

# Sex trade, social and legal aspect of the phenomena and the Albanian criminal legislation provisions

Aurela Bozo, PhD Candidate  
Center for Legal Civic Initiatives, Albania  
Faculty of Social Sciences, University of Tirana, Albania

## Abstract

The purpose of this paper is to analyse the effects of Article 113 of the Albanian Criminal Code<sup>1</sup> on women. This article appears to be gender neutral, but its enforcement affects women disproportionately and face them with forms of indirect gender discrimination. Through monitoring of Tirana Judicial District Court's decisions, with object article 113 of the ACC, "Prostitution", for a four year period from 2010 through 2013 and interviews with women who have exercised prostitution, there are brought in attention the profiles of the individuals who exercise prostitution and also social aspects of this phenomena.

The hypothesis raised in this paper is that the profile of an individual who exercises prostitution is a vulnerable woman, with low education, unemployed, with low income, who is faced with family and social problems.

This paper analyses the relation between the social aspects and legal dynamics of article 113 of ACC. The changes of 2012<sup>2</sup> introduced in the article 113 of the ACC brought sanctions for persons who buy the service of prostitution reflecting the process of social changes and understanding of gender equality. The issue of the next steps to address this phenomenon is analysed in this article too.

**Keywords:** prostitution; profile; court decisions; legal changes; equality

## Introduction

The Constitution of the Republic of Albania is the highest legal act sanctioning the principle of equality and non-discrimination, which is the principle permeating the entire legislation of our state. It has opened the way to the development of national legislation approximating it to the international standards<sup>3</sup>.

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<sup>1</sup> I will refer below as ACC

<sup>2</sup> For more see the Law no. 23/2012, "On some adding and changes in the law no.7895, dated 27.1.1995 "Criminal Code of Republic of Albania", changed, article 12.

<sup>3</sup> Bozo, A., & Grabova, L. (Eds.), The Albanian institutions for the protection of women against domestic violence, Publishing House: Pegi, 2006.

The Albanian State is a Party of CEDAW Convention,<sup>4</sup> which asks from the State Parties to guarantee gender equality and address social and family inequalities.

According to article 113<sup>5</sup> of the Albanian Criminal Code, the exercising of prostitution is a criminal act which is punishable with a fine or by imprisonment for up to three years, which in its implementation affects mostly women. Law and society needs to be analyzed and understood in its dynamic and relation.

## Methodology

There are monitored 40 court decisions of Tirana Judicial District Court with object article 113 of the Albanian Criminal Code, "Prostitution", for the years 2010-2011-2012. Monitoring of court cases during these years gave the possibility to compare the related trends.

The practice of Centre for Legal Civic Initiatives is used as a source of information as well. Interviews were accomplished with ten women accused for exercising prostitution, aiming to understand the effects of changes in the Albanian legislation regarding the criminal act of prostitution. The purpose was understanding their perspectives regarding the legal changes. It is selected the free type of interview, because it is assessed as more proper for the target group. This type of interview gives the possibility to organise the interview as a free talking, with open questions and to enter in depth of the issues which are studied.

The fact that the issue of exercising prostitution continue to be considered very sensitive, made things more difficult. All of women who exercise prostitution had to discuss sensitive issues related to the morality of the society, especially since they timidly shared their views openly because of the fact that exercising the prostitution is a criminal act, according to the Albanian Criminal legislation and to pay for prostitution services is sanctioned.

Monitoring of the court decisions, cases with object "prostitution", issued from Tirana District court during 2013, after the approval of changes in the Albanian Criminal legislation, gave the possibility of comparing the data, with 2010-2011-2012.

## Analyse and Results

The article has defined the objectives, formulated the hypothesis that the typology of the individuals accused of committing the criminal act of prostitution is characterized from vulnerability. Through a combined methodology, which includes monitoring of

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<sup>4</sup> Convention of the Elimination of All forms of Discrimination Against Women is ratified from the Albanian State with law no. 7767, dated 9.11.1993 and took effects and power on May 11, 1994.

<sup>5</sup> See article 113 of Albanian Criminal Code. Albanian Criminal Code of Republic of Albania is approved with the law no.7895, dated 27.01.1995, changed.

courts decisions of Tirana Judicial District court, with object “prostitution”, in depth interviews with individuals who have exercised the criminal act of prostitution and are faced with the weight of the Albanian Criminal Code and the practice of Centre for Legal Civic Initiatives in providing free legal aid for these cases, the analyse and results are developed. Available official sources are used too. This article is focused on the analysis of the prostitution as a power imbalance between genders, and the attempts of civil society actors to destruct this imbalance. Future prospects defines the challenges at the end of this article.

