

The Universal Periodic Review

The situation of lesbian, gay, bisexual and trans (LGBT) people in Albania

Date: 3 September 2013

Submitted by:

PINK Embassy / LGBT Pro Albania

Alliance Against Discrimination of LGBT Albania

ILGA-Europe

Contact details

E-mail: amarildofecanji@gmail.com/blerina.metaj@crca.al and
sidita.zaja@gmail.com /aleanca.al@gmail.com
joel@ilga-europe.org

Telephone/fax: +355 4 22 65 741
+355 69 64 84490

Postal address: Str. Vaso Pasha

Pll. Ish Keshillit Britanik
Kati VII
P.O Box 1403

Contact person: Amarildo Fecanji, General Manager, PINK Embassy / LGBT Pro Albania
Sidita Zaja, Legal Representative Alliance Against Discrimination of LGBT Albania
Joël Le Déroff, Policy & Programmes Officer, ILGA-Europe

1. Overview of the situation

The preliminary results of the European Social Survey, which was conducted for the first time in Albania in December 2012, found out that 53% of the Albanian public do not think that gay and lesbian people should be free to live their lives as they like¹. This puts Albania on the bottom list of the European countries surveyed. Another survey, conducted in autumn 2011, on Albanian youth, by Friedrich Ebert Stiftung Foundation, found out that more than 50% of Albanian young people under aged would not welcome a homosexual couple in their building². Qualitative surveys conducted by students of Social Sciences reveal trends of low acceptance from society on homosexuality, same sex union and high levels of discrimination and bullying in the school environment³.

Monitoring and recordings of human rights violations of lesbian, gay, bisexual and transgender people, conducted by PINK Embassy / LGBT Pro Albania, in the years 2011, 2012 and 2013 reveal

¹ <http://soros.al/2010/foto/uploads/File/Adela/Preliminary%20Findings%20-%20European%20Social%20Survey%20in%20Albania%20-%202026%20march%202013.pdf>

² <http://www.fes-tirana.org/pages/shqip/publikime/publikime-2012.php>

³ Publications available upon request

trends of violence against transgender people, violence in the family environment and discrimination due to appearance or behaviour in settings such as schools, bars, streets etc. The Alliance Against Discrimination of LGBT people has also recorded cases of violation from part of the community. There are eight cases of violence towards the LGBT community mainly in streets toward young gay men appearing more feminine that have been victim of physical violence. Politicians from both the right and left wing have discriminated against LGBT people and organizations in more than one occasion⁴. Annual Reports by the Children's National Helpline, Alo 116, reveal that one of the major causes of discrimination and bullying in schools is due to a youngster being perceived as gay or lesbian.

Despite, but also due to general trends of discrimination and homophobia, the Albanian government and law makers have shown willingness to improve the life conditions of LGBT people. On February 2nd 2010 the Law for Protection from Discrimination was adopted. For the first time in Albanian history, this law offers guarantees as regards the implementation of the principle of equality based on a person's sexual orientation and gender identity, and protection from discrimination⁵. In December 2012, the Ministry of Labour, Social Affairs and Equal Opportunities (MoLSAEO) launched the Plan of Measures of the Albanian government against discrimination based on sexual orientation and gender identity⁶. This working plan has brought together in the last two years, several ministries of the Albanian government, LGBT organizations, the People's Advocate, the Commissioner for Protection from Discrimination (Ombudspersons/Antidiscrimination authorities), and the international community in an effort to effectuate positive changes in Albania's legal, political, social, educational, economic and cultural framework regarding LGBT people. As of September 2013, with the support of the Council of Europe office in Albania, several activities are already taking place or will take place in the near future⁷.

Albanian political parties, on the other hand, have shown diverging trends in their approach towards LGBT issues. During the campaign of the general parliamentary elections which took place on June 23rd, two political parties publicly opposed homosexuality and LGBT rights. More specifically the Party for Legality of Albania (Royalist Party) added in its program that "the PLA does not think that Albanian law should recognize homosexuality and abortion."⁸ The Republican Party, in its chapter

⁴ Human Rights Violations Reports available upon request in English and Albanian languages

⁵ http://www.asp.gov.al/index.php?option=com_content&view=article&id=213:ligj-per

⁶ <http://www.mpcs.gov.al/zedhenesi/6-njofitime-per-shtyp/939-plan-masash-kunder-diskriminimit-me-baze-orientimi-seksual-dhe-perkatesie-gjinore->

⁷ CoE contact person on LGBT issues: Vincent.VANGERVENOEI@coe.int, LGBT Unit

⁸ <http://www.legaliteti.org/index.php/programi#politikasociale>

for Health and Ecology, in part C of the chapter asks with a very ambiguous language for “the legal prohibition of homosexuality as an overturning of senses of human nature...” A study conducted by two LGBT organizations, Alliance Against the Discrimination of LGBT and United Pro LGBT cause, reveals that the programs of most political parties of Albania have a general approach to human rights and make no specific mention of LGBT rights in their programmes. However, at meetings with LGBT activists political leaders of the left and right political spectrum have shown willingness to support and endorse LGBT rights.⁹ The most extreme case of political opposition to LGBT rights was the case with former Deputy Defence Minister, Ekrem Spahia, in spring 2012, prior to IDAHO activities, calling for violence against LGBT people.

