

**SHADOW REPORT  
ON THE IMPLEMENTATION OF THE CEDAW CONVENTION  
IN ALBANIA**

*Submitted to the United Nation's Committee on the Convention on the Elimination of  
All Forms of Discrimination against Women  
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**Submitted by the**

**Gender Alliance for Development Center (GADC)**

**The Albanian Women Empowering Network (AWEN)**

**The Network Against Gender-Based Violence and Trafficking**

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## **Foreword**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly in 1979 and was ratified by Albania in November 1993.

In spite of more than 30 years of its existence, it is only known to a minor part of the Albanian public.

This document is a shadow report to the Third Periodic Report of the Albanian Government on the implementation of the Convention on the Elimination of all Forms of Discrimination against Women (December 2008) addressed to the United Nations' CEDAW Committee.

Albanian women's organizations and associations have critically examined and commented on the Government report.

The Gender Alliance for Development Center (GADC), the Albanian Women Empowerment Network (AWEN) and the Network Against Gender-Based Violence and Trafficking, brought together their respective comments and opinions and, by common agreement, prepared this report to be presented to the CEDAW committee in July 2010.

The Albanian Government has made some progress in the area of gender equality and Albanian women's organizations and associations do recognize its efforts in this regard.

However, for the purposes of this report, it was necessary to concentrate on examining things critically and highlight the deficiencies in the Third Periodic Report of the Albanian Government.

The cooperation between the Gender Alliance for Development Center (GADC), the Albanian Women Empowerment network (AWEN), and the Network Against Gender-Based Violence and Trafficking is highly representative of the NGO sector and created opportunities for a broad based involvement on their part. The actual drafting of the report went hand in hand with various other activities such as meetings, training sessions, and seminars in different regions in Albania.

This Shadow Report was drawn up by a working group composed of team leader Prof. Dr. Arta Mandro-Balili, Prof. Dr. Aurela Anastasi, Ms. Mirela Arqimandriti and Ms. Vera Lesko in the period from February 2010 to May 2010.

## **Acknowledgements**

This Shadow Report on the implementation of the CEDAW Convention was prepared by Gender Alliance for Development Center (GADC) in collaboration with a number of non-profit organisations, members of the Albanian Women Empowering Network (AWEN) and the Network Against Gender-Based Violence and Trafficking.

We would like to thank the following organisations who responded positively to our invitation for collaboration and made their contribution in the collection and processing of the necessary information on which this report was built:

- Gender Alliance for Development Centre, Tirana;
- The association for Women with Social Problems, Durrës;
- The Psychosocial Centre “Vatra”, Vlora;
- The association “Agritra-Vision”, Peshkopi;
- The Women’s Forum, Elbasan;
- The association “Women to Women”, Shkodra;
- The association “Me the Woman”, Pogradec;
- The association “Jona”, Saranda;
- The Center for Legal Civic Initiatives (CLCI);
- The Counselling Center for Women and Girls (CCWG);
- The “Refleksione” Association;
- The Shelter for Women and Girls in Tirana (the “Shelter”).

GADC and AWEN would like to thank the Kvinna Till Kvinna Foundation for their financial and technical support in the preparation of this Shadow Report on the CEDAW implementation in Albania.

GADC is especially grateful to the team of experts who contributed to the preparation of this report – Team Leader, Prof. Dr. Arta Mandro–Balili, Prof. Dr. Aurela Anastasi, and Ms. Vera Lesko.

In addition, we wish to acknowledge our debt to all those people - representatives from Albanian civil society organizations and various local and central institutions and interest groups - who collaborated with us by providing information, data and opinions on the topics treated in this report.

The realisation of this study would have been impossible without the invaluable support of GADC staff members to which we are very grateful for the hard work and constant support to the expert team, careful collection of primary data and preparation of the body of information on which all our analyses were based on. Last, but not least, our thanks go to Ms. Majlinda Nishku for her sterling work in the translation of the report.

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## **List of Abbreviations**

CC	The Civil Code
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CMD	Council of Ministers Decision
FC	The Family Code
GADC	Gender Alliance for Development Center
ILO	International Labour Association
INSTAT	Institute of Statistics
LC	The Labour Code
LGES	Law on Gender Equality in Society
MLSAEO	Ministry of Labour, Social Affairs and Equal Opportunities
NES	National Employment Service
NSGEDV	National Strategy on Gender Equality and Domestic Violence
NPO	Non-Profit Organisation
PwD	People with Disabilities
SAA	Stabilisation and Association Agreement
SLI	State Labour Inspectorate
SR	State Report
SSI	Social Security Institute
SSS	State Social Services
UNIFEM	United Nations Development Fund for Women

## 1. PART ONE - General

### 1.1 Methodology

In the drafting of the present report we employed the method of combining primary and secondary sources. For instance, in addition to the data obtained from the Third Periodic Country Report, we also used other methods such as the development of a comprehensive questionnaire on the Convention, followed by an analysis of the information contained in the questionnaires that were sent out to NPOs; meetings and interviews with NPO representatives; brainstorming sessions to identify priority areas and intervention needs; meetings with representatives of governmental institutions; consultation of statistics and other sources of information. With regard to secondary sources, they consisted mostly of other literature sources and publications by various national and international organisations or individuals (including EU Progress Reports on Albania).

The information collected for the preparation of the report is wide ranging and geographically representative of nearly the whole country, including districts such as Shkodra, Peshkopia, Puka, Mirdita, Durrësi, Elbasani, Pogradeci, Vlora, Saranda and Tirana.

In addition, the information contained in this Shadow Report is based on data and information obtained from and through NPOs, as well as on studies and monitoring activities conducted during the period starting from the cut-off period of the previous CEDAW report.

### 1.2 Introduction

1. Albania ratified the CEDAW Convention about seventeen years ago [*Law 1769 of 9.11.1993*] while its Optional Protocol adopted by the General Assembly in its 54<sup>th</sup> Session on 6 October 1999, which entered in force on 22 December 2000, was ratified in Albania a few years later, in 2003 [*Law 9052 of 17.4.2003*].
2. Pursuant to the Constitution of the Republic of Albania [*Article 122/1*], “Any international agreement that has been ratified constitutes part of the internal juridical system after *it has been published in the Official Journal of the Republic of Albania*”. The official CEDAW text was first published in the Official Gazette **about 15 years after its ratification**. This happened on 15 October 2008 in Official Gazette No. 33 (a supplemental edition – for unpublished acts). Therefore, from 1993, the year of its ratification, CEDAW officially became an integral part of the juridical system in the country only on 30 October 2008 (i.e. fifteen days after publication in the Official Gazette).
3. In compliance with the requirement of Article 18 of the Convention, Albania has adopted and submitted its first and second periodic CEDAW reports<sup>1</sup> and has now adopted its third national report<sup>2</sup>. This report will be examined by the CEDAW Committee in its 46<sup>th</sup> Session in July 2010. Both the previous reports and the present one are an attempt to give an overview of the legislative, judicial, administrative and other measures taken by the government in pursuance of its obligations to

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<sup>1</sup> Previous national reports on Albania dates back to 23 May 2002 and are considered a combined first and second report – reference no. CEDAW/C/ALB/1-2 and was scrutinised by the CEDAW Committee in its 28th Session on 28 January 2003)

<sup>2</sup> Council of Ministers Decision (CMD) 1082/23.7.2008

implement the Convention, as well as any positive factors or difficulties encountered in the fulfilment of CEDAW standards and requirements.

4. The recognition, ratification, and implementation of the CEDAW Convention have made a tangible contribution towards gender and substantive equality between men and women. It has to be pointed out, however, that the practical implementation of these instruments in Albania is still limited.
5. This Shadow Report analyses discrimination areas that are considered the most problematic and which inevitably affect the progress of the process for eliminating discrimination in other areas. In this sense, our analysis is more qualitative than quantitative and is focused *on women's economic empowerment, trafficking and domestic violence, and women's participation in political and public life*.
6. While recognising the achievements of the Albanian government in this regard, this Shadow Report focuses on what the civil society considers as problems and shortcomings that still affect gender equality standards and leave room for the discrimination of Albanian women. Some of the non-achievements are related to the fact that development and progress are necessarily open ended processes and just like in any other country, in Albania too there is room for hailing achievements, but also for assigning responsibilities. Some of the failures are related to inadequate measures taken by the government. Other non-achievements are related to the specific nature of prevailing stereotypes in Albania. Their elimination will require more time and investment. Some of them could be eliminated if the civil society were more persistent and more aware of its role, while at the same time urging the government to play its own crucial role.
7. Although it can be safely said that the civil society, being an integral part of the Albanian society, has played an active role in the fight for the elimination of discrimination against women and promotion of gender equality, it also feels responsible for the failure to achieve the required results. With this in mind, the suggestions and criticisms we make are of a constructive, rational and comprehensive nature and part of them are also addressed to the civil society, while also emphasising the importance of more support for NPOs.
8. Reaching the standards set by CEDAW is inevitably going to be a long process. These frequently present challenges even to countries with more established and consolidated democracies. The recommendations made in the present report are based on Albania's possibilities and perspectives, taking care to be realistic rather than utopian. Thus, while the CEDAW principles and standards are the same for all, country-specific measures for their implementation are discretionary and diverse. This is why the Convention has left these measures to the discretion of the individual states, such as Albania, to adequately assess them in order to reach certain standards.

### 1.3 Executive Summary

9. Albania is a parliamentary republic. It has a population of about 3.2 million with an annual population growth rate of 0.75%, an average population age of 32.8 years, which indicates a young population structure, and an approximately equal sex distribution (1592.4 million males and 1601.5 million females<sup>3</sup>).
10. The issue of the elimination of discrimination against women is considered as one of the foundation stones of democracy in Albania. Elimination of discrimination and promotion of gender equality are integral components of primary importance in the package of human/women's fundamental rights and freedoms and a mandatory standard to meet for the country's European integration. Gender equality is also a fundamental right and value in all the EU countries. In the context of its EU integration, Albania has been looking into gender discrimination and other issues as a matter of priority [*Articles 77 and 99 of the Stabilisation and Association Agreement (SAA) provide Albania's obligations with regard to ensuring equal employment opportunities, and especially the provision adequate health and safety standards in the workplace. As far as working conditions are concerned, the aim is to align the Albanian body of legislation to EU's *acquis communautaire* with regard to guaranteeing equal opportunities for women*].
11. It has to be admitted that Albania has readily signed and ratified a series of international instruments on the protection and observation of human/women's rights, CEDAW being one of them. This is undoubtedly a very positive indicator because it directly affects the "disciplining", so to speak, of domestic legislation provisions, by making sure that minimum standards are at least respected *de jure*.
12. In the period from the previous national report submitted to the CEDAW Committee (i.e. from 2003 to present) Albania has adopted new laws and made improvements to the existing ones, where alignment with CEDAW and other important international standards is evident. Worthy of mention are:
  - Adoption of the Law "On Gender Equality in Society" [No. 9970/24.07.2008] which, among other things, addresses the areas of labour and employment, and the adoption of the National Strategy on Gender Equality and Domestic Violence (NSGEDV), and its accompanying Action Plan, 2007-2010 (CMD Nr.913/19.12.2007);
  - Adoption of the Law "On Measures Against Violence in Family Relations" [No. 9669/23.12. 2006].
  - The recent adoption of Law "On Health and Safety at Work" [No. 10237/18.2.2010] which brings issues such as the protection of pregnant and lactating women from hazardous substances, hard working conditions more in line with CEDAW and EU standards<sup>4</sup>;
  - Adoption of the Law "On Protection from Discrimination" [No. 10221/4.2.2010], which marks a concrete step forward and reinforces the law on Gender Equality. It includes the establishment of new independent mechanisms, such as the newly established Office of the Commissioner for the Protection

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<sup>3</sup> INSTAT 2009 "Women and Men 2008";  
[http://www.mdgmonitor.org/country\\_progress.cfm?c=ALB&cd](http://www.mdgmonitor.org/country_progress.cfm?c=ALB&cd)

<sup>4</sup> See Directive 92/85 of the CEE "On the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding".

against Discrimination, which was not envisaged under the Law on Gender Equality.

13. It has to be pointed out that the obligations deriving from ratified international instruments have not always been adequately implemented.
14. The legislative improvements effectuated by Albania in the past few years are undoubtedly very significant. However, it is clear to anyone that the law is a just useless and ineffective instrument if it is not internalised and properly implemented and enforced in practice; if there are no appropriate structures in place for their implementation, or if the structures exist but are not adequate; if budget resources allocated to these structures is similarly inadequate; if human resources fall prey of intermittent political changes which affect institutional continuity and sustainability; if discriminating cultural stereotypes still hold strong, and if there is inadequate awareness on gender issues, sometimes even at senior levels, etc.
15. The State Report is mostly of a descriptive nature and does not cover all that is expected of it. We think it should have included arguments as to *why* the situation at present is as it is, and *what* solutions have been thought of to change/improve it, as well as potential players who may be involved and measures to be taken in the future. The SR analysis is more of a list of laws and their content without addressing the synergic relation among the Standards, the legislation, the factual situation and measures already taken or planned to be taken in the future.
16. We are of the opinion that while the government report does contain a quantitative overview of issues as they compare with the respective provisions in the Articles of the Convention, it does not meet the requirement for a qualitative analysis of the present legal and factual situation and future perspectives which, at the time of the third periodic report and pursuant to the recommendations of the CEDAW Committee, is a significant but perfectly realizable undertaking.
17. The present document is the Shadow Report on the status of CEDAW implementation in Albania. By providing an overview of the situation as the civil society sees it and by focusing on several priority areas, we aim to present the status of the implementation of this instrument in Albania and contribute to the taking of measures for the reduction/elimination of discrimination of women in the future.
18. In order to realise this aim, the report focuses on discrimination issues by addressing areas that are related to gender discrimination. These are: domestic violence, trafficking, employment, women in rural areas and political representation.
19. The Shadow Report presents the present situation of the implementation of CEDAW standards, as it compares with the legal and factual situation presented in the Third Periodic Report and a series of other resources and studies. It also it draws a number of conclusions and recommendations which could be taken into account by governmental and non-governmental bodies involved in the reduction and elimination of gender-based discrimination.
20. In this respect, the present report aims to help raise awareness in various organisations and individuals of the concerns women have and problems they face, and to contribute to the improvement of women's situation in Albania.

## 1.4 Conclusions and Recommendations of the report

### 1.4.1 Domestic Violence

*(Articles 1 and 2 in conjunction with Articles 5 and 10 (c) of the CEDAW;  
General Recommendation No. 19 of the Committee (Violence Against Women)*

#### Conclusions

21. Six years after the first report Albania submitted to the CEDAW Committee, and following the recommendations of the latter, our organisations note that steps forward have been made in addressing the problem of domestic violence. The legislative framework for combating this phenomenon and other instances of gender discrimination has improved. There has been a considerable increase in the number of women who report domestic violence to the authorities, especially to the police, but also to non-profit organisations. A considerable body of judicial experience has been created in dealing with and issuing protection orders and emergency protection orders, which today, three years after the respective law entered in force, show considerable improvements. Secondary legislation has also been adopted, with a view to achieving a better implementation of the Law “On Measures Against Violence in Family Relations” and of the National Strategy and its Action Plan, as well as strengthening the network of public administration bodies in charge of implementing them.
22. However, we notice sluggishness in the implementation of the obligations provided by this law, especially with regard to the provision of free legal representation for victims of violence, as well as in the measures to combat other forms of violence against women committed by people other than family members.

#### Recommendations

23. Introduce improvements to the criminal legislation with a view to criminalising domestic violence, including criminalisation of psychological and economic violence and marital rape.
24. Introduce amendments to the criminal legislation with the aim of improving the status of victims of criminal offences, including access to information and access to legal representation.
25. Take all the necessary measures to guarantee free legal aid to victims of domestic violence.
26. Undertake research to look into the reasons behind the withdrawal of petitions for protection orders and of criminal complaints by victims of domestic violence.
27. Encourage cooperation between police authorities, bailiff’s offices, local authorities and prosecution offices to ensure proper enforcement of the law in cases of contraventions to protection orders.
28. Provide further training for police authorities, local authorities, lawyers, forensic doctors and bailiffs with the aim of providing supportive structures and referral systems for victims of domestic violence.
29. Ensure that the Ministry of the Interior and the Ministry of Justice collaborate in the compilation of statistics, disaggregated by gender, of reports of domestic violence and of other cases related to violence against women. In addition, take measures to regularly publish them annually.
30. Work systematically for raising the awareness of women on the importance of reporting cases of violence, especially in rural areas.

31. Encourage the Albanian Authorities to create decent job opportunities for women survivors of domestic violence helping the survivor to establish independence from the abusive partner having into consideration that the time for shelter is limited.

### **1.4.2 Trafficking in Women**

*(Article 6 of the CEDAW and General Recommendations No. 15 and 19)*

#### **Conclusions**

32. The fight against trafficking in human beings has constantly been at the centre of attention of the Albanian government and judicial authorities. However, trafficking in human beings remains a standing concern for the Albanian society. Only in 2009, 94 victims of trafficking in human beings were identified, referred and assisted in rehabilitation and reintegration centres.
33. There are indications that trafficking of Albanian women and girls and their exploitation outside Albanian borders has been decreasing. Nevertheless, it is still a concern that the government is failing to acknowledge the true scale of internal trafficking and the exploitation of prostitution within the borders. It is possible that this trafficking may also involve children.
34. The Albanian legislation has envisaged a number of mechanisms for the prevention, suppression and elimination of this phenomenon. The government has established a number of anti-trafficking structures. The National Anti-Trafficking Strategy clearly defines the tasks that all institutions involved in its implementation must perform. Of special importance are the roles of the National Coordinator and of the State Police.
35. An important instrument in the fight against this phenomenon has been the role played by the judiciary. The Courts, together with prosecutors' offices and other auxiliary judicial bodies, have aimed to strengthen the effectiveness of their work for the detection, apprehension and punishment of perpetrators, but also for the protection of victims of trafficking in human beings, including the right of the latter to compensation.
36. With regard to the above, we think that these structures, both governmental and judicial, have been effective in preventing and suppressing trafficking-related crimes. However, it is important not to rest on laurels and think that the phenomenon is heading towards its elimination, because that would negatively affect the role and effectiveness of these structures.

