CONSTITUTIONAL COURT OF THE REPUBLIC OF ALBANIA

QUESTIONNAIRE FOR THE XVIIIth CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: THE RELATIONSHIP OF INTERNATIONAL, SUPRANATIONAL AND NATIONAL CATALOGUES IN THE 21ST CENTURY

I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I.I International catalogues of human rights (ECHR, UDHR and ICCPR)

- **In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?**

Constitution of the Republic of Albania has clearly identified the importance of international agreements in our domestic law, in which Albanian state is a party by accepting and ratifying them. According to article 5 of the Constitution "The Republic of Albania applies the international law that is binding upon it". Article 116 has foreseen the hierarchy of normative acts that are effective in the entire territory of the Republic of Albania, which ranks the international agreements directly after the Constitution and before the laws and other normative acts of the Council of Ministers. Article 122 of the Constitution has provided that "any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania" and "an international agreement ratified by law has superiority over the laws of the country that are not compatible with it".

Constitution has recognized the superiority of international agreements, but has not been contented with these wordings alone. It has dared to give a very special position to the European Convention on Human Rights, equalling it with itself. This very special position of the European Convention on Human Rights, as compared to the Constitution itself, the international agreements and the country laws, has been reflected in article 17, point 2 of the Constitution which provides that "these limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights".

- **What mechanism is used to invoke the international treaties in national court decision-making?**

The respective provisions of the Constitution of the Republic of Albania has ranked the international agreements directly after the Constitution and considered them as part of the internal legal system. Moreover, these provisions have provided for their direct implementation, giving to the international agreements a kind of priority over the laws of the country that are incompatible with them.

European Convention has a supranational and sub-constitutional status, because according to article 116 of the Constitution it is ranked over the laws of the country and after the Constitution. Due to the status that the Convention has taken in domestic legal order, everyone is entitled to file a complaint with the Constitutional Court and courts of the ordinary system for the protection of individual rights, invoking its provisions directly.

Based on article 17/2 of the Constitution, Constitutional Court has emphasized in its case law that the text of Convention, of this legal act of international law, serves as an instrument in the hands of judges, which helps them to interpret the fundamental rights and freedoms sanctioned in our Constitution in line with the spirit of Convention. Certainly, this requires very good knowledge and familiarization of judges with the Convention and case law of the Court of Strasbourg, in order to use it when interpreting/applying the law.

With regard to fundamental human rights and freedoms, the Constitutional Court has stated in its case law that: "ECtHR has an exclusive competence in our legal system. This competence has been acknowledged by our internal legal system, for the purpose of implementation of article 122 of Constitution and article 17, point 2 thereof which imply that decisions of ECtHR are directly applicable" (decision no.20, dated 01.06.2011). This is the reason why Constitutional Court has constantly referred to decisions of the European Court in its case law, acknowledging their direct effect in interpretation of constitutional standards on the human rights.

- **Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism?**

The direct implementation of the Convention and its priority over the country laws that are incompatible with it, the authority of the Constitutional Court to review the compatibility of laws not only with the Constitution but also with the international agreements, as well as the establishment of a minimum standard that does not allow the exceeding of limitations provided for in the European Convention on Human Rights, have given to it a quasi-constitutional position. For the first time, Constitutional Court has applied article 17/2 of the Constitution in the case of abrogation of death penalty in Albania, provided by the criminal legislation of that time. With its decision no.65/1999, it interpreted the right to life sanctioned by the Constitution in the spirit of European Convention and the case law of the Court of Strasbourg.

Whereas, it should be emphasized that, the approach of the Constitutional Court has not been very changeable regarding the position of ECHR in our internal legal system. Initially, through its decision no.6/2006 it has recognized to the Convention supra-legal powers, but not over the Constitution, the same as to any ratified international agreement:

According to article 116 of the Constitution, as an international agreement ratified by law, Convention is ranked immediately after the Constitution in the hierarchy of legal norms.

Later on, in its decision no.9/2010, Constitutional Court has changed its position making a step forward by invoking the standards of ECHR as well: "*By invoking the ECHR, Constitution has given to this document the value of a constitutional standard as to the limitation of human rights.* With this decision, Constitutional Court is full in line with the doctrine, recognizing to the Convention itself as an act the value of a constitutional standard only as to the limitation of human rights.

Referring to decision no.20/2011, it could be reached the conclusion that decisions of the ECtHR where Albanian state is a party, have general binding force and are directly applicable by national courts. As to the other decisions of ECtHR, Constitutional Court has recognized to them a guiding force, which helps the national judges to interpret the internal law in conformity with the Convention and the case law of ECtHR, accepting in this way the exclusive authority of the latter to interpret the Convention.