Overall in the past five years, the LGBT movement in Albania achieved progresses. by the work of LGBT organizations, the international community, a general willingness of the Albanian media to be open about the debate on homosexuality and the perspective of Albania to join international organizations such as the European Union.

2. Equality and protection against discrimination

The Law for Protection from Discrimination was adopted in February 2010. Since then and with the plan of measures of MoLSAEO in December 2012, several actions have taken place in regards to improvements of the legal framework on equality and non-discrimination.

In August 2012, the People’s Advocate published a Special Report on LGBT rights. This report reminded the Albanian government of all its international commitments and the reforms that need to be implemented in the near future. With the leadership of Albania’s Ombudsman¹⁰, and the support of the working group chaired by MoLSAEO, including LGBT organizations, the Albanian Parliament adopted several changes in the Criminal Code. More specifically Article 50/j of the Criminal Code was changed to add sexual orientation and gender identity as aggravating circumstances in a crime. Article 265 regarding incitement to hatred and conflict added sexual orientation as a cause for punishment from two to ten years of imprisonment¹¹

⁹ Brochure “Think Politically” from Alliance for Protection from Discrimination and Together Pro LGBT email: aleanca.al@gmail.com

¹⁰ People’s Advocate as an independent institution that is charged with representing the interests of the public by investigating and addressing complaints of maladministration or violation of rights for more info <http://www.avokatipopullit.gov.al/?lang=en>

¹¹ <http://www.keshillimeligjore.al/legjislacioni-shqiptar/kodet%20shqip/ligji%20144-2013%20ndryshime%20ne%20kodin%20penal>

Meanwhile, in his Special Report the Ombudsman recommended changes to the Labour Code through: (i) inclusion of sexual orientation as a ground of discrimination in the workplace; and (ii) the addition of a paragraph on the burden of proof in accordance with the EU Employment Framework Directive (Directive 2000/78/EC). MoLSAEO has agreed to make these changes and the proposal has been sent to the parliament.

In the last two years several cases of discrimination have been recorded by LGBT organizations, published in the media and some of them have been publicly condemned by the Ombudsman. Meanwhile the Commissioner for Protection from Discrimination has made recommendations for several cases of discrimination, even though such recommendations have not been taken into account and have not been effective towards the perpetrators. In December 2012, the Commissioner replied to the complaint of PINK Embassy / LGBT Pro Albania about the content of two Legal Medicine books of the University of Tirana, which considered homosexuality as a sexual pathology. In March 2013 a Socialist Party member and publicist wrote a discriminatory article against LGBT people, comparing them and the work of LGBT activism with paedophilia. The same month, the head of the Party for Legality, Mr. Ekrem Spahia made homophobic remarks about homosexuality during a live TV debate.¹²

Meanwhile both the People's Advocate and the Commissioner for Protection from Discrimination have signed Collaboration Agreements with LGBT organizations.

Overall, discrimination has been recorded in the family environment, political speeches, public debates in the media etc. In one specific occasion, PINK Embassy received the testimony of a 19 year old student who was evicted from the apartment he was renting, once the landlord found out he was gay.

Due to widespread prejudice and homophobia, most LGBT people in Albania refrain from coming out in their family, at school or in the workplace. Sexual orientation has become, however, a widely discussed topic. Due also to how the media portrays the debate over homosexuality and LGBT rights, it becomes increasingly a subject for controversy.

¹² www.kmd.al contact person amarda.coku@kmd.al on decisions of the Commissioner on cases of discrimination because of sexual orientation or gender identity.

Right to marry and to create a family

Article 7 of the Albanian Family Code states that “marriage is contracted between a man and a woman who have reached the age of 18 years”, this explicitly prohibits the marriage between people of the same sex. Adoption of a child is also not permissible for people of the same sex, the article 242 of the Family Code providing that “a minor cannot be adopted by more than one person, unless they are spouses”, which means husband and wife and consequently by prohibiting the marriage the adoption is also excluded. Gay men or lesbians could adopt a child as individuals but not as a couple.

