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The Impact of the Council of Europe and the Process of European Integration on Protection of Human Rights in Albania

Abstract

The European integration process of Albania is bound to fulfillment of the accession criteria, a political criteria related to stability of institutions guaranteeing democracy, rule of law and protection of human rights. Protection of human rights is a core value for the EU as well as a pre-condition for candidate countries.

*The European Commission, through the annual progress reports, monitors protection of human rights and compliance of the domestic legislation with international human rights instruments; particularly the European Convention of Human Rights. Also, the Commission evaluates cooperation with the European Court of Human Rights and executions of the Court's decisions. The paper aims to analyze implementation of the *acquis* and European standards on the abolishment of the death penalty and on prevention of torture and ill-treatment. The paper considers the progress reports and some of the judgments of the European Court of Human Rights on prevention of torture and ill-treatment.*

According to the progress reports, the main conclusion is that Albania has an adequate legal framework that guarantees human rights, but the main concern is still the implementation of legislation.

Key words: integration process, human rights, European Court of Human Rights, torture, ill – treatment.

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Introduction

After the fall of the communist regime the process of European integration has been the main priority of the Albanian foreign policy, as well as the main aspiration of the Albanian society, which fully supports the European Union. Despite the differences in domestic policy between the government and the opposition, all the political forces and the society agrees that integration is the most important process for the future of the country.

On October 2019, the integration process backlashed due to the veto of France on the accession talks for Albania and North Macedonia. In Albania, the refuse was perceived as a failure of the Albanian government, as well as a “betrayal” of the European Union *versus* the Western Balkans.

Despite the French refusal in 2019, the Albanian integration is not a smooth process, but a long and complicated journey which impacts the domestic legislative system and the values of Albanian society. Albania is trying to embrace the European values, especially the founding value of protection of human rights.

The EU has always put a strong effort to promote and protect human rights, especially after the Treaty of Lisbon. As De Burca explains: the Treaty of Lisbon identified human rights as a foundational value of the EU, and this is evident due to the binding character of the European Charter of Fundamental Rights and the commitment of the EU to ratify the European Convention on Human Rights (ECHR) (De Burca 2011, 649). Also, the EU system and the Council of Europe system on human rights protection are strictly connected as the article 6 (3) of the EU Treaty mentions the ECHR and defines the fundamental rights guaranteed by the ECHR as general principles of the Union’s law (TEU, article 10).

Moreover, the Copenhagen criteria for prospective member states set that accession to the Community shall be open to any European state which guarantees the protection of human rights, a clear request included in the political criteria (De Burca 2011, 681). So the EU not only protects human rights, but also promotes human rights outside the EU and imposes protection of human rights upon candidate member states, because the “accession to the EU is the most successful instrument for the promotion of human rights in the post-communist countries” (Cierco 2011, 142–158). The protection of human rights in candidate states must pursue the European standards and the European Convention on Human Rights.

The EU has adopted various strategies to promote human rights, trying to mitigate Albanian lack of tradition in human rights issues. In Albania the protection and

respect of human rights is a recent issue, as during the communist regime Albania lacked human rights protection tools, especially the right to life, freedom of speech, belief and religion, detainee rights, vulnerable groups etc.

In order to embrace protection of human rights and to cut the ties with the communist past, in 1996 Albania ratified the European Convention on Human Rights and its Protocols (Qendra e Publikimeve Zyrtare, 2011). Albania has amended or promulgated the primary legislation trying to enforce the protection of human rights in order to fulfill the EU accession conditions and to meet the standard of the European Convention on Human Rights.

A properly functioning judicial system and an effective fight against corruption are of paramount importance, as is the respect for fundamental human rights. In this regard, Albania has begun a significant judicial reform, creating the institution of the People Advocate or the *Ombudsman*, and is trying to address all the conditions of the *Acquis* Chapter on Judiciary and Human Rights (European Commission, 2019).

The paper analyzes main legal reforms undertaken in Albania in order to prevent torture and ill-treatment in detention centers, as well as the decisions of the European Court of Human Rights on this issue.

As mentioned, the EU system and the Council of Europe system on human rights are independent, but strictly connected. Furthermore, in Albania, the reforms on domestic legislation embrace the European values on human rights and the principles of the European Convention on Human Rights. It is important to describe how Albania copes with the implementation of the European Convention on Human Rights, since the Stabilization and Association Agreement (SAA), the country committed to respecting human rights as defined in the ECHR (Official Journal of the EU – SAA, 2009). Also, one of the requirements of the European Commission is the execution of the ECtHR rulings.

