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## Research Article

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### **Some constitutional and legal aspects of gender equality in Albanian law: A comparative perspective with the EU and UK**

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#### **Abstract**

This paper deals with gender equality and women’s rights in Albanian law, in a comparative legal view with the European Union and UK. The analysis begins with the constitutional framework of Albania, which provides for the prohibition of any form of discrimination and the positive obligations of the state to promote real equality. It continues with the provisions of the criminal code on domestic violence, sexual harassment and the violation of equality by public officials, assessing their protective role and the challenges of practical implementation. Then, aspects of specific laws are analyzed, such as the law on gender equality, on protection from domestic violence and the law on protection from discrimination, emphasizing their importance for approximation with European Union standards. Through an assessment of statistics and institutional reports, weaknesses in implementation and the need for more effective mechanisms are highlighted.

An important place in the manuscript is occupied by the comparative aspect of EU legislation on gender equality, including important directives and the jurisprudence of the Court of Justice of the EU, as well as British legislation, with an emphasis on the Equality Act 2010 and relevant jurisprudence. The comparison highlights the similarities and differences in the approach to gender equality, noting that the main challenge in all systems remains the gap between legislation and social reality. The manuscript concludes with thoughts on the measures that need to be taken to strengthen the protection of women from discrimination, recommending the strengthening of implementation mechanisms, institutional coordination, social awareness, economic support for women and the implementation of affirmative measures. Thus, gender equality is projected not only as a formal principle, but as a real and necessary objective for the democratic and social development of the country.

**Keywords:** gender equality, discrimination, violence, sexual harassment.

## **1. Introduction**

Gender equality constitutes one of the fundamental pillars of the Constitution of the Republic of Albania (1998), being treated as a core principle of the legal and social order. Article 18 of the Constitution stipulates that all individuals are equal before the law and prohibits any form of discrimination, including discrimination on the basis of gender. This provision is not merely declarative, but a binding norm intended to prevail over any other legal or sub-legal act. The principle of equality is a constitutive element of the rule of law and serves as a guarantee for the exercise of fundamental rights and freedoms (Constitution of the Republic of Albania, 1998).

However, gender equality is not limited to a purely formal understanding, as social experience has shown that equal treatment before the law is not sufficient to achieve genuine equality. For this reason, the Constitution includes other provisions, such as Article 54, which guarantees special protection for children and pregnant women. This article clearly expresses the active role of the state in taking protective and affirmative measures, thus giving gender equality a substantive dimension beyond a formal declaration (Constitution of the Republic of Albania, 1998).

The Constitutional Court has played a decisive role in interpreting these provisions. In Decision No. 9, dated 26 February 2010, the Court emphasized that equality must not remain a theoretical construct but must be translated into concrete measures to ensure the effective exercise of rights. This interpretation aligns Albania with European Union standards, where gender equality is understood as a combination of non-discrimination and affirmative action policies in favor of women and girls. In this context, the Albanian Constitution serves not only the classical function of prohibiting discrimination, but also a developmental function, requiring the state to implement active policies to guarantee substantive equality (Constitutional Court of the Republic of Albania, 2010).

Furthermore, Article 59 of the Constitution, which sets out the state's social objectives, includes the duty to promote employment and education for women. This is an important element, as gender equality is not viewed solely as a legal issue, but also as a condition for the country's social and economic development. The constitutional legislator has recognized that building a democratic and sustainable society necessitates equal access for women to education, employment, and participation in public life (Constitution of the Republic of Albania, 1998, Article 59).

In conclusion, the Albanian Constitution has established a comprehensive framework for ensuring gender equality, combining the prohibition of discrimination with the state's positive obligations to protect and promote women's rights. Nonetheless, the main challenge remains the practical implementation of these provisions, which often faces cultural and institutional barriers. Therefore, achieving gender equality at the constitutional level requires not only an interpretative role by the Constitutional Court, but also sustainable policies and effective enforcement mechanisms.

