
European and International Law



Governance of Human Rights in Albania

Kasem CENAJ¹, Myzafer ELEZI²

Abstract: Restriction or control of democratic process itself for the executive power constitutes the essence of good governance and fair. As related to the quality of governance, are also issues of guarantees, respect and protection of fundamental freedoms and human rights. Significant role, in the process of governance, has the right to information, the right to dialogue, participation, those actions related to public activity. European Convention of Human Rights is the basic principles of all member states of the Council of Europe, to show and measured democracies values, peace and justice. All member countries, including Albania have included in the normative provisions, laws on human rights, based on the principles and decisions of the European Convention on Human Rights, which was developed in the 4 November 1950. The purpose of the article is to give an overview of governance of human rights in Albania. For the realization of the article are exploiting academic publications and official reports of important organizations and institutions. The article made analyze of important international Convents of Human Rights and the legal framework of human rights in Albania, to evaluate the governance of human rights.

Keywords: human rights; governance; European Convent of Human Right; Albanian Constitution; Committee of Helsinki

1. Introduction

Governance is the complex logical operations within a body or entity in accordance with their properties and the district. Governance has to do with the structure, practices and character of leadership, management, supervision, and care exercised by taking responsibility for a particular entity, in order to effectively carry out its mission, and to meet its goals and objectives. From time to time, human society has evolved and changed, and the same thing happened with the same manner or

¹ European University of Tirana, Albania. Tel.: 00355695527763. Corresponding author: myzafer.elezi@gmail.com.

² Lecturer at the Department of Law, of the University of Vlora "Ismail Qemali", Neighborhood "Pavarsia", Vlorë, Albania. Tel.: 00355695527763. Corresponding author: myzafer.elezi@gmail.com.

governance systems. Every governance system has its own features and characteristics. However, today the world is more and more focus on strengthening democracy as the best way of governance.

Democracy is important as the governance system as for humans, it is important for them to feel important in governance process, by taking part in decision-making or taking part in debates and government take into consideration public opinion of citizens. Depending on the context and the overriding objective sought, good governance has been said at various times to encompass: full respect of human rights, (UNHR, 2012)

Democracy is a political system where people exercise power, because people have the right to participate directly or indirectly in making binding collective decisions through competition so finally resolved alternatives are those that provide support of the majority. As such, democracy is closely associated with the freedoms and human rights. The problem of good or bad governance isn't born today, but he has been continuously a disturbance. The Constitution expresses simultaneously "*a symbolic value, a philosophical value and a Legal value*".

The protection of human rights is furthered both at the international and national levels of governance. There is an interface between the two levels as international human rights law obligations of states must be implemented into domestic laws and procedures in order to obtain effective enforcement of these rights in most cases. (Reif, 2000)

To accomplish this main task he greatly relies on the devotion, hard work and integrity of his experts and staff. He intends that individuals enjoy human rights and freedoms without having to address the case to the judiciary. (Avokati Popullit, 2009)

Constitution of the Republic of Albania, in Section 3, highlights that the Albanian state, is based on respect for and protection of human rights and freedoms. According to this article, the right forms the basis and limits of state activity, and that these rights are indivisible, unalterable, inviolable, and stay in the foundation, of all public order. The Constitution of the Republic of Albania cites concrete many other points for human rights and legal obligation to protect them. Looking at the relationship between state and citizen constitutional order, evidenced that the rights of Albanian citizens are protected and that guaranteed.

The human rights and freedoms are not an issue nowadays or modern times, they are fragmented in the geographic distribution, throughout the world and at any time, only that the level of preparation, establishment, implementation, was not the same. The idea of equality of all people is already developed in ancient Greek philosophy. This tradition, is developed further in early Christianity, and still further in other faiths. Human rights have undergone continuous transformation process reflecting development of human society.

The paper has as its aim, the interpretation of legislation regarding to respect for human rights, and analysis of the factual situation in this regard by the state institutions, which are at the center of their fundamental freedoms.

2. Albanian Legislation in the Area of Respect for Human Rights

The human rights and freedoms are not a nowadays issue or modern times; they are fragmented in the geographic distribution of conditions in the entire world, and at any time only that the level of preparation, establishment, and implementation wasn't at the same. The idea of equality of all people is already developed in ancient Greek philosophy. This tradition, is developed further in early Christianity, and still further in other faiths. Human rights have undergone continuous Fourier process, reflecting the development of human society.

Elements of protection of human rights in Albania found in the document that is the foundation of the state Constitution but in its domestic legislation and specifically in the Code of Criminal Procedure but also in the internal regulations of the national institutions.