One of the objective of this article is to design the typology of the individuals who exercise prostitution in Albania. Who are they? What is their gender? What education they have? Are they employed? Are they coming from vulnerable families? The hypothesis raised from this article is that the persons who exercise prostitution in Albania are vulnerable women, faced with sharp social problems. The more detailed hypotheses is that the profile of an individual who exercise the act of prostitution in Albania is mainly a vulnerable woman, with low education level, unemployed, with limited income and with many family social problems. Their vulnerability, poorness, unemployment, put women and girls in a very specific risk of violence and abuse.

If this hypothesis is proved, the next question is: What kind of solution makes for society the criminalisation of the act of prostitution, foreseen in the Albanian Criminal Code and it’s changes of 2012? What effects are stemming from this legal framework for vulnerable individuals, mostly women, who exercise this act?

Article 3 of the Albanian Constitution envisages “... the dignity of the individual, human rights and freedoms... are the bases of this state, which has the duty of their respecting and protecting.”

The ratified international agreements constitute part of the internal legal system after being published in the Official Journal. CEDAW Committee, organ of CEDAW Convention interpreting article 6 of this Convention, after the periodic final report of the Albanian State submitted to the Organisation of United Nations, made a clear recommendation to the Albanian State that Criminal Code to be changed aiming that women and girls who exercise prostitution not to criminally prosecuted and punished<sup>6</sup>.

CEDAW Committee has repeated its special concern for Albanian state in 2010 that the victims of trafficking and individuals who exercise prostitution continue to face criminal prosecution, in accordance with Albanian Criminal Code.

The Albanian Criminal Code criminalise prostitution. According to the legal framework, judicial district courts consider the act of prostitution as a criminal act of high risk, which violates not only the juridical relations but also the moral ones.

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<sup>6</sup> For more see, CEDAW Recommendations to Albania in 2003 and 2010.

Regardless of CEDAW's recommendation, and the obligation of the Albanian State to fulfil CEDAW Committee recommendations, the individuals who exercise prostitution continue to face criminal prosecution which strengthen their lack of power and vulnerability..

### Findings of monitoring, interviews and CLCI practice

<i>Years, object of monitoring</i>	<i>Number of court decisions</i>
<i>2010</i>	<i>13</i>
<i>2011</i>	<i>15</i>
<i>2012</i>	<i>12</i>
<i>Total</i>	<i>40</i>

*Table 1. No of monitored court decisions, with object exercising of prostitution, according to years*

It results from monitoring, that there were 40 monitored court decisions regarding the cases with object "prostitution", issued from Tirana Judicial District court, for the period 2010-2011-2012. Tirana Judicial District court has issued 15 court decisions during 2011 with this object and has punished 17 women for committing this criminal act, based in the legal provisions of the Criminal Code. For the year 2012, a total of 12 court decisions were issued related to this object and punishment were delivered for 13 women<sup>7</sup>.

The gender of the accused defendant for committing the criminal act of prostitution is very important not only for the typology of the persons who exercise prostitution but also to answer the questions regarding the effects of implementation of this article on women and men.

### **The gender of the accused defendant, for committing the criminal act of prostitution**

It results from the monitoring of court decisions of Tirana Judicial District Court for the years 2010-2012, that for court cases with object "prostitution", in 100% of cases, the accused defendant for committing the criminal act of prostitution and punished from the court was a female. There was no male faced with sanctions for committing this criminal case. The article in itself is neutral from gender perspective. It does not make difference on male and female, but it is clear that when the article of prostitution is enforced, it effects women in practice.

<sup>7</sup> the website of Tirana Judicial District Court [www.gjykatatirana.gov.al](http://www.gjykatatirana.gov.al) is used.

### **Which is the profile of women who have exercised the prostitution? Are they educated or no?**

In 11.6 % of monitored cases, the accused women for committing the criminal act of prostitution are without education; in 11.6 % of monitored cases, the accused women have attended 2-4 years of preliminary education; in 47 % of the monitored cases, the accused women have attended 7-9 years of secondary education; in 6.9 % of monitored cases, the accused women have attended the high school and in 23.2 % of cases there are no data on education of the accused women. The Judges of Tirana Judicial court in 23.2 % of the monitored decisions have not paid attention to education of the accused defendant and they did not emphasised this in the court decision. In fact, education is an important indicator, which speaks a lot on the vulnerability of these target group of women.

