

# Albania's Performance on Civil and Political Rights since its Membership in the Council of Europe

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*For all those who fight for human rights*

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## **AUTHOR DECLARATIONS**

1. The material included in this thesis has not been submitted wholly or in part for any academic award or qualification other than that for which it is now submitted.

2. The program of advanced study of which this thesis is part has consisted of:

- i) Research Methods course during the undergraduate study
- ii) Examination of several thesis guides of particular universities both in Albania and abroad as well as a professional book on this subject.

Marsida D. SALIHI

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## **ABSTRACT**

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**October 2010**

### **Albania's performance on civil and political rights since its membership in the Council of Europe**

This thesis attempts to present civil and political rights in Albania in relation to the Council of Europe. Albania is a country which has suffered many kinds of human rights violations, particularly civil and political rights violations. Albanians have been victims of communism and later victims of abuses by government for many years. In addition, this thesis also aims to evaluate the contribution given by the Council of Europe to Albania in the field of human rights. How did the Council react towards problems in Albania since 1995? How did the Albanian government and Albanian people find the membership in the Council of Europe? These are some of the main questions that will be raised in this thesis. But the key point of this study is to provide a detailed analysis on the subject of how the Council of Europe changed the shape of civil and political rights violations since Albanian membership in the Council. I emphasize that Council of Europe's policy in this period is still of indisputable importance. Therefore, I have in this thesis tried to understand the relationship between Albania and the Council of Europe in previous years and today.

Key words: Albania, Council of Europe, civil and political rights, membership of the Council of Europe.

## Kısa Özet

Marsida Durim SALIHI

Ekim 2010

### Arnavutluğun Avrupa Konseyine üyelikten sonraki sivil ve politik haklar için çabalar

Bu tez Arnavutlukdaki sivil ve politik hakların Avrupa Konseyi ile bağlantılarını açığa çıkarmayı hedeflemektedir. Arnavutluk, yıllarca birçok farklı insan hakları ihlali yaşamış ve bu ihlaller özellikle sivil ve politik haklar konusunda ortaya çıkmıştır. Yıllarca komünist rejim kurbanı olan Arnavutlar ardından da yıllarca hükümetin suistimaline maruz kalmışlardır. Buna ek olarak bu tez Avrupa Konseyi'nin Arnavutluk'daki insan haklarına verdiği katkıları değerlendirmeyi hedeflemektedir. Konsey 1995'ten bu yana Arnavutluk'taki problemlere karşı nasıl bir tutum sergilemiştir? Arnavutluk devleti ve Arnavutlar Avrupa Konseyi üyeliğini nasıl bulmuşlardır?

Bu tür sorular bu tezde ele alınacak temel sorulardandır. Fakat çalışmadaki temel amaç, Avrupa Konseyi'nin Arnavutluk'taki sivil ve politik manadaki insan hakları ihlallerinin azaltılmasına ne ölçüde katkı sağladığıdır. Burada Avrupa Konseyi politikalarının vazgeçilmez bir öneme sahip olduğu özellikle vurgulanmaktadır. Bu yüzden, bu tezde Arnavutluk ve Avrupa Konseyi ilişkilerinin yakın tarihi ve bugünü özellikle ele alınmaktadır.

**Anahtar Kelimeler:** Arnavutluk, Avrupa Konseyi, sivil ve politik haklar, Konsey üyeliği.

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	2003	2004	2005	2006	2007	2008	2009
<b>Albania</b>	34	50	62	80	87	79	88
<b>Bosnia</b>	37	21	33	19	34	36	39
<b>Croatia</b>	69	54	56	53	41	45	78 <sup>39</sup>
<b>Macedonia</b>	51	49	43	45	36	42	34
<b>Montenegro</b>	n/a	n/a	n/a	n/a	58	53	77
<b>Serbia</b>	n/a	n/a	n/a	n/a	67	64	62
<b>Serbia and Montenegro</b>	85	77	65	45	n/a	n/a	n/a
<b>Kosovo</b>	--	--	100	70	60	58	75

(isd)

(Taken from Reporters without Borders ‘Freedom of the Press Index’, available at <http://www.rsf.org/en-classement1003-2009.html>. Worst performers are highlighted)

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## **LIST OF ABBREVIATIONS**

AHRG	Albanian Human Rights Group
BHRN	Balkan Human Rights Network
CoE	Council of Europe
CPT	Committee for Prevention of Torture
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
IGOs	Inter-governmental organizations
NATO	North Atlantic Treaty Organization
NGOs	Non-governmental organizations
OSCE	Organization for Security and Cooperation in Europe
PA	Parliamentary Assembly
RTSH	Radio Televizioni Shqiptar
TVWF	Television Without Frontiers Directive

# Introduction

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”<sup>1</sup>

Xenophobia and ethnic hatred have been crucial factors leading to violence in various communities and countries around the world. Therefore, reducing xenophobia and hatred between groups and promoting tolerance and positive intergroup relations are crucial for achieving a peaceful world. To achieve this, it is important to understand societal influences that lead people to act violently.

Kelly-Kate S. Pease has given a good explanation about the actual situation in the world as regards human rights violations. She claims: “In spite of the proliferation of human rights accords, agencies, and NGOs, gross violations of human rights continue to occur on a large scale. Instances of mass killings, deliberate starvation, ethnic cleansing, systematic rape, summary execution, and genocide are far too common in the post-Cold War order.”<sup>2</sup> But still NGOs and IGOs play important roles in identifying and analyzing human rights violations. To paraphrase Kelly-Kate, IGOs like the Council of Europe are influential in meeting their international obligations to promote and protect human rights. My question in this thesis is, whether and how NGOs and IGOs influence the reduction of human rights violations in states like Albania. I am primarily interested in how the Council of Europe has influenced human rights in Albania (either directly or

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<sup>1</sup> The Universal Declaration of Human Rights, Article 1, <http://www.un.org/en/documents/udhr/index.shtml>.

<sup>2</sup> Kelly-Kate S. Pease (2<sup>nd</sup> edition) (2000), *International Organizations: perspectives on governance in the twenty-first century*, New Jersey: Prentice Hall, p. 243.

indirectly at two levels: (1) judicially (through court rulings) and (2) public perception and media.

Civil and political rights are usually denied in the developing world and under attack in the Western countries. Denial of living free and in peace, threat of torture, absence of freedom of speech or religion still continues in many states. Gross violations of human rights have increased international interests in many ways to ensure respect for human rights. According to Jean Jacques Rousseau, all people are born free and innocent; but perceived threats in society and in their surroundings lead to fear which in turn has adverse effects. Later, Thomas Hobbes argued that “During the time men live without a common power to keep them all in awe, they are in that condition called war; and such a war, as if of every man, against every man.”<sup>3</sup> Although Hobbes gave this phrase in his famous book “Leviathan” in 1651 by calling that period “war”, after more than three hundred years, the “war” still continues. A more recent philosopher, John Locke, talked for the first time about rights which people are entitled to. In his famous passage, he emphasized: “Every man has a property in his own person. This nobody has a right to, but himself.”<sup>4</sup> All those three important philosophers have given us the idea that each individual is entitled to some basic rights, and societal regimes should promote human rights. Unfortunately, many societies around the world not only do not promote human rights, but they violate them. States are generally the actors that promote or violate human rights.

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<sup>3</sup> Thomas Hobbes (2007), *Leviathan*, Minnesota: Wilder Publications, p. 74.

<sup>4</sup> Richard Ashcraft (2000), *John Locke: critical assessments*, Kentucky: Routledge, p. 390.

European Court of Human Rights, an international judicial body formed by the Council of Europe, was established with the purpose of guaranteeing that individual states act in accordance with human right values. The Court has the right to hold member states accountable for violations of human rights. Before the creation of this Court, there was no specific legal mechanism to push states to comply with human rights regulations. Human rights violations were an internal matter of each state. Thanks to the creation of this Court, European citizens are protected against violations mentioned in the European Convention of Human Rights.

In this thesis, I am going to present a series of points regarding these issues. First, I will give an overview of what we mean by human rights. Second, I will identify civil and political rights in Albania in relation to the Council of Europe. And finally, I want to clarify the role of the Council of Europe in Albania. But I want to show step by step the points to be raised in my thesis.

Different analysts define human rights differently. Here I will adopt Ishay's definition of human right from his book *The History of Human Rights*. He asserts that "Human rights are rights held by individuals simply because they are part of the human species. They are rights shared equally by everyone regardless of sex, race, nationality, and economic background. They are universal in content."<sup>5</sup> He continues by claiming that, long ago, the people who held rights were those which possessed some characteristics (e.g. an able-body or an adult male). But, nowadays, human rights idea has changed. This means that every person, despite of his\her gender, education,

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<sup>5</sup> Micheline R. Ishay (2008), *The History of Human Rights: From Ancient Times to the Globalization Era*, California: University of California Press, p. 3.

economic, or social status holds human rights. In my study, I will focus on the Balkan region, specifically on Albania. The Balkans has been an attractive region to many analysts and writers studying this topic, *inter alia*, because of the violations of human rights (in particular, fundamental or classical human rights) in this region. Many organizations, including “Balkan Human Rights Network (BHRN)”<sup>6</sup>, were established with the aim of protecting and preventing the abuse of fundamental human rights.

Chapter II of my thesis will give an overview of the relations between Albania and the Council of Europe. In Europe, human rights were taken seriously into consideration particularly when the Council of Europe was founded in 1949. As such, Council of Europe is one of the most important organizations promoting human rights and democracy. I will start this chapter with a brief description of the functions of the Council of Europe. Then, I will assess how Albania became a member of this Council, what her expectations were, and, in turn, what the Council of Europe’s expectations of Albania were. My analysis of these questions will focus on written records provided by the CoE for Albania’s membership, opinions given by the Albanian Government and Albanian analysts.

The third and fourth chapters deal with Albania’s performance of civil and political rights. Civil and political rights were discussed and mentioned for the first time in the International Covenant on Civil and Political Rights (ICCPR). Also, the ICCR is one of the three instruments which constitute what is sometimes known as the ‘International Bill of Rights’. Albania has had many problems with human rights, including here civil

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<sup>6</sup> *The Balkan Human Rights Web Pages*, <http://www.greekhelsinki.gr/bhr/english/index.html> (17. March. 2005).

and political rights and social, economic, and cultural rights. I mention here the year 1997 where a civil war occurred in Albania. Many civilians were killed and many others got injured. People were afraid of talking, of sharing their ideas or even supporting an ideology. Based on this, the questions that I will investigate in Chapters 3 and 4 include: Did Albania respect these individual rights? (Cases of human rights violations.) What was the impact of the Council of Europe and other international organizations on Albania's record in abiding with international law regarding these rights? Did civil and political rights increase or decrease after Albanian membership in the Council of Europe? What kind of reports was presented to the Council of Europe about these groups of rights?

Specifically, in Chapter 3, I will discuss the following rights: right to life, prohibition of torture, right to a fair trial, and non-discrimination. In Chapter IV, I will discuss freedom of speech, freedom of religion, and freedom of assembly and association. The last chapter, Chapter V, will focus on specific cases sent from Albania to the European Court of Human Rights. Electoral process and independent media in Albania will be discussed too. In this Chapter, I seek to demonstrate how Albania managed to elevate its human rights standards including the holding of reasonably fair elections, improvements in political rights, and more assertive public opinion.

This thesis also tries to show popular perception in Albania of the Council of Europe as a self-interested organization. Strong suspicion has come from the government, as well as from society. Besides these, Chapter V will introduce us with the opinion presented in media by civil society and government. Articles written about this issue and opinions of other international organization like the European Union (EU) and the

Organization for Security and Cooperation in Europe (OSCE) are all included in Chapter V.

I will conclude my paper by summarizing the main points I made throughout the thesis. I also would like to conclude my paper by showing how the Council of Europe reacts towards human rights abuses in Albania as well as its successes and failures. The influence of States in all these situations will be presented too. The state holds direct responsibility for its actions toward human rights violations. It is important that states and their citizens cooperate together for better results in the sphere of human rights. But in case that a problem is appearing in the horizon, then another actor, a third actor is needed. In this case, the Council of Europe is needed to diminish the tension that is raised between Albanian government and Albanian citizens.

# Chapter 1

## **Conceptualizing civil and political rights**

The first chapter of my thesis aims to define what civil and political rights are. Why are these rights important and what they serve for? The discussion of this chapter is important as it serves to make the reader understand the continuity of the thesis.

The phrase ‘civil rights’ comes from Latin words (*ius civis*) that means rights of citizens. Civil and Political Rights are those rights and freedoms that protect people from harsh action from other people, private organizations or the government. They may also bring people to participate in the civil and political life of the state without being discriminated and oppressed. Civil and Political Rights include right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment while in detention; equality and non-discrimination; self-determination; minority rights; the right to asylum; the right to recognition as a person before the law; freedom of thought, conscience and religion; freedom from slavery, freedom from retroactive criminal laws; freedom from imprisonment for failure to fulfill a contractual obligation, etc.

If they are taken separately, civil rights include the ensuring of people’s physical well-being and their safety such as protection from discrimination on grounds such as physical or mental disability, gender, religion, race, sexual orientation, national origin, age, and individual rights such as the freedom of thought and conscience, speech and expression, religion, and the press. While, political rights include procedural fairness in law, such as the right to a fair trial; right of association, the right to assemble, the right to petition, and the right to vote.

Even though civil and political rights seem to be separate and much different from economic, social, and cultural rights, Alex Conte, Scott Davidson and Richard Burchill assert that:

the terminology of ‘first’ and ‘second’ generation rights is also sometimes applied to these two categories of rights to signify the fact that civil and political rights are, by and large, concerned with freedom from state interference, while economic, social, and cultural rights require the state to act positively to promote the well-being of its people.<sup>7</sup>

These scholars have claimed that these two rights are indivisible. They have said that

There is some doubt whether it is possible to differentiate the two categories of rights in such a hard and fast way and the UN itself has always taken the view that first and second generation rights are indivisible and mutually supportive.<sup>8</sup>

Many international human rights organizations, particularly those formed in the last decades focus on the protection of civil and political rights. Undoubtedly, they have contributed significantly to the development of such rights. It is important to mention that the protection of all human rights cannot be attained without first guaranteeing the most basic rights as the right to life and liberty. The efforts of many people working to protect human rights all over the world have made it difficult for governments to violate and abuse them. They have also been significant in preventing considerable crimes committed by states from going unpunished. There are still many people today, including Albanian people, who are victims of such abuses. Thus, it is necessary to work more for the protection of the rights of all human beings, as has been proclaimed in most of the international treaties.

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<sup>7</sup> Alex Conte (et.al) (2004), *Defining Civil and Political Rights*, Burlington: Ashgate Publishing, p.1.