Albania's Constitution Article 3 states that the Albanian government has to respect and protect basic rights and freedoms. Sips her right constitutes the basis and limits of state activity, and that these rights are indivisible, inalienable. The inviolable and underlie all public order. The Constitution of the Republic of Albania cites many other points to concrete human rights and legal obligation to protect them. Looking at the relationship between state and citizen constitutional order, evidenced that the rights of our people are protected and that guaranteed.

2.1. What is foreseen by Code of Criminal Procedure of Albania for human rights?

Criminal Procedure Code also provides for a special Sub restoring of human rights when they are unjustly violated. Specifically Article 9, section "Restoration of human rights" provides that: "Persons who unlawfully prosecuted or punished unjustly returned rewarded for rights and suffered punishment." (Code of Criminal Procedure, 1995).

The rights of persons convicted by the court

This category of persons who for a criminal offense committed sentenced to a final court verdict and are serving a sentence in jail or are being investigated or tried and are in pre-trial detention with internal by laws enjoy their human rights. Here we can mention some of their rights:

- humane treatment, equally and without any discrimination to open or secret on the basis of faith, religious affiliation, ethnic, political, social position etc.;
- he assured the meeting, correspondence, telephone conversations with lawyers having enough time to complete confidential;
- it provided separate sleeping in bed with sleeping clothes according to weather conditions;
- u food provided three times a day;
- have a personal account, which you can use for their needs;
- meet with families of their relatives and receive food and clothing from them, according to rules 4 times per month;
- to medical care 24 hours under the care of medical personnel in cooperation with the prison hospital and health relevant state bodies, as well as private visits with their costs;
- submit requests and complaints to the prison administration personnel, as well as any other institution and receive a response within legal limits;
- to ensure the rights and privacy of correspondence;
- have the right ventilation;
- participate in recreational activities, education and employment, which are organized by the prison administration.
- exercise faith and religious rituals;
- social assistance be provided legal and psychological counseling;

- foreign nationals are eligible to receive diplomatic contacts with their country, and are aware of their rights and duties. (General Regulation of Prisons, approved by Decision Of Council of Ministers no. 187 dated 17.03.2010).

3. Features of Human Rights

Human rights are a concept that differs clearly from several features like universalization and internationalization. Human rights are universal ideas that are accepted by all states and societies, regardless of historical, cultural, ideological, and economic changes. Declaration of human rights is today accepted by all states, even those dictatorial, which assisted at the time of its approval. Values which are built on human rights have existed for centuries and they represent the main needs rights and responsibilities of people.

Elements of protection of human rights in Albania found in the document that is the foundation of the state Constitution, but in its domestic legislation, and specifically in the Code of Criminal Procedure, but also in the internal regulations of the national institutions.

These values have universal and common character to all mankind, regardless of cultural differences between people and nations, as is common human dignity, the same and only (Daci, 2001).

Given the fact that human rights are accepted by each country, and around the world, talking constantly to improve the institutions that care for the protection of human rights and their implementation by the state, nowadays human rights are international affairs concept.

In particular, after World War II, the process of internationalization is developing rapidly. Today the issue of freedoms and human rights is an issue addressed by diplomatic activities. Core values that lie in the core of the idea of human rights are: human dignity and qualities, which are a consequence of their freedom, respect for others, anti-discrimination, tolerance, justice and responsibility.

4. European System of Supervision that Human Rights

European System of supervision of human rights is created and functions in the framework of the Council of Europe, a regional international organization,

comprising most of the countries of our continent. Rights guaranteed in the European Convention, implemented in national and international level. Surveillance system that the Council of Europe, based on the activity of the three main institutions, which are: the European Commission of Human Rights, the Committee of Ministers of the EC, the European Court of Human rights.

In the ratification of the European Convention, every state recognizes the jurisdiction of the Commission to receive complaints regarding the content of the treaty violation. Country complainant is not required to show particular interests, on the issue presented for proper review, or that the victim of violated human rights. The right of an individual to submit a complaint against a state before the European Commission, conditioned by prior knowledge of the state in question, of the right of individual appeal, which is realized through a special declaration, under Article 25 of the Convention.

Article 26 of the Convention provides for the request for the Commission to engage in consideration of the appeals only after they exhausted all internal instances under the rules of international law and within 6 months from the time when it is received final decision at the international level.

The Committee of Ministers is the highest political body of the EC, and develops its activity in the plenary sessions. During the review and decision making, whether a matter constitutes or not constitute a violation of the Convention, proceeded by a 2/3 vote, and parties to the dispute have the right to vote also. Despite being a political organization the Committee of Ministers has been able to avoid the examination of political motivated cases and in general has accepted the proposals of Commission cases of violation of the Convention.