#### **Recommendations**

37. Improvements in legislation are necessary in order to strengthen the fight against traffickers and avoid punishment of victims of trafficking in all cases. The legislation must provide for improvements in the status of victims in the criminal process, by recognising their right to have access to information and to free legal representation.
38. The issue of compensation for victims of trafficking must not be regarded as a personal property issue, but as an integral part of the administration of justice, by also providing for tax exemptions in such cases.
39. It is important to insist on the proper implementation of the existing laws. We consider that there is a need to implement the new Law No.10192/3.12.2009, "On the Prevention and Suppression of Organised Crime and Trafficking Through

Preventive Measures Against Property” as well as of the Law “On the Protection of Witnesses and Collaborators of Justice”.

40. In order for the National Strategy for Combating Trafficking in Human Beings to be properly implemented, more needs to be done to strengthen the capacities and effectiveness of anti-trafficking authorities, for which the Strategy has envisaged specific duties and responsibilities.
41. There is a need for further cooperation among the relevant authorities, anti-trafficking structures, and non-governmental and non-profit sector, which would lead to greater effectiveness in combating crime, but also to an improvement of services for victims of trafficking.

### ***1.4.3 Participation of Women in Decision-Making***

*(Articles 7 of the CEDAW)*

#### ***Conclusions***

42. In the recent years, several special measures have been taken in Albania for the realization of women’s right to be involved in public life, especially at the higher levels of decision-making. The most important measure in this regard was the introduction of legal provisions for instituting gender quotas. These provisions were mainly introduced through the law “On Gender Equality in Society” (2008) and the Electoral Code (2009)<sup>5</sup>.
43. The implementation of Electoral Code provisions on gender quotas in the 2009 parliamentary elections led to an increase in the number of women representatives in the Albanian Parliament. Compared to the 2005 elections, the number of elected women MPs in the Parliament increased by 7%, taking the number of women to 15% of the total number of representatives. Nevertheless, this result is still far from the objectives set in the law, the legal requirement for gender representation being a minimum of no less than over 30%.

#### ***Recommendations***

44. The provisions on gender quotas in the Albanian legislation require a better understanding and a more honest implementation. A number of improvements need to be introduced to ensure compliance with the quota objective of over 30% for each gender.
45. More needs to be done to strengthen the work of the political parties and to support non-profit organisations to help increase women’s involvement and participation in political parties, as well as support women candidates for elected functions.
46. These measures should go hand in hand with efforts and measures to bring an end to the practice of family voting, which is a phenomenon often seen in the Albanian elections. Family voting is a practice whereby the husband casts the ballot on behalf of the wife and children.
47. Therefore, it is recommended that the Electoral Code be revised with a view to improving the mechanisms which ensure the implementation of gender quotas in the national elected bodies, as well as provide for sanctions in cases of failure to comply with the quota requirement in elected bodies at the local level. In addition, it is recommended that the Electoral Code be amended to include a stronger provision for the prohibition of family voting.

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<sup>5</sup>Law No. 9970, dated 24.07.2008, “On Gender Equality in Society” and the Electoral Code of the Republic of Albania, 2009.

#### **1.4.4 Employment**

(Article 11 of the CEDAW)

##### ***Conclusions with regard to the legislation***

48. The Albanian government has undertaken important binding legal commitments, both international and national, to fight against discrimination and promote and realise in practice gender equality in the areas of labour relations and employment. In this regard, the Albanian legislation is *generally* in compliance with the standards required by CEDAW and other international human rights instruments ratified by Albania. This legislative alignment has been a gradual on-going process, and it can be safely said that although the process of harmonisation has taken long, there have not been any steps back.
49. In spite of the several amendments introduced in the legislation, there is still room for further improvement. In addition, harmonisation among various national laws is also important: for instance, the alignment of the Labour Code with the Law on Gender Equality, or of the Civil Code with the Family Code, etc. From the point of view of the civil society we consider that the institutionalisation of legislative review in Albania is still left to spontaneity. For example, it would have been useful if, after the adoption of Law “On Gender Equality in Society” a comprehensive and complete review of gender equality standards in other laws or byelaws had been undertaken. The findings could then be presented in the form of a package, which would form the basis for amendments and additions to the whole legal framework with regard to gender equality standards. The same applies to the revision of legislation on health and safety in the workplace and protection from hazardous jobs, which must also keep in step with the technological and scientific developments which constantly give rise to the need for new rules.
50. The implementation of a law also requires the development of secondary legislation packages that derive from the said primary legislation. These activities have not always progressed at the rate expected. The same can be said for the implementation structures envisaged in the law and their support with adequate resources. The deadlines set in the laws for the completion of secondary legislation are generally not observed and the government needs to take more rigorous measures in this regard.
51. Very often the law envisages sanctions that are truly minimal and do nothing to deter or prevent the recurrence of discriminatory acts in the future.
52. Development of a law on gender statistics and making it mandatory for each institution to reflect these statistics in their area of activity.

##### ***Present situation and practical implementation of CEDAW standards***

53. In spite of the progress from the point of view of legislative reform, this has not translated into similar improvements in the situation on the ground. There are cases where, regrettably, the law is more of an ornamental and sleepy feature because it is not accompanied by the accessories necessary for achieving its effectiveness and impacting the level of awareness of the whole society. Therefore, although the legal framework is assessed as “good”, there are a lot of shortcomings in its implementation in practice.
54. *The level of unemployment* among women has either increased or is at the same level as in the previous report. The measures taken apparently have not had any effect on changing this situation of unemployment and informality in labour

- relations, and consequently, have not had an effect on women's economic empowerment.
55. Employment depends a lot on the strengthening of businesses, therefore the creation of new jobs and the fair distribution of jobs by gender in the existing sectors requires a great deal of coordination. The employment issue cannot be solved only through employment offices, but also through a number of other links on the chain that need to be operational. Employment programmes are very short term and it is not uncommon for women to remain unemployed again after completion of a short work contract.
  56. Women are the first to be affected by any reforms and reconfigurations both in the public and in the private sectors. *[For instance, the Albanian media have given extensive coverage to the story of protests staged by female workers employed in the oil processing facilities in Kuçova. The women found themselves out of their jobs when the management, under the pretext of reform, decided to keep in employment only those workers who were heads of households (i.e. the male workers, their husbands). In their protests the women rightly pointed out that the only way for them to keep their jobs, then, was to get a divorce, which, among other things, is indeed being encouraged by the so called reform processes.]*
  57. *Hazardous Jobs and Informality*: no part of the Albanian State Report covers the issue of hazardous jobs. One flagrant case is that of Gërdec (a munitions decommissioning facility where an explosion occurred in March 2008) where many of the workers were women and children performing very hazardous jobs with great exposure to imminent danger. The State Report accepts that there is informality, but there are no indications that the situation has changed.
  58. *Remuneration, Rewards, and Unpaid Work*: the concentration of women workers in the sectors that are the least paid is a known fact. As yet, no evaluation of work has been conducted and consequently the principle "equal pay for work of equal value" is not being respected. The calculation of the value of unpaid work, most of it done by women, is a matter of great urgency.
  59. *Low Level of Awareness of Fundamental Rights and Access to Justice*: until now there have been no cases in the judicial practice to set an example on how the law is applied with regard to discrimination in work relations, be it in recruitment, at work, or upon termination of a contract. Does this mean that we are in the avant-garde and no such cases exist? Does this mean that there are no cases of discrimination on the ground, or is it because there is a lack of awareness of rights, or further, gender stereotypes hinder women and affect their courage to claim their rights?
  60. Concerns and complaints about the infringement of rights are not addressed to the right place (institution) or are not addressed at all [p. 264 of the SR], which is a cause for concern.
  61. Women are not familiar enough, if at all, with the legislation and CEDAW standards. *[This information was obtained through the direct contacts NPOs have with women and girls throughout Albania. This aspect is also confirmed by the answers received in the context of the questionnaire prepared for this Shadow Report].* Now and again the civil society and members of the general public might raise a concern, but these are very sporadic. Women are not aware of things like: the risks involved in informality and the abuse they suffer in an informal labour market, what conditions they should work in, the obligation to pay social security contributions, the meaning of part time jobs and home work, and the obligation of "equal pay for work of equal value", discrimination because of harassment and

- sexual harassment, etc. Even the women who are aware of all these, prefer to keep silent because they feel there is no guarantee of protection.
62. Although it is emphasised that there access to justice is available to women in cases of gender discrimination in labour relations, no research has been conducted as to why there are no cases of discrimination and infringement of gender equality which have found their way to court. The report does not provide any statistics on the protection of women's rights through legal or administrative action and the difficulties they face. While the report refers to CEDAW's Optional Protocol, it does not envisage any awareness-raising instruments for utilising the procedures in the country.
63. *Women with Disabilities*: are even more deprived as far as employment is concerned.
64. *Family Responsibilities*: the cost of unequal division of duties and responsibilities in the family means that the major burden of family responsibilities falls on the women. This is unpaid work both for women who have a job outside the home and those who don't. This of course affects their economic status, their ability to find full time employment and attend training and career development courses, etc.
65. *Level of Services in the Country*: a real problem for the society, parents and children in Albania. Childcare services such as nurseries and kindergartens are either non-existent or, where they do exist, childcare fees are almost prohibitive, or there is very limited availability of places. It is of course clear that children are important and a priority both for their families and the society in general. No parent would feel comfortable going out to look for a job when they do not have a place for the child to stay during their working hours. Given that parents have difficulty in accessing such services (which are not subsidised by the government), a fact which the SR admits, women invariably decide to stay at home to take care of the children, because it is much less expensive than to pay other people for such services. We do not have any information as to the existence of any employer-promoted schemes to help with the care of their employers' children.
66. *Institutional Development and Professionalism*: as representatives of the civil society we think that the process of accepting the new standards elaborated by the CEDAW Convention and other international instruments and the alignment of Albanian legislation to them has met with some hesitation on the part of the Albanian political class, who have not always been clear about and familiarised with these standards, and hence, not as accepting of the necessity of such changes. Some recent legal initiatives have met with difficulty on such issues as the standard of the reverse burden of proof (which was introduced by the experts who drafted the Law on Gender Equality and the Law on Domestic Violence, but later removed by the MPs); the issue of gender quotas, etc. In this sense, however, alignment obligations have played a role in educating the political class in Albania and raising the awareness of many other decision-making players at the central and local level and of the entire society; they have led to the establishment of suitable and operational structures, etc.
67. Being in contact with multiple forms of discrimination and discriminatory attitudes, the public administration has felt the need to update staff knowledge on ways how to prevent and eliminate gender discrimination in their everyday activities. Regrettably, participation of senior managers from the central and local public administration or of other senior representatives from the judiciary, executive and legislative bodies has been insignificant, which is in inverse proportion with their decision-making powers. *To tackle this, it is important to operate a system of*

ongoing training for administrative staff, but not only, by also conducting regular assessments of training needs in conformity with new emerging standards. This becomes imperative because access to services is closely linked with the level of professionalism of the staff providing the services. While they are mentioned in the SR, training and further qualifications have not been treated from this angle.

68. *Sustainability of Administrative Staff (Maintenance of Low Staff Turnover Rates)*: professionalism and sustainability of staff at the central and local level are not at the required level. Sustained levels of professionalism, conscientiousness and qualifications require ongoing commitment. *The constant changes in the public administration, justified as “need for reform”, mean that training investments go mainly to basic training courses, and rarely to advanced courses. A greater sustainability and care in the recruitment of public administration staff would be much more cost-effective.* We noticed that this issue is not covered in the SR.
69. *The Judicial System*: Professionals in the judicial system, such as judges, lawyers, and legal experts in institutions have not yet had a chance to turn it into one that guarantees protection from discrimination before, during and upon termination of work relations. Lawyers and legal experts, due to their status and the relations they establish with individuals discriminated against, could be in the front line for the promotion of standards. In fact, lawyers receive very limited and sporadic training and there are no lawyers specialised in gender discrimination issues. Their level of professionalism is not related to such training courses, but rather, to their personal professional interest in such issues; similarly there are no legal assistants trained on these issues. The level of familiarity with international standards is limited. Cases of invoking CEDAW provisions are almost non-existent. Lawyers and advocates must become the promoters that put the justice system in motion for the protection of victims of gender discrimination and judges must familiarise themselves with the standards and administer justice by relying firmly on the domestic and international law on gender discrimination.
70. *Establishment and Strengthening of Capacities of Employer and Employee Communities*: while the first are not fully familiar with their many obligations and responsibilities, the level of awareness among the second group of their rights and the ways to claim them is very low. It would be difficult to think that there are no gender discrimination cases in labour relations in Albania. Some of them, in the form allegations of sexual or general harassment have been widely reported in the electronic and print media. But in general these cases are enveloped in silence, which sometimes takes the form of an unspoken agreement or compromise in order to find employment or keep a job, which would seem to indicate that having and keeping a job is more important than the observation of legal standards. The low level of trust in the judiciary, fear of losing the job, inadequate monitoring by the relevant authorities, the fact that the law can be broken without any consequences or sanctions, or that some of the sanctions are almost ludicrously insignificant, etc., create the untrue impression that there is no discrimination in labour relations.
71. *Monitoring*: Who are being dismissed from the most? Who is bearing the brunt of the public administration reform and what are the effects of this process? [For instance, only recently 14 women employees out of a total of 22 public administration employees (i.e. 63%) in the Ministry of Justice were placed on “the waiting list”, i.e. were made redundant]. In cases of dismissals on unreasonable grounds, the courts may decide that the employer must pay the employee a redundancy compensation of up to one year’s pay, or hire the employee back: but does this solve the problem? How have courts generally ruled in such cases? Can we

really force the private entrepreneur to take an employee back? These questions do not receive an answer in the State Report and there is limited monitoring activity in this regard, which hinders the taking of adequate measures.

72. *Budget*: very often, limited and inadequate funding makes the realisation of standards impossible. One of the problems generally encountered in the laws and strategies adopted in Albania is that, although they meet the specific standards on paper and in the way they are formulated, *their adoption does not necessarily come with a calculation of its financial impact*, i.e. the funds necessary to guarantee their full enforcement. The point is that budgetary funding should be allocated in an adequate and diversified manner, and not as a lump sum lost in one of the major budget entries. This is seen in the very limited or even inexistent funds allocated by the state budget to activities such as the training of staff directly involved with the implementation of a law or a specific strategy, or in the total lack of funds for information and awareness raising campaigns that the state institutions must undertake and which, for the most part, are nonexistent.
73. *Lack of Reliable Statistics*: Statistical data are generally lacking or fragmentary. This is highlighted in the SR, but also in other documents that were consulted in the preparation of this Shadow Report. The lack of statistics creates problems in the evaluation of the real situation and proper orientation of the political measures, etc., by the government and other authorities. From the report one gets the impression that the government is criticising someone, but the non-achievement of standards is first and foremost a failure on its part, which the report seems to also recognise.
74. *NPOs*: the number of NPOs involved in the area of women's economic empowerment is very limited. We consider this a shortcoming that needs to be addressed. Civil society activities in this area should be encouraged and supported by the government and international partners, in order to address and redress the problem. The areas of labour relations and gender discrimination at work have not been the main focus of civil society organisations until now. They are, of course, both important and difficult to tackle by the NPOs at a time when they have to struggle for survival in the conditions of dwindling support from international partners and the government. In the course of the preparation of this report we noticed that there were no organisations or association dealing with these issues. Their activities consist mostly of closed-end projects.
75. *Affirmative Action Measures*: The measures taken by the government have only kept the problem at a constant curve, which would indicate that the measures have not proven to be effective.

## **Recommendations**

### ***Important legislative improvements***

76. The legislation has a number of shortcomings. The Albanian legislation does not envisage paternity leave for fathers. There are differences between men and women regarding their pension age.
77. Regarding sexual offences, a new provision could be introduced into the Criminal Code to cover punishment of actions considered as sexual harassment in the work place in the context of relations of subordination or labour relations generally. Such a provision would offer better protection against unwelcome and unsolicited acts of sexual nature, without having to prove the use of violence or force, or the commission of the act in public places by the perpetrator.

***Institutional development and capacity building***

78. Strengthening of gender equality and monitoring mechanisms. Strengthening and building capacities of the relevant authorities.
79. Identification and individualisation of institutional responsibility but also collaboration among institutions and the NPOs through well defined protocols and procedures.
80. Make participation in training courses part of the evaluation and promotion criteria for staff in the public administration, basing their work evaluation and promotion on the performance and concrete contribution to the elimination of discrimination against women in under the remit of such institutions such as the National Employment Service, the State labour Inspectorate, etc.

***Training activities***

81. Given the importance of labour relations and elimination of discrimination in labour relations, the present Shadow Report recommends training on relevant issues and standards all across the board. The training should be offered to people working in the justice system, such as judges, lawyers, and legal experts in institutions; employees of the state administration at the central and local level, representatives of employer and employee communities.
82. Conduct training at various levels, in the framework of a mandatory curriculum, which involves representatives from all levels and types of authorities: legislative, executive and judicial, aiming to familiarise them with international standards;
83. Carry out training with a strong sense of practical implementation of relevant legislation, by gearing it towards the specific needs of each link in the chain of labour-related institutions;

***Improvements to the reporting and monitoring systems***

84. *Conduct research, monitoring activities, surveys, and publications:* which could focus on areas such as the effects of legal and institutional reforms on women's employment, on-going identification of needs for certain categories, on the basis of the principle that the right to work is a universal right for all and that there are diverse ways of realising it depending on the specific target groups and their needs.

