

Civil rights between legal provisions and political reality in Albania

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Abstract

One of the basic principles of civil rights is that all human beings are born free and equal in dignity and rights. The life protection, liberty and property should be equally guaranteed to citizens to exclude discrimination of minorities or other parts of the population. These rights are an important part of civil liberties and are considered as an essential element for effective citizenship. Arbitrary arrest, terror, torture or other serious and unlawful interference, both by state and private actors, significantly affect the well-being of democracy as it affects the very essence of it. In liberal democracies, leaders legitimized by the people must be involved within the norms and principles of the rule of law in order to establish a healthy relationship between the state and the citizen. This relationship is considered to be damaged in non-liberal democracies as it is affected by the suspension of individual freedoms and rights. This paper aims to analyze whether these individual rights are guaranteed and protected in Albania, considering from the perspective of the legal framework as well as in the political reality. This study aims to analyze the development of human rights, judicial rights and their implementation in our country to come to the conclusion, whether our system is that of a liberal democracy or not.

Keywords: civil rights; human rights; illiberal democracy; individual freedoms; individual rights; liberal democracy; rule of law.

Introduction

In the early 1990s, Albania became part of a major upheaval, which also launched the third and final wave of democratization. The collapse of the communist bloc in Albania and the complete failure of the dictatorial socialist model pushed the country into a wave of democratization. The act that marked the beginning of the new era was the legitimacy of political pluralism by the Communist Party, which came from a powerful student protests in Tirana. The proclamation of democratic pluralism can be characterized as the first step towards the end of a painful chapter and at the same time the beginning of a long way towards adapting a liberal democracy. Respecting and guaranteeing human rights can be considered as one of the basic aspects of liberal democracy. Wolfgang Merkel argues that civil rights and liberties are the essential element for effective citizenship.¹ According to him, civil liberties contain the

¹ Merkel, Wolfgang et al (2003): Defekte Demokratie. Band 1: Theorie, Opladen. pg. 85.

individual right, the right of representation, of participation and of defense in court. The protection of life, liberty and property against arbitrary arrest, terror, torture, or even other serious and unlawful interference by both state and/or private actors should be guaranteed.

This paper aims to analyze whether these individual rights are guaranteed and protected in Albania and that (consequently there were two aspects to be analyzed: first the legal framework in order to see.. and second the political reality)is why we have to analyze firstly the legal framework in order to see if the constitutional provisions reserved these civil rights and secondly the political reality. Two are the main determinates to identify the political system as a democratic one: 1) the legal framework and 2) the performance of human rights.

Constitutional and legal provisions of human rights in Albania

Article 3 of the United Nations Universal Declaration of Human Rights states that *"Everyone has the right to life, liberty and security of person"*. Rights and freedoms laid down by the Convention of the European Court of Human Rights like the obligation to respect human rights, right of life, the prohibition of torture and as well as the right of liberty and security are guaranteed in Albania through the Constitutional provisions, although this has not always been the case. The collapse of the political system in Albania was accompanied by a gradual abolition of the repressive practice of the Dictator's regime. Initially, these fundamental rights and freedoms were sanctioned in the constitutional provisions. Nevertheless, we have to admit the fact that the right to life was limited by the death penalty, which was definitively abolished in 2006.² With the adoption of the Albanian Constitution in 1998, human rights and fundamental freedoms were defined in the Articles 21 - 44. The Constitution of the Republic of Albania provides that *"The dignity of man, his rights and freedoms, (...) are the basis of this state, which has the duty to respect and protect them."*³ Moreover, in the second part of the Constitution, this principle is again underlined by emphasizing that

"fundamental human rights and freedoms are inseparable, inalienable and inviolable and stand in the foundation of all the juridical order". The constitution also underlines that *"the organs of public authority, in fulfilling their duties, must respect fundamental human rights and freedoms and contribute to their realization."*⁴ Furthermore, it provides for these rights to *"apply equally to foreigners and persons without citizenship in the territory of the Republic of Albania, except in cases when the Constitution specifically binds to Albanian citizenship the exercise of the rights and certain freedoms."*⁵

