

On the Compatibility of the Albanian Legislation with the European Convention on Human Rights (1991-1998)

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Abstract

The participation of a country in an international treaty makes it possible for the domestic legislation of that country to coexist with the international treaty, and the end result is by no means a spontaneous one. It requires taking necessary measures and actions to bring the domestic legislation to compatibility with the norms of the international treaty. This work takes on greater proportions in the case of the European Convention as the most advanced and sophisticated instrument guaranteeing the protection of human rights on international scale.

Within this context, my article focuses on the real relationship between the Albanian legislation and the international treaties on human rights, the European Convention in particular, covering a time span of almost 8 years, namely, the period that starts in 1991 and ends on October 21, 1998, with the adoption of the Constitution of the Republic of Albania, thus marking the beginning stage of the Albanian Justice Reform after the fall of communism. To make it more clear, I shall consider the following factors, which, in my opinion, are of a somewhat specific nature: (1) Albanian legislation is thoroughly new, and this becomes quite evident because of the fact that almost 90 per cent of it was drafted and adopted after the conclusion of the first pluralistic general elections of March 31, 1991; (2) Albanian legislation has been perceived, drafted and adopted, abiding by the content, the standards,

and the formulations of the legislations of countries of consolidated democracies, the founding States of the Council of Europe included; (3) Albania adopted a special constitutional law “On the Basic Human Rights and Liberties,” which reflects and embodies the highest degree of compatibility with the European Convention.

In addition, it is the above-mentioned factors that also determined the principal attitude of the Albanian authorities towards the preparatory process for the ratification of the European Convention. In Albania’s case, it appears that you cannot simply speak about the need of establishing the coexistence of the domestic legislation and the European Convention. Albania has not inherited a complete legislation from the past.

Keywords: compatibility, ratification, Albanian legislation, European Convention, human rights.

INTRODUCTION

Albania signed the European Convention on Human Rights in Strasbourg on July 13, 1995, the day on which it joined that pan-European organisation. By virtue of a special document, signed at the moment of admission, the Albanian authorities committed themselves to ratify the European Convention within a year, starting at the time of its signing.

To accomplish the commitment in due time, the Albanian authorities engaged themselves in an immediate activity to prepare the whole preceding process related to the ratification of the European Convention and its Additional Protocols. The activity was carried out in close cooperation with the Secretariat of the Council of Europe, the Directorate of Human Rights, and the Directorate of Legal Affairs. The main target of such a preparatory process was to make the Albanian legislation compatible with the standards of the European Convention and its legal practice. The task was associated with many difficulties because of Albania’s total isolation and lack of relevant experience.

During the above-mentioned period, however, Albania had a new legislation replacing the former one entirely, and thus coming closer to the provisions of the European Convention. A lot of laws were adopted, among which worth mentioning are the Law “On the Main

Constitutional Provisions,”¹ its chapter “On the Basic Human Rights and Liberties” included, “The Criminal Code,”² “The Code of Criminal Procedure,”³ “The Military Criminal Code,”⁴ the Law “On Public Order Police,”⁵ the Law “On the Use of Guns,”⁶ the Law “On Advocacy,”⁷ “The Code of Labour of the Republic of Albania,”⁸ the Assembly Resolution “On Migration,”⁹ “The Civil Code,”¹⁰ “The Code of Civil Procedure,”¹¹ the Law “On Expropriation to the Benefit of Public and Temporary Use of Immoveables,”¹² the Law “On Selling and Buying of Sites, Farm Land, Meadows and Pastures,”¹³ the Law “On Notarial Profession,”¹⁴ the Law “On Administrative Contravention,”¹⁵ and the Law “On Foreign Investments.”¹⁶

To make the the compatibility of the Albanian legislation with the European Convention as clear as I could, I have studied the provisions of the European Convention and its legal practice. I have also made a comparative examination of the spirit of the European Convention, contrasting it with the respective provisions of the Albanian legislation to find out the real relationship between them (similarities, dissimilarities, and shortcomings), as well as the impact

¹ Ligji nr. 7491, datë 29.04.1991, “Për Dispozitat Kryesore Kushtetuese”, *Fletorja Zyrtare* 4 (1991).

² Ligji nr. 7895, datë 27.1.1995, “Kodi Penal i Republikës së Shqipërisë”, *Fletorja Zyrtare* 2 (1995).

³ Ligji nr. 7905, datë 21.3.1995, “Kodi i Procedurës Penale i Republikës së Shqipërisë”, *Fletorja Zyrtare* 5 (1995).

⁴ Ligji nr. 8003, datë 28.09.1995, “Kodi Penal Ushtarak”, *Fletorja Zyrtare* 22 (1995).

⁵ Ligji nr. 7504, datë 30.07.1991, “Për policinë e rendit”, *Fletorja Zyrtare* 5 (1991).

⁶ Ligji nr. 8290, datë 24.02.1998, “Për përdorimin e armëve të zjarrit”, *Fletorja Zyrtare* 6, (998).

⁷ Ligji nr. 7541, datë 18.12.1991, “Për Avokatinë në Republikën e Shqipërisë”, *Fletorja Zyrtare* 10 (1991).

⁸ Ligji nr. 7961, datë 12.07.1995, “Kodi i Punës i Republikës së Shqipërisë”, *Fletorja Zyrtare* 16 (1995).

⁹ Ligji nr. 7939, datë 25.05.1995. “Për migracionin”, *Fletorja Zyrtare* 12 (1995).

¹⁰ Ligji nr. 7850, datë 29.07.1994, “Kodi Civil i Republikës së Shqipërisë”, *Fletorja Zyrtare* 11 (1994).

¹¹ Ligji nr. 8116, datë 29.03.1996, “Kodi i Procedurës Civile i Republikës së Shqipërisë”, *Fletorja Zyrtare* 9 (1996).

¹² Ligji nr. 7848, datë 25.07.1994, “Për shpronësimet për interes publik, si dhe për marrjen në përdorim të përkohshëm të pasurisë së paluajtshme”, *Fletorja Zyrtare* 10 (1994).

¹³ Ligji nr. 7983, datë 27.07.1995, “Për shitblerjen e tokës bujqësore, livadheve dhe kullotave”, *Fletorja Zyrtare* 17 (1995).

¹⁴ Ligji nr. 7829, datë 01.06.1994, “Për Noterinë”, *Fletorja Zyrtare* 7 (1994).

¹⁵ Ligji nr. 7697, datë 07.04.1993, “Për Kundërvajtjet Administrative”, *Fletorja Zyrtare* 5 (1993).

¹⁶ Ligji nr. 7594, datë 04.08.1992, “Për investimet e huaja”, *Fletorja Zyrtare* 4 (1992).

of the ratification of the European Convention on the domestic legislation. Finally, I have come up with conclusions.

