

# On the Road to the EU

Monitoring  
Equal Opportunities  
for Women and Men  
in South Eastern Europe

2006

ALBANIA  
BOSNIA AND  
HERZEGOVINA  
CROATIA  
KOSOVO  
MACEDONIA  
MONTENEGRO  
SERBIA

# On the Road to the EU

Monitoring Equal Opportunities  
for Women and Men in

## Albania

by *Artur Metani, LL.M, Sonila Omari*

2006

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## Preface

This monitoring report – “On the Road to the EU” – was prepared as part of the Open Society Institute’s Network Women’s Program (NWP) “Bringing the EU Home” Project. It is a three-year project (2004–2006) that aims to promote awareness, advocacy, and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level gender equality mechanisms effectively. The project further aims to help increase the importance of equal opportunities on the European agenda.

The “Bringing the EU Home” Project stemmed from OSI’s EU Monitoring and Advocacy Program’s efforts to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and to ensure that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anticorruption. This independent project was developed to evaluate the status of accession countries from the perspective of the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with.

In 2005, a new phase of the project – “On the Road to the EU” – was started. After concentrating on new member states of and acceding countries to the EU,<sup>1</sup> we started to focus on the candidate and potential candidate countries from South Eastern Europe. Albania, Bosnia and Herzegovina, Serbia and Montenegro, including Kosovo, are potential candidate countries to the EU, while Croatia and Macedonia are already candidates. To use their preparation period for EU membership effectively, NWP invited seven South Eastern European nongovernmental organizations to join the “Bringing the EU Home” Project. With this phase, the project aims to help raise the significance of equal opportunities within the process of new and future accession negotiations, creating a unique platform for candidate and potential candidate countries.

An assessment of the status of equal opportunities between women and men, *de jure* and *de facto*, was carried out in the above seven entities. The EU directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions, and practices. The project focused on the directives related to the principle of equal pay for work of equal value; equal treatment as regards employment;

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<sup>1</sup> See the publications of the previous monitoring phases: *Monitoring the EU Accession Process: Equal Opportunities for Women and Men*, Budapest: OSI, 2002; and *Equal Opportunities for Women and Men: Monitoring law and practice in new member states and accession countries of the European Union*, Budapest: OSI, 2005.

protection of pregnant women, breastfeeding women, and women who have recently given birth; and the situation of self-employed workers.

As a result of the assessment, seven monitoring reports were prepared. In this publication you can find the summary of the results, while the full reports themselves are available online.<sup>2</sup> To provide effective tools for advocacy at national and EU levels, the reports outline specific areas of concern and issue clear recommendations to governments on legislation, institutional mechanisms, policies, programs, and research initiatives. The recommendations focus on how laws and their implementation in participating countries should be in line with EU standards, to ensure that gender equality becomes a reality in the countries monitored.

The Network Women's Program worked in cooperation with the relevant members of the International Gender Policy Network (IGPN) in this new phase of the project.

We would like to thank all individuals and partner organizations who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

Éva Földvári  
*Senior Manager of the Network Women's Program*  
*Open Society Institute*

Valdet Sala  
*Coordinator of the "On the Road to the EU" sub-project, 2005–2006*  
*Consultant to the Network Women's Program*  
*Open Society Institute*

---

<sup>2</sup> See [www.soros.org/women](http://www.soros.org/women).

# Acknowledgements

## NATIONAL EXPERTS

<b>Albania</b>	Artur Metani, LL. M, <i>Faculty of Law, University of Tirana</i> Sonila Omari, <i>Faculty of Law, University of Tirana</i>
<b>Bosnia and Herzegovina</b>	Nada Ler Sofronic, Ph.D., <i>Research, Policy and Advocacy Center "Woman and Society," Sarajevo</i> Branka Inic, <i>Independent Expert</i> Rada Lukic, <i>Independent Expert</i>
<b>Croatia</b> <sup>1</sup>	Jagoda Milidrag Šmid, <i>Union of Autonomous Trade Unions of Croatia, County Office, City of Zagreb</i>
<b>Kosovo</b>	Besim M. Kajtazi, <i>Independent Expert</i>
<b>Macedonia</b>	Jasminka Friscik, <i>Association for Emancipation, Solidarity and Equality of Women of Republic of Macedonia</i> Lidija Dimova, <i>Macedonian Center for European Training</i>
<b>Montenegro</b>	Nina Vujovic-Krgovic, <i>Independent Expert</i> Darko Curic, <i>Independent Expert</i>
<b>Serbia</b> <sup>2</sup>	Marija Lukic, <i>Voice of Difference – Group for promotion of women’s political rights</i>

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These national experts prepared full monitoring reports on equal opportunities for women and men on the basis of a detailed methodology prepared under the project “Bringing the EU Home.”

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## THE EDITORIAL TEAM

Zsuzsa Béres, *English language editor*

Bea Szirti, *technical editor*

Eszter Stahl, *designer*

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## INSTITUTIONAL PARTNERS OF THE NETWORK WOMEN’S PROGRAM

Albania	Eglantina Gjermeni, <i>Gender Alliance for Development Center</i>
Bosnia and Herzegovina	Nada Ler Sofronic, <i>Research, “Policy and Advocacy Center Woman and Society,” Sarajevo</i>
Croatia	Sanja Sarnavka, <i>B.a.B.e. Women’s Human Rights Group</i>
Kosovo	Luljeta Vuniqui, <i>Kosovar Gender Studies Center</i>
Macedonia	Marija Savovska, <i>Association of Citizens Akcija Združenska (Women’s Action NGO)</i>
Montenegro	Maja Kovacevic, <i>Foundation Open Society Institute, Representative Office</i>
Serbia	Slavica Stojanovic, <i>Reconstruction Women’s Fund</i>

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## INTRODUCTION

In tandem with the political changes in Central and Eastern Europe, in the *annus mirabilis* of 1990 Albania underwent a political transformation accompanied by the emergence of corresponding new institutions. Post-1990 legislation reflects Albania's commitment to political democracy, aligning it with political and institutional standards in developed democracies. These changes have also brought about significant changes on issues of gender equality, including transformation of the legal system and the emergence of a new institutional framework.

Albanian legislation has changed radically and is now in the process of harmonization to incorporate the requirements of relevant European Union (EU) law into the national legal order. As a potential candidate country, Albania is preparing for eventual EU membership, and is in the midst of bringing its legal framework in compliance with the requirements of EU directives and guidelines. In regard to gender equality, Albanian legislation has generally met priorities established in the Stabilization and Association Process (SAP) with the European Union. However, as the following report details, implementation of these laws faces major hurdles.

In recent years, significant progress has been made in developing national legislation to promote the protection of women's rights as basic human rights, and foster equality between women and men in the economy and in public life. The Albanian government has endorsed this equality by enacting the appropriate legislation, giving women equal rights and obligations with men. However, the absence of political mechanisms to effectively enforce the new laws has actually increased gender inequality, which directly impairs the process of economic development, democratization, and political stability. Without effective enforcement, gender stereotypes and traditional mentalities preserve the structural inequalities between women and men and unequal power relations between them.

The grassroots social change movement (mainly women's organizations) has made an important contribution during these years to the enactment of gender sensitive legislation, such as the Act on Reproductive Health, 1995, the Family Code, 2003, and the Gender Equality Act, 2004.

## EQUAL PAY

**Council Directive 75/117/EEC of February 10, 1975** on the principle of equal pay for male and female workers for equal work or work of equal value.

### SECTION 1 – National Legal Framework Concerning the Principle of Equal Pay for Work of Equal Value

Albania's Constitution and national legal order enshrines the fundamental principles of equal rights for the country's citizens. However, the Albanian Constitution does not provide specifically for the equal pay principle. The Labor Code, on the other hand, does introduce the principle of equal pay. Specifically, the Albanian legal framework on this matter is the following:

#### 1.1 The Constitution

The Albanian Constitution does not explicitly provide for the principle of equal pay for work of equal value. In the chapter on Fundamental Human Rights and Freedoms, Article 18 makes a general proclamation of equal rights for all citizens.<sup>1</sup> Although not specifically expressed in the Constitution, citizens may not be discriminated against based on grounds of gender, religion, and so forth. Placing gender ahead of other grounds on which discrimination is not allowed underscores the importance and the value gender equality has in a democratic society.

#### 1.2 The Labor Code

The Labor Code<sup>2</sup> is the principal law governing labor relations between employers and employees, including employers' obligations *vis-à-vis* equal treatment of employees in

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<sup>1</sup> All are equal before the law. No one may be unjustly discriminated against on the grounds of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic conditions, education, social status, or parentage. Article 18 of the *Albanian Constitution*, 2. The Constitution of Albania was approved by Act No.8417 of October 21, 1998, approved by a referendum on November 22, 1998, and became effective via promulgation by presidential decree No.2260, November 28, 1998.

<sup>2</sup> The *Labor Code Act*, No.7961 of July 12, 1995.

all aspects of labor relations. The Labor Code contains a specific provision for the equal pay for work of equal value principle.<sup>3</sup>

### 1.3 The Act on Gender Equality

This act of law,<sup>4</sup> too, aims at ensuring the implementation of equal rights between men and women, guaranteed under Article 18 of the Constitution.<sup>5</sup> This law, just like the Labor Code, provides for the employer's obligation to render equal pay for work of equal value.<sup>6</sup>

### 1.4 International Treaties

Albania has ratified a number of international accords under which Albania is obliged to guarantee women's right to equal treatment for equal work. The following are the main international agreements Albania has ratified:

- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, Article 11, paragraph 1)<sup>7</sup>
- International Covenant on Economic, Social and Cultural Rights<sup>8</sup>
- European Social Charter<sup>9</sup>

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<sup>3</sup> Ibid., Article 115 stipulates that "The employer shall provide equal pay for men and women for work of equal value. Differences in pay, based on quality and amount of work, professional qualification and employment period, regardless of gender, shall not be considered discriminatory. In the event that the employee provides credible information substantiating the fact of discrimination, the employer shall bear the burden of proof to establish otherwise. Discrimination shall cease when the employer grants compensation to the employee discriminated against, which shall include all the advantages available to the employee of the other sex."

<sup>4</sup> The *Gender Equality Act*, No.9198 of July 1, 2004.

<sup>5</sup> Ibid., Article 1.

<sup>6</sup> Ibid., Article 4, paragraph c.

<sup>7</sup> Ratified by Act No.7767, November 9, 1993.

<sup>8</sup> Ratified on October 4, 1991.

<sup>9</sup> According to Article 4, paragraph 3 of the *European Social Charter*, the parties are obliged to recognize the rights of employees, both men and women, to receive equal pay for work of equal value. Ratified by Act No.8960, October 24, 2002.

- Framework Agreement between the Republic of Albania and the European Community on general principles for the participation of Albania in Community programs<sup>10</sup>

The legal status of international accords within the Albanian legal order is set forth in Articles 121, 122, and 123 of the Constitution. Article 121 stipulates that “the Republic of Albania shall ratify international agreements when they provide for human rights.”<sup>11</sup> All ratified international agreements are incorporated into the domestic legal order upon publication in the Official Gazette, and these agreements are directly applicable.<sup>12</sup> Additionally, the Constitution allocates a higher position to international agreements in the hierarchy of normative acts of legislation. Accordingly, ratified international agreements come right after the Constitution as normative acts with legal power in the territory of the Republic of Albania,<sup>13</sup> and a ratified international agreement prevails over domestic laws in the event of discrepancy between the two.<sup>14</sup>

## SECTION 2 – Implementation of the Principle of Equal Pay for Work of Equal Value: Legal Foundations and Institutional Structures

### 2.1 General presentation

Albanian legislation does not contain specific legal provisions regarding the principle of equal pay for men and women. All acts and work contracts contrary to the Labor Code and other laws will be null and void, and persons violating the law will be charged under administrative, civil, and criminal law provisions.<sup>15</sup> Also, the 2004 Gender Equality Act provides that: “Any violations of this law shall be punishable, as the case requires, under the Administrative, Civil, or Criminal Code.”<sup>16</sup> The legal framework of the 2004 Gender Equality Act sets forth the equal pay for work of equal value principle for both the public and the private sector. The provisions of the 1995 Labor Code and the 2004 Gender Equality Act apply to all employers and employees, in the public and private sector alike. The 1993 Act on Collective Bargaining Agreements stipulates that:

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<sup>10</sup> This framework agreement provides for the participation and contribution of Albania in Community programs. Among these programs, the Agreement lists efforts to combat discrimination and gender equality.

<sup>11</sup> Article 121, paragraph 1/b of the Constitution, 1998.

<sup>12</sup> Ibid., Article 122, paragraph 1.

<sup>13</sup> Ibid., Article 116.

<sup>14</sup> Ibid., Article 122, paragraph 2.

<sup>15</sup> Article 4, the *Collective Bargaining Agreement Act*, No.7673 of February 17, 1993.

<sup>16</sup> Article 15, the *Gender Equality Act*, 2004.

“This law shall apply to all employees in the private or state sector, to Albanian or foreign employers.”<sup>17</sup>

The 2004 Gender Equality Act does not specifically provide for the application of this law to both the public and the private sector. However, it may be derived from the aim and certain articles of this law that its norms extend to both sectors. As Article 1 stipulates: “the aim of this law is to ensure the implementation of equal rights between women and men, guaranteed under Article 18 of the Albanian Constitution.” Also, the legal repercussions for violating this law are administered by the State Work Inspectorate.<sup>18</sup>

The 1995 Labor Code regulates relations between both public and private sector employees and employers. It does not explicitly stipulate the principle of equal pay for men and women for both the public and the private sector, but the Labor Code applies, with a few exceptions, to all labor relationships, and the private sector is not mentioned as an exception. Article 115 of the Labor Code sets forth the principle of equal pay for work of equal value for women and men as applying to both the public and the private sector. The 2004 Gender Equality Act stipulates that: “The Minister of Labor and Social Affairs shall be the public authority responsible for monitoring and enforcing the principle of equal pay for work of equal value for men and women. The Minister of Labor and Social Affairs shall control and supervise the subordinate institutions that take measures to improve equal opportunities for both women and men, and to eliminate direct and indirect discrimination on the grounds of gender.”<sup>19</sup> The minister of labor and social affairs monitors the implementation of the equal pay standard through various subordinate institutions, such as: The National Service of Labor; the State Work Inspectorate; the Social Insurance Institute; the General Administration of State Social Service.