The paper analyzes the Progress Reports of the European Commission from 2007 to 2018 and the decisions of the European Court of Human Rights regarding prevention of torture and the abolishment of the death penalty.

The abolishment of the death penalty and prevention of torture

Protection of human rights in candidate and potential candidate countries is evaluated each year by the European Commission. Every year, the Commission publishes Progress Reports in order to assess the situation and define areas in need

of enhancement and reforms. The EU enlargement policy has been an important instrument of the EU in promoting human rights and fundamental freedoms in the region as inherent values of the integration process.

Also, the European Union acts in the Western Balkans through a powerful instrument of conditionality in order to impact domestic systems and political structures, to share common values and to promote human rights norms and values (Radaelli 2000, 1–28). Anastasis and Bechev assert that in the Western Balkans, EU conditionality is a form of power, a multi-dimensional and multi-purpose instrument which tries to assure the fulfillment of reforms and is related to economic, political, social and security-related criteria (Anastasakis, Bechev 2003, 1–20).

As Pridham affirms there is a growing use of conditionality in the Western Balkan countries, among them Albania, which includes a particular attention on human rights (Pridham 2007, 451). Moreover, the protection of human rights (a specific negotiation chapter, 23 of the Progress Rapport) as part of the *acquis* has added procedural force aiming to tighten up implementation (Pridham 2007, 461).

EU conditionality in human rights protection is difficult to measure and evaluate, but it is expected to function as an incentive on national authorities to pursue reforms and to align the domestic legislation with the values and principles that the EU shares and protects. The EU conditionality is more effective on the codification of human rights as a clear condition of the integration process than on spreading democratic values and human rights effective protection (Fraczek, Huszka, Kortvelyesi 2016, 196).

The first Progress Report on Albania in 2007, after the signature of the Stabilization and Association Agreement in 2006, analyzes the main features on protection of human rights and rights of minorities. Regarding the instruments for protecting human rights, the most important achievement was the ratification of the Protocol 13 of the European Convention on Human Rights regarding the abolition of the death penalty in any circumstances (Progress Report Albania 2007). The ratification of the Protocol 13 was in line with the EU initiatives concerning the abolishment of capital punishment, a clear result of the conditionality used by the EU and a commitment to European values. In this regard the ratification of the Protocol was influenced by the EU policy on the abolishment of the death penalty. In 2007, the abolition of the death penalty was a top human rights priority in the Council of Europe and also in the EU relation with the third countries (European Commission, Joint Declaration 2007). So, the Council of Europe and the EU shared the same strategic objective on the abolition of the death penalty in the world.

The European Union expressed its position on death penalty in numerous official statements and resolutions, like Resolution 1187/1999 that reaffirmed earlier

resolutions, stating that the death penalty “has no place in civilized, democratic societies governed by the rule of law” (Magen 2003, 50).

The abolition process of the death penalty started in 1995, when Albania signed a declaration affirming the intention to sign and ratify the Protocol 6 (European Convention on Human Rights) on the abolition of the death penalty in time of peace within three years. Indeed, from 1995 Albania put in place a moratorium on executions and ratified the Protocol in 2000 (OSCE 2001). *De Facto*, in 1999, the Constitutional Court of Albania decided that the death penalty was incompatible with the Constitution of 1998 (the first constitution after the communist regime), and *de facto* abolished the death punishment as cruel and degrading against the right to life. In this period, the Council of Europe invoked Albania to refrain from using the death penalty and to fulfill its commitment as a member of the Council on many occasions (Council of Europe 1990). Despite the efforts of the Council of Europe, the progress on the abolishment of capital punishment, the *de jure* abolition of the death penalty in all the circumstances as a result of the Protocol 13 ratification and the reform of the military code were completed in 2007 due to the conditionality policy used by the European Union. The abolition of death penalty was also a breaking point with the authoritarian past and an important element of the democratic system.

Despite this important achievement and the alignment with the European policy on the death penalty, from 2007 onwards the European Commission in its progress reports has continuously raised the concern of prevention of torture and ill-treatment. The paper focuses on the remarks of the ECtHR and the EU on torture and ill-treatment of detainees in Albania.

