
**Study on Homophobia, Transphobia and Discrimination on
Grounds of Sexual Orientation and Gender Identity**

Legal Report: Albania

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A. Executive summary

1. Same-sex sexual relations are not illegal anymore in Albania (as it was under the Criminal Code before 1995).
2. Discrimination on the basis of gender, race, language, gender identity, colour, ethnicity, sexual orientation, political beliefs, religious or philosophical, economic condition, educational or social, pregnancy, parental affiliation, parental responsibility, age, marital or family status, marital status, residence, health status, genetic predisposition, disability, belonging to a particular group, or any other cause is prohibited by law.
3. The legal protection against discrimination on the basis of the said grounds consists mainly of the Constitution of Albania and Law No. 10221 dated 4 February 2010 "On Protection against Discrimination". In addition there are specific provisions contained in the Criminal Code, the Family Code and other relevant laws applicable in certain cases of discrimination.
4. Law 10221 is very thorough, but it is also very new and not yet implemented. It does not cover intersex people specifically, although they have an implied protection under it.
5. Further, same sex marriage is not permitted under the Family Code of Albania. There is no legal provision in Albania guaranteeing the right of gay/lesbian couples to have children, whether through assisted reproductive technology/in vitro fertilization or adoption.
6. The principle of freedom of association is secured in the Albanian Constitution, Article 46. The principle of freedom of assembly has been ensured through the Albanian Constitution, Article 47. Neither of these Articles mentions sexual orientation or gender identity specifically as they are generally applicable.
7. Freedom of expression is a right secured for everyone in the Constitution, Article 22. This Article does not specifically mention sexual orientation or gender identity as a ground for prohibition of discrimination.
8. Hate speech is not a separate category of law; In the Albanian Criminal Code it is included under Section III *Crimes against public order and security*. Racism, xenophobia or homophobia are not considered as aggravating factors in determining penalties and as long as sexual orientation and gender identity are not included in Section III, the text of Article 266 ('call for national hatred') may be interpreted, in a general sense, as including LGBT people among the 'groups of society' against whom no hate speech may be directed. However, as yet, there are no judicial decisions providing such an interpretation.
9. Even though the Albanian Criminal Code does not contain specific provisions with respect to hate crimes, a number of recent amendments to the Code (Law no. 9686 dated 26.02.2007 "On Some Amendments of the Criminal Code") provide that the motives related to the gender, race, religion, nationality, language, political, social and religious beliefs in committing a criminal offence, are "aggravating circumstances".
10. The Albanian legislation does not recognize or deny the right of refugee status to foreign citizens or persons without citizenship (it simply does not mention anything) based on their "sexual orientation or gender identity".
11. Law 10221 provides a specific chapter on protection against discrimination in the field of education. Article 17 of Law 10221, under the above mentioned chapter, provides the

general rules regarding the prevention of discrimination in education. Article 18 provides obligations for the Council of Ministers and the Minister of Education to take positive measures to fight discrimination regarding the right to education.

12. Although there are no legal limitations of the right to employment in Albania, there are no provisions specifically prohibiting discrimination on the grounds of sexual orientation and gender identity in the employment sphere. The Labour Inspectorate carries out inspections and receives communications from employees of any discrimination occurring in the workplace.
13. Law 10221 has a specific article concerning access to housing and goods and services for people who may potentially suffer discrimination, including LGBT people.
14. Law 10221 prohibits the publication of advertisement and other notifications, if they present, directly or indirectly, causes of discriminations under the Prohibited Grounds. There is one official piece of data on discrimination towards LGBT individuals in the media. In the 2009 Ombudsman Report before the Parliament it was stated that "The Ombudsman considers that concrete efforts should be made against homophobia and discrimination based on sexual orientation and gender identity.
15. The national Albanian health scheme does not cover medical operations for transsexuals. Such medical operations are not available in Albania as hospitals are not technically prepared to handle such operations. Up to now, at our knowledge, there have been neither cases of transsexuals requesting medical operations in Albania, nor cases of recognition of gender reassignment performed abroad.

