



ALEANCA LGBTI

The Alliance Against Discrimination of LGBTI

Written Contribution:

The Situation of LGBTI+ Women in Albania in the Framework of GREVIO

September 2023

List of Abbreviations:

CEDAW Committee- The Committee on the Elimination of Discrimination against Women

CPD- Commissioner for Protection from Discrimination

CSO- Civil Society Organization

ECRI- European Commission against Racism and Intolerance

GoA- Government of Albania

KF- The Albanian Family Code

LGBTI+- Lesbian, Gay, Bisexual, Transgender, Intersex

NAP- National Action Plan

PEP- Post-Exposure Prophylaxis

PrEP- Pre-Exposure Prophylaxis

SOGIESC- Sexual Orientation, Gender Identity and Expression, and Sex Characteristics

UPR- Universal Periodic Review

Methodology

The formulation of this report rests upon the application of a mixed-method approach encompassing both qualitative and quantitative scientific research techniques. In the contextual expanse of this contribution, the dataset employed stems from recent investigations undertaken by the LGBTI+ Alliance. This dataset comprises findings drawn from four distinct focus groups comprising members of the LGBTI communities. Additionally, a dedicated questionnaire involving a sample size of 150 respondents was administered to collect crucial insights pertaining to domains such as violence and discrimination; education and legal safeguards. In addition, we organized one round table discussion with four partner organizations.

In terms of qualitative research methods, we have adopted the doctrinal and analytical approach in this report. This encompasses an evaluation of the actual legal framework, along with an exhaustive review of diverse reports addressing the situation of LGBTI+ rights within both the national and regional contexts and reports generated by independent and equality human rights bodies in Albania, including the Ombudsman and the Commissioner for Protection from Discrimination.

The primary reference for the structure of this contribution remains the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by the Parties adopted by Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) in 2022.

1. Information on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

1.1 Article 7: Comprehensive and co-ordinated policies; Article 11: Data collection and research

Constitution of the Republic of Albania

1. Albania's Constitution lacks dedicated provisions safeguarding the rights of LGBTI+ women. While Article 18 outlines the prohibited grounds for discrimination, it does not explicitly address crucial aspects such as sexual orientation, gender identity and expression, or sex characteristics (SOGIESC).
2. In 2017, the Albanian Parliament put forth a series of proposed amendments to the Constitution. Among these proposed changes was a revision to Article 18, which aimed to introduce the term "SOGI" into the text. Despite initial positive expectations, this alteration was met with vehement opposition from several Members of Parliament, who resorted to hate speech and discrimination against the LGBTI community. Additionally, a number of religious leaders publicly voiced their disapproval of these proposed changes. In a

surprising turn of events, mere days prior to the anticipated ratification of the constitutional amendments, the governing party withdrew its support for the revision to Article 18. As a result, the article remained unaltered. Since that pivotal moment, no significant progress has been made in relation to amending the constitutional safeguards to explicitly encompass the grounds of SOGI.

Law no. 10 221, dated 04.02.2010 "On protection from discrimination", as amended

1. Law no. 10221¹, as amended, upholds equality and non-discrimination, explicitly recognizing gender identity, sexual orientation, and sex characteristics as grounds for protection (Article 1). Article 18 places an emphasis on the education of the entire population and specifies specific measures in favor of women and girls who are more likely to face discrimination due to their gender identity or sexual orientation, among other factors (referred to in Article 1).
2. Despite a comprehensive² legal framework against discrimination towards the LGBTI+ communities, its implementation falls short. Reported cases of discrimination to state and independent bodies remain scarce, mirroring limited public awareness about the law's provisions.
3. Hate speech and discriminatory language in the media, especially online, and from politicians and criminal offences and discrimination against members of the trans-community (especially transgender women) remain a problem³. The Commissioner's rulings have identified discrimination only in 2 reported cases, where there appears to be a problematic approach toward acknowledging discrimination in situations where a fine line is drawn between hate speech and freedom of expression. This is despite the fact that the standards established by international courts in this regard unequivocally lean towards a zero-tolerance stance against hate speech.

