

## HUMAN RIGHTS PRACTICE REVIEWS

# Albania

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### 1. Introduction

This review covers a four-year period (2014-2018), outlining some of the most important human rights developments in Albania. The period is full of significant occurrences, which have had a visible influence on further improvement of the legal framework, as the latter is, unfortunately, still considered to be in transition, disoriented, incoherent and not fully internally harmonized. The following sections of the review summarize the new legislative developments, impacting evidently the human rights in the country, especially in relation to children's rights, victims of domestic violence and free legal aid for vulnerable groups. Further, the review analysis focuses on some of the decisions of the Albanian Constitutional Court related to the constitutionality of the process of re-evaluation of judges and prosecutors, as part of the justice reform package or the so-called vetting process. Also, the constitutionality of legislation related to the Property Compensation Process is another focal point of the review. Overall, among other issues, the right to a due legal process and the issue of non-execution of final court decisions will be at the centre of attention. The review also provides the impact of the European Court of Human Rights case law on Albania and supplies some conclusions regarding the main trends of the period.

### 2. Overview of the New Legislation

The main important event in the area of legislation in this four-year period is the activities and results of the ad hoc Parliamentary Committee on the 'Justice System Reform'<sup>1</sup> and the activity of the Group of High Level Experts. The Committee operated for almost two years<sup>2</sup> and approved a very essential document, which initiated the overall legislative reform in Albania, namely the Analysis of the Justice System.<sup>3</sup>

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1 The Ad Hoc Parliamentary Committee is approved following the Decision No. 96/2014 of the Assembly of the Republic of Albania.

2 Decision No. 32 of 16 December 2016, 'On completion of the activity of the Ad Hoc Parliamentary Committee for "The Reform of Justice System"'.

3 Analysis of the Justice System in Albania approved by the Group of High Level Experts with Decision No. 14 of 30 July 2015, available at: <http://www.euralius.eu/old/images/pdf/Analize-e-Sistemit-te-Drejtise-ne-Shqiperi.pdf> (last accessed 1 July 2019).

This document provides an assessment of the situation so far and the persisting problems of the justice system for a period of almost sixteen years, thus providing a general and detailed overview of the legal and institutional reforms taking place in the country since the adoption of the 1998 Constitution. The main and prior visible results are the new laws and all the other foreseen reforms to improve the entire justice system.

Three of the major legislative changes of the period have been selected and will be further discussed. The selection has taken into account the particular importance of some specific laws in the field of human rights, especially with regard to the rights of children, women and victims of domestic violence and the right to access to justice of other vulnerable individuals or groups. A nearly comprehensive legal package has impacted the protection and rights of children and has encouraged the adequate framework and standards on juvenile justice. Access to justice cannot be ensured without guaranteed state legal aid for all, and, ultimately, the quality of family life is a cornerstone of democracy as opposed to domestic violence.

The following three legal areas of reforms will be analysed in the following sections, providing some reflections on the legal changes that have occurred in the last nearly four years.

### 2.1. *New Law on Free Legal Aid*

Often enough, free legal aid has been labelled as generally non-functional and an ineffective service in Albania. Law No. 10039 of 22 December 2008 'On Legal Aid',<sup>4</sup> now abrogated, did not seem to ensure the right effect relative to its purpose and objectives. Thus, free legal aid in civil and administrative cases for those who do not have the financial means remains very weak.<sup>5</sup>

There have been constant remarks on this service, especially with regard to the lack of transparency by the State Commission for Legal Aid (SCLA) in the financing of legal aid cases,<sup>6</sup> confusion in the application of legal aid in the criminal field; ambiguity about the responsibilities of the SCLA vis-à-vis the Prosecutor's Office and the responsibilities of the courts in the financing of the legal aid scheme<sup>7</sup> as well as barriers<sup>8</sup> to providing information.

4 Law No. 10039 dated 22 December 2008 'On Legal Aid'. Art. 13 of the Law No. 10039 states that legal aid is provided to those individuals who "need legal aid in civil and administrative cases, but do not have the financial means to pay for legal aid".

5 European Commission, Albania Progress Report, COM (2016)715 final of 9 November 2016, p. 67, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_albania.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf) (last accessed 1 July 2019).

6 Analysis of the Justice System in Albania approved by the Group of High Level Experts with Decision No. 14 of 30 July 2015, pp. 316-327, available at: <http://www.eurailius.eu/old/images/pdf/Analize-e-Sistemit-te-Drejtise-ne-Shqiperi.pdf> (last accessed 1 July 2019).

7 See for further information: On the Project Law 'For legal aid support', available at (in Albanian): <https://www.parlament.al/Files/ProjektLigje/Relacioni-per-ndihmen-juridike.pdf> (last accessed 1 July 2019).

8 See for example the appeal of the Res Publica Center to the Commissioner for the Right to Information, available at: [https://www.idp.al/wp-content/uploads/2016/11/vendim\\_36\\_kshnj.pdf](https://www.idp.al/wp-content/uploads/2016/11/vendim_36_kshnj.pdf) (last accessed 1 July 2019).

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It has also been difficult to provide figures on the exact number of beneficiaries falling under the special categories, owing to the excuse of manual retention of the data. However, it is speculated that there have been very few applicants and beneficiaries – only 10% of eligible applicants have applied for free legal aid. Thus, the State's contribution to legal aid was almost insignificant and, overall, the lack of free legal aid has become an obstacle to the effective trial process.

