



Komisioneri për Mbrojtjen  
nga Diskriminimi

Commissioner for Protection  
from Discrimination

COMMISSIONER FOR PROTECTION FROM DISCRIMINATION

**SUMMARY OF THE DECISIONS OF THE  
COMMISSIONER FOR PROTECTION  
FROM DISCRIMINATION**

With the support of:



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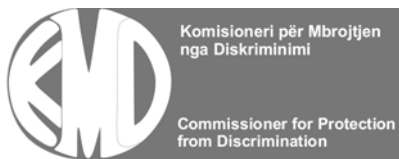
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Tirana, 2014



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# SUMMARY OF THE DECISIONS OF THE COMMISSIONER FOR PROTECTION FROM DISCRIMINATION

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## INTRODUCTION

The Assembly of Albania adopted in February 2010 the Law “*For the Protection from Discrimination*”. This law aims to ensure assistance to victims of discrimination. The Law “*For the Protection from Discrimination*” provides several opportunities for protection against discrimination, by using different legal and institutional instruments and structures. It envisages protection from discriminatory behaviors from the Commissioner for the Protection from Discrimination and addressing the issues of discrimination in court as the most efficient ways to be followed. Despite the legal means that victim of discriminatory behaviours uses, it is important that institutions that deal with the case have good knowledge on the legislation in force, to know how to identify the elements that a discriminatory behavior has in the case being examined, in order to give a decision or legal solution with a high level of professionalism. Being that, in Albania we are dealing with the implementation of a new law and in the absence of an administrative or judicial practice, the Commissioner for the Protection from Discrimination has considered the international instruments ratified by law and in particular the jurisprudence of international mechanisms that ensure the implementation of such acts.

Being that the handling of discrimination cases involves various actors, such as: CPD staff, representatives of central and local institutions, representatives of NGOs, prosecutors and judges, we esteemed important the publication of a summary of the decisions of the Commissioner for Protection from Discrimination and Opinions of the Board of Experts.

Some of the decisions of the CPD, according to the fields and different grounds for which is guaranteed protection by law, have been selected for this publication as the key decisions on which it is based, for other analog cases, the decision-making of the Commissioner, by establishing thereby an administrative practice of the Commissioner for Protection from Discrimination.

During 2013, the CPD activity was assisted by a Board of Experts composed of five experts in the field of protection of human rights, who have drafted opinions for the CPD, according to specific cases under review that required a more qualified expertise. These opinions have influenced on taking qualified and professional decisions by the Commissioner and on establishing a consolidated practice for other analog cases.

Special thanks to UNDP and especially Mrs. Entela Lako (Programme Officer) and Mrs. Emira Shkurti (Coordinator) of the “Gender Equality and Gender-based Violence Programme” that supported us in realizing the activity of the Board of Experts, but also to this publication as part of a wider cooperation.

Irma Baraku  
Commissioner for the Protection from Discrimination  
*December 2014*





## I. COMPLAINT ON THE GROUNDS OF GENDER

**THE COMPLAINT OF MRS. S. Ç., AGAINST MR. A. K,  
THE EXECUTIVE DIRECTOR OF THE FOUNDATION “HARRY FULTZ” AND MRS. B. B,  
THE DIRECTOR OF THE TECHNICAL SCHOOL “HARRY FULTZ”, WHERE IT IS CLAIMED  
DISCRIMINATION ON GROUNDS OF GENDER AS WELL AS BECAUSE OF HER DENUNCIATION OF  
THE LEADERS OF THE SCHOOL FOR CORRUPTED PRACTICES.**

### **DECISION No. 11/ 2012**

#### **1. PROCEDURE FOLLOWED**

- 1.1** Mrs. S. Ç has submitted to the Office of the Commissioner for Protection from Discrimination, the complaint no. 16, dated November 14, 2011, against Mr. A. K, Executive Director of the Foundation “Harry Fultz” and Mrs. B. B, Director of the Technical School “Harry Fultz”, where it is claimed the discrimination on grounds of gender as well as because of her denunciation of the leaders of the school for corrupted practices. According to the explanations given, it results that Mrs. S. Ç. exercises the profession of teacher of English language at the technical school “Harry Fultz”. The complainant has stated that she and her husband have made denunciations for corrupted practices in this school which, according to her, is a governmental school and it is treated as a private school from its directors. The complainant brought before the Commissioner a series of letters addressed to the higher governmental institutions such as: the Prime Minister of the Republic of Albania, the Minister of Education and Science, the Director of the Regional Educational Direction of the City, Tirana.
- 1.2** The complainant claims that due to these attitudes she is discriminated in different ways.
- She is under constant discrimination, through daily psychological violence, insulting words, distribution of disinformation with the purpose of damaging her image in front of the collective and to students, from the Director of the school;
  - She is been excluded from the activities realized by the educational body; she has not benefited additional to the salary, differently from the rest of the teachers; she does not benefit from the additional teaching hours,

- differently from what happens with the other teachers;
- The complainant has not been paid as participant, under order of the Minister of Education and Science, in the corrections of the State Final Exams for five days, differently from the other teachers in the same situation with hers.
  - The complainant claims that the concerns and discriminatory behaviors are exercised even towards her son, who is a student at this school in the fifth year. The discriminatory behavior towards him consist in the fact that the results of the exams are not issued in time, like the other students, the grades certificate of the fourth year is not issued or he is provoked in order to encourage him to perform certain actions for his exclusion from school.
  - She was issued disciplinary measure in contradiction with the Regulation for the Staff Management, fact on which she has presented her observations to the direction of the school and receiving no answer from them.

## **2. FACTS ASCERTAINED**

- 2.1** Pursuant to the article 32 and 33, of the law no. 10 221, dated February 04, 2010 “On Protection from Discrimination”, on November 10, 2011, Mr. A. K and Mrs. B.B were notified regarding the complaint addressed to them with the claim for discrimination of Mrs. S. Ç. On November 11, 2011 with the letter n. Prot. 197, addressed to Mrs. B. B it was required information regarding the claim of Mrs. S. Ç. On December 21, 2011, the inspectors of the Commissioner for Protection from Discrimination held a meeting with Mrs. S. Ç and the husband of the complainant.
- 2.2** With letter no. 2 of the Commissioner, dated January 06, 2012 the parts were notified for the hearing session. On February 16, 2012 on the office of the Commissioner for the Protection from Discrimination were presented Mrs. V. B. and Mrs. V. C. authorized by Mr. A. K. In the quality of the husband Mr. F. Ç, claimed to represent his wife who was absent with the motive that she had a meeting of the pedagogical council in school. The hearing session was postponed because Mr. F. Ç had no power of attorney to represent Mrs. S. Ç. With the consent of both parties, the hearing session was held on February 23, 2012.
- 2.3** On May 08, 2012 with letter no. 170 Prot., addressed to Mrs. B. B it was required additional information on employees’ payments, in answer of which it was sent the letter n. 451, dated May 5, 2012, where it was emphasized that: “Regarding the pay – rolls of the staff, as we have informed you, this information is confidential and protected as personal data of the individual by the law 9887 dated March 10, 2008 “For the protection of personal data”.
- 2.4** On May 21, 2012, it was issued the order no. 27 to perform an inspection at the technical school “Harry Fultz” with object “the verification of facts as follows”: 1. The verification of the pay - rolls of the staff in the technical school “Harry Fultz” for the period 2010 and following. 2. The legal basis on which the payments of teachers were realized, the practice followed for the assessment of the teachers, the practice followed to increase the salaries of the teachers. 3. The performance assessments of Mrs. S. Ç for the period 2009-2010.

- 2.5** The representative of the subject controlled during the inspection has stated that: the complainant's request is abusive. Regarding the complainant's claim for salary increase, they have estimated that it depends on the individual performance and the policies of the institution. Regarding the failure to pay the days as assessor in the state exams, the directors have explained that she had not request permission to leave and as result, the working days were not counted. Mrs. S. Ç. has been notified of the observance given within the legal limits. Regarding the claim for the denial of the grades certificate to the complainants' son, they said that the diploma will be given as soon as he will make the full payment of the school fee.
- 2.6** Comparing the assessments of Mrs. S. Ç for the period 2010-2011 with the teachers R. M., A. D., the assessment form of Mrs. S.Ç results completed differently. In the form of Mrs. S. Ç. there is no assessment with points from 1-4 according to the rule, but the boxes are empty and on the last page there is a written assessment for the teacher by identifying the fact that *"the directing staff was unable to assess the teacher because she refuses every element of assessment"*, which is in complete contradiction with the procedure of the Regulation for the Staff Management. *We recall here that the regulation provides that the assessment should be also based on the opinions of students"*.
- 2.7** In the assessments for the year 2010-2011 we note: *"She refuses to perform all obligations of the responsible teacher to the parents like telephone calls and notifications" (2010-2011); "...In public areas, in the Pedagogical Council, in the teachers room and in class her behavior is offensive and discriminatory as regards the managing staff" (2010-2011)*. While we found the previous estimations: *"She has the spirit of collaboration in the department and maintains correct relations with the colleagues and superiors" (2004-2005); "She has worked with the appropriate care with the class in her responsibility and the school documentation" (2004-2005)*. *While in the assessment for the year 2007-2008 the teacher was evaluated with the mark 1 or 2 for all components of the educational process.*
- 2.8** On March 16, 2011 with letter n. prot. 392, B. B, director of the high school "Harry Fultz", L. N, vice director and D. T, head of the department, have proposed to the General Director Mr. A. K the disciplinary measure "written warning" for the teacher with the arguments:
- On September 06, 2010 performs the lessons without uniform in violation of the internal regulations of the Institute and the relevant Directive of the Ministry of Education and Science, for the appearance of the school staff on the school premises.
  - She refuses to work with the talented students (clubs) and to consult students with low learning attitudes within the duration of work of 40 hours as on the contract signed by her.
  - She has put in difficulty and has continuously and publically impeded the School Management Team in developing its functional tasks.
- 2.9** On March 17, 2011 Mr. A. K has signed the written warning for Mrs. S. Ç. The disciplinary warning dates after the meeting of the pedagogical council with objects "Analysis of the first semester", dated February 16, 2011, where there was a debate between Mrs. S. Ç and the director of the school. In this debate Mrs. S. Ç, has asked from the

director to explain whether the school was public or private and as consequence the director has closed the meeting.

- 2.10 In the observations of Mrs. S. Ç, dated March 21, 2011, on the issue of the disciplinary measure, except for the disagreement with the argument on which the written warning was issued, it was also presented her complaint and concern that she has being discriminated by the school directors through<sup>1</sup>: the failure to provide the didactic materials for the lessons and necessary infrastructure as well as to the other teachers; the exclusion from any other activity that the teachers develop even in class hours; the isolation from every type of school information; the removal of the right of speech in the meetings with the teaching body ... etc.**
- 2.11** The complainant, in the observation has required also to be heard by the board of the foundation according to the legislation that regulates the operation of the foundation and to the Labor Code, article 10/1 where is qualified: ***“every unjustified measure or administrative sanction, which is issued against the employees, who have reason to suspect for corruption and that submit this doubt to the relevant persons or to the competent authorities, is invalid ...”***.
- 2.12** The complainant was not paid for the participation, for five days, in the corrections of the state final exams, as other teachers in the same situation with hers. From the inspection of the Commissioner on this case it was provided the certification of the National Agency of the Exams dated July, 12, 2011, n. 254, which proves the fact that Mr. S. Ç has been assessor in the State final Exams 2011, for the foreign language tests in English language, from July 03, 2011 to July 08, 2011. With letter no. 395 Prot., dated May 14, 2012, in answer to the request of the Commissioner for Protection from Discrimination, the National Agency of Exams confirms the participation of Mrs. S. Ç as assessor for the period 3-8 July 2011 together with four colleagues from the Institute “Harry Fultz”.

### **3. LEGAL BASIS**

- 3.1** The law has provided in the article 2/5 that: an undesirable conduct, when it is related to any of the grounds mentioned in article 1 of this law, which has the purpose or effect of violating the dignity of a person and the creation of an intimidating, hostile, degrading, humiliating or offensive environment for that person, as well as in the case of a less favourable treatment performed as a result of an objection or failure to submit by the person affected by such a behavior.
- 3.2** The law in the article 1 has expressly provided the grounds on which it offers protection. According to this provision, the stated grounds are for orientation and not exhaustive, because in this article it is also provided the expression *“for every other reason”*.
- 3.3** In the article 2, paragraph 8 of the law no. 10221, dated February 04, 2010 “On Protection from Discrimination” it is provided that: the unfavourable treatment or the negative consequences, that comes as a response to a complaint or a proceeding that aims the implementation of the principle of equality, constitutes discrimination.

<sup>1</sup> Referring to the observation dated March 21, 2011

- 3.4 In the article 5 of the law n. 10221, dated February 04, 2010 “On Protection from Discrimination”, it is provided that “discrimination is prohibited for the causes mentioned in article 1 of this law and the failure to examine an appeal or procedure, according to the grounds mentioned in article 3 of this law, as well as any other form of behavior that hinders the implementation of the principle of equal treatment.
- 3.5 The law “On Protection from Discrimination” includes specific provisions regarding the protection from discrimination in the employment area.
- In the article 12/1 of this law it is provided that: “*Discrimination against a person in connection with his right to employment is prohibited. Discrimination includes every distinction, limitation or exclusion that is based on the grounds mentioned in article 1 of this law and which, among other things, is related to : .....c) the treatment of employees in the work place, including their treatment during the establishing or changing of working conditions, compensation, benefits and the work environment, treatment related to professional training or during the disciplinary process or related to dismissal from work or the dissolution of a labor contract*”.
- Based on the article 13, paragraph e of the law “On Protection from Discrimination”, the employer is obliged “to respond effectively and in compliance with this law to complaints received because of discrimination committed by his employees, within one month from receiving them.”
- 3.6 Based on the article 19, paragraph c of the law, one of the obligations of the director of the educational institution is: “the effective handling of complaints about discrimination in the institution, examining every complaint within 30 days from its submission”.

#### 4. OPINION

- 4.1 The performance assessment of the teachers at the Institute “Harry Fultz” is provided in the Regulation for the Staff Management. It is foreseen the assessment for a period of 12 month and it is realized based on the evaluation of the work from the chief of department and from the students’ opinion. During the inspections we managed to provide the assessments for the years 2010-2011, 2007-2008, 2004-2005, while the assessments for the academic year 2009-2010 was not made available to us, with the claim that there was not made any assessment for any of the teachers of the school. **The failure to make available the assessments for the academic year 2009-2010 with the justification that the assessment of the work performance was not performed for any teacher in that period, on which, according to the claims of the leaders of the Institute, the behavior of the complainant has changed, leads us to the conclusion that the leaders of the Institution can not prove the complainant’s change of behavior, which is claimed by them.** The above argument is based also in the decision No. 33, dated

September 12, 2007 of the Constitutional Court, according to which, after the presumption of the discrimination by the employee, the employer has to prove the contrary, so that there was no discrimination towards the employee. This decision has decided and determined the reversal of the burden of proof in the cases of discrimination in employment.

- 4.2 If the assessments of Mrs. S. Ç for the periods before and after the complaint, are compared it **seems we are talking about two people with very different characteristics. It is noticed a radical change in the assessment of the complainant for the period before and after the complaints for corruption, which creates a conviction of an unfavourable treatment because of her or her husbands' complaints and a treatment different from her colleagues.**
- 4.3 The issue of the disciplinary measures in the institute "Harry Fultz" is disciplined by the paragraph 3 of the Regulation on the Management of the Staff. In this paragraph it is provided even the procedure for the issue of the disciplinary measures. We note that the procedures for the issue of the warning have been violated, and for this Mrs. S. Ç. will address to the competent authorities. In clear violation of the procedure provided in the above regulation, Mrs. S. Ç has not received any answer from Mr. A. K for the observation addressed to the latter. **The failure to treat the complaint for discrimination that the complainant declares in the observation addressed to the General Director constitute discrimination under the law no. 10221, dated February 04, 2010 "On Protection from Discrimination.**
- 4.4 The directors of the Institute "Harry Fultz" justify the absence of payment of the complainant with the argument that she did not request the permission to leave to the School Directors, but on the other hand they were not able to prove that the other teachers have requested such permission, as there is no letter or practice at the Institute on this issue. Mr. A. K himself has admitted that all teachers have privately insured the participation as assessors and there is no request from any governmental body addressed to the Institute, officially requiring the participation in the assessment. **The difference made to the complainant in the payment for the days of assessment is another argument added to the above arguments regarding her being treated differently.**
- 4.5 The claim of the complainant that the ground for her discrimination is the denunciation of persons, whose are accused by her for discrimination, constitutes a personal and distinctive characteristic of the complainant. We deem that this conclusion is reinforced even on the special protection provided by the law to the persons who initiate a complaint procedure or a proceeding that aims the implementation of the principle of equality, (victimization, article 2/8 of the law). Although the specific legal steps and the denunciations of the illegal situations claimed from the complainant were not connected to the implementation of the principle of equality, a situation when a person undertakes procedural steps or complaints against a person or persons, can be considered as a ground related to the article 1 of the law, as it constitutes a personal and distinct characteristic of a person or group of persons that pretend / s to have been discriminated.
- 4.6 The law has provided in the article 2/2 that: *when a person or group of persons is treated in a less favorable manner than another person or another group of persons in a situation that is the same or similar, based on any ground mentioned in article 1 of this law*, constitutes direct discrimination. Based on the article 32, paragraph 1, letters a) and c) and paragraph 3 of this law, article 33, paragraph 10 of the Law no. 10 221, dated



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February 04, 2010 “On Protection from Discrimination”, the Commissioner concludes the discrimination of Mrs. S. Ç, from Mr. A. K and Mrs. B. B, in the form of victimization.

## **5. RECOMMENDATIONS**

- 5.1** We recommend to take all the necessary measures to treat Mrs. S. Ç equally with the other school colleagues, to perform the assessment of the teacher under the same procedure with the other teachers; to take all measures to establish a spirit of collaboration between Mrs. S. Ç and the colleagues or the school governing body, as long as the complainant will be part of the staff of teachers.
- 5.2** The rules provided in the Regulation or Codes of the Institution should be equally applied to male teachers as well as to female teachers by not creating conditions to the latter to be in unequal and less favourable conditions compared to the male teachers and therefore to be discriminated on grounds of gender.
- 5.3** Based on the article 33 paragraph 11, you must report in front of the Commissioner about the measures taken in order to equalize the relations by eliminating the discriminatory elements within 30 days.

## II. DISCRIMINATION CASES ON THE GROUNDS OF DISABILITY

**EX-OFFICIO CASE, INITIATED FROM THE COMMISSIONER FOR THE PROTECTION FROM DISCRIMINATION BASED ON THE PUBLICATIONS IN MEDIA, WITH THE INFORMATION OBTAINED FROM THE NEWSPAPER SHQIPTARJA.COM, DATED SEPTEMBER 18, 2013, WHERE WAS CLAIMED DISCRIMINATION TOWARDS THE PUPIL OF THE FIRST CLASS OF THE ARTISTIC LYCEUM “JAN KUKUZELI” BECAUSE SHE WAS AFFECTED BY AUTISM.**

### DECISION No. 92/ 2013

Based on the publication in media of an article where it was claimed for discrimination of the pupil of the first class in the Artistic Lyceum “Jan Kukuzeli”, because she was affected by autism

### 3. PROCEDURE FOLLOWED

- 1.1. In the newspaper Shqiptarja.com, on September 18, 2013, was published an article with title “*She is autistic, the teacher: she must leave*”. According to this article, A. XH, a 6 years old girl from the district of Durrës is facing a flagrant case of discrimination. The teacher of the first class has asked the removal of the little girl from the school with the justification that she is affected by autism.
- 1.2. The Commissioner for Protection from Discrimination, based on the article 32/c of the Law no. 10 221, dated February 04, 2010 “*On Protection from Discrimination*”, based on the Order no. 74, dated September 18, 2013 “*For the start of the procedures for the following of the ex-officio case of the student of the Artistic Lyceum “Jan Kukuzeli” Durrës*”, has started the procedures for the examination of the administrative case.
- 1.3. In order to verify this event, based in the order no.75, dated September 18, 2013, the Commissioner for the Protection from the Discrimination had a meeting with the participation of the Director of the Artistic Lyceums “Jan Kukuzeli” Durrës, the parents of the pupils of the first class, the class teacher and the music teacher. It was also held a meeting of the Commissioner, with the teachers of the school.