<sup>8</sup> *Ibid.*

Civil rights legislation comes into play when the practice of personal preferences and prejudices of an individual, a business entity, or a government interferes with the protected rights of others.<sup>9</sup> The various civil rights laws have made it illegal to discriminate on the basis of race, color, religion, sex, age, or national origin.

Universal Declaration of Human Rights is widely seen as a major source of the theory of three generations of human rights. According to this theory, civil and political rights are part of the so-called 'first generation rights'. Meanwhile, the theory of negative and positive rights considers them to be negative rights. Civil and political rights are also mentioned in the European Convention on Human Rights. This Convention initially regulated civil and political rights. After a while, economic, social, and cultural rights were also regulated at the European level. Civil and political rights are treated in a special way in the Convention. As it is mentioned in Article 4 of the ECHR:

the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>10</sup>

It is well-known that civil and political rights were among the first to be recognized and codified.<sup>11</sup> Many countries have recognized this group of rights as fundamental rights and have included them in special documents. Civil and political rights have also been included in international human rights instruments, such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and European

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<sup>9</sup> Taken from the free dictionary by Farlex.

<sup>10</sup> European Convention on Human Rights (1950), Article 4, <http://www.right-to-education.org/node/223>.

<sup>11</sup> [http://en.wikipedia.org/wiki/Civil\\_and\\_political\\_rights](http://en.wikipedia.org/wiki/Civil_and_political_rights).

Convention on Human Rights. Civil and political rights are mostly considered to be natural rights. Thus, they need not be codified to be protected, and states do not need to have formal written guarantees of civil and political rights. Thomas Jefferson wrote in his 'A Summary View of the Rights of British America', 1774, that "a free people [claim] their rights as derived from the laws of nature, and not as the gift of their chief magistrate."<sup>12</sup>

Civil and political rights, despite being natural rights, are considered to be also universal rights that apply to all persons. But, in many countries citizens have greater protection against violation of these rights than non-citizens. This means that these rights are not always protected. When civil and political rights are not guaranteed to all individuals as part of equal protection of laws, non-citizens or any other individual who is victim of this violation, may protest and search for their rights. Thus civil rights movement has existed for many decades. Civil rights movement was a worldwide political movement for equality before the law. Over decades, humanity felt the need to live free, to express freely, to criticize freely, etc. So, they tried to fight hard to get their rights.

The purpose of this chapter was to present the definition of civil and political rights, what is their importance, where do they defer from each other, etc. It must be understood that the respect for civil and political rights can bring a better and more peaceful world. This can be reached also by international organizations which will be discussed in next chapter.

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<sup>12</sup> Thomas Jefferson on Politics and Government,  
<http://etext.virginia.edu/jefferson/quotations/jeff0100.htm>.

# Chapter 2

## **Albanian membership in the Council of Europe**

As of May 5, 1949, the following countries had become members of the Council of Europe: Belgium, Denmark, France, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden, and the United Kingdom. The Council of Europe, historically considered as a peace project, regards human rights as a primary objective. The Council of Europe is based in Strasbourg and now embraces almost all the European countries. The Council of Europe came out with the purpose of bringing together all the people around Europe after undergoing huge devastation and human suffering from the Second World War. It was September 19, 1946 when Sir Winston Churchill gave a speech at the University of Zurich. He made a declaration about the creation of a Council of Europe and the unification of all European states.

The aim and objective of the Council are also included in Article 1 of the Statute of the Council of Europe.

### Article 1

a. The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress.

b. This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realization of human rights and fundamental freedoms.<sup>13</sup>

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<sup>13</sup> Statute of the Council of Europe (1949) , Chapter I , Article 1 (a) (b), <http://conventions.coe.int/Treaty/en/Treaties/html/001.htm>.

The European Convention on Human Rights is the instrument which will follow my study as it is the most accredited one as regards human rights. It is, of course, the most concrete expression as regards democracy and human rights. It is also expressed in Council of Europe's text: "The European Convention on Human Rights is undoubtedly the most concrete expression by the Member States of the Council of Europe of their profound belief in the values of democracy, peace and justice, and through them, respect for the rights and fundamental freedoms of persons living in our society."<sup>14</sup>

To get a better understanding of the Council of Europe, it is apt to examine what it is composed of. It is composed of some institutions in which the most important are the Committee of Ministers which is the Council of Europe's decision-making body (it is both a governmental body, where national approaches to problems facing European society can be discussed on an equal footing, and a collective forum, where Europe-wide responses to such challenges are formulated)<sup>15</sup>, the Parliamentary Assembly which has only the ability to investigate, recommend, and advise; and the Secretary General who leads the secretariat of the Council of Europe. The Council of Europe's most achievement is the European Convention on Human Rights that was adopted in 1950. Robert Blackburn and Jörg Polakiewicz have given a basic explanation about European Convention on Human Rights (ECHR) when they assess that "the Convention emerged from the wider international human rights movements that had led to the General Assembly of the United Nations adopting its Universal Declaration of Human Rights on 10 December 1948 and the Convention was described by its founding members two years later as the first steps for the collective enforcement of certain of the rights stated

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<sup>14</sup> *European Convention on Human Rights: Collected Texts* (1987), Leiden: Martinus Nijhoff Publishers, p.x.

in the Universal Declaration”<sup>15</sup> As it is apparent from what these authors tried to present us, the Council of Europe was set up as a consequence of the Universal Declaration of Human Rights. There are twenty-seven general rights or freedoms provided for in the Convention, thirteen of them contained in the original body of the document signed in 1950, the others later added in protocols signed in 1952, 1963, 1983, and 1984. These thirteen articles present the most basic rights of individuals. They seek to guarantee following rights and prohibitions: the right to life (Article 2), the prohibition of torture (Article 3), the prohibition of slavery and forced labor (Article 4), the right to liberty and security (Article 5), the right to a fair trial (Article 6), no punishment without law (Article 7), the right to respect for private and family life (Article 8), freedom of thought, conscience, and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), the right to marry and have children (Article 12), the right to an effective remedy (Article 13) and the prohibition of discrimination in the enjoyment of Convention rights (Article 14).

Later, the Convention established the European Court of Human Rights in Strasbourg. Then, a new format of the European Court of Human Rights came as a result of elimination of the Commission. It is made possible by the ratification of Protocol 11, an amendment to the Convention that was ratified in November 1998. The Parliamentary Assembly of the Council of Europe elected the new judges of the Court. The European Court is an international institution established by the European Convention to receive complaints from individuals and States alleging violation of those rights protected under the Convention.<sup>16</sup> The Court functions as the highest court in

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<sup>15</sup> Robert Blackburn et.al. (eds.) (2001), *Fundamental rights in Europe: The ECHR and its member states*, New York: Oxford University Press, p. 5.

<sup>16</sup> Rhona K. M. Smith (3<sup>rd</sup> edition) (2007), *Textbook on international human rights*, New York: Oxford University Press, p. 95.

Europe that protects human rights and fundamental freedoms. Europeans can bring cases in this Court if they judge that a member state has violated their basic rights. Cases sent there make the European Court of Human Rights the most effective court in the world that punishes human rights violations. The Court is an international judicial body that monitors respect of human rights by states. It was set up in 1959 in Strasbourg with its main aim being to accept cases brought by an individual against State Parties or by a state against another State Party. This means that human rights of Europeans are protected through this mechanism.

Michael Dov Goldhaber<sup>17</sup> portrays the Court and human rights in a different way. According to him, the Strasbourg court is a civil court, where Europeans accuse European nations for violating their human rights. He continues by saying that European citizens mean by human rights what American citizens mean by constitutional rights: fundamental rights that are presented in a basic document. It involves what the people in the United States would call civil liberties, meaning equal protection, privacy, and the First Amendment freedoms. In short, according to Goldhaber, human rights are considered to be of a great value.

Many scholars and writers have presented different and interesting opinions about the Convention and the Court. The diplomat and scholar Antonio Cassese proclaims, “No other human rights treaty can claim the level of influence of the European Convention”.<sup>18</sup> Another professor calls the Strasbourg Court “a sort of world court of

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<sup>17</sup> Michael Goldhaber (2009), *A People's History of the European Court of Human Rights*, New Jersey: Rutgers University Press, p. 2.

<sup>18</sup> *Ibid.*

human rights.”<sup>19</sup> In the meantime, every person who feels his\her rights have been violated under the Convention by a member state can take a case to the Court.

Albania became a member state of the Council of Europe on 13 July 1995. It was a great achievement for her to become a member of this organization. As I noted at the outset of the section, the objectives of the Council of Europe are to establish the rule of law, protect human rights and bring about democratization. Albania’s aspiration to reach these objectives was an aim which has been constantly pursued and repeatedly proclaimed by Albanian people for centuries. Albanians are people which have suffered many human rights violations, in particular, civil and political rights abuses. Albania is a country which has emerged from communist regime, a regime that did not allow much space for the rights of its citizens. The effects of that era of dictatorship are still present in Albania. However, in this globalized and internationalized world, international organizations such as the Council of Europe are trying to combat any form of violation, discrimination, and authoritarianism. One of the reasons that Albania applied to enter the Council of Europe, was its belief that it was the most important international organization in the protection and promotion of human rights. Through membership, it was believed, Albanian citizens would have a place where they could feel more protected and secure in their country.

Before discussing the influence of the Council of Europe on Albania, I want to describe the relationship between Albania and the Council of Europe. How did Albania become a member of this organization? What were her intentions? Thus, in the second part of this Chapter, I want to give the history of the formation of their relations.

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<sup>19</sup> *Id*

Albania applied to enter the Council of Europe on 4 May 1992. Before being member of the Council, Albania gained “special guest” status by the Assembly. After the elections of 22 and 23 March, 1992, the Assembly observers concluded that Albania was in the right way. Hence, Albania opened its chance for subsequent membership in the Council. Since May 1992, the Assembly has done repeated visits in Albania to observe the situation that was present there. The Assembly observed some problems that Albania was passing at that time. The most serious problem was the elements for the rule of law which needed to become implanted and to make their effects felt. Once when Albania was struggling to provide a minimum of guarantees against hunger, oppression, and fear she felt the need to rely on international humanitarian aid.

Albania suffered under the communist regime for about fifty years, and after breaking the chains of communism, it was ready to enter into that group which promoted democratic values and respect for human rights. It is however true that the Council of Europe supported Albania’s access to the European society of nations and to the western world in general. The role of the Council is certainly of undeniable importance as it seeks to bring about democratization and westernization. In addition to the desire for westernization and modernization, one of the main and common points, in the opinion of the leaders of political parties, pressure groups, and a part of society in Albania, was the conviction that this organization would bring about stability, improvement in political and economic situation, and the improvement of every aspect of life. Since Albania came out of communism, she had an eager wish to establish a democratic state. That was the main reason for Albania proclaiming to be part of a democratic organization such as the Council of Europe. Since 1991, Albania has done progress by moving towards a

multi-party parliamentary democracy. Today, Albania is trying to enter democratic organizations which will give it the strength to stabilize and continue democratic reforms. Economic reasons for Albania's desire for a closer relationship with the Council were of course of primary importance too. As Albania emerged from a communist regime, the state failed to provide good conditions for its citizens, and economic rights were not respected by the state. (However this thesis is not intended to provide a detailed analysis of economic rights in Albania.)

The Council of Europe is one of the organizations that has extended its hand towards Albania. Albania gained "special guest status" on 25 November 1991, and then she applied for full membership on 4 May 1992. However, at that time, it had to overcome a number of difficulties before gaining full membership. Facing difficult economic problems and a growing unemployment rate did not make the democratic process easy for Albania. There were also problems between Albania and neighboring states which consisted of the large number of ethnic minorities which existed in Albania.

All these issues constituted difficulties which the new government and its citizens had to overcome in order to be part of a large democratic Europe. In regard to the "special guest" status, in the light of its good relations with minorities and fulfillment of the requirements by the Council of Europe, the Assembly considered Albania member of the Council of Europe. Article 4 of the Statute of the Council of Europe holds that "Any European State which is deemed to be able and willing to fulfill the provisions of Article 3 may be invited to become a member of the Council of Europe by the Committee of Ministers. Any State so invited shall become a member on the deposit on its behalf with the Secretary General of an instrument of accession to the present

Statute”<sup>20</sup> According to this Article, Albania gained full membership in 1995. Many people thought that Albania, after emerging from forty-seven years of communist rule, without knowing how democracy functioned, would have failed in its intention to create a democratic society. In contrast, Albanians have been successful in changing the mentality of the state after the communist regime. She has also been successful in managing the economy by turning it into a fastest growing market economy in Europe. However, such positive changes were still not enough since the Albanian Government was criticized for its autocratic style rule, reminding one in some respects of the previous communist regime. Albanian foreign policy towards the Council perceived membership as a natural part of Albania’s integration with the western world. There was a simple conviction among Albanian decision makers that Albania should join all western European organizations, because this would prove Albania’s modern and western identity. It is apparent that political reasons played one of the most important roles in Albania’s decision to make an application to the Council in 1995. However, Albania was treated as a state that was of secondary importance in comparison to other states. That is the reason why a part of population does not think this organization is correct in what it is doing.

Besides appreciations, there are also criticisms of the Council of Europe in Albania on account of its behavior towards Albania relating to certain problems that surround the country. One criticism of the Council of Europe towards Albania came as a result of the lustration law. Lustration law had as an objective the removal of the former officials of the communist regime from the governmental work. The law was strongly criticized from the Albanian judges and some other Western states, while the United States

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<sup>20</sup><http://conventions.coe.int/Treaty/en/Treaties/html/001.htm>.

embassy in Tirana asked the government to review it. "I have some concerns that the lustration law adopted on December 22 by the Albanian Parliament does not comply with Council of Europe standards of democracy, human rights and the rule of law," said former Secretary General of the Council of Europe Terry Davis in his speech.<sup>21</sup> Prime Minister Sali Berisha, who called it "a historical victory against political crime", swept the criticisms aside in a press conference.<sup>22</sup> "Every lustration law has its critics, but I respect the moral standard of the law," he said, responding to the Council of Europe's statement.<sup>23</sup> Many believed that it was inappropriate because it allows a special commission to (unfairly) fire judges and prosecutors who served during the former communist regime.

Council of Europe alone, or together with some other international organizations, has realized many projects and reports in order to help Albania to achieve the maximum of human rights. One of them is a report on Albanian prisons and police detention centers published on 21 January 2009 by the Council of Europe anti-torture Committee. A series of visits have been paid to Albania by this Committee. The main aim of these visits was to observe the progress that Albania had done in regard to the recommendations made by the CPT (Committee for Prevention of Torture). They had observed very carefully the treatment of persons detained by the police and conditions of detention and prisons. According to observations of CPT, in many areas, there were seen improvements. The majority of persons interviewed by its delegation stated that they

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<sup>21</sup> Likmeta, Besar, "Council of Europe Pans Albania Lustration Law", *Balkan Insight*, <http://www.balkaninsight.com/en/main/news/16018/> (16 January 2009).

