarantee that all the public and private higher education institutions, during the process of approval of

²⁹ www.pinkembassy.al/publikime

³⁰ European Union Agency for Fundamental Rights “EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey”, Luxembourg, 2013, pg. 10.

³¹ See: http://kmd.al/skedaret/1393580529-Guida_Burimore.pdf

³² Decision no. 5, dated 23.01.2014 (case started in 2013)

learning programs and curricula, and the literature that will be used, take into consideration and to their attention the changes in the text "Forensic Medicine".

- The Ministry of Education and Science takes all the necessary measures to guarantee that all the public and private higher education institutions, during the process of approval of learning programs and curricula, and the literature that will be used, to avoid the inclusion of texts and literature, which have in their content, predictions and discriminatory concepts.
- To remind the heads of public and private educational institutions, their legal obligations arising from the Law no. 10 221, on 04.02.2010 "*For the protection from discrimination*".

The CPD (by letter No. 461 Prot, on 05.09.2013) has sent "recommendations on taking measures to combat discrimination in respect of the right to education, in the beginning of the school year 2013-2014 in the pre-university education system", to all the Regional Education Directorates in Albania and to the Ministry of Education and Science, where through others: *to monitor continuously the measures adopted by heads of educational institutions to prevent and combat discrimination in schools, and how to handle homophobic attitudes and stigmatizing and discriminating behavior against students belonging to the LGBTI community.*

3. Addressing discrimination cases aiming at increasing the number of complaints.

During 2012 - 2013, the Commissioner for the Protection from Discrimination has handled 12 complaints and ex-officio, on alleged discrimination because of sexual orientation and gender identity. It should be emphasized that cooperation with NGOs has been very effective in identifying cases of alleged discrimination, awareness raising and improving situations. In some cases, information provided by civil society organizations has served as indicia or information to the Commissioner to initiate investigations by oits own initiative. At the office of the Commissioner for Protection from Discrimination, during 2013 besides the individual complaints, also 17 complaints were submitted by organizations with legitimate interests. These complaints generally came from organizations that protect the interests of the LGBTI community.

Therefore, it results that the number of complaints remains low in comparison with the overall number of complaints for other grounds (12 of 295 cases handled during these years). Of these, from 12 cases the CPD has found discrimination in 7 cases and has given 3 sanctions by fine for failure to comply the CPD recommendations.

First: Treating homosexuality as a disease and distribution of wrong information through university textbooks.

PINK Embassy/LGBTI Pro Albania, announced through a press release and a complaint submitted to CPD requires: the removal from the market of all the books that discriminate the LGBT community include "Legal Medicine" and update all academic texts, including the two texts used by the Faculty of Medicine and the Faculty of Law. **The Commissioner for Protection from Discrimination has decided:** The content of the book "Legal Medicine" is discriminatory; the Authors that have produced this discriminatory material should modify the text and if this is not possible the textbook should be removed from libraries and of all

institutions within 60 days; authors of this textbook shall inform the Commissioner for the actions undertaken within 30 days by submitting a copy of the book review. (Authors and deans of faculties have informed the Commissioner about the measures undertaken to implement the decision of CPD).

Second: Association of homosexuality with deviant and criminal behaviour

The Commissioner has examined two complaints with almost same allegations. One case was initiated by the CPD against a leader of the political party about the declarations in visual media that identify paedophilia with sexual orientation. The other complaint is made by the two organizations with legitimate interests PINK Embassy and Pro LGBTI Albania, which claimed that an article published by a public figure in a daily newspaper, has discriminatory context, homophobic and wrong information toward the LGBT community in Albania.

In both these complaints, the Commissioner has estimated that E.S and A.L have used language addressed to LGBT, which create among the public and especially to those people who are not well-informed about issues of sexual orientation or gender identity, feelings of misunderstanding, rejection, and to some hatred against this community. The Commissioner has estimated that the expressions used by the E.S and A.L, are flagrant and hate speech that even in the absence of identification of a particular individual as a victim of discrimination, impunity discriminatory behaviour so open, would seriously undermine the existence of the law "*On Protection from Discrimination*".