B. Findings

B.1. Overall legal framework

16. The overall legal framework consist of:

- i) The Albanian Constitution;
- ii) The Family Code;
- iii) The Labour Code
- iv) The Law No. 10221 dated 4 February 2010 "On Protection from Discrimination";
- v) The Law No. 8876 dated 04 April 2002 "On Reproductive Health", as amended.
- vi) The Law No. 8432 dated 14 December 1998 "On Asylum in the Republic of Albania"
- vii) The Law No. 7952, dated 21 June 1995, "On the pre-university education system"
- viii) The Law 7870, dated 13 October 1994 "On Health Insurance in the Republic of Albania"
- ix) The Law No. 9695, dated 19 March 2007 "On adoption procedures and the Albanian Committee on Adoption"
- x) The Decision of Parliament No. 33 dated 22 April 2010 "On Election of Commissioner for Protection against Discrimination:
- xi) The Decision of Parliament No. 34 dated 20 May 2010 "On Approval of Structure, Organics and Categorization of Work Positions of the Office for Protection Against Discrimination"
- xii) Albania has approximated its laws to a number of EU legislations. Thus Law 10221 takes stock of the following CE and EP Directives:
 - Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
 - Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
 - Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services;
 - 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)

17. The fundamental rights are secured by:

- Constitution, Part II which provides for the general principles, a detailed summary of the categories of the fundamental rights, the social objectives to be achieved by the state bodies within their constitutional powers and the establishment of the Peoples' Advocate as an independent body whose purpose is to defend the rights, freedoms and legitimate interests of individuals from unlawful or improper action or failure to act of the organs of the public administration (Articles 15-63); and
- Law no. 10221 dated 4 February 2010 "On Protection from Discrimination" ("Law 10221") which aims to regulate the implementation and observance of the principle of equality in connection with gender, race, colour, ethnicity, language, gender identity, sexual orientation, political beliefs, religious or philosophical beliefs, economic, educational or social condition, pregnancy, parental affiliation, parental responsibility, age, family status, marital status, residence, health status, genetical predispositions,

disability, belonging to a particular group, or any other cause (hereinafter referred to as “Prohibited Grounds”).

Principles of equality and non-discrimination reflected in Constitution

18. These two coherent principles are provided in Article 18 of the Constitution which details both principles, so that the former principle means that all individuals should be treated equally according to the law and the latter implies an equal distribution of rights and interests in a given society; no one can be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic conditions, education, social status or parentage or for any other reasons. In addition, Article 18 of the Constitution differentiates what is regarded as forbidden discrimination from what is considered acceptable.
19. Albania has signed the Statement on Sexual Orientation and Gender Identity presented to the UN General Assembly on 18 December 2008¹ and has also signed and ratified Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms for a General prohibition of Discrimination².

Appropriate legislative means to prohibit and eliminate discrimination

20. Adoption of Law 10221 by the Parliament is the main and only legislative mean undertaken up to now to prohibit and eliminate the discrimination. It is too early to speak about any enforcement of this law with respect to LGBT issues. The enforcement of this Law requires the establishment of the relevant bodies such as the Commissioner for Protection from Discrimination which, according to the Law, is supported by the Office of the Commissioner for Protection from Discrimination (The Office). By Decisions No. 33 dated 22 April 2010 and 34 dated 20 May 2010 of the Albanian Parliament it is respectively decided the approval of the structure of the Office and the election of the Commissioner for Protection against Discrimination. The Office is currently in the process of being established and hiring staff members. In addition there are still a few other relevant subordinate legal acts to be issued by the Commissioner and/or the Council of Ministers as regards the functioning of such bodies established in this law. The Council of Ministers is charged with issuing of the subordinate legal acts in implementation of Article 18³ (“Duties of Council of Ministers and Ministry of Education and Sciences”) of Law 10221, six months from its entry into force. In addition, Law 10221 provides that the Commissioner is charged of issuing rules of the functioning of the Office, within three months from the date of his appointment.
21. The Commissioner for Protection against Discrimination (“Commissioner”) is a public legal person elected by a majority of all members of the Parliament which assures the effective protection from discrimination and from any other form of conduct that incites discrimination.

1 Ilga Europe, www.ilga-europe.org/europe/guide/country_by_country/Albania, accessed 23 September 2010.

2 Ministry of Foreign Affairs, www.mfa.gov.al/, accessed September 2010.

3 Article 18 – Duties of the Council of Ministers and the Minister of Education and Science

1. The Council of Ministers and the Minister of Education and Science are each responsible for taking measures of a positive nature in order to fight discrimination in connection with the right to education.

