

## Human Rights Protection in Albania

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### 1. Introduction: Consideration Over the Current Albanian Constitution

The current Albanian Constitution was approved and entered into force in 1998<sup>1</sup>, since a precedent attempt of constitutional referendum was rejected by the majority of people in 1994. The Albanian constituent Assembly, assisted by experts provided by the Council of Europe, for what concerns the question of the relationship between international and internal law has tried to be as clear as possible. In particular, in the first part of the Constitution regarding the basic principles of the Albanian legal system, the validity of general international law is recognized in direct and automatic way<sup>2</sup>. According to this «solution», the international law binding upon the State is composed, besides internationally recognized general rules (principles and customs), even by treaty law. If, at first sight, this equalization between treaty norms and International general norms (principles and customs) could bring to any apparent confusion, in truth it should be interpreted as a clear and precise choice of the Constitutional legislator in order to guarantee a greater protection extending, exactly, even to the treaty obligations the same Constitutional protection granted to the general international law. This «equality» of strengthened Constitutional treatment should not be realized as an attempt of equalization of international treaty law with general international law (considering that hardly could be reached this goal by mean of internal legislative techniques or methods); instead, it should be seen as a further corollary guarantee that the constituent decided to grant to international treaty law binding upon the State.

For what regards the rank that International human rights law occupies in the Albanian Constitution, the constituent, even on International experts recommendation, demonstrated particular attention and sensibility towards the European system of human rights protection. European Convention on Human Rights (echr)<sup>3</sup> became part of the constitutional provisions binding, in a direct and indisputable way, the legislative activity of the Parliament, particularly with regard to (potential) limitations of human rights in peremptory hypothesis of public interest and protection of rights of others<sup>4</sup>. Direct consequence of this mechanism is the exclusive competence of the constitutional judge to question the compatibility of the limitations in object with what permitted by echr, also in the light of the interpretations of the Court of Strasbourg<sup>5</sup>. Any failure to respect the European minimum standards, in this case, would be considered a violation of art.

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<sup>1</sup> The current Constitution of the Republic of Albania, approved by Constitutional law No. 8417 of 21/10/1998 subject to popular referendum on 22 November of the same year, entered into force on 28/11/1998, the day it received the promulgation of the President of the Republic. From its entry into force, this Constitution was amended two times, respectively on 13/01/2007 by Law No. 9675 and on 21/04/2008 by Law No. 9904. The fundamental act of the Republic of Albania enumerates 177 operative articles and six articles concerning transitory and final dispositions.

<sup>2</sup> Art. 5 of the Albanian Constitution: «The Republic of Albania applies international law that is binding upon it».

<sup>3</sup> Albania joined the Council of Europe on 13 July 1995 while ECHR entered into force on 2 October 1996.

<sup>4</sup> «1. The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it. 2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights»: art. 17 of the Constitution.

<sup>5</sup> See, in Albanian language, also Sadushi, *Jurisprudenca e Gjykatës Kushtetuese në frymën e Konventës Europiane për të Drejtat e Njeriut (Constitutional Court's jurisprudence in the light of ECHR)*, in *E drejta parlamentare dhe politikat ligjore*, No. XI, Tirana, 2003, p. 28-42.

17 of the Constitution and thus declared unconstitutional by the (Constitutional) Court<sup>6</sup>. The constitutional placement of echr, although in «negative» terms of prohibition of limitations if violable of those permitted in the European system, represents an absolute originality for the human rights cause. In case the Parliament decided to restrict the core of human rights and liberties beyond limitations permitted by echr, the constitutional mechanism represents the perfect instrument in the hands of the guardian of the Constitution – the Constitutional Court – to invalidate, in legal ways, attempts of this kind.