## 2. FACTS ASCERTAINED AND THE OPINION OF THE COMMISSIONER ON THEM

2.1 From the information given from the director of the school, the case of A. XH was known from her since a year ago and A. XH was present in the Artistic Lyceum “Jan Kukuzeli”, Durrës since August. The admission of the pupils in the Artistic Lyceum “Jan Kukuzeli” Durrës was realized by competition. A. XH was part of the audition of this year, by being awarded the 29 place from 37 participants. It should be emphasized the fact that A. XH was accepted in the competition in a second session because the first time the pupil showed no concentration. A. XH started the collaboration with the teacher of violoncello before the class started. The director of the school asserts that after the notification made to the teacher of the first class, she asked for information in the Institute of the autistic children, where she was informed about the most serious cases. She emphasized the fact, that this was the first case with children with autistic elements in the school during the 54 years of its existence, although in this school other children with hearing disabilities attend to the lessons. Despite the fear of the teacher of the first class, the director explained that it was decided:

- To prove everything for the integration of A. XH in the class,
- In the first week the psychologist of the school should remain in class with her. For this purpose it was required the permit of the Director of the Regional Education Directory (DAR) of Durrës, because the psychologist exercises her activity in another school.
- It has been agreed with the parents to monitor her during all week.
- She was placed at the end of the line because she was sitting with the psychologist, which could impede the other children to attend to the lesson.
- It was called a second meeting (on 20 September, 12:00 o’clock) to decide for the continuation, as one day before some parents have asked the removal of A. XH, otherwise they would remove their children. During the hearing, the Director has emphasized once again that they will try the first week and they will decide at the end of the week for the continuation, but they were disturbed by the media. According to the Director, A. XH has participated regularly and was treated without any discrimination in the class by the teacher.

2.2 From the information obtained by the psychologist of the school we were informed that she stayed with A. XH in the same desk in the first day of school, while in the other days she has stayed in distance ready to help her. She asserts the fact that: *“It is a fight to achieve her focusing. She performs by herself the personal needs, but there are moments when she requires with insistence something and becomes nervous if not satisfied. During these days teachers and parents have entered into the class”*.

2.3 While the teacher of the class expressed her worries: *“I was informed about the presence of A. XH in the first class on 20 August, before the competition. Although I knew that we had a legal obligation to make possible for her attend to the school regularly, I have asked to the parents if it would be better for the girl to go to another school with a smaller number of pupils and where they can take care better. I feel worried about what*

*would I do when I will not have the psychologist to take care for A. and not to affect the level of learning in the other children. However, I have worked normally and I have not discriminated her. We do not have an individual plan for A. XH. I was afraid, because I required information and I was informed about the more severe cases of children with autism”.*

- 2.4 In the meeting were present even some parents who have expressed their concern that the teacher would not have enough time to dedicate to the other children. A parent, who was also a teacher at the school, had expressed the desire for her child to stay in the same desk with A. XH.
- 2.5 While the parents of A. XH expressed themselves worried about the fate of A. XH, because they doubt the behavior of the teacher in following. According to her the teacher had told her that she could not work with A. XH and had proposed to send her to a private school. The parents complained about the teacher’s unwillingness to cooperate with them. The mother of A. XH said that: *“The child has not brought any concern, but the situation is becoming alarming. From the visits she was diagnosed with elements of autism at an early stage. The medical report has been required from us 4 days after the start of the school. A. XH carries out by herself all personal needs, a fact that is confirmed even by the psychologist of the school”.*

### 3. LEGAL BASIS

- 3.1 Albania after the approval on November 15, 2012, of the law no. 108/2012 *“For the Ratification of the United Nations Convention on the Rights of Persons with Disabilities”*, has become the 127 country which ratifies this important Convention. The Convention offers to the persons with disabilities an unprecedented level of protection, by changing, first of all, the treatment of the disability from that based on the medical model or charity, according to the model social treatment. This Convention is drawn up in order to stimulate, protect and ensure that all persons with disabilities enjoy completely and in equal way all human rights and fundamental freedoms, and to stimulate the respect of their dignity. In the article 24 of the Convention is provided the obligation of the member states to guarantee the right of persons with disabilities about the education, among others by not allowing them to be excluded from the general education, the primary free and mandatory education because of the disability. The Convention is based on several important principles, among which there is the principle of non - discrimination, the acceptance of persons with disabilities as part of human diversity and humanity and the respect about the rights of children with disabilities. The convention offers a special protection for children with disabilities, in order to ensure, that these children will enjoy all the human rights and fundamental freedoms like all other children<sup>2</sup>. **In terms of this Convection, the persons with disabilities include individuals with long term physical, mental, intellectual or sensory damages, which in interaction with various barriers, may impede their complete and effective participation in society in the same way as the other part of the society.**

<sup>2</sup>Article 7 of the Convention *“On Protection of the Rights of Persons with Disabilities”*.

- 3.2 Disability is one of the grounds for which the Law No.10 221, dated February 4, 2010 “*On Protection from Discrimination*”, offers protection. In the article 1 of the law it is determined the scope of the law: “*This law regulates the implementation of and the respect of the principle of equality in connection with gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social situation, pregnancy, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other grounds*”.
- 3.3 According to the International Classification of Functionality, Disability and Health (ICF) carried out by the World Health Organization, a classification which serves for the assessment of health and disability, autism is included on the “*Global psychosocial functions*”. Albania has formalized its will to implement these obligations in the field of education, through the approval of the law 69/2012 “*For the Pre - University Educational System in the Republic of Albania*” where in the article 5, “*The right for education*”, it is provided that: “*In the Republic of Albania is guaranteed the right for education of Albanian, foreign citizens and persons without and stateless persons, **without being discriminated from**, gender, race, color, ethnicity, language, sexual orientation, political or religious beliefs, economic or social situation, age, residence, **liability or for other grounds that are defined in the Albanian legislation***”.
- 3.4 Also, in the article 6, “*General Principles*”, it is provided: “*...3. In the pre- university educational system, to the students and employees is offered protection from any form of action or non-action, which can cause discrimination, violence, mistreatment or moral damage. 4. In the educational institutions is applied the principle of comprehensiveness of students. 5. Each student is provided with the right of qualitative education and equal opportunities for education. 6. **To the students of the families in need, students with disabilities and to the students with difficulties in learning is offered special care, according to the definitions of this law ...***”.
- 3.5 The same law in its article XI clearly provides the education of children with disabilities. In the article 64 with the title: “*Attendance of children with disabilities in the educational institutions*”, in the paragraphs 3, 4 it is provided: “*3. The local educational unit creates a commission, composed by doctors, psychologists, teachers and specialists for children with disabilities, which, after the examination with the request of the parent or of the director of an educational institution, gives the relevant recommendations for continuing from the children of an ordinary or specialized educational institution. 4. The parents decide whether their children with disabilities will follow a specialized or ordinary institution of the basic education. The parents may at any time remove their children from the school, when they judge that he does not benefit from the lessons or he has other better opportunities 5. The Ministry, in collaboration with the basic governmental local unit and in consultation with the parents and the commission, provides the education of children with disabilities in one in one of two types of the educational institution, common or specialized.*
- 3.6 In the article 65 with title: “*Organization of the education of children with disabilities*”, the same law provides: “*1. The students with disabilities learn according to the learning plan and the common subject programs,*

*adopted for them, or according to the learning plan and specialized subject programs for them. 2. In the common educative institutions, the personalized program for students with disabilities is drafted by a commission, in the composition of which are teachers of various fields of learning of the institution and psychologists. The elaboration of this program is realized in collaboration with parents and students. The change of the personalized program within an educational institution is decided from the commission within the institution, in collaboration with the children's parents. 3. The children with disabilities is provided with assistant teachers and rehabilitation service, according to the established criteria by order of the Minister. The educational employees of the institutions, that have students with disabilities, are certified in training programs for the treatment of these students. 4. The relevant basic governmental local unit provides to the students with disabilities with the appropriate premises of teaching, according to the standards determined by the ministry.”* These legal provisions are also explained in detail in the Normative Provisions for the pre – university educational system 2013, approved by the Order 343, dated 19.08.2013 of the Ministry of Education. In this subsidiary act it is provided a special article (Article XV) about “The education of children with disabilities”, where there are clearly specified the obligations of all structures in order to guarantee the right of the children with disabilities to get an education and to ensure a comprehensive education.

- 3.7** Referring to the Regulatory Provision for the pre – university Education 2013, we can notice that it is defined the obligation of Regional Education Directorate / ZA to establish a: “*Multidisciplinary committee composed by a pediatrician (where is possible, a pediatrician for the development), a psychologist, a social worker, a teacher (where is possible, qualified for the specialized education) and the director of the psychosocial service unit*”<sup>3</sup>. These Commission “*at the request of the children's parent or of the director of educational institution, where the child is registered, it evaluates the educational and social needs of the children and its performance*”<sup>4</sup>. The commission invites at least one parent during the evaluation of the children, and if necessary, his relatives. If the children are registered in kindergarten / school, besides the parents they should be present: the employee of the psycho – social service educational institution, the teachers of the children appointed by the director of the educational institution<sup>5</sup>.
- 3.8** On the other side, the educational institution has also established a commission (*composed by three teachers of different matters of learning and the psychologist / social worker*) In the commission participates, at least one of the teachers of the pupil with disabilities and the assistant teacher (when there is one) and is headed by the employer of psychosocial service<sup>6</sup>, with whom the Director of the educational institution consults before he addressing to the

<sup>3</sup> “The Normative Provision for the pre – university Education” approved by the Order 343, dated August 19, 2013, article 93, paragraph 1

<sup>4</sup> In the same, article 93, paragraph 2.

<sup>5</sup> In the same, article 93, paragraph 8.

<sup>6</sup> Article 95, paragraph 1

commission in the Regional Education Directory (DAR/ZA). The Director should collaborate with the children's parent in order to present his request<sup>7</sup>. This Commission has an important role, because according to the assessment of the commission in DAR/ZA, it has these powers: instructs the teachers to draft the PEI and approves them; helps the teachers during the application of PEI; c) follows the progress of children with disabilities; submits to the Commission of DAR/ZA, the report progress of the pupil with disabilities<sup>8</sup>.

- 3.9** The commission notifies in writing the director of the ordinary educational institution about the children with disabilities that will learn with the adapted or individual teaching plan and common subject programs<sup>9</sup>. The Commission in the DAR/ZA instructs the commissions of the educational institutions for the work with pupils with disabilities<sup>10</sup>. In the article 94, paragraph 5, these provisions provide the obligation of DAR/ZA to organize *“through the psychosocial service in the DAR/ZA, the collaboration of the teachers of the specialized schools with the teachers of common schools, for drafting and the implementation of the individual educational plans (PEI) for students with disabilities”*.
- 3.10** According to the law *“On Protection from Discrimination”* in the article 3, paragraph 1, the discrimination is defined as: *“every distinction, exclusion, limitation or preference because of any grounds mentioned in article 1 of this law that has as a purpose or consequence the hindering or making impossible the exercise, in the same manner as with others, of the fundamental rights and freedoms recognized by the Constitution of the Republic of Albania, with international acts ratified by the Republic of Albania as well as with the laws in force”*. According to the paragraph 2 of the article 3 of the same law it is defined as direct discrimination: *“that form of discrimination that occurs when a person or group of persons is treated in a less favourable manner than another person or another group of persons in a situation that is the same or similar, based on any grounds mentioned in article 1 of this law”*.
- 3.11** In its article 7 of the law *“On Protection from Discrimination”*, it is provided that: *“1. Every action or failure to act of the public authorities or of natural or legal persons who take part in the private or public sectors and life, which creates bases for the denial of equality against a person or group of persons, or which expose them to an unfair, unequal treatment when they are in the same or similar circumstances in comparison with other persons or other groups of persons constitutes discrimination. 2. The elimination of all privileges and of unfair discrimination is guaranteed for everyone, on the basis of the personal, political, economic, social and cultural rights assured by the Constitution of the Republic of Albania and international acts ratified by the Republic of Albania as well as by the laws in force.”* According to the article 7 of the law *“On Protection from Discrimination”* the discriminatory behaviour can be realized by action as well as by the failure to act.

<sup>7</sup> Article 93, paragraph 4

<sup>8</sup> Article 95, paragraph and 3.

<sup>9</sup> Article 93, paragraph 11.

<sup>10</sup> Article 93, paragraph 12.



## 4. OPINION

- 4.1 **The interdisciplinary Commission in the DAR/ZA recommends to attend a specialized school only when it deems that attending a common school will not develop enough the children with disabilities (AK)<sup>11</sup>.**
- 4.2 In monitoring the activity of the commission of the educational institution the Director of the common educational institution has a key role. Also is worth to be emphasized the importance given to the awareness activities for the experiences with the children with disabilities, the teachers' training to care also for the education of children with disabilities<sup>12</sup>. The parents have an important role in all procedures for the registration and the education of children with disabilities, who under these provisions *“After the receipt of the recommendation from the commission at the DAR/ZA, decide whether their children with disabilities will follow a specialized or a common institution of the basic education. The parents may remove the children from the school at any time, when they deem that the child does not benefit from the teaching or has better possibilities”*<sup>13</sup>.
- 4.3 **From the results of the inspection and the public hearing session realized at the Artistic Lyceum “Jan Kukuzeli” Durrës, the above procedures have not been respected for the pupil of the first class A. Xh. It does not result the establishment of any commission, in order to assess the needs of A. XH., and if she should attend a common school or a specialized school. The director of the educational institution was aware of the special needs of A, and has referred the information to the DAR/ Durrës. DAR/ Durrës and the Director of the educational institution should have respected the provisions made in the legal and subsidiary acts governing the education of the children with disabilities. **The failure to respect these legal provisions has had as consequence A.XH not to enjoy, in equal basis with the other children, the right to education, a right which is guaranteed by the legislation in force on ground of disability.****
- 4.4 **Due to the failure to respect the above procedures provided for the education of the children with disabilities, it resulted that any adopted learning plan was prepared for the needs of A. XH. The class teacher, who would attend A.XH., had not received any training on the manner and the treatment of the children who need special care.** During the hearing session, the teacher due to the absence of knowledge about the children with autistic elements said that she was feeling intimidated at the first moment and unable to face and to adapt to the needs of A. XH. During the inspection it resulted that the Director of the educational institution had required from the DAR/ Durrës the presence of a psychologist near to A. XH., to assist the teacher during all the time that she was in class. In the first day of school, A. XH. was placed in the last desk because she should be accompanied by the psychologist, under the justification that the latter was an obstacle because of her height. During the first week of the school parents and teachers, media representatives have often interrupted the lesson by opening the door of the class. **Therefore, A. XH constituted curiosity; she has become the center of attention, while she was a child like many others,**

<sup>11</sup> *Id.*, Article 93, point 9

<sup>12</sup> Article 96, paragraph 1 and 2.


<sup>13</sup> Article 97, paragraph 6 and 7.

who has started the school for the first time. These behaviors and actions have created around A. an intimidating and not friendly environment, by causing to her signs of stress.

- 4.5** The director of the educational institution, by not respecting the legal procedures in order to guarantee the education of A. XH. as person with disabilities, has taken competencies which belong, by law, to the Multidisciplinary Commission, that should have been established at the DAR /ZA, according to the article 64 of the Law “For the pre – university education in the Republic of Albania” and the article 93 of the Normative Provisions about the pre –university educational system of 2013, having as consequence a non – professional manner of treatment for A.XH, which has not resulted effective. The Ministry of Education and Science with Directive n. 46, dated August 23, 2013 “On the academic year 2013- 2014 in the pre – university educational system”, has brought to the attention of DAR/ZA and to the directions of the schools the obligations that they have for the education of the children with disabilities and the respective measures for their registration, identification and support with individual education plans, creating the appropriate conditions for the integration of children with disabilities in the common schools of the basic education, which is primary.
- 4.6** Notwithstanding the measures to a different treatment, with the aim to integrate children with special needs, A. XH has not been provided with education according to the international standards required from the international acts and the Albanian legislation force .
- 4.7** The failure to act of the subjects DAR/Durrës and Director of the Artistic Lyceum “Jan Kukuzeli”, Durrës in accordance with the legal provisions guaranteeing the education of children with disabilities has had as consequence that A has not enjoyed the right of education on an equal basis with the other children, due to the disability. The failure of these two institutions to take all effective measures to provide the individual assessment of the needs of A in order to guarantee her integration in school, constitutes a direct discrimination as referred to in the article 3, paragraph 2 of the law n. 10 221, dated February 04, 2010 “On Protection from Discrimination”.
- 4.8** The commissioner determines the discrimination of the pupil A. Xh, in the Artistic Lyceum “Jan Kukuzeli”, Durrës from the Regional Educational Directory of Durrës and the Director of the Artistic Lyceum “Jan Kukuzeli”, Durrës.

## **5. RECOMMENDATIONS**

- The Regional Education Directory of Durrës should take urgent measures to makefor the functionality of the Multidisciplinary Commission, according to the above mentioned legal provisions for the education of children with disabilities, for the evaluation of the educational and social needs of the student A. XH. and her performance.
- The Director of the Artistic Lyceum “Jan Kukuzeli”, Durrës, should take urgent measures to raise the Commission for the pupils with disabilities within the Artistic Lyceum “Jan Kukuzeli”, according to the above mentioned legal provisions, for the education of children with disabilities.

- Up to the establishment and functioning of the Commissions and individual plans for the pupil A. Xh, the Director of the Artistic Lyceum “Jan Kukuzeli”, Durrës and the class teacher should enhance the cooperation with the parents of the child to adapt and to fulfill better her actual needs.
  - The Regional Education Directory of Durrës and the Director of the Artistic Lyceum “Jan Kukuzeli”, Durrës must collaborate closely in order to follow all the legal procedures for the education of children with disabilities for all the other children who attend classes in this educational institution.
  - The Regional Education Directory of Durres and the Director of the Artistic Lyceum “Jan Kukuzeli” Durrës, should notify the Commissioner, regarding the measures taken for the implementation of this decision, within 30 (thirty) days from being informed about it.
  - In reference to Article 33, paragraph 11 of the law n. 10 221, dated February 04, 2011, “*On Protection from Discrimination*”, the failure to implement this decision results in penalties according to the provisions of the paragraph 13 of the same article.
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**COMPLAINT SUBMITTED BY MRS. H.H. TO THE COMMISSIONER FOR THE PROTECTION FROM DISCRIMINATION,  
AGAINST THE DIRECTOR OF THE HIGH SCHOOL DORMITORIES OF TIRANA  
REGARDING THE INTERRUPTION OF THE EMPLOYMENT RELATIONS BY THE EMPLOYER, ON THE GROUNDS  
OF ASSOCIATION WITH THE SON, WHOSE CARE IS PROVIDED MAINLY BY THE EMPLOYEE  
(DECISION NO. 54/2014)**

**1. PROCEDURE FOLLOWED**

- 1.1** Mrs. H. H. in her complaint explains that: *“I have been an employee at the dormitories of the High School in Tirana, since 1998. As soon as Mr. I. D. was appointed in the position of Director of the High Schools Dormitories of Tirana, I have informed him, on the health conditions of my son and I have asked permission to be absent from the official working hours, for two hours, in only two days a week, because I should accompany my son in the University Hospital Center “Nënë Tereza”, to undergo to dialysis, but he has absolutely refused my absence during the working hours. During the days that I have accompanied my son to undergo to dialysis, I come back to work and I stayed until late hours of afternoon, in order to be as correct as possible. Even though the commission of KEMP (Medical Commission for the Assessment of Work Ability), had assigned me to work 6 hours a day, I worked like everyone else 8 hours a day, in order to leave to anyone cause to dismiss me from my work. Mr. I. D., finally dismissed me without considering the health conditions of my son and mine at the same time. I think that being absent during the official working hours, to accompany my son in the University Hospital Center “Nënë Tereza”, has caused my dismissal from work.”*
- 1.2** Pursuant to the applicable legal provisions, defined in the articles 32 and 33 of the law no. 10221/2010 “On Protection from Discrimination”, The Commissioner for Protection from Discrimination, with the letter No. 746/ 1 prot., dated December 19, 2013 has notified the Director of the High Schools Dormitories Mr. I. D., by informing him for the commencement of the procedures for the analysis of the complaint and required information, on the pretenses arose by Mrs. H. H.. Through the letter no. 53 prot., dated January 17, 2014, Mr. I. D. answered to the request for information.
- 1.3** On November 04, 2013 it was realized the inspection at the Direction of High Schools Dormitories of Tirana.

