

REPORT ON THE ACTIVITY OF THE COMMISSIONER FOR PROTECTION AGAINST DISCRIMINATION

In the framework of the approximation of national legislation with European Union legislation, as well as to provide a more effective legal protection to victims of discrimination, the Parliament approved Law no. 10221, dated 02.04.2010 "On Protection against Discrimination" (PAD). An important contribution in lobbying activity for the drafting and adoption of this law gave the representatives of civil society in Albania, representatives of international organizations for human rights and representatives of the diplomatic corps accredited in Albania. Albanian Helsinki Committee (AHC) was one of non-profit organizations that provided legal expertise during the drafting and approval of this law.

This law introduced a number of innovations in the Albanian legislation providing legal guarantees for protection against discrimination for all persons living in the territory of the Republic of Albania, and to all those Albanian and foreign citizens living outside the territory of Albania in relation to Albanian state authorities. One of the most important legal guarantees that the law provides is the creation of the Commissioner for Protection against Discrimination (CPD). CPD is an independent public and specialized institution, which provides effective protection against discrimination and any form of conduct that, encourages discrimination.

Based on Article 21 of the LPD, the Parliament of the Republic of Albania, through decision no. 33, dated 22.04.2010, elected Mrs. Irma Baraku in the position of Commissioner for Protection against Discrimination, as well as through decision no. 34, dated 20.05.2010, the Parliament approved the structure and classification of job positions to the Office of the Commissioner for Protection against Discrimination, enabling the start of the work of this institution. AHC, in the framework of citizenship supervision of the activity of public administration, with the support of Civil Rights Defenders, has monitored the activity of CPD and in the end, has prepared this report.

The main purpose of this report is to analyze the activity of CPD, from the time when the institution began to function until the end of 2011, and provide concrete recommendations aimed at improving the work of this institution in the future. Analysis of activity of CPD is made in light of the significant powers accorded to the institution by the Law "On Protection against Discrimination." This report aims also to highlight the legal problems that are noted by law enforcement practices related to the activity of CPD.

The methodology used for gathering information has been achieved through the realization of meetings Mrs. Irma Baraku and CPD's staff, examination of the information presented in the Draft of Strategic Plan and Action Plan of the Commissioner for Protection against Discrimination 2012 - 2015¹ and evaluation of the current activity of CPD. In this report is included the problematic identified by AHC during the implementation of various projects as regards the situation of discrimination in country, promotion of capacities of CPD and local NGOs working in the field of human rights,

¹ Prepared by the Open Society Foundation Soros for Albania, OSFA

awareness of local community in various districts for LPD and CPD assisting in the drafting of the inner office acts. Following the report there are reflected our conclusions and recommendations.

1. Financial Resources

CPD is an independent institution which prepares and defends by itself the draft-budgets for the following years, taking into consideration the necessities related to the implementation of the obligation that this institution should commit, according to the law. With funds of State Budget of 2011, was made possible the reconstruction of facilities of CPD. In this framework, except the positive evaluation for creation of a suitable working place in this institution, it deserves to be underlined to make available a facility near this institution for development of staff trainings. Although, the budget approved by the Parliament for CPD activity for 2012 was not sufficient to ensure the necessary computer equipment, improvement of infrastructure and realization of activities with sensitivity and awareness character. In this budget there are not provided funds to open local CPD offices in the districts, as it is provided by the law.

2. Institutional capacities strengthening of CPD and publicity

Despite the work done from the institution, the staff of CPD has participated in several trainings and round tables designed to the capacity building of the staff and other actors of civil society through development of various topics dealing with issues of discrimination. These trainings are organized by domestic and international organizations such as the Albanian Helsinki Committee², the Open Society Foundation Albania (OSFA), Pink Embassy, UN Volunteers and the Young European Federalists, Commissioner for Human Rights at the Council of Europe etc. Staff participated also in several study tours and visits conducted in Sweden, Great Britain, Netherlands, etc., states that have established practices for tracking and addressing issues of discrimination.

The staff of CPD considers as important the continuity of its capacity building in the future, particularly with regard to such topics as: procedures for investigating cases of discrimination, claiming procedures of the person/group of persons in private entities, consolidation of CPD's relations with the public, issues of discrimination against people with disabilities and Roma, etc..

