

THE RIGHT TO WORK AND EMPLOYMENT IN ALBANIA IN REGARD TO THE DISCRIMINATION AGAINST WOMEN'S EMPLOYMENT UNDER THE HUMAN RIGHTS SPECTRUM

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Abstract

This paper aims to establish a more realistic understanding of principles and application of norms regarding to non-discrimination and specifically the discrimination of women in the framework of the right to work. This research paper handles synthetically issues of non-discrimination both internationally and nationally. It aims to provide a minimal contribution to the implementation of non-discrimination in Albania, considering that the discriminating nature of the Albanian society continues to be the determinant of discriminatory policies. Despite the positive steps that Albania has made in creating a legal framework, there are still missing or incomplete acts in the implementation of the laws in practice.

Key Terms: *Human Rights, Labor Law, Gender, Women, Non-Discrimination*

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Introduction

Human rights and fundamental freedoms are rights that rise together with human being and have a universal character, so the Constitution of the Republic of Albania underlines that they are inseparable, inalienable, inviolable and stand on the foundation of the entire juridical order, without making any exclusion or discrimination for all, women and men, Albanian citizens, foreign nationals and stateless persons, national minorities, etc. The unstoppable part of these rights is the right to work and the non-discrimination of women in this right.

In this paper is presented a general figure of all major international legislation, mainly EU regulations on the protection of labor law in terms of non-discrimination on a gender basis; and then detailed in Albanian legislation; the enforcement mechanism and organs of those laws; statistical datas and fact analyzing, and than of the Guaranteeing forms and realize of these rights reflected in court decisions and practice.

To make an assessment on this issue, I am mainly based on the projections of basic international acts for human and employee rights, gender non-discrimination, and in the domestic legislation based on the Constitution of the Republic of Albania, as well as on the Labor Code of the Republic of Albania, Laws, Guidelines, and other articles.

The Labor Law Character

Handling of labor law, as part of the fundamental human rights has sparked a lot of debates, where some endorse the character of labor rights as part of the fundamental human rights, while others see it with skepticism and suspicion.

The right to work in fact *does not include the guarantee to work, but governments need to take action and should use all the means to achieve the full realization of the right to work and to create conditions for access to Work.*

Is Work Right or Obligation? Work is closely related to human dignity, while unemployment can cause serious and social problems for individuals who are unemployed. As a result of the continuous increase in legal work arrangements, more and more it is argued that labor rights should be understood and conceived *as fundamental human rights.*

Regardless of this background, rights such as the right to form and join an employee organization are categorized as ***civil and political rights*** and rights such as the right to work, the right to appropriate working conditions or the right to strike, are categorized as ***social and economic rights***. As a result of this categorization, some of these rights are considered to be

human rights, while others have been presented as inspirational purposes or *binding targets* to be reached by states parties in these acts.

The principle of non-discrimination for employment and gender-based and professional formation its regulation in EU legal instruments, international acts ratified by the Republic of Albania and their implementation in Albanian legislation

Discrimination² is defined as any distinction, exclusion, restriction or preference based on any cause related to sex, race, color, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic condition, educational or social condition, pregnancy, parental affiliation, parental responsibility, age, family or marital status, civil status, place of residence, health status, genetic predisposition, disability, belonging to a particular group or any other cause that has the purpose or effect of making or impossible to practice in the same way with others, of the fundamental rights and freedoms recognized by the Constitution, international acts, and the laws in force.³

Discrimination can be either direct or indirect. ***Direct discrimination*** is considered any unequal treatment of a person or group of persons for reasons such as: gender, race, religion, ethnicity, language, political conviction, religious or philosophical beliefs, economic state, educational, social or parental affiliation, color, age, sexual identity, family or marital status, health status, property status, disability status, affiliation to a vulnerable group that is carried out by differentiation, exclusion or privilege creation in comparison to another person's treatment, or another group of persons, in similar or same circumstances.⁴

Discrimination is indirect when it consists in the application of provisions, conditions, criteria, or practices, seemingly neutral, but which imply the placement of persons or groups of persons in less favorable situations for the reasons outlined above, with the exception of cases where these conditions, criteria or practices are justified as legitimate discrimination or positive.⁵

Equal treatment for all persons, regardless of their nationality, race, religion, gender, ability to work, etc., with the aim of creating equal opportunities to exercise the right to employment, as well as in other areas of community legislation and international law and in employment legislation is a fundamental principle.

Essential equality, also known as material, economic and social, provides everyone with the same opportunity to exercise these rights. In the Constitution, the principle of equality addresses

²The term comes from the Latin word "*dicriminio: discriminātiō, discriminātiōnem*" and has the meaning of separation, different treatment, limitation of rights, or imposition of inequality.

³ Law no. 9970, dated 24.07.2008 "On Gender Equality in Society", Article 4/3.

⁴ Law no. 10221 dated 4.02.2010 "On Protection from Discrimination", Article 5.

⁵ Ibid

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the state and all social entities, forcing them to take all the necessary measures to achieve the purpose of this principle. The state of fundamental equality is different in different countries. There are countries that are more active in helping the various layers of the population. While there are countries that have equality in formally written documents and laws in which the state is unable to play an active role to apply those rules, what constitutes as **formal equality**.

Special protection of women in the exercise of the right to work and social protection, according to the EU legal instruments

The concept of gender equality begins since the founding of the European Union, and then got the first form in the Treaty of Rome⁶, where was written the principle of equal pay between men and women.

The European Convention on Human Rights (in Article 14), in the Protocol no. 7 (Article 5) and Protocol no. 12 (Article 1) predicts the principle of gender equality as one of the fundamental principles of the Council of Europe and its institutions. The European Court of Human Rights, as the main guardian institution of this convention has considered a number of issues regarding the principle of gender equality and non-discrimination.⁷

The European Court of Human Rights is a human rights guarantee institution based by the legal instruments provided as an organ within the Council of Europe. Consequently this Court is a good guarantor of the principle of gender equality. In its first decades admitted the concept of direct discrimination, but did not recognize indirect discrimination. However in recent issues it show a different approach. The Court for Hoogendijk case has contemplate: "When a policy or general measure has disproportionate prejudice consequence against a particular group, it is not excluded that this can be seen as discriminatory, even though it does not intend or does not specifically address that group" ⁸. The Court has acknowledged that Article 14 of the UCHR has recognized not only **formal discrimination** (unequal treatment of equal issues), but also **substantive discrimination** (unequal treatment of unequal issues)⁹. In cases considered by the Court for discrimination on grounds of sex, its stated that: "Equality of sex is one of the major goals of the member states of the Council of Europe".

The EU legal instruments, which can be considered as the most important in terms of the social protection of women, are those described above and are mainly in the "**Treaty on the**

⁶ European Commission, The Treaty of Rome, 25 March 1957.

http://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf

⁷ Equality Issues in Legal Standards and National and International Jurisprudence, Guidebook, School of Magistrates, p. 14-22

⁸ Hoogendijk v. The Netherlands (2005) 40 EHRR SE22 at 207

⁹ Gender Equality Issues in Legal Standards and National and International Jurisprudence, Guidebook, School of Magistrates, pg.71.

Functioning of the European Union”, TFEU¹⁰ , articles 8 and 10, which express the equality in the treatment of men and women and for the fight against discrimination due to gender, race or ethnic origin, religion or belief, disability, age or sexual orientation.

Also Article 157 of the TFEU, addresses in its internal affair the principle of non-discrimination in terms of work reward, wage. According to him, each member state ensures to apply the principle of equal pay for male and female employees for equal work or work of equal value.¹¹ The first legislative measure adopted by the European Council in the field of gender equality was **the Directive on Equality of Payments¹²**, which reinforced the principle of equal payment (ie the elimination of any gender-based discrimination in relation to payments for the same work or with the same value.¹³)

In Title I of **the Community Charter “For the Fundamental Rights of Workers”**, with the subheading "Employment and Payment", point 4 specifies that *"every individual shall be free to choose and to be employed in a workplace in accordance with the regulations defined for this country"*¹⁴, regardless of the citizenship, race, religion, gender etc. that it has. Also in point 5 of this subheading 207 is emphasized that *"every individual should receive a fair payment, ..."*¹⁵, which is intended to provide and assist each individual, regardless of nationality, race, religion, that he might have.

Directive 92/85 / EEC¹⁶ "On the introduction of measures to promote improvements in the safety and health at work of *pregnant workers and newly born or breastfeeding workers*", predicts the rights and standards to be derived for the mother from the child's birth, including the allowance and income earned during her, as well as other benefits provided to pregnant workers who recently have been born or have a baby at bay. Article 8 states that member states should take all necessary measures to ensure that employees are entitled to a continuous period of maternity leave of at least 14 weeks. During this maternity leave period, employees must be guaranteed their employment rights and, in particular, the right to return to the same or a similar job, with no less favorable working conditions. According to the Directive, pregnant women enjoy health protection and the warranty of their work safety and cannot be forced to work overnight and are protected from dismissal from the onset of the burden until the end of the

¹⁰ Treaty on the Functioning of the European Union (TFEU)

¹¹ Point 2 of Article 157 of the TFEU

¹² Council Directive 75/11 / EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ L 045, 19/02/75).

¹³ This formulation increases the protection afforded by Article 119 TEC, as it allows comparison of various jobs. The same formulation is also included in revised Article 141 (ex Article 119), following the reforms undertaken in Amsterdam. Now Article 141 TFEU , ECC codifies the principle of "equal pay for equal work or work of equal value".

¹⁴ "European Labor Law and Social Security Law" Codex, Kluwer Law International p. 25.

¹⁵ Subheading "Employment and payment", point 5.

¹⁶ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently been born or have Infant formula (the tenth specific Directive, within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 348, 28.11.1992, p. 1-8. 32. COM (2008).

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maternity leave¹⁷. The European Commission voted on the proposal to amend the Pregnant Women Directive for its updating and improvement in October 2008¹⁸.

The Parental Permission Directive 96/34 / EC¹⁹ provides that any parent, whether made up of birth or adoption, is entitled to a free maternity leave of up to three months to care for one children up to eight years old. The right to parental leave should be noted that It's different from the maternity leave, which mainly aims at the care and rehabilitation of the pregnant or woman after childbirth and the newborn child. It cannot be transferred beyond biological or adoptive parents, so each of the two parents has a special three-month period that they cannot collect or exchange with each other. Reconciliation of family/private life is, according to the CD "*the natural consequence of gender equality*" and "*... a tool of achieving gender equality not only by law, but also in the reality of everyday life.*"²⁰

The Directive on the burden of proof in cases of gender discrimination²¹ fulfills the legal framework of the European Community on equality between women and men in the field of employment and social security. *The summary in an EU act* of the content of the existing provisions of the various directives that were in force until that period in terms of gender equality, including in some cases from the case law of the Court of Justice, through **changed Directive 2006/54 / EC**²². This Directive aimed to clarify and summarize in a single act the provisions of the EU up to that time *on equality of treatment, employment* including promotion and *professional training*, working conditions, *wages* and professional schemes of *social insurance*. This Directive since 2009 has abolished Directives 75/117 / EEC, 76/207 / EEC, 86/378 / EEC and 97/80 / EEC.

