



Komisioneri për Mbrojtjen
nga Diskriminimi

Commissioner for Protection
from Discrimination

ANNUAL REPORT

2014

Commissioner for Protection from Discrimination



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INTRODUCTION

Opening Address by the Commissioner

**Honourable Mr Speaker of the Assembly of Albania,
Honourable Members of Parliament,**

Today we are submitting to the People's Assembly of Albania our 2014 Annual Report, fully conscious of the great responsibility that the Commissioner for Protection from Discrimination has as the key institution working to ensure effective protection from discrimination and from behaviours promoting it.

The goal of the activities carried out by the Commissioner's Office was to contribute to the enhancement of Albania's intensive democratisation and integration processes and to ensure an effective exercise of the Commissioner's powers pursuant to the law.

The preparation of the present report stems from the legal obligation of the Commissioner for Protection against Discrimination under Article 26 of the Law On Protection from Discrimination, which explicitly provides that *"The Commissioner shall submit a report to the standing committees of the Assembly at least once a year. The Report shall contain an analysis of the implementation of the law in general and of the work of the Commissioner and the Commissioner's Office"*.

The content of the report is governed by the Mission and Objectives of the Commissioner's Office, as outlined in the *"2012-2015 Strategic Plan and the 2013 Action Plan of the Commissioner for Protection against Discrimination"* and the 2014 recommendations of the People's Assembly of Albania.

I am grateful for Your understanding,

THE COMMISSIONER

Irma BARAKU

As an independent institution whose obligations are directly derived from the Constitution and the Law, the CPD holds that effective protection of each and every individual's right to equality and their protection from discrimination are priorities of paramount importance in its work and key factors in the progress of the Albanian state towards integration in the European Union.

Of great importance to the work of the institution has been the close collaboration with various non-profit organisations involved in the protection of human rights, particularly the rights of vulnerable groups, as well as the collaboration with a number of various central and local government bodies, the media and the general public.

During 2014, as in the previous years, the work and activity of the CPD were based on the legislation in force, the 2012-2015 Strategic Plan, the 2014 Action Plan, and recommendations of the Albanian Parliament on CPD activities for 2014. The 2012-2015 Strategic Plan is a key instrument in the work of the CPD. It clearly defines objectives for the CPD and for other key institutions involved in the implementation of this strategy.

The evaluation and recommendations of the Parliamentary Standing Committee on Labour, Social Affairs, and Health, in their Draft-Resolution on the Evaluation of the Work of the Commissioner for Protection from Discrimination in 2013 and Recommendations for 2014, served as guidelines for the institution's further work in ensuring ensure equality and effective protection from discrimination and from any form of behaviour promoting discrimination.

In the context of the fulfilment of the obligations deriving from Key Priority 5, The Commissioner for Protection against Discrimination, took a number of measures to:

First, provide qualified assistance to victims of discrimination, by providing training to various stakeholders, including:

- Continuous training of the CPD staff on the handling of discrimination cases, based on the Strasbourg jurisprudence and in the spirit and principles of the European Court of Justice;
- Training of judges from First Instance Courts in 5 (five) districts of Albania;
- Training of civil servants from local administration units on the equal and non-discriminatory treatment of citizens;
- Training of representatives from Chambers of Commerce;
- Training of NPO-s on the identification of instances of discrimination and on ways and means to provide support for victims of discriminatory behaviours.

The direct outcome of these training activities was an increase in the number of complaints filed with the CPD and in the number of strategic discrimination-related decisions made (for instance, discrimination in the form of hate speech against the LGBT community, discrimination in the form of victimization on grounds of pregnancy, employment, education and discrimination in the provision of services); a full exercise of all the powers granted to the institution of the Commissioner by the relevant legislation; an increase in the number of cases handled by the courts, in the number of judgments on discrimination cases, and requests for the Commissioner's written opinion or attendance at court proceedings as a third party.

Second, raise the awareness of the society in general and of specific social groups, by:

- Developing and publishing information and awareness-raising materials on the Law on Protection from Discrimination, such as manuals, brochures and leaflets;
- Preparing and disseminating information materials throughout the territory of Albania (the signing of the collaboration agreement with the Albanian Post service has improved the provision of information in the rural areas);
- Carrying out awareness-raising campaigns in 9-year schools and health centres;
- Holding open lectures with students.

Third, provide legislative recommendations. The Commissioner aims to contribute to the alignment of the existing legislation (Criminal Code, Labour Code, Family Code, Civil Procedure Code and Electoral Code, Law 9355 "On Social Assistance and Social Services") with the provisions of the law "On Protection from Discrimination," primarily in relation to:

- Prohibited grounds of discrimination;
- Forms of discrimination;
- Distribution of the burden of proof.

GENERAL REMARKS

- » In the reporting period, the CPD has paid special attention to the promotion of the principles of equality and non-discrimination, by making use of several instruments for the purpose of raising public awareness and increasing identification rates of claims or complaints. The contributions made by the CPD staff by appearing in the print and electronic media, organising workshops, roundtables, seminars and conferences, holding Open Days, strengthening of collaboration with non-profit organisations, local and central government bodies, universities and other stakeholders, have opened up new avenues and possibilities for the CPD to further raise public awareness about equality and non-discrimination. In addition, there has been a considerable increase in the number of awareness-raising activities, the level of familiarisation of the public with the legal remedies available, provision of information on the role of the CPD and of the courts, and the number of complaints filed with our institution. Awareness raising meetings will continue to be held in the future, in collaboration with national and international organisations.
- » The CPD is of the opinion that the monitoring the implementation of the Law on Protection from Discrimination is of paramount importance. In 2014, the Commissioner began monitoring employment practices in the private sector, focussing primarily on the access of vulnerable groups to employment. The Commissioner also paid special attention to the monitoring of court decisions in the area of non-discrimination. The results of these monitoring activities will be used as important advocacy instruments by the CPD in the following year.
- » Special attention has been paid to the publication of CPD decisions and other publications, with a view to providing the community with more information on discrimination situations and the means employed to address and rectify them. The official site of the institution, which is regularly enriched with updated information, aims to provide better access to the public and to ensure on-going, real-time communication between the institution and the citizens.
- » During 2014, the number of complaints lodged with the CPD, in relation to protection from discrimination issues increased. Race, political convictions, economic situation, health status, and disability are some of the main grounds raised with the Commissioner for Protection from Discrimination.
- » The CPD deems as very important and welcomes the increasing role of non-profit organisations working with vulnerable groups, such as children, women, members of the Roma and Egyptian communities, as these organisations are invaluable sources of information for the CPD. Similarly, the media must strengthen their active role, with a view to identifying situations that may give rise to discrimination against members of various groups at the national level. Although the provisions of Law No.10221 of 4.2.2010, On Protection from Discrimination, stipulate that organisations with legitimate interest may file discrimination complaints on behalf of a vulnerable person or group of persons, the number of claims filed by such organisations accounts for only 6% of the total claims filed with the CPD.

- » We note that the role of non-profit organisations involved in protecting the rights of the Roma and Egyptian communities on an equal basis and without discrimination, has increased. Based on the complaints filed by representatives of the Roma community, we note that members of this community mostly complain of being discriminated in areas such as employment, housing, education, welfare benefits and services.
- » Complaints claiming discrimination on grounds of disability were mostly to do with denial of reasonable adjustments, provision of goods and services, failure to apply the legislation in relation to the reimbursement of higher education tuition fees, and problems with inclusion of disabled children in mainstream education.
- » One of the main areas of gender-based discrimination claims relates to the failure of public institutions to observe the right of individuals to access to goods and services. However, we note that the number of these gender-based discrimination claims is generally low compared to other claimed grounds of discrimination.
- » During 2014, the CPD made efforts to keep to the legal deadlines of administrative investigation proceedings in the examination of claims. Special attention has been given to expanding the collection of data and information from the central and local public bodies and private entities.
- » The CPD has carried out on-going consultations with a view to determining the needs for amendments to Law No. 10221 of 4.2.2010, On Protection from Discrimination. These consultations focused on the problems identified in the implementation of the anti-discrimination law on the ground.
- » A number of legislative recommendations have been drafted and sent for examination with a view to further improving legal mechanisms, harmonising the domestic body of legislation with Law On Protection from Discrimination, and their alignment with international legislation in the area of non-discrimination. These legislative amendments aim to improve the Criminal Code of the Republic of Albania, the Criminal Procedure Code, the Civil Procedure Code, the Administrative Procedures' Code, The Labour Code, the Electoral Code, the Family Code, etc.
- » The organisation of awareness-raising, training, and other types of events activities with various actors and stakeholders has helped promote the best practices of the CPD in addressing discrimination on various grounds.
- » During 2014 the CPD staff have taken part in various activities, which aimed to increase their capacities in handling claims of discrimination on various grounds, the implementation of the anti-discrimination law, and in monitoring the implementation of the legislation.
- » In order to strengthen the collaboration between the CPD and other institutions, the CPD has signed a number of collaboration agreements with government bodies, civil society and international organisations and has organised several joint events with these organisations.
- » The CPD has carried out research studies on special groups, such as the LGBT, the Roma etc.
- » The CPD has played an important role by contributing to the preparation of various reports, including the report on the implementation of the CEDAW Convention in Albania, the 2014 Progress Report, etc.

CHAPTER I

AN OVERVIEW ON THE DISCRIMINATION SITUATION IN ALBANIA

I.1. Development of a Legal Framework to Ensure Equality and Non-Discrimination in Albania

The Constitution of the Republic of Albania sanctions the principles of equality and non-discrimination. Article 18 stipulates, “*all are equal before the law and no one shall be unjustly discriminated on grounds such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic, education, and social status or parentage*”.

Albania is a signatory party to international instruments for the protection of human rights and non-discrimination. International norms have a paramount influence on the legal system and national policies of our state. Their place in relation to the national legislation in force, as stipulated in the Constitution of the Republic of Albania, provides us with the opportunity to refer to important international documents in the practice of our institution. In the legislative and other types of recommendations, as well as the decisions made pursuant to more the examination of discrimination claims, annual reports and special reports, the CPD always makes reference to the international acts ratified by the Albanian state.

In 2014, the legal framework in the areas of equality and non-discrimination saw several developments, outlined in the next section of this report:

The Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence¹ was ratified by Albania in 2012. By adopting Law No. 104/2012, “On the Ratification of the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence”, the Albanian state demonstrated its willingness to complete the legal framework addressing domestic violence and to meet the obligations stemming from the Convention. The convention entered into force on 1 August 2014.

The Convention regards domestic violence as one of the gravest forms of human rights violations. The Convention recognises domestic violence as an expression of the historically unequal power relations between men and women. The Convention applies to all forms of violence against women, including domestic violence, which affects women disproportionately. Prevention and protection of women from all forms of violence, prosecution of perpetrators, elimination of violence against women and domestic violence, elimination of all forms of discrimination against women as well as the promotion of genuine equality between men and women, are some of the main pillars of this international document.

¹ Law No. 104/2012, “On the Ratification of the Council of Europe Convention ‘On Preventing and Combatting Violence against Women and Domestic Violence’”. This Convention has not yet entered in force because two additional ratifications are needed.

The Convention sets out several important obligations, including: the victims' right to information, provision of support services (both general services and specialised ones tailored to each victim's needs), ensuring that the provision of services shall not depend on the victim's willingness to press charges or to testify against the perpetrator of a criminal offence, the establishment of adequate shelters that are easily accessible and in sufficient numbers, the right of victims of violence to compensation, ensuring the right to free legal aid, etc. The Convention envisages a number of interventions both in relation to the legal framework addressing violence against women and domestic violence, and in relation to the enforcement of such legislation.

» **Framework Law No. 93/2014, "On the Inclusion of and Accessibility for Persons with Disabilities"**

Framework law No. 93/2014, On the Inclusion of and Accessibility for Persons with Disabilities, aims to provide protection to persons with disabilities, with a view to ensuring a full and effective participation of disabled people in all spheres of society, on an equal footing with others. In addition, the law defines the responsibilities of the relevant public and non-public bodies to enable disabled persons' equal participation in society.

The law defines key terms such as "persons with disabilities", "denial of reasonable adjustment/accommodation", also recognised as a form of discrimination in Law 10221 of 4.2.2010, On Protection from Discrimination, "organisation of persons with disabilities", "organisation for persons with disabilities", "accessibility", "inclusion" etc. In addition, the definition of persons with disabilities is in line with the meaning of discrimination under Article 3, "Definitions" of Law No. 10221 of 4.2.2010, On Protection from Discrimination.

The law introduces some new disability-related concepts in the domestic legislation, such as "independent living", "supported decision-making", etc. The law defines the responsible institutions and their duties pursuant to the law: the National Disability Council, the minister in charge of disability issues, and state bodies at the central and local level. The officials dealing with disability matters at the central and local level, and non-profit organisations, are some of the institutions responsible for its implementation.

The law provides for the establishment of multi-disciplinary commissions for the assessment of disability and of the need for support and assistance.

Non-discrimination and equality, including gender equality, are two of the key principles on which this law is based.

This framework law is expected to guide improvements to the domestic legislation in line with the standards of the Convention on the Rights of People with Disabilities. The law stipulates that the CPD and the People's Advocate are the institutions in charge of monitoring the implementation of this Convention.

» **Law No. 40/2014, "On some Additions and Amendments to Law No. 8328 of 16.4.1998, On the Rights and Treatment of Sentenced and Detained Persons"**

Law No. 40/2014, "On Some Additions and Amendments to Law No. 8328 of 16.4.1998, On the Rights and Treatment of Sentenced and Detained Persons", as amended, provides for the treatment with dignity, fairness and without discrimination of detained and sentenced persons, detained and sentenced women, detained and sentenced people with mental health problems, and detained and sentenced people with disabilities.

These changes require the prevention of any gender-based acts of violence that may cause physical, sexual, or psychological harm, suffering, or any other form of abuse or ill treatment of detained and sentenced women.

In line with the legislation on gender equality and non-discrimination, the law provides that the special measures whose implementation is necessary in relation to certain groups of detained and sentenced people shall not be regarded discrimination.

Protection and support measures, and legal advice aiming at rehabilitation, are offered to detained and sentenced persons who have had experiences of exposure to various forms of violence, before or during their stay at the institution.

With these changes to the law, the treatment of detained and sentenced people is oriented towards individualised rehabilitation and re-integration, according to individual need. Special cultural programmes shall be put in place for the benefit of detained and sentenced persons from ethnic and linguistic minorities, as well as of foreigners and stateless persons.

In the institutions for the enforcement of criminal judgements (correctional facilities) health care services are provided without discrimination. The law prohibits discrimination against institutionalised persons on grounds of their legal status or on any other grounds.

» **Law No. 77/2014, "On Some Additions and Amendments to Law No. 10039 of 22.12.2008, On Legal Aid", as amended**

With these changes, the legislators have expanded the number of individuals eligible to claim legal aid, including a) Albanian nationals resident in the territory of the Republic of Albania; b) foreign nationals whose eligibility stems from the reciprocity principle; c) stateless persons in possession of a permit to stay pursuant to the legislation in force; d) persons who are foreign nationals or stateless persons who apply for leave to remain or asylum, or who are in the process of appealing any administrative and/or court decisions refusing them leave to remain, or asylum.

Some of the criteria assessed by the National Legal Aid Council are: sufficiency of financial means by the individual or their dependants, family composition, social status, eligibility for social protection programmes and schemes, or meeting the criteria to for being included in such programmes, or any other circumstances placing the individual in a position whereby he/she is not able to privately afford legal assistance.

One very important provision is that of Article 16 "Submitting an application and relevant documentation for claiming legal aid", according to which persons claiming to be part of social protection programmes, and minors, are exempted from the obligation to submit

supporting documentation. In these cases, the State Legal Aid Commission collaborates with the institutions in charge of providing the necessary documentation. Exemption from the obligation to submit supporting documentation facilitates access of vulnerable groups to the justice system. This article provides that, where the provision of legal aid is a matter of urgency, the checking of eligibility criteria may be done at a later time and legal aid is granted immediately.

These changes constitute important developments in ensuring the right to free legal aid.

» **Law No. 47/2014, "On Some Additions and Amendments to Law No. 9355 of 10.3.2005, On Social Assistance and Social Services", as amended**

This law provides that the application for claiming social benefits shall be made in writing by: a) the head of the household, or another other adult member of the family; b) either of the spouses, where they are in the process of the dissolution of marriage and the court has not as yet pronounced a final decision.

Article 41/1 of this law provides the right to file an appeal against a social benefits decision with the head of the relevant local government body and, where the applicant deems that the decision made is unfair, an appeal may be submitted in writing to the director of the regional office of the State Social Service.

» **Law No. 104/2014, "On some Amendments and Additions to Law No. 7703 of 11.5.1993, On Social Insurance in the Republic of Albania", as amended**

This law provides that any citizens of or over 70 years of age, who have been residing in Albania for at least the past five years, who are not eligible to receive a pension under the mandatory social security schemes, and who do not have an income, or the income they receive from other sources are lower than the income provided under the social pension, are eligible to receive social pension.

The law provides that, "Unpaid workers in the family/household, who work and cohabit with a self-employed person, shall pay maternity and pension contributions calculated on the basis of the national minimum wage".

In addition, the law provides that insured fathers or adoptive fathers are also entitled to leave of absence in order to care for a child, where the mother does not, or is incapable of exercising this right.

» **Law No.120/2014, "On Some Amendments and Additions to Law No. 9887 of 10.3.2008, On the Protection of Personal Data", as amended**

This law changes the title of the position from "Personal Data Protection Commissioner" to "Commissioner for the Right to Information and Protection of Personal Data".

This law defines the powers and responsibilities of the Commissioner for the Right to Information and Protection of Personal Data, in areas such as protecting the right to

information related to the examination of claims of breaches of rights stipulated in the Law on the Right to Information, examining complaints related to the functioning of public authorities' transparency programmes, imposition of administrative sanctions, conducting monitoring activities and surveys, submitting written opinions on issues related to the right to information as per court requests, etc.

» **Law No. 161/2014, "On Some Amendments and Additions to Law No. 10237 of 18.2.2010, On Health and Safety at Work"**

This law established the institution of the State Inspectorate on Labour matters and the State Inspectorate on health matters, as the two central state bodies in charge of overseeing the implementation of the Law On Health and Safety at Work. The law also outlines the concrete responsibilities assigned to them.

Law No. 163/2014, "On the Social Work Professions Order in the Republic of Albania", establishes the criteria for exercising the profession of a social worker, guarantees the ethical and professional standards in the exercise of this profession for the protection of public interests by respecting the principle of the autonomy of the social work profession. The Law establishes the main bodies of the Social Work Professions Order, such as the Assembly, the National Council, the President and the Commission for Disciplinary and Professional Adjudication.

Law No. 178/2014 "On Some Amendments and Additions to Law No. 152/2013 On Civil Servants", deals with issues such as filling temporary vacancies, filling vacancies at lower or medium management levels, evaluation of work results, etc. This law provides that, final court decisions to reinstate civil servants to their previously held positions shall be implemented by the responsible unit with immediate effect. The law provides that, where reinstatement in their previous position is no longer possible, civil servants may be placed on a waiting list until their eventual appointment to a regular position in the civil service. Once a civil service vacancy is created, the responsible unit is obliged to first consider the appointment (with their consent) of the civil servants on the waiting list. This law has been amended and is now being supplemented with the relevant secondary legislation.

I.2. The Discrimination Situation in Albania

This section presents the situation in relation to some of the most spread forms of discrimination, as identified in the existing sources and the findings from the activities of the Commissioner for Protection from Discrimination. With the adoption of Law No. 10221 of 4.2.2010, On Protection from Discrimination and its subsequent implementation, the awareness of the general public and of special groups on the legal means of protection from discrimination increased. This was reflected in the greater number of complaints filed with the institution of the CPD and in the instances of enforcement of the Law On Protection from Discrimination by the courts. However, even though the number of complaints has risen sharply, public awareness-raising remains one of the priorities of the CPD.

It is worth mentioning that the increase in the number of complaints submitted to the Office of the CPD was also noted in the 2014 Albania Progress Report, which stated that: "In the

area of anti-discrimination, the number of cases handled by the Commissioner for Protection against Discrimination rose from 107 cases in 2012 to 256 cases in 2013, while the number of inspections initiated ex officio by the commissioner increased from 16 in 2012 to 31 in 2013. Of the 131 decisions issued by the commissioner in 2013, 21 concern cases of discrimination on grounds of ethnicity and disability. The commissioner's recommendations to amend the labour code have not yet been followed up. Training and awareness campaigns have taken place, including at local level. Public awareness of the law on protection against discrimination and of the complaint mechanism remains low².

In relation to the situation of discrimination in Albania, the groups facing discrimination more frequently include members of the Roma and Egyptian communities, persons with disabilities, women, representatives of the LGBT community.

I.2.1. Discrimination on grounds of race

Protection of communities and enjoyment of rights by them on an equal footing and without discrimination is guaranteed by the Constitution of the Republic of Albania. Article 18 of the Constitution of the Republic of Albania³ stipulates the equality of all citizens before the law. No one shall be unjustly discriminated on grounds such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic, education, and social status or parental descent. Title IV of the Constitution emphasises the economic, social and cultural rights and freedoms, which must be enjoyed *de facto*, in an equal way and without any discrimination.

The Albanian government has paid attention to the improvement of the legislation and policies on minorities. Thus, the legislative developments of 2014 created more opportunities for strengthening the Roma and Egyptian communities in Albania. In addition, we greatly appreciate the government's focus on the integration of Roma and Egyptian community in some of its development policies and strategies, such as the Social Inclusion Strategy, the Strategy for Development and Integration and the attempts to develop the National Action Plan for the Integration of Roma and Egyptians in the Republic of Albania 2015-2020.

Roma community issues are also a priority in the context of the fulfilment of the European Commission recommendations for Albania and the five key priorities for opening accession negotiations. One of these five priorities is the protection of human rights (including non-discrimination policies, Roma community, and the implementation of property rights)⁴.

However, in spite of all these steps taken by the Albanian government at the legislative and policy levels, and its continuous endeavours to fulfil the recommendations of the European Commission for Albania, in practice, the situation of guaranteeing the rights of these communities still leaves to be desired. The legislation envisages opportunities for the enjoyment of rights by Roma and Egyptians, but there are a number of barriers, which are

2 2014 Albania Progress Report accompanying the Communication of the Commission to the European Parliament, European Council, the European Economic and Social Council as well as the Committee of the Regions. Available from the website of the Ministry of European Integration www.integrimi.gov.al.

3 Law No. 8417 of 21.10.1998, as amended.

4 Ministry of European Integration, National Plan for European Integration, June 2014.

an indirect effect of the implementation of the legislation. Although the criteria for claiming certain rights and benefits are neutral, they members of the Roma and Egyptian communities are often not able to fulfil them, thus leading to an exclusion of the Roma and Egyptians from the effective enjoyment of their rights.

The **poverty** of the Roma community is noted in various reports and studies. One poverty indicator is household monthly income. For instance, the Census of Roma Population, Households and Dwellings in Albania found that: *“Based on self-declarations, monthly household income appears to be much lower compared to minimum wages, which in 2014 stood at 19,000 ALL a month. Thus, about 48% of Roma families claim that they earn less than 10,000 ALL a month, followed by about 35% of the families that claim to receive less than 20,000 ALL a month. The findings indicate that less than 1% of the Roma families claim to have a joint income of up to 50,000 ALL a month”*⁵.

The existing studies show that in Albania, the **health situation** of Roma and Egyptians is worse than that of the majority population, which is also reflected in their relatively lower life expectancy. The reasons for this unsatisfactory health situation are related to poverty, difficult living conditions and the lack of basic infrastructure, limited access to health services, low education level, and some forms of discrimination⁶. Additionally, these studies reveal that only 58% of the Roma and 76% of Egyptians say they possess health care cards and receive services at health centres.

Social assistance: jobseekers allowance and orphaned children's pensions are not adequate to meet the family needs of the members of the Roma minority. The new points allocation system has given rise to complaints by representatives of this community, who claim that they are being excluded from receiving social benefit payments. The same conclusion was also reached by the institution of the People's Advocate⁷. Delays in benefits payments have also affected the Roma and Egyptian community members, who often are entirely reliant on these benefits to ensure their own survival and the survival of their families.

A number of members of the Roma community do not benefit from the social assistance scheme or are not eligible to claim because of lack of fixed abode. Similarly to the field of education, where several temporary measures have been instituted to facilitate the education of the Roma community, it is necessary that in the area of social assistance as well, the Roma community must be treated as a special group and care should be taken not to exclude them from social assistance on account of their moving from one place to another.

Roma and Egyptians are mostly engaged in the informal labour market. Given this, members of this community are not eligible to benefit from social insurance schemes. The changes made to the social insurance legislation, Law No. 7703 of 11.5.1993 *“On Social Insurance in the Republic of Albania”* with Law No. 104 of 31.7.2014, make provisions for social pensions, but it can only be received at 70 years of age by all elderly people who have been residing in the territory of Albania in the past five years and who do not meet the criteria to receive

5 For more information in relation to the Census and its methodology see Open Society Foundation for Albania, 2014 Census, “Banesat and Popullata Rome në Shqipëri.” (Roma Dwellings and Population in Albania) Available from www.osfa.al

6 Open Society Foundation for Albania, Census 2014, Banesat and Popullata Rome në Albania (Roma Population and Dwellings in Albania). Available in the Albanian language at www.osfa.al.

7 Recommendation of the People's Advocate, Doc. No. 201401869/4 of 04 /12 /2014.

any other pension. Taking account of the fact that life expectancy among members of this community, as shown by various studies, is lower, this makes it more difficult for members of this minority to receive social pension payments in practice.

Although opportunities have been created for providing vocational training to members of the Roma community, it is important to raise their awareness about attending these programmes and courses. The needs and issues faced by this community are well-known, however, there are no serious initiatives in place at public institutions to resolve them, particularly issues such as housing and employment. More attention, investments, and positive action are needed to support this marginalised group in our society.⁸

The Roma community faces numerous problems as far as their **housing** is concerned. Faced with the real impossibility of resolving their housing situation, they resort to alternative solutions by “self-accommodating” that lead to informality, often encouraged by the lack of any reaction by the authorities, which has left them in this situation of informality for long periods of time. This situation, combined with an inadequate legal framework for accommodating this part of the population, has led to their discrimination. Even more problematic are those situations where, due to public works or other development works undertaken by the actual owners of the property, they are threatened with eviction from their dwellings and settlements⁹. Eviction from the settlements without offering them an adequate housing alternative and the lack of legal regulations on providing them suitable accommodation before the actual eviction, raise issues of discrimination against members of this community and indicate a failure to meet international standards. These standards stipulate that: “Evacuation of property must not turn the person into a homeless person and must not render them vulnerable to other human rights violations”¹⁰.

In July 2014, the CPD dealt with the case of some Roma families in Elbasan, whose settlement was affected by the construction of Ruzhdi Bizhuta Stadium. Pursuant to the order issued by the Elbasan Urban Development Inspectorate, these families were ordered to vacate their dwellings to make way for the public interest investments for the construction of the Ruzhdi Bizhuta Stadium, while no measures had been taken to provide them with alternative accommodation. In principle, orders for vacating a property or land in the public interest or for urban development purposes is legal, but its legality also depends on the measure being proportional and not to give rise to any discrimination. The standards of the European Court of Human Rights (ECHR) deal with forced evictions under Article 8 of the European Convention on Human Rights, i.e. the right to respect for private and family life and the right to a place to live. ECHR has also highlighted that protection from forced evictions should be guaranteed in relation to all kinds of housing, regardless of the fact whether these are regarded as dwellings in the definitions provided in the national laws. The Commissioner is of the opinion that where state authorities undertake actions for the eviction of Roma families from their settlements without prior analysis and evaluation of the social situation and the financial needs of these families, and where they do not take all the necessary measures by making the best use of their available resources to avoid these individuals becoming home-

8 Albania Helsinki Committee, Raport mbi situatën e respektimit të të drejtave të njeriut në Albania për vitin 2014 (Report on the State of Observation of Human Rights in Albania in 2014), Tirana 2014.

9 Open Society Foundation for Albania, Soros Foundation, Analizë e legjislacionit për problemet e strehimit (Analysis of Legislation on Housing Issues), 9 February 2015, p. 5. This study is available in Albanian at www.osfa.al.

10 CESCR (1997) General Comment 7, Forced evictions and the right to adequate housing, available at: <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>.

less or vulnerable to other human rights violations – this constitutes discrimination. Given the specific characteristic of Roma settlements, which are largely informal and often do not meet the criteria to be regarded as “dwelling/accommodation”, Roma community dwellings are more frequently subject of demolition and there are more Roma who do not benefit any compensation following expropriation.

Article 24 of Law No. 9232 of 13.05.2004, On Social Housing Programmes for Inhabitants in Urban Areas, as amended by Law No. 9719/2007 and Law No. 54/2012, contains provisions on rent subsidies. Paragraph 2 of this article provides that families of Roma origin shall receive priority treatment in relation to rent subsidies and eligibility for housing benefit. According to this law, Roma families without any income shall only be eligible for social housing programmes of housing benefits and small grants; these small grants can only be used to make improvements to living conditions and not as housing subsidies. In addition, the other social programmes provided for in this law require that the claimant have a *certain amount of income*, but given that these families live in informality, measuring their real income has proven difficult¹¹. Many of the Roma families do not meet the income levels stipulated by the law. Many Roma and Egyptians are not able to benefit from social assistance programmes. The poor living conditions and infrastructure increases their isolation from the rest of the society and is a hindering factor to their children’s education¹².

The 2014 Progress Report on Albania emphasised that: “A sustainable long-term housing solution for these evicted people has not yet been identified. The new law on property legalisation was adopted in May without prior consultation with relevant stakeholders and has increased the risk of further evictions of Roma families from their informal settlements, which remain a particular concern”.

Roma and Egyptians are faced with direct and indirect barriers in their access to public services, which stem from the fact that they are not able to meet the eligibility criteria, lack of information or lack of understanding of administrative procedures, and from the constant discrimination and stigmatisation by the rest of the population.

The Roma and Egyptian communities are faced today with various legal problems, which necessitate the provision legal assistance free of charge. Although Law No. 10039 of 22.12.2008, On Legal Aid, as amended, and related secondary legislation, provide for the eligibility of individuals who can prove they are part of, or meet the criteria to be part of social protection programmes, are victims of violence or victims of trafficking in human beings, in relation to court cases, there are no data in relation to the number of Roma and Egyptian community members who have actually received free legal aid from the State Commission On Legal Aid. The lack of information in relation to the possibilities created by the legislation for claiming free legal aid and the other obstacles related to completing the necessary documentation required for the application, have created barriers to the enjoyment of this right by members of the Roma and Egyptian communities.

With the changes to Law No. 10039 of 22.12.2008, On Legal Aid, as amended, in 2014, persons

11 Open Society Foundation for Albania, Soros Foundation, Analizë e legjislacionit për problemet e strehimit (Analysis of Legislation on Housing Issues), 9 February 2015, p.17. This study is available in Albanian at www.osfa.al.

12 A Needs Assessment Study on Roma and Egyptian Communities in Albania, Tirana 2012. The study was funded by the One UN Programme.

who claim to be part of social protection programmes, and minors, are exempted from the obligation to attach supporting documentation to the application for free legal aid. In view of the most recent changes to Law On Legal Aid (Law No. 77/2014 on Some Additions and Amendments to Law No. 10 039 of 22.12.2008, On Legal Aid, as amended), such as the exemption of individuals from payment of charges on documentation and decisions, and the exemption from payment of trial costs both in civil and administrative proceedings, it is necessary to improve the level of information provided to these communities and support them in demanding these rights. In emergency cases, where members of the Roma community are eligible to receive free legal aid, this aid is approved promptly. The establishment of local offices for the provision of free legal services would lead to a greater number of Roma and Egyptian community members benefitting from these services, both in Tirana and other districts of the country.

The issue of ensuring greater access to the justice system is an issue for other groups in need, a concern that was also raised in the Albania 2014 Progress Report. The report states: "As regards access to justice, the functioning of the State Commission for Legal Aid should be improved and recent provisions on Legal Aid providing for the establishment of regional legal aid offices implemented. Judicial fees deter many citizens and application procedures are too cumbersome. Free legal aid continues to be provided mainly by non-governmental organisations with donor funding"¹³.