Open Society Foundation for Albania - Soros (OSFA)³ has developed and is in the process of finalizing the Strategic Plan and Action Plan for Protection against Discrimination Commissioner for the years 2012-2015. In the process of drafting this plan, OSFA included representatives of civil society, active in this field, following a consultation process with all public institutions with competence in the field of anti-discrimination. This strategy is an important tool for CPD and other public and private actors that are involved in discrimination cases, for a common understanding of the situation of non-discrimination, the challenges in this regard and their addressing.

² These trainings have been possible through the financial support of AHC by Civil Rights Defenders

³ Through the Program Rule of Law and Human Rights in the Soros Foundation

CPD in cooperation with the OSCE - in Albania is finalizing the preparation of institution's website. Also, the OSCE office in Albania is working to prepare a commentary that will enable better implementation of the LPD. Albanian Helsinki Committee with the financial support of Civil Rights Defenders and the Dutch Embassy in Albania has assisted CPD in the preparation of some of the interior acts of the office such as a complaint form, the data records of the complainants, etc.

3. Positive measures

LPD defines the institutions responsible for taking positive measures, which are temporary and special measures aimed at accelerating the deployment of real equality, when the lack of equality is caused by discrimination. In the field of employment, LPD has charged the Council of Ministers, the Minister of Labour, Social Affairs and Equal Opportunities and Minister of Interior to take positive measures, meanwhile, in the field of education, LPD has charged the Council of Ministers and the Minister of Education to take positive measures.

To date, none of the above institutions has taken positive action in the appropriate fields. Lack of a continuous activity from the Commission for Protection of Discrimination related to the monitoring of the implementation of the law, has influenced indirectly on negligence of the responsible institutions in the drafting of such measures. AHC estimates that the role of CPD and other actors of civil society engaged in the fight against discrimination are important to "exercise the necessary pressure" so that institutions begin the work for positive measures. Conduct of comprehensive studies on discrimination issues in employment, education and service sector in Albania would help these institutions in determining of the relevant measures.

4 Complaints

Article 32, paragraph 1, letter "a", "b", "c" and "d" of LPD, provides important competencies to CPD in terms of reviewing complaints from individuals, groups of persons who claim that are discriminated against or by NGOs that have a legitimate interest with the consent of the discriminated individual/group of individuals. On this purpose, CPD has the power to conduct investigations and impose sanctions, according to the law, when evaluates that the discrimination has been committed.

4.1 Statistics

CPD until now does not have an electronic system for data processing (database) that results from complaints received and reviewed so far. Details related to the complaints are processed manually and this hinders accurate and comprehensive analysis.

Since the establishment of this institution, until the end of 2011, CPD has received 19 complaints, of which 4 have been received in 2010. The complainants have used all modes provided by LPD for submitting complaints before the Commissioner. They have

alleged being discriminated mainly in goods and services⁴, employment, education, the right of ownership, personal dignity, etc. The reasons for which it is claimed for discrimination are mainly sexual orientation, gender, Roma ethnic origin, age and disability. CPD has given 8 rulings on complaints received.

Only in one case, CPD has ascertained discrimination because of sexual orientation in the context of a complaint brought by two NGOs which carry out their activities as regards the protection of the persons with different sexual orientation. The complainants claimed that the discrimination was committed by the vice chair of the Parliamentary Committee on Labour, Social Affairs and Health and the Deputy in charge of this Commission, during the exercise of his duty. CPD, after has examined the case, has decided to make recommendations to avoid discriminatory statements to LGBT community in Albania as well as providing institutional support to help this community to enjoy the normal rights and freedoms. Article 33, paragraph 10 and 11 of LPD provides that *"CPD's decision contains the regulations and arrangements, setting a deadline for their performance. If the commissioner orders the arrangements or measures, the person against whom a complaint is filed, report within 30 days before the commissioner in connection with actions taken to implement the decision"* The right of CPD to make recommendations, is a general competency of CPD provided for by the provisions of Article 32, paragraph 1, letter "f". Although, AHC has the opinion that in cases when CPD determines that the person or group of persons have been discriminated, it should order making the arrangements and determining mandatory measures against the person, who has committed discrimination, with purpose for restoring the right of the individual or group of individuals that was violated from discrimination.

Regarding the other 7 cases, CPD had decided not to accept the claim using motivations such as: discrimination is alleged prior to the adoption of the law; lacked documentation of the legal representative of the NGO; the issue is pursued in the context of another complaint that is judicially reviewed; the lack of sufficient information to enable an investigation, etc.