The European Commission in March 2006 adopted the "**Roadmap for Equality between Women and Men**"²³. Gender equality is considered as a fundamental right, a common value of the EU and a necessary condition for achieving the EU's objectives.

¹⁷ Article 10 of the Directive

¹⁸ COM (2008) 637 Final Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85 / EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant women and workers who have little time to give birth or who are breastfeeding.

¹⁹ Council Directive 96/34 / EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICEF, CEEP and ETUC, OJ L 145, 19.6.1996, p. 4-9.

²⁰ Issue-243/95, Hill and Stapleton v Revenue Commissioners and Finance Department [1998] ECR 1998, I-3739 (Hill).

²¹ Council Directive 97/80 / EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex (OJ L 014, 20/01/98).

²² Directive 2006/54 / EC of the European Parliament and of the Council of 5 July on the implementation of the principle of equal opportunities for men and women in matters of employment and occupation (redistributed), Official Journal L 204, 26/07/2006 P. 0023 - 0036.

²³ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - A roadmap for equality between women and men 2006-2010 [COM (2006) 92 final - Not published in The Official Journal].

It is worth mentioning a case of the **GJD**, where in the case of **Pedro Manuel Roca Álvarez vs Sesa Start España ETT SA**²⁴, the object of judgement is related to the right to detach itself, for the employed mothers, the possible use of the *breastfeeding time by the employed mother*, based on Directive 76/207 / EEC²⁵. The issue raised by the court for discussion was whether Directive 76/207 should be interpreted as a preamble to a national measure which provides that female workers who are employed mothers are entitled to various ways of leaving the work to feed their children, during the first nine months of birth, while employed fathers do not have this right if the mother of a child is also employed. In adjudicating this case, the Court analyzed that the Directive should be interpreted as a preamble to national measures by providing that female workers who are employed mothers have the right in different ways to leave their work to feed their children during the nine months of the first birth, while the employed fathers do not have this right if the mother of the child is also employed.

The 1997 European Parliament Resolution called on Member States to consider domestic *violence against women*, including rape within marriage and sexual mutilation, *a criminal offense* and to raise services to help women who are victims of this type of violence²⁶.

Other important instruments include *the EU Gender Equality Strategy* adopted in 2010, **the EU Guidelines on Violence against Women and Girls and the Fight against All Forms of Discrimination Against Them**, and the EU Directives and Resolutions²⁷. Regarding anti-sexual harassment measures at EU level, sexual harassment is regulated by **Directive 2002/73 / EC** introduced the concepts of *sexual harassment and sexual harassment as forms of discrimination*²⁸. Directive 2006/54 / EC calls sexual harassment as "sexual discrimination and violation of the dignity of the workplace".

In the EU legal instruments on women's social protection issues is also included **The Council Directive 2000/78 / TFEU, EC** "On a general framework for *equal treatment in employment and profession*".

²⁴ Issue C 104/09, Pedro Manuel Roca Álvarez v Sesa Start España ETT SA, [Hhttp://curia.europa.eu/juris/document/document.jsf?text=&docid=83738&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=171981H](http://curia.europa.eu/juris/document/document.jsf?text=&docid=83738&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=171981H)

²⁵ Directives repealed by Directive 2006/54 and incorporating its content in this Directive

²⁶ COM (97)0224-C4-0333/97), Official Journal C175, 21 June 1999.

²⁷ EU guidelines on violence against women and girls and combating all forms of discrimination against them, <http://www.consilium.europa.eu/uedocs/cmsUpload/16173cor.en08.pdf>, accessed for the last time on 4 June 2012.

²⁸ Stop Violence Against Women, http://www.stopvaw.org/1976_equal_treatment_directive_and_2002_sexual_harassment_amendment.html, last accessed on June 6, 2012.

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The Universal Declaration of Human Rights contains some specific definitions relating to the right to work²⁹, and to a living and social protection³⁰ such as: If specific arrangements are found in Articles 22, 23, 24 and 25, In the first set of provisions are specified: "Equality in the dignity and rights of all people who are born free and equal"³¹; "The enjoyment of rights and freedoms without any restrictions, including gender"³²; "Prohibition of slavery in all forms"³³; "The Right to Equality before the law and protection against any discrimination"³⁴; "The right to social security and the realization of the economic, social, cultural rights"³⁵.

These projections later became the basis of the formulations of international conventions, national legislation of different states and their implementation. Standards set out in the Declaration, as an international act ratified by the Republic of Albania, have an effect on Albanian-national legislation including the right to work and employment.

Convention "On the Elimination of All Forms of Discrimination against Women", ratified by **Albania** by law no. 7767, dated 09.11.1993³⁶, is a very important Convention of UNO on Women's Rights as it defines in its own right rules for the protection of women and aims to eliminate discrimination against them in all areas.

The Convention has also included very important adjustments such as: the right to work as an inalienable right; the right to freely choose the profession and place of work; the right to promotion; the right to work safety and all benefits and working conditions; the right to benefit from vocational training and retraining; the same employment opportunities, including the implementation of the same selection criteria related to employment issues; the right to equal reward, including benefits; the right to protection of health and safety at work, including the maintenance of preservation function of women; the right to social security, particularly in the case of retirement, unemployment, sickness, invalidity and old age or any other loss of ability to work; the right to paid holidays.

Regarding the field of labor relations, Article 11 of the **CEDAW** Convention specifies the obligations of the States party to it in the field of employment. This article requires states to

²⁹ Article 23 of the Universal Declaration of Human Rights (UDHR)

³⁰ Article 25 of UDHR

³¹ Article 1 of UDHR

³² Article 2 of UDHR

³³ Article 4 of UDHR

³⁴ Article 7 of UDHR

³⁵ Article 22 of UDHR

³⁶ Ratified by law no. 7767 / 9.11.1993

take all measures to eliminate discrimination in this area and to ensure equal rights for both men and women.

The obligation to match the domestic legislation with international acts requires that states undertake in continuity the necessary legal or sub-legal initiatives for this purpose. Even in Albania over the last two decades there have been major changes in the legislation on women's protection in order to ensure compliance with international acts where it is a party, but also to solve various social problems as well as those that brings economic development of the country.

*Another important factor for amending the legislation in this area is the approximation of Albanian legislation with international standards and the *acquis comunitare* of EU.*

The Albanian Internal Law in the Treatment of Non-Discrimination

*The Albanian Constitution are used such as "all", "anyone", "no one", "whomsoever", "each", etc. to show that the human community to which the provision applies is *no exception, no discrimination*, because human rights and fundamental freedoms are guaranteed to all, women and men, minors and adults, Albanian citizens and foreigners, stateless persons, national minorities, etc.*

The constitution as the fundamental act of the Albanian justice system has embodied in its entirety the principles and standards of the Albanian state for fundamental human rights and freedoms, including those of the right to work and employment. The constitution in its Article 3 emphasizes that *"human dignity, his rights and freedoms ... are the basis of this state, which has the duty to respect and protect them"*³⁷.

*Human rights and fundamental freedoms are rights that arise with every human being and have a universal character. Their protection and promotion is the primary obligation of every state and government, this is reflected even in article 18 of the Constitution otherwise called "anti-discrimination article" where it states that "... all citizens are equal before the law and that no one can be discriminated for reasons such as gender, race, religion, ethnicity, language, political, religious and philosophical beliefs, economic, educational and social conditions."*³⁸

Article 54/1 of the Constitution of the Republic of Albania is mentioned the category of gender: *"Children, young people, pregnant women, and new mothers have the right to a special protection from the state"*. Thus, in this article, the Constitution itself has proclaimed state-specific protection for children, young people, pregnant women and new mothers.

The articles of the Constitution of the Republic of Albania are also covered by the principle of *freedom and equality* and sanction them in terms of labor rights, regardless of whether they are

³⁷ Article 3 of the Constitution

³⁸ Constitution of the Republic of Albania, 1998, Article 18.

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related to an Albanian or a foreign citizen³⁹. Thus, the legislator, through the definitions set out in Articles 49/1 and 49/2 of the Constitution, closely related to Articles 16/1 and 18 of it, provides for equal treatment between nationals and foreign nationals with Albanian nationals in terms of rights "... *all are equal before the law and no one can be discriminated ...*"⁴⁰, so she has taken care of her norms to regulate in her content the care of women as well.

In the field of human rights, the place of the international norm in the hierarchical system of norms represents changes from the general hierarchy of norms provided in Article 164 of the Constitution, in its Article 17/2. The **Constitution of Albanian Republic** as it is formulated⁴¹, makes the European Convention on Human Rights as an integral part of it. This article states that the law restricting a right in no case cannot exceed the limits set in the European Convention of Human Rights Article (17/2) is a characteristic guarantee only for the Constitution of Albania¹, where the ECHR takes an equal status to the Constitution itself. Albania is part of the group of those countries that have given to the ECHR a priority power (Article 122)⁴². This means that the articles of the Convention are based on domestic laws, but not on the Constitution.

The **Labor Code**, in its Article 9, establishes the prohibition of discrimination in respect of employment and vocational formation⁴³ and protection of the dignity of the employee. In this article is defined as "sexual concern" any concern that significantly affects the psychological condition of the employee due to sex.

In a special chapter, the Labor Code deals with employees protection⁴⁴, and in special provisions of this chapter there are specific definitions for the protection of women's health.

The provisions of the Labor Code provide for the possibility of returning to work after the woman has fulfilled the legal term of 'work prohibition' for women who have been born after the end of 63 days of their birth. In the Article 107 of the Labor Code gives a special protection for the woman who has born by providing the preserving of the job during the benefit period of maternity or due to adoption. It will also be considered invalid the termination of the legal relationship during this period.

³⁹ Articles 16/1 and 18, Constitution of the Republic of Albania.

⁴⁰ Article 18 of the Constitution

⁴¹ Sokol Berberi, Comparison of Article 3 of the ECHR (KEDNJ-se ne shqip) with Albanian Law and Practice in the "Report on the Study of Approaches to Albanian Legislation with the European Convention on Human Rights", Tirana, June 2003

⁴² "Human Rights - Questions and Answers" of 1987.

⁴³ Law no. 7961, dated 12.07.1995, labor Code of Republic of Albania, Article 9.

⁴⁴ Article 54 of the labor Code

Article 104 of the Labor Code stipulates the obligation of the employer to prohibit the employment of pregnant women and mothers with breastfeeding women in serious and dangerous work that harm the health of the mother and the child. While under Article 108 of the Labor Code, the night work for pregnant women is forbidden.