One of the fundamental rights sanctioned in the Constitution of the Republic of Albania is the right to education. Law No. 69 of 29.6.2012 On the Pre-University Education System in the Republic of Albania aims to establish comprehensive standards in pre-university education; however, the implementation of these standards still leaves much to be desired.

Temporary special measures have been taken by the Albanian government, such as exemption of Roma children from the payment of guarantee deposits¹⁴ in the Tirana district, exemption of Roma parents from payment of parent board fees throughout the country, the selection and enrolment criteria for Roma candidates in first-tier full-time study programmes, non-university vocational programmes, integrated second-tier study programmes, and higher public education institutions (2014-2015)¹⁵. Similarly, Instruction No. 21/2014 of the Ministry of Education and Sports (MES) on improving the attendance of Roma Children in Pre-school Education gives priority to the enrolment of these children and provides other facilities for the enrolment of Roma children in nurseries and kindergartens in their catchment areas.

Although the legislation in force guarantees the right of Albanian citizens to education, without discrimination on grounds of race, this community still faces various issues and barriers in the *de facto* enjoyment of this right. The education of Roma and Egyptian children is faced with various challenges and difficulties. Their difficult living conditions and poor infrastructure increases their isolation from the rest of the society and is an obstacle to the education of their children¹⁶. The distance of schools from the settlements, lack of free

13 European Commission, 2014 Albania Progress Report. Available from www.integrimi.gov.al.

14 Instruction No. 21/8.8.2014 "On Improving Attendance of Roma Children in Pre-School Education"

15 Instruction No. 34 of 30.09.2014 "On the Criteria and Procedures for the Selection and Enrolment of Candidates Awarded the Status of the Blind Person, Paraplegic/Tetraplegic Invalids, Orphans, Roma, Balkan Egyptians, in full-time Undergraduate Study Programmes, non-university vocational study programmes, and integrated second-tier study programmes at higher education institutions (2014 – 2015)".

16 A Needs Assessment Study on Roma and Egyptian Communities in Albania, Tirana 2012. The study was supported with funding by the One UN Programme.

transport for Roma pupils at a time when schools are more than 2 km from away from their settlements, the existing tradition whereby Roma girls should marry at a young age, the poverty of their families, are some of the problems faced by Roma and Egyptian children. Institutional barriers include the lack of capacities, quality of education provided, distance of schools from settlements, and elements of discrimination¹⁷.

Although the Council of Ministers' Decision Nr. 709 of 5.10.2011 "On the use of public funds for the transportation of teachers and pupils working and attending school outside their settlements", provides for the obligation of covering travel expenses for pupils who live more than 2 km away from their school, the situation in practice shows that the distance of schools from settlements is another obstacle to the education of children, a fact which is also noted by 18% of Roma parents and 8% of Egyptian parents¹⁸.

Roma children have also been in the focus of CPD's attention during 2014. Given the concerning problems with lower rates of Roma children enrolment in schools, which has led to lower access of Roma children to their economic, social and cultural rights, the CPD has taken an active stance for resolving these issues. In her Letter No. 757 Prot. No. 11.09.2014, "Recommendations on taking measures for fighting discrimination in relation to the right to education at the start of the 2014-2015 academic year in the pre-university education system", addressed to the Minister of Education and Sports, the CPD raised issues of school enrolment, class distribution, and attendance of Roma and Egyptian children.

In relation to child labour, there is a high number of (predominantly Roma) children who work or beg on the streets and who are subjected to the worst forms of exploitation and extreme marginalisation¹⁹.

Representation of Roma and Egyptians in the country's political life and decision-making is still very low. In spite of the temporary special measures envisaged in CEDAW, the Law "On Gender Equality in Society", Law On Protection from Discrimination and the Electoral Code, Roma and Egyptian women and girls do not take an active part in policy- and decision-making in the political life of the country. In conclusion, as mentioned in the 2014 Albania Progress Report of the European Commission, "Living conditions, access to education, employment, health and social care for the Roma population need to be improved." Given the fact that the local government bodies have insufficient budget means and administrative capacities for Roma and Egyptian inclusion policies, the collaboration between the central and local governments needs to be strengthened further.

By closely following the situation of the Roma and Egyptian communities in Albania, the Commissioner for Protection from Discrimination has focused and continues to focus on the constant improvement of standards in relation to the protection of and respect for the rights of Roma and Egyptians. During 2014, the Commissioner handled cases of grievances brought by members of the Roma and Egyptian communities and held open days, which made it possible to meet members of these communities who raised their issues and concerns with

17 Sinani Gj., Taho B., Country Assessment Albania, Roma Education Fund, 2011. <http://www.romaeducationfund.hu/>.

18 A Needs Assessment Study on Roma and Egyptian Communities in Albania, Tirana 2012. The study was supported with funds by the One UN Programme.

19 European Commission, 2014 Albania Progress Report. Available from the website of the Ministry of European Integration www.integrimi.gov.al.

the Commissioner. The problems faced by the Roma and Egyptian communities consist mainly in the failure to receive social assistance, unequal treatment in their right to employment, the use of offensive language by law enforcement representatives, right to housing, etc.²⁰

1.2.2. Discrimination on grounds of disability

The fundamental rights and freedoms of people with disabilities and their practical enforcement are sanctioned in the Constitution of the Republic of Albania.

The UN Convention On the Rights of Persons with Disabilities was ratified with Law No. 108/2012. The Convention On the Rights of Persons with Disabilities aims to promote, protect and ensure that all disabled persons enjoy their full and equal fundamental rights and freedoms and to promote full respect for their dignity. Some of the key principles of this Convention are non-discrimination, equal opportunities, full and effective participation and inclusion in society, etc. In the framework of equality and non-discrimination, the Convention demands from state parties to take the specific measures that are needed to accelerate or to achieve a de facto equality of persons with disabilities.

Framework Law No. 93/2014, On the Inclusion of and Accessibility for Persons with Disabilities, aims to promote and protect the rights of persons with disabilities on an equal basis and without discrimination. One of the principles permeating the entire law is that of progressive realisation, according to which the Government takes measures to ensure the inclusion of and accessibility for all persons with disabilities at the maximum level allowed by the available resources, without affecting the rights already gained pursuant to the UN Convention On the Rights of Persons with Disabilities.

The law provides for the establishment of multidisciplinary commissions for the assessment of disability and identification of needs for services. In addition, the Law establishes the National Council on Disability (NCD), a consultative body chaired by the Minister in charge of disability issues, and composed of 17 members, 7 of whom are disabled persons, of which five are representatives of organisations of persons with disabilities and two of organisations for people with disabilities. The Commissioner for Protection from Discrimination monitors the implementation of this law in line with the Convention on the Rights of Persons with Disabilities, pursuant to the obligations set out in Law No. 10 221 of 4.2.2010, On Protection from Discrimination²¹. Although there is a legislative framework in place that guarantees the rights of persons with disabilities, the implementation of this legal framework is a necessity for all the bodies in charge and stakeholders. The implementation of the new framework law demands considerable improvements to be made in infrastructure and equal access to services²². ADRF has raised the concern of the financial implications of this law and related delegated legislation²³. The reforming of the present Medical Commissions for Work Capability Assessment and the establishment of the multidisciplinary commissions in line with the bio-psychosocial model of the Convention on the Rights of Persons with Disabilities, should be

20 For more about the role of the CPD to ensure the rights of the Roma and Egyptian communities and resolve the problems they face, see Chapter II –CPD Activities for Providing Protection from Discriminatory Behaviour and Promoting Equality.

21 Framework Law No. 93/2014 On Inclusion of and Accessibility for People with Disabilities, Article 16, “Monitoring”.

22 European Commission, 2014 Albania Progress Report. Available from www.integrimi.gov.al.

23 ADRF, Objektivat e programit qeverisës and planet për aftësinë e kufizuar. Raport vëzhgimi. (Objectives of the Government Disability Programme and Plans: A Survey Report). Tirana 2014, p. 23. This report was prepared with the support of the Civil Rights Defenders.

one of the priorities in the implementation of this law, which shall guarantee that persons with disabilities are not treated in a differentiated way because of their disability.

Law No. 10221 of 4.2.2010, On Protection from Discrimination, regulates the implementation of the equality principle also in relation to disability, among others. In addition to the definitions of direct and indirect discrimination, and discrimination by association, etc., the law also defines “denial of reasonable adjustments”²⁴ as a form of discrimination. The Albania Helsinki Committee, in its report on the situation of respect for human rights in Albania, identifies problems in relation to ensuring the rights of disabled persons in practice. The report emphasises: “*With all the improvements that have been made, there are still delays in making the payments due to members of this community, especially in remote areas of the country; there are problems with the education of these groups, provision of health care and rehabilitation services, employment, etc. Progress is slow in the implementation of the standards set out in the Convention on the Rights of Persons with Disabilities*”.²⁵

Although Article 15 of Law No. 7995 of 22.09.1995 On Promotion of Employment, (as amended), provides that: “*Any employer who employs more than 24 employees shall employ at least one person with disabilities for every 25 employees in their staff. The State Labour Inspectorate monitors the implementation of this Article*”, however, employers often do not fulfil this legal obligation. There is a need for the State Labour Inspectorate to monitor the implementation of this article, not only by private organisation, but also at public institutions at the local and central level. These findings were in line with those of the Special Report on the Activity of the People’s Advocate, on the employment of disabled persons in local and central government bodies. The report states that disabled persons constitute only 0.17% of employees in central government bodies, out of a total of 2334 employees, and 3.1% of employees in local government bodies, out of a total of 1096.

Council of Ministers’ Decision No. 248/30.4.2014, “A Programme for the Promotion of Employment of People with Disabilities”, creates facilities for employers who employ people with disabilities, as well as for the disabled employers themselves. The Labour Inspectorate reimburses the employers at a rate of 100 per cent of mandatory health and social insurance contributions payable by the employer, on condition that the contract duration shall not be less than one year, for making adaptations to the workplace and arranging transport (reasonable adjustments) for the disabled person and for carrying out essential preparations and arrangements to enable them to work. In the context of this programme, the disabled unemployed jobseeker receives wages from the Employment Office, at a rate of up to 100 per cent of the national minimum wage for the first six months, and then up to 50 per cent of the national minimum wage for the second six months of their employment. But the number of companies who have signed up for the programme is very limited; the same can be said for the number of unemployed jobseekers who have benefitted from this programme²⁶.

The carrying out of reasonable adjustments of workplace environments for persons with

24 Law No.10221 of 4.2.2010, On Protection from Discrimination, Article 3, paragraph 7.

25 Albania Helsinki Committee, Raport mbi situatën e respektimit të të drejtave të njeriut në Albania për vitin 2014 (Report on the State of Observation of Human Rights in Albania in 2014).

26 RisiAlbania, Partner for Growth, MSWY, “Programet për Nxitjen e Punësimit në Albania: vlerësimi i cilësisë së tyre në proceset e formulimit and zbatimit (2008-2014)” (Employment Promotion Programmes in Albania: Evaluation of their quality in the processes of development and implementation), Tirana 2014. <http://www.kerkojpune.gov.al/publikime-shkp/>

disabilities, by local and central government bodies and private organisations, is an immediate necessity. Reasonable adjustments to work environments help create equal opportunities in employment and labour relations. Limited provision of accessible transport by employers also has an adverse effect on the employment of disabled persons.

The 2014 Albania Progress Report of the European Commission notes that, in regard to the right to education, school and pre-school teachers have been trained to promote the inclusion of children with disabilities²⁷. However, people with disabilities continue to face difficulties in accessing education.

In connection with the education of children with disabilities, the CPD has recommended a number of measures to be taken, conscious of the great importance of guaranteeing this right on an equal basis and without discrimination. Therefore, at the beginning of the 2014-2015 academic year, the CPD issued recommendations for measures to be taken with a view to fighting discrimination in relation to access to education, by recommending the urgent establishment and functionalisation of multidisciplinary committees for the evaluation of the needs of children with disabilities.²⁸

Lack of easy access to public spaces remains an issue that needs to be addressed. Lack of physical access to some public buildings also leads to discrimination against persons with disabilities in the areas of *access to goods and services*, particularly as it relates to access to health care institutions, which are services of vital importance to persons with disabilities. Also, the exercise of the right to vote is closely linked with reasonable adjustments to polling stations and surrounding premises. The Electoral Code needs to be amended with a view to making it possible for housebound disabled persons to vote. With this in mind, the CPD has also made recommendations for legal measures to be taken to ensure that housebound disabled people are able to vote.

Order of the Prime Minister No. 239 of 11.12.2013 On Establishing the Inter-Ministerial Group for the Implementation of the Rules for the Adjustment of Central and Local Government Buildings is considered a positive step forward in this regard.

Decision No. 404 of 20.6.2012, On Establishing the Extent of Criteria and Procedures for Claiming Financial Compensation by Persons with Blind or Disability Status, Paraplegic and Tetraplegic Persons, for the Payment of Electricity and Fixed Telephony Bills, sets out the rules for the financial compensation of persons with blind or disability status, paraplegic and tetraplegic persons for their electricity and fixed telephony bills. It is necessary that disabled people be reimbursed in timely and systematic way.

The number of grievances brought by people with disabilities has increased with each passing year, however it is still low compared to the number of discrimination situations faced by disabled people.

A report published by the Albanian Disability Rights Foundation, *The Law on Protection from Discrimination in the Area of Disability* notes that: *“On the other hand, it transpires that the*

²⁷ European Commission, 2014 Albania Progress Report. Available from the website of the Ministry of European Integration www.integrimi.gov.al

²⁸ For more information see Section II.2.2. Other recommendations on discrimination issues” in this report.

number of complaints against the private sector remains low compared to those against the public sector, in spite of a tendency on the rise compared to previous years. Given that the public administration provides a series of service to the citizens, it is generally that sector which the citizen is faced with more frequently, and against which they file the greatest number of complaints”²⁹.

The Albania Disability Rights Foundation noted that: *“A monitoring of the situation has shown that disabled persons find it very difficult to personally initiate discrimination proceedings for a number of reasons: not only because in many cases initiating a complaint procedure with the Commissioner or the Court is financially expensive, because disabled persons would incur more expenses from the moment they set foot out of their homes because of lack of adequate adjustments, or, for instance, for translating the complaint into Braille, or hiring a sign language interpreter for deaf persons, but also because they are not regularly informed about the nature of legal mechanisms that are set in motion in the framework of the Law on Protection from Discrimination”³⁰.*

The problems and issues faced by people with disabilities in Albania were also identified in the course of the examination of complaints and the ex officio cases initiated by the CPD. The main subject of complaints claiming discrimination on grounds of disability is the denial of adequate accommodation/reasonable adjustment, provision of goods and services and failure to implement the legislation on claiming reimbursement of higher education tuition fees and the integration of children with disabilities in mainstream education.

The collection of adequate statistical and research data on disability by INSTAT and other relevant organisations would help in the development of inclusive and effective policies.

I.2.3. Discrimination on Grounds of Sexual Orientation and Gender Identity

The classical equality clause of the Constitution of the Republic of Albania guarantees equality of all citizens before the law. The Lesbian, Gay, Bisexual, and Transgender community in Albania must enjoy their constitutional rights on an equal basis with other individuals, and without discrimination.

Protection of LGBT persons is presently a component part of the Roadmap on the 5 Key Priorities recommended by the European Commission, more specifically of Priority No. 5, about the implementation of human rights.

Article 12 of Law No. 10221 of 04.02.2010, On Protection from Discrimination, prohibits the discrimination of persons in relation to their right to employment, Article 17 prohibits all differentiation, restriction, or exclusion in the field of education, and Article 20 prohibits the discrimination of any natural or legal person in the form of refusal to provide a person or group of persons access to goods or services, among others, on grounds of sexual orientation. The Commissioner for Protection from Discrimination has pointed out that changes are needed in the present legal framework to approximate it with Law No.10221 of 4.2.2010 On Protection from Discrimination, which would improve the legal guarantees for the protection

²⁹ The Albania Disability Rights Foundation, “Law on Protection from Discrimination in the Area of Disability”, Tiranë 2014, p. 64. This report was prepared with the support of the Civil Rights Defenders.

³⁰ Albania Disability Rights Foundation, “Law on Protection from Discrimination in the Area of Disability”, Tiranë 2014, p. 38. This report was prepared with the support of the Civil Rights Defenders.

of the LGBT community as well³¹. For this purpose, legal amendments have been proposed³² to be made to the Criminal Code of the Republic of Albania, the Labour Code of the Republic of Albania, and other laws, with the aim of approximating the legislation with Law On Protection from Discrimination. Similarly, in relation to the rights of this community, the 2013 Albania Progress Report of the European Commission, notes “The Albanian authorities need both to apply the existing legislation and to draft new legislation in the area of anti-discrimination”. However, in spite of the accepted international standards through the ratification of Human Rights Conventions and the domestic legislation, the CPD is of the opinion that there is still room for improvement in the situation of the LGBT community.

The 2014 Albania Progress Report noted that there have been improvements in the cooperation between the state authorities and civil society organisations regarding the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. In addition the report also noted the celebration of the International Day against Homophobia, and that there were no cases of homophobic speeches by politicians or state officials. The report draws attention to the need for the adoption of amendments to the Family Code and the legal recognition of the cohabitation of same sex couples. However, in spite of the awareness-raising events organised by various actors, public awareness of LGBTI rights remains very low³³.

Non-profit organisations involved in the protection of human rights have drawn the attention to issues of concern this community is faced with. For instance, the Albanian Helsinki Committee (AHC) has drawn attention to a petition signed by a number of intellectuals, made public on Diversity Day. According to the AHC, the petition contained the signatories’ demand for the LGBT community not to enjoy the right to family life and the statement in the petition contained offensive phrases which are not in line with the principles of respect for fundamental human rights and freedoms³⁴. The concern in relation to this petition of intellectuals was first raised by the Pink Embassy. The AHC report underlines the necessity that members of the LGBT community who are victims of discrimination must make their contribution by informing the wider public about the features that characterise this community.

The Law On Pre-University Education in the Republic of Albania, adopted in 2012, lists “sexual orientation” among the other prohibited grounds of discrimination. Although it does not contain a full schedule of all the grounds of discrimination set out in Article 1 of Law On Protection from Discrimination, Article 5/ 1 of Law No. 69/2012 On Pre-University Education in the Republic of Albania allows sufficient space for the implementation of the latter in the pre-university education system³⁵. In relation to the right of LGBT to education, it is important that information about this community become part of the curricula and the academic staff receive systematic training.

31 KMD, Raport i Veçantë “Për mbrojtjen and respektimin e të drejtave të komunitetit LGBTI në Albania”, (The CPD, Special Report “On Protecting and Respecting the Rights of the LGBTI Community in Albania), p.7.

32 For more information see the legislative recommendations made in the present report.

33 European Commission, 2014 Albania Progress Report. Available from the website of the Ministry of European Integration www.integrimi.gov.al.

34 Albania Helsinki Committee, Raport mbi situatën e respektimit të të drejtave të njeriut në Albania për vitin 2014 (Report on the State of Observation of Human Rights in Albania in 2014), Tirana 2014.

35 KMD, Raport i Veçantë “Për mbrojtjen and respektimin e të drejtave të komunitetit LGBTI në Albania” (The CPD, Special Report “On Protecting and Respecting the Rights of the LGBTI Community in Albania”, p.13.

The staff of the Office of the Commissioner was part of the working group for the development of the 2012-2014 Plan of Measures for Non-Discrimination on Grounds of Sexual Orientation and Gender Identity, and they contributed with their proposals for changes and amendments to the legal framework and anti-discrimination policies in employment, education and in access to goods and services.

During 2014, instances of homophobia were identified both in schools and workplaces, and in the provision of services. Discrimination against LGBT persons is linked to their outer appearance or behaviour. The amendments made to the Criminal Code by the adoption of Law No. 144, of 2.5.2013, more specifically, Article 50 of this law which provides for the aggravating circumstance of committing a criminal offence incited by motives related to gender identity and sexual orientation; or changes to Article 265 of the Criminal Code which provides for the criminal offence of incitement of hatred and disputes based on sexual orientation motives, have not led to any changes in the statistics of the Ministry of Justice in the period after the adoption of these amendments. According to the 2013 Statistical Annual Bulletin of the Ministry of Justice, no one was tried for the criminal offence provided for under Article 265 of the Criminal Code. This Bulletin does not contain data from 2014, as they were not yet available at the time of the development of this report.

LGBTI people continue to suffer from inadequate health services on account of the fact that the Albanian health system is poorly prepared to address and resolve the needs and problems of this community³⁶. Access to social services is also limited.

The cases submitted to the CPD for examination and the cases initiated ex officio by the CPD institution itself, involved claims of discrimination in relation to the right to employment, education and the provision of goods and services, or raised issues such as the right to housing, homophobic comments and statements against gay marriages and LGBT parades.

In order to carry out an analysis of the actual state of guaranteeing LGBTI rights, more data and information is needed about the access of LGBTI persons in employment, education, health services, social services, etc., which at present are not sufficient.

1.2.4. Discrimination on Grounds of Gender

Equality and protection from discrimination are principles that permeate international human rights law and our domestic legislation on human rights. However, although equality is an essential component in the protection of human rights, gender inequalities continue to be present in our society.

International acts at the level of the UNO, the Council of Europe and EU Community Acquis include acts that are directly or indirectly related to gender equality and non-discrimination. The CEDAW Convention is one of the most significant international acts in the area of gender equality, which was ratified by the Albanian state with its Law No. 7767 of 9.11.1993.³⁷

The CPD has made its contribution as part of the Inter-Ministerial Working Group set up

36 Pink Embassy Activity Report, June 2013-December 2014, available from <http://www.pinkembassy.al/sites/default/files/uploade/Raporti%20Vjetor%20i%20Pink%202014.pdf>

37 Law No. 7767 of 9.11.1993, “On the Adoption of the Convention on the Elimination of All Forms of Discrimination Against Women.

by Order of the Prime Minister No. 112/2014, for the preparation of the Fourth National Periodic Report on the Implementation of the Convention on the Elimination of all Forms of Discrimination against Women, adopted with CMD No. 806 of 26.11.2014.

In its contribution to this report, the CPD raised some concerns about the issues faced by women in Albania.

First, women face discrimination in employment relations. In 2013, unemployment rates by gender were 9.3% for males and 13.7 % for females³⁸. The CPD found instances of direct and indirect discrimination on grounds of gender both by public administration bodies and private entities.

Second, in the area of access to goods and services, women are faced with inequality and direct and indirect forms of discrimination. Discrimination in access to or provision of services, such as potable water and electricity supply, has brought to the attention of the CPD the need for revising framework contracts used by regulatory bodies, especially as regards the provision on “household customers”, by clearly defining who is included in this concept. For this purpose, the CPD sent a recommendation to CEZ Distribution Ltd. on revising their framework contract with a view to avoiding unequal treatment of men and women in the provision of electricity supply services.³⁹ With this recommendation, the CPD seeks to give its decisions strategic significance and to help improve not only the situation of individual women, but also the situation of women and girls as a gender group. Following the examination of complaints, the CPD found that the main thrust of claims of discrimination on grounds of gender were related to a failure to respect their rights in the area of access to goods and services, both by public institutions and private entities.

Third, women’s access to social and economic benefits still leaves to be desired. In the recent years affirmative action measures have been taken for **women’s empowerment**, especially in the economic field. However, women’s access to credit, bank loans, mortgage assistance and other forms of financial credit remains low. As a rule, it is males who typically apply for credit and loans⁴⁰. They are the individuals who act in the quality of heads of households, thus making it harder for women to apply for credit. Women’s limited access to various forms of financial credit is closely related to a practice that is widespread in our society, whereby property is registered mainly under the name of a male in the family, who is generally the head of household.

The CPD has expressed concern that, in spite of the achievements in abrogating discriminatory laws, there is still a lot to be done in this regard. Article 4, paragraph 10 of Law No. 9355 of 10.03.2005, “On Social Assistance and Social Services”, sets a gender-based discriminatory criterion in the definition of the term “head of household”, by placing the father at the head of the hierarchy as head of the household; consequently it is the

38 Official Gazette No. 187/2014, Fourth National Periodic Report on the implementation of the Convention On the Elimination of All Forms of Discrimination Against Women. Adopted with CMD No. 806 of 26.11.2014, p. 10195.

39 Recommendation of the Commissioner on Protection from Discrimination addressed to the Energy Regulatory Authority on the revision of the framework contract “General Terms and Conditions of the Contract for Supplying Electricity to Household Customers”.

40 See research studies carried out by the Albanian Centre for Economic Research (ACER) and the Association for Business and Professional Women in 2006. According to a study by ABPW, women who have applied for loans and credits from banks were faced with barriers. These barriers were related to the nature of their business (81.3%); development of a business plan (76.7%), preparation of bank documents (72.7%) and terms of the collateral (70%).

father that may claim social assistance benefits on behalf of the family. According to this law, men are automatically designated as heads of household, while women-mothers only become heads of household in their absence. In the context of exercising its powers, the Commissioner has prepared the relevant recommendations necessary to bring this law in line with the law On Protection from Discrimination. This issue has also been identified in the Concluding Remarks of the Committee for the Elimination of All forms of Discrimination against Women, which has called for strengthening the use of temporary special measures pursuant to Article 4, paragraph 1, of the CEDAW Convention. This Committee recommended that: *“Temporary special measures shall be implemented with a view to ensuring equality between men and women in access to property, capital and credit, health care services, housing and all the components of an adequate living standard, particularly in relation to women members of deprived groups, including women and girls from linguistic and ethnic minorities, elderly women, disabled women, and women living in rural and remote areas...”*⁴¹.

In addition, in relation to the issue of women’s access to property, loans and credits, a study on Women’s Property Rights In Albania was carried out by UN Women in 2012, in collaboration with the Ministry of Justice, which reached the same conclusions and findings.

Fourth the CPD has closely followed the steps taken to improve the participation of women in politics and decision-making and deems it necessary to make amendments to the existing legal framework. Law No. 9970 of 24.07.2008, On Gender Equality in Society, establishes gender quotas aiming at equal representation of both genders in all the legislative, executive and judicial bodies and other public institutions. In spite of this commitment to establishing gender quotas, pursuant to Article 67/6 of the Electoral Code, women account for only 18 per cent of the members of parliament in the 8th Legislature of the Assembly that came out of the 2013 general parliamentary elections.⁴² In 2014, the number of women members of parliament increased to 21 per cent, due to the application of vacancy rules (Article 64/6 of the Electoral Code)⁴³.

In spite of the criteria established in Article 67 of the Electoral Code, practice has shown that this provision contains a legal loophole. The formula chosen for the multi-name candidate lists *“at least 30 per cent of the multi-name list and one in the first three names of the multi-name lists shall be from either gender”* does not guarantee the implementation of the 30% gender quota. In relation to this, and to other matters, the Commissioner drafted a legislative recommendation, which was sent to the Albanian Parliament in the month of June 2014.

In relation to *women’s participation in decision-making*, the data provided in the INSTAT publication entitled, “Women and Men in Albania 2013”, reveal the tendency that the higher the position or management level, the lower the presence of women in those leading positions. Thus, out of 55 ambassadors, only 6 are women, while 49 are men; out of 13 university rectors, only one is female, the rest are male; there are more male judges and prosecutors than there are females, and the gap widens further the higher the managerial/hierarchical positions; all the members of the High Council of Justice are male (15) and the gender ratio in the High Court is 12 males to 4 females.

41 Concluding remarks of the Committee on the Elimination of all Forms of Discrimination against Women, para. 23, 46th Session, 12-30 July 2010.

42 Women and Men in Albania 2013, an INSTAT publication.

43 Official Gazette No. 187/2014, Fourth National Periodic Report on the implementation of the Convention On the Elimination of All Forms of Discrimination Against Women. Adopted with CMD No. 806 of 26.11.2014, p. 10189.

CHAPTER 2

CPD ACTIVITIES AIMING TO PROVIDE PROTECTION FROM DISCRIMINATORY BEHAVIOUR AND PROMOTE EQUALITY

II.1. Provision of Assistance to Victims of Discrimination and Handling of Discrimination Claims

Pursuant to Law No. 10 221 of 4.2.2010, On Protection from Discrimination, assistance to victims of discrimination is realised through:

1. Examination of cases by the CPD;
2. Assistance to victims in court hearings.

II.1.1. Cases Handled by the CPD

Pursuant to Law No. 10221 of 4.2.2010 On Protection from Discrimination, the Commissioner for Protection from Discrimination has the following powers: to examine claims/complaints by persons or groups of persons who claim they have been discriminated against; examine claims by organisations that have a legitimate interest to act on behalf of and with the consent in writing of individuals and groups claiming that discrimination has occurred; carry out administrative investigations after receiving reliable information about violations of this law; make recommendations by proposing the adoption of new legislation or amending or reforming the existing legislation; impose administrative sanctions pursuant to the provisions of this law.

Between 1 January 2014 and 31 December 2014, the CPD has handled a total of 308 cases (290 complaints and 18 ex officio cases). Of these, 172 complaints and 8 ex officio cases were filed in 2014 and 128 cases (118 complaints and 10 ex officio) were carried over from 2013. The CPD has issued decisions on 209 cases examined during 2014, including all the backlog cases from 2013.

The following chart represents the increase in the number of claims and the ex officio cases initiated by the Office of the Commissioner for Protection from Discrimination, from 2010

Fifth, domestic violence, as one of the forms of gender-based violence, remains one of the most concerning phenomena women are faced with in our society. A research study entitled “Domestic Violence in Albania: A Population-Based National Survey” found that 59.4 % of women (over 1 in two women) said that they had “ever” experienced violence in their family, marriage/intimate relationships, and 53.0 per cent of the women (one in two) were experiencing domestic violence at the current time (within 12 months prior to the interview)⁴⁴.

In 2012, 36 domestic violence-related cases were tried under Article 130/a of the Criminal code and 37 persons were convicted and sentenced. In 2013, there were 280 domestic violence related court cases, Article 130/a of the Criminal Code, with 278 convicted and sentenced individuals. In 2012, there were 10 court cases dealing with “actions in contravention with the decision of the court” (Article 321 of the Criminal Code) and 9 persons were sentenced. In 2013, there were 31 court cases on “actions in contravention with the decision of the court” (Article 321 of the Criminal Code) and 33 persons sentenced⁴⁵. In spite of the developments in the Criminal Code of the Republic of Albania and the civil-administrative legislation, the effectiveness of the implementation of the legislation against domestic violence needs further strengthening.

I.2.5. Multiple Discrimination

There have also been cases of individuals who experienced discrimination on more than one ground.

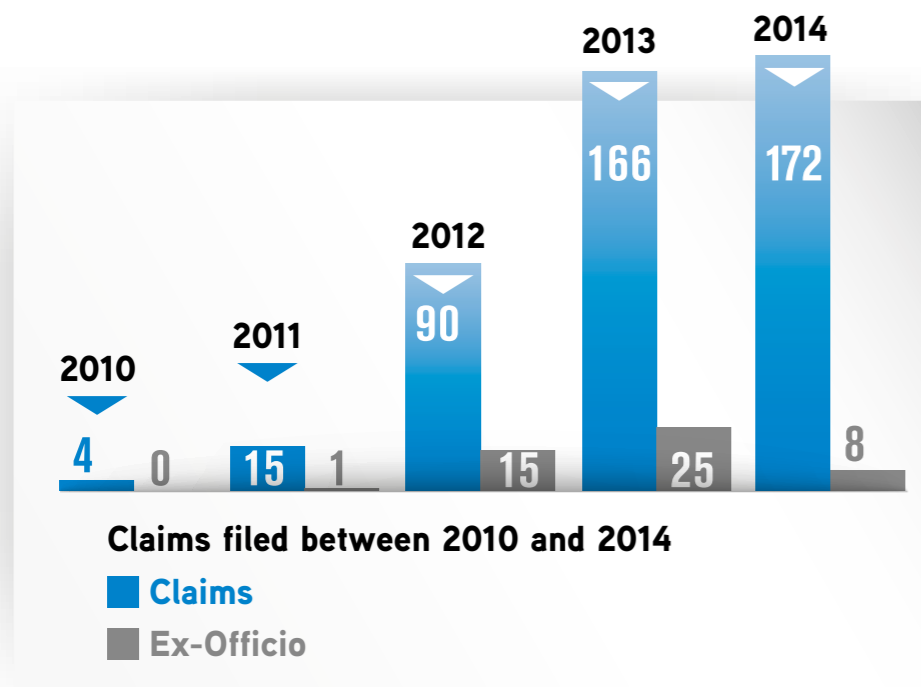
The Fourth National Periodic Report on the implementation of the CEDAW Convention in Albania raises some concerns in relation to the prevention and protection from discrimination of women with disabilities, elderly women, LGBT women, Roma and Egyptian women, etc. Their encounters with discriminatory behaviour may be on grounds of age and gender, or race and gender, or race and economic and social status, etc.

