

FREE FROM DISCRIMINATION BASED ON SEXUAL ORIENTATION

Aulona Haxhiraj

University “Ismail Qemali”, Vlore, Albania, E mail: aulonahaxhiraj@yahoo.com

Abstract

Throughout history sexual minorities have been treated differently and discriminated against by state actors. Sexual minorities are confronted with differential treatment by state actors and private individuals within their private as well as family life. Charter of human rights have on numerous occasions dealt with the issue of sexual orientation discrimination within the sphere of family life. They pronounced itself against discrimination on the basis of sexual orientation. The interpretation of the term family differs from country to country, and might even be different within the territory of one state. Within the scope of family life the focus will be on the relationship between a child and his parent of a different sexual orientation. This article will be limited to the right to family life of homosexual, lesbian and bisexuals and will not include transgender issues. It will trade also the definition of sexual orientation that will be used is that of the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. This document, formulated by a group of human rights experts and initiated by a coalition of non-governmental human right organizations, contains basic principles of human rights as they specifically apply to issues of sexual orientation. In the following, first the concept of discrimination shall be set out. Thereafter, regional human rights treaties shall be examined on whether they deal with discrimination on the basis of sexual orientation. A closer look will then be offered to the case law of the ECtHR on issues of sexual orientation in connection to the right to family life, especially in custody and adoption cases. The same will be done for the Inter-American Court’s case law, after which a conclusion shall be drawn.

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