As of 1 June 2018, the new Law No. 111/2017 of 14 December 2017 'On State Guaranteed Legal Aid' has entered into force.<sup>9</sup> This law is considered as a positive step undertaken by the Albanian government in the framework of the justice reform for the protection of vulnerable groups.

This law provides that legal aid guaranteed by the state is offered in the form of primary<sup>10</sup> and secondary legal aid<sup>11</sup> and includes exemption from court fees.

The new law also re-evaluates the procedures and mechanisms of providing legal aid guaranteed by the state structures accordingly, in line with its core mission, which is to ensure and guarantee full and equal access to justice for all individuals.

The law includes a so-called transitional period dedicated to the establishment of adequate mechanisms required to ensure that the provisions of legal aid guaranteed by the state are implemented to their fullest capacity.

It is expected that the new legal aid mechanisms will provide all the data on applications and that this will facilitate the origination of statistical data on the number of applicants, beneficiaries and the progress of the state-guaranteed legal aid delivery, thereby contributing to a fair and transparent system and possible ground for further improvements.

Additionally, it is expected that Law No. 111/2017 will provide a proper solution to the problem of exorbitant selection of ex officio lawyers, in certain cases by judges or prosecutors. It is foreseen in the law that the SCLA will select the lawyers who will provide legal assistance in criminal matters, civil and administrative ones, based on a fair competition procedure.

In order to implement the new law it is necessary to prepare the relevant secondary legislation, which will ensure the successful enactment of the provisions.

9 Law 111/2017 'On State Guaranteed Legal Aid', available at: <https://www.euralius.eu/index.php/en/library/albanian-legislation/send/21-legal-aid/232-law-on-legal-aid-en> (last accessed 1 July 2019).

10 See Art. 3(b) of Law No. 111/14 December 2017. According to the Law, the 'primary legal aid' is: "the provision of information about the legal system of the Republic of Albania, the normative acts in force, the rights and obligations of the subjects of the law and the methods for exercising these rights in the judicial and extra-judicial proceedings; delivery of counseling; providing advice on mediation procedures and alternative dispute resolution; providing assistance in drafting and establishing the necessary documents to initiate state administration or to seek secondary legal assistance; representation before the administrative bodies; and the delivery of all other forms of necessary legal support that do not constitute secondary legal aid."

11 See Art. 3(c) of Law No. 111/14 December 2017. According to the law, 'secondary legal aid' is the "legal service that is offered for the compilation of the necessary legal acts for putting in motion the court, the delivery of counseling, representation and defense before the court in administrative and civil cases and in criminal cases for which is not applied the mandatory defense in accordance of the criminal procedural legislation".

In the cross-sectorial justice strategy document,<sup>12</sup> measures to reform the system and improve the legal and sub-legal acts on the provisions of state legal aid, together with the establishment of clear criteria for financing the people in need from the state budget through legal aid, are both envisaged.

The law provides for several new categories of legal aid beneficiaries regardless of their income and wealth. It offers support at every stage of criminal proceedings to the following: victims of domestic violence, victims of sexual abuse and victims of human trafficking; juvenile victims of a criminal offence and juveniles in conflict with criminal law; children living in social care institutions; children under guardianship who seek to initiate proceedings without the approval of their legal guardian or against their legal custodian; disabled people who benefit from disability insurances; persons who are subject to involuntary treatment at mental health facilities; persons who have been deprived of or restricted from their ability to act seeking to initiate proceedings against their legal guardian; persons who are beneficiaries of social protection schemes as well as persons who have been violated by an act or omission that constitutes discrimination based on the decision of the competent body under the applicable legislation on protection against discrimination.

The implementation of this law will require the appropriate measures taken by the state to raise awareness among vulnerable groups, establish adequate cooperation with NGOs and increase access through the promotion of legal clinics at the local or regional level.<sup>13</sup> As de jure Law No. 111/2017 proves to offer the highest support to a broad range of vulnerable groups, thus guaranteeing equal and fair access to justice for everyone, yet it is a matter of time before the hopefully positive changes that law will bring in practice are witnessed.

## 2.2. Legal Novelties Regarding Children's Rights and Juvenile Justice Standards

The Albanian legal reform on the rights of the children and the noteworthy juvenile justice reform have led to evident de jure improvements. Nonetheless, a lot remains to be done to make possible and guarantee what the all-encompassing legal framework offers.<sup>14</sup>

The adopted Laws in 2017, namely Law No. 18/2017 'On the Rights and Protection of the Child'<sup>15</sup> and Law No. 37/2017 'Code of Criminal Justice for Chil-

12 The Cross-Sectorial Justice Strategy 2017-2020 and its Action Plan, Decision of the Council of Ministers No. 773 of 2 November 2016, Official Gazette No. 278 of 19 December 2017, available at: [http://drejtesia.gov.al/wp-content/uploads/2018/06/278-2016\\_fletore\\_zyrtare\\_SND.pdf](http://drejtesia.gov.al/wp-content/uploads/2018/06/278-2016_fletore_zyrtare_SND.pdf) (last accessed 1 July 2019).

13 The official website of the Ministry of Justice indicates that the State Commission for Legal Aid is under its direct supervision; however, no additional information is provided on the website, available at: [www.drejtesia.gov.al/institucione-ne-varesi/](http://www.drejtesia.gov.al/institucione-ne-varesi/) (last accessed 1 July 2019).