The relationship between the international treaties and the domestic legislation of a Member State constitutes a key question exerting great influence on the process of implementing and respecting the content of those treaties in the Member States. According to the basic principle of the international law, every Member State to a treaty referring to the questions of its domestic juridical order is legally obliged to make it sure that its domestic legislation be compatible with the recognized international obligations. The compatibility of the domestic legislation with the international obligations remains an internal affair of each Member State.

Member States to the European Convention fulfil two fundamental obligations: firstly, they ensure that their domestic legislations be compatible with the European Convention, and make changes or improvements in case of need; secondly, they guarantee the ways and means of complaining about any violation of the provisions contained in the first part of European Convention. Thus, the provisions contained in the first part of the European Convention shall have a domestic status as a direct protection of the individual rights and liberties in the territories of the member States. European practice shows various ways through which the provisions contained in the first part of the European Convention may gain domestic status. Hence, the European Convention provides each Member State with full authority to fix the manner of implementing its provisions on national scale.

To solve this problem, the following crucial questions had to be observed and treated: Which is the best way of including the provisions of the European Convention in the domestic legislation? Which is the real position of the provisions of the European Convention in the domestic legal hierarchy? Was it possible for the individual to profit from the provisions of the European Convention?

Although the Albanian legislation relating to these questions provides a general regulation in the Law "On the Main Constitutional Provisions," it has no special act to treat and solve them in a particular and detailed way. Moreover, the Albanian legal practice is not rich enough and, consequently, it contains no clarifying elements.

The main provisions regulating the manner of including international treaties in the Albanian legislation are found in the Law "On the Main Constitutional Provisions." According to its Article 16/5,

“Parliament ratifies and denounces treaties or agreements that have to do with the basic rights and liberties of the citizens.” Thus, ratification is carried out on the basis of a special legal act containing the title of the agreement, or of the treaty. The President of the Republic having decreed it, the text of the international treaty shall be considered as an integral part of the Albanian legislation.

The Law “On the Main Constitutional Provisions” contains two provisions clarifying the question of the position to be accorded to the international law in the Albanian domestic legislation, the provisions of the European Convention included. Article 4 defines, “The Republic of Albania shall recognize and guarantee the basic human rights and liberties of the national minorities, as accepted in the international documents.” Article 8/1 defines, “The legislation of the Republic of Albania shall consider, recognize, and guarantee universally accepted principles and norms of the international law.” Thus, Article 4 guarantees a higher position to the international norms on human rights, whereas Article 8/1 reflects an equal position of the international norms and domestic laws. In addition, Article 24/4 of the law “On Some Amendments to the Law Number 7491, dated April 29, 1991, “On the Main Constitutional Provisions,”¹⁷ makes the situation clear, defining, “The Constitutional Court shall decide on the compatibility of the Constitution with the international agreements, which are signed in the name of the Republic of Albania before their ratification, as well as on the compatibility of the laws with the universally accepted norms of the international laws, and with the agreements to which the Republic of Albania is a party...”. According to this Article, international treaties should not run contrary to the Constitutional Law and, thus, shall become subject to it, whereas the other legislation, the ordinary one, should be compatible with international treaties and, thus, the later ones shall have the effect of the new law. Consequently, international treaties have the effect of the new law, however, they are not of the level of the constitutional law. Supportive of this conclusion is Article 11 of the Code of Labour, which defines, “The rights and duties relevant to work relations shall be regulated, by order of priority, on the basis of the following sources: (a)

¹⁷ Ligji nr.7570, datë 03.06.1992, “Për disa ndryshime në ligjin nr.7491, datë 29.04.1991, “Për dispozitat kryesore kushtetuese”, *Fletorja Zyrtare* 3 (1992).

The Main Constitutional Provisions; (b) The ratified International Conventions; (c) This Code and its regulatory acts...”.

This special status of the international treaties makes it possible to solve the problems arising from the incompatibility of the domestic legislation with the provisions of the international treaties. In such cases, two legal techniques may be used. In case of incompatibilities and deep gaps between these two legal structures, the procedure defined for submitting and adopting laws in Parliament, or the decrees of the President of the Republic become applicable. Another way is using the power of the Constitutional Court. On the basis of the above-mentioned provisions, the Constitutional Court acquires the rights to verify the compatibility of the treaties with the Constitutional Law and invalidate all legal acts running contrary to the ratified treaties. The Constitutional Court may act upon its own initiative, or upon the request of the President of the Republic, of a parliamentary group, of one fifth of the deputies, of the Council of Ministers, of the courts, of the bodies of local power, as well as of any other person, if there are violations of individual rights and liberties defined by the Constitutional Law. Thus, the circle of those that may appeal is wide and, consequently, the protection provided for by the Constitutional Court is of a high level.

The only problem that may arise relates to the case where there is an incompatibility between the Constitutional Law and the provisions of the European Convention. The incompatibility between these two legal acts does not exclude itself although they are formulated using almost similar terms.

According to the Albanian legal practice, the text of an international treaty, right after being ratified by Parliament, becomes an integral part of the domestic legislation. The provisions of the treaties may be implemented immediately, and their observation in case of conflict is guaranteed by the courts. The question deserving attention here relates to the fact whether the provisions of the international treaties are “self-applicable” or not. However, the answer here is clear: it is up to the courts, in full compliance with the domestic hierarchy of the Albanian legislation, to determine the provisions to be implemented in each case.

LEVEL OF COMPATIBILITY OF THE ALBANIAN LEGISLATION WITH THE EUROPEAN CONVENTION

1. Guaranteed rights and the subjects to profit.

The rights defined by Articles 2-18 of the European Convention¹⁸ are subject to guaranteeing. The Constitutional Law recognizes and guarantees the rights included in the European Convention. Of course, the manner of regulating and treating them is different. But, as a fundamental category of rights, the provisions of the European Convention have been reflected in the Albanian legislation. No category of human rights and liberties is excluded from the Constitutional Law Provisions.

A subject to profit from respecting the European Convention is “... anyone within their jurisdiction (of the Member States)...”¹⁹ This formulation constitutes a great change from the traditional forms of the individual international protection. This formulation does not require “citizenship” or “nationality” to be as an indispensable condition restricting the sphere of subjects extremely. By implementing this formulation, every Member State guarantees the entirety of the defined rights to every individual within its jurisdiction, be them foreigners, citizens of the Member State, persons without citizenship, or not subject to their civil status. The attribute “within their jurisdiction” has not to do only with the territorial extension of a Member State. It also refers to the existence of certain relations and dependence of the individual on a given State.

The Albanian Constitutional Law, two articles excluded, recognizes and guarantees individual rights without making any particular qualification. Thus, “anyone” or “any individual” enjoys these rights, and is protected from various violations. This category may include everyone. The other two separate articles refer to “citizens.” This is meaningful only if one considers the participation in the elections of a given State.