Taking into consideration the approach of our Constitution with regard to conventional law, recognizing to the ratified international agreements priority over the country laws that are incompatible with them, as well as the monist theory embraced by our Constitution, it could be pointed out that European Convention should be directly applied by the national judges, as long as the laws are not compatible with it. Respect for the European Convention and constitutional standards is an obligation not only for the Constitutional Court but also for the courts of ordinary jurisdiction, particularly the Supreme Court, due to its authority to review court decisions and unify judicial practice.

I.II Supranational catalogues of human rights (Charter)

Our country, Albania, is not member of European Union and our constitutional court does not apply the Charter or the case law of the Court of Justice of the European Union.

- **Is the Charter a point of reference to review the constitutionality of legal rules and/or decisions of public authorities, be it directly (a formal point of reference in some EU member states) or indirectly by "radiating" through the national catalogues (a substantive point of reference in other states)?**
- **Does the human rights case law of the Court of Justice of the European Union serve as guidance for the interpretation and application of the national catalogue in your country by general courts, or as a source for judicial law-making?**
- **Is the national impact of the Charter conditioned, in constitutional terms, by its essentially equivalent degree of protection afforded, or as the case may be in the EU member states, is it conditioned by making a request for preliminary ruling with the Court of Justice of the EU**?

I.III National catalogues of human rights

- **Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional order)? What is its structure?**

The greatest achievement of Constitution of 1998 lies in its modern and careful regulation of institutional and legal norms at the constitutional level, particularly of fundamental human rights and freedoms set forth in Part II, immediately following the Fundamental Principles of state formation. Among the values declared in Constitution of 1998, the first one is set out in the Preamble, as the determination of the people of Albania "… *to build a state of law, social and democratic, to guarantee the fundamental human rights and freedoms …with a pledge to protect human dignity and personhood*…"

What is its structure?

Constitution has provided for the recognition, guaranteeing and constitutional protection of human rights. It has also provided for an interesting and meaningful classification of categories of fundamental rights and freedoms: Personal rights and freedoms (Chapter II), Political rights and freedoms (Chapter III), Economic, social and cultural rights and freedoms (Chapter IV). Moreover, Albanian Constitution is characterized by some other elements that clearly affirm its innovative and modern spirit: the presence of a Chapter V entitled "Social Objective", of a Chapter VI defining the establishment and functioning of the People's Advocate, as well as incorporation of "European Convention on Human Rights" as an integral part of it, with quasi-constitutional rank and value.

- **What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?**

In our history of constitutional justice, fundamental human rights and freedoms have been regulated even by other constitutional acts since the creation of State and until the establishment of democracy after the 1990s. But these provisions were not respected as they remained inapplicable in the dictatorial regime. The so-called "catalogue of human rights" provided by the Constitution of 1976 is entitled just like its counterpart in the Constitution of 1946: "The rights and obligations of citizens", where the rights and obligations bore the same value. Even though the Constitution of 1976 provided for a formal catalogue of human rights, which contained several formulations that were accepted and used by the liberal-democratic constitutions, the general principles established in its Chapter I ("Social Order") constituted *de facto* and *de jure* absolute limitations for the realization of these rights, reasons for which this Constitution had a fictive character.

At first, law on the Main Constitutional Provisions of 1991 did not include a catalogue of human rights and freedoms. The main reason for this gap in the first Albanian constitutional charter after the fall of dictatorship was either the lack of time, in a historical period where events were rapidly developing, or the lack of experience and knowledge from the local lawyers of the theory and practice of human rights. Almost two years later, the Main Constitutional Provisions, after undergoing five other amendments earlier, were completed with a special Chapter entitled "Fundamental Human Rights and Freedoms".

The catalogue of human rights and freedoms in law on the Main Constitutional Provisions (LMCP) constituted a separate Chapter and had 41 articles, adapting an approach that does not hide the similarity with the European Convention on Human Rights. Like the latter, the catalogue

ranked a number of civil and personal rights, to continue with political rights and finally to be closed with some social and economic rights.