14 Meanwhile, seven draft by-laws and several ministerial orders were drafted to implement the Code and will be adopted by the end of 2018. Source: Ministry of Justice, Elona Haska *Head of Unit/ Sector for Juvenile Justice*.

15 Law No. 18/2017 was approved on 23 February 2017 and entered into force on 9 June 2017, available at: [https://observator.org.al/wp-content/uploads/2017/06/Layout-A5-english\\_18May2017.pdf](https://observator.org.al/wp-content/uploads/2017/06/Layout-A5-english_18May2017.pdf) (last accessed 1 July 2019).

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dren',<sup>16</sup> are of special importance for protecting the rights of children in Albania. Also, they are of great prominence in terms of the country's integration into the European Union.

Furthermore, substantial changes, accompanied by a pronounced impact on the rights of juveniles in conflict with criminal law, juvenile witnesses or victims of criminal offences, are additionally foreseen in the 2017 amendments to the Criminal Procedure Code<sup>17</sup> as well as in Law No. 10 385 of 24 February 2011 'On Mediation in Dispute Resolution', which is amended by Law No. 26/2018.<sup>18</sup>

In addition, in April 2017 the Council of Ministers approved the National Agenda for Children's Rights 2017-2020,<sup>19</sup> and in September 2018 the Council of Ministers with the Decision No. 541 of 19 September 2018 approved the Strategy on Juvenile Justice and its Plan of Action for 2018-2021.<sup>20</sup> The Strategy serves as a crucial policy document setting forth the major objectives of the Albanian Government Programme towards the adequate implementation of the reform of the justice system for juveniles in conflict with the law, together with strengthening the restorative justice system and guaranteeing effective procedural protection. Furthermore, the Strategy lists five strategic objectives that relate especially to access to justice, ensuring a due legal process, prevention of involvement in juvenile delinquency, reintegration of juveniles in conflict with the law and strengthening the cooperation between juvenile justice institutions.<sup>21</sup>

The problems relating to the treatment of juveniles who are in conflict with the law and the need for immediate legal changes are reflected by the Albanian ad hoc Parliamentary Committee on justice system reform in its 'Analysis of the Justice System in Albania'.<sup>22</sup> Issues such as the lack of "educational institutions in

16 Law No. 37/2017 entered into force as of 1 January 2018, available at: [http://drejtesia.gov.al/wp-content/uploads/2017/11/03\\_Ligj\\_37\\_2017\\_30.03.2017\\_Kodi\\_i\\_Drejtesise\\_Penale\\_per\\_te\\_Miturit.pdf](http://drejtesia.gov.al/wp-content/uploads/2017/11/03_Ligj_37_2017_30.03.2017_Kodi_i_Drejtesise_Penale_per_te_Miturit.pdf) (last accessed 1 July 2019).

17 Law No. 7905/21 March 1995 'Code of Criminal Procedure of the Republic of Albania' amended by Law No. 35/2017 'For some additions and changes in Law No. 7905/21 March 1995, "Code of Criminal Procedure of the Republic of Albania"'.  
18 Law No. 26/2018 'For Some Additions and Amendments in Law No. 10 385, Date 24 February 2011, "On mediation in dispute resolution"'. Published in the Official Gazette No. 85 of 12 June 2018, available in English at: <https://www.eurailius.eu/index.php/en/library/albanian-legislation/send/23-mediation/261-mediation-2018-06-12-en> (last accessed 1 July 2019). The Law provides that "For mediation in criminal cases involving children the provisions of the Code of Criminal Justice for Children shall be applied" (See Art. 2(3)); and that the "Mediators for cases relating to children, shall have the proper qualification and specialization in these fields and shall preferably be graduated as psychologists, lawyers or social workers" (See Art. 5(3)).

19 National Agenda for Children's Rights 2017-2020, approved with Decision of the Council of Ministers No. 372 dated 26 April 2017, available at: <http://femijet.gov.al/wp-content/uploads/2017/06/Agjenda-kombetare-per-te-drejtat-e-femijeve.pdf> (last accessed 1 July 2019).

20 Strategy on Juvenile Justice and its Plan of Action for 2018-2021, available at: [www.qbz.gov.al/Botime/Akteindividuale/Janar%202018/Fletore%20138/VKM%20nr.%20541,%20date%2019.9.2018.pdf](http://www.qbz.gov.al/Botime/Akteindividuale/Janar%202018/Fletore%20138/VKM%20nr.%20541,%20date%2019.9.2018.pdf) (last accessed 1 July 2019).

21 Strategy on Juvenile Justice and its Plan of Action for 2018-2021, Chapter II 'Vision, Priorities and Strategic Objectives', available at: [www.qbz.gov.al/Botime/Akteindividuale/Janar%202018/Fletore%20138/VKM%20nr.%20541,%20date%2019.9.2018.pdf](http://www.qbz.gov.al/Botime/Akteindividuale/Janar%202018/Fletore%20138/VKM%20nr.%20541,%20date%2019.9.2018.pdf) (last accessed 1 July 2019).