Cases of Violence and Discrimination

4. In the Albanian context, violence against women is evident, which is shown by the increasing numbers of murder cases and gender-based violence, especially in the domestic sphere, where during the past two years, 26 Albanian women have been killed by their partners or former partners. According to a survey by the Organization for Security and Cooperation in Europe, of which Albania was a part, more than two-thirds of women living in the region think that violence has become part of everyday life in their countries, while one-fifth think that violence is very common. The data of this report show that the situation in Albania is particularly serious compared to other countries in the region, where the most common form of violence against women is the psychological one exercised by intimate

¹ Law No. 10 221, date 04.02.2010 "On Protection from Discrimination", as amended.

² Information paper on protection against sexual orientation, gender identity and expression, and sexual characteristics (SOGIESC) discrimination, International Labour Standards Department (2019).

³ European Commission Report on Albania, 2022.

partners. According to the data, no group of women is safe in relation to the possibility of experiencing potential violence in the future⁴. The data show that in Albania within a period of 1 year, courts issue about 5000 Protection Orders and Immediate Protection Orders for women and girls against their abusers⁵.

5. Lesbian, bisexual, transgender, intersex and non-binary women in our country, where the patriarchal mentality and gender segregation prevail, are subject to multiple discrimination not only because of gender, but also because of sexual orientation, identity, gender and sex characteristics that do not match what is perceived as “normal” by society, which affects their well-being, security, access and well-being⁶.
6. Despite the fact that the legal framework for protection against discrimination is deemed complete in relation to the referral of LGBTI+ women's issues, its implementation leaves much to be desired, as the number of cases of discrimination reported to independent and state institutions from the community remains low, as does the level of education regarding the protections of this law. Over 63% of our respondents were unaware of the existence of the Commissioner for Protection against Discrimination, while 86% of those who were aware and had experienced discrimination had never filed a complaint with the Commissioner's office.
7. 40% of LGBTI+ respondents personally experienced violence or discrimination within the past two years, according to our survey. Similarly, 50,2% knew another LGBTI individual who faced similar issues. Notably, 78% of these incidents were related to the respondents' LGBTI status; however, 89% of respondents chose not to report violence or discrimination to any state institution, including the Commissioner's office.
8. Over the past two years, Albania has witnessed a concerning rise in an anti-LGBT movement, spearheaded by influential political figures, religious leaders, and prominent public figures. This movement has periodically directed its hate rhetoric and actions towards the LGBTI+ communities, particularly transgender women, employing inflammatory and discriminatory rhetoric, perpetuating harmful stereotypes, and fostering public animosity. These developments are unfolding in a predominantly conservative environment, further exacerbated by the scarcity of objective information on LGBTI issues. Against this backdrop, over the past two years, Aleanca LGBT has taken proactive measures by lodging a series of complaints pertaining to discrimination and hate speech. However, it is disconcerting to note that the Commissioner for Protection from Discrimination (CPD) has established a precarious precedent in its handling of the delicate balance between hate speech, discriminatory language, and freedom of expression. Out of the six complaints filed, only one received a partially favorable decision, raising concerns about the safeguarding of these fundamental rights in the face of the growing antiLGBT sentiment in Albania.

⁴ OSCE, Report on the Welfare and Security of Women, 2019.

⁵ SDGs implementation in the context of Albania: The LGBTI+ Perspective, Nini. D, 2020.

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Criminal Code of the Republic of Albania

3. Revisions to the Criminal Code⁷ have yielded advantages for the LGBTI+ community by rectifying deficiencies found in its prior iteration. Notably: a)Article 50 outlines aggravating circumstances, specifically citing sexual orientation and gender identity as motives for harsher penalties in relevant criminal offenses; b)Article 100 deems homosexual relations with minors a criminal offense; c)Article 101 specifies that forcibly engaging in homosexual intercourse with minors is punishable by imprisonment, safeguarding minors' sexual integrity; d)Articles 100 and 101 apply universally to juvenile victims, irrespective of their sexual orientation or gender identity; e)Articles 102/a - 107/a extend protection by criminalizing offenses that use physical or psychological violence to coerce homosexual intercourse.
4. Despite the presumably favorable intents behind these regulations, it is noteworthy that the term 'homosexual' appears more than 21 times in the Albanian penal code. This frequent mention provides a legal framework that categorizes persons based on their homosexuality, inadvertently contributing to their continued social othering. These legal provisions solely acknowledge minors as victims of sexual violence resulting from heterosexual or gay relationships. They also give recognition to women and girls in heterosexual partnerships where the perpetrator is male, as well as to men and boys in homosexual relationships. However, these prohibitions disregard the broader fact that gay partnerships include not just homosexual men, but also lesbian, bisexual, queer, and pansexual women and gender non-conforming individuals (GNC)."⁸
5. Cybercrime Gap: Notably absent are provisions addressing cybercrimes that incite hate speech, discrimination, and conflict against LGBTI+ individuals.
6. Criminalization of Sex Work: Albania's law prohibits and criminalizes sex work, disproportionately impacting transgender women who often engage in it. Given the inability to change gender indicators, transgender individuals face vulnerability to arrests, arbitrary sentences, and exposure to discrimination and violence among same-sex convicts. This violates their rights to dignity and physical integrity, primarily due to gender identity and expression.
7. In 2012, the Commissioner for Protection against Discrimination advocated for the decriminalization of sex work in response to the very precarious condition of transgender sex workers and in accordance with CEDAW's 2010 periodic report recommendations. In 2015, following the hearing of the case before the Supreme Court and the Constitutional Court, and despite international advice, the Constitutional Court opted to maintain the prostitution-criminalizing Article 113 of the Criminal Code of the Republic of Albania. In

