



Gender Identity and the Right to Legal Recognition in the Republic of Albania: An Analysis of the Legal Framework and Challenges in Implementation

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Abstract

Gender identity is one of the fundamental aspects of life and a person's gender is determined immediately after birth and then becomes a social and legal fact. Human rights are universal and apply equally to all, therefore there are no special rights for trans people. However, trans people face special challenges in accessing their human rights, such as intolerance or prejudice. Gender identity and the right to legal recognition constitute a fundamental component of human rights and equality before the law. This study aims to examine the Albanian legal framework regarding the recognition of legal identity and to analyze the challenges in the practical implementation of this right for transgender people. The methodology used includes the analysis of domestic legislation and ratified international acts as well as the international aspect of the treatment of gender identity. The main results show that the lack of a specific law on legal gender recognition creates uncertainty and violates the right to personal identity, given that this issue still remains in the early stages of legal and institutional development in the Republic of Albania

Keywords: Gender identity, right to legal recognition, legal framework, institutional discrimination, legal reform

1. Introduction

In recent decades, issues related to gender identity have become increasingly present in legal and social discourse, both at the international and national levels. Gender identity, understood as the internal and personal experience of gender, which may or may not coincide with the sex registered at birth, is an essential dimension of the right to personal autonomy and human dignity. In this context, the Republic of Albania is facing a significant challenge with the lack of a clear legal framework to enable the legal recognition of gender identity in an equal and efficient manner. While Albanian law does not explicitly prohibit changing legal gender, it does not provide for a specific procedure for this purpose, leaving it an issue of legal

uncertainty for institutions and difficulties for individuals seeking to legally approve their gender identity. According to the contextualist view, people are divided into genders based on their perceived biological characteristics and gender based on their declared identity, and this theory is useful in explaining how in many societies trans people are unfairly restricted and categorized as members of a category with which they do not identify. (Cosker-Rowland, 2023). The recognition of gender identity as one of the universally protected grounds of discrimination has also been raised as a problem by the UN High Commissioner for Human Rights: Neither the existence of national laws nor the prevalence of customs can justify abuse, attack, or torture against these persons. (Commissioner for Human Rights, 2013). According to Principle No. 3 of the Yogyakarta Principles, a key international document that explains how international human rights law applies to gender identity, it states that: Everyone has the right to recognition as a person before the law everywhere. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. No one shall be pressured to conceal or deny their sexual or gender orientation (ICJ & ISHR, 2007).

2. Research Methodology

The research in this study has been carried out by emphasizing the doctrinal and comparative analysis of the right to legal recognition of gender identity in the Republic of Albania. Given that this right represents an essential aspect of fundamental human rights and personal integrity, the purpose of this methodology is to explain the existing legal framework, the challenges in implementation and the importance of gender identity recognition in accordance with international human rights standards. The study is based on the analysis of sources that include: the legislation of the Republic of Albania, including the Constitution, the Civil Code, as well as any other legal or sub-legal act that affects the legal recognition of gender identity, as well as the practice of the European Court of Human Rights (ECtHR), Yogyakarta Principles and United Nations documents that address gender identity and its legal protection.

3. The Evolution of the Concept of Gender Identity in Legal Doctrine and Human Rights

Gender is a concept that has acquired a polysemic meaning in recent decades, although it was once considered indisputable and clear-cut and was traditionally defined based on visible anatomical features. The gender assigned at birth does not necessarily correspond to the gender with which one identifies, and in such cases legal gender recognition applies. (Horniczak, 2024). Some philosophical approaches to gender identity define it based on the social norms of femininity and masculinity that prevail in society. Other approaches also explain that groups of norms that are typical of femininity and masculinity group certain behaviors such as caring for others, passivity with family members, manner of expression, etc. In my opinion, what constitutes one of the greatest challenges today is the lack of legal clarity regarding gender identity, making this ambiguity affect not only on a theoretical level but also in consequences for individuals who do not find themselves in the traditional division of gender. From a legal point of view, gender identity can be considered a good, a personal non-property right characterized by components such as: a person's self-identification as a representative of a certain sex, gender self-expression through the so-called social ways of gender including name, manner of behavior, clothing, etc. (Dubinchuk, O. 2024).