***Promotional activities/public information and access systems***

85. Raising the awareness of women and of the society at large on rights and the protection or rights remains a task that needs to be addressed more intensively in order to achieve the desired results.

***Budget***

86. Allocation of adequate and diversified budgetary funds. The training of staff working in areas such as law and strategy implementation should be a separate budget entry, as should funds for awareness-raising or information campaigns to be conducted by state institutions, which are almost non-existent.

***Lack of statistics***

87. Urge the Albanian Government to support the collection of gender based disaggregated data by age and sex and the creation of a database by the National Institute of Statistic (INSTAT).

### **NPOs**

88. Strengthen and better channel the activities of NPOs on issues related to women's employment and economic empowerment, as well as on other areas related to their labour rights and protection from discrimination, harassment, and sexual harassment in the work place.

### **1.4.5 Social and Economic Benefits**

*(Article 13 of the CEDAW)*

#### **Conclusions**

89. As far as the obligations deriving from Article 13 of CEDAW, the legislation is generally well aligned, however its implementation in practice, and sometimes, the lack of clarity in certain provisions or the lack of awareness among women about their own rights, allow for women's discrimination in real life. There is still lack of harmonisation among the various Albanian laws. Given that the legislation is still in process, sometimes there is lack of coherence or relation between them. The Albanian legislation lacks an instrument that provides for the interests of the wife and child/ren, in cases of donation contracts, which has led to their discrimination. The same can be said with regard to *the relinquishing property rights by one of the spouses* to a third person who is not the other spouse, or the child/ren, before the dissolution or termination of the marriage. Registration of immovable property in Albania is done by the male spouse, or head of household in the case of the farming family, who register the property in their own name. Illegal constructions or informality in the construction of matrimonial homes is still a concern which can lead to women's discriminations. There have also been problems in the area of applications for credits and alienation of property, when these are done by one of the spouses in both spouses' names, but without even letting the other spouse know or seeking their consent. Women rarely apply for credit, because they are usually perceived as having a supporting role in business activities. In addition, the credit rating policies of many banks require the applicant to own capital, which very few women possess.

#### **Recommendations**

90. Harmonisation of provisions across Albanian laws with the aim of eliminating discriminatory applications. For instance some of the CC provisions on joint ownership of farming families create confusion in their application in cases of marriage or dissolution of marriage by one of the members of the farming family [generally women/daughters]; some of the provisions of the FC, especially as regards: the ability to act, matrimonial property regime, registration of immovable property, administration of spousal property and representation between spouses, donations between spouses and joint ownership, inheritance, etc., as well as harmonisation of the provisions of the law "On Entrepreneurs and Companies" with the FC and CC, because these laws and practices lead to infringements of women's rights. Here we must include the importance of a clear articulation of provisions related to donations between spouses and donations by one of the spouses that benefit a third party, or the relinquishment of property rights in order to prevent a further worsening of the position of women and children [based on the problems identified above].
91. Provision of strict rules on credits and alienation of immovable property when these

are initiated or done by one of the spouses, and strict sanctions in case of non compliance.

92. Provide training courses for judges, lawyers and notaries on women's economic rights and Gender Equality standards.
93. Increase women's awareness of their economic and social rights and their encouragement to benefit from affirmative measures.

#### **1.4.6 Rural Women**

*(Article 14 of the CEDAW)*

##### **Conclusions**

94. The Albanian legislation does not differentiate between women in rural and non-rural (urban) areas. Women in rural areas find themselves in a worse situation of discrimination than those in urban areas. The economic situation is weak and dependent on remittances from abroad. Women are generally not employed and dependent on men financially. They engage mostly in housework. Unemployment in rural areas is very high; wages for agricultural or animal husbandry work are very low; no social security payments are made for women working in private businesses; and there are no governmental structures in place to monitor the implementation of legislation protecting the rights of women in rural areas. With regard to the economic status of members of the farming family, the legislation needs to be clarified in order to avoid misinterpretation [see second part of the Report]. There is a lack of services such as kindergartens, nurseries, and health services as well as a tendency among young girls not attend secondary school regularly or drop out of it altogether upon reaching a certain age. Incidence of domestic violence is high, with very low rates of reporting. Women in rural areas are not involved in political and public life.
95. *Women from the Roma minority* continue to face very difficult living conditions, poverty, domestic violence, discrimination, mainly with regard to access to education, social protection, health care, employment and adequate housing<sup>6</sup>. It can be said that the description of the situation of rural women applies to Roma women as well, but is even worse.

##### **Recommendations**

###### **Legal**

96. Legal improvements with regard to the rights of the members of a farming family, in case of marriage or dissolution of marriage;
97. Some of the recommendations related to Article 11 apply to Article 14 as well.

###### **Services**

98. Special measures need to be taken in order to improve the services network in rural areas: utilities (electricity, water), kindergartens, nurseries, and health care.

##### **Awareness raising, training and professional Development**

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<sup>6</sup> See EU Assessment Report 2009

99. More intensive awareness raising work with regard to family and matrimonial rights, health care, educational rights, risk of trafficking, economic and labour rights, social security, domestic violence, etc.
100. Promotion of employment and support through courses that are closely linked with the potential employment market by diversifying needs and opportunities by each individual district.

### **Institutional Capacities**

101. Extending the responsibilities of authorities in charge of monitoring the implementation of the legislation to cover oversight of the implementation of the rights of rural women at the local level.

## **2. PART TWO- Analysis of specific areas**

### **2.1 Domestic Violence**

*(Articles 1 and 2 in conjunction with Articles 5 and 10 (c) of the CEDAW;  
General Recommendation No. 19 of the Committee (Violence Against Women)*

#### ***2.1.1 The legislative framework addressing domestic violence***

102. The period between 2003 and 2009 was characterized by several initiatives and activities that led to improvements in the Albanian legislation with regard to prevention of violence against women. New laws were adopted, with a view to strengthening government bodies involved in the prevention and reduction of domestic violence as well as providing protection from gender discrimination in general. Another important step forward was the National Strategy on Gender Equality and Domestic Violence and its accompanying Action Plan, adopted by Council of Ministers Decision No.913 of 19.12.2007.

103. However, it has to be pointed out that there has been stagnation in the areas of criminal and criminal procedure legislation, with no changes made to either of them.

104. The implementation of new laws was accompanied by a series of measures taken by the relevant authorities; however, problems still remain with their practical implementation.

#### **2.1.1.1 Civil and administrative legislation on the prevention and reduction of domestic violence and the state of its implementation**

105. *The Family Code (FC)*, adopted by the Albanian Parliament as Law no. 9062 of 08.05.2003, marked a number of essential changes. For the first time the law provided for emergency measures and measures against violence which apply in cases of failure to fulfil marital obligations and the exercise of violence between the spouses (Articles 61 and 62 of the FC respectively).

106. However, these FC provisions have seldom been implemented and were invoked by litigating parties only in a very limited number of cases. The degree of familiarization with and awareness of the law was not sufficient enough to demand from the courts to implement these measures, while the judges themselves were still unclear as to the way they were to be implemented. In addition, the FC did not envisage any time limits for violence related measures. Even in those rare cases

when such measures were actually requested, they were very badly received, as a result of the predominant macho and patriarchal mentality. *[In 2005 the Shkodra District Court was trying the case of Gjelina, a woman who had filed for divorce from her husband. In the course of the hearing, Gjelina's lawyer made representations that the Bench could invoke Article 62 of the Family Code of the Republic of Albania and order the removal of the husband from the family home, on grounds of his violent behaviour. However, the Civil Court in Shkodra refused the complainant's petition for measures against violence. The criminal court had already sentenced him with a suspended sentence for exercising violence against his wife, while the civil court refused her petition for measures against violence. In the meantime, the heavy burden of the macho mentality and his father's incitement led the 16 year old son of the couple to murder his own mother. The woman died just a week short of the court's decision on her request for divorce; the case file was archived, but it caused a profound sadness and fear in the ranks of civil society organisations which precisely at the time were working on the development law "On Measures against Violence in Family Relations" (The Domestic Violence Law). It became clear more awareness raising work was needed to familiarize everyone with the new anti-violence law].*

107. Law No. 9669, of 23.12. 2006, "On Measures against Violence in Family Relations", (The Domestic Violence Law) entered into force on 1 June 2007. The initiative for the adoption of this law was taken by over 20,000 members of the public with voting rights, in the form of a petition submitted to the Parliament by the non-profit organizations who led the coalition for the development of the law. This was of particular importance in more ways than one, not least because it was the first time a law was adopted as a result of the legislative initiative taken by members of the public. On the other hand, the preparatory work done by these non-profit organisations for the recognition and signing of the prepared draft, helped raise public awareness of the importance of demanding that measures against domestic violence are in place. During the process of adoption and implementation of this law, good cooperation was achieved between state bodies and civil society organisations.
108. The law on domestic violence envisages legal measures that guarantee the protection of all family members, regardless of gender or age, with a view to preventing them from becoming victims of domestic violence. These measures provide for better protection, not only of the persons who are currently in a family relationship, but also of persons who used to be in a family relationship, such as former spouses or partners.
109. The practical implementation of this law has underlined the problem of protection from violence in girlfriend/boyfriend or engaged-to-be-married relationships (i.e. other intimate relationships). They are not included among the subjects protected by the law on domestic violence and the courts have not extended coverage by protection orders beyond the subjects mentioned in the law. In practice, violence against a female partner or girlfriend is present, and has in some extreme cases, even led to them being killed. *(such as the case of an incident that occurred on the 10<sup>th</sup> of May, in the secondary school in Elbasan, where a nineteen year old man shot and killed an eighteen year old girl, who had refused his advances).* Often the police and the courts fail to offer adequate protection. One such case is the case of E.S. from Fier. *[E.S. had suffered abuse at the hands of her boyfriend E.T. on several occasions, while the police failed to protect her. The aim of the latter was to help the couple reconcile, without any success, because violent incidents kept*

recurring. E.S., submitted a request to the Court of First Instance in Fier, but her request was refused on grounds that the individuals concerned were neither married, nor living together as partners. As can be seen, the Court did not consider lovers or former partners to be subject to protection by the law “On Measures against Violence in Family Relations”. At the moment, the case is being heard by a Criminal Court, after the lodging of a complaint with the District Prosecutor’s Office. See *Shqip*, an Albanian daily, 4 December 2010; Press Statement of the Albanian Network against Gender-Based Violence, 19.02.2010.

110. The law provides for the establishment of a coordinated network of institutions responsible for the protection, support, rehabilitation and alleviation of the consequences of domestic violence, by defining specific tasks for each segment of the network at the central and local level. These include: the Ministry of Labour, Social Affairs and Equal Opportunities; the Ministry of the Interior and the State Police; the Ministry of Justice; the Ministry of Health; the Ministry of Education; and local government authorities. The law also lays down important obligations with regard to cooperation of non-profit organisations with the above mentioned bodies.
111. Applications can be made to Courts for the issuance of orders of protection against domestic violence, which the law terms “Protection Orders” or “Emergency Protection Orders”. The law also provides for legal assistance free of charge in the preparation of the complaint/application and any accompanying documentation, as well as their submission to the Court. All the proceedings are conducted within the civil jurisdiction system; however, this does not prevent the commencement or continuation of criminal or other proceedings on the same case.
112. A new feature of this law is that it sanctions for the first time the concept of public prosecution *ex officio*. Such legitimization of the right of the police and prosecutorial bodies to submit requests for protection orders for adults, as well as requests for emergency protection orders for adults and minors, constitutes a very important provision for the support and protection of victims of abuse in the course of legal proceedings, and an important instrument for raising public awareness that violence in family relationships is a public concern. Requests for protection orders on behalf of the victims may also be submitted by non-profit organizations licensed by the Ministry of Labour, Social Affairs and Equal Opportunities, and relevant bodies in the local authorities that deal with such issues.
113. The law provides that in the cases when the request has been submitted by the police or the prosecutor’s office, the victim’s withdrawal from the proceedings does not lead to the case being dropped. *However, this legal provision has rarely been used by the police, while our monitoring data indicate that it has not yet been used by any of the prosecutors.*
114. The law envisages sanctions against government officials who fail to fulfil their duties and against persons who fail to abide by the protection order issued against them.

#### **2.1.1.2 The Criminal Code on the Punishment and Prevention of Violence Against Women**

115. *The Criminal Code* does not contain special provisions for the punishment of domestic violence. However, some aggravating circumstances are envisaged for criminal offences perpetrated against children, pregnant women, or for offences that take advantage of family relationships.<sup>7</sup> Concerning access to justice in seeking the

<sup>7</sup> Article 50, letters “e” and “g” of the Criminal Code.

punishment of domestic violence, it is important to differentiate and distinguish between two categories of victims of criminal offences, as provided by the Criminal Code:

- A. *Persons harmed by criminal offences that are pursued ex officio*
- B. *Persons harmed by criminal offences, as the injured accusing party*

116. The right of the injured accusing party to start legal proceedings is sanctioned in the *Criminal Procedure Code*, in two different forms, in Articles 59 and 284 of the Code respectively. Initiation of legal action by the injured party is a precondition for the prosecutor's office to proceed with the indictment for all criminal offences listed in the Criminal Code as referred to in article 284 of the Criminal Procedure Code.<sup>8</sup> In these cases the injured party lodges a complaint with the Prosecutor's Office or the Judicial Police, in the form of a statement which, personally or through a special representative, expresses the willingness to proceed with the prosecution of an act described in the law as a criminal offence. The injured party may withdraw the request at any stage of the proceedings thereby causing the cessation of the case.
117. A person is considered to have the status of injured plaintiff when he or she is a victim of a petty criminal offence and who can press charges directly before a court of court. This category includes thirteen criminal offences, based on a closed-list categorization provided by the Criminal Procedure Code (Article 59).<sup>9</sup> Many of these criminal offences are committed in the form of domestic violence, or of actions related to domestic violence. Therefore, if a complaint made by the injured plaintiff pursuant to article 59 of the Criminal Procedure Code is a necessary precondition for the Court to commence a trial, similarly, a complaint of the injured party pursuant to article 284 of the Criminal Procedure Code is a necessary precondition for the Prosecution to start investigations.
118. With the exception of the criminal offences prosecuted upon a direct complaint lodged by the injured party as described above, other criminal offences are pursued *ex officio*, i.e. proceedings may start irrespective of any complaint lodged by the injured party. The submission or non submission of a complaint in such cases shall not prevent the start of proceedings, nor can it cause the suspension of proceedings that have already commenced.
119. From the above analysis it follows that access provided by the Albanian criminal legislation regarding the prevention and punishment of violence against women, especially of domestic violence, is related more to the willingness of the complainant rather than the willingness of competent state bodies to prosecute criminal offences *ex officio*. This observation is based on the fact that the greatest part of criminal offences involving violence against women and domestic violence, are only prosecuted if initiated by the injured party.

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<sup>8</sup> Some of the criminal offences envisaged in Article 284 of the Criminal Procedure Code are: light intentional injury (Article 89 of the Criminal Code), forced non-consensual sexual intercourse with adult women (Article 102 of the Criminal Code), sexual or homosexual relations with people who are blood-related or under one's guardianship (Article 106 of the Criminal Code), coerced cohabitation or dissolution of marriage, or hindrance thereof (Article 130 of the Criminal Code), malicious use of telephone calls (Article 275 of the Criminal Code).

<sup>9</sup> The status of "injured party" is enjoyed by victims of the following criminal offences: Other intentional injury (caused by beating/battering); Grievous injury caused by neglect; Light injury caused by neglect; Violation of domicile (non-consensual entering and remaining in domicile); Insult; Defamation; Unlawful interference with private life; Withholding means of existence; Unlawfully taking a child/children away;

120. The above mentioned offences (footnote no. 6), occur most frequently in the domestic environment and are mainly directed against women in the family. These are considered offences of low social risk and the law does not provide for criminal prosecution without the injured party bringing charges against them. Making the actual complaint by the injured party a necessary precondition for the prosecution of an offence and withdrawal thereof a right of the injured party, may lead to such offences committed in the family environment to go unpunished.
121. The amendments that were made to articles 86 and 87 of the Albanian Criminal Code in 2007, both of them providing for the criminal offence of torture, leave out the possibility of criminalizing domestic violence as a form of torture. A previous edition of the Code provided a generalized definition of the perpetrator of this criminal offence, while as the law stands now, the perpetrator of this criminal offence is more narrowly defined as a specific subject, an official person or state agent. We consider this to be a change for the worse in the legal mechanisms that are in place for the purpose of punishing and preventing cases of torture, or inhuman and degrading treatment as a result of domestic violence.<sup>10</sup>

### ***2.1.2 Issues in the Implementation of the Law “On Measures against Violence in Family Relations”***

122. NPOs have been monitoring decisions of the First Instance Court in Tirana and have noticed a considerable increase in the number of protection orders and emergency protection orders (heretofore POs and EPOs), issued by the Courts. For instance, compared to the period 1 June 2007 to 30 April 2008 when the Tirana District Court issued only 18 such POs and EPOs, from 30 April 2008 to 1 June 2009, the number of protection orders issued by the same court rose to 448<sup>11</sup>.
123. There has been a marked increase in the number of women reporting incidents to the police, which have served as the main instigator of requests for POs/EPOs. For instance, of the 448 cases tried from 30 April 2008 to 1 June 2009, 18.31% of the applications were submitted through the police. This is due to an increased awareness of women of the importance of reporting domestic abuse, but is also a result of better preparation and qualifications of the relevant bodies that receive and assist victims of domestic abuse. According to the data obtained by the same monitoring exercise, 91.51 % of the applications in these cases were made by women and 8.49% by men.
124. However, the study of these decisions reveals the existence of some barriers and problems related to the effectiveness of protection orders. The government has not yet taken any measures for the application of the principle of *free legal representation*. The Ministry of Justice has been charged with the duty of adopting an official list of advocates who shall carry out the obligations contained in this legal provision, which has not been done yet. This has affected the effectiveness of protection orders and the way they are applied by the courts. For instance, of 448 trial cases held during the monitoring period, 329 of them were suspended by the

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<sup>10</sup> Law No. 9686, of 26.02.2007, “On Some Changes and Amendments to Law No. 7895 of 27.01.1995 ‘The Criminal Code of the Republic of Albania’”, as amended.

