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Albania: Disability and the right to marry

Amnesty International today expressed grave concern about draft amendments to the Albanian Family Code that would bar marriage to people with certain mental and physical disabilities.

"The right to marry and found a family, on the basis of free and full consent, is a right enshrined in international human rights law and standards. The amendments, as drafted, would conflict with international human rights instruments ratified by Albania that have precedence over domestic legislation," the organization warned.

"The Albanian authorities should not be discriminating against people with disabilities but should take all necessary measures to ensure that they can effectively exercise the same rights as other citizens."

Amnesty International calls on Albanian legislators to reject the proposed amendments.

"Before any legislation is adopted that affects people with disabilities, there should be a process of wide consultation with medical and legal experts and, most importantly, with people with disabilities and their representatives."

As the law stands at present, *"A person who suffers from a severe mental illness or lacks the mental capacity to understand the nature of marriage"* may not marry. The proposed amendment defines more specifically the nature of the mental illness or disability, listing schizophrenia, manic-depressive and reactive psychoses as well as certain intellectual disabilities ("idiocy", "imbecility" and "profound debility"), which would be bars to marriage. In addition, it extends the ban on marriage to persons living with HIV/AIDS and to marriages where both potential spouses have congenital blood diseases.

A further proposed amendment states that, for a marriage to be registered with a civil registration office, the two potential spouses must present medical certificates confirming that they do not suffer from any of the above disabilities.

Amnesty International emphasises that such provisions would be severely discriminatory and would conflict with the Albanian Constitution, which guarantees everyone equality before the law (Article 18/1) and the right to marry and form a family (Article 53/1). The organization recalls that under Article 1 of the Universal Declaration of Human Rights (UDHR), all people are "free and equal in dignity and rights", while, in 1993, the World Conference on Human Rights declared that "all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities" (the "Vienna Declaration").

Restrictions of the right to marry should only be made to protect the best interests of one or both

potential spouses and where there are grounds to believe that one or both are unable to validly consent to the marriage because of mental incapacity. The presence in one or both partners of transmissible diseases cannot be regarded as a valid reason to suspend their right to marry. Any restriction of the right to marry should only be imposed according to due process, including the right of the person concerned to be effectively represented, the right of judicial review and other legal safeguards against any form of abuse.

Amnesty International further calls on the Albanian authorities to institute legal and other measures that prevent discrimination against people with mental and physical disabilities and that enable them, by means of education, counselling and appropriate services, to make an informed choice with regard to marriage as well as to enjoy the other rights guaranteed by Albanian and international human rights law.

BACKGROUND

Article 2 of the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Albania in 1991, prohibits discrimination "of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The ICESCR Committee, in its General Comment No.5, specifies that disability falls under the heading of "other status" and, thus, may not be discriminated against.

Article 16 of UDHR guarantees the right to marry and found a family, a right reiterated in the International Covenant on Civil and Political Rights (ICCPR, Article 23), while the ICESCR (Article 10) obliges States Parties to accord "[t]he widest possible protection and assistance ...to the family". General Comment No.5 requires States Parties to endeavour to ensure that persons with disabilities can, when they so wish, live with their families. *Importantly, it also requires states parties to ensure that "laws and social policies and practices" do not impede the realization of the rights of persons with disabilities to marry and form a family.*

Further, Rule 9 of the UN Standard Rules on the Equalization of Opportunities for People with Disabilities, adopted by the UN General Assembly in 1993, requires states to "promote the full participation of persons with disabilities in family life. They should promote their right to personal integrity and ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood." Further, "[t]aking into account that persons with disabilities may experience difficulties in getting married and setting up a family, States should encourage the availability of appropriate counselling" (rule 9.2).

With regard to the provisions of the draft amendment that would bar marriage to people living with HIV/AIDS, Amnesty International recalls that in 1998 the UN High Commissioner for Human Rights and UNAIDS published 12 Guidelines for states on the rights of individuals concerning HIV/AIDS. These state: *"...it is clear that the right of people living with HIV/AIDS is infringed by mandatory pre-marital testing and/or the requirement of 'AIDS-free certificates' as a precondition for the grant of marriage licences under State laws"* [emphasis added].

The Guidelines also note: "Public health is most often cited by States as a basis for restricting human rights in the context of HIV/AIDS. Many such restrictions, however, infringe on the principle of non-discrimination... Although such measures may be effective in the case of diseases which are contagious by casual contact and susceptible to cure, they are ineffective with regard to HIV/AIDS since HIV is not casually transmitted ... these coercive measures drive people away from prevention and care programmes, thereby limiting the effectiveness of public health outreach."

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