Decisions of the Committee of Ministers are mandatory for Parties States on the basis of Article 54 Committee of Ministers, tasked to ensure implementation of the decisions of the European International Court.

The European Court of Human Rights is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights (Council of Europe, 2013)

The European Court of Human Rights is composed by judges, appointed in each State, acting, in a personal capacity and is grounded in Strasbourg. The mandate of judge, comprise a limited advisory role, as well as substantive jurisdiction only in

those cases where states expressly accept such a thing, through a declaration under article 46.

The individuals have the right to present their complaints before this court. Also this right is for the committee, party states, whose citizens are victims of violations, states parties to submit the case to the Commission, and the states party against whom complaints can be filed. Decisions of the European Court contain three basic elements: determining guilt; Receipt of legislative measures for the prevention and restoration of the offense; payment of compensation.

European System for the Protection of Human Rights has some regional mechanisms, which are developed to serve the cause of protection and freedom of human rights. UN system for the protection of human rights is a universal system, as the highest numbers of Member States are part of this system. (Daci, 2001)

European regional system, consisting of three different systems, where each of them consists of a large number of instruments and organic, within the Council of Europe, European Union, and the Organization for Security and Cooperation in Europe . These systems are connected to each other, and cooperate closely with each other.

“Globalization has brought about new challenges related to the universal respect for human rights,” said Ambassador Eugen Wollfarth, the Head of the OSCE Presence in Albania. *“However, the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’, as stipulated in the Universal Declaration of Human Rights signed 62 years ago, and this principle should always underlie state policies and interaction between the authorities and citizens.”* (OSCE, 2010)

European Union, aiming to further improve the standards of human rights and fundamental freedoms, and expanding catalog, compared with those that provide EC, on 12 December 2000, adopted the Charter of Rights and Fundamental Freedoms. Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice. (European Union, 2010)

The EU Charter of Fundamental Rights complements, but does not replace, national constitutional systems or the system of fundamental rights protection guaranteed by the European Convention on Human Rights (European Commission, 2013).

5. Human Rights in Albania

Human rights principles provide a set of values to guide the work of governments and other political and social actors. In this aspect, apart from the protection of human rights, one of his main intentions is to develop what is called *culture of good governance*. (Avokati Popullit, 2009)

They also provide a set of performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures. On the other hand, without good governance, human rights cannot be respected and protected in a sustainable manner. (UNHR, 2012)

Human rights are a vital, indispensable and irreplaceable for modern society, without which they can not function and therefore can not developed. Human rights from the legal point of view, can be defined as a set of relationships between the individual and the state. According to the modern concept, human rights are understood as a set of guarantees for individuals against state power, which in the hands of governing people has a tendency to become a despotic power. A different attitude, sees the concept of human rights closely linked to the notion of the state of right as a set of norms that derive from the state and where the individual occupies a central place. (Daci, 2001)

In their substance, human rights, claim that every human being, in every society, is equipped with the right, that you are recognized and simultaneously, to respect the autonomy, and you met the basic needs for living. The Constitution of the Republic of Albania, has devoted a significant part of the rights and fundamental freedoms the second part of her which is expressed by the sixth chapter, from Article 15 to Article 63.

In the Chapter 1 of the Constitution of the Republic of Albania, are expressed general principles of human rights, which are indivisible and inalienable and

underlie all the legal, government and public bodies, must respect of human rights and freedoms, and to contribute to the fulfillment and completion.

Limits the rights and freedoms provided can be established only by law in the public interest or for the protection of the rights of others. In Chapter 2 of the Constitution of Albania, talk about personal rights and freedoms. Article 21 says "life is protected by law". Other leaders speak of freedoms and political rights, economic, social, cultural, and social objectives Bar people.

The institution of the People's Advocate that was anticipated for the first time in the Albania's Constitution approved in November 1998, after 8 years of democratic changes is a great success and important victory on the part of the Albanian People. It is the first time in the history of Albania that its Constitution provides for the Institution of the People's Advocate, guaranteeing in practice the implementation of fundamental human rights in Albania. (Avokati Popullit, 2009)

In the Article 60 of the Constitution of the Republic of Albania "*The People's Advocate defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration*". With the competencies entrusted to the People's Advocate, he can conduct independent, detailed investigations and come out with objective results intending to restore the violated laws and human rights. (Avokati Popullit, 2009)