² Osterberg – Kaufmann, Norma (2011): Erfolg und Scheitern von Demokratisierungsprozessen, Wiesbaden, pg. 62

³ Article 3 of the Constitution

⁴ Article 15 of the Constitution

⁵ Article 16/1 of the Constitution

Human Rights Performance in Albania

From historical point of view, it can be said that human rights were not respected and sufficiently guaranteed in authoritarian Albania. National minorities were neither granted nor guaranteed any special right.⁶ Today, the Constitution of the Republic of Albania guarantees the rights of minorities through the Articles 3, 18 and 20, and yet, the legal provisions on the protection of minorities are considered insufficient.⁷ Since 2010, Albania has the law "On Protection from Discrimination" which has been approved by the Assembly of the Republic of Albania as a result of European Union requirements for progress in the European integration process. This reflects, in this way, the utmost commitment of the Albanian authorities towards respect for human rights, equality and non-discrimination. The Commissioner for Protection from Discrimination was created based on this law as an independent institution in the exercise of duty, which ensures effective protection from discrimination and any form of conduct that incites discrimination.

Although there's a large number of laws that meet international standards, the main problem consists in serious implementation problems and this leads to defects in political reality.⁸ The prohibition of the OMONIA party, in the early 90's, is considered an example of violation, especially against Greek minorities. To date, it is not that we are dealing with systematic discrimination of minorities but it should be underlined that a large part of them, especially the Roma, suffer from miserable living conditions and social exclusion. In 2015, the annual report of the Commissioner for Protection from Discrimination, acknowledged that:

*"representatives of different groups as representatives of the Roma and Egyptian community, persons with disabilities, women, representatives of the LGBT community, etc. face different forms of discrimination."*⁹

It is enough to analyze the reports of Amnesty International and point out that the principles of non-discrimination are not always applied to the Roma minority. Amnesty International reports that this minority is not sufficiently guaranteed the right to adequate housing and as an alternative is offered an accommodation that does not meet the criteria sanctioned by the CDESCR Convention on habitable housing as they do not provide: sufficient space, protected by cold, humidity, heat, rain, wind or even other threats and dangers.

⁶ Osterberg-Kaufmann 2011: 62

⁷ Ibid: 63

⁸ Stoppel, W. (2005): Minderheitenschutz im östlichen Europa. Albanien, in: http://www.uni-koeln.de/jur-fak/ostrecht/minderheitenschutz/Vortraege/Albanien/Albanien_Stoppel.pdf (10.09.2017)

⁹ Commissioner for Protection from Discrimination (2015), Annual Report 2015, in: http://kmd.al/skedaret/1487862994-Raport%20Vjetor%202015_KMD.pdf (25.10.2017), pg. 17

This is also noted in the Report of the Commissioner for Protection from Discrimination, which states that:

*“Roma and Egyptians live in bad housing conditions where often there are no sanitation facilities, live in peripheral areas and with no infrastructure nearby. Sixteen percent of Roma families are not supplied with running water in their homes or outdoors, while 28% of Roma families live in dwellings that are not connected to the sewage system.”*¹⁰

The forced displacement of the Roma community is one of the main issues mentioned in the reports of AI. Amnesty International calls these violent evictions as frequent cases in the Albanian political reality.¹¹ Also, the People’s Advocate of Albania acknowledges the problematic with regard to this issue and states that *“these displacements as they result are repeated situations that have occurred over the years.”*¹² For these reasons, the People’s Advocate Office claims that there are signs of discrimination against this part of the population and recommends in its annual report to find a *“final solution in full compliance with the legal and international standards applicable in our country, in order to provide sustainable and long-term solutions to Roma communities and not only, which clearly aims to improve their living conditions.”*¹³ Also, the Commissioner for Protection from Discrimination claims that *“Roma and Egyptian minorities face very difficult living conditions and suffer from social exclusion and frequent discrimination.”*¹⁴