<sup>11</sup> CLCI, *Report on the Implementation of the Law “On Measures Against Violence in Family Relations”*, with the support of Civil Rights Defenders, February 2010. Printing and layout of the report supported by UNDP Albania as part of the United Nations Joint Programme on Gender Equality and Domestic Violence.

courts. We think that this scarcity of court orders has been also caused by the absence of *ex officio* advocates in the proceedings. [N.E is divorced from her husband, but continues to live together with her four children (S.E; K.E; E.E; E.E) under the same roof as him. One of the causes for the dissolution of the marriage was the abuse she and her children suffered at the hands of L.E, husband and father. Nevertheless, he kept on abusing her and the children. She went to the police station several times to report the abuse. Upon being told of the abuse, the duty police officer prepared and submitted on her behalf a petition for a protection order for her and the children, which was then submitted to the Tirana District Court. When N.E appeared before the Court, unrepresented, she stated that instead of a protection order she just wanted division of their property, i.e. division of the house where they were living together. Under these circumstances, the judge at the Tirana District Court refused to issue a protection order for her and the children. The abuse situation between the parties remained unchanged. It is our opinion that in this case the police and the court initially failed to protect N.E from violence, because they were not able to collaborate with any *ex officio* lawyers, a list of whom does not exist as yet.]

125. Protection orders issued by the courts have produced some results, but there is still need for better cooperation among police authorities, relevant local authorities and the bailiff services, to make sure that these orders are duly executed and observed for the whole period they are in force.

### ***2.1.3 Central and Local Administrative Bodies involved in the Implementation of the Law “On Measures against Violence in Family Relations”***

126. Some positive examples **in the implementation of this law** can be also seen in the network of public administration bodies. The law “On Measures against Violence in Family Relations” requires from the Council of Ministers to adopt byelaws. In addition, it clearly defines the duties of each of the relevant public authorities. So far only a part of the byelaws have been adopted. As things stand now, these acts are being successfully implemented by the Ministry of the Interior, which has established new professional structures to deal with domestic violence, which are proving to be very effective. However, more remains to be done regarding the further training of staff and the establishment of similar professional structures in all the districts in the country. (A case that was covered by the media in ..., *demonstrated that the police authorities in Librazhd, a town in central-eastern Albania, failed to offer..., a victim of abuse, the necessary assistance she needed, thus forcing her to travel to the capital, Tirana, in order to be able to request a protection order. This case proved the effectiveness of the law, because it effectively grants powers to any court, in any court district, to issue protection order/emergency protection orders*).
127. The Ministry of Health has also adopted and issued normative byelaws and decisions in this regard; however, more work needs to be done for their implementation. Level of awareness of the main law and relevant byelaws and decisions among workers in the health sector remains low. Consequently, the number of cases referred to the justice authorities by them is also low.
128. The failure of the Ministry of Justice to press forward with the adoption of byelaws has hampered the implementation of the law as far as access of victims to free legal aid is concerned, which is of crucial importance to the proper

administration of such aid. A decision for the adoption of a nation-wide official list of advocates to offer free legal services is of primary importance and a matter of urgency for the implementation of this law.

129. The Ministry of Labour, Social Issues and Equal Opportunities, has not yet submitted to the Council of Ministers byelaws of normative force which would help improve the functioning of the network of public authorities and the establishment of an appropriate infrastructure for receiving, accommodating and rehabilitating victims of domestic abuse, but also for the rehabilitation of the perpetrators themselves.
130. Implementation of the Domestic Violence Law by the local authorities is still in its initial stages. There is some cooperation between local authorities, the central government and non-profit organizations, and some pilot projects have been launched in a number of municipalities of the country for the creation of referral systems for the fight against violence.<sup>12</sup> However, this activity needs to be spread throughout in the whole country, especially in the rural communes. It is necessary that the local authorities establish the structures envisaged by the law.

#### **2.1.4 Role of NPOs**

131. An important role is played by non-profit organisations, which offer legal and psychosocial services as well as refuge services for the victims of domestic violence. There are several NPOs that offer high standards of such assistance. However, until now they have only been supported with funds by various donors. Laws are already in place, that envisage the support of such NGOs with government funds, but their implementation has not started yet.<sup>13</sup>
132. *Law No. 9970 of 24.07.2008 “On Gender Equality in Society”, aims to provide effective protection from discrimination on grounds of gender; it defines measures for guaranteeing equal opportunities between genders and the responsibilities of the state authorities, both central and local, in the development and implementation of normative acts and policies which support the promotion and furtherance of gender equality in society. This law is of special importance in protecting women from violence, even when such violence occurs outside family relationships. For instance, provisions of this law can be invoked by judges in the punishment of sexual harassment of women in the workplace. No actual cases have been tried. [Allegations of sexual harassment raised against a government minister were considered as media manipulation and although the minister was dismissed from his ministerial post, no other steps were taken to address the phenomenon. The claim of media manipulation was also maintained by pro-government media, Tirana, May 2009]*
133. *Law 10221, of 4.2.2010, “On Protection from Discrimination”, aims to guarantee the right of every individual to equality before the law and equal protection by the law; equality of chances and opportunities to exercise rights and enjoy freedoms and participate in public life; and effective protection from discrimination or any other behaviour that may lead to discrimination. In order to ensure the implementation of this law, a new public body called the Office of the*

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<sup>12</sup> The Network against Gender Violence and Trafficking, supported by UNIFEM, has established and is presently working for the strengthening of referral mechanisms in five municipalities: Vloora, Rrëshen, Pogradec, Shkodra and Berat. Work is now under way in these municipalities to strengthen these referral mechanisms and increase their effectiveness.

<sup>13</sup> The laws that were adopted are: Law no.10093, of 09.03.2009, “On the Organisation and Functioning of the Agency for Supporting the Civil Society”, and the Law “On Legal Aid”.

Commissioner for Protection from Discrimination has been established. It is to be hoped that the latter shall become an active and effective instrument for the prevention of cases of discrimination against women, by filling one of the organic gaps in the law “On Gender Equality in Society”, the implementation of which did not envisage the establishment of an independent public body of this sort. Presently, the procedure for the appointment of the Commissioner for Protection Against Discrimination by the Albanian Parliament has already been completed and the Commissioner is due to be sworn in, before the institution actually starts functioning.

### **2.1.5 Conclusions and Recommendations**

#### **Conclusions**

134. *Regarding the legislation:* In the period 2003-2009 tangible improvements have occurred in the Albanian legislation and the measures taken by the Albanian government, especially concerning the prevention and reduction of domestic violence. Among the most important measures were the Law “On Measures against Violence in Family Relations” and the accompanying measures for its implementation. Similarly, the adoption of two new laws, “On Gender Equality in Society” and “On Protection from Discrimination” is also an important step in the right direction.
135. There have been no improvements in the legal mechanisms of the criminal and criminal procedure legislation which are important instruments in the punishment and prevention of violence against women and in increasing women’s access to criminal procedures, with a view to providing them with protection against violence.
136. *Regarding the referral system in combating violence against women:* Important measures have been taken to facilitate the reporting of violence and to create new specialist structures for the protection of women from domestic violence. New and more effective structures have been established at the Police Directorate in the Ministry of the Interior, with the aim of fighting against domestic violence, as well as at the Ministry of Labour and other central government institutions, which aim to provide protection against gender discrimination. At present, work is under way at some local authorities for the preparation and establishment of specialist structures dealing with domestic violence issues. In the courts there are judges who specialise in family law and the examination of petitions for protection orders.
137. There are no support structures in place for the accommodation and rehabilitation of victims and abusers. Until now services in this sector have been provided exclusively by non-profit organizations funded by various donors.
138. *Regarding increased access of women to protection from violence and discrimination:* An analysis of the legislation shows that women and girls enjoy increased access to protection from domestic violence. The monitoring of actual practices in the field also shows an increased number of cases of violence reported to police authorities. This access is provided through the referral system established within the public administration authorities, as well as through the courts and the intervention of prosecutors in civil cases. For the first time the law envisages the possibility that the petitions for protection orders may also be submitted by the police or prosecution authorities on behalf of the victims. In such cases, even if the victims of domestic violence decide to withdraw their charges, this does not automatically cause the cessation of the trial. This is a very important instrument, but we are yet to see its implementation in practice.
139. Criminal legislation needs other mechanisms in place to support women’s access

to protection from violence. The legal provision for the establishment of the institution of the Commissioner of Protection from Discrimination constitutes a new link in the chain of measures for the prevention of violence and for out-of-court resolution of conflicts.

140. *Inter-institutional collaboration and coordination for an improved referral system.* This is one of the most positive elements of the present legislation, namely that it provides for a network of institutions collaborating with each-other for the prevention of domestic violence. It has to be said, however, that this cooperation needs to be strengthened. The strongest link in the network at present is the cooperation between the police and the courts.
141. In order for this collaboration not to remain just words on paper, the Ministry of Justice must step up its cooperation with the rest of the network, primarily by providing a list of *ex officio* advocates to offer free legal assistance as provided by the law. It also needs to provide further training and monitor the activity of bailiff's offices with regard to the enforcement of protection orders. Another collaboration link that needs to be strengthened is the one between central and local authorities, for providing joint shelter and rehabilitation services for victims, but also for the perpetrators of abuse. For some time now efforts have been under way for establishing collaboration with and support of civil society organisations, but no concrete steps have been made as yet, with the exception of the fact that the criteria for the licensing of organisations offering services are now already in place and checks are being made as to their implementation.

### **Recommendations**

142. *With regard to improvement of legislation: Improve criminal legislation for the protection of women from domestic violence.* Introduction of a special provision in the law to make domestic violence a separate criminal offence, which may appear in the form of physical, but also psychological violence. The law should also provide additional punishments with the aim of preventing the recurrence of violence. The legal provisions against torture must reinstate punishment for perpetrators of such an offence, including cases when the perpetrators are not state agents.
143. *Improvement to the criminal procedure legislation, including provisions on public prosecution, which would support and encourage victims of domestic violence to report the abuse; and provisions on ex officio prosecutions, which will help victims of violence not to feel isolated and intimidated by lengthy trial processes. Improvements to the Criminal Procedure Legislation are needed, including a clear definition of the status of victims of criminal offences, their right to access information on the rights deriving from the legislation, and the right to be represented in court proceedings.*
144. *Improvements to the law "On Measures against Violence in Family Relations", by establishing stricter sanctions for individuals who violate protection orders and emergency protection orders issued against them. We think that the provisions of the law should expand to include intimate partners not living together, but who used to be in an intimate or engagement relationship.*
145. *In order to strengthen referral systems, we recommend:*
- Completion of the body of byelaws for a better implementation of the law "On Measures against Violence in Family Relations" which will finalise the establishment of the structures necessary for its implementation;
  - Taking of measures for the implementation of the law "On Legal Aid", which

entered into force in April 2009 but has yet to be implemented. The implementation of the provisions of this law will provide free legal aid to poor women victims of abuse in civil and criminal proceedings.

- Strengthening of collaboration between state authorities and non-profit organisations for the implementation of the laws “On measures Against Violence in Family Relations”, “On Gender Equality in Society”, and “On Protection from Discrimination”.
- A more active prosecutorial service which intervenes with the legal means at its disposal for the implementation of the law “On Measures against Violence in Family Relations”.
- Establishment of a specialised network of qualified advocates who will provide free legal aid, as provided by the law “On Measures against Violence in Family Relations”. The relevant state authorities must take measures for their fees to be paid by the state, pursuant to the legislation in force.
- It is recommended that the local authorities take measures for the creation of local structures for the implementation of obligations pursuant to the law “On Measures against Violence in Family Relations”.
- It is recommended that in the course of the fulfilment of their obligations, local authorities must collaborate with the central government and civil society organisations.
- It is recommended that the Ministry of Health increase its effectiveness in the implementation of the byelaws it has adopted.
- More should be done for strengthening the legal mechanisms and judicial practices in place to seek compensation for the damage caused by violence against women. This can be done by using the mechanisms already provided by the existing legislation as well as by introducing new improvements to the law.

## **2.2 Trafficking in Women**

*(Article 6 of the CEDAW and General Recommendations No. 15 and 19)*

146. The report of the Albanian Government contains a comprehensive description of the present legislative situation and of the measures taken by the government in relation to the phenomenon of trafficking in human beings in response to the recommendations of the CEDAW Committee, (paragraphs 30 and 31) [p. 96-142 of the State Report].

### **2.2.1 The legislative framework and trafficking in women**

147. Positive achievements have been noticed in the area of improvements and changes to the relevant primary and secondary legislation, such as anti-trafficking strategies and their accompanying action plans, ratification of international and bilateral agreements, etc.

148. As the government report itself points out, prostitution in Albania still remains a criminal offence punishable by law (article 113 of the Criminal Code). This makes the Albanian Criminal Code one of the few pieces of legislation in Europe, possibly the only one that assigns criminal responsibility to prostitutes. The provision in article 113 does not distinguish between male and female prostitution, but judicial practice shows that the majority of sentences pronounced for the offence of prostitution were passed against females. It still remains a concern that women

engaged in prostitution are punished although they are both victims and perpetrators of the said criminal offence, especially when they are exploited by other persons for profit purposes. The Criminal Code also provides for the offence of exploitation of prostitution – article 114 (and aggravating circumstances, Article 114, letter “a”) and the use of buildings or other premises for such a purpose, but in practice the punishment of perpetrators becomes very difficult due to procedural issues. Ultimately, and invariably, this leads to the punishment of the persons working as prostitutes, i.e. the women. It is for this reason that the existing provision which criminalises prostitution should be abrogated sooner rather than later.

149. The failure of the Criminal Procedure Code to provide for the right of victims of trafficking to free legal representation and to be party to the judicial proceedings, has led to many cases being dropped or not brought to a conclusion. What is worse, there have been cases when the criminals reported by victims did not receive the punishment they deserved. *[On 29 August 2009 Gazeta Shqiptare, an Albanian daily, wrote: “...The Serious Crimes Court passed a verdict of acquittal in the case of a well-known entrepreneur from Fier, on the charges of exploitation of females [for prostitution purposes]. On a previous occasion, the same Court had found the same individual, together with an accomplice guilty on the charges of trafficking in women for prostitution purposes under aggravated circumstances, as well as money laundering, and sentenced them with 20 and 18 years imprisonment respectively. However, the Supreme Court quashed the judgement issued against them on grounds of procedural irregularities!!! The case was sent back for retrial to the Serious Crimes Court, in which occasion the defendants were found not guilty”].*<sup>14</sup>
150. The Law “On the Protection of Witnesses and Collaborators of Justice” has been in place for years now, however, in the past couple of years there have been no reports of any victims benefitting from it, *[although NPOs who deal with trafficking issues have observed that there have been cases when the victims indeed met all the legal criteria to be admitted to such programmes [Observation of the “Vatra” Center in Vlora].*
151. Human trafficking remains a worrying concern not only for the government but for the entire Albanian society. It is true that the trafficking of Albanian women and their exploitation outside the Albanian borders has been on the decrease thanks to the continuous efforts and measures taken by the government. Nevertheless, it is still a concern that the government is failing to acknowledge the true scale of internal trafficking and the exploitation of prostitution within the country, thus allowing the phenomenon to develop unhindered and risking to turn Albania into a destination country.
152. In spite of government efforts for the development and improvement of a body of legislation aimed at combating the phenomenon of trafficking in human beings, Albania still remains a country of origin. This fact is also pointed out and acknowledged in Albanian government reports. In 2009, ninety four victims of trafficking were identified, referred to, and assisted in rehabilitation and reintegration centres. *[Report on the Implementation of the National Strategy for the Suppression of Trafficking in Human Beings January-December 2009.]*

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<sup>14</sup> *Gazeta Shqiptare*, 29 September 2009.

153. The failure of justice authorities to adequately implement the legal provisions aimed at combating criminal groups and individual criminals has led to a situation where rather than being eradicated, the phenomenon is now threatening to transform Albania into a country of destination. Indeed, in the course of 2009 the Vatra Centre assisted 25 victims of human trafficking, of which 13 were being exploited within the territory of Albania, which indicates an approximate ratio of 50:50.
154. The low level of public trust in the justice system, coupled with the phenomenon of corruption, remain a concern and have been identified as such by many surveys conducted by national and international organisations<sup>15</sup>. In order for justice to be justice, it also has to be perceived as such. *[In the course of its activity in the service of victims of trafficking, the “Vatra” Center has observed that victims have generally been willing to cooperate with the justice and law enforcement authorities (the police, the prosecution). The centre notes that there have been instances when their cases were dropped even before reaching court, others were procrastinated for years, and only few of them were successfully concluded in favour of the victims.]*
155. The victims feel they are at risk and not protected by the system. Because of their fear, instead of disclosing the identity of the criminals who traffic and exploit them, the victims often state that they act of their own choice and free will, thus giving a free hand to judicial authorities to treat them as criminals and not as victims. Sometimes the victims do not cooperate with the law enforcement agencies and do not report their traffickers because they are generally scared, or even in fear of their life.

