
The protection of the rights of Roma community, social policies and Albanian legal and institutional framework for their implementation

Irma Baraku

Commissioner for Protection from Discrimination, Albania
irma_baraku@yahoo.com

Entela Hoxhaj

University of Shkodra "Luigj Gurakuqi", Albania
enhoxhaj@yahoo.com

Abstract

A considerable number of minorities, including Roma, live in Albania. The improvement of legislation and policies on minorities is one of the measures that our country has projected to take within the five priorities of the European Commission to Albania. Albania has approved legislation in conformity with international acts and has established mechanisms for the protection from discrimination of Roma people. The protection of minorities is guaranteed by the Albanian Constitution and the laws that provide for the respect of their rights. Albania has a large institutional framework for the protection of the rights of Roma people. The recognition of these institutions has a fundamental importance in realizing the protection of their rights. Each institution has its part of responsibility but the cooperation and coordination between them is essential to providing the best possible results. For the implementation of strategic documents that were adopted in our country is required cooperation and coordination of actions between central and local government. The issue of housing, the access to the enjoyment of economic, social and cultural rights, the promotion of the employment of Roma, remain significant problems. The equality bodies face three challenges in dealing with cases of discrimination against Roma: (i) positive measures, (ii) strengthening of NGOs in decision-making, (iii) service respect to diversity and promoting equality.

Keywords: minorities, discrimination, equality, human rights.

Introduction

The treatment of the Roma as a minority within the Albanian society, since the beginning, is faced with a lack of the legal definition of 'minority' in both levels, international and domestic legislation. There were difficulties in determining a general definition for the 'minorities' because of their diversity and in setting the consolidated features for their determination. When referring to the protection of the rights of the Roma community, we will address the raised issues in accordance with the definition of 'racial discrimination' given by ECRI, according to which we are dealing with 'the different treatment based on ethnicity, origin, color, nationality, religion, and language' (ECRI General Policy Recommendation No. 7, par. 1 / b, c). While the European Convention on Human Rights gives a broader meaning to the concept of 'ethnic and racial' by explicitly including the 'nationality'; this approach is different from that given by the EU legislation, because the Directive on Racial Equality expressly excludes 'nationality' from the concept of 'race' or 'ethnicity'. However, the jurisprudence has shown that nationality can be understood as a component of ethnicity (FRA, July 2010, p. 79).

In Albania, although the internal legislation does not have a legal definition of 'minority', there are two types of minorities:

- i. National, ethnic minorities (Greek minority, Macedonian minority, and Serbs-Montenegrin minority).
- ii. Ethno-linguistic minorities (Vlach minority and Roma minority).

However, in reality there are other communities such as the Bosnian, Egyptian, and Gorani. In this paper, we are focused on the sensitive issue of respecting the Roma community rights.

According to Census 2011, conducted by INSTAT, it results that the total number of population in the Republic of Albania is 2.800.138 inhabitants, among which minorities are 52.700 individuals; these minorities represents about 1,9 % of the total population. The debate over the exact number of individuals belonging to the Roma community has been constant.

Thus, this opinion did not consolidate even in Census 2011. According to Census 2011 data, there result in 8.301 Roma inhabitants in Albania.

In this census, it was included the question on ethnicity as a voluntary option, which means self-declaration as a criterion for identifying the ethnicity of the population. Regarding this question, it resulted that: (i) 390.938 inhabitants have preferred not to answer; (ii) the answers of 44.144 others were invalid or indefinite. The results of Census 2011 on Population and Housing were contested by representatives of minorities, including Roma and Egyptian associations (Progress Report on Albania, 2013, p. 56).

For the detailed analysis of the issues, we propose to highlight three important aspects to be addressed, closely related to the effective respect of the rights of Roma in Albania: (1) the Albanian legal framework that guarantees the rights of Roma community; (2) the development of policies aimed at reducing the differences and promoting the implementation of the principle of equality; (3) establishment of the institutional framework for the protection of the rights of Roma and Egyptians in Albania.

1. Creating the necessary legal framework that guarantees the rights of Roma.

The Albanian legislation in the field of non-discrimination provides a wide range of acts, starting with the Albanian Constitution, and international treaties ratified and domestic laws, which are enumerated in the following.

I. The Constitution of the Republic of Albania aims to promote respect for equality and non-discrimination, in its several provisions, where we can mention Article 18, but also Articles 16 and 20. Article 18 states "*1. All are equal before the law. 2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage.*".

