

Ministry of Education and Sports Suggestions for the Draft plan of action for the Fifth Phase (2025-2029)

We suggest including in the plan:

1. Education on human rights for young people, with a particular focus on those belonging to marginalized groups and/or living in unfavorable socio-economic conditions.
2. Education on human rights through the development of digital competence, leveraging contemporary advancements in information and communication technology.
3. Education on human rights through sustainable development and the environment, including climate change and the interconnected challenges.

REPUBLIC OF ALBANIA
COMMISSIONER FOR PROTECTION FROM DISCRIMINATION

Subject: *The contribution of the Commissioner for Protection from Discrimination, regarding the Letter from OHCHR.*

The Assembly of the Republic of Albania approved the Law No. 10 221, dated 04.02.2010 “*On protection from discrimination*”, as amended, which entered into force on March 13, 2010.

On October 15, 2020, the Law no. 10 221, dated 04.02.2010 “*On protection from discrimination*” has been amended through the Law No. 124/2020 “*On some additions and amendments to Law No. 10 221, dated 04.02.2010 “On protection from discrimination*”, which entered into force on November 18, 2020.

The Law “*On protection from discrimination*” expressly guarantees protection in the area of employment, education and in the area of providing goods and services.

Based on this law, the Commissioner for Protection from Discrimination is the only responsible authority that ensures effective protection from discrimination and from any form of conduct that incites discrimination. CPD exercises its competences in three main spheres: (I) providing assistance to victims of discrimination through reviewing complaints, conducting administrative investigations, imposing administrative sanctions and representation in court on civil cases; (II) monitoring the implementation of the law on protection from discrimination and (III) raising awareness.

The Commissioner implements national and international legal mechanisms for the protection of human rights ratified by the Republic of Albania, in exercising its activity.

I. About the legislation:

a. *Law No. 10 220/2010 “On protection from discrimination”, as amended.*

The legal amendments on Law Nr. 10 220/2010 on 2020, improved the legal framework for protection from discrimination in Albania, and consisted on:

- Addition of new protected grounds for which discrimination is prohibited: *citizenship, sex characteristics, living with HIV/AIDS and appearance*. (Article 1)
- Addition of new forms of discrimination, such as: *multiple discrimination, intersectional discrimination, hate speech, segregation, sexual harassment, structural discrimination, incitement to or aiding another to discrimination, proclaimed intention of discrimination*, referring to international practice as well as current social circumstances. Existing forms of discrimination have also been reformulated, such as the case of “*victimization*”. (Article 3).
- A separate provision has been envisaged on *serious forms of discrimination*, referring to any discriminatory behavior that is motivated by more than one ground, committed more than once, which has lasted for a long period of time, or when it has caused particularly harmful consequences for the victim. When discrimination is committed in such circumstances, the law foresees to double the amounts of fine. (Article 3/1 and Article 33)

- The obligation of public authorities to promote equality and prevent discrimination in the exercise of their functions is emphasized. (Article 7, point 3)
- Some of the powers that the law recognizes to the Commissioner for Protection from Discrimination have been added and changed, where among others we mention the competence to review complaints from persons or groups of persons claiming to have been discriminated, as provided not only in the Law “*On protection from discrimination*”, but now also in the Law “*On gender equality in society*”. The right of the Commissioner to monitor the implementation of the Law “*On gender equality in society*” has also been added as a competence. It is stipulated that the Commissioner has the power to review complaints from organizations that have a legitimate interest in acting on behalf and with the written consent of individuals or groups of individuals alleging discrimination or on their behalf in matters relating to collective interest.
- It is worth noting as an achievement, the envisage in the law of the Commissioner’s right to file lawsuits, in defense of the principle of equality and non-discrimination, on issues related to collective interests, as well as the right to initiate **the Constitutional Court**, when during its activity it finds that the law or normative act violates the fundamental rights and freedoms of individuals. (Article 32)
- In order to motivate the increase of the number of complaints related to individuals of the LGBTI community but also of the complaints related to the denunciation of cases of sexual harassment in the workplace, the provision on which Commissioner does not consider anonymous complaints has been repealed. (Article 33)
- Legal amendments define the active role of organizations with legitimate interests by enabling them to file complaints directly to the institution, representing the collective interest or may provide reliable information for initiating investigations by Commissioner’s initiative. Civil society organizations can now file lawsuits for discrimination in defense of collective interests directly in the court. (Article 33 and Article 34)
- One of the novelties of the changes in the law is the “*shifting of the burden of proof*”, to the subject who is alleged to have committed discriminatory behavior. (Article 33)
- The amendments also provide the possibility of joining cases, coming from different entities, which have the same object and refer to the same alleged discriminatory behavior, for procedural economics. (Article 33)
- The new legal amendments enable the obligation of the national media to publish the decisions of the Commissioner who have found discrimination through hate speech. The imposition of such an obligation would enable greater effectiveness.