At the conclusion of the review of the complaint the Commissioner has ascertained that the terms used by the both subjects are discriminatory because they prejudice the dignity and violate the security and protection of persons from violence due to sexual orientation and gender identity.

Also, in this decision, the Commissioner decided the obligation of E.S and A.L, as persons who have consumed discriminatory behavior, to apologize publicly and to avoid in the future the usage of such language that incites hatred.

*Given that in response to the decision, the subjects have not responded, the Commissioner, pursuant to the Law "*On Protection from Discrimination*" has decided an administrative fine, in the amount of 20,000 ALL and 10,000 ALL.*

Third: The tendency of treating homosexuality as a topic related to scandalous news

Transmission of information on criminal offenses, by relating it with personal characteristics (sexual orientation) who presumed to have committed the offense even when this personal feature does not define the setting of the offense, this situation establishes a practice that indirectly discriminates individuals or communities because of these characteristics.

In order to address issues of discrimination against LGBTI community in a more qualified way, the Commissioner is involved in a number of activities to build staff capacity:

- ✓ On the implementation of the project of the Commissioner for the Protection from Discrimination, entitled "*Implementation of the principle of gender equality and program of gender-based violence*", supported by UNDP, during January-December 2013, a Group of Experts (consisting on four members of Albanian academia and an international expert, experienced in gender equality bodies) assisted the CPD, in the decision-making process and drafting the legal opinions.
- ✓ Also, in the framework of this project, is prepared for publication a summary of the decisions of the European Court of Human Rights, the European Court of Justice and the Equality Bodies of the EU countries, which have been translated in Albanian.
- ✓ On 7 June 2013, two representatives from the Office of the CPD and the Commissioner participated in a roundtable, entitled "*Implementation of the Orders of Protection in the framework of measures on prevention and fight against domestic violence*", organized within the project "Prevention and fight against violence against women and domestic violence, in the framework of gender justice", of the School of Magistrates, supported by UNDP.
- ✓ On 18-22 November 2013, a representative of the Office of the CPD participated in the *study visit* in Sweden at the Swedish Institute. The main objective of this activity was to get known to the delegation of the Balkans with the handling of LGBTI cases from Sweden, introduction with institutions dealing with these issues as well as the way of organizing the annual parade of LGBT community.
- ✓ On 6 - 7 June 2013, two employees of the Office of the Commissioner participated in the workshop, by topic "*Effective methods to fight discrimination in the Western Balkans*", organised by Civil Rights Defenders.
- ✓ On 17 September 2013, the Advisor and one employee of the CPD's Office attended in the workshop by topic "*Issues and Intersex transgender persons in Albania*", organized by the Alliance of LGBT and Pro LGBT. On 1 November 2013, a representative of the Office of the CPD took part in the seminar "*Developing Strategic Litigation of LGBT persons*".
- ✓ On 20-21 November 2013, two representatives of the CPD Office participated in the seminar held by the Ombudsman on "*The usage of Indicators to implement and evaluate Human Rights in Albania*".

4. Drafting policies and strategies and addressing them by the institution of equality and non-discrimination.

Albania does not have a strategy for protection from discrimination, but has undertaken concrete measures aimed at protecting the rights of the LGBT community and some other vulnerable communities

- ***The Office of the Commissioner has been part of the working group for drafting the "Action Plan for discrimination because of sexual orientation and gender identity 2012- 2014"***, giving his contribution to proposals for changes in the legal framework and anti- discrimination policies in employment, education and in the area of goods and services. Some of the measures envisaged in this plan are: training of public administration at central and local government with new concepts and principles of law for protection from discrimination, organization of awareness campaigns, annual editions,

publications, leaflets, good practices on anti-discrimination, concrete measures by public institutions and business/private activities to ensure equality based on the anti-discrimination law, trainings of specialists who work for employment offices and teaching staff related to LGBT issues.