2. The right to life.

As concerns the question relevant to the person subject to Article 2 of the European Convention on the protection of the right to life, it does

¹⁸ *Konventa Europiane për të Drejtat e Njeriut*, (Tiranë: Qendra e Publikimeve Zyrtare, 2010).

¹⁹ See: Article 1.

not exclusively address to the lawmakers but rather refers to a common obligation of the authorities to take adequate measures for the protection of the life of the individuals. Meanwhile, the problem of determining the beginning and the termination of the physical life of the human being remains an object of disputes because of a wide range of moral, religious and political views, and so on, and as a result, no consensus exists either in national or international levels. Within the context of its practice, the European Commission stresses that it does not recognize the absolute right to life to the foetus, whereas the State may impose restrictions relating to abortion without risking the right to personal life of pregnant women. Likewise, there are no unique standards concerning the problem of euthanasia as well. Anyhow, the value of the life to be protected should have priority over other human rights. Another important question is that relating to the cases in which the prohibition of causing death is not implemented. As defined by the European Convention, the exception occurs in the case of executing a capital punishment ruled by the court and also if death has been a result of the use of absolutely indispensable violence. The European Commission explains that in this case the provision does not define the circumstances under which the cause of intentional death is permitted but describes the conditions in which the use of violence is permitted, regardless of the fact that it may bring about death. In one instance of its legal practice, the European Commission has come to the conclusion that “Article 2 (2) defines the situations permitting the use of violence that may lead to loss of life as an unintentional result of the use of violence. It must be told that the use of violence, which has led to loss of life, has been absolutely indispensable for one of the purposes fixed by the mentioned Article and, therefore, is justifiable, irrespective of the threats that it caused to human lives.”²⁰

While examining the Albanian legislation and referring to the content of Article 2 of the European Convention, the legal experts have focused on four questions.

Firstly, they have looked through death penalty, which is regulated by Constitutional Law.²¹ Likened to the European Convention, the method of treatment in the Albanian legislation is

²⁰ *Guide on Article 2 of the European Convention on Human Rights: Right to life* (Council of Europe/European Court of Human Rights, 2020).

²¹ See: Article 1.

more advanced when it comes to the restriction of applying this punishment only relevant to “an extremely grave crime” and those subjected to it, excluding the juveniles under the age of 18, as well as women. The Code of Criminal Procedure, which entered into force on August 1, 1995, provides for the right to request pardoning for the individual sentenced to death. The presentation of the request suspends the execution. The case should be addressed to the President of the Republic mainly from the court that has ruled the final decision. The Criminal Code, adopted on January 27, 1995, defines death penalty as a punishment for 14 extremely grave, whereas the Military Criminal Code, adopted on September 28, 1995, defines death penalty for 8 grave crimes. However, it must be pointed out that death penalty, wherever defined, has life imprisonment as its alternative, and this makes it possible for the court to apply the latter. Hence, foreseeing death penalty for these offences, which are “extremely grave,” does not run contrary to the first paragraph of Article 2 of the European Convention.

Secondly, the legal experts have examined the problem of abortion. The law number 8045, adopted on December 7, 1995, “On the Interruption of Pregnancy,” recognizes the right to wilful interruption of pregnancy under the following conditions: if, on the basis of examination, it is judged that the continuation of pregnancy, or giving birth to the baby, threaten a woman’s life or health; if the commission of doctors judges that the foetus has abnormalities incompatible with life; if a woman believes that pregnancy causes psychological and social problems to her. As concerns the above-mentioned cases, the law defines particular procedures to be respected by the doctor and the mother. Hence, this law does not run contrary to the spirit of the European Convention.

The Albanian legislation also defines some circumstances that exclude penal liability for the committed action. The Criminal Code and its Articles 19 and 20 foresee the cases of “needed defence,” and of “extreme need,” which exclude individual penal liability, if proved that he/she has acted in compliance with the circumstances defined by these Articles. Proceeding from the content of these two Articles and the Albanian jurisprudence, it becomes clear that the Albanian legislation is compatible with letter “a” of the second paragraph of Article 2 of the European Convention.

With regard to the question of causing death through legal use of violence by the bodies of public order, the basic legal provisions are

those contained in Decree Number 7449 “On the Use of Fire Guns by the Boarder Protecting Forces, by the Forces of Maintaining Public Order, by Military or Civil Armed Guards.” The Decree specifies the forces that have the right to use fire guns and the cases in which these guns may be used: if the boarders of the Republic of Albania are attacked; if these forces themselves fall under attack; if a grave crime is committed, and so on. Hence, this Decree is not compatible with the European Convention and the law “On the Main Constitutional Provision” because it avoids the protection of the basic human rights and liberties.

3. The prohibition of torture, inhuman or degrading treatment or punishment.

The human rights protected by Article 3 of the European Convention are directly connected with the human integrity, intactness and dignity. Therefore, the prohibition of torture and other inhuman or degrading treatment acquires special importance in a democratic society. This question was one of the most difficult ones because it referred to practical behaviours rather than theory and formulations. Nevertheless, the legal experts concentrated their attention on the questions of understanding the terms, the measures guaranteeing the prohibition of torture, and on the treatment of current practices. As concerns terminology, they pointed out that the Albanian Government had already established its own experience. On the basis of the law number 7727, dated June 30, 1993, Albania had adhered to the “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment,” making it a part of the Albanian legislation.

The Albanian legislation contains special provisions that embody not only penal statements but also sanctions against individuals who, in opposition to the Constitutional Law and the European Convention, perform actions that, from the point of view of their content, equal to torture, inhuman or degrading treatment. Thus, the Criminal Code contains two provisions, Articles 86 and 87, which foresee serious punishment for liable persons who exercise torture. The Code of Criminal Procedure contains provisions that confirm the prohibition of torture and inhuman treatment. The exercise of torture is prohibited under war situation and states of emergency.

The European Court points out that Article 3 of the European Convention shall be violated, if there is a demonstration of a certain

degree of severity against the victim. Thus, according to it, not every violation is considered to be a torture.²²

Hence, the revision of some legal and regulatory acts acquires special importance, such as those on the use of fire guns and other means of violence by the police, the provisions on assembling and manifestations. Likewise, of interest are the following: the revision of the legislation on the rights and duties of prisoners and detainees; the revision of the acts regulating the conditions of hygiene, food, medical service of prisoners and detainees.

