

## Council of Europe and Its Priorities on the Reform of the Legal System in Albania

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### Abstract

After the Second World War in all international organizations, it was created a spirit of overall giving a fundamental importance to the recognition and the guaranteeing of human rights. These organizational initiatives by then tried to avoid what had just happened, that according their existence results precisely to the goals of peace and friendly relations increasingly between them. In such circumstances setting out the principles on which relations between Member States of European council should support. Which supports the Council of Europe and in its efforts Albania has responded to the essential changes that apparently occurred in its legal system within the country. The Council of Europe has played an essential role for countries like Albania with typical character which aspired to adopt new reforms on the international stage but based on their a regional level. Following the principles and objectives enunciated in the UN Charter as well as the spirit that pervades today regarded as a universal catalog of human rights, Albania more than anyone else had some-century clash conflict. Council of Europe had defined its key purpose in his status founded and signed on 5 May 1949 in London, called the Treaty of London which states: *"achieving a closer collaboration between its Member States to maintain and promote the ideals and principles that constitute their common property in their social and economic development"*<sup>1</sup> To achieve this goal the European Council submitted clearly, in its status, the principles on which it will be inspired and will constitute the basis of the Member States commitments. Thus, under Article 3 of the Council of Europe: *"Every state of the Council of Europe accepts the principle of priority of law and the principle that every person under its jurisdiction should enjoy human rights and fundamental freedoms"* This principle, although insufficient is necessary to achieve the goal, in close union with the European countries who assisted the by activity of regional organizations but at the same time encourage the development of lower countries like Albania. In this paper, obviously we do not think to resolve any special important issues of, but to give a specific picture of the most important changes in Albania under the impact of the principles of the Council Europe.

**Keywords:** *jurisdiction; international agreement and guarantee; shortcomings*

### INTRODUCTION

Considering the role of this jurisprudence for the member states of Europe and especially primary weight to the Constitution of the Republic of Albania has given to this document for the protection of human rights and our principles freedoms. In our

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<sup>1</sup> See Article 1, paragraph a) of the Statute of the Council of Europe

paper are highlights diverse and complex situations in that of the European Convention on Human Rights but also applies of social and legal issues on which it reaches to settle down by its provisions and control bodies.

This shows that the European Convention as an authentic document is very important one for all subjects of the law in the Republic of Albania and in particular for judges, prosecutors, lawyers and all other jurisdictional entities. The European Convention on Human Rights as it is claimed dozens of times constitutes one of the most efficient regional instruments across the globe concerning the protection of human rights.

Over the years of its existence the Convention has shown its particular value and in relation to other international instruments finished in the same direction primarily stands a complete structure, solid and precise one with exact terms and from the binding standpoint of the international conventional technique.

Secondly it equips her with a sustainable mechanism of control which can be put in operation, as has been proved quite successfully in dozens of times even with individuals against a member states to the European Convention on Human Rights.

### **EUROPEAN CONVENTION THE KEY RESPECT FOR HUMAN RIGHTS.**

European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 48 years ago, 4 November 1945 in Rome.

Countries that called it were convinced that in this way would create the mechanism of preventing the coming of the great evil that mainly any country was not allowed to fall into the trap of totalitarian governments, which trample the fundamental rights of citizens.

The result and performance to conclusions showed that exactly was the disrespect of human rights that led to the outbreak of WWII. These were added to the cruelty of Stalinism which Albania as a totalitarian country which adopted Stalinism at that time constituted a real threat to world peace but also instability.

The Convention during its entire existence has met the requirements marked by its creators. And we really had very few complaints about 98% was considered as inadmissible.

The activity of the European Commission which served as unfounded obstructionist complaints was shown out. Especially regarding the review of some interstate issues, related to the problems between respective countries of Cyprus and the UK as well as the tense situation that was created disputes between Austria and Italy.

The year of 1975 marks the second phase of the activity of this institution. Meanwhile the commission made efforts not to comply with the restrictive and positivist attitudes that kept due to the problems that were treated. Then there were repeated cases of failure to consider the complaints which were not directly involved in any of the guarantees that were mentioned.

Unlike the early years of its existence<sup>1</sup> the convention has become almost a *sine qua non* for membership of the Council of Europe and all member states of the organization within a few months of membership in the organization should have signed and ratified the Convention. The Republic of Albania, for example, became a member of the Council of Europe on 13 July 1995, the moment in which signed the convention, which was ratified in July 1996 and deposited the instruments of ratification with the Secretary General of the Council of Europe on 2 October 1996.