- *CPD Strategy sets LGBTI community as one of the communities most at risk, especially as one of the groups to which is REQUIRED the implementation of a series of legal improvements, curricula revision and awareness of society about their rights.*³³

5. Promotion of community rights and the communication aspect

In the promotion of LGBTI community rights is of special importance the attitude and support of opinion-makers. *“Open support by politicians makes LGBT persons feel more comfortable about living as LGBT persons... In addition, Member States are encouraged to promote a more balanced public opinion on LGBT issues by facilitating dialogue involving the media, political parties and religious institutions”.*³⁴

5.1. Media

The media has expressed a particular interest in the issue of LGBTI and has significantly influenced (positively & negatively) in addressing the concerns of LGBTI community.

The debate, discussion, or even writings in Albanian daily newspapers on issues of rights and freedoms of persons with different sexual orientation are necessary, considering that the discussions on such issues have been taboo. Derecognition of these issues in an appropriate manner makes that the audience has a wrong reaction. Such discussions based on incorrect information often lead to prejudices and stereotypes towards people due to sexual orientation.

The citizen V.N has submitted a complaint at the Office of the Commissioner, after feeling discriminated on ground of sexual orientation, by various written and visual media, which have fully transmitted his personal data. In the information provided to the media, persons involved in the news are labelled as homosexual and prostitution offenses are connected with the personal characteristic of sexual orientation. Mr V.N stated that due to the publication of his name on television and in newspapers, he is being refused to be employed, the family does not want to deal with him and he was insulted at the facilities of the Police Station.

At the end of the proceeding, the CPD stated that the transmission of information on criminal offenses, by relating it with personal characteristics (sexual orientation) who presumed to have committed the offense even when this personal feature does not define the setting of the offense, this situation establishes a practice that indirectly discriminates

³³ Strategic Plan 2012-2015 and Action Plan of the Commissioner for the Protection from Discrimination, pg. 36.
See: <http://kmd.al/skedaret/RAPORTI-SHQIP-PER-PRINTIM.pdf>

³⁴ See: European Union Agency for Fundamental Rights “EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey”, Luxembourg, 2013, fq 10 **and** European Union Agency for Fundamental Rights “Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States”, Luxembourg, 2013, pg. 10.

individuals or communities because of these characteristics.

The Commissioner recommended that the media should be more careful and responsible *in the publication of information* by overcoming the tendency of treating homosexuality as a topic related to the scandalous news. *Media should take measures not to publish the personal characteristics of individuals, who are not related to the legal provision regarding the criminal offense committed.*

5.2. Organisation of Conferences and trainings from CPD and the participation in seminars and roundtables

During 2013, the Commissioner and CPD staff have participated in about 35 seminars, conferences and roundtables on discrimination in the field of employment, gender equality, the exercise of the right to vote for persons with disabilities, social inclusion of the Roma community in Albania, LGBTI community rights. Of these, we would note:

On 18 March 2013, the Commissioner participated in the Regional Conference "***LGBTI Community Rights in the Western Balkans - Achievements and Challenges***", held by PINK Embassy in cooperation with COC Netherlands and with the support of the MATRA Programme of the Ministry of Foreign Affairs of the Kingdom of Netherlands. In this conference, the Commissioner focused on the challenges of discrimination of the LGBTI community in Albania.

On 16 May 2013, a roundtable discussion by topic "***Albania against Homophobia: LGBTI in front of politics, media, youth and measures against discrimination***", was held in collaboration with the Ministry of Labour, Social Affairs and Equal Opportunities (actually the Ministry of Social Welfare and Youth, the Commissioner for the Protection from Discrimination and the People's Advocate. In this meeting, the Commissioner held the topic "***The Rights of the LGBTI community as fundamental human rights***".