Law No. 10 221/2010, has provided in a separate chapter, protection from discrimination in the area of education. Thus, the law provides that: “*1. Every distinction, limitation or exclusion is prohibited based on the causes mentioned in article 1 of this law and which, among other things, is related to: a) the creation of public or private institutions that offer educational or professional services; b) the financing of public institutions that offer educational or professional services; c) the content of principles and criteria of educational activity, including teaching programmes and teaching methods; ç) the treatment of students or pupils, including acceptance, evaluation, application of disciplinary measures or their expulsion. 2. It is prohibited for a person or group of persons to be refused acceptance into a public educational institution for the causes mentioned in article 1 of this law. 3. Every kind*

of annoyance is prohibited, especially annoyance of students, pupils and employees in educational institutions. 4. The implementation of special and temporary measures, based on the causes mentioned in article 1 of this law, for the purpose of speeding up equality in education, is not considered discrimination. The implementation of such measures can in no case mean permanently maintaining unequal or different standards, and these measures are interrupted when the objective of offering equal opportunities and treatment is achieved”.

The law also provides the duties of the director of an educational institution: *“The director of an educational institution is responsible for taking measures of a positive nature in the respective institution, in order to fight discrimination in connection with the right to education. The measures that are taken, among other things, are: a) raising consciousness about this law within the institution, among other things by posting the law in a visible place; b) the fight against models of discriminating behaviour that constitute or encourage discrimination within the institution; c) taking necessary measures, including disciplinary measures, for the protection of employees from discrimination and victimisation, within one month from receiving knowledge; ç) the effective handling of complaints about discrimination in the institution, examining every complaint within 30 days from its submission; d) imposing disciplinary measures against any person who is verified to have performed a discriminatory act when such a thing is appropriate, proportional and in conformity with the competences of the director.”*

Recently, in the Strategic Plan of the Commissioner for Protection from Discrimination (2022 - 2026), specifically in the strategic objective No. 1.2 *“Active promotion of the law on anti-discrimination and the active role of the CPD, based in success stories”*, it is envisaged to take measures and develop activities related to the distribution and posting of Law *“On protection from discrimination”* in languages adapted for children in all schools of the Republic of Albania, as well as the posting of the law, especially in relation to the rights of employees.

II. “Hate speech”:

Law No. 10 221/2010 *“On protection from discrimination”*, as amended, provides that: *“Hate speech” is any form of public expression, through any means, of the promotion, incitement of denigration, hatred or vilification, any harassment, insult, negative stereotyping, stigmatization or thret against a person or group of persons, as well as any justification of all forms of expression on the basis of a non-exhaustive list of grounds set forth in article 1 of this law.”*

Since December 2019, the Commissioner for Protection from Discrimination has become part of the Alliance Against Hate Speech (AAHS), which is an initiative of the institution of People’s Advocate, the Commissioner for Protection from Discrimination, the Audiovisual Media Authority and the Albanian Media Council to fight the phenomenon of *“hate speech”* in all dimensions that it appears in Albanian society.

- *Management of cases of the use of hate speech with a religious background in the form of denigration, stereotyping and stigmatization.*

Management of cases of the use of hate speech with a religious background in the form of denigration, stereotyping and stigmatization, is a project financed by AMA carrying out

several launching and informational activities, monitoring of hate speech in the written media, audiovisual and online.

The aim of the project is to inform journalists of print and visual media about the role of independent institutions as defenders of human rights; as well as discussion with journalists on how to report information and the problems that may arise in its transmission, avoiding communication that may create concern in religious communities in the form of stereotyping, denigration or stigmatization.

Informing journalists in this direction aims to make them partners of Independent Institutions in defense for a more affective protection of human rights and more aware of the social impact of information communication.

III. Judicial processes:

During 2024, 14 decisions of the Commissioner, through which it has been ascertained discrimination of children on the part of the Korçë Municipality, on grounds of the economic situation, as children who belong to families that are treated with economic assistance, have been contested in Court by the Municipality. The cases have not yet been officially forwarded by the court.