2. The Council of Ministers and the Minister of Education and Science, among other things, each take measures for: raising consciousness about this law in the educational system, among other things, including information about it in teaching programmes; including concepts and actions against models of discriminating behaviour in teaching programmes; educating the entire population, in particular, by taking measures in favour of women and girls, minorities, persons with a disability as well as persons who are or have more possibility of being the object of discrimination for the causes mentioned in Article 1 of this law; Respecting and assuring the right to education in the languages of minorities, as well as in appropriate manners for persons with a disability.

22. The Commissioner has the competence:

- to examine complaints from persons or groups of persons who claim that they have been discriminated against, as provided in this law, to examine complaints from organizations that have a lawful interest to act in the name and with the written consent of individuals or groups of individuals who claim that discrimination has occurred, to perform administrative investigations after the receipt of credible information about a violation of this law, to impose administrative sanctions according to the specifications of this law; to encourage the principle of equality and non-discrimination, especially by sensitising and informing about those issues, also including the offering of written information, among other things about this law, in the Albanian language, in the languages of minorities as well as in formats usable by people with a disability; to monitor the implementation of this law,
- to take polls in connection with discrimination; to make recommendations to the competent authorities, especially by proposing the approval of new legislation or the amendment or reform of existing legislation;
- to publish reports and make recommendations about any kind of issue relating to discrimination, to address public opinion directly about any kind of issue related to discrimination, at the request of the court examining a case, to set out an opinion in writing of any kind of issue that is related to discrimination, to contribute to reporting and, as the case may be, to submit reports to international and regional bodies, to represent a complainant in the juridical organs in civil cases, with his approval in compliance with point 3 of Article 34⁴ of Law 10221, to inform about the right to protection from discrimination and the legal means available to this protection, to hold a regular dialogue in connection with issues of discrimination with the respective social groups, including non-governmental organizations; (to conduct awareness-raising and educational activities that aid in the implementation of the Law against discrimination.

Programmes of education and awareness to enhance human rights

23. Some training has been organised or financed by the Albanian Ministry of Justice. The main financial support has come from international organizations (USAID, OSCE, Council of Europe and others). Law 10221 provides obligations for state bodies (Council of Ministers, Minister of Education and directors of educational institutions, and Ministry of Labour and Equal Opportunities) to take positive measures against discrimination.

Appropriate government action

24. Drafting and adopting Law 10221

Other

25. Before 1995 same-sex sexual relations were illegal in Albania; Article 137 of the old Criminal Code provided that homosexuality was punishable by up to ten years of imprisonment. Today same-sex sexual relations are not illegal anymore.

4 An organisation with a lawful interest or the commissioner may submit a lawsuit in the name of a person or group of persons, provided that the commissioner or organisation shall have the consent by special power of attorney or by declaration before the court of the person or group of persons injured by the discrimination.

B.2. Freedom of assembly and association

26. The principle of freedom of association is secured in Article 46 of the Albanian Constitution,. The principle of freedom of assembly has been ensured through Article 47 of the Albanian Constitution,. Neither of these Articles mentions sexual orientation or gender identity specifically as they are generally applicable.
27. Public rallies or gatherings must be notified to the police three days in advance. According to Article 5 of Law No 8773, dated 23 April 2001, "On Rallies" ("Law 8773"), if a rally takes place in a street or public crossing, the organizer and the leader are required to notify in writing the police authorities three days prior to the occurrence of the rally. The written notice must contain:
 - identity and address of the directors and organizers of the rally;
 - purpose of the rally;
 - date, place and time of commencement and termination of the rally and its itinerary;
 - the approximate number of participants in the rally;
 - Persons who will speak at the rally.
28. If a written notice does not contain the above-mentioned elements, the organisers must resubmit a complete written notification no later than 24 hours before the occurrence of the rally. Rallies held in places open to the public may be organised without prior notification to the police authorities (Article 12 of Law 8773). The Chief of the Police Authority, within 24 hours from the receipt of the written notification, issues a decision communicating to the organizers any possible restrictions and limitations, including the number of people who may help during its occurrence.
29. According to Albanian legislation, rallies that offend the public order, health or morals can be banned by the police.
30. According to the Ministry of the Interior there are no statistical data on public demonstrations in favour of and/or against LGBT people in Albania.
31. However, recently there has been a homophobic protest caused by an emotional come-out on TV by a gay person, named Klodian Çela. Born in the city of Lezha, he was an participant of the Big Brother reality show aired by Top Channel TV,. He called for an understanding of his sexual orientation from everybody, including his mother. According to some local newspapers and TVs, there were approximately 100-200 protesters, mainly young men, protesting in the streets of Lezha shouting "Lezha is clean – we have no homosexuals". Despite that protest in the Lezha's main square, the protesters threatened to step up and continue their protests in other cities, including Tirana, if Klodian Çela would not be expelled from the Big Brother house.