## 2.2 Job classification system

Albania uses a job classification system to determine rates of pay based on the law on the Status of Civil Servants.<sup>20</sup> This law provides that “The Council of Ministers shall establish the Public Administration Department with the following competences: (...) prepares for the Council of Ministers the classification and the evaluation of jobs based on the proposal of the interested ministry or institution and on the approval of the

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<sup>17</sup> Article 1, the *Collective Bargaining Agreement Act*, 1993.

<sup>18</sup> Article 15, the *Gender Equality Act*, 2004.

<sup>19</sup> *Ibid.*, Article 7.

<sup>20</sup> The *Status of Civil Servants Act*, No.8549 of November 11, 1999.

Ministry of Finance.”<sup>21</sup> In accordance with this law, the Council of Ministers has issued Decision No.711 of December 27, 2001, on the Structures and Levels of Payments for Civil Servants in the Institutions of Central Administration, Administration of the President of the Republic, Administration of the Assembly and Clerks of State Budget Institutions. This decision sets forth rates of pay based on the job classification system, and also categorizes jobs into four classes. These are: managerial, advisory, coordinative, and implementing positions.<sup>22</sup> This governmental decision addresses and is valid only for public sector work. Meanwhile, there is no legally regulated job classification system in place for the private sector.

### **2.3 Available legal procedures in cases involving the violation of the principle of equal pay for work of equal value**

Under the Albanian Constitution everyone is entitled to bring a case before an independent and impartial court of law to defend his/her constitutional and legal rights, liberties, and interests, and has the right to a fair and public due process within a reasonable period of time. The Albanian legal system is unlikely to establish special courts to hear employment disputes. Legal procedures and time limits in cases involving violation of the principle of equal pay for work of equal value are subject to the provisions of the Code of Civil Procedures. If mediation fails to peacefully resolve an individual or collective complaint against the employer, all parties to the dispute have the right to submit their complaint to the Court of First Instance. Thereafter, all parties are entitled to appeal the Court of First Instance decision to the Court of Appeals and, eventually, to the Supreme Court.

Under the 1995 Labor Code everyone has the right to seek legal redress in the event that he/she believes his/her rights have been violated.<sup>23</sup> Furthermore, according to the 2004 Gender Equality Act, every citizen who believes that the principle of equal pay for work of equal value is not respected because of his/her gender is entitled to demand restoration of his/her right.<sup>24</sup> He/She may present the complaint to his/her employer first, and may also ask workers’ organizations to help resolve the situation. Although not specifically stated as such, this supportive role of workers’ organizations may be

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<sup>21</sup> Ibid., Article 4, paragraph 4, iii.

<sup>22</sup> See *Decision* No.711 of December 27, 2001 “On the Structures and Rates of Pay for Civil Servants in the Institutions of Central Administration, the Administration of the President of the Republic, the Administration of the Assembly, and the Clerks of State Budget Institutions.”

<sup>23</sup> Article 201, paragraph 1, the *Labor Code*, 1995.

<sup>24</sup> Articles 11/1, 5 and 4, the *Gender Equality Act*, 2004.

regarded as a conciliation process. Anyone, who has allegedly been discriminated against on the grounds of gender has the right to file suit in a court of law.<sup>25</sup> If the allegation of discrimination is substantiated in court and the court rules in favor of the complainant, the employer is ordered to cease its discriminatory actions and to pay damages for the material or moral injury the complainant has sustained on account of discrimination.<sup>26</sup>

If an act of discrimination has occurred in the public sector, the complaint for the violation of the gender equality principle is lodged with the most senior official in the public administration hierarchy. In the event that the responsible official rules in favor of the complainant, the individual responsible for the act of discrimination is punishable by a fine, except in cases where the violation of gender equality legislation entails consequences that constitute a breach of the Civil or Criminal Codes. In such an event, the same legislation that applies to the State Work Inspectorate will also govern the meting out of fines for such acts of discrimination. Additionally, Article 19 of the 1993 Act on Collective Bargaining Agreements provides that if one party does not respect, fully or in part, its contractual obligations, the other party has the right to file suit in court within 15 days from the date the violation is detected. The law on the "State Work Inspectorate"<sup>27</sup> also proffers another option for lodging a complaint against violations of Labor Code provisions. Article 19 of this law stipulates that employees have the right to file a complaint with the Work Inspectorate, in the event that the employer does not adhere to labor law provisions.

No special State protections are afforded to workers who have initiated court proceedings. As in any case conciliated or litigated before a court of law, state courts ensure compliance with procedures and time limits set forth in codes of procedures.

## 2.4 Out-of-court alternatives

Chapter VII of the 1995 Labor Code stipulates that all collective labor disputes be resolved through conciliation. First, a mediator will work together with the parties to the dispute, and if the matter cannot be successfully settled through mediation, the Conciliation Office will step in to resolve it. Should it, too, fail to resolve the dispute, the case can then be brought before a Court of Arbitration. The 1995 State Work Inspectorate Act also establishes an out-of-court alternative, namely the option to lodge a complaint with the Inspectorate for violations of Labor Code provisions by employers. The Inspectorate may impose fines of up to 50 times that of the minimum

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<sup>25</sup> Ibid., Article 16, paragraph 1.

<sup>26</sup> Ibid., Article 16, paragraph 2.

<sup>27</sup> The *Work State Inspectorate Act*, No.7986 of September 13, 1995.

wage. The 2004 Gender Equality Act provides the opportunity for employees to file a complaint against an employer and request support from trade unions.

A significant out-of-court alternative to redress acts of discrimination perpetrated by a public administration organ is the office of the Ombudsperson or People's Advocate. The Constitution stipulates that "The People's Advocate shall defend the rights, freedoms and legitimate interests of individuals from unlawful or improper action or failure to act on the part of organs of public administration."<sup>28</sup> Reports issued by the Office of the Ombudsperson do not actually report breaches by public administration organs of the equal pay for work of equal value principle.

## 2.5 Means of informing employees of their right to equal pay for work of equal value

Article 38 of the Labor Code obliges employers to inform employees of their rights and obligations and to acquaint them with the Labor Code, thus bringing to their attention relevant legal provisions and enforcement measures *vis-à-vis* the equal pay principle and the available complaint mechanism. Alongside the 1995 Labor Code provisions, the 2004 Gender Equality Act stipulates that the chairman of the Gender Equality Committee organize public information campaigns to promote the principle of "equality on the ground of gender in society."<sup>29</sup>

Article 3 of the Act on the "State Work Inspectorate" puts the Inspectorate in charge of educating employees and employers about their rights and obligations under prevailing labor legislation, and disseminating public information about labor laws. Article 10 of the same obliges the Inspectorate to provide technical assistance, and advise employers and employees about effective means of applying labor legislation. The Inspectorate informs and instructs employers and employees about employment legislation in the fields of occupational health, safety, and labor relations through seminars, radio broadcasts, and videos that explain employment law and provide suggestions on how to apply it.

The Act on Trade Unions<sup>30</sup> does not explicitly oblige trade unions to inform employees about their rights.

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<sup>28</sup> Article 60, paragraph 1, the 1998 Constitution.

<sup>29</sup> Article 17/g, the *Gender Equality Act*, 2004.

<sup>30</sup> *The Trade Unions in the Republic of Albania Act*, No.7516, of October 7, 1991.

## 2.6 Role of trade unions

According to Article 176 of the Labor Code, trade unions are professional organizations that represent and protect the economic, professional, and social rights and interests of their members. According to Articles 18, 19 of the 1991 Trade Union Act, trade unions have the right to meet and confer with state institutions over employment disputes, wages, working conditions, and even to receive gratis economic and financial data and statistics.

Trade Unions play an important role in protecting employee rights. In the event of breach of employee rights or of disputes between employers and employees, trade unions may act as mediators to resolve the issues. Should mediation efforts fail, under article 182 of the Labor Code trade unions are entitled to bring the case to court on their members' behalf. This right is also granted under article 9 of the 1991 Trade Union Act, which stipulates that "in cases of an employment dispute between employees and employers, trade unions shall have the right to bring the case to court and to represent employee interests."

The 1991 Trade Union Act does not explicitly grant trade unions the right to initiate proceedings in matters involving gender equality, but since the respective laws stipulate that trade unions are entitled to initiate proceedings to protect the interests of their members and to ensure compliance with labor legislation, collective agreements, and individual labor contracts,<sup>31</sup> and since "equality" is one of the most important principles set forth in employment legislation, it may therefore be inferred that trade unions should also be able to initiate proceedings in matters involving gender equality. According to Article 182 of the Labor Code, trade unions may initiate proceedings not only on behalf of a group of employees, but also on behalf of an individual employee who is a trade union member. However, labor legislation does not provide for pro bono legal aid to workers who want to pursue their claims.

The 1993 Collective Bargaining Agreements Act does not stipulate that a collective bargaining agreement should include the principle of equal pay for men and women, but under this law provisions of collective contracts that run contrary to the provisions of the Labor Code and other applicable legislation will be null and void.<sup>32</sup> Since the principle of equal pay for work of equal value is enshrined in labor legislation, the collective bargaining agreement ought to include this standard, or at least should not include any discriminatory provisions regarding equal pay.

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<sup>31</sup> Article 182, the *Labor Code*, 1995.

<sup>32</sup> Article 4, the *Collective Bargaining Agreement*, 1993.

## SECTION 3 – Factual Background with Regard to the Principle of Equal Pay for Work of Equal Value: Related Research and Statistics

The gender dimension of development issues in Albania is now acknowledged as significant in several respects. First, women are the largest impoverished population in the country; second, the economic and social status of women in society has not changed much over the past two decades despite intensive efforts by the government and civil society organizations to make a difference.

In recent years, significant progress has been made in developing national legislation to promote the protection of women's rights as basic human rights, and foster equality between men and women in the economy and public life. The Albanian government has legally sanctioned equality between men and women by enacting the appropriate legislation. Accordingly, Albanian women now have the right to equal treatment under the law. However, the lack of effective enforcement of these laws has drastically exacerbated gender inequality, with consequences to economic development, democratization, and political stability.

### 3.1 Equal pay

As regards implementation of the principle of equal pay for women and men, paragraph 3, Article 115 of the Labor Code stipulates that the employer provide equal pay (wage) to women and men for work of equal value. This provision is in compliance with all international accords (ILO Convention No.100 on Equal Remuneration, 1951), to which Albania is a signatory.

During the past decade, wage levels have steadily inched up. Up to the end of 1989, the working wage was the sole source of income for the entire working population. Wages were determined by the state within a set income system, based on the quantity and quality of work performed. Since 1991, wages have risen in all key sectors of the economy.<sup>33</sup> As part of this trend, a new wage system was inaugurated for the remuneration of public employees. Taking into consideration the type of job, the accompanying responsibilities, and the difficulties arising from work duties, the new system created 22 categories and was intended as a first step in the process of differentiating skilled and unskilled work.<sup>34</sup>

<sup>33</sup> Ministry of Labor and Social Affairs, *Përkatësia gjinore dhe punësimi në Shqipëri – Çështje të Integritetit Gjinnor në Politikat e Punësimit në Shqipëri* (Gender and Employment in Albania – Gender Mainstreaming Issues in the Employment Policies of Albania) 2005. Tirana: United Nations Development Program, 32.

<sup>34</sup> Ibid.

On paper women are entitled to equal pay with men for work of equal value, but in actual fact wage differentials are quite evident in the incomes of women and men in Albania. Men are usually dominant in managerial positions and women are more commonly employed in fields with lower-paying jobs so the average remuneration of men is much higher than that of women. Data provided by the Institute of Statistics (INSTAT), shows that women hold a mere 26.7 percent of managerial positions, versus the 73.3 percent held by men. Women with post-graduate professional credentials hold a higher percentage of managerial positions.

Additionally, wage differentials are evident in sectors such as health and education where women comprise the majority of employees. The average wage for health sector jobs is ALL 12,759 per month (100 euros);<sup>35</sup> the figure for the education sector is ALL 14,785 per month (120 euros) (Source: LSMS 2002).

**Table: Average monthly wage by sex and age groups<sup>36</sup>**

Age groups	Male	Female	Total
15-19	25910	15759	22617
20-24	21801	142783	18945
25-29	28670	18247	24195
30-34	25685	14640	22303
35-39	27702	16351	24237
40-44	25499	16498	22127
45-49	27497	20261	24956
50-54	27910	17125	24234
55-59	20382	23228	20691
60-64	24274	– (women at this age are retired)	24274
65 +	16240	–	16240
<b>Total</b>	<b>26041</b>	<b>17154</b>	<b>23106</b>

According to the World Bank, men on average have had higher incomes than women in all sectors, except the nonprofit sector of NPOs and humanitarian organizations. Wage differentials detrimental to women are even more evident in the private sector

<sup>35</sup> Approximately equals 104 euros (as to the exchange rate of February 7, 2006: 1 euro = Albanian leke 123).

<sup>36</sup> INSTAT, *Women and Men in Albania*. 2005. Tirana: INSTAT, 40.

(World Bank, Albania Poverty Assessment, June 2003, p. 67, based on LSMS 2002 data).