## 2. ASCERTAINED FACTS

- 2.1 From the consult of the personal file of Mrs. H. H., it was evidenced that she had not deposited copy of the certification of the Medical Commission for the Assessment of Work Ability, in the Direction of High Schools Dormitories, which indicates that she has not notified in writing, Mr. I. D. about her health conditions.
- 2.2 During the inspection realized on November 04, 2013, in the context of examination of the complaint no. 38 of register, dated July 31, 2013 of Mrs. H. H., in the Direction of High Schools Dormitories, Mr. I. D. has informed the inspection group as follows: *“I was informed that Mrs. H.H. has had health problems with her son and because of this she was absent and did not present at the work twice a week.”* Referring to the abovementioned minutes, it results that Mr. I. D., has confirmed that he was informed that Mrs. H. H., was absent during the official working hours twice a week because her son has health problems, and for this reason disciplinary measures<sup>14</sup> are taken against her.
- 2.3 Referring to the documentation administered, it is noted that, in the material attached to the decision for the termination of the employment relation, there is the notice of warning, issued to Mrs. H. H due to the failure to present at work. Referring to these facts, we ascertain that the termination of the employment as cleaning worker at the Dormitories of the Sportive Mastery in Kamza, has derived from a weak performance and the failure to present at work.
- 2.4 Based on the evidences and facts collected from the Commissioner for the Protection from Discrimination, it results that Mrs. H. H., accompanied her son in the University Hospital Centre “Nënë Tereza”, Tirana, three times a week (Tuesday, Thursday and Saturday), to undergo to dialysis and because of this she had to be absent during the official working hours. The accompaniment of her son because of his health conditions was one of the reasons for the interruption of the employment relations of Mrs. H. H. and the Directorate of High Schools Dormitories.

## 3. LEGAL BASIS

- 3.1 In the Article 3, paragraph 2 of the law no. 10 221, dated February 04, 2010 *“On Protection from Discrimination”*, it is provided that: *“The direct discrimination is that form of discrimination that occurs when a person or group of persons is treated in a less favorable manner than another person or another group of persons in a situation that is the same or similar, based on any ground mentioned in article 1 of this law”*.
- 3.2 We emphasize that the discrimination on the grounds of association is a form of discrimination provided by the law *“On Protection from Discrimination”* in article 3, paragraph 4, where sanctioned: *“The discrimination on the grounds of association is that form of discrimination that occurs when there is a distinction, limitation or preference, because of association with persons who belong to the groups mentioned in article 1 of this law, as well as on the grounds of an assumption of such association”*.

<sup>14</sup> Pursuant the letter n. 68 Prot., date September 2011 of the Director of the High Schools Dormitories, Mr. I. D.

- 3.3** The jurisprudence of the European Court of Human Rights (GJEDNJ), in the case with no. C-303/06, S. Coleman against the Attridge Law and Steve Law, has declared that ***“the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3) of the Directive 2000/78”***. ECHR during the examination of the case has ascertained that the employer has treated an employee who is not himself disabled, less favorably than another employee on grounds of disability of his child, whose care is provided primarily by that employee and such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a) of the Directive 2000/78.
- 3.4.** In the case Thlimmenos against Greece<sup>15</sup>, The European Court of Human Rights, has s the attitude that: *“.....The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”*<sup>16</sup>.

#### **4. OPINION**

- 4.1** For the above, the Commissioner estimates that the practice followed by the Direction of High Schools Dormitories, by treating all the cleaning employees, in the dormitory of Sports Mastery in Kamza, equally, regardless of the different conditions that they may have, constitutes a substantive discrimination (the equal treatment of the unequal cases) in the domain of goods and services, by violating the right of Mrs. H. H. regarding the employment, on the grounds of the disabilities of her son.
- 4.2** The Commissioner ascertains the direct discrimination, due to the association, of Mrs. H. H., from the Director of High Schools Dormitories, Mr. I. D., by exposing her to unfavorable conditions, compared to other employees of the High Schools Dormitories.

#### **5 . RECOMMENDATION**

- 5.1** Recommendation to the Direction of the High Schools Dormitories, to return Mrs. H. H. to previous working position.
- 5.2** The obligation of the Direction of the High Schools Dormitories, to inform and notify the Commissioner within 30 (thirty) days regarding the actions undertaken to implement this decision, based on the Article 33, paragraph 11 of the

<sup>15</sup> Thlimmenos against Greece, Demand no. 34369/97, decision dated 06.04.2000

<sup>16</sup> The European Convention of the Human Rights (Ratified by the Republic of Albania with the Law no. 8137, dated July 31, 1996, entered into force on August 02, 1996) and the jurisprudence of ECHR are mandatory to implementation based on the Article 116 of the Constitution of the Republic of Albania

Law “On Protection from Discrimination”.

- 5.3** Referring to the article 33, paragraph 11 of the law no. 10 221, dated February 04, 2011, the failure to implement this decision results in the punishment with fine according to the provisions contained in the paragraph 13 of the same article.

### III. DISCRIMINATION CASE ON THE GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY

**THE COMPLAINT OF MR. V.N, IN WHICH IS ALLEGED DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION, FROM THE TELEVISION CHANNELS “NEWS-24”, “ABC NEWS” AS WELL AS THE NEWSPAPERS “PANORAMA”, “SHQIPTARJA.COM” AND “KOHA JONË”.**

#### **DECISION No. 97/2013**

#### **1. PROCEDURE FOLLOWED**

- 1.1** In his explanation Mr. V.N writes: *“I feel discriminated by the medias “News-24”, “ABC News” and newspapers: “Panorama”, “Shqiptarja.Com” and “Koha Jonë”, as they have transmitted the news all day long for 24 hours and have not given the initials only as always occurs, but the complete name and surname as if it was a serious crime this has influenced negatively my life because since that day I have excluded from family, parents and friends”*. Pursuant the complaint, Mr. V.N has attached the Decision n. 31, N. of Act 217 of the Court of Judicial District of Tirana, in which V.N was declared guilty for the penal act of “Prostitution”, defined by the article 113 of the Penal Code, and his conviction with a fine, as well as photocopies of the newspapers that have published the news of the Police Direction of the District of Tirana for the arrest of the citizen V.N. The complainant subject requires from the Commissioner that: *“To fix my moral right as because of this reason I feel discriminated from my family”*.
- 1.2** With letter no. 272/1, dated 26.04.2013 it is notified the complainant subject for the commencement of the complaint examination.
- 1.3** With separate letters, dated April 26, 2013 the newspapers “Koha Jonë”, “Panorama”, “Shqiptarja.com” and TV channel “ABC News”, “News 24” were notified for the initiation of the examination procedures for the complaint and it was required information on the pretences raised by the complainant.
- 1.4** In answer to the request of the Commissioner, the newspaper “Shqiptarja.com” has sent the e-mail dated May 02, 2013 with the explanation that: *“The information in the news room of the newspaper was made by the notification from the structures of the Police Direction of the District of Tirana, in which were given the respective names of the persons under accuse for exercise of prostitution in public”*.

- 1.5** With letters No. 382, 383, 384, 385, 386 Prot, dated August 05, 2013 the parts and the Commissioner for Protection of Personal Data (KMDP) were informed for the occurrence of a hearing session to submit and argument directly their pretences. On date July 07, 2013 in the premises of the office of the Commissioner for Protection from Discrimination the hearing session took place. In this session have participated representatives of the Police Direction of the District of Tirana, the complainant subject Mr. V. N and the representatives of the Commissioner for Protection of the Personal Data. In the session were not present the representatives of the newspapers: “Koha Jonë”, “Panorama”, “Shqiptarja.com” and TV Channels “ABC News” and “News 24”.
- In this session, Mr. V. N. stated that due to the publication of his name on television and in the newspapers, he is being refused the employment, the parents do not love him and he was cursed and insulted in the premises of the police station. The complainant has not made available to the Commissioner any information to support his claims that he is not being employed and he is excluded from the family because of the publication of his sexual orientation.
  - In answer of the pretences raised, the representative of the police, Mrs. A. K said that: *“If the complainant is been offended from the police officers this case should be investigated by the Service of Internal Control. Regarding the publication of the data the police has realized its obligation for the publication of the press releases”*.
  - Following the investigation of the complaint, dated July 11, 2013 it was required to the Commissioner for Protection of Personal Data a legal opinion on the responsibilities of the parties, the media and Tirana Police about their rights to publish personal data.
- 1.6** In answer to the above request, KMDP with letter no. 752/1, dated September 05, 2013 has given its legal opinion emphasizing that: *“In the quality of the supervisor of the personal and sensitive data of the subject of the data Mr. V. N, the private TV channels “News 24”, “ABC News” and the newspapers “Panorama”, “Shqiptarja.Com” and “Koha Jonë”, have realized the treatment of the personal sensitive data of this subject violating the article 7 of the law no. 9887, dated March 10, 2008 “On the Protection of Personal Data”*.

*The fact that the above supervisors have received the information on the personal /sensitive data of the complainant subject Mr. V. N from another source (Ministry of Internal Affairs) which is already public, does not justify the supervisors, the TV channels “News 24”, “ABC News” and the newspapers “Panorama”, “Shqiptarja.Com” and “Koha Jonë” for the treatment of the data and their publication, as each of the supervisors acts individually, as the implementation of the law n. 9887, dated March 10, 2008 “On the Protection of Personal Data” during the work, is mandatory.*

## **2. FACTS ASCERTAINED AND OPINION OF THE COMMISSIONER ON THEM.**

- 2.1** In the press release of the Police Direction of the District of Tirana dated August 12, 2012 is published the information on Mr. V. N. In this press release among other things it is written: *“Yesterday the Police Station no. 3 of Tirana has*



*realized the arrest in flagrance of the citizens: - V. N<sup>17</sup>, 27 years old, resident in Tirana, - E. B, 26 years old, resident in the village Nikël, Fushë Kruja, - and has initiated the penal procedure in freedom for the citizen GJ. B, 20 years old, resident in Tirana. The arrest of those citizens was realized as at 00.30 o'clock they have been caught in flagrance, in Street "Bardhok Biba", from the service officers while exercising prostitution among them for the amount of 3000 lekë, and have been seized in the quality of material proof 2 periwigs, 20 condoms, and the amount of 8000 lekë. The investigation materials were transferred at the Prosecution Offices of the Judicial District of Tirana for performing the criminal act of Prostitution defined by the article 113 of the Penal Code".*

- 2.2** During the hearing session, the representative of the Police Direction of the District of Tirana has declared that: *"The Police Direction of the District of Tirana, based in the law 9749, dated June 04, 2007 "On the State Police" and the law n. 8503, dated June 30, 1999 "On the right of information to official documents", elaborates systematically the activity of its work. The police, as part of the administration, has the responsibility about the information of the public, which is accomplished together among the others even with the collaboration with media. The right of information as a constitutional right guaranteed by the articles 22 and 23 of the Constitution of the Republic of Albania which regards the freedom of expression, press and right of information. While it is prohibited the preliminary censure of the communication means. In this context, the police in its daily activity has implemented correctly all the police relations with the community which include a series of issues regarding the common attempts of the police and citizens for the solution of different problems connected with issues of security and cohabitation. Among the issues that include the relation with the community there is the prevention of crime, the public relations and the relations with people. In the above case the state police has cited the criminal act and has published the personal data of the persons arrested in flagrance circumstances. The police does not publish the data of the persons who are investigated while in freedom and in the cases where minors are involved".*
- 2.3** In the newspaper "Panorama" dated August 12, 2012 the press release of the Police Direction of the district of Tirana was presented in the news under the title: *"Tirana, caught two males, having sexual relations under payment".* Among others in this article it is written: *"Two males, who had homosexual relations under payment, were arrested yesterday together with their client in the capital..... Initially the police have enchained the citizen V. N<sup>18</sup>, 27 years old and E. B, 26 years old ..... While after the arrest of the two abovementioned persons, the police has identified and arrested their client, the Gj. B, 20 years old ....."*
- 2.4** In the newspaper "Koha Jonë" dated August 12, 2012 the press release of the Police Direction of the district of Tirana was presented in the news under the title: *"Caught for prostitution 2 men, the client: They look like*

<sup>17</sup> In the press release dated August 12, 2012 of the Police direction of the district of Tirana, the names of the two citizens were complete, not in initials.

<sup>18</sup> In the press release dated August 12, 2012 of the Police direction of the district of Tirana, the names of the two citizens were complete, not in initials.

women”. Among others in this article it is written: *“It is suspected that the homosexuals had sexual relations with different men under payment. V. N and E. B, were arrested for the criminal act of exercise of the prostitution. The 20 years old with the initials Gj. B was also taken in the premises of the police station.....”*.

- 2.5** In the newspaper “Shqiptarja.com” dated August 12, 2012 the press release of the Police Direction of the district of Tirana was presented in the news under the title: *“Irons to the three homosexuals in Tirana”*. Among others in this article it is written: *“The persons arrested are named V. N and E.B, who in collaboration to each other have realized the exploitation of the homosexual Gj. B for the purposes of prostitution”*.
- 2.6** In the media “ABC News” and “News 24” the press release of the Police Direction of the district of Tirana was presented on August 12, 2012 was captioned several times including the personal data of the persons V. N and E.B.

### **3. LEGAL BASIS**

- 3.1** **The recommendation Rec(2003)13 of the Committee of Ministers of the Council of Europe “On the provision of information through the media in relation to criminal proceedings”, approved on July 10, 2003, in its 5 principle defines the modality of the provision of information through media, in which it is written: “When judicial authorities and police services themselves have decided to provide information to the media in the context of on-going criminal proceedings, such information should be provided on a non-discriminatory basis and, wherever possible, through press releases, press conferences by authorized officers or similar authorized means”.**
- 3.2** Pursuant the legal obligation defined in the article 3 of the Constitution of the Republic of Albania, in which the states provides to the protection of dignity of the person and the respect of his freedoms and rights, the article 14 of the European Convention of Human Rights, the law n. 10021, dated February 04, 2010 “On Protection from Discrimination”, as well as the Recommendation CM/Rec(2010)5 of the Council of Ministers to the member states on measures to combat discrimination on grounds of sexual orientation or gender identity, the Commissioner for Protection from Discrimination aims the strict respect of the principle of equality in front of the law, equality of the chances and possibilities to exercise the rights and freedoms, as well as the efficient implementation of the non – discriminatory policies, especially as regards the LGBT community in Albania.
- 3.3** The Constitution of the Republic of Albania guarantees the right of information in its article 23 where it is defined that: *“The right to information is guaranteed”*. The Constitution of the Republic of Albania, sanctions that the fundamental rights and freedoms defined in it might be limited. Therefore, in its article 17 it is sanctioned that: 1. *“The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it”*. So, we notice that, the Constitution relates the limitation of the rights and freedoms defined in it, only if it provided by law for a public interest.
- 3.4** In the law no. 9749, dated June 04, 2007 “On the State Police”, in the article 117 it is defined the informative activity



of the Police, therefore in the paragraph 1 of the article it is written that: “ *An informative activity of the police, in the framework of this law, will be considered the process of collecting, systematizing, evaluating, analyzing, distributing and using information for the purpose of protecting public order and security or for the purpose of preventing and detecting criminal acts*”.

- 3.5** With order no. 2122, dated June 22, 2005 of the Minister of Public Order, were defined the functional tasks of the officers of Public Relations in the Police Directions of the Districts, where in the paragraph 1, it is defined that: “*Among the main tasks of the public relations it is defined the information of the public on the actions, structures and reforms of the police*”.
- 3.6** The article 1 of the law no. 10221, dated February 04, 2010 “On Protection from Discrimination”, defines that “*This law regulates the implementation of and respect for the principle of equality in connection with gender, race, color, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other reason*”. So, as it is obvious the persons enjoy protection from the discriminatory attitudes or its encouraging on the grounds of sexual orientation.
- 3.7** Based in the article 7 of the law n. 10221/2010, “On Protection from Discrimination”, every action or failure to act of the public authorities or of natural or legal persons who take part in the private or public sectors and life, which creates bases for the denial of equality against a person or group of persons, or which expose them to an unfair, unequal treatment when they are in the same or similar circumstances in comparison with other persons or other groups of persons, constitutes discrimination.

#### **4. OPINION**

- 4.1** The Commissioner deems that the case should be treated regarding the right of the persons to be presumed innocent up to the final judicial decision. Therefore, in the Constitution of the Republic of Albania, article 30 it is defined that: “*Everyone is considered innocent so long as his guilt is not proven by a final judicial decision*”. The right to be presumed innocent is used for the suspect persons before that the criminal accusation are presented to the judgment and are in force up to the declaration as guilty of the accused person, after the final appeal. In the moment of the treatment and publication of his data from the State Police, Mr. V. N enjoyed the right of presumption of innocence.
- 4.2** Based in the press release of the Police of the District of Tirana, we notice that the release has been correct as regards the qualification of the criminal act and the circumstances of the event, but as regards the diffusion of personal data of the citizens, as qualified also from the Commissioner for Protection of Personal data, this press release violates the law n. 9887, dated March 10, 2008 “On Protection of Personal Data”.
- 4.3** In the Progress Report of the EU for Albania in the years 2011 and 2012, attention was recalled on a series of issues and problems of the Albanian society on the treatment of the LGBT community. Therefore, in the Progress Report of

EU for Albania in 2011, it is emphasized that “Several cases of violence and ill-treatment targeting the transgender community have been reported. Homophobia remains widespread, including on the part of public service professionals”. In the Progress Report of EU for Albania in 2011, it is emphasized that “.....There is still discrimination against certain vulnerable groups, such as LGBT persons and Roma.”.

- 4.4** For the above, we notice that during those years, in the public opinion of our country it is established the stereotype against the persons of the LGBT community, who are profiled as threat to the tradition and values of our society. The prejudice towards the LGBT community in Albania is related to the fact that up to 2001, the homosexuality was considered as a criminal act, defined by the article 116 of the Penal Code. The sexual orientation refers to the capacity of every person to deep emotional, love and sexual attraction, intimate and sexual relations with persons of different genders (heterosexuals) or of same gender (homosexual, lesbian, gay), or more than a gender (bisexual).
- 4.5** In the Penal Code, article 113 it is defined that, “The prostitution is punishable by a fine or up to three years of imprisonment. Giving remuneration for personal benefit of prostitution is sentenced by fines or up to three years imprisonment”. This provision does not give a definition of the prostitution, as consequence it does not relate it to a personal characteristic as the sexual orientation. In this sense, the information issued by the media, by identifying the complainant subject as homosexual, may encourage negative and aggressive attitudes on the ground of his sexual orientation, and might expose the whole LGBT community to discriminatory positions.
- 4.6** To achieve the conclusion if it is made an association between the person characteristic and the criminal act, the Commissioner for Protection from Discrimination, has performed the monitoring of the daily newspapers: “Panorama”, “Shqiptarja.com” and “Koha Jonë” during the month of March 2013. From this monitoring results that:
- In the newspaper “Panorama” were published about 99 articles which include the qualification of the criminal and civil acts such as: murder, injury, exploitation of prostitution, theft, traffic of women, sexual or homosexual relation with minors, traffic of drugs, accidents, etc., in which were used the personal data of the persons arrested, accused or convicted by court decision. From those, in 26 cases were used initials as in the cases of minor injured persons, suspected or wanted persons. In the information reported in this newspaper in **4 cases it was reported the criminal act accompanied with the personal data of the accused persons and they were also written personal characteristics of these persons (health situation and race)**, while in other 69 cases the information were reported together with the personal data of the persons.
  - In the newspaper “Shqiptarja.com” were published about 71 articles which include the qualification of the criminal and civil acts, in which were used the personal data of the persons arrested, accused or convicted by court decision. In the information reported in this newspaper in **1 case it was reported the criminal act accompanied with the personal data of the accused person and victim and they were also written personal characteristics of these persons (health situation)**
  - In the newspaper “Koha Jonë” were published about 71 articles which include the qualification of the criminal and civil acts, in which were used the personal data of the persons arrested, accused or convicted by court decision. **In the information reported in this newspaper in there were no cases when it was reported the criminal act accompanied with the personal data and personal characteristics.**

- 4.7 As the above, it is noticed that the written press (monitored newspapers) have had the tendency to publish information by using the personal characteristics not only in the case under exam, but also other personal characteristics as health situation or affiliation to the Roma community.**
- 4.8 The Commissioner for Protection from Discrimination evaluates that the freedom of expression is a constitutional right which is guaranteed by the article 22 of the Constitution of the Republic of Albania. The Constitution relates the limitation of the fundamental rights and freedoms defined in it with the obligation not to exceed the limitation defined by the European Convention of Human Rights. According to the second paragraph of the article 10 of the European Convention of Human Rights, the exercise of this freedom should not prejudice the dignity and rights of the others.
- 4.9 The Commissioner ascertains that: Transmitting the information about the criminal act, by relating it with the personal characteristics of the person who is presumed to have realized the criminal act even when this characteristic does not define the qualification of the criminal act, establishes a practice which, on the grounds of these characteristics, indirectly discriminates the persons or communities.

