



ILGA-EUROPE Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex people in Albania

Contribution to the 2014 EC Progress report on Albania

Based on the submission of Pink Embassy and LGBT ProAlbania¹

16 May 2014

Introduction

In 2013, ILGA-Europe and its affiliated member organizations observed that Albania continued to make progress at the institutional level towards greater recognition and protection of LGBTI people. This was clearly demonstrated through, amongst others, the following developments: (i) the Ombudsman's Special Report on the situation of the LGBT community and subsequent follow-up work; (ii) the Ministry of Labour, Social Affairs and Equal Opportunities' drafting of a National Activity Plan towards the promotion of greater LGBT equality; and (iii) the State Police's development of a Memorandum of Cooperation with LGBT civil society.

The EP in its adopted resolution of December 2013² has called on the Albanian authorities to further improve the climate of inclusion and tolerance for all minorities in the country and concern that groups such as LGBTI persons still suffer discrimination, including on the part of some state authorities; It urged the authorities to deploy further efforts in raising awareness of any type of discrimination and noted the importance of raising public awareness of the legal means at the disposal of citizens for filing complaints about various forms of discrimination. The EP also called for appropriate revision and implementation of the legislation, for the fostering of awareness-raising, education and other activities aimed at fighting discrimination against LGBTI persons, including sanctions for hate speech.

Summary of developments since the last ILGA-Europe report

Even though several public figures engaged in bias-motivated speech, and despite the fact that homophobia and transphobia remain very present in society nationwide, Albania moved forward in its acceptance of LGBTI individuals. The Criminal Code was updated to punish homophobic and transphobic crime and speech; several political actors made specific efforts to increase the protection of LGBTI people's human rights nationwide. The Socialist Party newly in power made great promises to the LGBTI community; and proposals for same-sex partnerships and a progressive gender recognition law were discussed earnestly.

¹ ILGA-Europe is grateful to Amarildo Fecanjii Project Director at Pink Embassy for its cooperation in preparing this submission

² European Parliament resolution of 12 December 2013 on the 2013 Progress Report on Albania (2013/2879(RSP))



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The effects of these positive changes must now be highlighted by tangible steps. The adopted Action Plan for Non-Discriminatory measures for LGBT people, (herein the “Action Plan”) of the previous government (2012-2014) has been “dormant” since the coming into power of the new government (September 2013). The new Ministry of Welfare met with LGBT activists activities but has not made any clear comments nor taken any specific steps regarding the Action Plan. Public statements of state officials, including Ministers, have reiterated their commitment to advance LGBT rights and pledged for constructive debates to take place. However, there is a lack of clarity in terms of the intentions of the Albanian government on concrete measures to effectively implement its commitments.

The Albanian Ombudsman institution has been a very proactive institution in Albania for the advancement of LGBT rights. On 25 October 2013, at a civil society hearing organized by the EU delegation in cooperation with the EESC, Igli Totozani the Ombudsperson made a statement mentioning that he would make sure that within his first mandate (2012-2016), same sex marriage would be legally recognized in Albania. This brought about a huge debate in media, social networks and public life. It was however quite a “progressive” debate compared to previous years.

The Commissioner for protection from discrimination is currently preparing a comprehensive report on the situation of LGBT people in the country which will be published in the course of 2014.

The European Social Survey published survey results in March, according to which 53% of respondents in Albania believed that “gays and lesbians should not be free to live life as they wish”.

Equality and Non-discrimination.

The Socialist Party, which won the general elections in June, wrote in its programme that it would make “legal amendments [to] provide special attention to disadvantaged groups of women, including [...] women with a different sexual orientation”. It also pledged to strengthen the role of the Ombudsman, and said: “It is the government’s mission to provide every Albanian citizen with [quality] public services, regardless of their [...] sexual orientation.”

The first pilot Project of the Council of Europe to combat discrimination on grounds of sexual orientation and gender identity continued to support Albania’s efforts to develop a forceful, cross-sectoral LGBT policy building on the COE Recommendation CM/Rec(2010) on measures to combat discrimination on grounds of sexual orientation or gender identity.