## ***2.2.2 Structures in place for combating trafficking of human***

156. In order to counter the phenomenon of human trafficking it is imperative that adequate, responsible and highly professional structures are in place. The national anti-trafficking strategy clearly defines the tasks and obligations of all the authorities involved in combating the phenomenon. Worthy of mention in this regard is the role of the Office of the National Coordinator and the state police authority. However, it has to be said that in spite of the good efforts made by the police to control all border crossing points, the absence of a social worker in these border stations has led to the erroneous identification of victims merely as persons crossing the border illegally.
157. As far as other institutions are concerned, i.e. the Ministry of Labour, Social Affairs and Equal Opportunities (MLSAEO), the Ministry of Health, the Ministry of Foreign Affairs, etc., their involvement is little more than a token one, and it appears they have not yet fully taken on board their responsibilities with regard to the support and treatment of victims of human trafficking.
158. Trafficking in human beings is closely interrelated with profound poverty. For this reason, it is within the remit of the MLSAEO as a major player in the anti-trafficking strategy, to take measures for the improvement of the living conditions of victims of human trafficking. There is still a dearth of long term programmes and projects for the employment and accommodation of victims of trafficking. Law

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<sup>15</sup> Judiciary Reform Index. Albania. 2008, Vol. IV.

no.10093, of 09.03.2009, "On the Organisation and Functioning of the Agency for Supporting the Civil Society", provides for the financial support with government funds of joint NPO-government projects for the establishment and running of residential services for victims of trafficking.

159. The role of Ministry of Health hasn't been an adequate one. It is a recognised fact that as a result of uncontrolled exploitation and sexual abuse by clients and traffickers alike, victims of trafficking are carriers of various contagious diseases and suffer from post traumatic stress. Due to the complexity of problems they face, the victims assisted and treated in NPO-run residential centres are sent to the health centres in their respective towns to be diagnosed and for specialist treatment. It has to be said that collaboration with health authorities has known both positive and negative experiences. NPOs have even encountered cases when the victims were refused admission and treatment in hospitals. *[For instance, as recently as in 2010, there were young women in the Women's Refuge run by Vatra Centre in Vlora, who were diagnosed with Hepatitis B and C, two of which with Hepatitis C, and who, although very seriously ill, were refused admission and treatment in the Vlora Hospital].* However, there have also been cases of successful collaboration between the NPO-s and hospital management bodies. *[A case in point is the DNA testing done free of charge for a victim of trafficking and her daughter, at the "Mbretëresha Geraldinë" maternity hospital in Tirana].*
160. The failure of the state to establish specialist centres for the treatment of victims with various health problems, has caused many of these victims to live with their families or in other public premises, thus risking the spread of sexually transmitted diseases among the population. Health conditions such as: sexually transmitted diseases (Hepatitis A, B, and C), drug addiction, mental health problems, etc., are some of the diseases carried by the women victims of trafficking as a result of the sexual abuse they suffered during their exploitation as prostitutes. Their treatment in specialist centres set up by the state would solve their health problems and, at the same time, would prevent the spread of sexually transmitted diseases among the general population.
161. Regional anti-trafficking committees which were set up in 2006 in all 12 regions of the country have been almost totally inactive. Indeed, until now no potential case has ever been identified by these committees and no victim has been treated by them or assisted in finding solutions to their multiple problems.
162. The agreement on the National Referral Mechanism developed by the government and signed in 2005, has opened a new avenue for mutual cooperation between all players. The agreement is being implemented correctly at the level of central government, but local authorities have failed to fulfil their obligations as defined in the agreement for the resolution of the problems of victims of trafficking.
163. The establishment of a centre for the processing of data on victims of trafficking by the Ministry of the Interior was a new development aimed to assist in the correct identification of the number of victims, figures which, in the past, frequently did not tally with the data obtained by the NPOs. Thus, in addition to the NPOs working in the field, now the government too has a database of country-wide statistics on victims of human trafficking.

164. Role of NPOs<sup>16</sup>: They have shouldered a considerable part of the burden and have played an outstanding role in assisting and treating victims of trafficking and those at risk of being trafficked, by offering them long term accommodation, rehabilitative and reintegration services. In 2007 a National Coalition of Anti-Trafficking Shelters (NCATS) was established and starting from the current year, it has been functioning and institutionally collaborating with all other anti-trafficking players. From 2002, 2,272 victims of trafficking or at risk of being trafficked were assisted and treated in the NCATS shelters, 1,350 of which in the Vatra Centre only. As a result of the services offered by the NCATS shelters, between 2002 and 2009, out of the total number of 2,272 victims of trafficking or at risk of being trafficked, 1,476 have now reintegrated in the mainstream society.

### **2.2.3 The justice system and compensation of victims of trafficking**

165. There is a lack of collaboration of victims with law enforcement authorities in reporting and bringing their exploiters to justice, mostly due to lack of trust in the justice system, but also because even when they cooperate, the victims are not placed under the protection of the state and are not compensated for the physical and psychological harm they have suffered. This because the provisions of the Albanian Legislation on the compensation of victims of trafficking are not implemented.

166. The Albanian legislation envisages the possibility of awarding compensation to victims of trafficking for the suffering and harm caused to them by the traffickers and/or exploiters through a *civil claim appended to the criminal procedure*, or, alternatively, through *petitioning for damages in an independent under civil procedure*. The main difference between these two is that in the former procedure claims can only be made for material damages, while moral damages can only be awarded through the civil procedure. In the case of claims made by an accusing injured party before the court, the law envisages petitioning for damages, not necessarily limiting it to material damages.

167. Law No. 9284, of 30.09.2004 “On the Prevention and Fight against Organised Crime”, otherwise known as “the Anti Mafia Law” which remained in force until December 2009, envisaged the right to compensation from government funds created by confiscating the unlawful assets of individuals involved in organised crime, managed by the relevant institutions. However, this law was not implemented and there have been no cases of victims receiving compensation or of any financial support from such funds for organisations assisting victims of trafficking. Indeed, during the five years it was in force, no accompanying byelaws were adopted. These provisions were also included in the new law No.10192, of 03.12.2009, “On the Prevention and Suppression of Organised Crime and Trafficking through Preventive Measures against Property” which entered into force on 22 January 2010, thereby abrogating the previous law.

168. The instruments made available in the criminal and civil legislation with regard to petitioning for damages before a court of law have only been used on rare occasions. There have been multiple barriers and obstacles to this, the most important being the failure to provide for the right of the victim to access

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<sup>16</sup> The “Vatra” (Hearth) Centre in Vlora was established in 2001; “Të ndryshëm dhe të barabartë” (Different but Equal) Centre, 2002; The National Centre for Victims of Trafficking, in Linza, near Tirana, established in 2003, “Tjetër Vizion” (A Different Vision) Elbasan, 2003, “Jetë dhe shpresë” (Life and Hope), Gjirokastra, 2005.

information and to free legal representation, as well as high legal costs incurred. [For instance a single presiding judge in the Serious Crimes Court in Tirana adjourned a criminal case with the aim of allowing time for the attachment of the civil lawsuit to the criminal charges, by allowing the plaintiff time to pay the tax on documentation (ruling nr. 65 of 14.02.2008, by a judge in the First Instance Serious Crimes Court, Tirana)].

169. Only in the past three years we have seen collaboration among the NPOs, the School of Magistrates and the National Chamber of Advocates for the training of judges, prosecutors and lawyers on issues of compensation for victims of trafficking. There have also been some decisions by courts on damages, following petitions made by victims with the support of NPOs<sup>17</sup> (one such example is the court case on the petition for damages submitted to the Court by D.L., a victim of trafficking, represented by lawyers of the Centre for Legal Civic Initiatives. The court awarded her damages to the amount of 40,000 euro; Judgement No. 1202 of the Tirana First Instance Court, 19 February 2010). As far as the training of judges and prosecutors is concerned, it has to be underlined that the School of Magistrates has been doing a commendable job in its collaboration with the civil society; from the year 2000 it has involved representatives of the civil society in its initial and continuing training programmes on these issues.

#### **2.2.4 Collaboration with international organisations**

170. Collaboration with international organisations has been one of the key elements in the fight against trafficking in human beings, which has benefitted both government institutions and the strengthening and financial support of the NPOs.

#### **2.2.5 Conclusions and Recommendations**

171. Changes need to be made to the criminal and criminal procedure legislation in order to improve the status of victims of trafficking in criminal proceedings. It is especially necessary to provide for the right of victims to have access to information and free legal representation. It is recommended that the criminal legislation does not criminalise prostitution in practice; the real punishable offence is the exploitation of prostitution.
172. The government must introduce legal provisions which exempt victims of trafficking, as well as other victims of violent crimes, from paying court fees and taxes when they petition for damages. The legislation and relevant byelaws and decisions must clearly state in their provisions the right of trafficking victims to access free legal services offered by specially trained professionals, so that these decisions are not left to the discretion of hospitals.
173. We recommend that the criminal legislation include provisions on restitution orders as automatic orders for damage compensation, with the aim of supporting victims of trafficking or victims of other violent crimes.

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<sup>17</sup> See "The development and implementation of the Albanian legislation in the fight against trafficking in human beings with a view to protecting and guaranteeing victims of trafficking in human beings", prepared by the Centre for Legal Civic Initiatives in the framework of the "Legal Education and Protection of Rights" Project, supported by OSCE/ODIHR, Tirana 2009.

174. It is necessary to strengthen and further train the staff in the respective government structures already established, with a view to increasing their effectiveness.
175. Introduction of provisions on free health services for victims of trafficking.
176. Provision of specialist legal assistance by qualified advocates who are trained in trafficking issues, and obligatory provision of psychological assistance.
177. Strengthen collaboration between the relevant government authorities and anti-trafficking structures with the non-governmental and non-profit sector, by offering support to the latter.

## **2.3 Participation of Women in Decision-making** (Articles 7 of the CEDAW)

### ***2.3.1 The legislative framework in relation to special measures and their implementation in practice***

178. In the recent years, several special measures have been taken in Albania for the realization of women's right to be involved in public life, especially in the higher levels of decision-making. The most important measure in this regard was the introduction of legal provisions for instituting gender quotas. These provisions were especially introduced through the law "On Gender Equality in Society" (2008) and the Electoral Code (2009)<sup>18</sup>. These regulatory measures were also accompanied by awareness-raising activities, conducted mainly by representatives of the civil society in collaboration with the relevant government bodies, with the aim of raising the awareness of the Albanian public and political operators of the need to increase women's participation in decision-making bodies and of the importance of applying gender quotas as an effective instrument for realising that end.
179. The quotas set in the present Albanian legislation are gender neutral and are subdivided into: (a) national quotas, applicable in general elections to the National Assembly (the country's highest legislative body), and (b) local quotas, applied in the election of local government authorities. Gender quotas are also mandatory by law in the appointment of election administration bodies. In particular, the Electoral Code of the Republic of Albania contains measures which aim to guarantee the implementation of the quota system and defines the respective sanctions against the election subjects in case of non-compliance.
180. The implementation of Electoral Code provisions on gender quotas in the 2009 parliamentary elections led to an increase in the number of women representatives in the Albanian parliament. Compared to the 2005 elections, the number of elected women MPs in the Parliament increased by 7%, taking the number of women to 15% of the total number of representatives. Nevertheless, this result is still far from the objectives set in the law, the legal requirement for gender representation being a minimum of no less than over 30%.
181. In our opinion the above mentioned results were insufficient for a number of reasons. Firstly, the results reflect the reality of political developments in Albania, where women continue to be less active and less involved in party activities and

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<sup>18</sup>Law No. 9970 of 24.07.2008 "On Gender Equality in Society" and the Electoral Code of the Republic of Albania, 2009.

political life in general. In addition, these results stem from the inadequacy of legal mechanisms provided by the law, coupled with an inadequate implementation of the same, although both acts mentioned above were adopted by consensus by the political parties represented in the parliament.

182. It is our opinion that the existing legal provisions are not adequate because the legislation contains some clauses that make allowances for election subjects that evade meeting the quota requirements. For example, both the law “On Gender Equality in Society” and the Electoral Code mention the obligation of election subjects to have at least 30% of each gender on their candidates’ lists, while according to the law “On Gender Equality in Society”, equal gender representation means participation of both genders in representative bodies with no less than over 30% each. It is clear that this legal discrepancy creates leeway for inadequacies in meeting the requirements set in the law.
183. Clauses that allow for deviations from meeting the quota requirement are also found in the way ranking order rules are set out. The Electoral Code provides a specific formula for ranking candidates by gender on the candidates’ electoral lists. For parliamentary elections, the list of candidates in each constituency must contain no less than 30% candidates of each gender and/or no less than one candidate from each gender in the first three names on each list. Therefore the Electoral Code allows each party (or coalition) to fulfil only one of these obligations: either compile a list with no less than 30% from each gender, without any conditions as to their ranking order, or draw up a list where at least one of the candidates is from either gender.
184. Legal inadequacies can also be identified when looking at the nature of sanctions provided in the electoral legislation. The failure to meet any one of the requirements in the compilation of what the electoral code terms “multi-name” electoral lists, leads to the rejection of the said list by the Central Electoral Commission. However, this sanction is not consistent in guaranteeing the implementation of the quotas - provided that we are not talking about an invalid list, but simply a rejected list - because it does not specify how many times the list can be rejected and whether it can be rejected definitively.
185. The problem described above was clearly exemplified during the 2009 parliamentary elections, when the new regulations on gender quotas were first applied. The lists of candidates of political parties for all constituencies contained no more than 20% women. In addition, the Central Electoral Commission did not insist on the requirement to observe gender quotas in the preparation of candidates’ lists and accepted them as they were.
186. The legislation makes better provisions for local quotas; however, the sanctions envisaged for election subjects who do not fulfil the quota requirement are arguably weak. The legal requirement for both genders to be represented with no less than over 30% shall be realised by fulfilling the legal requirement of compiling lists with over 30% representatives from each gender. Again, the ranking order for local government bodies is clearer, because in this case, every third name on the list shall be from either of the genders. The sanction envisaged in the case of failure to comply with the quota obligation carries a penalty of 30,000 Albanian Leks for each constituency, payable by the election subject. It is very likely that the political parties and other election subjects would much rather pay the penalty in return for non-compliance with the quota system, as the penalty is easily affordable.
187. During the 2009 parliamentary elections actual efforts were made to comply with the quota requirement for two levels of election administration bodies: the

Central Electoral Commission and the Commissions in the Constituencies. For instance, there was an increased representation of women in the Central Electoral Commission (two out of seven members are women). The Electoral Code exempts election subjects of all obligations to apply quotas at the level of Polling Stations Commissions, which is perhaps related to the inability to apply quotas for over 4000 polling stations commissions.

188. The obligation to comply with the gender quota requirement also applies to positions in appointed bodies. This obligation is contained in the law “On Gender Equality in Society”, which requires equal gender representation in all legislative, executive and judicial bodies, as well as other public institutions. The law contains a clause stating that the quota requirement in appointed bodies shall be complied with by appointing a candidate from the less represented gender, all other qualifications and qualities being equal. In the recent years the high appointing bodies in the country have, to some extent, taken this criterion into account in the procedures for appointing senior government officials, but not as much as is desirable. Although the number of female judges has increased, there is only one woman minister in the present government, although there are more women in deputy ministerial posts.

### ***2.3.2 Conclusions and Recommendations***

189. The provisions on gender quotas in the Albanian legislation require a better understanding and a more honest implementation. A number of improvements need to be introduced to ensure compliance with the quota requirement of over 30% representation from either gender. It is necessary that the attention be focused more on the understanding, monitoring and finding solutions for the implementation of the gender quota requirement for appointed bodies.
190. It is necessary to focus the attention more on the understanding, monitoring and finding solutions for the implementation of gender quotas in appointed bodies.
191. More needs to be done to strengthen the work of the political parties and to support non-profit organisations to help increase women’s involvement and participation in political parties, as well as support women candidates for elected functions.
192. These measures should go hand in hand with efforts and measures to bring an end to the practice of family voting, which is a phenomenon often seen in the Albanian elections. Family voting is a practice whereby the husband casts the ballot on behalf of the wife and children<sup>19</sup>.
193. It is recommended that the Electoral Code be revised with a view to improving the mechanisms which ensure the implementation of gender quotas in the national elected bodies, as well as provide for sanctions in cases of failure to comply with the quota requirement in elected bodies at the local level.
194. It is recommended that the Electoral Code be amended to include a stronger provision for the prohibition of family voting.
195. More needs to be done for the implementation of gender quotas in appointed bodies, which can only be realised as an ongoing process, through constant monitoring, especially by the civil society.

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<sup>19</sup> See: The Albanian Helsinki Committee, Report on the Monitoring of Parliamentary Elections, August 2009.

## 2.4 Employment

(Article 11 of the CEDAW)

### 2.4.1 The legislative framework and problems identified in the areas of employment and labour relations

196. Article 11 of CEDAW is covered in paragraphs 217-272 of the Albanian State Report [heretofore SR]. In relation to this Article, following are some of the issues that are still considered problematic from the point of view of the civil society and that require serious consideration by the government in order to: *firstly*, improve women's situation in this area and *secondly* to fulfil its international obligations. By addressing the issues raised by this Article we can probe into the ways employment and labour relations have on the discrimination against women in other areas, in the Albanian context. Positive evaluations have been made of the whole process of improvements and amendments made to primary and secondary legislation in the areas of employment and labour, as well as the ratification of a number of international conventions [*more specifically the ILO Conventions*]. Some of the laws have a direct impact, while others a more indirect one. Some of them are:

- Law No. 9970/28.7.2008 "On Gender Equality in Society" (GES);
- Law No. 10221/4.2.2010, "On Protection from Discrimination";
- Law No. 9634/30.10.2006 "On Labour Inspections and the State Labour Inspectorate";
- Law No. 7995/20.09.1995 "On Promotion of Employment" as amended;
- Law No. 9355/10.03.2005 "On Social Assistance and Social Services";
- Law No.10237/18.02.2010 "On Safety and Health at Work"<sup>20</sup>.
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197. The law guarantees *the right to work without any discrimination* to all those people who are of legal working age. The Albanian legislation guarantees to all, irrespective of gender, the right to earn their living through their own legitimate work, which they choose of their own free will, as well as the right to equal training opportunities and treatment in employment relations,<sup>21</sup> etc.