Another group of Albanian society that can be considered discriminated is the LGBTI Community. According to the last report of the Ombudsman, this community is subject to restrictions on fundamental human rights, which, according to the constitutional provisions, should be enjoyed by all human beings indiscriminately. In the 2016 report, it is emphasized that in Albania *“LGBTI persons do not enjoy the right to marriage, legally recognized coexistence, civil unions etc.”*¹⁵ This fact demonstrates a kind of discrimination that results from the denial of a constitutional right, but it must be emphasized also Article 53, which sanctions that *“Everyone has the right to marry and have a family”* is part of so-called economic, social and cultural rights and freedoms. However, it must be acknowledged here that the protection of these freedoms and rights should be guaranteed to citizens equally, and this in our country is not valid for the LGBTI community. Discrimination against the LGBTI community is also accepted by the Commissioner for Protection from Discrimination: *“The LGBTI community faces prejudice, discrimination, verbal and physical abuse. This happened regardless of city or commune.”*¹⁶

¹⁰ Ibid: 22

¹¹ Amnesty International (2014): Albania. Submission to the European Commission against racism and intolerance, London, pg. 8

¹² People’s Advocate (2016): Annual Report on the activity of the People’s Advocate, Tirana, pg.14.

¹³ Ibid: 16

¹⁴ Commissioner for Protection from Discrimination, 2015: 31

¹⁵ People’s Advocate, 2016: 15

¹⁶ Commissioner for Protection from Discrimination, 2015: 39

Not only that the Albanian state is not able to protect citizens and guarantee the full implementation of fundamental rights, but in many cases the state actors themselves violate these rights. It is said that most of the principles sanctioned in the general human rights statement have been violated since the change of the system.¹⁷ Despite the fact that the violation incidents were more frequent during 1992 and 1997, unfortunately, today also state actors are basically violating human rights in Albania. One of the biggest problems continues to be mistreatment and torture during arrest and detention on one hand and miserable imprisonment on the other.¹⁸ It seems that the Albanian state approves this form of violations, as prosecutions against the mistreatment of accused police officers are rare and moreover in special cases when they are punished, they are not sentenced for torture or inhuman treatment but for arbitrariness.¹⁹ Even in the reports of the State Department of Human Rights, it is noted that:

“Other human rights problems included significantly substandard prison and detention center conditions, notably overcrowded, aged infrastructure, with lack of medical treatment for inmates. Reportedly, police and prison guards sometimes beat and abused suspects and detainees and occasionally held persons in prolonged detention without charge.”²⁰

Even in the Ombudsman’s report, this violation is accepted by the state actors. In his report in 2016, he claims that there were 163 complaints against the State Police body, where citizens filed claims for violations of their legal rights by State Police structures or employees. Complaints specifically addressed issues relating to *“physical violence, non-human treatment, arrests or illegal escorts.”²¹* The alleged violations have been found in several cases and therefore, this institution has been *“guided to 8 (eight) cases District Prosecutors for initiating prosecutions for: 3 (three) State Police employees, 4 (four) Prison Police employees and 1 (one) employee of the Territorial Defense Inspectorate.”²²*

Another aspect that demonstrates violations of human rights by state actors is closely related to the return or replacement of property. The right of private property is sanctioned in Article 41. Unfortunately, it should be acknowledged that the Albanian state is qualified as a little progressive in terms of property restitution or replacement.²³ For this reason, this aspect enjoys full attention also from the Ombudsman who

¹⁷ Osterberg-Kaufmann, 2011: 64

¹⁸ Amnesty International, 2008

¹⁹ Osterberg-Kaufmann, 2011: 65

²⁰ United States Department of State (2016): Country Reports on Human Rights Practices for 2016. Albania 2016 Human Rights Report, in: <https://www.state.gov/documents/organization/265600.pdf> (15.08.2017), pg. 1.