22 Analysis of the Justice System in Albania approved by the Group of High Level Experts with Decision No. 14 of 30 July 2015.

order to execute the judgments on educational measures against juveniles involved in criminal activity”,<sup>23</sup> difficulties in the implementation of alternative measures to detention<sup>24</sup> and extensive application of imprisonment<sup>25</sup> are considered a real concern. The ad hoc Parliamentary Committee, after analysing the Albanian legislation, arrived at the conclusion that prison sentences for juveniles are neither structured nor separated from adults and that imprisonment is not seen as the last resort but rather as something normal.<sup>26</sup> The ad hoc Parliamentary Committee further states that the needs of the children are not taken into account in order to address them to the appropriate institutions with the possibility of reintegration into society.<sup>27</sup> Lastly, the same Committee expressed concern about the procedural safeguards regarding juvenile victims of criminal offence, which need to be in harmony with EU standards.<sup>28</sup>

Concerns about the children’s rights situation in Albania have also been expressed internationally. The Committee on the Rights of the Child (CRC) has repeatedly expressed concern over the lack of an effective juvenile justice system in Albania in its Concluding Observation of Albania.<sup>29</sup> Furthermore, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also recommends that the relevant legislation be revised.<sup>30</sup> Other international monitoring bodies also communicate their concerns about the situation of juveniles in conflict with criminal law. Almost all reports documenting the situation in Albania lay special emphasis on problems related to juveniles being interrogated in inappropriate rooms, without the assistance of a lawyer, subjected to ill-treatment from the police and their inmates and detained in cells together with adults as well as a too lengthy period of stay in solitary con-

23 *Ibid.*, p. 108.

24 *Ibid.*, p. 173. The court has rarely taken such measures. “Even in those few cases when such measures are taken, their enforcement in practice is not made possible because of lack of respective infrastructure and legal framework. The same may be concluded as regards medical measures, foreseen as well in Article 46 of the Criminal Code.”

25 *Ibid.*, p. 108.

26 *Ibid.*, p. 158.

27 *Ibid.*, p. 158.

28 *Ibid.*, p. 171.

29 Even if this document dates back to December 2012, it is important to mention it here because it shows the gravity of the situation and the concern of the international community about the situation in Albania. In paragraph 84 one can read that the Committee even reiterates its concern about the juvenile justice system in Albania, made back in 2005 (CRC/C/15/Add.249, para. 76, 2005). See, for further information, concluding observations of the combined second to fourth periodic reports of Albania, adopted by the Committee at its sixty-first session (17 September-5 October 2012), CRC/C/ALB/CO/2-4 of 7 December 2012, para. 84-85, available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fALB%2fCO%2f2-4&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fALB%2fCO%2f2-4&Lang=en) (last accessed 2 September 2019).

30 Report to the Albanian Government on the visit to Albania carried out by the European Committee for the prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), from 4 to 14 February 2014. CPT/Inf (2016) 6, para. 99, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806677b7> (last accessed 1 July 2019).



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finement, etc.<sup>31</sup> Several European Commission country progress reports<sup>32</sup> reflect the administration of juvenile justice as an issue, and the introduction of the new legal framework, especially the Code of Criminal Justice for Children, is seen as the “de jure compliance with international standards on juvenile justice”.<sup>33</sup>

As a response to the situation, the Code gives a de jure answer to all the aforementioned concerns and lays down the obligation that all authorities – judges, prosecutors, police officers, attorneys, etc. – be trained and specialized in juvenile justice. To facilitate this process the “Electronic Commentary under preparation aims to provide a platform to share the knowledge and understanding of the justice reform process and a basis for cooperation and search for legal professionals”.<sup>34</sup>

Furthermore, Law No. 18/2017 ‘On the Rights and Protection of the Child’ in almost seventy articles provides a list of general principles and makes a detailed explanation of the principle of the best interest of the child, right to be heard and to participate, etc. The law is fully in compliance with CRC. It also provides a comprehensive profile of all the responsible mechanisms and responsible authorities that will guarantee effective exercise of, respect for, promotion of these rights and also the special protection of the child.<sup>35</sup>

- 31 See: Report to the Albanian Government on the visit to Albania carried out by the European Committee for the prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), from 4 to 14 February 2014. CPT/Inf (2016) 6, paras. 25 and 36, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806677b7> (last accessed 1 July 2019). See also: Report to the Albanian Government on the visit to Albania carried out by the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), from 10 to 21 May 2010. CPT/Inf (2012) 11, para. 98, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680667783> (last accessed 1 July 2019). See also: 18th General Report on the CPT’s Activities, covering the period 1 August 2007 to 31 July 2008, CPT/Inf (2008) 25, para. 26, available at: <https://rm.coe.int/1680696a85> (last accessed 1 July 2019).
- 32 European Commission, Albania Progress Report, COM (2016)715 final of 9 November 2016, p. 5 “The legislation on juvenile justice remains to be brought in line with international standards”; pp. 66-67 “However, appropriate planning, budgeting and community-based re-education and reintegration programs for children in conflict with the law are still lacking. Certain categories of children, such as those from ethnic minorities, children with disabilities, girls and children living in rural areas, face particular challenges in accessing judicial protection.”, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_albania.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf) (last accessed 1 July 2019). For further information see also: European Commission, Albania Progress Report, COM(2014)700 final of 8 October 2014, p. 48, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2014/20141008-albania-progress-report\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf) (last accessed 1 July 2019).
- 33 European Commission, Albania Progress Report, SWD (2018)151 final of 17 April 2018, p. 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf> (last accessed 1 July 2019).
- 34 “Electronic Commentary is supported by the EU-funded project ‘Justice System Consolidation in Albania’ (EURALIUS). In cooperation with local legal experts, this Electronic Commentary aims to provide a platform to share the knowledge and understanding of the justice reform process and a basis for cooperation and search for legal professionals”, available at: <http://komentarielektronik.magistratura.edu.al/sq/eli/fz/2017/37/10> (last accessed 1 July 2019).
- 35 See Arts. 1 and 2 of Law 18/2017 ‘On the Rights and Protection of the Child’.