Constitution of 1998 has provided for the recognition, guaranteeing and constitutional protection of human rights. It has also provided for an interesting and meaningful classification of categories of fundamental rights and freedoms: Personal rights and freedoms (Chapter II), Political rights and freedoms (Chapter III), Economic, social and cultural rights and freedoms (Chapter IV). Moreover, Albanian Constitution is characterized by some other elements that clearly affirm its innovative and modern spirit: the presence of a Chapter V entitled "Social Objective", of a Chapter VI defining the establishment and functioning of the People's Advocate, as well as incorporation of "European Convention on Human Rights" as an integral part of it, with quasi-constitutional rank and value.

Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?

Following the examples of the German Basic Law, Italian or Polish Constitution, which at that time served as points of reference, the Albanian legislator chose to incorporate a long and comprehensive list of fundamental human rights and freedoms into the Constitution. The Albanian approach reflects at the same time the desire of a society, whose citizens' rights and freedoms were extremely denied for decades during the dictatorial regime. It tends to be not only a modern and western constitution, but above all an efficient one. Furthermore, a national catalogue with a wide variety of individual rights and freedoms, starting with those of civil (personal) character, to continue with those of political character and to be finally closed with economic, social and cultural rights is a clear indication of the inspiring influence of the great international catalogue of individual rights and freedoms (alias The International Bill of Human Rights). "Universal Declaration of Human Rights of 1948, as well as other documents of UNO, OSCE and Council of Europe, which together represent the international catalogue of human rights, served as a 'project' for building the new system". The classification of fundamental human rights and freedoms in the Constitution of 1998 is bounded by this 'project' as it takes into account not only the characteristics of rights and freedoms themselves, but also the international practice.

- **What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?**

The catalogue of rights and freedoms provided by the Constitution of 1998, with the exception of some elements of legislative technique (drafting), such as a more precise classification and structuring of regulations related among them – if we refer to its content, it does not introduce any new element that deserves to be emphasized as compared to the homologue provisions of the catalogue of fundamental human rights and freedoms in law on the Main Constitutional Provisions (LMCP) of 1991.

Is it undergoing a change?

Article 45, paragraph 1, of Albanian Constitution has stipulated that "*every citizen who has attained the age of 18, even on the date of the elections, has the right to elect and to be elected*", adhering to both national constitutional and state-forming tradition and the global consensus on this issue.

Paragraph 3 is the first and only amendment (so far) to a constitutional norm of fundamental human rights and freedoms catalogue. As part of the process of ensuring the integrity of persons elected, appointed or holding public functions (decriminalization), the constitutional legislator considered it necessary to further reduce the space protected by the regulation(s) provided for in paragraph 1 of article 45.

According to the amendments: "the citizens sentenced to imprisonment upon a final decision for commission of a crime, pursuant to the rules set forth by law to be approved with the three fifths qualified majority of all members shall be excluded from the right to be elected. In exceptional and legal justified cases, the law may provide for restrictions of the right to elect for citizens serving an imprisonment sentence, or the right to be elected prior to a final decision being rendered, or the citizens having been deported for a crime or for a very serious and grave breach of public security".

The previous regulation of this article excluded from the passive right to vote (only) citizens who, on day of elections, were serving the sentence of deprivation of liberty. The new regulation extends the scope of the restriction (narrowing the law) in order to include other former convicts who have completed their sentences on day of elections. Further details of the constitution have been allowed by the legislator, but only through an enforced law.

Is there a constitutional procedure for its modification or amendment?

The Albanian Constitution, in its article 177, provides for the procedure of reviewing itself. Unlike ordinary legislative acts, the initiative to amend (revise) the Constitution can only be taken by one-fifth of the deputies, while the draft submitted is approved only by a two-thirds majority vote. In any case, the draft could go directly to a referendum, if the same number of deputies decides so. When approved by the Assembly, the constitutional amendment is subject to referendum when this is required by one fifth of all members of the Assembly.

The formula for revising the Constitution of 1998 provides for the preservation of the foundation on which the Constitution stands, consisting of the great agreement of the main structures of society, represented by the deputies elected to Parliament. In this way, the Constitution of 1998 becomes a strong shelter for the fundamental human rights and freedoms enshrined in it. The provision of article 177/2 that "*No amendment to the Constitution may take place when extraordinary measures are in effect*." further reinforces this finding.

I.IV **The mutual relationship between different catalogues of human rights**

- **Can you give examples from the case law of your court related to the use of any of the international catalogues**?