Difficult economic conditions of the family of the accused women are present in monitored cases. It has resulted from monitoring that the accused defendants of committing the criminal act of prostitution were faced with difficult economic conditions and different family problems. In 79 % of the monitored decisions, it results that women accused of committing the criminal act of prostitution are faced with difficult economic conditions and different family problems. In 21 % of cases, it has not resulted from the court decisions that the accused women are faced with difficult economic and social conditions.

Prostitution is largely a response to a lack of economic alternatives<sup>8</sup>.

Thus from monitored court cases, it has resulted that in 16.2 % of court cases, women are divorced, in 2.3 % they are head of the family, in 2.3 % their parents are divorced, in 2.3 % they are persons with disabilities, in 2.3 % they are from Roma community and in 2.3 % they were abandoned from their parents.

Thus, refer to the decision no.1590, dated 26.11.2013 of Tirana Judicial District court, it results that the benefits of a woman from committing the prostitution act are used to feed her children and herself.

These data calls for attention to the Albanian state, to read them carefully. The divorce, the responsibilities as the head of the family, the divorce of their parents, the problems with disability, the fact that they belong to Roma community or other vulnerable communities, abandonment from their parents are some economic and social problems, with which women are facing in Albania. They make the situation of these women very complicated and let them without alternative solutions.

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<sup>8</sup> Freeman, J., (1996) The feminist debate over prostitution reform. In A. Dworkin, C. MacKinnon,..... & J. Freeman et al. (Eds) Applications of Feminist Legal Theory to Women's Lives, Sex, Violence, Work and Reproduction, Temple University Press, p.241.

The vulnerable situation of the accused women is also reflected in the measure of payments that women have benefitted in reward of offering the service of prostitution. It resulted that the enforcement of this article, all sanctioned persons have been women and girls who have accepted to engage in this type of sexual relationship to benefit the reward of men, because of their social and family vulnerability.

### **One of the questions raised is the amount of benefited rewards by the accused defendant.**

In 67.3 %, women have exercised the act of prostitution for the payment up to 5000 AL. In Euro it is approximately 35. It is a situation in which the Article 113 punishes women for committing the criminal act of prostitution and the vulnerable group of women commit this act to benefit around 35 Euro. (in 67.3 %). This is a strong fact which asks for steps and measures from the Albanian society to address the vulnerability of the situation and the need the state to undertake measures to strengthen women economically.

### **Which is the civil status of the accused defendants?**

In the highest percentage of cases in 60.4%, the accused defendant are single girls. In 20.9 % of cases, the civil status of the accused defendants for committing the criminal act of prostitution is married. In 16.2 % the accused defendants are divorced women and in 2.3 % of cases they were widowed.

In this vulnerability of the accused defendants, it is added the burden of the criminal sanction. The measures of sanction given from the courts on women charged for committing the criminal act of prostitution, foreseen in the article 113 of the Albanian Criminal Code, "prostitution", for years 2011 are as follows:

*There were 17 impeachment women for the year 2011. From the monitoring it results that in 2011, 8 females were punished by imprisonment and in 6 cases of them Article 59 of the Criminal Code was applied, according to which the execution of the sentence was suspended. The length of imprisonment given by the court to females for this criminal offence varies from 2 months up to 4 months. Whereas in 9 cases the court has punished females by fine, which varies from 66 000 AL to 200 000 AL. In all the cases, the court has applied Article 406 of the Criminal Procedure Code, performing thus an accelerated trial<sup>9</sup>.*

These women are faced with lack of education, lack of employment, social problems in family, family responsibilities and at the end with imprisonment or fine from the courts in Albania. Their vulnerability is strengthened through punished by imprisonment or

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<sup>9</sup> Mandro, A. & Bozo, A. & Anastasi A, (2013) Report on knowledge and implementation of the gender equality standards in court decisions, 59. This report is available in the website of Center for Legal Civic Initiatives [www.qag-al.org](http://www.qag-al.org) in Albanian and English language.

fine. To punish vulnerable women with fine up to 300.000 AL when in a high percentage they sell their bodies for 200-5000 AL, this is really desperate and not a solution for a “moral” society. This is a chain which has to be broken through strengthening women and not making them more vulnerable.

