

**LEGAL PERSPECTIVE OF GENDER EQUALITY IN ALBANIA**  
*A PERSPECTIVA JURÍDICA DA EQUIDADE DE GÊNERO NA ALBÂNIA*

*Oriona Muçollari\**

**Abstract:** In Albania, the structure's patriarchal of society dominated gender relations in the private sphere. During the communist era, the Albanian state imposed another structure in the public sphere, which promoted parity opportunities between men and women in education and the labor market. Thus, women could assume important positions in the sphere of public life. However, women of the communist regime also incumbent on the family management responsibility, and especially the children. Socioeconomic transformations in the course of the nineties did reemerge gender stereotypes and old patriarchal structures. So, currently, is opened Albania the debate about policies of inclusion and protection of women's rights in order to promote a culture of rights attentive to gender issues.

**Keywords:** Genre. Rights of women. Balance. Right to equality. Non-discrimination. Quotas.

**Resumo:** Na Albânia, a estrutura patriarcal da sociedade dominou as relações de gênero na esfera privada. Durante a era comunista, o Estado albanês impôs uma outra estrutura na esfera pública, que promoveu oportunidades paritárias entre homens e mulheres em matéria de educação e mercado de trabalho. Deste modo, as mulheres puderam assumir posições importantes também na esfera da vida pública. Todavia, às mulheres do regime comunista incumbia também a responsabilidade da gestão da família e, sobretudo, dos filhos. As transformações socioeconômicas no curso dos anos noventa fizeram reemergir os estereótipos de gênero e velhas estruturas patriarcais. Por isso, atualmente, encontra-se aberto na Albânia o debate sobre políticas de inclusão e de tutela dos direitos das mulheres, no sentido da promoção de uma cultura de direitos atenta às questões de gênero.

**Palavras-chave:** Gênero. Direito das mulheres. Equilíbrio. Direito à igualdade. Não discriminação. Cotas.

---

\* Professora Doutora da Universidade de Tirana, Faculdade de Direito, Departamento Público. E-mail: tildamia@yahoo.it; oriona.muçollari@unitir.edu.al

## 1 INTRODUCTION

Gender equality means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life. Gender equality is the opposite of gender inequality, not of gender difference<sup>1</sup>. The Council of Europe's work in the field of gender equality is based on two premises: gender equality is an integral part of human rights and gender equality is a fundamental criterion of democracy. The legal status of women in Europe has undoubtedly improved over the last thirty years, but effective gender equality is still far from being reality. In the general perspective of protecting and promoting human rights, the Council of Europe seeks to combat any interference with women's liberty and dignity, eliminate discrimination based on sex, promote a balanced participation of women and men in political and public life and encourage the integration of a gender perspective in all programs and policies. Given its primary concerns, any discrimination on the grounds of sex will directly undermine the values on which the Council of Europe is based and therefore it is logical that finding solutions to this problem and promoting gender equality has been a priority for that organization since its foundation. The EU Strategy for equality between women and men 2010-2015<sup>2</sup> spells out actions under five priority areas and one area addressing cross-cutting issues. The actions proposed follow the dual approach of gender mainstreaming, i.e. integration of gender equality goals into all policy areas, and implementation of specific measures.

The principle of equality between women and men as an integral part of human rights is reflected in the prohibition of discrimination based on sex contained in Article 14 of the European Convention on Human Rights (ECHR) of 1950 and its Protocol No. 12, which entered into force in April 2005<sup>3</sup>. Protocol No.12 of the ECHR is an important instrument for achieving equality between women and men because it secures a general prohibition on discrimination by any public authority, in particular on the grounds of sex, regarding the enjoyment of any right set forth by law and not only rights and freedoms of the ECHR.

The issue of the elimination of discrimination against women is considered as one of the foundation stones of democracy in Albania. Elimination of discrimination and promotion of gender equality are integral components of primary importance in the package of

human/women's fundamental rights and freedoms and a mandatory standard to meet for the country's European integration. Gender equality is also a fundamental right and value in all the EU countries. In the context of its EU integration, Albania has been looking into gender discrimination and other issues<sup>4</sup>.

## 2 LEGAL FRAMEWORK OF GENDER EQUALITY

Albania ratified the CEDAW Convention in 1993<sup>5</sup>, while its Optional Protocol adopted by the General Assembly in its 54<sup>th</sup> Session on 6 October 1999, which entered in force on 22 December 2000, was ratified in Albania a few years later, in 2003<sup>6</sup>. Pursuant to the Constitution of the Republic of Albania<sup>7</sup>, "Any international agreement that has been ratified constitutes part of the internal juridical system after it has been published in the Official Journal of the Republic of Albania". The official CEDAW text was first published in the Official Gazette about 15 years after its ratification. This happened on 15 October 2008 in Official Gazette No. 33 (a supplemental edition – for unpublished acts). Therefore, from 1993, the year of its ratification, CEDAW officially became an integral part of the juridical system in the country only on 30 October 2008 (i.e. fifteen days after publication in the Official Gazette)<sup>8</sup>.