## 5. RECCOMENDATION

- 5.1 Based in the law no. 9887/2008 “On Protection of the Personal Data” amended, article 16, it is recommended to Mr. V. N to address to the Commissioner for Protection of Personal Data.
- 5.2 The media “News 24”, “ABC News”, “Panorama”, “Shqiptarja.Com” and “Koha Jonë” are recommended to be more careful and aware in the publication of the information by exceeding the tendency of treating homosexuality as a theme related to scandalous news.
- 5.3 The media “News 24”, “ABC News”, “Panorama”, “Shqiptarja.Com” and “Koha Jonë” are recommended to take measures not to publish the personal characteristics of the persons that are not related to the legal definition of criminal offence occurred.

## IV. DISCRIMINATION CASE ON GROUNDS OF ETHNICITY, RACE AND LANGUAGE

### EX-OFFICIO CASE “ON MONITORING THE ALLOCATION OF THE ROMA PUPILS IN THE PRIMARY SCHOOLS OF TIRANA”

Case initiated from the commissioner for protection from discrimination, on the grounds of the information received that some pupils of the Roma community have been registered all together in the same first class at the primary school “Bajram curri” in Tirana.

#### DECISION No. 95/2013

*Bearing in mind the case of the Roma community in Albania and especially the implementation of the principle of equality and non-discrimination in education the Commissioner for Protection from Discrimination, has started on its own initiative the monitoring of the allocation for the Roma pupils in the primary schools, in Tirana.*

#### 4. PROCEDURE FOLLOWED

- 1.1 The base for the initiation of the investigation procedures upon such case, originates to a case examined during the year 2012, regarding some Roma pupils registered all together in the same first class in the primary school “Bajram Curri” in Tirana. During the investigation and analyze of this case, it was found that the concentration of the Roma pupils at this school was much higher than in other primary schools, regardless of their residence<sup>19</sup>. Therefore, in the school “Bajram Curri” currently there are 860 pupils, where 405 of them or about 43% are Roma and Egyptians, while in the first classes of this school these communities constitute 63% of the pupils.
- 1.2 As for the above and based on the Article 32/c of the law no. 10 22, dated February 04, 2010 “On Protection from Discrimination”, where it is sanctioned that: “*The commissioner has the competence to perform administrative*

<sup>19</sup> Despite the fact that generally the Roma families change often their residence, so they do not have a permanent residence, again there are recognized certain areas where these families have lived and live for relatively long periods, such as: Bregu i Lumit, the artificial lake of Tirana etc.

*investigations after the receipt of a credible information about a violation of this law and in its function”, the Commissioner for Protection from Discrimination, with letter n. 279/1 prot., dated July 09, 2012, has required to the Regional Educational Direction of the City of Tirana, information about the allocation of the Roma pupils in the primary schools of the city of Tirana.*

- 1.3** In response to the letter no. 279/1 prot., dated July 09, 2012, the Regional Educational Direction of the City of Tirana ( REDCT), with letter no. 1673 prot., dated December 05, 2012, has made available to the Commissioner for Protection from Discrimination the information required, in the content of which were included data of the Roma children for the academic year 2011-2012 for each school of the city of Tirana and the legal basis by which the allocation of children in schools is disciplined.
- 1.4** With letter no. 1055/1 prot., dated September 06, 2013, REDCT informed the commissioner about the registration of the pupils in the primary education for the academic years 2010-2013, as well as the statistical data on the distribution of the Roma children in the primary schools of the city of Tirana.

## **5. LEGAL BASIS**

- 2.1** In regard of the principle of equality, the Constitution of the Republic of Albania provides in its article 18 “*1. All persons are equal before the law. 2. No one may be unjustly discriminated against for grounds such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic situation, education, social status, or parentage 3. No one may be discriminated against for the grounds mentioned in paragraph 2 without a reasonable and objective justification*”. In the article 20 of the Constitution it is expressively provided that “*1. Persons who belong to national minorities exercise the human rights and freedoms in full equality before the law*”.
- 2.2** The European Convention on Human Rights in the article 2, Protocol n. 1, provides that: “*No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions*”.
- 2.3** The commissioner during the examination of the case has also referred to the jurisprudence of ECHR, in the hearing of the case *Lavida and others v. Greece* from the European Court of Human Rights, which concluded that: “***the placement of the Roma children in a special school, separates them from the rest of the society and does not allow the children of this community to be integrated into the social life***”.
- 2.4** According to the Albanian legislation (also reflected in the response of REDCT), the registration of the pupils in the primary schools is realized according to the Normative Provisions of the Pre – University Education, of the Minister of Education and Science. In the analysis of the Chapter III, article 12, paragraph 1, in which it is stated that: “*The registration of children in kindergarten and of the pupils in the primary school or in the general secondary school, as a rule is realized in the kindergarten and in the school determined from the territorial division of the*

*residence determined by the local government on the proposal of the Educational Directory”, paragraph 2 “The pupil, with the approval of the School Director, can be registered in the primary schools outside the territorial division of his residence, when this is allowed by the conditions and capacities of the premises”, the registration of the pupils and their allocation in the primary schools, should be in the school that belongs to the administrative unit in which the pupils live.*

- 2.5** The Article 28/3 of the law 69/2012 “On the pre-university educational system in the Republic of Albania”, states that: *“The basic unit of the local governance shall, in cooperation with the respective educational local unit and public educational institutions, be responsible for the registration of pupils in public schools of full time mandatory education”,* while the Directive n. 16, dated July 24, 2012 “For the academic year 2012-2013 in the pre –university educational system”, of the Minister of Education and Science, Chapter VII, paragraph 2 states that: *“The Regional Educational Directions and the Educational Offices, in cooperation with the local government, should provide the registration of pupils in compliance with their residence”.*
- 2.6** Pursuant to the directive of the Minister of Education N. 6, dated March 29, 2006 “*On the registration in schools of the Roma pupils who are not provided with birth certificate*”, the school directions, have the legal obligation of the identification and registration of the Roma pupils in the primary schools in the relevant area where they live, without the need of the birth certificate.

## **6. ASCERTAINED FACTS AND OPINION OF THE COMMISSIONER ON THEM.**

- 3.1** As it is shown from the implemented legislation, but also from the information collected, there is no law, bylaw or directive that sanctions or aims the allocation of the Roma pupils in a particular school.
- 3.2** Considering the above, if in the same administrative unit of the local government it exists more than one primary school then the pupil has the option of choosing between them.
- 3.3** During the administrative investigation, conducted to identify the geographical position for the location of the primary schools with the largest number of the Roma pupils, it was realized that in the schools located closer to the residences of the Roma community there was a greater number of the pupils of this community. Specifically the primary schools with the largest number of the pupils of Roma community are the School “Bajram Curri”, which has also the largest number of the pupils of this community, the school “26 Nëntori”, the school “Kol Jakova” and the school “Ramazan Jarani”.
- 3.4** It was identified a problem during the investigation was the high concentration of the number of the Roma pupils in the primary school “Bajram Curri”, compared to the primary school “Ramazan Jarani”, which pertains to the same administrative unit and which were close to each other.
- 3.5** The Albanian government is engaged to respect the rights of the national minorities, formalizing its will through the adoption of the National Strategy “On the improvement of the living conditions of the Roma minority” (approved by Decision of the Council of Ministers n. 633, dated September 18, 2003). The Chapter I of the National Strategy “On



the improvement of the living conditions of the Roma minority”, provides support policies in the education of the children of Roma community.

- 3.6** Referring to the case of the school “Bajram Curri”, we cannot say that the fact that in this school it is concentrated the highest number of the pupils of Roma community of this local unit, constitutes a discriminatory behavior, because the children of this community are allowed by the law and the above directive to register in accordance to their residence. It should be emphasized that the school “Bajram Curri” and the school “Ramazan Jarani” even though they fall under the same administrative unit, do not have the same distance from the residences of the Roma communities. During the investigation procedure, it was noted that the school “Bajram Curri” is located closer to the residences of the Roma communities, compared to the school “Ramazan Jarani”.
- 3.7** Another fact to be emphasized is that, *in the school “Bajram Curri” there was not ascertained an increasing trend of the number of children of the Roma community.* In comparison with the total number of students (for the academic year 2010-2011 it was 869, for the academic year 2011-2012 it was 860 and for the academic year 2012-2013 it was 835), it is evidenced the fact that the number of children of the non – Roma community registered in this school in these years (for the academic year 2010-2011 it was 540, for the year 2011-2012 it was 531 and for the academic year 2012-2013 it was 512) it was greater than the number of children of the Roma community (for the academic year 2010-2011 it was 329, for the year 2011-2012 it was in the same numbers, for the academic year 2012-2013 it was 323). **It is noticed a decrease in the total number of pupils for both communities.**
- 3.8** Referring to the case of the primary school “26 Nëntori”, which belongs to another local unit, but which is very close to another residence of the Roma community, for the three academic years which were analyzed, it was noted the same situation, when the number of the non – Roma community is greater that the number of the Roma community.
- 3.9** As conclusion, for the above, the Commissioner, concludes that *there is not a tendency to separate or concentrate the Roma children in a single school*, but since the Roma communities are concentrated closer to the school “Bajram Curri”, consequently, the number of the Roma children registered in the this school is higher.

## **6. RECOMMENDATIONS**

- 4.1** The ascertainment of the non-discrimination, on the grounds of race, ethnicity and color, against the children of the Roma community in the primary schools of Tirana.
- 4.2** Based on the article 35 of the law n. 10 221, dated February 04, 2010 “On Protection from Discrimination”, “The individual responsibility does not exclude the responsibility of the state or a private legal person”, the Commissioner for Protection from Discrimination *recommends that:*  
*The Regional Educational Direction of the District of Tirana should follow consistently the attendance of the children of Roma community in the primary schools and the change of the proportion between the pupils of the Roma and non Roma community in the schools that have higher number of children of the Roma community.*

## V. DISCRIMINATION CASE ON GROUNDS OF POLITICAL BELIEFS

**THE COMPLAINT SUBMITTED BY THE SUBJECT V.M AGAINST THE PUBLIC SUBJECT, DIRECTORATE OF PUBLIC HEALTH OF MAT, IN WHICH IS PRETENDED DISCRIMINATION ON THE GROUNDS OF POLITICAL BELIEFS IN THE FIELD OF EMPLOYMENT.**

### **Decision No. 140 / 2014**

#### **1. PROCEDURE FOLLOWED**

- 1.1** The citizen V.M in her complaint explains: “Since November 14, 2012 up to May 20, 2014 she has been employed at the Directorate of Public Health (DPH) of Mat, in the function of Finance Specialist. With letter n. 167, dated May 20, 2014 the Director of the DSHP of Mat it is ordered “the immediate political dismissal from work”.
- 1.2** Pursuant the legal provisions, defined in the articles 32 and 33 of the law n. 10221/2010 “On Protection from discrimination”, on date July 03, 2014, with letter n. 600/1 prot., it is realized the notification and request for information to the Directorate of Public Health of Mat regarding the complaint, while in the same date, with letter n. 600/2 Prot., to the complainant subject it is required additional information regarding the complaint.
- 1.3** With letter dated July 09, 2014 the complainant subject, among the others has submitted in support to her complaint at the Commissioner office the documentation in her possess<sup>20</sup>

#### **2. ASCERTAINED FACTS**

- 2.1** V.M with letter Decision - Appointment, n. 2, dated November 14, 2012 has been employed at the subject, Directorate

<sup>20</sup> Certification n. 42, dated June 05, 2014 issued by the subject, Democratic Party, Branch Mat in which it is certified that V.M since 1992 is a member of the Democratic Party, Branch Mat.

- Authorization for the observers if the electoral subject, issued by the KZAZ District of Dibra, qualifying V.M in the quality of the observer for the electoral subject, Democratic Party at the KQV n. 0936, dated 23.06.2013.

- Report for the temporary incapacity to work, n. of register 726, n. module 033624, from May 19, 2014 to June 02, 2014.



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of Public Health of Mat, in the function of Finance chief for a period of 3-months. With letter Decision – Appointment, n. 1, dated January 15, 2013, V.M has been appointed for an indefinite period.

- 2.2 With letter no. 167, dated May 20, 2014, the Directorate of Public Health of Mat orders: **“The immediate political dismissal of V.M from the Directorate of Public Health of Mat. This order enters in force immediately”**.
- 2.3 The participation in political activities of the complainant subject is certified by means of the documents submitted by V.M which are: Certification of membership in the political subject Democratic Party and the authorization in the quality of observer during the election process for the subject Democratic Party for the general elections on date June 23, 2013.

### 3. LEGAL BASIS

- 3.1 The Constitution of the Republic of Albania, sanctions at the article 18/2 that: “No one may be unjustly discriminated against for grounds such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic situation, education, social status, or ancestry”.
- 3.2 In the article 1 of the law no. 10221/2010 “On protection from discrimination”, it is defined the object of this law, by sanctioning that: “This law regulates the implementation of and respect for the principle of equality in connection with gender, race, color, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital situation, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other reason”. *The political belief is a ground about which the law 10221/2010 “On protection from discrimination” provides protection and based in the article 32/1/c of the law, the commissioner has the competence to examine the violations made to the application and respect of the principle of equality regarding the political beliefs.*
- 3.3 Based in the article 7 of the law n. 10221/2010 “On protection from discrimination”, the protection from discrimination is guaranteed against every action or failure to act of the public authorities or of natural or legal persons who take part in the private or public sectors and life, which creates bases for the denial of equality against a person or group of persons, or which expose them to an unfair, unequal treatment when they are in the same or similar circumstances in comparison with other persons or other groups of persons.
- 3.4 The law no. 10221/2010 “On protection from discrimination” prohibits discrimination against a person in connection with his right to employment. So, in the article 12, paragraph 1, it is defined that it is prohibited the discrimination on the grounds of political beliefs and that is related to: c) the treatment of employees in the work place, including their treatment during the establishing or changing of working conditions, compensation, benefits and the work environment, treatment related to professional training or during the disciplinary process or related to dismissal from work or the dissolution of a work contract;

## 4. OPINION

- 4.1 Based in the law n. 10221/2010 “On protection from discrimination”, article 32, paragraph 2 “All public institutions and private subjects are obliged to support the commissioner in the fulfilment of its duties, especially by providing information needed by it”. The Directorate of Public Health of Mat, though the period of time in their disposal, has not accomplished the legal requirements to provide the information required by the Commissioner for Protection from Discrimination.
- 4.2 The Commissioner deems that the tendency for the immediate dismissal from work of V.M without the respect of the legal proceedings for the dismissal of the employees is contrary to the Order no. 506, dated September 18, 2013 of the Minister of Health, who in the paragraph 1, orders: “The suspension of the proceedings of employment and dismissal from work, up to a second order, for the employees in the health institutions”.
- 4.3 Also, an aggravating fact of the unjust dismissal from work of V.M is her dismissal in the moment in which the employee has been under medical report for temporary inability to work.
- 4.4 The employer, the Directorate of Public Health has not presented any facts to confute the pretences of the complainant subject and to prove that her being treated differently has derived from reasonable grounds and not on the grounds of her political beliefs. On the contrary, with the letter of dismissal from the function, the will of the public authority is been clearly expressed by emphasizing “**The immediate political dismissal of V.M from the Directorate of the Public Health of Mat. This order enters in force immediately**”.
- 4.5 The Commissioner for the Protection from Discrimination based in the administrated evidence deems that the Order no. 167, dated May 20, 2014 for the dismissal from work of V.M on the grounds of the political beliefs is a flagrant case of the violation of dignity, fundamental rights and freedoms of the person sanctioned in the Constitution of the Republic of Albania and in the law no. 10221/2010 “On protection from discrimination” and the impunity of a so clear discriminatory attitude, would gravely mine the motive of existence itself of the law “On protection from discrimination”.
- 4.6 The Directorate of Public Health of Mat, in the quality of the employer has violated the article 12, paragraph 1/c of the law n. 10221/2010 “On protection from discrimination”. For this motive, pursuant the article 12, paragraph 1/c, article 21/1, article 32, paragraph 1/a, as well as the article 33, paragraph 10, 11, of the law n. 10221/2010 “On protection from discrimination”, the Commissioner for Protection from Discrimination, ascertains the discrimination of V.M from the Directorate of Public Health of Mat, on the grounds of the political beliefs, in the field of employment.

## 5. RECOMMANDATION

- 5.1 The Directorate of Public Health of Mat, as a subject that has realized discriminatory attitude, should return V.M at the previous position of work.
- 5.2 Based in the article 33, paragraph 11 of the law “On protection from discrimination”, the Director of the Directorate

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of Public Health of Mat, is obliged to notify the Commissioner, within 30 (thirty) days, regarding the actions undertaken for the implementation of the present decision.

- 5.3** Referring to the article 33, paragraph 11 of the law 10221/2010 “On protection from discrimination”, the failure to implement the present decision derives to a punishment with fine according to the provisions of the paragraph 13 of the same article.
- 5.4** We remind here that based in the article 35 of the law 10221/2010 “On protection from discrimination” every person is responsible for his actions or failure to act, without excluding the responsibility of the institution.

## VI. DISCRIMINATION CASE ON GROUNDS OF RELIGIOUS BELIEFS

**EX-OFFICIO CASE, THE INVESTIGATION INITIATED BY THE COMMISSIONER FOR PROTECTION FROM DISCRIMINATION, ON THE BASIS OF THE PUBLICATIONS IN THE NEWSPAPER GAZETA SHQIPTARE, DATED JUNE 06, 2013, IN THE ARTICLE ENTITLED “THE DOCTOR REFUSES TO WORK WITH THE NURSE WEARING HEADSCARF”.**

### **DECISION N. 86/2013**

Based on the information taken in the newspaper “Gazeta Shqiptare”, in the article entitled “*The doctor refuses to work with the nurse wearing headscarf*”, the Commissioner for Protection from Discrimination ordered the beginning of the procedures for following the “*ex-officio*” case.

#### **7. PROCEDURE FOLLOWED**

- 7.1** Gazeta Shqiptare, on June 06, 2013, in the article entitled “*The doctor refuses to work with the nurse wearing headscarf*”, written by the journalists E. D. and T. V. informs that: “*an incident with religious context has occurred in Burrel*”, because the doctor of the city hospital has refused to work with the nurse who wears a headscarf. In the article it was also reported that against the director of the hospital was exercised physical violence from a relative of the doctor and that and the nurse herself, Mrs. I. H. has confirmed to the reporters that the doctor Mrs. F. Gj. has said that: “*You are covered with headscarf. This is a laic and not a religious institution and the state is laic, therefore you go and work in those institutions where it is allowed to wear a headscarf*”.
- 7.2** Despite to the investigation substantially of the case, Mrs. I. H. has expressed her approval for the examination and treatment of the case by filling in the application form.
- 7.3** With letter N. 354/1, dated June 11, 2013, the Commissioner has informed Mr. B. S., the Director of the Hospital Center “Xhavit Mara” Burrel about the initiation of the administrative proceeding regarding the case and has requested more detailed information in relation to the current situation in the function of the examination of the case. With letter N. 235/1 dated June 17, 2013, Mr. B. S has informed the Commissioner that: “*The nurse I. H. was not allowed to enter in the premises of the work by the doctor F. Gj. with personal claims and religious prejudices.*”

..... We have had no results in these attempts to complete our purpose: the stabilization of the nurse in the work premises. Our direction will try to find a favorable solution for both parties in conflict and we will inform you in following in relation to the progress of the event”.