## **2. Protection of Women's Rights under the Albanian Criminal Code**

The Criminal Code of the Republic of Albania represents a key instrument in the protection of women from various forms of violence and discrimination. Through its provisions, the Albanian legislator has defined a set of criminal offenses aimed at safeguarding the safety, dignity, and physical and psychological integrity of women. One of the most significant provisions is Article 130/a, which criminalizes domestic violence. This article specifically aims to protect women, who, according to statistics from INSTAT and reports by the Commissioner for Protection from Discrimination, represent the overwhelming majority of domestic violence victims. This reality clearly demonstrates that criminal intervention is a necessary tool to address a deeply rooted social issue (Criminal Code of the Republic of Albania, 1995; INSTAT, 2023; Commissioner for Protection from Discrimination, 2022).

Another important provision is Article 108/a of the Criminal Code, which prohibits sexual harassment. This article plays a crucial role in protecting women in the workplace, in educational institutions, and in public life, by providing criminal mechanisms against behaviors that undermine their dignity. The implementation of this provision has gained particular importance in the context of aligning Albanian legislation with the European Union directives on gender equality and anti-discrimination (Criminal Code of the Republic of Albania, 1995; European Union, 2019).

In addition to these, Article 253 of the Criminal Code sanctions the violation of equality by individuals holding public office. This article holds particular significance as it foresees criminal liability for public officials who engage in gender-based discrimination, thus violating the principle of equality before the law. In this way, the Criminal Code sets a high standard for the public administration, obliging it to respect the principle of gender equality in practice (Criminal Code of the Republic of Albania, 1995).

Nevertheless, despite the existence of these provisions, the main challenge remains their effective enforcement. Annual reports from the General Prosecutor's Office indicate that women victims of violence often hesitate to report due to social pressures and a lack of trust in institutions. This situation calls for the strengthening of protective mechanisms, close cooperation between police, courts, and social services, as well as broader social awareness. In conclusion, the Albanian Criminal Code provides a clear legal framework for the protection of women from violence, discrimination, and trafficking. However, it remains the responsibility of institutions to ensure that these provisions do not remain merely on paper, but are transformed into effective tools for safeguarding women's rights and ensuring gender equality in practice (General Prosecutor's Office, 2023).

## **3. Special Laws on Gender Equality, Domestic Violence and Discrimination**

In addition to constitutional guarantees and criminal law provisions, Albania has

adopted a significant legal framework of special laws aimed at ensuring the protection and promotion of gender equality. These laws form the normative foundation upon which national gender policies are built and represent an essential element in the approximation with European Union standards.

One of the main pillars of this framework is Law no. 9970/2008 “On Gender Equality in Society”. This law defines the core principles of gender equality and imposes concrete obligations on both public and private institutions to implement the principle of equal treatment. It established the Gender Equality Committee and requires institutions to develop policies promoting women’s participation in decision-making, including the use of gender quotas in electoral lists. Although, on paper, this law aligns with the best European practices, its implementation in practice remains partial and often depends on political will.

Another highly important piece of legislation is Law no. 9669/2006 “On Measures Against Violence in Family Relations” (Republic of Albania, 2006). This law was considered a historic step in the protection of women, as it was the first to provide a clear legal mechanism for the protection of victims of domestic violence. It provides for immediate and temporary protection orders, which courts are required to issue through expedited procedures. Judicial practice has shown that this law has saved many lives; however, it has also revealed significant weaknesses in enforcement, particularly in rural areas where awareness and institutional infrastructure are limited.

Law no. 10221/2010 “On Protection from Discrimination” established another important pillar in the legal protection of equality. This law created the Commissioner for Protection from Discrimination, an independent institution empowered to monitor compliance, handle complaints, and impose measures against discriminatory practices. The law offers broad protection, covering not only gender-based discrimination, but also discrimination based on race, age, sexual orientation, disability, and other grounds. This instrument has significantly raised public awareness on equality rights; however, the lack of sufficient resources and limited enforcement powers of the Commissioner’s office remains a continuing concern (Commissioner for Protection from Discrimination, 2020).

#### **4. Practical Implementation and Gender Equality Statistics in Albania**

Although the constitutional, criminal, and special legal frameworks in Albania formally ensure comprehensive protection of gender equality, the main challenge remains their effective implementation. A clear gap often exists between the legal provisions and social reality, influenced by cultural, institutional, and economic factors.

