

Dr. Blerina SADIKU

**INTERNATIONAL LAW AND HUMAN RIGHTS
IMPLEMENTATION: ALBANIA AFTER THE FALL OF
DICTATORSHIP (1990-2018)**

Abstract:

International law is one of the main legal instruments which has influenced the implementation of Human Rights in various countries, especially in the last decades. Conventions regarding the protection of these kind of rights have gained a substantial importance especially after the Cold War. Nevertheless, the protection of human rights is still one of the most debatable issues among scholars, authors, and other societal actors. However, this paper will focus on the progress that Albania has made in the context of the Human Rights after the fall of dictatorship, since only at this point Albania was ready to embrace the international system's set of values. During the early 1990s, several international actors played a major role in regard to human rights in the country [Albania]. Not only its political system was changed due to the international intervention, but also its economic and societal environment was considerably transformed. However, this paper aims to analyze the Albanian context regarding some of the main Fundamental Human Rights like the protection of human dignity, the right to life, the freedom of expression and the right to a fair trial, since these were some of the basic Human Rights which were suppressed under the dictatorial regime. Furthermore, this study will also focus on the actual debate of Human Rights by analyzing the right of good administration as one of the main fundamental rights that individuals should enjoy nowadays, as it is stated in the Charter of Fundamental Rights of the European Union. Despite the fact that

Albania has shown substantial progress in this background [amelioration of Human Rights] since the fall of dictatorship, according to several international organizations' reports there is still considerable work to be done in this background.

Keywords: *Albania, Human Rights, Good Administration, International Organizations;*

1. Introduction

The system of Human Rights and Freedoms has been established in 1948 through the Universal Declaration of Human Rights by the United Nations. The discussions concerning the human rights date back to antiquity. Nevertheless, the conceptual point of view of what constitutes "human rights and freedoms" has changed throughout the years and most probably it will continue to change in the future considering the complexity of issues that arise as a consequence of the needs that each human being holds.

After the Universal Declaration of Human Rights by the United Nations, other international organizations were created with the aim of establishing and upholding peace among countries. The Council of Europe was the first organization in the European continent which aimed to create the system of human rights, among its other aims which concerned establishing and maintaining democracy and the rule of law in Europe. Later, the European Community which became afterwards known as European Union (1993) aimed first of all the achievement of peace among European countries through constructing economic ties among them. Despite this organization's importance in the continent, the European Union work on the protection of the Human Rights has embraced substantial importance only after the ratification of the Treaty of Lisbon (2009) together with its instruments like the Charter of Fundamental Human Rights. Before this period, the Union has closely collaborated with other international organizations on this field.

The protection of Human Rights would have never been achieved without the change of certain political regimes in various countries. During the late 1980s and early 1990s, Albania started a noticeable era of political transition. Since these years, the country has

¹ been eager to embrace the democratic values, which are strongly supported by various international organizations. At the end of the Albanian dictatorial regime, the state borders were opened for the vast majority of individuals, considering that this right was previously denied to the Albanian population.² As a consequence, several international actors were established in the country in the short and long term, in order to supervise the country's developments mainly³ in the field of Human Rights. As reported in a Human Rights Watch's document, some of the democratic values on which Albania had to pay attention urgently were: the judicial and political system and the restriction of state actors' power, the penal code, the freedom of expression, the right of association and peaceful protest, the rights of minorities, women, homosexuals and other previously denied fundamental rights.⁴ However, the country has made notable progress in the last decades. Nowadays, Albania has shortened its deadline regarding the negotiations of membership with the European Union, since it has almost implemented the required criteria. Furthermore, the last reports of the European Commission, of the US Department of State, of the United Nations⁵, the Council of Europe⁶, and the OSCE/ODIHR⁷ on Albania

¹ Albania is still aspiring to fully adhere to the European Union.

² The free movement of individuals.

³ Albanian state and society were going through considerable uncertainties after the fall of dictatorship. Therefore, the international actors deemed necessary a first intervention on the judicial and political system, rather than other fields. Consequently, the most important background that needed an immediate intervention concerned the Human Rights, since by limiting the state's power towards the individual, the latter had major possibilities to enjoy more of the previously denied human rights during dictatorship.

⁴ See: Fred Abrahams report of Human Rights Watch/Helsinki (May 10, 1996)

⁵ Through the Office of the High Commissioner for Human Rights.