Being designed for the realization of the goals predicted in Article 3 of the abovementioned status of the Council of Europe, the Convention reiterates that in its Preamble, constitutes:

*" the first appropriate measures to ensure collective guarantees of some of the rights proclaimed in the Universal Declaration"*

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<sup>1</sup> For example France, although it was one of the first ten signatory countries in 1950, it has signed the Convention only on 3 May 1974.

It is worth mentioning that the measures to which the Convention preamble didn't remain in the initial level of the year 1950. Up to now twelve protocols <sup>1</sup> are met in the framework of the European Convention on Human Rights with new rights and procedures have changed of guaranteeing these rights and freedoms perfected them further.

It may be said that the first of these protocols was developed during the summer of 1950, the before the Convention itself the European Human Rights to be signed. However, as well as for other protocols was the political will of the member states that conditioned the inclusion of some certain rights, such as for property or for free elections and democracy, in the bosom of the Convention and signed the acceptance of those rights, special procedures of signing and ratification.

## THE CURRENT VERSION OF THE EUROPEAN CONVENTION

In its current version of the European Convention of Human Rights it consists of 59 articles 4 additional protocols.

We are speaking about its current version because during 50 years of its existence it has been changed and amended by a number of other protocols. Protocols which have brought changes to the text of the Convention, namely 2,3,5,8,9,10 and 11 which are also called amending protocols have been those who have had to do with the control system and its procedures, which we would show more broadly below.

But others who specifically were 1,4,6,7 and 12 protocols have therefore brought the addition of the other rights and freedoms of man in Convention system, by attaching other specified by the Title of Convention. As above it has been mentioned, both these types of Protocols subject in accordance with the rules of international law, with special procedures of signature and ratification, specified by each of them.

The complex of 59 articles of the Convention, for further now the Court under Article 19 of the Convention is permanent and under Article 32 of the convention is responsible "*for all matters concerning the interpretation and application of the Convention and its Protocols*". It consists of number of judges equal to the number of member states of the Convention<sup>2</sup>.

To cope with its functions that previously dealt with by the Commission, the Court now divided into three judges who examine individual requests and if the request is acceptable file is forwarded either by Chambers<sup>3</sup> which consist of seven judges. <sup>4</sup>

In accordance with the provisions of Article 44 of the Convention, the Grand Chamber decisions are final. While decisions of Chambers become final if the parties declare that they will require the case to be transferred to the Grand Chamber or if within three months they do not make such a request or when the panel of abovementioned of five judges did not accept the request passing to the Grand Chamber. <sup>5</sup>

If, after the decision passed by the Chamber, one of the parties in the process within three months from this decision, although in exceptional cases may require that the matter be passed Grand Chamber. Such exceptional case is considered when comes up: "*An important problem for the interpretation or application of the Convention of its protocols, or a serious problem of a general nature*". A panel of five judges took into account such a request. If it accepted the case is referred to the Grand Chamber of judgment. <sup>6</sup>

We find appropriate to mention that the European Court of Human Rights is not in the role of the Supreme Court because it has always referred to the interpretation of the internal law of the relevant national bodies.

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<sup>1</sup> Protocol 12 of the European Convention on Human Rights, which deals with a clause of general non-discrimination, adopted by the Committee of the Ministry in September 2000 was presented for signature by member states on 4 November 2000 during memorial ceremony of the 50 - anniversary Convention held in Rome.

<sup>2</sup> Article 20 of Convention

<sup>3</sup> Article 29 /1 of Convention

<sup>4</sup> Article 27 of Convention

<sup>5</sup> Refer article 44 of Convention

<sup>6</sup> Article 43 of Convention

However, the Court reserves the right of the interpretation and implementation of the European Convention on Human Rights, even when we have about the internal decisions that may be different in the justifications to conclusions.

From this point of view it can say that the European Court of Human Rights plays a higher court. Despite this, its decisions have no character internal e Supreme Courts when they conclude that a particular country has violated its obligations under the Convention. So, through these decisions the European Court of Human Rights finds only as violations of the Convention by the State in question and does not pretend to repeal the act, the measure or incompatible practice with the convention.

It is for the following, pursuant to Article State responsible to take appropriate measures pursuant to paragraph 1 of Article 46 of the convention and then under paragraph 2 of the same article, it is the Committee of Ministers which supervises the implementation of the decision by respective states.