Article 105/a of the Labor Code guarantees the protection of woman personality, where the employer is prohibited to perform pregnancy tests before employment. Article 105/a, paragraph 2 of the Labor Code stipulates that if the employment contract is terminated by the employer when the woman is at work during pregnancy period or has returned to work after childbirth, the burden of proof that is the cause of solving the labor relationship is not a maternity, it belongs to the employer.

According to article 115 of the Labor Code, the employer gives the same salary both for women and men who perform work of equal value. In the Code is predicted that is not considered as discriminatory the wage differentials based on objective criteria regardless of sex, quality and quantity of work, vocational qualification and seniority at work. When the employee presents serious information that implies on the existence of discrimination, the employer is obliged to prove the opposite.

Article 132 of the Labor Code has regulations regarding employees who care for children in charge regardless of their gender, by guaranteeing him or her a payment. According to this article, in the case of indispensable care for children in charge, the employee is entitled to have not more than 12 days absence per year; While the employee with minor children up to three years old is entitled to a paid leave of up to 15 days; When his / her child is ill, certified by a medical report. In the above cases the employee has the right to absent for an additional period of no more than 30 days per year free of charge.

The Labor Code, in its Article 146, has foreseen pregnancy as one of the cases when the termination of the contract is considered without reasonable cause. If an employer terminates the legal employment relationship due to the pregnancy of the employee, this solution is considered without reasonable cause, and in such cases the employee has the right to compensation for recovering the damage caused.

The **Civil Code** is predicted that every natural person enjoys full and equal capacity to have civil rights and obligations within the limits set by law⁴⁵, while the Criminal Code goes even further by adding to the provisions governing offenses against the family, domestic violence.

Article 130/a with the concept of domestic violence prohibits any form of beating, intimidation or injury done to a person who is a spouse, former spouse, cohabitant or former cohabitant, a close relative to the perpetrator of the offense as a result of the violation of his physical, psycho-social and economic integrity.⁴⁶

⁴⁵ Law no. 7850 of 29.7.1994, Civil Code of the Republic of Albania. Article 1

⁴⁶ Law no. 7895 dated 27.01.1995, Criminal Code of the Republic of Albania. Article 130 / a

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Family Code adopted in 2003, by Law no. 9062, also recognizes the equal right of men and women to freely choose marriage commitments and divorce, as well as mutual rights and obligations to the family and to the education of children.

Meanwhile, **at the legal level**, Albanian legislation is enriched with two very important laws in the function of equal treatment between men and women in society: the **Law "On Gender Equality in Society"**⁴⁷ and the **Law "On Protection from Discrimination"**⁴⁸.

Law no. 9970, dated 25.07.2008 "On Gender Equality in Society", under its Article 2, aims to provide protection against discrimination due to gender and any form of conduct that promotes discrimination due to gender, determining measures for guaranteeing equal opportunities between women and men, to eliminate gender-based discrimination in any form whatsoever, and to determine the responsibilities of state, central and local authorities to draft and enforce normative acts as well as policies which support the development and promotion of gender equality in society.

Article 9 of this law stipulates that gender discrimination is not what is called in the theory of *'Positive Discrimination'*, so when the state takes special measures, including legal provisions aimed at: a) the special protection of women during pregnancy and maternity, new mothers and young parents due to natural birth or adoption of the child, creating conditions for their protection and facilitation at work; social security and social assistance; providing the necessary health care for the mother and the child; providing and promoting the social services system, favoring the development of nurseries and gardens; b) facilitating assistance to persons with special family responsibilities due to daily care of inadequate family members due to age, physical or mental disability or other causes of disability. c) restrictions on working in some sectors of serious and dangerous jobs for pregnant women and those with breastfeeding.

In 2004, Law no. 9198, adopted on 26.02.2004 "On an Equal Gender Society", completes the legal framework regarding equal rights between men and women. The law consists in the placement of both sexes in equal positions in the field of employment, education, decision making, against discrimination and sexual harassment. In addition, this law provides for a legal punishment if it finds violation of it. **Law no. 9669, adopted in June 2007, "On Measures Against Domestic Violence (2007)**, on the approximation of Albanian legislation with international standards in the area of legislation against domestic violence, having the objectives: Prevention and reduction of domestic violence in all forms through appropriate legal measures; and Ensuring the protection of legal measures of family members who are victims of domestic violence, paying special attention to children, the elderly and people with disabilities.

⁴⁷ Law no. 9970, dated 24.07.2008 "On Gender Equality in Society".

⁴⁸ Law no. 10 221, dated 4.2.2010 "On Protection from Discrimination".

Law 7703 / 11.05.1993 "On social insurance in the Republic of Albania" (amended) regarding the maternity leave is in full compliance with the standards established in international acts. According to it, the female worker, *mother*, has the right to maternity leave for a period of 365 days (48 weeks) of calendar days, of which 35 days before birth and 63 days (more than six week after giving birth). With the recent changes in social security legislation, after the 63 days following the birth, the right of the childcare allowance is also provided by the *father* or the adoptive parent, if this right is not exercised or there are no conditions to benefit the mother. So, the lawmaker with this change has recognized the equality in family responsibilities of men and women.

Decision of the Council of Ministers no. 397, dated 20.05.1996 "On the Special Protection of Pregnant and Maternity/motherhood", is the act that has defined in its detail, in more detail, some rules on the working conditions of pregnant women and maternity. It provides rules on the duration of work for pregnant women and mothers with breastfeeding, by stipulating that they are entitled to vacation occasionally during the day, provided that such holidays are justified by their health condition. Under this Council of Ministers decision, pregnant women in no case cannot be obliged to carry out activities that pose a risk of exposure to agents or working conditions foreseen in a list prepared by the Council of Ministers which put their health and safety at risk.

Meanwhile Law no. 8876, dated 04.04.2002, "On Reproductive Health" supports and guarantees the reproductive rights of women. The law states that every woman who is free and exempt from any form of discrimination, obligation and violence has the right to be controlled and to decide freely on all matters relating to her sexuality and her sexual and reproductive health. "

Law 10237/2010 "On safety and health at work" also sets rules on health and safety at work, for pregnant women and mothers with breastfeeding. Measures that have to be taken by the employer for pregnant women or women with breastfeeding are provided in Article 33 of the law. When exposure to agents, processes or working conditions may pose a risk to safety and health and affect the pregnancy or the breastfeeding of the employee, the employer should temporarily adjust the working conditions and / or workplace of this employee, until the exposure to these risks has been eliminated. If none of the abovementioned measures can be applied for technical and / or objective reasons, or cannot be requested on reasonable basis or reasons, the employer grants paid leave to this worker until the risk is avoided.

Definitions of Albanian laws are in same line with the **Directive 92/85 / EEC "On the inclusion of measures to encourage improvements in the safety and health at work of pregnant workers and those newly born or breastfeeding"**. This Directive Sets out the minimum measures and standards that countries should determine for the protection of pregnant women and those who are breastfeeding and the provisions of paragraphs 14, 15 and 16 of the preamble and Articles 4, 5 and 6 thereof are in partial compliance with Articles 31/1, 32 and 33 of Law 10237/2010, for the above-mentioned reasons.

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Pursuant to **Law no. 7995 dated 20.09.1995 "On Employment Promotion" (amended), Decision of the Council of Ministers no. 27, dated 11.01.2012 "On the Programs for Promoting Women's Employment by Special Groups"** (as amended). From this employment program benefit: a) long-term unemployed women (registered as unemployed jobseekers for more than a year; b) women who benefit from income support programs; c) women trafficked; ç) women over 50; d) Roma women; dh) women with disabilities; e) new mothers; ë) women divorced with social problems; f) women returning from emigration, with economic problems.

Favorable rules are also foreseen with regard to the professional formation of individuals coming from specific groups, according to the definition given for this category in the Employment Promotion Act. According to **Order no. 394, dated 23.02.2004 of the Minister of Labor and Social Affairs, "On Vocational Formation System Tariffs"**, the registration fees for the category of trafficked girls and women are free of charge for the vocational courses provided by the Public Formation Centers. Also free courses are provided by these centers even for unemployed jobseekers registered with the competent employment offices.

Finally, **the Law "On Prevention of Domestic Violence"**, entered into force in December 2007. As implementation mechanisms are lacking, this law presents difficulties in implementation. The Ministry of Labor, Social Affairs and Equal Opportunities has to incorporate amendments to the law "On Prevention of Domestic Violence" and to efficiently coordinate the efforts for its recognition and enforcement.

National mechanisms for the implementation of non-discrimination and gender equality in Albania

The legislator is itself a non-solid regulator, although it applies basic principles and unique, is not blind to cases deserving differentiated treatment due to diversity. In a state of law, not all things are left to the legislator, the role of some of its executive institutions itself is influenced by what are called valid equilibriums.

Ministry of Social Welfare and Youth (MSWY). The Responsible Authority is the *Minister of Social Welfare and Youth*, through the structure of the *Directorate of Social Inclusion and Gender Equality (DSIGE)*, which aims to better liaise between social inclusion programs (focusing on women from the most vulnerable groups) with gender equality.

The MSWY plans the annual budget for gender equality and domestic violence issues, which has been increased every year for programs such as: (a) Equal Opportunities; (b) Social Protection; (c) Labor Market, there is cooperation agreement with United Nations Development Programme and UN WOMEN. Part of the state budget for these issues is also the amount

allocated to NGOs by the Civil Society Support Agency. United Nations agencies also support NGOs.⁴⁹

"Commissioner for Protection from Discrimination" on Gender Discrimination Issues

The Commissioner for Protection from Discrimination, CPD has been established and operates pursuant to Law no. 10 221, dated 04.02.2010 "On Protection from Discrimination", as a special institution that guarantees at national level the promotion, analysis, monitoring and support of equal treatment of individuals, also exercises its activity in accordance with European standards. The key competences to be enjoyed by these equality bodies are: 1. To provide independent assistance to victims of discrimination in prosecuting their complaints; 2. To conduct independent surveys of discrimination; 3. Publish reports and make recommendations on any issue related to discrimination;

CPD is an administrative, independent institution, which also has some *quasi-judicial functions*. This function clearly appears in its competencies relating to the resolution of conflicts and complaints of persons who claim to have been discriminated and especially in the law's commitment to define in detail the procedures followed by the Commissioner for Resolving Appeals and Conflicts. CPD is the responsible authority in Albania, which guarantees the protection of subjects from discrimination or behavior that promotes discrimination.