B.3. Freedom of expression

32. Freedom of expression is a right secured for everyone in the Constitution, Article 22. This Article does not specifically mention sexual orientation or gender identity as a ground for prohibition of discrimination.

B.4. Hate crime - Criminal law

33. In the Republic of Albania, hate speech is not a separate category of law; in the Albanian Criminal Code it is included under Section III on *Crimes against public order and security*. Criminal Code provisions provide for a crime of 'incitement to national and racial hatred' (Article 265, which stipulates that "*the incitement of hatred and conflicts based on race, nationality or religions...are punishable by a fine or imprisonment for up to ten years*"). Article 266, as more general and all-inclusive, specifies that "*jeopardizing the public order by incitement to hatred against groups of society, offending and defaming them, soliciting violence or arbitrary acts against them, is punishable by fine or imprisonment for up to five years*". Because racism, xenophobia or homophobia are not considered as aggravating factors in determining penalties and as long as sexual orientation and gender identity are not included in Section III, the text of Article 266 may be interpreted, in a general sense, as including LGBT people among the 'groups of society' against whom no hate speech may be directed. However, as yet, there are no judicial decisions providing such an interpretation.
34. Even though Albanian Criminal Code does not contain specific provisions with respect to hate crimes, there are some recent amendments of Albanian Criminal Code (Law no. 9686 dated 26.02.2007 "On Some Amendments of the Criminal Code") which have provided that the motives related to the gender, race, religion, nationality, language, political, social and religious beliefs in committing a criminal offence, are "aggravating circumstances". .
35. There is no government data collection or regular public reporting on hate crimes in Albania. The data are collected specifically in relation to hate crimes related to the desecration of graves only⁵.

B.5. Family issues

36. The Albanian Family Code prohibits same-sex marriage (Article 7 states that "marriage is contracted between a man and a woman who have reached the age of 18 years"). In addition same-sex partners cannot jointly adopt a child, as Article 242 of the Family Code provides that a minor cannot be adopted by more than one person, unless they are spouses, meaning husband and wife. Lesbians or gays can therefore adopt a child only as individuals, not as couples. Fertility treatment for lesbian women is not regulated by the relevant Albanian law. Law No. 8876, dated 04 April 2002 "On Reproductive Health" ("Law 8876"), regulates the recognition and admission of the reproductive rights of any individual and consorts as well as guarantees and provides for the offering of the respective services for exercising the reproductive rights without distinction of gender or other demographic category. However, Law 8876 does not provide whether a lesbian woman is entitled or not to a fertility treatment. To our best knowledge there are no family case law related to transgender persons.

B.6. Asylum and refugee issues

37. In the Republic of Albania, asylum is regulated by Law No. 8432 dated 14 December 1998 "On asylum in the Republic of Albania", as amended. Article 4 of this law provides a definition of a refugee:
38. "*A refugee is a person who because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political*

⁵ *Hate Crimes in the OSCE Region – Incidents and Responses*. Annual Report for 2008, Warsaw, November 2009, p. 18.