The 2008 Progress Report marked the difficulties on prevention of torture and ill-treatment by police officers during pre-trial detention (European Commission Progress Report 2008). Albania has ratified the Convention against Torture and the document is transposed into national legislation, but the implementation of this legal instrument is limited. Furthermore, the enforcement of detainees' rights is insufficient (Civil Right Defenders 2006, 8). In 2010 the EU heads of Mission in Albania approved the Local strategy for the implementation of the EU guidelines on Human Rights Defenders, addressing the need to prevent torture in detention centers (EU Heads Mission 2010). The EU Mission in Albania also affirmed collaboration with the Council of Europe in order to promote and encourage enforcement of human rights in Albania. The Council of Europe and the EU Mission collaborate in Albania in order to promote and enhance human rights and to protect vulnerable groups.

The efforts of the EU delegation and the Council of Europe were also influenced by the report of the European Committee for the Prevention of Torture and Inhuman

Punishment (CPT). The CPT in its *ad hoc* visit in 2008 uncovered a series of human rights breaches, like the ill-treatment of the persons in custody, detainees in pre-detention center and prisons (Council of Europe 2009, 9). The Progress Report in 2009 had also recommended actions from the government in order to implement the recommendations of the CPT (European Commission Progress Report 2009, 14).

Albania had tried to address the concerns of both the CPT and of the European Commission on the ill-treatment and torture in pre-detention centers and prisons. The National Strategy for Development and Integration 2007–2013 affirmed that protection of human rights and the rule of law were main priorities of the national agenda as was defined in the Stabilization Association Agreement (SAS) (Council of Ministers of Albania 2008, 11). According to the document, one of the priorities was the improvement of prisons and pre-detention systems, ensuring a humane treatment of all the prisoners.

One of the measures undertaken in order to achieve this goal was transferring pre-trial detention facilities from the Ministry of Interior to the Justice Ministry, but it was only finalized in 2007–2008, despite being approved in 1994 (Sufaj 2009, 3). The expected reform had been finished only after construction of new pre-detention centers, financed through European Union projects like CARDS (Program of Community Assistance for Reconstruction, Development and Stabilization – an important financial instrument in the Western Balkans) and IPA (Instrument for Pre-Accession Assistance).

Despite all the efforts, instances of ill-treatment had continued and in 2007 the European Court of Human Rights ruled in some important cases regarding this issue.

The ECtHR delivered one judgment on Albania regarding the torture and ill treatment of prisoners and found that Albania had violated the ECHR. The case is *Dybeku versus Albania* and the Court unanimously found that there was a violation of the Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights (Dybeku, 41153/06, 3). The applicant had alleged that his detention conditions and medical treatment were not appropriate for his health, particularly chronic paranoid schizophrenia. The Court concluded that the applicant was subjected to ill-treatment and negative effects of lack of medicines and appropriate cures for his state of health, which was enough for the situation to be qualified as inhuman and degrading (Dybeku, 41153/06, 5).

Another case was *Groni versus Albania*, when the applicant complained about a violation of the Article 3 of the Convention due to a lack of medical treatment. The Court found that Groni had been left without medical treatment, and due to the Government's failure to explain the deterioration of the his health in prison, the Court decided that the deterioration of the applicant health had created a strong feeling of insecurity, which amounted to degrading treatment (Groni, 25336/04, 4).

In order to enforce prevention of torture and to improve its legal framework, the Albanian criminal code was amended in 2010. The crime of torture (art. 86) was introduced among the offences committed intentionally against health, laying down the legal framework and providing a tool for effective protection in case of abusive actions by officials. In 2008 the National Mechanism for Prevention of the Torture had been established (Daems, Robert 2017, 107).

In this context between 2007 and 2010 there was an improvement in the legal framework on the human rights protection regarding prevention of ill-treatment and torture of detainees. This enhancement has been recognized by the European Commission, as being in line with European standards, as well as a break with the past (EC Progress Report 2012, 16). In order to promote the European path and to underline the presence of the EU in the region, in 2012 the European Commission recommended to grant EU candidate status to Albania in recognition of “Albania’s reform efforts” in fulfillment of the enlargement priorities (European Commission 2013). The candidate status was a clear signal of the EU presence in Albania, and although not all of the reforms had been fully implemented the EU wanted to acknowledge Albania’s endeavors to fulfill the integration criteria, especially the political ones.