Gender mainstreaming at the central and local level⁵⁰

The establishment and strengthening of this network promotes the inclusion of gender policies at all levels of government. According to the Electoral Code, Article 174 stipulates that in regions where parties have not respected the law for 30% of women in electoral lists, even if a man leaves a parliament, he must be replaced by a woman, even she may be the last on the list. And recently in the 2017 Government Cabinet, the female gender seems to have taken the desired power of perfect equality, where there are 10 female ministers and 10 men ministers who will form the cabinet after recent changes.⁵¹ While in the Albanian Parliament there are 33 female Deputies.⁵²

Advisory Bodies⁵³

⁴⁹ Ministry of Foreign Affairs, Fourth National Periodic Report, addressed to CEDAW. November 2014. Page 14

⁵⁰ Ibid

⁵¹ Prime Minister's Office, "Ministers of the Government" <http://www.kryeministria.al/en/government/prime-minister-cabinet>

⁵² Magazine: "Koha Jone": <http://www.kohajone.com/2016/08/28/32-deputete-femra-sfidojne-meshkujt-me-fjalime-ne-kuvend-dhe-pune-ne-teren/>

⁵³ Ibid

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- **The National Council for Gender Equality (NCEE)** functions since 2009, reformed after the 2013 parliamentary elections, comprising 9 Vice-Presidents, 3 representatives of civil society and is headed by the Minister of 'Ministry of Social Welfare and Youth', (MSWY). Differing gender equality issues were addressed at the NCEE meetings, sub-legal acts or annual monitoring reports were adopted and recommendations were made to institutions at central and local level.

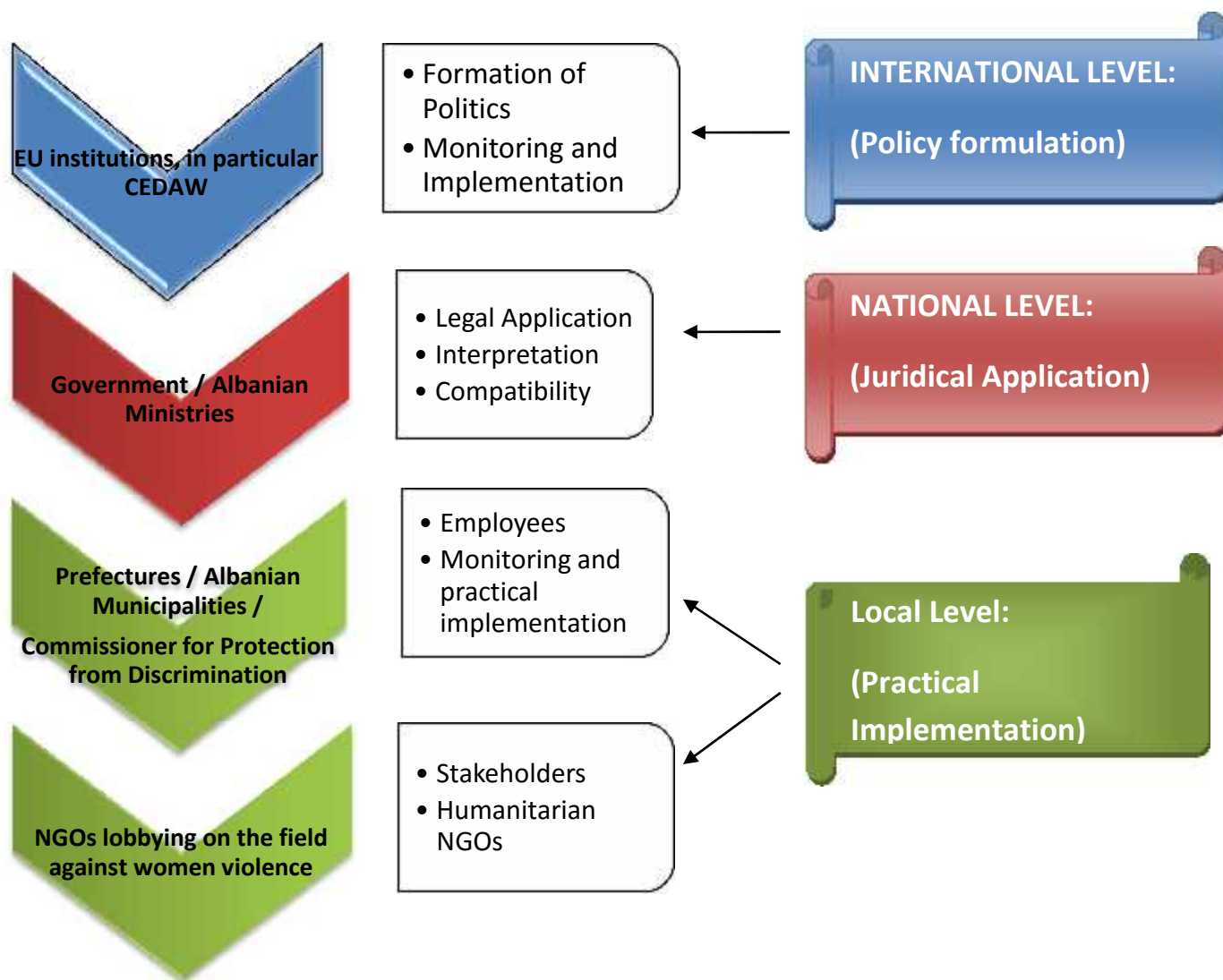
- **At parliamentary level: the Committee on Labor, Social Affairs and Health Care** examines, issues of gender equality and domestic violence through hearings. In 2013, within this committee, a "Sub-Commission on Juvenile Affairs, Gender Equality and Domestic Violence" was established in order to monitor government policies in support of women, family and involvement of CSOs in this process. Within the Commission on Legal Affairs, Public Administration and Human Rights, operates the Subcommittee on Human Rights.

- **The Women's Deputies Alliance (AGD)** was established in October 2013 by lobbying of women of all parliamentary forces as another opportunity to prioritize women's issues and achieving gender equality. AGD has carried out activities for raising awareness in this area, whereby by 2017 there are 33 female deputies in Parliament, which in the upcoming elections are requiring to be represented equal to 50% of Parliament's composition.⁵⁴

The figure below shows in a schemed way the main actors at the local, national and international level, that are involved in the implementation of Albanian legislation on gender equality.

Figure 1: Main actors participating in the implementation

⁵⁴ Official Gazette: "Koha Jone", Title: "Women's Deputies Alliance: In 2017 we request equal representation in the lists of deputies", accessed on 19/12/2016. [Http://www.javanews.al/aleanca-e-grave-deputete-ne-2017-kerkojme-perfaqesi-te-barabarte-ne-listat-e-deputeteve/](http://www.javanews.al/aleanca-e-grave-deputete-ne-2017-kerkojme-perfaqesi-te-barabarte-ne-listat-e-deputeteve/)



The **CEDAW Committee** is a central level supervisor with implementing powers to submit formal reports, opinions and recommendations, so that States Parties can improve and fully implement the Convention⁵⁵.

The Albanian Government, and in particular the Minister of Labor, Social Affairs and Equal Opportunities, is responsible for incorporating and implementing the Convention into national law.⁵⁶ Practical implementation was carried out locally at the responsibility of Prefectures and Municipalities. Also, the role of civil society and NGOs in developing this policy has become even more important over the years, but still lacks financial support from the government.

⁵⁵ Eurocomissioner Stefan Fule: <http://www.balkanweb.com/shqiperi/2685/negociatat-me-be-fule-5-prioritetet-per-shqiperine-ke-mbeshtetnje-dialog-te-nivelit-te-larte-153969.html>

⁵⁶ South East European Law School Network, *Legal Perspectives on Gender Equality in South East Europe*, Skopje 2012, faqe 49-50.

Statistics and Facts over the women equality in Albanian reality⁵⁷

Population, migration, family

On January 1, 2017, the resident population of Albania is estimated at 2,876,591, compared to 2,875,592 on January 1, 2016. During 2016, around 32,000 children were born, while about 21'000 people died. However, there has been a decline in the population since 2005 up now, where the number of women is declining. In 2005 we see that the number of women is greater than the number of men in the population, in 2009 the number was equalized, and since 2009 and onwards, we see that there are more males than females.

On the other hand, net migration has increased compared to the previous year, although it remains negative. For the first time since 2001, natural supplements exceeded net migration, resulting in a slight increase in the number of resident population on 1 January 2017. "(For more information, see Figures 1 and 2 in Annex 1).

In Figure 3 of Annex 1, we see that the gender of the head of the family (the household), is predominantly male male by approximately 87-88% of the household is the male leader, and only 12-13% are woman the leader of the households.

Education

The educational level of the Albanian population is gradually increasing. In the 9-year education, dominate male students where women are 48% of graduate, while in the high school and university dominate female graduate students. There has been an increasing enrollment of youth in universities. In the recent years, the number of *female students* has been higher than that of the male ones for the **universities**, which in 2013-14 amounted to 57%. Number of *graduates in higher education* in 2014 has almost doubled since 2009. (See figure 4, 5 of Annex 1).

The largest share in degrees obtained by *field of study* in universities belongs to the social sciences, business and law, which account for almost 40.8% of all graduates. The same reports also occupy women and men in the field, as opposed to their totals. Compared by fields of study, most graduates dominated by women are the field of exact sciences, followed by that of Health and Welfare, then the Humanities and the Arts, respectively 82%, 77%. On the contrary, areas dominated by men with higher education are Services, followed by that of Agriculture, and beyond it the Engineering, Processing and Construction, of respectively 74.64% and 61%.

⁵⁷ All the datas of this sector are derived from INSTAT (Instituti I Statistikave Shqiptare), General Director of Civil Office and also a raport build on that, in the adress: http://www.instat.gov.al/media/295842/femra_dhe_meshkuj_n_shqip_ri_2015.pdf

High ratio of female graduates of 66% compared with 34% of male graduates in 2014 shows a positive trend of their development, especially in tertiary. (See Figure 6 of Annex 1).

The structure of the **academic staff** by gender in universities has changed. Teaching staff for pre-university education is in the prevalence of women who make up more than 73% of them and over 63% in upper secondary education. In higher education, men predominate, while in recent years are mainly female. The figures of the past four years show a gradual increase in the absolute value of women **Professors** although *men* still hold high values especially in the last year, of 69% or more than twice that of women. As for the staff holding a **PhD degree**, the ratio is 49% to 51% respectively for men and *women*, but in public education these percentages are 42% to 58%. Less qualified staff as Assistant Professors and Lecturers with no title is increasingly female, which in the last year reaches 62%, which constitutes 58% and 65% respectively in public and private sectors. *Female teachers* account for over 63% in secondary education and 73% of basic education. (See Figure 7.8).

While about leading positions on the universities, we see almost a total domination of man. For the year 2015, 90% of rectors are male, 69% of Senate members are male, 59% of Deputy Dean are male, 62% of Chef Department are male. Females dominate only in the lowest post, Member of the Counsel, with 56%. (See Figure 9)

Labor Market and Unemployment

Employment x Unemployment

According to the 2014 Labor Force Survey estimates, 219 thousand people are **unemployed**, where dominate *unemployed women*: For 2014, women contains 48.7% of the unemployed and men 27.8%. While the number of people employed in the number of daughters dominates men with 72.2% who work, and for women only 51% of women work. (See Figure 10)

In year 2000 the Registered Jobseekers were dominated by man, while for year 2015 are women who dominate by 75%. (See Figure 11).