The sanctions with imprisonment or fine given from the court have had effects on vulnerable women, making them more poor. There are women who are faced with sanctions of the criminal legislation in Albania, in cases of exercising prostitution. No person of the next gender is punished for committing the criminal act of prostitution, from Tirana Judicial District court, during the years of monitoring 2010-2012.

The article 113 of the Albanian Criminal Code “Prostitution” violates in a direct way the standards, defined in the international conventions, ratified from the Albanian State. This article’s enforcement violates the principle of gender equality. “Prostitution, like pornography, raises fundamental issues regarding the male right of access to women’s bodies and the relationships among sexuality, gender and equality”<sup>10</sup>. Is there any solution? “The solution for Brownmiller is equality: prostitution will not end until men see women as equals”<sup>11</sup>. This issue is in the same time issue of gender equality and it reflects gender indirect discrimination.

Why we think that the article 113 of the Albanian Criminal Code was a discriminatory article analysed from gender perspective? Did this article discriminate women in a clear way? Was the article neutral from gender perspective? What happened with the article when it was implemented? Which were the effects of this article on women? Which were the effects of this article on men? Which were the effects of this article on society? Which is the profile of women who exercise prostitution?

The article 113 of the Albanian Criminal Code has a simple and moral aim. It aims to protect moral and dignity of the Albanian society. The object of this criminal offence are the juridical relations defined to prohibit prostitution with the aim of protecting the morality and dignity of individual and it is obvious that objectively the essential element of such a criminal offence, is the payment received for exercising prostitution<sup>12</sup>.

Thus, the subject of this criminal act is the person who has benefited a reward as a result of offering services through committing the sexual relations. This is a discriminatory approach and it does not protect all citizens in an equal way. In this case, it is not considered that the criminal acts with which this act is consumed are committed not only by the beneficiaries of rewards and offers, but also by the persons who benefit the sexual relations, in an illegal way.

<sup>10</sup> A. Dworkin, C. MacKinnon,..... & J. Freeman et al. (Eds) (1996) Applications of Feminist Legal Theory to Women's Lives, Sex, Violence, Work and Reproduction, 187. Temple University Press.

<sup>11</sup> A. Dworkin, C. MacKinnon,..... & J. Freeman et al. (Eds) (1996) Applications of Feminist Legal Theory to Women's Lives, Sex, Violence, Work and Reproduction, 189, Temple University Press.

<sup>12</sup> Elezi, I. (2009). “Criminal law. Specific Part”, 153-155.

The individual, who has benefited the sexual relations and he/she who has committed the sexual relations have violated the norms of social morality and the dignity of person, in the same way. In arguing of court decisions, the process verbal of declaration of men, the persons who have benefited the sexual services has served to prove that the woman defendant is guilty.

If the aim of the lawmaker has been the protection of morality of society, than the sanction for this act is discriminatory and it has effects only on women. This article again was problematic.

When it is spoken about prostitution, we have to understand that this is not an issue of individual selection of a woman but a selection that expresses the differences in power between men and women, in personal, family and social relations. There are social, economic and other differences of power in personal, family and social relations. Prostitution is mainly a response upon the lack of economic or other alternatives.

Women who exercise prostitution are not free in their unit, they are not isolated from their social context. They are not exercising this autonomy, they do not make their selection out of social context. There is a debate between individuals who concept prostitution as a right to choose, as an exercise of the individual autonomy and individuals who believe that prostitution put the group of women in dependence, made them subordinated.

How possible is to understand the phenomenon of prostitution as a consent of a girl or woman who exercise prostitution, how authentic is her consent given in a given society.

Is consent evident in such a case? The saying "yes" from women does not guarantee the lack of force or threatening.

What kind of force, and What kind of power? It can be the force of a powerful man but it also can be the force of vulnerability of a society, the vulnerability of women inside the family, the force of poverty feminism.

Let's analyse some cases from the practice of Center for Legal Civic Initiatives and the jurisprudence of Tirana Judicial District Court.

**Case 1:** The female defendant B.Q accused for committing of the criminal act of prostitution has declared that she has come from a city far from Tirana and that she left family because of difficult economic conditions. From the interview with B.Q, it is reflected clearly her vulnerability.