IV. Written opinions before the Constitutional Court:

The Constitutional Amendments of 2016 gave the CPD the right to put into motion the Constitutional Court, by sanctioning, in Article 134, that *“the Constitutional Court is set in motion by (e) any Commissioner created by law for the protection of fundamental rights and freedoms guaranteed by the Constitution”*. Even the Law *“On protection from discrimination”*, as amended by Law No. 124/2020, provided that the CPD has the power to put into motion the Constitutional Court, when during its activity he finds that the law or the normative act of the fundamental rights and freedoms of the individuals. (Article 32, point 1, letter “i/1”). During 2023 the CPD has submitted a specialized written opinion before the Constitutional Court, with the latter, in the case with:

- Requester: a group of deputies of the Assembly of Albania (not less than one fifth of the deputies), interested subject: the Assembly of the Republic of Albania. The Council of Ministers of the Republic of Albania with the object *“Repeal of Article 4, paragraphs 1(c), 2(b), 3(b); as well as Article 5, first sentence of Law No. 60/2023 “On the special treatment of students who follow the integrated study program of the second cycle “General Medicine” in public institutions of higher education”; and Suspension of Law No. 60/2023 until the entry into force of the final decision”*.

In this written opinion, the CPD emphasized: *“The fact whether the new legal regulation has violated the essence of equality will have to be proven by assessing the lack of existence of an objective and reasonable justification. To justify the different treatment it must be demonstrated that the rule or practice in question pursues a legitimate aim and that the means chosen to achieve the aim (i.e. the measure that led to the different treatment) are proportionate and necessary to achieve that goal. To determine whether the different treatment is proportionate, the court must be satisfied that: There is no other means of achieving the goal that requires less interference with the right to equal treatment. In other words, the disadvantage suffered is the minimum possible damage necessary to achieve the intended goal; The goal to be achieved is so important that it justifies this level of intervention. Failure to treat differently subjects who are not in the same situations, when this*

is based on a protected cause, will be considered discrimination, in the absence of objective and reasonable justification. In relation to the legal intention, first of all, the factual existence of this intended purpose through this legal measure must be proven, i.e. does such an intention exist with reference to the concrete facts and circumstances. An intended purpose may in principle be a legitimate purpose, but this is insufficient, as it must be proven that the claimed legitimate purpose exists in the conditions and circumstances of the case under consideration and not based on presumptions.”

Through decision No. 1 date 25.01.2024, the Constitutional Court decided: *“Partial acceptance of the request.”*

V. The CPD’s recommendations regarding children and gender equality:

Making recommendations to competent authorities, especially by proposing the approval of new legislation or the amendment or reformation of existing legislation, is one of the CPD’s core activities. The Commissioner for Protection from Discrimination, during his activity on his own initiative or at the request of the relevant institutions, has given legal recommendations, related to the rights of children, etc.:

- Recommendations for taking measures to eliminate from the study programs offered by public and private higher education institutions, literature that prejudices and discriminates against the rights of the LGBT community.
- Recommendations for taking measures to combat discrimination in relation to the right to education, at the beginning of the 2013-2014 school year in the pre-university education system.
- Recommendation *“On taking urgent measures for the approval of the joint instruction between the Minister of Education and Science and the Minister of Finance, to ensure the compensation of the price of school textbooks, for the school year 2013-2014 in the pre-university education system”*.
- Recommendations for taking measures to combat discrimination in relation to the right to education, at the beginning of the 2014-2015 school year in the pre-university education system.
- Recommendations regarding the handling of cases with flexibility when parents/legal guardians request to take children temporarily from residential institutions.
- Recommendations for the Draft Decision *“On the approval of Juvenile Justice Strategy and Action Plan”*.
- Recommendation for taking positive actions, at the border points, giving priority to: the elderly, children, people with serious health conditions, people with disabilities and pregnant women.
- Recommendations for draft decisions in implementation of the Law *“On the rights and protection of the child”*:
 - a. Draft decision of the Council of Ministers *“On the types, method of exchange and processing of information and statistical data, required by the agency near the responsible state structures, at the central and local level”*.
 - b. Draft decision of the Council of Ministers *“On the criteria for hiring employees of child protection structures and employees who work with children”*.

- c. Draft decision of the Council of Ministers “*On the activity of structures for the protection of the child, in relation to the child under the age of criminal responsibility who is suspected or has committed a criminal offense*”, etc.