⁶ Through the Commissioner for Human Rights.

⁷ OSCE- Organization for security and co-operation in Europe; ODIHR- The office for democratic institutions and human rights.

indicate periodically the progress of the country in the field of Human Rights by identifying the current unsolved problems which need an immediate attention. There are also many other international actors that operate with Albanian society's representatives through specific programs on Human Rights, as it occurs in the implementation of projects which aim the improvement of living conditions, for example by constructing shelters or/and schools in the poor areas of the country and other programs aiming at improving the educational level of the marginalized individuals.

Despite the country's willingness to adhere to international organizations and their respective projects aiming at the improvement of the Fundamental Human Rights in Albania, the country needs to act further towards this direction. This paper aims to test the following hypothesis: "International Organizations and International Law have played a crucial role in the Albanian context of [Fundamental] Human Rights' Implementation in the aftermath of the country's communist regime". In order to achieve the aim of this paper, this study will mainly provide with a comparative analysis of the main international organizations' reports for Albania's progress as a country, by focusing especially on the major developments during the timeframe 1990-2018.

2. Legal Framework and Human Rights Implementation in Albania during the 1990s

After the fall of communism in Albania, the country underwent quite a long political, economic, and societal transition. Despite this fact, many initiatives in the legislative, economic, political, and societal field were initiated and finalized within the respective timeframes. Before these achievements, Albania had opened its borders towards the "foreign world", in contrast to what occurred during the dictatorship period in which only few individuals had the right to travel abroad, in very specific conditions. In addition during the communist period, the society was closed and dogmatized according to this ideology.⁸ None could express their non-

⁸ See: Akademia e Shkencave e Shqipërisë. p. 168-231; 274-301

communist views, and those who did were punished in various cruel forms like imprisonment, and other heavy physical maltreatments.⁹

However, after the 1990s, the country experienced chaotic changes. There occurred massive immigrations, while on the other hand, the Albanian society was experiencing the ideologic gap of the transition and its subsequent consequences. Nonetheless, the political actors of the time tried to reconstruct and improve the existing structures of the state and society, but this class of the society was also unclear about the evolution of changes that were occurring in this period.¹⁰ However, many efforts were made by the existing political and societal actors. Albania tried to establish connections not only with its neighbor countries but also with other countries, as well. It started to adhere to the international norms, through becoming member of various international organizations of political and economic mission, and other types of international organizations, as well.

Initially, in 1991, a constitutional law was adopted.¹¹ Its article I recognized Albania as a Parliamentary Republic, whose sovereignty derived from its population and belonged to it, while on the other side, the previous Albanian Constitution 1976 [dictatorial regime] had “closed every possibility for the freedom of expression and act” by the citizens of the country.¹² The provisional constitutional law of 1991, transformed all the communist concepts of the previous legal acts. Article II recognized Albania as a juridical and democratic state, in which the human dignity, rights and freedoms, equality in front of the law, plurality, and other democratic concepts belonged to the state, and the latter “has the right to uphold them.”¹³ However, despite these democratic concepts the Albanian society was not totally ready to face the new changes, therefore, despite the

⁹ See: Akademia e Shkencave e Shqipërisë. p. 188-194

¹⁰ Alimehmeti, Z. “Historical Emerging”,

http://www.cecl.gr/RigasNetwork/databank/REPORTS/r9/AL_9_Alimehmeti.htm

¹¹ Law 7491/1991

¹² Akademia e Shkencave e Shqipërisë. *Historia e Popullit Shqiptar*. Vëllimi i IV-t. p. 301. See also: The Statute of People’s Republic of Albania 1946, the Albanian Constitution 1950, and the Albanian Constitution 1976, note: the change on provisions regarding the private property.

¹³ Law 7491/1991

legal initiatives, in practice these provisions could not be accomplished properly. Therefore, the road to the “democratization” of the country was long and the same challenge occurred as a consequence to the human rights’ protection.