### 3.2 Gender Pay Gap

INSTAT data shows that the women's average monthly wage is lower than that of men's in all economic sectors.<sup>37</sup> The differential is greater for employees in the non-agricultural private sector and it affects women of all ages. On the other hand, the average wage differential between men and women is rather small in the public sector. Indeed, in some branches of this sector it does not even exist.<sup>38</sup>

### 3.3 Discrimination in employment and at work

Besides gender discrimination, discrimination based on age also impacts employment opportunities for women. The likelihood of pregnancy makes certain women of reproductive age undesirable employees. Likewise, women over the age of 35 are not preferred. Despite existing legal protections for equal rights accorded to women and men under the Albanian Constitution, job advertisements printed in the daily press reveal signs of gender and age discrimination. Most advertisements for private-sector job openings seek young women under 25, mainly for secretarial, assistant, or sales positions. At the same time, listings for vacant managerial positions show preference for male jobseekers. Even when women hold identical qualifications with men, they are seldom hired to fill managerial positions either in the private or the public sector.

### 3.4 Women in the tertiary sector<sup>39</sup>

INSTAT data on the growing number of not-for-profit enterprises demonstrates a more marked female presence in the tertiary sector.<sup>40</sup> Figures show that more women and girls than men and boys work in this sector. However, only very few women and

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<sup>37</sup> INSTAT, *Women and men in Albania 2003*. 2004. Tirana: INSTAT, 14.

<sup>38</sup> Ibid.

<sup>39</sup> The term *tertiary sector* means commerce and services.

<sup>40</sup> Women's Center, *Studim mbi kontributin e shkruar të lëvizjes së gruas në Shqipëri 1990–1998*. (An Overview of the Written Contribution of the Women's Movement in Albania 1990–1998.) 2000. Tirana: International Training Centre and Training Activities for Women, Italy, 61.

girls hold executive posts. Generally speaking, their role is primarily in activity management, rather than supervisory responsibilities.<sup>41</sup>

### 3.5 Women in the private sector

Data compiled by INSTAT (2004) shows that the number of women running private businesses is still very low. Only 17 percent of all private business managers are women, and the most women-run registered businesses are concentrated in Tirana (31 percent), Durrës (8.7 percent), Elbasan (6.2 percent), and Lushnje (3.5 percent). In terms of the urban and rural divide, 85 percent of women-run businesses are located in urban areas, with 15 percent situated in the countryside.<sup>42</sup>

According to INSTAT data, the typical female business enterprises are in retail and wholesale; in the health sector, where women work, for instance, as dentists and pharmacists; in legal services, where they are, say, public notaries and lawyers; or in services like hairdressing and dressmaking.

### 3.6 Women in the public sector

INSTAT figures show that roughly 44 percent of public sector employees are female. Analysis by occupation in this sector shows differing rates of female participation.<sup>43</sup> Only 26 percent of lawmakers, senior officials, and managers are female, whereas precisely the opposite is true for the occupational group of technicians, professionals, and clerks where the majority, or 56 percent, of employees are female.<sup>44</sup>

### 3.7 Financial services and women's access to bank credit

It is virtually impossible to obtain data on bank loans received by women in Albania during the 1999–2000 period, primarily owing to a dearth of formal reports on the

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<sup>41</sup> Ibid.

<sup>42</sup> Milan Municipality, Foreign Relations Sector, *Woman's Business in Albania*. 1999. Tirana: Milan Municipality, Foreign Relations Sector, 12.

<sup>43</sup> INSTAT, *Women and men in Albania 2003*. 2004. Tirana: INSTAT, 13.

<sup>44</sup> Ibid.

granting of such loans.<sup>45</sup> Clearly, however, women working in the private sector face difficulties in procuring bank loans. Banks usually prefer men to run a business.

Women entrepreneurs or women wishing to start a business do not receive any special assistance, direct or indirect, from the government. There are no state policies on women's enterprises. Women have scarcely any ties with the banking system either as bank loan recipients, managers of their own business-related transactions, or even as owners of a simple savings account. Bank services for women remain unsatisfactory, most notably because of the lack of a modern system of payment, the latter being one reason why women keep aloof from banks.. Additionally, other considerable obstacles hinder people from turning to the banks for loans: for example, high interest rates for credit charged by the banking system (varying from 13 to 43 percent),<sup>46</sup> and stringent collateral requirements for loan applications (from 100 to 200 percent).<sup>47</sup>

### 3.8 Women in the informal economy<sup>48</sup>

It is common knowledge the world over that the informal economy blossoms during transition periods. Many factors accelerate its genesis and development. The absence of state control and employment contracts in the free job market has engendered the rise of the informal market. Informal market employers not only pay low salaries, but also do not pay employer contributions to the country's social and health insurance system. This state of affairs directly impacts women's lives, women being the most heavily involved in the informal economy. At the same time, women are more sensitive toward social and health issues, since they are first and foremost, and often the only ones, who care for children and the elderly.<sup>49</sup>

<sup>45</sup> Katro, Jeta, ed. *Gender and Women's Economic and Political Status in Albania*. 2001. Tirana: Women in Development, 29.

<sup>46</sup> Hafizi, Majlinda, *Female Entrepreneurship in Albania 2002*. For more information, please visit <http://www.ea2000.it/file%20per%20numero1-2004/forli12.pdf>. Last accessed: October 27, 2005.

<sup>47</sup> Ibid.

<sup>48</sup> The informal economy comprises economic activities that are not officially reported or identified, and as such cannot be included in the national GDP.

<sup>49</sup> Women's Center, *Studim mbi kontributin e shkruar të lëvizjes së gruas në Shqipëri 1990–1998*. (An Overview of the Written Contribution of the Women's Movement in Albania 1990–1998.) 2000. Tirana: Women's Centre, 70.

## SECTION 4 – Conclusions. Areas of Concern. Recommendations

### 4.1 Conclusions

The principle of equal pay for work of equal value is incorporated into Albanian legislation. The legal framework guarantees women's right to receive equal pay for work of equal value. Also, Albanian laws prohibit all forms of discrimination on grounds of sex *vis-à-vis* all aspects and conditions of remuneration. The Albanian legal framework defines and stipulates the concept of equal pay for work of equal value in the same manner and with the same substance as set forth in Council Directive 75/117/EEC. However, the implementation of this important principle faces challenges in Albania's private sector. While monitored and implemented quite efficiently and in a well organized manner in the public sector, more needs to be done to address the issue in the private sector.

### 4.2 Areas of concern

- Although Albanian legislation offers the same standard for the protection and equal remuneration of work of equal value as provided in EU directives, such equality remains theoretical. Its implementation has not been fully achieved in practice.
- Discrimination against women and problems implementing the law are rooted in Albanian mentality and culture. Policymakers' and implementers' perspectives and way of thinking play a particularly significant role.
- Under-representation of women at decision-making levels has had a negative impact on the design of public policies sensitive to gender issues.
- Another issue of concern is that women's employment in the private sector without formal employment contracts and without social insurance is an obvious infraction of the law. There is evidence that 70 percent of women working in the private sector do not have formal employment contracts and therefore they are not insured.<sup>50</sup> The situation is even worse for foreign employees.<sup>51</sup>
- Certain job advertisements contain discriminatory criteria (requirement to be unmarried, young, pretty, etc.), and are examples of discrimination against women in the labor market.

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<sup>50</sup> Ibid., 58.

<sup>51</sup> Ibid.

- Women's participation in business is another area where women and girls suffer discrimination. There is evidence that women receive no help or support to start up and run their own businesses.

### 4.3 Recommendations

- More efforts are needed to ensure and achieve implementation of the principle of equal pay for work of equal value in the private sector. There must be public oversight and frequent monitoring of the private sector to ensure that international standards and domestic norms alike prevail in implementing the equal principle.
- An organized effort must be made to make women aware and informed about their economic and legal rights. Such efforts should be as closely geared to rural women's needs and realities as possible, breaking away from the stereotypes and the narrow outlook generally espoused by NGOs in their work.
- The level of women's participation in decision-making processes and bodies must be increased to pave the way to women's greater contribution to gender-sensitive policy and strategy design.

## EQUAL TREATMENT AT THE WORKPLACE: EMPLOYMENT, TRAINING AND WORKING CONDITIONS

**Council Directive 76/207/EEC** of February 1976 on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion and working conditions. Amended on September 23, 2002 through **Directive 2002/73/EEC** of the European Parliament and of the Council.

### SECTION 1 – National Legal Framework Concerning the Principle of Equal Treatment for Women and Men

#### 1.1 General provisions

##### *The Labor Code*

The principle of equal treatment is stipulated in the 1995 Labor Code. The Labor Code provides for the definition of the concept of “discrimination.” Thus, Article 9 of this Code states that: “Discrimination in employment and profession shall be prohibited. Discrimination shall mean any distinction, exception or preference based on the grounds of race, color, gender, age, religion, political belief, nationality, social status, parentage, limited physical or mental ability, which violates the right of an individual to be equal in employment and treatment. Employment and profession shall mean professional orientation and education, employment, terms of employment, compensation, social security, or the termination of labor contract.”<sup>52</sup>

The above-mentioned legal provision is provided for in the Labor Code and relates to employment and employment-related treatment. It is Article 18 of the Constitution that provides for discrimination as a general concept.<sup>53</sup>

##### *The 2004 Gender Equality Act*

The 2004 Gender Equality Act is more specific and detailed regarding the principle of equal treatment. This law aims at implementing equality between women and men, defines measures to promote equal opportunities for women and men in order to eliminate direct and indirect discrimination on the grounds of gender in the public life

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<sup>52</sup> Article 9, paragraphs 1, 2, the *Labor Code*, 1995.

<sup>53</sup> Article 18 of the 1998 *Constitution* states that: “All are equal before the law. No one shall be unjustly discriminated against on grounds of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic conditions, education, social status, or parentage.”

of the country.”<sup>54</sup> This law also sets forth the meaning of “a society of gender equality.” Article 2 states that: “‘Society of gender equality’ is a society where women and men have equal opportunities to participate in activities of all areas as equal partners, to share responsibilities and enjoy equal political, social, economical and cultural rights.”<sup>55</sup>

The 2004 Gender Equality Act also establishes the obligation of the Public Administration Department and departments in independent institutions (such as the Office of the President of the Republic, Parliament, etc.) to set, in accordance with the Status of Civil Servant Act, the Labor Code, and the Gender Equality Act, equal recruitment and evaluation criteria for women and men.<sup>56</sup>

## 1.2 The concept of discrimination on the grounds of sex: definitions and legal sanctions

The concept of discrimination on the grounds of sex is not a separate provision in the Albanian legal framework. The Constitution and the country’s national legislation provide for the elimination of discriminatory acts on the grounds of all potential discriminatory motives.<sup>57</sup> Also, the 1995 Labor Code defines the concept of discrimination as “any differential treatment, exclusion, or preferences based on grounds of race, color, sex, age, beliefs, political opinions, nationality, social origin, marital and family status and physical or mental handicap, resulting in the restriction of the recognition of rights in the field of the employment relationship.”<sup>58</sup>

<sup>54</sup> Article 1, the *Gender Equality Act*, 2004.

<sup>55</sup> In Article 4, the principle of equal treatment is more directly expressed and ensures equal treatment in employment, training and working conditions. It states that “(...) the employer shall:

- a) apply equal recruitment criteria;
- b) offer equal working conditions, equal opportunities and improve qualifications for equal benefits;
- c) apply equal evaluation criteria;
- d) pay equal salaries for work of equal value;
- e) take measures for the prevention of sexual harassment against employees;
- f) employ, without gender differentiation, in all vacancies, across the full spectrum of the professional hierarchy.”

<sup>56</sup> *Ibid.*, Article 10, paragraph c.

<sup>57</sup> Article 18 of the 1998 *Constitution* provides that “All are equal before the law. No one shall be unjustly discriminated against on grounds of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic conditions, education, social status, or parentage.”

<sup>58</sup> Article 9, paragraph 2, the *Labor Code*, 1995.

The Gender Equality Act is more detailed and explanatory with regard to the concept of discrimination on the grounds of sex. Paragraph 2 of Article 2 of this law stipulates: "... violation of equal rights between women and men or discrimination are active or passive acts that convey underestimation, disgrace and restriction of rights or privileges because of the gender of the person..."

Further, Article 5 of the same law stipulates what would constitute a discriminatory act. Accordingly, it is an act of discrimination if, on account of gender the employer applies different standards for employees regarding working time or pay for work of equal value; establishes different working conditions for employees; institutes differing disciplinary measures, change of work conditions, or termination of contract; harasses employees because of a complaint for above mentioned acts of the employer.

The law also specifically defines what will be considered discriminatory acts in educational and scientific institutions.<sup>59</sup> Further, Article 9 of this law addresses the issue of discriminatory job announcements, prohibiting requirements that would give the competitive edge to one party or the other on grounds of sex.

The above-mentioned acts of law describe and define what constitutes discrimination. These legal provisions are in compliance with and ensure adherence to the standards set forth in Council Directive 76/207/EEC.

Anyone who alleges discrimination has the right under Albanian law to seek redress in a court of law. Article 42 of the Constitution, a general provision guaranteeing citizens' constitutional rights states: "Everyone, to protect his/her constitutional and legal rights, freedoms and interests, or in case of charges against him/her, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law."

Discrimination on grounds of sex is considered an offense under Albanian law, and in such cases the court may rule that "the responsible persons cease the discrimination and pay moral and material damages to the subject of discrimination, as well as reinstatement of the situation prior to the discrimination."<sup>60</sup> "If reinstatement at work is not possible because of the employer, the employer shall be punishable with a fine pursuant to Article 202 of the Labor Code of up to fifty times the wronged employee's pay."<sup>61</sup>

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<sup>59</sup> Article 8 provides that "Acts of educational and scientific institutions shall be considered discriminatory, on the ground of gender, in the event that they apply different requirements for women and men in admission applications for schools, access to scholarships, curriculum criteria, or the evaluation of knowledge, and in the event that they create unequal opportunities for applicants in terms of their choice of study, training, graduation, and duration of study."