- 7.4** Based on the order N. 53, dated July 02, 2013 “For the realization the inspection at the Direction of the Hospital Service of Mat” of the Commissioner for Protection from Discrimination, on July 08, 2013 it was realized the inspection in the Hospital Center “Xhavit Mara” Burrel, with the purpose of obtaining information on the event published in the newspaper Gazeta Shqiptare on June 06, 2013. With letter N. 369/1, dated July 02, 2013 it was realized the communication to the interested parties for the realization of the inspection. During the inspection were present the Director of the Hospital Center “Xhavit Mara” Burrel, Mr. B. S. and Mrs. I. H.
- 7.5** Mr. B. S. has communicated that with letter N. 249/1, dated July 04, 2013 has informed Mrs. F. Gj. about the date and time of the inspection, but it results that the latter was not present during the inspection.
- 7.6** With the purpose to treat the case objectively and in respect of the rights of all the subjects involved, on July 08, 2013, were made different attempts to contact and communicate with the doctor, Mrs. F. Gj., but she was not present in the work premises, independently from the information about the date and time. Mrs. F. Gj. was contacted on August 16, 2013 in the phone number made available by the Direction of the Hospital Service of Burrel, but she refused to give explanations.

## **8. FACTS ASCERTAINED**

- 8.1** Based on the minutes dated July 08, 2013 held during this inspection, Mr. B. S. emphasized that: “I am informed that during the time in which Mrs. F. Gj. was in annual leave she has not delivered the key of the doctor’s room and has not allowed Mrs. I. H. to work in the doctor’s room”<sup>21</sup>. The Director has issued a copy of the Decision N. 20, dated July 03, 2013 through which he appoints Mrs. I. H. (who was not employed before) in the function of nurse for the Endocrinologist Doctor in the Department of Polyclinic in the place of the nurse M. B, who has retired.
- 8.2** Mrs. I. H. explained that the incident started on June 03, 2013 when after the presentation to the doctor in order to communicate the appointment, she had not expressed any considerations, but she only had told to her to go home, because her (the doctor) would discuss with the director about her appointment<sup>22</sup>. She presented every day, but the attitude of the doctor was the same. We emphasize that according to the decision about the appointment, the financial relations would begin on June 13, 2013 upon presentation at work of Mrs. I. H. According to Mrs. I. H., in the period after the conflict, at about the date June 10, 2013, Mrs. Gj. was in annual leave and had locked the doctor’s room and had not allowed her to stay even during the time that she (the doctor) was not there. These statements comply also with the explanations given by the Director of the Hospital Center “Xhavit Mara” Burrel, Mr. B. S.

<sup>21</sup> Minutes of the administrative inspection in presence of the Hospital Service of Burrel Representative (Mr. B. S.-Director), dated July 08, 2013.

<sup>22</sup> Minutes of the administrative inspection in presence of the Hospital Service of Burrel Representative (Mrs. I. H.-Nurse), dated July 08, 2013.

### 3. LEGAL BASIS

- 3.1** In the article 1 of the law n. 10 221, dated February 04, 2010, it is provided the object of this law, by sanctioning that: *“This law regulates the implementation of and respect for the principle of equality in connection with gender, race, color, ethnicity, language, gender identity, sexual orientation, political, **religious or philosophical beliefs**, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other reason.”*
- 3.2** *The religious beliefs* is a ground on which the law provides protection and based on the article 32/c of the law, the commissioner has the competence to examine complaints that are made to the implementation and observance of the principle of equality in relation to religious beliefs.
- 3.3** The article 18 of the Constitution of the Republic of Albania establishes that all persons are equal in front of the law and prohibits the discrimination against anyone among others even from the religious beliefs.
- 3.4** The freedom to choose and express individually or collectively, in public or private life the religious beliefs is guaranteed from the Constitution of the Republic of Albania in the articles 10 and 24. Therefore in the article 10 of the Constitution it is provided that: *“The state is neutral on questions of belief and conscience and **guarantees the freedom of their expression in public life**”, while in the article 24, paragraph 1, it is provided that: “Freedom of conscience and of religion is guaranteed”, while “ Everyone is free to choose or to change his religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals.”*
- 3.5** The law n. 10 221, dated February 04, 2010 “*On Protection from Discrimination*” provides protection from discriminatory behavior specifically in the area of employment. The article 12, paragraph 1, letter “b” and “c” prohibits discrimination for all the grounds provided in the article 1 of this law including *“the recruitment and selection of employees” or “the treatment of employees in the work place, including their treatment during the establishing or changing of working conditions .....”*.
- Based on the law “*On Protection from Discrimination*”, the employer is obliged: a) to implement, protect and encourage the principle of equality and the prohibition of every kind of discrimination<sup>23</sup>; to raise consciousness about this law by posting it in public premises of the work place as well as enabling a full understanding of it by his own means or with the assistance of specialized subjects<sup>24</sup>.
  - Based on the law “*On Protection from Discrimination*”, the employer has the legal obligation “to take all the necessary measures, including even disciplinary measures, for the protection of the employees from the discrimination and victimization, within a month from receiving knowledge”.
- 3.6** The discrimination is defined by the law “*On protection from discrimination*” in the article 3, paragraph 1, as “*every*

<sup>23</sup>Law n. 10 221, dated February 04, 2010 “*On protection from discrimination*”, article 13, paragraph 1/a.

<sup>24</sup>Law n. 10 221, dated February 04, 2010 “*On protection from discrimination*”, article 13, paragraph 2.



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*distinction, exclusion, limitation or preference because of any ground mentioned in article 1 of this law that has as a purpose or consequence the hindering or making impossible the exercise, in the same manner as with others, of the fundamental rights and freedoms recognized by the Constitution of the Republic of Albania, with international acts ratified by the Republic of Albania as well as with the laws in force.”*

- 3.7** In the article 3, paragraph 5 of the law “On Protection from Discrimination”, it is provided that in the case of an undesirable conduct, when it is related to any of the ground mentioned in article 1 of this law, which has the purpose or effect of violating the dignity of a person and the creation of an intimidating, hostile, degrading, humiliating or offensive environment for that person, as well as in the case of a less favorable treatment performed as a result of an objection or failure to submit by the person affected by such a behavior, we are dealing with discrimination showed in the form of “Annoyance”.
- 3.8** The article 10 of the Law “*On Protection from Discrimination*” in addition to the expressive provision of the religious beliefs as a ground for the protection from discrimination, prohibits discrimination “*in connection with the exercise of freedom of conscience and religion, especially when it has to do with their expression individually or collectively, in public or in private life, through worship, education, practices or the performance of rites*” and any exception from this provision may be permitted only when a reasonable and objective justification exists”
- 3.9** In the article 3, paragraph 1, of the law “On Protection from Discrimination”, it is sanctioned that when a person or group of persons is treated in a less favorable manner than another person or another group of persons in a same or similar situation, based on any of the ground mentioned in the article 1 of this law, this constitutes a direct discrimination.
- 3.10** Based on the article 7 of the law n. 10 221, dated February 04, 2010, the protection from the discrimination is guaranteed against every action or failure to act of the public authorities or of natural or legal persons who take part in the private or public sectors and life, which creates bases for the denial of equality against a person or group of persons, or which expose them to an unfair treatment.
- 3.11** In the process of accession to the international institutions, Albania has signed a number of international acts, among which there is the European Convention on Human Rights, which is not only part of the internal legislation of the Republic of Albania, but also it occupies a special place within it. The Convention recognizes and provides general restrictions and specific restrictions for special rights. Respectively in the article 9, paragraph 2 it is provided that: “The freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”.
- 3.12** Therefore, the Constitution has the same attitude with the Convention, but on the other hand in the article 17 of the Constitution, it is provided that: “*The limitations of the rights and freedoms provided for in this Constitution may be established only by law, in the public interest or for the protection of the rights of others. A limitation shall be in proportion to the situation that has dictated it*”.



## 4 OPINION

- 4.1 The attitude of the doctor on June 03, 2013 against Mrs. H. and her dismissal from the office, not allowing the latter on the doctor's room where Mrs. H. was appointed, are attitudes that violate the dignity, despise, humiliate and insult Mrs. H as a person, not allowing her to exercise on equal basis with the others her right to employment and profession, due to the manifestation of the religious beliefs from Mrs. H.
- 4.2 Mrs. H. is employed based on the Labor Code and the Employment Contract with the Direction of Hospital Service of Burrel. The article 9, paragraph 1 of the Labor Code of the Republic of Albania prohibits "*Any kind of discrimination in the field of employment or profession*", while in the second paragraph of this provision the discrimination is treated as "*any differentiation, exclusion or preference based on race, color of skin, sex, age, religion, political beliefs, nationality, social origin, family relation, physical or mental disability, threatening the individual right to be equal in terms of employment and treatment*". The discriminatory attitudes are prohibited by the Labor Code among others on aspects such as "*employment in different professions, and the employment conditions related to the distribution of work, its performance, compensation, social assistance, discipline or termination of employment contract*".
- 4.3 From the legislation in vigor that disciplines the employment relations, in the present case, does not result such restrictions, a fact that would lead us to the need to analyze whether these restrictions have a reasonable and objective justification or not. This conclusion is reinforced even by the fact of the appointment of Mrs. I. H. as nurse in the Hospital Center "Xhavit Mara" of Burrel, structure of the Direction of the Hospital Service of Burrel.
- 4.4 In the employment, every employee has the right to complaint to the employer, to the Commissioner for Protection from Discrimination, or in court, if he believes that he has suffered discrimination<sup>25</sup>. It results that Mrs. I. H. has exercised her right to complaint to the employer.
- 4.5 It results that Mrs. I. H. continues to work as a nurse at the Polyclinic, but she continues to stay out of the doctor's room where she was appointed, Mrs. Gj., but in the another room of the Polyclinic, so unlike to what usually happens with the nurse staying in the room of the doctor where he / she has been appointed.
- 4.6 Therefore, the employer of Mrs. I. H., **the Direction of the Hospital Service of Burrel has failed to ensure her protection from discrimination on the grounds of manifestation of her religious beliefs, and has failed to guarantee the constitutional right of the citizen in question to express and manifest the religious beliefs in public.**
- 4.8 It results proved that there is a difference in the treatment of Mrs. I. H., who differently from the other nursing employees, who stay in the room of the doctor where they have been appointed, continues to stay to another doctor and not near the doctor where she has been appointed. Despite the absence of the discriminatory intent by the employer, the Direction of the Hospital Service of Burrel, against Mrs. I. H., the latter has failed not only in the protection of the latter from the discriminatory attitudes of the other employees, but its failure to act (the absence of effective actions), has have as consequence the impediment of Mrs. I. H. and not to exercise equally with the other

<sup>25</sup>Law no. 10 221, dated February 04, 2010 "On Protection from Discrimination", article 15/1.

nurse employees, only because of the manifestation in public of her religious beliefs.

- 4.9** For this reason, the failure to act of the Direction of the Hospital Service of Burrel, for the elimination of the negative consequences and the different treatment of the employee, Mrs. I. H., constitute direct discrimination on the grounds of her religious beliefs.
- 4.10** The education of the public to respect the equality and non-discrimination remains one of the main challenges in which all the stakeholders, who have legal obligations under the Law, must be engaged. The case under examination is an indicator of the fact that we must be attentive and careful in handling employment relations on the basis of the principle of equality and non-discrimination due to religious beliefs. The religious cohabitation in the Albanian society is a value, which must be maintained and fed as a good model to build relationships between the different communities through tolerance and respect for human rights of each individual, regardless of the individual qualities or membership in a particular group which differentiates us from the rest of the society.
- 4.11** The commissioner determines:
- The discrimination in the form of “Annoyance” in the employment area, due to the religious beliefs of Mrs. I. H. with the function of “nurse”, from Mrs. F. Gj. with the function of “endocrinologist doctors” at the Hospital Service of Burrel.
  - The “direct discrimination” in the area of employment, due to the religious beliefs of Mrs. I. H., from the Direction of the Hospital Service of Burrel.

## **5 RECOMMENDATIONS**

- 5.1** The obligation of Mrs. F. Gj. to stop immediately the discriminatory attitudes and actions against Mrs. I. H. Pursuant the Article 33, paragraph 11 of the law n. 10 221, dated February 04, 2010, “*On Protection from Discrimination*”, Mrs. F. Gj. is obliged to notify the Commissioner regarding the actions taken to implement this decision within 30 (thirty) days.
- 5.2** The obligation of the Direction of the Hospital Service of Burrel to take immediate measures to eliminate the different treatment of Mrs. I. H. and to guarantee the exercise of her duty as a nurse on an equal basis with the others.
- 5.3** In application of the article 13, letter “b” of the law n. 10 221, dated February 04, 2010 “*On Protection from Discrimination*” and the legislation disciplining the employment relationships between the employer and Mrs. F. Gj., the obligation of the Direction of the Hospital Service of Burrel to take disciplinary action against Mrs. F. Gj., because of the violation of the law n. 10 221, dated February 04, 2010 “*On Protection from Discrimination*”.
- 5.4** In application of the article 33, paragraph 11 of the law n. 10 221, dated February 04, 2010, “*On Protection from Discrimination*”, the Direction of the Hospital Service Burrel, is obliged to notify the Commissioner regarding the actions taken to implement this decision within 30 (thirty) days.
- 5.5** In reference to the article 33, paragraph 11 of the law n. 10 221, dated February 04, 2011, “*On Protection from Discrimination*”, the failure to implement this decision will result in the punishment by fine according to the provisions made in the paragraph 13 of the same article.

## VII. DISCRIMINATION CASES IN THE FIELD OF EDUCATION

**THE COMPLAINT SUBMITTED BY THE PINK EMBASSY /LGBT PRO ALBANIA, AGAINST THE AUTHORS OF THE TEXTBOOK “FORENSIC MEDICINE”, MR. S. M AND MR. B. Ç, IN WHICH IS PRETENDED THAT THE UNIVERSITY TEXTBOOKS CLEARLY DISCRIMINATE AND PREJUDICE THE LGBT COMMUNITY IN ALBANIA.**

### **DECISION No. 27/2012**

*The discrimination of the LGBT community in the textbook “Forensic Medicine”, by the authors: Prof. Dr. S. M and Prof. Dr. B. Ç, using of discriminatory, non-scientific and offensive terms and information regarding the LGBT community, and the students of the Medicine Faculty and the Law Faculty of the University of Tirana are having wrong knowledge which may influence their education as future doctors and lawyers.*

#### **1. PROCEDURE FOLLOWED**

- 1.1** With letter No. 441 Prot., dated November 09, 2012 the subjects towards whom the complaint is presented were notified for the initiation of the proceedings of examination of the complaint.
- 1.2** With letter No. 446 Prot. dated November 13, 2012 the subjects towards whom the complaint is presented were required to present written arguments in answer to the complaint made.
- 1.3** With letter No. 1495/4 Prot., dated November 19, 2012, the Law Faculty has provided to the Commissioner the required information in which it is explained that: *“the subject of Forensic Medicine because of the specifics of the medical type is provided by the Department of Forensic medicine at the Medicine Faculty. For this the study program for this subject is approved by this faculty”*. For the verification of the pretences presented in the complaint, the Law Faculty has addressed a request to the author of the textbook, Prof. S. M in which is required information regarding this issue. With letter N. 1495/2, dated November 14, 2012, Prof. Dr. S. M confirms that: *it is true that the abovementioned textbook, in its pages 140-141 includes concepts which currently are not acceptable from the World Health Organization on the usage of the term sexual perversion.*

- 1.4** In order to certify the pretences of the complaint the office of the Commissioner has made the verifications of the book “Forensic Medicine”. In the analyze of the textbook “Forensic Medicine”, Tirana 2007 with author Prof. Dr. S. M, and the textbook “Forensic Medicine” published by the editor “Arbëria” with authors Prof. Dr. S. M and Prof. Dr. B. Ç with ISBN code: 999 27-796-9-1 re-publication of the last years, the Commissioner.

## **2. FACTS ASCERTAINED FROM THE COMMISSIONER FOR THE PROTECTION FROM DISCRIMINATION**

- 2.1** In the textbook “Forensic Medicine” Tirana 2007, in the page 140 is written:  
*“The sexual perversions are deviations from the norm of sexual motive as consequence of organic pathologies and psychic and psychological disorders of a defined person. .... The persons that suffer these disorders tent to commit sexual crimes or penal actions against moral and dignity, through unworthy behaviors and actions in society. Some of sexual perversions that are met more frequently in practice are: Homosexuality, fetishism, exhibitionism, sadism and masochism, scoptophilia, zoophilia and Necrophilia.*
- 2.2** In the textbook “Forensic Medicine” of the editor “Arbëria” in page 141 it is written:  
*“The sexual perversions are deviations from the norm of sexual instinct ..... Some of sexual perversions that are met more frequently in practice are: a) Homosexuality is the tendency of sexual attraction between members of the same gender. Pederasty is foreseen as crime from the Penal Code and describes in the realization of sexual acts between .....*
- 2.3** In the analysis of the abovementioned texts it is noticed that the authors in the preamble of the re-publication of the said textbooks write that: *“they have made efforts to update this discipline to the new Albanian legislation of the last 10 years”.*

## **3. LEGAL BASIS**

- 3.1** Based in the article 3 of the Constitution of the Republic of Albania, the government guarantees the protection of person’s dignity and the respect of their rights and liberties.
- 3.2** The article 14 of the European Convention of Human Rights provides the protection from discrimination in the enjoyment of the fundamental rights and liberties.
- 3.3** The recommendation CM/Rec (2010) 5, paragraph 32 of the Council of Ministers provides the obligation of the member states to take all measure to combat discrimination on grounds of sexual orientation or gender identity.
- 3.4** Albania, as a member state of the Council of Europe, should take appropriate measure also for the implementation of the paragraph VI of the recommendation of the Council of Ministers of the CoE, CM/REC(2010)5, where are treated issues on the education, in which is defined that: *“Taking into due account the over-riding interests of the*

*child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in **school curricula and educational materials**, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity”.*<sup>26</sup>

- 3.5** In the article 1 of the law no. 10221/2010 “On protection from discrimination” it is defined that: “*This law regulates the implementation of and respect for the principle of equality in connection with gender, race, color, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other reason*”. Sexual orientation and gender identity are grounds protected by law.
- 3.6** Based in the article 32/1/a of the law, the Commissioner has the competence to examine the implementation and respect of the principle of equality regarding the sexual orientation and gender identity.
- 3.7** Based in the article 17/1/c of the law n. 10221/2010 *protection from discrimination in the education field provides the prohibition of every distinction, limitation or exclusion based on the grounds mentioned in article 1 of this law and which, among other things, is related to c) the content of principles and criteria of educational activity, including teaching programs and teaching methods;*

#### **4. OPINION OF THE COMMISSIONER ON THE FACTS ASCERTAINED**

- 4.1** The Commissioner for Protection from Discrimination aims the strict respect of the principle of equality in front of the law, equality of the chances and possibilities to exercise rights and freedoms, as well as the effective implementation of the anti-discriminatory policies, especially as regards the community LGBT, in Albania.
- 4.2** Even if the authors emphasize the update of the scientific information, they have not reflected in the abovementioned textbook the fact that the homosexuality is been decriminalized since 2001 with the law n. 8733, dated January 24, 2001, and since 1990 The World Health Organization has removed homosexuality from the International Classification of the Statistics of Illnesses and Problems connected to the health.
- 4.3** Referring to the above, the definitions that include the homosexuality in the group of the sexual perversions are wrong, not scientific and discriminatory definitions on the grounds of the sexual orientation and gender identity. Teaching those concepts to the students in the auditoriums creates wrong perceptions about this category by influencing in the formation of those students as future doctors and lawyers.
- 4.4** The Commissioner deems that the content of the said textbook is a concern, creates the feeling of insult and prejudices

<sup>26</sup> Translation of the Commissioner

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the dignity of this community by transforming in discriminatory the perception of other persons about this category.

- 4.5** The Commissioner ascertains the discrimination of the LGBT community through the content of the textbook ‘Forensic Medicine’ with authors Prof. Dr. S. M and Prof. Dr. B. Ç, on the grounds of the sexual orientation and gender identity.

## **5. RECOMMENDATIONS**

- 5.1** The obligation of the authors, as persons having realized the discriminatory attitude as above, to make the modification or if it is not possible to remove from the market and from the libraries of the institutions this textbook, within 60 (sixty) days from the information about this decision.
- 5.2** The authors, Prof. Dr. S. M and Prof. Dr. B. Ç, are obliged to inform the Commissioner regarding the action undertaken for the implementation of the present decision, within 30 (thirty) days, depositing a copy of the textbook with the respective modifications.
- 5.3** Referring to the article 33/11 of the law n. 10221/2010, ‘For Protection from Discrimination’, the failure to implement the present decision will have as consequence the punishment with fine according to the provisions of the paragraph 13 of the same article.