Two years later, law no. 7491/1991 was amended through the adoption of law no. 7692/1993.¹⁴ Considering the multifaceted difficulties that the Albanian society was going through¹⁵, it was quite impossible to draft an adequate law in the field of Human Rights, therefore this law came up as a translation of the provisions of the European Convention on Human Rights (1950).¹⁶

One of the first and most important initiatives that the “newly” democratic Albanian state undertook was the abolishment of death penalty which entered into force with the new Constitution of 1998. This provision came as a result of a gradual change in the legal system of the Albanian Republic, since it was a criteria for accession to international organizations like the European Union, the Council of Europe, the OSCE and other international organizations.¹⁷

Another important step in the field of Human Rights was the creation of the People’s Advocate, following the Constitution of 1998. Unlike the dictatorship period, when individuals could not appeal to this type of institution, the early 1990s brought in more possibilities for individuals to demand for their rights. In this field, there emerged another institutional improvement, regarding the establishment of a Constitutional Court, which together with the Albanian Ombudsman could give to the country’s

¹⁴ Law 7692/1993

¹⁵ In 1993 the Albanian society had not overcome the gap of transition between two different ideologies [communism-democracy]. In 1996, Albania was still suffering the consequences of the transition. For more details see Human Rights Watch Report by Abrahams 1996.

¹⁶ Alimehmeti, Z. “Historical Emerging”,
http://www.cecl.gr/RigasNetwork/databank/REPORTS/r9/AL_9_Alimehmeti.htm

¹⁷ See also: Alimehmeti, Z. “Historical Emerging”,
http://www.cecl.gr/RigasNetwork/databank/REPORTS/r9/AL_9_Alimehmeti.htm ;
Abrahams 1996, p. 28- 30.

population the right to appeal for any issue regarding the infringement of their human rights.

In 1995, Albania became a member of the Council of Europe, which is one of the most important international organizations that aims at upholding human rights among other democratic values for states and societies. Especially, after the second half of the 1990, the Albanian state conveyed an increased awareness towards the human rights. After the accession in the Council of Europe, the country [Albania] signed and ratified various international legal instruments in the background of human rights. It ratified the European Convention on Human Rights (1950), the Framework Convention for the Protection of National Minorities and Explanatory Report (1999), and other international documents like a series of legal instruments of the United Nations Covenants. Those conventions are: the International Convention on the Elimination of All Forms of Racial Discrimination ratified in 1994, the International Covenant on Civil and Political Rights which was ratified in the early years of the political transitional period (1991), the International Covenant on Economic, Social and Cultural Rights (1991), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1994), Convention on the Rights of the Child (1992) etc.

According to the Albanian Constitution (1998), article 122, paragraph II, grants the international agreements the right to prevail in front of the national law in those cases when the latter is in conflict with the first. Therefore, the state grants to the individual these Universal Human Rights in front of the country's courts. Despite this fact, Albania faced several problems during the 1990s, since the rights and freedoms were not fully respected by the state authorities, and other interested parties, considering the difficulties of societal and political transition of the country. Since the approval of the Albanian Constitution (1998), the country and its society were facing persistent challenges in regard to the political and judiciary system.

From the early 1990s, legal reforms were implemented aiming at the improvement of the existing legal system, in order to bring more benefits to

the society. Nevertheless, the problems continued to persist notably, despite all the improvements that were made in the legislative framework of Albania. Two of the most marginalized categories during this time in Albania were women and homosexuals.¹⁸ During dictatorship, women were supported by the state not only in the legislative measures but also in the everyday life. They were considered an important category in the Albanian society. Meanwhile, in the 1990, women's participation in the everyday life was visibly limited.¹⁹ On the other hand, homosexuality was considered a crime in Albania up to 1995. After the approval of the new penal code, this phenomenon ceased to be considered a crime, but the representatives of this societal groups were mistreated even by the state's representatives, i.e. by the police, which were supposed to protect the dignity of every citizen of the country.²⁰ In addition to the various statal reforms, the Albanian state gave attention to minorities, as well. In November 1993, the Albanian government established the Office for Ethnic Relations.²¹ Since 1990, Albania tried to reestablish the relations of good neighborhood. One of its most sensitive issues concerned the respective minorities' issues with Greece.²² Therefore, the establishment of this office was an important step towards minorities rights', as an important field of the protection of Human Rights.

The right of "good administration" during the 1990s, was undermined by the political influence in the public sector's recruitment. This concept [good administration] which is nowadays considered as a Fundamental Human Right by the Charter of Fundamental Rights of the European Union, is one of the main challenges of the Albanian state, as it is also stated in the last Progress Reports of the European Commission for this country.²³ However, the political influence in this context during the 1990s was considerably noticeable in comparison to nowadays. In addition, the right

¹⁸ For more details see: Abrahams 1996 124-129.