<sup>60</sup> Article 16, paragraph 2, the *Gender Equality Act*, 2004.

<sup>61</sup> *Ibid.*, Article 16, paragraph 4.

Only a single act of law specifically addresses the issue of direct and indirect discrimination. While the Labor Code speaks of discrimination, as a general concept, the 2004 Gender Equality Act specifically stipulates in Article 1 that: “The aim of this law is ... to eliminate direct and indirect discrimination.” The 2004 Gender Equality Act also puts the minister of labor and social affairs, as the public authority responsible for the implementation of gender equality standards in labor relationships, in charge of monitoring and supervising subordinate institutions’ efforts to institute measures to improve equal opportunities for both women and men and to eliminate direct and indirect discrimination on the grounds of gender.<sup>62</sup> However, the law does not provide a more detailed elaboration with regard to the concept of direct and indirect discrimination.

The 1995 Labor Code provides that special protective measures do not constitute discrimination. Accordingly, paragraph 20 of Article 9 of the Code stipulates that “special protective measures for the employees under the Labor Code, governmental decisions or Collective Bargaining Agreements, are not considered discriminatory.” Chapter X of the Labor Code provides for special protective measures for pregnant women and women on maternity leave.

### 1.3 Legal status of harassment and sexual harassment

The Labor Code defines harassment and protects employees from harassment and sexual harassment. Article 32 of the Code stipulates: “An employer, in labor relationships, shall be obliged to respect and protect the personality of employees. The employer shall prevent any attitude that violates the dignity of employees. The employer shall not take any actions and shall not allow other employees to take any actions that cause sexual harassment to the employees. Sexual harassment shall be any harassment on grounds of sex which harms the psychological state of the employee.”

The 2004 Gender Equality Act declares that “sexual harassment is an harassing behavior, of a sexual nature, towards a co-worker, colleague or other collaborator.”<sup>63</sup> *Sexual harassment* is defined under this law as a form of discrimination based on sex and therefore prohibited, with offenders punishable under the law.<sup>64</sup>

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<sup>62</sup> Ibid., Article 7.

<sup>63</sup> Ibid., Article 2, paragraph 3.

<sup>64</sup> Ibid., Article 4, paragraph d, provides that “... the employer shall take measures to stop sexual harassment of employees.” Also, Article 5 sets forth the employer’s obligations to protect employees from discrimination, particularly from sexual harassment. Thus, the employer must institute disciplinary measures with regard to sexual harassment, must get information from employees with regard to sexual harassment in the workplace, etc.”

## SECTION 2 – Implementation of the Principle of Equal Treatment for Women and Men: Legal Foundations and Institutional Structures

### 2.1 General presentation

The principle of equal treatment for women and men as regards access to employment, vocational training and promotion, and working conditions derives, just like all other principles or standards of equality and nondiscrimination, from the Constitution.<sup>65</sup> Also, with regard to these economic rights, Article 49 of the Constitution provides everyone's right to choose his/her profession, place of work, and his/her own system of professional qualification." Article 59 of the Constitution sets forth, among other social objectives, "employment under suitable conditions for all persons who are able to work."

The Labor Code provides direct guarantees *vis-à-vis* equal treatment for women and men with regard to access to employment, vocational training, and promotion. Further, under the 1995 Labor Code the terms "employment" and "profession" also embrace professional guidance, training, access to employment and different professions as well as employment conditions related to allocation of work, social assistance, disciplinary measures or the termination of the labor contract.<sup>66</sup>

The legal safeguards for equal treatment are likewise assured for employment selection criteria and access to all jobs. Article 4 of the 2004 Gender Equality Act stipulates that "To provide equal rights for women and men in labor relationships, an employer shall apply the same selection criteria, equal working conditions; shall give employees the same opportunities to improve their professional qualifications and apply the same criteria in the evaluation of job performance; shall employ someone without prejudice to his/her gender, in every place of work, at all levels of professional hierarchy."<sup>67</sup> The law contains another specific article, which prohibits discriminatory job advertisements.<sup>68</sup>

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<sup>65</sup> Article 18 of the 1998 *Constitution* reads: "All shall be equal before the law. No one shall be unjustly discriminated against on grounds of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage. No one shall be discriminated against on grounds pursuant to paragraph 2 without a reasonable and objective justification."

<sup>66</sup> Cf., Article 9, paragraph 3 of the *Labor Code*, 1995.

<sup>67</sup> Article 4, the *Gender Equality Act*, 2004.

<sup>68</sup> *Ibid.*, Article 9 stipulates that "A job or educational advertisement shall be considered discriminatory in the event that it sets forth specific requirements that place one sex at an advantage over the other... The advertiser shall ensure that this advertisement does not conflict with the natural equality between the sexes, does not imply any humiliating prejudices for either of the sexes, does not portray a woman or a man in an insulting manner."

The 2004 Gender Equality Act sets out guarantees for both public and private work sectors. Article 1 sets forth the aims of this law, among which the implementation of equality between women and men, provided for under Article 18 of the Constitution, is stipulated as a priority in the work of responsible public authorities in charge of monitoring and supervising the implementation of this law.

The legal framework has also set up the institutions responsible for monitoring, supervising, and guaranteeing nondiscriminatory practices in labor relationships. Article 7 of the 2004 Gender Equality Act provides that “The Minister of Labor and Social Affairs shall monitor and supervise the implementation of this law, the implementation of equal opportunities for women and men, and the elimination of direct and indirect discrimination on the grounds of gender.”

The 2004 Gender Equality Act also established a state mechanism to oversee the implementation of gender equality policies, for the drafting and promotion of gender equality programs, as well as for monitoring the status of gender issues. This governmental body was established by an order of the prime minister, to serve in an advisory capacity.<sup>69</sup>

Courts of law serve as the last resort for the assertion of gender equality rights. As already previously mentioned, all Albanian citizens have the constitutional right to seek redress for a violated right from an independent and impartial court of law. The People’s Advocate is another constitutional body, which defends the rights, freedoms, and legitimate interests of individuals from unlawful or improper action or failure to act on behalf of the organs of public administration.<sup>70</sup> This is another constitutional and legal means available to monitor and ensure implementation of the prohibition of

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<sup>69</sup> Ibid., see Articles 12, 13, 14.

<sup>70</sup> Article 60, *Constitution*, 1998.

sex-based discrimination. However, the People's Advocate may only monitor and guarantee noninfringement of this right via the public administration system.<sup>71</sup>

## 2.2 Available legal procedures in cases involving the violation of the principle of equal treatment for women and men

A worker alleging an infringement of the principle of equal treatment may base his/her complaint on the following administrative procedures:

- Article 191 of the Labor Code provides for the possibility of mediation before bringing the case to court. According to the Code, “the mediator and the conciliation office may be addressed for any collective conflicts.”<sup>72</sup>
- Also, under the 1995 State Work Inspectorate Act “an employee is entitled to complain to the Work Inspection Authority in the event that the employer fails to comply with labor law provisions.”<sup>73</sup>
- Under the 2004 Gender Equality Act, “an employee may, initially, complain to his/her employer, with respect to allegations of gender-based discrimination, or lodge a complaint against the employer, when the latter has been directly involved, demanding the support of the trade union.”<sup>74</sup> In cases of allegations of gender-based discrimination by state employees, complaints are filed with a more senior responsible official of the state administration, who, upon finding that the complaint is founded, penalizes the perpetrator

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<sup>71</sup> The *Gender Equality Act* was adopted by the Albanian Assembly on February 26, 2004. However, the President of the Republic returned the Act to the Assembly for reconsideration on the ground that it was unconstitutional. Article 11 of the Act provided that “in the event of complaints on the ground of gender discrimination, the employee shall file his/her complaint with the People's Advocate, who shall verify the allegation.” Article 60 of the *Constitution* sets forth that “The People's Advocate shall defend the rights, freedoms, and legitimate interests of individuals from unlawful or improper action, or failure to act of the organs of public administration.” The authority conferred by Article 11 of the *Act on the People's Advocate* was deemed unconstitutional by the President of the Republic on the ground that it extended the constitutional area of activity of that institution. The constitutional authority of the *People's Advocate* extends to cases of conflict between citizens and the organs of public administration, whereas cases of conflict between citizens and private entities or other citizens, fall outside the constitutional scope of the work of the People's Advocate. The Assembly adopted the decree to return the Act into force, omitting the competence of the People's Advocate.

<sup>72</sup> Article 191, paragraph 1, the *Labor Code*, 1995.

<sup>73</sup> Article 19, the *State Work Inspectorate Act*, 1995.

<sup>74</sup> Article 11, paragraph 2, the *Gender Equality Act*, 2004.

with a fine up to ALL 30,000<sup>75</sup> unless the said perpetrator is facing charges for disciplinary, administrative, civil or criminal violations.<sup>76</sup>

If the above-mentioned administrative procedures fail to resolve an individual or collective complaint against the employer, all have the constitutional and legal right to seek redress in a court of law. As Article 43 of the Constitution stipulates: “everyone, to protect his/her constitutional and legal rights, freedoms and interests, or in the case of charges against him/her, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.”

Other laws likewise guarantee the right of an individual to file a suit in court in cases of allegations of violation of the equal treatment principle. Accordingly, Article 15 of the 2004 Gender Equality Act stipulates an employee’s right to bring a suit to court. Article 19 of the 1993 Collective Bargaining Agreements Act sets forth a general provision under which the party whose rights have been violated has “the right to bring the case before a court of law within 15 days from the date the violation began.” Also, under the 1991 Trade Union Act, “a representative of this trade union may submit a case before the court on behalf of an employee, member of the respective trade union, who believes that his/her rights with respect to the employment relationship have been violated.”<sup>77</sup>

When violations of equal treatment standards occur or when a person is injured as a result of discrimination on grounds of sex, the Albanian legal framework ensures compensation for the loss and the damage caused.

Albanian constitutional and legal provisions deem discrimination on grounds of sex an offense and in such cases court rulings mandate cessation of discrimination, award moral and material damages to the person discriminated against, and order that he/she be restored to his/her status prior to the act of discrimination. If reinstatement at work is not possible because of the employer, the latter is liable to a fine in the amount 50 times that of the official minimum wage.<sup>78</sup>

Individuals may seek enforcement of compliance with the principle of equal treatment for women and men either on their own,<sup>79</sup> or with assistance from other legal entities on their behalf as complainants. The Trade Union Act stipulates that “in cases of violation of the rights set forth in the labor relationship, an employee may ask the Trade Union, in which he/she is a member, to bring the case before the court on

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<sup>75</sup> 250 euros

<sup>76</sup> Article 15, the *Gender Equality Act*, 2004.

<sup>77</sup> Article 9, the *Trade Union Act*, 1991.

<sup>78</sup> Cf., Article 202, paragraph 1, the *Labor Code*, 1995, and Article 16, the *Gender Equality Act*.

<sup>79</sup> Article 16, paragraph 1, the *Gender Equality Act*, 2004.

his/her behalf.”<sup>80</sup> Accordingly, trade unions are a legitimate party, who act on behalf or in support of the complainants in a judicial or administrative procedure to enforce compliance with the principle of equal treatment for women and men. Additionally, the Gender Equality Act stipulates that in cases of alleged acts of gender based discrimination “an employee may seek the assistance and the support of trade unions to resolve the situation.”<sup>81</sup>

The People’s Advocate is another institution constitutionally entitled to defend the rights, freedoms, and legitimate interests of individuals from unlawful or improper action by a public agency or from the agency’s failure to act. Under Albania’s Constitution and national law, everyone has the right to seek assistance from the People’s Advocate to halt an alleged violation.<sup>82</sup> The power of redress of the People’s Advocate extends, however, only to complaints lodged against public administration organs.

When acting on behalf of a complainant, the trade unions and the People’s Advocate are not obliged to meet the criteria of *legitimate interest* in attempting to enforce compliance with the principle of equal treatment for women and men. The legal framework does not stipulate that these entities must prove a legitimate interest in the case. However, the assistance provided by these entities, in particular that of the trade unions on complainants’ behalf, is confined to courts of the first instance, the appellate courts, and the High Court. When complainants reach the Constitutional Court, the unions or the People’s Advocate may only bring their case to the Constitutional Court if the issue in question is related to their interests.<sup>83</sup> Interpreting this legal provision in response to a request from the People’s Advocate, the Constitutional Court has concluded that: “...issues related to the interests of the People’s Advocate shall be issues which relate to the constitutional function of the People’s Advocate, wherein, as a result of the application of the law, normative act or sublegal act, from the improper action or failure to act of public administration organs, these interests are violated via infringement of the rights, the freedoms, and the legitimate interests of individuals, infringements that have been observed during the verification of the complaints, requests, and notices filed with the People’s Advocate.”<sup>84</sup>

As regards the right of the trade unions to act on behalf of a complainant, the Constitutional Court has not yet had a specific case to rule on. The issue remains whether or not a trade union may act on behalf of its own worker. If the answer is affirmative, then the issue becomes whether or not the trade union in question may

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<sup>80</sup> Article 9, the *Trade Union Act*, 1991.

<sup>81</sup> Article 11, the *Gender Equality Act*, 2004.

<sup>82</sup> Article 12, the *Act on the People’s Advocate* No.8454 of February 4, 1999.

<sup>83</sup> Article 134, paragraph 2, the *Constitution*, 1998.

<sup>84</sup> *Decision of the Constitutional Court of Albania*, No.49 of July 31, 2000.

also act on behalf of a worker of another trade union. This remains a salient issue at the time of the writing of this report, since the Constitutional Court has not yet addressed the matter with any binding or advisory opinions.