On the basis of information received from the Centre for Legal Civic Initiatives in relation to violations of the Law No. 10221 of 4.2.2010 On Protection from Discrimination, and Law No. 9970 of 24.07.2008 On Gender Equality in Society, by CEZ Distribution Enterprise Ltd and the Drinking Water Supply and Sewage Enterprise, Tirana, the CPD examined the practices applied by the above-mentioned enterprises and found that they constitute discrimination on grounds of gender, pregnancy, marital status or civil status. Other situations were related to claims of discrimination on grounds of ethnicity (Roma), place of residence, and economic and social status taken together⁴⁶.

44 INSTAT Domestic Violence in Albania: A National Population-Based Survey, 2013, p. 33.

45 Ministry of Justice, Annual Statistical Bulletin 2012, 2013. <http://www.drejtesia.gov.al/al/dokumente/statistika>

46 Centre for Civic Legal Initiatives, Information submitted in the memorandum 3.7.2014, Prot. No. 323.



to t 2014.

Chart 1: Claims filed between 2010 and 2014

The individual claims filed with the Commissioner for Protection from Discrimination are an expression of the raised awareness among the general public in relation to the Law On Protection from Discrimination and the legal remedies it provides.

The following table presents data in relation to individual claims filed with the CPD institution in the years 2011, 2012, 2013 and 2014.

Year	Number of claims filed
2011	15
2012	90
2013	166
2014	172

Table 1: Number of claims filed with the CPD.

II.1.1.1. Procedure for the Examination of Cases

The procedure followed by the Office of the Commissioner for Protection from Discrimination starts with filling a complaint form. A person or group of persons who claim they have been discriminated against, or an organisation with legitimate interests that files a discrimination claim on behalf of a person or a group of persons, may file a complaint in writing with the Commissioner, together with supporting documentation; in exceptional cases the complaint

may be oral and a written record (minutes) is taken (Article 33 of the law). The complaint form should contain information about the victim of discrimination, information on the entity alleged to have carried out the discrimination, explanations and facts available in relation to the alleged discrimination, and the remedies sought from the Commissioner. Complaint forms must be signed by the complainants themselves or by their chosen representatives. The Commissioner does not admit or examine anonymous complaint forms. There are several ways to file a complaint with the CPD:

- Via direct contact with the CPD office (the Public Relations Sector has the obligation to assist the complainant with filling out and filing the complaint form);
- By filling out the complaint form online (the form is available from the official website of the Office of the Commissioner at www.kmd.al in the following languages: Albanian, English, Romany, and Greek);
- Presenting the alleged discrimination case by sending an email to the official email address: info@kmd.al
- By post.

By way of clarification, it is not mandatory to fill out a complaint form to initiate a case with the CPD. The complaint may also be made in a simple format, in the form of a note or a letter, which must contain the main contact data of the complainant and an explanation of the alleged discrimination situation.

Where the complaint meets the admission requirements envisaged in the law, it becomes subject of further examination pursuant to Article 33 of the same law. Investigation procedures include the collection of information about the case, as well as possible on-site inspections or hearing sessions with the parties. After conducting an analysis of the facts and information collected in the course of investigation procedures, the Commissioner issues a decision within 90 days from the filing of the complaint, or from the hearing session, if there has been one. The decision will also outline the necessary measures and remedies proposed, with a set timeline for their fulfilment. If the commissioner orders remedies or measures to be taken, the persons against whom the complaint has been filed must report to the commissioner on the actions taken within 30 days from the decision.

Where the person/entity against whom the complaint was lodged fails to inform the commissioner or fails to implement the decision, the Commissioner may impose a fine against that person/entity. The fine is stayed and cancelled if the person against whom the complaint was filed implements the decision within seven days from the date the sanction was imposed.

As a last resort, in those cases where the natural or legal person does not abide by the decision of the Commissioner, or fails to pay the fine within three months after the deadline set by the Commissioner, and the sanction has not been challenged in court, the Commissioner may ask the relevant authorities to revoke or suspend the natural or legal person's permit or authorisation to conduct their activities. The natural or legal person against whom the fine has been imposed is entitled to appeal the decision in the relevant court.

II.1.1.2. Complainants

Pursuant to Article 32, paragraph 1/a/b, of Law No. 10 221 of 04.02.2010 On Protection from Discrimination, complainants may include: individuals, groups of individuals, and organisations with legitimate interests who act on behalf of a person or a group of persons. In 2014, the Commissioner started the examination of 172 claims, of which 166 were submitted by various individuals and 6 by organisations with legitimate interests.

The following chart presents the proportions of individual complainants and organisations (in percentage and absolute figures. Of course, ex officio cases are not included here, as those cases do not have any complainants as such, but are initiated by the CPD, after receipt of reliable information.

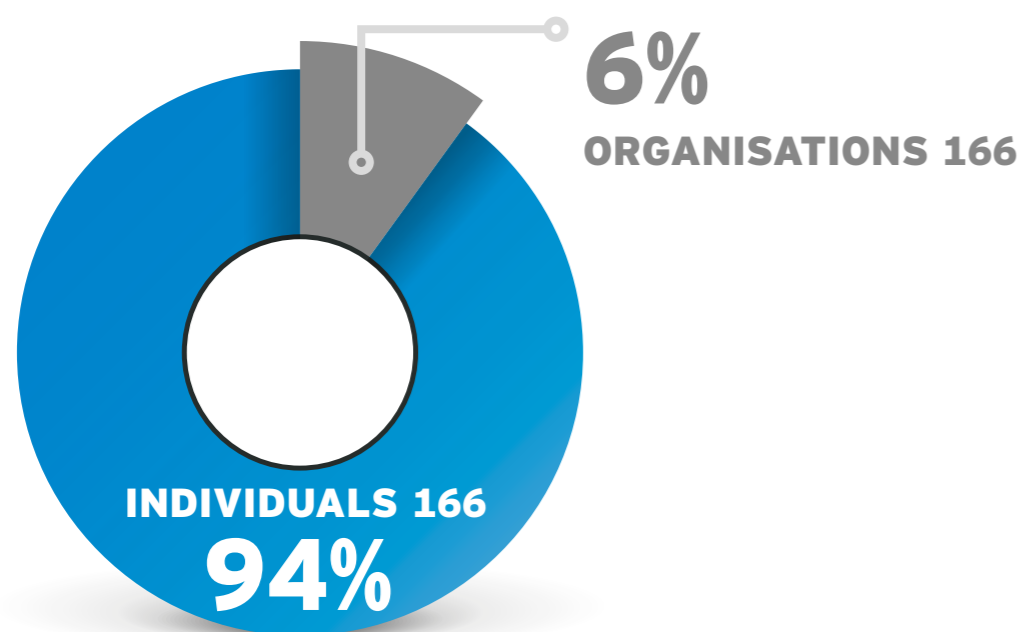


Chart 2: Complainants

In 2014, besides complaints by individuals, the Office of the Commissioner for Protection from Discrimination received six complaints by organisations with legitimate interests. These complaints were generally submitted by organisations involved in the protection of the Roma, Egyptian, and LGBT communities' rights, women's organisations, groups of people with disabilities, etc. Thanks to the collaboration between the Commissioner for Protection from Discrimination and these organisations in relation to the complaints submitted by them, the Commissioner was able to issue recommendations in the form of remedy measures to restore denied rights, while some of the cases were resolved through mediation. It is worth mentioning that the collaboration has been very effective in terms of identifying alleged discrimination cases, awareness raising, and improving the situation. In some cases, the information provided by civil society organisations has alerted the CDP to problems or has provided sufficient information for the Commissioner to initiate cases ex officio.

II.1.1.3. Distribution of Complaints by Region

In 2014 the discrimination claims submitted to the CPD were geographically quite varied. The towns with the largest number of discrimination claims were Tirana, Lezha, Shkodra, Kukës, Vlora, Fier, Elbasan, Korça, Dibra and their surrounding areas.

The majority of the complaints were filed by persons who live in towns where the CPD held information and awareness-raising meetings in collaboration with international organisations (OSCE/ODHIR, UNDP) or various NPO-s (the Albania Helsinki Committee, ADRF, "Different but Equal"), where the community was informed about the law On Protection from Discrimination, the powers of the CPD and the procedures for filing a complaint with the CPD.

II.1.1.4. Grounds of Discrimination Claimed

Law No. 10221 of 04.02.2010 On Protection from Discrimination regulates the implementation observation of the principle of equality in relation to gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, parental responsibility age, family of marital status, civil status, place of residence, health status, genetic predispositions, disability, membership of a special group, or any other grounds (Article 1).

In 2014, the Office of the CPD received complaints under the grounds set out in the law, but there were also a number of complaints where the complainants were not able to identify the exact grounds. It is important to note here that Article 1 is an open-ended provision, as shown in the wording "any other grounds", thus providing for grounds related to an individual's personal trait(s). Some of the complaints filed with the Commissioner's Office contained more than one ground of discrimination.

The following table shows that the greatest number of complaints by far relates to discriminatory behaviours on grounds of race. Thus, race has the largest number of complaints, predominantly raised by the Roma/Egyptian community (colour is also a related ground of discrimination raised). These are classed as racial discrimination in the meaning of ECRI⁴⁷. There was a sharp rise in the number of discrimination cases on grounds of political belief and affiliation. In addition, there was a considerable increase in the number of claims of discrimination on grounds of health status or disability. Claims of discrimination on the ground of economic status remained roughly at the same level. These were cases where it was unclear which of the above grounds was being claimed exactly, in spite of the fact that differentiated treatment was obvious, or where discrimination was related to an individual trait expressly provided for in the law.

⁴⁷ According to the European Commission Against Racism and Intolerance, "racial discrimination" is defined as "any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective or reasonable justification." http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/Recommendation_7_en.asp#P_80_4931

Grounds	Number of cases
Gender	8
Race	164
Colour	3
Ethnicity	8
Language	1
Gender Identity	1
Sexual Orientation	3
Political affiliation	43
Religious belief	5
Economic status	20
Educational Status	9
Social Status	9
Pregnancy	1
Age	5
Family Status	6
Marital Status	2
Civil Status	1
Place of residence	5
Health Status	17
Genetic Predisposition	1
Disability	19
Membership of Special Group	4
Any other grounds	31

Table 2: Distribution of complaints filed in 2014, by grounds of discrimination

While the percentages of claims distribution by grounds of discrimination are presented in the following chart:

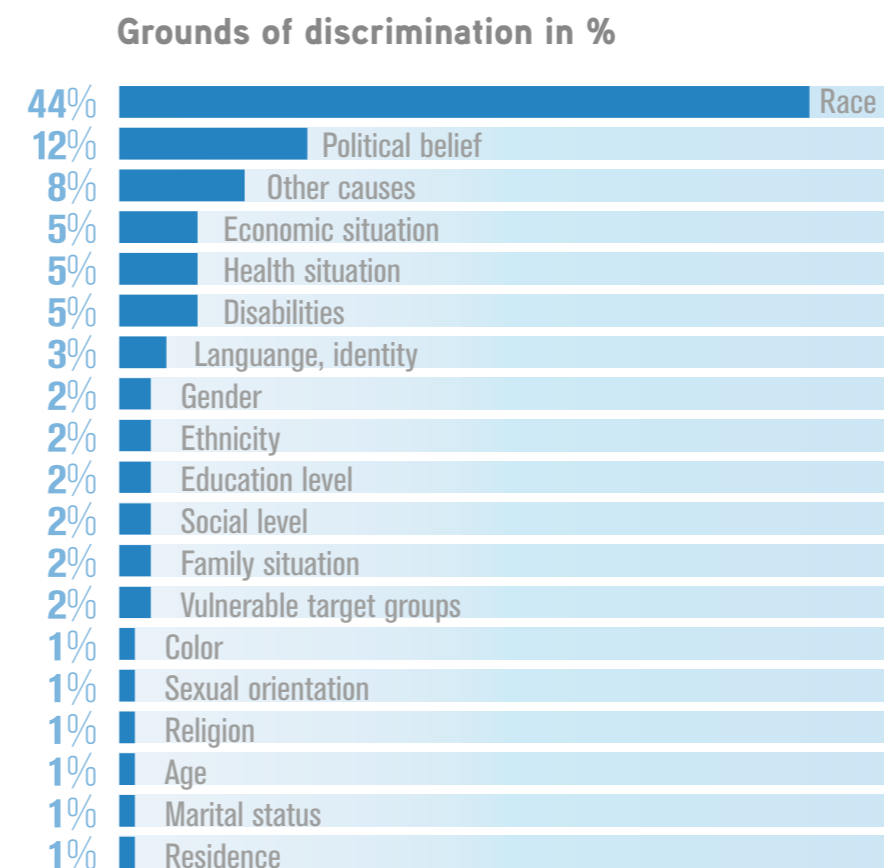


Chart No. 3: Discrimination claims by ground of discrimination

II.1.1.5. Cases Handled, by Ground of Discrimination

1. Claims of Discrimination on Grounds of Race

In 2014 the Commissioner handled 160 complaints and initiated 4 ex officio cases of discrimination on grounds of race. It has to be highlighted here that complaints by individuals were received mainly in the course of the events and open days organised by the Commissioner with groups from the Roma and Egyptian communities in various districts of the country. The organisation of open day events was a component of the awareness-raising projects of the CPD, with the Roma and Egyptian communities placed in the focus of such activities, where they were informed about the Institution of the Commissioner for Protection from Discrimination, her powers and ways how to file complaints with the Commissioner's Office. Based on the information collected in these meetings, the CPD has sent recommendations to the relevant institutions on the concerns and issues raised by this community.

The issues raised in these complaints are related to claims of:

- Unfair exclusion from social assistance schemes as per provisions of Law No. 9355 of 10.03.2005, On Social Assistance and Social Services, as amended, and the related

delegated legislation adopted for the implementation of this law;

- Incorrect calculation of the amount of social assistance due, or termination of social assistance payments;
- Claims of unequal treatment in the area of employment, both in by state and private sectors;
- Complaints against law enforcement authorities claiming alleged use of offensive language and underestimation of the complaints made by these communities;
- Complaints against local authorities with regard to observation of their right to housing and against the demolition of their dwellings that are in the process of being legalised.

Based on the nature of claims received, we note that members of this community mostly complain about discrimination in the areas of employment, housing, education, and services. In 2014, the Commissioner completed the examination of 108 cases (of which 104 claims by individuals and 4 ex officio cases). At the end of the examination of these complaints, the Commissioner issued her decisions, as per following table:

- In six of the cases the Commissioner concluded that discrimination had occurred (in 3 cases the Commissioner issued a finding of discrimination, while the remaining cases were resolved by mediation in the course of the investigation procedures);
- In 83 of the cases the Commissioner found that no discrimination had occurred;
- In four cases the complainant withdrew their claim;
- In 12 of the cases the claims were not accepted due to failure to fulfil legal requirements;
- In one case a fine was imposed;
- In two instances the examination of the cases was suspended due to inability to proceed.⁴⁸

In relation to claims of discrimination on grounds of race that were found inadmissible for examination⁴⁹, due to failure to meet the criteria provided in Law 10221/2010 On Protection from Discrimination, in about 30 of these cases the Commissioner made suggestions and recommendations as to what the complainants had to do for resolving the matters they had brought before the CPD. In some cases, the CPD provided assistance to the Roma and Egyptian communities with the preparation of documentation for claiming social assistance benefits, enrolling their children in school, registering with civil status offices, claiming social housing, claiming reimbursements of student tuition fees, etc.

⁴⁸ The complainants passed away while examination of their cases was in progress.

⁴⁹ From a preliminary examination of these complaints, it was concluded that they do not meet the requirements of Law on Protection from Discrimination because: the information was insufficient, time limits were not respected, and the complaints fell outside the purview of the institution.

CASE 1:

Ex officio investigation of a case of where police officers from the State Police used offensive language in addressing members of the Roma community in Tirana

On 09.09.2014, following some media coverage, the Commissioner initiated administrative investigation procedures on two cases that had featured in the investigative TV programme *Fiks Fare*, where “members of the State Police failed to react to take measures against and prevent the exploitation of Roma children, after these cases were reported via the 129 free telephone number by a journalist of the above-mentioned TV programme. In one of the cases, the State Police members used offensive gestures and language towards the Roma community”.

Following this situation and based on the powers given to the institution of the Commissioner by the Law on Protection from Discrimination, and pursuant to the Memorandum of Collaboration between the two institutions, the CPD recommended that the Police Department of the Tirana Circuit take measures:

- To investigate and punish the case of the offensive language used by the police officers towards the individuals who reported the case to the TV Programme *Fiks Fare* of 09.09.2014.
- To take measures to effectively deal with every call or report made by any individual, regardless of his or her ethnicity.
- Raise awareness and train police officers to treat all individuals with respect and dignity, regardless of their ethnicity.

In response to these CPD recommendations, the Police Directorate of the Tirana Circuit informed the Commissioner in their Letter with Reference No. 7778/1 of 10.10.2014, of the measures taken for the implementation of the recommendations.

CASE 2:

In his complaint form filed with the office of the Commissioner, E. B. claimed discrimination on grounds of race by the manager of the Elbasan Branch of the Albanian Postal Service. He had been demoted and transferred from his then position as “distributor” with the Elbasan Post Office branch, to “agent” at the Post Office in Stravaj, Librazhd. The complainant did not agree with the transfer and was convinced that this was a discriminatory act undertaken because he was a member of the Roma community. Following his initial complaint, E.B. lodged a second complaint with the CPD, where he informed the CPD that he had been dismissed from the job and all financial relations with the Elbasan Post Office branch had been terminated.

Following the completion of the investigation launched in the case, the Commissioner concluded that there had been discrimination on grounds of race against Mr E.B. by the management of the Elbasan Post Office Branch and that his dismissal was unfair and unjustified. The commissioner recommended that the Elbasan Post Office Branch immediately take measures to reinstate the complainant.

The Elbasan Post Office carried out the Commissioner’s recommendation immediately but the complainant refused to take the position offered to him.

2. Claims of Discrimination on Grounds of Disability

In 2014, the Commissioner for Protection from Discrimination handled 11 claims (8 complaints and 3 ex officio cases) of discrimination on grounds of disability. Of these:

- In five cases the commissioner concluded that discrimination had occurred (out of these, in three cases a finding of discrimination was issued and in two cases the discrimination situation was rectified in the course of the investigation procedures and the aim of the complaint was achieved);
- In four cases the Commissioner issued a finding of non-discrimination;
- In two cases the complaints submitted were not admitted due to failure to meet the legal criteria.

Claims of discrimination on grounds of disability were mainly related to denial of reasonable adjustment, discrimination in the provision of goods and service, failure to apply legislative provisions in relation to reimbursement of higher education tuition fees, and barriers to the integration of children with disabilities in mainstream educational institutions.

CASE 1

The Albanian Association of Work Invalids submitted to the CPD a complaint against the National Association of Urban Transport, where they raised a grievance of discrimination on grounds of disability. Following a NAUT decision of 01.07.2014, a great number of work invalids lost their right to travel free of charge on urban transport buses in Tirana, which they claimed was accompanied by psychological and physical abuse against them by bus conductors. After examination of the facts and evidence, the Commissioner upheld the claim of the Albanian Association of Work Invalids. In spite of this situation, the matters for which the claim was filed with the CPD, were resolved in favour of this social group, because they were able to travel free of charge while the case was being examined.

At the conclusion of the investigations, the Commissioner reached a finding of discrimination on grounds of disability against this category of persons who possessed invalidity certificates, by the private operators of urban transport operating in Tirana. However, the case was subsequently stayed because the situation was resolved in favour of this category of people. A recommendation was made to the National Association of Urban Transport Operators to correctly apply the legal framework cited in the decision, so that situations like these, that are detrimental to this category of people, are not repeated again.

CASE 2

Following the publication of a number of articles in the print media⁵⁰, covering the story of Mr T. J. who claimed that the treatment of his 17 year-old disabled daughter during her daily transfers from the Residential Development Centre in Durrës to the School for Special Needs Children, Durrës, amounted to abuse and discrimination, the Commissioner for Protection from Discrimination initiated the investigation of the case ex officio.

In the course of the investigation of Xh.J.'s case, the Commissioner was informed that the RDC Durrës operated on the basis the Organisational and Operational Rules for Development Centres, a document that guided the activity of several similar institutions. However, the document did not contain detailed and specified protocols of some of the routine practices at RDC Durrës, which played a very important role in the life, health and welfare of the children cared for at the centre. The practice of providing daily transport to and from school, which

50 Gazeta Shqip of 13 October 2013, and other newspapers.

ought to have been clearly defined in an internal act of this centre, was also considered in this context. Similarly, the Commissioner found that the failure to fill the position of "physician/doctor" at the Residential Development Centre, Durrës, caused delays in the provision of medical services to the children living there. Another weakness identified was the lack of correspondence and official collaboration between the Residential Development Centre, Durrës and the School for Special Needs Children, Durrës.

Based on the outcomes of the investigation, the CPD made a finding of indirect discrimination on grounds of disability by the Residential Development Centre, Durrës, against the children under their care. The CPD issued relevant recommendations for the improvement of the present situation of these children.

The State Social Service and the Residential Development Centre, Durrës, have implemented the recommendations made by the CPD.

3. Cases of Discrimination on Grounds of Economic Status

In 2014, the number of cases claiming discrimination on grounds of economic status handled by the CPD was 15 (fifteen). Decisions were issued in nine of these cases:

- A finding of discrimination was issued in 4 (four) of the cases,
- In 3 (three) of the cases the Commissioner found no discrimination had occurred,
- 2 (Two) complaints were not admitted because they failed to meet the requirements of the Law on Protection from Discrimination.
- The Commissioner issued 4 (four) recommendations⁵¹.

CASE 1

T. K. filed with the CPD a claim against the Ministry of Education and Sports, whereby he claimed discrimination on grounds of "economic status".

The complainant explained that his wife and himself were unemployed and were in receipt of state benefits. They claimed they were unable to afford textbooks for their two children, who were attending mandatory primary education in one of the public schools in Elbasan. The commissioner found that pursuant to CMD No. 212 of 16.03.2011, On Some Additions and an Amendment to Decision No. 107 of 10.02.2010 of the Council of Ministers "On the Publication, Printing, Distribution and Sale of Textbooks in the Pre-university Education System", paragraph 6.7, children from families on state benefits and those receiving jobseekers allowance from Employment Offices, must be reimbursed the cost of buying textbooks to the amount of 100%.

This category of people who are entitled to free textbooks for their children are being indirectly discriminated against, as a result of the Joint Instruction No. 51 of 20.09.2013, of the Ministry of Finances and the Ministry of Education and Sports, Procedures for Using State Budget Funds for the Publication, Printing, Distribution and Sale of Pre-school Education Textbooks, which outlines the reimbursement procedures. Given that this category of people has insufficient income, they are unable to buy the textbooks first and then wait to be reimbursed later.

51 The Ministry of Education and Sport informed the commissioner that in the following period it would take CPD recommendations into account in future proposals for the amendment and improvement of legal acts.

At the conclusion of the investigation process, the Commissioner made **a finding of indirect discrimination** against this group of people who are in receipt of state benefits, according to their respective categories, and who are entitled to 100% reimbursement for school textbooks pursuant to Joint Instruction No. 51 of 20.09.2013, of the Ministry of Finance and the Ministry of Education and Sports on Procedures for Using State Budget Funds for the Publication, Printing, Distribution and Sale of Pre-school Education Textbooks, which outlines the reimbursement procedure. The CPD recommended that in the 2015-2016 academic year, the Ministry of Education and Sports and the Ministry of Finance change the procedures so that persons on state benefits or receiving jobseekers allowance from the Employment Offices, should be provided with free textbooks, without having to buy them first and then wait to be reimbursed by the state.

In its Official Letter No. 9836/1 of 16.01.2015 the Ministry of Education informed the Commissioner that in the future it will take into account the recommendations of the CPD whenever work for amending or improving legal acts will be undertaken in the future.

4. Claims of Discrimination on Grounds of Sexual Orientation and Gender Identity

In 2014, the CPD received 3 complaints claiming discrimination on grounds of sexual orientation and gender identity. These claims were examined by the respective departments at the Commissioner's office, and the outcomes were:

- 1 finding of discrimination;
- 1 finding of non-discrimination;
- 1 decision imposing a fine as a result of the failure of the entity against which the claims were made to provide the requested information.

CASE 1

The CPD examined a complaint submitted by the Alliance Against LGBT Discrimination against a private entity, Pizzeria Kledi, claiming discrimination on grounds of sexual orientation in the provision of goods and services.

The Alliance Against LGBT Discrimination, represented by two of its activists, filed a complaint with the Commissioner for Protection from Discrimination, in which they described the incident: "On 18.10.2013, at about 21:40 hours, two female activists of our organisation were dining at Restaurant Pizzeria Kledi. Upon serving the order, the waiter, using offensive language and threatening them with a corkscrew and the TV remote control, demanded that the two activists leave the establishment immediately, on account of him having seen them kissing".

The CPD took all necessary measures to notify the establishment against which the complaint was made of the claim against them, as per relevant legal provisions, both by inspecting the premises of the establishment and via the postal service, offering them the opportunity to explain and provide information in relation to the claims raised by the complainants. In spite of these attempts, the CPD found that the representatives of the establishment in question deliberately refused to provide any explanations about the claims raised against them, refused receipt of official letters three times, and prevented CPD representatives from carrying out of the inspection.

Upon conclusion of the investigation procedures, it was concluded that the owner of Restaurant-Pizzeria "Kledi", was in breach of article 32/2 of Law No. 10221/2010 On Protection from Discrimination. The Commissioner for Protection from Discrimination ordered that K.N. be fined with 10.000 (ten thousand) ALL.

CASE 2

Two associations, the Alliance Against LGBT Discrimination and United Pro the LGBT Cause filed a complaint with the Commissioner, claiming discrimination against the LGBT community on grounds of sexual orientation and gender identity, in the online posts on the Aleanca Kuq e Zi (Red and Black Alliance, a political party) Facebook page. According to the explanations made in the complaint form and the evidence presented to the Commissioner, it was claimed that the content of the posts published on the Aleanca Kuq e Zi Facebook page, on 29 and 30 April 2014 aimed to incite hatred through the use of threats and hate speech against the LGBT community. The comments after each of the posts were clearly of a similar nature. Upon conclusion of the investigation procedures, the CPD made a finding of discrimination against the LGBT community on grounds of sexual orientation and gender identity by the Alliance Kuq e Zi, as a result of the posts and comments published on the Facebook social network during April 2014. In addition, it was recommended that Aleanca Kuq e Zi make a public apology within 15 days from receiving notification of this decision, and in the future avoid the use of such language that serves to spread and incite hatred and other forms of discrimination on grounds of sexual orientation and gender identity. The Commissioner ordered the imposition of a fine against Aleanca Kuq e Zi, for failing to provide information officially requested by the Commissioner for Protection from Discrimination pursuant to Article 32/2 of Law No. 10221/2010 On Protection from Discrimination.

Aleanca Kuq e Zi appealed the decision of the Commissioner to the administrative court of first instance in Tirana and the case is on-going.

5. Claims of Discrimination on Grounds of Gender

In 2014, the CPD examined 5 (five) complaints claiming discrimination on grounds of gender, which, at the conclusion of the investigation procedures, had the following outcomes:

- In 1 (one) case the commissioner made a finding of discrimination;
- 2 (two) complaints were not admitted because they did not meet the requirements of the law on Protection from Discrimination;
- In 2 (two) cases the finding was one of non-discrimination.

In relation to the individuals who filed complaints with the CPD, the number of claims of discrimination on gender grounds is relatively small, compared to other grounds of alleged discrimination, although the complainant gender ratio is close to 50:50.

Complainants by gender

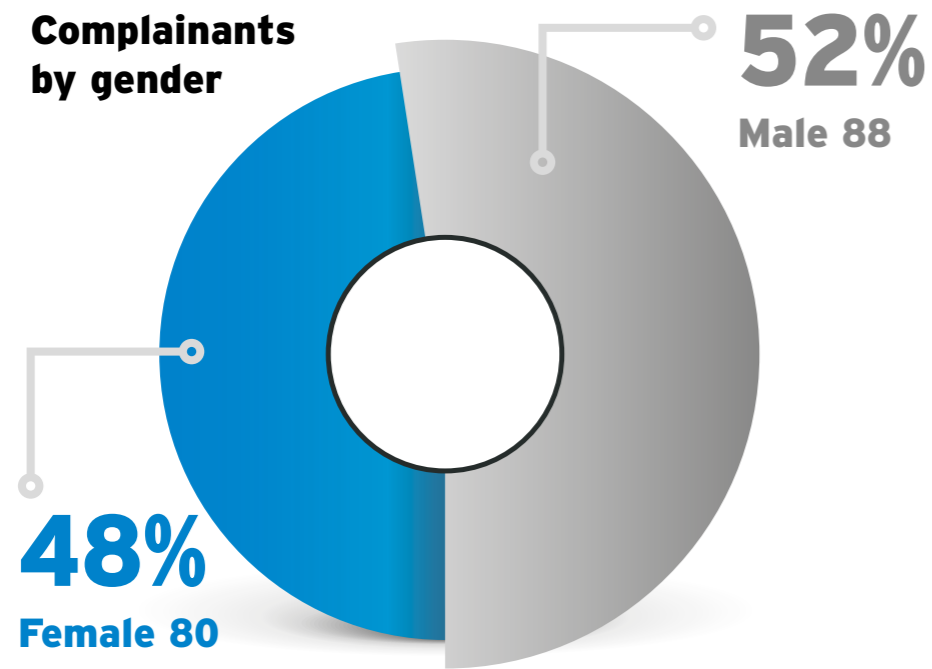


Chart Nr. 4: Complainants by gender

The objects of complaints claiming discrimination on grounds of gender were mainly related to the areas of provision of goods and services by public institutions.

CASE 1

In her complaint lodged with the office of the Commissioner, E. H. claimed discrimination on grounds of gender, pregnancy and health status, by Protec Shoes, a limited company. E. H. had been working as an accountant for Protec Shoes limited from 18.04.2012. A fixed term contract had been signed then between E.H., in the quality of employee of Protec Shoes limited and Protec Shoes Ltd., in the quality of employer, valid until 02.07.2013. The complainant claims that the Albanian representative of the company initially communicated to her that upon expiry of her contract on 02.07.2013, there would be no renewal of contract. This meant that E.H would be out of work just two days after her due date and that she would still be in the maternity hospital, which caused her great distress and worsened her health situation. Later, in May 2013, the company officially communicated to E.H. that her contract would not be renewed once the term specified in the contract had expired, i.e. after 02.07.2013. At the time, E.H. was still on maternity leave, after a very difficult delivery, which led to both mother and baby suffering poor health as a result.

At the conclusion of the investigation procedures, the Commissioner made **a finding of discrimination** on grounds of gender against E. H., in contravention with Article 147 of the Labour Code⁵², by Protec Shoes Ltd. and issued the respective recommendations, which were implemented by the company.

⁵² Article 147 of the Labour Code provides that "(1) The employer shall not terminate a contract in cases where, pursuant to the legislation in force, the employee is completing his/her military service, receiving temporary benefit payments from the employer or Social Insurance Services for a period of up to one year, or where the employee is on holiday as per agreement with the employer. (2) When the termination of the contract takes place prior to the employee being called up for military service, or the employee is receiving temporary incapacity benefits, or is on holiday as per agreement with the employer, and the notice deadline has not expired, such deadline shall be deferred for the period of completion of the military service, temporary incapacity to work, or holiday agreed by employer, and shall resume at the end of these periods."