Salaries and gender gap in wages

Wages and gender pay gap in 2014 in Albania the gross average monthly wage per employee is 45,539 All. For male employees, the gross average monthly salary is 47,664 All and for female employees 42,852 All. The gender pay gap is 10%. That means that male employees have a gross average monthly salary of 10% higher than female employees.

Men are paid at an average gross salary of 10% higher than women. In the state sector, this difference is insignificant, per contrary with a small no.of number in domination of women, thus because there are more women working in the state and having more experience. Men in foreign affiliates in the country are paid 2 times more than females. (See Figure 12).

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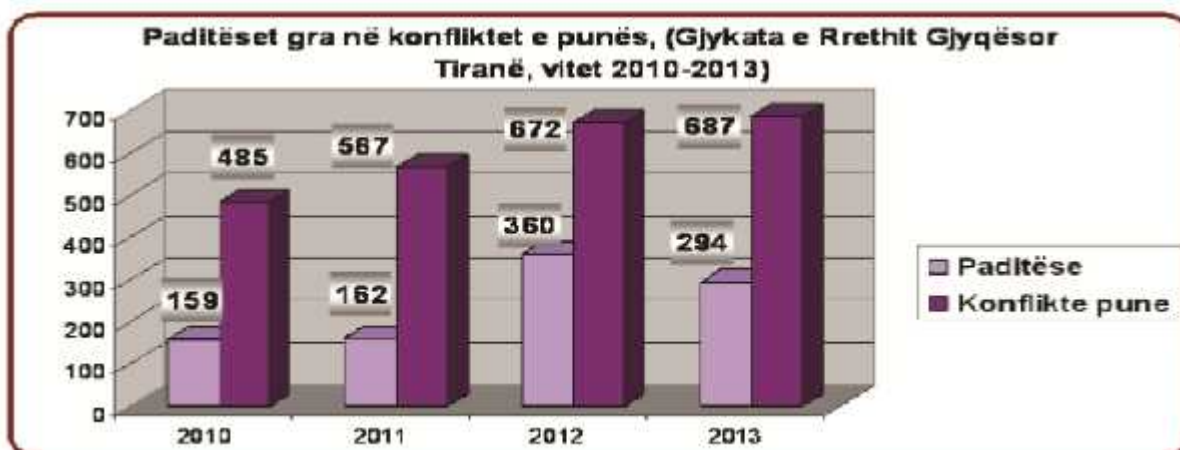
Almost half (47.5%) of women-run enterprises are concentrated in the capital, Tirana, while in the other districts there are very few. (See Figure 13)

The capital, Tirana, while in the other districts there are very few. (See Figure 13)

Albanian judicial practice regarding labor disputes⁵⁸

Judicial conflicts of labor relations seen under the perspective of gender equality

The analysis of court practice has been based on one sample case that has 140 cases of judicial practice each year. Thus, in total, 700 court decisions have been analyzed for the period 2010-2013⁵⁹ judged by the Tirana Judicial District Court. According to the following chart we have noticed that the cases where the claimants are women, about half of them are labor issues.



Termination of employment contract during and after termination of pregnancy leave

The Social Insurance Law regulates the status of a woman as an employee of social security because of maternity⁶⁰. Maternity benefit is paid to the insured woman for the burden and birth

⁵⁸ Prof. Dr. Arta MANDRO-BALILI, "Gender Discrimination in Family and Marriage Matters", School of Magistrates & UNDP, Tirana, 2014, Chapter 3, pages 53-100.

⁵⁹ Statistics of the Tirana Court

⁶⁰ For details, see Articles 26-29 of Law "Law no. 7703", dated 11.05.1993 "On social security in the Republic of Albania", amended by laws no. 7932, dated 17.05.1995, no. 286, date 16.02.1998, no. 8392, dated 02.09.1998, no.8575, dated 03.02.2000, no. 8776, date 26.04.2001, no. 8852, dated 27.12.2001, no.8889, dated 25.04.2002, no. 9058, dated 20.03.2003, no. 9114, dated 24.07.2003, no.9377, dated 21.04.2005. no. 9498, dated 03.04.2006 no. 9600, dated 27.07.2006.

of the child when she has a 12-month insurance period⁶¹. The labor law provides that the labor contract cannot be terminated when the employee is in a maternity leave or after her/his termination. However, such cases also occur in court practice.

In the case of **A.K against Shkodra Regional Hospital**, judged by the Shkodra Judicial District⁶², results that the respondent was Director of the Hospital and the employment relationship was terminated when she was pregnant. The question that arises is: Is the termination of a contract during pregnancy affecting the mother's and child's health and, as such, equates to an inappropriate time-resolution? Even the termination of a work contract or dismissal for a pregnant woman should be considered as being inadequate and as such should be banned. We make this comment because in the judicial practice analyzed for the purpose of preparing this material, there is a tendency to resolve the employment contract shortly after the pregnancy leave is over. For this reason, maybe a period of safety for the new mother and especially for the child may be recommended to be added to the legislation.

Likewise, in the case of **A.Z. against the Ministry of Economy, Trade and Energy**⁶³, it results that the claimant worked with the respondent in the archivist's office and the legal relationship of labor was time-limited, renewed on several occasions. The legal relationship of employment was terminated unilaterally and without justified reasons by the respondent, on the reason that maternity leave has been completed. The claimant pretends that the legal relationship of employment was verbally terminated by the employer on the above date without giving any cause to the claimant. The Court states that: "... this way of resolving the legal relationship of work is unilateral, arbitrary, without justified causes and is contrary to Articles 105 / a, 107 and 147 of the Labor Code." The termination of the employment contract is made once the employee is returned from the maternity leave.

In the case of **J. C against the National Commercial Bank**⁶⁴, it turns out that the termination of the employment relationship was made only 7 days after the employee was returned from

⁶¹ The benefit period provided by law is 365 calendar days, including a minimum of 35 days before and 42 days after the birth of the child.

⁶² For details, see the Judgment of the Shkodra District Court, no. 326, dated 09.02.2009, where the court has ruled the partial admissibility of the lawsuit.

⁶³ For details, see the Judgment of the Tirana District Court, no. 6443, dated 10.06.2013, with the object: Return to work. Obligation of the respondent to pay compensation of 12 monthly salary for the termination of the employment contract without justified and unjustified reasons. Compensation with two monthly salaries for non-compliance with the contract termination procedure. The right to a salary of three monthly salaries, if the employment relationship would have ended at the end of the notification deadline by law. Compensation for seniority according to legal provision of 1.5 salary as well as indemnification for unpublished annual holidays where the court has decided partial receipt of the lawsuit without accepting return to work.

⁶⁴ For details, see Court Judgment of the Tirana Judicial District, No. 5137, dated 14.06.2011, where the court has decided to dismiss the lawsuit because were respected the procedures for notifying the termination of the employment relationship.

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the maternity leave. The employer has been careful to perform notification procedures and meetings required by law in such cases, has taken care of providing written evidence and keeping minutes of meetings. However, the human aspect of care for a new mother who comes after a maternity leave after a period of experience with her health disability and the relationship and care of a totally subordinate child should be taken more in consideration.

Employers do not even want long-term leave, they put pressure on employees that the job cannot wait for them so long. For this reason, a large part of new mothers do not consume maternity leave until the end, and when this happens they risk losing their job. In this regard, **the Albanian Supreme Court can also unify judicial practice in cases of termination of work for the new mother shortly after returning from the pregnancy leave.**

While the practice that the father's permission to give birth can still be found in Albanian legislation and consequently in Albanian practice. Thus, Articles 26 to 29 of the Social Security Law refer only to a woman or a mother, starting with maternity reward, maternity leave and so on. For this reason, from a gender perspective, the father of a child is worth to be treated equally as a mother, even from the legislative point of view, in order to affect the changes in the social mentality.

The position of a woman household in holidays⁶⁵

Collective holidays: in the latter ones, women are more vulnerable than men, and often the lists of people who are fired first are women with the justification that men are head of household. In the cases analyzed in the article of Prof. Dr. Arta MANDRO, "Gender Discrimination in Family and Marriage Matters", we see that 65% are work-related conflicts coming from the public sector and 35% from the private sector (148 dismissals are from the public sector and 78 from private ones).

Reorganization and Re-structuring of Work: Even in labor disputes resulting from job cuts as a result of reorganization of employers, it is noted that women are the first to be affected by reforms and structuring, both in public administration and the private sector. For example, Albanian media have provided extensive coverage in the history of protests organized by female workers, employed in oil **processing facilities in Kuçova**. Women found no reason to maintain their work when employers' directors, under the pretext of reform, decided to employ only those male employees who were heads of households. In their protests women's rightly pointed out

⁶⁵ Prof. Dr. Arta MANDRO-BALILI, "Gender Discrimination in Family and Marriage Matters", School of Magistrates & UNDP, Tirana, 2014, Chapter 3, page 106.

that the only way for them to keep their jobs was to get a divorce, which, among other things, is really being encouraged by So-called reform "⁶⁶.

In the case **V.K vs. A.K.U Tirana and the Regional Branch of Durrës**⁶⁷, it results that the claimant has been dismissed with a disciplinary measure for irregularities found in the performance of the cargo practices and for the lack of new certificates. It is part of dismissal of some employees for the same cause. The court has found that the claimant turns out to be a head of households with minor children and in a serious moral and social situation and continues to be unemployed. The court has taken this into consideration along with the other facts in the trial, by placing compensation from the employer at the rate of 12 monthly salaries. The Court finds that Order no. 328, dated 22/11/2011 that decides also the use of new models of certificates, for the non-implementation of which has been removed from employment, has not been implemented not only in the Regional Directorate of Durrës, but in all Directorates of AKU through the districts. However, we are not in front of a collective rejection by AKU inspectors for non-execution of the order, but in itself, thos was just a pretext and impossibility to implement these points. Some of the obstacles are related to the inability of the subjects to be informed in time regarding the new model of required certificates, models which have not been notified by the World Trade Organization, as an obligation of the Albanian state participating in these organisms. The other ambiguity was the confusion that caused this warrant for its entry in power, as well as the publications with changes to the import countries, in the Official Journal. In conclusion, the repeal of Part 2, Annex 2 of Order no. 328, dated 22/11/2011 regarding the certificate templates shows that there were real objective reasons that led to the impossibility of implementing this order. The audit team for the disciplinary measures "Dismissal from job" for employees who have not implemented or followed the implementation of one part of the Order no. 328 finds it an extreme proposition and collective punishment. Their report referred to DCM no. 94 dated 15/02/2006 "On the approval of the regulation on the functions and procedures of the Internal Administrative and Anticorruption Control of the Council of Ministers", recommends among other things that the General Director of the National Food Authority to review the disciplinary measures given to the employees of the AKU , Referred to the abovementioned findings and conclusions "and" National Food Authority in cooperation with the Directorate of Policies and Veterinary Directorate of the Ministry of Agriculture, Food and Consumer Protection, to coordinate their future activities in case of change of practices or to implement new regulations".