### **2.3 Protective measures with regard to women's participation in the labor market**

Under Albania's Labor Code, a woman has the right to return to her job after a period of maternity leave. Paragraph 2, Article 105 of the Labor Code stipulates that "after the completion of 42 days of mandatory maternity leave, a woman is entitled to either return to work or to continue to receive social insurance assistance." Thus, under this provision, a woman has the right to decide whether she would prefer to return to work or remain on maternity leave funded by social insurance. Additionally, Article 105/a (2) provides that "the employer who terminates the work agreement of a woman who works during her pregnancy, or returns after her period of maternity leave, shall prove that the cause of the termination of the work agreement was not the fact of pregnancy or motherhood." This is how the legal framework guarantees that pregnancy or motherhood do not impede a woman's return to her former job, or to an equivalent position with terms and conditions no less favorable.

### **2.4 Prohibition of dismissal**

The Labor Code specifies and details cases and situations wherein an employer may terminate employment and the procedures that he/she must follow before terminating employment. Dismissal will be considered null and void if it fails to comply with the required legal procedures.<sup>85</sup> Article 146 of the Labor Code enumerates the grounds under which termination of the work agreement by the employer is regarded unreasonable. This article stipulates that if the employment contract is terminated on unreasonable grounds, the employee has the right to file a suit in court.<sup>86</sup>

Further, the 2004 Gender Equality Act states that discriminatory behavior includes acts by the employer that intrude upon an employee who has filed a complaint against the employer on grounds of discrimination.<sup>87</sup>

The 1991 Trade Union Act is yet another guarantee for protecting employees or employees' representatives against dismissals or any other reactions from employers, in

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<sup>85</sup> Article 144, the *Labor Code*, 1995.

<sup>86</sup> *Ibid.*, Article 146, paragraph 2.

<sup>87</sup> Article 5, the *Gender Equality Act*, 2004.

cases when employees initiate legal proceedings to enforce compliance with the principle of equal treatment. Accordingly, Articles 10, 11 of this act stipulate that “trade union membership and active membership in this entity shall not serve as a cause for an employer to terminate the work agreement. The employer shall not terminate the work agreement or transfer employees elected to trade union leadership positions to another post, without first obtaining the opinion of the respective trade union.”<sup>88</sup>

## 2.5 Women’s and men’s jobs

The Albanian legal system does not provide legal provisions classifying jobs specifically into women’s and men’s jobs. Labor legislation makes general references only, without classifying or specifying women’s and men’s jobs.

A governmental Decision on the Specific Protection of Pregnant Women and Motherhood provides that pregnant women and women who have recently given birth are not allowed to perform work that is dangerous and poses risks to their own and their children’s health.<sup>89</sup> Paragraph (a), Article 4 of the same act stipulates that the employer is obliged to apply the same selection criteria to both women and men when hiring for a job, except in the cases mentioned above. In conclusion, the Albanian legal framework does not differentiate and specify jobs based on gender differences. On the contrary, the Albanian acts guarantee that there is no discrimination in hiring or dismissal from work.

## SECTION 3 – Gender Equality Bodies

The following are the bodies responsible for the promotion, analysis, and support of equal treatment of all persons without discrimination on the grounds of sex:

**The Committee for Gender Equality** (formerly known as the Committee for Equal Opportunities) is a central institution overseen by the Minister of Labor and Social Affairs, approved by Decision No.59 of the Council of Ministers, on January 23,

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<sup>88</sup> Articles 10, 11, the *Trade Union Act*, 1991.

<sup>89</sup> Article 4, *Decision of the Council of Ministers*, No.397, of May 20, 1996 “On the Specific Protection of Pregnant Women and Motherhood.”

2003.<sup>90</sup> The Committee for Gender Equality has a very small budget to implement its program.<sup>91</sup> Therefore, its activities are primarily funded (upwards of 70 percent) by various donors.

**The Inter-Ministerial Committee for Gender Equality** is a body established on November 17, 2004, by the 2004 Gender Equality Act and under Council of Ministers Decision No.184. The general objectives of the Inter-Ministerial Committee are: approval of programs to promote gender equality in society; analyzing the concrete situation of gender equality in the country; and monitoring the implementation of programs approved by the Gender Equality Committee.<sup>92</sup> Further, the composition of this committee, its organization and function are defined by an order of the prime minister. Based on the recommendation of the Inter-Ministerial Committee, the prime minister nominates the chairperson of the Committee for Gender Equality.<sup>93</sup> Members of the Inter-Ministerial Committee for gender equality have a four-year nonrenewable mandate. The Inter-Ministerial Committee convenes twice a year.

**The People's Advocate**, provided for under the Constitution (1998), was established by the People's Advocate Act of February 4, 1999. The People's Advocate defends the rights, freedoms, and legitimate interests of individuals from unlawful or improper action or failure to act of organs of public administration.<sup>94</sup> The People's Advocate is independent in the exercise of his/her duties.<sup>95</sup> With regard to the institution of the People's Advocate, paragraph 3, Article 60 of the Constitution stipulates that: "The People's Advocate shall have a separate budget which he/she administers himself/herself. He/She shall propose the budget pursuant to law."<sup>96</sup>

The above-mentioned gender equality bodies also provide assistance to the victims of discrimination. Such assistance is rendered through providing advice, help with taking

<sup>90</sup> The responsibilities of the Gender Equality Committee are: the implementation of governmental policies for equal opportunities; the coordination of programs to instigate equality between women and men at central and local level; the proposal of new laws and amendments about women and children's rights pursuant to the international standards; the support and coordination of NGO activities in the field of women and family's rights; the evaluation of the implementing of government programs for equal opportunities; the coordination of the assistance programs with international organizations that deal with gender issues.

<sup>91</sup> Jaupllari, Valbona, ed. *Activity of the Committee for Equal Opportunities 1998–2003, SWOT Analyse*. 2004. Tirana: Albas, 42.

<sup>92</sup> Article 13, the *Gender Equality Act*, 2004.

<sup>93</sup> *Ibid.*, Articles 13, 14.

<sup>94</sup> Article 60, paragraph 1, the *Constitution*.

<sup>95</sup> *Ibid.*, Article 60, paragraph 2.

<sup>96</sup> *Cf.*, Article 36, the *People's Advocate Act* of 1999.

cases to court, conflict resolution, or mediation. The Organization and Functioning of the People's Advocate Act stipulates that everyone who feels that his/her rights, liberties, and legal interests have been violated may lodge a complaint with the People's Advocate. The advocate may advise the victim of discrimination on how to protect his/her rights,<sup>97</sup> or he/she may launch an investigation either upon the victim's request or based on his own initiative, when he/she believes that a violation of rights has been perpetrated.<sup>98</sup>

In the event of violation of employee rights or of conflict between employers and employees, trade unions may act as a mediator to resolve the problem.<sup>99</sup> Should this mediation procedure prove unsuccessful, under Article 182 of the Labor Code trade unions are entitled to bring a case to court on their members' behalf.<sup>100</sup>

Gender equality bodies also engage in diverse promotional activities, such as awareness raising, dissemination of information, analysis and monitoring, conducting research, making recommendations, support and networking for equal treatment standards. The State Work Inspectorate, for instance, provides information to employers and employees regarding their rights and obligations under Albanian labor law, and disseminates public information about the same.<sup>101</sup>

The Inspectorate is actually obliged under the law to provide this information and to advise employers and employees about effective means to achieve compliance with labor legislation.<sup>102</sup> The Inspectorate informs and educates employers and employees about labor legislation in the fields of health, occupational safety, and labor relationships through seminars, radio broadcasts, and videos explaining provisions of labor legislation.<sup>103</sup>

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<sup>97</sup> Ibid., Article 17, paragraph b.

<sup>98</sup> Ibid., Article 18.

<sup>99</sup> Article 11, paragraph 2, the 2004 *Gender Equality Act* provides that "Employees who believe they have been discriminated against on the grounds of gender shall have the right to complain to the employer or against him, and to request trade union intervention to resolve the situation."

<sup>100</sup> Cf., Article 9, the *Trade Union Act*, 1991.

<sup>101</sup> Article 3, paragraph ç, the *State Work Inspectorate Act*, 1995.

<sup>102</sup> Ibid., Article 10, paragraph c.

<sup>103</sup> Ibid., Article 22.

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## SECTION 4 – Factual Background with Regard to the Principle of Equal Treatment for Women and Men: Related Research and Statistics

### 4.1 Research and statistics on women's access to and presence in the labor market

Women's participation in the labor market is one of the main indicators of women's empowerment. INSTAT data to date demonstrates a considerable inequality between women and men regarding their labor market participation. INSTAT data for 1989 shows that whereas 85 percent of women and 94 percent of men were employed, in the post-1990 era employment levels plummeted by 50-60 percent for both sexes. Further, in recent years the gap has widened with 38.3 percent of women employed in 2004 versus 60.1 percent of men.

Important as they are, employment and unemployment are insufficient indicators when it comes to the analysis of women's and men's labor market status. It is also important to take into consideration the indicator for the level of participation in the labor force, which reflects the ratio between the economically active population and the overall population of corresponding working age.

Besides official INSTAT and MoLSA (Ministry of Labor and Social Affairs) data, other sources of information are Census 2001 and LSMS (Living Standard Measurement Survey) 2002, 2003, which reveal alarming facts regarding women's participation in the labor force compared to men's.<sup>104</sup> According to LSMS 2002, 2003, women's participation does not show progress, whereas the contrary is true for men.<sup>105</sup>

Although official data show a low participation of women in the labor force and a low employment level in comparison to men, this does not mean that women are absent from the country's economic development. The exit of women from the visible labor forces conceals not only their self-employment activities, but also their work in the informal economy.

In Albania, no research is being conducted specifically on working condition issues. There is, however, extensive media coverage regarding working conditions and gender relations in the workplace, in the public as well as the private sector. A good example is an August 2005 national television broadcast report of detrimental working conditions in several private Tirana (shoemaking, tailoring, etc.) factories, where the majority of workers were women and children suffering from serious health problems.<sup>106</sup>

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<sup>104</sup> Ministry of Labor and Social Affairs, *Gender and Employment in Albania – Gender mainstreaming Issues in Employment Policies in Albania*. 2005. Tirana: UNDP, 26.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid., 27.

Competition in the labor market is one of the obstacles Albania has identified in relation to women's access to the labor market. Actually, labor market competition is inevitable – a situation women as well as others vying for work in the job market must face every day. Admittedly, labor market competition enhances knowledge, working skills, and abilities. Yet it does not lead to the designing of gender-sensitive policies. As previously noted in this section, the collapse of socialism and the drastic political, social, and economic changes in the post-1990 era engendered immediate unemployment. Thereafter, women were compelled, for the most part, to stay home and become homemakers. Women thus paid a higher price than men in terms of inferior skills and abilities in the wake of changes brought about by the switch to a market economy.

In this context, as well as due to pregnancy, women are often discriminated against as they attempt to re-enter the labor market,<sup>107</sup> and as a result they have fewer opportunities to garner the right qualifications for available jobs. Accurate official data is not available on the number of women employed with short-term contracts. This is one of the reasons that it is difficult to put forth a precise assessment of Albania's labor market. Another reason is that the majority of Albanians live in rural areas (where they are not registered as unemployed), as well as the high level of employment in the informal economy. The massive movement of the population in the post-1990 era to urban areas of the central and coastal region of Albania gave rise to this informal economy and undeclared economic activities.

*Program to promote employment opportunities for female job seekers*<sup>108</sup>

Employers who employ women – especially women from the Romani community, women over 35, divorced women with social problems, and women with disabilities – will receive financial incentives under this program.<sup>109</sup> Further, the Albanian

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<sup>107</sup> Ibid., 64.

<sup>108</sup> *Albanian Government Decision*, No.632 of September 18, 2003.

<sup>109</sup> More specifically these measures are the following:

1. The person, who employs a woman (from the Employment Office's waiting list) under a regular work contract, with an extension of at least one year, receives monthly financing equal to 70 percent of the dues for the employee's compulsory insurance (the employer's contribution).
2. If the above contract is extended for two years, the employer receives 85 percent of the dues for the employee's insurance; and 100 percent of the above expenses if the regular contract is extended for 3 years.
3. If trafficked women, Roma women, women with limited abilities, single mothers, divorced women, and women with social and financial problems are employed (in accordance with the above conditions), the employer receives monthly financing equal to the four, six, and eight months pay, respectively, of the employed woman.

government is taking other positive steps to support job seekers by offering vocational training and mediation for jobs.

Data provided by National Employment Service (2004) show that more women attended vocational trainings during 2004 (5,243 in total) than men (3,871 in total). Additionally, data for 2003 reveal that vocational training for women in that year consisted of subjects like English language, computer and secretarial skills, tailoring, Italian language, cosmetics and hairdressing, while men were trained in occupations such as auto mechanic, plumber, electrician, etc.

## 4.2 Women in the labor market after maternity leave

There is no available data on women who return to work after giving birth. Government institutions appear to be implementing existing legislation on maternity leave efficiently. In the private sector, however, anecdotal evidence indicates that women are often losing the jobs they had before going on maternity leave. In both instances, however, women grapple with the challenge of meeting labor market requirements after a year of maternity leave.