*opinion, is outside the country of his nationality and is unable or, because of such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*⁶

39. The formulation “member of a particular social group” in the above definition implies that the members of that group share a common characteristic or belief fundamental to the members’ identity, and that the group is perceived to have a distinct identity in the society of origin. In this light, LGBT individuals must often hide their sexual orientation or gender identity, as the common characteristic of the group, in their countries of origin to escape prosecution. Sexual orientation or gender identity as a source of persecution is not specifically considered by the provisions of the above Law on Asylum for granting asylum. The Albanian legislation does not recognize or deny the right of refugee status to foreign citizens or persons without citizenship (it simply does not mention anything) based on their “sexual orientation or gender identity”
40. Article 5 of the above Law offers protection to foreigners who do not satisfy the criteria to qualify as refugees; such individuals are offered temporary protection and will not be subjected to any expulsion order issued by the competent authorities in order to prevent torture and degrading and inhuman treatment, as laid down in the ECHR and other international Conventions, to which Albania is a signatory. Subsidiary protection is important, as there may be cases where authorities may refuse to recognize the status of a refugee, causing the individuals concerned (LGBT as well) to run a real risk of being subjected to ill-treatment upon return to their country of origin.
41. No public official data are available either on the number of persons who were granted asylum or subsidiary protection because of persecution on the grounds of sexual orientation or gender identity, or on family members of such persons.

B.7. Social security, social care and insurance

42. Please see chapter on Access to goods and services.

B.8. Education

43. The right to access to education is embodied in the Albanian Constitution; Article 57, par 1, states that, “Everyone has the right to access to education”. Also, Article 3 of Law No. 7952, dated 24 June 1995, “On pre-university education”, as amended, guarantees all citizens equal rights at all levels of the educational system covered by the law, notwithstanding their social situation, nationality, language, sex, religion, race, political convictions, health condition and economic situation. Access to higher education is only limited by a successfully completed pre-university education level. Sexual orientation and gender identity are not mentioned.
44. Law 10221 provides a specific chapter on protection against discrimination in the field of education. Article 17⁷ of Law 10221, provides the general rules regarding the prevention of

6 LIGJ, www.qpz.gov.al/doc.jsp?doc=docs/Ligj%20Nr%208432%20Dat%C3%AB%2014-12-1998.htm, accessed 23 September 2010.

7 Article 17 *Prohibition of discrimination*.

1. Every distinction, limitation or exclusion based on the grounds mentioned in Article 1 of this law is prohibited and which, among other things, is related to:

- a) the creation of public or private institutions that offer educational or professional services;
- b) the financing of public institutions that offer educational or professional services;
- c) the content of principles and criteria of educational activity, including teaching software and teaching methods;

discrimination in education. Article 18 provides obligations for the Council of Ministers and the Minister of Education to take positive measures to fight discrimination regarding the right to education.

45. According to Article 12 of Law 8876, any individual has the right to health education, which includes the possibility to be properly and appropriately informed and education in the field of reproductive and sexual rights. Freedom of sexual reproductive health should not be restricted from the influence of religion, philosophy, culture and ideology.

B.9. Employment

46. With regards to employment, Article 9 of the Labour Code, which covers employment in both the public and the private sectors, prohibits “every type of discrimination in employment or professional life.”⁸ The same article continues by defining discrimination as “any exclusion or preference based on race, colour, sex, age, religion, political convictions, ethnicity, social position, family relations, physical or psychological defects”. Law No. 9970, dated 24 July 2008, “On gender equality in society”, prohibits any type of gender-based discrimination with regard to employment,⁹ albeit “gender” is defined as either male or female and “gender equality” is identified solely as equality between men and women. Although there are no legal limitations of the right to employment in Albania, and paragraph 1, of Article 9 above, prohibits any kind of discrimination, there are no provisions specifically prohibiting discrimination on the grounds of sexual orientation and gender identity in the employment sphere. The Labour Inspectorate carries out inspections and receives communications from employees of any discrimination occurring in the workplace.
47. The Council of Ministers and the Minister of Labour, Social Affairs and Equal Opportunities are responsible for taking positive actions to fight discrimination in relation to employment. (Article 14 of Law 10221)
48. No data are available in relation to discrimination against LGBT individuals at the place of work.

B.10. Housing

49. Law 10221 regulates also the offering of goods and services to the public, including the housing. Article 20/1 of it specifies that a natural or legal person who offers goods or services to the public, whether in exchange of payment or free of charge, is prohibited from discriminating against another person who seeks to achieve or use them:
 - by refusing to provide a person or a group of persons with goods of services based on Prohibited Grounds;

d) the treatment of students or pupils, including acceptance, evaluation, application of disciplinary measures or their expulsion.