⁶⁶ "Shadow report on the implementation of the CEDAW Convention in Albania", pika 56. Submitted by the Gender Alliance for development Center (GADC) The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking, submitted to the United Nation's Committee on the Convention on the elimination of all forms of discrimination against women", Prepared by Prof. Arta Mandro, Prof. Aurela Anastasi, Ms. Mirela Arqimandriti and Ms. Vera Lesko, June 2010.

⁶⁷ For details, see the Court Decision of the Durrës District Court, no. 2633, dated 10.05.2013, where the court ruled the partial admission of the lawsuit.

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However, despite this recommendation the AKU did not return the claimant to the job and other persons by holding unlawful attitude. Moreover, the Ministry of Agriculture, Food and Consumer Protection with letter no. 2832 prot. Dated 25/06/2012 with the order no. 223 of 25/06/2012 considering that order no. 328 dated 22/11/2011 was not implemented in any case, by any person, repealed exactly that part of the order for which the claimant was fired from work.

"During the transition period, many women and girls have lost their jobs as a result of changes in the political system, the closure of certain sectors of the economy, the privatization of some enterprises, and so on. Many of them were forced to look for new job opportunities in Albania and abroad, and in most cases, these new employment opportunities did not reflect the level of education and qualifications they had gained in the previous system, for example, women textile engineers, physicists, women once employed in heavy industry, etc. ".⁶⁸

Job conflicts related to career opportunities

Opportunities for gaining a profession against fair and objective competition, through examinations, tests, etc., highlight the skills of women and girls. Thus eg. In the **Magistrates School** are prepared The Judges and Prosecutors, selected by competition, the number of which shows females about 70% more than men. The same is true in the faculties of law, where the number of female students is higher than the boys.

As we ascend to the **Court of Appeals or the Supreme Court** and the **General Prosecutor's Office**, *the number of women, with the rise of career degrees, is lowered.* However, court cases where women claim respect for their career, although small, is still present in court practice.

Thus, in A. O's case against the General Directorate of State Police⁶⁹, it results that the claimant requests the annulment of the Order No.240 / 1, dated 17.01.2009 of the General Director of State Police, regarding the award of the "Inspector" grade, the obligation of the respondent to recognize the claimant as senior service, higher education according to the diploma no. 451-A at the Public Order Academy and the waiting time for nomination on duty, the obligation of the respondent for giving to the claimant the "vice commissar" police degree, and accepting all the rights arising from this degree from the moment of readmission. This court's position relies on

⁶⁸ "Shadow Report on the implementation of the CEDAW Convention in Albania", pika 236, Submitted by the Gender Alliance for development Center (GADC) The Albanian Women Empowering Network (AWEN), The Network Against Gender-Based Violence and Trafficking, submitted to the United Nation's Committee on the Convention on the elimination of all forms of discrimination against women", Prepared by Prof. Arta Mandro, Prof. Aurela Anastasi, Ms. Mirela Arqimandriti and Ms. Vera Lesko, June 2010.

⁶⁹ For details, see the Judgment of the Tirana District Court, no. 4918, dated 06.05.2013, where the court has ruled the partial admissibility of the lawsuit.

the fact that the State Police steering structures were obliged to designate to the claimant's a function that corresponded to her level of education, thus recognizing the corresponding rank. Precisely because of this lack of will, the court finds that the claimant has been prevented from developing her career, which in the circumstances set out cannot be allowed to start with a degree that excludes the educational level, by equating it with any Another person involved in State Police structures without having higher education".

Sexual Harassment in Labor Relations

In all the judicial practice, analyzed for the interest of this material in five important courts at national level, we did not show the cause of sexual harassment as a cause of termination of the employment relationship. However, beyond the side of the documentation in the form of lawsuits, objections, minutes of the sitting, report, decisions or orders, outside the courtroom are also discussed in the conversations cases of sexual harassment mainly from male employers to female employees. This is most evident in the work relations in the public administration. Thus, in a litigation that does not aim to labor relations, but relates to the reward of damage to the name and personality of a public administration head on a television channel due to the transmission of a video, we see that sexual harassment is evidenced by a girl who was promised to start a working relationship.

More specifically, in the **Y. P case against "Top Channel" Sh.A** it results that on March 4, 2009 on the "FIKS FARE" show of 20:15 of the defendant was presented a "video" taken from hidden camera. In a televised sequence, a girl was asked to be hired in the apartment of the head of the public administration, discussing with her about the possibility of her participation at various fairs, using her for her external appearance. In his home, according to the video cassette, the headmaster asked the girl to strip in front of him with the argument that he should watch her as he would hire her at the Tourism Agency, where she would attend the fairs. Meanwhile, criminal case has begun. The Prosecution Office of Tirana, on dt. 14/10/2009 has recorded the criminal proceeding with no. 3724 for the criminal offense of "Passive Corruption of High State Officials or Local Election Officials" provided by Article 260 of the Criminal Code. The Prosecutor's Office concludes that the registration as a result of the defendant Top Channel JSC Sh.A, without the authorization of the state authorities, does not constitute evidence in the procedural sense, since the video was taken secretly and not according to sources provided by the applicable Criminal Procedure Law⁷⁰. Likewise, the Tirana Judicial District Prosecutor's Office has come to the conclusion that it does not prove that the State function was abusively exploited to seek, directly or indirectly, improper benefits, sexual acts in return for carrying out the actions Related to his duty or function⁷¹.

70 According to the Decision no. 5046, dated 18.06.2010 of the Court of the Tirana Judicial District, the court argues that the registration with hidden cameras in the sense of Articles 149, 151 / 4,221,222 and 226 of the Criminal Procedure Code, but also under Article 32/2 of the Constitution of The Republic of Albania is unusable as evidence in the criminal process and has indemnified the claimant by 400 thousand Euros.

71 Comment: The court further notes that: "... under Article 8 of the European Convention on Human Rights it is sanctioned that:" Everyone has the right to respect for his private and family life, his residence and his correspondence ". While Article 15 of the Constitution of the Republic of Albania stipulates that: "Fundamental

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In addition, in another practical case, from the reports and complaints made before the **Office of the Commissioner for Protection from Discrimination**, it turns out that the employee under Article 33 of Law no. 10221, dated 4.02.2010, "On Protection from Discrimination" filed a complaint for sexual harassment of her superior. This case is also evidenced in the case law where the case **N. Ç. Against the Mayor of Kamza, Tirana**⁷², judged by the Court of the Tirana Judicial District, results that the employed worked as an economist from 07.12.2009 until 26.08.2011, date when the employment relationship was terminated, not even respecting the required legal procedure, which is also in accordance with Convention no. 158, of the ONP "for the Prohibition of Employment at the Employer's Initiative", articles 8 of it. There is no element of sexual harassment in the verdict. While in the complaint filed by the Office of the Commissioner for Protection from Discrimination, the chief by sending telephone messages such as "cheerful soul", "kiss kiss", "you are my sweetheart", "love you honey" "Okay red flower that is losing freedom like everyone else", and so on. The last message also proves that this action is repeated for the head of the local public administration. He initially gives her a job with 50% lower salary and then removed her at all. The employee has informed the Speaker of the Parliament, the Prime Minister, made it present in the media, but her problem has not been resolved. According to the legal representatives of the claimant this discrimination was made due to gender⁷³.

Conclusion

Discrimination against women, including discrimination in the field of work, is incompatible with human dignity and the well-being of family and society, does not let women participate in political, economic and cultural life in their country. Having a satisfactory result, a detailed and followed-up work has to be done by state institutions and the whole society. The origin of discrimination on the basis of gender derives from past barriers found in the lack of women's

Human Rights and Freedoms are ... inviolable and remain the foundation of all the juridical order". Whereas Article 17 of the Constitution of the Republic of Albania stipulates that: "The limitations of the rights and freedoms provided for in this Constitution may only be imposed by law ... and that such limitations cannot undermine the essence of freedoms and rights and No case cannot exceed the limits set forth in the European Convention on Human Rights. Like wise, Article 36 of the Constitution of the Republic of Albania sanctions that: "Freedom and secrecy of correspondence or any other means of communication are guaranteed." Also, Article 37 of this Constitution is expressly sanctioned that: "The inviolability of the apartment is guaranteed" . Most notably, it is noted that section 41 of the Constitution of the Republic of Albania has sanctioned that: "The right to private property is guaranteed". Finally, the Court analyzing the issue of respect for these principles, of the fundamental human rights and freedoms as above, finds that in the case of the trial, the respondent "Top Channel" JSC has openly violated **human** fundamental rights and freedoms ".

72 For details, see Decision no. 7064, dated 06.07.2010 of the Court of the Tirana Judicial District, the court has imposed the obligation of the employer to indemnify the employee with 17 monthly salaries. Where the decision was left in force even by the decision of the Tirana Court of Appeal, no. 522, dated 05.03.2013.

73 This case was reported by the Center for Legal Initiatives, which has been very active in protecting women's rights from discrimination, and in the present case has provided its legal assistance for filing this case in all the necessary links.

access to education or training opportunities or lack of access to decision-making in the field of public policy.

Even in Albania over the past two decades there have been major changes in the legislation on non-discrimination, gender equality and the protection of women, in order to ensure compliance with international acts where it is party, but also to solve various social problems, even those that bring the country's economic development. Another important factor for amending the legislation in this area is *the approximation of Albanian legislation with international standards and the EU acquis communautaire*.

In this context, is worth mentioning that gender equality issues and non-discrimination of women at work are included in almost all EU policies, programs or decisions, as well as the domestic activity of the Albanian government which aspires to become part of EU. Albania has recognized and sanctioned the principle of gender equality and non-discrimination since in its fundamental law, Constitution, and to continue with a series of other important codes and laws of our domestic legal system.

On the other hand, in Albania have been established some national and local mechanisms that will help to implement this policy, such as: CEDAW Committee; Ministry of Social Welfare and Youth (MSWY); Committee on Labor, Social Affairs and Health, where CPD has a major role.

In conclusion, I would say that the legislative framework is complete and it is more and more harmonized with EU legislation, but there are still problems in applying and enforcing these laws. For this part, the CPD has an important role which needs to be improved in these points: it should intervene with concrete legal action against the relevant institutions in the cases of gender discrimination; Increase the number of contacts with individuals, verify systematically, professionally and as briefly as possible the information that has different complaints; to be proactive in identifying discrimination cases; to increase transparency with the public by enriching the CPD web site, to be more active in the quasi-judicial function.

Findings and Recommendations

At the end of this material, we see that we have been browsing laws and judicial decisions that make us understand that the Albanian society and Albanian justice are playing their part in the process of protecting the working relationship and in strengthening the role of women at work, society and family.

Although there are difficulties and problems, it is important to note that the judicial trend seeks to place the employed woman in a position protected against economic insecurity, dictated by arbitrary and unjustified termination of employment. Women become increasingly aware of their rights and ways of protecting them.