The Albanian Constitution gives the opportunity to refer to important documents of international and regional, giving them legal force that comes immediately afterward and setting them to the second level within the hierarchy of legal norms (*Albanian Constitution*, Article 116). Obviously, it is a very broad framework, among which are the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, ratified by the Republic of Albania in 1991. However, we want to highlight those that entirely serve as an important basis to develop a domestic legislation that promotes the principle of equality in the exercise of human rights.

II. International Convention on the Elimination of All Forms of Racial Discrimination – ICERD; Albania adhered in 1994. The Convention establishes the obligation of States Parties to forbid and eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law regardless of race, color or national or ethnic origin, notably in the enjoyment of some rights such as:

- Political rights > the right of participation in elections, active and passive right to vote, and equal access to public services.
- Other civil rights > the right to free movement and free choice of residence in the territory of a State, the right of citizenship, the right to marriage and choice of husband / wife, the right to property, the right of inheritance, the right to freedom of thought, conscience and religion, the right to freedom of gathering and creating peaceful organizations.
- Economic, social and cultural rights > the right to work, the right of establishment of trade unions and the membership in them, the right to housing, the right to medical treatment, social security and social services, the right to education and professional preparation.

III. European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Albania in 1996 (*Albanian Law no. 8137 / 1996*), in its Article 14 provides for '*prohibition of discrimination*', while Protocol no. 12, Article 1, refers to the general prohibition of discrimination, expanding the scope of Article 14 even when a person is discriminated against in the enjoyment of any right or benefit under national legislation.

IV. An essential place among main related international documents has the ratification of Albania without any reservation to the **Framework Convention of the Council of Europe for the Protection of National Minorities**. This Convention

has the basic purpose of ensuring the implementation of the principles of equality and non-discrimination for persons belonging to national minorities. It prohibits any discrimination based on belonging to a national minority, and determines the liability of the signatory parties of the Convention to guarantee, to persons belonging to national minorities, the right of equality before the law and equal protection by the law.

V. European Social Charter, a Council of Europe treaty, adopted in 1961 and revised in 1963, has become part of Albanian domestic legislation with its ratification in 2002. The European Social Charter has enshrined *explicitly* the principle of equality (Article 20) "*All are equal before the law*" and the principle of non-discrimination (Article 21) "*Any discrimination on any ground such manner as sex, race, color, ethnicity, ethnic or social origin, language, religion or belief, political beliefs or other beliefs, association with a national minority, residence, birth, disability, age, sexual orientation should be forbidden*".

VI. The Albanian law no. 10.221, date 04.02.2010 "For protection from discrimination" makes concrete Article 18 of the Constitution. It is the organic law on the basis of which is provided the protection against discrimination. The purpose of this law is to ensure the right of every person to equality before the law and equal protection by the law, equality of opportunities and possibilities to exercise the rights and freedoms of the individual, as well as effective protection against discrimination. The law regulates the implementation and observance of the principle of equality in relation to an exhaustive list of causes, explicitly including race, color, language and faith that are essential elements of a minority.

The Albanian law provides the belonging to a group as the reason for which is offered protection, and also provides discrimination 'because of the association with persons belonging to protected groups'. LPD provides as form of discrimination "*instruction to discriminate, as an instruction or request, based on hierarchical relationship to discriminate against one or more persons, based on the reasons mentioned in Article 1 of this law*". Upon our opinion, the term 'hierarchy' should be removed, because this form of discrimination may also occur in relationships at the same level. The Albanian law, in arranging housing refers to '*a place where housing is provided*'. As this wording is not clear, its clarification would be of benefit. In accordance with the outlined above, the object also should be expanded (OSCE / ODHIR, 2013, p.12). In any case, segregation can not be justified, but '*it is noted that the laws of Albania, Serbia and FYROM do not foresee any regulation on segregation*' (OSCE / ODHIR, 2013, p.12).

The main areas, in which this legal protection is ensured, are expressly provided and include protection from discrimination in employment, in education, and in the delivery of goods and services. But, protection from discrimination under the Albanian law on non-discrimination is guaranteed to all fundamental rights recognized by the Constitution of the Republic of Albania, the international acts ratified by Albania, as well as by the applicable laws.

Other laws also stipulate the principle of equality and protection from discrimination, although it is necessary a legislation change or the adoption of new legislation to ensure protection from discrimination (Progress Report on Albania, 2013, p. 58). Mostly, it is necessary to have these laws harmonized with the Albanian law on non-discrimination, in terms of the grounds to which subjects can be protected from discriminatory attitudes and on the forms of discrimination.