Article 33, paragraph 1 and 2 of the LPD provides for the right of an organization with legitimate interests to file a complaint on behalf of a person or group of persons to discrimination and the right of the authorized organization to represent specific person or group of persons complaint in review procedures by CPD. Two NGOs have invested a legitimate interest in the two cases together forwarding complaints to CPD about discrimination due to sexual orientation. One of the complaints is still in review process while in the other case CPD has concluded by stating discrimination in favor of the claims of NGOs (see above). CPD has set records that one of NGOs in order to be legitimized as a representative of the applicant/applicants must submit:

- a) A copy of the decision on registration of NGOs in court;
- b) A copy of the charter & Statute
- c) Special proxy

⁴ Social security, evaluative criteria of tenders, failure in using funds of a NGO for housing

Generally, the Law “On Protection from discrimination” has been assessed as a completed law and in accordance with EU legislation. Law practice of its implementation does not give the necessary grounds for further evaluation. Although, as regards cases where complaints are not accepted due to lack of sufficient information to enable an a fair and objective investigation⁵, we would like to point out that this provision is to some extent unclear and for that reason, it would be necessary that CPD makes an interpretation of this provision in its decisions. Also, switching the burden of proof from the complainant to the person against which the appeal is addressed, seems to be omitted, because is not provided explicitly in the provisions of LPD for procedures to review the complaint by CPD, according to the EU standard.

4.2 Investment ex officio of the CPD

Article 32, paragraph 1, letter "c" of LPD provides for the power of CPD to conduct administrative investigations after receiving reliable information on violations of this law. In the period this report covers CPD is invested in two cases ex officio.

The first case is the incident of 20 February 2010, where 45 Roma families were forced to flee their homes in the area near the train station in Tirana, by threatening to set fire to the barracks where they lived. To treat this case CPD has participated in the working group set up in the Ministry of Labour, Social Affairs and Equal Opportunities. Also, for this case, CPD has requested information from the Police Directorate of Tirana, and has held a meeting with the Executive Director of a Roma NGO. Then the case was closed because the legal representative of the Roma NGOs has given up from the examination of the case.

The second case relates to segregation of Roma children in schools. CPD has launched ex officio investigation in this case, where according to the information some Roma children who enrolled in first grade for the 2011-2012 school year in the school "Bajram Curri" in Tirana, were allegedly discriminated against, because were displaced from the initial classes where were recorded in a single class. This issue is still in process of review by CPD.

Based on abovementioned, AHC notes that the number of cases and complaints filed to CPD during the period of its functioning are scarce.

4.3 The procedure for internal review of complaints and respect of terms

Internal procedures of receiving and reviewing complaints by CPD pass through several phases. Initially complaints receive the appropriate specialist of Public Relations Division. This sector is responsible for maintaining and administering the registry to document all complaints directed to CPD Office. At this stage is examined the implementation of the formal aspects of the complaint according to provisions of LPD. If the complaint meets these aspects, it is passed to the Department of Procedural Affairs, Legal and External Relations, which examines whether the information reflected in the

⁵ For more information see article 33/4/ç of LPD

complaint is sufficient for CPD to be expressed by a decision or further investigation is needed to resolve it. If it is necessary to carry out further investigation, the complaint goes to the Department of Investigation- Inspection, which among other things has as its object of carrying out inspections and investigations to verify the facts presented by the subjects according to LPD. Once these three stages are exhausted, the Commissioner has the authority to decide on acceptance or rejection of the appeal and ordering the measures in accordance with applicable law. CPD administers two registers where are recorded complaints, one for complaints that do not meet the formal criteria laid down in the LPD and the other for those which meet the formal criteria.

Article 33, paragraph 10 of LPD provides that *"the Commissioner pronounces by decision, which is made known to the parties within 90 days of receipt of the complaint or whether holding a public hearing within 90 days of the session. The decision contains adjustments and arrangements, setting a deadline for their conduct"*. From the information that CPD has forwarded regarding the complaints, it appears that the deadline provided in the abovementioned clause is violated only in a complaint filed against the vice chair in duty of the Parliamentary Committee on Labour, Social Affairs and Health and the Vice Chairman of the Commission office. The reason of the breach of the term is that CPD had difficulty accessing the information by the party against which the complaint is filed.

