

Nature of CPD and administrative litigation procedures, with specific attention on LGBTI cases.

CPD is considered an administrative body, specialized and independent, with quasi-judicial nature.

Administrative – because is not part of judicial power and follows procedures foreseen in Law on Protection from Discrimination (LPD) and the Code of Administrative Procedures (CAP).

Specialized – because its activity is focused on the principle of equality and nondiscrimination.

Independent – expressly considered by the law and has all the adequate means to fulfill its function.

Quasi-judicial – because some procedures and guarantees are same as in the judiciary and its decisions are legally binding.

Procedures with regard of its decision power.

CPD can start a case by complaint or *ex officio*.

The administrative procedure is composed by three components:

- Inquiring by documents;
- Inspections on-site;
- Hearings.

All the subjects are obliged by law to support CPD and give all the required information.

All the procedures have to be done within three months, except in the cases with hearings where the length of procedures can go till six months.

All the procedures are free.

Further expansion of administrative procedures and guarantees.

- The shifting of the burden of proof;
- The shortening of times regarding the information provided from the subjects;
- Possibility to issue fines to the subjects which do not provide the information required;
- Less restrictions than the judiciary in considering and evaluating proofs.

Cases handled from CPD regarding LGBTI rights, some numbers 2011-2021.

- 39 cases treated:
 - 11 decisions of discrimination;
 - 9 decisions of non discrimination;
 - 6 decisions of inadmissibility;
 - 3 decisions of dismissal of the case for the complaints have abandoned the case;
 - 4 decisions of effectiveness achieved;
 - 5 cases still in procedure, on going.
- 6 cases are initiated from CPD ex officio;
- 10 cases were addressed toward police officers;
- 10 decided cases and 5 on going cases are related to the use of hate speech;
- From 11 discrimination decisions, 5 were followed, for the other 5 were issued fines, 1 is on going.

Case 1

Transgender person v. Police Office.

- The person was stopped from a police patrol without reason and was offended from the police officers.
- In these cases is very difficult to prove the complainant's allegations.
- Despite the repeated request from the CPD for information from the police office, the information was not provided.
- Using the shifting of the burden of proof the CPD decided that the person was discriminated on the grounds of gender identity.
- In the decision was issued also the obligation for all patrol police officers of the office to be trained from NGO in protection of LGBTI rights.

Case 2

Use of discrimination speech toward LGBTI community

- The case was started ex officio from CPD, on some declarations in TV from a public figure organizer of TV spectacles.
- In the declaration LGBTI persons were compared to pedophiles.
- CPD issued a discrimination decision asking for public apology and the removal of the video from you tube.
- The video was removed from the TV but the subject who made the declarations appealed the decision of CPD before the administrative court.
- The court, for the first time in a case of hate speech, entered in the substance of the case and decided itself a decision of discrimination.
- The subject didn't appeal the decision in the Court of Appeal, and made a public declaration of apologies toward LGBTI community.

Case 3

LGBTI persons v. bartender.

- To some persons who were perceived as LGBTI persons, was refused bar service from the bartender.
- In this case the cameras of the bar were decisive as proof for the administrative procedure.
- However, a hearing was requested from the bartender followed with an apology during the conciliation session.
- It was established also that all the offended persons were to go to the bar and receive the service from the bartender equally as all the others.
- In this case, the decision issued from the Commissioner was of *achieved effectiveness* and the procedures were interrupted, since the apology from the subject happened during the administrative procedure.

Case 4

Transgender person v. taxi company.

- A transgender person with her friend in the airport of Tirana was refused the taxi service from the company. In the first call the service was provided, but in the second call the same service was refused.
- The complainer had registered the conversation with the call center of the company, who deliberately tell to the complainer that the taxi drivers refuse to provide the service, so the company can't do anything.
- The registration was crucial to this case, and the Commissioner issued a discrimination decision, establishing also public apologies to LGBTI community through their social network page and the obligation for training in LGBTI rights for all the taxi drivers of the Company.
- The Company hasn't yet provided for the trainings.

From administrative procedures to the judiciary

- A very important role from the Commissioner is played before courts of both administrative and civil jurisdiction.
- Nearly 80% of the decisions of the Commissioner are appealed before the administrative court of first instance.
- Persons also, can claim a violation of their rights from discrimination directly before civil courts. CPD is part in all these cases as a third party and a specialized body in helping the court for a better understanding of principle of equality and nondiscrimination.
- There has been a progressive increasing of complaints before court through years.
- This is very important, because till 6-7 years ago there were treated just a couple of cases of discrimination before courts.
- Now the courts are dealing daily with cases of discrimination.
- From 2014-2020, there have been 300 decisions regarding principle of equality and non discrimination, from courts of both jurisdictions and of first and second instance.

New challenges in the courts

- One of the aims of CPD is to provide the courts with the EHRCh jurisprudence for their reasoning, but also to provide the courts with ECRI recommendations, recommendations of the committees of several Conventions ratified from Albania, and the jurisprudence of the CJEU since the LPD is based on the four equality directives of EU.
- Another aim is to have decisions from the supreme courts of Albania, the High Court and the Constitutional Court. There is a lack of jurisprudence regarding principle of equality and nondiscrimination from the supreme courts of Albania.
- There are some cases now pending before the High Court and with the new modifications of the Constitution the Commissioner can bring cases before the Constitutional Court.
- With the new modifications of the LPD now is foreseen the possibility for the Commissioner and the NGO-s to make complaints before courts in protection of collective interests. This is a new instrument in the Albanian legal order, but very important for the important step to involve the courts in combatting structured and systemic discrimination.

In conclusion

- The decision-making function of CPD is very effective because it allows to enter in concrete cases and in the depth of the violations of principle of equality and nondiscrimination.
- The specific law and other laws provide effective procedures and guarantees for all the persons who are victims of discrimination.
- The decisions of CPD and its participation in court proceedings has contributed to an increment of the cases before courts, but also to a better understanding of equality and discrimination.
- Some specifics of discrimination cases, ex.the shifting of the burden of proof is now used frequently from the courts and essentially understood. There have been made consistent modification of several laws in this regard, but still the Code of Civil Procedures does not foreseen it.
- The challenges of the institution in the next five years will be the continuation of treating concrete cases, especially concentrated on cases with large impact.
- There will be a specific attention on cases before the Constitutional Court (three months ago the CC has asked the opinion of CPD on a case related to the unconstitutionality of a law from a principle of equality and nondiscrimination prospective. This decision and its reasoning will be the first one, a leading case and a precedent for the understanding and the application of Art.18 of the Constitution).
- There will be a specific focus on the use of the complaints before courts for collective interests. We are now looking to other EB which do have a similar instrument in their legal order, for an effective use of this new guarantee.

ECRI annual seminar with Equality
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CPD - Albania

Thank you!

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Fcb: Komisioneri për Mbrojtjen nga Diskriminimi