Furthermore it can be added to the European Court of Human Rights does not matter whether the violation of the Convention is made by the legislative character, administrative or judicial one.

About this, the responsibility for the violation of the Convention has the character of an international responsibility of the state, since he as a subject of international law is a contracting party to the European Convention of Human Rights and under Article 1 of the Convention has undertaken to guarantee the rights and freedoms of basic human as it is stated in its title.

## **ALBANIA AND ITS COMPLIANCE WITH COUNCIL OF EUROPE CONVENTION**

"Article 3 of the Protocol [appendix] shall be implemented in accordance with the provisions of Albanian law nr. 8001 dated 09/22/1995 and nr. 8043 dated 30. 11. 1995 for a period of 5 (five) years, starting from the deposit of instruments of ratification. " **(Reserve shown on the instrument of ratification deposited on 2 October 1996)**

In accordance with Article [57] of the Convention, the Republic of Albania has had some reservations about Article 3 of the Protocol, in this sense the content of this Article shall be established in accordance with the provisions of Law No. 8001 dated 09. 22. 1995 as and the law nr. 8043, dated 30. 11. 1995 of the Republic of Albania.

Law No. 8001 dated 22. 09. 1995 on "genocide and crimes against humanity committed in Albania during the communist regime for political, ideological and religious" and Law No.. 8043 dated 30. 11. 1995" on the control of official figures that personalities official and other persons who are related to the protection of the democratic state. " They predict *inter alia* by the 31<sup>st</sup> December of 2001 election in the central organs of the state or local government is stopped for authors, for those who have conspired and having actuating crimes against humanity, committed in Albania during the regime for political, ideological and religious those up to 31 March 1991 were former members or candidates of the Political Bureau, secretary or members of the Central Committee of the Party of Labor of Albania (or Albanian Communist Party), former secretary to see the Committee of District Party of Labor of Albania and responsible of comparable rank, employees of sectors which are related to security State Central Committee of the Party of Labor, the former prosecutor General, former ministers, former member of the Presidential Council, former Chief Judge, former prosecutor general, former members of Parliament, with the exception of those who have acted against the official line and public.

They have renounced the amendment, as well as former employees of the Security Service of the State, the former collaborators of State Security and the persons who testified against accusations in the political process, the former investigator, Judge in the political process, the former investigating judge at special political processes, former secret agents of some foreign service or their homologous.

Recently the Law No. 8151 dated 12. 09. 1996 "" on amendments to the law No. 7513 dated 06. 16. 1992 related to the election of local government bodies. ""People's Assembly of Albania has significantly reduced the scope of the law nr. 8001, dated 09. 22. 1995. "On genocide and crimes committed in Albania during the communist regime for political, ideological, religious," and law no. 8043 dated 30. 11. 1995. "" For the control of the official figure personalities which are relevant to the protection of democratic state. "

As the result of these amendments, the laws mentioned above is not apply either for Respondents listed or selected heads of municipalities. Referring to concrete figures, in terms of local elections and as a result of recent amendments to the number of cases that must be verified it is reduced by about sixty thousand(60. 000) for 5764 countries and eight hundred (800) for 64 countries.

## CONCLUSIONS

Just as nowadays the European Commission of Human Rights, New Court will continue to accept complaints from any person, organizations in governmental or groups of persons, who see themselves as victims of a violation by one of the States parties of rights guaranteed by Convention. These countries are engaged that in any way not to interfere with the implementation and effectiveness of this right

In such circumstances the European Court of human rights shows that it includes – and is taking over-all today important functions that of the Commission and the Court. Despite the forecasts, something is safe; the reform of the mechanism of protection of Human Rights, based on the European Convention is an important step for the future.

Obviously to give a solution to all jurisdictional issues is really too big commitment because of the number of decisions and a wide range of issues addressed by it. But it is interesting and important to do this thing and also should be noted that under paragraphs of these decisions could be found concrete ways to regulate the lives of individuals and activities of state bodies and authorities across European countries all around the world.

This picture shows a clarifying bridge in relation to such an arrangement since it has being made such efforts, quite successfully efforts in providing also an overview of the decisions of the Strasbourg Court. These leaders today still constitute its jurisprudence and consequently the activity of internal state court. For this reason, along with other things this Convention of the Council of Europe comes at a time giving the right result for a higher level of professional Albanian jurist consult from all "the Albanian law".

Certainly, the greatest role is played in the integration of Albania in these standards regulating European life today more than ever and tomorrow forever.

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