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However much remains to be done in terms of changing the mentality that women are inferior in relation to men at work and family. Still it remains a lot of work to do in terms of strengthening public structures that have the role of observers, preventers and punishment of workers' rights violators. A lot of work is to be done to increase the degree of investigation and judgment of cases of sexual harassment or abuse of office in the bounds of a criminal offense; a lot of work is to be done in sensitizing men in society to see in women a partner or a skilled and capable lady as they themselves; and also to educate younger generations, children of today's society with a sense of equality in life and work.

This study was conducted to analyze what gender problematic emerges from judicial practice as well as to provide specialized recommendations based on concrete observations to influence how laws need to be improved and above all, to improve judicial guarantee of gender equality, the rights and economic status of women in our country.

Thus, **it was found** that:

- Women account half of the country's population, but only one-third of the employment.
- Although Albania has seen economic growth in recent years, the position of women in the labor market continues to remain behind of the women in European Union (EU) states.
- Women are concentrated in sectors and professions that offer low salaries compared to men-dominated sectors.
- The economic dependence on others can increase the vulnerability of women, which can therefore affect the economic well-being of their children.
- Women are underrepresented among lawmakers, senior officials and managers and as a consequence have limited opportunities to be directly involved in decision-making.

The purpose of this study will be completed by identifying the following **recommendations**:

1. To improve the legal framework

-With gender equality, equal participation and equal opportunities in employment, the legislation provides for all institution to ensure equal participation of at least 30% of each gender.

-Between the retirement age limit is noticed that many women working in education, health, etc., are forced to retire even when they do not want to, although they feel fully able to continue their work.

- Regarding the termination of the employment contract in Inappropriate time: dismissal from work for a pregnant woman should be considered as an inappropriate time and as such should be prohibited.

- Regarding the right to benefit from maternity leave: to legalize and to apply in practice the

right of maternity leave not only for mothers as it is applied, but for fathers too 'the fathers leave' after the child birth.

2. To Improve the practical framework

- Realization of the practice of obtaining a maternity leave also for the father of the child.
- Facilitation of taking evidence in cases of discrimination, especially in acute cases for accusation of sexual harassment by the procedural bodies.
- Installing a higher percentage of female employees in both the public and private sectors, and especially their growth in higher positions and career opportunities.
- With specific programs to achieve further sensitization of women for tacing care of her rights.
- To conduct more often studies about the reality of the discrimination, the application of the rights and reports on how much are acclipable our lows as a metter of fact (*de cafto*).

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ANNEX 1

Figure 1: Population according to gender

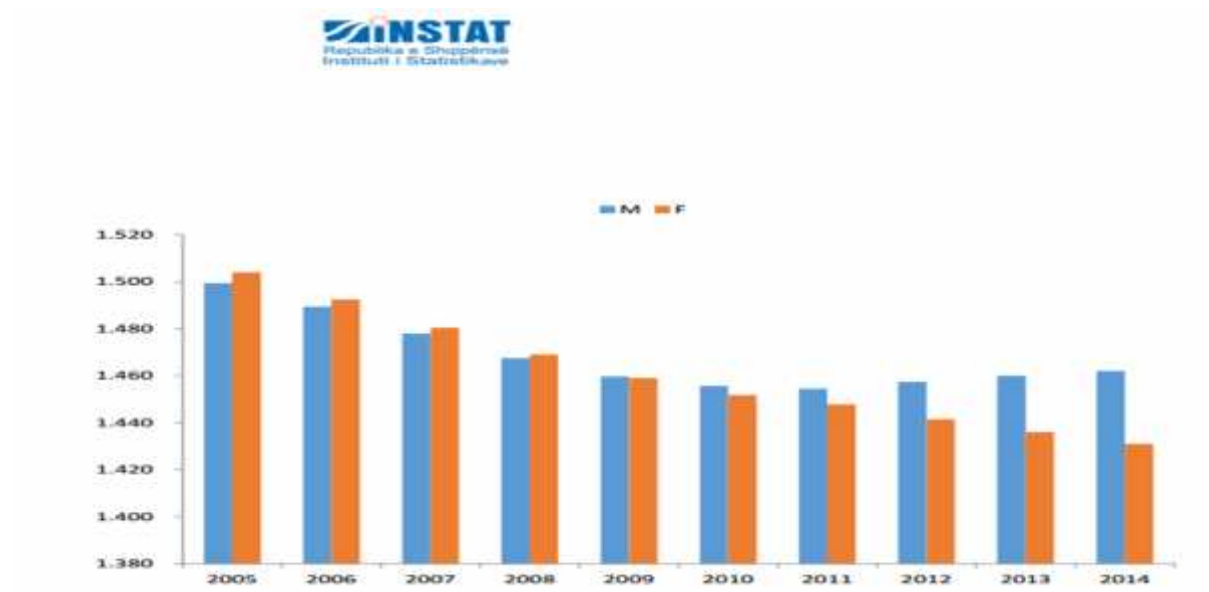


Figure 2: Population changes

Population changes

Gjendësja në fund të vitit /000 - At the end of the year /000

Vitet Years	Popullsia Population		Shtesa natyrore Natural increase		Migracioni neto Net migration		Norma e rritjes vjetore Annual growth rate
	Meshkuj Men	Femra Women	Meshkuj Men	Femra Women	Meshkuj Men	Femra Women	
2005	1.499	1.504	9	9	-17	-18	-0,54
2006	1.489	1.492	8	7	-18	-19	-0,72
2007	1.478	1.480	7	7	-18	-19	-0,79
2008	1.467	1.469	6	7	-17	-18	-0,74
2009	1.460	1.459	7	7	-15	-17	-0,6
2010	1.456	1.452	7	7	-11	-14	-0,39
2011	1.454	1.448	7	7	-8	-11	-0,18
2012	1.457	1.441	7	7	-4	-14	-0,12
2013	1.460	1.436	8	8	-5	-13	-0,10
2014	1.462	1.431	8	8	-6	-13	-0,10

Burimi: INSTAT, Drejtoria e Përgjithshme e Gjendjes Civile
Source: INSTAT, General Director of Civil Office

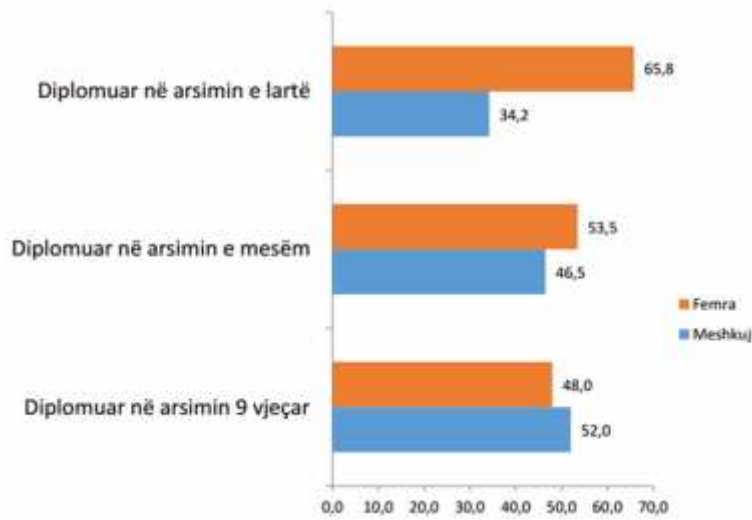
Figura 3: Percentage of household by sex of the head of household.

Percentage of household by sex of the head of household

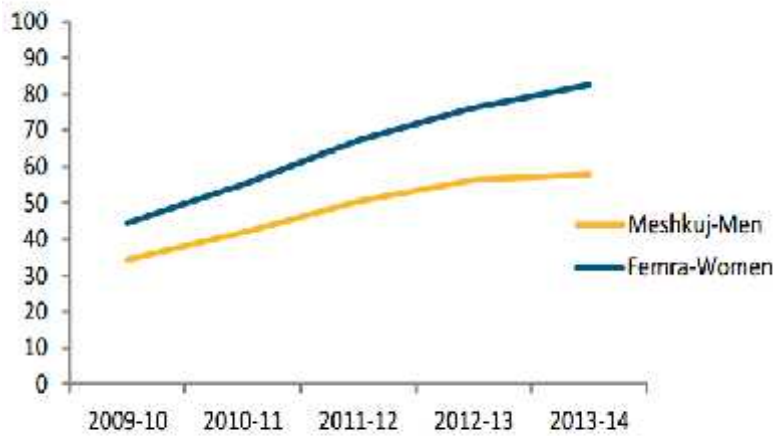
Vitet Years	Gjinia e kryefamiljarit		Gjithsej Total
	Sex of the head of household		
	Meshkuj-Men	Femra-Women	
2002	87,6	12,4	100
2005	88,2	11,8	100
2008	86,1	13,9	100
2012	87,5	12,5	100

Burimi: Anketa e Matjes së Nivolit të jetesës, 2002, 2005, 2008, 2012
Source: Living Standard Measure Survey, 2002, 2005, 2008, 2012