2. It is prohibited for a person or group of persons to be refused acceptance into a public educational institution on the grounds mentioned in Article 1 of this law.

3. Every kind of harassment is prohibited, in particular harassment on sexual grounds of students, pupils and employees in educational institutions.

4. The implementation of special and temporary measures, based on the grounds mentioned in Article 1 of this law, for the purpose of speeding up equality in education, is not considered discrimination. The implementation of such measures can in no case mean permanently maintaining unequal or different standards, and these measures are interrupted when the objective of offering equal opportunities and treatment is achieved.

⁸ See Article 9, par. 1, *Labour Code*.

⁹ See *Part IV- Protection and equal treatment*, based on gender, in employment.

50. By refusing to offer a person goods or services in a similar manner, or with similar qualities, or in conditions similar to those in which the goods or services are offered to the public in general.
51. This provision is, among other things, especially applicable to:
- systemization in a place where housing is offered;
 - the sale or renting of residences and other premises (Article 20, paragraph 2, point d) and dh) of Law 10221).

B.11. Health care

52. Article 55 of the Albanian Constitution guarantees the right to access to health care; all citizens are equally entitled to access the healthcare system and have the right to have health insurance in accordance with the law. The State, within its constitutional powers and available tools, aims at achieving the highest possible health standard, as stated in Article 59.1(c) of the Constitution. As suggested from the above articles, the healthcare system in Albania is accessible to anyone and no restrictions are in place. Hospitals, clinics and other health institutions, public or private, are available to the general public. Individuals who are employed pay contributions to the Institute of Healthcare Insurance (ISKSH) and those who are unemployed are helped by the State to cover costs.
53. However, it should be noted that there is no legal provision in Albania guaranteeing the right of gay/lesbian couples to have children, whether through assisted reproductive technology/in vitro fertilization or adoption. Law No. 8876 contains provisions regulating assisted reproductive technology/in vitro fertilization procedures, available only to individuals and/or consorts (husband and wife). The Family Code contains a provision (Article 242) which prohibits adoption of a minor by more than one individual, unless they are consorts. Law No. 9695, dated 19 March 2007 “On adoption procedures and the Albanian Committee on Adoption” (the “Law 9695”) defines adoption as “the administrative procedure that guarantees to the child an alternative family with the same rights and obligations of his biological parents”. Law 9695 provides that the adoption can be made by individuals and/or consorts. Given this, it seems that adoptions involving same sex persons are prohibited in Albania as far as Albanian Family Code provides that marriage is contracted between a man and a woman.
54. Under Article 4 of Law 7870, “On Health Insurance” dated 13 October 1994 (as amended), compulsory health insurance covers all citizens of the Republic of Albania with a permanent residence in Albania, as well as foreign employees insured in Albania. According to Decision No. 700, dated 18 June 2009 of the Council of Ministers, the minimum amount of monthly contributions to all branches of insurance for the period from 01 May 2009 and onwards, is 4,497 (four thousand four hundred and ninety-seven) Albanian lek, of which 3.4% of it is allocated to health insurance. Contributions are paid by economically active citizens and the State (Article 4.4 of Law 7870).
55. There is no legislation on HIV/AIDS which may have an indirect impact on discrimination against LGBT persons. Many donors make blood donations every day to the Albanian Red Cross. According to its practice, donors are first required to complete a form which contains general personal data such as name, surname and age of the donor. Also, donors are asked to cite in their answers if they are bearers of sexually transmitted diseases. According to the information provided by the Red Cross, until now, there has been no case of discrimination because of sexual orientation in cases of blood donation.

56. There are no legislative acts or other relevant Albanian regulations governing the access to healthcare for trans/intersex people. In other words, they benefit as all other individuals, but no assistance is specifically provided for gender reassignment or other treatment for transgender persons' need.