6. Claims of Discrimination on Grounds of Age

In 2014, the CPD received four complaints claiming discrimination on grounds of age. The Commissioner made the following findings:

- One finding of discrimination,
- One finding of non-discrimination;
- Two decisions not to admit the files because of failure to meet the criteria set out in Law No. 10 221 of 04.02.2010, On Protection from Discrimination.

The cases handled by the CPD on these grounds are mainly related to the area of access to goods and services. For more information on cases of this type, go to Complaints Related to Access to Goods and Services.

7. Claims of Discrimination on Grounds of Political Belief

In 2014, the Commissioner received 34 complaints claiming discrimination on grounds of political belief. The commissioner decided as follows:

- In five cases, the Commissioner made findings of discrimination;
- In six cases the finding was one of non-discrimination;
- In four cases the proceedings were suspended because the complainants withdrew their claims and;
- In four cases the claims filed were judged inadmissible due to failure to meet the criteria set out in Law No. 10 221 of 04.02.2010, On Protection from Discrimination.

CASE 1

M.Z. lodged a complaint with the Commissioner's Office, claiming he was discriminated against on grounds of his political beliefs by the Regional Educational Directorate, Fier. The complainant had worked as a maths teacher at Ruzhdie Primary School since 06.11.2002. In the wake of the general parliamentary elections of 28 June 2009, he was transferred from the school. The complainant claimed that this move was a result of an altercation he had had during the electoral campaign with his political opponents, given that he was also the leader of the SP branch in Ruzhdie municipality. From the inquiries made, the Commissioner found that in the space of 3 (three) academic years, Mr M. Z. had been transferred 5 (five) times, with no reasonable justification, to various schools in the Fier district, which were at quite a distance from his place of residence.

At the conclusion of the investigation procedure, the Commissioner judged that all these unjustified transfers at the expense of the complainants were on account of M. Z.'s political beliefs, because the consequences he suffered all related to events after 28 June 2009, date when the general parliamentary elections were held. In addition, all these transfers were authorised in contravention of the education legislation in force. *The Commissioner made a finding of discrimination against M.Z. by the Regional Education Directorate Fier, on grounds of his political beliefs, and recommended to the Regional Education Directorate Fier, the organisation that committed the discriminatory behaviour, to take measures to remedy the consequences suffered by Mr M. Z, by reinstating him in his previous position as maths teacher in the Ruzhdie municipality.*

The Commissioner's recommendation was implemented by the Regional Education Department Fier, and Mr M.Z. was reinstated.

CASE 2

V.M. lodged a complaint against the Public Health Directorate in the district of Mat, whereby she claimed discrimination on grounds of political belief. In support of her claim, V.M. produced an Official Letter No. 167 of 20.05.2014 of the Public Health Directorate, Mat, whereby the Directorate ordered: "*Immediate political removal of V. M. from the Public Health Directorate, Mat. This order enters into force with immediate effect*". The complainant explained that the director of the institution had ordered that she be dismissed from the job with immediate effect, without any legal basis or reasonable justification, but based on purely political motives.

The Public Health Directorate at Mat, in spite of the time it was given to respond, did not produce any facts or evidence to reject the complainant's claims and to prove that her differentiated treatment was a result of reasonable grounds and not because of V.M.'s political beliefs.

The Commissioner found that the order for V.M.'s dismissal on grounds of political belief was a flagrant case of violation of dignity, human rights and fundamental freedoms of the individual, sanctioned in the Constitution of the Republic of Albania. It deemed that failure to punish such flagrant discriminatory behaviour would greatly undermine the *raison d'être* of the Law on Protection from Discrimination.

At the conclusion of the investigation process, the Commissioner made a **finding of discrimination on grounds of political belief against V.M.** by the Public Health Directorate at Mat and recommended V.M.'s reinstatement in her previous job position.

With its decision No. 460 of 04.11.2014, the Public Health Directorate in Mat informed the Commissioner on the implementation of her recommendation whereby V.M. was reinstated to her previous position.

8. Claims of Discrimination on Grounds of Educational Status

During 2014 the Commissioner for Protection from Discrimination received 9 complaints claiming discrimination on grounds of educational status. The Commissioner decided as follows:

- 1 (one) finding of non-discrimination;
- 6 (six) claims are still in process;
- 1 (one) decision for the case to be suspended because the complainant withdrew the complaint, and
- In 1 (one) case a decision was made on another ground claimed by the complainant.

CASE 1

S.R. lodged a complaint against the IEVP (penitentiary institution) in Kavaja, claiming discrimination on grounds of "educational status".

The complainant had worked for IEVP Kavajë as an 'electro-mechanic' from 10.11.2009 to 24.01.2014, after which his employment relations were terminated. He was notified of the termination by an official letter of 23.01.2014 of the General Director of Prisons. He claims the termination of contract was unfair and discriminatory.

Following the investigation procedures and the inspection carried out at the IEVP Kavajë, the Commissioner found that the dismissal from work and the termination of administrative and financial relations with IEVP Kavajë⁵³ had been carried out pursuant to Order of the General Director of Prisons⁵⁴ and based on the legal acts and delegated legislation in force. The decision followed the recommendations of the Internal Prison Audit of the Department of Internal Affairs in Tirana, which after the inspection of this institution on 17.12.2013, noted, among other things, that S.R.'s personal file contained irregular educational documentation and that he did not have the required qualifications for the job position.⁵⁵

The complainant did not provide the CPD any documents to prove that his qualifications met the job requirements.

At the conclusion of the investigation, the Commissioner made a finding of non-discrimination against S.R. by the IEVP Directorate in Kavajë on grounds of educational status because the Law on Protection from Discrimination provides that the requirement to meet the relevant criteria for the job position shall not be regarded as discriminatory.

9. Claims of Discrimination on Grounds of Health Status

In 2014, the CPD received 17 (seventeen) complaints claiming discrimination on grounds of health status. The investigation procedures have been completed for 11 (eleven) of these claims, of which:

- In 4 (four) cases the Commissioner made a finding of discrimination and issued the relevant recommendations,
- 3 (three) claims were deemed inadmissible because they did not meet the criteria of the Law on Protection from Discrimination,
- In 3 (three) cases a finding of non-discrimination was made.
- In 1 (one) case the complainant withdrew their claim.

CASE 1

In her complaint submitted to the CPD, L. R. claimed discrimination on grounds of health status by the Regional Education Directorate Fier. The complainant worked as a teacher in the "Jakov Xoxa" Secondary School in Fier. During the summer holidays she had been diagnosed with thyroid cancer, for which she was going to have surgery. Before leaving to go abroad for her operation and treatment, the complainant duly informed the director of the educational institution where she worked, as well as the Regional Education Directorate Fier, giving the reasons for her temporary absence from her teaching duties on account of her health situation. While Ms L.R. was off on certified sick leave and under treatment abroad, the Regional Education Directorate in Fier terminated her employment relations.

The RED Fier had placed the complainant in an unfavourable and discriminated position by failing to follow due procedures and violating the law, in contravention of Labour Code provisions and education-related legislation. The CPD found that L.R. had been discriminated against by the RED Fier on grounds of her health status and recommended to the RED Fier, the organisation that had committed the discriminatory behaviour, to take measures to remedy the consequences suffered by L.R.

53 Internal order of the IEVP Kavajë, Prot. No. 305 of 27.01.2014.

54 Order No. 358/1 of 23.01.2014 of the General Director of Prisons.

55 This refers to Official Letter with Prot. No. 9240 of 30.12.2013 of the Internal Affairs Department on: "The Audit Report to the IEVP Directorate Kavajë, on the inspection carried out on 17.12.2013"

The Commissioner's recommendation was implemented by the RED Fier and L.R. was reinstated in her job.

CASE 2

K.N, parent of a pupil with the initials N.N., lodged a complaint against the managers of the private Alen Primary School in Fier, claiming discrimination on grounds of health status. The complainant explained that her child was a pupil in the third grade of the primary school. The child had learning difficulties and displayed aggressive behaviour. In January 2014, the school management had ordered the expulsion of the child from school without providing any reasons.

The commissioner judged that, pursuant to Article 7 of the Law on Protection from Discrimination, discriminatory behaviour may result from an action or from failure to act. The failure of Alen School to act in compliance with the legal provisions, which guarantee the education of children with learning or behavioural problems, led to a situation whereby the pupil, N.N., was not able to enjoy her right to education on an equal footing with other children. The failure of the educational institution and of the parent to take effective measures to ensure the integration of the child in school is considered direct discrimination pursuant to Article 3/2 of Law No. 10221/2010 On Protection from Discrimination.

In conclusion, the Commissioner made a finding of discrimination against the pupil, N.N., on grounds of health status, by the Alen School, and recommended that the private primary school take measures for setting up the psycho-social service unit at the school, in order to develop a plan of intervention in support of pupils with various difficulties in learning or pupils with disabilities.

In its Official Letter of 03.07.2014, the Alen School informed the Commissioner on the implementation of her recommendation, by setting up a working group in support of pupils with various problems.

10. Claims of Discrimination on Grounds of Religious Belief

In 2014, the Commissioner for Protection from Discrimination handled 5 cases (3 complaints and 2 ex officio cases) on grounds of religious belief. Of these:

- In one case, the Commissioner made a finding of discrimination,
- In one case, the Commissioner made a finding of non-discrimination,
- In one case the complaint was not admitted,
- In two cases, the investigation process is still on-going

CASE 1

Following the publication of an interview with M.V. by journalist A.L. in *Mapo Weekend* newspaper on 6 and 7 September 2014, entitled "*Ja pse jam antiverior e antimusliman*" (Here's Why I am Anti-Northerner and Anti-Muslim), the Commissioner for Protection from Discrimination initiated administrative proceedings against Mr M. V.

In dealing with this case, the Commissioner took into account that this case involved two fundamental human rights, the freedom of religious belief and the freedom of expression. Every individual has the absolute right to express their own opinions, but where opinions are made public, the freedom of speech, although a fundamental freedom, is no longer absolute. The society is made up of a variety of cultures, religious beliefs, lifestyles, customs and traditions, and consequently, it is necessary that the freedom of speech does not encroach on other rights, such as the freedom of thought, conscience and religion, and the right not to be discriminated against. The way Mr M.V. described northerners in his

interview, by labelling them thieves and criminals, and labelling the Muslim religion as a religion of violence, amounted to incitement of feelings of hatred, contempt, and divisiveness between the regions and the religions. Proof of this are the debates, comments and posts on social networks or articles in the print and online media, which intensified the offensive and denigrating attitudes based on regional origin or religious faith.

In relation to this case, the Commissioner took into account two other significant factors, namely Mr M. V.'s role as a public person and the medium he chose to publish his statements. *The importance of the freedom of speech of a public person goes hand in hand with a greater responsibility on their part to be more cautious and avoid language that leads to feelings intolerance and incites discrimination among the public.* The fight against intolerance and discrimination are essential in the protection human rights and fundamental freedoms – these rights and freedoms are the key pillars of a democratic state. In addition, *the Commissioner is of the opinion that the publication of such statements through the print media is a powerful means of spreading information.* The right of individuals to freely express their opinions must not "**offend, shock, or upset**" others.

The Commissioner for Protection from Discrimination found that: the content of the interview entitled *Here's Why I am Anti-Northerner and Anti-Muslim* by journalist A. L. with Mr M. V., published in *Mapo-Weekend* of 6-7 September 2014, is of discriminatory nature. The CPD decided that Mr M.V., as the person who carried out the discriminatory behaviour, must publicly withdraw the statements made in the above interview within 7 (seven) days from receiving notification of this decision and that in the future he must avoid any use of such language that may incite, spread or promote hatred or other forms of discrimination.

M.V. responded to the CPD's decision in writing with his letter of 18 October 2014, whereby he informed the Commissioner of the publication in the same newspaper, *Mapo Weekend*, of his "Apology and Withdrawal of Statement" in relation to parts of his interview published on 6 and 7 September 2014.

11. Claims of Discrimination on Other Grounds

Membership of a Special Group

In 2014, the CPD issued decisions on two cases related to membership of a special group. In one case, the complainant claimed that he had been discriminated against, after having raised some issues and concerns about the organisation he filed the complaint against. In another case, the Commissioner initiated the procedures for the examination of the complaints for one of the grounds set out in the Law on Protection from Discrimination, and at the end of the investigation procedures the finding was that the complainant had been discriminated against because of his reporting of the organisation against which he lodged the complaint and on grounds of membership of a special group.

CASE 1:

In 2014 the CPD examined the case of M. G., who claimed he had been discriminated against by Albpetyl Ltd, Fier, because of his health status and membership of a trade union group. At the conclusion of the investigation process, the Commissioner found that M.G. had suffered discrimination in the form of victimisation, after lodging his complaint with the Commissioner for Protection from Discrimination.

Taking into account the fact that M. G. filed his complaint with the Commissioner's Office on 05.06.2014 and that the punitive measures taken against him by Albpetyl Ltd Patos mostly post-dated the date of the complaint, the Commissioner concluded that they were a

consequence of the said complaint. The Commissioner found that the unlawful actions or failures to act on the part of Albpetrol ltd Patos had led to his being placed in an unfavourable position due to his transfer from his usual job to another one less favourable to him, which then culminated with the ultimate dismissal from the job and termination of the employment contract by the employer.

II.1.1.6. Forms of Discrimination

Article 3 of Law 10221/2010, On Protection from Discrimination also sets out the forms of discrimination. Two of the forms of discrimination defined in the Law on Protection from Discrimination are direct and indirect discrimination. In addition, the law also sets out other forms in which discriminatory behaviours could be displayed, including are discrimination by association, harassment, incitement of others to discriminate, denial of reasonable adjustment, and victimisation. Definitions are provided for each of these forms of discrimination and the concept of discrimination itself.

Below are some of the cases handled by the CPD, where a finding of discrimination of various forms was made:

CASE 1

Ms E.G., an external lecturer at the Faculty of Mathematical and Physical Engineering of the Polytechnic University of Tirana, lodged a complaint with the Commissioner's Office, claiming discrimination on the ground of educational status. According to the background of the case provided in the complaint form, the Tirana Polytechnic University had announced a competition in relation to two vacant positions for academic staff in the Department of Physics Engineering of the Faculty of Mathematical and Physics Engineering. After submitting the required documentation, Ms E. G. inquired about the next stages of the competition. She had not been informed, however, that her application had not been successful because of failure to meet all the criteria. The complainant had attended higher education in 1994-1998 at the Physics Department, Faculty of Natural Sciences of "Luigj Gurakuqi" University in Shkodra. The vacancy announcement by the Tirana Polytechnic University stated that only candidates who had earned diplomas from the Department of Physics Engineering of the FMPE of the University of Tirana or from the Physics Department of the Faculty of Natural Sciences, University of Tirana could apply. The complainant claimed that this criterion was discriminatory and that she met and surpassed the rest of the criteria, with the exception of having completed her studies at the Physics Department of the Faculty of Natural Sciences, "Luigj Gurakuqi" University in Shkodër. By placing this criterion in the vacancy announcement, Tirana Polytechnic University had automatically disqualified all the further courses of study completed by the complainant. Ms E.G. had studied and received a PhD from the University of Bologna, Italy, and from May 2014, had earned the title "Associated Professor".

At the conclusion of the investigation, the CPD decided⁵⁶ to issue a **finding of direct discrimination** by the Rectorate of the Tirana Polytechnic University against Ms E. G. on grounds of educational status, as well as one of indirect discrimination against candidates who had graduated from any Physics Sciences Faculty at Universities in the districts, and who had earned a Second Level Integrated Diploma (recognised pursuant to the legislation

⁵⁶ Decision No. 6 of 20.01.2015 of the Commissioner for Protection from Discrimination.

in force). The Commissioner recommended that the Rector of the Polytechnic University and the Dean of the Faculty of Mathematical and Physical Engineering take measures to change these exclusion criteria in their vacancy announcements for academic positions, with immediate effect after the issuance of this decision.

CASE 2

In 2014, Ms H.H. lodged with the Office of the Commissioner for Protection from Discrimination a complaint against the Director of the Dormitories of Tirana Secondary Schools, claiming that she had been discriminated against. H.H.'s contract with the Dormitories had been terminated on account that she had accompanied her son to medical appointments, whose health insurance was mainly provided for by the employer, during working hours.

Ms H. H. explained that she had worked as a cleaner at the Dormitory of one of the Tirana secondary schools in Tirana since 1998. In addition, Ms H.H. explained that she had been dismissed on account of taking time from work to accompany her son to medical appointments at the Mother Theresa University Hospital Centre. In the opinion of the CPD, the practice of the Directorate of Secondary School Dormitories, whereby it treated all cleaning staff of the Dormitory of the Sports Education School in Kamëz in the same way by not taking into account their particular circumstances, constituted substantive discrimination (equal treatment of unequal matters), and was a violation of Ms H. H.'s right to employment due to her having a disabled son.

The commissioner found that in the case of H.H. there had been direct discrimination by association by Mr I. D., Director of Dormitories of Secondary Schools, who had placed her in an unfavourable position compared to other employees working for the Dormitories of Secondary Schools. The CPD ordered the Directorate of Secondary School Dormitories to reinstate Ms H.H. in her previous position as a cleaner. In addition, the CPD imposed on the Directorate of Secondary School Dormitories the obligation to officially advise the Commissioner within 30 (thirty) days from the issuance of this order, on measures taken for the implementation of this order, pursuant to Article 33, paragraph 11 of the Law on Protection from Discrimination. In relation to Article 33, paragraph 11 of Law No. 10 221 of 04.02.2011, failure to implement this decision shall lead to the imposition of a fine, pursuant to the provisions of paragraph 13 of the same Article.

CASE 3

F.D v. Manager of Kindergarten 25 Tirana

F.D, parent of the child with the initials G.D. (*diagnosed with infantile autism*), claimed that the manager of the kindergarten had discriminated against her by refusing to enrol her child on grounds of disability.

Instruction No. 23 of 08.08.2014 "On the 2014-2015 Academic Year in the Pre-University Education System", Title III, paragraph 2/b provides that: "*Regional Educational Directorates/ Education Offices, managers and teachers in public kindergartens shall give priority to: b) the enrolment in their kindergartens of children from vulnerable, Roma and Egyptian children, and children with disabilities*". Regarding the above, it is deemed that the priority enrolment of children with disabilities is an obligation of managers of educational institutions, regardless of the conditions in the kindergarten or the workload of the teaching staff.

The Normative Provisions on Pre-University Education for 2013, in particular Article 93 of Title 15 "Education of Children with Disabilities", provides for the functioning of multidisciplinary committees at the Regional Education Directorates/Educational Offices and the educational institutions. Paragraph 4 of Article 93 provides that: "Heads of the educational institutions shall consult with the committees of the educational institution before addressing the committee at the Regional Education Directorate/Educational Office, and shall collaborate with the child's parents in submitting their application". Article 95/1 provides that: "The head of the mainstream educational institution sets up a committee for pupils with disabilities, composed of three teachers of various school subjects and the psychologist/social worker. In addition, the committee shall also have at least one teacher and teacher assistant specialised in disability, (where available). The committee shall be chaired by the psycho-social worker".

After examining the documentation, the Commissioner found that there was no evidence of discriminatory conduct by the managers of Kindergarten 25 in the enrolment of the child for reasons of disability. Apart from this, in the course of the examination of documentation submitted by the parties, it transpired that the school had failed to set up a multidisciplinary committee to assess the child's condition and needs. This would have helped further collaboration with the child's parents, before addressing the Regional multidisciplinary committee for carrying out an assessment educational and social needs of the child.

The Commissioner notes that, pursuant to Article 7 of Law no Protection from Discrimination, discriminatory behaviour may consist of actions or failures to act. Failure to act pursuant to the legal provisions that guarantee the right of children with disabilities to education, by the staff and managers of Kindergarten 25, had led to a situation where the disabled child in this case was unable to enjoy her right to education on an equal footing with other children. The failure of the education institution and of the child's parent to take effective measures to ensure the integration of the child in Kindergarten 25 constitutes **direct discrimination** in contravention of Article 3/2 of Law No. 10221/2010 on Protection from Discrimination, The CPD recommended that the Manager of Kindergarten 25 take the necessary measures for setting up the committee at their educational institution.

With their official letter No. 5/1 of 23.01.2015, the director of Kindergarten 25 informed the Commissioner on the implementation of the recommendation and the setting up of the committee for the assessment of children with disabilities.

CASE 4

The complainant, L. G. explains that she had previously been an employee of Albpetrol ltd. She had completed vocational education as a medical nurse and a further one-year course as a chemical-biochemical laboratory technician, both completed before the 1990s. Due to her family connection with M.G. (her husband, representative of the Trade Union of Petroleum Industry Workers), she was transferred from the position of chemical-biochemical lab technician to that of environmental worker. She claimed that two new workers, with no experience and with unsuitable educational qualifications for the positions they were given, were hired as medical nurses. In addition, in her complaint form she explained that following her husband's whistleblowing Albpetrol ltd., she was put under constant pressure, which she thought aimed at removing her from the job. After the complaint filed with the CPD, Albpetrol ltd took an unjustified disciplinary measure against her.

From the examination of the facts and evidence submitted by the parties, the Commissioner found that the disciplinary measure against L.G. was ungrounded and she is satisfied that the measure taken against L.G. was deliberate and unfair. The fact that Albpetrol ltd failed to provide the Commissioner with a reasoned justification for the disciplinary measure taken is proof of this. In addition, the Commissioner found that the absence of clock-in and clock-out procedures to ensure attendance of workers created a favourable terrain for issuing the said disciplinary measure against the complainant.

In conclusion, after the examination of the facts, the Commissioner found that the actions of failures to act on the part of Albpetrol ltd Patos in relation to the complainant were unlawful and had placed her in a disadvantaged position, first by transferring her from one job position to another that was less advantageous to her, and then by taking a unjustified disciplinary measure against her, not based on evidence or facts.

*The CPD found that the complainant had been discriminated against by her employer Albpetrol ltd, in the form of **discrimination by association** on account of her husband's involvement in the trade union movement. The CPD also found that the complainant had been discriminated against, in the form of **discrimination by victimisation**, because she was treated unfairly following the filing of a complaint with the Commissioner for Protection from Discrimination.*

II.1.1.7. Areas of Discrimination Claims

In 2014, the Commissioner received 180 complaints, from areas ranging from education, employment, and access to goods and services. The following chart presents the percentage of complaints from each of these areas.

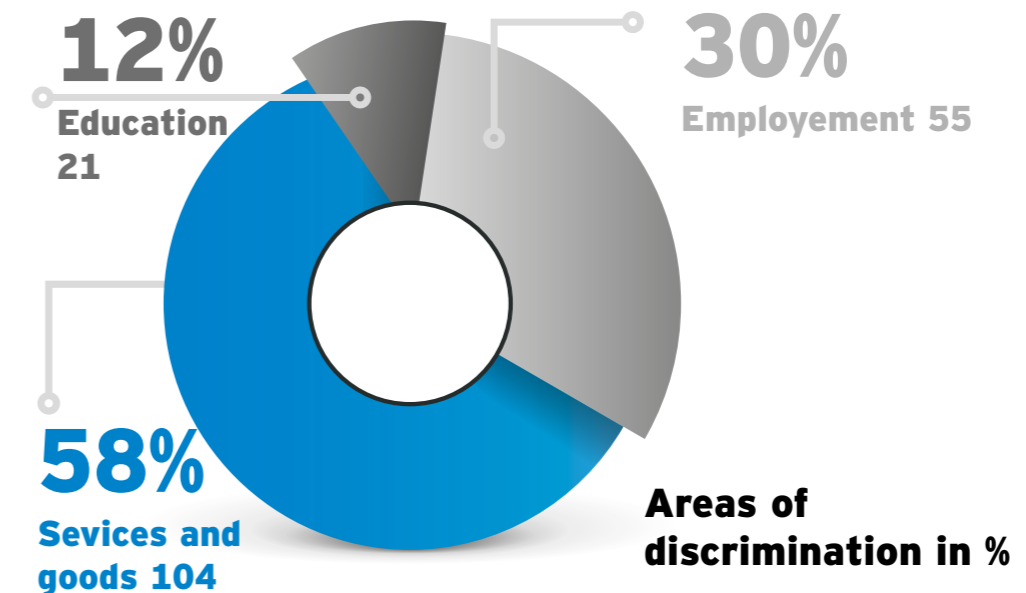


Chart No.5, Complaints by area of discrimination

- **Protection from discrimination in the area of access to goods and services**

Claims in the field of goods and services accounted for the largest number of complaints, compared to the other two major areas. In general, the complaints were related to denial of reasonable adjustment/accommodation, delays in payment of disability benefits, delays in receiving the monthly income support payments, etc.

CASE 1

According to information published in *Gazeta Shqiptare (The Albanian Newspaper)* of 19.04.2013 the elderly residents of the Home for the Elderly in Shkodër had not received their benefit payments from the State Social Service in the last seven months.

Following the investigation carried out and based on the documentation examined by the Office of the Commissioner for Protection from Discrimination, it transpired that the elderly residents of the Home for the Elderly in Shkodër had constantly experienced delays in the receipt of their benefits from the Ministry of Social Welfare and Youth and the State Social Service.

Based on the evidence and facts collected, the Commissioner for Protection from Discrimination found that the elderly residents of the Home for the Elderly in Shkodër had been discriminated against on account of their membership of a special social group, as persons without any income residing in public residential homes. The CPD recommended that the relevant departments of the Ministry of Social Welfare and Youth must abide by their legal obligations and take into account the economic and social situation of the residents of the Home for the Elderly in Shkodër and take immediate measures to transfer the monthly payments of 6000 ALL to the elderly living at this residential home.

In response to the recommendation of the Commissioner, the Ministry of Social Welfare and Youth informed the Commissioner about the prompt measures taken to transfer the monthly payments of 6000 ALL to all the citizens entitled to this payment.

- **Protection from discrimination in the area of employment**

Complaints claiming discrimination in the area of employment were mainly addressed against state institutions and private entities. They were mostly related to discriminatory behaviours in the form of job transfers and termination of employment relations on abusive or unfair grounds.

The total number of these claims in 2014 was 69. Compared to the previous year, the claims filed in the area of labour and employment relations focus more on dismissal from work. The grounds of discrimination claimed in the cases handled in the field of employment were: political belief, health status, membership of a special group, educational status, race, and age.

In the area of employment, following the investigation and completion of some of the cases, the CPD made findings of discrimination and issued the relevant recommendations on the remedies and measures to be taken by the entity that carried out the discrimination. In seven cases, the entities found to have committed discrimination implemented the Commissioner's recommendations and the complainants were reinstated to their previous jobs.

CASE 1

A.T. filed a complaint against KESH Ltd, claiming discrimination on grounds of political belief. The complainant explained that the manager at KESH Ltd had terminated his employment contract with the motivation "for reasons of restructuring of the organisation"; the official reasoning stated that the dismissal was due to the fact that the complainant's educational

qualifications were incompatible with the job position. The complainant provided supporting documentation to enable verification of his claims.

While the complainant confirmed his political beliefs and the fact that KESH Ltd was aware of them, KESH Ltd did not produce any evidence or written documents with the terms and conditions, or a job description setting out the criteria and requirements for the position of 'expert' for which Mr A.T. had been hired initially (particularly something in writing about the educational qualification requirements). In addition, the restructuring of the institution did not affect the section where the complainant worked, or his particular job position.⁵⁷

At the conclusion of the investigation procedures, the Commissioner made a finding of discrimination against A.T. by KESH Ltd, on grounds of political belief and recommended that A.T. be reinstated in his former position.

- ***Decision no. 148 of 26.09.2014 of the Commissioner imposed a fine on KESH Ltd for failure to implement the recommendation to reinstate A.T. to previous position.***
- ***KESH Ltd lodged an appeal against the decision of the Commissioner to impose a fine with the Administrative Court of Tirana District. The appeal was dismissed and the Commissioner's decision to impose a fine was upheld.***

- **Protection from discrimination in the area of education**

In 2014, the Commissioner for Protection from Discrimination received seven complaints related to the area of education. The cases from this area were generally claims of discrimination on grounds of race, health status and disability. The greatest number of the cases were to do with the refusal to integrate children with disabilities in mainstream schools and refusal to enrol children from the Roma community in primary and secondary schools.

CASE 1

E.C. filed a complaint with the CPD, against A.Q., E.B. and K.G., managers at "Ismail Qemali" University at Vlorë, claiming unequal treatment compared to other colleagues in the department, which she believed was caused after E.C. had written letters of complaint to various levels of leading authorities at the University, as well as to the State Supreme Audit Authority, and the Ministry of Education and Sports, denouncing some alleged wrongdoings she had noticed in the educational and administrative activities of the "Ismail Qemali" University in Vlorë and as a result of her stance in relation to the 2012 election for the leading bodies of the University.

The authorities at the Vlora University responded to the claim stating the claims of the complainant were not correct. They believed that the events that gave rise to the claim of discrimination related to the time period between 2011 and October 2013, i.e. the

⁵⁷ An examination of KESH's organisational chart, adopted by Decision of Supervisory Council No. 3 of 12.01.2013 showed that the Maintenance Department, Generation Division, had 10 employees. Also, the KESH organisational chart adopted by Decision of Supervisory Council No. 4 of 23.10.2013, the Maintenance Department, Generation Division, had 15 (fifteen) employees, i.e. 5 (five) more than the previous organisational chart, which shows that there had been no job cuts, on the contrary, more people had been hired. It is true that the new organisational chart had 57 fewer employees than the previous one, but this organisational chart represented the number of KESH employees nationally, while at the Maintenance Department where A.T. worked, the number of employed had increased.

consequence predated the cause. In relation to the claim of being discriminated against on account of her stance towards the 2012 elections for the leading bodies of the University, the University authorities responded that they were not aware of any public or personal, formal or informal, statement addressed by the complainant to any leading election bodies.

The commissioner found that all the applications/reports made by the complainant, and the letters she claimed had given rise to discrimination against her, had taken place after the period where the alleged discrimination against her; in addition, the complainant failed to prove her claim of discrimination on account of her outspokenness against the 2012 elections for leading bodies at the University.

In relation to the above, the Commissioner judges that in order to prove the existence of discriminatory behaviour it is necessary to establish the existence of a causal relationship between the adverse treatment and the cause of such adverse treatment. After examining the documentation handed in by the parties, the cause of the alleged discrimination could be established and consequently, discriminatory behaviour was not proven.

The complainant also claimed that on 08 and 09.01.2014 she had sent a letter to the University Rectorate, copies of which were sent to the Minister of Education and Sports and the Prime Minister of the Republic of Albania, whereby she demanded that the discriminatory actions against her be stopped. After examining the documentation submitted by the parties, the Commissioner found that the Rector of Vlora University had failed provide an official response to E.C.'s claims. It is an obligation of employers to examine the complainants' claims and respond to them within one month.

The Commissioner analysed the internal regulation of the Vlora University and the statements made by A.Q., E.B. and K.G. and found that the internal regulation did not establish well-defined procedures for allocating subjects and spreading the teaching workload; rather, this was left at the discretion of heads of departments to coordinate the distribution of the teaching workload. The lack of clear instructions on the procedures and criteria used for allocating subjects and spreading the teaching workload had caused varying interpretations by the academic and managerial staff of the university.

At the conclusion of these procedures, the Commissioner:

1. **Did not find that E.C. had been discriminated against** by the managers at the University on account of her claimed principled stand towards the violation of service standards at the university and towards the 2012 election processes for leading bodies of the University.
2. **Found that E.C. had been discriminated against** by the Rector of the Vlora University on account of her outspokenness and critical stand, due to his failure to respond to the complaint letters of the complainant of 08 and 09.01.2014.

The Commissioner recommended that "Ismail Qemali" University take the following measures to improve the situation:

1. Meet employer's obligations set out in Article 13 of the Law on Protection from Discrimination, by handling every claim of discrimination by employees in an effective and timely way.