## VII. DISCRIMINATION CASES IN THE FIELD OF EMPLOYMENT

**THE COMPLAINT OF MRS. F. K. WITH N. REGISTER 7, DATED MARCH 13, 2012, AGAINST MR. A. SH, DIRECTOR OF THE REGIONAL HEALTH DIRECTORATE (HENCE RHD) OF FIER, WHERE IT IS PRETENDED DISCRIMINATION ON THE GROUNDS OF EDUCATION, HEALTH SITUATION AND ANY OTHER GROUND.**

### DECISION No. 13/2012

*According to the explanations given by Mrs. F. K, it results that she has been employed at the Regional Health Directorate of Fier since 1984. The labor relations have continued normally up to the moment when she has denounced the violations at this institution. The complainant said that she has denounced in several institutions the unfair appointment of Mr. F. Ç, in the function of economical vice director and she alleged discrimination and victimization on this ground.*

#### 1. PROCEDURE FOLLOWED

- 1.1 On March 26, 2012, with letter no. 96 Prot, Mr. A. Sh was notified regarding the complaint addressed to him with the pretence of Mrs. F. K for discrimination.
- 1.2 Based in the letter No. 149 Prot., dated April 30, 2012 it is realized the inspection on date May 03, 2012<sup>27</sup>.
- 1.3 Regarding the interest of the inspection group for the verification of some of the files, the procedures of nomination of the employees as well as the examination of the book of the meetings minutes, the Vice Director Mrs. Sh. K has

<sup>27</sup> The object of the inspection was:

- Organization, functioning and analytical structure of RHD Fier
- Minutes Book of the meetings for the period June 2009 – June 2011
- Procedure of appointment of Mr. F. Ç in the function of the Economical Vice director and Responsible of the Health Information Sector
- Procedure of appointment and criterions of employment in the position of nurse
- Investigation at the administration and services sector on the progress of the financial relations of Mrs. F. K for the period February 01, 2011 to the conclusion of labor relations
- Verification of some files of the employees of the RHD of Fier
- Order n. 3, dated March 21, 2011, "For the dismissal from the function of the responsible of the sector of the health information",



answered that the Responsible of the human resources office, Mr. S. M, and the employee of the archive Mrs. F. C were not at work, being in annual leave and medical report, but the required documents will be available as soon as these employees return at work. With letter no. 317 Prot, dated May 17, 2012, the RHD of Fier has sent the documents required during the inspection dated May 03, 2012<sup>28</sup>.

- 1.5 On July 11, 2012, the complainant subject Mrs. F. K is presented at the offices of the Commissioner for the Protection from Discrimination (hence CPD) and has required the examination of her complaint only as regards the discrimination on the grounds of the education situation and the absence of recognition of the university diploma.

## 2. **FACTS ASCERTAINED FROM THE COMMISSIONER FOR PROTECTION FROM DISCRIMINATION**

- 2.1 During the inspection was required to make available the facts and proofs for the breach of ethics at work from Mrs. F. K, as well as the facts and proofs for weaknesses at work and improvement of the work in the sector of Health Information after the dismissal of Mrs. F. K. In answer to this interest Mrs. B. Zh (lawyer of the institution) has informed us that regarding the breach of ethics at work we should address to the Ministry of Health, as the letters presented by Mrs. F. K are in its disposal. Regarding the improvement of the progress in work after the dismissal of Mrs. F. K she informed us that they have had no more complaints from the employees of the sector, but she had no written proofs of the complaints, explaining that they were oral complaints. Mrs. B. Zh has declared that she will communicate with the employees of the RHD of Fier and with the Ministry of Health about the explanations required from her and as soon as they will be available they will be made available to the CPD.<sup>29</sup> The Director of the RHD of Fier, Mr. A. Sh has explained that: *“we do not have proofs to argument that Mrs. F. K has violated the ethics”* but according to the testimonies of the employees present during the inspection, we were informed that Mrs. F. K has not have good behavior with persons and neither good relations with the other employees of the institution<sup>30</sup>.
- 2.2 The RHD of Fier during the inspection and following correspondence has not achieved to make available to the commissioner proofs on the breach of ethics by Mrs. F. K. The only proof to which the director of the RHD of Fier has referred to during the decision making for the dismissal of the employee F. K is the letter sent from the Ministry of Health, Direction of Management of the Human Resources and Education in Continuity, n. 1055, dated March 16m

<sup>28</sup> File of the employee Mrs. F. K

File of the employee Mr. F. C

File of the employee Mr. K. Ki (appointed as epidemiologist aid at the Health Centre of Portëz

Annual analysis of work for the 2010, RHD of Fier

Book of meetings minutes held for the 2010

<sup>29</sup> Referring to the inspection minutes dated May 03, 2012

<sup>30</sup> Referring to the inspection minutes dated May 03, 2012

2011, with object: “*Explanatory letter, in which the RHD of Fier is informed that Mrs. F. K with the letters and emails sent to the Ministry of Health has violated the rules of ethics of the public administration by prejudicing the figure of the superiors and exceeding her competencies. In order to prove the violation of ethics made by Mrs. F. K the RHD of Fier, as the authority to have issued a administrative measure against Mrs. F. K , has not presented any documentary proof*”.

- 2.3** While the complainant subject has made available three letters that prove the concerns presented by Mrs. F. K for the violations occurred<sup>31</sup>: in these three letters Mrs. F. K has denounced the appointment of the economical vice director, Mr. F. Ç, without having the respective education, a fact ascertained even by the control of Supreme State Audit (SSA) at the RHD of Fier, where with letter no. 2011, dated April 26, 2011 recommends to the Ministry of Health to issue the administrative measure “Dismissal from the function of the economical vice director of the RHD of Fier, Mr. F. Ç and legally requiring the return of the economic damage caused from the illegal payment”. The fact of the unfair appointment of Mr. Ç in the position of the economical vice director was also accepted by the director, Mr. A. Sh, by means of the Decision n. 279, dated March 21, 2011 which accepts the recommendation of the Supreme State Audit for the dismissal of Mr. F. Ç from the function.
- 2.4** As regards the improvement of the work progress in the sector of health information there are no proofs to support the decision of the director Mr. A. Sh for the improvement of the work in this sector. In the personal file of the employee F.K at the sector of human resources there was no document to certify that towards the said employee there has been any measure, as council or observation. During the examination of the book of meetings minutes held for the 2010, there was not found any proof to ascertain the weakness in this sector and necessity for improvement addressed to the director of the sector. In the final report of audit n. 2928/3 dated October 04, 2011 elaborated by the Internal Audit Direction of the Ministry of Health for the period June 2009 – July 2011 there was no observation addressed to Mrs. F. K and the sector of health information, therefore the pretence against Mrs. F. K regarding the improvement of the work progress in the sector of health information remains not proved from the RHD of Fier.
- 2.5** According to the documentation sent from the RHD of Fier, Order n. 733, dated November 10, 2008, Mrs. F. K results graduated in the University “Aleksandër Xhuvani”, Elbasan Faculty of Economics, and after date October 05, 2008 she has been paid as a graduated employee. Based in the Certification n. 442, dated May 16, 2011 issued by the RHD of Fier, we notice that Mrs. F. K would have been paid with a salary of 38100 lekë/month in the position of epidemiologist aid, lower if compared to the salary she had benefited a responsible of the sector of health information of 52000 lekë/month.
- 2.6** In the answer of the RHD of Fier about this case, referring to the letter n. 210/1, dated April 27, 2012, the only argument used by the direction for the appointment of Mrs. F. K in the new function is the *work experience of 28*

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<sup>31</sup> Document addressed to the Prime Minister, Mr. Sali Berisha, dated September 24, 2010 (Albanian Post invoice)  
Document addressed to the Minister of Health, Mr. Petrit Vasili, dated September 24, 2010 (Albanian Post invoice)  
Letter of Denounce of Mrs. F. K, dated February 09, 2011 addressed to Mr. R. C, Chairman of the Supreme State Audit

*years as nurse*, but it does not refer to the fact that Mrs. F. K, was not graduated as a nurse and from 5 years she had detached from the abovementioned work experience, a fact declared by Mrs. F. K by means of the letter addressed to the director, Mr. A. Sh, on date April 08, 2011 (certified by the post office receipt N. 036797).

### 3. LEGAL BASIS

- 3.1** The law 10221/2010 “On Protection from Discrimination” in the article 12, paragraph c), defines the prohibition of the discrimination related to the treatment of employees in the work place, including their treatment during the establishing or changing of working conditions, compensation, benefits and the work environment, treatment related to professional training or during the disciplinary process or related to dismissal from work or the dissolution of a labor contract;
- 3.2** The law 10221/2010 “On Protection from Discrimination” has defined in the article 3/8 that: ***the “Victimization” is an unfavorable treatment or adverse consequence that comes as a reaction to a complaint or to a proceeding that aims at implementation of the principle of equality.***
- 3.3** The law 10221/2010 “On Protection from Discrimination” Chapter II, Protection from discrimination in employment, Article 12, paragraph a) and b), Prohibition of Discrimination, 1. Discrimination against a person in connection with his right to employment is prohibited. Discrimination includes every distinction, limitation or exclusion that is based on the grounds mentioned in article 1 of this law and which, among other things, is related to: a) the announcement of free places of work; b) the recruitment and selection of employees;
- 3.4** The law has defined in the article 3/1 that: is every distinction, exclusion, limitation or preference because of any ground mentioned in article 1 of this law that has as a purpose or consequence the hindering or making impossible the exercise, in the same manner as with others, of the fundamental rights and freedoms recognized by the Constitution of the Republic of Albania, with international acts ratified by the Republic of Albania as well as with the laws in force, is a discrimination.
- 3.5** The education is one of the grounds protected by the law 10221/2010, Article 1, Chapter II, Protection from discrimination in employment, Article 12, Prohibition of discrimination, 1. Discrimination against a person in connection with his right to employment is prohibited. Discrimination includes every distinction, limitation or exclusion that is based on the grounds mentioned in article 1 of this law and which, among other things, is related to: c) the treatment of employees in the work place, including their treatment during the establishing or changing of working conditions, compensation, benefits and the work environment, treatment related to professional training or during the disciplinary process or related to dismissal from work or the dissolution of a labor contract.
- 3.6** The criterions of employment in the function of nurse at the RHD of Fier are defined by means of:
- Order n. 291, dated July 20, 2007 “On the criterions of employment in the public health service”, paragraph 1, *“the employment in the health institutions may be realized only by means of open competition, based in unified criterions”*, and following,
  - Letter n. 887/1, dated March 17, 2008, from the Ministry of Health, Direction of Public Health, addressed to the

Regional Health Directorate (RHD) of Fier, with object: Reminder on the employment criteria for the nurses, in which among others it is written that: *in the criteria of employment of the staff, nurses it should be included the university degree in nursing*, as well as the criteria that should be accomplished by the candidates declared in the bulletin of the Public Procurement Agency dated June 06, 2011, in which it is declared the main criterion: *Should be graduated in the Nursing Faculty*.

#### 4. OPINION

- 4.1 Based in the regulation “*On the organization and functioning of the direction of public health of the district*” n. 2752, dated July 23, 2007, issued from the Ministry of Health, chapter III, the Mission of the leading bodies of the DSHPQ, it is defined that the Director, “*appoints and dismisses the chiefs of sector and the employees within the organization structure of the DSHPQ by applying the Directive of the Minister of Health “On the criteria of employment in the public health service” and the Labour code. In cases of violation of discipline at work, the persons causing it, he applies administrative measures pursuant the “Collective labour contract”*”. The Director, Mr. A. Sh, has the competencies to dismiss the responsible of the sector but, as Mrs. F. K has submitted a problem on the case of the unmerited appointment (according to her) he should have followed the procedure defined in the Article 144 of the Labour Code. The order n. 3, dated March 21, 2011, is an extreme measure issued towards the employee F.K.
- 4.2 Based in the Order no. 291, dated July 20, 2007 “On the criteria of employment in the public health service”, we deem that the Decision no. 279, dated March 21, 2011 for the appointment of Mr. F. Ç in the function of the Responsible of the Sector of Health Information is discriminatory because they are not applied the rules on the employment in the health system: open competition, notification for the vacancies and the mandatory requirements of competition. By non-using these criteria the RHD of Fier has enabled the possibility of establishment of discriminatory practices regarding the equal treatment of the persons.
- 4.3 Based on the DCM n. 606, dated July 08, 2010 on a modification in the Decision n. 306, dated June 27, 2002 of the Council of Ministers, “On the approval of the structure and level of payment of the graduated employees in the system of the Ministry of Health and.....” annex 1 (chapter 1.2) the position of Chief of Sector, salary of the group 12 000 ALL, as well as according to the letter n. 1086, dated September 08, 2010 “On the implementation of the new decisions for the salaries” in which it is defined that the Group I, complies to DND or DIND, we think that the Decision n. 279, dated March 21, 2011 on the appointment of Mr. F. C in the position of the Responsible of the sector of the Health Information is discriminatory because the request for this job position pertains to the university degree DND or DIND and based in the documentation of the personal files of Mrs. F. K and Mr. F. C we notice that the degree of Mrs. F.K is a degree of a higher level than the degree of Mr. C and non-considering this factor constitutes a discrimination on the grounds of education level.

- 4.4** Not recognizing the university degree and the payment with a lower salary of the employee F.K. The Order n. 3, dated March 21, 2011 for the dismissal of Mrs. F. K from the function of the responsible of the health information and her appointment in the function of the Epidemiologist aid at the Health Centre of Portëz has not considered the university degree of Mrs. F. K but has referred to the previous job experience of the complainant, and regarding the payment of the salary it is not considered the difference in the salary, as the employee would have been treated as an employee with secondary education.
- 4.6** We notice that in the appointment of Mrs. F. K in the function of epidemiologist aid, they were not respected the procedures of employees' employment on the grounds of competition and other criterions were used by treating her differently from the other candidates. The different treatment is also proven by the practice of employment followed by the RHD of Fier for the employment of the employee Mr. K. K. Not recognizing the university degree of Mrs. F.K has derived in her discrimination.
- 4.7** The Commissioner ascertains the discrimination of Mrs. F. K from Mr. A. Sh, Director of the Regional Health Direction of Fier, in the form of victimization because of the denouncement made by her.

**5. RECOMMENDATION:**

- 5.1** We recommend the return of Mrs. F.K. in the job position.
- 5.2** Based in the article 33, paragraph 11, it should be reported to the Commissioner on the measures taken for the implementation of this decision within 30 days.

## IX. DISCRIMINATION CASES IN THE FIELD OF GOODS AND SERVICES

### THE COMPLAINT SUBMITTED BY THE ORGANIZATION “ALLIANCE AGAINST DISCRIMINATION LGBT” AGAINST THE PRIVATE SUBJECT RESTAURANT PIZZERIA “K” ON ALLEGED DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION IN THE FIELD OF GOODS AND SERVICES

#### DECISION No. 5 / 2014

#### 7. PROCEDURE FOLLOWED

- 1.1 On behalf of two members of the organization, the organization “Alliance against Discrimination LGBT” has presented the complaint to the Commissioner for Protection from Discrimination. The organization “Alliance against Discrimination LGBT” in the complaint explains: “On date October 18, 2013, at about 21.40 o’clock in the premises of Restaurant Pizzeria “K”, which is frequented by two female members of our organization, the waiter after serving the order, the waiter has addressed to the members asking them to leave the premises by insulting and threatening them with the cutters of the wine bottles and the remote control, as he have seen them kissing each other”.
- 1.2 Pursuant the legal provisions, defined in the articles 32 and 33 of the law n. 10221/2010 “On protection from discrimination”, with letter n. 534/1, dated November 08, 2013 it was notified the subject Restaurant Pizzeria “K” requiring information on the case.
- 1.3 In date November 11, 2013, the Albanian Post has returned the envelope with the note that the receiver has refused to take in consign the envelope.
- 1.4 In date December 18, 2013 it is issued the Order n. 103, “For the realization of the inspection at the Restaurant Pizzeria “K”. The object of the inspection was the information required by the letter n. 534/1, dated November 08, 2013, the meeting with the waiter serving on October 18, 2013 from 21<sup>00</sup> to 22<sup>30</sup> o’clock as well as the verification of the facts pretended by the complainant subject.
- 1.5 On date December 20, 2013 the inspectors of the Direction of Investigation – Inspection went to the subject Restaurant - Pizzeria “K”, to perform the inspection, which was not realized because the owner of the restaurant K.N, has refused the inspection and the issuance of information.



## 8. ASCERTAINED FACTS

- 2.1 Pursuant the article 32, paragraph 1, letters “a” and “c”, and 3 of the same article of the law n. 10221, dated February 04., 2010 “On Protection from Discrimination”, the Commissioner for Protection from Discrimination, has followed all the phases defined by the investigation procedure, in order to examine the complaint n. 48, dated October 24, 2013 submitted by the organization “Alliance against Discrimination LGBT”, at the office of the Commissioner for Protection from Discrimination against the subject Restaurant - Pizzeria “K”, for discrimination on the grounds of sexual orientation.
- 2.2 The Commissioner for Protection from Discrimination has taken all the measures for the information of the subject against whom the complaint is submitted about the complaint and has provided the possibility to give explanations and information on the pretences of the complainant subject.
- 2.3 The Commissioner notes that the subject in complete knowledge has refused to give explanations on the pretences by refusing the letters sent by mail and by refusing the realization of the inspection on date December 20, 2013.

## 3 LEGAL BASIS

- 3.1 The article 1 of the Law n. 10 221, dated 04.02.2010 “On protection from the discrimination” defines that its purpose is: *“This law regulates the implementation of and respect for the principle of equality in connection with gender, race, color, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability<sup>2</sup>, affiliation with a particular group or for any other reason.”*
- 3.2 The article 20/1 of the Law n. 10 221, dated 04.02.2010 “On protection from the discrimination” defines that: “A natural or legal person who offers goods or services to the public, whether or not for payment, is prohibited from discriminating against another person who seeks to achieve or use them: a) by refusing to give a person or group of persons goods or services for the ground mentioned in article 1 of this law; b) by refusing to offer a person goods or services in a similar manner, or with similar qualities, or in conditions similar to those in which the goods or services are offered to the public in general”.
- 3.3 Based in the law no. 10221/2010 “On Protection from Discrimination”, article 32, paragraph 2 *“All public institutions and private subjects are obliged to support the commissioner in the fulfilment of his duties, especially by supplying information needed by him”*.
- 3.4 The article 33/13 of the law no. 10221/2010 “On Protection from Discrimination” defines that *“Every person who violates the provisions of this law is punished by a fine...”*



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**4 OPINION**

**4.1** At the conclusion of the examination of the complaint, it results proved that K.N, in the quality of the owner of Restaurant - Pizzeria “K”, has violated the article 32/2 of the law n. 10221/2010 “On Protection from Discrimination”. For this reason, pursuant the article 32/1, letter “ç”, article 33, paragraphs 10, 12, 13/a and 14, of the law n. 10221, dated February 04, 2010 “On Protection from Discrimination”, the Commissioner for Protection from Discrimination,

**HAS DECIDED**

1. K.N, to be fined in the amount of 10.000 (ten thousand) ALL.
2. The fine should be paid in the State Budget within February 26, 2014.

**EX-OFFICIO CASE, INITIATED BY THE COMMISSIONER FOR PROTECTION FROM DISCRIMINATION,  
ON THE GROUNDS OF THE MEDIA PUBLICATIONS, ON THE COMPLAINTS OF SOME WOMEN HOUSED  
AT THE NATIONAL CENTRE OF TREATMENT OF THE VICTIMS OF DOMESTIC VIOLENCE**

**DECISION No. 9/2012**

*Pursuant the media publications, regarding the complaints of some women, who were housed in the National Centre of Treatment of the Victims of Domestic Violence,*

**1. PROCEDURE FOLLOWED**

- 1.1** Pursuant the Order no. 21, dated April 13, 2012 “For initiating “ex-officio” the case published in the media, regarding the women psychologically violated at the Centre of the Victims of Domestic Violation, as well as the letter no. 13/1, dated April 23, 2012, of the National Centre of Treatment of the Victims of Domestic Violence, the Commissioner for Protection from Discrimination, with its own initiative, in dates April 26, 2012 and May 04, 2012, has realized two inspections at this Centre.
- 1.2** Except for the positive aspects of the life conditions of the beneficiaries and their children at this Centre, the Commissioner for Protection from Discrimination has noticed some problems, which were also noticed from other competent institutions and resolved by means of their official acts. As above, the Commissioner for Protection from Discrimination has realized only the examination of those issues, which are in its competences pursuant the law no. 10 221, dated 04.02.2010 “On the protection from discrimination”.