B.12. Access to goods and services

57. Article 20 of the Law 10221 specifically concerns access to goods and services for people who may potentially suffer discrimination, including LGBT people.
58. A natural or legal person who offers goods or services to the public, whether in exchange of payment or free of charge, is prohibited from discriminating against another person who seeks to achieve or use them:
- by refusing to give a person or group of persons goods or services on the Prohibited Grounds as mentioned in Article 1;
 - by refusing to offer a person goods or services in a similar manner, or with similar qualities, or in conditions similar to those in which the goods or services are offered to the public in general.
59. The prohibition of discrimination concerning access to goods and services is especially applicable to:
- the ability to enter into a place where the public is permitted to enter or to use a place that is permitted to be used by the public;
 - the ability to receive or to benefit from goods or services that have to do with health;
 - the contribution and possibility to benefit from goods from social protection schemes, including social assistance, social insurance, protection of children, disability benefits or any another scheme of social protection or other advantage offered to the public;
 - the opportunity to use or enter into an educational institution;
 - systemization in a place where housing is offered;
 - the sale or renting of residences and other premises;
 - banking services and the opportunity to obtain grants, loans, bank deposits or financing;
 - facilities for entertainment, relaxation and refreshment;
 - facilities for transport or travel;
 - services of the free professions.
60. Refusal according to point 1 of this article also includes situations when the refusal in fact is based on the Prohibited Grounds, but other reasons are declared by the discriminating subject or no reason is declared as a reason for the refusal.
61. Distinctions in compensation and benefits, established because of the Prohibited Grounds, do not constitute discrimination when the distinctions are reasonable and in proportion to a risk that is assessed on the basis of current and statistical data that can be verified and are closely linked to the risk.
62. The prohibition of discrimination is not applicable to the setting of a particular age for the possibility of social benefits, goods, facilities and services, if reasonable and objective

criteria exist for the determination, without infringing the core of the right to benefits and when the determination aims at achieving a lawful purpose for a public interest, or to protect the rights of others, always in a fair proportion to the situation that has caused the determination.

B.13. Media

63. Law 10221 prohibits the publication of advertisement and other notifications, if they present, directly or indirectly, causes of discriminations listed under the Prohibited Grounds.
64. There is one official piece of data on discrimination towards LGBT individuals in the media. In the 2009 Ombudsman Report before the Parliament it was stated that “The Ombudsman considers that concrete efforts should be made against homophobia and discrimination based on sexual orientation and gender identity. The Strasbourg jurisprudence has already accumulated enough positive practices based on international law for the protection of human rights, with respect to issues of sexual orientation and gender identity. Unfortunately, the model of these people in Tirana continues to be identified absurdly with the stereotype reflected by the media, as some poor who work as sex workers behind the Palace of Culture. This needs to end and everyone should be aware of that. In any case, arbitrariness against these people is unacceptable.”¹⁰

B.14. Transgender issues

65. Law 10221 applies also to transgender persons (please see Prohibited Grounds above).
66. The national Albanian health scheme does not cover medical operations for transsexuals. Such medical operations are not available in Albania as hospitals are not technically prepared to handle such operations. Up to now, at our knowledge, there have been neither cases of transsexuals requesting medical operations in Albania, nor cases of recognition of gender reassignment performed abroad. As regards the legal situation of the change of name and sex the relevant law, Law No. 10129 dated 11 May 2009 “On Civil Status” (“Law 10129”), does not provide anything in connection with change of sex whilst with respect to change of name, according to the said law, this change is allowed to take place only if the person’s name is inappropriate, which are defined as such, under the same Law, by the General Directorate of Civil Status. The General Directorate of the Civil Status has lists of such inappropriate names.
67. Issues pertaining to legislation provided for the partners of transgender/transsexual persons on the rights to pension, social security, health insurance etc. are not regulated by law.
68. There is no case law on this issue; neither under Law 10221, which is relatively new, nor prior to the enactment of that law.

B.14.1. Intersex issues

69. Such issue is not specifically regulated for the time being, although the State has the positive obligation to protect them as defined in Law 10221.

¹⁰ Avokati i Popullit, www.avokatipopullit.gov.al/Raporte/Raporti_2009.pdf, (page 43), accessed 23 September 2010.