Figure 4 and 5: Education of students according to gender



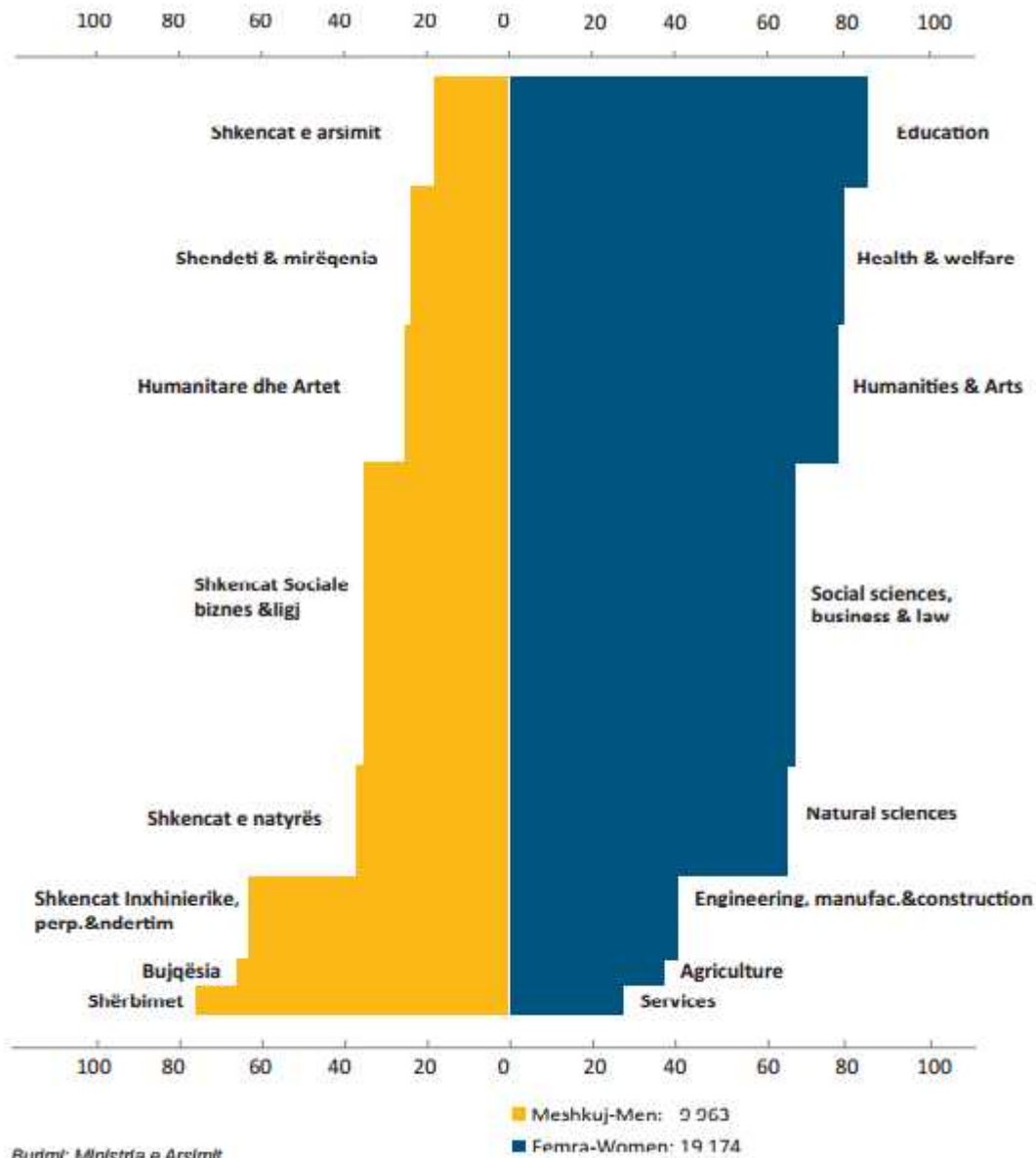
Participation level in tertiary /gross enrolment ratio (GER)



Burimi: INSTAT
Source: INSTAT

Figura 6: Students graduated according to field of study, 2014

Students graduated on tertiary by field of study, 2014



Burimi: Ministria e Arsimit
 Source: Ministry of Education
 Shënim: Sipas ISCED 97
 Note: According to ISCED 97

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Figure 7, 8: Mesimdhenia, mesues dhe pedagoge, sipas gjinise**Mësuesit në arsimin 9 vjeçar dhe të mesëm në (%)**

Teachers of preuniversity education in (%)

Vitet Years	Në 9 vjeçare - Basic education		Në të mesme - Upper secondary	
	Meshkuj Men	Femra Women	Meshkuj Men	Femra Women
2009-10	30	70	38	62
2010-11	28	72	38	62
2011-12	28	72	38	62
2012-13	27	73	36	64
2013-14	27	73	36	64

Burimi: INSTAT

Source: INSTAT

Trupi mësimor shkencor efektiv në arsimin e lartë, sipas titujve e gradave në (%)

Academic Effective staff in Tertiary education by titles and grades in (%)

Viti Akademik Academic Year	Profesorë Professors		Doktorë Phd		Docentë dhe Pedagogë pa tituj Docents and Pedagogues without titles	
	Meshkuj Men	Femra Women	Meshkuj Men	Femra Women	Meshkuj Men	Femra Women
2010-11	73	27	44	56	43	57
2011-12	74	26	52	48	40	60
2012-13	71	29	53	47	38	62
2013-14	69	31	49	51	38	62

Burimi: INSTAT

Source: INSTAT

Figura 9: Drejtuesit neper Universitete

Stafi Universitar sipas gjinisë, 2014-15
Universities staff by sex, 2014-15

Posti	Numër-Number		%		Position
	Meshkuj	Femra	Meshkuj	Femra	
	Men	Women	Men	Women	
Rektor	12	1	92	8	Rector
Zv/Rektor	14	9	61	39	Deputy Rector
Anëtarë Senati	183	90	67	33	Member of Senate
Dekanë	44	15	75	25	Dean
Zv/Dekan	45	31	59	41	Deputy Dean
Anëtarë të Këshillit të Fakultetit	401	324	55	45	Member Faculty's Council
Përgjegjës Departamenti	170	105	62	38	Chef of department
Anëtarë i Zyjedhur i Këshillit të Departamentit	214	272	44	56	Member of Department's Council

Burimi: Rectoratet e Universiteteve Publike

Source: Rectorates of Public University

Shënim: Për vitin 2014 të dhënat e datuara të stafit i referohen Universiteteve Publike.

Note: Data for year 2014 refers personnel only in public University.

Figura 10: Raport: me Pune x i Papune



Pjesmarrja në forcat e punës, 2014

■ Shkalla e pjesmarrjes në forcat e punës ■ Jo në forcen e punes

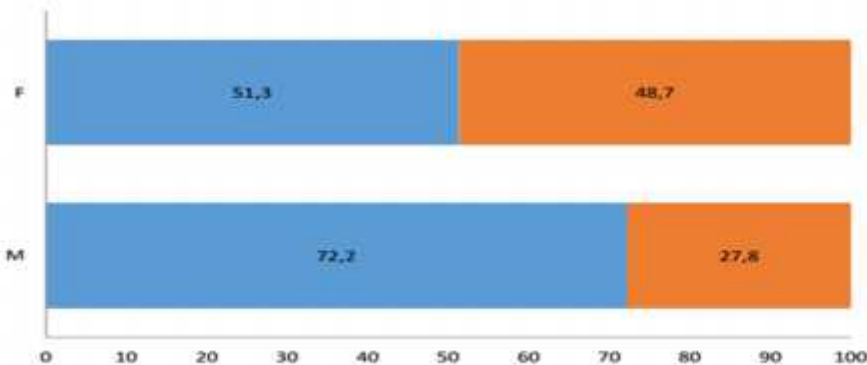
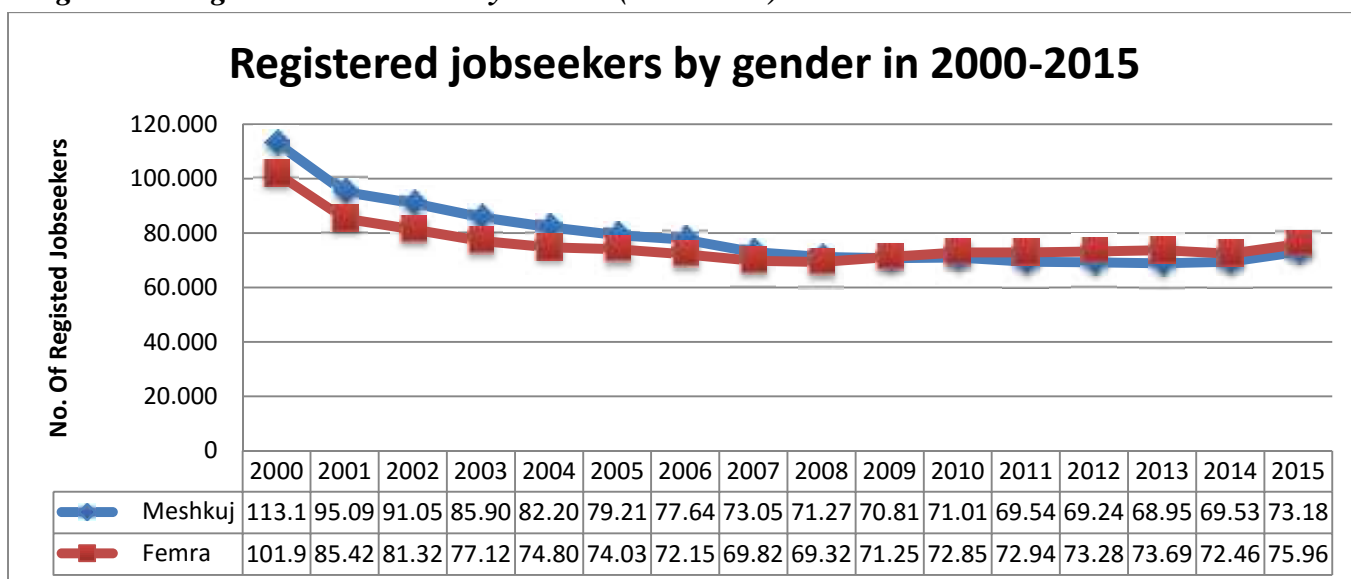
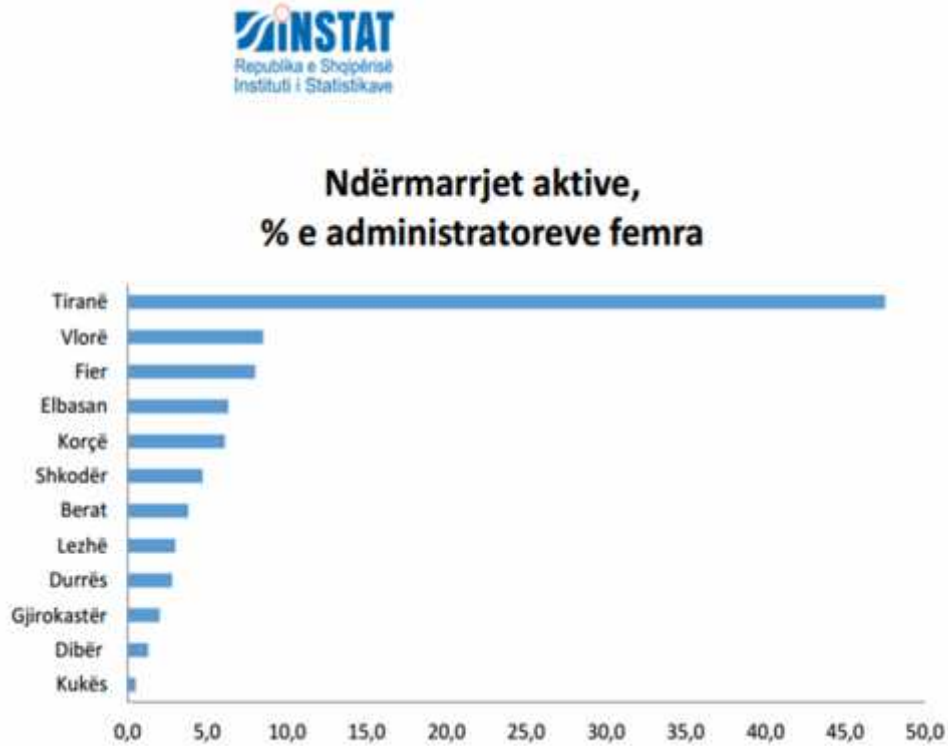


Figure 11: Registered Jobseekers by Gender (2000-2015)

Source of Information: Ministry of Social Welfare and Youth

Figura 12: Hendeku gjinor ne paga

Figura 13: Grate ne Biznes



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