Nonetheless, all the developments in the legal framework require considerable efforts and investments to ensure adequate implementation together with constant willingness to safeguard the rights of the children in the country.<sup>36</sup>

### 2.3. Domestic Violence

Domestic violence is a serious problem in Albania. Statistical data shows an increasing trend between 2015 and 2017.<sup>37</sup> While the victims are much more aware of their rights and the protection they are subject to, unreported cases, mainly in rural areas and among vulnerable groups, still remain a problem.

To remedy the situation, work with the authorities to enhance their professionalism has been constant throughout this period. In this regard, the School of Magistrates has played a crucial role by providing continuous training to judges and prosecutors. Also, Police Academy and School for Advocates, together with many NGOs involved in domestic violence cases, provide training activities to increase the professionalism and awareness in the country.

The Parliament of Albania, concerned about the dramatic situation of domestic violence in the country, proceeded to adopt Resolution No. 1 of 4 December 2017, 'On punishing violence against women and girls and increasing the effectiveness of legal mechanisms for preventing it'.<sup>38</sup> The resolution showed that there is a political will to take action and determination to improve the legal framework.

The 2018<sup>39</sup> amendments of Law No. 9669 of 18 December 2006 'On Measures Against Violence in Family Relations' make a clear attempt to achieve full harmonization with the EU *acquis communautaire*, the Council of Europe Convention 'On preventing and combating violence against women and domestic violence'<sup>40</sup> and the GREVIO Committee Recommendations.<sup>41</sup> These changes are also in line with and fulfil the CEDAW Committee recommendations to Albania.<sup>42</sup>

Some of the novelties of Law No. 9669 include expansion and clarification of the group of subjects that are included in the category of family members who

36 In the Ministry of Justice under the Justice Regulatory Directorate, the Juvenile Criminal Justice Sector has been operating for about a year now.

37 INSTAT. 'Statistics on crime and criminal justice – 2018', p. 15, available at: [www.instat.gov.al/media/4823/statistikat-e-krimeve-dhe-drejtësisë-penale.pdf](http://www.instat.gov.al/media/4823/statistikat-e-krimeve-dhe-drejtësisë-penale.pdf) (last accessed 1 July 2019). See also: Vjetari Statistikor i Ministrisë së Drejtësisë për periudhën 2015-2017, available at: [www.drejtësia.gov.al/statistika/](http://www.drejtësia.gov.al/statistika/) (last accessed 1 July 2019).

38 Information available at: [www.qbz.gov.al/Botime/Akteindividuale/Janar%202017/Fletore%20212/REZOLUTE,%20date%204.12.2017.pdf](http://www.qbz.gov.al/Botime/Akteindividuale/Janar%202017/Fletore%20212/REZOLUTE,%20date%204.12.2017.pdf) (last accessed 1 July 2019).

39 Law No. 47/2018 On Some Additions and Amendments to the Law No. 9669 of 18 December 2006, 'On Measures Against Violence in Family Relations', available at: [www.parlament.al/Files/Akte/ligj%20nr.%2047,%20dt.%2023.7.2018.pdf](http://www.parlament.al/Files/Akte/ligj%20nr.%2047,%20dt.%2023.7.2018.pdf) (last accessed 1 July 2019).

40 Ratified by the Law No. 104 of 8 November 2012.

41 'Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Albania', IC-CP/Inf(2018)3, published on 30 January 2018, available at: <https://rm.coe.int/recommendation-cop-albania/1680783ffa> (last accessed 1 July 2019).

42 Albanian ratified the Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) on 11 May 1996. See: CEDAW, Concluding Observation on the fourth periodic Report of Albania, 25 July 2016.



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benefit from special protection, by adding into the protected category intimate partners, custodian and person in care, etc. Furthermore, the law amendments offer improved protection to persons with disabilities in accordance with the concept of reasonable accommodation based on the UN Convention on the Rights of Persons with Disabilities (CRPD).

The law also provides improvements on the standards of victim protection through immediate reaction through the Preliminary Immediate Protection Orders issued by the State Police. This is an important measure to protect the victim until the Court issues the Protection Order or the Immediate Protection Order. It also aims to accurately reflect the responsibilities of all central and local authorities in order to avoid confusion between their roles and overlapping tasks as well. Protection is provided for citizens residing or staying in the territory of the Republic of Albania; such persons include foreign nationals or stateless persons who have applied for international protection under the applicable asylum legislation in the Republic of Albania and foreigners with regular residence for various reasons, according to the legislation in force for foreigners.