198. Given the present levels of unemployment, it appears that *legal guarantees are not sufficient*. One of the major concerns in Albania is the *gap between de jure and de facto equality* in relation to employment, access to entrepreneurship and credit, health and social services. In the responses given to the Questionnaire prepared in the context of the present Shadow Report and the meetings organised for this purpose, the NPOs made it clear that generally, the economic situation of women is much weaker and women are identified as "poor". The level of unemployment among women is much higher than among men.

199. The statistical figures presented in the State Report indicate that the situation has not seen any tangible changes from the time of previous report, as was expected, which leads us to draw the conclusion that the efforts and the measures taken by the government *either were not effective, or more time is needed for them to produce the desired effect*. Thus, for instance, the SR states that the women's employment level is

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<sup>20</sup> Title VI of this law contains several provisions for the protection of vulnerable groups or those at risk. One of these groups consists of pregnant women and lactating women. Pursuant to Article 31(3) of this law "The protection of safety and health of vulnerable groups shall not be a cause for creating unfavourable conditions for women in the labour market."

<sup>21</sup> The above mentioned guarantees are defined in Article 49 of the Constitution of the Republic of Albania, Article 9 of the Labour Code, and Article 21 of the GES

lower; there is a noticeable process of feminisation of unemployment or a tendency of shutting women and girls out of the labour market; the difference between males and females in level of employment has remained unchanged [p. 242 of the SR]; among the 16-25 year olds who have completed 8-year (mandatory) education, females represent the highest percentage of people employed in services sectors that entail manual work and physical exhaustion, and are less paid; with the increase in age and level of education, finding a job becomes even more difficult; there is a large number of women engaged in farming work; etc.

200. The situation of women's education and training is heterogeneous and there is a large correlation between level of education and place of residence. Nevertheless, education remains high on the agenda of communities in urban areas; however, there are also cases when girls and young women are deprived of education because of the prevailing mentality in the area where they live, lack of infrastructure and lack of access to services in rural areas etc. [p. 232 of the SR]. The press and media have frequently addressed the issue that parents do not allow girls to attend school when their physical development becomes/is considered as a "danger" to their safety [*one such case covered by the media was that of a village in Kruja where parents stopped their daughters from attending school, most of them in grades 5 to 9 of mandatory education*].
201. Women are mostly employed in service-based professions, as a result of the stereotypes that exist about their reproductive role. These are the lesser paid jobs.
202. Women are more frequently employed in the informal labour market, in part time jobs, and domestic services [p. 246 of the SR]. Albania ratified ILO Convention 177 "On Home Work" by Law No. 8909/6.6.2002, but the government report underlines that "women work at home, but it is not clear under what conditions they exercise their skills and abilities." The lack of information about the situation shows that the government has not taken the necessary measures to guarantee women working at home the protection envisaged by the convention. This is an example that reflects a general shortcoming as far as international conventions are concerned, namely that, although they are made part of the domestic legislation following ratification by the Albanian Parliament, their implementation in practice has proven to be difficult.
203. Article 13/2 of Law No. 9634/30.10.2006, "On Labour Inspection and the State Labour Inspectorate", provides that: "In carrying out their duties for the oversight of the implementation of Labour Legislation provisions, the labour inspector and supervisor are authorised to enter residential premises if there are sufficient indications or legal motives to presume this. In order to go ahead with the inspection, the labour inspectors and supervisors are obliged to inform the General Inspectorate on any further legal procedures in the inspection." This shows that the law allows the possibility of inspecting labour carried out at home and has outlined (a) when the inspection shall be carried out (by limiting it to the existence of legal motives which presume their right to enter places of residence), (b) the procedures to be followed. Up until the drafting of this Shadow Report, this provision had not been implemented, due also to the procedural rules that must be followed obligatorily.
204. Women hold fewer executive or leading positions than men, even when they have the same or, indeed, higher level of education and qualifications than men.
205. The present situation of women's participation in the labour market is still being justified by bringing such arguments as the on-going economic and political transition, immigration, etc. The situation of informality in the labour market in Albania remains a concern, consequently, the statistics in the report do not indicate the real situation of unemployment [p. 228 of the SR presents the situation of unemployed people who have registered as such, but there is a group that does not appear in any of the statistics of

the employment offices, and, as a result, it can be safely assumed that real unemployment figures are much higher]<sup>22</sup>. State officials in this line of work recognise the fact that the number of unemployed persons registered in employment offices (i.e. the official figure of unemployment levels in Albania) is lower than the real figure. This speaks of a lack of public information on the opportunities offered by employment services and of jobseekers' lack of trust in the real employment opportunities offered by the employment offices.

206. Various studies and reports underline that there are great difficulties in achieving effective collective contracts defining the main standards of labour relations. This happens because the parties are not interested, or do not trust the services of public mediation, orientation or employment advice." Individual work contracts make up the overwhelming majority.
207. Involvement of trade unions and employers associations in decision-making processes is still weak [*EU Progress Report 2009, p. 33*].
208. *Their right to equal employment opportunities, including the implementation of the equal selection criteria for employment, still remains a legal criterion written on paper, rather than a reality.* The fact that the level of employment among women compared to men is lower shows that their access to employment opportunities is different. Women are still not integrated in the labour market. Labour market figures are inadequate (poor)<sup>23</sup> and cannot serve as sound basis for the taking of adequate measures.
209. With regard to the mandatory standards in the area of labour relations, the Labour Code and GES do not distinguish between public or private employers. For instance, private employers must abide by certain standards in the recruitment process, with the aim of employing the least represented gender in the respective sector/industry [*Article 16 and onwards of the GES*]. Discrimination and violation of Gender Equality principles carries sanctions that must be applied by the State Labour Inspectorate (SLI). The SR does not contain any information on this issue or on whether legal any sanctions have been applied at all, which again speaks of a lack of statistical data or of the low level of enforcement of sanctions. In addition to government policies, which are not always adequate with regard to women's employment, mention should be made here of the failure of state bodies to exercise their inspection functions [*weak role of the SLI*] for the enforcement of the law on gender equality as a prerequisite for employers [*opinion of the Women's Forum in Elbasan*].
210. The higher rates of unemployment among women compared to men are seen with great concern by the CEDAW Committee, which encourages the provision of equal opportunities for men and women in the labour market, including, *inter alia*, the use of special temporary measures pursuant to Article 4, paragraph 1, of the Convention.
211. Employment promotion programmes developed pursuant to the Law On Employment Promotion and the National Strategy of Employment and Professional Training [DCM No. 67/10.01.2003] marked a positive tendency in the efforts to alleviate women's unemployment problem and are considered as affirmative measures whose aim, content and form is not in any way discriminatory against men [p. 240 of the SR] an issue highlighted both by the CEDAW and the Albanian Legislation [see GES, Articles 7, 8, 9].

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<sup>22</sup> <http://www.instat.gov.al/graphics/doc/downloads/lfs/Rezultate%20te%20FP%202008.pdf>;  
<http://www.nationmaster.com/country/al-albania/lab-labor>

<sup>23</sup> According to the EU Progress report:

212. *The level of access to professional training and education, including the learning of trades, professional improvement and continuous training is considered cause for concern by the CEDAW Committee which underlines that “women are not able to receive the appropriate training and retraining to compete in the labour market”. Among the recommendations of the Committee is the one for setting up and implementing special training and retraining programmes for various groups of unemployed women.*
213. Law No. 9570/3.7.2006 “On Promotion of Employment” emphasises that employment offices in the regions shall offer training and qualifications to job seeking persons, by giving priority to special groups, such as women.
214. One cannot deny the positive aspects of these programmes, but in practice, according to the NPOs, not all the training activities and programmes have been suited to the needs of the labour market. This has led to a situation where not only have women not become a part of the labour market, but their employment opportunities have indeed gone down [*opinion of Agritra-Vizion Centre in Dibër*]. The SR highlights the fact that women’s qualifications are not high enough to enter the labour market [*p. 238 of the SR*]. Women and girls usually attend mainly traditional “female-oriented” training courses such as courses in sowing and tailoring, computers, foreign languages, beauty and cosmetics, secretary work, for which the demand in the market is limited. The training courses, which are frequently offered by public institutions of professional training or by some NPOs, partly cover general subjects, and partly specific training. They promote, to some extent, self-employment opportunities for the attendees in the labour market, but this always depends on their personal means and ability to afford opening a business of their own.
215. *The right to equal pay, including bonuses, to equal treatment for work of equal value, as well as to equal treatment in the evaluation of the quality of work, is a standard we find in the provisions of the Labour Code and the Article 16/7 of the GES. The provisions of the GES are closer to international standards both in their formulation and conceptually. Therefore, the provisions of the Labour Code should be harmonised with those of the GES, so that the Labour Code is interpreted in the light of the improvements made to the GES for issues related to the observation of gender equality standards, and the GES should be considered as a supplement to the Labour Code [see Articles 21 ç and 16(7) of the GES in relation to Article 115 (paragraphs 1 and 2) of the Labour Code respectively. See also Articles 4 and 6 of the GES in relation to Article 9 and 32/3 of the Labour Code. This can be achieved by introducing cross references to Articles 16, 17, 18, 20, 21, 22 in Article 9 of the Labour Code, etc.].*
216. In fact, the principle of “equal pay...” is not implemented correctly. The state administration does provide equal remuneration for the same job position or same job classification. This does not happen in private businesses where a different policy from that of the government is applied and where, more often than not, priority is given to men, also reflected in higher levels of pay for men than women for the same job position [*opinion of the Centre “Aleanca Gjimore për Zhvillim” (Gender Alliance for Development) and Agritra-vizion Centre, Dibër*].
217. The problem appears in cases of work of equal/same value, where work of the same value is remunerated differently, which in turn gives rise to covert discrimination against women and in favour of men in remuneration. The lack of an established methodology for determining the value of work leads to violations of the principle of equal remuneration.

218. There have been no studies on the evaluation of jobs, which, in some cases, display a clear divide between “women’s” jobs and “men’s” jobs. Although the SR [p. 225 of the SR] mentions the preparation of a study on equal remuneration by the Ministry of Labour, Social Affairs and Equal Opportunities (MLSAEO), which was supposed to be completed in 2008, it appears that the said document is not yet available.
219. Another problem that makes it difficult to implement this principle is economic informality. As a result of non-disclosure of wages paid and the lack of inspection by state authorities, unequal treatment becomes even more pronounced.
220. *The CEDAW Committee recommends the strengthening of effective measures that allow for a better balance between family and professional responsibilities and which promote a fairer division of household and family responsibilities between men and women.*
221. Women carry nearly the largest part, if not the entire burden of *invisible and unpaid work* of caring for children, the sick, and the elderly, cleaning and other domestic work, cooking, etc. This is true both for women who have a job outside the home, in the formal or informal market and women who have withdrawn from the labour market<sup>24</sup>. Article 23 of the Gender Equality Law deals with the evaluation of unpaid work. According to paragraph 2 of this Article unpaid workers in the family shall benefit from community services, labour and employment policies, and professional training pursuant to the legislation in force. Is this enough?
222. Such services as homes for the elderly [*it is a well known fact that a great number of women cannot work outside the home because they have to care for their parents or the parents of their husbands*] kindergartens and nurseries for children, are either insufficient in quantity or unaffordable financially, or inaccessible because of distance, etc. It has to be added that conditions in many of them are very poor and they suffer from inadequate staffing. Now and again you find reports in the press and other media on the unacceptable conditions in which children are kept in such institutions [*Main news on Top Channel and “Fiks Fare” Programme, 23 May*] and about parents’ complaints to the government. In addition, the policies and measures for hiring and training workers for these institutions are the same as for all categories in need of these services, with no specific arrangements made for the specific qualities and skills they must have.
223. There are no cases of employers offering these kinds of services to their employees. It is still unthinkable for Albanian employers to subsidise such services for their employees.
224. The Albanian legislation still does not provide for paternity leave for men, which would allow parents to decide for themselves who stays at home to care for the child and who goes to work. Sources from the MLSAEO speak of a new reform in the near future, with the aim of approximating the Albanian legislation on Social Security with the provisions of the European Code of Social Security.
225. *Regarding the implementation of the right to health and safety in the work place, including the protection of reproductive functions [dealt with in pages 262- 266 of the SR] it appears the law is of good quality from the legal point of view.* It defines the appropriate conditions that the employers must create for the protection of the health of women at work, women employed to do hazardous jobs, etc. The adoption of Law No.10237/18.02.2010 “On Health and Safety at Work”, is a qualitative step forward towards the legal regulation of the protection of health and safety at work

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<sup>24</sup> Danaj E., Plaku A., Cavo Z., Ekonomi M. -“Unpaid Care Work- the Invisible Burden of Women”, published by the Advanced Studies Centre, Tirana 2008. See: <http://ucw.asc-al.org>

for at-risk or vulnerable groups (including pregnant women and lactating women). The challenge now lies in the correct implementation of the law as well as a correct enforcement of sanctions and conduct of inspections by the relevant authorities.

226. The situation on the ground shows that because of the limited number of jobs in the labour market, women are willing to make sacrifices and allow their rights to be infringed, in order not to lose their jobs [*opinion of the Gender Alliance for Development Center*]. Women do not claim the rights provided to them by the law from their employers or courts, thus allowing the perpetuation of such violations of their rights [*Women's Forum, Elbasan*]. Very often their working conditions are not appropriate, for instance, some women operate hazardous machinery and equipment in conditions that are far from adequate from the point of view of safety; they work long hours and are not paid for overtime; there are cases of lactating women working full time in spite of their right to reduced hours; poor condition of toilets and heating systems; non-provision of foods that helps recuperate the health of employees, especially in jobs that may affect the respiratory tract system and other organs of the body, etc.
227. In some workplaces the actual physical conditions in the buildings may put the health of the workers at risk. Such enterprises also employ very young women, who work with machinery that may put their life at risk, as has already happened in 2 or 3 cases [*opinion of Association of Women with Social Problems*]. There have also been extreme cases where workers have died en masse. For instance, the explosion in the Gërdec weapons dismantling factory caused the death of 26 persons, of which one child, nine women and 14 men, as well as considerable material damage and environmental pollution. This is an extreme example of the failure to implement health and safety standards at work and the failure of the state to exercise its inspection function.
228. It remains a challenge of the State Labour Inspectorate to oversee the implementation of legislation on the working conditions and workers' health and safety, including the new Law "On Health and Safety in the Workplace". The civil society has many reservations with regard to the level of fulfilment of legal obligations by this body. In essence, there is no efficient labour inspection service in Albania [*ECSR conclusion on Albania in 2009; Article 3 of the European Social Charter, Revised*].
229. A sector that is not covered *de facto* by the SLI is that of farming and agriculture. The law does not exclude the inspection of the agricultural sector. Given the fact that agriculture is a dominant sector in Albania, the covering of this sector by the Labour Inspectorate remains a task for the near future. The absence of inspections in agricultural work means that the law is not being implemented. This is also because of the limited number of inspectors, compared to the total number of employees to be inspected. However, this does not justify the failure to implement the law.
230. The Albanian legislation defines, prohibits, and punishes *sexual harassment in the workplace*, both in the provisions of the Labour Code, and those of the GES. This part of the legislation is very little known among the employers' community and not enough has been done to raise their awareness. The law provides a number of obligations for the latter.
231. No cases of sexual harassment at work have found their way to law and order or judicial authorities. However, now and again the media cover cases that involve allegations of sexual harassment at work, including the cases of two senior state

- officials [*the case of the Minister of Culture and that of the Director of a Department in the Ministry of Foreign affairs, etc*]. Although heavily featured in the press, the alleged perpetrators were not prosecuted, which speaks of a cover up and shows that the taboos and prejudices against women and girls have not yet been broken and that perpetrators are not being punished. There is a total lack of official statistics and of awareness raising campaigns with regard to safety at work and protection from sexual harassment both in the private and public sectors.
232. Pursuant to the law, if a case goes to court the burden of proof rests with the plaintiff, therefore the failure to report cases of harassment in general and sexual harassment in particular is also linked with the present situation regarding the standard of the *burden of proof*.
233. *Women's promotion, positions and level of responsibility*. The CEDAW Committee has requested that the present government report include detailed information about the situation of women in the labour market, including the positions of women in various economic sectors, levels of responsibility and remuneration.
234. The Labour Force Survey (INSTAT 2008) shows that the difference in remuneration between women and men is 19.15% (higher in men). This is because there are fewer women in senior and executive positions and women generally do simpler work than men and as a result their pay is in many cases lower [*p. 257 of the SR*]. In addition, most of the businesses are headed by men; consequently they are the ones that manage the money. Also, many women are employed in the "black market". In many cases (such as in domestic cleaning or general maintenance jobs) the monthly wages for 30 or 31 working days (i.e. no days of rest), their wages range from 13,000-15,000 Leks a month.
235. The Albanian legislation in its entirety *prohibits discrimination in the area of social security*. What needs to be revised from the legal point of view are some special temporary measures:, such as (1) the difference in the state pension ages of men and women (60 years for women and 65 years for men) while the number of working years required to receive a full pension is the same for both genders (35 years of social security contributions for both), and (2) differences in family pensions benefits for widows/widowers (50 years for women and 60 years for men).
236. During the transition period, many women and girls lost their jobs as a result of the changes in the political system, the closure of some economic sectors, privatisation of several enterprises, etc. Many of them were forced to look for new jobs in Albania and abroad, and in the majority of the cases, these jobs did not reflect the level of education and qualifications they had earned in the previous system [for instance, women textile engineers, physicists, women previously employed in the heavy industry, etc.] Although the system did allow for the possibility of paying voluntary social security contributions, because of lack of information and insufficient financial means, these women have not been paying into these funds for a period of 10 to 15 years, which will inevitably affect their future status.
237. Although the law is clear, the high level of informality in the labour market causes that a great number of women are not covered by social security. For those women who attend employment promotion programmes, the government subsidises the employers in the payment of obligatory social security contributions for workers who find employment through such programmes [*p. 240; 258-261 SR*], but this is

just a temporary solution. A major problem that still remains is that of those women who, although they spend most of their life doing home work or working in the informal market, are not covered by a pension scheme or do not benefit from any other government assistance scheme when they reach pension age or when no longer able to work.