Actually, the value of echr in the Albanian legal system has a double dimension: on one hand the Convention guarantees at constitutional rank the minimal core of human rights as provided for at European level placing an insuperable limit to any attempt of human rights restriction within the whole legal system; on the other hand, as sanctioned also in the art. 116 of the Constitution, the echr inasmuch as international agreement ratified by Parliament's law, assumes a pre-constitutional rank within the Albanian legal system and, thus, prevails on any contrary ordinary law<sup>7</sup>. In this case, echr assumes the role of an intermediate constitutional norm in the sense that it becomes a constitutional reference parameter for the ordinary legislation in case of possible contrast. It depends on Constitutional Court to decide, if requested, over the compatibility of ordinary laws with echr according to art. 116 and 131 of the Constitution and, eventually, to declare their illegitimacy.

The same constitutional guarantee is extended to all international agreements in the field of human rights (and not only) given that the Constitution (art. 122, § 2) expressly provides for the prevalence of any duly ratified international agreement on ordinary law. Fall within this category the un Covenants on human rights of 1966<sup>8</sup> as well as all those international and regional instruments ratified by Albania in the human rights field<sup>9</sup>.

## 2. Democratic Standards and Human Rights

Although any Constitution was not adopted immediately, at the beginning of the Nineties important goals were achieved. Though brief and provisional, the «Constitutional Chart» of 1991<sup>10</sup> sanctioned, for the first time at constitutional level, the defense and the fundamental guaranties in the human rights field<sup>11</sup>. The modest constitutional framework recognized, in the section dedicated to *general provisions*, the essential rights of the people under a perspective of equality of the citizens in front of the law<sup>12</sup>.

An important *bill of rights* issued on 1993 completed the provisional constitutional mosaic<sup>13</sup>. It was a catalogue of fundamental rights and liberties that sanctioned, for the first time in the Albanian legal system, the centrality and the dignity of the individual, rendering him a milestone of the whole society. Human rights and liberties, as sanctioned in all democratic Constitutions and guaranteed and protected in international Covenants, this time entered from the principal gate of the Albanian juridical order<sup>14</sup>. In addition, in accordance with the provisional Constitution, a criminal and

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<sup>6</sup> Art. 131 of the Constitution: « The Constitutional Court decides on: a) compatibility of the law with the Constitution or with international agreements as provided in article 122 [...]»; art. 132: «1. The decisions of the Constitutional Court have general binding force and are final. The Constitutional Court only has the right to invalidate the acts it reviews».

<sup>7</sup> See art. 122, § 2 of the Constitution.

<sup>8</sup> International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976; International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976. Albania ratified both instruments in 1991.

<sup>9</sup> For a complete consultation of all international and regional treaties regarding human rights subscribed by Albania visit: <http://www.mfa.gov.al/>.

<sup>10</sup> The provisional Constitution of 1991 was composed of only 46 articles concerning essential and temporary functioning of juridical and social order of the country.

<sup>11</sup> Article 2 [Foundations] «(1) The Republic of Albania is a juridical and democratic state. (2) Man's dignity, his rights and freedoms, free development of his personality as well as the constitutional order, equality before the law, social justice, and pluralism are the foundations of this state, whose duty is to observe and defend them». Article 4 [Human Rights, Minorities]: «The Republic of Albania recognizes and guarantees the fundamental human rights and freedoms, those of national minorities, admitted in the international documents».

<sup>12</sup> See art. 6 to 14 of the provisional Constitution.

<sup>13</sup> (Constitutional) Law No. 7692 of 31 March 1993 on amendments to law No. 7491 of 29 April 1991 (Constitutional provisions).

<sup>14</sup> In particular, the bill of rights enumerated, *ex multis*, the right to life (art. 1), the freedom of thought and speech (art. 2), the absolute prohibition of torture and forced labour (art. 3 and 4), the inviolability of private liberty (art. 5), *nulla poena sine lege* principle (art. 6), the

procedure criminal code were approved<sup>15</sup>.