### 3. Court Decisions

#### 3.1. Albanian Constitutional Court Decisions

The justice reform in Albania brought significant changes and improvements to the effective role of the Constitutional Court in protecting the fundamental rights and freedoms set forth in the Constitution. Among others, it is worth mentioning the changes made in 2016 to the Constitution and, specifically, the amendment made to Article 131(f) of the Constitution with respect to the Constitutional Court.<sup>43</sup> This amendment brought to an end the limited constitutional jurisdiction offered thus far, under which individuals could refer to the Constitutional Court merely for cases concerning due legal process for the protection of their constitutional rights. This constraint did not guarantee the effectiveness of the Constitutional Court. The European Court of Human Rights (ECtHR) also expressed its concern on the issue when analysing the cases brought against Albania. The ECtHR concluded that the Albanian Constitutional Court was not an

43 Art. 131 (f) as amended by Law No. 76/2016 dated 22.7.2016 provides that “The Constitutional Court decides on the final examination of the complaints of individuals against the acts of the public power or judicial actions affecting the fundamental rights and freedoms guaranteed by the Constitution, after all effective legal means for the protection of those rights have been exhausted unless otherwise provided by the Constitution”, available at: [www.eurailius.eu/index.php/en/library/albanian-legislation/send/9-constitution/178-constitution-of-the-republic-of-albania-en](http://www.eurailius.eu/index.php/en/library/albanian-legislation/send/9-constitution/178-constitution-of-the-republic-of-albania-en) (last accessed 1 July 2019).

effective remedy, especially in cases of exercising control over the execution of decisions within a reasonable time.<sup>44</sup>

Three aspects of the practice of the Albanian Constitutional Court<sup>45</sup> are selected for further examination. The choice is based on their very particular importance, without, however, denying the significance of other issues.

Notably, in 2017, two important cases contested the constitutionality of the vetting process before the Constitutional Court, but the latter rejected those appeals.<sup>46</sup> In one of the cases, the Constitutional Court rejected the request to evaluate as unconstitutional one of the laws, which was part of the judicial reform, namely Law No. 84/2016, 'On the provisional re-evaluation of judges and prosecutors in the Republic of Albania', dated 30 August 2016.<sup>47</sup>

The Constitutional Court ruled out the allegations of a possible violation of the principle of separation and balance of power from this Law. In paragraph 21 of its Decision, the Court has even argued that

the re-evaluation system is set up in order to guarantee the functioning of the rule of law, the independence of the justice system, and restore public confidence in the institutions of this system. The re-evaluation will be carried out on the basis of the principles of the due process, as well as respecting the fundamental rights of the assessment subject.<sup>48</sup>

Additionally, in paragraph 22 of the same Decision, the Constitutional Court underlined that

The whole process of re-evaluation of judges and prosecutors, as part of the justice reform package, even though is an extraordinary measure of temporary character, is constitutionally based and envisions the institutions that will carry out this process, their competences, how the members are elected and the discretion they enjoy. The purpose of defining the competences of

44 See for example *Gjyli v. Albania*, No. 32907/07. The European Court of Human Rights noted that the decisions of the Constitutional Court were declaratory, so the Constitutional Court did not provide any appropriate remedy. Specifically, the Court did not award remuneration for financial and/or non-financial damages and did not provide a clear prospect of preventing possible violations or continuation of such violations, which constitutes a breach of Art. 13 in conjunction with Art. 6 para. 1. See also on this issue: Analysis of the Justice System in Albania approved by the Group of High Level Experts with Decision No. 14 of 30 July 2015, p. 16.

45 For the period 2015-2017 the number of decisions issued is as follows: 89 decisions during 2017; 89 decisions during 2016 and 83 decisions during 2015. The Constitutional Court issued only 15 decisions in 2018. See: [www.gjk.gov.al/web/Vendime\\_perfundimtare\\_100\\_1.php](http://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php) (last accessed 1 July 2019).

46 Decision No. 78, date 12 December 2017 of the Constitutional Court and Decision No. 2 date 18 January 2017 (V-2/17). See also: European Commission, Albania Progress Report, SWD (2018)151 final of 17 April 2018, p. 11.

47 Decision of the Constitutional Court No. 2 date 18 January 2017 (V-2/17).

48 *Ibid.*, para. 21.

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these bodies directly in the Constitution means that no institution can take these powers or avoid them.<sup>49</sup>

Following this, the Constitutional Court ruled out the claim that this law violates the principle of legal certainty or limits the fundamental rights of the individual and, consequently, the Court did not accept the allegation of a violation of the right to a due legal process.

The constitutionality of Law No. 133/2015, dated 5 December 2015, 'On the Treatment of Property and the Completion of the Property Compensation Process', was also challenged in the Constitutional Court.<sup>50</sup> The case was brought to the Court in 2017. The Constitutional Court reached the conclusion that Article 6 paragraph 3 and Article 6 paragraph 5 of Law No. 133/2015, which describes the methodology of the financial assessment of final decisions on the restitution and compensation of property, were unconstitutional. These arrangements undermine legal certainty.

Accordingly, the provisions led to confusion in relation to other provisions within the same law. They also led to confusion in regard to citizens' expectations about the extent of physical compensation and the calculation of the area benefited and what would be deducted or increased.<sup>51</sup> This law provides for a new compensation scheme for former owners, in which the valuation method of the property has been changed.

Unlike previous laws, the implementation of Law No. 133/2015 can result in the lowest compensation rate.<sup>52</sup> Given the specific situation of Albania, it can be argued that what is envisioned by Law No. 133/2015 may result in a lower compensation measure for former owners but still meets the proportionality requirements set out in Article 1 of Protocol No. 1 of the European Convention on Human Rights (ECHR).