238. It is still not possible to document, measure the value and provide payment for services provided by women as domestic workers, such as cleaning, babysitting, etc., and to guarantee them social security coverage even in this line of work. The government has issued a Decision of the Council of Ministers which provides for the obligation of employers to declare any female workers to the tax authorities and pay their social security contributions.
239. The status of *women with disabilities* has seen some legal improvement, in the context of general improvements made to the provisions covering persons with disabilities. In the drafting of the integral law “On the Protection of Rights of Persons with Disabilities”, gender-related principles must be clearly stated and defined.
240. Women and girls with disabilities still encounter a number of barriers, which are far greater than those encountered by the rest of women and girls in the society. Until the time of the drafting of this Shadow Report, the authors were not aware of any specific initiative undertaken in the course of the current year for the development of specific mechanisms that guarantee the implementation of legislation on the employment of women and girls with disabilities.
241. No official statistics exist as yet on the total number of women with disabilities, while according to the MLSAEO the total number of women with disabilities benefitting from the invalidity scheme is 18,880. Those few statistical data on women with disabilities that do exist are fragmentary and are not guided by well-defined objectives in the policies of the institutions that compile them.
242. Women with disabilities do not feature at all in the State Report. They are only mentioned in passing in the National Strategy on Gender Equality and Domestic Violence and the Action Plan for its Implementation, 2007-2010; they are also invisible as a specific social group throughout the National Strategy for People with Disabilities and the respective Action Plan, which does not specifically address the problems and issues faced by women and girls with disabilities.
243. Additionally, women and girls with disabilities receive little mention, if at all in the strategies, programmes and services offered by national and international organisations that focus on women’s issues, human rights and disabilities. Women with disabilities either do not feature in these reports at all, or are treated of in the context of women or people with disabilities generally.
244. The problems they face are multiple:
- *Their economic rights are violated*, because although they receive incapacity benefits (incapacity benefits make up 55% of the total of economic assistance offered by the state), the said assistance only keeps them at the level of minimum living standards. Article 15/2 of Law No. 9355/10.03.2005, “On Social Aid and Assistance” provides for the payment of an allowance for carers of people with disabilities, in need of constant care by another person. According to Decision of Council of Ministers No.618/07.09.2006, the carer of a person with disabilities is paid an allowance at 150% of the disabled person’s allowance. No provisions are made for the payment of temporary carers.
  - *Their educational rights are violated* to the extent that the parents of girls with disabilities hinder their education for fear that they would be exposed to stigma and

abuse.

- *Their right to work, in the majority of the cases, is also violated*, to the extent that employers consider them ineligible for jobs because of their disability, even in cases when the functional tasks they are expected to perform in that job are unrelated to the disability they have.

#### **2.4.2 Responsible structures in the area of labour relations**

245. Government responsibilities in the field of labour and employment are spread out in several structures at the central and local level which have gone through a process of reconfiguration and change in quality and quantity. In addition there is an increased awareness of gender equality issues and anti-discriminatory policies and measures. Improvement of collaboration among the various structures is also important.

246. GES [2008] defines the responsible bodies in the field of gender equality and gives a fresh impulse to their powers and responsibilities, including:

- At the central level: the Council of Ministers, the National Council of Gender Equality; the Minister covering gender equality issues; each ministry appoints an official who deals with gender equality issues.
- At the local level: local government authorities.

247. As far as labour relations are concerned, GES defines the structures responsible in the field, such as: the Minister covering Gender Equality issues, the structures set up in the respective ministry and authorities subordinated to the minister responsible for Gender Equality issues such as: The State Labour Inspectorate (SLI); the National Employment Service (NES); State Social Service(SSS). The Minister covering Gender Equality issues collaborates with the Minister of Finance with regard to the Social Security Institute (SSI) in order to ensure the implementation of measures for monitoring of gender equality in areas such as the management and administration of the public pension system and other social security rights.

248. Administrative reform remains a problematic issue (often labelled “politically motivated” by the administration staff themselves), which leads to high staff turnover rates. This leads, in turn, to a repeated need for basic training courses to be provided to newly appointed staff members who replace experienced ones. There are delays in advanced training. It is increasingly necessary to offer training on gender equality and gender mainstreaming issues to trainers and consultants employed to teach in the Centres of Professional Development, etc. This would help re-orient women towards professions that are more in demand in the market, by moving away from gender stereotypes in various professions.

249. It is the duty of these structures to better inform the public on gender equality standards, availability of jobs, existence of employment offices and the opportunities offered by them to meet women’s employment needs, etc. The limited number of jobseekers registered in employment offices leads us to the conclusion (be it right, or wrong, or rushed) that the public is not sufficiently aware of the existence of such offices and the role they play, or, alternatively, it has no confidence in their activity.

#### **2.4.3 Conclusions and recommendations**

##### **Legislation**

250. There are some shortcomings in the area of legislation, which makes it important to introduce some improvements, *especially to the* Labour Code, social security legislation, etc., more specifically:
- By introducing improvements to the labour legislation that aim to provide for a combination of family responsibilities and work responsibilities. Look into the possibility of introducing changes in the primary or secondary legislation in order to provide for flexible working hours for people with family responsibilities and for more flexibility and security in the labour market for this category of people. Recognise paternity leave for fathers.
  - Tougher sanctions for work in the “black market”. These sanctions should aim at reducing informality as a precondition for increasing productivity and improving the quality of life of women employees.
  - Finding adequate legal mechanisms for the implementation of the “equal pay for equal work” principle. Drafting and adopting methodologies for determining the value of work, pursuant to ILO standards.
251. Elimination of differences in the pension ages of men and women, through new legal regulations which envisage a gradual equalisation of age, within a certain length of time
252. Development of a law on gender statistics, which shall also cover the area of labour relations, and making it mandatory for each institution to reflect these statistics in their area of activity. At present this is regulated by an Instruction of the Minister of Labour, Social Affairs and Equal Opportunities, pursuant to Article 13, letter “d” and Article 32 of the GES.
253. Development of a specific framework of rules and regulations, to be made part of the internal regulations in various industries and sectors, especially the private sector. These regulations should define the standards, rights, and obligations of employers and employees with regard to gender equality and non-discrimination in the work place and labour relations. Perhaps these issues can also be regulated in the individual or collective contracts. Given that contracts are drafted pursuant to the Labour Code, the provisions of this Code envisage specific regulations on the rights of employees, including non discrimination or special protection issues for women.
254. Look into the possibility of introducing an amnesty through legislation for those people who were adversely affected by economic reforms in Albania and who have fallen into arrears on their social security contributions.
255. As far as sexual offences are concerned, it is advisable that the Criminal Code include a new provision on the punishment of actions considered sexual harassment in the work place, in the context of relations of subordination or labour relations generally. Such a provision would offer better protection against unwelcome and unsolicited acts of sexual nature, without having to prove the use of violence or force, or the commission of the act in public places by the perpetrator.
256. Albania has signed the Convention on the Rights of Persons with Disabilities. We suggest that it is ratified and implemented as soon as possible.

### ***Institutional Development and Capacity Building***

257. Strengthening of gender equality and monitoring mechanisms. Strengthening and building capacities of the relevant authorities. Establishment and functioning of the institution of gender liaison persons in the line ministries and local government authorities throughout country, pursuant to the Law on Gender Equality. Building and further strengthening of the human, physical and financial resources of the State labour Inspectorate, with the aim of guaranteeing an on-going inspection and

- oversight of all economic activity, which is also the object of the implementation of this law.
258. Establishment of local SLI offices, in compliance with the provisions of the law “On Labour Inspection and the State Labour Inspectorate”, etc., and increase transparency in staff policies in these structures.
  259. Identification and individualisation of institutional responsibility but also collaboration among institutions and the NPOs through well defined protocols and procedures.
  260. Make participation in training courses part of the evaluation and promotion criteria for staff in the public administration, basing their work evaluation and promotion on the performance and concrete contribution to the elimination of discrimination against women. For instance, these criteria are important to be applied in the case of the SLI, given the level of their inspection duties, and in the NES, because of the role they play in mediation, orientation and employment advice, and the implementation of the Gender Equality principle of non-discrimination, etc.;
  261. Strengthening the capacities of employment services. Constant efforts are needed to increase the physical, human and financial capacities of the SLI and the NES, with a view to increasing transparency in staff hiring and promotion policies and promoting partnership and competition between public and private employment services. This can be achieved through: a) establishing a coordinated system of demand and supply for both types of services, and b) dynamism of private employment services, by making them part of the employment programmes.

### ***Training***

262. Given the importance of labour relations and elimination of discrimination in labour relations, the present Shadow Report recommends training on relevant issues and standards all across the board. The training should be offered to: people working in the justice system: judges, lawyers, and legal experts in institutions; employees of the state administration at the central and local level, representatives of employer and employee communities;
263. The training of administrative staff should aim to increase capacities by conducting training in the areas of gender equality and gender mainstreaming to specialists and consultants hired to teach the courses offered by the Centre for Professional Training, etc. This would help re-orient women towards jobs and professions more in demand in the market, by moving away from gender stereotypes in various professions;
264. Conduct training at various levels, in the framework of a mandatory curriculum, which involves representatives from all levels and types of authorities: legislative, executive and judicial, aiming to familiarise them with international standards;
265. Realisation of training with a strong sense of practical implementation of relevant legislation, by gearing it towards the specific needs of each link in the chain of labour-related institutions;
266. Training of a group of high level gender experts on issues of labour relations and more;
267. Inclusion of gender issues and of some of the essential standards applicable in labour and employment relations in professional training curricula, if not as full courses, at least in the form of a number of introductory classes. Plan training courses that address issues of concern in women’s health and safety at work, for representatives of employers, officials responsible for health and safety at work, as

well as of the Councils for Occupational safety established by employers pursuant to the law “On Health and Safety at Work.”

***Encouragement of studies and surveys; Improvement of the Reporting and Monitoring System for issues such as:***

268. Impact of legal and institutional reforms on women employment rates. Identification of needs in close relation with demand in the labour market, this ensuring implementation of the right to work as a unique right that is realised through diverse measures suited to target groups and their specific needs, with the aim of guaranteeing decent work and work for all: thus developing the social and human dimension as well as equality opportunities in the labour market
269. Informality of employment and the place occupied by women in informal employment (foreseen by the government since 2009, in the framework of the implementation of the National Strategy on Gender Equality and Domestic Violence 2007-2010, but which has not yet been implemented in practice).
270. Women’s unpaid work, its calculation and legal alternatives for “remunerating” it and introduction of legal regulations (primary or secondary) which provide for the recognition of periods of unpaid work and counting them towards social security benefits.
271. The use of working time by women and men in the whole country. [A UNFPA supported national survey on the use of working time is being conducted, which will serve to establish the levels of women’s unpaid work. However, these surveys should be conducted periodically, every two or three years, and supported with the necessary funds]. Inclusion of part-time and home work, by also analysing the type and amount of remuneration in these cases.
272. Gender-specific studies on the situation in the labour market with the aim of paying more attention to the possibility of increasing wages in these sectors and professions, pursuant to the principle of equal pay for work of equal value; and definition of criteria/indicators for establishing the value of work, for a *de facto* implementation of the principle “equal pay for work of equal value.”
273. It is not clear which are the existing stereotypes that adversely affect the implementation of this principle. The sectors generally described as “women’s work/domain” are less paid than the sectors employing mostly men.
274. Regular monitoring of the implementation of the labour legislation with a focus on gender equality issues, especially with regard to working conditions, by raising the awareness of employee organisations and the Councils of Health and Safety at Work operating under the employers (in enterprises or factories employing women and girls), through the use of structures such as SLI and the Department of Equal Opportunities at the MLSAEO, and by making monitoring results public by publishing reports on them.
275. Monitoring and assessment of the impact of existing employment promotion schemes (presently there are no such assessment schemes in place).

***Promotion/information, public awareness and access systems:***

276. Raising the awareness of women and of the society at large on rights and the protection or rights: remains a task that needs to be addressed more intensely in order to achieve the desired results. For instance, although it is legally possible to file a lawsuit against an institution/employer for being discriminated against, these rights only exist *de jure* because such cases have never found their way to the courts

in the country. Awareness raising campaigns on specific provisions and legal regulations that provide for special protection of women, pregnant women and lactating women, in relation to health and safety at work.

277. *Ongoing dedicated awareness raising campaigns*, mainly for increasing familiarisation with the gender equality legislation and CEDAW standards, paying special attention the private sector and to an increased level of knowledge of the instruments available for claiming and protecting rights.

*Greater access to information* through the use of adequate and easily usable means so that it can reach the target groups whose rights are most at risk, or are being discriminated. The use of the internet is still limited in Albania, and first attempts to use it for purposes of *public information* must be hailed and encouraged. A new website came into being in early 2010, [see: [www.kerkojpune.gov.al](http://www.kerkojpune.gov.al) which lists all job vacancies in all the regions of the country; see also [www.shkp.gov.al](http://www.shkp.gov.al).]

278. Because of the limited use of the internet by the public, it still cannot address the needs of female jobseekers and jobseekers generally, throughout the country.

279. Strengthening of the role of the media (national and local) with a view to increasing coverage of gender equality issues, implementation of gender equality in the context of employment and labour relations, and elimination of gender stereotypes.

280. Preparation of brochures, leaflets, etc., for a greater access of all women and girls in this respect.

281. General encouragement of all employees to use legal or other mechanisms that affect and encourage the taking of concrete and effective legal, administrative, etc., measures.

### ***Budget***

282. Allocation of adequate and diversified budgetary funds. The training of staff working in areas such as law and strategy implementation should be a separate budget entry, as should funds for awareness-raising or information campaigns to be conducted by state institutions, which are now completely non-existent.

### ***Statistics***

283. Improvement of the statistical system, with a focus on gender equality elements. Periodical revisions of the List of Gender Statistics and Improvement of the Status of Women in Albania [see Instruction by the Minister of Labour] by including statistics that presently are not part of the, such as: gathering statistics on the women's informal employment, etc.; gathering statistics on businesses led by women<sup>25</sup>, etc.

284. Improvement of data on the labour market [also highlighted as important in the 2009 EU Progress Report for Albania].

285. Establishing computerised information systems throughout the country – presently the system is operational only at the central office of the National Employment Service and two regional Offices [see EU Progress Report 2009].

286. Establish a database on people with disabilities<sup>26</sup>.

### ***NPOs***

287. Strengthen and better channel the activities of NPOs on issues related to women's employment and economic empowerment, as well as on other areas related

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<sup>25</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_103610.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_103610.pdf).

<sup>26</sup> EU Assessment report 2009

to their labour rights and protection from discrimination, harassment, and sexual harassment in the work place.

288. NPOs should raise the awareness of women and the society in general about their rights in the area of labour relations, as well as help improve women's qualifications in conformity with the demands of the labour market.
289. NPOs must monitor the implementation of the rights of women in the field of labour relations
290. NPOs can contribute by offering training courses or through concrete projects, such as, by promoting and supporting family tourism, preservation and dissemination of cultural traditions, promotion of traditional trades and local cuisine, etc.

### ***Affirmative Action***

291. The measures taken by the government have kept the problem at a constant curve, which means that they are not the right measures. In this respect, it is important that the measures are revised and monitored periodically to establish the real effect of their application.
292. Information and advice on best practices when new measures are implemented; adaptation of such measures to the conditions of Albania.
293. Support women to increase their capacities, by orienting themselves to the needs of the local market.
294. Support self-employment opportunities by encouraging local initiatives that already exist in the region (organisation of women in production groups).
295. Fiscal facilities for initiatives undertaken and managed by women. Support women entrepreneurs and their businesses with soft credits. These women's initiatives (mentioned above) should be considered as social activities rather than mere business activities (economic activity).
296. NPOs, line ministries and local authorities must make more efforts to draw the opinions of women.

## **2.5 Social and Economic Benefits**

*(Article 13 of the CEDAW)*

### ***2.5.1 Legislation, present situation and problems***

297. Economic discrimination goes beyond the area of labour relations. In this respect, the legislation is generally in line with the CEDAW, but its implementation in practice, and sometimes, the lack of clarity in certain provisions or the lack of awareness among women about their own rights, allow for women's discrimination in real life.
298. Thus, while the Civil Code [CC] is generally in line with the contemporary standards laid down in the CEDAW and European documents, there is still room for improvement of technical and linguistic nature, in order to prevent and avoid discrimination situations in practice. For instance, some of the provisions on joint ownership of the farming family create confusion in the case of marriage or divorce of a member of the farming family<sup>27</sup>.