2. The development of policies aimed at reducing the differences and promoting the implementation of the principle of equality.

To achieve the design of appropriate and effective policies in supporting the integration of the Roma community should be considered two problematics:

- 2.1. The identification of the nature of issues and obstacles.
- 2.2. The determination of priorities and the promotion of best practices.

2.1. The identification of the nature of issues and obstacles.

The situation in which lives the Roma community in Albania is evident discriminating and not in conformity with the standards that a democratic state should offer to its citizens. The multiple discrimination often touches this community; it is a situation where an individual undergoes discrimination on more than one ground. In other words, a certain person,

belonging to a given minority, could be of a certain age, and even have a gender that can add vulnerability to him. Thus, all of this can make him a victim of discrimination (KMD, 2013, p. 21). This paper highlights some issues that appear mainly in:

- a. providing of services in respect of diversity and without discrimination,
- b. education,
- c. employment.

Problematic related to Roma concern similar issues within post-socialist countries. Notwithstanding the state-socialist social control policies, a measure of independent Romani activism did emerge laying the groundwork for post-socialist Gypsy mobilization. (Barany, 2012, p. 27). Among European experiences, one of the most established programs to promote employment income-generating opportunities for Roma is Hungary's Autonomia Foundation, which provided grants and interest-free loans to develop employment programs for Roma. Its income-generating initiatives included livestock breeding, agricultural programs, and small-enterprise development. (Ringold, Orenstein, & Wilkens, 2005, p. 193) The following is focused on the problematic related to Albanian conditions and perspectives.

a. The main problematics related to '**Providing services in respect of diversity and without discrimination**' are associated with housing, access to social protection, registration in the civil registry.

Housing – Is one of the most sensitive areas for a considerable number of Roma people in Albania. They live in residential difficult conditions, with insufficient space and inadequate facilities.

By the analysis of the situation is evidenced as following:

- Some of the Albanian local units have not built social housing.
- The local units did not provide special quotes assigned to this community in order to narrow the visible differentiation with non-Roma population.
- The Albanian legislation is seemingly neutral and respects the principle of equality, but its social effects on Roma community are unfavorable and exclusive. The responsible institutions should intervene to avoid indirect and substantive discrimination. This attitude held ECHR in the *Thlimmenos case* (ECHR 6.4.2000).
- Another phenomenon, which appears more frequently, concerns the deportation of Roma families from lands subject to development due to the public interest or to development needs of the property rightful owners.

When vulnerable individuals are not able to provide themselves alternative accommodation, they must be supported by the state within the available sources. The state should take into account that domestic legislation should provide protection from deportation particularly in procedural terms. Procedural assistance includes providing remedies and offering, within the possibilities, legal aid to people who need to address the court to defend their rights (*General Comment nr. 7, art. 11.1*).

Although Article 41 of the Albanian Constitution guarantees the right to property, Article 17 thereof provides for the restrictions made by law and they should be made on a proportionate basis. The Albanian law on expropriation for public interest (Albanian law no. 8561 / 1999)

The law on expropriation for public interest regulates the right of the state to expropriate, protect the rights and interests of their respective owners and determines the cases and procedures for carrying out expropriations. This law does not protect those who are placed in these properties by informal way. But, on the other hand, the current situation is closely linked to the process of legalization of informal buildings. It is noted that there are times when ALUIZNI (Agency for the Legalization of Informal Buildings) directories have taken all measures to finalize the procedures to legalize these apartments. Meanwhile, the interventions of INUK (National Urbanistic Building Inspectorate) and INUV (Local Urbanistic Building Inspectorate) are done without having a definitive answer on the compliance or not of the legalizing criteria. In cases of meeting criteria of legalizing, these families would benefit from the expropriation.

On the other hand, the legislation provides the obligation to take measures for the rehabilitation of displaced persons. Specifically in Article 21, paragraph 2 *lë* of the law "*On Territorial Planning*", as amended (Albanian law no. 10119 / 2009), stipulates that: **The plans, in accordance with the territory that is object of planning, contain an element for the rehabilitation program for persons displaced as a result of the implementation of the plan.**

The European Court of Human Rights has dealt with issues of forced displacement in the context of Article 8 of the European Convention on Human Rights, upholding respect for domicile, private and family life.