The recognition, ratification, and implementation of the CEDAW Convention have made a tangible contribution towards gender and substantive equality between men and women. It has to be pointed out, however, that the practical implementation of these instruments in Albania is still limited.

It has to be admitted that Albania has readily signed and ratified a series of international and regional instruments on the protection and observation of human/women's rights. This is undoubtedly a very positive indicator because it directly affects the "disciplining", of domestic legislation provisions, by making sure that minimum standards are at least respected *de jure*.

**Constitution of Republic of Albania** (1998) it does not have a specific definition of equality between men and women however in general it can guarantee this impartiality. Article 18 forbids any kind of discrimination based on gender, Article 18 states that: a) all are equal before the law, 2) no one may be discriminated unjustly for reasons of gender, race, religion, ethnicity,

language, political, religious and philosophical beliefs, economic, education, or social situation and parental situation, 3) no one may be discriminated against for reasons mentioned in paragraph 2, if reasonable and objective legal grounds do not exist.

**The Civil Code** (approved on 03.05.2001, Law No. 8781) recognizes equal rights in all legal proceedings, such as the right to fair trial. The Civil Code states that all individuals possess skills to act when 18 years old and since that moment she/he can freely execute any juridical act. The Civil Code, banking legislation and other laws use impartial language related to gender issues, such as “every person”, “parties”, “physical person” etc. In other sections the law uses male gender terms such as “creditor” or the term “owner”. The use of this language is evident in other laws as well.

**The Penal Code** (approved on 21.03.1995, Law No. 7905) ensures equality between men and women in all areas of life, health, ownership, and dignity. Women receive the same punishment as men for the same offences.

**The Labor Code** (approved on 12.07.1995, Law no. 7961) contains a more detailed definition of discrimination in employment relations, whereas during the years 2003-2007, there was no legislative initiative recorded to review the respective definition in the Labor Code regarding gender balance. Article 9, paragraph 1 of the Labor Code prohibits all forms of discrimination in work and professional life, while paragraph 2 of this article defines discrimination in employment relations, pursuant to which, “Discrimination is the distinction, exclusion, or preference made on the basis of race, color, sex, age, faith, political opinion, ethnic belonging, or social origin, physical or mental impairment that infringe the right of the individual to be equal in employment and training”.

**The Family Code** (approved on 08.05.2003, Law No. 9062, enacted at the beginning of 2004) is one of the most important laws concerning family rights, in order to eliminate the discrimination of women in issues that deal with marriage and family relations. The Family Code envisions equal rights regarding the age of marriage being 18 years old for men and women, as well as reciprocal rights and duties in the family and for the education and upbringing of children. The Code states that the equal rights of the spouses to customary or common

administration of mutual properties and the right to resolve property status without limitations based on gender. Article 74 of the Family Code states that: The marital estate consists of:

- a) the wealth obtained by the spouses, together or separately, during the marriage;
- b) income from specific activities of each spouse during the marriage, which were not consumed, before the termination of joint ownership<sup>10</sup>;
- c) profits from the properties of each spouse, which have been acquired and not consumed before the termination of joint ownership;
- d) trade activity created during matrimony.

As regards to the rights and obligation that parents have to children the Family Code treats both spouses equally.

**The Electoral Code** (adopted on November 29, 2008, No. 10019). The new electoral code finally sanctioned the application of gender representation quotas in the multi name lists of political parties for the general elections. Furthermore, the Code attempts to establish a listing of the sexes as follows in Article 65: for every electoral zone, at least thirty percent of the multi name list and/or one of the three first names in the multi name list should belong to one of the sexes. It should be emphasized that the inclusion of the words “and/or” gives the parties the opportunity to not observe the listing of one of the first three names, but only observe the 30% minimum in the entire multi name list. Unlike the Law on Gender Equality, No. 9970, the Electoral Code includes a strengthening of the sanction for failure to observe Article 65, item 5. Article 175 of the Electoral Code notes: failure to meet one of the conditions envisioned in article 67, with regard to the makeup of the multi name list for elections to the Assembly, as a result leads to the CEC’s rejection of the list.

**The Law on Measures Against Domestic Violence** (No. 9669 approved in June 2007) represents one of the most successful initiatives for bringing Albanian legislation in line with international standards, in the area of legislation against domestic violence. The law is an essential part of Albanian anti-discrimination legislation, drafted in the process of implementing different compulsory international acts, such as CEDAW, or other acts approved by the

European Union. The law was presented to Parliament following a petition signed by 20,000 Albanian citizens.