On 17 May 2013, on the International Day against Homophobia, the CPD supported the organization of "***Diversity Fair 2013***". The CPD had its own stand at the fair. The CPD has participated also in the consultative meetings for organizing this fair, giving its contribution to the preparation of leaflets and logos of the Diversity Fair.

On 17-19 June 2013, **the Commissioner participated at the regional workshop "*The human rights of LGBTI Community, Equal Treatment and Fight against Discrimination*", organised in Belgrade, Serbia, by "People 2 People", Programme of the European Commission in cooperation with the Office for the Protection of Human Rights of Minorities in Serbia.** The Commissioner gave a speech on "***Hate crime and Hate speech***". The Commissioner's presentation is available on the TAIEX website:

http://ec.europa.eu/enlargement/taieux/dyn/taieux-events/library/detail_en.jsp?EventID=53050

On 2nd October 2013, in the premises of the Alliance against Discrimination of LGBTI, a workshop with the LGBTI community was held. In this workshop attended a representative of CPD office, who presented the mechanisms for protection from discrimination, the role of CPD and positive patterns, the remedies, procedures for handling the complaints etc.

The Commissioner for Protection from Discrimination held, on 07 November 2013, the **Conference entitled "The protection from discrimination: Positive Patterns and Challenges"**. The conference aimed to attract the attention of institutions, civil society, media and international organizations to the right to protection from discrimination, achievements and challenges in this field. After the panel with high representatives, the conference continued through separate roundtables for the protection from discrimination of vulnerable groups, part of which were the interested groups, representatives of civil society that have as object of their work the protection of these target groups and representatives of the CPD. Thus, the Conference was organized in six working groups, discussing on the protection from discrimination based on gender, protection from discrimination of children, minorities, LGBTI community, persons with disabilities and another discussed on the challenges on the implementation of the law "*For the Protection from Discrimination*".

In conclusion were identified as **positive patterns**:

- Positive cooperation with NGOs for referral of discrimination cases;
- Decisions that create positive patterns for handling of discrimination cases;
- Positive cooperation with NGOs to train local institutions, teaching staffs and Regional Employment Offices for handling discrimination cases and raising community awareness;
- The information containing elements that encourage discriminatory behavior are handled ex-officio by the CPD;
- Conducting monitoring in the educational system and mediation to resolve cases related to discrimination.

The working group on protection from discrimination of LGBTI community came up with the following **conclusions and recommendations**:

- The decisions of the Commissioner should be more visible and public.
- It remains a problem the discrimination of LGBTI community in public environments.
- Strengthening the administrative measures or setting extreme fines.
- There are difficulties in addressing cases
- Problem, how far does the freedom of speech go?
- LGBTI community finds it difficult to extract problematic
- A monitoring is necessary especially to the private sector.

The Commissioner has promoted the social dialogue against discriminatory behaviour towards the LGBTI community. Presentation of recent cases of discrimination based on sexual orientation in national and local television as: "News 24" and tv emission "Top show" on "Top Channel", "Ora News", "Channel One", Radio Albania News etc.

The Commissioner has published several articles in the written media: "*Among the freedom of expression and "hate speech"*" in the newspaper "Mapo" on 18.05.2012; "*Respect for the rights of LGBTI Community: Achievements and Challenges*" published on 14.12.2012 in the newspaper "Gazeta Shqiptare", "*LGBTI rights as fundamental human rights*" on 16.05.2013 in the newspaper "Panorama".

5.3. Publication of Special Reports and conducting monitoring

Based on Article 32, paragraph 1, letter (f) of the Law 10221/2010 "*On Protection from Discrimination*", which provides that the Commissioner has the power "*to publish reports (...) for any kind of issue related to discrimination*", **the CPD has prepared this Special Report "For the protection and respect of the rights of LGBTI community in Albania"**. During the first quarter of 2014, this report will be prepared for publication.

