

Protection of Minorities in Albania persuant to the Law for Protection from Discrimination

UNE JAM NJESOJ SI TI



Komisioneri për Mbrojtjen
nga Diskriminimi

Commissioner for Protection
from Discrimination



BEST PRACTICES
IN
ROMA INTEGRATION
IN THE WESTERN BALKANS



Protection of Minorities in Albania

pursuant to

the Law for Protection from Discrimination

Tirana, 2013



This booklet is intended to provide information for persons belonging to a minority group¹, about the guarantees and legal protection against discrimination under the Law on Protection from Discrimination.

The publication of this booklet is made by the Commissioner for Protection from Discrimination with the support of the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The publication has been produced with the financial support of the European Union, in the framework of the project Best Practices for Roma Integration, implemented by ODIHR. The views expressed in this brochure do not necessarily reflect the official opinion of the European Union, and the policies or stance of ODIHR.

Cover: Rahela Kotollaku, a pupil at “Bajram Curri” school, presented at the exhibition organized within the framework of the project “Discrimination: Perception and current challenges” supported by the OSCE Presence in Albania.

¹ The term minority is used to describe racial, religious, political, ethnic, or other groups thought to be different from the larger population of which it is part. In this brochure the term minority is used in accordance with the Constitution of Republic of Albania (amended).

Introduction

Albania has had and continues to have a permanent commitment to the continuous improvement of standards related to the protection of and respect for human rights and fundamental freedoms, including minority rights. This fact is also demonstrated by our country's membership in international and regional organizations, as well as the ratification or accession to a number of international conventions on human rights and, in particular, the ratification of the Framework Convention of the Council of Europe "For the Protection of National Minorities".

Another guarantee for the protection of minorities is Law no. 10221 "On Protection from discrimination". The Commissioner for Protection from Discrimination was established based on this law as an independent institution to support efforts to provide effective protection from discrimination or any conduct that encourages discrimination.

Irma Baraku

Commissioner for Protection from Discrimination



Protection of Minorities in Albania *pursuant to* the Law for Protection from Discrimination

1. What does the Law on Protection from Discrimination guarantee for minorities in Albania?

The Law on Protection from Discrimination guarantees the right of everyone to equality before the law, equal protection by the law, effective protection from discrimination and any form of behavior that incites discrimination, regardless of membership in a minority.

2. What is discrimination against members of a minority?

Discrimination against one or more members of a minority is any distinction, exclusion, restriction or preference based on race, color, ethnicity, language of a person or group of persons, the intention or consequence of which is to impede or make the rights and fundamental freedoms guaranteed by law impossible to exercise in the same way as other people.

3. What are the forms of discrimination against a minority?

Direct discrimination occurs when a person or group of persons belonging to a minority is treated less favorably than another person or group of persons in the same or a similar situation.

Example: The director of an elementary school, when distributing pupils in classrooms, has decided to group Roma students in a separate classroom. This isolates this community.

Indirect discrimination occurs when a provision, criterion or practice, intended to be neutral, would put a person or group of persons belonging to a minority in unfavourable standing in relation to others.

Example: An institution gives an annual reward to employees for good performance, but statistics show that this year no award was received by two

employees who belong to a minority even though their performance was the same.

Instruction to discriminate is an instruction or request, based on a hierarchical relationship, to discriminate against one or more persons belonging to a minority.

Example: An ad-hoc committee is established in a state institution to carry out a civil service competition. The head of the institution confidentially instructs the members of the ad-hoc committee not to award the maximum points to candidates belonging to the Greek minority.

Annoyance² is discrimination that occurs when being associated with a minority creates unwanted behavior, the purpose or consequence of which is to violate a person's dignity and to create an intimidating, hostile, humiliating, degrading or offensive environment for that person.

Example: In a neighborhood, a group of children belonging to the Serbian-Montenegrin minority are offended with dirty and threatening words about their origin, causing panic and fear among children.

Discrimination based on association takes place when there is a distinction, restriction or preference because of association with persons belonging to a minorities group.

Example: A new student who belongs to a minority comes to class. Alban, the best student of the class, keeps him close and constantly accompanies him. Teachers begin to lower Alban's grades and not include him in the cultural activities of the school, because of his association with the minority student.

