

"Multiple Discrimination and Legal Mechanisms for its Prevention"

(Legislation, Practice and the Role of Non-Profit Organizations)

Report

Summary of Conclusions and Suggestions

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The full report is published in Albanian Language in: http://www.qag-al.org/publikime/diskriminimi_shumefishte.pdf

For the purpose of this study, we have analyzed the cases attended by the Commissioner for Protection from Discrimination on the Request or Information of Non-Profit Organizations, particularly the CLCI.

Based on the Commissioner's reports presented annually to the Assembly, we were able to highlight the overall number of issues that the Commissioner has judged on this basis each year, either at the request or on the basis of information from civil society organizations.¹

From these data it is obvious that in general, the number of cases initiated by the Commissioner at the request of civil society organizations is relatively low. It represents only 6% of the reviewed cases, as opposed to 85% of the queries and 9% of cases initiated by the Commissioner ex officio 9%. There is also a downward trend last year. This fact, we think, is related to the need for civil society organizations to increase capacity in this area and to better identify individual cases.

However, the subject of this study is focused only on multiple discrimination cases. Therefore, we had an objective inability to analyze in detail all the contributions that civil society organizations have given to this issue alone. This is due to the fact that, in their requests to the competent authorities, multiple discrimination as such has not been addressed due to lack of anticipation in the law.

At the request of the CLCI there were reviewed 15 cases by the Commissioner for the period 2011-2016, of which we are aware in detail in the course of their proceedings

¹ See: Report of the Commissioner for Protection from Discrimination in [Httpwww.kmd.al/index.php?fq=brenda&emri=Botime&gj=gj1&kid=142&kid=80](http://www.kmd.al/index.php?fq=brenda&emri=Botime&gj=gj1&kid=142&kid=80)

and this gives us the opportunity to identify more findings in this regard. Some of these issues have also been consulted with other civil society organizations, which has helped us by CLCI to the Commissioner for Protection from Discrimination, in the period 2011-2016. By studying that chart we can read some aspects and find out, some of which we summarize as follows:

1. It is concluded that the most common form of multiple discrimination in these cases is cross-sectoral discrimination, where causes act simultaneously and are inseparable from each other.

2. Although we have not made any hierarchical order of causes or grounds on which discrimination is committed, they can be identified as follows:

- in the field of labor relations, the main cause of discrimination is that of gender, whereas,

- in the field of education the main cause of discrimination is the race.

3. In the field of services we have causes mainly due to gender and race.

4. We underline the fact that discrimination on grounds of sex is accompanied, in particular, by discrimination because of the economic and social situation, whereas because of the pregnancy or the civil or family status, the cause of the sex is naturally related.

5. Even racial discrimination is carried out along with it due to the economic and social situation, while because of ethnicity or color it is naturally sociable.

6. In the case of compound discrimination, the cause of the sex is particularly increased by victimization due to the complaints expressed.

7. Sexual harassment is presented as one of the forms used to discriminate on grounds of gender.

8. From the in-depth study of the decision we conclude that the identification of various causes is not accompanied by arguments to prove the existence of all causes. This is because they are treated spontaneously and not deliberately, due to the lack of a legal basis.

9. There is no analysis to conclude on the factors that combine or interconnect these causes.

10. The fact that the commissioner has identified more than one cause of discrimination has influenced the taking of measures to prohibit it. This is particularly

apparent in the recommendations it provides on the issue, but it is not clear how it has affected the imposition of a fine.

11. Out of these cases, only 2 of them have been appealed to the court. There are no court decisions yet, at the time this report is drafted.

Conclusions and suggestions

Firstly, with regard to the study of the phenomenon of multiple discrimination in Albania there is a complete lack of studies and statistics. There is a need for the Ministry of Social Welfare and Youth, that of Justice and the Commissioner for Protection from Discrimination encourage research work and statistics collection related to multiple discrimination. Civil society organizations working for protection against discrimination are also welcome in conducting surveys, studies and monitoring in this area. Encouraging scientific studies at universities is also very necessary.

Secondly, in Albanian legislation this phenomenon is not mentioned. Moreover, there is no reference to this discrimination either in the law "On Protection from Discrimination". We suggest that at the earliest when there is a review of this law or of the law "On gender equality in society", multiple discrimination should be addressed through definition as a discrimination with the most serious consequences to be considered in the justification of Causes, damage assessment, and collecting statistics on discrimination issues.

Thirdly, regarding the role of the Commissioner for Protection from Discrimination, we conclude that multiple discrimination has found a spontaneous address and needs to be consolidated as a concept and as one of the worst forms of discrimination. For this reason, we suggest not to wait for the change of legislation but to advance in the creation of new legal practices that further clarify this concept and involve it in tackling discrimination.

Fourthly, with regard to education and training, we find that there are shortages in this category and we think there is room for incorporating such topics into undergraduate curricula. The study of the practices on it should be carried out in the professional higher education of lawyers, judges, prosecutors, etc.

Fifthly, with regard to judicial jurisprudence, we have brought some of the best experiences of the courts of different countries that have developed multiple discrimination. Their role is important. In Albanian courts we have not yet identified any case of multiple discrimination. Any cross-sectoral approach would be very useful in addressing all the needs and measures to be taken after finding discrimination for more than one cause.

Sixthly, regarding the role of non-profit organizations, it should be noted that these organizations have addressed for the first time issues of multiple discrimination, through requests submitted to the Commissioner for Protection from Discrimination. But there is a need for their role to be strengthened in this regard through job identification, as well as to increase the capacity of lawyers within specialized civil

society to appeal this phenomenon. Organizations need to set up forums in order to understand multiple discrimination and develop a discussion about it. Cooperation between organizations is also needed to appeal this form of discrimination to the competent authorities and the court.

Seventhly, for the lawyer it is very important to consider that all causes should be identified and argued if there are more than one in the request addressed to the competent body for reviewing the cases of discrimination; To be required during the representation before the court or the competent body so that they are analyzed one by one in order to identify all the problems related to discrimination.