⁷Law No. 7895, dated 27 January 1995, "The Criminal Code of the Republic of Albania", as amended.

⁸Link to the article: <https://www.reporter.al/2023/07/18/gjuha-e-kodit-penal-shqiptar-ruan-stigmen-rreth-homoseksualitetit/>

the last two years alone, approximately twenty transgender women who attend the LGBTI Alliance have admitted that sex work is their only source of income.

1.2 Article 14: Education

1. Due to their sexual orientation, gender identity, and gender and sex traits that do not conform to the typical heteronormative attitude, academic personnel and/or the social circle target LGBTI+ women in school settings. This targeting results in the majority of cases in extremely poor outcomes, ranging from psychological pressure and abuse to bullying and physical assault, which causes students to discontinue their education and drop out of school owing to discrimination.
2. In this research, around 48 percent of respondents have completed higher education, 23 percent have completed regular high school, 10 percent have completed obligatory education, 12 percent have completed postgraduate studies, and 6 percent have completed less than 8/9 grades (corresponding to the compulsory education framework in Albania). When asked what factors prevented them from completing compulsory education, respondents most frequently cited gender-based violence and/or LGBTI+ status, economic incapacity, and family refusal.
3. Discrimination, inequal treatment, bullying and violence in educational institutions remain among the main issues faced by LGBTI + women attending school and academia⁹. In this line, 50% of our respondents reported that they had faced discrimination in educational settings by peers, while 30% of them stated that discrimination came from academic staff and school principals.
4. Educational environments emerge as the primary spaces for LGBTI+ discrimination, followed by the family setting, backed by annual reports and recent survey results. Only 18% of our respondents described the Albanian school environment as safe for LGBTI + girls and women.
5. Despite efforts to train educational staff within the framework of the National Action Plans (2016-2023), about 75% of the LGBTI+ respondents believe that teachers and school principals remain uninformed about LGBTI+ issues. Over five years, 25 cases reported to the LGBTI Alliance involve individuals leaving education due to bullying and societal pressure¹⁰. 80.2% never reported discrimination due to fear of exposure and further mistreatment.
6. Current curricula fall short in providing informative content on the LGBTI+ community. Sex education from a heteronormative stance leaves LGBTI+ individuals with fragmented knowledge about relevant issues. 96% of our respondents stated that the school curricula did not contain any accurate, impartial and necessary information related to the issues of the LGBTI + community nor in relation to the specific issues of LGBTI + women, despite

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¹⁰ Nini. D, (n. 15), p. 14.

that information regarding these issues has been the primary objective of the previous and present National Action Plans (NAPs) regarding the improvement of the situation of the LGBTI + community in Albania.

1.3 Article 15

During the past two years around 140 police officers and 50 prosecutors and judges have been trained by the Council of Europe in cooperation with LGBTI organizations and the institutions of Commissioner for Protection from Discrimination and Peoples Advocate. The trainings have been focused on raising awareness on LGBTI issues as well as documentation and prosecution of hate crimes.