<sup>22</sup> *Ibid.*

<sup>23</sup> *Id.*

had been treated properly whilst in police custody; nevertheless a number of credible allegations of recent physical ill-treatment were received.<sup>24</sup>

The Council of Europe and the European Union have had close cooperation in regard to developing states. They have planned many common projects. One of these projects regards

Albania. It is called “Project against corruption in Albania”<sup>25</sup>. This is a three-year project to help the Albanian Government enforce a new strategy for combating corruption and for transparent governance. This project is financed by the European Union and the Council of Europe. The first meeting of the project group is held on December 15, 2009. The Council of Europe cooperated with the OSCE too. There was a project named “Data protection within the framework of the civil registry system of Albania” The project on “Data protection within the framework of the civil registry system of Albania” is implemented by the Council of Europe under the auspices of the OSCE’s presence in Albania project on “Technical Assistance to the Government of Albania on modernization of administrative address and civil registration systems” through an agreement between the OSCE Presence and the European Commission Delegation in Albania.<sup>26</sup> The aim and objective of the project was to present the establishment of a personal data protection legal framework in Albania, in line with European standards, in order to provide a sound basis for the establishment of the civil registry. As the civil registry contains a lot of

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<sup>24</sup> *Council of Europe anti-torture Committee publishes report on Albania*, <http://www.cpt.coe.int/documents/alb/2009-01-21-eng.htm> (21 January 2009).

<sup>25</sup> *Project against Corruption in Albania*, <http://www.coe.al/index.php?faqe=content/detail&kat=news&id=624&mnu=0&PHPSESSID=1c773ddfc1bdea1c477659da88f9b8b2&lng=en&PHPSESSID=1c773ddfc1bdea1c477659da88f9b8b2> (24 February 2010).

<sup>26</sup> *Project on “Data Protection within the framework of the civil registry system of Albania”*, <http://coe.al/index.php?faqe=content/detail&id=134&mnu=136&PHPSESSID=a32f5e916810b90f9feb34c2b538743a&lng=en&PHPSESSID=a32f5e916810b90f9feb34c2b538743a> (22 January 2009).

personal data, adequate rules, procedures and practices, should be in place to ensure good administration and have the trust of citizens in the way public authorities handle their personal data.<sup>27</sup>

Before concluding over this issue, one more point needs to be highlighted: as Albania has been evolving and changing its nature about human rights, the Council of Europe has also changed its understanding about integration of Albania in relation to civil and political rights. That means that the Council of Europe is more conscious about the achievements of Albania in the field of human rights. This thesis has tried to present positive steps undertaken by the Council of Europe towards Albania. It has also referred too to the negative implications in the country. According to the Council, from the history that I showed above, the only way for Albania to enter the so-called ‘democratic society’ was to fulfill the requirements presented by the CoE. Albania has tried to give its huge contribution in improving many areas of human rights by ratifying at the same time many conventions and protocols; some of them are part of the European Convention on Human Rights. However Albania has also its own deficiencies some of which are mentioned in the reports adopted by the Council of Europe. Some of these reports will be examined in other chapters.

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<sup>27</sup> *Ibid.*

# Chapter 3

## **Civil and political rights with particular focus on the right to life, prohibition of torture, fair trial, non-discrimination**

The focus in this chapter being on civil and political rights, and not on economic, social, and cultural rights, needs an explanation. There is still an ongoing debate over which rights should take priority. The end of communisms may have lessened human rights problems in Albania, but the problems still remain. Not only lack of food or clothing is occurring at this time, but also the right to live, freedom of expression, freedom of association, prohibition of torture, etc. are all below the required standards in Albania.

The author, Vincent, describes in this way the importance of civil and political rights:

They [civil and political rights] are the most important: plainly, the right to life is superior to that to holidays with pay. And the claims they press are for moral necessities which can immediately be met. Establishing the right to life merely requires legislation against murder. Establishing the right to holidays with pay requires not only the provision of employments, which is beyond some of the world's most advanced industrial societies, but also some substantial fringe benefit. By the standard of what is very important, and what can be achieved now, so-called economic and social rights do not qualify.

Human rights are concerned with what must be honored now, not with what it might be nice to provide for some day.<sup>28</sup>

But how is the Albanian state performing in respect of these problems? Theoretically, the law called "Major Constitutional Provisions" recognizes the

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<sup>28</sup> R. J. Vincent (1986), *Human Rights and International Relations*, Cambridge: Cambridge University Press, p. 12.

fundamental human rights of the individual and of the minorities. It sanctions these rights according to the “universally accepted documents”.<sup>29</sup> Albania is a “poor” country which has difficulties in improving herself in respect of human rights. But, as I also mentioned in the Second Chapter of my thesis, the Council of Europe is optimistic about the progress Albania has made. In one of its official reports, it is said: “Albania of all the candidate countries has one of the longest and most intense experiences of Council of Europe cooperation....”<sup>30</sup> Albania has also been part of some Conventions which consist of civil and political rights. Civil and political rights are mentioned in the International Covenant on Civil and Political Rights which was adopted and opened for signature on 16 December 1966 and entered into force on 23 March 1976. Civil and political rights are also mentioned in the European Convention on Human Rights. They are named as the first generation human rights. There is no doubt that civil and political rights have formed the core of the ECHR. Jean-François Renucci has also claimed: “These are basic rights: civil and political rights certainly form the framework of the European Convention on Human Rights, if not the very reason for its existence, at least historically.”<sup>31</sup>

It should be noted that individual rights might be divided between natural rights (such as the right to life, prohibition of torture, and discrimination) and some other rights, where state interference is possible in some circumstances. But despite of such distinctions, the fact is that all civil and political rights are of considerable importance.

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<sup>29</sup> Aleks Luarasi (1997), *Legal and Institutional Reform in Albania after the Democratic Revolution ( 1991 – 1997 )*, Tirana: Tirana University Press.

<sup>30</sup> “Official Report of Debates” (1995), *Council of Europe*, 8: 778.

<sup>31</sup> Jean-François Renucci (Vol.88) (2005), *Introduction to the European Convention on Human Rights*, Strasbourg: Council of Europe Publishing, p. 9

In this Chapter I will delve into some specific fundamental classical rights, which include the right to live, prohibition of torture, right to a fair trial, and non-discrimination found respectively in articles 2, 3, 6, and 14 of the European Convention on Human Rights.

### **3.1 Right to life**

The right to life is a first generation right. This is easily understood since human being has a fundamental and basic right to live. This right is related to the fact that human being has the right not to be killed by other human beings. “Traditionally, the right to life is concerned with protecting the individual’s life against potential assaults on it.”<sup>32</sup> Right to life is an essential and a fundamental right. Every person has the right to live and let the others live. Above all we are born free and equal. Not occasionally, the right to life is mentioned in Article 3 of the Universal Declaration of Human Rights: “Everyone has the right to life, liberty and security of person.”<sup>33</sup> European Convention on Human Rights states in its second article: “Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”<sup>34</sup> Therefore, the right to life, guaranteed by Article 2 of the European Convention on Human Rights, forms the supreme value in the hierarchy of human rights at international level.<sup>35</sup> Its importance is undoubtedly considerable. This is the reason that states should avoid from taking life ‘intentionally’, but at the same time they should

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<sup>32</sup> Mathieu, Bertrand (Vol. 1) (2006), *The right to life in European constitutional and international case-law*, Strasbourg: Council of Europe Publishing, p. 9.

<sup>33</sup> The Universal Declaration of Human Rights (1948), Article 3, <http://www.un.org/en/documents/udhr/index.shtml>.

<sup>34</sup> The European Convention on Human Rights (1950), Article 2, <http://www.hri.org/docs/ECHR50.html>.

<sup>35</sup> Jean-Francois Renucci (op.cit.)

take appropriate measures to protect life. In one of the reports of the Council of Europe is stated that “the citizens of Europe must feel confident that their fundamental rights are guaranteed in all circumstances: the right to life, liberty and security...”<sup>36</sup>

Right to life is a right mentioned almost in all conventions and declarations. It is a right that should be respected in every state. But is Albania able to respect the right to life? Theoretically, the right to life is protected by “Law No. 7692” which guarantees Albanian’s fundamental civil and political rights. According to this Law, death penalty is applied only for major crimes committed intentionally. The death penalty cannot be applied to juveniles under the age of 18, or to women.

The year 1997 was a bad year in Albania where many deaths were caused as a result of acts of revenge, from “blood feuds”<sup>37</sup>, or from fighting between rival criminal groups. The year ’97 was considered also as a bad period from the perspective of human rights in Albania. Many policemen were killed and many others got injured during the worst violence in March and April of this year. In September, inside the parliament building, the socialist party M.P. Gafur Mazreku shot democratic party M.P. Azem Hajdari four times.<sup>38</sup> It was really risky to live in that period in Albania. Not only administrators of government were in danger, but the whole society was experiencing a bad time. Although Albania was part of the Council of Europe in 1997, human rights were violated on a routine basis. One year later, in 1998, there no cases of political killings by the government, but the opposition party continued to claim that its members were

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<sup>36</sup> *Council of Europe: Activity Report 2007* (2008), Strasbourg: Council of Europe Publishing, p. 9.

<sup>37</sup> Marylee Knowlton (2005), *Albania*, New York: Marshall Cavendish, p.129

<sup>38</sup> *Albania Country Report on Human Rights Practices for 1997*,  
<http://www.hri.org/docs/USSD-Rights/97/Albania97.html> (30 January 1998).

harassed, beaten, and sometimes murdered by government agents. However, observers of the international organizations claimed in their reports that they did not find evidence of such crimes committed by the government. Ten years later, in 2008, human rights still did not manifest a constant and sustainable model in Albania. Human Rights Watch wrote to the government of Kosovo requesting to the government that it should investigate alleged trafficking of civilians from Kosovo to Albania in the 1999 Kosovo conflict.<sup>39</sup> Both governments rejected the assessment. At that time, the United Nations Mission in Kosovo and the International Criminal Tribunal for the Former Yugoslavia conducted preliminary investigations into the matter, which resulted in no further action.<sup>40</sup> Albanian authorities claimed that they did not refuse to cooperate with that investigation. It was the Council of Europe that allocated a special investigator to report on these allegations.

As it is expected, theoretically, the right to life is really an important and significant right for Albania. She has tried to respect some of international requests. “On 11 November 1999 the Constitutional Court of the Republic of Albania abrogated the death penalty in peacetime as being incompatible with the Constitution of the Republic of Albania”<sup>41</sup> Many countries, including Albania, has abolished death penalty as it is considered to be “a violation of fundamental human rights”<sup>42</sup>. But practically, Albania still faces serious challenges about the right to life that is a barrier for its citizens to live a secure and dignified life.

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<sup>39</sup>2008 *Human Rights Report: Albania*,

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119064.htm> (25 February 2009).

<sup>40</sup>*Ibid.*

<sup>41</sup>The Death Penalty: beyond abolition (2004), Strasbourg: Council of Europe, p.31.

<sup>42</sup>Europe against the death penalty,

<http://www.coe.al/index.php?faqe=content/detail&id=189&mnu=139&lng=en&PHPSESSID=9c9724017c87391e99ef4189340289b3>.

### 3.2 Prohibition of Torture

Torture is prohibited under international law as it is considered to be a violation of human rights. The term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.<sup>43</sup> “The prohibition of torture and inhuman or degrading treatment or punishment is probably the best attested in the entire human rights catalogue”.<sup>44</sup>

In the context of Article 3 which prohibits torture, the protection afforded by the European Convention on Human Rights has to be respected by all states parties to this Convention. ECHR holds that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”<sup>45</sup> Protection against torture is essential to the scheme of the Convention as a whole. Taken together with the right to live, it forms the crucial key of human rights protection. As such, it can never be possible to justify subjecting someone to torture or inhuman or degrading treatment or punishment – even in war or national emergency (Article 15, ECHR). Article 3 therefore is a pure absolute right which should be seriously respected for all and by all.

Since 1993, Albania has been part of the Committee for prevention of torture (CPT) which focuses on the treatment of persons detained by the police and on conditions of detention and prisons. As I also mentioned in the second Chapter of this thesis, the CPT has visited numerous institutions around the country and has made some recommendations to improve the treatment and conditions of detention of persons held

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<sup>43</sup> UN Convention Against Torture ( 1984 ), Article 1, <http://www.hrweb.org/legal/cat.html>.

<sup>44</sup> Malcolm Evans et.al. (1998), *Preventing torture: a study of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, New York: Oxford University Press, p. 6

<sup>45</sup> European Convention on Human Rights (1950), Article 3.

there. CPT came to the conclusion that many issues in Albania were problematic including ill-treatment by the police, poor material conditions in police detention facilities, prison overcrowding and bad living conditions of psychiatric patients. In their responses, Albanian authorities have taken measures to implement the CPT's recommendations and improve the living conditions in these places. One of its developments was the decrease in the number of deaths at Elbasan Psychiatric Hospital. That was reached by improving the conditions such as heating, hygiene, and food.

Torture and inhuman treatment are a common phenomenon which happens often in Albania. It may be inflicted on a person by another person or on a person by state. In theory, the law prohibits such actions; however, the police sometimes abuse suspects. The Albanian Helsinki Committee and the Albanian Human Rights Group (AHRG) have reported that the police nationwide use excessive force or inhuman treatment.<sup>46</sup> According to the AHRG, members of the Roma, Balkan-Egyptian community, and homosexuals are the most frequent victims of the police abuse. There have been allegations that detainees are tortured, usually immediately after arrest and during questioning. In 2005, prisoners in Prison 302<sup>47</sup> alleged that they were regularly abused in their cells by guards and in April of the same year, they sent an anonymous letter to the Ministry of Justice. Conditions of the prisons and detention centers were poor and there was a lack of food and medicine. However, in recent years, it is affirmed by the Council of Europe and other international human rights organizations that Albania has improved herself as regard prison conditions.

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<sup>46</sup> *Albania*, <http://www.state.gov/g/drl/rls/hrrpt/2006/78797.htm> (6 March 2007).

<sup>47</sup> *Albania*, <http://www.state.gov/g/drl/rls/hrrpt/2005/61633.htm> (8 March 2006).