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<sup>27</sup> According to the Civil Code: "The property of the farming family is jointly owned by its members, who through their labour and other means, have contributed to the creation and increase of the farming economy." (Article 222). "The farm family is composed of persons related to each other by kin, marriage, adoption or acceptance as family members. (Article 223)

299. There is still lack of harmonisation among the various Albanian laws. Given that the legislation is still in process, sometimes there is lack of coherence or relation between them. This is the case with provisions of the Civil Code (which predates the Family Code by about nine years) and the Family Code provisions, especially as regards: the ability to act, matrimonial property regime, administration and representation between spouses, donations between spouses and joint ownership, inheritance, etc., as well as the harmonisation of the provisions of the law “On Entrepreneurs and Companies” with the FC and CC, etc., because these laws and their application cause infringements of women’s rights.
300. There is a moot point in judicial practice which has stemmed from *the donation of one spouse’s portion of the matrimonial property*, a few years before his death, to a third person, thus placing the wife and young children in difficulty. The Albanian law lacks an instrument that provides for the interests of the wife and child/ren, in cases of donation contracts, which has led to their discrimination. The same can be said in relation to *the relinquishing property rights by one of the spouses* to a third person who is not the other spouse, or the child/ren, before the dissolution or termination of the marriage.
301. In general, the registration of immovable property in Albania is done by the male spouse, or head of household in the case of the farming family, who register the property in their own name. In the case of spouses, although the FC provisions clearly define that assets gained after marriage are not personal property, it is still important for the CC to provide for the obligation of presenting a marriage certificate, or “specifications of personal property”, as appropriate, in the registration process, and for the registration to be considered complete after all the necessary verifications have been made.
302. Illegal constructions or informality in the construction of matrimonial homes is a problem which is being solved through the adoption of new primary and secondary legislation. Care should be taken in the registration of these properties, so that both spouses are registered as owners for properties acquired or built during marriage. However, in practice, there have been cases when the courts themselves, or even the Supreme Court, through its Unifying Judgement [Ruling No 22, 13.03.2002<sup>28</sup>] decided that the female spouse who was also the plaintiff in the case, was not to be granted her request for property rights over an illegal building, giving the husband the right to use the unlicensed building.
303. In many cases, as evidenced by the monitoring of court litigation by NPOs [*opinion of the Centre for Legal Training and Studies, ACLTS*], it has transpired that a considerable number of litigations are actually caused by inadequate acts/documents prepared by the notaries public and the legal advice offered by lawyers, who, deliberately or not, cause further discrimination against women, creating problems that end up in court.
304. As far as applications for bank credits and alienations of immovable property by one of the spouses, it is very important that the legislation be unequivocal that these actions must have the approval of both spouses and never taken on trust. Several women have presented themselves to women’s NPOs, whose husbands had received credits from banks in both their names without the women knowing anything about it, by forging the documents submitted to the notary public. This calls for improvements to the Law on the Notary Public and the provision of strict sanctions in case of non compliance.

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<sup>28</sup> For more detail, see the above Unifying Judgement published in the Official Gazette 20/2002, pages 648-650.

305. The trade legislation should provide for a more specific position of spouses as compared to other heirs, because according to the present legislation they are on equal standing with other heirs, which overlooks the fact that spouses are joint owners of matrimonial property.
306. Women rarely apply for credit, because they are usually perceived as having a supporting role in business activities. In addition, the credit rating policies of many banks require the applicant to own capital, which very few women possess. Women's property rights usually cease when the property is registered under the name of the husband. Our interviews have brought to light many cases when the couple's marital home has been registered (unlawfully) under the husband's name, although both spouses have equal property rights over it. Generally women do not have the support of men when they want to start a business, or, in some cases, they do not even have the courage to go ahead with the undertaking. Lack of information also contributes to the inability to use bank services effectively.

## **2.5.2 Conclusions and Recommendations**

### **Legal**

307. Inter-law harmonisation with the aim of eliminating discriminatory applications. For instance some of the CC provisions on joint ownership of farming families create confusion in their application in cases of marriage or dissolution of marriage by one of the members of the farming family [generally women/daughters]; some of the provisions of the FC, especially as regards: the ability to act, matrimonial property regime, registration of immovable property, administration of spousal property and representation between spouses, donations between spouses and joint ownership, inheritance, etc., as well as harmonisation of the provisions of the law "On Entrepreneurs and Companies" with the FC and CC, because these laws and practices lead to infringements of women's rights. Here we must include the importance of a clear articulation of provisions related to donations between spouses and donations by one of the spouses that benefit a third party, or the relinquishment of property rights in order to prevent a further worsening of the position of women and children [as described above].
308. The trade legislation can provide for a more specific position of spouses as compared to other heirs, because according to the legislation as it stands now, the spouses are on equal standing with other heirs, which overlooks the fact that they are joint owners of the matrimonial property.
309. Provision of strict rules on credits and alienation of immovable property when these are initiated or done by one of the spouses, and strict sanctions in case of non compliance.

### **Capacity Building**

310. Training courses for judges, lawyers and notaries on women's economic rights and Gender Equality standards.

### **Awareness raising and promotion**

311. Increasing awareness of women of their economic and social rights and their encouragement to benefit from affirmative measures.

## 2.6 Rural Women

(Article 14 of the CEDAW)

### 2.6.1 Legislative framework and problems identified in the present situation

312. The Albanian legislation does not differentiate between women in rural and non-rural (urban) areas.
313. Women in rural areas find themselves in a worse situation of discrimination than those in urban areas. The economic situation is weak and dependent on remittances from abroad. Women are generally not employed and dependent on men financially. They engage mostly in housework. Unemployment in rural areas is very high; wages for agricultural or animal husbandry work are very low; no social security payments are made for women working in private businesses.
314. While the provisions of the CC (Article 222-230) speak of equal status of the members of the farming family, without making any distinction between head of household and other members on grounds of gender, there have been some legal interpretations in practice that have led to dilemmas – this because of a legal vacuum in the law which leads to uncertainty as to women’s position. Pursuant to Article 224, the farming family is represented by the head of the family, who, according to the law may be a man or a woman, but *de facto* is generally a man who represents the woman in trade or ownership relations with others. According to the law, a member of a farming family cannot be simultaneously a member of one or more additional farming families. The question arises in the case of marriage of a member of the farming family (daughter/son) when they move out of the original family homestead [this mainly happens to females because they move out of the parental home]. In this case, the son or daughter has the right to claim their own share of the property, which derives from the joint ownership of the farming family, in cash. If the daughter does not demand her share of property from the family of origin before she goes to live with her husband’s family, she loses her share to the family of origin. In the new family she joins, she gains new ownership rights, pursuant to Article 223. However, in cases of dissolution of the marriage and return to the family of origin, does she lose her share in the husband’s family’s property and does she regain her original rights in the family of origin? The legal vacuum and lack of clarity have to be clarified in order not to further aggravate the situation of women.
315. In relation to auxiliary services: there is a total lack of kindergartens, a drastic change from the not too distant past when they used to be free of charge, which was also pointed out in the State Report [p. 371 of the SR]. This forces women or other female members of the family to stay at home and care for the children themselves [p. 383 of the SR]. In fact, the State Report does not provide any information at all on the state of demand and supply in kindergarten and nursery facilities. It also does not provide any data on the total number of children of the appropriate age group to attend kindergartens or nurseries, and how many of the latter exist; neither does it provide an analysis of the fees system in relation to financial means available. This is one of the reasons why now and then we label the State Report as more of a descriptive document which does not address needs and possible solutions to problems.
316. There are no governmental structures in place for monitoring the implementation of legislation protecting the rights of women in rural areas at the

local level [in relation to this, refer to the above description of the real spread of the SLI offices and activities as compared to their legal obligations].

317. Important issues for women in rural areas:

- Health: provision and access to health services is problematic, especially in remote areas. In these areas there are generally only general practitioners with insufficient supporting medical staff. Women do not have adequate access to health checks and specific tests, so they are obliged to go to large urban centres or to Tirana. The infrastructure of health centres is poor and left to neglect. Low awareness among women about the need for regular health checks leads to late diagnosis and low levels of prevention.
- Education: a considerable number of girls do not attend secondary school regularly or drop out of it altogether upon reaching a certain age. We also have reservations as to the quality of education. Now and again the media have reported cases of teachers of history or other subjects who were ignorant of some basic facts.
- Domestic violence is at very high levels and is found in various forms: physical, psychological, economic, sexual, etc.
- Trafficking: Recently it has been noticed that girls from these areas, especially teenage girls, are being trafficked for prostitution purposes, to large urban centres in the country, i.e. internal trafficking.
- The level of emancipation of the women in these areas is low [“Women in Kukës give birth at home because their husband love them so!” – was the title of an article in a daily newspaper] and they are not involved in public life.
- Both men and women have fewer opportunities to develop a business through credit.

318. Regarding obligations deriving from Article 14(2, letter “a”) on the right to participate in the drafting and implementation of development projects, we would like to point out that there is generally a pronounced lack of participation by individual people in the decision-making process and in the implementation of development policies in Albania. But this is even more evident among women, especially those in rural areas. This is a tangible problem not only in the context of development projects undertaken by state authorities, but also for international organisations and NGOs. Women’s failure to participate causes many of these projects to fail, because the absence of opinions from the target communities that these projects are designed to help makes them ineffective.

319. *Women from the Roma minority* continue to face very difficult living conditions, poverty, domestic violence, discrimination, mainly with regard to access to education, social protection, health care, employment and adequate housing<sup>29</sup>. It can be said that the description of the situation of rural women applies to Roma women as well, but is even worse.

## **2.6.2 Conclusions and Recommendations**

### **Legal**

320. Legal improvements with regard to the rights of the members of a farming family, in case of marriage or dissolution of marriage;

321. Some of the recommendations related to Article 11 also apply to Article 14.

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<sup>29</sup> See EU Assessment Report 2009

### **Services**

322. Special measures need to be taken in order to improve the services network in rural areas, such as utilities (electricity, water), kindergartens, nurseries, and health care.

### **Awareness raising, training and professional education**

323. More intensive awareness raising work with regard to family and matrimonial rights, health care, educational rights, risk of trafficking, economic and labour rights, social security, domestic violence, etc.

324. Promotion of employment and support through courses that are closely linked with the potential employment market by diversifying needs and opportunities by each individual district.

### **Institutional capacities**

325. Extending the responsibilities of authorities in charge of monitoring the implementation of the legislation to cover oversight of the implementation of the rights of rural women at the local level.

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#### 4. ANNEX

##### *Annex 1 The questionnaire*

#### Questionnaire for NGOs

*related to the shadow report on the convention on the elimination of all forms of discrimination against women (CEDAW) -- and its implementation in Albania*

#### **Part one: Important instructions -- how to fill out the questionnaire**

- I. Anyone working on the questionnaire should take into account the daily problems faced by the NGO, according to its field of activity, as well as any other information concerning the status/situation of women in the city/village /area they are familiar with.
- II. Anyone working on the questionnaire should take into account the general positions of the organization in order to provide comprehensive and realistic information, emphasizing what is typical and special.
- III. Please indicate in the end the names of those who worked closely with you and assisted you to complete the questionnaire
- IV. Any question you respond should be considered from the following perspectives:
  - the actual situation of women in practice;
  - legal situation (if a law exists or not): if a law is in place, is it sufficient? what is not included in its scope and how is it implemented?
  - condition of state structures (whether there are structures dealing with relevant issues; in case such structures are in place: are they sufficient? how do they collaborate with your organization? what is their professional performance? which is the most active entity? what needs to be improved?)
  - status of NGOs addressing the relevant issues and constraints they face in offering adequate services; what needs to be improved?
  - what can be done to improve the women's condition within your organization's main field of activity, as well as in other areas?
- V. The questionnaire includes several questions. You may focus on those related to your area of expertise and elaborate carefully on them. For questions not related to your field of work you might simply indicate "this is not within our scope" or refer to issues that you have noticed and consider problematic.
- VI. note: There will be three experts working on this report. They will share the work and may individually submit additional questions to you. We need your collaboration and commitment! This is your report; we only systemize the information, based on your observations.
- VII. We thank you for your understanding and your continuing contribution to the protection of women's rights and other issues.

## Group of experts

### Part Two: Questionnaire

- A. What is the name of the NGO that you represent?
- B. What is the main field of activity of the NGO?
- C. Please indicate briefly and specifically the main issues related to women's rights addressed by the NGO you represent.
- D. Do you collaborate with other NGOs:
- a. That deal with similar issues as your organization? Yes-No
  - b. That deal with other issues? Yes-No  
If yes, please list them
  - c. At the regional level (including international NGOs)? Yes-No  
If yes, please list them
  - d. At the local level (national NGOs)? Yes-No  
If yes, please list them
- E. In your opinion, what are the most important discrimination problems faced by Albanian women? Please list some of them, based on your area of expertise.
- F. Do you think the relevant legislation is generally sufficient and fully guarantees women's rights (based on specific laws relevant to the issues your NGO deals with)?
- G. Do you have any specific suggestions/recommendations on an issue that needs to be addressed more clearly by legislation?
- H. Are you familiar with the Convention on the Elimination of all Forms of Discrimination against Women? Yes-No  
If yes, how did you learn about its existence and content?
- I. Are you familiar with the Measures Against Domestic Violence Act? Yes-No  
If yes, how did you learn about it?
- a. Do you think this law is comprehensive enough? Yes-No  
If not, what needs to be improved?
  - b. Do you think state authorities are informed about the law and implement it properly?  
Yes-NO. If No, please provide some explanations.
  - b. Do you think NGOs are informed about the law and make use of it? Yes-No  
Please provide pro and con arguments based on the situation.

- c. Do you think the women's community is aware of the Act's content and the possibilities it offers? Yes-No  
What is the basis for this conclusion?

J. Which is the most active state agency involved in addressing domestic violence?

- a. Judiciary
- b. Police
- c. Public prosecution office
- d. Local government
- e. NGOs
- f. Others

K. In your opinion, what else can **government agencies** do to protect women from domestic violence?

L. Which is the most **active** NGO addressing domestic violence issues? Please provide reasons for your assessment.

M. What **services is the state failing to provide** to victims of domestic violence?

N. What **services are the NGOs failing to provide** to victims of domestic violence?

O. What do you think **state agencies can do to support the work of NGOs** providing assistance to victims of domestic violence?

16. Do you think that human and women's trafficking continues to be prevalent in our country? Yes-No

Please provide arguments based on the activities of your organization. Please provide also any available statistics.

17. Do you think existing legislation is sufficient to address human trafficking? Please explain why.

18. Do you think existing legislation provides sufficient protection to victims of human trafficking? Yes-No.  
Please provide a rationale.

19. Which is the most active among the NGOs engaging in the fight against human trafficking that you are familiar with?  
What is the basis for your assessment?

20. Are the following state agencies effective in protecting victims of trafficking? Yes-No.  
Please explain why.

- a. Police forces: Yes-No
- b. Prosecution Office: Yes-No
- c. Courts: Yes-No

- d. NGOs: Yes-No
- e. The Bar: Yes-No
- f. Other: Yes-No

21. What are the main **services that state agencies fail** to provide to victims of trafficking?
22. What do you think are the main **services that NGOs are failing to provide** to victims of trafficking?
23. What is the general **economic situation of women** (based on your knowledge of the situation in the region where you work)?
24. Do you think **labour and employment laws** discriminate against women?
25. What do you suggest can be done to improve women's employment levels?
26. What do you think about women's labour remuneration? Is there "equal pay for equal work" or do the women's salary rates continue to be one of the main aspects of discrimination against women?
27. Which are the main **services the state is failing to provide** in order to protect women rights in the labour market?
28. Which are some of the **services that NGOs are failing to provide** in relation to protection of women rights in the labour market?
29. Is protection of women's health in the workplace adequate?
30. Are **health services generally effective** in addressing women's needs/requirements?
31. Is the level of women's awareness of the health protection, reproductive health and family planning adequate? Please explain why?
32. What do you suggest can be done to improve the women's health in general and specifically the reproductive health?
33. What are some of **services the state is failing to provide** in relation to women's health protection (reproductive health, etc)?
34. Which are some of the **services that NGOs are failing to provide** in relation women's health protection (reproductive health, family planning etc.)

35. Is there room for legislative improvements in relation to women's health protection and reproductive health?
36. Can you briefly define the situation of women in rural areas (based on your knowledge) in relation to:
- Education
  - Health
  - Economic situation
  - Employment
  - Domestic violence
  - Trafficking
  - Other (specify other problematic issues)
37. What do you suggest can be done to improve the situation of women in rural areas:
- in relation to legislation
  - how should state agencies improve their performance
  - what else remains to be done by NGOs
38. Does family law reflect the principles of equality and anti-discrimination?
39. Do you consider the actual situation of women's rights within the family to be in accordance with the level of protection provided by law?  
Please provide examples of cases (you are aware of) involving the violation of women's rights within the family.
40. Which are the main areas calling for greater awareness-raising among women for the protection of their family and marital rights?

**Third Part: suggestions and recommendations**

41. Which of the following issues require greater attention in NGO reports on CEDAW?
- Non-discrimination and positive measures.
  - Relevant measures: special measures to fight discrimination.
  - Political representation; decision-making
  - Employment/economic situation
  - Education
  - Health
  - Family rights
  - Women living in rural areas
  - Women belonging to minority groups
  - Gender-based violence
42. What are the most pressing problems in relation to discrimination against women in Albania?
43. What would be your recommendations for NGO actions against women's discrimination? What specific issues would you highlight?
44. What would be your recommendations for government action addressing women's discrimination? What specific issues would you highlight?

45. What would be your recommendations for international partners' actions against women's discrimination? What specific issues would you highlight?
46. Do you think the revision of domestic legislation aimed at eliminating all discriminatory provisions against women has been completed?
47. Do you think [Albanian] women have effective legal remedies against discrimination?
48. Why do women use infrequently existing legal protections against discrimination?
49. Does the staff of your organization have sufficient information on the CEDAW and its Optional Protocol?
50. Has your organization worked to disseminate information on CEDAW among communities, NGOs, members of the judiciary?
51. Has your organization used the recommendations of the CEDAW Committee on Albania, and its decisions on various individual communications, as lobbying and advocacy tools?
52. Do you think the government has adopted sufficient measures to prevent school drop-outs?
53. Do you think health services -- and in particular reproductive health services -- are accessible to women?
54. Do you consider useful measures undertaken by the government to increase women's participation in decision-making processes?
55. Do you think that sufficient measures have been undertaken to ensure the improvement of women's economic situation in order to decrease their vulnerability to trafficking, violence and other [adverse] social phenomena?
56. Do you think the media play any role in eradicating or reinforcing gender stereotypes?
57. Has the Department for Equal Opportunity Policies of the Ministry of Labour, Social Affairs and Equal Opportunities offered your NGO any opportunity to collaborate?
58. Have you submitted any complaints to the Ombudsperson's Office for discriminatory treatment of individuals?
59. Do you think the rights of women in penitentiaries and pre-trial detention centers are respected? If so, please attach any relevant reports.