¹⁹ Ibidem, p. 126-128; see also: US Department of State 2000.

²⁰ Abrahams 1996, p. 129.

²¹ Abrahams 1996, p. 96

²² Sadiku 2016

²³ Albania Progress Report 2016, p. 4 and Albania Progress Report 2018, p. 5.

for a fair trial during the 1990s was not fully granted to individuals also due to various challenges which have persisted in our society since the fall of dictatorship, like corruption²⁴ and political influence as well.²⁵ Another issue within this context regards the role of the police. The latter often mistreated the detainees²⁶. During the same period, the Albanian Parliament approved also new legislative measures which limited the police' power in the background of searches. As Abraham states, these measures were an important step in accordance with the principles of international law, which aimed especially the protection of right to privacy.²⁷

Furthermore, several improvements could be noticed in the context of freedom of speech, as the Human Rights Watch's Inspector Fred Abrahams observed that more than 200 newspapers and magazines were published after the fall of dictatorship though not periodically,²⁸ which means that the Albanian citizens were considerably freer to express their thoughts in contrast to the communist period. Yet, the most notable journalists of the 1990s in Albania were target to attacks by their adversaries²⁹. Not only journalists, but also several representatives of the judiciary system were subject to attacks during this period, even by the existing statal actors.³⁰

In 1997, the Albanian state lost its control over its territory and population due to the civil war. This fact was a "blackout" to all the progress that was achieved up to that period of time. However, after this regressive period, the political and civil society actors of the country restarted to establish the lost connections with other international actors. On the other

²⁴ See Koxhaj 2002, p. 254; also see: Abraham 1996, p. 26, 27, both these authors put an emphasis in the legislative vacuum of the early 1990s [*refer to Law. 7256 on the Work Relations, as cited in Abrahams p. 26, 27*], which gave a visible space to the political influence in the recruitment process of employees in the public sector.

²⁵ See also: Abrahams 1996, p. 31. In Koxhaj 2002, p. 247-254, the author explains mostly the problem of corruption in the Public Sector in Albania during the 1990s and its underlying reasons.

²⁶ Abrahams 1996, p. 31, 32.

²⁷ Ibidem, p. 30.

²⁸ Ibidem, p. 63.

²⁹ Various individuals who did not agree with the exercise of freedom of speech by these journalists. See also: Abrahams 1996, p. 47, 81-88.

³⁰ Abrahams 1996, p. 20-21.

side, the latter actors were prompt to help Albania in overcoming the destabilized period. One of the first international organizations which decided to establish its presence in Albania was OSCE.³¹ Afterwards, due to the presence of these international actors and Albania's awareness towards the protection of human rights increased further. This fact came also as a result of the country's aspiration of adhering to the major existing international organizations, in particular the European Union.

3 Future Challenges in Albania's Human Rights Protection System

Albania has made considerable progress in the field of human rights.

Considering the fact that since

the fall of communism, Albania has improved its legal system and its respective implementation instruments especially due to the international actors' influences, one of the main fields in which Albania needs still to achieve further improvements, concerns the rights of minorities, which should be understood in a separated context from the minorities' rights, i. e. Albania has made notable progress on the official recognition of minorities, nonetheless, the vast majority of the Roma and the Egyptians live in very poor conditions.³² Therefore, the country needs to focus on guaranteeing these minorities the basic human rights before recognizing them within the context of minorities.

However, several challenges for other categories of the Albanian society still persist. The legislation regarding children and women still need stronger implementation instruments. UNICEF in Albania notes that "*the approved laws in the background of women and children's rights have not brought a significant change on their conditions and little improvement is expected in this regard until the mentality and others' behaviours change towards these categories of the society*".³³ On the other side, the legislative framework of the country is periodically enriched with additional measures:

³¹ OSCE Presence in Albania to be established, <https://www.osce.org/cio/52511>

³² European Commission, Progress Report 2016- Albania

³³ Unicef in Albania "Situata e fëmijëve në Shqipëri"
https://www.unicef.org/albania/sq/children_27588.html;

for example, Law no. 9970/2008 aimed to increase awareness on the society for what regards the gender equality issues.³⁴ There have also been implemented other legal initiatives on children's rights, as well.³⁵ However, the international actors in Albania are playing an important role, i.e. in this context UNICEF is one of the main partners of the country in regard to children's rights.³⁶ By the other side, one of the main legal initiatives on the background of women's rights is the right to be elected. According to the last Code of Elections in Albania (2017), the list of representatives during elections should be at list composed on 30% of it by women.³⁷