Regarding the human rights part of the enlargement criteria, the Progress Report in 2013 affirmed that the measures taken to improve the treatment of detainees, which was a key priority for the European Commission, were partially effective (European Movement Albania 2011).

In 2014, after a shift of power from the Democratic to the Socialist Party, the government elaborated a new National Strategy on the integration process (Council of Ministers 2014). According to the document it is strategically important to minimize the use of violence in penitentiary institutes, through both administrative and judicial procedures, in order to prevent this phenomenon and therefore fulfill the European Commission requests and recommendations. Despite the legal framework enhancement the ill-treatment of detainees was not fully addressed, the National Mechanism on the prevention of Torture uncovered further cases of abuse and lack of investigations against police officers (Avokati i Popullit 2015, 26).

In 2015 the country was involved in a debate regarding a comprehensive justice reform with the participation of all political forces and with involvement of the European diplomacy and civil society.

In 2016–2018 a slight improvement regarding torture and ill-treatment in detention centers had been noted, due to the Progress Reports (European Commission, Progress Report 2018). Also, this trend was confirmed by the Committee for the Prevention of Torture in its *ad hoc* visit. The CPT reported to the Albanian Government in 2017 and

the Progress Report of the European Commission in 2018 presented the main findings of the CPT. Due to the report, the situation was improved compared to 2014, and a vast majority of persons interviewed were treated by the Police authorities in a correct way. Despite a positive trend, the CPT reiterated the recommendation to combat all forms of ill-treatment by the police officers (Council of Europe 2018, 13). The CPT and the EU Commission were mainly concerned of the treatment of people with health problems, both in pre-trial centers and prisons, despite a positive improvement comparing to 2014.

In 2019, The European Court of Human Rights again ruled on a case regarding violation of the article 3 and article 2 of the ECHR. The case *Prizreni v. Albania* raised questions about ill-treatment of prisoners in hospitals. The applicant complained about a lack of investigations from the authorities regarding the death of his brother. The Court ruled that *the authorities had failed to carry out an effective investigation to establish whether Mr. Prizreni's brother had been subjected to ill-treatment while in custody and there had thus been a violation of Article 3 under its procedural limb* (Prizreni, n. 29309/16).

Conclusions

The paper addressed the main challenges faced by Albania in preventing torture and ill-treatment, as well as abolishment of the death penalty. Albania, as a post-communist state, doesn't have a tradition of protection of human rights. Although after the fall of the communist regime the state ratified the main instruments on the human rights as well as international treaties, a concern of their implementation still remains. The European Union and the Council of Europe have an important role in the area of protection of human rights in Albania. Due to the EU policy of conditionality Albania ratified the Protocol 13 of the European Convention on Human Rights. As a result the death penalty was abolished in any circumstances. The abolishment of the death penalty was a clear sign of dissociation from the communist past.

Albania, as a member of the Council of Europe, was bound to abolish capital punishment, but it was the conditionality policy of the European Union that convinced the Albanian government to ban the penalty in any circumstances. However, while conditionality enhances legal framework, it cannot assure its implementation. This is evident in Albania; according to all of the Progress Reports the legal framework is adequate with European values, but its implementation is still lacking, as shown by frequent cases of maltreatment of detainees in 2008–2014.

All of the Progress Reports mentioned above have a common feature, which is the European Commission's concern on the crime of torture and ill-treatment

towards detainees during pre-trial treatment and in prisons. Albania tried to face the problem through the enhancement legal framework and approval of reforms. The most important reform is the creation of the People Advocate institution and the improvement of legal framework of its activities. Also, the criminal code was amended, introducing the crime of torture (art. 86) which is a direct result of the EU request to improve the legal framework on the human rights. After acquiring the status of a candidate country Albania boosted implementation of the reforms, and conditions in prisons and custody centers have improved.

From 2016 until now the attention of the European Union in Albania has been concentrated on the judicial system reform. It is considered crucial in the integration process and is being implemented under observation of the EU.

In 2018, The Committee on the Prevention of Torture recognized the achievements in the area of prevention of torture, but there are still some reported cases of abuse.

The integration process and the integration criteria have a positive impact on protection of human rights in Albania because, due to this process, the country has ratified the most important international human rights instruments. Also, Albania has amended the national legal framework in line with European standards. However, the main problems are still the incomplete implementation of the mentioned national and international instruments and, in some cases, the implementation of the European Court of Human Rights judgments.

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