This thesis would like to emphasize the positive and negative performance of Albanian state as regards human rights particularly prohibition of torture. Positive aspect is related to the fact that Albania adopted a democratic constitution in 1998 that would increase protection of human rights, in which the prohibition of torture is also included. She has also adopted the following legislation:

- (i) The Law "On Innocence, Amnesty and Rehabilitation of Ex-political Convicted and Persecuted Persons" in 1991, amended in 1993;
- (ii) The Law "On Migration" in 1995;
- (iii) The Criminal Military Code in 1995;
- (iv) The Law "On the Rights and Treatment of Prisoners" in 1998;
- (v) The Law "For the Ombudsman" in 1999;
- (vi) The Criminal Code in 1995, amended in 1996, 1997 and 2001;
- (vii) The Law "On the Organization and Functioning of the High Justice Council" in 2002.<sup>48</sup>

Above all, Albania has ratified the European Convention on Extradition together with its additional Protocol in 1998 and the European Convention for the Prevention of Torture and its two Protocols in 1996. She has also provided training for the police through a project in the field of prevention of torture. This project is realized by the Ministry of Public Order in cooperation with non-governmental organizations.

The negative aspect<sup>49</sup> is related with the concern that outside actors have expressed which include the following: there is no adjustment of the definition of torture of the Criminal Code with the definition of the Convention; there is no qualification of acts of torture by law enforcement; there is limited number of complaints regarding torture and

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<sup>48</sup> Utrecht School of Law, Netherlands Institute of Human Rights.

<sup>49</sup> Universal Human Rights Index of United Nations Document, Albania, <http://www.universalhumanrightsindex.org/hrsearch/search.do;jsessionid=C27576699A9630AD2E5280BCBF26CA17?accessType=category&categories=68&currentPage=1&orderBy=country&clusterCategory=category&lang=en>.

ill-treatment; there is lack of impartial investigation of allegations of torture and ill-treatment committed by law enforcement personnel; there have been and still are difficulties for victims of torture and ill-treatment to file a formal complaint with public authorities; there are allegations of cases of lack of independence of the judiciary; spread of violence against women and girls, including sexual and domestic violence.

Although it appears that Albania<sup>50</sup> seems to be on the right track, there is much to be done. Despite the assistance that some international organizations contributed in this country, there are still many problems. Prisons and detention centers are very poor and overcrowded, has poor hygiene and lack of health care. Sometimes minors cohabit together with adults by sharing the same cell, even though this is prohibited by the Albanian law and international standards. Even mentally ill prisoners are forced to stay in prisons instead of being sent for medical treatment.

### **3.3 Right to a Fair Trial**

In 1993, the Albanian parliament adopted Law No. 7692, On Fundamental Freedoms and Human Rights. The Law guarantees Albanian citizens basic civil and political rights including also the right to a fair trial. The right to a fair hearing (or to a fair trial) is a fundamental aspect of the judicial process and is important for other human rights' protection. The reason why the right to a fair hearing is so important is related to establish the proper administration of justice. "The right to a fair hearing applies in both civil and criminal proceedings and in courts and tribunals. The right may also apply when dealing with various government bodies."<sup>51</sup> Right to a fair trial or hearing is another significant right given in Article 6 of the Convention. It is seen as a fundamental

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<sup>50</sup>2008 *Human Rights Report: Albania*.

<sup>51</sup> Right to a fair hearing, Human Rights Law Resource Centre.

right in all countries respecting the rule of law. Article 6 further guarantees to “everyone a public hearing in the determination of his civil rights and obligations or of any criminal charge against him everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”<sup>52</sup> In case that the appeals court does not consider the values of the case or is not competent to deal with all aspects of the matter, then there will be a violation of Article 6. “It is only thanks to Article 6 of the ECHR that the notion of ‘fair trial’ entered the legal/procedural heritage of the states of mainland Europe in the first place.”<sup>53</sup> “The state provides all citizens the right to a fair, speedy, and public trial, except in cases where the necessities of public order, national security, or the interests of minors or other private parties require restrictions. All proceedings are conducted in the Albanian language; defendants, witnesses, and others who do not speak Albanian are entitled to the services of a translator. If convicted, the accused has the right to appeal against the decision within 5 days to the Court of Appeals.”<sup>54</sup>

Theoretically, the law guarantees an independent judiciary but political pressure, political instability, threat, and extended corruption have prevented the judiciary to function independently and efficiently. During these years, the efforts of the Council of Europe and NGOs to work with the Government in realizing their intention for a fair trial have mostly failed. The most difficult period for the right to fair trial, as for other rights, has been the year '97 when many courts and public buildings were destroyed.

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<sup>52</sup> European Convention on Human Rights (1950), Article 6 (1).

<sup>53</sup> *The right to a fair trial* (2000), Strasbourg: Council of Europe Publishing, p. 10.

<sup>54</sup> Taru Bahl (et.al.) (eds.) (2003), *Encyclopaedia of Muslim world*, New Delhi: Anmol Publications Pvt. Ltd, p. 196.

The courts in Albania have taken a long time to recover and function effectively. Corruption remains a serious problem which has also affected the trial in Albania. One example is “when on November 11, a bomb destroyed much of the home of the Chief Justice of the Constitutional Court. No one was injured. The Chief Justice had previously served as a Socialist Party M.P. and was named to the position following a long, public, and highly politicized struggle between the Speaker of the Parliament and the previous Chief Justice, who had been appointed by the previous Democratic Party government.”<sup>55</sup>

As I mentioned in Chapter II, on December 22, 2008, the parliament authorized a "lustration" law that had as its principle the dismissal from public administration some of the officials who were part of the governmental positions under the communist regime. International observers, including the Council of Europe's officials, have criticized the lustration law in Albania.<sup>56</sup> Furthermore, the law states that persons subject to the law cannot participate in its judicial examination. This places the court in direct conflict with the executive and meets the Council of Europe's disapproval.

The judicial system<sup>57</sup> is composed of district courts, the serious crimes courts, military courts, and appellate courts. There are both a High Court and Constitutional Court. The High Court hears appeals from the appellate courts which hear cases on appeal from the district courts. The Constitutional Court primarily reviews those cases

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<sup>55</sup> Albania Country Report on Human Rights Practices for 1998, <http://www.hri.org/docs/USSD-Rights/1998/Albania.html> (26 February 1998).

<sup>56</sup> Council of Europe officials criticizes Albania's lustration law, [http://www.accessmylibrary.com/coms2/summary\\_0286-36418993\\_ITM](http://www.accessmylibrary.com/coms2/summary_0286-36418993_ITM) (16 January 2009).

<sup>57</sup> Allamok. Egyesült (Vol.1) (2008), Country reports on human rights practices 2007, Washington D.C: Government Printing Office, p. 1073.

involving constitutional orientation and conflicts between branches of government and cases of individuals alleging denial of due process.

### **3.4 Non-discrimination**

Before talking about non-discrimination, I would like to define what discrimination is. Discrimination, in a general sense, means treating someone in inappropriate way just because that person is different from you. Discrimination in color, gender, economic status, or social status may be determined as “hatred for no reason”<sup>58</sup>. Many foundations and organizations are trying to combat discrimination in all their forms. Non-discrimination is a right found almost in every international human rights instrument. It has been widely discussed granting in particular that there are different forms of it. It is a term which, in the general meaning, is non-prejudicial towards a person, group, or community. In international law, this term takes on a different meaning. Dr. Curtis F. J. Doebbler has given a fine definition of the principle of non-discrimination according to international law. He explains: “The principle of non-discrimination is fundamental to international law. It means, essentially that all individuals must have their human rights equally respected.”<sup>59</sup> This means that the principle of non-discrimination requires states to ensure that all individuals are equal before the law, have equal protection of the law, and are treated equally by society in general. A specific reference to non-discrimination is to be found in Article 14 of the ECHR. This article reminds us the significance of this right as follows: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national

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<sup>58</sup> Don Middleton (1999), *Dealing with Discrimination*, New York: The Rosen Publishing Group, p. 6.

<sup>59</sup> Curtis F. J. Doebbler (2007), *The Principle of Non-Discrimination in International Law*, Washington DC: CD Publishing, p. 1.

minority, property, birth or other status.”<sup>60</sup> Almost in all states and international instruments, discrimination is prohibited on the ground of race, gender, nationality, language, religion, culture, disability, age, social status, etc. The responsibility of states to ensure the law for protecting people from discrimination is a right which should be respected. But most of the time states fail in their intention to respect and make individuals respect this right. States should have the responsibility not only to respect people’s right not to be discriminated, but it has the obligation to compensate the victims of the violation.

“When a state fails to abide by its international obligations through acts or omissions attributable to the state it is said to be responsible or that state responsibility accrues. In such cases, the state must stop the discriminatory action and compensate the victims of the violation. The obligation to bring to an end a violation of international law is the first and foremost obligation of the state under international law.”<sup>61</sup>

Albania prohibits any kind of discrimination in all sorts of activities as it is observable in the Law No. 10 221 “On Protection from Discrimination”<sup>62</sup> adopted by the Albanian parliament on 24 February 2010. The adoption of this law has been effectual for the protection of equality and non-discrimination in Albania. Theoretically, Albania is a state which respects human rights, particularly with regard to the prohibition of discrimination. The Law on Major Constitutional Provisions prohibits all forms of discrimination particularly based on sex, race, ethnicity, language, or religion. Among others, Albania has declared under Article 14 of the Convention the elimination of all

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<sup>60</sup> European Convention on Human Rights (1950), Article 14.

<sup>61</sup> Curtis F. J. Doebbler (*op.cit.*), p. 12.

<sup>62</sup> “Albanian President signs Comprehensive Anti-Discrimination Law” *Fida Blog* , (1 March 2010)

forms of racial discrimination. However there are many cases of violation and discrimination against different people. Violence against women is a common phenomenon and still occurs in our society, and unfortunately most of the abuses go unreported. In 1996, there was no program to protect the rights of women, only one small shelter for abused women was found in Tirana. However, years later, some more institutions and charities were established with the aim of protecting the rights of all females around Albania. Many men, particularly those living in the north, still follow some old traditions in which the women are considered and treated as chattel. The concept of marital rape and spouse abuse is still foreign in Albania and is not considered a crime. Some women and girls continue to be part of international prostitution rings, especially in Greece and Italy.

As it was noted before, a number of NGOs are involved in women's issues. Unlike previous years, many seminars, training courses, and counseling for women are being held during last years. The Council of Europe is one of the organizations that has contributed to women's right and has shown its concern and worry not only in Albania but all over European countries. The Council of Europe has played a significant role against any kind of violence including domestic violence. Albania remains poor as regards the protection of women and girls. The Albanian journalist, Shpresa Banji has claimed: "The Albanian State still does not offer social services for girls and women at risk. There are NGOs, mainly funded by foreign donors that offer services for this social group, but state organs often do not collaborate with NGOs."<sup>63</sup>

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<sup>63</sup> Shpresa Banja (2007), "Albania-violence against women: still a long way to go", *Fempower*: 9.

Another kind of violation exists among children and people with disabilities. According to governmental authorities and NGOs, child abuse is a problem that exists in mass. However, many cases go unreported and sometimes unpunished. According to international reports, most of the criminal groups kidnap children, particularly young girls, and send them in any European country to work as beggars and prostitutes. Romani children have been used as beggars. The sad fact is that the police take no action either for the children or against the adults who use them.<sup>64</sup>

There are a large number of disabled persons in Albania.<sup>65</sup> The disabled should be provided with various forms of public assistance, but the budget is limited and there are not enough amounts to be allocated for these people. There are difficulties for accessibility to public buildings for people with disabilities and no law has mandated facilities for this category of people.

Minority rights are fundamental rights which should be respected and adopted in every state. The State also has to ratify laws which intend to prevent discrimination against minorities. But who is defined as minority group? “A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim it is to achieve equality with the majority in fact and in law.”<sup>66</sup> The main minority populations in Albania are

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<sup>64</sup> *Albania Country Report on Human Rights Practices for 1997*, <http://www.hri.org/docs/USSD-Rights/97/Albania97.html> (30 January 1998).

<sup>65</sup> Actually there is no statistical data to tell what is the *number of disabled persons* in Albania.

<sup>66</sup> International Legal Principles Concerning National Minorities, <http://www.osi.hu/fmp/html/minority.html>.

ethnic Greeks and Macedonians. Although there is not yet any official statistics which shows the size of different ethnic communities, ethnic Greeks seem to be the most organized, and to receive the greatest attention from abroad. Many ethnic minorities left the country during the unrest in 1997. Roma community was the one who suffered mostly from societal discrimination.

There are also other societal abuses and discrimination. Homosexuals are another community that still suffers from continues discrimination. According to the general secretary of Gay Albania, the police often arbitrarily arrest homosexuals and then physically and verbally abuse them while they are in detention.<sup>67</sup> According to the ombudsman's office, in June 1997 police at the Tirana police commissariat detained, insulted, and physically mistreated a member of the Gay Albania association.<sup>68</sup>

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe which was set up in 1994. Its objective is to combat racism, xenophobia, intolerance, and anti-Semitism threatening human rights and democratic values in Europe. As from 1999, ECRI has begun to examine the actions of the governments of its member states.

ECRI's first report on Albania was issued on 9 November 1999. According to this report, the new adopted Constitution of the Republic of Albania established that the Albanian state respects most of the fundamental rights. Also, the Albanian Constitution contains Article 18 that indicate equality before the law without any discrimination such

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<sup>67</sup> *Albania Country Report for Human Rights Practices 2004*, <http://www.state.gov/g/drl/rls/hrrpt/2004/41666.htm> (28 February 2005).

<sup>68</sup> *Albania Country Report for Human Rights Practices 2006* (6 March 2007).

as discrimination on gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, or social status. In the Constitution of Albania, it is also stated that any political party or organization that incites and supports discrimination or hatred is prohibited (Article 9). In this report, the problematic part of the state is also mentioned. This is what is written in the report: “At present, the implementation of legislation is generally problematic: there is a need for a well-trained and independent judiciary and more training for law enforcement officials. ECRI notes that co-operation is currently underway with the Council of Europe on such issues, and encourages the Albanian authorities to continue their efforts to ensure that the legislation in force is properly and systematically implemented at all levels of the law enforcement system.”<sup>69</sup>

There are other points regarding human rights, particularly those in terms of non-discrimination. Instead of giving all the facts that are given in this report, I would like to show briefly two other reports presented by ECRI. Then, I would like to give in details their opinions. The two reports give successes and failures of Albania after signing the European Convention of Human Rights and its protocols. In the second<sup>70</sup> and third report<sup>71</sup>, respectively adopted in 2000 and 2004, Albania has been criticized for not signing the European Charter for Regional or Minority Languages, the European Convention on the Legal Status of Migrant Workers, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

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<sup>69</sup> European Commission against Racism and Intolerance (Report on Albania) , Strasbourg, (9 November 1999) .