B.15. Good practice

70. Law 10221 (as regards Albania)

B.16. Other Relevant Issues

71. Annexes on case law and statistics.

B.16.1. First case

72. There has been case law in 2006 in Albania with respect to the arrests of the 5 LGBT person ("the Defendants"). They were criminally charged of conducting sexual relationships in public premises and prostitution, provided by Articles 107 and 113 of the Albanian Criminal Code. The court found the Defendants guilty and sentenced each of them with imprisonment of 6 months and ten days.
73. It formally seems that those persons were sentenced of conducting sexual relationships in public premises and prostitution. The court decision does not make any reference which could be connected directly or indirectly with their homosexuality.
74. However we would like to list a few opinions and conclusions made by a number of national or international organizations such as OSCE, Albanian Human Rights Group, and by the Defendants with respect to the core problems related to their human rights, that could have been originated by their sexual orientation.

Problems with the arrests conducted by the police authorities.

75. In Albania, an arrest is legally ordered by a court decision. The police authorities claimed that they arrested the Defendants on the spot whilst according to the Albanian Human Rights Group Report, the Police authorities' stated that the Defendants were arrested on the basis of information provided by confidential sources according to which the Defendants were conducting sexual relationship in public premises.
76. According to a report issued by the OSCE, the police may arrest on the spot only for crimes with a maximum punishment of at least five or two years or when it is a "necessity because of the importance of a fact or of the threat the offender presents for the public". An arrest, under Albanian as well as international, law has to be based on evidence. In this case it is unclear what evidence of ongoing sexual activities were there. The hearing for the confirmation of the arrest was not held within 48 hours from the moment the arrest was applied as required by both the constitutional and legal provisions. The arrest (detention on remand) should be imposed only as a last resort and for reasons set down in law. In Albania, detention on remand is applied routinely and often in violation of both domestic and international law. In this case it can be questioned whether there were enough grounds for detention on remand.

Problems with the way the Media published and broadcasted the materials related to the Defendants

77. According to the report of the Albanian Human Rights Group the written and electronic media have only partially broadcasted materials related to this case. Media has held forth the discriminative and exclusive opinion, as well as prejudices particular social categories, by using this case as a standard for further interpretations. Concretely on one hand media stated that the Defendants were exercising prostitution and on the other hand it published personal information about them, such as their state of health.

Problems with accommodation in the detention premises

78. According to Albanian Human Rights Group Report, the most problematic issue regarding this case, faced by police authorities in charge of prisons or detention centres, was the accommodation of the Defendants in such premises. Taking into consideration the mentality of the Albanian society toward this phenomenon, it has been noticed that these authorities have faced the duality between the duty to implement the law and on the other hand a subjective perception of the problem, as a result of the sexual orientation of the Defendants.
79. After the security measure undertaken towards the Defendants, they were accommodated on the premises of the Directorate of Police in Tirana, contrary to the verdict of the court according to which the competent bodies should execute the verdict of "awaiting trial in prison" in the specific premises of detention, such as in prison 313 or 302 in Tirana.
80. Consequently, the 48 hours term of keeping the Defendants is surpassed, which clearly constituted an open infringement of a fundamental right. However, later on, on 21 August 2006 the Defendants were transferred to the detention premises of prison 313 in Tirana, where the Defendants have been accommodated under harsh security measures, in a distinctive cell (4 of them), except for the female person who has been placed in the female sector of the detention premises.
81. The day after, due to lack of the conditions in their respective detention premises, they were transferred to prison no. 302 of in Tirana. The following night, one of the Defendants attempted suicide by cutting his veins through an edgy surface in the cell. Because of that, the Defendants were kept under continuous surveillance and were placed in two separate cells, isolated from the rest of the defendants.

B.16.2. Second case

82. An emotional come-out on TV by a gay person, named Klodian Çela. Born in the city of Lezha, he was a participant of the Big Brother reality show in Top Channel TV. He called for an understanding of his sexual orientation from everybody, including his mother. According to some local newspapers and TVs, there were approximately 100-200 protesters, mainly young men, protesting in the streets of Lezha shouting "Lezha is clean – we have no homosexuals". Despite that protest in the Lezha's main square, the protesters threatened to step up and continue their protests in other cities, including Tirana, if Klodian Çela would not be expelled from the Big Brother house.

83. Klodian Cela received the support of US Secretary of State Hillary Clinton. The US Ambassador in Tirana also publicly expressed his firm support for this man. No other homophobic protest has been organised in Albania since then.