After examination of the case, in its decision no.3/2004, the Constitutional Court declared: "*The prohibition of torture in the context of the sanctioning of other human rights in international acts constitutes a guarantee for the citizens not only against abuses of State, but also against*

abuses of individuals. The purpose of the provisions prohibiting the use of torture is to safeguard the dignity and physical mental integrity of the individual. [...]. As long as the prohibition of torture and maltreatment is defined as a human right, and while human rights are considered as indivisible, inalienable and inviolable, everyone has the right not to be subjected to torture or maltreatment, regardless of whether he is in the hands of a public official or an individual. The obligation of States parties to international treaties to respect and guarantee the prohibition of torture and inhuman or degrading treatment is not only an obligation for the State to protect its citizens against torture and ill-treatment by public officials, but also the obligation to take preventive measures to protect people from acts of torture and ill-treatment exercised by individuals."

With regard to the right to an effective remedy guaranteed by the Constitution and the European Convention on Human Rights and other international acts, the Constitutional Court in its decision no.15 / 2003 imposes on the legislator the duty not to obstruct individuals to exercise such a right, but to provide them with the necessary means for its effective exercise. The Constitutional Court states that: "*Article 8 of the Universal Declaration of Human Rights and Article 13 of the European Convention on Human Rights provide for the right to an effective remedy against a court decision. Article 2 of the International Covenant on Civil and Political Rights sets out the obligation for States to guarantee, through competent judicial, administrative or legislative bodies, the right of the individual to exercise the recourse and to create opportunities for the adjudication of such recourse*."

Even in its Decision no. 32 /2003 the Constitutional Court states that: "*Arbitrary avoidance of this competence of the judicial bodies when considering appeals against the legitimacy of public administrative acts makes it difficult or impossible the effectiveness of the remedy, which is an essential requirement of Article 13 of the Convention and Article 8 of the Universal Declaration of Human Rights*."

- **Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in light of the protection afforded?**

No, because Albania has no obligation to apply the EU Charter and therefore refers only to the ECHR as an integral part of its domestic legal system.

- **Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogues (NB: The application of the Charter is binding in EU member states subject to compliance with Article 51(1), i.e. its application is not discretionary.)**

N/A

II. SPECIAL PART - SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I Right to life

- **What is the original wording of the provision protecting this right in your national catalogue?**

CHAPTER II - PERSONAL RIGHTS AND FREEDOMS

Article 21
The life of the person is protected by law.

- **It is possible to restrict the right? If so, how and under what conditions?**

Concerning the restriction of human rights in general, Constitution of the Republic of Albania refers directly to the European Convention on Human Rights in its Article 17 when it states:

1. Limitations of the rights and freedoms provided for in this Constitution may be established only by law, for a public interest or for the protection of the rights of others. A limitation shall be in proportion to the situation that has dictated it.

2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.

The right to life cannot be restricted under any circumstances. By Law no. 9722 of April 30, 2007, the death penalty was also abolished by the Military Criminal Code, which provided for this punishment for serious criminal offenses committed in time of war.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

By its decision no.65, dated 10.12.1999, the Constitutional Court declared incompatible with the Constitution of the Republic of Albania and repealed the death penalty, in peacetime, which was provided in 16 provisions of the Criminal Code. After accession to the Statute of the Council of Europe, Albania had the obligation to ratify the European Convention on Human Rights, together with its Protocols. In order to formally fulfil the Albania's obligation to abolish the death penalty, it was put into motion the Constitutional Court. The Constitutional Court addressed this issue in the spirit of the ECHR as follows:

"...The basic principles of the protection of human life find full support in the constitutional provisions. Life is a right, a fundamental attribute of the human being, and when this life is taken away, or taken over by the state, the individual is at the same time eliminated as the bearer of rights and obligations. Human life is an indisputable value and is subject to constitutional protection, but that does not mean that the protection of human life at all times and in all circumstances must be the same, because it is influenced of a series of factors of different natures that the legislator shall provide by law. The legislator is allowed to make only the exceptions by law, when, as a result of the protection of a more important constitutional right, it is required to deprive someone of his life.

... Analyzed in the same line with the spirit of the Constitution and the European Convention on Human Rights, the death penalty is incompatible with the essence of these rights and freedoms. It is the denial of the right to life that the state realizes through its judicial power. The capital punishment is not related with the restriction, but with the final elimination of the individual from society.

Consequently, the limitations imposed by the Constitution, under the first paragraph of Article 17, should be understood only in cases where the legislator is entitled to envisage also the restriction of the right to life for the protection of the rights of others, not implying the deprivation of life, through

a court ruling, because the death penalty imposed by the court is neither an exception nor a limitation permitted by the Constitution.