<sup>70</sup> European Commission against Racism and Intolerance (Report on Albania) , Strasbourg (16 June 2000).

<sup>71</sup> European Commission against Racism and Intolerance (Report on Albania) , Strasbourg, (17 December 2004) .

On the other hand, she has done positive progress in signing the European Convention on the Participation of Foreigners in Public Life at Local Level. She also ratified the Revised European Social Charter and the European Convention on Nationality. On 26 November 2004, Albania ratified Protocol 12 to the European Convention on Human Rights (ECHR) and the Additional Protocol to the Convention on Cybercrime.

What about discrimination problems in recent years? The fourth report of ECRI on Albania, adopted on 15 December 2009, contains the following statement: “ECRI welcomes the positive developments in Albania. However, despite the progress achieved, some issues continue to give rise to concern.”<sup>72</sup> Thus, ECRI has made some recommendations including the adoption of comprehensive legislation and full implementation of the provisions on combating racism, discrimination, and intolerance.

To conclude this chapter, it is important to mention that Albania is a country which, assisted also by international organizations, particularly by Council of Europe and European Union, has tried to respect the aforementioned rights. For instance, a joint programme<sup>73</sup> of EU with the Council of Europe has supported the reform of the Albanian judicial system. This programme has helped in improving court facilities and providing support for the rehabilitation of the prison system, in order to improve its quality. It has also helped in enhancing professionalism of the civil service with the aim of establishing an efficient self-sustaining public administration in line with EU standards. Council of Europe has helped Albania in a number of ways; through reports, programmes, and, if it was necessary, through sanctions. But in most of the cases,

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<sup>72</sup> European Commission against Racism and Intolerance (Report on Albania) , Strasbourg, ( 15 December 2009), p. 8.

<sup>73</sup> EU Assistance in Albania: Activities, <http://www.eubusiness.com/europe/albania/ec-activities>, February, 2010.

Albania failed in fulfilling her obligations to protect, and refrain from the abuse of, the most fundamental rights.

# Chapter 4

## Freedom of Speech and Expression, Freedom of Religion, and Freedom of Assembly and Association

### 4.1 Freedom of Speech

Freedom of speech is one of the most fundamental rights that individuals hold. It is of fundamental concern for democracy and human dignity. At the same time, it is one of the most “dangerous” rights. You may be at risk since you are expressing your discontent about a situation and trying to change it. Different governments, different societies, different people approach freedom of speech in a variety of ways.<sup>74</sup> There are people who never asked themselves why the freedom of speech is important, so important that humanity around the world have fought for centuries and died for it. The right to express your opinion, the right to publish freely, the right to criticize the latest movie or to complain about the government, should all be considered fundamental liberties in all societies, particularly in democratic societies. The law professor K. Greenawalt has held that it is an “important political principle that government should not suppress the communication of ideas. Indeed, this principle is frequently regarded as a cornerstone of liberal democracy.”<sup>75</sup> Australian journalist Robert Pullan, in expressing the importance of freedom of speech, says: “Speech expresses the self and like the self is free...Words are our... connection to each other and to all that has gone before. Our speech is inherently free because violating this connection violates our humanity. When

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<sup>74</sup> Robert Trager (et. al.) (1999), *Freedom of expression in the 21st century*, California: Pine Forge Press, p. 4.

<sup>75</sup> Kent Greenawalt (1992), *Speech, Crime, and the Uses of Language*, New York: Oxford University Press, p. 4.

we are censored we are diminished... Free speech seems part of our human programming whatever the culture”.<sup>76</sup> Freedom of speech is one of the most important factors “of being a free person and of having a free society”<sup>77</sup> The guarantee of the freedom of speech, after all, is announced in the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 10 of the European Convention recognizes that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.<sup>78</sup>

According to the Convention, free speech or expression is the right to express opinions in public without being restricted by the government. The European Court has made it clear that the evaluation of any of the restrictions presents the Court “not with a choice between two conflicting principles but with a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted.”<sup>79</sup> The restrictions can only be permissible under Article 10 if warranted by a “pressing social need” and if proven to be proportionate to the legitimate aim pursued.<sup>80</sup> Human being has experienced a long history of violation of freedom of speech. Throughout history, human beings have been censored in their right of having fundamental human rights which include free speech and expression. “Censorship has followed the free

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<sup>76</sup> Robert Pullan (1994), *Freedom of Speech-Australia*, Sydney: Pascal Press, p. 11.

<sup>77</sup> Robert Trager (op. cit.), p. 13.

<sup>78</sup> European Convention on Human Rights (1950), Article 10 (1).

<sup>79</sup> *The Sunday Times v. the United Kingdom*, Judgment of April 26, 1979, Series A no.30, para.65.

<sup>80</sup> *Handyside v. the United Kingdom*, Judgment of December 7, 1976, Series A no.24, paras. 48-50.

expressions of men and women like a shadow through history.”<sup>81</sup> People have fought for many years to get the right of free speech. “The struggle for freedom of expression is as ancient as the history of censorship.”<sup>82</sup>

The right to say and print whatever we like holds a special place in the Albanians’ mind. They have suffered for years, to gain their right of expression. Fatos Tarifa, in his book, has this to say: “It was communism and worse, if there is such a thing. It froze us in time; shut down community; walled out information. There was no freedom of the press. There was no freedom. There was no press.”<sup>83</sup> As I mentioned above, the existence of free speech is an important condition of democracy in a state. It is valid for Albania too. This is well presented by an Albanian analyst who claims: “Albanian citizens of a democratic society are convinced that through free exchange of ideas and thoughts the truth will prevail over fraud, the others’ quality can be evaluated better, and the road through progress will triumph. The most various the intensity of these exchanges will be, the better will democracy be mobilized.”<sup>84</sup> The above paragraph vigorously coincides with my opinion that free speech, thought and idea mean free communication. Violation of free speech is harmful for all because in our century elimination of somebody’s freedom constitutes an offence and a threat, oppression, and dictation of that person whether he is a simple citizen, journalist, intellectual, etc. I want to continue by asserting that free speech is protected by a category of individuals, who,

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<sup>81</sup> Mette Newth, “The long history of censorship”, *Beacon for Freedom of Expression* (July 2001).

<sup>82</sup> *Ibid*.

<sup>83</sup> Fatos Tarifa (2007), *To Albania, with Love*, Ontario: University Press of America, p. 116.

<sup>84</sup> Bardhi, Ndini, “Te drejtat dhe liria e fjales ne demokracine shqiptare” (Freedom of expression in Albanian democracy), *Sot* (20 May 2010).

at the same time, protect the liberty of themselves, their existence, and identity in democracy, in this case, Albanian democracy.

The most dominant case as regards the violation of free speech is violence against journalists or any other people which seems to be a common aspect of Albanian society. “Public reactions to violations of media freedom are still weak,”<sup>85</sup> claimed media analyst Valbona Kurti in 2010. According to the lawyer Gent Ibrahimi, “The state does not act fairly by not applying penal processes in crimes against journalists, and the reactions against these episodes emerge mainly from the journalism community rather than from other social groups.”<sup>86</sup> Physical violence against journalist is perhaps the most dramatic violation of media freedom in Albania. Violence against journalists mostly goes unpunished. According to Human Rights Watch, an organization that has been examining the situation in Albania since 1997, “not a single person implicated in the incidents detailed in this report is known to have been disciplined or prosecuted, despite the publicity and protests that these incidents have generated.”<sup>87</sup> Human Rights Watch in its report on Albania in 2002 has assessed: “The Albanian courts failed to recognize the right of journalists to withhold the identity of confidential sources, an essential element of media freedom”<sup>88</sup>

In theory, freedom of expression is guaranteed by article 22 of the Albanian Constitution of 1998. Article 23 of the Constitution of the Constitution supplements

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<sup>85</sup> *Media Sustainability Index 2010*, 4,  
[http://www.irex.org/programs/msi\\_eur/2010/EE\\_MSI\\_2010\\_Albania.pdf](http://www.irex.org/programs/msi_eur/2010/EE_MSI_2010_Albania.pdf) (2010).

<sup>86</sup> *Ibid.*

<sup>87</sup> *Albania The Cost of Speech: Violations of Media Freedom in Albania* (Vol.14, No. 5) (June 2002), Tirana: Human Rights Watch, p. 3.

<sup>88</sup> *Ibid*, p. 4.

article 22 by providing for a right to information. It is held in Article 22 that, “Freedom of expression is guaranteed. The freedom of the press, radio and television is guaranteed. Prior censorship of means of communication is prohibited. The law may require authorization to be granted for the operation of radio or television stations.”<sup>89</sup> According to Article 23, “The right to information is guaranteed. Everyone has the right, in compliance with law, to obtain information about the activity of state organs, and of persons who exercise state functions. Everyone is given the possibility to attend meetings of elected collective organs.”<sup>90</sup> The Law on Fundamental Human Rights and Freedoms<sup>91</sup> provides for freedom of speech and the press, and the Government has mostly respected these rights. Although journalists complain that they are not free to write and express their opinions, according to Human Rights Watch, generally there is no lack of freedom of the press. There was a bad period<sup>92</sup> under the state of emergency in 1997 when no newspapers except the Democratic Party paper were published. Each party, when it was in opposition, complained about the parties’ lack of freedom in writing or that it had problems with the media. During the unrest, journalists experienced lots of difficulties in reporting stories such as having cameras and equipment stolen and being threatened and attacked by criminal gangs. *Koha Jone*, and independent newspaper, became an opposition newspaper during the unrest of 1997. Just because it accused Berisha’s government, its office was burned and destroyed by unknown persons. In May, a bomb exploded at the home of a journalist for the

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<sup>89</sup> Albanian Law No. 8417 ( 1998 ), Articles 22 .

<sup>90</sup> Albanian Law No. 8417 ( 1998 ), Article 23.

<sup>91</sup> *Albania Country Report on Human Rights Practices for 1998* (26 February 1998).

<sup>92</sup> *Ibid.*

newspaper Koha Jone and injured her two children and two neighbors.<sup>93</sup> There are also complaints in the academic sphere. University professors, often, complain of not having academic freedom. Their complaints mostly consist in firing for political reasons. In previous years the university officials were elected by faculty and student body. In recent years it is the government itself that appoints university officials. This means that government has control over the university which may interfere with academic appointments.

Overall, Albania has made some progress on human rights, particularly on freedom of expression. I would like to call this 20-year progress “decades of progress”<sup>94</sup>. One of the most famed organizations in Albania working towards human rights is the Council of Europe. The work of the Council of Europe in the media sector is directed towards the following goals:

- strengthening freedom of expression and information and the free flow of information and ideas across frontiers;
- developing pan-European policies and appropriate legal and other instruments for this purpose;
- formulating appropriate measures to ensure that media law and policy keep pace with technological, economic and regulatory changes in the media sector.<sup>95</sup>

In 1999<sup>96</sup>, Albania signed and ratified the Council of European Convention on Transfrontier Television and its Additional Protocol. Many provisions of the Law on

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<sup>93</sup> *id.*

<sup>94</sup> Arnold Goldberg (ed.) (Vol. 10) (1994), *A Decade of Progress*, New York: Routledge.

<sup>95</sup> Council of Europe Official Page,

<http://www.coe.al/index.php?faqe=content/detail&id=85&mnu=77&PHPSESSID=6e9522f7b4a8acff60af9e03663fcc19&lng=en&PHPSESSID=6e9522f7b4a8acff60af9e03663fcc19&PHPSESSID=6e9522f7b4a8acff60af9e03663fcc19> (8 June 2010).

<sup>96</sup> Ilda Londo, 5, *European Union Audiovisual Media Services and its impact on freedom of speech*, <http://www.institutemedia.org/documenta/research%20and%20monitoring/research/media%20legislation/EU%20AVMS%20Albania.pdf>.

Radio and Television derive from this agreement and in a way also fulfill some of the requirements in the Television Without Frontiers Directive (TVWF) too. This is the case with the provisions on sponsorship, advertising, the right to reply, and the protection of minors.

Even though we see progress in this area in Albania, again there is paranoia about its progress. Despite its positive achievements, “a professional independent media is not yet fully developed in Albania. In general, it lacks a proper sense of responsibility, which is manifested in scan respect for codes of ethics, human rights, and other liberal-democratic values, which are still not embedded in the journalists’ work.”<sup>97</sup> Even though two decades have passed after the communist regime, democracy in Albania still remains suspicious. Freedom House labels Albania ‘partly free’, the Economist Intelligence Unit considers it a ‘hybrid’ regime and international organizations have expressed concern about the progress of Albania’s reform process in recent times.<sup>98</sup> The European Commission’s 2009 ‘Albania Progress Report’, for example, presented a mixed record in the areas of democracy and the rule of law, particularly when it refers to the nature of political dialogue; the judicial system; the fight against corruption; and the independence of the media.<sup>99</sup> The media situation in Albania also contains serious problems; its independence is experiencing considerable stress and is constantly being challenged. From the table 1, it is apparent that Albania ranks 88 out of 173 countries in the 2009 Reporters without Borders ‘Freedom of the Press Index’. This rating clearly

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<sup>97</sup>Mirela Bogdani et. al. (2007), *Albania and the European Union: the tumultuous journey towards integration and accession*, London: I. B. Tauris, p. 55.

<sup>98</sup>*Economist Intelligence Unit’s ‘Index of Democracy 2008’*  
(<http://graphics.eiu.com/PDF/Democracy%20Index%202008.pdf>).

<sup>99</sup> *European Commission, ‘Albania 2009 Progress Report’*, Commission Staff Working Paper SEC (2009) 1337., (14 October 2009).

represents a significant decrease from 2003, when Albania ranked 34 and was the best among other Balkan states (see table 1). During 2007 the government of Prime Minister Sali Berisha continued to exert pressure on the media, accusing unidentified media figures of ties to organized crime.<sup>100</sup> While the failure of media independence is a common phenomenon in the Balkan region, Albania continues to be the worst performer since 2006 (see table 1).

As regards the Council of Europe's contribution in the area of freedom of speech and expression in Albania, I think it has mostly failed as is obviously seen from the reports and the above given table. In recent years, Albania has been performing less successfully in the area of freedom of speech. Human Rights Watch has recommended to the Council of Europe in relation to the freedom of speech in Albania to pay more attention to violations of media freedoms in this country; "to continue assistance to the Albanian authorities and support amendments in order to bring Albania's criminal and civil defamation laws in line with international standards, to assist the Albanian authorities in providing training to judges and prosecutors of all levels on the European Convention on Human Rights and the jurisprudence of the European Court."<sup>101</sup> Such training could help in covering freedom of expression and fair trial issues.