Her parents were divorced and the sconomic family conditions were very difficult and made her to exercise prostituion. The woman defendant in the time of committing the crime has been only 17 years ol and 11 months. Tirana Judicial Distric Court and Tirana



Appeal court found B.Q guilty and penalized her. Tirana Judicial District court, with the court decisions no.744, dated 6.5.2011, found B.Q guilty for committing the criminal act of prostitution, envisaged from the article 113 of the Albanian Criminal Code and sentenced her with 4 months in prison. In application of article 406/1 of the Criminal Procedural Code, she was sentenced with two months and 20 days in prison. Based in the article 59 of the Criminal Code, it was ordered to suspend the execution of court decision with a probation time of 18 months with a condition that the defendant B.Q not to act other criminal acts during the probation time.

Center for Legal Civic Initiatives has asked Tirana Judicial District court and Appeal court to find innocent B.Q and also asked from these courts to suspend the case and to send it to the Constitutional court to decide on it's constitutionality.

The case of B.Q was sent at the High Court of Tirana. The High Court on May 14,2014 decided to suspend the case and to send it to the Constitutional Court aiming the Constitutional Court to exercise it's power and to decide if the article 113 of the Albanian Criminal Code is unconstitutional and not in compliance with the equality article of the Constitution of the Republic of Albania and the international acts ratified especially CEDAW Convention.

**Case 2:** Another accused woman for exercising the criminal act of prostitution is C.I. She was born in city L, divorced, with three children, with eight class education. Tirana Judicial District court, with the court decision no.103, dated 01.02.2012 has found her guilty and finally under the frame of the enforcement of the article 59 of the Criminal Code has ordered to suspend the execution of the imprisonment, ordering her to keep contacts with the Probation Service for a period of two years, and during this time she has the obligation not to commit other criminal act. This court decision is irrevocable, after the case was judged again from Tirana Appeal court. In a position of a lawyer I accompanied her in the Probation Service. The representatives of the system identifies her with a violator of the moral of society. For me she is victim, because with the same court decision, a man was found guilty for exploitation of prostitution and the exploitation means violence, force and power. On the same time it means lack of consent by the victim.

Is this yes? I think no. There is no consent there. The consent of women, when they say "yes" is not a consent and it contributes in strengthening the power of men and reflects the dependence of women, the lack of their power in continuity.

The Criminal Code of Republic of Albania is focused at criminalisation as a guarantee for a society and moral regulations.

But, it is not possible to achieve the aim of securing the society moral- a very important aim- through sanctioning only women and girls for their lack of force and power in all relations. The discussion and debate regarding the unfavourable effects of a law, or the

practice of implementation of this legislation upon a gender group and the attempts to address the problem, make an achievement under the frame of guarantying the principle of gender equality and non discrimination.

In the case of “prostitution” and it’s addressing with legal remedies, a form of indirect gender discrimination is present. Drafting, enforcement, encouraging and creating of articles conditions, criteria’s or practices neutral but which put an individual of one gender in a less favourable situation compared to an individual of the next gender, make an indirect discrimination on ground of gender. *It is quite clear that this article is neutral from gender perspective.* This article does not favour one gender compare to the other, but its effects are reflected especially on one gender group and in a specific way in the more marginalised part of the Albanian society, on women.

In cases of indirect gender discrimination, the main criteria is the effect that one article, criteria or practice has upon a certain gender group. Article 113 of the Albanian Criminal Code was an article that effected mostly women because of the fact they are women, and especially the marginalised women because of the fact that they are women and they are marginalised in the same time. This article in the practice of its implementation, sanctions women and in a specific way the ones who are in a social and economic disadvantage.

With the changes in the Albanian Criminal Code, with the law no. 23/2012 “On some adding and changes in the law no. 7895, dated 27.01.1995 the Albanian Criminal Code, changed made some changes in the article 113 of the Albanian Criminal Code, adding a paragraph with this content: “To give rewards, offers for personal benefits of prostitution services it is punished with fine or imprisonment up to three years. “

Does this legal change has reflections in the practice? Did this change addressed adequately the discrimination upon women? Let’s analyse some facts and numbers on the implementation of article 113 of the Albanian Criminal Code after this legal change of sanctioning men for buying prostitution services.

### **Some facts and numbers from the monitoring of court decisions with object ‘Prostitution’ of Tirana Judicial District Court for the year 2013.**

From monitoring of court cases with object “Prostitution” of Tirana Judicial District Court, for the year 2013, it has resulted that the number of court cases is 7 and the number of accused defendant was 11 for article 133 of ACC, paragraph 1 and paragraph 2. There are 6 women and 2 men, found guilty for exercising the prostitution, paragraph 1 of the article 113 of ACC.