Albania's record in the execution of court decisions is not impressive. Instead, non-execution of court decisions is a major and serious problem in the country. The Court of Strasbourg, especially in property law matters, has also critically engaged with this issue. Many cases have been brought to the Constitutional Court specifically on this problem.

The next decision brings into focus a sensitive issue that is becoming more and more evident and for which there was even a decision against Albania in the ECtHR.<sup>53</sup>

The decision at hand has to do with the protection of family life. The principle of the best interest of the child and the correlation with the right of the parent to have personal relations with the child is the main issue underlying this decision. In a 2016 Constitutional Court judgment,<sup>54</sup> the claimant, namely the father of a child born in 2002, based on the rights deriving from cohabitation

49 *Ibid.*, para. 22.

50 Decision No. 1 dated 16 January 2017 (V-1/17).

51 See paras. 39 and 40 of the Decision.

52 See para. 4 of the Decision.

53 *Bajrami v. Albania*, No. 35853/04.

54 Decision of Constitutional Court No. 17 dated 15 March 2016 (V-17/16).

with his partner, claims that there is a violation of the right to a due legal process as a result of the non-execution of the court's decision regarding the way of exercising parental responsibility and the right of visit and contact after the termination of cohabitation. He also claimed a violation of the right to a due legal process due to the exceeding of reasonable time in the adjudication of a case on family matters.

The applicant alleged violation of Article 8 of the ECHR on the right to respect for private and family life. He addressed the execution office to execute the Court's decision regarding the right of contact with the child and other essentials of parental responsibility, but it was unsuccessful. Meanwhile, his cohabiting partner, along with the child, fled to Greece.

He requested a change of the decision regarding the exercise of parental responsibility in the court and addressed the Ministry of Justice as the responsible authority in Foreign Jurisdictional Relations to assist in his case. In this case, the Constitutional Court has estimated that "the duration of the proceedings is counted from the moment when the court proceedings start until the decision is taken and executed, and that the execution of the decision constitutes an essential element of the rule of law and of the very notion of a fair trial".<sup>55</sup>

After analysing some aspects of the case, the Constitutional Court deemed that although the issue in question was complex, the applicant has never become an obstacle to the enforcement of the decision. Instead, he has made efforts and has systematically taken measures demanding the return of his child from Greece to Albania. On the other hand, the mother of the child, despite having the option of enforcing the Final Decision, has become an obstacle.

Analysing the behaviour of the responsible authorities such as the Ministry of Justice and the bailiff office, the Constitutional Court judges held that the Bailiff's office was not proactive and did not create realistic possibilities for the execution of the final court decisions.

The Court brought to attention the obligations deriving from international instruments that Albania has ratified, the constitutional jurisprudence and that of the ECtHR, and finally considered that the engagement of the Ministry of Justice in matters relating to the protection of the best interests of the child must be visible and effective, by taking emergency measures that would enable effective enforcement of final court decisions.

The Constitutional Court reached the conclusion that the efforts of the Ministry of Justice were neither institutional nor effective to enable the applicant's right to have contact with his child who has left without his permission to Greece. In conclusion, the Court found – as a result of non-execution of the final court decision by the authorities charged by the law and within a reasonable time – a violation of the right to due process as envisioned under Article 42 of the Constitution of the Republic of Albania and Article 6(1) of the ECHR.

55 *Ibid.*

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### 3.2. Decisions of ECtHR

During the period January 2014 to October 2018, the ECtHR issued fourteen judgments by a Chamber of seven judges and seventeen judgments by a Committee of three judges. Out of the total of thirty-one judgments, in fifteen cases the Court found a violation of Article 1 of Protocol 1 of ECHR related to protection of property; in twenty-six judgments the Court found a violation of Article 6 on right to fair trial; and in fourteen cases the Court found a violation of Article 13 on the right to effective remedy.<sup>56</sup> On 1 July 2018, there were 561 pending applications before the ECtHR.<sup>57</sup>

Albania continued to ensure good cooperation with the ECtHR.<sup>58</sup> In two cases the government and the applicants reached friendly settlements.<sup>59</sup> There is, however, a deplorable lack of recognition and enforcement of the standards of the ECHR and ECtHR jurisprudence.<sup>60</sup>

In this part the emphasis is on the long-standing problem of non-execution of decisions delivered by the Albanian Constitutional Court. The most problematic cases were those concerning a violation of Article 6 paragraph 1 and Article 1 of Protocol No. 1 of the Convention. Following this, the cases reveal a structural problem and failure to put in place an effective mechanism to enforce the final, domestic, judicial and administrative decisions, with regard to the right of the applicants to compensation for the property nationalized under the Communist regime and the lack of an effective remedy in this respect (violations of Article 13 of ECHR). Considering the scale of the problem, the European Court of Human Rights delivered a pilot judgment in the *Manushaqe Puto and others v. Albania* case,<sup>61</sup> in which the Court insisted on the setting up of an effective compensation

56 See HUDOC, available at: <https://hudoc.echr.coe.int> (last accessed 1 July 2019).

57 This includes also those applications for which completed application forms have not been received. See for additional information the Press Country Profile, available at: [www.echr.coe.int/Documents/CP\\_Albania\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_Albania_ENG.pdf) (last accessed 1 July 2019). In 2016, the Court dealt with 66 applications concerning Albania, of which 44 were declared inadmissible [22 declared inadmissible by judgment]. In 2017, the Court dealt with 56 applications concerning Albania, which were declared inadmissible or struck out. No judgment was delivered. In 2018, the Court dealt with 42 applications concerning Albania, of which 42 were declared inadmissible [6 declared inadmissible by judgment].