2. Define clear procedures and protocols for handling employees' claims of discrimination in its internal rules of procedure.
3. Take measures for the development of an instruction manual on the procedures and criteria to be used for the allocation of subjects and distribution of the teaching workload.
4. Advise E.C. of the reasons for not receiving reimbursement, or the delays in receiving reimbursement of expenses approved by the Dean, as confirmed in the official letters of 29.05.2013 and 21.10.2013.

In their official letter No. 500/1 of 23.10.2014, and the enclosed supporting documentation, the authorities of Vlora University advised the Commissioner of the implementation of recommendations.

CASE 2

Ms A.P. filed a complaint with the Commissioner for Protection from Discrimination, against M.P., head teacher of the Unified School at Vau i Dejes, claiming discrimination against her son on grounds of disability.⁵⁸

According to the explanations provided in the complaint form, M.P.'s was in third grade at the United School in Vau i Dejës, but had not been able to attend in the last two weeks prior to the complaint. His mother, who is a teacher at the school, stated that the reason for this non-attendance was because the head teacher was seeking to expel her son from school, because he caused problems to other children due to his suffering from autism. Among others, M.P.'s mother asked the Commissioner to intervene in order for her son to be allocated an assistant teacher, pursuant to Article 65, paragraph 3 of Law No. 69/2012 On the Pre-University Education System in the Republic of Albania, which would enable him to resume his education.

The investigation revealed that the Regional Education Directorate at Shkodër and the head teacher of the Unified School at Vau i Dejës had not fulfilled their legal obligations in relation to disabled pupils, as provided in Law No. 69/2012 On the Pre-University Education System in the Republic of Albania and Order No. 343 of 19.8.2013, of the Minister of Education and Science On the Adoption of Normative Provisions in the Pre-University Education System. The Regional Directorate Shkodër had been duly advised of M. P.'s case but had not taken any measures to solve the problem. A comprehensive analysis of the facts and evidence showed that, compared to other children at the same school, M.P. had been subject to unfair treatment by the RED Shkodër and Vau i Dejës Primary School. This treatment was directly related to his disability.

Regarding the above, the Commissioner found that MP had been discriminated against⁵⁹ on grounds of disability by the RED Shkodër and the Primary School at Vau i Dejës, and recommended that the above institutions take measures to fully comply with their legal obligations.

⁵⁸ M. P. suffers from autism.

⁵⁹ Decision No.1 of 15.01.2015 of the Commissioner on Protection from Discrimination.

Pursuant to the Law on Protection from Discrimination and following receipt of the above decision, Vau i Dejës Primary School in Shkodra duly informed the CPD about the measures taken by them for the implementation of the recommendation and fulfilment of their legal obligations.

II.1.1.8. Ex officio Cases

In 2014 the Commissioner for Protection from Discrimination initiated ex officio procedures in the examination of 8 cases. The initial indications that led to these investigations were: two cases were reported in the media, in two other cases the Commissioner was informed in writing by non governmental associations, in two other cases contact was made via the email address published on the web page of the Commissioner, and via telephone calls by inmates serving their sentences in institutions for the execution of criminal sentences (acronym in Albanian: IEVP).

All these cases were related to access to goods and services, on various grounds, including: the use of offensive language on grounds of race, on grounds of place of residence (living abroad or outside the centre of the county), on grounds of health status, disability and religious faith.

Out of the total of eight cases, 5 (five) were closed: in 3 (three) cases the Commissioner recommended improvement of the situations that gave rise to the discriminatory behaviours identified, and in 2 (two) cases the Commissioner made a finding of non-discrimination.

II.1.1.9. Outcomes of Decisions in the Cases Examined by the CPD

Pursuant to Article 33 of the Law on Protection from Discrimination, the complaints initially undergo a preliminary examination to establish their admissibility. Where the complaint does not meet the admissibility criteria or information is missing, which may hinder the procedures for the further examination of the case, the complainant is asked to take measures to meet the criteria pursuant to the Law on Protection from Discrimination, in order to make their complaint admissible. In many cases, thanks to collaboration with local authorities, the complainants were assisted by the local government bodies in filling the forms and completing the necessary supporting documentation, pursuant to the requirements of the Law on Protection from Discrimination.

In 2014, The Commissioner for Protection from Discrimination completed the administrative examination of 209 cases, of which:

- In 32 cases, the Commissioner made a finding of discrimination (27 findings of discrimination; in 5 the situation was resolved before the conclusion of the procedures);
- In 115 cases, the Commissioner found that no discrimination had occurred;
- In 12 cases, the decision was to suspend the investigation, following withdrawal of claim by complainant;
- In three cases, the proceedings were discontinued on various grounds;
- 43 decisions of inadmissibility of complaints;

- 1 recommendation for improving the situation;
- 3 decisions on imposing sanctions of penalty against the entities that failed to provide the CPD with the information requested pursuant to Law No. 10 221 of 4.2.2010, On Protection from Discrimination.

Pursuant to Article 33/8 of Law No. 10 221 of 04.02.2010 On Protection from Discrimination, the Commissioner for Protection from Discrimination has carried out public hearing sessions in eighteen cases, where the parties and any other interested person could attend to present their claims.

A number of the cases considered by the CPD were solved through mediation.

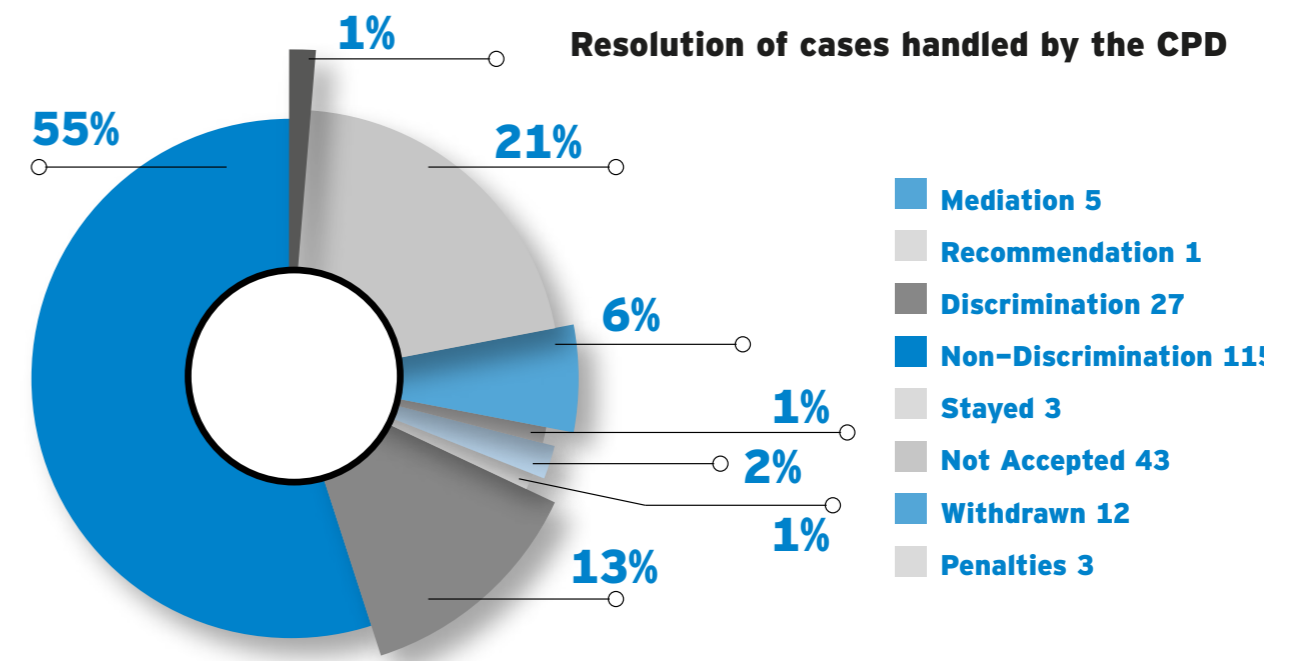


Chart No.6: Resolution of cases handled by the CPD

II.1.2. Handling of Claims of Discrimination by the Courts

The Law on Protection from Discrimination places the CPD in a broad-based relationship with the courts, by setting out a number of powers with regard to the participation of the institution in judicial proceedings. Above all, the goal of the law is to ensure non-discriminatory treatment in keeping with the letter and the spirit of the law, which means that both the CPD with its recommendations on administrative remedies (following the administrative examination of complaints or the ex officio investigations) and the courts must correctly and effectively apply the relevant legislation.

During 2014 there was a sharp increase in the participation of the Office of the Commissioner for Protection from Discrimination in court proceedings from 2012 to 2014, presented below in the form of a table:

CPD's participation in trial proceedings	2012	2013	2014
	3	6 (3 carried over from previous year)	18

Table No. 3 CPD participation in court proceedings

The following table represents CPD's participation in court proceedings, in the quality of a defending party, third party, as an expert providing written opinions on discrimination matters at the request of the court, court proceedings initiated by the CPD, requesting Court Enforcement Orders in relation to the penalty sanctions imposed by the CPD against entities/individuals who had committed discriminatory actions and had failed or refused to comply with CPD orders.

Year	CPD as defendant	CPD as a third party	Provision of written opinion for the court	Applications for court enforcement orders
2012	1	1	1	-
2013	3	3	-	-
2014	6	3	6	3

Table No. 4: Role of the CPD in court proceedings during 2014

II.1.2.1 Provision of Written Expert Opinions for the Courts

The activities of the CPD in the recent years have helped consolidate its role as a body specialised in the area of non-discrimination. The number of court requests for CPD's written expert opinions on discrimination issues, sent directly to the courts, has increased considerably. As seen from Table No. 4, there has been an increase in the number of court requests for CPD's written opinions for cases involving discrimination matters. This is also related to the training events held by the CPD and the Albanian Human Rights Group with court staff from five judicial districts in Albania in 2014.

Article 36, paragraph 4, of Law No. 10221 of 04.02.2010, on Protection from Discrimination, "Court Proceedings", provides that "The court may ask the commissioner at any stage of the proceedings, to provide a written opinion, the results of their investigation, if such investigation was carried out, or any other information material to the case". The CPD, as a specialised body, has established an important relationship with the courts, which contributes to the effective enforcement of the Law on Protection from Discrimination in the judicial system and the handling of discrimination matters by the courts based on the standards set by this organic law.

Following are summaries of cases where the CPD has provided written opinions for the benefit of the courts:

COURT CASE 1

The Commissioner for Protection from Discrimination participated in the trial between D.S., (the plaintiff), High Council of Justice (defendant/respondent), and the Ministry of Justice and the Commissioner for Protection from Discrimination (third parties). The plaintiff sought a finding of discrimination on grounds of political belief, because the HCJ had refused to admit D.S.'s case for examination. This case had not been brought before the CPD previously. The plaintiff claimed that the HCJ had not duly considered her application for reappointment to the public function she had held prior to becoming a member of the Central Election Commission, as provided in the Electoral Code. The reason, according to the plaintiff, is that D.S. had been elected a CEC member at the proposal of the then opposition party and for that reason the HCJ regarded her as politically biased. The plaintiff claimed that she was treated differently from a colleague of hers, also member of the CEC, whose mandate had expired at the same time as the plaintiff's, but who was reappointed to the job/function he had held previously. It transpired that the colleague the plaintiff compared herself with, had been appointed by the same political party as the plaintiff. In her written opinion for the court, the CPD recommended that a distinction had to be made between claims of discrimination and claims of unlawfulness. In its decision No. 7462 of 17.12.2014, the Administrative Court of first instance at Tirana decided: - **To uphold the plaintiff's claim of discrimination by: - making a finding of discrimination caused by the failure of the defending party, the High Council of Justice, to duly consider the case of the plaintiff. - Ordering the HCJ to comply with its obligation to consider the plaintiff's case and - Payment of damages to the plaintiff of a value of 1,000,000 ALL for the moral damage caused as a result of the discrimination she had suffered.**

COURT CASE 2

Plaintiff: S.L; Defendant: Albacall ltd. - Discrimination case in the area of employment relations. S.L., the plaintiff, had been employed by Albacall ltd, a privately owned company and his application before the court was for a finding of invalidity of employment contract under the provisions of the Labour Code and compensation for the discrimination suffered. The plaintiff claimed that he had been dismissed because he had founded a trade union of the workers of the company (the plaintiff claimed that he had taken steps towards the founding of the trade union, but the trade union had not been officially founded or registered according to the laws in force).

The CPD was summoned by the court under Article 36, paragraph 4 of the Law on Protection from Discrimination, and asked to provide a written opinion on the case, based on an application made by the plaintiff in the course of the proceedings. This case had not been handled by the CPD previously.

In the written opinion, the CPD recommended to the court that it had to take into account the fact that even the preliminary steps and activities towards establishing a trade union must enjoy protection from discrimination (however, it fell upon the plaintiff to prove such preliminary activities, i.e. to prove the existence of the grounds for discrimination), that is to say, even in the absence of a *de jure*-recognised trade union. It also recommended that the burden of proof be shifted in this case as the plaintiff had proven the preliminary activities he carried out towards the founding of a trade union.

Decision No. 10999 of 14.11.2014 of the Tirana District Court dismissed the plaintiff's claim of discrimination. In relation to CPD's opinion, the court argued that pursuant to Articles 213-295 of the Civil Procedure Code, the written opinion was inadmissible evidence and as such it could not inform the court's decision either in favour or against the plaintiff's claim of discrimination.

This case helped identify two problems in relation to the implementation of the Law on Protection from Discrimination:

- 1. The Courts do not notify the Commissioner about all the discrimination cases they handle, as provided in Article 36, paragraph 3, "Proceedings before the court";***
- 2. The final decision of the court was not communicated to the Commissioner for Protection from Discrimination, in spite of it being an obligation under Article 37/2 of the Law on Protection from Discrimination.***

COURT CASE 3

The CPD provided a written opinion to the Administrative Court of first instance at Durrës in relation to a case between the following parties: plaintiff: Z.H.; Defendants: General Directorate of Road Transport Services, Tirana, and Regional Directorate of Road Transport Services, Durrës. The plaintiff sought: "1) Total annulment of an administrative act, namely Decision No. 369 of 30.12.2013 of the General Director of the General Directorate of Road Transport Services, Tirana; 2) Ordering the defending party to restore to my previous job position; 3) Ordering the defending party to pay me damages to the amount of one year's salary, on account of their terminating the employment contract without any reasonable grounds; 4) Order the defending party to pay ½ of the monthly salary for his seniority at work for the period that it was not recognised and for which no payments were made."

This case had been previously handled by the CPD, but the investigation was suspended and case closed due to the fact that the plaintiff had at the same time pressed charges, based on the same claims, at the administrative court of first instance at Durrës. The CPD followed the entire court proceedings and provided its written opinion on the case.

The administrative court of first instance at Durrës pronounced a judgement⁶⁰, which referred to and took into account the opinion of the CPD, making a finding of discrimination against the plaintiff, pursuant to the Law on Protection from Discrimination. The administrative court of first instance at Durrës decided: - *To partially uphold the claim; - Ordered the defendants to compensate the plaintiff for the damage caused due to the termination of the contract without any reasonable grounds, to the amount of 6 (six) monthly salaries; - Partially dismiss the claim with regard to the rest*". This decision has been appealed and is now being considered by the Administrative Court of Appeals.

COURT CASE 4

The CPD provided a written opinion to the administrative court of first instance at Durrës in relation to the case between the following parties: S.P., plaintiff; General Directorate of Road Transport Services, Tirana, and Regional Directorate of Road Transport Services,

60 Decision No. 1620 of 25.11.2014 of the First Instance Administrative Court at Durrës.

Durrës. The plaintiff sought: "1) Total annulment of an administrative act, namely Decision No. 368 of 30.12.2013 of the General Director of the General Directorate of Road Transport Services, Tirana; 2) Ordering the defending party to restore to my previous job position; 3) Ordering the defending party to pay me damages to the amount of one year's salary, on account of their terminating the employment contract without any reasonable grounds (abusive motives), Article 146/1/c".

This case had not been the subject of consideration by the CPD previously. The plaintiff addressed the relevant court directly and the Court asked the CPD to provide a written opinion in the case.

Regarding this case, the Court pronounced a judgement⁶¹, which referred to and took into account the opinion of the CPD, making a finding of discrimination against the plaintiff, pursuant to the Law on Protection from Discrimination. The administrative court of first instance at Durrës decided: - *To partially uphold the claim; - Ordered the defendants to compensate the plaintiff for the damage caused due to the termination of the contract without any reasonable grounds, to the amount of 6 (six) monthly salaries; - Partially dismiss the claim with regard to the rest*". This decision has been appealed and is now being considered by the Administrative Court of Appeals.

COURT CASE 5

The CPD provided a written opinion to the administrative court of first instance at Durrës in relation to the case between the following parties: plaintiff: N.Sh.; defendants: General Directorate of Road Transport Services, Tirana, and Regional Directorate of Road Transport Services, Durrës. The plaintiff sought: "1) Total annulment of an administrative act, namely Decision No. 364 of 30.12.2013 of the General Director of the General Directorate of Road Transport Services, Tirana; 2) Ordering the defending party to restore to my previous job position; 3) Ordering the defending party to pay me damages to the amount of one year's salary, on account of their terminating the employment contract without any reasonable grounds; 4) Order the defending party to pay ½ of the monthly salary for his seniority at work for the period that it was not recognised and for which no payments were made."

This case had not been the subject of consideration by the CPD previously. The plaintiff addressed the relevant court directly. The Court asked the CPD to provide a written opinion.

Regarding this case, the Court pronounced a judgement⁶², which referred to and took into account the opinion of the CPD, making a pronouncement on the discrimination against the plaintiff, based on the Law on Protection from Discrimination. The administrative court of first instance at Durrës decided: - *To partially uphold the claim; - Ordered the defendants to compensate the plaintiff for the damage caused due to the termination of the contract without any reasonable grounds, to the amount of 6 (six) monthly salaries; - Partially dismiss the claim with regard to the rest*". This decision has been appealed and is now being considered by the Administrative Court of Appeals.

COURT CASE 6

The CPD provided a written opinion to the administrative court of first instance at Durrës in relation to the case between the following parties: plaintiff: J.N.; Defendants: General Directorate of Road Transport Services, Tirana, and Regional Directorate of Road Transport

61 Decision No.1709 of 09.12.2014, of the First Instance Administrative Court at Durrës.

62 Decision No.1708 of 09.12.2014, of the First Instance Administrative Court at Durrës.

Services, Durrës. The plaintiff sought: “1) Total annulment of an administrative act, namely Decision No. 245 of 12.12.2013 of the General Director of the General Directorate of Road Transport Services, Tirana; 2) Ordering the defending party to restore to my previous job position; 3) Ordering the defending party to pay me damages to the amount of one year’s salary, on account of their terminating the employment contract without any reasonable grounds (abusive motives), Article 146/1/c.”

This case had not been the subject of consideration by the CPD previously. The plaintiff addressed the relevant court directly and the Court asked the CPD to provide a written opinion in the case.

Regarding this case, the administrative court of first instance at Durrës pronounced a decision⁶³ for dismissing the claim, on grounds that it was an already tried case. This decision has been appealed and is now being considered by the Administrative Court of Appeals.

In relation to the court cases presented above under points 3, 4, 5, 6, on which the CPD submitted a written opinion to the administrative court of first instance at Durrës, **the CPD notes that the court decisions made no findings in relation to discrimination. This is because in their lawsuit applications to the courts, the plaintiffs did not claim discrimination in contravention of the Law on Protection from Discrimination, despite the fact that the Law served as legal grounds for the claim. Consequently, CPD’s written opinions (in all four cases) were only cited in the reasoning part of the court decision, which, although taken into account in reaching the judicial decisions of breaches of Labour Code provisions, (more specifically of Article 146/1/c), were not included in the body of the decision. Faced with this situation, the CPD:**

- **Demands the recognition and implementation by court judges of their legal obligation to inform the CPD on discrimination-related cases.**
- **In drafting their complaints/pleadings, the lawyers must include a request for a finding of discrimination to be made, by specifically referring to Law 1022/2010 On Protection from Discrimination in the legal grounds for filing the complaint.**

We are of the opinion that this would lead to an adequate and effective implementation of the discrimination law by the courts.

II.1.2.2. THE CPD as a Defending Party

In the cases where the CPD made a finding of discrimination, some parties have challenged the decisions and the fines imposed by the CPD.

It has to be noted that in the largest part of the administrative courts’ decisions related with challenges against CPD’s decisions, the plaintiffs’ appeals were dismissed. The following are a sample of cases where CPD decisions were appealed in court:

COURT CASE 1

The Commissioner for Protection from Discrimination was the defending party in an administrative case tried at the Tirana First Instance Administrative Court. Plaintiff: the Albanian Electric Power Corporation (KESH Ltd); Defendant: Commissioner for Protection

63 Decision No. 46 of 21.01.2015 of the First Instance Administrative Court at Durrës.

from Discrimination. The plaintiff sought the annulment of Decision No. 148 of 26.09.2014 of the Commissioner for Protection from Discrimination; and suspension of enforcement of Decision No. 148 of 26.09.2014 of the Commissioner on Protection from Discrimination till the conclusion of trial proceedings.

CPD Decision Nr. 148 of 26.09.2014 in relation to this matter decided: 1) To impose a fine of 60,000 (sixty thousand) on the Albanian Electric Power Corporation Ltd; 2) The fine has to reach the State Budget within 30 (thirty) days from receipt of notice of this decision 3) Enforcement of Decision No. 133 of 22.08.2014 of the Commissioner for Protection from Discrimination within 7 days from receipt of notification of the sanctions leads to their annulment; 4) The Albanian Electric Power Corporation Ltd must notify the Commissioner for Protection from Discrimination in line with the provisions of point 3 of this decision; 5) This decision may be appealed pursuant to the law.

At the conclusion of the proceedings, **the administrative court of first instance at Tirana dismissed the appeal of KESH Ltd.**

COURT CASE 2

The Commissioner for Protection from Discrimination was the defending party in the administrative lawsuit filed by plaintiff: *Partia Aleanca Kuq e Zi* (The Black and Red Alliance political party), against the defendant, the Commissioner for Protection from Discrimination. Third party: Alliance Against LGPT Discrimination Association. Subject matter: “Filing a lawsuit seeking a finding of absolute invalidity of Administrative Act No.1250 of 01.08.2014 of the Commissioner for Protection from Discrimination”. The court dismissed the application for invalidation filed by *Aleanca Kuq e Zi* political subject.

COURT CASE 3

The Commissioner for Protection from Discrimination was the defending party in the administrative lawsuit filed by plaintiff: *Aleanca Kuq e Zi* political party. Third party: Edmond Themelko, Mayor of Liqenas Municipality. Subject matter: Invalidation of an administrative act, namely Decision No. 75 of 01.07.2013, “On imposing a penalty fine”, issued pursuant to Decision No. 28 of 04.04.2013, of the Commissioner for Protection from Discrimination.

In its Decision No. 28 of 04.04.2013 the CPD decided: “1) to make a finding of discrimination against the Liqenas municipality, Korçë, inhabited by a community of Macedonian ethnicity, by means of statements and stances that incited discrimination in the enjoyment of rights recognised and guaranteed by domestic legislation and international acts on ethnic minorities. 2) Demand from *Aleanca Kuq e Zi* political party, the entity that carried out the discrimination behaviour, to comply with the obligation of a public apology and to avoid any future instances of incitement of violence or other forms of discrimination against ethnic minorities”.

This decision was not implemented by *Aleanca Kuq e Zi*. Pursuant to the legal provisions in force, the CPD issued Decision No. 75 of 01.07.2013, imposing a fine on *Aleanca Kuq e Zi* to the amount of 60,000 ALL.

Aleanca Kuq e Zi challenged the above decisions of the CPD in court. Following the Unified

Decision of the High Court in relation to court powers in the implementation of Law No. 49/2012, "On the Functioning and Organisation of Administrative Courts and Trying of Administrative Disputes", the case was transferred from the Tirana District Court, where proceedings had already started, to the administrative court of first instance at Tirana.

The administrative court of first instance at Tirana, with its Decision of 13.05.2014, **dismissed the claim of Aleanca Kuq e Zi, as unfounded in law and evidence. This decision has been appealed in the Administrative Court of Appeals at Tirana.**

COURT CASE 4

The Commissioner for Protection from Discrimination was the defending party in the administrative case filed by plaintiff: Regional Hospital Vlorë; Subject matter: Appeal against Decision No. 56 of 17.04.2014 of the Commissioner for Protection from Discrimination.

T.R. had been an employee of by the Vlorë Regional Hospital and then dismissed on grounds that she failed to meet the required educational qualifications criteria and due to her unjustified work absences. At the time of her dismissal, the complainant had been issued with a long-term sick note by the KMCAP; also, by decision of the KMCAP she had now the status of a disabled person. A court decision had granted the complainant compensation under the Labour Code provisions, due to her employer's failure to comply with the terms and procedures of contract termination.

T.R. subsequently filed with the CPD a claim of discrimination on grounds of health status in the area of employment. The CPD found that T.R. was discriminated against and had been dismissed from her job on grounds of her health status. In its Decision No. 98 of 09.10.2013, the CPD recommended that the complainant be reinstated in her previous position. This decision was not implemented by the employers, therefore the Commissioner for Protection from Discrimination issued another Decision, No. 56 of 17.04.2014, imposing a fine on the Vlorë Regional Hospital, for an amount of 60,000 (sixty thousand) ALL.

Vlorë Regional Hospital challenged this decision in court. Decision No. 5122 of 25.09.2014 of **the administrative court of first instance at Tirana upheld the claim and invalidated the penalty fine imposed by the CPD, with the reasoning that the employer was unable to implement the decision of the CPD. The CPD has appealed the decision in the Administrative Court of Appeals at Tirana.**

COURT CASE 5

The Commissioner for Protection from Discrimination was the defending party in the administrative case filed by plaintiff: Directorate of Secondary School Dormitories, Tirana, seeking the annulment of Decision No. 54 of 17.04.2014, of the Commissioner for Protection from Discrimination, whereby the CPD made a finding that Ms H.H. had been discriminated against by association.

The administrative court of first instance dismissed the claim of the Directorate of Secondary School Dormitories, Tirana. The Directorate of Secondary School Dormitories Tirana lodged an appeal with the Administrative Court of Appeals.

COURT CASE 6

The Commissioner for Protection from Discrimination was the defending party in the administrative case filed by plaintiff: K.Sh. against the defendant: Commissioner for Protection from Discrimination, the National Employment Service, etc. The complainant sought: "A finding of absolute invalidity of administrative act No. 10 of 30.04.2012, of the Commissioner for Protection from Discrimination", whereby a finding of non-discrimination against Ms K.SH. on grounds of social status was made. **The Court decided to send the case back.**

II.1.2.3 The CPD as a Third Party

COURT CASE 1

The Commissioner for Protection from Discrimination participated as a third party in the civil proceedings between: plaintiff: L.H.; defending party: Albpetrol ltd, Patos, Fier; subject matter - "Ordering Albpetrol ltd, the defending party, to pay compensation to L.H., the plaintiff, following a finding of discrimination on political grounds and of unfair moral and extra-contractual damage caused by this company". The complainant had not filed a claim with the CPD prior to the court case. **The trial is on-going.**

COURT CASE 2

The CPD attended as a third party in the case between F.K., plaintiff, and Regional Health Directorate, Fier, defending party.

F.K., the plaintiff, had initially filed a complaint with the CPD, claiming to have been discriminated against by her employer, the Regional Health Directorate, Fier, because she had exercised her rights by reporting her employer's actions in contravention of the law. As a consequence of the complaints and reports she had made against her employer, F.K. the claimant, had been subjected to constant harassment before ultimately being dismissed from her job. After a full and comprehensive administrative investigation, the Commissioner, in her decision No. 13 of 30.07.2012, made a finding of discrimination against F.K., the complainant, and recommended that she be reinstated in her previous position. The Regional Health Directorate, Fier failed to implement the decision, and consequently, based on the Law on Protection from Discrimination, the Commissioner issued Decision No. 21 of 08.11.2012, imposing a fine penalty on the Regional Health Directorate, Fier, for failure to implement the decision.

After the administrative examination by the Commissioner, the complainant filed a lawsuit with the court, claiming that she was removed from her job on discriminatory bases. At the request of the complainant as the alleged victim of discrimination, the Commissioner provided her with legal assistance in filing the complaint and supported her with all the documentation collected in the course of the administrative proceedings.

At the request of the complainant, the Commissioner attended the entire court proceedings as an interested party to the trial. On 04.06.2013 **the Fier District Court decided: - to make a finding of discrimination against F.K., the complainant, and of victimisation of the same by the Fier Regional Health Directorate. Pursuant to Article 37 of Law on Protection from Discrimination, which provides for the payment of damages in cases of discrimination and violation of the law, an order was made for: - remedying the**

consequences caused by the discriminatory behaviour by reinstating the complainant in her previous position and ordering the payment of compensation for the material and non-material harm suffered by the complainant.

The Fier Regional Health Directorate appealed the decision of the Fier District Court in the Court of Appeals at Vlora. On 20 February 2014, the Court of Appeals at Vlora upheld the decision of the Fier District Court as lawful and correct.

II.1.2.4 Court Proceedings for the Enforcement of Penalty Fines Imposed

In regards to decisions imposing fines that were not appealed, or decisions that were appealed and for which there has been a final court ruling, the CPD has commenced the procedures for the enforcement of the fine penalties, by initially requesting the issuance of enforcement orders.

The Law on Protection from Discrimination does not give the CPD executive powers in relation to the penalty orders. On the issue of applications for Penalty Enforcement Orders, the CPD has argued before the courts that in the absence of a direct provision in the Law on Protection from Discrimination, CPD penalty decisions must be considered under the provisions of the Law On Administrative Offences.

The CPD has applied to the relevant courts for the issuance of Penalty Enforcement Orders on three occasions.

COURT CASE 1

CPD Decision No. 57 of 08.05.2013, found that the public statements made by Mr E.S., President of *Lëvizja e Legalitetit* (Legality Movement, a political party) and former Deputy Minister of Defence constituted hate speech against the LGBT community. **The CPD recommended to Mr E.S. to withdraw these statements and issue a public apology, as well as to make sure that such a thing would not happen again in the future. This decision of the CPD was not implemented.** Pursuant to the legal procedures in force, the CPD issued its Decision No. 73 of 28.06.2013, imposing a fine of 20,00 ALL on Mr E.S., President of *Lëvizja e Legalitetit* and former Deputy Minister of Defence. The decision was not appealed and the CPD has started the enforcement procedures by applying for an enforcement order from the court.

Decision No. 819 of 02.07.2014 of the First Instance Administrative Court in Tirana issued a Penalty Enforcement Order for the execution of Decision No. 73 of 28.06.2013 of the Commissioner for Protection from Discrimination.

Court Case 2

The CPD issued Decision No. 58 of 08.05.2013 in relation to an article on the LGBT community published in a daily newspaper, authored by Mr A.L, media analyst and representative of a political subject, whereby she found that the article constituted hate speech and was discriminatory against the LGBT community. **The CPD recommended to Mr A. L. to publicly withdraw his statements and issue a public apology, and to make sure this did not happen again in the future. This Decision of the CPD was not implemented.** Pursuant to the legal procedures in force, the CPD issued Decision No. 74 of 28.06.2013,

imposing a fine of 10,000 against Mr A.L. The decision was not appealed and the CPD has started enforcement procedures by applying for an enforcement order from the First Instance Administrative Court at Tirana.

In its decision of 18.07.2014, the administrative court of first instance at Tirana decided: to reject the application of the Commissioner for Protection from Discrimination on ground that the address provided by the CPD was incorrect. We would like to emphasise that the same details (included in various communications, in the usual format, i.e. address, postal code, phone/fax number, and email) were provided to this court in another application for which the court did issue an Enforcement Order, with its decision No. 819 of 02.07.2014. Also, it was to the same address that the court had sent its notices to the CPD in relation to other trial proceedings. The Commissioner for Protection from Discrimination has lodged an appeal against the decision of the court to reject the application with the Administrative Court of Appeals at Tirana.