This case has revealed another shortcoming of LPD, which provides that CPD should be expressed with a decision within 90 days of the session but does not define the term from the moment of receiving the appeal until the day that public hearing is held. For this reason, this part of the provision leaves room for causing delays in investigating complaints under which has developed a public hearing. We suggest that CPD should draft internal normative acts to cover this legal vacuum.

5. Representation of applicants in the judicial/ Submission of written opinions in court.

LPD provides two important competencies for CPD in relation to the judicial authorities in order to guarantee better a specialized examination of the cases of discrimination before the courts. Article 31, paragraph 1, letter "i" of LPD provides the competence of CPD to represent the complainant in the judiciary in civil matters with his consent in accordance with the procedure provided in this law. Article 31, paragraph 1, letter "k" of LPD provides the right of CPD right, at the request of the court to consider the matter, to file a written opinion on any matter relating to discrimination.

As above, AHC notes that none of the above provisions has been implemented, during the exercise of the CPD activity, until now. Moreover, to date no individual/group of individuals has not exhausted the legal means to specifically petition the court for discrimination issues, according to LPD.

AHC considers that the access of discriminated citizens to justice is limited also by the joint decree of the Ministry of Finance and Ministry of Justice, no.991 / 3, dated 03/02/2010, which has quadrupled the fees and rate charges to be paid in advance to the

court for the damage which the plaintiff seeks to be indemnified. As regards this issue, AHC would like to point out that among the most discriminated groups in Albania, are persons who have, among other things, very low financial income. The nature of the issues of discrimination is associated with the damage caused, which may be pecuniary and/or property, therefore the abovementioned fees prevent this category to access the court. Despite this problem, the access of citizens is low due to lack of confidence towards the justice system, what is caused mainly by delays of the cases by the courts and prosecutor offices and the perceptions of corruption that public has toward them.

Regarding the right of CPD to represent the discriminated complainant in the judiciary in civil matters, AHC suggests to have a better awareness of citizens about this power of CPD. Defining clear legal criteria, in internal acts of CPD, when and in what conditions this body may represent the applicant in judicial bodies, constitutes a guarantee for the realization of this right in practice.

6. Monitoring of law enforcement/Conducting surveys

Namely, Article 31, paragraph 1, letter "f" and the letter "e" of LPD provides CPD the competence to monitor the implementation of the law and to conduct surveys on discrimination issues. In the period this report covers, CPD has not implemented any of these powers. Among the main factors were the inadequacy of financial resources and the fact that the institution is relatively new and still has not yet necessary capabilities for their realization. Is positive that in 2012 budget that is allocated to CPD is foreseen the implementation of a monitoring for implementation of the LPD and a study on discrimination issues.

7. Promotion of the principle of equality and nondiscrimination by organizing sensitizing/awareness activities⁶

Awareness and legal education of citizens for LPD is very important to enable its implementation. In particular, vulnerable groups like women, children, Roma, Egyptians, LGBT persons, etc., must be familiar with the contents of this law on the grounds that these categories are defined as among the most discriminated against in various reports of human rights issued by domestic and international organizations.

Article 32, paragraph 1, letter "d" of LPD provides that CPD has the power *"to promote the principle of equality and nondiscrimination, particularly by sensitizing and informing on these issues, including the provision of written information, including on this law, in Albanian, in minority languages and in formats usable by persons with disabilities"*.

As above, CPD has prepared and published brochures and awareness materials which contain information for the office of CPD and content of the LPD, the form of claim to be filled by citizens who claim that they are discriminated against, etc. Also the law has been translated in some minority languages and has been adjusted to be read by people

⁶ This conclusion is based on the reaction of citizens bringing claims in the framework of the program "Free Legal Clinic"

with disabilities in the sense of sight. Also, the format of the complaint filed in CPD is translated into 2-3 minority languages. CPD is cooperating with police structures to finalize the content of the posters for LPD that will be located in police premises. In collaboration with UNDP, CPD has developed a training cycle in some regions of the country to inform the local authorities of the LPD and functioning of the office of CPD.

CPD has developed some sporadic awareness activities such as participation in televised debates, the presence in the press, organization of a round table in cooperation with the OSCE, where were exhibited artworks of students from six city schools of Tirana on discrimination issues, etc.

Sensitizing activities for LPD have developed several NGOs. Although, AHC noted that CPD activity within the awareness and education of citizens LPD, although wide-ranging, has not been sufficient. The lack of necessary funds is one reason for low CPD involvement in these activities. AHC estimates that establishing public confidence in CPD institution is a key factor for increasing the complaints which request protection from discrimination, what will achieve in reality the main aim of this law. .