58 European Commission, Albania Progress Report, SWD (2018)151 final of 17 April 2018, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf> (last accessed 1 July 2019).

59 *Theodhosi v. Albania*, No. 75175/13. The applicant complained, based on Art. 6 para. 1 of the Convention, on the length of the administrative proceedings before the Commission on Property Restitution and Compensation. See also: *Harri v. Albania*, No. 78187/13. The applicant complained, under Art. 1 of Protocol No. 1 to the Convention, about the authorities' failure to pay him compensation in respect of his inherited movable properties, as ordered by an administrative decision of the Elbasan Municipality.

60 Justice System Strategy Reform, Document of 24 July 2015, p. 4, available at: [www.reformanedrejttesi.al/sites/default/files/draft\\_strategjia\\_versioni\\_shqip.pdf](http://www.reformanedrejttesi.al/sites/default/files/draft_strategjia_versioni_shqip.pdf) (last accessed 1 July 2019).

61 *Manushaqe Puto and others v. Albania*, Nos. 604/07, 43628/07, 46684/07 and 34770/09, Final on 17 December 2012.

mechanism within eighteen months.<sup>62</sup> The same problems were identified in the *Driza* group of cases.<sup>63</sup> Unreasonable delays create the premises of a corrupt judicial system, which is constantly addressed by the European Court of Human Rights in its decisions given against Albania.<sup>64</sup>

As a good sign, in 2018, the Committee of Ministers of the Council of Europe adopted a Resolution<sup>65</sup> on execution of the judgments of the European Court of Human Rights of the sixteen cases filed against Albania with the same typology as the case of *Manushaqe Puto*. In response to the judgment of the Court, on 24 April 2014, the Government adopted an Action Plan aimed at introducing an effective compensation scheme addressing the long-standing and systematic problem stemming from property rights denied by the Communist Regime. Pursuant to the Action Plan, the Albanian Government adopted in 2015 the new Law 'On the treatment of property and finalization of the process of compensation of property' as a very positive step towards finally ending the long-standing failure to compensate or return property to former owners. Lists of by-laws in adherence to legal time limits were adopted as well. The Constitutional Court, as mentioned earlier, examined certain questions related to the constitutionality of the new Law No. 133/2015<sup>66</sup> and relied on *amicus curiae* brief from the Council of Europe's Venice Commission.<sup>67</sup> The Law was compatible with the Albanian Constitution. The Albanian government fulfilled all the requirements regarding individual measures to put an end to violations established and erase their consequences so as to achieve, as far as possible, *restitutio in integrum* and prevent similar violations through general measures.<sup>68</sup>

For the period between 2014 and 2018, the Committee of Ministers issued fourteen Resolutions<sup>69</sup> related to the execution of decisions and individual and general measures taken by Albania.

62 Specifically by 17 June 2014. See: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808cecf7> (last accessed 1 July 2019).

63 See: *Driza v. Albania*, No. 33771/02, Final on 2 June 2008.

64 Analysis of the Justice System in Albania approved by the Group of High Level Experts with Decision No. 14 of 30 July 2015, p. 103. See also: European Commission, Albania Progress Report, SWD (2018)151 final of 17 April 2018, p. 16, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf> (last accessed 1 July 2019).

65 Resolution CM/ResDH(2018)349 of 20 September 2018. Resources allocated from the State budget to cover payment of all compensation claims (with a Financial Fund of 50 billion Albanian Lek and a Land Fund estimated at 99 billion Albanian Lek – a total of about 1.2 billion Euros).

66 Decision of the Constitutional Court No. 1 of 16 January 2017.

67 Adopted at its 108th Plenary Session, Venice, 14-15 October 2016.

68 See for further information: Action Report of 23 August 2018, Communication from Albania concerning the cases of *Driza* and *Manushaqe Puto v. Albania*, Nos. 33771/02, 604/07, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808cecf7> (last accessed 1 July 2019).

69 For further information of the Resolutions follow the link: [https://hudoc.echr.coe.int/eng#{%22languageisocode%22:\[%22ENG%22\],%22respondent%22:\[%22ALB%22\],%22documentcollectionid%22:\[%22RESOLUTIONS%22\],%22kupdate%22:\[%222013-11-11T00:00:00.0Z%22,%222018-11-11T00:00:00.0Z%22](https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22ENG%22],%22respondent%22:[%22ALB%22],%22documentcollectionid%22:[%22RESOLUTIONS%22],%22kupdate%22:[%222013-11-11T00:00:00.0Z%22,%222018-11-11T00:00:00.0Z%22) (last accessed 1 July 2019).



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#### 4. Conclusion

Albania, with its yet fragile democracy, is witnessing the emergence of human rights standards. This is supported by constant efforts to improve the legal framework and judicial practice, including that of the Constitutional Court. There is always room for reflection, and the international standards, the practice of the ECtHR, together with the monitoring reports based on the legal and practical situation in the country, serve as great contributions to aid the situation. It is important to emphasize and recognize the political will in the country to further advance in the field of human rights and promote awareness among citizens. This is witnessed by the legal initiatives and judicial processes focusing on the protection of fundamental freedoms and fundamental rights. Nonetheless, constant efforts should be more intensively directed to guarantee that what the law encompasses has an actual positive impact in practice.