**2. FACTS ASCERTAINED**

- 2.1** According to the information released by Mrs. D. K., Director at the National Centre of Treatment of the Victims of Domestic Violence, it results that: This centre is an institution established based in the Order of the Prime Minister no. 36, dated March 23, 2010, in tutelage of the women violated and without any support. The women and children are accommodated in this institution, accompanied by the State Police, under protection order or immediate protection order issued by the courts of the judicial districts.

- 2.2** At the National Centre of Treatment of the Victims of Domestic Violence, the women are free to move during the day and the children frequent the school near the Centre. The number of the beneficiaries that currently frequent the Centre is 6 women and 14 children. During the inspection it was noticed that the conditions of life for the inhabitants of the centre were good. The beneficiaries and their children live in commode locals with good hygienic conditions.
- 2.3** Based in the Order n. 36, dated March 18, 2011 of the Prime Minister, the staff of the National Centre of Treatment of the Victims of Domestic Violence is composed by 1 (one) director and 2 (two) sectors, respectively the Sector of Social Service – 7 (seven) employees and Administrations Sector – 3 (three) employees, so, 11 (eleven) employees in total. The Sector of the Social Service is composed by: 1 (one) responsible of sector (social employee), 1 (one) specialist (social employee), 1 (one) specialist (doctor), 2 (two) specialist (educators) and 2 (two) caretakers. The Administration Sector is composed by: 1 (one) finance specialist, 1 (one) cooker and 1 (one) cleaning staff.
- 2.4** Up to April 26, 2012, the organization and functioning of the National Centre of Treatment of the Victims of Domestic Violence was not yet disciplined by any internal regulation. In the absence of this regulation, pursuant the Order n. 4, dated August 08, 2011, of the General Director of the State Social Service, the National Center of Treatment of the Victims of Domestic Violence functioned under the Regulation of the Reception Center for the Victims of Traffic. In the paragraph 1 of the abovementioned Order, the National Center of Treatment of the Victims of Domestic Violence, was in charge for the drafting of the internal regulation of the organization and functioning of the institution with the respective duties of the employees and to present it for approval to the State Social Service.
- 2.5** In the inspection realized on date May 04, 2012, the Commissioner for Protection from Discrimination was informed about the approval of the Internal Regulation for the Organization and Functioning of the National Centre of Treatment of the Victims of Domestic Violence. However, almost from the moment of establishment of the National Centre of Treatment of the Victims of Domestic Violence, so for almost 9 months, this Centre has functioned according to the Regulation of the Reception Centre of the Victims of Traffic, being influenced in its functioning according to the purposes of establishment.
- 2.6** The beneficiaries declare that they were allowed only a phone call per month with their familiars and this was supervised by persons appointed by the director of the institution. The children are been sent in school with a vehicle, starting from March 01, 2012, because only in this date, the Centre was provided with a vehicle from the State Social Service.
- 2.7** The beneficiaries at the National Centre of Treatment of the Victims of Domestic Violence are not provided with psychological help by a psychologist, even if it is extremely necessary for them to have such help, as consequence of the physical and psychological violence exercised on them from their husbands. The psychological services are additional services foreseen to be provided by this Centre, according to the Standard 1, of the Decision n. 505, dated July 13, 2011, of the Council of Ministers “On the approval of the standards of the Social Care Services for the victims of domestic violence in the public and private residential centers”.
- 2.8** Many of the beneficiaries of this centre are part of judicial processes of divorce or restrictive order of protection from the court, while the legal assistance of the Centre is lacking, as in its organization structure is not foreseen the position of “lawyer”. Despite of their very difficult economic situation, the beneficiaries pay lawyers, while the existence of a

lawyer of the Centre would avoid such difficulties. It is worth mentioning again that these juridical services are foreseen as additional services to be provided in this Centre, according to the Standard 1, of the Decision n. 505, dated July 13, 2011, of the Council of Ministers “On the approval of the standards of the Social Care Services for the victims of domestic violence in the public and private residential centers”.

- 2.9** During the inspections in the locals of the National Centre of Treatment of the Victims of Domestic Violence, it was noticed that the children of the beneficiaries were not under the care of the two educators of the centre. Those children crawl around wherever in the centre (especially in the stairs of the centre), despite of their young age and nobody pay attention or care to them. To the question where the educators were (in the inspection realized in date April 26, 2012), the other employees have answered that they have not presented to work.
- 2.10** In the inspection made in date May 04, 2012, the Director informed us regarding the two educators M.C. and L.C. that are employed based in the organizational chart of the centre. According to her, one of the educators, respectively Mrs. L.C was not a permanent employee of the Centre. The educator was appointed in the function of the specialist (educator) at the centre with Order no. 774, dated June 16, 2011, of the General Director of the State Social Service, but she did not present at work even if her name result in the presence list and she was duly paid by the centre. From the information received by the Director of the Centre it has resulted that the social employees and care takers work in shifts of 16 or 24 hours. In this manner, the sole educator that was presented at work should be at the Centre once each 3-4 days. In her absence, the duties and work plan about the children of the beneficiaries were realized by the social employees and care takers.

### **3. LEGAL BASES**

- 3.1** In the article 1 of the Law n. 10 221, dated 04.02.2010 “On protection from the discrimination” it is defined that: *“This law regulates the implementation of and respect for the principle of equality in connection with gender, race, color, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or for any other reason.”*
- 3.2** According to the article 7, of the Law “On the protection from discrimination” the discriminatory behavior might be consumed with the action or the failure to act.
- The law n. 7952, dated June 21, 1995 “On Pre-university education system”, as modified, Decision n. 505, dated July 13, 2011, of the Council of Ministers “On the approval of the standards of the Social Care Services for the victims of domestic violence in the public and private residential centers”.
- Regulation of the National Centre of Treatment of the Victims of Domestic Violence.
- DCM n. 505, dated 13.07.2011, “On the approval of the standards of the Social Care Services for the victims of domestic violence in the public and private residential centers”, standard n. 3 declares: *“The provider of the services*

*should treat them with respect and dignity. They should be protected by all forms of abuse and discrimination”.* Article 8, paragraph 8.3 of the Regulation of the Reception Centre of the Victims of Traffic (a regulation pursuant which the National Centre of Treatment of the Victims of Domestic Violence has functioned for 9 months) defines that *“The normal daily time of work is 8 (eight) hours per day”.*

#### 4. OPINION

- 4.1 Whereof, it should be emphasized that the beneficiaries that are resident of the Reception Centre of the Victims of Traffic have a different status from the beneficiaries of the National Centre of Treatment of the Victims of Domestic Violence, as the very concept of traffic is different from that of domestic violence. But, the consequences in both cases are really hard for the victims of traffic as for the victims of domestic violence.
- 4.2 As it results from the Regulation of the Reception Centre of the Victims of Traffic and the new Regulation of the National Centre of Treatment of the Victims of Domestic Violence (even if they have almost the same content), the services provided in the first one are more specific. Here, the beneficiaries are provided with specialized psychological assistance, legal assistance, as well as a high level of security for the dangerousness that presents their status as victims of traffic. Meanwhile, such services were never provided to the victims of domestic violence, despite the fact that the regulation based on which the National Centre of Treatment of the Victims of Domestic Violence has functioned for 9 months was the same.
- 4.3 Whereof, we think that the existence of a sufficient level of security for the beneficiaries has been necessary since a year ago, when the Centre has begun its functioning, even if this level of security was not so high as the one in the Reception Centre of the Victims of Traffic, as even the statuses of the beneficiaries of those Centers are not the same. **At this Centre, the level of security is been considered sufficient only in the limitation of the phone calls with the family and the “seizure” of the mobile phones of the beneficiaries so that they would not communicate with their parents, while they are free to go outside the institution, to work or to accompany the children in school. In the Commissioner judgment, the violation of the right to communicate with the families, is not efficient and does not serve the provision of security for the centre and the beneficiaries. Meanwhile the women and children are not accompanied outside the locals of the Centre.** The lack of a sufficient level of security enabled the husband of the beneficiary H.B. to take an eye off to her while she was accompanying the children to school.
- 4.4 **Based also in the organization chart of the centre, as presented above, the Commissioner deems that, as there is no lawyer included in the organization chart of the centre, it lacks the qualified staff, to draft an internal regulation.**
- 4.5 **In the new regulation of the National Centre of Treatment of the Victims of Domestic Violence it is foreseen only the psycho-social assistance, while we deem that it is really necessary the aid of a proper psychologist.** If we refer again to the new Regulation of the National Centre of Treatment of the Victims of Domestic Violence, we

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notice that in the second part “Structure of QKTVDHF” it is defined also a psychologist and a lawyer (part time), who are not included in the structure or organization chart approved with the Order n. 36, dated March 18, 2011 of the Prime Minister. In this context, we deem that the role of lawyer and psychologist in this centre should be permanent, because of the needs of the beneficiaries of the centre.

- 4.6** So, referring to the Regulation of the Reception Centre of the Victims of Traffic (base on which the National Centre of Treatment of the Victims of Domestic Violence has functioned for 9 months), the timetable to be accomplished by the employees of the Reception Centre of the Victims of Traffic and consequently by the employees of the National Centre of Treatment of the Victims of Domestic Violence is 8 (eight) hours. In this regulation it is not defined that the educators of the children, the social employees or the care takers work in shifts of 16 or 24 hours.
- 4.7** **As it is noticed from the facts declared above, the children of the beneficiaries at the National Centre of Treatment of the Victims of Domestic Violence are excluded from the benefit of their rights to be treated equally with the other children outside this centre, because of the situation of their mothers. Even if, by means of the organization chart approved with Order n. 36, dated March 18, 2011, of the Prime Minister, to the children of this centre are given all the possibilities to benefit the same rights to the other children outside the centre, by providing for them 2 educators, those are not available for them, and their role is often covered by the social employee or the care takers.**
- 4.8** The ascertaining of the discrimination, on the grounds of the economic and social situation of the beneficiaries at the National Centre of Treatment of the Victims of Domestic Violence, from the Director of the Centre, Mrs. D. K.
- 4.9** The ascertaining of the discrimination, on the grounds of association, of the children of the beneficiaries of the National Centre of Treatment of the Victims of Domestic Violence, from the Director of the Centre, Mrs. Dodona Kaloshi.

## **5. RECOMMENDATIONS**

- 5.1** We recommend the competent institution to take immediate measures, to ensure to the beneficiaries the legal, psychological assistance and the sufficient level of security for their life and health.
- 5.2** We recommend the competent institutions to take immediate measures to ensure to the children residing in this centre an adequate educative treatment and sufficient, full time care, from the person responsible for this task.

## X. OPINIONS OF THE BOARD OF EXPERTS

**OPINION OF THE BOARD OF EXPERTS FOR THE REQUEST SUBMITTED TO THE COMMISSIONER FOR PROTECTION FROM DISCRIMINATION FROM THE CONSTITUTIONAL COURT FOR A WRITTEN COMMENT REGARDING THE APPLICATION OF THE KCPD AND THE ASSOCIATION OF THE BLIND OF ALBANIA ON: “THE DECLARATION OF THE PARAGRAPHS 7 AND 9 OF THE ARTICLE 3 OF LAW NO. 10221 / FEBRUARY 04, 2010 “ON PROTECTION FROM DISCRIMINATION” AS INCOMPATIBLE WITH THE CONSTITUTION, THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, THE ECHR AND THE EUROPEAN SOCIAL CHARTER”.**

### I. GENERAL CONSIDERATIONS

The discrimination for any reason / purpose by anyone to anyone is a violation of the fundamental human rights and freedoms. The steps made in the Albanian legal framework as regards the protection from discrimination and gender equality standards cannot be denied. Undoubtedly, the discrimination has its absorption and precipitation process by the individuals, the society, the governmental bodies and the justice system. In order to make really applicable the standards set in the law it is necessary a comprehensive commitment.

The international experience shows the multidimensional difficulties and obstacles encountered in the process of consolidation of these standards. In the courts of EU member states were submitted and continue to be submitted increasingly discrimination claims<sup>32</sup>. Often, these courts require to the ECJ, interpretations of the provisions of their legislation and the coherence with the EU<sup>33</sup> standards because of the depth, delicacy and new risks that emerge to the principles of non-discrimination. Also, the jurisprudence of the ECHR, recently has known rapid developments associated to direct implications relating to the Article 14 of the ECHR.

The legal and practical experience, mainly the jurisprudence of abovementioned courts, emphasizes the dynamics of the concept of discrimination and the dynamic of the efforts to non-discrimination as well as the awareness throughout the society

<sup>33</sup> See: *Chacon Navas v Eures Colectividades SA (C-13/05) [2006]; C-335/11 & C-337/11, HK Denmark v. Dansk almennyttigt Boligselskab (April 11, 2013).*

<sup>34</sup> The ECJ in the abovementioned case C-335/11 & C-337/11 extends the meaning of the term “disability” against the Directive on Equal Treatment 2000/78/EC as well as the meaning of “reasonable accommodation”. For this, the ECJ has referred to the UN Convention on the rights of the persons with disabilities, which is mandatory to it.



and individuals.

This means, that the terms of reference [definitions] of a law, should be treated in harmony and coherence with the social, economic, technological<sup>34</sup> etc., developments which vary time to time and from one country to another. As consequence the treatments case to case of the reasonable accommodation and undue burden are seen through a process of current analysis and synthesis of the case under consideration and in several dimensions. Further, the understanding of their update with factual situations is realized through an exercise called ‘case by case’. Because of this the solutions offered in a case, or the static formulas for the solution of the past issues, do not have the same value in another case or in a different time or for a service. Other times, there are several variants of adaptation where one derives in undue burden and another does not. This challenges the process of assessment. This makes the terms to be assessed under the best effect and possibility that they have in an actual case, while carrying the values of the principles embodied in them.

To our country, the ratification of the international instruments, including the UN Convention of the right of the persons with disabilities [hence Convention] is a big step forward. But not only. It is long since the non-discrimination clause is included almost in every legal act approved by the Parliament as all the international instruments are focused in the human rights in different fields. In the united cases C-335/11 & C-337/11, *HK Denmark v. Dansk almennyttigt Boligselskab* the ECJ has analyzed the Directive 2000/78 of the Equal Treatment based on the UN Convention. Therefore, by giving its example, the ECJ, in interpreting the UE Directive refers to the UN Convention. The UN Convention includes definitions clearly different from the Directive as regards the “disability” and “reasonable accommodation”. This decision and contemporary message related to the standard of the principles and values in a positive evolution, given by the ECJ, will, without any doubt, have an impact in the courts of the respective UE States when it will be necessary to apply the provisions of the Directive of equality. For the Albanian bodies and courts, from the other side, it is an indicator of the dynamics and evolution of the perceptions regarding the discrimination and the more right meaning of the terms and principles.

The Albanian law on protection from discrimination is drawn in approach to the EU directives of “equality”<sup>35</sup>

*Completely approached with:*

The law dates back before the ratification of the UN Convention. Therefore, as the abovementioned case law of the ECJ refers, it is very important that in equal manner to the relevant directives, the Albanian law too, is to be interpreted and understood in the light of the Convention.

<sup>35</sup> *Completely approached with:*

1. Council Directive 2004/43/KE, dated June 29, 2000 on the “Implementation of the principle of equal treatment between the persons independently from the race or ethnic origin”;
2. Council Directive 2000/78/KE, dated November 27, 2000 on the “Definition of a general frame for the equal treatment in employment and relations during the work”;
3. Council Directive 2004/113/KE, dated December 13, 2004 on the “Implementation of the principle of equal treatment between men and women in the possibilities to have and be provided with goods and services”;
4. European Parliament and Council Directive 2006/54/KE, dated July 5, 2006 on the “Implementation of the principle of equal opportunities and equal treatment of men and women in the issues of employment and relations during the work”.

## 2. REQUEST FOR OPINION SUBMITTED TO THE COMMISSIONER FOR PROTECTION FROM DISCRIMINATION FROM THE CONSTITUTIONAL COURT

**On April 16, 2013, the Constitutional Court has required from the Commissioner for Protection from Discrimination a written comment regarding the possible arguments against the application of the KCPD and the Association of the Blind of Albania on: “The declaration of the paragraphs 7 and 9 of the Article 3 of Law no. 10221 / February 04, 2010 “On protection from discrimination” as incompatible with the Constitution, the UN Convention on the Rights of persons with disabilities, the ECHR and the European Social Charter”.**

### Current content of the dispositions attackable on unconstitutional grounds

Article 3/7. “Denial of a reasonable accommodation” is that form of discrimination that happens whenever there is a denial of or objection to making essential and appropriate regulations or changes *that are necessary in a particular case* and do not impose an undue burden, for the purpose of assuring the enjoyment and exercise, on an equal basis, of the fundamental rights and freedoms for persons with a disability or which occurred under other conditions mentioned in article 1 of this law.

Terms /expression considered as discriminatory: ‘undue burden’

Article 3/9. “Organisations with legitimate interests” are those organisations that have been registered in the Republic of Albania and have as the declared object of their activity the protection of human rights or which offer assistance to victims of discrimination.

Terms /expression considered as discriminatory: organizations that have as the declared object of their activity the protection of human rights.

## 3. TREATMENT OF THE PRETENCE IN THE LEGISLATIVE TECHNIQUE POINT OF VIEW

The purpose of the Law for Protection from discrimination, as explicitly defined in its article 2 “*is to assure the right of every person to: .... b) equality of opportunities and possibilities to exercise rights, enjoy freedoms and take part in public life...*” In this aspect the provisions that underlie the law in question and the obligations of guarantee bodies for the principle of equality, is, among others, not only the prohibition of the discrimination but also taking positive measures (or encouraging the competent bodies to take these measures) with the aim of accelerating the real deployment of equality.

On this regard we would like to emphasize an important aspect that is related to the literal interpretation of the word “definition” and the meaning that it has in the juridical doctrine of the legislative technique. It should be noted that most of the definitions in the normative texts, according to the legislative technique manuals, give, for each notion listed under “Definitions” the respective

meaning in which it should be understood each time it is used in the provisions of the law under analysis<sup>36</sup>.

The purpose of Article 3 as a whole is to give the meaning in which the terms given should be understood for purposes of interpreting the provisions of the Law no. 10221 “On Protection from Discrimination”. The provisions of the definitions, generally, are rather declarative and do not impose obligations to the subject to which they address. In this aspect of the analysis the paragraphs 7 and 9 of the Article 3 of the Law “On Protection from Discrimination” do not impose to the subjects any obligation of defined behavior, but they orientate the understanding of the group-words “denial of a reasonable accommodation” and “organizations with legitimate interests” in the following provisions of this law and do not give a definition for example of the NGOs for any other legal text but only to this specific law.

In terms of the specific claims of the requiring subject, regarding the terminology used and the meanings given in the content of the paragraphs 7 and 9 of the Article 3, we note that:

The expression “*do not impose an undue burden*”, used in the paragraph 7 presume first of all, the “burden” set to the public and private entities in the frame of their obligation to take positive measures for the subjects who are not in equal terms. The purpose of the legislator in the paragraph 7 of the Article 3 refers to the “undue”, as the “burden” is implied. We also think that the term “burden” has no offensive connotation and no reference should be made to the everyday language or terminology, but we must see it in the context of the legal terminology of the case, under which, for example, the term “positive discrimination” does not refer to the “discrimination” as a negative notion.

The definition given in the paragraph 9 of Article 3 has a general connotation and does not refer to specific categories or specific NGOs; further, in the relevant definition, it does not impose an obligation to be defended by specific organizations in a legal process and neither limits the possibility of direct representation. In the request to the Constitutional Court it is claimed the exclusive right of representation of the disable persons only by their organization (see last paragraph in page 9 of the respective request), while the corresponding UN Convention allows the representation by the own organizations, by leaving the possibility of free choice of the representative or counsel, but the exclusive representation is not binding.

#### 4. TERMS USED BY THE UN CONVENTION

##### **How can be found the terms in the UN Convention (ratified by the law no. 108/2012) in the Albanian and English version?**

The Albanian version of the Convention uses the term “disproportionate burden (barrë disproporcionale)”. The English version of this institute contains the phrase “disproportionate or undue burden” which according to the dictionary is translated to “disproportionate or excessive burden”.

The Barra disproporcionale / “disproportionate or undue burden” does not have a specific definition in the Convention. This institute can be found within the definition given for “reasonable accommodation”. In the text of the Convention “undue

<sup>36</sup> See: <http://www.regione.puglia.it/index.php?page=prg&opz=display&id=1205> ; Direttive di tecnica legislativa (DTL), Edizione 2003 aggiornata, Edite dalla Cancelleria federale svizzera, page 19.

burden' is used only once, respectively in the article 2, where all the definitions are listed.