1.4 Article 20: General support services

1.4.1 Public health sector:

1. Law No. 10 138, dated 11.05.2009 "On public health"¹¹- Article 1 of the law explicitly defines the application of its provisions to the entire population in the Republic of Albania. The general approach is maintained throughout the content of this law, which fails to specifically address the SOGIESC grounds and the issue of discrimination by medical staff towards marginalized communities;
2. Law no. 8876, dated 04.04.2002 "On reproductive health"¹²- This law addresses the problems that may arise in relation to reproductive health and guarantees the provision of reproductive health care service for every individual. It does not express any point regarding the prohibition of discrimination in benefiting of the guarantees it offers due to sexual orientation, gender identity and expression or sex characteristics, and does not address any issues that may arise as a result of discrimination or differentiated treatment of LGBTI+ individuals by medical staff, creating ambiguity and space for the violations.
3. From the survey conducted with LGBTI+ persons, in the frame of this report, 40% of the participants stated that they had not had the opportunity to access the medical services that they needed or had accessed them only after they were accompanied by other persons. Of the nearly 90% of participants who said they had received medical care in recent years, 36% said they had been discriminated against by medical staff during their visits, while 32% said they didn't feel comfortable receiving the services because of the feeling of fear and anxiety that they would be discriminated against, prejudiced or even violated in the premises of health care institutions. Regarding sexual and reproductive health visits, 68% of the surveyed community members said that they had not made such visits in the last 4 years, and/or had deliberately avoided them even though they thought they were needed,

¹¹ Law No. 10 138, date 11.5.2009, "On Public Health".

¹² Law No. 8876, date 4.4.2002, "On Reproductive Health".

due to the fear that they would face misunderstandings from the staff, the fear of maintaining confidentiality, but also because of their economic difficulties. About 9.6% of respondents said that they suffer from permanent pathologies or chronic diseases, and as a result they'd need to visit health institutions more than 10 times a year, making them a frequent target of potential discrimination or violence which they face in these environments.

4. Currently in Albania there is no possibility to undergo hormonal therapies or sex reassignment surgeries, a fact that is emphasized in the report of the Commissioner for Human Rights-"Discrimination on the basis of sexual orientation, and gender identity in Europe", where Albania is ranked as one of the countries where predictions for specific treatments performed on transgender people are non-existent, and where rehabilitation costs after such interventions are extremely problematic¹³. The study of the Danish Institute for Human Rights also emphasizes the fact that the national health scheme in Albania does not cover sex reassignment surgeries, and that Albanian hospitals are not technically prepared to perform these interventions¹⁴.
5. Since two years ago, Aleanca has advocated with the Ministry of Health to begin work on establishing a medical protocol for transgender people. This procedure will make it possible for transgender people in Albania to access hormone therapy. Work on the protocol's drafting by the working committee began in July 2023. Members of this working group include physicians from several fields and civil society organizations.
6. The situation of intersex individuals remains extremely vague, as the exact figures regarding the number of intersex born babies remain unclear, and so does the information about the surgeries performed on them. A series of laws¹⁵ stipulates that persons undergoing surgical interventions in the Republic of Albania must give their expressed consent, but in the case of intersex infants the interventions are performed at a very young age, when the individual does not have the legal capacity to give this consent. Only in 2020, the Ministry of Health and Social Protection approved the "Medical Protocol for the Assessment of Children with Atypical Genital Development," which is currently the only official document aimed at safeguarding bodily integrity and the rights of intersex infants. This Protocol, however, does not provide adequate protection against the challenges faced by intersex individuals in the country, as Albania currently lacks a law that enforces a blanket ban on non-consensual and non-therapeutic surgeries on intersex infants.
7. The lack of retroviral medications (PrEP and PEP) still remains an obvious problem¹⁶. For years, Albania has not been able to buy and import the necessary retroviral drugs in a timely

¹³Commissioner for Human Rights- Discrimination on grounds of sexual orientation and gender identity in Europe- 2nd edition: section 5.2

¹⁴The Danish Institute- COWI-; Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity-Legal Report: Albania by Independent researcher K. Loloçi.

¹⁵Law No. 10107/2009 "On health care in the Republic of Albania"; Law no. 8876/2002 "On reproductive health". ¹⁵ Law No. 10221/2010 "On Protection from Discrimination".

¹⁶Nini. D, SDGs Implementation in the Context of Albania, 2020, p. 12.

manner, which should be taken continuously and uninterruptedly by HIV patients, who during the periods when the drugs are missing are forced to change the treatment schemes, to the detriment of their health and quality of life. In addition to the lack of retroviral drugs for long periods of time, individuals with HIV also face a lack of CD4 testing for viral load and virus resistance, forcing them to perform tests at extremely high costs near private clinics. Although Albania is considered a country with a low prevalence of the virus, the number of deaths related to HIV in the country is alarming. LGBTI and HIV+ individuals remain the category most affected by discrimination due to their HIV+ status, being subjects of double stigma, fear of discrimination, and exclusion¹⁷.