4. Prohibition of slavery and compulsory labour.

This provision regulates two basic questions: the prohibition of slavery and servitude and, on the other hand, the prohibition of compulsory or forced labour. These questions are treated separately. The term “slavery” shows that an individual is in legal possession of another individual, whereas the term “servitude” shows forms of restriction of a very low imposing force and may refer, for instance, to the entirety of labour conditions and obligations to work or produce services, which can neither be avoided nor changed by the individual. On the other hand, the term “compulsory or forced labour” refers only to the involuntary character of the work or service performed by the individual, which may have temporary or occasional character. The content of this paragraph may be used as an argument relevant to prisoners’ complaints against their being forced to perform labour in jail. The European Commission, however, has expressed its viewpoint that the notion “slavery” and “servitude” are not applicable in such a situation. To give the definition of the notion “compulsory or forced labour,” the European Commission refers to Article 2 of the Convention number 29 of ILO and describes it as “the whole work or service performed by an individual under the threat of some kind of punishment at a time when he/she has not offered it voluntarily.” According to the European Commission, its main elements are: involuntary nature, and unjust or oppressive character. Meanwhile, paragraph 3 specifies a series of exceptions to the notion “compulsory labour,” such as the work done by the prisoners in the course of serving

²² Aisling Reidy, “The prohibition of torture: A guide to the implementation of Article 3 of the European Convention on Human Rights,” *Human rights handbooks* 6 (Germany: July 2003): 7-35.

their punishment, the obligations of military character, the labour performed in the case of crises or calamities threatening the life or wellbeing of mankind, and so on. Any practice, which is based on one of the above-mentioned exceptions, shall not be permitted, if it includes discrimination.

The Albanian legal framework regulating this question refers to the standards of international conventions. The Code of Labour, by virtue of its Articles 2 and 11, foresees that the legislation covering labour relations gives priority to the Constitutional Law, to the ratified international conventions, to this Code and its legal acts. The Albanian legislation prohibits the exercise of compulsory labour as provided for in Article 4 of the Constitutional Law. Apart from this, the conclusion concerning the prohibition of slavery derives indirectly from Article 5 of the same law, which defines that “individual freedom and security are inviolable.” In addition to the definition of such provisions, Article 74 of the Criminal Code guarantees a special defence, sanctioning penal punishment for individuals who “... enslave, intern, and banish...” Another question is that of the definition of notions, and of the formulation of various exceptions to them. Thus, Article 8(2) defining compulsory labour is a rather loyal reflection of the respective Article of the Convention number 29 of ILO, and its formulation serves as a classical definition of the notion. The compatibility of these formulations with the international ones is evident. The Albanian legislation has been successful in choosing just the right models of provisions from that vast range of international treaties. A point deserving discussion is that of formulating the exceptions to compulsory labour. Interpreting the content of Article 8(3) of the Code of Labour, which says “... any kind of labour or service imposed on the individual as a punishment by the court...,” the legal experts concluded that one of the ordinary punishments fixed in the Albanian legislation is the obligation to perform “any kind of labour.” The working team is of the opinion that the conclusion is somewhat groundless. An individual deprived of liberty may be required to work in the normal course of serving his/her sentence. The content of Article 8(3)b of the Code of Labour does not comply with the standards of the European Convention, and is in opposition to, or deforms its meaning, because it requires that exception to “compulsory labour” be applied only in the case of a punishment ruled by the court and, on the other hand, it extremely restricts the use of labour by those deprived of liberty;

because its excluding from “compulsory labour” is conditioned only by a punishment given by the court. The Albanian legislation does not contain the formulation of Article 3.4.d of the European Convention. This may cause problems because the formulation guarantees a crucial demarcation criterion of the activity to be regarded as “compulsory labour,” and of that not to be regarded as such.

The law number 7933, adopted on May 17, 1995, “On public labour,” defines that “the families profiting economic support, which refuse to perform any kind of offered public labour, cease to receive economic support.” Hence, it runs contrary to the Code of Labour, Article 8(2)b. The Decision of the Council of Ministers number 228, dated May 19, 1993, “On the remuneration of prisoners for their labour,” fills in an empty legal space and, owing to its content, complies with international standards. According to it, it is quite normal that the individuals deprived of liberty work at the places offered to them by the penitentiary administration. The consequence brought about by the Decision of the Council of Ministers number 300, dated June 21, 1994, “On admissions to the universities during the school year 1994-1995,” introducing compulsory service in given districts of difficult conditions for a certain category of persons, who graduate from the universities, is not a form of compulsory labour: the graduate does that upon his consent; the period to be in the service is fixed and relatively short; and the individuals mentioned here will exercise their professions.

5. Individual liberty and security

The protection of individual liberty and security from the illegal actions of bodies and employees of the State administration, or of any other person, remains an object of priority for the Albanian legislation. Article 5 of the Constitutional Law defines that “individual liberty and security shall be inviolable.” Included are also other important formulations that fully comply with the provisions of the European Convention: they have served as a source for the rest of the Albanian legislation regulating the activity of the State bodies. The basic laws, namely, the Criminal Code and the Code of Criminal Procedure, y guarantee the juridical protection of individual liberty and security. Article 5 of the Code of Criminal Procedure defines that “individual liberty shall be restrained only in case of preventive detention as defined by law.” The Code of Criminal Procedure specifies the

conditions, particular criteria, and power of the body that imposes individual preventive detention. According to the European Convention, court is the only body entitled to restrain individual liberty as defined by law. Article 228 of the Code of Criminal Procedure defines that no individual may become subject to preventive detention, unless there is plausible suspicions of him/her, which has to be based on evidence. Besides, no preventive detention may be imposed if the causes exclude punishment or lead to erasure of record. Likewise, confinement may be imposed only if no other measure is found appropriate because of the danger related to the offence and the defendant. Arrest may not be imposed on a pregnant or breast-feeding woman, or on a person found too sick or older than 70 years of age. Another reason to interfere with personal liberty is detention in case of flagrant necessity. Such a procedure has been clearly defined. Although the police execute detention, it is the court that, within 24 hours, decides upon the kind of measure to be imposed on the defendant. The Code of Criminal Procedure defines the right of the defendant, and of his defender, to complain at the Court of Appeal, or at the Court of Cassation. The complaint against the kind of measure imposed on the defendant by a district court must be examined within three days from the day of its presentation. Article 263 of the Code of Criminal Procedure sets the term of detention in the following cases: (a) the defendant is subject to preliminary inquiries; (b) the defendant's case is subject to examination at a district court, or at the Court of Appeal. Articles 268 and 269 guarantee the defendant's right to ask for compensation in case he/she is found not guilty.

The Criminal Code contains the following provisions protecting individual liberty and security from illegal actions considered as offences: Article 109: "Kidnapping;" Article 110: "Illegal deprivation of liberty;" Article 250: "Commitment of arbitrary actions;" Article 252: "Illegal confinement."

The Criminal Code complies with the experience of the European Court concerning the detention and isolation of "mentally diseased" individuals. The Criminal Code defines that "the judgement related to medical and educational measures shall be revocable at any time if the circumstances imposing it cease to exist; but, in any case, court shall be mainly obliged to examine its own judgement following one year from the day on which it was issued." The Criminal Code clearly defines acting and neglecting considered as offences. It also

defines civil disputes resulting from the violation of contractual obligations.