#### **4.2 Freedom of religion**

Civil rights such as freedom of religion have long been of interest to philosophers, political scientists, and many scholars. Freedom of religion is one of the fundamental human rights. The European Court of Human Rights has stated that freedom of religion

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<sup>100</sup> *Albania's Press 'Least Free' in the Balkans*, <http://www.balkaninsight.com/en/main/news/14187/> (22 October 2008)

<sup>101</sup> *Albania- The Cost of Speech: Violations of Media Freedom in Albania* (op. cit.).

and belief is “one of the foundations of a democratic society”<sup>102</sup> Historically, religious freedom, according to Westphalia Peace Treaty or Code of Rhode Island, is considered to be one of the first recognized human rights. ‘Freedom of religion’ is also a common term used constantly in our century. “Today, religion is increasingly in public view, not only as a matter of practice, but as a subject of study”<sup>103</sup>, said Diana Eck in 2000. Freedom of religion is also seen as “one element of human rights addressed in the major religious traditions of Judaism, Christianity and Islam. Many of the rights referred to in the Universal Declaration of Human Rights can be found explicitly or implicitly in the Bible or in the Qur’an (the Holy Scripture of Muslims)”<sup>104</sup> As a principle, freedom of religion figures in the constitution of many western nations. It is a great paradox of the present years that, even though all constitutions across the world guarantee freedom of religion, conscience and belief, there are ample possibilities of abusing and violating such liberties. Many people believe that the concept of freedom of religion is so complex that they could not understand its real meaning. For instance Carolyn Evans has asserted that, “there is always a danger in attempting to apply a concept as complex and controversial as religious freedom.”<sup>105</sup>

The increasing intolerance of recent years has caused religious conflicts in many parts of the world. This has caused suspicion whether the international organizations that are developed more than half a century ago are able to meet the present demands. However, the duty not to discriminate, including religious discrimination, is clearly

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<sup>102</sup> Kokkinakis v. Greece (25/5/93, A 260-A) para 31.

<sup>103</sup> *International Studies and Programming* (Vol.8) (2000), Minnesota: Macalester College, p. 3.

<sup>104</sup> Abdullah Saeed et. al. (2004), *Freedom of religion, apostasy and Islam*, London: Ashgate Publishing, p. 9.

<sup>105</sup> Carolyn Evans (2001), *Freedom of Religion under the European Convention on Human Rights*, New York: Oxford University Press, p. 18.

presented in all international requirements. Violation of freedom of religion as well as freedom of thought, as it is believed, makes one of the most serious abuses in the context of human rights. Kevin Boyle has this to say regarding freedom of religion: “Freedom of thought, conscience, religion and belief is far from being universally enjoyed. Discrimination and intolerance in matters of religion or belief is a serious dimension of the catalogue of violation of human rights in the world including situations of gross violations”<sup>106</sup>. European Convention on Human Rights presents the right to change or manifest religion in Article 9: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.”<sup>107</sup> Thus, everyone is entitled to freedom of religion, conscience and belief that makes the sphere of private and personal belief.

The second part of this Chapter tries to explore the relationship between Albania and ECHR in relation to religious freedoms. Albania was the smallest, poorest, and most isolated state for about fifty years during the Cold War because of the former communist regime’s mistrust of the outside world. It was a country in which freedom of religion was restricted. Since 1990, the period when communist regime fell, Albania has tried to establish a democratic state which guarantees basic human rights, including the freedom of religion or belief. Its success should be part of the acceptance of its application to join the Council of Europe in 1995.<sup>108</sup> Albania is generally defined as a secular state.

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<sup>106</sup> Kevin Boyle et. al. (1997), *Freedom of Religion and Belief: a world report*, New York: Routledge, p. 1.

<sup>107</sup> European Convention on Human Rights (1950), Article 9 (1).

<sup>108</sup> Kevin Boyle (op. cit.), p. 261.

Religious instruments and state are separate, and the political process is secular. 'Religious commands' have no influence on politics or law or on societal integration. There have never been antagonism or prejudice among communities, and inter-religious marriages are considered to be normal. The Sunni Islam, eastern Orthodox and Roman Catholic Christianity, and Bektashi faiths have been regenerated after the fall of communism in Albania. By contrast, the communist dictator Enver Hoxha in 1967 proclaimed 'the world's first atheist state.'<sup>109</sup> In 1967, the government closed more than 2,000 mosques, churches, monasteries, and other places of worship and declared the country an atheist state. But in 1990, dictatorship came to an end, and then churches and mosques were allowed to reopen. Albania is now a secular state that allows freedom of religion. Government policy has been contributing to the free practice of religion. The Albanian government is secular. Public schools in Albania are also secular. Thus, religion is not allowed in public schools. The Constitution supports freedom of religion, and the government has generally respected this right. According to the Albanian Constitution of 1998, there is no official religion in Albania and they are all treated as equal. However, main religious communities (Bektashi, Sunni Islam, Orthodox and Catholic Christians) have the right of official recognition such as national holidays and the right of their social status.

As I mentioned, the Albanian Constitution of 1998 provides for freedom of conscience and of religion.<sup>110</sup> The law also provides for the freedom of individuals to change their religion, as well as to manifest it, individually or collectively, in public or

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<sup>109</sup> Tim Judah (2008), *Kosovo: what everyone needs to know*, New York: Oxford University Press, p. 8.

<sup>110</sup> Albanian Constitution (1998), Article 24 (1).

in private, through worship, education, practices, or performance of rituals.<sup>111</sup> In data collected by sociologists Brian Grim and Roger Finke, Albania scored low on Government Regulation of Religion, Social Regulation of Religion, Government Favoritism of Religion and Religious Persecution.<sup>112</sup>

According to Human Rights Watch<sup>113</sup>, there is only one case of religious abuse that is related to the Jehovah's Group. This group played a significant role in a series of juvenile suicides witnessed in Albania in recent years. The general director of police said that all "suspicious sects" would be investigated. However no action has so far been taken against these religious sects. In Tirana, on 25 April 2009, NOA – Albanian Group of Human Rights, a Muslim group that strives for the defense of human rights in Albania, complained before the media about their lack of religious freedom. They alleged that they have anxiously followed the fact that two faithful Muslims, Florida Kola and Artenisa Neziri from Burrel city, are expelled from school because of their headscarves.

According to Recommendation 1804 (2007), the Parliamentary Assembly notes that religion is important for the European societies. This is because of the historic fact that some religions have been part of human beings for centuries and because of their great influence in Europe's history. Religions are still multiplying in our continent today, with a wide variety of churches\mosques and beliefs. The Parliamentary Assembly of the Council of Europe has constantly referred to the separation of religion and state. In a

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<sup>111</sup> Albanian Constitution (1998), Article 24 (2).

<sup>112</sup> Interdisciplinary Journal of Research on Religion. 2 (2006) Article 1: [www.religjournal.com](http://www.religjournal.com).

<sup>113</sup> Country report on Albania (2006).

formal Recommendation, the Assembly noted that “religious leaders must acknowledge the precedence of human rights over any religious principle and called for humanist leaders to be included in political consultations with religious representatives.”<sup>114</sup>

Of course, Council of Europe’s contribution in Albania is of undisputed importance. It is of course an important organization, particularly for such a “small” country as Albania. Overall, Albania has done progress in its way to establish greater guarantees for freedom of religion. This is evidenced by the fact that, “international institutions have qualified the Albanian Constitution as meeting international standards, especially with regard to protection of personal rights and freedoms it provides.”<sup>115</sup> However it is difficult to reach perfection. As Van der Vyver says “All in all, it is not easy to be optimistic in regard to the establishment of genuine religious human rights throughout the Balkans. It will take massive international pressure and assistance along with cooperation of those segments of the local population who do have a genuine desire for mutual respect and tolerance for any progress to be made which may outlast the momentary political exigencies.”<sup>116</sup>

#### **4.3 Freedom of Assembly and Association**

The right to form groups, to organize, and to assemble together with the aim of presenting issues of common concern is a human right. Freedom of assembly which is mostly used interchangeably with the freedom of association is the right of an individual

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<sup>114</sup> “Council of Europe backs the Secular State”, *International Humanist and Ethical Union*, (7 August 2007).

<sup>115</sup> Silvio Ferrari et. al. (eds.) (2003), *Law and Religion in post-communist Europe*, Leuven: Peeters Publishers, p. 27.

<sup>116</sup> J. D. Van der Vyver et. al. (eds.) (1996), *Religious Human Rights in Global Perspective: Legal Perspectives*, The Hague: Martinus Nijhoff Publishers, p. 284.

to bring together common interests and to express and defend freely. “Freedom of assembly is the right of people to gather without fear of government harassment or intrusion...”<sup>117</sup> The right to freedom of association is recognized as a human right, more specifically as a civil and political right. Freedom of assembly and association are considered to be important not only for basic human rights, but also as being crucial for social progress and democracy. It is, to be a strong relationship between freedom of assembly and association with the democracy. J. Merrill has defined their relations in this way:

It is easy to see how these freedoms and the idea of democratic government are related. If democracy is concerned with respecting individuals and giving attention to their claims, then permitting people to articulate their concerns by demonstrating or forming interest groups are means to a democratic end. Moreover, the opportunity to act with like-minded people in pursuit of goals which are socially acceptable contributes to the self-realization of the individual....the freedoms protected by Article 11 can be regarded as important in their own right.<sup>118</sup>

Freedom of assembly is a common term used mostly for the right to protest, while freedom of association is considered as a labor right and the right to collective bargaining, for example, by joining a trade union. One has the right to protest by holding meetings and demonstrations collectively. But a person must act peacefully and without violence or threat of violence. One also has the right to form and be part of a trade union, a political party or another association or voluntary group without being violent or causing violence. None has the right to force somebody to join a trade union, protest, political party or another association. The European Convention on Human Rights

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<sup>117</sup> Library of the Missouri Bar , <http://members.mobar.org/civics/FreetoAssemble.htm>.

<sup>118</sup>J. G. Merrills (1995), *The development of international law by the European Court of Human Rights*, Manchester: Manchester University Press, p 138.

(ECHR) protects the rights to freedom of assembly and association. Article 11 of the Convention lays down that: ‘Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests’<sup>119</sup> These two rights, freedom of assembly and freedom of association, are always used together; therefore one cannot imagine separating them. In the Convention, the freedom of association and that of peaceful assembly are treated in one and the same provision.<sup>120</sup> Freedom of association, freedom of assembly and freedom of expression are among the major cornerstones of democracy.<sup>121</sup> They are also unavoidably related. Freedom of assembly and association, which are mentioned in Article 11 of ECHR, are considered to be interdependent and treated as such. In reality, freedom of association would not exist without freedom of assembly, as regular meetings of an association would make its existence become effective. Just as with freedom of assembly, there are positive obligations inherent in freedom of association.<sup>122</sup> Freedom of association in recent times is considered to be an important right which has received great attention as increasing studies testify. The right to work, to refuse to join or to remain a member of a trade union, and the right of a worker not to be discriminated are the aims of the citizens all around the world. They are the aims of the Albanian citizens too.

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<sup>119</sup> European Convention on Human Rights (1950), Article 11 (1).

<sup>120</sup> P. Dijk et. al. (1998), *Theory and practice of the European Convention on Human Rights*, The Hague: Martinus Nijhoff Publishers, p. 586.

<sup>121</sup> *Freedom of association: seminar organised by the Secretariat General of the Council of Europe in co-operation with the Ministry of Justice of Iceland, Reykjavik (Iceland), 26-28 August 1993* (1994), The Hague: Martinus Nijhoff Publishers, p. xviii.

<sup>122</sup> Richard Gordon et. al. (2000), *Judicial Review and the Human Rights Act*, London: Routledge Cavendish, p. 138.

Albania is part of southeast Europe. This part of Europe has been particularly badly affected by the global financial and economic crisis. For many years, Albania was among the states in which scope for trade unions was far too limited. It should be pointed out that Albania is relatively a small state where in the past, trade unions were of secondary importance. The Law on Fundamental Human Rights and Freedoms provides for the right of peaceful assembly. It states that "no one may be denied the right to collective organization for any lawful purpose."<sup>123</sup> The Government has tried to respect this right in practice. According to the law, organizers must obtain permits for gatherings in public places, which the police may refuse to issue for reasons such as security and traffic.<sup>124</sup> In practice, after the fall of communism in Albania, rallies and demonstrations were very common, and the Government usually made no concerted efforts to prevent them even when violence seemed possible, or when permits had not been issued. However, during a Democratic Party rally in Tirana in 2005, six or seven demonstrators were injured and five were arrested. Six or seven police officers were also injured. Unlike previous years, in 2006, there was no evidence that police mistreated protesters. However, the Albanian organization 'Mjaft' reported, on September 1 of 2006, police stood by without taking action while a government supporter physically assaulted a participant in a protest it had organized.<sup>125</sup> But no charge was filed against the officer.

The Council of Europe has been a great supporter of freedom of assembly and association. As it is mentioned also in the above paragraphs, this right is given in article

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<sup>123</sup> Taru Bahl (*op. cit.*), p. 198.

<sup>124</sup> *Ibid.*

<sup>125</sup> Country Report on Albania (6 March 2007).

11 of the European Convention on Human Rights. The support of the Council of Europe regarding this issue was strengthened when it adopted Recommendation 211<sup>126</sup> in March 2007 on freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons.

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<sup>126</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1099699&Site=COE>.

# Chapter 5

## Albania and the European Court of Human Rights

“Why would someone abuse another person—a child, a partner, an elderly parent, or a sibling?”<sup>127</sup> This is the question which many analysts tried to give an answer. In my opinion, the first thing why people abuse others is because of difference they notice on other people. It might be in color, sex, religion, nationality, economic background, or social culture. It is mainly because of the European Convention and the European Court of Human Rights that human rights violations were reduced in Europe. Regionally, ECHR and ECtHR have been more successful than any other mechanism in Europe on the issue of human rights. Wolfrum draws on the success of the Court in the following words: “Is it not an almost unbelievable success story? Currently the jurisdiction of the European Court of Human Rights (ECtHR) extends to 47 States with more than 800 million inhabitants. Accordingly, international judges review the activities of 47 governments as to their compatibility with the European Convention on Human Rights (ECHR).”<sup>128</sup>

Internationally, the Convention and the Court are not the first instruments to provide human rights, but they were the first to treat them with the machinery for supervision and enforcement. Of course, the protection of human rights does not depend totally on international assurance. There are states which try to protect civil and political rights in

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<sup>127</sup> Vernon R. Wiehe (1998), *Understanding Family Violence: treating and preventing partner, child, sibling, and elder abuse*, California: Sage Publications, p. 1.