Denial of reasonable adjustment occurs whenever there is a denial or objection to carry out the necessary and appropriate changes or adjustments in order to not impose an excessive burden or to ensure the enjoyment and exercise, equally, of human rights and fundamental freedoms of persons with disabilities, or in other conditions mentioned in Article 1 of the Law on Protection from Discrimination.

2 Tr. note: The Albanian word translated here (shqetësim) has a number of closely related meanings; the concept aimed at is "harassment".

Example: Zamira, a Roma girl with disabilities, should have a laboratory class every Friday, but because the laboratory is located on the top floor of the school she has never taken part in this class. This failure of the school to act in order to adjust the school's premises constitutes a denial of reasonable adjustment.

Victimization is unfavorable treatment or a negative consequence that comes in response to a complaint or a proceeding aimed at implementing the principle of equality.

Example: A teacher begins to treat a pupil badly after the latter complained to the school's headmaster about feeling discriminated against based on race. The behavior of the teacher is a response to the pupil's complaint and constitutes victimization.

4. Can there be double or multiple discrimination against a person that belongs to a minority?

Yes. A person belonging to a minority may also be the victim of discrimination on one or more other grounds covered by this law.

5. Do taking positive measures for minorities constitute discrimination against the rest of society?

A temporary special measure that aims to accelerate the establishment of equality, when the lack of equality is caused by discrimination based on race, ethnicity, language or color, is considered a positive action and does not constitute discrimination under this law. This measure should end as soon as the objective for addressing and providing equal opportunities has been achieved.



Shushicë, January 2013, Awareness raising activity on the Law for protection from Discrimination.

Examples of such measures include those that promote the education of Roma children, such as: Instruction No. 6, dated. 29.03.2006, of the Minister

of Education “*For the Registration in schools of Roma pupils who are not equipped with a birth certificate*” or special quotas for Roma and Egyptian students to enroll in University studies or the instruction for free distribution of textbooks to Roma students.

6. The Law on Protection from Discrimination protects minorities from:

- Discriminatory advertising;
- Discrimination in participation in politics; and
- Discrimination in the exercise of freedom of conscience and religion.

7. In what areas does the Law offer special protection?



- Education;
- Employment; and
- Goods and services.

January 2013, Representatives of Roma and Egyptian NGOs co-operating with the Commissioner for Protection from Discrimination.

8. How does the Law on Protection from Discrimination provide protection in the area of employment?

It prohibits discrimination in employment based on membership in a minority group, including in the language of job vacancy announcements, selection and recruitment processes, the signing of contracts, employee training in the workplace and termination.

9. Are employers obliged to prevent discrimination against members of a minority at work?

Employers are obliged to implement and promote the principle of equality, as well as prohibit any discriminatory behavior that takes place in the working environment. If discrimination is identified, the employer must take disciplinary measures to protect employees from discrimination. If an employer receives a complaint of discrimination, he or she is obliged to respond to that within one month.

Example: Artan is an employee and has worked for 5 years working in Beni's business. Beni's colleagues have been consistently promoted over the years, but he has not. Artan sends a complaint to Beni that sets forth his claims that he was discriminated against because he belongs to the Roma community. Beni does not take into consideration his complaint and a few days later he dismisses him without any explanations. Artan, among several options, decides to file a complaint to the Commissioner for Protection from Discrimination. The employer has discriminated against Artan by not addressing the complaint on discrimination and by illegally terminating the employment contract.

10. How does the Law on Protection from Discrimination provide protection in the area of education?

The Law prohibits any distinction, restriction or exception in the establishment of educational institutions, financing of education and the treatment of students with respect to admissions, evaluation, disciplinary measures or expulsion.

11. Is the head of an educational institution obliged to prevent discrimination in his or her institution?

Yes, he or she has a number of obligations, such as raising awareness of non-discrimination policies; publicizing the law within the school premises or taking action in cases of discrimination.

12. How does the Law on Protection from Discrimination provide protection from discrimination in the area of goods and services?

A person who offers paid or unpaid goods and services to the public at large is prohibited from discriminating on grounds of a customer belonging to a minority group.

Example: Three young Roma are not allowed in a bar on the grounds that it is full and there are no seats. As they leave, they notice that other people are allowed to enter. This case illustrates discrimination and exclusion from service.

13. Who is the Commissioner for the Protection from Discrimination?

The Commissioner is an independent individual who has been given legal authority to guarantee efficient protection from discrimination and any behaviour that incites discrimination.