COURT CASE 3

Decision No. 21 of 08.11.2012 of the CPD found breaches of Law No. 10 221 of 04.02.2010 on Protection from Discrimination, and decided: to make a finding of discrimination against F. K., by her employer, the Fier Regional Health Directorate, because her dismissal from the job was done on discriminatory grounds. The CPD recommended F.K.'s reinstatement to her previous position. This decision was not implemented by the employers. Pursuant to the legal procedures in force, the CPD decided to impose a penalty of 60,000 ALL against the RHD. The Fier RHD appealed the decision, but there has not been a final decision, as the case was stayed because of the failure of the plaintiff to appear in court. The CPD has started enforcement procedures by applying for an enforcement order.

Decision No. 1132 of 14.10.2014, the First Instance Administrative Court at Tirana sanctioned the issuance of an Enforcement Order in relation to CPD order No. 21 of 08.11.2012.

II.2. Legislative and Other Recommendations on Discrimination-Related Issues

II.2.1. Legislative Recommendations

Pursuant to the legal powers provided in Article 32, paragraph 1, letter "ë", of the Law on Protection from Discrimination, which states that: "The commissioner has the powers to make recommendations to the relevant authorities, particularly by proposing the adoption of new legislation, or changes and reforms to the existing legislation", the Commissioner for Protection from Discrimination has made legislative recommendations with a view to approximating the present legislation with the concepts, provisions and standards of the Law on Protection from Discrimination. In this regard, the Commissioner has aimed for legislative approximation, particularly in relation to:

- grounds of discrimination, against which the laws provides protection;
- forms of discrimination;
- distribution of the burden of proof.

The following table presents the number of legislative recommendations made by the

CPD, seeking to approximate the internal legislation with the Law on Protection from Discrimination:

Year	Number of legislative recommendations
2012	4
2013	2
2014	7

Table No. 6: Legislative recommendations made by the CPD between 2012 and 2014

In the context of **recommendations on the Criminal Code** sent in May 2013, the Commissioner for Protection from Discrimination suggested that Article 50 “Aggravating Circumstances” should include a paragraph ‘j’ providing for other grounds, as per the Law on Protection from Discrimination. The CPD recommended: the addition of an article to provide for the separate criminal offence of threats on grounds of a person’s sexual orientation and gender identity; criminalisation of dissemination of homophobic materials and insults via electronic means, on grounds of a person’s sexual orientation and gender identity; addition of an article on the criminalisation of incitement of hatred on ground of sexual orientation and gender identity; rewording of the article so that it includes other grounds provided for under the Law on Protection from Discrimination, including sexual orientation and gender identity of a person, with a view to guaranteeing a broader and more comprehensive protection of persons against causes of discrimination, where an employee of the state bodies or a public servant makes distinctions between citizens, thus violating the principle of equality.

Of the five recommendations sent, two of them were fully considered and implemented; one was partially applied, and two were rejected. For this reason, the CPD sent an official letter, Reference No. 295, of 10.03.2014, whereby it resent the unapplied recommendations to the Ministry of Justice.

In addition to the above, the CPD has also recommended replacing the terms “homosexual relationships’ with “sexual relationships” (this term appears under Section VI and under Articles 100 to 107 of the Criminal Code).⁶⁴

Taking due regard of the European Union directives in the area of equal treatment and non-discrimination, more specifically of the principle of reverse burden of proof in her **legislative recommendations for changes to the Criminal Procedure Code of the Republic of Albania**, the CPD has requested the taking of measures for shifting the burden of proof in civil proceedings, in cases where the court examines discrimination cases, in line with Title VI of Law No. 10221 of 04.02.2010 On Protection from Discrimination.

The primary aim of CPD’s proposed **legislative recommendations on changes to the Electoral Code of the Republic of Albania**, is to harmonise the areas of protection from discrimination with the provisions of Article 1, of the Law on Protection from Discrimination; help increase the participation of women in the Parliament and in local government bodies, and raise sanctions against the political parties that fail to implement the gender quota

⁶⁴ For more detailed information, see table under bullet point II.4.12. Impact of and follow up on CPD’s legislative recommendations.

both in general parliamentary elections and local elections; the CPD has recommended that the title under Article 108 of the Electoral Code change from “*Voters who cannot vote themselves*” to “*Voters with disabilities*” with a view to changing societal perceptions about persons with disabilities; the CPD has recommended that it is imperative to find a legal solution to guarantee the right to vote of people who are housebound and cannot attend polling stations.

CPD’s **legislative recommendations on changes to the Broadcasting Code**, emphasise that audio-visual broadcasting of all types must respect the principles of equality and non-discrimination on any grounds, as provided in the Albanian legislation; the discrimination grounds should be harmonised with Article 1 of Law No. 10 221/2010, On Protection from Discrimination, which provides a non-exhaustive list of grounds; in relation to provisions related to children in audio-visual broadcasting, the CPD has recommended that cultural and entertainment programmes for children must not make use of terms that incite or promote prejudicial attitudes. Regarding the provisions on persons with disabilities and audio-visual broadcasting services, the latter have to ensure that their services are accessible to this group and openly or promote the achievements of disabled persons. Regarding advertising, advertisements that overtly or covertly display an intention to discriminate on the grounds prohibited under the Albanian legislation, shall be prohibited.

In the context of the **legislative recommendations on changes to the Family Code of the Republic of Albania**, the CPD has taken part in the working groups set up by the Ministry of Social Welfare and Youth for the purpose of amending this Code. The CPD has submitted her recommendations, which aim to approximate it with the Law On Protection from Discrimination, particularly regarding cohabitation.

In the context of **recommendations on Law No. 9355/2005, On Social Assistance and Social Services**, the CPD has made recommendations that aim to eliminate gender-related, age-related, or any other sort of bias or preference. The way paragraph 10 of Article 4 is worded is in contravention with the equality principle, because it establishes a preferential order based on the age of the individual, giving priority to older individuals in the 18-65 age group and the younger individuals in the over 65 age group.

In the **recommendations on the Draft Code of Administrative Procedures**, sent in December 2013, the CPD recommended the addition of a separate article formulating the principles of equality and non-discrimination, as important principles that must guide the activity of every public body or private organisation exercising public functions; the prohibited grounds of discrimination in this Code must be in harmony with the provisions of Article 1, of Law No. 10221 of 04.02.2010, On Protection from Discrimination; rewording of articles that establish the principle of burden of proof between parties in administrative proceedings with the aim of providing for the distribution of the burden of proof in cases dealing with discrimination claims. In 2014, the CPD resent these recommendations to the Albanian Parliament, at the latter’s request.

For further and more detailed information on CPD’s legislative recommendations and the reasoning provided in support of these recommendations, please refer to ANNEX 2 of this report.

II.2.2. Other Discrimination-Related Recommendations

1 The CPD sent an official letter with Reference No. 554, of 04.06.2014 and subject matter **“Recommendation on revising the framework contract on the general terms and conditions for supplying electric energy to household customers”**, to Mr Petrit Ahmeti, Chairman of the Board of Commissioners of the Energy Regulatory Authority - ERA. Pursuant to Article 1 of Law No. 10221/2010 On Protection from Discrimination, which sets out the prohibited grounds of discrimination and the scope of the law, guaranteeing the principle of gender equality, Article 20 which prohibits discrimination in the provision of goods and services and Article 32, paragraph 1, letter (f) which provided that *“The Commissioner has the power to make recommendations on any discrimination-related matter”*, the CPD recommended: - *Revision of the framework contract on the General Terms and Conditions of the Contract for supplying electricity to household customers, by providing a definition of “household customer”; clear provisions for determining the entities included in the definition of the “customer” and the obligation to abide by them; to regulate the freedom of the “customer” as contract holder to suspend/terminate the contract, so that the right of the members of the family to energy supply is not denied due to the abusive will of the contract title holder; keep in mind the revision of legal acts and secondary legislation, as well as of the practices used so far, with the aim of harmonising them with the principles of gender equality and non-discrimination, sanctioned in the national legislation in force and international acts.*

It has to be emphasised that in making this recommendation, the CPD referred to the international standards, such as Article 25 of the Universal Declaration of Human Rights; Articles 10, 11 and 12 of the Covenant on Economic, Social and Cultural Rights; the Fourth General Comment of the UN Committee on Economic, Social and Cultural Rights; Protocol 12, Article 1 of the European Convention on the Protection of the Fundamental Human Rights and Freedoms; Articles 2, 14, 15, and 16 of the UN Convention on the Elimination of All Forms of Discrimination against Women; and the European Social Charter (revised).

2 As stated in official letter with Reference No. 757 of 11.09.2014, with subject matter **“Sending of recommendations on taking measures to fight discrimination in relation to their right to education, at the start of the 2014-2015 academic year in the pre-university education system”** addressed to Ms Lindita Nikolla, Minister of Education and Sports, the Commissioner for Protection from Discrimination has closely followed the situation in the pre-university education system, particularly so at the end of each academic year.

In the course of her work, the CPD has identified various issues and problems faced by groups and categories of studied, including those of Roma and Egyptian ethnicity, LBGT, disabled students, children who are unable to attend school due to blood feuds, those children who, due to their difficult economic conditions or place of residence, are faced with difficulties, or even prevented from attending education. The CPD has raised the concern that, in spite of the existence of a legislation and related delegated legislation, policies and strategies, setting out the duties and obligations of all institutions involved in education, there have been some cases of discriminatory situations as a result of the lack of familiarity with the legal framework in force and, consequently, of its poor implementation or non-implementation.

The CPD has laid emphasis on the need for an effective application of Law No. 69/2012 of 21.06.2012, On the Pre-University Education System in the Republic of Albania, laws and delegated legislation, measures and action plans with the aim of guaranteeing special care by the state for special categories of students and protecting them from discrimination in the field of education.

With regard to the above, aiming to fulfil the purpose of Law No. 10221 of 04.02.2010, On Protection from Discrimination, namely ensuring the right of each person to equality before the law and effective protection from discrimination or any other behaviour that promotes discrimination, and based on the powers provided to it under letter “f”, Paragraph 1, of Article 32 of this Law, to make recommendations on any discrimination related matter, the institution of the Commissioner has recommended:

- Adoption of secondary legislation for the implementation of Article 18 of the Law On Protection from Discrimination. The CPD has requested information on the steps taken by the inter-institutional working group headed by the Ministry of Education, set up by order of Prime Minister No. 52 of 23.04.2012 *“On the establishment of the inter-institutional working group for the development of delegated legislation for the implementation of Law No. 10221 of 04.02.2010 On Protection from Discrimination”*, for the purpose of drafting the secondary legislation.
- Amending the framework rules of pre-university educational institutions, with the aim of establishing a clear procedure for dealing with complaints of discrimination in the educational system. Given that the content of Instruction No. 30 of the Minister of Education and Science, of 02.08.2013, On Framework Rules in Educational Institutions, does not contain any provisions about the handling of complaints of discrimination that may be made by students and teachers, it is recommended that Instruction No. 30 of 02.08.2013 On Framework Rules in Educational Institutions, is amended to include provisions on the manner of handling claims of discrimination.
- Raising awareness on the Law on Protection from Discrimination. The CPD has recommended that a national awareness-raising campaign be held to increase awareness in all pre-university education institutions of the obligations deriving from the Law on Protection from Discrimination, both in the public and private sectors, for instance, the fulfilment of the legal obligations under Article 18 of the Law On Protection from Discrimination. The CPD has recommended for appropriate measures to be taken so that, in addition to the legal basis included in Instruction No. 23 of 08.08.2014, the Regional Educational Directorates and Education Offices also have a copy of the Law On Protection from Discrimination. The CPD also recommended that in the future the Law on Protection from Discrimination should be included in the legal bases listed in Ministerial Instructions at the beginning of each academic year. In addition, the CPD has recommended that the Regional Educational Directorates and Education Offices must take steps to ensure that all education institutions visibly display a copy of the Law On Protection from Discrimination, which is an obligation under Article 19, letter “a” of the law.
- Important components in this recommendation are issues of enrolment, distribution, and attendance by Roma and Egyptian children. In this context, for the 2014-2015 academic year, the Regional Education Directorates were asked to effectively implement the entire

body of legislation and related delegated legislation in force, as well as related strategies and policies, in order to ensure the enrolment of Roma and Egyptian children in the new academic year. The recommendation also demands that no child of mandatory education age is refused enrolment.

- Pursuant to the obligations deriving from the 2010-2015 National Action Plan for the Roma Inclusion Decade, the CPD has recommended that Regional Education Directorates and Education Offices must implement and monitor all the envisaged measures for *establishing the number of Roma children* at all levels of pre-university education, *by distance of their place of residence from the school they attend*, and to make proposals to the relevant responsible institutions for the *provision of free transport* for these children.
- The CPD has recommended that the Regional Education Directorates/Education Offices must *monitor school attendance* by children from Roma and Egyptian communities, as well as any *changes in the ratio* between Roma children and children from other backgrounds, in order to prevent the creation of zones and schools where only Roma and Egyptian children attend. Particular care should be taken in enrolment of first grade children, or in cases of class restructuring, to avoid any segregation of Roma children in separate classes by creating Roma-only classes.
- Regarding the subsidising of textbooks, *the CPD has recommended that monitoring of all the processes of textbook subsidising* for all categories of children eligible to receive free textbooks *must be considered a priority*, so that all students receive their textbooks. This would help to prevent the creation of discriminatory situations for this category of students who would not be able to afford textbooks themselves.
- The CPD recommended the creation and functioning of multi-disciplinary committees to assess the needs of children with disabilities. Regarding provision of education for children with disabilities, the CPD recommended that attention should be paid to the **obligation** to institute appropriate measures (modifications or changes) **to carry out the necessary reasonable adjustments**, infrastructural or otherwise (procedures or timetables) as necessary. The CPD has drawn attention to the fact that denial of reasonable adjustment constitutes discrimination under Article 3, point 7 of Law On Protection from Discrimination.
- The CPD recommended to heads of educational institutions to take measures for preventing and fighting discrimination in schools. The CPD recommended to the Ministry of Education and Sports that it should issue instructions, particularly to the RED/Eos, to continuously monitor the measures taken by the heads of educational institutions to prevent and fight discrimination in schools, the manner of handling homophobic and stigmatising behaviours and attitudes towards students from the LGBT community, Roma and Egyptian students, students with disabilities, etc., as well as ways of handling cd discrimination claims, an obligation under Article 19, letter “ç”, of the Law on Protection from Discrimination.

3 In the official letter with Reference No. 112 of 31.01.2014 and subject matter: “*Recommendations on facilitating eligibility procedures for claiming invalidity status and extending the list of reimbursed medicines*”, addressed to Mr Ilir Beqaj, Minister, Ministry of Health, and Mr Astrit Beci, General Director of the Institute of Health Insurance and Health Care, the CPD made recommendations on the facilitation of eligibility procedures for claiming invalidity status and extending the list of reimbursed medication. In the open days and meetings organised by the CPD with various NPOs in cities and towns throughout Albania, the CPD was informed of various issues and problems the community is faced with in various regions of the country. Two of the issues identified in Lezha were: the obstacles and difficulties in implementing the procedures for claiming invalidity status; disabled persons were not in a position to afford the medicines that were not included on the reimbursed list. The CPD is of the opinion that reimbursement of medicines is an essential necessity for all categories of disabled persons, given that they are not able to afford even their more immediate everyday needs. In this context, under Article 32, point 1, letter ‘f’, of Law No. 10 221 of 04.02.2010 On Protection from Discrimination, which establishes CPD’s power to make recommendations on “*any discrimination-related issues*”, and in order to help improve the life and guarantee the principle of equality and effective protection from discrimination of persons with disabilities, the CPD recommended: - *due attention must be paid to the correct implementation of procedures for claiming invalidity status and – revision of the list of reimbursed medicines for 2014, keeping in mind extending the list with new medicines that must be genuinely effective and meet the needs of persons with disabilities according to the categories set out in the law.*

4 In February 2014, the CPD sent a recommendation to the General Directorate of Prisons, on the resolution of the urgent situation created because of the lack of medicines at the correctional facility in Peqin.

II.3. Awareness Raising

Raising public awareness is one of the pillars of the work of the CPD, as demonstrated by a number of powers the CPD has in this respect, including: - promotion of the principles of equality and non-discrimination, particularly by raising awareness and providing information on these issues, including the provision of written information on this law in the Albanian language, in the languages of the minorities, and in accessible formats for people with disabilities; - directly addressing public opinion on any discrimination-related issues; - providing information on the right to protection from discrimination and the legal means available to achieve protection; - engaging regularly in dialogue on discrimination issues with the relevant social groups, including non-governmental organisations; and holding awareness-raising and educational events that assist in the implementation of this law.

One of the strategic priorities set by the CPD in the implementation of the 2012-2015 Strategic Plan, is **to increase public awareness on protection from discrimination and the role of the CPD in the field**. From the establishment of the institution, the Commissioner for Protection from Discrimination in the exercise of her functions and powers provided in the Law on Protection from Discrimination and in line with the priorities aiming to increase awareness and facilitate citizens’ access to CPD, has conducted a number of activities and events that are outlined below. However, the CPD notes that there is further need for raising the awareness of the public and vulnerable groups, on Protection from Discrimination and the legal means available for such protection.

II.3.1. Development, Publication and Dissemination of Awareness-raising and Other Training Materials

In 2014, the Commissioner for Protection from Discrimination has developed, published and distributed a range of information and awareness-raising materials. Some of them are listed below:

An information brochure **“Protection of Minorities in Albania under the Law Protection from Discrimination”**.⁶⁵ This brochure is available in Albanian, Romany and English, with 1000 copies printed in Albanian. This brochure was published by the Commissioner for Protection from Discrimination with the support of the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The publication was supported financially by the European Union, in the context of the Best Practices for Roma Integration Project, implemented by ODHIR.

A volume with translated materials, entitled **“Compilation of Decisions of the Court of Justice of the European Union, European Court of Human Rights and Equality Bodies”**.⁶⁶ This publication was supported by the United Nations Office in Albania, the United Nations Development Programme, and the Swedish Government, in the context of the Project **“Implementation of the principle of gender equality and of the gender-based violence programme”**. This volume was printed in 1000 copies. The material was initially distributed to all the first instance courts in Albania, the Appeals Courts, the High Court, the Constitutional Court, Public and Private Universities and NGOs involved in the field of protection of human rights.

A handbook: **“Protection from discrimination: A training manual for NPO-s”**,⁶⁷ produced in the framework of the project **“Together for the protection and promotion of the rights of persons discriminated against”**, implemented by the Albanian Helsinki Committee with the financial support of the Office of Swiss Cooperation in Tirana. The manual was printed in 1500 copies and is available only in Albanian.

A Manual **“On Protection from Discrimination of Marginalised Ethnic Minorities”**, in the context of the SSIREC project.

A brochure **“Report Discrimination”**, in the framework of the SSIREC project, printed in 1000 copies.

A **“Compilation of CPD decisions and of Expert Board Opinions”**, available in English and Albanian, printed in 800 copies.

A publication **“Resource Guide on Protection from Gender Discrimination in the Economic Sector”**. This publication, launched at a seminar entitled Equal Opportunities in The Economic Sector, organised by the Commissioner for Protection from Discrimination, with the support of UN Women and in collaboration with the National Union of Chambers

⁶⁵ These are available from the following web links: <http://KMD.al/?fq=brenda&gj=gj1&kid=204> and <http://KMD.al/skedaret/1392134886-brosh%20OSCE%20ang.pdf>

⁶⁶ This publication is available from the following link (in the Albanian language): <http://KMD.al/skedaret/1409565567-KMD%20final.pdf>

⁶⁷ This publication is available from the following link (in the Albanian language): <http://KMD.al/skedaret/1393424101-Manuali%20i%20Trajnimit.pdf>

of Commerce and Industry and the Albanian Young Women’s Christian Association (YWCA). The first edition (2012) was updated and reprinted in 2014.

A leaflet **“Information for public officials on LGBT issues”**⁶⁸, published in collaboration with state institutions and the Pink Embassy, and distributed at various events and activities.

The CPD published a **“Commentary on the Law on Protection from Discrimination”**, December 2014.

An information brochure **“On employment in the public and private sectors”** was developed by the CPD.

An information brochure **“On the provision of goods and services”** was developed by the CPD.

Between January and December 2014, the CPD distributed 100 leaflets at health clinics across Tirana.

Around 3000 leaflets on the Law on Protection from Discrimination were distributed throughout the Tirana district, in collaboration with the Albanian Postal Service. The distribution of information materials will continue in other areas, including rural areas.

II.3.2. Training Sessions and Conferences Organised by the CPD

CPD training activities for the benefit of various groups

The CPD held five training courses for judges from First Instance Courts on the Law on Protection from Discrimination. More specifically, between April and October 2014, training sessions have been organised for all the judges at the District Courts in Korçë, Berat, Elbasan, Vlorë and Shkodër. These training sessions were organised by the CPD and the Albanian Human Rights Group, in collaboration with the School of Magistrates and with the support of the Embassy of the Netherlands to Tirana.

Four training sessions were held with the staff of local government bodies in the framework of the Project on Supporting the Social Inclusion of Roma and Egyptian Minorities. The trainings were held between January and February in Korçë, Berat, and Vlorë. A total of 180 officials from local government bodies were trained. In her speech, the Commissioner for Protection from Discrimination focused on the following issues: the meaning of discrimination, legal mechanisms for the prevention of and protection from discrimination, and the international and national body of legislation on the burden of proof.

Three training events were organised in 2014 with representatives from NPO-s involved in the field of protection of human rights, in the framework of the project **“Together for the protection and promotion of the rights of discriminated persons”**, implemented by the Albania

⁶⁸ This publication is available from the following link: <http://KMD.al/skedaret/1392136411-FLETE%20PALOSJE%20PERPARA%20.pdf>

Helsinki Committee in partnership with the CPD, and supported financially by the Swiss Cooperation Office in Albania. The participants in these events were informed about the joint publication of the CPD and AHC: *“Protection from Discrimination: A training Manual for NPO-s”*. These training events were held in the period January-April 2014 in Korçë, Shkodër and Kukës.

Following consultations with PAMECA IV, the CPD deemed the following activities as effective and fruitful:- training of police staff on the Law on Protection from Discrimination, the rights and obligations set out in the law, the mechanisms for an effective protection from discrimination, information about the CPD office, its powers and procedures for handling discrimination-related cases; - the training of staff from prisons and detention facilities on the Law on Protection from Discrimination; - development of a plan of visits to convicted persons serving their sentences, identification of gaps in the implementation of the principles of equality and non-discrimination and development of the relevant recommendations. The CPD developed a module on equality and non-discrimination to be included in the curriculum of the Albanian Police Training Centre; a programme of training activities for police staff police stations on Law no. 10221/2010, On Protection from Discrimination; in collaboration with PAMECA representatives, the CPD prepared a timetable with the initial training sessions to be held. The CPD is awaiting an official response from the representatives of PAMECA IV in relation to the adoption of the programme and calendar of training activities.

Conferences Held under the Auspices of the CPD

On **30 January 2014**, the Commissioner for Protection from Discrimination, in collaboration with the Pink Embassy/LGBT Pro Albania, held a workshop on *“Inclusive and non-discriminatory policies for LGBT persons”*. This workshop held in the framework of the Council of Europe LGBT Project, sought to provide a comprehensive overview of the outcomes of the inclusive and non-discriminatory policies and best practices in relation to LGBT persons in the country. At the event, the Commissioner on Protection from Discrimination held the following presentation: *“The role of the CPD in protecting LGBT persons from discrimination”*. The event was also attended by the People’s Advocate, the Deputy Interior Minister, representatives from the Ministry of Social Welfare and Youth as well as representatives from NPOs and the civil society.

On **12 May 2014**, the CPD held a seminar entitled *“Equal Opportunities in the Economic Sector”* with the support of UN Women and in collaboration with the National Union of Chambers of Commerce and Industry and the Albanian Young Women’s Christian Association (YWCA). This event provided an opportunity to work and discuss on the effective preventive mechanisms and reporting systems to address gender discrimination in the economic sector, as well as ways of collaborating between business associations/operators and the CPD on measures for protection from discrimination in this sector. Among other things, the seminar referred to the Portuguese experience and equality institutions, such as the Committee on Immigration and Intercultural Dialogue, the Committee on Nationality and Gender Equality, and the Committee on Equality in Work and Employment. This seminar was supported by UN Women. In the second part of the event, training was provided for representatives of Chambers of Commerce *“On Protection from Gender Discrimination in the Economic Sector”*, and the Resource Guidebook with the same title distributed to par-

ticipants (2012 edition). This Guidebook was developed with the support of the UN Unit on Gender Equality and Women Empowerment (UN Women), Albanian office, and a new edition updated with new materials, was published in 2014.

On **17 May 2014**, on the occasion of the International Day Against Homophobia, the CPD was joint organiser of the *“Diversity Fair 2014”* and the pride parade. The CPD had its own stand at the fair, where various awareness-raising materials were displayed.

On **30 June 2014**, the CPD held a conference entitled *“Together for the protection and promotion of citizen’s rights”* in collaboration with the Albania Helsinki Committee, in the framework of the project *“Together for the protection from and promotion of the rights of discriminated persons”* with the financial support of the Swiss Cooperation Office in Albania and the Civil Rights Defenders. This conference was part of an initiative taken two years earlier for the protection of the rights of vulnerable groups in the regions of Korçë, Lezhë, Shkodër and Kukës. The initiative aimed to raise public awareness of the anti-discrimination legislation in Albania. In her address to the conference, the Commissioner for Protection from Discrimination focused on the role this project had played in training local government officials, establishing a network of local NPO-s and providing training to them, etc. In her speech, Ms Marie-Thérèse Karlen, Deputy Director of Swiss Cooperation, remarked, “...only when all citizens enjoy equal access to services, development opportunities and benefits, can we hope of further progress”. Other issues raised by other speakers at the conference were: social services and the role of local government bodies, the role of NGO-s in reporting cases of discrimination, effectiveness of state bodies in the application of the rights of citizens and protection from discrimination, the urgent needs of persons with disabilities, etc.

On **20.11.2014**, the CPD held a seminar entitled *“Legal aspects of the implementation of the Law on Protection from Discrimination”*, with the aim of identifying problems in the implementation of the Law on Protection from Discrimination. Five round tables were organised, where representatives from state institutions, international organisations, non-profit organisations involved in the protection of minority rights, non-profit organisations protecting the rights of women and children, and non-profit organisations protecting the rights of persons with disabilities discussed a number of issues. This seminar drew the attention of the institutions, civil society, the media, and various stakeholders on the need to improve the Law on Protection from Discrimination, with a view to increase the effective of its implementation and access of victims of discrimination to the bodies providing legal assistance to them. Some of the issues discussed in this event were: representation of victims of discrimination by NPO-s, fulfilment of the obligation to provide information by the relevant bodies, the role of statistics in examining cases, deadlines for filing claims, and the burden of proof in the examination of discrimination claims.

In December 2014, the CPD held an awareness-raising meeting with teaching staff and students of Edith Durham Primary and Junior High School.

II.3.3. Open Days

In 2014, the CPD also held open days, in the framework of three projects being implemented in collaboration with international organisations and national NPO-s (OSCE/ODHIR, UNDP, AHC). In the reporting period, the CPD held a total of 10 (ten) Open Days, attended by about 385 persons from various vulnerable social groups. During February 2014, three

awareness-raising meetings were organised with the Roma and Egyptian communities in Berat, Pogradec, and Vlorë⁶⁹. Between November 2013 and February 2014, four Open Days were held in Korçë, Lezhë, Shkodër and Kukës.⁷⁰ Three awareness-raising meetings were held in Tirana in December 2014.

At the Open Day events, the CPD distributed leaflets and information brochures on the Law on Protection from Discrimination, in the minority languages and accessible formats for visually impaired persons (in Braille).

II.3.4. Greater Visibility in the Media

The Commissioner and the staff of the CPD office have participated in several television programmes discussing various social issues related to equality and non-discrimination⁷¹ and a number of exclusive interviews and appearances as a special guest in primetime news programmes. The commissioner has also published articles in the print media.⁷² In addition, there have been press statements regarding the rise in the number of cases of violence against women, integration of disabled children in education, discrimination in employment relations, discrimination through hate speech, minority rights, etc. The CPD official and Facebook pages are regularly updated with the events and activities held, legislative recommendations, opinions and recommendations on discrimination matters, CPD decisions or ex-officio examination of cases of public interest, thereby greatly intensifying the relations between the public and the CPD. In the same vein, there has been an increase in the number of claims made via the email address of the institution or reports via CPD's Facebook page.

II.3.5. Open Lectures

The Commission has held 7 (seven) open lectures on the subject of "The role of the Commissioner for Protection from Discrimination as a guarantor of protection from discriminatory behaviour" at the Faculty of Law, University of Tirana, in the context of the module: "Public administration and protection of human rights".

On 28-30 July, 2014, the commissioner lectured at the Summer School "Minority Rights Academy" organised by the Albanian Human Rights Group with the support of the German Embassy.

In 2014, the CPD Office attended 34 events (seminars, workshops) aiming to raise capacities and strengthening the cooperation with state institutions and national and international organisations involved in the protection of human rights and providing opinions on discrimination. The capacities of the CPD Office have been strengthened in areas such

⁶⁹ Events and activities supported by Support for the Social Integration of the Roma and Egyptian Communities (SSIREC) Project.

⁷⁰ In the context of the project "On the protection and promotion of the rights of discriminated persons", of the Albania Helsinki Committee (AHC) in partnership with the Commissioner on Protection from Discrimination, with the financial support of the Swiss Cooperation Office, Tirana.

⁷¹ Some of these are: Agon Channel; Wake-up on Top Channel; "7 pa 5" on Vizion Plus; Urbanika (A1 Report); Me zemërtëhapur (News 24); Pasdite on Top Channel; "Dita ime" (Vizion Plus); Target (Albanian Screen); Duel (TVSH); Radio Albania News etc.

⁷² On 9 May an article written by Commissioner Irma Baraku appeared in the Shqip newspaper entitled, "Integrimi ne arsim i fëmijëve me aftësi të kufizuara – Filozofi and detyrim ligjor" (Integration of disabled children in education: a philosophy or legal duty" or the other article published in the same newspaper "Mbi shpërndarjes së nxënësve rom në shkollat 9-vjeçare në Tiranë" (On the distribution of Roma children in the primary schools in Tirana).

as the protection of children's rights, rights of persons with disabilities, rights of Roma and Egyptian communities, security, social justice, blood feud-related issues, protection of personal data, etc.

For further information on the events and activities attended by the staff of the CPD Office, please see Annex 2 of this report.

II.4. Discrimination-Related Research Studies and Monitoring Activities

The CPD has carried out the following activities pursuant to Article 32, paragraph 1, letters (dh), (e), (f) of Law 10221/2010, On Protection from Discrimination.

II.4.1. Research Studies on Discrimination

During 2014, the CPD developed:

- Research Study "**On the Situation of discrimination against the Roma Community**". In addition to an overview of the present situation, this study also contains a detailed analysis of the legal framework, policies, and major areas where intervention is needed for a better implementation of the principles of equality and non-discrimination in the enjoyment of human rights by this community.
- Research Study "**On protecting and respecting the rights of the LGBT community in Albania**". These studies focused on the social context, addressing the issues of discrimination against the LGBT community, with a view to increasing the number of complaints/claims filed, development of policies and strategies, and addressing these issues by the equality and non-discrimination institution, as well as the promotion of the rings of the LGBT community and communication aspects. This study has also been published in English.

II.4.2. Discrimination-Related Monitoring Activities Carried out by the CPD

In 2014, the CPD initiated two monitoring activities:

- Monitoring of the implementation of the Law on Protection from Discrimination in the Private Employment Sector, particularly the access of vulnerable groups to employment.
- Monitoring of the implementation of the Law on Protection from Discrimination by the Courts.

The methodology has now been established and the monitoring activities will conclude in 2015.