“Reasonable accommodation” / “përshtatje e arsyeshme” is used respectively in the Article 5, paragraph 3; Article 14, paragraph 2; Article 24, paragraph 2 / c and Article 24, paragraph 5 regarding the education field; the Article 27 paragraph 1 / i regarding the employment. Specifically, the content of the definition in Albanian and English language as given in article 2 is:

Albanian version: “Akomodim i arsyeshëm” do të thotë modifikim dhe rregullim i nevojshëm dhe i përshtatshëm që nuk krijon një barrë disproporcionale, që është i nevojshëm *në raste të veçanta*, për t’u siguruar personave me aftësi të kufizuara gëzimin dhe ushtrimin e të gjitha të drejtave dhe lirive themelore të njeriut me baza të barabarta me të tjerët (neni 2).

English version: “Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed *in a particular case*, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

## 5. TERMS USED IN THE LAW “ON PROTECTION FROM DISCRIMINATION”

In the object of the law “On protection from discrimination” (hereinafter LPD) there is also the implementation and observance of the principle of equality in relation to disability (Article 1). The law is fully compliant with the EU directives in this field.

According to the article 5, paragraph 2 of the LPD: “The denial of adaptations and modifications that are appropriate and necessary for persons with a disability constitutes discrimination”. Regarding the term “adaptation”, the LPD uses the terms: “appropriate regulations” (article 3&7); “appropriate and necessary adjustment” (article 5&2); “accommodations that are necessary and appropriate” (article 20&3).

In the LPD there is not a specific definition regarding “undue burden”. “Undue burden” is found in the context of the definition given for “Denial of a reasonable accommodation” respectively in the article 3 & 7 of the law.

Regarding the term “burden” and relevant tags, the LPD uses the terms “undue burden” (article 3 & 7); “Disproportionate or illegal burden” (article 20 & 3).

## VI. CONCLUSIONS ON THE COHERENCE / COMPARISON OF THE TERMS

The table of terms aids us in the analysis and comparison of the terms of the law against those of the Convention.

Terms according the respective articles	UN Convention		Law on Protection from discrimination
	English	Albanian	
“Burden”	“disproportionate or undue burden” [Article 2]	“barrë disproporcionale”	“undue burden” [Article 3 &7]; “ Disproportionate or illegal burden” [Article 20 &3];
“Accommodation”	Reasonable accommodation”/	“akomodim i arsyeshëm”	“reasonable accommodation” [Article 3&7]; “appropriate and necessary adjustment” [Article 5&2]; “necessary and appropriate accommodations” [Article 20&3],

From the above table of terms we can conclude that “barrë e tepruar” is the Albanian translation of “undue burden”, used by the Convention. One of the problems faced by the lawyers during the work with the international instruments is the inaccurate translation of thereof.

## 7. CONCLUSIONS AND/ OR RECOMMENDATIONS

### 1. LACK OF BYLAWS AND GUIDELINES

It is recommended: the issuance of bylaws and guidelines on the indicators that aid to determine a reasonable accommodation and undue burden.

The preparation of practical guidelines that include examples from different areas and the sense they have, for example: excessive burden; disproportionate or illegal burden, in harmony with the Convention and the Albanian law.

### 2. FROM THE GENERALIZED READING OF THE LAW, WE NOTICE THAT:

- “Denial of a reasonable accommodation” and subsequently the “undue burden” is not only used for disability but for all categories protected by the Article 1 of the Law (see the article 3)
- The analysis, even that of a particular case, includes priority attention and is consistent with the jurisprudence of the ECHR regarding the situations where when the limitation is inevitable, this group is the last to be affected.
- The law has an administrative and judicial complaining system that protects the persons discriminated against the arbitrary actions or justifications that lead to denial of reasonable accommodation.

It is recommended:

The processing and detailing of the structures of complain in an administrative aspect and the awareness of all stakeholders involved in this test.

The establishment of a council or board of assessment regarding, the possibilities and alternatives, case by case of the “reasonable accommodation” and the case by case analysis if we have situations of a claim that leads to “undue burden”.

### 3. ROLE OF THE AUTHORITIES AND JUDICIAL SYSTEM

The interpretation of “reasonable accommodation” remains an issue that not only should be treated case by case, individually, but that can even be associated with many uncertainties. That is why the role and contribution of the court in the development of this practice remains unique, if in the cases examined it is set a disproportionate burden on the employer.

**For a more complete understanding of the terms “undue burden” and “reasonable accommodation” we should address to the doctrine and jurisprudence.** For this, a special place is occupied by the jurisprudence of the ECHR<sup>37</sup> and ECJ<sup>38</sup>.

According to documents consulted<sup>39</sup>, the reasonable adjustment is an *endless list* of options aimed to ensure the enjoyment and exercise, on equal basis, of the fundamental human rights and freedoms of the persons with disabilities, or occurred in other conditions referred to in the article 1 of the Law. This list varies case by case while this accommodation is or is found to be adequate for a particular case.

Therefore, the analysis of ‘reasonable accommodation’ requires that, every request for reasonable accommodation to be treated individually. This means that the institution affected makes an assessment whether there is opportunity to make accommodation for this case. In this manner, the reasonable accommodation is set in front of the question whether this constitutes “undue burden”.

Based on the briefly argued above, our opinion is that the paragraphs 7 and 9 of the article 3 of the Law “On protection from Discrimination” have no discriminatory character neither are incompatible with the Constitution.

<sup>37</sup> Z.H. v. Hungary; Jasinskis v. Latvia; Eweida and the others v. United Kingdom; R. P and the others v. United Kingdom.

<sup>38</sup> Chacon Navas v Eurest Colectividades SA (C-13/05)<sup>3</sup> (2006); HK Denmark v. Dansk almennyttigt Boligselskab C-335/11&C-337/11, (April 11, 2013); Case C411/05 Palacios de la Villa (2007).

<sup>39</sup> <http://www.eeoc.gov/policy/docs/accommodation.html>; <http://www.eeoc.gov/policy/docs/accommodation.html#requesting>

**OPINION OF THE BOARD OF EXPERTS FOR THE TREATMENT OF THE COMPLAINT SUBMITTED BY  
A.Ç AGAINST CEZ DISTRIBUTION IN WHICH THE COMPLAINANT HAS PRETENDED DISCRIMINATORY TREATMENT ON  
GROUNDS OF GENDER, PREGNANCY, MARITAL AND CIVIL STATUS.**

## **GENERAL CONSIDERATIONS**

The rights are not isolated. They have sometimes direct and other peripheral connection with each other and thus affect the quality of enjoyment of each other. Such is the relationship between the right to services and enjoyment of the right to adequate housing. If there is discrimination in supply of services related to house, then, automatically, the right of housing is violated. The house becomes uninhabitable and inappropriate.

The issues relating to discrimination in goods and services seems to not be evident in the international practice. In general, there is a lack of awareness and statistics related to them. Furthermore, related to the benefits and services in the public sector, there is a tendency of the lawyers to consider more the protective remedies in public law than to consider them as issues that regard the anti-discrimination legislation.

In many cases, the consumers do not perceive this as a wrong thing and that regards the different treatment between men and women but tend to see this as an example of the weak service rather than unfair discrimination. Consequently, in the future, it may happen that they, the consumers, will tend simply to establish relationships with another service that offers the same product and not to require proper legal protection in the context of anti-discrimination. *Thus, there is the risk to have a more strongly discrimination installed.*

The low number of cases means that *there are very few reported cases* of discrimination between men and women in goods and services<sup>40</sup>.

The right of housing and to have a suitable accommodation is included in the fundamental rights to an adequate and human standard of living. “The human right to adequate housing ... has a great importance for the enjoyment of all economic, social and cultural rights<sup>41</sup>”. The inhabitation is the place where everyone should feel safe, protected and cozy.

*An adequate housing* includes electric power and drinking water supply<sup>42</sup>. These are vital services. So the right of housing cannot be understood separated from the water and power supply. These are considered as basic standards, necessary to

<sup>40</sup> In the jurisprudence of ECR it is emphasized the case C-236/09 *Association belge des Consommateurs Test-Achats ASBL and Others v. Conseil des ministres*. In the jurisprudence of the United Kingdom the most known case is *James v Eastleigh Borough Council*, which regards the local authorities that offer concession fees for the pools on the basis of the retirement age. The net case is *Fill v Le Çino* that regards the refusal to serve to women in a bar if they do not seat at the tables but stay at the counter.

<sup>41</sup> The UN committee on the Economic, Social and Cultural Rights, *General Comment 4*.

<sup>42</sup> Regarding the right of adequate housing and situation in the level of the UN see: **UN SPECIAL RAPPORTEUR HOUSING REPORT 2012 - WOMEN & ADEQUATE HOUSING** in [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-53\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-53_en.pdf)



enjoy a normal human life. It is not possible to talk about these services as accessories of the main good, such as the inhabitation. The limiting or removing them automatically violates the right to adequate housing or residence by making the house ‘de facto’ uninhabitable. In a way such deprivation of the basic services is a kind of obligation to get the residents outside the apartment by using the indirect constriction and not the direct one. In our case, by using also ‘the standard clauses of the contracts’. It is a duty of the public authorities to ensure the housing to be adequate. This includes various measures such as not limiting and not interrupting the essential services such as water, electricity and telephone service supply.

When a marriage is solved, a series of personal and wealth consequences derive and are listed for the former spouses. Various studies reflect that the economic / property consequences of divorce vary, are different, according to the gender. The economic, social, housing, employment, etc., consequences of a woman are different if compared to those of a man. In this context different means deteriorated. While it should be emphasized that all legal efforts should be made not only to not distort some rights because of the marital status change, as despite the divorce they should be fully guaranteed as they regard the essence of fundamental freedoms and human rights. Among them is included the right of housing, the right to water and electric power supply.

So, the change in the marital status of the spouses can not affect the right to adequate housing and therefore closely related to the water and electric power supply. Starting from the importance of this right, the Family Code, has paid special attention and protection to the family residence in some provisions, regardless of the ownership, treating it in view of the interest of the children, and in the interest of the spouse who has installed a professional work area of considerable value and also depending on the type of divorce, such as the interruption of the common cohabitation<sup>43</sup>.

Other laws positively treat certain categories as regards the right of housing, including women who have divorced and who are head of family<sup>44</sup>.

The adequate housing remains an issue in the case of women without financial resources, unemployed women, women who have divorced and violated women as well as other vulnerable categories as the orphans, etc<sup>45</sup>.

## **IX. Circumstances of the case submitted to the Commissioner for Protection from Discrimination**

The case, in the name of the citizen A.C was submitted to the Commissioner for Protection from discrimination, by a request submitted by QNLQ, a non – profit organization operating in the issues of the protection of women rights from violence and discrimination.

The citizen A, civil status: divorced<sup>46</sup> since May 20, 2011, currently pregnant and mother of two children, of the previous marriage, under her care according to the judicial decision, reports to have time to time interruptions in the supply of water and

<sup>43</sup> See article 153 of the Family Code 2003, Article 153

<sup>44</sup> Law no. 9232/13.5.2004 “On the social programs of housing for the urban areas inhabitants”, actually modified with the law 54/2012 and which refers not only to the urban areas but to the whole territory of Albania, aims the constitution of possibilities to adequate and affordable housing, based in the solvency of the families that necessitate housing and government aid.

<sup>45</sup> See the report of Amnesty International [AI] for the 2012, part on Albania related to the right of housing [page 60 of the report] <http://www.amnesty.org/en/region/albania/report-2012#section-2-10>

<sup>46</sup> Decision no. 4184/ 20.05.2011 of the Judicial Court of the District of Tirana.

electric power starting from March 15, 2013. The citizen A.C has continuously lived in the family residence and has never left it. Since 2007 her former spouse has left the residence and the solution of marriage was effective in 2011. The continuous requests of the citizen A.C to water and electric power supply got negative answer or delayed answer by turning the house in a non-adequate place of inhabitation.

The applicant has pretended a discriminatory treatment by CEZ Shpërndarje SH.A Tirana and Water utility of Tirana regarding the interruption of the electric power and water supply, after the request submitted to those subjects by her former spouse, who was the contractor of the subjects in the quality of “familiar client”. The companies CEZ Shpërndarje sh.a and Water utility, after the receipt of this request for the suspension of the electric power and water supply, have automatically interrupted the service. The division of marital properties is reported to be still in litigation, while the demand of the former spouse to stipulate contracts for the electric power and water supply on her behalf was rejected by the subject.

So, it seems that those violations are aided by the legal provisions or bylaws or the practices generated by the institutions that offer services through standard contracts, which occasionally do not respond adequately to the various issues, new situations and to the dynamics dimensions of the protection of family, women and children, such as the aforementioned.

## LEGAL FRAMEWORK IN FORCE

The constitution, which guarantees special protection to the family, children and pregnant women [article 53 and 54] and sanctions the principle of non discrimination [article 18]

The Universal Declaration of Humans Rights in its article 25 includes the right of housing in the right of an adequate standard of living<sup>47</sup>;

The UN Covenant on Economic, Social and Cultural Rights in its article 11 (1), also guarantees the right of housing as part of the right of an adequate standard of living while in the article 12, it includes issues of the standards related to the health. About the right to water supply we can also mention the general comment no. 15 of this covenant.

The UN Convention on the Rights of the Child [CRC] in the articles 24/2/c defines the provision of drinking water in the frame of the health care.

The UN Convention for the elimination of discrimination against women **CEDAW**:

- **In the article 2** defines the obligation of the States Parties to avoid the discriminatory policies and to take all measures for the elimination of the discriminatory behaviors and abolishment of the discriminatory legislation (including the regulations, customs and practices);
- **In the article 14 paragraph 2/h** defines the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.
- **In the article 15 /1** defines the principle of equality before the law.

<sup>47</sup> Regarding the international legal frame on the right to water supply see: [http://www.un.org/waterforlifedecade/pdf\\_human\\_right\\_to\\_water\\_and\\_sanitation\\_milestones.pdf](http://www.un.org/waterforlifedecade/pdf_human_right_to_water_and_sanitation_milestones.pdf)

- **In the article 16** defines the obligation of the States Parties shall take all measures to eliminate discrimination against women in all matters relating to marriage and family relations

The European Social Card (reviewed) includes the article 31 on the right of housing / residence. This right is also found in the article 16 and 19(4) of the European Social Card as well as in the article 4 of the Additional Protocol of the Card<sup>48</sup>.

The Family Code: provisions regarding the right of housing (article 139) where, among the temporary measures, in the process of dissolution of marriage and when deemed reasonable from the court, it is listed also the provision of housing. We have already treated above the special status that the family residence has, which derives in limitations of extraordinary administration even from the owner and we have also mentioned the value of the article 153 of the family Code regarding the right of use of the family residence regardless of whose of the spouses property it is.

The law no. 9970, dated July 24, 2008, “On the Gender Equality in Society”, in the article 6 the discrimination on the ground of gender is prohibited.

The law no. 10221, dated February 04, 2010, “On Protection from Discrimination”, defines the prohibition of discrimination in the field of goods and services (article 20):

- a) by refusing to give a person or group of persons goods or services for the grounds mentioned in article 1 of this law;
- b) by refusing to offer a person goods or services in a similar manner, or with similar qualities, or in conditions similar to those in which the goods or services are offered to the public in general.

## CONCLUSIONS AND RECOMMENDATIONS

The access in the services of water and electric power supply to be appropriate should be referred in law, should be a reality and should be provided without any discrimination by all public and private subjects.

**We deem to be in front of direct discrimination** as the behaviors and failure to act of the institutions towards the continuous request to water and electric power supply are refused to a woman while their interruption is automatically realized under request of a man. In the absence of a definitive decision of the court and of the respective executive title regarding the ownership of the house and the exit of the former spouse and children from the marital residence, the electric power and water supply to the residence should not be interrupted. It is true that the marriage was solved in 2011, but the property pretences of the parts are still in process of litigation. Even by considering the request submitted by the former spouse for the interruption of the service of electric power supply by the CEZ, this request should have been respected up to the limits of his contractual liability regarding this service, after the dissolution of the marriage and his division from the family.

The refusal of the request of the former spouse by the CEZ to stipulate a new contract under her name, with the same conditions of the former spouse, presenting the respective guarantees on her solvency about the service, we deem that the pretences on unequal treatment between the two spouses is based.

From the other side, it is important to emphasize that the CEZ has not raised the same pretence of the formal recognition of the

<sup>48</sup> See: Digest Of The Case Law Of The European Committee Of Social Rights

spouse (husband) as subject *regarding the payment of the obligations for the service received by the CEZ*. During a period of several years the payment of the electric power is made by the spouse (wife) by signing the payment of the obligations in the respective booklet and invoice of electric power. In the conditions of the exclusive formal recognition of the rights of only one of the spouses to dispose regarding the benefit of the service, the liabilities for the financial aspect of the benefit should be attributed to the same subject. This makes even more unequal the treatments of the two former spouses. While the advanced state of pregnancy of the former spouse, which is made evident to the CEZ officials and the lack of prompt reaction to a situation in which the electric power and water are essential for the progress of the pregnancy, the health and the life of the woman and her two children under her care according to the Court decision, are also facts that can be observed as sensitive.

**It is our opinion that we are ahead of indirect discrimination** while seemingly the standard contract appears as neutral as regards the person who is the head of family, but on the other hand, it is known that in the Albanian reality, generally, the men cover this “role”.

The provisions of the standard contract of CEZ and Water utility contain a problem regarding the lack of exact definition of the term “family client” and then in its correct application.

For the categorization of an individual within the group “family client”, the family factors, at least the wife, should also find formal recognition in the standard contract.

*The beneficiaries of the service in the case of “family clients” are the individuals as well as their family.* In this sense, the contract has a lack in terms of giving the definition of its terms based on the application in a incomplete sense of the term. In fact, it seems that the CEZ authorities interpreted the term in the contrary to the very terminology of “family”, limiting the service only to the spouse who signs in this capacity as an individual and not as a family man.

The lack of exact definitions and of the relevant provisions regarding the concept of “family client” leads indirectly to the violation of the rights of the spouse and other family members to benefit from the service being provided to the common residence. We deem that the provisions of the standard contract should be regulated, at least regarding the definitions of the terms and conditions that must be accomplished, in order to avoid the risk of the raise of problems of unequal treatment.

Even according to the law “On protection from discrimination”: the “indirect discrimination” is that form of discrimination that occurs when a provision, criterion or practice, *apparently neutral*, would put a person or group of persons in unfavorable conditions, on the grounds of gender, compared to another person or group of persons, as well as when that provision, criterion or practice is not objectively justified by a legitimate aim, or the means for the achievement of that aim are not appropriate or not necessary and in proportion to the situation that has caused it.

**Starting from the abovementioned case and the competencies of the commissioner for Protection from Discrimination we suggest that except for the currently measures taken:**

- To promote the monitoring of access in some all inclusive services and then in other services that might affect a defined target group.
- To promote the monitoring of the aspects of adequate housing under the slogan: an adequate housing does not mean “four walls and a roof”.

- To realize a study on the impact of the standard contracts towards the gender perspective and other discriminatory grounds. In this manner the monitoring and analysis will focus in the not neutral impact of the contracts that seem neutral from the gender point of view<sup>49</sup>.
- With the aim of the harmonization of the legislation with the international standards to recommend to the competent authorities the modification or reforming of the existing legislation in order to give a definition in accordance with the international standards regarding the adequate housing as well as the inclusion in the types of standard contracts in order to protect the interests of the clients, independently from their marital status.
- In this context, the Commissioner for Protection from Discrimination except the examination of the complaint should perform administrative investigations and issue administrative sanctions as well as to undertake awareness initiatives of the bodies and citizens too regarding the respect of equality in the services.

### **AS CONCLUSION:**

When speaking of right of adequate housing, it is necessary for everybody, person or administrative or judicial body, to understand that this right is not the same with the right of property on the house, about which exists a disagreement.

The right to adequate housing is wider than the right of ownership and this right includes rights that do not derive from the title of ownership. This right has as purpose every person to have a safe place to live in peace and with dignity, and for this it is not mandatory to own the inhabitation. This right includes also the informal solutions of the disagreements. The right of adequate housing, as such, is not connected to an ownership title and should not be violated by the proceedings of conflicts solution. The recognition of the equality of the spouses even in the aspects of the personal and property relations is very important, in order to provide to the woman as spouse or former spouse a non discriminatory access to the adequate housing.