The Albanian Constitutional Law fully complies with the European Convention, guaranteeing the right to an independent, fair, and impartial trial. Articles 38 and 39 of this law define that “liberty, property, or other rights recognized by law may not be violated, unless they become subject to an equitable trial;” that “any person, who has been deprived of a right recognized by the present Constitutional Law, shall be entitled to regain his/her right at court;” that “no one may be deprived of the right to a fair, public trial to be held in due time by an independent, impartial, and competent court.” Likewise, trial publicity and the presence of mass media are guaranteed, and may be restricted only in clear-defined cases. The Criminal Code, the Civil Code, the Code of Criminal Procedure and the Code of Civil Procedure, which were adopted during the period 1994-1996, fully comply with the international standards, the European Convention included.

Article 6 of the European Convention focuses on the independence of court. Consequently, Article 3 of the Constitutional Law was formulated to sanction the principle of separation of powers. It defines that “judicial power is independent, and separated from the other powers, and may be exercised only by the bodies as recognized by law.” The Albanian courts are all set up on the basis of the Constitutional Law; other courts may be established, extraordinary ones excluded.

Article 3 of the Code of Criminal Procedure sanctions the principle of the independence of the courts. It defines, “Court is independent and judges on the basis of law. The court issues its judgement on the basis of the evidence examined and verified in a judicial session.” This provision shall be equally implemented with respect to civil cases as well.

Besides, the Albanian Codes have fixed detailed rules defining the rights of citizens to appeal at a competent court as regards the following: their disputes; court independence and impartiality; publicity of trial; assuring of defence; defendant’s contact with the lawyer; the right of the persons who do not know Albanian to become familiar with the charges in their own native tongues, and have their own interpreters.

The presumption of innocence, the rules regulating the exclusion of judges and prosecutors from the judicial process are of exceptional importance.

Article 4 of the Code of Criminal Procedure defines, “The defendant shall be presumed innocent unless is proved guilty by an irrevocable judgment. Any suspicion relevant to charges shall be estimated in favour of the defendant.”

Article 8 defines, “The person, who does not know Albanian, shall use his/her own native tongue and, by means of an interpreter, he/she shall enjoy the right to speak and learn about the evidences, the acts, and the process he/she is subject to.”

Article 39 defines, “The procedural body shall clearly explain to the defendant all charges brought against him/her; it shall also show him/her the evidence existing against him/her; it shall show him/her the sources of evidence, unless this spoils the inquiries.”

Article 339 defines, “The trial shall not be valid, unless it is open to public.” In addition, Article 26 of the Code of Criminal Procedure defines, “The trial shall be open, unless otherwise defined by this Code. The court shall not permit the presence of mass media, unless this is to the benefit of the trial.”

The Albanian legislation specifies the cases of closed-doors trials. The court shall decide so, if the publicity of the cases is threatening to social moral, preservation of State secret, public order, children’s interest, and the security of the witnesses.

The law “On advocacy” guarantees the defendant’s right to be defended from the moment of his/her detention until the end of the trial; he/she shall enjoy the right to freely consult his/her own lawyer without the presence of anyone.

The Albanian legislation guarantees the right to any person to present a complaint before the bodies of justice when his/her rights are violated, administrative contravention included.

6. The right of respecting private life.

State must not interfere with private life. State must engage itself in respecting the right to private life. Thus, Article 15 of the law number 7692, adopted on March 31, 1993, defines that individual private life and dignity may not be violated. This provision does not only prohibit the violation of private life of any individual by the State but also forbids other persons to do so. The data about the private life of an

individual may be collected only with his/her consent, or if it is necessary to investigate a crime, or with the permission of the competent body when it is indispensable for national security.

The Constitutional Law contains a limited number of cases where State authorities are permitted to interfere with the exercise of such rights. As concerns the right of the individual to become familiar with the data collected about him/her, the Constitutional Law guarantees that none shall be deprived of the right to have full access to them. The exception is the same as in the case of collecting the data. This provision prohibits the use of personal data contrary to the goal for which they are collected. According to the Constitutional Law, the collection, treatment, final use of personal data, and the supervision or the preservation of their secrecy are regulated by law.

The Constitutional Law defines that the residence is inviolable. There may be exceptions only: in the case of a judicial decision; in other cases specified by law; if necessary to avoid an immediate threat to the life and health of the people; and if a crime is being committed.

Likewise, the Constitutional Law defines that none may become subject to personal control except for the cases of entering into and going out of the State territory, and if necessary to avoid an immediate threat to national security. Privacy of correspondence and other means of private communication may not be violable, unless there is a judicial decision; upon the consent of the competent body; or if it is indispensable for national security. The Code of Criminal Procedure, reflecting the constitutional principles, sanctions the prohibition of the publication of materials relevant to investigation, those of a closed-door trial included. Also, the Code of Criminal Procedure defines that the control of an individual and of his/her residence as well as the sequestration of his/her correspondence may be done upon the decision of the court, and if there are strong reasons that they contain material evidence concerning the crime. Two separate Articles, 221 and 226, treat spying on the telephone calls or conversations. This may be done only in the cases of intentional crimes punishable with not less than five years of imprisonment, of crimes relevant to guns and explosive matter, smuggling, insulting and threatening through telephone included. The decision shall be taken by the court. In well-defined cases, this decision shall be taken by the prosecutor, but it must be immediately submitted to the court for taking the decision. If the terms are not respected spying on telephone calls or conversations shall be

suspended, and its data shall be considered to be invalid. The lawyers and the interested parties shall be informed about this. The Criminal Code defines sanctions to guarantee the rights and liberties mentioned in Article 8 of the European Convention. So, punishable crimes are considered to be the following: the interruption of pregnancy without the consent of the pregnant woman; the violation of a woman's sexual freedom; installing of spy apparatuses; recording and transmitting of words or images that expose an aspect of private life of the individual without having his/her consent; divulging of secrets of private life by the person who has access to them because of his/her function; destroying, opening and throwing away of letters without delivering them to the right persons and so on. The Criminal Code does not consider homosexual relations to be punishable except for the cases where homosexual intercourse is a result of violence, or is imposed on juveniles. Likewise, punishable by law are the following: the abandonment of juveniles; their deprivation of the means of existence; changing and adopting of juveniles in opposition to the law; coercing or hindering of individuals to either live together or divorce.

Another problem to be treated is one related to law number 7497, dated July 2, 1991, "On the Organisation of the National Information Service." Article 4 of this law defines the power of this Service to violate the individual rights recognised by the Constitutional Law. But this has to be approved by the Prosecutor General. According to the Code of Criminal Procedure, the Prosecutor General is already deprived of power and, at the same time, exercises it in favour of another body.