Reports from INSTAT show that violence against women remains a serious concern. According to a 2021 survey, approximately 52.9% of women in Albania have experienced some form of intimate partner violence in their lifetime (INSTAT, 2021). These figures confirm that gender-based violence is not an isolated phenomenon, but

a widespread problem requiring constant institutional intervention. While the law provides for protection orders, victims often hesitate to report abuse due to social stigma and lack of trust in the justice system (Commissioner for Protection from Discrimination, 2020).

In terms of economic participation, statistics show that women continue to be in more disadvantaged positions compared to men. Female employment rates are lower, and women are often paid less for similar work (INSTAT, 2023). This constitutes a form of indirect discrimination that, although prohibited by law, persists in the Albanian labor market. This situation contradicts constitutional principles and the Law on Gender Equality but reveals the challenges of enforcement in practice. The Commissioner for Protection from Discrimination reports a considerable number of complaints related to gender discrimination each year (Commissioner for Protection from Discrimination, n.d.). However, the institution often lacks adequate resources and sanctioning powers, which limits its effectiveness. The European Union progress reports on Albania have highlighted these same issues, emphasizing that despite an advanced legal framework, implementation remains weak and often inconsistent (European Union, 2023).

Another issue lies in the lack of coordination between state institutions and civil society organizations. Civil society groups have played a significant role in providing services to victims of violence and raising public awareness, but they often lack sufficient financial support from the state (NGO Report, 2022). This creates gaps in service provision and limits the impact of legal mechanisms. In conclusion, the main challenge for Albania is no longer the creation of new laws, but rather the effective enforcement of existing ones. To meet European standards, it is necessary to strengthen institutions, increase public trust in the justice system, and ensure financial support for gender-related services. Only in this way can legal provisions be transformed into tangible improvements for Albanian women (European Union, 2023; INSTAT, 2021).

## **5. A Comparative Perspective with the European Union (EU)**

The European Union's standards on gender equality have evolved progressively, transitioning from a formal approach that merely prohibits discrimination to a material approach that demands measurable and effective outcomes (European Union, 2012a; European Union, 2012b).

At the primary law level, the Treaty on the Functioning of the European Union (TFEU) enshrines the principle of equal pay for equal work or work of equal value (Article 157 TFEU) (European Union, 2012a), while the Charter of Fundamental Rights guarantees gender equality in all areas (Article 23) (European Union, 2012b). In secondary legislation, Directive 2006/54/EC (Recast Directive) consolidates the legal framework on equality in employment and occupation, covering direct and indirect discrimination, rules on the burden of proof, and requirements for effective

remedies (Council of the EU, 2006). This is complemented by:

- Directive 2004/113/EC on gender discrimination in access to goods and services (Council of the EU, 2004);
- Directive 2010/41/EU on self-employment and equality (Council of the EU, 2010);
- Directive 92/85/EEC on the protection of pregnant workers (Council of the EU, 1992);
- Recent reforms include:
- Directive (EU) 2019/1158, promoting work–life balance for parents and carers (Council of the EU, 2019);
- Directive (EU) 2023/970, introducing pay transparency to combat the gender pay gap (Council of the EU, 2023);

The jurisprudence of the Court of Justice of the EU (CJEU) has significantly strengthened these standards. In *Defrenne v. Sabena* (No. 2) (1976), the Court held that the principle of equal pay has horizontal direct effect (CJEU, 1976). In *Danfoss* (1989) and *Enderby* (1993), the use of statistical evidence was accepted to reverse the burden of proof (CJEU, 1989; 1993). In *Dekker* (1990) and *Webb* (1993), pregnancy-based discrimination was defined as direct discrimination (CJEU, 1990; 1995). The *Kalanke–Marschall–Badeck* line of cases (1995–1997) clarified the conditions under which positive action measures are permissible (CJEU, 1995–1997). Additionally, in *P v S* and *Cornwall County Council* (1996), the Court extended protection to transgender individuals (CJEU, 1996).

In comparison, Albanian law has aligned with the EU *acquis* in several areas, including the prohibition of discrimination in the Constitution and the adoption of gender equality legislation. However, the main challenge lies in practical implementation—particularly regarding pay transparency, use of statistical evidence, and enforcement capacity. The EU’s gender equality *acquis* is also closely tied to social policy instruments and institutional funding. Thus, formal transposition must be accompanied by implementation plans, institutional training, and dedicated budgets to avoid a gap between law and practice.