Although this Convention does not oblige the state to provide for domicile, in the case *Yordanova and others v. Bulgaria* (ECHR 5.6.2012), the ECHR ordered the Bulgarian authorities to suspend deportation pending the outcome of the proceedings before the court. This decision was significantly influenced by the fact that it regarded a considerable number of individuals placed informally for a long time, and because of the lack of an assessment by local institutions on the effects that the violent deportation of Roma residents would bring to the development of this territory (ECHR 5.6.2012). The protection of Roma Community from violent deportation was brought to attention even by European Union Agency for Fundamental Rights – FRA (FRA, March 2010, p. 138).

Access to social protection – Social protection is closely related to its acquisition criteria, which, as in the case of housing benefit, requires intervention in setting the indispensable criteria to be included in this system.

Registration in the civil registry – The lack of registration of children in the civil registries is another problematic for Roma children in Albania. Lack of registration of Roma and Egyptian children reduces their access to the enjoyment of economic, social and cultural rights (CESCR, 2013, p. 4).

b. Education.

The Albanian law on protection from discrimination provides for special duties for the Ministry of Education: its expressed obligation to issue bylaws for the elimination of discrimination in the field of education. Despite the law “*On pre-university education*” and its relevant bylaws facilitate the registration of Roma children in schools, even without birth certificate, we found that 9-year schools have hesitated to enforce this rule. The project ‘*The second chance*’ determines the possibility of schooling even when it was not made in the right time. However, the Commissioner for Protection from Discrimination in some cases has identified schools that have refused to admit students belonging to these communities.

The educational institutions should be attentive to avoid cases of segregation that may occur because Roma community is located in certain areas, and their children go to the same school. During 2013, the Commissioner for Protection from Discrimination has conducted monitoring to see the distribution of Roma children in the primary schools in Tirana. The Commissioner found that there was not a tendency to separation or concentration of Roma children in a single school (KMD, 2013, p. 52). Even the dropout situation of Roma scholars is a widespread one. The Committee on Economic, Social and Cultural Rights came up with concerns related to the lack of measures to effectively address the highest rates of primary education dropout by Roma girls, compared with boys. This phenomenon disproportionately affects Roma children (CESCR, 2013, p. 4).

In order to guarantee the right of children to equal access, the Regional Education Directories are obliged to apply with priorities for the Roma community two bylaws of the Minister of Education: (1) Directive no. 29, date 02.08.2013 “On the procedures to attend basic education part-time”; (2) Directive no. 30, date 02.08.2013 “On the procedures to attend basic education for students that have not attended at least two classes of basic education”.

c. Employment.

Roma people struggle with evident problematics in employment. Despite they are involved within the action plans of local government or the national strategies that provide for the enhancement of Roma employment, still the number of unemployed remains high. Within the conclusions of the Committee on Economic, Social and Cultural Rights is highlighted that the lack of access of Roma people in employment is also because state priorities are not implemented in local level (CESCR, 2013, p. 3).

2.2. The determination of priorities and the promotion of best practices.

In the framework of implementing the legislation mentioned in the first issue of this paper, there have also been elaborated non-discriminatory strategic documents and politics, among which: the Sectorial Strategy of Social Protection 2007-2013 and the National Action Plan ‘Roma Inclusion Decade’ 2012-2015. The drafting of these documents is a real challenge related to the undertaking of positive measures to promote the integration of Roma and the implementation of the principle of equality. One of these measures, continuously proposed by the Ombudsman and the Commissioner for Protection from Discrimination, has been to amend legislation that would allow inclusion in the system of social protection or registration.

The Law on Protection from Discrimination provided the obligation of the Council of Ministers and the Ministry of Education to take positive measures to enhance the education of minorities or girls, which would directly affect the level of education of this community. There were taken several measures such as the exclusion from tuition fees for Roma students or the free supply with books for Roma children of pre-university education, etc.

3. Establishment of the institutional framework for the protection of the rights of Roma and Egyptians in Albania.

The European Commissioner for Albania, in the Annual Report of 2013, highlighted the engagement that Albania should have in the framework of the implementation of the National Action Plan to quickly improve Roma life conditions. Thus, it is essential the coordination of public administration at central and local level (Progress Report on Albania, 2013, pp. 52-57).

Albania has already elaborated legislation in conformity with the international acts and has created the mechanisms for the protection from discrimination of the Roma community. The Law on Protection from Discrimination provided for the creation of the institution of the Commissioner for the Protection from Discrimination, whose competences are in conformity with Directive 2006/54/EC of the European Parliament and Council that in Article 20 determines that these organs should ensure independent assistance to victims of discrimination through addressing issues and assistance in court. This process is closely linked with the *"assistance to victims, the definition of criteria useful for the identification of cases that must be supported, thus the issue would take effect at the time of settlement beyond the specific case"* (European Network of Equality Bodies, 2010, p. 14).