²¹ People’s Advocate, 2016: 35

²² United States Department of State, 2016: 10

²³ People’s Advocate, 2016: 7

acknowledges that he has paid attention to the handling of the property issue, as: *“The legal situation foreseen in the law regarding the treatment of property rights has been assessed by Ombudsman, not in accordance with some constitutional principles, an assessment which was accepted by the Constitutional Court on the occasion of the decision of 09.11.2016, according to which it is decided to abrogate the points 3 and 5 of Article 6 of this Law.”*²⁴ The main issue lies in the first instance in the non-execution of decisions regarding the right to compensation of property. To date, there are over 26,000 declarations that have not yet been executed.²⁵ Also, another problem lies in the non-completion of claims by the Property Treatment Agency (ATP) and moreover in the refusal of local offices. Several cases were found in which the local real estate registration offices held a refusal of registration of property even though the ATP had made the decision to recognize the property. All of these are indicative of the violation and disrespect of the individual’s right to property, or otherwise, a violation of human rights.

Violations of human rights through private actors are mainly found in relation to organized crime on the one hand and the “revival” of the *Kanun*, especially in the north of the country. The collapse of state structures during the first years of transition in 1996 and 1997 allowed the restoration of traditional values and their overlapping on the fundamental principles of individual rights. The customary *Kanun* law and its implementation can be considered as massive violations of human rights. Nearly ten per cent of the murders committed during 1992 and 2004 are closely related to vengeance²⁶, and even today, it is claimed that Albania continues to have serious problems with this phenomenon.²⁷

Another problem that Albania has encountered, especially during the transition years, has been the phenomenon of organized crime. Especially women and children have been the main victims of these criminal organisms. Abductions on the one hand and smuggling of human beings on the other, for a long time, have been identified as one of the main issues in our country. Suffice it to say that in 1993 - 2001, over 100,000 Albanians were trafficked.²⁸ In addition, the prohibition of human trafficking was hampered since, until 2001, trafficking in human beings has not been prosecuted. Despite the fact that today there is a law that condemns it for a long time, its

²⁴ Ibid: 30

²⁵ Ibid

²⁶ Arsovska, J., Verdoyn, P. (2008): Globalization, Conduct Norms and 'Culture Conflict'. Receptions of Violence and Crime in an Ethnic Albanian Context. in: British Journal of Criminology 48, 226-246.

²⁷ Bertelsmann Transformation Index (BTI) (2016): Albania Country Report, https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Albania.pdf, pg. 16

²⁸ Hensell, S. (2006): Banden und Gangs in Albanien, in: Bakonyi, Jutta; Hensell, Stephan; Siogelberg, Jens (eds.) Gewaltordnungen bewaffneter Gruppen. Ökonomie und Herrschaft nichtstaatlicher Akteure in den Kriegen der Gegenwart, Baden-Baden. 179-192.

implementation has been rated as extremely weak. From 260 people charged for committing the trafficking of human beings in 2001 and 2002, only 39 were arrested.²⁹

Nowadays, we are dealing mainly with the phenomenon of domestic violence, forced labor, prostitution or even bad working conditions. Undoubtedly, the main victims here are women and children. Despite the fact that Albania has ratified *law no. 104/2012 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, domestic Violence continues to be considered one of the most serious forms of human rights violation by private actors in the country.³⁰ The Bertelsmann Stiftung Transformation Index (BTI) annual report for Albania claims that serious crimes and domestic violence are a continuous phenomenon in the reality of Albanian society.³¹ Also in the United States Human Rights Report, it is noted that domestic violence, especially among women, remains a serious problem.³² From the National Population Survey, "Domestic Violence in Albania", turns out that 59.4% of women reported of suffering domestic violence in "intimate marriage" and 53.0% of women were experiencing domestic violence "currently" (within 12 months before the interview).³³ This survey clearly stated that this phenomenon cannot be considered bygone, but that whether all efforts to stop the violence, it continues to be a main issue, considering human rights violation by private actors. "3094 incidents of domestic violence reported to the police were found, while women constitute the majority of victims. Slightly more than one-third (1,292) of these reports constitute criminal offenses."³⁴ Unfortunately, the examples show that violence against women in rare cases ends even in life-loss. The last case of Judge Fildes Hafizi, who was killed in Tirana, by her former husband, shows the extent to which domestic violence can overlap. After this event, the European Union delegation blamed the relevant institutions saying: "Protection of women from threats is the full responsibility of the state. Respective institutions respond immediately." But domestic violence does not stop women, and children are often turned into victims. Children's Human Rights Center Albania (CRCA) reports that 58% of children are physically abused.³⁵ In summing up this shows that, although human rights, in these cases are violated by private actors, state institutions are responsible and have to be liable.