In practice, however, several problems related to the implementation of the human rights legislation framework emerged. As underlined even in non-governmental international organization's reports, during the first years of the Albanian transition the capacity of the Albanian society to guarantee the full enjoyment of human rights and liberties was seriously questioned<sup>16</sup>. The one-party mentality inherited by the old regime and the non independence of judiciary power from the executive and political one jeopardized the human rights cause. During this embryonic period cases of violence exercised by police forces against individuals, restrictions of individual liberties as those of media, association and manifestation were registered.

Anyway, steps forward with regard to political and civil rights as well as to economic and social rights are not to be ignored. The free enterprise was guaranteed at all levels without any distinction while the old-style economy of the country gradually transformed into a capitalistic model.

With the adoption of the new Constitution, the legislative framework regarding human rights and liberties continued to improve. The new democratic Constitution endorsed the most important principles relating human rights and raised them to constitutional rank; (individual and collective) human rights and liberties finally lied in their natural *habitat*<sup>17</sup>. This constitutional catalogue does not only jealously safeguard the centrality of human rights in the Albanian legal culture but also aims to eradicate those archaic notions inherited from the old communist mentality according to which the unconditioned protection of human rights threatens the discretion of public institutions and challenges the State sovereignty<sup>18</sup>. The centrality and indefeasibility of human rights and dignity<sup>19</sup>, instead, are the milestone of the new legal order imposing to all organs of the State their full and unconditioned implementation<sup>20</sup>.

A further fundamental element of the human rights protection system is certainly represented by the art. 17 of the Constitution<sup>21</sup>. From its analyze clearly emerge the peremptory hypothesis of human rights and liberties restriction: *public interest* and *protection of rights of others*; all in full and rigorous respect of the proportionality of the action and, most of all, only by the mean of a law of the Parliament. Furthermore, in any case, these restrictions or limitations shall never exceed those provided for in the echr. In this sense, the Constitutional Court, in a verdict of 2006, literally interpreting the article in question, firmly rejected the possibility of the Council of Ministers to intervene with proper acts (so-called *normative acts*) aiming the restriction or limitation of fundamental human rights and liberties stating that only the Parliament is the competent organ to legislate in similar cases<sup>22</sup>.

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*principle of presumption of innocence (art. 7), the right to a fair trial (art. 8), ne bis in idem principle (art. 12), the freedom of religion and conscience (art. 18), right to private property (art. 27), inviolable rights of minorities (art. 26), right to family life (art. 32-33) etc.. In other words, a catalogue of constitutionally protected rights, in full accordance with international and comparative standards of the time.*

<sup>15</sup> Law No. 7895 of 27 January 1995: Criminal Code of the Republic of Albania; Law No. 7905 of 21 March 1995: Code of Criminal Procedure of the Republic of Albania.

<sup>16</sup> See at this regard a detailed report of Human Rights Watch *Human Rights in Post-Communist Albania* (1 March 1996).

<sup>17</sup> The current Constitution of 1998 dedicates a whole third part to the question of human rights, duly subdivided into six chapters, respectively concerning: I) General Principles; II) Personal Rights and Freedoms; III) Political Rights and Freedoms; IV) Economic, Social and Cultural Rights and Freedoms; V) Social Objectives; VI) Peoples Advocate.

<sup>18</sup> See, for more details, Dhima, E drejta., cit., p. 141-163.

<sup>19</sup> «[...] ne Kushtetuten e Shqiperise, ne dallim nga formulime te tjera ne disa kushtetuta te vendeve demokratike, i eshte dhene dinjitetit te Njeriut, vendi i qarte i parimit themelor kushtetues. Ai sherben si nje baze themelore per te interpretuar te gjitha pjeset e Kushtetutes dhe respektimi e mbrojta e tij, qendron ne themel te te gjithë rendit juridik»; English translation: «To the Men's dignity, in the Albanian Constitution, unlike similar dispositions of other democratic Constitutions, is reserved a clear status as fundamental constitutional principle. It serves as a fundamental reference for the interpretation of the rest of the Constitution's dispositions and its respect and protection is the milestone of the whole juridical order», [Omari-Anastasi, E drejta kushtetuese (The Constitutional Law), Tirana, 2010, p. 69].