7. Freedom of expression and information.

Article 10 of the European Convention defines the freedom of expression as one of the crucial pillars of a democratic society. Freedom of expression is closely connected with the freedom of thought, consciousness and religion, defined by Article 9 of the European Convention. Article 10, however, covers a wider scope. The implementation of Article 9 requires that the expressed opinion reflect the belief of the person expressing it, while Article 10 includes the protection of any expression of opinion, accepting that the degree of expression may depend on the nature of the expressed opinion. Article 10 lays stress on the protection of specific means through which opinion is expressed and, especially, of media as a major source of public

information in a modern society. The European Commission and the European Court have frequently detailed and expanded the scope of their own conception on the nature of the freedom of expression covered by Article 10. In the *Handyside* case,²³ the European Court expresses that “freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10, it is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.” But, “the States enjoy a great freedom of appreciation to decide what is indispensable for the protection of the moral.” The European Court has declared that public has the right to receive information even when the facts and problems presented in it show the content of a judicial conflict.²⁴ It has also instituted a higher level of the protection of press, proceeding from the presumption that general interest is better served if there is a concern to provide public with as much information as possible. The implementation of sanctions by the Government against a journalist who had criticised a political figure constitutes, in this case, a kind of censorship that aims at making people not become involved in criticism within the context of a political dispute. Such punishments give birth to the threat of frightening the journalist not to help in public discussion of the problems that are in the interest of the life of the community.²⁵ Likewise, in Article 10, paragraph 1, it is clearly accepted that there is a rule of authorizations delivered by the State as concerns the broadcasting institutions, cinema and TV. Thus, referring to the interpretations of the European Court about various cases, this rule should by no means be put in the service of a discriminating and censoring policy.

Freedom of expression enjoys constitutional protection. Article 2 of the Constitutional Law is similar with Article 10 of the European Convention. It defines, “Freedom of expression is inviolable. Preliminary censorship is forbidden. No law preliminarily restricting the freedom of expression, press or other means of communication may be passed... The right to be informed may not be denied to anyone.” It also defines the cases in which, for the protection of important

²³ *Handyside v. United Kingdom*, Case Number: 5493/72, Date of Decision: December 7, 1976.

²⁴ *Ibid.*

²⁵ *Case of Lingens V. Austria*, Case Number: 9815/82, Date of Decision: July 8, 1986.

interests, the restriction of this right by law does not constitute a violation of the freedom of expression, as is provided for in Article 10 of the European Convention.

Press constitutes an important means for accomplishing the freedom of expression and information. That is why the adoption of the Law on Press, in October 1993, is a positive achievement. According to it, "...Press is free. Freedom of press is protected by law.... The activity of press, the setting up of press enterprises, or of any other enterprise relevant to press do not require any licence." It defines sanctions concerning several infringements such as divulging of State secrets or materials, which might threaten democracy, social peace, and the moral of youth. These sanctions are necessary to prevent the misuse of the freedom of press, which might harm the interests of citizens and juridical entities. The sanctions, however, are such that they destroy the correct ratio between the freedom of press and the other protected interests. This ratio may be mitigated in two main directions: to reduce punishable offences; to decrease the amount of fine and term of imprisonment. Likewise, the right to receive information from trials must be respected to such an extent that it does not hinder the normal activity of the court.

Some offences relating to the freedom of expression and information are worthy of consideration. Articles 119 and 120 of the Criminal Code deal with insult and slander to the detriment of the individual; Articles 240 and 241 deal with insult and slander to the detriment of the officials; Article 267 deals with spreading of false information that might cause panic. No incompatibility of the above-mentioned criminal legislation with Article 10 of the European Convention is observed, the practice of the European Court included. As concerns certain categories of employees of the public sector, they define several restrictions relevant to their freedom of expression due to their State position. Thus, they provide for restrictions in the legislation on the Armed Forces, police, civil service, judicial system and so on. These restrictions comply with the necessary measures defined by Article 10 of the European Convention.

State secret constitutes a problem that has to do with the right of giving and receiving information is. A new legal solution of this problem is indispensable because lack of it may be exploited to violate the freedom of expression unjustly, pretending that State secret must be preserved.

8. The right to marriage and family creation.

The minimum age to marry, or the notion “appropriate age,” is not specified by the European Convention. And, consequently, the definition of the minimum age to be reached to enter into marriage is done by the domestic law. The recommendation of UNO, in 1965, defines that this age “may, by no means, be less than 15 years.” The right to marriage and family creation, as a second question, is recognized to both men and women. This right, which belongs to everyone without exception, is regulated in accordance with the domestic law. The Code of Family regulates the question of marriage and family creation. Marriage and family enjoy special protection by the State. The Criminal Code considers coercing and hindering of individuals either to establish or continue to have matrimonial ties as punishable offences. The Code of Family contains obsolete terms that have to be changed. The Albanian legislation defines the minimum age for marriage of both men and women, fixing it respectively at 18 and 16 years of age. The Albanian competent bodies do not have the right to make exceptions to the minimum age even if they are judged to be reasonable. Therefore, such an opportunity should be created by making necessary additional amendments to the law so as to make it comply with the international standards. Marriage is regulated in a detailed way, and the respective provisions are in compliance with Article 12 of the European Convention. The legislation does not provide an absolute right to establish matrimonial ties as it sets several restrictions. The Albanian law entitles the court to invalidate matrimonial ties that are established without the consent of spouses, or if the minimum age of marriage is not respected. The content of article 130 of the Criminal Code provides additional necessary guarantees for the female person to freely decide herself whether she wants to marry a person, to freely fix the time of her marriage, and also to freely decide whether she wants to be a spouse or not. Thus, the State takes measures to guarantee the right defined by Article 12 of the European Convention.

9. Respecting the right to be in possession of property.

The actual formulation of this right contains three distinctive rules. Firstly, it points out the principle of respecting property. Secondly, it defines the conditions under which individual deprivation of property becomes possible. And thirdly, it entitles the State to control the use of

property in compliance with the public interest. The European Court, in its practice, has reiterated the idea that the European Convention, in its entirety, insists on maintaining a balanced state between community interests and basic individual rights. Likewise, there is an opinion that the State enjoys a greater freedom of estimation relevant to the criterion of “public benefit” than when it focuses on the criterion of “indispensability in a democratic society”, as defined by other Articles of the European Convention. The Civil Code clearly defines the notion on ownership. According to Article 149, ownership is defined as a right to be in possession of things within the limits set by law. According to the Civil Code, ownership is a right to possess something or to possess a certain property; this makes it different from the other rights by which a person may or may not possess a property. Thus, the citizens should not have restrictions on their right to be in possession of property, or to win or increase that property, except for the cases where this is done by virtue of a fair legal procedure. Also, the citizens should not only enjoy the right to be in possession of property, but also they must have the right of respecting it. The right to be in possession of property is sanctioned by the Main Constitutional Provisions as well. Thus, this right is reflected in the Albanian legislation, and complies with the standards of the European Convention. The Albanian legislation contains no provisions narrowing the concept of ownership. The prohibition of alienating immovable property for the foreigners does not exist, except in the case of farm land, which condition results from the social and economic situation of the country in transition. But, on the other hand, its long term renting is permitted. The restrictions concerning on the right of the owner of dwelling houses to break the contract rent before due time, as well as that of fixing the amount of rent, are inherited from the past communist legislation and, as such, they are being abolished and will lead to complete liberalization of the rent contract. As concerns the granting of licenses or authorizations as a means to possess and administer a property, the Albanian legislation is devoid of cases in which the law, by specified conditions, *de facto* deprives the citizen of the right to be in possession of property. The Albanian legislation manages to balance community interests with the basic rights of the citizens. The problem of expropriation is defined by the Main Constitutional Provisions as follows, “None may be expropriated except for public interest, receiving full compensation.” It contains two elements: a person may be expropriated provided that