The death penalty does not even correspond to the purpose of the criminal sentence, which includes several important moments that generally affect the convicted person, such as rehabilitation, isolation, effort to reintegrate him into society, etc. The other penalties in the Criminal Code, ranging from fines to 25 years imprisonment and life imprisonment, as an alternative to the death penalty, are completely sufficient to achieve the objective of criminal punishment, and when they are rigorously enforced by the judiciary, they have an undeniable influence on the punishment of the guilty party and on the effective fight against criminality.

The existence of criminality at the actual level, as well as the struggle for its continued reduction, are not inseparably linked to the presence of the death penalty, rather than to the weaknesses still observed in the work performance of the relevant bodies in the country regarding the detection of criminal offenses, apprehension and prosecution of perpetrators, and application of appropriate penalties against them. Often the pressure to maintain the death penalty, in addition to propaganda purposes, is used as a pretext to cover the weaknesses of specialized bodies and the insufficient work of the society to eliminate social causes of crime.

The provisions of the Criminal Code of the Republic of Albania which provide for the death penalty do not respect the spirit of the Constitution and violate the essential content of the right to life and human dignity. The provisions of the Criminal Code which deprive human life constitute in themselves a complete and irreversible elimination of human life and dignity. The execution of the death penalty against a given individual, as a result of even a subjective error, becomes irreparable and, therefore, the individual becomes unjustly the victim of this error.

The analysis of this constitutional provision in relation to the case in question shows that the restrictions of the right to life, as is the case with the death penalty, cannot be carried out, because that would violate and completely deny the essence of the provision. On the other hand, the restrictions provided for in the European Convention on Human Rights do not have to do with the death penalty as a criminal conviction."

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

The Constitutional Court of the Republic of Albania has followed and referred to the jurisprudence of international courts regarding the protection of this right and was based on ECHR.

II.II Freedom of expression

- **What is the original wording of the provision protecting this right in your national catalogue?**

Chapter II

PERSONAL RIGHTS AND FREEDOMS

Article 22

1. Freedom of expression is guaranteed.
2. Freedom of the press, radio and television are guaranteed.
3. Prior censorship of means of communication is prohibited.
4. The law may require the granting of authorization for the operation of radio or television stations.

- **Is it possible to restrict the right? If so, how and under what conditions?**

The freedom of expression provided for in the Constitution can be restricted only to cases provided for by law and which entail liability. Such case is article 120 of the Criminal Code which provides that: "Intentionally dissemination of statements and any other information known to be false, which affect the honour and dignity of the person is a criminal offense punishable by a fine or imprisonment up to one year."

Constitution also provides that: 1. The deputy is not held responsible for opinions expressed in the Assembly and votes cast by him in the exercise of his function. This provision is not applicable in the case of defamation. (Article 73)

With regard to the freedom of the press, Article 22/3 of the Constitution prohibits prior censorship of the means of communication, thus the essence of this freedom relies on absolute the freedom from prior censorship. The form of restricting freedom of the press is a restrictive measure of seizure, a measure that applies where the work is published and is intended to stop its spread.

Regarding the freedom of the electronic media, this is a right that is enforced through the legal framework, so, it is the legislator who has the right to impose restrictions and the extent of the freedom of communication, taking into account the technical conditions of the media (Article 22/4 of the Constitution). The requirement for licensing according to the criteria set out in the law is the restriction on the freedom of electronic media due to the avoidance of the dominant position created in this field.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

The Constitutional Court has dealt with freedom of expression in the following decisions:

In its Decision No. 16/2004, the Constitutional Court stated that: The freedom of expression constitutes one of the cornerstones of a democratic state. Without guaranteeing this right, we cannot speak of pluralism, tolerance and the establishment of free political will, which are so indispensable for a democratic society. The exchange of ideas and free information are among the most important and effective means of controlling democracy as a form of government. It is through these means that state power becomes more transparent, more effective and closer to the citizen. Freedom of the press is also the basis and precondition for securing a large number of fundamental rights and freedoms. For this reason, the application of this right requires in all cases to be widely understood and interpreted**...**

In its Decision No. 56/2016 the Constitutional Court emphasizes once again that the freedom of expression and the right to information provided by Articles 22 and 23 of Constitution, in addition to the subjective guarantee as fundamental constitutional rights, are also objectively linked to the principle of building a democratic state, which is stated in the Preamble of our Constitution. The implementation of this important principle includes also guaranteeing the freedom of expression, the freedom of press and the right to information, that are so necessary for a free constitutional order.

In the light of the foregoing, the Constitutional Court has paid particular attention to freedom of expression, emphasizing: "*Unlike the European Convention on Human Rights, our Constitution guarantees freedom of expression in the strict sense and the right to information in two separate provisions, namely Articles 22 and 23 thereof*."