## 4.3 Discriminatory job advertisements

Some research has been conducted on discriminatory job advertisements, mainly by different local and international NGOs working on gender issues in Albania. One of the most recently published (2004)<sup>110</sup> highlights the fact that traditional attitudes toward women and the disparagement of their abilities and status in the labor market still persist in Albania. The Act on Gender Equality stipulates that a job or educational advertisement is discriminatory if the requirements include a statement on the preferred sex of the applicant. Any public notice or announcement must be designed in a way that is not detrimental to the principle of equality between the sexes and does not pass contemptuous judgment on either sex or cause harm to either sex. It is therefore prohibited to ask information regarding the marital status of the applicant or the private or family life of the applicant. Only very rarely does the media portray the triple burden of women (the productive, reproductive, and community role) or their valuable contribution. Social norms and values, institutional structures, audience preferences, market economy rules – all of these impact what the media produces. Images and messages conveyed through the media mirror society's economic, social,

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<sup>110</sup> Karaj, Theodhori, ed. *Diskriminimi i gruas në tregun e punës* (Discriminating against Women in the Workplace) 2004. Tirana: Open Society Foundation for Albania.

and cultural reality. What is more, the media plays an essential role in conveying existing gender stereotypes and roles.

#### 4.4 Sexual harassment

Article 6 of the 2004 Gender Equality Act stipulates that the employer, to protect employees from discrimination in general and from sexual harassment in particular, must: define disciplinary measures on sexual harassment in the Rules of Procedures, in compliance with this law; collect information from employers regarding sexual harassment in the workplace; and take appropriate organizational and disciplinary measures once the complaint in question has been resolved.

Sanctions for sexual harassment are also stipulated in the Labor Code. Obviously, passing legislation and drafting gender-sensitive policies to address the issue of sexual harassment was a positive – albeit of necessity limited – step in the right direction. However, mechanisms for enforcement, monitoring, and evaluation are almost nonexistent. Generally, when the subject of sexual harassment comes up in public, people and institutions pretend it does not exist, even though research on the issue demonstrates just the opposite.<sup>111</sup>

### SECTION 5 – Conclusions, Areas of Concern, Recommendations

#### 5.1 Conclusions

The principle of equal treatment for women and men in the workplace, in employment, training, and working conditions is incorporated into the Albanian legal framework. The 1998 Constitution and other laws provide for and clearly define the concept of this principle, direct and indirect discrimination, as well as the measures to be taken in cases of alleged violations of this standard. Albanian legislation has also established the public administration bodies responsible for monitoring, supervising, and implementing the laws that enshrine the principle of equal treatment for men and women.

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<sup>111</sup> Karaj, Theodhori, ed. *Diskriminimi i gruas në tregun e punës* (Discriminating against Women in the Workplace) 2004. Tirana: Open Society Foundation for Albania.

## 5.2 Areas of concern

- The activity of the Gender Equality Committee needs further improvement and empowerment. The changes that have occurred during the past years in its structure and composition and the reductions in its budget have impacted the efficiency and weakened the performance of this body.
- The Inter-Ministerial Committee needs more commitment to fulfill its legal responsibilities. It currently meets twice a year, whereas the situation in the country and the importance of the issues it deals with need more intensive engagement.
- The Gender Equality Act does not provide specific sanctions for violations, referring in most cases to already existing legislation. This allows for the inference that the Act does not really add any new protections against gender discrimination. Moreover, the organizational structures established under the Act have not been given clear reporting guidelines or clearly defined monitoring functions.
- Women returning to the labor market after maternity leave face challenges in the private and public sector alike.
- Albanian legislation does not provide for paternity leave.

## 5.3 Recommendations

- The awareness of policymakers must be raised on the issues of gender equality and the importance of gender mainstreaming as a tool for achieving gender equality.
- Members of the judiciary and other responsible actors need training and qualifications on gender equality issues to increase their gender sensitivity during implementation and application of respective laws.
- The Gender Equality Act needs to be improved to fully ensure the efficiency of the structures it has established.
- Women returning from maternity leave must be provided with further training and qualifications to help them meet labor market requirements.
- Legal changes need to be considered to embrace paternity leave as an important factor of reconciling work and family life in Albania.

## **PREGNANCY AND MOTHERHOOD PROTECTION**

Council Directive 92/85/EEC of October 19, 1992 on the introduction of measures to encourage improvements in the occupational safety and health at work of pregnant worker and workers who have recently given birth or are breastfeeding.

Measures and improvements at Work of Pregnant Workers, Workers Who have Recently Given Birth, or are Breastfeeding

### SECTION 1 – Legal and Conceptual Framework

In Albania, the idea of protecting pregnant workers and workers who have recently given birth from workplace-related hazards has been integrated into the legal framework, albeit without actually defining such protection.

In the absence, therefore, of authoritative interpretation, Albania's Social Insurance Act stipulates that a pregnant worker or a worker who has recently given birth inform her employer of her condition, under the assumption that the rights of such workers to protection exists under Albanian law. In practice, a working woman must verify the fact of her pregnancy, the recent birth of her child, or that she is breastfeeding her baby. To prove pregnancy, she must obtain a certificate from a medical specialist. A mother who has recently given birth or who is breastfeeding must present the birth certificate of the child. No distinction is made between naturally conceived children and those conceived with the help of assisted reproductive technology. The Reproductive Health Act regulates, for the first time, some of the principal techniques of assisted reproduction and the conditions under which access to assisted reproductive technology is possible.<sup>112</sup>

In an actual employment situation, an employer may become suspicious about the veracity of the medical certificate presented by a woman employee requesting motherhood protection. Although legal provisions do not expressly provide for such a situation, judicial practice has allowed the application, by analogy, of the provisions of Article 130 of the Labor Code. This article stipulates that upon the employer's request, the employee is obliged to undergo a second examination by a medical doctor appointed by the employer. In the event of conflicting results, the employee must undergo yet another examination by a medical doctor appointed by the State Work Inspectorate. To date, there have been no judicial rulings establishing a legal precedent with respect to this type of case.

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<sup>112</sup> The *Reproductive Health Act*, No.8876 of April 4, 2002.

## SECTION 2 – Assessing the Risk to the Safety or Health of a Pregnant Worker and the Employer’s Obligations

### 2.1 Assessing the risk to the safety or health of a pregnant worker

The Labor Code regulates occupational safety conditions at the workplace and the protection of workers’ health.<sup>113</sup> Besides these general provisions, which also apply to pregnant and breastfeeding women, Albanian lawmakers have introduced a number of protective measures to help these working women. The Gender Equality Act provides that all the measures, undertaken by the state for the special protection of pregnant and breastfeeding women, will be considered legal exceptions to the general constitutional principle of nondiscrimination on the grounds of gender.<sup>114</sup>

It should be emphasized that lawmakers have provided these legal measures only to benefit pregnant and breastfeeding workers, regulating their situation only in the form of negative conditions or legal obstacles. In other words, lawmakers have regulated solely the activities, procedures or working conditions under which a pregnant or breastfeeding woman may not work. However, the law does not regulate the activities or the conditions under which a pregnant or breastfeeding woman must fulfill her employment obligations.

### 2.2 Employer’s obligations

Paragraph 2, Decision No.397 of May 20, 1996, of the Council of Ministers provides that the employer must make an assessment of the workplace and the work of pregnant or breastfeeding women and women who have recently given birth to identify and evaluate the nature, extent, and level of these women’s exposure to agents, processes, and working conditions detrimental to their reproductive health.

The Council of Ministers determines the work duties deemed to pose the risk of exposure to agents and working conditions harmful to working women’s reproductive health. The State Work Inspectorate annually updates the list of the work duties that

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<sup>113</sup> Articles 39–75, the *Labor Code*, 1995.

<sup>114</sup> Article 2, paragraph 2, the *Gender Equality Act*, 2004. Thus, special regulations for the protection of pregnant and breastfeeding women are provided for in: Article 54, paragraph 3, of the *Labor Code*; Paragraph 5, Article 55 of the *Labor Code*; Articles 104–108 of the *Labor Code*; Paragraphs 1 and 3, Article 11 of the *Reproductive Health Act*; *Decision No.397* of the Council of Ministers “On the Special Protection of Pregnant Women and Motherhood” of May 20, 1996; *Decision No.185* of the Council of Ministers of May, 3, 2002 “On Some Amendments to Decision No.397” of May 20, 1996 of the Council of Ministers.

pose specific risks for pregnant and breastfeeding women, so that the list keeps abreast with technological developments. As the need to make change arises, the Inspectorate proposes them to the minister of labor, who in turn presents these to the Council of Ministers.<sup>115</sup>

The employer is under legal obligation to make an assessment of work duties entailing specific risks. To do so, the employer must take into consideration any factor that poses a threat to the occupational safety and health of workers, and, on the other, determining the necessary measures to obviate those risks.

This normative act does not expressly stipulate the consequences of noncompliance in the event that employers do not meet their legal obligation to make an assessment of the above-mentioned risks. However, applying the general standards of accountability, the following legal means are available:

a) criminal sanctions:

- Violations of provisions of the Labor Code, when constituting a criminal offense, are sanctioned by the provisions of the Criminal Code.
- According to the provisions of the Labor Code any violation of labor relations is subject to a fine.

b) civil sanctions:

- A worker who believes that she has been harmed as a result of the employer's noncompliance with the legal obligation to make an assessment of risks to health and safety at the workplace, may seek compensation from the said employer. The employer will be responsible even if one of his/her subordinates was responsible for the actual harm done.<sup>116</sup>

The analysis of this normative act does not explicitly establish the right of pregnant and breastfeeding women to information on the findings of the employer's assessment of risks to their reproductive health and safety at the workplace. Nevertheless, based on Article 43 of the Labor Code, which wields the capacity of a general provision in the realm of labor relations (*generalia specialibus derogant*), the authors of this country report believe that the employer is obliged to inform pregnant and breastfeeding employees about the risks associated with their job and must explain to them the necessity of occupational safety measures.

If the employer's assessment or the workplace reveals a risk to the health and safety of pregnant or breastfeeding women at work, he/she must take all reasonable steps to

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<sup>115</sup> Paragraph 6, *Decision* No.397 of May 20, 1996 "On the Special Protection of Pregnant Women and Motherhood."

<sup>116</sup> Articles 608, 618, 626, the *Civil Code*, No.7580 of July 29, 1994.

ensure that the risk is avoided.<sup>117</sup> As a rule, the measures instituted thereafter comprise a temporary adjustment of the affected worker's working conditions and work schedule. In cases when adjustment of working conditions and work schedule is not technically or objectively feasible, the employer must take all necessary measures to ensure transfer of the worker to another place of work. In cases when the transfer to another place of work is not technically or objectively possible or may not be requested for other justified reasons, this worker must be accorded a leave of absence for the period of time necessary for the protection of her health. The definition of "necessary time" will be determined case by case, based on the level of risk exposure and the worker's state of health. Although paragraph 3 of the aforementioned decision of the Council of Ministers does not stipulate the conditions under which a worker is accorded leave of absence, a systematic interpretation of all provisions of this act give rise to the conclusion that lawmakers have provided for the employer's obligation to grant a paid leave of absence for the time necessary to protect the health and safety of the worker, her pregnancy, and the breastfeeding of her child

### SECTION 3 – Cases in Which Pregnant and Breastfeeding Women Are Protected from Hazardous Conditions

If the employer's assessment of the workplace reveals a risk to the health and safety of pregnant women, their fetus, or women who are breastfeeding, he/she must take all necessary steps to ensure that the risk is avoided. In any event, the decision of the Council of Ministers stipulates that workers may not be forced to work in places hazardous to their health and safety.<sup>118</sup>

Albanian lawmakers have laid down the general principles for measures to protect pregnant and breastfeeding women, but to date there exist no specific legal texts. In other words, the instruments of law mandating special measures for the protection of pregnant and breastfeeding women do not list specific agents these women should not be exposed to or specific conditions under which they must not work.

As an exception to this general provision, points 1 and 2 of the Council of Ministers Decision No.185 of May 3, 2002, provide that "pregnant and breastfeeding women may not lift weights of over 5 kg. Pregnant women and women who are breastfeeding have the right to paid leave of no less than 20 minutes for every three hours of work during their work day." In consequence, the specific protections extended to these workers will be determined on a case by case basis by the employer as part of compliance with his/her obligations arising from labor relations. In the event that pregnant and breastfeeding

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<sup>117</sup> Paragraph 3, *Governmental Decision*, No.397, 1996.

<sup>118</sup> *Ibid.*, paragraph 4.

workers claim infringement of their legal rights, the general principles of the law give them the right to lodge a complaint with public administration organs and to file a suit in a court of law – despite the fact that there exists no specific legal means for seeking redress.

#### SECTION 4 – Night Work

Among the measures for the special protection of pregnant women and new mothers, the 1995 Labor Code provides that “night work for pregnant women is prohibited.”<sup>119</sup> The same provision stipulates that “the Council of Ministers shall determine specific rules for permitting night work for workers who are breastfeeding.”

As regards application of these principles provided for in the Labor Code, Decision No.397 of the Council of Ministers of May 20, 1996, regulates, under point 5, the length of the work day for pregnant and breastfeeding women. Although the provisions of the Labor Code make it possible for the Council of Ministers to set different legal norms for night work for pregnant women and for breastfeeding women, current regulations set a unified regime for both the categories. Thus, according to decision No.397 “pregnant women and those who are breastfeeding shall not be obliged either to commence work before 5 a.m. during summer time, or before 6 a.m. during winter time or to continue work after 8 p.m.”<sup>120</sup>

In consequence, the employer is obliged to take the necessary measures to avoid night work for pregnant and breastfeeding workers. The employer must transfer pregnant and breastfeeding women to work duties they can perform between 5 a.m. and 8 p.m., and if this is not technically feasible the employer must grant temporary paid leave to pregnant and breastfeeding workers.<sup>121</sup> The Council of Ministers is the state authority in charge of determining the measures necessary to protect pregnant and breastfeeding workers, and consults the National Employment Council on this issue. The responsibilities of the latter include drafting policies for employee protection, as well as harmonization of domestic legislation with ILO norms.<sup>122</sup>

On the other hand, the State Work Authority is the government body responsible for monitoring the application and implementation of the measures set forth in domestic legislation and international accords to which Albania is a signatory.<sup>123</sup>

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<sup>119</sup> Article 108, the *Labor Code*, 1995.