14. What are the main competencies of the Commissioner for Protection from Discrimination?

The Commissioner for Protection from Discrimination:

- Examines discrimination complaints from persons or groups of people, or from organizations;
- Carries out administrative investigations on his or her own initiative after receipt of reliable information;

- Imposes administrative sanctions pursuant to the law;
- Promotes the principle of equality and non-discrimination, among others, in the Albanian language and in minority languages;
- Monitors the implementation of this law;
- Carries out surveys on discrimination;
- Makes legislative recommendations for the competent authorities and recommendations on any matters related to discrimination;
- Represents the complainant before judicial bodies in civil cases; and
- Conducts awareness and educational activities to aid in the implementation of this law.

15. How does the examination of a discrimination case start?

- a. Through the complaint of:
 - A person;
 - A group of people; or
 - An organization with legitimate interests.
- b. From the Commissioner for Protection from Discrimination following receipt of reliable information about the violation of the law.



December 2012, Vulnerable communities discussing on what discrimination is.

16. Against whom is it possible to bring a discrimination complaint?

Protection from discrimination is guaranteed in any act by:

- Natural persons;
- Legal persons; and
- Public authorities.

17. Why would a complaint not be accepted?

The complaint is not accepted if:

- It is anonymous;
- Constitutes abuse of the right to file a complaint to the Commissioner, or is incompliant with the provisions of the law;
- The same case is being examined in the framework of another complaint or a previous decision has been rendered and there is no new information;
- It is clearly ungrounded or there is not sufficient information to enable an investigation;

- All facts that constitute the essence of the complaint have taken place before the law entered into force; and
- It filed later than three years from the time of the discrimination or later than one year from the time the injured party learned about this fact.

The filing of the complaint before the Commissioner for Protection from Discrimination is free of charge. For purposes of orienting subjects, there is a complaint form on the official webpage of the Commissioner, which is not obligatory.



Lezhë, 22 February 2013.

18. What procedure does the Commissioner for Protection from Discrimination follow after receiving a complaint?

The Commissioner:

- Verifies the facts;
- May conduct a public hearing session where interested parties are invited to speak;
- May seek to reach a reconciliation agreement between the complainant and the person against whom the complaint was filed;
- Renders a decision about which the parties are informed within 90 days from the day of the receipt of the complaint or, if a public hearing session has taken place, within 90 days from the day of the session;

- May order adjustments or measures by the person against whom the complaint was filed, he or she must report within 30 days about the actions undertaken to implement the decision;
- Imposes measure for punishment by fine if the person against whom the complaint was filed does not implement the decision. The fine sanction is revoked if the person against whom the complaint is filed implements the decision within seven days from the day the sanction is ordered; and
- May ask the competent authorities to revoke or suspend the permit or authorisation of the subject to exercise his or her activity if the person does not abide by the decision of the Commissioner.

19. Where can a discrimination complaint be filed?

Besides the Commissioner, a complaint can be filed with:

- The head of an educational institution;
- The employer; and
- The court.

20. If I file a complaint with the Commissioner for Protection from Discrimination, can I also file a lawsuit with the Court?

Any person or group of persons claiming that they have been discriminated against, because of race, ethnicity, language or color, may submit lawsuits before the competent court according to the provisions of the Civil Procedure Code for compensation. An appeal before the Commissioner is not a condition for filing a lawsuit and does not constitute an obstacle for the injured person in addressing the court.

21. Are there regional offices where I can send a complaint?

The Commissioner is a national institution based in Tirana. Citizens who live in the regions can file a complaint through the post. Authorities in the municipalities or communes will also assist individuals seeking to contact the Commissioner, as the Commissioner has signed agreements of co-operation with several municipalities and communes to forward cases of alleged discrimination. Complaints can also be made via the Internet.



Gjirokaštër, 27.11.2012, Picture taken while signing an agreement of co-operation between the Commissioner and the municipality of Gjirokaštër in the framework of the project “Best Practices for Roma Integration”, implemented by the OSCE/ODIHR, funded by the EU.

22. How can you contact the Commissioner for Protection from Discrimination?

You can contact the Commissioner for Protection from Discrimination by calling, sending a letter or a fax, or by completing the form found on the website of the Commissioner for Protection from Discrimination at www.kmd.al.

ADDRESS:

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