²⁹ Osterberg-Kaufmann 2011: 66

³⁰ Commissioner for Protection from Discrimination, 2016: 11

³¹ BTI 2016: 22

³² Department of State 2016: 19

³³ INSTAT (2013): Vrojtim Kombëtar me bazë popullatën, "Dhuna në Familje në Shqipëri",pg.33.

³⁴ Commissioner for Protection from Discrimination, 2015: 41

³⁵ Children's Human Rights Center of Albania (CRCA) 2013: Raport tematik. Dhuna tek femijet vajza, Tiranw, <http://www.crca.al/sites/default/files/publications/ALO%20116%20RAPORT%20EMATIK%20Dhuna%20tek%20femijet%20vajza%20ne%20Shqiperi%2C%20Nentor%202013.pdf> (20.10.2017).

Judicial rights as part of human rights

An inalienable part of the fundamental human rights are its judicial rights, including the right to a fair trial and the principle of equality before the law. *“Everyone is equal before the law”*, thus sanctioned in Article 18, paragraph 1 of the Constitution of the Republic of Albania. The principle of equality before the law is defined in point 2 of Article 18 by adding that

“No one shall be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, educational, social or parental affiliation.”

Paragraph 3 of Article 18 adds that these apply if *“there is no reasonable and objective justification.”* Regarding the right to a due legal process, it is sanctioned in Articles 33 and 42 of the Constitution. While Article 33 of this right is more indirectly guaranteed, Article 42 fully guarantees that:

“Freedom, property and rights recognized by the Constitution and by law cannot be violated without a due process.”

Paragraph two of Article 42 stipulates that this right is universal because:

“Everyone (...) has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

The right of a fair trial is a guarantee right, which means it guarantees the right, regardless of any person that, for the protection of his or her interests, addresses the court or the competent authorities.

Although de jure the right of a fair legal process is guaranteed to anyone, de facto certain groups of Albanian society such as women, children, minorities or even the rural population, often do not exercise this right because of certain factor as: poor education, traditions or social pressures.³⁶ In Freedom House’s annual report, it is noted that by the end of 2016 there were 488 requests from Albanian citizens waiting to be heard by the ECtHR for a violation of the law for a due legal process.³⁷ Also, the Ombudsman asserts that during 2016 *“200 complaints were filed by citizens for unjust and unlawful acts or omissions by the prosecution body and the Courts of all levels.”*³⁸

Among the most vulnerable groups regarding the violation of this right are the prisoners and the Roma community. Amnesty International (AI) reports have shown that prisoners have been constantly victims of ill-treatment and have had serious difficulties in seeking the right to a fair trial. In many cases this right was actually

³⁶ Osterberg-Kaufmann 2011: 67

³⁷ Freedom House 2017: 10

³⁸ People’s Advocate, 2016: 43

denied.³⁹ This fact is also asserted by the Ombudsman, who states that: *“complaints have also come from other persons tried and convicted in absentia by the Court for various criminal offenses, alleging that the Courts were committed and allowed violation various procedural procedures related to notifications from prosecution and trial bodies, etc.”*⁴⁰

Another problem is that the phenomenon of gender discrimination, in many cases, goes hand in hand with denying the fact of the right to a due legal process. AI report 2014/2015 states that nearly 20 percent of requests for warrant-protection in civil proceedings were withdrawn or abandoned at the Tirana District Court, and moreover, even where the protection orders were left, often were not implemented.⁴¹ Unfortunately, difficult access to the courts of our country unfortunately reflected as a form of discrimination. It is mainly the exposed groups suffer this form of discrimination. Despite the fact that according to INSTAT reports, every two women claim to experience domestic violence, even the small ones, who address the relevant instances, often face resistance and delays by the courts.