There is a change comparing with years 2010, 2011 and 2012 regarding the gender of accused defendant. It results that in 25 % of cases, the gender of accused defendant for exercising prostitution was female and in 75 % of cases the gender of the accused

defendant is male. Changes in the Albanian Criminal Code which sanction not only the individual who exercise the prostitution but also the individual who buy this service are reflected in the practice of implementation of the Albanian Criminal Code's changes. As a result of changes in the Albanian Criminal Code, the second paragraph of article 113, three men are punished in Albania for buying services of prostitution, during the year 2013.

Women continue to face the weight of sanctions, the vulnerability of these women continue to be present, penalties upon them continue to strengthen their vulnerability. They have low level of education and have faced economic problems in their families in all cases. Men have stated the same, that they come from families with difficult economic conditions. But this article affects mostly women. It results that only in 12.5 % of cases, the defendant have been accused before for committing a criminal act. Tirana Judicial District court in 2013 has punished defendant on exercising prostitution with Probation Service in 75 % of cases (all of them are women) and in 25 % of cases (they are men) has punished defendants by fine.

The vulnerability of individuals who have exercised the prostitution is present in all monitored court decisions for cases of prostitution. There are many social problems, evident in the court decisions, which reflect the unemployment of women who have exercised the prostitution, the fact that they are divorced, faced with family problems, exercise the responsibility upon children, in cases in which they are the head of families, etc. In one of the monitored cases, the accused defendant explained to the court that she is the head of the family, she is unemployed, without dwelling place and with children. Thus the criminalisation of prostitution continues to punish women who are at social and economic disadvantage. 100 hundred percent of accused defendant of committing this criminal act are faced with difficult economic condition.

Cases sanctioned with jail were replaced with sanction with condition of being in contact with the Probation Service under the obligation of not committing again similar criminal acts during the time of probation. The court has expressed the opinion that the sanctions with imprisonment for these individuals were not in compliance with the aim of reintegration of these persons in the society and the relation with the members of their families. In one of the cases, the court has ordered the accused defendant to participate in courses of professional education aiming to contribute in their rehabilitation.

Numerical analysis of the monitored court decision, after the changes introduced in the Albanian Criminal Code article 113, give the impression that the number of court cases related to exercise of prostitution is decreasing. But, this is not true.

As a result of the change, the beneficiaries of the services who played role in the past to prove this criminal act are without voice, because of fear of punishments. As a result less women will be sanctioned for committing this crime. The society will lie

itself that is more moral and pure. But it is not. Prostitution continues to be exercised in our society. There are many cases from monitored court decisions which reflect the exercising of different forms of violence against women who have exercised the prostitution.

The case below is one of them.

**Case 3:** When I refused to exercise prostitution, I was beaten brutally by Q and E who have broken my teeth. Although I had a mobile phone, I was feared and I did not inform my family. I have many health disorders because of violence exercised upon me. I felt dizzy and because of that I was dropped and have had problems with my feet. (the case of M.C, a single parent)

Another woman, witness in the court told about M.C: When the tutors violated M.C, she said “do whatever you won’t but do not kill me because I have a child to raise”.

Tirana Judicial District Court decision no.1800, dated December 24, 2013.

It is not a solution for our society. “Criminalization only makes life more difficult for prostitutes, minimizing their chances of leaving the trade. The way to empower women is not to punish them for being powerless”<sup>13</sup>. To punish the vulnerable women, who exercise prostitution with fine or imprisonment up to three years for many actors in Albania was considered discriminatory and absolutely it is not a solution of the problem.

With the initiative of the Centre of Legal Civic Initiatives, a non-profitable organisation in Albania, it was asked from Commissioner for Protection from Discrimination to undertake steps aiming to find the article 113 of the Albanian Criminal Code, “Prostitution” as unconstitutional. Anti Discrimination Commissioner recommended to the Albanian Parliament to abolish this article as unconstitutional. This recommendation issued two years ago was in the logic and enforcement of the competencies of the Commissioner for Protection from Discrimination based in the law no.10 221, dated 4.2.2010, “On protection from Discrimination” article 32/1 of this law. Based in this article, Commissioner for Protection from Discrimination has the competence to make recommendations to responsible authorities, proposing the approval of new legislation, changing or reformulating of the existing legislation. Some of the arguments used were the negative effects this article had to women, non equality, violation of international standards, etc.