**The Law on Gender Equality in the Society** (No. 9970, approved by the Albanian Assembly on 24.07.2008). The law completes in a visible manner the legal framework on gender equality in Albania and, for the first time, includes the application of a minimal representation quota for each of the sexes (30 percent) in the multi-name lists of candidates for members of parliament in general elections<sup>11</sup>.

The purpose of the law, as expressed in Article 2, is to: a) ensure effective protection against discrimination due to gender and any form of behavior that encourages gender based discrimination; b) determine measures for guaranteeing equal opportunities, between women and men, to eliminate gender based discrimination, in any form it may appear; c) determine the responsibilities of state authorities, national and local, to draft and implement normative acts as well as policies that support the development and encouragement of gender equality in society. The novelties of this law deal with the introduction of new definitions: gender based discrimination, gender mainstreaming, equal gender representation of 30 percent, the definition and allowance as non discriminatory of special temporary measures, the creation of new policy making, executing, and protective structures such as the National Gender Equality Council, gender employees at ministries and local employees on gender issues, the inclusion of special temporary measures on political and public decision making (expressed through the 30 percent quota). Concerning education and employment; the introduction of the concept and recognition of unpaid work, which is presently becoming increasingly one of the main themes regarding gender equality in many countries of the world; as well as the obligation to determine gender statistics and gender indicators in all areas. With regard to the inclusion in the multi name lists of candidates for members of parliament, it is noted: no less than 30 percent of each of the sexes shall be included in the list of candidates presented by the political parties in the proportional system for the elections to the Assembly of the Republic of Albania.

Furthermore, the law determines the sanction for parties that fail to respect this legal obligation: political parties pay a fine of up to one tenth of the state fund for their campaign financing, if they violate the provisions of this law, until the violation is corrected. This sanction

is one of the items debated in discussions about the Electoral Code, considering also that it is one of the things that will change after discussions in the Special Commission for the approval of the Code.

**The Law On Health and Safety at Work** (No. 10237/18.2.2010) which brings issues such as the protection of pregnant and lactating women from hazardous substances, hard working conditions more inline with CEDAW and EU standards<sup>12</sup>.

**The Law “For the protection from the discrimination** (4.2.2010), which protects Albanians from a number of forms of discrimination, including on the grounds of sexual orientation and gender identity. Article 1 of the law, which outlines the law's objective, states: “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, restricted ability, affiliation with a particular group or for any other reason”.

The law outlines detailed provisions for the protection from discrimination in employment, in education, and in the field of goods and service. The law establishes an independent, state funded Commissioner for Protection from Discrimination who "assures the effective protection from discrimination and from every other form of conduct that incites discrimination".

### 3 CONCLUSIONS

During the last years different positive changes have happened in the Albania legislation aimed at advancing the situation of women and eliminating discrimination based on sex and gender, as well as those aimed at multiple and intersecting forms of discrimination against women.

Some of the failures are related to the fact that development and progress are necessarily open ended processes and just like in any other country, in Albania too, there is room for hailing achievements, but also for assigning responsibilities. Some of the failures are related to inadequate measures taken by the government. Other failures are related to the specific nature of

prevailing stereotypes in Albania. Their elimination will require more time and investment. Some of them could be eliminated, if the civil society were more persistent and more aware of its role, while at the same time urging the government to play its own crucial role<sup>13</sup>.

Although it can be safely said that the civil society, being an integral part of the Albanian society, has played an active role in the fight for the elimination of discrimination against women and promotion of gender equality, it also feels responsible for the failure to achieve the required results. With this in mind, the suggestions and criticisms are of a constructive, rational and comprehensive nature and part of them are also addressed to the civil society, while also emphasizing the importance of more support from the State.

State should continue raising awareness of the importance of education for the empowerment of women and that it take concrete comprehensive measures to overcome traditional attitudes and other obstacles to the education of girls and women. The State should intensify efforts to promote the access of girls and women living in rural or remote areas, including minority girls and women, to education and their retention at all levels of education. The State should enhance temporary special measures currently in place in the form of quotas, in order to ensure the representation of women in high-level positions in Universities and other educational institutions.

State should continue its efforts to address gender stereotypes that perpetuate discrimination against women. It is a duty of State to strengthen targeted educational programs, including initial and in service training programs for teachers at all levels of the educational system, and to develop a more comprehensive and wide ranging strategy across all sectors to eliminate stereotypes, working with a broad range of stakeholders, including women's and other civil society organizations, the media and the private sector, and specifically targeting rural areas and the minority communities in respect of family relations.

The State, while respecting the independence of the media and the right to freedom of expression, encourage the media to project positive non stereotyped images of women and of their equal status and role in the private and public spheres. The State should take concrete steps to eliminate customary laws and traditions that discriminate against women<sup>14</sup>.