4. Albanian Legislation on Human Rights and Gender Equality

Albania has already drafted legislation in accordance with international acts and has created mechanisms for the protection of the LGBT community from discrimination. The Law on Protection from Discrimination has provided for the establishment of the institution of the Commissioner for Protection from Discrimination as an institution that ensures effective protection from discrimination and from any form of behavior that incites discrimination. (Komisioneri për Mbrojtjen nga Diskriminimi, 2018). Albanian legislation provides a general protection of fundamental human rights and the principle of equality and non-discrimination, specifically in articles 18 and 26 of the Constitution of the Republic of Albania. “All are equal before the law” (article 18/1 of the Constitution of the Republic of Albania) and “no one may be unfairly discriminated against for reasons such as age, gender, race, religion, economic status, education or parental affiliation” (article 26 of the Constitution of the Republic of Albania). The Labor Code of the Republic of Albania does not expressly provide for sexual orientation and gender identity as grounds for which discrimination during employment is prohibited, but the code recognizes the distribution of the burden of proof when dealing with discrimination cases, providing that “When the employee presents serious evidence suggesting the existence of discrimination, the employer is obliged to prove the contrary.” (article 115/3 Labor Code). The Code of Administrative Procedures provides for the principle of equality as one of the general principles that the activity of public administration must support, emphasizing that “in relations with private persons, public administration is guided by the principle of equality and that no one may be discriminated against on the grounds of religion, gender, race, political or religious beliefs.” (article 11 of CAP). If we refer to the draft law on reproductive health, which has been under consultation since May 2024, it does not directly mention transgender people. This draft law focuses mainly on guaranteeing the reproductive rights of individuals and providing quality and comprehensive health services. According to this draft law, in its article 23 it is determined that “every individual has the right to preserve their own regenerative cells through freezing,” leaving it open and unclear whether these people could be included”.

5. The International Aspect of Gender Identity Recognition

The map below presents a breakdown of countries that recognize and do not recognize gender identity, thus explaining the impact of different policies and legislation on the lives of these individuals.

Table.1 Countries that do not recognize gender identity

[illegible]

Source (<https://www.ilga-europe.org/report/rainbow-map-2024/>)

At the international level, gender identity recognition has become an indispensable criterion for assessing a society's progress towards equality and respect for human rights. The European Court of Human Rights has repeatedly ruled in favor of trans individuals, emphasizing that states have an obligation to legally recognize the self-declared gender, however, the reality is different, as some countries have adopted laws on gender identity recognition, while others have left them unclear. Argentina is one of those countries that in 2012 became the first country to pass a law on gender identity as a fundamental right, making it possible through this law to "change name and gender in official documents without the need for a long and costly administrative procedure." (National Congress of Argentina, 2012). Case *Bostock v. Clayton County* (2020) which dealt with the case of a woman who was fired from her job because she declared that she had begun to live in accordance with her gender identity, marked a historic turning point in the protection of the rights of trans people in the field of employment. The court's decision found that dismissal from employment due to sexual orientation or gender identity is a form of discrimination and is prohibited by reference to Title VII of the Civil Rights Act. (*Bostock v. Clayton County*, 2020).

6. Discussions

In the Republic of Albania, legal recognition of gender identity is an issue that concerns the rights of trans individuals and the way in which the law recognizes them, and so far, Albanian legislation does not have a specific law that directly addresses gender identity. Legal recognition of gender identity requires that trans individuals have the opportunity to change their name and gender in official documents, this is a requirement accepted internationally and in EU countries but not included in Albanian legislation. A significant challenge regarding this

issue is also confronting discrimination and social stigmatization, which often damages the dignity of these individuals and makes the process of legal recognition more difficult. Recognition of gender identity is essential for the protection of the dignity and rights of individuals, and a law that does not ensure this recognition has direct consequences for the well-being of these individuals, and improving the legal framework is necessary to ensure and respect their rights.

7. Conclusions

In a society that still preserves conservative traditions and norms, gender identity in the Republic of Albania remains a debated issue. The lack of a legal framework for gender recognition, discrimination in employment, and difficulties in accessing healthcare are problems faced by these individuals. Although Albania has adopted laws against discrimination, their implementation remains lacking and in this case the question arises: how ready is Albania and the Albanian state to recognize and respect gender identity as a fundamental human right? To guarantee the rights of trans individuals, Albania must create and implement a clear legal framework that guarantees their rights to live in accordance with their gender identity, eliminating legal and social barriers that hinder the realization of these rights, a process that requires continuous commitment and deep reforms in the legal framework and in the practice of Albanian society, thus creating a just and inclusive society.

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