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

The Constitutional Court of the Republic of Albania has followed and referred to the jurisprudence of international courts in relation to the protection of this right, in particular the jurisprudence of the European Court of Human Rights.

II.III Right to privacy/right to respect for private life/right to private life

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 35 of Constitution

1. No one may be obliged, except when the law requires it, to make public data connected with his person.
2. The collection, use and making public of data about a person, is done with his consent, except for the cases provided by law.
3. Everyone has the right to become acquainted with data collected about him, except for the cases provided by law.
4. Everyone has the right to request the correction or expunging of untrue or incomplete data or data collected in violation of law.

- **Is it possible to restrict the right? If so, how and under what conditions?**

When this right is restricted the legislator is obliged to determine by law the criteria of restriction (e.g. when an individual is obliged to make public information about him or her as it may be in the case of a investigation, when it is required for a high public interest, etc.)

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

The Constitutional Court has addressed this right several times in the following decisions:

In its decision No. 2/2017, the Constitutional Court analysed the Article 8 of the ECHR related to respect for private life. The Constitutional Court stated that the wording of Article 8 not only evidenced the negative obligation of public authorities not to intervene in private and family life, but also the positive obligation of the State to safeguard these rights as realistically as possible through the bodies of the three powers: the legislative, the executive and the judiciary. Respect for private life requires, in principle, no interference with the individual's decisions about how to make his or her life. Undoubtedly, even in this case, in principle, the intention of the Constitution-maker was precisely to guarantee the necessary space within which the individual could independently develop his personality. In any concrete case, the legitimacy or not of the intervention would depend largely on its intensity, the degree of infringement on private life, the necessity of such intervention on democratic society and the concrete reality that has dictated it, the effectiveness and proportionality of the purpose, which is intended to be achieved and the means used to achieve it. Above all, it should be borne in mind that the more the sphere of intimate or sensitive life is penetrated, the more the obligation of the public authority to protect private life increases. ...

According to article 17 of Constitution, restrictions on constitutional rights and freedoms may be imposed if certain conditions are met: to be established by law, for the public interest or for the protection of the rights of others; must be commensurate with the condition that has dictated them (the principle of proportionality); not violate the essence of freedoms and rights; and in no case exceed the limitations provided for by the ECHR. Therefore, this constitutional provision requires an assessment of the necessity of legal intervention by the State, depending on the nature of the right, the nature of the public interest to be protected, the concrete circumstances that dictate the interference to a minimum level and the least harmful in aspect of the human rights. The ECtHR has stated: "Whenever a State tries to rely on the principle of “democracy capable of protecting itself” in order to justify human rights interference, the State must carefully consider the purpose and consequences of the measures undertaken in order to ensure the achievement of the above-mentioned balance” (see Decision no. 9, dated 23.03.2010 of the Constitutional Court).

In its Decision 52/2011, the Court notes that the Law on the Civil Status does not provide for guarantees regarding the collection and use of “sensitive” personal data. No provision of this law refers explicitly and specifically to the Law on Personal Data. In this respect, the Court considers as essential the existence of a specific reference provision due to the "sensitive" nature of the ethnicity data. The Court highlights that the Law on the Civil Status does not contain any provisions on how this data will be used or on liability in case of misuse, which would be a very important guarantee for all citizens.

In light of this premise, the Court concludes that the provisions of the civil status law, subject to this constitutional review, by imposing the obligation to record data on “nationality” in the civil status registers, interfere with the private life of the individual, within the meaning of Article 35 of the Constitution. According to the Court, this interference causes a deviation from the constitutional principle of non-compulsory disclosure of personal data, including "sensitive" personal data, which is sanctioned by Article 35 of the Constitution. The Court considers that the protection of “sensitive” data, as one of the components of the right to respect for private life, is guaranteed by the free expression of the will to disclose or not such data, in accordance with Article 35 of the Constitution. Data that provide information on demographic analysis and that are

necessary for economic and social development or for state policy purposes to promote the preservation of the cultural and linguistic identity of ethnic minorities, may be obtained through other relevant procedures, in accordance with legal guarantees that prevent the misuse of the data collected and precisely set out specific processing rules.

In its Decision no.16 / 2004, the Constitutional Court held that: "… Data on income or property are of a personal nature. Consequently, they fall within the broad scope protected by Article 35 of the Constitution. As a rule, making them public requires the consent of the person concerned.