<sup>120</sup> Point 5, *Governmental Decision*, No.397, 1996.

<sup>121</sup> *Ibid.*, point 5, paragraph 4.

<sup>122</sup> Article 200, the *Labor Code*, 1995.

<sup>123</sup> Articles 1, 10, the *State Work Inspectorate Act*, 1995.

## SECTION 5 – Maternity Leave and Time Off for Prenatal Examinations

The legal framework regulating the conditions and duration of, and benefits received during maternity leave, for pregnant and breastfeeding women, entitled employment women includes the following:<sup>124</sup>

Regardless of the duration of the individual work contract, working women are eligible for maternity leave as well as to income from the social insurance fund during and after pregnancy. The Labor Code and the 1993 Social Insurance Act provide that pregnant workers, women who have recently given birth, and women who are breastfeeding have the right to an obligatory minimum, and an optional extended maternity leave.

According to the Institute of Social Security, in 2004 a total of 8,443 women enjoyed maternity benefits. Meanwhile, INSTAT figures show that a total of 43,022 women gave birth that same year. In 2003, the figures were 10,301 women receiving maternity benefits out of 47,012 women giving birth. Clearly, there is a conspicuous difference between these two sets of figures: only one-fifth of women who gave birth during 2003 and 2004 enjoyed maternity benefits under Albania's Social Security Scheme.

Article 29 of the Social Security Act, No.7703 of May 11, 1993, stipulates that “an insured person (mother or father) is entitled to childbirth payment on condition that she/he was insured for one year prior to the child's birth.” The mother is the preferred recipient, when both parents are insured.<sup>125</sup> In the event that the mother had not been insured or she had not worked for a year prior to giving birth, the father may receive the childbirth payment instead of the mother.<sup>126</sup>

### *a. Obligatory maternity leave*

Maternity leave is divided into two parts: leave before childbirth accorded to pregnant women, and leave after childbirth accorded to workers who have given birth and those who have adopted a child under circumstances provided in the Family Code. Accordingly, pregnant workers must stop working 35 days before the expected birth of

<sup>124</sup> Articles 104 and 105, the *Labor Code*, No.7961 of July 12, 1995; Article 20, letter ë, the *Status of Civil Servants Act*, No.8549 of November 11, 1999; The *Social Insurance in the Republic of Albania Act*, No.7703 of May 11, 1993; *Decision No.42* of the Council of Ministers of January 23, 1995, “On Some Issues for the Implementation of the Social Insurance in the Republic of Albania Act and the Health Insurance in the Republic of Albania Act;” *Decision No.112* of the Council of Ministers of March 18, 1999 “On Some Issues for the Implementation of the Social Insurance in the Republic of Albania Act and the Health Insurance in the Republic of Albania Act.”

<sup>125</sup> Kepi, Fadil, *Albanian Legislation on Social Problems*. 2004. Tirana: LILO, 117.

<sup>126</sup> *Ibid.*

the child. When the worker is pregnant with more than one child, the first period of maternity leave must be 60 days.

For workers who have recently given birth and those who are breastfeeding, the law provides an obligatory leave of no less than 42 days after birth. The law likewise provides for adopted children. Accordingly, a worker who has adopted a child of up to one year of age, is entitled to a leave of at least 28 days starting from the date of the adoption. The leave for the adoptive mother may not commence until the 42<sup>nd</sup> day subsequent to the birth of the child, which is the minimum obligatory leave accorded the biological mother of the adopted child.

A maternity leave of 77 days – 35 of which are work contract leave days and 42 are leave days after childbirth – is considered obligatory because during this period of time pregnant and breastfeeding women are prohibited from working. In consequence, not only is the employer barred from pressuring these workers to perform work duties, but, likewise, the worker may not voluntarily renounce this maternity leave.<sup>127</sup>

#### *b. Optional maternity leave*

Following the 42 days of leave after childbirth, the worker may decide whether she wants to return to work or to stay home and receive social insurance–funded childcare leave. The maximum period for drawing social insurance benefits is 365 days, the maximum optional maternity leave under Albanian law. For women who are pregnant with more than one child the maximum maternity leave is 390 days.

In the event that parties have not set forth specific provisions for maternity leave in contract provisions, they may avail themselves of Labor Code provisions on minimum obligatory maternity leave. When parties have not provided for maternity leave in the work agreement, the employee has the right to choose either the shorter obligatory leave with a higher per-day benefit or the longer optional leave with a lower per-day benefit. Pregnancy-related benefits are paid to the employee if she has been insured for at least the previous 12 months, regardless of the system of insurance, obligatory or voluntarily.

According to Article 27 of the 1993 Social Insurance Act, the maternity benefits of the insured worker comprise the following: 80 percent of the average daily estimated basic income for the prior year for the period before childbirth and for 150 days after childbirth; 50 percent of the average daily estimated basic income for the prior year for the rest of leave (depending on the number of children, from 365 or 390 days of maternity leave, up to 150 days after the childbirth are paid with the 80%. From 150 days to the end of 365 or 390 days are paid with the 50%. Thus, these amounts are not

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<sup>127</sup> Articles 104 and 105, the *Labor Code*, 1995; Article 27, the *Social Insurance in the Republic of Albania Act*, No.7703 of May 11, 1993.

linked to the obligatory or optional maternity leave). The insured worker who moves to a different place of work for reasons arising from her pregnancy has the right to compensation for any reduction of her income.<sup>128</sup>

Besides pregnancy-related benefits, Albanian legislation also provides for a one-time benefit paid when the child is born, the eligibility criterion for which is that the worker must have been insured for at least one year prior to childbirth and all mandatory insurance contributions have been fully paid for that time period. The mother is the primary recipient of this benefit.<sup>129</sup> Currently, this benefit is set at 50 percent of the minimum monthly wage. Provisions recently added to Albanian legislation provide special measures to safeguard women's reproductive health from pregnancy to childbirth.

The Reproductive Health Act (No.8876) April 4, 2002, regulates all organizational and functional aspects of reproductive health, in both public and private health institutions. According to Article 7 of this act, the principal tools for ensuring safe motherhood include access to quality care before, during, and after the birth of the child. Consequently, the provisions of this act and other regulations issued by the minister of health, stipulate free obligatory examinations before and after the birth of the child. The number and type of the examinations are set forth in directives of the minister of health.<sup>130</sup> Although the Council of Ministers has not yet issued a decision on the implementation of this act, workers are actually able to leave work without loss of pay for such medical visits, including prenatal examinations, during working hours under Council of Ministers' decisions providing paid leave or time off for every three hours of work.

## SECTION 6 – Prohibition of Dismissal and Defense Rights

In order to protect the right to work of pregnant women and women who are breastfeeding, Albanian legislation provides the following guarantees:

- Article 146 of the Labor Code provides that “the termination of the work contract shall be deemed unfounded and unreasonable in the event that it is carried out on grounds indivisible from the employee's personal situation, but with no legal connection the employment relationship. Grounds of this nature include, among others, gender, marital status, pregnancy, and family

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<sup>128</sup> Article 28, the *Social Insurance Act*, 1993.

<sup>129</sup> *Ibid.*, Article 29.

<sup>130</sup> Article 24, the *Reproductive Health Act*, 2002.

obligations.” Termination of the work contract based on unreasonable grounds is invalid, and in consequence, such termination will have no effect.

- Also, according to the 2004 Gender Equality Act, taking disciplinary action against an employee, changing her working conditions, transferring her to another place of work, and terminating her employment contract on grounds of gender are considered discriminatory actions by the employer, which are punishable under the provisions of this act and other normative acts.<sup>131</sup>
- In the event that the employer terminates the contract on reasonable grounds,<sup>132</sup> but the employee is pregnant or breastfeeding, the law presumes that the cause of the dismissal is the pregnancy or the birth of the child. In regard to such cases, Article 105(a) of the Labor Code states that “the employer shall have the obligation to prove the reasonable ground which brought about immediate termination of the contract.”
- Article 107 of the 1995 Labor Code provides that “the termination of the work contract, announced by the employer when the employee demands maternity leave, shall be considered invalid.”

If the employee is notified of termination of the contract before maternity leave begins, but the deadline for notification expires prior to its actual commencement, the said time limit is suspended for the period of maternity leave. Any pregnant or breastfeeding worker alleging that her dismissal is illegal, has the right to file a complaint and demand reinstatement of her rights.

The following legal recourse is available to pregnant and breastfeeding workers:

- If the subject of unlawful dismissal is a civil servant,<sup>133</sup> he/she may lodge a complaint with the Commission of the Civil Service, which will determine whether there is justification for the complaint and whether any disciplinary measures should be taken against the employer to redress the civil servant’s grievance.<sup>134</sup> In the event that the Commission voids the employer’s decision to terminate the employment contract, the civil servant will receive full pay from the day the financial relationship was interrupted. The employer has the right to appeal the Commission’s ruling in a court of appeal within 30 days

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<sup>131</sup> Articles 5 and 15, the *Gender Equality Act*, 2004.

<sup>132</sup> Article 153 of the 1995 *Labor Code* sets forth as reasonable grounds cases when the employee commits a serious breach of contractual obligations, as well as cases of less serious but repeated breaches of contractual obligations.

<sup>133</sup> A civil servant is an official of central and local administration, and independent institutions. Their labor relations are governed by the 1999 Status of Civil Servants Act.

<sup>134</sup> Article 8, *The Status of Civil Servants Act*, 1999.

from the day of the notification.<sup>135</sup> The civil servant has the right to return to her previous job and receive compensation for actual loss sustained during the interruption in employment, if the court finds that the dismissal was illegal. The court's decision is legally enforceable. In practice, judicial decisions favoring civil servants are contested and not complied with by the state administration. In consequence, there are conflicts between employers, law enforcement agencies, and the Commission of the Civil Service.

- If the provisions of the Labor Code are applicable to the dismissed worker's employment situation, the worker who alleges violations of her rights may seek redress in a Court of First Instance. However, there are far more workers whose employment is governed by individual work contracts. This category accounts for the largest segment of workers in the public and private sector. In the event of illegal dismissals with no reasonable grounds in the private sector, the court will rule that the employer is obliged to pay the employee a wage compensation of up to one year's salary, including the wage the employee is entitled to during dismissal notice period. In the case of employees of state institutions, the court will reinstate the employee to her/his previous job if it finds for unlawful dismissal.<sup>136</sup>

In practice, there are no difficulties in legally enforcing these types of judicial decisions.

## SECTION 7 – Conclusions. Areas of Concern. Recommendations

### 7.1 Conclusions

Generally speaking, current Albanian legislation meets the standards set forth in Council Directive 92/85/EEC. In general, knowledge and enforcement of the legal framework is in accordance with the principles of the directives and with legislation. However, some matters of concern are listed below. Judicial practice is likewise consistent.

### 7.2 Areas of Concern

- In practice, uninsured private sector employees, including pregnant women, lack access to rights provided by Albanian labor legislation.

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<sup>135</sup> Ibid., Articles 6 and 25.

<sup>136</sup> Article 146, the *Labor Code*, 1995.

- There is also a tendency in the private sector of noncompliance with normative legislation that sets forth, in detail, occupational safety standards in the workplace. A case in point is light industry, which often provides high risk work environments.
- While this legislation provides for and guarantees gender equality, gender-based discrimination continues to exist.
- Although, from a legal standpoint not hiring or dismissing women from jobs may not technically be on grounds of pregnancy or of raising a young child at home, quite often employers consider such personal aspects of women's lives, as well as changes in her marital status as diminishing her abilities at work, and are the real reasons for taking disciplinary measures against pregnant and breastfeeding women. Such cases require special attention and need to be a governmental and civil society priority in order to document and help eliminate such practices.

### 7.3 Recommendations

- There is a need to improve the work of the State Work Inspectorate because violation of the rights of pregnant and breastfeeding women persist. Court cases and social attitudes indicate that the State Work Inspectorate has not been able to prevent or alleviate such discrimination.
- The legal responsibility of employers who violate the law or who refuse to implement judicial decisions should be increased.
- Training efforts must be stepped up in two directions: employers and employees alike need more intensive education regarding their rights and duties. Such training may be offered jointly to employers and employees, to encourage them to mutually acknowledge and implement their common obligations.
- It is especially important to strengthen employee organizations, such as the trade unions, through training, raising awareness of their specific role in a society based on the free enterprise and a market economy.
- The media and civil society networks need to do more to raise the public's level of awareness about the rights of pregnant and breastfeeding women, and to increase employers' understanding of their responsibility to comply with the specific legal rights of pregnant and breastfeeding women under Albanian law. The rights of pregnant and breastfeeding women must be seen as a legal obligation, not a privilege.

## PROTECTION OF SELF-EMPLOYED WOMEN DURING THEIR PREGNANCY AND MOTHERHOOD

**Council Directive 86/613/EEC** of December 11, 1986 on the application of the principle of equal treatment between women and men engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

### SECTION 1 – National Legal Framework on Self-Employment: General Provisions

In the practice of labor relations, the constitutional principle of gender equality is also applied to the work of self-employed individuals. Since there are no specific statutory provisions regulating the work of self-employed men and women, they are, as a rule, subject to the provisions of Albanian labor legislation.

Albanian legislation refers to the concept of “self-employed person” in some normative acts, either specifically providing for it, or incorporating the concept into the category of the economically active population.<sup>137</sup> Article 2(11) of the 1995 State Work Inspectorate Act defines the term “self-employed person”, so as to embrace all people engaged in a for-profit enterprise, who hold the appropriate permits and licenses therefore, or otherwise comply with stipulations of statutory provisions. Government Decision No.208 of April 19, 1994, on the Extent of Social Insurance Coverage for the Workers of Former Agricultural Organizations and Members of Their Families regards as self-employed people working in agriculture, even former agricultural organization workers and other former state sector employees, as well as members of their families over 16 years of age who own or rent land.