## **6. A Comparative Perspective with UK**

The legal system of UK provides a consolidated framework for the protection of gender equality, culminating in the adoption of the Equality Act 2010, which unified and systematized over 100 prior laws on discrimination and equality (Equality Act 2010, 2025). This law covers a broad range of protected characteristics, including gender, race, age, sexual orientation, disability, religion, and pregnancy (EHRC, 2019). One of the key innovations of the Act is the clear distinction between direct and indirect discrimination. Direct discrimination occurs when an individual is treated less favourably because of a protected characteristic, whereas indirect discrimination arises when a seemingly neutral practice disproportionately disadvantages a specific group, such as women (EHRC, 2019; EHRC, 2025). The Act also provides specific

protections for pregnant women and new mothers in employment, including the right to maternity leave and protection from discrimination (Equality Act 2010, 2025). For public sector employers, there is a particular public sector equality duty that obliges them to consider gender equality in all policies and decisions (Equality Act 2010, 2025; EHRC, 2022). British jurisprudence has played a crucial role in shaping standards in this field. In *Smith v. Avdel Systems Ltd*, it was held that women on fixed-term contracts could not be treated differently from those on permanent contracts regarding leave rights (casual reference). Meanwhile, in *Allonby v. Accrington & Rossendale College*, the Court of Justice of the EU emphasized the importance of the “comparable worker” concept in assessing equal pay claims (ECJ, 2004).

Despite this robust legal framework, the main challenges in England remain the gender pay gap, which persists despite the existing laws. The Equality Act 2010 introduced a requirement for companies with over 250 employees to publish gender pay gap reports, aiming to promote transparency and public pressure (Equality Act 2010, 2025).

Compared to Albania, where the legal framework is often fragmented and poorly enforced in practice, England offers an example of normative and institutional consolidation. However, both systems share a common challenge: the gap between law and social reality. Albania needs to strengthen enforcement mechanisms, while England must focus on transforming transparency into socially tangible outcomes.

## **7. Conclusion**

Despite the existence of a comprehensive constitutional and legal framework, gender equality in Albania remains largely a programmatic principle rather than a concrete social reality. Based on an interdisciplinary and comparative analysis, several critical areas emerge as priorities for intervention:

- Strengthening enforcement mechanisms. Although laws are in place, they are often not implemented effectively. It is essential to enhance the legal authority of the Commissioner for Protection from Discrimination and expand the jurisdiction and effectiveness of administrative courts in gender-based discrimination cases (Commissioner for Protection from Discrimination, 2020).
- Institutional coordination. Cooperation among police, courts, social services, and civil society remains fragmented. The establishment of integrated institutional frameworks would provide more consistent and effective responses to gender-based violence and inequality (EU Progress Report, 2023).
- Education and awareness. Deep-rooted patriarchal attitudes and gender stereotypes continue to hinder real progress. Incorporating gender equality education into school curricula and conducting nationwide awareness campaigns are key steps toward shifting public perceptions (INSTAT, 2021).
- Economic empowerment of women. Women’s economic vulnerability, stemming from limited access to employment and resources, perpetuates inequality. Active labor market policies, financial support for women entrepreneurs, and

improved access to childcare services would contribute significantly to women's independence and security (INSTAT, 2023).

- Implementation of affirmative measures. Gender quotas in politics and public administration have shown some positive outcomes, but there is a need to expand their application to the private sector and to leadership positions in business and public life (Republic of Albania, 2008).
- Transparency and monitoring. Legally mandating employers to publish gender-disaggregated pay data and conduct regular reporting on gender pay gaps would improve accountability and help address structural disparities (EU Gender Equality Directive, 2023).

In conclusion, the primary challenge facing Albania is no longer the absence of adequate legal norms, but rather their insufficient implementation. Achieving substantive gender equality requires the integration of legal, institutional, economic, and cultural measures. Only by transforming formal commitments into practical actions can the principles of equality enshrined in law be translated into lived realities for Albanian women.

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