The Constitutional Court also underlines, the fact that article 35 of Constitution creates the possibility to make public personal data even without the consent of the person, if such a thing "is required by law" (paragraph 1) or in cases "provided by law" (paragraph 2). Such a restriction, under certain conditions, is also supported by article 17 of Constitution (the restriction may be established "... only by law, for the public interest or for the protection of the rights of others ..."). Also, in this decision the Constitutional Court states that: "the publication of details of income or personal property does not constitute interference in private life, especially if the person exercises public or quasi-public functions".

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

The Constitutional Court of the Republic of Albania has followed and referred to the jurisprudence of international courts regarding the protection of this right and is based on the European Convention on Human Rights.

II.IV Freedom of religion

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 24 of Constitution provides:

1. Freedom of conscience and of religion is guaranteed.
2. Everyone is free to choose or to change his religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals.
3. No one may be compelled or prohibited to take part in a religious community or in religious practices or to make his beliefs or faith public.

- **Is it possible to restrict the right? If so, how and under what conditions?**

The Constitution has established clear criteria on when, how and for what reasons the restriction of fundamental rights is justified. For a certain number of rights and freedoms, it is the Constitution itself that has provided, while for others, the constitution maker has delegated this authority to the legislator. In this context, a good part of the provisions related to the human rights and fundamental freedoms in the Constitution provide the legal reserve clause.

There are also constitutional rights and freedoms for which, the constitutional provision that sanctions them, does not provide *prima facie* limitation or legal reserve (for example Article 24 - freedom of belief). However, this does not mean that this right can be exercised in an absolute way. This right may not be subject to any restrictions other than those provided for by law and which constitute necessary measures in a democratic society in the interest of public safety, for the protection of public order, health or morals or for the protection of the rights and freedoms of others.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

The Constitutional Court of the Republic of Albania has not considered / examined this right.

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

N/A

II.V Prohibition of discrimination

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 18 of the Constitution provides that:

1. All are equal before the law.
2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage.
3. No one may be discriminated against for the reasons mentioned in paragraph 2 whether reasonable and objective legal grounds do not exist.

- **Is it possible to restrict the right? If so, how and under what conditions?**

The right not to be discriminated against is a right that cannot be restricted, except when provided by law. Thus Law no. 10221, dated 04.02.2010 “On the prohibition of discrimination” in article 6 provides:

The justified different treatment:

1. The prohibition of discrimination described by this law does not apply in cases where there is a purpose objectively justifiable and legitimized under the Constitution, the international agreements or laws ratified by the Republic of Albania and the legislation in force.

2. The different treatment, based on a characteristic related to the causes mentioned in article 1 of this law, does not constitute a discrimination when, because of the nature of the professional activities or the conditions under which this activity is exercised, these characteristics constitute a real and necessary professional requirement, provided that the purpose of the different treatment is justified and that the requirement does not exceed what is necessary for its realization.

According to the Court: “The sanctioning of human rights and freedoms enshrined in the Constitution and their accompanying with measures to implement them, should aim at improving and enhancing the standards of rights, as well as strengthening the rule of law. If the measures taken lead to an unreasonable deterioration of the legal status of other persons deny the acquired rights or disregard their legitimate interests, then the constitutional principle of equal rights will be violated and, in general, this will jeopardize the achievement of the principal objective of establishing the rule of law".

The Constitutional Court has also referred to the case law of the European Court of Human Rights, concluding that “the difference in treatment shall be considered discriminatory when there is no reasonable and objective justification, when it does not pursue a “legitimate aim” or when there is no "reasonable and proportionate relationship between the means used and the purpose to be achieved" (Decision of Constitutional Court no. 23, dated 08.06.2007).

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

In several judgments, the Constitutional Court has interpreted Article 18 of the Constitution through its jurisprudence, and has emphasized that the principle of equality aims at the equality of all before the law not only in relation to the fundamental rights provided for in the Constitution, but also in relation to other legal rights. Specifically, in Decision no.10 / 2016 the Court stated that: “Equality before the law does not mean that there would be equal solutions for individuals or categories of individuals who are in objectively different conditions. Equality before the law presupposes the equality of individuals who are in fair conditions” and “Only in exceptional cases and for justified and objective reasons it can be legitimized the different treatment of specific categories benefiting from this right.” (See decisions no.34, 20.12.2005; no.39, 16.10.2007; no.4, 12.02.2010, of Constitutional Court).