<sup>128</sup> Rüdiger Wolfrum et. al. (eds.) (2009), *The European Court of Human Rights overwhelmed by applications: problems and possible solutions*, Heidelberg: Springer, p. 1

an excellent way, but which for different reasons do not adjust to international requirements. Thus, the fact that a State is a member of human rights organizations cannot guarantee respect for the obligations that these organizations require. But in the absence of international law there would be chaos in the international system.

As the European Court of Human Rights has emphasized, the aim and purpose presented in Article 1 of the Convention is that the rights and freedoms should be secured by the Contracting State within its jurisdiction. “It is fundamental to the machinery of protection established by the Convention that the national systems themselves provide redress for breaches of its provisions.”<sup>129</sup> The European Court plays an important role in the application of the Convention. That means it functions through the processes that are mentioned in the Convention. At Strasbourg, individuals can obtain compensation for violations of their rights and they can change the way in which domestic law functions. Here I will present the cases that were sent from Albania to the European Court of Human Rights.

#### The Court and Albania from its inception to 1 January 2010:<sup>130</sup>

First judgment delivered:	Qufaj Co. Sh.p.k. v. Albania (18 November 2004)
Total number of judgments:	20
Judgments finding a violation:	18

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<sup>129</sup> Steve Peers et. al. (eds.) (2004), *The European Union Charter of Fundamental Rights*, Oregon: Heart Publishing, p. 103.

<sup>130</sup> *The European Court of Human Rights*, 4, [http://www.echr.coe.int/NR/rdonlyres/C2E5DFA6-B53C-42D2-8512-034BD3C889B0/0/FICHEPARPAYS\\_ENG\\_MAI2010.pdf](http://www.echr.coe.int/NR/rdonlyres/C2E5DFA6-B53C-42D2-8512-034BD3C889B0/0/FICHEPARPAYS_ENG_MAI2010.pdf).

Judgments finding no violation:	1
Other judgments:	1
Inadmissibility decisions:	140
Number of pending applications:	228

Examples of cases brought against Albania before the Court:<sup>131</sup>

*Qufaj Co. Sh.P.K. v. Albania* (18 November 2004): In 1996 the applicant company was awarded compensation in a dispute with the city of Tirana over a refusal of planning permission. It sought enforcement of the final decision in its favor, but to no avail. After reiterating that it was not open to a State authority to cite a lack of funds as an excuse for not honoring a judgment debt, the Court held that the applicant company had not had a fair trial.

Violation of Article 6 § 1 (right to a fair trial)

*Balliu v. Albania* (16 June 2005):

In February 2000 Taulant Balliu was found guilty of, *inter alia*, being one of the founding members of the “Kateshi gang” and was given a life sentence. The Court noted that the applicant had been represented by an officially appointed lawyer and that the applicant and his counsel had had an opportunity to have the witnesses for the prosecution questioned.

No violation of Article 6 (right to a fair trial)

*Bajrami v. Albania* (12 December 2006):

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<sup>131</sup> All these cases are taken from this address, *Ibid*, pp. 4-5.

Agim Bajrami complained that he had been unable to secure the enforcement of a court decision giving him custody of the daughter his ex-wife had taken to Greece after their divorce. After reiterating that the Convention required the States to take all the necessary measures to reunite parents and their children in execution of a final judgment of a domestic court, the Court held that there had been a violation of the applicant's right to respect for his family life.

Violation of Article 8 (right to respect for private and family life)

*Driza v. Albania and Ramadhi and Others v. Albania* (13 November 2007):

In these two cases, the applicants had taken court action seeking compensation or the restitution of property that had belonged to their fathers and had been confiscated by the Albanian authorities without any compensation. The Court held, *inter alia*, that there had been a violation of the applicants' right to the peaceful enjoyment of their possessions. It invited Albania, without delay, to take the legal, administrative and budgetary measures necessary in order for the applicants rapidly to receive the compensation or sums awarded under the 1993 Property Act regulating the restitution of property and compensation.

Violation of Article 6 (right to a fair trial).

Violation of Article 1 of Protocol No. 1 (protection of property).

Violation of Article 13 (right to an effective remedy)

*Dybeku v. Albania* (18 December 2007):

Ilir Dybeku, who suffers from chronic schizophrenia, was sentenced to life imprisonment in May 2003 and imprisoned as an ordinary prisoner. The Court held that the fully inadequate conditions in which the applicant was being held had been harmful to his health and amounted to inhuman and degrading treatment. The Court also invited

Albania to take the necessary measures as a matter of urgency in order to secure appropriate conditions of detention and adequate medical treatment, in particular, for prisoners who need special care owing to their state of health.

Violation of Article 3 (prohibition of inhuman or degrading treatment)

Violation of Article 46 (binding force and execution of judgments)

*Xheraj v. Albania* (29 July 2008):

Arben Xheraj, who was acquitted of murder charges in 1998, complained that the fact that the public prosecutor had been able to lodge an appeal out of time had resulted in the reopening of the proceedings against him, effectively annulling his acquittal. He argued that this amounted to trying him twice for the same crime. The Court considered that what had happened in this case had been a resumption of the previous proceedings, rather than an attempt to hold a new trial. It also held that allowing the public prosecutor to lodge an appeal out of time had infringed the principle of legal certainty.

No violation of Article 4 of Protocol No. 7 (right not to be tried or punished twice)

Violation of Article 6 (right to a fair trial)

As it is obvious from the cases given above, the most frequent violation of human rights submitted by the Albanian citizens to the European Court of Human Rights is the right to a fair trial. In Albania, there have been lots of cases regarding this violation. Not only in Albania, but in other countries as well, the right to a fair trial is considered to be one of the most violated rights. It is the most frequently violated right submitted to the European Court of Human Rights. Loucaides comments on the application of this right to the European Court of Human Rights in the following words: “In the light of the significance of Article 6, which provides the right to a fair trial, it is not surprising that more applications have been received relating to Article 6 than any other provision of

the Convention. Article 6 (1) of the European Convention on Human Rights goes on to impose an obligation for a public pronouncements of judgments, to allow exceptions to the rule for a public hearing, and for minimum rights in criminal cases, including the presumption of innocence.”<sup>132</sup> The right to a fair trial, as I mentioned in the third chapter, means a lot for an individual.

In this Chapter, I will pay attention too to the electoral system and independent media in Albania which seems to be an important factor for the values of democracy and human rights.

### **5.1 Electoral process**

Electoral process in Albania has mostly faced crisis. In 2007, for the first time, elections were rescheduled owing to the failure of the major political parties to agree on amendments to the Constitution and the electoral code.<sup>133</sup> As regards transparency of elections, Albania is judged by international institutions as a state with many problems regarding this issue. On 28 June 2009, European Union officials have been pressuring the Albanian Central Election Commission to finish counting ballots quickly and transparently.<sup>134</sup> Also, the OSCE criticized the vote-counting in Albania by claiming that “these elections did not fully realize Albania’s potential to adhere to the highest standards for democratic elections”.<sup>135</sup> Observers from the OSCE and the Council of Europe emphasized in one of their joint statements, issued on February 19<sup>th</sup>, 2007, that “local elections fell short of international standards”<sup>136</sup>. The observers of these two

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<sup>132</sup> Loukis G. Loucaides (2007), *The European Convention on Human Rights: collected essays*, Leiden: Martinus Nijhoff Publishers, p. 193.

<sup>133</sup> Shpati Koleka (2009), *An Investor’s Guide to Albania*, München: Grin Verlag, p. 7.

<sup>134</sup> “EU pressures Albania to complete month-long vote count”, *Election Guide* (22 July 2009).

<sup>135</sup> “Lack of transparency in political financing”, *Transparency International*, (10 June 2009).

<sup>136</sup> *Observers say Albania’s election failed to meet international standards*, [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/newsbriefs/setimes/newsbriefs/2007/02/20/nb-01\(20 February 2007\).](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2007/02/20/nb-01(20 February 2007).)

organizations complained that the vote was held in an inappropriate atmosphere where tension and distrust between the main political players were present. OSCE mission head, Jorgen Grunnet, said at a press conference in Tirana that the vote was "a missed opportunity" which could prove that Albania was capable of holding free and fair elections.<sup>137</sup> Transparency International Albania followed the recent elections in Albania and noted the "low level of electoral transparency"<sup>138</sup>.

The situation of transparency during the election process may be solved by, inter alia, increasing the number of national and international observers. Beyond transparency in the electoral system, Albania should also be concerned with the low level of financial transparency in Albania is the publication of the financial bill of each electoral activity. Sometimes Albanians do not give too much importance to the proper management of the electoral system. Registration system does not function well in Albania, poll workers are not well-trained enough, and above all they are badly compensated. There are problems with ballot counting and ballot design. It is believed that hundreds or even thousands appear to have voted wrongly because of the ballot design. Albania is under international pressure to make sure the election is fair and not fake as it was the case in the previous elections.

## **5.2 Independence of the Media**

Media may play a significant role in the solution of many issues. But it should not serve for its own interests causing many problems in the country. Thanos Veremes has given an example from his book: "The fact that some media segments have served the

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<sup>137</sup> <http://www.albania.de/alb/index.php?s=electoral> (5 April 2010).

<sup>138</sup> "Albania: Lack of transparency in political financing", *Transparency International* (10 June 2009).

policies of genocide and stirred up national hatred raises the dilemma: how can these voices that incite people towards hatred be silenced without impeding the voice of freedom?”<sup>139</sup>

There are a high number of daily newspapers in Albania. But their sale is too low which means that business management among the print media is poor. Distribution infrastructure is also poor in the country. The current legal framework, including the Law on Digital Broadcasting, is not fully implemented and does not reflect developments in the growing digital broadcasting market in Albania. The human resources and enforcement capabilities of the National Council on Radio and Television remain limited. In May 2000<sup>140</sup>, Albania Radio and Television (RTSH) became an independent public entity. All other electronic media are private. There are also a high number of so-called ‘independent media outlets’<sup>141</sup>, but encountering financial difficulties made them to have close ties with different political parties, or powerful businesses which may finance them. This market of these independent media can harm “the development of a truly independent TV and press”<sup>142</sup>

Since the end of the communist regime in 1990, Albania has experienced many changes in the political and economic sphere. One of the greatest achievements of Albania has been the braking of barriers of a closed society that was deeply isolated from the outside world. Albania is a country that has passed through difficult stages. Albanian people have suffered under diverse and difficult transitions. But Albania has

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<sup>139</sup> Thanos Veremes et. al. (eds.) (2002), *Is Southeastern Europe doomed to instability: a regional perspective*, London: Routledge, p. 84.

<sup>140</sup> Adrian Karatnycky et. al. (eds.) (2002), *Nations in transit, 2002: civil society, democracy, and markets in East Central Europe and the newly independent states*, New Jersey: Transaction Publishers, p. 54.

<sup>141</sup> Mirela Bogdani (op. cit.), p.56

<sup>142</sup> *Ibid.*

lately tried to take these challenges. As I have mentioned in the above chapter, in 2006, she signed the Stabilization and Association Agreement that would serve as a strong relationship with the European Union. The country worked hard during 2008 to qualify for an invitation to join NATO in April 2009. Despite these positive achievements, Albania's transition to democracy and a market economy seems to be a long way off. She still has problems in managing elections according to the international standards.

In my opinion, Albania needs to pay more attention to reform the public administration, the judiciary, and increase the fight against corruption and organized crime by creating a strategic approach. Above all, more efforts are needed in order to bring 'trust' in politics and in Albanian society. Other international instruments should also give their own contribution for independent media in Albania. A free independent media may help in solving many problems. Human Rights Watch has, for instance, recommended to the Council of Europe, as well as other international organizations, "to pay closer attention to violations of media freedoms in Albania in the context of the Parliamentary Assembly's monitoring procedure on the honoring of obligations and commitments by member states."<sup>143</sup>

### **5.3 Opinions about the Council of Europe**

There are many praises as well as criticisms of the Council of Europe in Albania. I have conducted a survey so as to get the views of the Albanian people of the Council of Europe. The questions which are posed in this survey are the following:

1) Do you think that the Council of Europe has contributed to the elevation of human rights standards in Albania? If yes, in what ways?

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<sup>143</sup> *Albania The Cost of Speech: Violations of Media Freedom in Albania* (op. cit.), p. 8.

2) Do you think that the Council of Europe has some failings in appreciating the specific human rights problems of Albania?

The respondents had to answer these questions in the form of 'yes' or 'no'.

The survey has indicated that the Albanian people somewhat confused the Council of Europe with the European Union. More specifically, the results showed that eighty percent of these people held positive views about the role played by the Council of Europe in Albania with regard to the elevation of human rights standards, whereas twenty percent held negative views about the Council's role in Albania. Some of those who responded positively were intellectuals like professors, economists, engineers, specialists of statistics, or even students. Those that hold a negative view for the Council were mostly ordinary citizens and workers. At the same time, the Parliamentary Assembly is aware and very optimistic about all those done by the Council in all European countries. In the same official report of debates, the Parliamentary Assembly held that "The Council of Europe has done a lot for the development of Europe since its establishment in 1949. I am sure the second summit of the Council will promote the role of our Organization and will improve the quality of life in Europe."<sup>144</sup>

I have a favorable view of the contributions made by the Council of Europe for the enhancement of human rights standards in Albania. Europe has changed dramatically since the Council was created. It is of course important to mention the role of the Council in the fields of human rights, democracy, and the rule of law. I also believe that the Council of Europe is successful in the field of political democracy. But, in Albania, the Council does not get the attention it deserves.

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<sup>144</sup> *Official report of debates*, Volumes 1-2 (*op. cit.*), p. 902 .

# Conclusion

That the individual is valuable, that his\her reality must be recognized and appreciated lies at the basis of human rights as found expression in the European Convention on Human Rights. In my thesis, I have repeatedly drawn on the concept of human rights, its nature, goals and the effective ways in which human rights should be implemented. NGOs play important roles on the issue of human rights. The number of NGOs active in the field of human rights has risen dramatically since the end of the Second World War.<sup>145</sup> Particularly over the last three decades, their numbers have increased more rapidly and they have become more diversified.<sup>146</sup> NGOs are an important factor for a state. They can help in the establishment of a progressive and democratic society. “A democracy is to be measured not only by its law and institutions such as parliament, the courts, government civil service and local elected authorities; it is also to be measured by the existence of NGOs, free associations created by citizens within those laws and institutions.”<sup>147</sup> I think that in this globalized world, both governments and NGOs have to join forces to achieve security and prosperity based on human rights, democracy and rule of law in a country.

The question guiding this study has been: ‘Has the Council of Europe, after Albanian participation, has a role in the reduction of human rights violations in this country?’ My answer, as expressed in this thesis, contains affirmative and negative

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<sup>145</sup> Claude E. Welch (1995), *Protecting Human Rights in Africa: Roles and Strategies of Non-governmental Organizations*, Philadelphia: University of Pennsylvania Press, p. 47.