II.4.3 Reporting by the Commissioner for Protection from Discrimination before Regional and International Organisations

Pursuant to Prime Minister's Order No. 112 of 05.03.2014, "**On the establishment of the inter-ministerial working group for the development of and participation in the examination of reports in the framework of International Conventions on Human Rights**" the CPD has contributed to:

The Development of the Fourth Periodic Report on the Implementation of the Convention of the Elimination of All Forms of Discrimination against Women - CEDAW

In the preparation of this report, the CPD contributed to the following sections:

- The legal framework guaranteeing equality and non-discrimination in Albania;
- Improvement of the legal framework on addressing gender discrimination by emphasising the changes to the Criminal Code of the Republic of Albania, the Electoral Code, etc.;
- CPD recommendations for the improvement of the Electoral Code;
- The present situation of women's participation in politics and decision-making;
- The present situation regarding domestic violence;
- CPD practice in addressing violence against women. During 2012, the CPD only examined one ex-officio case, related to the psychological abuse suffered by some women in the institution where they were being treated. In relation to this case, the Commissioner recommended the taking of measures with a view to eliminating this situation. The institution in question implemented the recommendation.
- The situation of discrimination on grounds of gender in Albania;
- The activity of the CPD in relation to protection from gender discrimination; the CPD has assisted victims of gender discrimination with the examination of cases and by assisting victims in court, making legislative and other recommendations, awareness raising work, publications, etc.

The working group for the development of this report was assisted by CEDAW expert Pramila Patten, Deputy Chairwoman of the Convention for the Elimination of All Forms of Discrimination against Women - CEDAW.

The Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), was adopted by CMD No. 806 of 26.11.2014

Contribution in the Development of the 2014 Human Rights Report

This contribution consisted mainly of the following:

- Providing information on the number and type of discrimination cases and the measures taken by the CPD as well as the outcomes of these measures;
- Among the grounds of discrimination claimed are: race, sexual orientation, health status, disability, political belief, and age;
- The CPD made a general assessment of the situation of discrimination against LGBT persons and presented information regarding specific cases; various proposals were made for amendments to the Criminal Code of the Republic of Albania and their partial implementation;

- The CPD has noted that in many cases, debates on the rights of LGBT persons have been accompanied by the use of hate speech. In the complaints filed with the CPD, claims of use of hate speech were mainly raised in LGBT-related cases. The claims filed were mainly against public figures such as politicians, journalists and textbook authors. The CPD has highlighted some concerns in relation to the LGBT community, including: homosexuality is regarded as a health issue and university textbooks provide erroneous information on these matters; the tendency to treat sexuality as an issue related to scandalous news, etc. One such case was the broadcast on information on criminal offences, linking it with the personal characteristics (such as sexual orientation) of the individual who is alleged to have committed the criminal offence.
- Activities aiming at raising awareness.

In the framework of the preparation of the ***Report on the Implementation of the Conventions of the International Labour Organisation – ILO***, and based on the recommendations of the Committee of Experts, the Commissioner for Protection from Discrimination prepared information about the activity areas within its remit, for the period between May 2013 and May 2014.

In relation to its area of activity, the Commissioner for Protection from Discrimination prepared information on three issues that were discussed by the Ad Hoc Committee on the Elaboration of Complementary International Standards for the ***Convention for the Elimination of All Forms of Racial Discrimination (CERD)***.

Reporting in the Framework of European Integration Processes

On 18 March 2014, the Commissioner reported in the framework of the ***Fifth Meeting of the Stabilisation and Association Committee***, EU-Albania, which monitors the implementation of the Stabilisation and Association Agreement. The reporting focused on the implementation of the Stabilisation and Association Agreement, the European Partnership Document (2007) as applicable, recommendations of the 2013 Progress Report, and the recommendations of the Stabilisation and Association Sub Committees, held in 2013 and 2014.

The Sixth of the ***Sub-Committee Meeting on Justice, Freedom and Security*** was held in the premises of the Ministry of European Integration in Tirana, on 14-15 May 2014. After presenting the main activities and developments in the work of the CPD during the reporting period, the Head of the European Delegation commented that the work of the institution of the Commissioner for Protection from Discrimination is commendable, there are data and statistics, there is raised awareness and it is positive to note that the law has now started to be implemented in the courts.

The Sixth ***EU-Albania Subcommittee Meeting on Innovation, Information Society and Social Policies*** was held in Brussels on 25-26 November 2014. With her letter with Reference No. 898/1 of 30.10.2014, the Commissioner sent in written information on the concrete developments in the institution in the reporting period, from 1 November 2013 to 31 October 2014, following a request by the Ministry of the European Integration, in their official Letter No. 1785 of 21.10.2014.

The Commissioner for Protection from Discrimination was part of the working group with SMEI III experts and made its contribution in the framework of the **National Plan for European Integration – NPEI**, in relation to Chapter 19.

The office of the Commissioner for Protection from Discrimination provided its contributions to the **Roadmap on the Five Key Priorities**, by proposing a number of measures in the framework of Priority 5 “Human Rights”. The CPD outlined measures and reported on these measures and related activities in the framework of the effective implementation of the Law on Protection from Discrimination and raising public awareness of this law.

Expert Missions to the CPD

- 1) The European Commission sent to Tirana an expert mission on 2-6 June 2014, in the framework of the preparation of the 2014 Progress Report and monitoring the progress of the key priorities for integration. The agenda of the topics to be discussed in the meeting were set by the European commission, but there were other topics and discussions that went beyond the confines of the Agenda.
 - a) In relation to the *Expert Mission on Human Rights, with a Focus of Women’s Rights*, the issues on the agenda related to: National Referral Mechanisms and the Gender Equality Officials; Strategies for a national hotline for survivors of violence against women and a system for the compensation of victims; Capacities of/resources for the national shelter for victims of domestic violence; measures taken for the prevention of and fight against discrimination and domestic violence; strategies for establishing a system for victim compensation, as provided in the Convention of the Council of Europe; Reintegration programmes for victims, including training, education, accommodation and economic opportunities;
 - b) Regarding the *Expert Mission on Human Rights with a Focus on the Rights of Roma and Anti-Discrimination*, the issues on the agenda were: the number of claims/complaints filed by victims with various authorities, types of claims, grounds for claiming and solutions arrived at, including comparative data, for instance between 2011-2013 and the number of concluded cases; effectiveness of the State Prosecution and State Police Service in investigating cases (i.e. harassment of LGBT persons); Capacities/resources available to the Office of the Commissioner for Protection from Discrimination; The Database of the Office of the Commissioner for Protection from Discrimination for the systematic of data in the course of case handling; number of staff at the CPD office involved in investigating cases of violence; awareness-raising campaigns about the Law on Protection from Discrimination and on non-discrimination, gender equality and the rights of LGBT persons; the Database on the implementation of the implementation of the Law on Protection from Discrimination, particularly as regards the handling of discrimination cases; whether amendments to the Labour Code have been adopted regarding the prohibition of discrimination on grounds of sexual orientation and/or gender identity; Are there plans to harmonise the existing non-discrimination legal provisions with the Labour Code, the Family Code, the Albanian Media Ethics Code and the Media Law?; evaluation of the CPD-proposed amendments (if not implemented yet) to the Criminal Code, the Labour Code, the Family Code, the Civil Procedure Code, the Electoral Code and the Administrative Procedure Code; Measures for strengthening capacities of local government and

public administration staff on anti-discrimination issues; how do local and central authorities address the issue of discrimination in the private sector.

- 2) On 8-10 September 2014, in the context of the processes of accession to the European Union and at the request of the Ministry of European Union, the European Commission organised an expert mission on independent institutions, which also visited the CPD. The expert missions focused on the evaluation of the independence and functioning of independent institutions in Albania, including: the Commissioner for Protection from Discrimination; the People’s Advocate; the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interests; the Commissioner on the Right to Information and Protection of Personal Data; Public Procurement Agency; the Public Procurement Committee; the Energy Regulatory Authority; the State Aid Commission; the Competition Authority.
- 3) On 9 September 2014, the Commissioner for Protection from Discrimination met the High Commissioner on National Minorities of the OSCE, Ms Astrid Thors. The High Commissioner expressed her interest on issues of discrimination against minorities in Albania, types of complaints, the role of the Commissioner in the inter-institutional working group or the evaluation of the legal framework and minority policies, assessment of the need for developing a specific law on minorities, collaboration with other institutions guaranteeing minority rights, addressing multiple discrimination, etc. On her part, Ms Baraku informed Ms Thors about the work of the Commissioner in the fight against the discrimination against minorities, the cases handled by the Commissioner, the growing number of cases year on year, ways of raising the awareness of minorities about protection from discrimination, level of enforcement/implementation of the recommendations of the commissioner by the relevant authorities. The Commissioner thanked the OSCE Presence in Albania for the collaboration and support they have provided to the Office of the Commissioner for Protection from Discrimination.

II.4.4. Public Hearings at the Parliament

In 2014, the CPD attended a number of hearings at the Parliament, including:

- 28 May 2014. The CPD attended the parliamentary hearing organised by the Standing Committee on Labour, Social Affairs and Health Care (a meeting between young people and members of the People’s Assembly of Albania).
- 15 July. Parliamentary hearing of the Standing Committee on Labour Social Affairs and Health with the participation of various stakeholders, for the discussion of the Draft Law on Compensation for Political Prisoners.
- 21 July 2014. Parliamentary hearing session of Standing Committee on Labour Social Affairs and Health with the participation of interest groups, on the Draft-Law on the Inclusion of and Accessibility for Persons with Disabilities.
- 2 December 2014. Parliamentary hearing session of the sub-Committee on Human Rights “*On the protection of and respect for the rights of the LGBT community in Albania*”.

II.5. Collaborations

II.5.1. Membership to EQUINET – European Network of Equality Bodies

The granting of candidate status for membership to the European Union to Albania led to the fulfilment of one of the conditions for membership to EQUINET – European Network of Equality Bodies.

According to the procedure for gaining membership to EQUINET, Albania initially applied for membership and subsequently the Executive Board, in its meeting of 15 October 2014, assessed CPD's application according to the membership criteria and the EQUINET Statute, and adopted the application by CPD. On this basis, the Board proposed to EQUINET to hold a vote on CPD membership at its annual Meeting. Thus the CPD is the 42nd and the youngest EQUINET member.

The Commissioner for Protection from Discrimination became a member of the EQUINET on 4 December 2014, after the ballot held at the Annual General Meeting (AGM) of the network members. At present, EQUINET is a network of 42 equality bodies from 32 European countries.

THE CPD deems that its membership to the EQUINET is a good opportunity, particularly in regard to exchanging experiences and information on legislation policies on equality and non-discrimination on a European level. The CPD staff form part of the seven working groups of the network, namely:

- Working Group on Equality Law in Practice
- Working Group on Communication Strategies and Practices
- Working Group on Gender Equality
- Working Group on Policy Formation
- Working Group on Strategic Legal Cases
- Working Group on Evaluation of Laboratory Projects
- Working Group on Equality Standards and Bodies

II.5.2. Collaboration with International Bodies through Joint Projects

Five staff members of the CPD Office are involved in the HELP Programme of the Council of Europe. The programme aims to provide online training to young legal professionals on discrimination cases, the way they are handled by the European Court of Human Rights, etc.

The joint collaborative projects between the CPD and international organisations are:

- **Support for the Social Inclusion of Roma and Egyptian Communities**, SSIREC- funded by the EU and implemented by UNDP;
- **Strengthening the CPD capacities to Address Gender Issues, Particularly in the Economic Sector**, of UN Women, Albania;
- **Best Practices for Roma Integration** of ODIHR, funded by the EU, also supported by the CPD.

II.5.3. Collaboration with the Civil Society

- Regarding collaboration with the civil society, it has to be noted that this collaboration was strengthened during 2014. The recommendations that came out of the dialogue with the civil society have been reflected in the CPD Action Plan for 2014. The CPD has undertaken the necessary steps for their implementation.

The joint collaborative projects between the CPD and the civil society are:

- **Together for the Protection and Promotion of the Rights of Citizens**, a CPD project in collaboration with the Albanian Helsinki Committee, funded by the Swiss Cooperation Office in Albania and Civil Rights Defenders
- **Improvement of the Life of LGBT Persons at the Local Level**, a PINK Embassy Project

II.5.4. Collaboration with State Institutions

In collaboration with the Ministry of Education and Science and a number of actors from the academia and the civil society, the CPD has been involved in the development of a plan of measures for interventions in the academic curricula in line with the provisions of the Law on Protection from Discrimination. In the context of the measures under Priority 5, the Ministry of Education and Sports has been appointed the responsible institution for "*The implementation of the recommendations of the Commissioner for Protection from Discrimination sent to the Ministry of Education and Science⁷³ by Official Letter with Reference No. 367, of 01.07.2013 on the measures for the elimination of literature that discriminates against and prejudices the rights of the LGBT community from study programmes and curricula in the public and private institutions of higher education*", until September 2014.

The CPD has been part of a number of working groups, including:

- CPD has made its contribution in the framework of the working group for the Evaluation of the Legal Framework and Policies on Minorities, set up pursuant to the respective Order of the Prime Minister No. 117 of 10.03.2014. Between April and October 2014, nine meetings were held with the aim of assessing and discussing various issues on the minorities. At the 5 December 2014 meeting, the participants discussed the issues of access of minorities to the media. In October 2014, a meeting of the Minister of Foreign Affairs with representatives of minority associations was held in the context of the consultation process. The conclusions of the consultation process were drawn in December 2014;
- The inter-ministerial working group "**On Monitoring And Implementing the National Strategy on the Improvement of the Living Conditions of the Roma Community**";
- The inter-ministerial working group "**On the Implementation of the Rules of Reasonable Adjustment in State Institutions**";
- The technical working group "**On the Official Recognition of [the Albanian] Sign Language**".
- The Working Group on the evaluation of the progress of the Document of Cooperation between the Council of Europe and Albania 2012-2014.

⁷³ Presently, the Ministry of Education and Sports.

CHAPTER 3

ADMINISTRATIVE ASPECTS

III.1. Human Resources Management

The CPD has 20 staff, 15 of which have the status of civil servants, which they earned in conformity with the requirements and procedures set out in the Civil Service Legislation. These procedures were subject to an inspection by the Civil Service Commission in 2013, which found that they had been correctly applied by the CPD. During 2014 the Commissioner for Protection from Discrimination did not announce any competitions for vacancies; however, pursuant to Law No. 152/2013 "On Civil Servants" all employees who had gained civil servant status under the previous law, received confirmation of their status.

The employees at the Office of the Commissioner for Protection from Discrimination meet the minimum educational qualifications requirements for their positions (they have either completed 4 years of BA studies, or the 3 + 2 study programmes) and have mainly graduated in Law and Social Sciences (with the exception of the IT specialist, the Archives/Protocol secretary and the accountant, who have graduated in Electronics, History, and Finance, respectively). Part of the CPD staff have completed their MSc studies in study areas related to their duties within the CPD structure, including Master's Degree in Public Administration, European Law, Gender Equality, Professional Master's Programme on European Business Law, MSc in Public Law, Master in Constitutional Law, Professional Master's in Criminal Law, etc.

Members of the CPD staff have attended various training courses including training courses organised by the Department of Public Administration, the Training Institute of Public Administration (presently known as ASPA), the Civil Service Commission (presently the Commissioner for the Supervision of the Civil Service) and the Commissioner on the Protection of Personal Data.

The training courses focused on a wide range of issues, including: Introduction to the Public Administration, Writing Official Letters and Communications, Contract Drafting, Human Resources Information Management System, Protection of Personal Data, Implementation of the Law On Civil Servants, Disciplinary Measures and Appeals Procedures, Organisation and Development of Human Resources and Organisational Structures, etc.

Training sessions were organised with a view to raising the professional level in handling discrimination issues, such as protection from discrimination on grounds of gender, ethnicity, sexual orientation and disability, monitoring of the implementation of the Convention on the Rights of Persons with Disabilities, improvement of mechanisms for the protection of

human rights in the fight against discrimination, organisation of open days with Roma and Egyptian communities, human rights and non-discrimination of Roma and Egyptians, gender mainstreaming for gender equality focal points at the local level, including LGBT issues in social policies, Human Rights in practice, etc.

On 19-21 February 2014, the Commissioner for Protection from Discrimination and six CPD staff were part of a group that went on a study visit to various Portuguese equality bodies. The study visit was organised in the context of the UN Women Project on Strengthening the Capacities of the Commissioner for Protection from Discrimination to address gender issues, particularly in the economic sector". The aim of the study visit was to raise the capacities of the staff of the Office of the Commissioner for Protection from Discrimination, representatives of the Chambers of Commerce and Industry and Civil Society Organisations who are involved in the area of promotion of women's rights, best practices in the prevention and handling of gender discrimination, with particular focus on the economic sector, through exchanges of practices, experiences and information with representatives of Portuguese authorities involved in the areas of gender equality, protection from discrimination, etc.

- **Draft Decision of the CPD Submitted to the Parliament of the Republic of Albania**

With its Official Letter with Reference No. 737 of 01.09.2014, the CPD submitted to the Parliament, a draft-decision "On some amendments to Decision No. 34 of 20.5.2010 "On the Adoption of the Structure, Organisational Chart, and Categorisation of Job Positions at the Office of the Commissioner for Protection from Discrimination".

The proposal for amending Decision No. 34 of 20.05.2010 "On the Adoption of the Structure, Organisational Chart, and Categorisation of Job Positions at the Office of the Commissioner for Protection from Discrimination" was a result of the need to harmonise the structure of the Office of the Commissioner with the legal provisions and delegated legislation, such as Law No. 10296 of 08.07.2010 "On Financial Management and Audit", Council of Ministers Decision No. 474 of 16.06.2011 "On establishing standards of procedure to be followed in the development and adoption of organisational structures of public administration institutions". At the same time, these amendments aimed to address the priority set out in the 2012-2015 Strategic Plan of the Commissioner for Protection from Discrimination on institutional reorganisation with a view to increasing the efficiency of the work of the CPE and particularly to strengthening the Public Relations Section, as well as with the recommendations of the 2013 Progress Report on the necessity of raising public awareness.

The changes proposed by this draft-decision include:

- Transfer of the human resources specialist from the Support Services Department to the Public Relations Section and changing the name of this section from Public Relation Section to Awareness-Raising and Public Relations Section;
- Changing the name from Support Services Department to Department of Finance and Administration.

At the present time, the draft is with the Parliament.

III.2. Management of Financial Resources

With regard to its budgetary and financial performance, the Office of the Commissioner for Protection from Discrimination, has acted correctly in conformity with Law No. 9936 of 26.06. 2008 *“On the Management of the Budgetary System in the Republic of Albania”*, Law *“On the 2014 Budget”*, pursuant to Minister of Finance Instruction No. 2 of 06.02.2012, *“On Standard Procedures for the Implementation of the Budget and Implementation of the Complementary Instruction of the Minister of Finance “ On the Implementation of the 2014 Budget”*.

The budget allocated for this programme is in the service of the realisation of the policy set out in the Programme Policy Statement: To organise and build the necessary capacities for the effective running of the Office of the Commissioner for Protection from Discrimination; to approximate and harmonise legislation in the areas of implementation of the equality and non-discrimination principles with the legislation of other EU countries; ensure the implementation of existing laws and develop strategies for achieving this purpose; establish relations and develop memoranda of cooperation with all actors involved in the implementation of the legal requirements in the area of the implementation of the equality principle; promote and raise the awareness of communities, who have a direct stake in these matters, and of entire society at large, on ways and opportunities to implement the above principle in order to ensure the best implementation possible of human rights and fundamental freedoms. In addition, the budget aims to support particular actions undertaken achieving the realisation of the deliverables and of the objectives set out in this budget programme.

Of the overall budget funds, the Commissioner for Protection from Discrimination has spent 77.75% of the 12-month budget funds allocated. Of the total funds allocated under item “Expenditure and Investment Funds (item 231)” 87.00% were spent. In the category ‘expenditure funds’ under Goods and Services (item 602), 68.62 % of planned funds were spent.

We note that the unspent amounts from the allocated funds fall under the item “domestic and international travel”, which have been partially covered by donors. On the other hand, we note that one of the barriers to realising some of the expenditure funds is the inadequate planning of obligatory monthly expenditure ceilings, by allocating the largest amounts in the last two months of the year. In addition, small procurements made online do increase the transparency of the process, but they cause delays to the institution, because often participating companies did not respect the procurement process requirements or there was no show of interest (because of the small amounts involved). The Donor Fund of 2014 was realised to the extent of 90.33 % of the annual planned funds. The donations were used to co-fund joint activities with UNDP.

The CPD has defined a number of priorities for 2015, including:

- To strengthen the collaboration between the CPD and organisations involved in working with marginalised groups, such as the Roma and Egyptians, disabled persons, LGBTI persons, etc., with a view to identifying situations that raise discrimination issues and increasing the number of cases initiated ex officio;
- To continue working for raising the awareness of the community through awareness-raising campaigns, inclusion of local government, organisations working with groups in need, using electronic and print media as important instruments, etc.

- Given that Open Days have helped increase the number of discrimination claims filed with the CPD, such open days must continue to be held in the future.
- By assessing the grounds of discrimination claims in 2014, the CPD will strengthen the work for the prevention of discrimination on grounds of race, ethnicity, political belief, economic status, medical status, disability, educational status, social status, economic status and other grounds.
- Taking into account that improvements to the Law on Protection from Discrimination increase the effectiveness of its enforcement and implementation, the CPD shall carry on with the work for further improvements, in full compliance with the EU Community Acquis.
- The CPD shall carry on with its lobbying work with a view to ensuring that the recommendation made by the CPD office in 2014 are taken into account and adopted.
- Increasing the number of collaboration agreements with the greatest number of actors possible shall once again be in the focus of the institution during 2015.
- The CPD shall carry on with its commitment to train all interested parties and to identify effective ways of dealing with discrimination cases.

ANNEX 1

The Legal Framework Ensuring Equality and Non-Discrimination in Albania

The International Covenant on Civil and Political Rights was ratified by Albania in 1991⁷⁴. Article 2 of this Covenant establishes the obligation of Each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 of this instrument provides that, “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.”

In July 2013, the CPD was part of the delegation the reported on the implementation of the International Covenant on Civil and Political Rights, in the context of Albania’s Second Periodical Report in the 106th Session of the Human Rights Committee. In its concluding remarks, the Committee pointed out positive developments, including the adoption of the Law on Protection from Discrimination in 2010 and the amendments to the Criminal Code in May 2013, which expand the meaning of protection from discrimination to include sexual orientation.

In its General Comment 18, Non-Discrimination, the Human Rights Committee emphasises that Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Regarding protection of human rights, the Committee emphasises that the principle of equality often requires state parties to take affirmative action in order to diminish or eliminate conditions, which cause or help perpetuate discrimination prohibited under the Covenant. The Committee notes that not all differentiated treatment constitutes discrimination, if the criteria for such differentiated treatment are reasonable and objective and if the aim is to achieve a purpose, which is legitimate under the Covenant.

International Covenant of Economic, Social and Cultural Rights was ratified by Albania in 1991⁷⁵. The State Parties to this instrument guarantee that the economic, social and cultural rights proclaimed in this Covenant shall be exercised without any discrimination. Some of the rights envisaged by the Covenant include the right to work, the right of trade unions, the right of social insurance, the right to education, etc.

In November 2013, the CPD was part of the delegation that reported on the implementation of the International Covenant on Economic, Social and Cultural Rights. In its concluding remarks on the second and third periodic report submitted by Albania, the Committee hailed as positive developments such as the adoption of the Law on Protection from Discrimination,

74 Law No.7510 of 08.08.1991 On Accession of the Republic of Albania to the International Covenant on Civil and Political Rights.

75 Law No. 7511 of 08.08.1991, On the Accession of the Republic of Albania to the International Covenant on Economic, Social and Cultural Rights.

the Law on Mental Health, the ratification of the UN Convention On the Rights of Persons with Disabilities, the amendments to the Criminal Code in May 2013, which expand protection from discrimination to include sexual orientation, and the work of the Commissioner for Protection from Discrimination.⁷⁶

The Convention on the Rights of Persons with Disabilities, ratified by Albania in 2012⁷⁷, establishes a series of rights for people with disabilities, which translate into obligations for the State Parties. These provisions must guide the legislative changes necessary in the context of the alignment of the Albanian domestic legislation with this Convention, to ensure the rights of persons with disabilities in the framework of the obligations arising for the State Parties to the Convention. Law No. 93/2014, On the Inclusion of and Accessibility for People with Disabilities, is based on the principles of gender equality and non-discrimination.

The Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979, was ratified by Albania in 1993⁷⁸, and the Optional Protocol of the Convention in 2003⁷⁹. The Albanian legislation provides a definition of discrimination that is fully aligned with the CEDAW in Law 9970/2008 On Gender Equality in Society (Article 4) and Law 10221/2010 On Protection from Discrimination (Article 3). This Convention aims to ensure *de facto* improvements of women’s status and situation. The CPD contributed to the preparation of the Fourth Periodic national Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, adopted by Decision No. 806 of 26.11.2014. The substantive articles of this convention define the obligations of the Albanian state in relation to gender equality in political representation and public life, representation at the national level, nationality, trafficking and prostitution, equality in education, employment, health care and reproductive health, economic and social welfare, equality before the law, equality in marriage and in the family, etc. For the decisions or recommendations made on matters where discrimination was claimed, the CPD referred to this Convention.

In the Concluding Remarks of the Committee on the Elimination of Discrimination against Women (46th session, 12-30 July 2010), the Committee pointed out the positive development of the establishment in 2010 of the institution of the Commissioner for Protection from Discrimination, an independent body in charge of promoting equality, monitoring the implementation of anti-discrimination legislation, organising awareness-raising campaigns and investigating claims of discrimination⁸⁰.

Article 14 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, ratified by Albania in 1996⁸¹, provides for the “prohibition of discrimination” while Article 1 of Reference No. 12 stipulates the “general prohibition of discrimination”, extending the scope of Article 14 to include cases where persons are discriminated against in the enjoyment of any right or benefit under the national legislation. The principle of non-discrimination that permeates the convention is closely related to the rights defined in the articles of the Convention.

Council of Europe Convention On Preventing and Combatting Violence against Women

76 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/ALB/CO/2-3&Lang=En

77 Law No.108 of 15.11.2012, On the Ratification of UN Convention On the Rights of Persons with Disabilities.

78 Law 1769/ 9.11.1993.

79 Law No. 9052, of 17.04.2003.

80 Concluding Remarks of the Committee for the Elimination of Discrimination against Women, 46th session of the CEDAW Committee, 12-30 July 2010, paragraph 14.

81 Law No.8137 of 31.07.1996, On the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended.

and Domestic Violence⁸² was ratified by Albania in 2012. With its Law No. 104/2012, On the Ratification of the Council of Europe Convention On Preventing and Combatting Violence against Women and Domestic Violence, the Albanian state accepted its obligation to prevent and combat all forms of violence against women and domestic violence.

The Framework Convention of the Council of Europe On the Protection of National Minorities, which following ratification has become part of the domestic legislation and is fully enforceable, thus providing a guarantee for the protection of the rights of minorities in Albania;

The European Social Charter, a treaty of the Council of Europe adopted in 1961 and revised in 1963, was made a component part of the domestic legislation, following its ratification by Albania in 2002. The Charter deals with rights related to housing, health, education, employment, social protection, etc.

The International Convention for the Elimination of All forms of Racial Discrimination -ICERD, to which Albania acceded in 1994, requires from the State Parties to take measures for the elimination of discrimination on racial grounds.

Law No. 10221 of 04.02.2010, On Protection from Discrimination, expands on Article 18 of the Constitution. It is an organic law, which ensures protection from discrimination. The 2014 Progress Report on Albania states that the Law on Protection from Discrimination is generally aligned with the EU Acquis⁸³. The aim of this Law is to ensure the right of each person to equality before the law and equal protection by the law, equality of opportunities to exercise their individual rights and freedoms and effective protection from discrimination. The law regulates the implementation and observation of the principle of equality, based on a non-exhaustive list of grounds. The institution of the Commissioner for Protection from Discrimination (the CPD), as a public legal body, independent in the exercise of its duties and functions, and as the authority whose remit it is to ensure effective protection from discrimination and from any forms of behaviour that promote discrimination, was established pursuant to this law. The CPD has powers to admit claims against both public bodies, and private organisations and individuals. The main areas where this protection is provided are expressly provided in the law and include protection from discrimination in employment, education, and the area of access to goods and services. However, protection from discrimination under the Law on Protection from Discrimination is guaranteed for all the rights and fundamental freedoms recognised by the Constitution of the Republic of Albania, and the legislation in force.

Domestic Laws also sanction the principles of equality and protection from discrimination, although there is a need for changes or adoption of new legislation to guarantee protection from discrimination⁸⁴.

Law No. 8485 of 12.05.1999, "Administrative Procedures Code" is another piece of legislation on which the CPD relies in carrying out her duties and functions. In this law, the principle of equality is sanctioned as one of the main principles that must guide the functioning of the public administration. *In the framework of the development of the new*

82 Law No. 104 of 11.08.2012, On the Ratification of the Convention of the Council of Europe on Preventing and Combatting Violence Against Women and Domestic Violence. This Convention came into effect on 1 August 2014.

83 European Commission, 2013 Albania Progress Report. Available from the website of the Ministry of European Integration www.integrimi.gov.al.

84 This was also noted in the 2013 Albania Progress Report.

Code of Administrative Procedures, the CPD has reiterated that the distribution of the burden of proof in discrimination cases is essential, which is also supported by the standards provided in the EU directives in the areas of equality and non-discrimination.

Article 9 of Law No. 7961 of 12.07.1995, "The Labour Code of the Republic of Albania", as amended, provides for the prohibition of all types of discrimination in the area of employment, the number of grounds is more limited than those provided in the Law on Protection from Discrimination. In 2012, the CPD sent recommendations on the Labour Code, which have yet to be adopted. The CPD resent these proposals.

In addition, provisions in the areas of equality and non-discrimination, in relation to specific grounds, are also made in other laws such as: Law No. 9970, date 24.07.2008, "**On Gender Equality in Society**" which prohibits discrimination on the ground of gender (Article 6); Law No. 10347, of 04.11.2010, "**On the Protection of the Rights of Children**", which prohibits all forms discrimination or punishment against children; Law No. 9669, of 18.12.2006, "**On Measures against Violence in Family Relations**", etc.

The level of protection from discrimination has increased in 2014, following the implementation of the amendments to the Criminal Code in 2013⁸⁵. Worthy of mention here is the provision on aggravating circumstances in the commission of criminal offences, for motives such as gender identity, sexual orientation, health status, genetic predisposition, and disability⁸⁶; criminalisation of sexual harassment (Article 108/a); criminalisation of incitement of hatred or dispute on grounds of sexual orientation (Article 265); criminalisation of violations of the equality of citizens by state or public officials on grounds of sexual orientation and gender identity (Article 253). Some of these changes were proposed by the CPD. Some of the recommendations made by the CPD were not taken into account and consequently, they were resent to the authorities in charge.

In order to fight discrimination in the area of education, the Law On Protection from Discrimination has demanded from the Council of Ministers and the Ministry of Education and Science⁸⁷ to take measures of an affirmative nature (Article 18 of the Law), and for the fulfilment of these obligations, Article 39 of the Law provides for the adoption of delegated legislation for the implementation of the provisions of Article 18. The Commissioner notes that, even though an inter-institutional working group chaired by the Ministry of Education and Science⁸⁸ was established pursuant to Order of the Prime Minister No. 52 of 23.04.2012 "*On the Establishment of the Inter-Institutional Working Group on Drafting of Secondary Legislation for the Implementation of Law No. 10221 of 04.02.2010 On Protection from Discrimination*", no delegated legislation provision have been adopted as yet for the implementation of Article 18 of the Law on Protection from Discrimination.

Strategic documents and non-discrimination policies have been adopted for the purposes of the implementation of the legislation in force, including: The Sectoral Strategy on Social Protection 2007-2013; Action Plan on Children 2012-2015; The National Strategy on Gender Equality, Violence against Women and Domestic Violence 2011-2015; the National Action Plan for the Roma Inclusion Decade 2012-2015.

85 Law No.144/2013, "On some additions and amendments to Law No. 7895 of 27.1.1995, 'The Criminal Code of the Republic of Albania, as amended.'"

86 These grounds are directly prohibited in the Law on Protection from Discrimination.

87 This is the nomenclature used in the Law on Protection from Discrimination; the present official name is Minister of Education and Sports.

88 This was the official nomenclature at the time when the order for the establishment of the working group was issued (today the Ministry of Education and Sports).