there exists a motivated public interest, and that he/she receives full compensation. Likewise, the protection of property is guaranteed, and may become subject to an equitable judicial process. The problem of expropriation is better regulated by the law number 7848, dated July 25, 1994, "On Expropriation for Public Interest, and on Taking of Immovable Property for Temporary Use." This law is based on the universal principles of the International Law, and guarantees complete, immediate and unconditioned compensation, the right to appeal at court included. This expropriation may be done only for public interest in well-defined cases, such as when constructing the infrastructure or other public buildings and so on. And this is a positive measure to restrict the cases of expropriation. The expropriated property is fully compensated at the market value on the day of the execution of the action of expropriation. If the expropriated object is not used in compliance with the defined goals, upon the request of the owner, it shall be given back to him. At any case, the owner has the right to appeal at court. A special protection from expropriation guarantees foreign investments by the law number 7764, dated November 2, 1993, "On Foreign Investments." Foreign investments shall not, directly or indirectly, be expropriated or nationalized, except for the cases where this is in the interest of public use, as defined by law, without discrimination, and in compliance with legal procedures. In the case of disputes, the foreign investor may appeal to the international arbitration court. Hence, the legislation covering expropriation is in compliance with the spirit of the European Convention, and also respects the universal principles of the International Law.

10. The right to education.

The right to education is one of the basic human rights defined by the Protocol 1, as a constituent part of the European Convention. Article 2 of this Protocol contains three major elements: none may be denied the right to education; the right of parents to guarantee the education of children in accordance with their religious and philosophical beliefs; as well as the functions of the State in the field of education.

While implementing the legal reform, one may notice that the progress of the Albanian legislation in this field has suffered changes to the extent required in a democratic society. So, following the changes of 1992 in the existing laws, the law number 7810, dated April 6, 1994,

regulated higher education and, after it, the law number 7952 dated June 21, 1995, regulated undergraduate system of education. This legal regulation is completed even with regulatory acts that have created a complete legal framework in the field of education. Comparing the content of this legislation with Article 2 of the Protocol 1, one notices no incompatibility between them. Hence, Article 35 of the Constitutional Law number 7692, dated March 31, 1993, "On an Addition to the Law Number 7491, dated April 29, 1996, "On the Main Constitutional Provisions," sanctions the right to education free of charge, which lasts not less than eight years. It has been completed with the right to general secondary education that is open for all, as well as with the right to secondary professional education, of which the attending may be conditioned only by professional criteria. Articles 3 and 4 of the law "On the Undergraduate System of Education," comply with the principal sanctions defined by Article 2 of Protocol 1, according to which none is deprived of the right to education. According to Article 3, citizens enjoy equal rights to education of all levels as defined by this law regardless of their social status, nationality, language, religion, race, political beliefs, state of health, and economic level. The same right is recognized to individuals of Albanian nationality living abroad, and to foreign citizens on the basis of regulatory acts issued by the Ministry of Education. It also provides for the establishment of private educational institutions.

Article 12 of the law "On the Undergraduate System of Education" does not fully comply with Article 2 of Protocol 1. According to this provision, public educational institutions must cooperate with children's parents to accomplish their duties. Parents and their children are free to choose both the type of education and religious beliefs. Article 44/1 of the law "On the Undergraduate System of Education" authorises the opening of institutions of undergraduate education teaching religious subjects as well. State is entitled to insist on respecting the conditions that must be fulfilled by such institutions, without violating the right of their existence. Although the legislation in power guarantees an educational pluralism that characterises a democratic society, Article 12 of this law must be formulated more clearly.

The Albanian State, regulating such a right by legal and regulatory acts, clears the ground for schooling. Primary and secondary education is free of charge. The Albanian State also grants fellowships

for attending schools and universities. The Albanian State creates opportunities for its citizens to study in accordance with their own wishes. The contests for admission to given schools are based on the constitutional right to education. The practice of the European Court and Commission shows that State must regulate the exercise of this right without restrictions.

Within this context, Article 26 of the Constitutional Law defines the right of the national minorities to learn and be taught in their own native tongues. Article 10 of Law number 7952, dated 21 July 1995, "On the Undergraduate System of Education," sanctions this right and the obligation of the State to clear the ground for the national minorities to learn and be taught in their own native tongues, to learn about their own histories and cultures within the framework of the teaching program. Its last paragraph defines that the national minorities accomplish their own education at given educational institutions. The opening and functioning of such institutions comply with the procedure fixed by the Council of Ministers. According to this regulatory acts, the State has cleared the ground for the national minorities to learn in their own native tongues. Their members may exercise this right not only in the areas where they constitute a majority but also in the areas where they constitute a minority. The working team is of the opinion that State is entitled to set criteria concerning the minimum number of pupils to study at such school units, the rules on their urban transportation included. But these rules may not be considered as a violation of such a right. The recent Decision of CM has brought about an improvement, creating the premises for a fair exercising of this right.

11. The right to elect and be elected.

Article 3 of Protocol number 1 of the European Convention provides for guaranteeing of the expression of the people's will through free elections that must be held periodically, by general, equal, secret voting, and according to a procedure that secures the freedom to vote. This guarantees to anyone the right and the possibility, regardless of race, colour, sex, language, religion, political opinion, or any belief, national or social origin, to participate in the management of the country's public affairs directly or through representatives who are freely elected.

Article 19 of the Constitutional Law defines that any citizen 18 years age, without any exception, has the right to elect and be elected. Excluded are the citizens who are deprived of the capacity to act. Arrested and imprisoned persons are excluded from the right to be elected. They have only the right to elect.