The promotion of human rights is part of the Presence's mandate. The Presence supported the creation of the Office of the People's Advocate and continues to assist this institution. Project activities in the area of human rights include strengthening the rights of vulnerable groups, including members of minorities. These efforts focus, inter alia, on the development of systematic protection for children, in particular for those in conflict with the law, and improving protection from domestic violence. (OSCE, 2013)

Principals are the basic document adopted by General Assembly of United Nations which provides for the standards of the functioning of the National Institutions in Promoting and Defending Human Rights. People's Advocate has been functioning as such for years. (Avokati Popullit, 2009)

Albanian Helsinki Committee, is the observation of respect for human rights and freedoms, and to throw them in place, sensitization of citizens about the protection of their rights and freedoms, improvement of legislation and law enforcement practice. The Albanian Helsinki Committee, founded in 1990, was the first human

rights organization established in Albania. The AHC monitors respect for human rights and fundamental freedoms, works toward the reinstatement of rights that have been violated, provides specific recommendations for the improvement of legislation and law enforcement, and raises citizen awareness about human rights. (AHC, 2012)

The 10th anniversary finds People's Advocate Institution with a consolidated, tripled status: Ombudsman Office, National Institution for the Promotion and Protection of Human Rights; National Mechanism for the Prevention of Torture. (Avokati Popullit, 2009)

6. Conclusions

In the framework of respect for human rights, Albanian legislators, by special law, have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and its additional protocols. (Law no. 8173, dated 31.07.1996). Albania has ratified the European Convent of Human Rights and all institutions are obligated to respect the human rights in all function and level of governance. Under its obligations the Convention death penalty has been removed in the Criminal Code of the Republic of Albania by the Constitution. In all educational institutions have specific modules related to human rights, protection and compliance.

The Ombudsman Institution in addition to other duties has the protecting the rights and freedoms of citizens, and every year reports on the situation of respect for human rights in the country. A special significance role in relation to human rights, has Helsinki Committee and other nongovernmental organizations and nonprofit in our country, which through their activities, promote freedoms and human rights. Despite the done work in the field of human rights is still more to be done continuously.

In the framework of Albania's integration into the EU one of the country's obligations, is the respect of human rights and fundamental freedoms in all sectors and organizational levels, including respect for the rights of persons who are deprived from freedom by court order. Summing of human rights in Albania, which are protected by law, they include some areas, such as:

- the right to life (prohibition of torture, prohibition of slavery and forced labor, the right to liberty and security, the prohibition of discrimination);

- rights in private terms (respect for private and family life, freedom of thought, conscience and religion, the right to marry, to education, more medical assistance, etc.);
- Rights in connection with the elections (the right to vote and be elected, to protest or assemble, effective solutions etc.).
- Rights in the legal field (right to a fair hearing, not punishment without law, no punishment twice for the same offense, the right to legal defense etc.).

As above, given that these rights are sanctioned by law, it is important to respect their practice of law enforcement institutions in the country, which should have priority observance of human rights in the country. With these legal improvements, we can say that Albania has formally aligned its domestic legislation with that of EU countries regarding human rights in the country. However, much remains to be done in this direction in the future.

6. References

- AHC, 2012. *Civic Solidarity*. [Online] Available at: <http://www.civicsolidarity.org/member/148/albanian-helsinki-committee>. Accessed 14 November 2013.
- Avokati Popullit, 2009. *People's Advocate in Albania*. Tirana: People's Advocate of the Republic of Albania.
- Council of Europe, 2013. *European Court of Human Rights*. [Online] Available at: http://www.echr.coe.int/Pages/home.aspx?p=court&c=#n1354801701084_pointer. Accessed 27 December 2013.
- Daci, J. (2001). *Te drejtat e njeriut*. Ist ed. Tirana: SHBLU.
- European Commission, 2013. *European Commission Justice*. [Online] Available at: http://ec.europa.eu/justice/fundamental-rights/charter/rights-breached/index_en.htm. Accessed 13 11 2013.
- European Union (2010). CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION. *Official Journal of the European Union*, C(02), pp. 83-389.
- OSCE, 2010. *OSCE Presence in Albania*. [Online] Available at: <http://www.osce.org/albania/74551>. Accessed 27 December 2013.
- OSCE, 2013. *OSCE Presence in Albania*. [Online] Available at: <http://www.osce.org/albania/43321>. Accessed 12 December 2013.
- Reif, L. C. (2000). Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection. *Harvard Human Rights Journal*, 13 (Spring), pp. 1-69.
- UNHR, 2012. *Good Governance and Human Rights*. [Online] Available at: <http://www.ohchr.org/>. Accessed 23 January 1996.