8. Institutional Cooperation

During the period this report covers, CPD has established contacts with the District Court of Tirana to facilitate obtaining data about NGOs operating in Albania, which have in the focus of their work protection of human rights and mainly protection from any kind of discrimination. It has established also collaborative relationships with other state institutions such as the Ministry of Education and Science, Ministry of Labour and Social Affairs and Equal Opportunities, Ministry of Integration, local governments, etc. There is in process the finalization and signing of cooperation agreements with the Ministry of Justice, Ministry of Education and Ministry of Labour, Social Affairs and Equal Opportunities. The Legal Aid Commission and CPD have signed a Memorandum of Cooperation which envisages joint awareness activities between the two institutions, creating facilities for purposes of monitoring the implementation of the LPD, offering free legal aid for civil cases with discrimination' object and the training of lawyers of the Legal Aid Commission by CPD in this field. AHC has the opinion that CPD should extend the collaboration between Ombudsperson and local authorities.

9. Develop a regular dialogue with relevant social groups, including NGOs

The Article 32, paragraph 1, letter "k" of LPD provides for the competence of CPD for "*the development of regular dialogue about issues of discrimination with the relevant social groups, including NGOs.*" CPD has very good cooperation with domestic and international organizations: OSCE Office in Albania, the Open Society Foundation in Albania, UNICEF, Pink Embassy, Albanian Helsinki Committee, TLAS, CLCI, British Council, the Council of Europe etc... Cooperation has consisted in participation of CPD in activities conducted by these organizations, which have been focused on issues of discrimination, such as national and regional conferences, round tables and dialogue,

training, seminars, national debates, etc. Between AHC and CPD has been signed a memorandum of cooperation.

AHC assesses the current activity of CPD regarding development in terms of regular dialogue with domestic and international organizations operating in Albania. However, AHC wishes to highlight the fact that this cooperation in all cases was initiated by civil society within the various activities that are carried out with its initiative. AHC notes also that CPD has not taken the initiative to develop a regular dialogue with social groups.

3. Recommendations

- AHC suggests for the future, to consider the possibility of making the necessary amendments of LPD and secondary-laws related to various aspects that need improvement, such as clarification of the burden of proof in civil process of protection from discrimination; clarification of the conditions and circumstances when the complaint lacks reliable information to enable them to conduct an investigation; clarification of the terms of the examination of the complaint by CPD, when a public hearing has been developed; etc..
- We suggest that CPD put pressure to responsible institutions, that under the implementation of the law, to take positive measures, in the framework of protection from discrimination.
- AHC suggests that CPD should be more active and should increase the number of administrative investigations ex officio, especially for those cases of discrimination which are made public in print and electronic media, or the cases presented in various reports of domestic and international organizations of human rights.
- In terms of internal procedures in receiving and reviewing complaints, AHC suggests that CPD, time after time, should re-evaluate the internal procedure and organizational structure related with handling of complaints, with aim that, by analyzing the experience of the examination of the cases handled, to set conditions increasingly appropriate for receiving complaints and to examine them in reasonable time and fair way.
- AHC suggests that Ministry of Finance and Ministry of Justice review once again the order no 991/3, dated 03/02/2010 for judicial fees in civil cases, especially for people who are victims of discrimination and similar categories, with aim to exclude them from the obligation of the payment of this fee. AHC suggest also that CPD should lobby in this regard.
- AHC suggests to CPD increase cooperation with local and international organizations, with domestic institutions involved in collecting and processing statistical data and to take experience from homologue institutions in developed countries, to implement monitoring activities and surveys, in order to make evident the situation of discrimination phenomenon in Albania.

- AHC suggests to CPD to increase awareness and information activities with the view of improving access of citizens before this institution.
- AHC believes and suggests the continuity of cooperation between CPD and civil society actors who focus on legal education of citizens, by developing joint activities of awareness and educational nature, as well as in preparation of joint studies, developing capacity building of staff and making efforts to refer cases of discrimination before the relevant institutions.
- AHC suggests to CPD to develop ongoing activities such as: round tables or meetings with stakeholders⁷, so as to discuss forms of discrimination which such groups are faced with, addressing them in an institutional way and reviewing the possibility of involvement of stakeholders in joint activities of CPD with informative/sensitizing and training character, etc.

⁷ Who represent the most discriminated strata of the Albanian society