While the CPD has reported on the situation of LGBTI community in the Annual Reports³⁵ submitted to the Parliament of Albania as well as in the context of reporting's at international organizations mechanisms, such as:

On March 8, 2013, the CPD reported to the IVth meeting of the Stabilisation and Association Committee, in Brussels. On April 17-18, 2013, the CPD reported to the Vth meeting of the *Subcommittee on Justice, Freedom and Security* of the EU-Albania, in Brussels. The CPD reported to the Human Rights Committee, within the Albanian Second Periodic Report to the *International Covenant on Civil and Political Rights*, which was considered on July 15-16, 2013, in Geneva. The Commissioner reported under the Fifth Meeting of the European Union-Albania *Subcommittee on Innovation, Information Society and Social Policy*, EU-Albania, held on 28-October 29, 2013, in Tirana. On November 6, 2013, the Commissioner reported on the implementation of the *Covenant on Economic, Social and Cultural Rights* to the Human Rights Committee, in Geneva. On November 20, 2013, the Commissioner for Protection from Discrimination has sent written information to the State Agency for the Protection of Child Rights at the Ministry of Social Welfare and Youth, related to questionnaires regarding the implementation of the Council of Europe Convention "*On the Protection of Children against Sexual Exploitation and Sexual Abuse*". On November 27, 2013, the Commissioner for the Protection from Discrimination has sent information to the Ministry of Foreign Affairs, regarding the drafting of the National Report under the Universal Periodic Mechanism (UPR) of Human Rights.

5.4 Monitoring in Education

In 2011, the Commissioner about Protection from Discrimination, considered it necessary to conduct a monitoring focused on discriminatory attitudes in the education system and the level of knowledge of the law no. 10221, dated 04.02.2010 "*On protection from discrimination*". The polls specifically addressed these age groups:

1. Pupils of 12 to 15 years old and students of 16 to 18 years old
3. Teachers, psychologists and school directors of 9-year schools and high schools

Monitoring was conducted in the municipalities of Shkodra, Tirana, Elbasan, Durrës, Fier, and Kukës and laid down in 6 schools for each city. It resulted from this monitoring that 17% of the pupils and 6% of the surveyed teachers ranked sexual orientation as a ground of discrimination.

The Commissioner for Protection from Discrimination come up with concrete recommendations addressed to educational institutions:

³⁵ Annual Reports: 2011 (pg. 15, 40); 2012 (pg. 16-17, 31-33, 59-60, 61); 2013 (pg. 15-19, 31-33, 51-52, 53-54)

The Regional Education Directorates take all measures to fulfill the obligations provided by the Law no. 10221, dated 02.04.2010 "*On protection from discrimination*", Chapter III, focusing primarily on article 19 which provides:

The director of an educational institution is responsible for taking positive measures in the respective institution, in order to fight discrimination related to the right to education. The measures that are taken, among others, are:

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

5.5. Publication and distribution of informational brochures and training manuals

Publication of informational brochures with general information on discrimination issues and those with specific information addressed to persons of LGBTI community has been one of the means to achieve the CPD objectives to raise awareness of this community on the possibilities to be protected against discriminatory behaviors. Besides the brochures and leaflets with information general³⁶, and various manuals in specific areas as: education³⁷ and employment or for specific grounds³⁸, or addressed to various stakeholders such as NGO-s³⁹, teachers and school psychologists, we highlight the publication of a leaflet and an informational brochure specifically addressing LGBTI community:

- Informative Brochure "How does the Law "On Protection from Discrimination" protect LGBTI Community?", which were developed with joint contribution of Pink Embassy and the Commissioner for Protection from Discrimination.
- "*Informational leaf for public officials on LGBTI issues*" with the support of the Council of Europe for LGBTI.

³⁶ 5000 leaflets and brochures on the Law on Protection from Discrimination were published and distributed.

³⁷ 2500 copies Informative Brochure on the Law "*On Protection from Discrimination*" in the field of education (for the pre-university educational system) **and** Training Manual for the directors of educational institutions, school psychologists and social workers.

³⁸ Information Booklet "*Protection of Minorities in Albania pursuant to the Law for Protection from Discrimination*".