<sup>20</sup> Art. 3 of the Constitution: «The independence of the state and the integrity of its territory, dignity of the individual, human rights and freedoms, social justice, constitutional order, pluralism, national identity and inheritance, religious coexistence, as well as coexistence with, and understanding of Albanians for, minorities are the bases of this state, which has the duty of respecting and protecting them».

<sup>21</sup> Art. 17 of the Constitution: «1. The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it. 2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights».

<sup>22</sup> Constitutional Court of Republic of Albania, Court Verdict. n. 20, Albanian Helsinki Committee et. Others v. Council of Ministers, 11.07. 2006. In this verdict the Court declared the non-compatibility with the Constitution of three normative acts issued by the Council of Ministers, respectively no. 43, 44 and 48 of 27.01.2006 in the base of the argumentation that, according to the art. 17 of the

### 3. The Role of the ECHR and National Institutions in the Implementation of Human Rights Dispositions

A fundamental contribution in favor of the cause of human rights is given certainly by the institutions and organs provided for in the internal legal system. They are the principal actors invested with the arduous task of converting legal dispositions in concrete actions. In this sense, important organs as Constitutional Court, People's Advocate, judiciary power as well as all the organs of public administration are some of the most clear examples. It is also to be underlined the contribution given by the non-governmental organizations, international and not, inasmuch as defenders and sustainers of requests coming from the social base. In many cases they are bearers of experiences of exemplar social battles as those regarding death penalty, environmental rights, bioethics, rights of categories of emarginated persons, rights of women, of children as well as those in case of humanitarian crisis. The mosaic of the involved actors would not be complete without mentioning the undisputable role of the European Court of Human Rights (Court of Strasbourg) whose contribution to the cause of human rights in the Albanian society is (and has been) of fundamental incidence. If steps forward have been made in the field in question (which in certain aspects are indisputable), it is because of the joint distribution and coordination of the responsibilities among these same actors, serious interlocutors between public power and social base.

In this context, the Constitutional Court, in full and rigorous respect of its competences, left an indelible mark in favor of human rights cause. Considering echr (as well as the Constitution) a strong reference point, the Constitutional Court intervention has given further clarity to the core of human rights compelling even the legislator to take concrete legislative initiatives in order to render internal legislation compatible with echr<sup>23</sup>.

In other occasions, the Court has gone beyond the spirit of Rome Convention itself and its interpretations given by the Court of Strasbourg, extending for example, even on the basis of the interpretation of the Albanian Constitution, some criminal and civil procedural guaranties relative to the *right to a fair trial* even in hypothesis of administrative cases. In several occasions the Court expressed its firm opposition in case of improper restriction or limitation of fundamental constitutional rights tracing a clear minimum threshold that should never be surpassed. Having to the Court been assigned the exclusive power of judge of the laws, even with reference to the Strasbourg's jurisprudence, it has repeatedly sanctioned that any indirect restriction of the right in object (right to a fair trial) provides sufficient evidence in order to censure prejudicial laws or conducts<sup>24</sup>.

A further important element in the institutional geography of the constitutional bodies involved in the human rights question within the Albanian legal order is certainly represented by the figure of the *Ombudsman*, or People's Advocate. The political independence and impartiality, deducible even by the qualified *quorum* (3/5 of the members of the Parliament) requested for its election, combined with the constitutional guaranties granted for carrying out proper

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*Constitution, the only body entitled to issue any restrictive law in the field of human rights and liberties is the Parliament: «The expression (only by law) means that in case of restriction of any right sanctioned by the Constitution this evaluation is an exclusive discretion of the legislative power and not of other bodies, Council of Ministers included»; verbatim in Albanian language: «Shprehja "vetëm me ligj" ka kuptimin që në rast se është i nevojshëm kufizimi i një të drejte të parashikuar në Kushtetutë, atëherë ky vlerësim është në diskrecion vetëm të ligjvënësit dhe jo të organeve të tjera, përfshirë edhe Këshillin e Ministrave»).* For further elaboration on Constitutional Court's jurisprudence concerning interpretations of art. 17 of the Constitution, see Court Verdict. n. 9 (2003); n. 29 (2005); n. 24 (2007); n. 39 (2007); n. 41 (2007).