Following this recommendation, with the law no. 23/2012 “On some adding and changes in the law no. 7895, dated 27.01.1995 the Albanian Criminal Code”, changed it was made a change in the article 113 of the Albanian Criminal Code, with this content:

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<sup>13</sup> Freeman, J., (1996) The feminist debate over prostitution reform. In A. Dworkin, C. MacKinnon,..... & J. Freeman et al. (Eds) Applications of Feminist Legal Theory to Women's Lives, Sex, Violence, Work and Reproduction, 246, Temple University Press.

“To give reward for personal benefit of prostitution it is punished with fine or jail up to three years.” This change in the Albanian Criminal Code took effects on April 13, 2012. In my opinion it is not a solution for the problems of women vulnerability, inequality, poverty and lack of power. To punish some men with the second paragraph of the article 113 of the Albanian Criminal Code is not a solution of the problem. Women continues to be punished, they continue to face inequality.

The Anti-Discrimination Commissioner’s recommendations and the changes in the Albanian Criminal Code led to strong debate in the Albanian society, related to the issue of prostitution showing clearly that the Albanian society and it’s legislative branch is not ready to decriminalise the prostitution. This debate demonstrates the relation between the law and society and interrelation between them.

Although the articles of the Albanian Criminal Code envisages higher sanctions, this criminal act continues and it is accompanied with strong forms of violence against women.

It does not show a purer society. It is just a conflict between the society and a law. A conflict which need more time for solution. It continues to be an indicator that the Albanian state and society are not in compliance with the recommendations of CEDAW Committee, organ of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

## **Conclusion**

- As a conclusion, the profile of an individual who has exercised the act of prostitution is a female, in a highest percentage of cases, she has no or low level of education, faced with difficult economic conditions and social problems, single, unemployed and not previously convicted.
- Prostitution is mainly a response of marginalized individuals, mostly of women upon the lack of economic or other alternatives provided from the state and society.
- The Albanian Criminal Legislation is not an adequate response to this social phenomena of prostitution, because it affects women disproportionately.
- The Albanian State needs to undertake coordinated actions to address this phenomena.

## *Future prospects*

Again the struggle to abolish the article 113 of the Albanian Criminal Code with its latest additions and changes continues. The Constitutional Court will have the chance to contribute in addressing this issue and to find the article 113 of the Albanian

Criminal Code as unconstitutional. High Court has asked this from the Constitutional Court in May 14, 2014.

The discussion to abolish the article 113 laid in table the issue of an unprepared society for this change.

Programs, policies, strategies aiming to strengthen women economically are necessary. These policies need to be oriented to vulnerable groups of women. It is necessary that these policies and programs to be available in local level too. When women and men are equal, then the debate on prostitution will finalize. We are far from this point. The struggle continues.

Through these attempts we are aware on the sociology of law, the fact that the legislation is developed as a result of social developments. When a conflict is present between them, one of them, social development need to change dynamically to have compliance with international standards. The national legislations need to be reviewed aiming to be in compliance with international standards.

Women and girls continue to be sanctioned for exercising prostitution in Albania. Does it mean a failure of legal acts to lead society? Does it mean that the article 113 of the Albanian Criminal Code and its latest changes fail to guarantee a moral society without gender discrimination? I think yes, this is a failure in conditions and the lack of alternatives given by the state. At the same time, it is an issue of the relationship between law, international standards and society, which needs to be a more compliant relation.

## Notes

- Centre for Legal Civic Initiatives is a non profitable organisation established in 1996. It has in her mission to increase the access of the marginalised women and girls in the justice system.
- AL - The Albanian Lek

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8. *Albanian Code of Republic of Albania, law no.7895, dated 27.01.1995, changed, article 113;*
9. *Law no. 23/2012, "On some adding and changes in the law no.7895, dated 27.1.1995 "Criminal Code of Republic of Albania", changed, article 12.*
10. Law no.9970, dated 24.07.2008, "On gender equality in society", article 6, "To stop discrimination due to gender".
11. Law no.10 221, dated 4.2.2010, "On protection from Discrimination";
12. Decisions of Tirana Judicial District court are available in the website [www.gjykatatirana.gov.al](http://www.gjykatatirana.gov.al)