VI. Monitoring competences of the CPD:

Monitoring the implementation of Law “*On protection from discrimination*”, or publishing reports about issues related to discrimination is also one of the CPD’s core activities.

- Report with special focus, the children in education.

As above, during 2020, the CPD has publicated a report with special focus, the children in education. At the end of the monitoring, it was concluded that the state of respect for the rights and freedoms of children with disabilities, Roma and Egyptian children needs improvement. From the aforementioned analysis and evaluations, the Commissioner for Protection from Discrimination came up with some recommendations, in order to improve the situation.

- *Gender implication on the identity of the person in the public administration activity.*

In order to fulfill the purposes of his monitoring competences, The Commissioner has recently assisted on a study about “*Gender implication on the identity of the person in the public administration activity*”.

This study was developed in the context of the project: “*Expanding the Free Legal Aid Service for Women and Men in Albania*” (EFLAS), which is implemented by UNDP in partnership with the Ministry of Justice and the financial support of the Austrian Development Cooperation (ADC).

Since the family is the main social formation where daily relationships take place and life develops between husband and wife, it is important to understand the inequalities within it as well as their impact on the development of children's personality. In this sense, it results that, in the Albanian family, man is still in a position of superiority against the woman.

Thus, it results that in 2.4% of Albanian families the head of the family is a woman, including families where the woman is the only head of the family. Whereas, only in 0.41% of families that have both husbands, the head of the family is a woman.

- *The principle of equality and non-discrimination - Analysis of case law 2013-2020.*

This analysis was carried out by the Commissioner for Protection from Discrimination with the support of the United Nations Development Program (UNDP) Albania as part of the Project “*Expanding Free Legal Aid Services to Women and Men in Albania*”, funded by the Austrian Development Cooperation.

- *Gender-based discrimination and labour in Albania.*

The Gender Alliance for Development center, in close cooperation with the EU delegation to Albania and the Commissioner For the Protection from Discrimination, launched the second edition of the report, which focuses on gender-based discrimination at work, in Albania. The report is funded by the European Union and co-funded by the Swedish International Development Cooperation Agency (Sida).

The report aims to raise the awareness of the relevant institutions, the media and the general public regarding the current situation of gender-based discrimination in Albania. The report also aims to increase the awareness of citizens to report gender-based discrimination, which appears in various forms, including sexual harassment in the workplace. The report provides recommendations for addressing gender-based discrimination.

- *Violence against women in politics.*

The study examines violence against women in politics and presents a series of suggestions for various actors on what should be done to address this phenomenon. The study was conducted by the United Nations Development Program (UNDP) Albania in partnership with the Ombudsman and the Commissioner for Protection from Discrimination and is conducted in the context of the UN Joint Program “*Ending Violence against Women in Albania*”, funded by the Government of Sweden.

VII. Awareness-raising

Raising public awareness is one of the CPD’s core activities, provided through a series of competencies for this purpose such as: promoting the principle of equality and non-discrimination, particularly by raising awareness and informing about these issues, including the provision of written information on this law, in Albanian, in minority languages, as well as in formats used by persons with disabilities; directly addressing to the public opinion regarding any issue related to discrimination; Information on the right to protection from discrimination and on the legal means available for this protection; development of regular dialogue on discrimination issues with relevant social groups, including non-governmental organizations, and development of awareness-raising and educational activities that contribute in the implementation of this law.

During 2023, the CPD has cooperated with the media as a possible source of information, to promote the fight against discrimination, to fight and prevent hate speech, discriminatory language, racism, etc., in the protection and respect of fundamental rights and freedoms of the person with the outputs in visual and written media.

Lately, in February 2024, as part of the anti-discrimination week, the Commissioner has developed awareness-raising activities in the fight against hate speech. Specifically, on 28.02.2024, the CPD participated in the meeting at the “Oso Kuka” School in Shkodra, where the topic of “*Hate speech in social networks and media*” was discussed. Also, on 29.02.2024, the CPD participated in the meeting at “Janaq Kilica” School in Fier, where the topic of “*Bullying, hate speech and discrimination in schools*” was discussed.

On 27.02.2024, the CPD has also participated on the meeting held at “Naim Frasheri” School, in Korça, where the topic of “*Segregation at the “Naim Frasheri” School. Implementation of the action plan and measures for its desegregation*” was discussed.