<sup>23</sup> In this sense, the Constitutional Court in a decision of 1999 (Constitutional Court of Republic of Albania, Court Verdict n. 65, 10.12.1999) found incompatible with the Constitution the internal dispositions concerning death penalty in peace time, present either in criminal code or in the military criminal one, on the basis of the argumentation that those dispositions contrast with the Constitution (art. 21 and others) and echr (Prot. No. 6). Although, at the time, Albania had not ratified the Protocol relative to the abolition of death penalty (this Protocol was entered into force in Albania on 1 October 2000) but had temporarily suspended executions, the Constitutional judge interpreted in an extensive way the significance of art. 17, § 2 of the Constitution, considering death penalty a negation, rather than a limitation, of the rights and liberties sanctioned in both instruments (Constitution and echr).

<sup>24</sup> The Court, though being essentially a judge of the laws, on the basis of proper competencies (art. 131 of the Const.) set strict limits with concern to individual's right to a fair trial creating the basis of a correct interpretation and comprehension of this right among all judicial operators. So, in Court Verdict n. 48 (1999); n. 15 (2000); n. 20 e 38 (2000); n. 3 e 4 (2001); n. 9 (2001); n. 17 (2001); n. 24 e 205 (2001); n. 25 (2002); n. 76 (2002); n. 109 (2002) the Court brought out and underlined the inviolability of those individual's rights whose restriction or/and denial could deprive from all meanings the right to a fair trial itself. Consider that the violation of art. 6 of ECHR occupies the top rank (45% of the total) among all the violations registered by the Strasbourg's Court.

functions render this institution an important factor in the achievement of human rights standards<sup>25</sup>. Though its competencies are circumscribed to issue recommendations towards institutions considered guilty for human rights violations, its legal capacity to solicit the intervention of the Constitutional Court [art. 134, § (f)] render it an active and effective institution in defense of human rights<sup>26</sup>.

The attention of the Court of Strasbourg<sup>27</sup>, for what concerns cases relative to Albania, has been concentrated mostly, but not exclusively, on art. 6 of echr (the *right to a fair trial*). Aiming to give an as more as possible extensive interpretation of the right in object, the Court never lost the opportunity to firmly underline the importance of the substantial elements of the *right to a fair trial*; for example, in several occasions, the Court has affirmed with force that, according to art. 6, the «execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6»<sup>28</sup>. In concrete terms, in the cases *Qufaj Co. Sh.p.k. v. Albania* (2004) and *Balliu v. Albania* (2005), the «judge of Strasbourg», referring to consolidated jurisprudence, underlined that art. 6 of the Rome Convention does not concern only the right to a fair trial in the strict sense, but rather a set of minimal guaranties aiming an «effective remedy for an alleged breach of the requirement under Article 6 of the Convention»<sup>29</sup>.

In other occasions, the Court of Strasbourg certified infringement of several rights and liberties sanctioned in the echr: in particular right to life (art. 2), prohibition of inhuman and degrading treatment (art. 3), right to liberty and security (art. 5), *nulla poena sine lege* (art. 7), right to respect for private and family life (art. 8), right to effective remedy (art. 13), right to private property (art. 1, Prot. 1) etc..