## NOTES

- <sup>1</sup> Information document prepared by the Gender Equality and Anti-Trafficking Division of the Directorate General of Human Rights and Legal Affairs of Council of Europe; <https://wcd.coe.int>
- <sup>2</sup> [Http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/em0037\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/em0037_en.htm)
- <sup>3</sup> ECHR enter into force in Albania by Law 8137, on 31.07.1996, published on Official Gazette 12.08.1996. The Protocol No.12 enters into force in Albania by Law 9264, on 29.07.2004, published on Official Gazette 16.08.2004.
- <sup>4</sup> Articles 77 and 99 of the Stabilization and Association Agreement (SAA) provide Albania's obligations with regard to ensuring equal employment opportunities, and especially the provision of adequate health and safety standards in the workplace. As far as working conditions are concerned, the aim is to align the Albanian body of legislation to EU's *acquis communautaire* with regard to guaranteeing equal opportunities for women
- <sup>5</sup> Law 1769 of 9.11.1993
- <sup>6</sup> Law 9052 of 17.4.2003
- <sup>7</sup> Article 122/1
- <sup>8</sup> Shadow report on the implementation of the CEDAW Convention in Albania. NGO Shadow Report to the UN CEDAW Committee. June 2010, from Prof. Dr. Aurela Anastasi, Prof. Dr. Arta Mandro-Balili, Ms. Mirela Arqimandriti and Ms. Vera Lesko in the period from February 2010 to May 2010.
- <sup>9</sup> See ILO Convention provisions, No. 111
- <sup>10</sup> Law No.9062, dt.08.05.2003, Article 74
- <sup>11</sup> <http://www.jica.go.jp/activities/issues/gender/pdf/e10alb.pdf> Albania Country Report, February 2010
- <sup>12</sup> See Directive 92/85 of the CEE "On the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding".
- <sup>13</sup> Prof. Asoc. Oriona Mucollari, Country Report on Gender Equality, Case of Albania, SEELS Conference, "Legal Perspectives of Gender Equality in South East Europe", Law Faculty Sarajevo, Bosnia and Herzegovina, 24-25 September 2012.
- <sup>14</sup> Concluding observations of the Committee on the Elimination of the Discrimination against Women in Albania. Forty-sixth session 12-13 July 2010.

## REFERENCES

### Legislation:

1. Constitution of Republic of Albania (1998).
2. ECHR enter into force in Albania by Law 8137, on 31.07.1996, published on Official Gazette 12.08.1996.
3. The Protocol No.12 enter into force in Albania by Law 9264, on 29.07.2004, published on Official Gazette 16.08.2004.
4. Stabilization and Association Agreement (SAA)
5. CEDAW Convention ratified by *Law 1769 of 9.11.1993*.
6. ILO Convention.
7. Directive 92/85 of the CEE “On the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding”.
8. The Family Code approved on 08.05.2003, Law No. 9062.
9. The Albanian Civil Code approved on 03.05.2001, Law No. 8781
10. The Albanian Penal Code approved on 21.03.1995, Law No. 7905.
11. The Albanian Labor Code approved on 12.07.1995 Law no. 7961.
12. The Albanian Family Code approved on 08.05.2003, Law No. 9062.
13. The Albanian Electoral Code approved on November 29, 2008, Nr 10019.
14. National Strategy for Gender Equality and Domestic Violence (2011-2015).
15. Council of Ministers Decision, No. 415, dated 01.07.1998.
16. The Law on Measures Against Domestic Violence (2007), No. 9669.
17. The Law on Gender Equality in the Society, no. 9970, on 24.07.2008.
18. The Law “On Health and Safety at Work” No. 10237/18.2.2010.
19. The Law “ For the protection from the discrimination”, date 4.2.2010

**Materials, Reports, Articles:**

1. Prof. Asoc. Oriona Mucollari, Country Report on Gender Equality, Case of Albania, SEELS Conference, "Legal Perspectives of Gender Equality in South East Europe", Law Faculty Sarajevo, Bosnia and Herzegovina, 24-25 September 2012.
2. Census 2011, Albania Preliminary Results of the Population and Housing; [www.instat.gov.al](http://www.instat.gov.al).
3. Information document prepared by the Gender Equality and Anti-Trafficking Division of the Directorate General of Human Rights and Legal Affairs of Council of Europe; <https://wcd.coe.int>.
4. [Http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/em0037\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/em0037_en.htm).
5. Shadow report on the implementation of the CEDAW Convention in Albania. NGO Shadow Report to the UN CEDAW Committee. June 2010, from Prof. Dr. Aurela Anastasi, Prof. Dr. Arta Mandro-Balili, Ms. Mirela Arqimandriti and Ms. Vera Lesko in the period from February 2010 to May 2010.
6. Albania Country Report, February 2010. <http://www.jica.go.jp/activities/issues/gender/pdf/e10alb.pdf>

Recebido: 20/11/2014  
Aprovado: 10/03/2015