<sup>146</sup> Peter Van Tuijl, 494, “NGOs and Human Rights: Sources of Justice and Democracy,” *Journal of International Affairs*, 52 (1999).

<sup>147</sup> *The Challenges of a greater Europe: the Council of Europe and democratic security* (Vol.1) (1996), Strasbourg: Council of Europe Publishing, p.121.

responses for two main reasons. First, for more than five decades, the Council of Europe has been encouraging and supporting unity in Europe for the purpose of protecting human rights and realizing democracy. Albania has made progress in the last years by establishing a pluralistic democracy with a reasonable degree of respect for human rights, even though there is still much to be done. Albania's transition from dictatorship to democracy has been difficult and long. Most of its citizens would say that it was too long. But, at the end, Albanians could justifiably consider themselves as Europeans living in a democratic state. In the last years, Albania has made further progress towards respect for civil and political rights. She has for instance approved new legislation for migrants and border management in order to fulfill its obligations according to international standards.

I consider Albania differently from Western European and Balkan countries. Geographically, she is part of Europe, but many foreigners have drawn on its complex history and unique culture. Unlike its Balkan neighbors, Albania has enjoyed religious and ethnic tolerance, and its people share a strong sense of national identity. Thousands of Albanians are working hard to rebuild their country and do away with various political crises, despite enormous obstacles. Albanians are disappointed that other states tend to focus on Albania's problems rather than encouraging the efforts of the Albanian people who are working for change. Indeed, anyone who saw the country in the early 1990s and today can only conclude that, for most of the citizens, life has socially and politically improved. And this thanks also to the efforts of the support and presence in Albania of some international organizations, particularly the Council of Europe. At the same time, many other human rights groups have generally been able to work freely, even though the authorities were sometimes non-cooperative. For instance, the Albanian

Human Rights Group was active in documenting and reporting serious violations, including police violence, interference with media freedoms, and abuses in the government's anti-terrorist campaign.<sup>148</sup> The Albanian Helsinki Committee directed significant resources at providing commentary on draft legislation, such as the police code of ethics and regulations on detention facilities.<sup>149</sup> The Albanian ombudsman made good progress toward the consolidation of that new institution, engaging various branches of government in human rights dialogue and focusing his activities on promoting freedom of information, privacy rights, and effective judicial remedies.<sup>150</sup>

It is believed that all progressive works realized by Albania has come as a result of international instruments that include the Council of Europe. The Council of Europe, for years, has expressed its support for better human rights and democratic conditions in Albania. "We are resolved to turn Albania into a country of free citizens, a democratic state whose policy of integration with Europe will further peace and stability in the region. The Parliamentary Assembly and the Council of Europe assisted the democratic elements at the transitional stage, but at present their help is vital to us and we trust that it will be increased. The foundation of a democratic state is without doubt in all Europe's interest".<sup>151</sup>

Secondly, I would like to draw on the failings of the Council of Europe in providing substantial support for the elevation of human rights standards in Albania. For many years, Albania was Eastern Europe's most closed and repressive state. This peculiar

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<sup>148</sup> *Human Rights Developments*, <http://www.hrw.org/wr2k3/europe1.html> (2003).

<sup>149</sup> *Ibid.*

<sup>150</sup> *Human Rights Watch World Report* (2003), New York: Human Rights Watch, p. 302.

<sup>151</sup> *Official Report of Debates* (Vol.1) (1993), Strasbourg: Council of Europe Publishing, p. 91.

history has been a main impediment to overcoming human rights problems in Albania, as expressed in the following words: “Some problems stem from Albania’s tragic past. The destruction of civil society and democratic institutions under Enver Hoxha’s regime left a shaky foundation for the construction of a new society rooted in tolerance and respect for human values.”<sup>152</sup> Restrictions on the right to free expression, association, assembly, and a free press means government violations of civil and political rights. Albania’s economic crisis of course has aggravated the situation. Foreign investment and economic development will only come when there is a stable legal framework based on independent courts and the rule of law.<sup>153</sup>

Despite significant improvements over the last decade, violations of media freedom continue to occur in Albania in which the acts of violence and threat against journalists have become more common. As a result, Albanian citizens are still suffering serious human rights violations, such as restrictions on freedom of expression and association, manipulation of the legal system and violence by the police. Current issues concerning human rights in Albania include violence against women, torture, police brutality and maltreatment of prisoners, the bad conditions of prisons, human and sex trafficking and LGBT (Lesbian, Gay, Bisexual, and Transgender) rights. The Council of Europe is concerned about the situation of prisoners in Albania in which torture and ill-treatment toward inmates is common. Also the detention conditions are poor, although steps have been taken to reduce overcrowding. Domestic violence is another problem; so, many reforms are needed to protect victims. The trafficking of women and children still

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<sup>152</sup> Fred Abrahams (1996), *Human Rights in post-communist Albania*, New York: Human Rights Watch, p. 138.

<sup>153</sup> *Ibid.*

continues. The law does not protect victims enough, for whom there are limited support services provided by non-governmental organizations. Some in Albania believe that Albanian democracy is still inadequate. There are lots of problems in the country where neither international organizations, nor the Council of Europe is able to find a solution. As Albania continues its long march towards democracy and respect for human rights, the international community must display greater interest in the country. Without concrete support from regional and international organizations for a real democracy in Albania, this key strategic Balkan country will not be able to enjoy long-term political, economic and social stability.

This study, above all, explained how Albania's acceptance to the CoE has shaped Albanian society. The Council of Europe, among others, has an important role to play by encouraging Albania to comply with fundamental human rights standards, including right to live, freedom of expression and other rights and freedoms. It must assist Albania so that it can close the gap with the European Convention on Human Rights and show better performance by training its judges, while taking part in the European Convention on Human Rights. There have been other efforts of the Council of Europe for helping Albania, such as creating a legal concept of police ethics. In a report of the Council of Europe, it is written: "With the help of Council of Europe experts, several workshops have been held for various parts of the police force: high-ranking national staff from the Ministry of the Interior, middle-ranking officials of the Ministry and staff from local police structures. Those attending came from every region of Albania."<sup>154</sup> The

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<sup>154</sup> *Police ethics in a democratic society* (1999), Strasbourg: Council of Europe, p.89.

Albanian government got help from the Council of Europe also to prepare a new Constitution and civil and penal codes.

## **LIST OF APPENDICES**

### **APPENDIX A**

#### **OPINION No. 189 (1995) on the application by Albania for membership of the Council of Europe**

1. Albania applied to join the Council of Europe on 4 May 1992. By Resolution (92) 9 of 21 May 1992, the Committee of Ministers asked the Parliamentary Assembly to give an opinion, in accordance with Statutory Resolution (51) 30 A.

2. Albania has been functioning as a multi-party parliamentary democracy since the elections of 31 March and 7 and 14 April 1991. The Assembly sent observers to these elections. In the light of their observations and of subsequent political developments, "special guest" status was given to the Albanian Parliament on 25 November 1991. Since then, both government and opposition have been able to make their positions known in Strasbourg.

3. Further elections were held on 22 and 29 March 1992. Assembly observers concluded that they opened the way for closer relations between Albania and the Council of Europe, with a view to subsequent membership - subject to review of the position of the ethnic Greek minority (notably in the south).

4. Since May 1992, following Albania's application for membership, Assembly committees and their rapporteurs have paid repeated visits to the country - most recently, on the occasion of the constitutional referendum of 6 November 1994.

5. In January 1993 a joint Commission of the European Communities/Council of Europe programme of co-operation in the fields of human rights and the rule of law was set in train. The programme addressed inter alia the training of judges, lawyers and the police; reform of the prosecution, of the judiciary, of the ministry of justice, and of prisons; the drafting of civil and penal codes and the corresponding codes of procedure.

6. A report confirming progress on the conformity of legislation in Albania with general principles of the Council of Europe and the European Convention on Human Rights was delivered by two eminent jurists to the Bureau of the Assembly on 15 October 1993.

7. Although the draft constitution submitted to referendum in November 1994 was rejected, this left Albania neither in a constitutional vacuum, nor with the communist constitution of 1976. From April 1991 to September 1993 a framework for democracy was built through eight laws of a constitutional character. These laws establish a parliamentary republic. They provide for the separation of powers. They embody a list of human rights and fundamental freedoms, following consultation of international and European experts.

8.Despite current political difficulties impeding a fresh initiative, a new constitutional commission is expected to be established with representatives of the parliamentary parties and with international consultants - inter alia from the Council of Europe and the European Commission for Democracy through Law (Venice Commission).

9.Criticism will persist in regard to Albania's judicial and penal systems and the administration of justice. Clearly, the elements of a judicial and legal culture necessary for the "rule of law" - as compared with the elements of a market economy and of "civil society" - need more time to become implanted and to make felt their effects. Progress must be assessed in the context of immense material difficulties, following the collapse of an isolationist totalitarian dictatorship.

10.By March 1992, oppression, fear and hunger had driven Albania to near-anarchy, with mass efforts to flee the country and total reliance on humanitarian aid. Today, however, the physical appearance of Albania is transformed. A market economy is emerging. From being completely closed to outside influence, the society is both outward-looking and animated. This transformation suggests that the right policies and legislative priorities have been chosen.

11.The situation is nonetheless precarious. For the most part, water is only available for a few hours a day. Leaks are causing contamination. Sewage is being discharged without treatment. Electricity networks are badly overloaded. These are causes of great hardship. Also, they are a risk to health and safety.

12.Albania thus continues to need international aid and massive infrastructural rehabilitation. It is tragic that the transition to democracy and a market economy should have coincided with a heightening of tensions on Albania's northern and southern borders - substantially due to the break-up of the former Yugoslavia. Such tensions have been a radical disincentive to investment.

13.A welcome relaxation of tension on Albania's southern border has been matched by a re-affirmation of the legal and constitutional bases of Albania's policy towards minorities - notably to the effect that no religious community will be deprived in practice of an opportunity to flourish (letter of 13 February 1995 from the Speaker of the Albanian Parliament to the Chairman of the Political Affairs Committee). The fact that this commitment will be monitored by the Council of Europe should provide continuing reassurance to ethnic minorities and communities in Albania.

14. In regard to minorities and communities of Albanian ethnic origin in the Federal Republic of Yugoslavia (Serbia and Montenegro), notably in the neighbouring and formerly autonomous province of Kosovo (where ethnic Albanians are said to account for virtually 90% of the population) and in the former Yugoslav Republic of Macedonia (where ethnic Albanians account for 23% of the population), the restraint of Albanian foreign policy in the face of rising tensions has served to maintain stability in the region.

15.Albania's new civil code has been in force since November 1994. A code of civil procedure is being drafted with the help of Council of Europe experts. A new penal code and a code of criminal procedure were adopted, respectively, on 27 January and 21

March 1995 - to enter into force, respectively, on 1 June and 1 August 1995. On 23 March 1995, agreement was reached on a second joint Commission of the European Communities/Council of Europe programme for reform of the legal system.

16. On the basis of:

i. Albania's commitment in relation to minorities and continuing developments in the field of legislation;

ii. Albania's existing constitutional provisions;

iii. the participation of a "special guest" delegation of the Albanian Parliament in its proceedings since 25 November 1991;

iv. the establishment of political dialogue between the Albanian Government and the Committee of Ministers, the Assembly considers that Albania, in the sense of Article 4 of the Statute, is able and willing to fulfil the provisions for membership of the Council of Europe as set forth in Article 3: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of [its] aims."

17. Therefore, the Parliamentary Assembly, on the understanding that Albania shares its interpretation of commitments entered into as spelt out in paragraphs 13 and 16, and now intends:

i. to sign the European Convention on Human Rights at the moment of accession; to ratify the Convention and Protocols Nos. 1, 2, 4, 7 and 11 within a year; to recognise, pending the entry into force of Protocol No. 11, the right of individual application to the European Commission of Human Rights and the compulsory jurisdiction of the European Court of Human Rights (Articles 25 and 46 of the Convention);

ii. to sign, ratify and apply Protocol No. 6 of the European Convention on Human Rights on the abolition of the death penalty in time of peace within three years of accession, and to put into place a moratorium on executions until total abolition of capital punishment;

iii. to sign and ratify within a year from the time of accession the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

iv. to sign and ratify within a year from the time of accession the Framework Convention for the Protection of National Minorities, and to conduct policy towards minorities on the principles set forth in Assembly Recommendation 1201 (1993);

v. to recognise the vital importance of freedom of expression to a properly functioning democracy, as recorded in Article 19 of the Universal Declaration of Human Rights, and to move swiftly to encourage and protect independence in broadcasting and in printed media - allowing complete editorial freedom, even-handed tax treatment, free

availability of newsprint and equal access to broadcasting and printing facilities and to distribution outlets;

vi.to change the role and functions of the Prosecutor's Office, transforming this institution into a body which is in accordance with the rule of law and Council of Europe standards;

vii.to ensure the independence of the judiciary, in particular by protecting judges from unjustified or arbitrary dismissals, and by keeping the operating budgets of the courts under their direct and full control and by having them approved by Parliament;

viii.to establish, within a reasonable length of time, a constitutional commission as indicated in paragraph 8;

ix.to seek settlement of international disputes by peaceful means (an obligation incumbent upon all member states of the Council of Europe);

x.to co-operate fully in the monitoring process for implementation of Assembly Order No. 508 (1995) on the honouring of obligations and commitments by member states of the Council of Europe, as well as in monitoring processes established by virtue of the Committee of Ministers' Declaration of 10 November 1994 (95th session);

xi.to study, with a view to ratification, the Council of Europe's Social Charter and the European Charters of Local Self Government and for Regional or Minority Languages, and meanwhile to conduct its policy in accordance with their principles;

xii.to study, with a view to ratification, and meanwhile to apply the basic principles of other Council of Europe conventions, notably those on extradition, on mutual assistance in criminal matters, on the transfer of sentenced persons, and on laundering, search, seizure and confiscation of proceeds from crime;

xiii.to sign and ratify within a year from the time of accession the General Agreement on Privileges and Immunities of the Council of Europe, and its Protocol,

Recommends that the Committee of Ministers:

i.invite Albania to become a member of the Council of Europe;

ii.allocate four seats to Albania in the Parliamentary Assembly.

## APPENDIX B

### COMMON ABBREVIATIONS

e.g.	<i>exempli gratia</i> -for example
ed.	edited
<i>et al.</i>	<i>et alii</i> -and others.
ibid.	<i>ibidem</i> -in the same book
op. cit.	<i>opere citato</i> -in the work already quoted
p., pp.	page(s)
para., paras.	paragraph(s)
Vol., Vols.	volume(s)

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