ANNEX 2

Legislative Recommendations Proposed by the CPD

1. Legislative Recommendations for Amendments to the Criminal Code of the Republic of Albania

Recommendation sent to the Minister of Justice with Official Letter with Reference No. 295 of 10.03.2014, and subject matter: "Sending recommendations for amendments to Law No. 7895 of 27.01.1995 'Criminal Code of the Republic of Albania', as amended". These amendments aim for the implementation of the principles of equality and protection from discrimination on grounds of sexual orientation and gender identity. Given that the proposals sent by the CPD with Official Letter with reference No. 175 of 07.03.2013 were not reflected in the changes that were made to the Criminal Code in 2013, the CPD has resent these recommendations.

More specifically, the Commissioner recommended:

- Rewording of Article 50/j of the Criminal Code to include as aggravating circumstances in the commission of a criminal offence all the grounds provided in the Law On Protection from Discrimination.
- Rewording of Article 84/a of the Criminal Code with the aim of providing for the separate criminal offence of threats on grounds of a person's sexual orientation and gender identity.
- Rewording of Article 119/a "Distribution of racist or xenophobic materials online" to criminalise these attitudes towards sexual orientation and gender identity.
- Addition of a new article after Article 265 "incitement of hatred or disputes between ethnicities, races and religions", to criminalise the incitement of hatred on grounds of a person's sexual orientation and gender identity.
- Rewording of Article 253 "Violation of citizens' equality", to include all the grounds of discrimination prohibited under the anti-discrimination law, thus guaranteeing broader protection for people.

Given that only two of these recommendations in relation to articles 50/j and 253 of the Criminal Code have been implemented, while the recommendation on Article 265 was only partially implemented, the CPD resent these recommendations with its Official Letter of 10.03.2014, with Reference No. 295.

In addition, recommendations were submitted for amendments to the Criminal Code of the Republic of Albania. This, the institution of the CPD has also recommended the removal of the term "homosexual relations" in the title and in the body of articles 100 to 107 of the Criminal Code, Section VI, where provisions are made about sexual offences. To eliminate the use of unsuitable language, with negative and prejudicial connotations, it has been recommended

the following: a) remove the words "or homosexual" from the titles of Articles 100, 101, 103, 104, 105, 106, 107 of the Criminal Code; b) remove the words "or homosexual" from the first and second paragraphs of articles 100, 101, 103 of the Criminal Code and from Articles 104, 105, 106 and 107 of the Criminal Code; c) reword Article 102 of the Criminal Code to state the following: "Forcible sexual relations with an adult person" Engaging in forcible sexual relations with an adult person shall be punished by imprisonment of three to ten years.

Where there is conspiracy to commit forcible sexual relations, or the forcible sexual relations occur more than once, or when the injured person suffers serious health consequences, it shall be punished by imprisonment of five to fifteen years.

Where the offence leads to the death or suicide of the injured party, it shall be punishable by imprisonment of ten to twenty years."

Given this rewording of Article 102 of the Criminal Code, it is recommended that Article 102/a of the Criminal Code be rescinded.

2. Legislative Recommendations for Amendments to the Civil Procedure Code of the Republic of Albania

In her Official Letter with Reference No. 294 of 10.03.2014 and subject matter: "Sending recommendations for amendments to Law No. 8116 of 29.03.1996 'The Civil Procedure Code of the Republic of Albania', as amended", the CPD submitted her recommendations to Mr Nasip NAco, Minister of Justice. In line with EU directives in the areas of equal treatment and non-discrimination, specifically in relation to the reverse onus of proof standard, the CPD has demanded that initiatives be undertaken to allow for reversing the legal onus in civil procedures in cases where the court is dealing with a discrimination case.

The CPD has argued the need for the fulfilment of this legislative recommendation by arguing that Chapter VI of Law No. 10221 of 04.02.2010 On Protection from Discrimination, "Court procedures", provides for the shift/distribution of the legal onus of proof in cases where the court is dealing with a discrimination case, unlike the general onus probandi principle, whereby the burden to prove the necessary facts to prove the allegation falls on the party that makes the allegation. The burden of proof principle is set out in Article 12 of the Civil Procedure Code, which states: "*The party claiming a right, has a duty, in conformity with the law, to prove the facts on which it bases its claim*" is not in compliance with the *Acquis Communautaire* in relation to the reverse burden of proof rules.

The institution of the CPD has argued the need for this change in the law by highlighting the fact that as it has transpired from the practice of the institution itself with the examination of discrimination claims, it is very difficult for the individual to collect the necessary evidence and sometimes individuals are faced with situations where no direct evidence is available. The argument in favour of this legal change is based also on the jurisprudence of the European Court of Justice and European Council Directive 97/80 on the Burden of Proof and subsequent EC Directives, such as Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)." In these circumstances, with a view to approximating the legislation with the EU *acquis communautaire* and harmonising the various pieces of domestic legislation, the CPD has proposed the following:

- **Addition of a paragraph after the first paragraph of Article 12 of Law No. 8116 of 29.03.1996 “The Civil Procedure Code of the Republic of Albania”, as amended, with the following content: “After the claimant/plaintiff presents the evidence on which he bases his claim and on the basis of which the court may presume discriminatory behaviour, the defendant has the duty to prove that such facts do not constitute discrimination”.**

In relation to CPD proposals for amending the Civil Procedure Code, the Ministry of Justice confirmed that these recommendations shall be taken into account at the earliest opportunity when an initiative for amending the Civil Procedure Code is launched.

3. Legislative Recommendations for Changes to the Electoral Code

In 2014, the CPD sent Official Letter with Reference No. 594 of 18.06.2014, “Sending recommendations for amendments to Law No. 10 019 of 29.12.2008 “The Electoral Code of the Republic of Albania”, amended by Law No. 74/2012” whereby she presents her recommendations for amendments to this law to the Speaker of the People’s Assembly of Albania.

- It is recommended that paragraph 3 of Article 3 of the Electoral Code, where protected grounds of discrimination must be harmonised with the provisions of Article 1 of Law No. 10221 of 04.02.2010, On Protection from Discrimination, as follows:

“Any Albanian national, who has reached the age of 18, including on Election Day, without distinction according to gender, race, ethnicity, colour, gender, language, gender identity, sexual orientation, political, religious or philosophical convictions, economic, educational or social status, civil status, place of residence, health status, genetic predisposition, disability, affiliation to a special group, or any other grounds, has the right to elect and be elected in accordance with the rules set out in this Code.”

- *It is recommended that the Commissioner for Protection from Discrimination is added in paragraph 2 of Article 6 of the Electoral Code as one of the institutions that is entitled to appoint election observers.*

- In line with the provisions of Law No. 9970 of 24.07.2008, ‘On Gender Equality in Society’ and the principle of equal gender representation stipulated, and taking into account the present situation where women remain underrepresented, the CPD has recommended that Article 67/6 of the Electoral Code be amended as follows:

“In each electoral zone, at least thirty per cent of the multi-name list and one in every three names in the multi-name list must be from either of the genders. The subject submitting the list announces the seats in conformity with the gender quota, with the aim of applying the exemption set out in paragraph 2 of Article 164 of this Code”.

- In regard to Article 175 of the Electoral Code, which provides for sanctions for the failure to implement the gender quota and taking into account the electoral practice in the general parliamentary elections of 23 June 2013, THE CPD recommended:

Increase the amount of the penalty fine in Article 175, paragraph 1, both in relation to parliamentary elections and local elections.

Consider reducing the difference between the sanctions applied in the case of general parliamentary elections and the sanctions applied for local government elections.

Provide for cumulative sanction of rejecting the party lists, in addition to the penalty applied, where the parties do not comply with the gender quota of 30%.

- In addition, in order to guarantee the right of all individuals to receive information on the electoral campaign on an equal basis, and to guarantee an effective and non-discriminatory participation of disabled persons in the political life of the country, it is recommended: Article 80, paragraph 2, after the first sentence of this paragraph, add a sentence with the following wording: *“The Public Radio and Television shall report on the electoral campaign in formats and technologies that are accessible/appropriate for various types of disability”.*

- *Referring to the new approach adopted by the UN Convention On the Rights of Persons with Disabilities, and the important role of language used in changing the perceptions of the society about people with disabilities, the CPD recommended that the title of Article 108 of the Electoral Code is amended from “Voters who do not vote by themselves” to “Voters with disabilities”.*

Based on the obligations of the Albanian state deriving from the UN Convention On the Rights of Persons with Disabilities”, to respect, protect and guarantee that all persons with disabilities fully and equitably enjoy all human rights and fundamental freedoms, the CPD recommended that it is imperative to find a legal solution, by making the relevant concrete changes to the Electoral Code, to guarantee the right to vote for voters who are house bound and cannot attend the polling stations in person.

4. Recommendations for Amendments to the Broadcasting Code

In her Official Letter with Reference No. 54 of 20.01.2014, the CPD sent recommendations in relation to the Broadcasting Code to the Audio-visual Media Authority (AMA). These were:

- Section 1, “**Basic Principles**”, to include the following provision: Audio-visual Broadcasts of all types shall respect the principles of equality and non-discrimination for all the protected grounds provided in the Albanian legislation.
- Section 2, “**The Right to Privacy**” to include the following provision: *“In Audio-visual Broadcasts, observation of the privacy principle and protection of personal data shall be implemented without discrimination on grounds such as race, age, disability, or any other grounds prohibited by the Albanian legislation.”*
- Section 4, “**Broadcast of Information Programmes**”, the list of discrimination grounds under point 4.11 should comply with Article 1 of Law No. 10221/2010, *On Protection from Discrimination*, where the list of grounds is non-exhaustive.
- Section 4, add the following paragraph: *“OSHMA-s in the information space shall not misuse vulnerable groups, in stead, a positive approach must be promoted towards vulnerable groups (minorities, abused women, persons with disabilities, etc.)”*
- Section 5, “**Children in Audio-visual Broadcasts**”, add the following: *“Cultural and entertainment programmes for children shall not use terms that promote prejudicial attitudes.”*
- Section 6 “**Persons with Disabilities in Audio-visual Broadcasts**”, add the

following: *“OSHMA must guarantee that their services are accessible by persons with disabilities. OSHMA must promote the achievements of persons with disabilities.”*

- Section 8, **“Advertisements in Audio-visual Broadcasts”**, reword point 8.3 to comply with No. 10221, *On Protection from Discrimination*: *“Publication of advertisements containing an overt or covert intention to discriminate on the grounds prohibited under the Albanian legislation, shall be prohibited.”*

5. Recommendations for Amendments to the Family Code

The CPD participated in the working group set up by the Ministry of Social Welfare and Youth where they have presented their recommendations for amendments to the Family Code. The recommendations for amendments to the Family Code aim at its approximation with Law On Protection from Discrimination. Keeping these suggestions in mind, The Ministry of Social Welfare and Youth has now finalised the process of drafting some amendments to the Family Code, in regard to co-habitation. (Article 163 of the Family Code, “The meaning of cohabitation” and Article 164 of the Family Code).

6. Recommendations for Amendments to Law No. 9355/2005, “On Social Assistance and Social Services”.

In the letter with Reference No. 971 of 10.11.2014, the CPD submitted her recommendations for amendments to Law No. 9355/2005, “On Social Assistance and Social Services”. These recommendations were sent to the Minister of Social Welfare and Youth, Mr Erion Veliaj and consist of a request for the rewording of point 10, Article 4, of Law No. 9355 of 10.03.2005 “On Social Assistance and Social Services”, with a view to eliminating the creation of gender and age preferences, or preferences on any other bases.

The CPD notes that the definition of “head of household” in Law “On Social Assistance and Social Services”, Article 4, point 10, is in contravention of the principle of gender equality. The CPD is of the opinion that not only does this point not serve women’s empowerment, which is one of the commitments set out in the National Strategy on Gender Equality and Reduction of Gender-Based Violence and Domestic Violence 2011-2015, but it further weakens the role and status of women in the family and in family decision-making.

In addition to expressing preference in gender terms, the ordering used in point 10 of Article 4, also expresses age preferences, as in the wording “the oldest member of the family in the active age-group (18-65 years of age), the youngest member of the family in the over 65 age group”. Therefore, the way this paragraph is formulated is in contravention with the principle of equality, because it provides a preferential order on the basis of the age of the individual, giving priority to the older individuals in the 18-65 age group and the younger individuals in the over 65 age group.

7. Recommendations for Amendments to the Administrative Procedure Code

The CPD has sent proposals for amendments to the Administrative Procedure Code in her Official Letter with Reference No. 692/1 of 30.12.2013 addressed to the Ministry of Justice. The CPD has recommended:

- Rewording of Article 5 of the draft law, or addition of a separate article formulating the principles of equality and non-discrimination as important principles that must guide the activity of any public body or private entity exercising public functions.
- Prohibited grounds of discrimination must be in harmony with the provisions of Article 1 of Law No. 10221 of 04.02.2010, *On Protection from Discrimination*.
- Addition of an article to regulate the burden of proof in discrimination cases. The Law On Protection from Discrimination, in line with the provisions of EU Directives, has provided for the shift of the legal onus of proof before the court, where the latter deals with cases involving a discrimination claim. More specifically, this is a provision made in Article 36, point 4 of the Law on Protection from Discrimination.

In the Official Letter with Reference No. 894/1 of 24.10.2014, with subject matter **“Sending recommendations in relation to the draft-law “The Administrative Procedure Code of the Republic of Albania”**, the CPD sent recommendations regarding this draft law to Mr Fatmir Xhafaj, Head of the Standing Committee on Legal Affairs, Public Administration, and Human Rights at the Parliament of Albania. It has to be said that that of the recommendations sent in 2013, the one for the inclusion of the principle of equality and non-discrimination had been implemented.

Given that part of the recommendations sent to the Ministry of Justice in the Official Letter with Reference No. 692/1 of 30.12.2013 was the recommendation for the rewording of the articles dealing with the burden of proof between the parties in administrative proceedings, with the view to providing for the distribution of the legal onus in cases of discrimination claims and this recommendation has not been taken into account, the CPD reiterated that the distribution of the burden of proof in discrimination cases is also essential considering the standards set out in the EU directives in the areas of equality and non-discrimination. Even the CEDAW Committee, in the Concluding Remarks of the Committee on the Elimination of Discrimination Against Women, in its 46th session in 2010, encourages State Parties to consider the remove the burden of proof in cases of claims of discrimination on grounds of sex and gender, particularly in claims of sexual harassment, from anti-discrimination laws and the Labour Code.

With the aim of approximating the Albanian legislation with the EU *acquis communautaire*, the CPD has proposed that Article 93 of the draft law, “Burden of Proof”, should include a paragraph after point 1, which regulates the application burden of proof principle in discrimination cases, with the following wording:

“In cases where the interested party submits evidence on which it bases the claim of discriminatory behaviours and on the basis of which a presumption of discrimination can be made, the other party has the duty to prove that the facts do not constitute discrimination”.

In making this recommendation, the CPD has referred to Directive 97/80/EC on the burden of proof in cases of claims of discrimination on grounds of gender, more specifically to the provision that, “Member States shall take such measures as are necessary in accordance with their national judicial systems to ensure that, where persons consider that an injustice has been done for reasons of failure to apply the equal treatment principle and the plaintiff establishes, before a court or other competent authority, facts from which discrimination

may be presumed to exist, it is for the defendant to prove that there has been no contravention of the principle of equality.”

In addition, the CPD has drawn the attention of the Albanian Parliament to point 1 of Article 93 of Draft-Law **“The Administrative Procedure Code of the Republic of Albania”**, which makes the same provision as Article 12 of the Civil Procedure Code, which stipulates that the party claiming a right has the duty to prove the facts on which she bases her claim. This is the general onus probandi rule, according to which it is up to the party that makes the claim to establish the necessary facts to prove the claim. Similarly, the CPD has drawn the attention to Law No.49/2012 *“On the organisation and functioning of administrative courts and the trial of administrative disputes”*, Article 35/3, which stipulates the possibility that the court, with an interim decision, may decide to shift the burden of proof to the public body, in cases of administrative proceedings initiated at the request of the interested party. The principles of administrative trials, Article 3/3 of Law No.49/2012 *“On the organisation and functioning of administrative courts and the trial of administrative disputes”*, provide that: *“As a rule, it is for the public administration body to prove its actions’ reliability in law and in fact.”*

In conclusion, the CPD is of the opinion that proving a claim in administrative proceedings is more difficult for the interested parties, compared to administrative court proceedings.

8. Recommendations for Amendments to the Labour Code

In relation to the draft law *“On some additions and amendments to Law No. 7961 of 12.07.1995 “The Labour Code of the Republic of Albania”, the Commissioner for Protection from Discrimination, as amended”*, the CPD, in its Official Letter with Reference No. 360 of 14.09.2012, proposed the following amendments:

- Reword the definition of “discrimination” in the Labour Code, by adding discrimination grounds, including sexual orientation and gender identity, according to Law 10221/2010 On Protection from Discrimination.
- Include other forms of discrimination, such as *“instructions to discriminate”, “harassment”, “victimisation”, “discrimination by association”, and “denial of reasonable adjustment”*.
- The Labour Code should include a provision on the duty of the employer to take the necessary measures to adjust the workplace for persons with disabilities; all aspects of the workplace must be adjusted to the nature of the work and the needs of the employee, and must guarantee the right to employment on an equal footing of persons with disabilities.

The status of this recommendation is ‘implemented’, because the proposals have been incorporated in the amendments to the Draft Labour Code.

ANNEX 3

Participation of CPD Staff in Activities and Events Organised by Other Institutions

In 2014, the staff of the CPD Office participated in 34 activities (seminars, workshops) aiming to increase capacities and strengthen the collaboration with state institutions and national and international organisations involved in the protection of human rights and providing opinions on discrimination.

Staff capacities at the Office of the Commissioner for Protection from Discrimination have been strengthened in the areas of protection of the rights of children, the rights of disabled people, the rights of Roma and Egyptian communities, security issues, social justice issues, blood feud-related phenomena, protection of personal data, etc.

Regarding Protection of Children’s Rights

- On 17 January 2014, the Commissioner for Protection from Discrimination and another representative from the CPD Office took part in a Conference entitled “Protection of Children’s Rights in the Media”, organised by the Audio-visual Media Authority. In her address to the conference, the Commissioner highlighted the role of the CPD in the protection of the rights of children and the importance of the media in assisting the CPD carry out its functions, by providing reliable information which serve as a basis for launching investigations.
- On 22 January 2014, The Commissioner for Protection from Discrimination and the Advisor participated in a Open Consultative Round Table entitled: “Every Roma Child in Kindergarten”, organised by UNICEF and the MES in premises of the Ministry of Education and Sports. The roundtable aimed to establish partnerships between governmental and non-governmental bodies on “Every Roma Child in Kindergarten”, by drawing some recommendations for the future.

Regarding the Rights of Persons with Disabilities

- On 21 January 2014, the Commissioner and the Advisor took part in a working meeting entitled “On launching the process of official recognition of sign language” at the premises of the Ministry of Social Welfare and Youth, under the aegis of Deputy Minister, Ms Bardhylka Kospiri. At the meeting there were presentations on the Kosovo experience and on the rights of persons with disabilities in the light of the UN Convention on the Rights of Persons with Disabilities.
- On 17 February 2014, a representative from the CPD office attended the National Conference *“Access to Justice – A New Focus on Articles 12 and 13 of the UN Convention on the Rights of Persons with Disabilities”*. This event was organised in the framework of the “Access to Justice” Project implemented by the Albanian Association of Blind Persons in collaboration with the National Disability Council, with the support of the

People's Advocate and EU financial support. The representative from the CPD office held a presentation on: "Discrimination on the basis of unequal status in criminal, civil and administrative proceedings against persons with disabilities".

Regarding Roma Community Rights

- On 22 January 2014, a representative of the CPD Office took part in a meeting entitled "Towards a more effective health service for the Roma minority", organised by the National Centre for Community Services and the Open Society Foundation for Albania, with the aim of ensuring and improving access to health services for the Roma minority.
- On 30 and 31.01.2014, a representative of the CPD Office took part in a workshop entitled: "Discrimination against the Roma – Challenges of Anti-gypsyism and Multiple Discrimination" organised by the Presidency of Montenegro of the Decade for Roma Inclusion 2005-2015. The aim of the workshop was to introduce multiple discrimination.
- On 8 February 2014, a representative of the CPD Office took part in a consultative meeting on the Local Draft-Plan on the Roma and Egyptian Communities of the Tirana Municipality, which aimed to promote the integration of Roma and Egyptian communities in the social and economic life of the country. This plan emphasised the four priorities of the Decade for Roma Inclusion, namely Education, Employment, Health Care and Housing.
- On 13 February 2014, a roundtable was held, entitled: "*Together for building environments promoting diversity and non-discrimination*", with the Roma and Egyptian Communities, in the framework of the SSIREC project implemented by UNDP and with the financial support of the EU. The role of the CPD in this event was to raise awareness and present on the issues and concerns faced by this community.
- On 20-21 February 2014, a representative from the CPD office attended the roundtable entitled "High level dialogue on the integration of Roma and Egyptian communities in Albania and new challenges of social development in Albania", organised jointly by the European Union Delegation in Albania and the Ministry of Social Welfare and Youth, with the financial support of TAIEX. The CPD was a member of the panel discussion on Vocational Training and Employment, which took place on the first day of the event. The representative of the Office of the Commissioner for Protection from Discrimination at this Conference presented on: "*Discrimination on the ground of race in the area of employment*", *emphasising the problems and concerns, but also the measures taken by the CPD for the prevention of and protection from discrimination of the Roma/Egyptian communities.*
- On 28 February 2014, the Commissioner and a representative from the Office of the CPD attended the closing event of the "Best Practices in Roma Integration" Project. The CPD supported the implementation of "Best Practices in Roma Integration" Project with their expertise and intensive engagement. In addition, open days were organised and collaboration agreements with local government units were signed in the context of the project.
- On 24 April 2014, a representative from the CPD office attended a seminar for the introduction of the European Charter on Regional and Minority Languages, held in the framework of a joint European Union/Council of Europe Project entitled "Promoting

Human Rights and Minority Protection in South-eastern Europe". This seminar presented the present situation regarding the protection of regional and minority languages and emphasised the fact that Albania is in the process of considering the possibility of ratification of the European Charter on Regional and Minority Languages.

- On 21 October 2014, a Workshop entitled "*Roma Minority Rights*" was organised by the National Network of Roma Associations "Together to Strengthen the Roma Voice in Albania". This event was held in the framework of the Project entitled "Sustainable improvement of the standard of living of Roma Communities in Albania", funded by We Effect and aimed to increase awareness of the legal framework, of the policies for the protection of the Roma minority in Albania, by undertaking concrete lobbying and advocacy initiatives. The Commissioner for Protection from Discrimination held a speech on the present state of play in the work of the institution and the issues faced by this community, in relation to the Roma minority.
- In the context of the project "*Support for the Social Inclusion of Roma and Egyptian Communities*", the CPD has strengthened staff capacities for dealing with and examining claims of discrimination by the Roma/Egyptian communities, by organising two training events in March 2014. On 4 March 2014 the CPD held "Open Days in/with the Roma and Egyptian Communities". In addition, on 25 and 26 March 2014 a two-day training event was organised on "Human Rights and Non-Discrimination of Roma and Egyptian Minorities". All the CPD members of staff attended this training.
- On 21 October 2014 a roundtable was organised at the Ministry of Internal Affairs on the drafting of the Action Plan for the Integration of Roma and Egyptians, 2015-2020. The roundtable discussions identified the main issues faced by the Roma and Egyptian communities and focused on how to address these issues by means of the Action Plan for the Integration of Roma and Egyptians. The Action Plan aimed to clearly define the duties and responsibilities of each institution, aiming at a full integration of Roma and Egyptian communities. Representatives of the CPD office participated in this roundtable. Representatives of other state institutions participated in this event. This roundtable was part of a series of other roundtables organised by the Ministry of Social Welfare and Youth for this purpose.
- On 15 December 2014, a representative of the CDP Office took part as key speaker in the training event entitled: "The right to housing and protection from evictions, with a focus on the housing issues of the Roma and Egyptian Communities". The CPD representative presented on the topic: "Presentation of the work of the Commissioner o Protection from Discrimination on the Roma and Egyptian community issues: Experiences and the road to the future". This event was supported by the Council of Europe through its Tirana and Prishtina offices, and with the support of the Special Representative of the Secretary General on Roma Issues, the Res Publica Centre, and in collaboration with the National Bar Chambers of Albania and Kosovo*. The training for legal professionals from Albania and Kosovo was held on 15-16 December 2014. The aim of the training was to promote awareness of legal professionals on the challenges faced by the Roma and Egyptian communities and raising the capacities and skills of the participants in the implementation of international standards in their legal practice and strategic litigation.

Regarding Security Issues

Participation in roundtable discussions, police forces trainings and conferences organized by Albanian Rehabilitation Centre for Trauma and Torture for the rights of persons deprived of liberty or persons with mental health problems.

On 24 January 2014, two representatives from the Office of the CPD took part in the "Fourth Security Research Forum: Belgrade-Pristina-Tirana. Security Police Collaboration among Albania, Serbia and Kosovo". This event was part of a broader project undertaken by three independent partner organisations: the Belgrade Centre for Security Policy, The Kosovar Centre for Security Studies, and the Institute for Democracy and Mediation. The aim of the Forum was to promote understanding on security issues by further improving transparency in governance in the field of security.

Regarding Social Justice Issues

On 8 February 2014, the Advisor to the CPD took part in the Conference "Social Justice and Active Civic Engagement in Albania", organised by the Albanian Caritas and CODE Albania.

Regarding the Blood Feud Phenomenon

On 13 February 2014, a representative from the CPD Office participated in the Annual Analysis Meeting of the House of Justice and National Conciliation Institute, organised by the House of Justice and National Conciliation Institute, with the aim of raising public awareness about the blood feud phenomenon and its consequences, particularly in the areas affected by the blood feud phenomenon.

Regarding Protection of Personal Data

On 20 and 21shkurt 2014, two representatives from the CPD Office took part in the training for contact persons charged with the protection of personal data in the public sector, organised by the Commissioner on the Protection of Personal Data in collaboration with the Albanian School of Public Administration.

Regarding Discrimination in Labour and Employment Relations

- On 28 February 2014, the Commissioner for Protection from Discrimination and the Advisor took part in an event organised by the "Unë, Gruaja" Association in Pogradec, entitled "How to avoid discrimination in the institution I manage".
- On 28 May 2014, a representative from the CPD Office participated in a meeting organised by the Ministry of European Integration in the context of the drafting of Chapter 19 of the National Plan for European Integration - NPEI. The meeting was attended by the members of the inter-institutional working group on Chapter 19 "Social Policies and Employment", appointed by Order No. 125 of 26.05.2014 of the Minister of Social Welfare and Youth. Regarding the part of the Commissioner for Protection from Discrimination, point 7.3 "Anti-discrimination of Part 7 "Anti-discrimination and Equal Opportunities", the expert suggested that the table on "Existing Policy Framework" include the 2012-2015 Strategic Plan of the Commissioner for Protection from Discrimination", although in this case European legislation has not been applied.
- On 09.05.2014, the Commissioner participated in a consultative roundtable organised by the State Police, UN Women and other national or international partners, as well as representatives from the civil society. The meeting focused on the need for a safe working environment and protection from discrimination on the ground of gender.

Regarding the LGBT Community

- On 20 May 2014, a representative from the CPD Office participated in the second day session of the two-day Workshop on: "LGBT issues from the psycho-social, legal, and media viewpoint, in the Albanian society", organised in Shkodra. This two-day workshop was held by the "Gruaja tek Gruaja" (Woman to woman) organisation, in the context of the project: "Raising awareness and providing psycho-social support to the LGBT community in the Shkodra region" funded by Kvinna till Kvinna and supported by the Alliance Against LGBT Discrimination. This workshop consisted of several sessions: LGBT from the psycho-social viewpoint; myths and facts about the LGBT community in Albania; protection from discrimination in Albania from the legal viewpoint; aspects and cases handled by the Commissioner for Protection from Discrimination; the beginnings of the LGBT movement in Albania; Reflections on the activities of the Alliance Against LGBT Discrimination; Presentation on the International Day against Homophobia by representatives of the Alliance Against LGBT Discrimination; Discussions on media viewpoints on the treatment of LGBT issues; Excerpts from SKANDALI, a documentary film, premiered in Shkodra for the participants.
- On 13 November 2014, the ceremony of signing Collaboration Agreements or Memoranda of Understanding in the context of the "Improvement of the life of LGBT persons at the local level" Initiative. In the framework of its collaboration with the PINK Embassy, the CPD contributed in raising awareness and conducting monitoring activities of the education system.

On 16.12.2014, a meeting was organised with the topic "Discussion amongst colleagues on legal changes for LGBTI persons". This meeting was organised in collaboration with the People's Advocate and with the support of the Council of Europe. The meeting was attended by an expert from the CPD Office.

Regarding Social Inclusion

- On 17 March 2014, a representative from the CPD Office took part in the Presentation of the United Nations Organisation in support of the Social Inclusion Programme for Albania 2013-2020. This presentation had been conceived in the form of a workshop for the development of capacities on social policies. The programme was supported with funds by the United Nations and Swiss Cooperation in Albania, and led by the Ministry of Social Welfare and Youth. The aim of the workshop was to strengthen coordination both at the central and local levels, with a view to addressing the needs of various groups, such as LGBT persons, representatives of the Roma community, persons with disabilities, in the social policies.
- On 2 and 3.12.2014, a representative from the CPD participated in the Convention on Social Services, organised by the Ministry of Social Welfare and Youth, the State Social Service and UNICEF, with the support of the Swiss Embassy in Albania.

Regarding Women's Participation in the Media

- On 09.12.2014, a strategic consultative meeting was held between Civil Society organisations and the Alliance of Women Parliamentarians regarding the promotion of a greater representation of women in the 2015 local elections, together with the "Woman of the Year, 2014" Award Ceremony Representatives of the Office of the CPD attended this event. This strategic and consultative meeting was attended by representatives from the Alliance of Women Parliamentarians, the Coalition for the Promotion of Women's and

Young People's Participation in Politics, Women for Change, and OLAF PALME International Centre. The Commissioner informed the participants about the recommendations that the Commissioner has sent to the People's Assembly of Albania and the Central Electoral Commission for amendments to the Electoral Code of the Republic of Albania.

Regarding Human Rights

- On 10.12.2014, Ms Baraku, the Commissioner for Protection from Discrimination, attended the International Human Rights Day organised by the OSCE.
- On 12 December 2014, a representative of the Office of the CPD took part in the commemorative Conference "15 Years from the creation of the Institution of the State Advocate", organised by the State Advocate. At this conference on the occasion of the 15th anniversary of its establishment, emphasis was placed on the need for reforming this institution, with a view to meeting the best European standards and the best representation possible of state interests. The host and moderator of the event was Ms Alma HICKO, State Advocate.
- On 5 February 2014, the Commissioner took part in the regular meeting of the inter-ministerial working group "*On the implementation of adjustment rules in state institutions*".

Regarding Trafficking in Human Beings

- On 17.12.2014, the CPD and one expert from the CPD Office participated in the Conference for Launching the Strategy on Combatting Trafficking in Human Beings and its Action Plan 2014-2017. At the conference, the Ministry of Internal Affairs presented its most recent achievements and challenges. This strategy placed importance on the cooperation among many institutions.

Regarding the State Police

On 18.12.2014, a staff member of the CPD Office participated in the National Conference on "Strengthening the Integrity of the State Police", organised by the Institute for Democracy and Mediation (IDM). This conference was held in the framework of the project with the same name that IDM has been implementing in the period between July 2013 and December 2014 with the support of the Embassy of the Netherlands to Tirana and in collaboration with the State Police (SP), the Ministry of Internal Affairs (MIA) and various international partners. The Project, the first of its kind in Albania, conducted a full and focused study of the State Police, the phenomenon of corruption and police integrity.

Regarding Discrimination in the Media

On 7 February 2014, the Commissioner participated in the National Conference "Discrimination in the Media", organised by the Audio-visual Media Authority (AMA). The commissioner addressed the conference with a speech on the role of the media in handling discrimination cases.