As previously noted, court proceedings for criminal cases related to domestic violence, are slowed down by the courts in violation of the time limits for reviewing and issuing protection orders.⁴² Equal representation before the law is also expressed in other forms, so for example another aspect that should be severely criticized is that in some cases even where protection orders have been issued they have not been implemented.⁴³ This fact clearly demonstrates that gender discrimination extends to judicial proceedings. The problem with the lack of access to justice is also affirmed by Prof. Dr. Aurela Anastasi, Executive Director of the Center for Legal Civic Initiatives. She states that the Gender Equality and Anti-Discrimination Law *“do not yet promise the same impact on access to justice.”*⁴⁴ She also admits that mentality and social reasons often constitute a barrier to access to justice. Especially with regard to property rights, there is still a considerable gap between de jure and de facto equality.⁴⁵

Also the Roma and Egyptian community suffer from unequal treatment. They often face various legal problems that come mainly due to lack of information. The Commissioner for Discrimination claims that *“the lack of information about the opportunities offered by the legislation for obtaining free legal aid and other obstacles related to the completion of the necessary documentation for the application have*

³⁹ Amnesty International (2017): Amnesty International Report 2016/2017. The state of the World's human rights, London, pg. 63.

⁴⁰ People's Advocate, 2015: 46

⁴¹ Amnesty International, 2015: 53

⁴² Commissioner for Protection from Discrimination, 2015: 41

⁴³ Ibid.

⁴⁴ Qëndra për Nisma Ligjore (2013): Drejtësia Gjimore. Parimi I barazisë dhe mosdiskriminimit. Buletin Nr. 1, Tiranë, pg. 6

⁴⁵ Ibid:7

brought barriers"⁴⁶ by having the judicial rights by the Roma and Egyptian communities. Mainly for these reasons, but also as a result of general stigmatization and general discrimination from the rest of the population, one can conclude that this community does not have the same approach to justice.

Conclusions

A summary of this study reveals two basic elements: civil rights and in general human rights are guaranteed under Albanian constitutional provisions. Moreover, it can be said that they are protected in three levels, as they are also guaranteed by the Universal Declaration of Human Rights and secondly through the ECHR. It can be concluded that there is no general and substantial restriction in the constitutional provisions on these rights and freedoms but on the other side the analysis highlights the gap between *de jure* and *de facto* rights. Although the legal framework provides these rights in reality they are constantly violated. Human rights performance can be considered negative because they are violated by the interference of state actors on one hand and by private actors on the other. Illustrated examples show that the number of violations is considerable and that these violations, unfortunately, despite attempts by the respective institutions, do not constitute incidents and special cases, but can be considered as a frequent phenomenon.

The same applies to judicial rights. It should be noted that in general the principle of due process is difficult to implement and access to justice is not available to all citizens regardless of the legal provisions. It can be concluded that this phenomenon is an undesirable continuation of discrimination that affects mainly minorities and women. The reason why Albania cannot really protect human and judicial rights, by violating its own legal provisions, can be numerous. It should first be acknowledged that the legal provisions constitute a summary of laws that are very similar to a conglomerate, which has little to do with Albanian history, its political culture, or social circumstances. To avoid these negative representations we should not be satisfied with the legal framework alone. Discrimination must be eliminated as one of the main reasons for violating human rights, and access to information should be improved. In general, we can say that these rights will be fully guaranteed when they do not dominate the traditional principles and when the state is capable of implementing its laws. As far as the political system of our country is concerned, the results of the analysis prove that what we call democracy can be called electoral democracy, since a political system in which minimal civil rights and freedoms are not guaranteed cannot be considered a liberal democracy.

⁴⁶ Commissioner for Protection from Discrimination, 2015: 25

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