Human rights are constantly changing; thus they will change again in the future. Albania is a developing country, which aims to adhere to the European Union. Its progress in the political, economic, and societal field has been notable. Nonetheless, the country needs to further improve with the "newest" changes in the field of human rights. European Union has become more aware about the human rights context as its territory was further enlarged, because more territory means a larger complexity of issues. Before the European Charter of Fundamental Rights, the concept of "good administration" as part of human rights was almost unmentioned.³⁸

Albania is still not a member country of the European Union, nevertheless it should pay attention to this legal text [Charter of Fundamental Rights of the EU]. The legal term to represent "good administration" in the country was described with "the equality before the

³⁴ Considering the patriarchal pattern of the Albanian society, since the early 1990s, women have been a marginalized and discriminated part of the society in comparison to men, therefore these legal initiatives are thought to be more regarding the improvement of women condition rather than men. See: Law no. 9970/2008.

³⁵ See Unicef in Albania "Situata e fëmijëve në Shqipëri" https://www.unicef.org/albania/sq/children_27588.html; see also one of the latest legal initiative on children's rights: Law no. 18/2017.

³⁶ Unicef "Dhuna ndaj fëmijëve". https://www.unicef.org/albania/sq/children_28180.htm

³⁷ Kodi Zgjedhor 2017. Article 67. Paragraph 6. <http://qbz.gov.al/botime/Kodi%20Zgjedhor-2017%20faqe%20portret.pdf>

³⁸ See: Article 41. Charter of Fundamental Rights of the European Union.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

law”, while this concept [good administration] was generally included in secondary and tertiary legislation, i.e. in the Codes of Ethics of the respective institutions. Nowadays, in the background of European Union, the “good administration” is recognized as one of the main Fundamental Human Rights that states should grant to individuals. In this context, the Charter is binding only to the European Union member states, while for Albania this concept is still part of its delegated legislation. Even though, the concept of “good administration” has gained an increased importance in the last years since the country is aiming to fulfill all the criteria of accession in the European Union, and therefore the incorporation of “European values” in the country’s political and societal issues has a crucial “status” in Albania. The European Union is notably concerned regarding the concept of “good administration”, and therefore, even the Albanian state and its officials are expected to be more concerned in what regards this concept. However, Albania still needs further steps to take towards the good administration. As Profesor Krisafi notes in his work:

“Good administration can be achieved, among others, by putting a reasonable distance from the influence and interventions off the politics, from the determination to stay above the politics and political parties, in order to be next to everyone whose rights are disrespected, despite its national, ethnical, lingual, religious or political belonging.”³⁹

As the last Progress Reports of the European Commission for Albania note, the country’s public sector is still influenced by the political actors.⁴⁰ Therefore, this fact undermines the impartiality that should exist in this context and consequently the citizens of the country cannot fully enjoy their rights.

³⁹ Krisafi, p. 21.

⁴⁰ Albania Progress Report 2016, p. 4 and Albania Progress Report 2018, p. 3.

4. Conclusions

Albania's awareness in regard to the human rights field has started to emerge notably after 1990s. Before this period of time, the country was under the dictatorial regime which totally suppressed the Fundamental Human Rights of its citizens, nonetheless they were mostly granted several civil rights like the right to education, the right to work, the right to access freely to the health system etc. After the fall of dictatorship, the country underwent to a chaotic status of the society which totally broke up during the civil war in 1997, i.e. all the progress that was made up to that moment had to be re-established by the political and societal actors. Albania's progress towards the implementation of Human Rights started to gain a positive position only through the country's accession in various international organizations, in particular its itinerary towards the European Union has increased the country's awareness in the field of Human Rights' protection. The country has drafted various legal measures for several marginalized categories of the society as children, women, and LGBTi community, however it is notably difficult for our society to change attitude and the status of this categories unless the mentality changes⁴¹. The only way in which this societal mentality can change regards the influence that international organizations in the country should have through the implementation of various projects regarding the information and education of the interested parties aiming at the improvement of the respective categories of society in order to grant all of them their [Fundamental] Human Rights.

⁴¹ Unicef in Albania "Situata e fëmijëve në Shqipëri"
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