³⁹ The Commissioner for the Protection from Discrimination and the Albanian Helsinki Committee, with the support of the Swiss Cooperation in Albania, during 2013, have prepared: "*Training manual "Protection from Discrimination-Training Manual for NGO-s"*", published in 2014.

RECOMMENDATIONS

1. Improving Albanian legislation to avoid discrimination on ground of sexual orientation and gender identity in accordance with the international acts, European legislation and the Law "On protection from discrimination".

- Approval of proposals made by the *Commissioner for the Protection from Discrimination regarding Draft-law "On some addition and amendments to Law no. 7961, dated 12.07.1995 "Labour Code of the Republic of Albania, amended ", (through the official letter no. 360 Prot, dated 14.09.2012)*

✓ In order to address the predictions made in Recommendation CM / Rec (2010) and to guarantee the right to security and protection from violence to people on ground of sexual orientation or their gender identity, we propose that: **after Article 84/a of the Criminal Code, to add another article in order to predict as specific figure of criminal offence intimidation on ground of sexual orientation and gender identity of the person.**

✓ In order to address the predictions made in part I of the Recommendation CM / Rec (2010), letter B, "Hate-speech" where it is stipulated that "Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons", CPD has recommended the reformulation or adding of new articles after Article 119/a "distribution of racist or xenophobic material through computer systems" and article 119/b "Insulting motivated by xenophobic or racism through computer system" in order to criminalize the distribution of materials through computer systems and homophobic insult through the computer system because of sexual orientation and gender identity of the person. EU experts have also highlighted the need of carrying out these changes and have recommended that their implementation should be included in the Guide to Priority 5.

✓ As we noted above, the recommendation requires, by force, the prohibition and conviction publicly of the "hate speech" on grounds of sexual orientation and gender identity. The Law "On Protection from Discrimination" provides in Article 1, the **gender identity** as protected ground of discrimination. To the amendments that were made to the Criminal Code in 2013, and specifically changes in Section 265, this section was redesigned by criminalizing incitement to hatred and strife just because of sexual orientation but gender identity as ground was exclude. **We propose that Article 265 "Promoting hatred or disputes" be reformulated to criminalize the incitement of hatred on grounds of gender identity.**

✓ *CPD recommended also the removal of the term "homosexual relations" mentioned in articles 100-107, Section VI "Sexual Crimes" of the Penal Code, and replacement with the term "sexual relations".*

- Approval of proposals made by the *Commissioner for the Protection from Discrimination sent, through the official letter No. 691/1 Prot, on 30.12.2013, legislative recommendations regarding the draft-law "The Administrative Procedures Code of the Republic of Albania"*.
 - Approval of proposals made by the *Commissioner for the Protection from Discrimination, sent, through the official letter No. 175 Prot, on 07.03.2013 "On amendments to Law no. 7895, on 27.01.1995 "Criminal Code of the Republic of Albania", amended"*.
2. It is very important to make research and gather information on the measures and discriminatory practices, especially when it comes to "hate crimes" and "hate incidents" due to sexual orientation or gender identity, taking into account the right to respect for private life. Crime statistics on grounds of sexual orientation should be reflected by the police.
 3. Awareness of society in general and specific groups on the rights of LGBTI community should be raised in order to promote debate incompatible with the use of hate speech.
 4. Should make sure that victims of discrimination are aware and can use effective remedies
 5. Realization of surveys and monitoring on the observance of the rights of LGBTI community in various fields, such as: education, employment and services. Inclusion in curriculum/school extra curricula of the rights of LGBTI community as human rights; review of textbooks with discriminatory content; surveys and studies on issues of discrimination / bullying / violence which include sexual orientation etc.
 6. Inclusion of public figures (journalists, politicians, teachers ...) to protect the rights of LGBTI community in order to promote positive patterns.
 7. Trainings on equality and non-discrimination should be conducted for specific professional groups, such as: police officers, healthcare workers, teachers and psychologists, local government officials, judges.