Article 3 of the law number 8137, dated on July 31, 1996, which law ratified the European Convention on the Protection of the Basic Human Rights and Liberties and its Additional Protocols number 1,2, 4, 7 and 11, says that the provision of Article 3 of Protocol number 1 shall be recognized as applicable in accordance with the provisions of the law number 8001, dated September 22, 1995, "On Genocide...", and of the law number 8043, dated November 30, 1995, "On the Control of the Public Figures...", for a period of five years from the moment of depositing the instruments of ratification. On the basis of these laws quoted above, the circle of persons deprived of the right to be elected extends. According to Article 3 of the law "On Genocide...", of the right to be elected in the bodies of central and local power and nominated in higher state administration, in the judicial system, and in mass media, until 31 December 2001, are deprived the authors, inspirers, executors of the above-mentioned crimes, who, until 31 March 1991, were members of the Political Bureau, of the Central Committee of ACP, ministers, deputies, members of the Presidential Council, chairmen of the Supreme Court, General Prosecutors, district first secretaries, employees of the State Security, collaborators of the State Security, denouncers, and witnesses against defendants in political trials, except for the cases where they have acted against the official political line, and have resigned demonstratively. The Law number 8151, dated September 12, 1996, "On an Amendment to Law Number 7573, dated June 16, 1992, "On Local Elections," narrows the circle of the persons to be deprived of the right to be elected in the local bodies of power during this period, the chairmen of the municipalities excluded only.

12. Freedom of movement and the protection of foreigners from expulsion.

The European Convention does not interfere with the control of emigration. But, the European Commission has stressed that the European Convention may be applied in a series of cases to restrict the absolute freedom of the Contracting State. As regards a foreigner, however, the European Convention does not provide for a universal

right for him/her to enter, stay, or dwell in a given country. These rights are relative and may be restricted in accordance with the law, provided that any imposed restriction be justified as necessary in a democratic society.

Article 22 of the Constitutional Law defines, “Anyone has the right to choose his/her own dwelling place and move freely in the territory of his/her country, unless the law provides for restrictions related to individual health and the security of population.” The Albanian legislation guarantees complete freedom to the Albanian citizens to move freely within the country and choose his/her own dwelling place. Certain restrictions may imposed only temporarily, and for reasons as defined by law.

The European Convention provides for the freedom to leave a country and not to enter it. Even this right, however, is subject to several restrictions. After 1990, Albania has applied a liberal regime of movement. Article 22/2 of the chapter “On the Basic Human Rights and Liberties” of the Main Constitutional Provisions defines, “Anyone is free to travel abroad and return.” In accordance with this Constitutional Provision, on 25 May 1995, Albanian Parliament adopted the law number 7939 “On Migration.” Article 1 of this law defines, “This law regulates entering of persons into the territory of the Republic of Albania, and their exiting from It.” Article 6 has the following content, “(a) Any person has the right to leave the territory of the Republic of Albania; (b) The right to leave the territory of the Republic of Albania shall not be restricted. Excluded are the cases related to the protection of national security, public order, public health, moral, the rights and the liberties of other persons.” The restrictions that may be imposed on exercising this right fully comply with the spirit and the content of the International treaties, the European Convention included. The examination of any case of restriction and the judgement relating to it is done by the court. Article 6 of the law “On Migration” defines, “(c) The right to leave shall be restricted on the basis of judgement, considering every case and observing also one of the following circumstances: (1) prevention of Illegal leaving of juveniles; (2) Interdiction of a person to leave when he/she is subject to criminal prosecution or is suffering imprisonment; (3) protection of public health and prevention of the spread of serious diseases; (4) rejection of request for delivering a passport to a person who has been repatriated at public expenses, and has not paid back the

expenses of his/her repatriation; (5) rejection of request for delivering a passport to a person whose mental capacities has been appraised by the court so harmed that his/her leaving would bring about a serious danger for himself/herself, or for other persons.”

Only the citizens of the State are subject to protection from expulsion. The Albanian legislation regulates this right In accordance with the spirit and the content of the International treaties. Moreover, the formulations of the Albanian legislation are almost identical with the provisions of the European Convention on Human Rights. Article 23 of the chapter “On the Basic Human Rights and Liberties” of the Constitutional Provisions defines, “No Albanian citizen may be expelled from the territory of the State. Extradition may be permitted only if explicitly so defined by International conventions to which the Republic of Albania is a party.” In accordance with these provisions, several legal and regulatory acts are adopted and decreed. Article 6 of the law “On Migration” defines, “Any Albanian citizen, who leaves the territory of the Republic of Albania, has the right to return. To this end, any Albanian citizen, who is outside of the territory of the Republic of Albania, shall be given the opportunity to receive permission for crossing the border.” Experience provides no cases of complaints on the part of the Albanian citizens for not having been permitted to enter the Albanian territory.

Article 4 of Protocol number 4 defines the interdiction of collective expulsion of foreigners without exception. The content of this Article is equally applied relevant to legal and illegal foreigners. Article 23/3 of the chapter “On the Basic Human Rights and Liberties” of the Constitutional Provisions defines, “Collective expulsion of foreigners shall be forbidden. Collective expulsion of foreigners is permitted only as defined by law.” In accordance with the Constitutional Provisions, Article 13/2 of the law “On Migration” defines, “The persons, whose requests to extend the length of stay, or change their dwelling place, are being examined by the Ministry of Interior, shall be considered as legal residents in the Republic of Albania until they are ordered to leave the country according to Articles 34 and 35 of this law”. Article 34 has the following content, “The persons subjects to this law dwelling illegally in the territory of the Republic of Albania shall be expelled according to the procedures defined by the acts issued to Implement this law, which are published.”

The question of the guarantees of a foreigner enjoys In case of encountering an order of expulsion is regulated by the law “On Migration.” Articles 33 and 35 present a detailed description of the rights of the persons to be expelled, and the procedure to be applied relevant to them, and the additional rights they enjoy when they find themselves under specific circumstances.

CONCLUSIONS

As it becomes evident in the above-mentioned analysis, the compatibility process of the Albanian legislation with the European Convention has followed two principal lines: firstly, the rapport between the Albanian legislation and the European Convention, and the general influence that might result from its ratification; and, secondly, the degree of compatibility characterizing the obligations defined by particular Articles.

As concerns the question of the general rapport, the Albanian legislation fully complies with the content and the practice of the European Convention in terms of the category of rights to be guaranteed, and the sphere of subjects to profit from them. Taking into account the actual position of the international treaties in the Albanian legislation, the concrete rapport between the Constitutional Law on human rights and the European Convention, as well as the objective to institute the most efficient compatibility possible between the two legislative structures, the European Convention enjoys the status of a constitutional law in the Albanian legislation. This has been achieved through the ratification of the European Convention by the Albanian Parliament in August 1996, applying the procedure of the adoption of constitutional laws.

The Albanian legislation happens to be in a state of dynamism, and is being supplemented with new legal acts.

The international legislation is given priority, and this constitutes an additional guarantee for respecting individual rights in full accordance with universally recognized standards.

The European Convention on Human Rights has been considered as a juridical act of a greater legal power than the Albanian legislation.

The undertaking of the Albanian Authorities to become fully integrated in the protection system of the European Convention, which

is proved by recognizing the European Court jurisdiction, individual complaint, and by ratifying Additional Protocols as well.

The last but not the least, during the period 1991-1998, *a great range of laws have been drafted and adopted, bringing the Albanian legislation quite close to the European Convention.*

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