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In January 2014 PINK Embassy and Commissioner for Protection from Discrimination hosted a workshop with the participation of government institutions, human rights institutions, international organizations and human rights organizations called “inclusive and non-discriminatory policies for LGBT people”. Several recommendations were made as a result and are provided in the last section of this document.

Family

In December 2013, the CoE, Ministry of Social Welfare and Youth, LGBT organizations, Ombudsman, Commissioner for Protection from discrimination held a two day conference where recommendations for new legislation were made with a draft law intended to amend two articles of the Family Code of the Republic of Albania and allowing same-sex unions. The legal argumentation for civil-unions has been based on the principles established by the ECHR case-law (Vallianatos and others v. Greece³). It is expected that by May 2014 the Albanian Parliament will pass amendments on the Family Code which should recognize same-sex civil unions.

Gender legal recognition

During the conference organized by the CoE and the Ministry of Welfare and Youth (mentioned in the previous section), a proposal of law on legal gender recognition was put forward. The draft law was prepared by renowned Albanian legal experts taking into account the Argentinian model of legislation and is currently under discussion in Parliamentary Commissions.

(Bias-motivated) hate-speech and hate-crimes

In July two gay men, 18 and 22 years old were approached by two men at their table in a bar, were threatened and had their mobile phones stolen. The young men went to the police to denounce the case but instead of investigating the police mocked the two victims. In October 2013, two lesbian girls were refused service and were attacked by a waiter at a fast-food in Tirana. The girls reported the incident to the LGBT organizations and the Commissioner for Protection from Discrimination. In November 2013 a gay couple re-approached LGBT organizations in Tirana and the Commissioner for Protection from Discrimination, following attacks and threats by family members of the couple who refused their union and sexual orientation. The case was also referred to the police which failed to follow it up. One Police

Officer is also under investigation by the Internal Police Service for discrimination against the couple.

³ CASE OF VALLIANATOS AND OTHERS v. GREECE (Applications nos. 29381/09 and 32684/09)- ECHR Judgment
7 November 2013



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According to the Commissioner's Annual Report for 2013 "members of the LGBT community are increasingly victims of hate based incidents (in public places and within the family). LGBT people have reported to the Commissioner for Protection from discrimination cases of harassment of trans people from police officials.

The Commissioner's report also added that "often debates over LGBT rights in the media have been highlighted with 'hate speech'.

Civil society organizations also reported that the Ombudsman's recommendations made to public authorities (including those on LGBT rights) are disregarded and not given the necessary consideration by public authorities.

Public statements and media

Last year at a TV debate, a high ranking cleric of the Orthodox Church condemned discrimination and persecution of LGBT people. "Even though the church does not accept homosexual behaviour, morals of the church cannot contradict today's reality," he stated.

Recommendations

Albania need to ensure that its laws and policies protect all human rights of LGBTI persons in accordance with the existing international legal standards applicable at the level of the United Nations and the Council of Europe and notably the recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

Albania need to fully integrate EU fundamental rights acquis and notably laws and policies covering equality and non-discrimination on the grounds of sexual orientation, enshrined in Articles 10 and 19 of the Treaty on the Functioning of the European Union (TFEU) and Article 21 of the Charter of Fundamental Rights of the European Union (CFREU). The EU's founding principle of equal treatment also protects transgender persons against discrimination. This is enshrined in the EU Gender Re Cast Directive (2006/54/EC), in the Gender Goods & Services Directive (2004/113/EC) and, with explicit reference to gender identity and expression, in the EU Asylum Qualification Directive (2004/83/EC) and the EU Victims' Rights Package (2011/0129).

At the domestic level the Albanian government, parliament and other institutions should:-

- Prepare an equality mainstreaming strategy on the advancement of LGBT rights, were all ministries and institutions take up their duties and responsibilities in the framework of the law for protection from discrimination and the demands of the LGBT community, very clearly expressed by LGBT civil society in the country;
- Consider the recommendations of the People's Advocate and Commissioner for Protection from Discrimination;
- Act with due diligence on the cases of hate crimes perpetrated against LGBT people and also the harassment and unequal treatment endured when reporting complaints at the level of police authorities;



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- Give special attention to education and school curricula;
- Develop a wide awareness campaign for the recognition of LGBT rights as human rights and the fight against discrimination;