1.5 Employment:

1. The Labour Code¹⁸ amended in December 2015, prohibits discrimination in employment and professions on the grounds of SOGI. Article 9 defines discrimination as any differentiation, exclusion or preference threatening the individual right to be equal in terms of employment and treatment. Article 32 states that moral and sexual harassment and derogatory comments against the employee's dignity and personality are prohibited.
2. Despite the favorable amendments, the reality is bleak: lesbian, bisexual, transgender, and intersex (LBTI+) women face considerable inequality and discrimination in the workplace. Nearly 33 percent of LBTI+ individuals polled for this report stated that they are currently employed through a regular employment contract. In contrast, 15,5 percent describe being employed informally, without a regular contract, which, according to the law, renders them uninsured. 28.1 percent of LBTI+ women surveyed state that they have been employed in the past but are currently unable to find a job, and 28 percent report that they are neither currently employed nor have they ever been on a regular employment report.
3. Given the fact that in a democratic society working through a regular employment contract is the only way to earn legal incomes and to be covered by the health and social insurance fund, we can understand that about 70% of our respondents are currently uninsured and in an unstable economic situation, which complicates their strive for financial independence.
4. In Albania women find it more difficult to achieve financial and individual independence from their families and seems that among the LBTI + community the most affected by family conflicts are transgender and lesbian women, which are subjects of parental pressure regarding their gender non-conforming appearance and behavior in public and in the family circle as an infringement on the honor of the family¹⁹.
5. 25% of our respondents say that due to their appearance they find it almost impossible to secure a regular employment contract, while employed LBTI + women, to an extent of 80% report that the income they earn through their job legally fails to meet all the needs

¹⁷ <https://www.lgbti-era.org/news/shocking-, and-unacceptable-2020-albania-fails-its-hiv-aids-fight>

¹⁸ Law No. 7961, dated 12.7.1995, "The Labour Code of the Republic of Albania".

¹⁹ UNDP, Being LGBTI in Eastern Europe: Report on Albania, 2017, p.26.

for independent living from their family members. The most affected in this regard continue to be women of the transgender community.

6. Unsafe working environments affect employment reports for LBTI+ women. When asked to assess the safety of the most recent workplace, 55% of respondents reported facing discrimination in these settings due to their LBTI+ status, despite the fact that 73% had never disclosed their sexual orientation or gender identity to their employers and colleagues. Fear that other employees would distance themselves, fear of discrimination and prejudice, fear that working conditions would change in relation to them, and fear of administrative penalties at work were the factors that most influenced these women's decisions not to come out and to be extra cautious around other employees.

1.6 Housing:

1. The law on social housing²⁰ is one of the most important national remedies for members of the LBTI+ community, especially for transgender women as the target group most affected by housing problems. The law directly addresses the community as a group of interest.
2. However, the realities faced by LBTI+ individuals are complex. Due to violence, discrimination, stigma, bullying, and limited employment opportunities, community members often see the capital city as the only escape to being free, and to realize their right to an undisturbed life. Along with relocation, their need for accommodation arises. Challenges in securing housing persist due to ongoing discrimination, presenting an obstacle for community members. Notably, between 2019 and 2023, 20 transgender women faced evictions from their landlords solely due to their gender identity. Among the primary contributors to the housing problems lies the inability to access social housing programs provided by local municipalities, owing to concerns of compromised confidentiality within the scoring system. Here, personal information and one's LGBTI+ status risk becoming public, even when individuals have not disclosed this information to their families or broader social circles.
3. Furthermore, the absence of certain crucial bylaws compounds the challenges posed by this legislation. This gap hampers proper implementation, as pointed out in an article published by portavendore.al²¹. In numerous instances, due to this legal void, institutions still resort to referencing provisions from the previous law when dealing with diverse elements encompassed by the current legislation.

²⁰ Law no. 22/2018, "On Social Housing".

²¹Link to the article: <https://portavendore.al/2020/02/18/ligji-i-ri-per-strehimin-bashkia-e-tiranes-sorollat-te-pastrehet-me-ligjin-e-vjeter/>