Law No. 8876, dated 04 April 2002 “On Reproductive Health” (“Law 8876”), does not regulate fertility treatment for lesbian women. The Albanian law regulates the recognition and admission of the reproductive rights of any individual and consorts. It as well guarantees and provides for the offering of the respective services and exercising the reproductive rights without distinction of gender or other demographic category. To our knowledge there are no family case law related to transgender persons

3. Freedom of peaceful assembly

In the last two years LGBT organizations have organized several outdoor activities, mainly around May 17th, on the International Day against Homophobia and Transphobia, and peaceful demonstrations against cases of discrimination. In all these cases the LGBT organizations have been protected by the Tirana Police and overall collaboration between the organizations and the Police authorities has been good.

There have been however several instances where high-level politicians exercised pressure against the protection of such demonstrations and the free exercise of LGBT organizations’ freedom of assembly. In March 2012, upon the public declaration of PINK Embassy to hold the first outdoor LGBT event, the *Festival of Diversity*, in the country on May 17th 2012, the Deputy Defence Minister stated that “they [LGBT people] should be beaten with batons” thereby endorsing violence against people participating in the event. The statement was condemned by the EU, the then Prime Minister Sali Berisha, the Ombudsperson and various human rights and civil society organizations.

Furthermore, The Alliance Against the Discrimination of LGBT people/United Pro LGBT cause made a complaint to the Commissioner Against Discrimination regarding this statement but the

Commissioner closed the case stating that “there were not enough evidence”, that would proof his statement

During the same event, on May 17th an Islamic Group held a counter-demonstration where they condemned homosexuality and asked homosexuals to leave Albania. Representatives of the Church also issued discriminatory press statements against such activities. On the same year, a Bike Ride organized by The Alliance Against the Discrimination of LGBT people/United Pro LGBT cause LGBT organizations was attacked by a group of youngsters who threw fireworks at the participants, two of the perpetrators were arrested and prosecuted Also on May 17th, 2013, a group of activists were thrown fireworks as they were sitting at a downtown cafe following the Gay Ride. Two activists went to report this attack to the police but firstly the Police did not want to take the complaint as they stated that “The people who threw the fireworks had the right to express their opinion in that way”. The police accepted to take the complaint only after the activists made clear that the police behaviour would be reported to Internationals.

Overall in the last years, the right to peaceful assembly has been granted to LGBT organizations and individuals and Law Enforcement institutions have been willing to offer their support. However, several incidents have shown that there is a tendency among different groups of society, to try to limit or prohibit LGBT visibility. Public authorities have to be better equipped and more willing to investigate cases of hate speech, discrimination or even hate crime occurring in the context of the LGBT community’s outdoor activities.

4. Right of asylum

There is currently no provision in the Albanian legislation to guarantee the right to asylum for LGBT people. However, recently adopted EU directives ask member states to include in their Asylum law also provisions recognising the existence of persecution based on sexual orientation and gender identity. It is believed that Albania, as a potential candidate country for joining the EU, will sooner or later adopt the same legislation.

5. Transgender rights

Transgender people remain the most discriminated and vulnerable group amongst the LGBTQ community in Albania. For years, before and after the LGBT movement was established, transgender people have remained the most marginalized. Many of them are sex-workers, an illegal activity according to Albanian law, many also are homeless and have no social support from the Municipalities and other institutions in the jurisdictions where they live. In 2009, the first reported case of hate crime against a transgender person resulted in the death of the latter. The police failed to consider it a hate crime and the perpetrator said that he did it in a moment of shock after finding out that the prostitute was a 'man'. Testimonies from other trans workers, however, reveal that the person was very much aware of the victim's gender identity and he had been following her for several days in a row.

In many other instances trans people have been victims of aggressions and discrimination from random citizens, but also from police officers and health practitioners. Overall, there is a tendency to confusion between the issues of gender identity and those of sexual orientation, as for many years the media and the general public reported the situation of this community making no difference with the situation of homosexual people.

In addition, there have been no cases of transsexuals requesting change of sex or other medical operation in Albania, neither have they requested recognition of legal gender change. However, the national health scheme in Albania does not cover such treatments and operations; they are not available even because of technical issues since Albania is not able to provide such treatments. The national Albanian health scheme does not cover medical operations for transsexuals.

According to the Law No. 10129 dated 11 May 2009 "On Civil Status", is not provided anything regarding the legal change of sex, meanwhile the change of name, according to this law, is permissible only when the person's name is inappropriate, but should be defined as such by the same law. The General Directorate of the Civil Status has a list of inadequate names which does not mention the situation of trans people.

Matters regarding the partner of transgender/transsexual persons on the right to pension, health insurance or social security are not regulated by law.