For what regards, instead, the operation and the contribution of the non-governmental organizations (NGOs) in defense of human rights, there should be mentioned, *ex multis*, Komiteti Shqiptar i Helsinkit (Albanian Helsinki Committee – AHC), Fondacioni Shqiptar per Shoqerine Civile (Albanian Civil Society Foundation – ACSF), Grupi Shqiptar per te Drejtat e Njeriut (Albanian Human Rights Group – AHRG), Qendra Shqiptare per te Drejtat e Njeriut (Albanian Center for Human Rights – ACHR), Institutit Shqiptar i Medias (Albanian Media Institute – AMI), Forumi i Pavarur i Gruas Shqiptare (Albanian Independent Women Forum – AIWF) etc. The lack of a civil society during almost fifty years of communism rendered too difficult the task of these NGOs in the new democratic dimension of the society<sup>30</sup>. This inexistence of civic responsibility tradition has been further on worsened by the unavailability of the ruling class to consider both NGOs and trade associations as direct interlocutors for the definition of the *policy-making*, inasmuch as representatives of the interests of society. In consequence, the civic conscience of the Albanian society still remains fragile, thanks also to the strong political hostility and polarization that reigns in the Country which has brought sometimes, even to the politicization of considerable part of civic *elite* exponents<sup>31</sup>; this obviously generated loss of trust on public opinion towards them.

#### 4. Conclusive Remarks

In a country as Albania, where the indelible legacy of the disastrous experience of the past communist regime still threatens the progress of the rising democracy, the human rights question remains an open challenge. The actual situation in the country shows that steps forward have been made but there is still a lot to do.

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<sup>25</sup> Apart the constitutional dictate, the competencies and powers of the People's Advocate are defined in details by the Law No. 8454 of 04/02/1999 «On the People's Advocate». Though not being invested with executive or decisional powers this institution has the right to make recommendations of legislative nature addressed to the Parliament (or of administrative nature addressed to the respective institutions) aiming the improvement of the legislation in the field of human rights. For what regards the sub-legislative acts considered in violation of human rights and liberties, the silence of the competent institution for more than thirty days from the People's Advocate solicit implies the suspension and non-applicability of the same act (art. 24 of the Law No. 8454).

<sup>26</sup> In its decisions Court Verdict n. 26 of 26/04/2001 and n. 4 of 17/02/2003 the Constitutional Court, fully accepting the People's Advocate petition invalidated as unconstitutional, in both occasions, the normative acts issued by the government.

<sup>27</sup> Albania has been arraigned before Strasbourg's Court thirty-two times and has been found guilty exactly 27 times mostly for violation of art. 6, art. 8, art. 13, art. 46 and art. 1, Prot. I.

<sup>28</sup> With regard to art. 6 see Case of Marini v. Albania, 18.12.2007; Case of Driza v. Albania and Ramadhi and Others v. Albania 13.11.2007; Case of Xheraj v. Albania 29.07.2008; Case of Dauti v. Albania, 03.02.2009; Case of Behrami v. Albania, 27.05.2010.

<sup>29</sup> Case of Qufaj Co. Sh.p.k. v. Albania, 18.11.2004, § 38.

<sup>30</sup> «Albania did not inherit a 'civil society', because there was no separation between the state and society during the communist period, as the state and the communist party had absolute control and penetrated every aspect of society and life. Even before that, Albania lacked civic traditions and independent social organizations and associations. These historical and communist legacies have been and still are among the major obstacles to the construction of a powerful civil society in Albania», (Bogdani-Loughlin, Albania., cit. p. 187).

<sup>31</sup> Freedom House, Nations in Transit, 2012. Albania, p. 49.

It is not a challenge against; it's a challenge *for* the guarantee of human rights and liberties, *for* the construction of a society that gives voice to the interests and requirements of its members, that creates the necessary conditions in order that these rights and liberties become a common good at the service of proper citizens. We think there is no example to follow or emulate with fanaticism; the capacity of a well-governed society is expressed exactly in its ability to translate in concrete dispositions and actions the necessities for justice and liberty coming from the social base, in full respect of its history, culture and its best traditions.