Additionally, Albanian legislation embraces the concept of “member of the self-employed family,” which refers to a family member who works with or for the self-employed person without a work contract and without a salary.<sup>138</sup> Under Albanian law, members of the self-employed family enjoy the same rights that are provided in the Labor Code for self-employed persons.

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<sup>137</sup> The 1993 *Social Insurance Act* and a number of governmental decisions *vis-à-vis* implementation of the Act refer to the concept of *self-employed* person, but, do not regulate the meaning of this concept.

<sup>138</sup> Article 2, paragraph 10, the *State Work Inspectorate Act*, 1995.

## SECTION 2 – Social Rights of Spouses of Self-Employed Workers

### 2.1 Formation of companies by spouses

When a person is setting up a business enterprise, the law makes no distinction based on whether or not its founders are married to each other. It must be noted that the issue of marital property in respect of such businesses is subject to the following provisions of the Albanian Family Code:

- If the business is started up by a single person, the business activity and its profits are considered personal property of the person who has started the business.<sup>139</sup>
- If the business is established by a married person, the company and its profits automatically constitute the common property of both spouses, even in the event that only one of the spouses founded the company.<sup>140</sup> The Family Code provides that the community property rule holds true, unless the parties otherwise stipulate in their marriage contract.<sup>141</sup>

### 2.2 Recognition of the work of spouses

Current Albanian legislation does not specifically protect the rights of spouses who perform certain work duties for a business founded by the other spouse, but who, in such a capacity, are neither legal partners in the business, nor employees. New statutory measures are needed to set forth specific provisions to facilitate acknowledgement of the work of these spouses.

Provisions of the Family Code, however, stipulate that any work performed by one spouse with respect to the management of assets gained during marriage, or even the usual jobs of housekeeping or child raising, are regarded as a contribution to common property. Consequently, in the event that the common property is divided up, each part is recognized as an equal portion of the assets gained during marriage, regardless of the actual contribution of the spouse.<sup>142</sup> Additionally, even if the assets had been accumulated prior to marriage, but were, during the marriage, managed by both spouses, the profits and the production growth are considered common property of both spouses.<sup>143</sup>

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<sup>139</sup> Article 77, the *Family Code*, No.9062, on May 8, 2003.

<sup>140</sup> *Ibid.*, Article 74.

<sup>141</sup> *Ibid.*, Article 66.

<sup>142</sup> *Ibid.*, Articles 90, 103, and 147.

<sup>143</sup> *Ibid.*, Article 74, letter d, and paragraph 2.

### 2.3 The rights of self-employed workers whose work activity is interrupted due to pregnancy and motherhood

Albanian legislation stipulates that self-employed persons must be enrolled in social and health insurance schemes, which protect the self-employed from the social risks of pregnancy, retirement, mental or physical disability, and loss of the family provider. They also have the right to extend their obligatory social insurance coverage by procuring additional voluntary insurance to provide supplementary economic security.<sup>144</sup> The spouses of self-employed persons, as members of families of self-employed persons, receive obligatory protection and insurance only for health risks.<sup>145</sup>

Under the 1993 Social Insurance Act and Regulation No.35 of June 19, 2002, on Voluntary Insurance with the Institute of Social Insurance, the self-employed have the right to sign up for voluntary insurance to qualify for a minimum pension or up to twice the minimum retirement pension, the physical or mental disability pension, or the retirement benefit for the loss of the family provider. Compulsory insurance for self-employed women covers pregnancy or the birth of a child. They receive pregnancy-related benefits during the interruption of their work duties for a period of 365 days. Since self-employed workers do not have a fixed salary their benefits are in relation to the minimum wage. Albanian legislation does not provide the possibility for contributing to voluntary insurance schemes to bolster income during pregnancy or after the birth of a child.<sup>146</sup>

When spouses of a self-employed person work with or for the self-employed spouse, without a work contract and without earning a salary, they do not receive social insurance-based benefits during pregnancy or after birth of a child, because this category of worker is not, under Albanian law, subject to compulsory social insurance coverage. As a result, the spouses of self-employed persons also do not have the right to benefit from voluntary social insurance schemes, because Albanian legislation has restricted this option to coverage for retirement, physical or mental disability and the loss of the family provider, but not for pregnancy.

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<sup>144</sup> Articles 2 and 3, *The Social Insurance Act*, 1993, and Article 8, the *Act on Health Insurance in the Republic of Albania*, No.7870 of October 13, 1994.

<sup>145</sup> Article 8, The 1994 *Health Insurance Act*, and Council of Ministers *Decisions* No.112 of March 18, 1999 “On Some Issues of the Implementation of the Social Insurance Act of the Republic of Albania, and the Health Insurance Act of the Republic of Albania.”

<sup>146</sup> Articles 27 and 60, the *Social Insurance Act*, 1993.

### SECTION 3 – Legal Means of Redress

All self-employed persons, as well as family members working for them may file a complaint with the State Work Inspectorate in the event that they believe that the principle of gender equality has been violated.<sup>147</sup>

The provisions of legislation regulating the organization and functioning of the Inspectorate apply to employers, employees, self-employed persons, and the latter's family members.<sup>148</sup> The Inspectorate's final decisions are legally binding, and when those affected by them fail to comply voluntarily, law enforcement agencies are entitled to enforce them.<sup>149</sup> The parties concerned have the right to respond to allegations, within the framework of general legal principles, by seeking redress in a court of law. As Article 42(2) of the Constitution stipulates: "Everyone, to protect his/her constitutional and legal rights, freedoms and interests, or in the event of charges filed against him/her has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law."

If the court of law finds that the self-employed person or a member of his/her family has been discriminated against on grounds of gender, it will rule that the discriminatory act be discontinued and, if warranted, that the injured party receive compensation for damages.<sup>150</sup>

### SECTION 4 – Related Research and Statistics

#### 4.1 Social perception of self-employed women and men

Despite the growing number of woman-run businesses, recent data show that women's involvement in business enterprise remains rudimentary.<sup>151</sup> Figures through 2002 reveal that men own about 82.5 percent of registered private businesses, with a mere 17.5 percent owned by women.<sup>152</sup> Also, 85 percent of businesses operate in urban areas, 15 percent in rural ones.<sup>153</sup> Woman-owned businesses are concentrated primarily

<sup>147</sup> Article 19, the State Work Inspectorate Act, 1995.

<sup>148</sup> Ibid., Article 3, paragraph 3.

<sup>149</sup> Ibid., Article 27.

<sup>150</sup> Article 608, the *Civil Code*, 1994, and Article 16, the *Gender Equality Act*, 2004.

<sup>151</sup> UNDP & SEDA Albania, *Pro-Poor and Pro-Women Policies and Development in Albania – Approaches to Operationalizing MDGs in Albania*. 2005. Tirana: UNDP, 68.

<sup>152</sup> Hafizi, Majlinda, *Female Entrepreneurship in Albania*. Bologna: University of Bologna, 2002. For more information, please visit [www.ea2000.it/file%20per%20numero1-2004/forli12.pdf](http://www.ea2000.it/file%20per%20numero1-2004/forli12.pdf). Last accessed: October 27, 2005.

<sup>153</sup> Ibid.

in commerce, where they are usually sellers; in various services where they work as dentists, pharmacists, lawyers, notaries, hairdressers, etc; in industrial/agricultural enterprises, where they are involved in daily production; in the textile industry and tailoring; in publishing; in handicrafts, etc.<sup>154</sup>

## 4.2 Research on women in agriculture

It is difficult to delineate a full and precise picture of rural women's economic status and legal rights in the absence of definitive statistical data on the role of women in agriculture. A study conducted by ACER (Albanian Centre for Economic Research) shows that men account for 83.4 percent of agriculture-related purchases, while in 71 percent of cases women tend the vegetable garden. Most of the tasks in the agricultural field such as purchasing goods required for agricultural purposes, spraying with pesticides, transport and seed selection are performed by males, whereas women do the weeding and fertilizing of the garden. While women are responsible for most of the meal preparation and childcare, it is men who are mostly in charge of the weekly marketing and budget management.

Women's roles and status in agriculture depend on a number of factors, the most important being related to the size of the farm. On relatively well-developed farms oriented mainly toward market production the man plays the lead role in managing and marketing activities, with women and children involved in productive chores and servicing activities. On middle-sized farms, which produce mainly for the needs of the family and partly for the market, usually both husband and wife engage in productive activities and in marketing the goods produced. On small un-mechanized farms in hilly and mountainous areas where productivity is very low, family incomes derive mainly from men employed outside the country or in urban centers.<sup>155</sup>

There is a significant rift between men and women as regards the extent of ownership, engagement in private business, and access to financial and credit institutions.<sup>156</sup> There is a lack of gender data in agriculture field.<sup>157</sup> However, women's participation in

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<sup>154</sup> Ibid.

<sup>155</sup> The survey on "Economic and Legal Rights of Rural Areas Women" conducted by the Committee for Gender Equality (former Committee for Equal Opportunities) in 2004, in which 812 women from 5 districts of the country (Elbasan, Shkodër, Kukës, Berat, Gjirokastër) were polled, revealed that the husband played the main role in providing the incomes for 83 percent of families, while wives worked alongside their husbands in 45 percent of families in rural areas.

<sup>156</sup> Women's Centre, *Report on Gender Problems in Rural Areas and Agriculture*. July 2003. Tirana: Women's Centre.

<sup>157</sup> Eglantina, Gjermeni, ed. *Gender Identity and Agriculture*. 2003. Tirana: Women's Centre.

agriculture has noticeably increased. Women's entry into agricultural work traditionally regarded as "men's monopolies," is also evident. Poverty, tradition, previous experiences, migratory movements, economic need, and education are factors that have impacted women's increased participation in agriculture. Level of mechanization is another factor that determines women's involvement in farming operations: the higher the level of mechanization, the lower the need for manual labor. Whenever the need for manual labor diminishes, women are the first to lose their work.

### **4.3 Research on the status and rights of self-employed women**

There has not been any research regarding the status and rights of self-employed women, such as women assisting their spouses and women during pregnancy and motherhood. Therefore, it is difficult to estimate whether they are discriminated against in practice or whether self-employed work is less favorable for these women than other forms of work.

## **SECTION 5 – Conclusions, Areas of Concern, Recommendations**

### **5.1 Conclusions**

Albanian legislation does not specifically apply to self-employed men and women. However, an individual in these circumstances may use the general constitutional and legal provisions that define the principle of equal treatment. The concept of self-employed men and women is referred to specifically in Albanian legislation, and it comprises all those persons who have a gainful activity, including farmers and members of the self-employed family. The laws in Albania guarantee and enable self-employed persons to seek redress through administrative and judicial procedures. In cases of violation of equal treatment standards, Albanian legislation provides for compensation.

### **5.2 Areas of concern**

- low levels of women's participation in the business sector and few women entrepreneurs;
- lack of updated information on self-employed individuals, disaggregated by sex, and their activities;
- the spouses of self-employed persons who work with or for the self-employed spouse without a work contract and without salary do not receive social insurance benefits when pregnant or when they give birth to a child, because

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under Albanian law this worker category is not subject to compulsory social insurance;

- the spouses of self-employed persons do not have the right to benefit from voluntary social insurance schemes because Albanian legislation has restricted opportunity for coverage to retirement, physical or mental disability and the loss of the family provider, excluding the social risk of pregnancy.

### 5.3 Recommendations

- There is a need for programs, policies, and projects to promote the economic empowerment of women.
- It is important to conduct more qualitative and quantitative research, which would establish the basis upon which social policies must be built.
- Legislation should be passed to improve the situation of spouses of self-employed persons in terms of social insurance schemes.
- Programs of positive discrimination should be designed in order to encourage women's participation and involvement in the self-employment sector.

## ANNEX

### List of Legislation Screened

Civil Code, No.7580 of July 29, 1994.

Constitutional Court of Albania. Decision No.49 of July 31, 2000.

Act No.397 of May 20, 1996 on the Specific Protection of the Pregnant Women and Motherhood.

Act No.711 of December 27, 2001 on the Structures and Levels of Payments for Civil Servants in the Institutions of Central Administration, Administration of the President of the Republic, Administration of the Assembly and Clerks of State Budget Institutions.

The Gender Equality Act, No.9198 of July 1, 2004.

The Collective Bargaining Agreements Act, No.7673 of February 17, 1993.

The State Work Inspectorate Act, No.7986 of September 13, 1995.

The Status of Civil Servants Act, No.8549 of November 11, 1999.

The Reproductive Health Act, No.8876 of April 4, 2002.

The Labor Code, No.7961 of July 12, 1995.

The People's Advocate Act, No.8454 of February 4, 1999.

The Social Insurance in the Republic of Albania Act, No.7703 of May 11, 1993.

The Health Insurance in the Republic of Albania Act, No.7870 of October 13, 1994.

The Act on Some Issues in regard to the Implementation of the following two acts: On Social Insurance in the Republic of Albania Act and the Health Insurance in the Republic of Albania Act, No.112 of March 18, 1999.

The Trade Unions in the Republic of Albania Act, No.7516 of October 7, 1991.

Decree No.67 of the Council of Ministers of January 10, 2003.

Decision No.632 of September 18, 2003: The Program to Promote Employment for Female Job Seekers.

Act No.8960 of October 24, 2002 The European Social Charter (ratification).

The Constitution of Albania. Approved by Act No.8417, Tirana, October 21, 1998. (It was approved by a referendum on November 22, 1998 and became effective via promulgation by Presidential Decree No.2260. Tirana, November 28, 1998.)

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