However, the European Bodies of Equality and Non-discrimination have defined some aspects that should be taken into account during the addressing and monitoring issues related to the respect of the rights of Roma community. These aspects concern the indispensability of education for anti-discrimination legislation through strategies of information, increasing capacities to address cross-cultural issues or creating the necessary spaces by identifying them as protectors of the community (European Network of Equality Bodies, 2010, pp. 13-14).

The Albanian Commissioner for the Protection from Discrimination, in the framework of registered complaints, has delivered some recommendations to local governments to take positive measures for the Roma community in order for their requests to be treated with priority (KMD, 2013, pp. 7-8). The deportation of Roma families from their households in August 2013 has been a matter of particular concern. This concern was also addressed in the Conclusions of the Committee on Social, Economic and Cultural Rights, 18 December 2013.

This research contributes to the knowledges of people working in educational institutions, policy-makers and NGO-s in Albania for issues related to the rights of Roma community and the development of policies on promoting the implementation of the principle of equality and reducing the differences.

Conclusions and Recommendations

- Protection from discrimination under the Albanian legislation on non-discrimination is guaranteed to all fundamental rights recognized by the Constitution of the Republic of Albania, the international acts ratified by Albania, as well as by the applicable laws. However, it is necessary to have these laws harmonized with the Albanian Law on Protection from Discrimination, in terms of the grounds to which subjects can be protected from discriminatory attitudes and on the forms of discrimination.
- There is a wide range of laws that stipulate the principle of equality and protection from discrimination. However, it is recommended to amend legislation in order to make possible the benefits from the social housing programs, census or social protection.
- It is recommended to take positive measures to encourage training, education and employment of Roma in Albania.
- In order to avoid violent deportations of Roma from the land where they are located in an informal manner, the staff of central and local institutions should be trained.
- Local governments should perform studies for the evaluation of the social consequences of development programs of the territory for public interest, as well as for the property developments by the rightful owners.

Literature

- [1] Albanian law no. 10.221, date 04.02.2010 "For protection from discrimination"
- [2] Albanian law no. 10119 / 2009 "On Territorial Planning", amended.
- [3] Albanian law no. 8137 / 1996 "On the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms".
- [4] Albanian law no. 8561 / 1999 "On expropriation and getting temporary use of private property for public interest".
- [5] Barany, Z., 2012, *Politics and the Roma in State-Socialist Eastern Europe*, published in Pusca, A. (ed.), *Eastern European Roma in the Eu: Mobility, Discrimination, Solutions*, New York, International Debate Education Association (<https://www.questia.com/read/123372281/eastern-european-roma-in-the-eu-mobility-discrimination>).
- [6] CESCR, 2013, Conclusions of the Committee on Social, Economic and Cultural Rights, 18 December 2013.
- [7] ECHR 5.6.2012, case *Yordanova and others v. Bulgaria* (no. 25446 / 06).
- [8] ECHR 6.4.2000, case *Thlimmenos v. Greece* (no. 34369 / 97).
- [9] ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, CRI(2003)8, adopted 13 December 2002.
- [10] *European Convention for the Protection of Human Rights and Fundamental Freedoms*
- [11] European Network of Equality Bodies, 2010 (March 2010), *Making Equality legislation work for Roma and traveller*, Brussels.
- [12] FRA, July 2010, *Handbook on European Non-Discrimination Law*, European Union Agency for Fundamental Rights, Council of Europe.
- [13] FRA, March 2010, *The State of Roma and Traveller Housing in the European Union: Steps Towards Equality*, European Union Agency for Fundamental Rights.
- [14] *General Comment nr. 7*, UN Committee for Economic, Social and Cultural Rights.
- [15] KMD, 2013, *Annual Report 2013 of the Albanian Commissioner for Protection from Discrimination* (http://kmd.al/skedaret/1410951832-Annual%20Report_2013.pdf).
- [16] OSCE / ODIHR, 2013 (30 april 2013), *Overview of Anti-Discrimination Legislation in the Western Balkans*, Varshavia (<http://www.legislationline.org/topics/topic/84>).
- [17] Progress Report on Albania, 2013 (www.mie.gov.al)
- [18] Ringold, Orenstein, & Wilkens, 2005, *Roma in an Expanding Europe: Breaking the Poverty Cycle*, Washington, DC., World Bank (<https://www.questia.com/read/120498350/roma-in-an-expanding-europe-breaking-the-poverty>).