The Court considers that the legislator is bound to respect this principle when it comes to "equality under the law". Regarding the non-discrimination, it has defined certain standards by which it sought to determine whether a law is discriminatory under Article 18 of the Constitution. Thus, the Court examines whether the law prescribes a differentiated treatment of subjects and, if so, whether this differentiation was justified and for an objective reason. This justification is considered together with the objectives and effects of the measures taken. Moreover, the justification for the differentiated treatment is not sufficient, because the means chosen to achieve the legislator's objective must also be reasonable and appropriate.

On the other hand, the principle of equality does not preclude differential treatment, therefore the Court, in the case of equal treatment of subjects, examines whether the law should have had a differentiation based on a legitimate and objective reason because they (the subjects) present themselves with different factual specifications.

According to the case law of the Constitutional Court, we are faced with discrimination when legal entities in the same situation are treated differently without any reasonable and objective legal justification. Of course, the definition of any criterion to qualify objective reasoning largely depends on the estimation of values and cannot be precisely defined. (See decisions of Constitutional Court no.71/1998; no.16/2000 no.34/2005; no.39/2007; no.4/2010; no.48/2013; no.78/2015).

In its Decision no.1/2013 the Constitutional Court held that: "Following the democratic changes, the Albanian Parliament adopted a set of laws that aimed at redressing the injustices inherited from the previous regime as regards the guarantee of fundamental rights and freedoms, in particular the right to private property.

The very beginnings of the new legal framework are the following laws: Law no.7652, dated 23.12.1992 "On Privatization of State-owned Houses" and Law no.7698, dated 15.04.1993 "On the restitution and compensation of property to the former owners".

The tenants, occupants of the formerly owned properties of the expropriated entities, claimed that the legal arrangements were discriminatory. However, after the control of the compliance of these laws with the Constitution, the Court concluded that the legal regulations did not discriminate against homeless citizens residing in former housing owned by the expropriated subjects, in relation to the rest of the population who realized the need for housing pursuant to Law no.7652 dated 23.12.1992 "On the privatization of the state-owned houses" (amended), because the housing problems that these categories of tenants have to solve are not due to any discrimination between them, but due to the different positions they actually have, the first being tenants of state-built housing, the latter being tenants of houses returned to their former owners. (See decision of Constitutional Court no.11/1993).

The Constitutional Court has stated in its jurisprudence that: "The Constitution in its Article 18 provides that everyone should be equal before the law. This provision, in the paragraph 2, sanctions the prohibition of discrimination on the grounds of gender, race, religion, ethnicity, language, political, religious or philosophical conviction, economic condition, education, social

status or parentage, while the paragraph 3 itself embodies the restriction of this right, according to which no one may be discriminated against for the reasons mentioned in the paragraph 2 whether reasonable and objective legal grounds do not exist. (See decisions of Constitutional Court no.48/2013; no.60/2016)".

Regarding the protection of these rights, the Constitutional Court is based on the ECHR.

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

The Constitutional Court of the Republic of Albania has followed and referred to the jurisprudence of international courts regarding the protection of this right and is based on the European Convention on Human Rights.

II.VI Right to liberty

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 27 of Constitution

1. No one can be deprived of liberty except in the cases and according to the procedures provided by law.

2. The liberty of a person may not be limited, except in the following cases:

a. when he is punished with imprisonment by a competent court;
b. for failure to comply with the lawful orders of the court or with an obligation set by law;
c. when there are reasonable suspicions that he has committed a criminal offense or to prevent the commission by him of a criminal offense or his escape after its commission;
ç. for the supervision of a minor for purposes of education or for escorting him to a competent organ;
d. when a person is the carrier of a contagious disease, mentally incompetent and dangerous to society;
dh. for illegal entry at state borders or in cases of deportation or extradition.

3. No one may be deprived of liberty just because of not being able to fulfil a contractual obligation.

- **Is it possible to restrict the right? If so, how and under what conditions?**

The cases of restriction of this right are provided for in Article 27 of the Constitution and therefore this right cannot be restricted by law.
The cases of restriction of this right are as follows:

a) when he is punished with imprisonment by a competent court; b) for failure to comply with the lawful orders of the court or with an obligation set by law; c) when there are reasonable suspicions that he has committed a criminal offense or to prevent the commission by him of a criminal offense or his escape after its commission; ç) for the supervision of a minor for purposes of education or for escorting him to a competent organ; d) when a person is the carrier of a contagious disease, mentally incompetent and dangerous to society; dh) for illegal entry at state borders or in cases of deportation or extradition.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

The Constitutional Court of the Republic of Albania has not considered or examined this right.

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

  N/A