

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

ALBANIA, Situation as of 31 December 2003

General Overview

Preliminary Note: this table is accompanied by an explanatory note

COUNTRY: ALBANIA	Constitutional provisions	Specific legislation	Criminal Law	Civil and Administrative Law
Norms concerning discrimination in general	Yes.	No.	Yes.	Yes.
Norms concerning racism	Yes.	No.	Yes.	Yes.
Relevant jurisprudence	No case law was found on this subject.	No.	No reported cases.	No reported cases.

EXPLANATORY NOTE

ALBANIA / GENERAL OVERVIEW

Albania is a parliamentary republic. It has been a Member of the United Nations since 1955 and has ratified almost all the important conventions of the Organisation relating to the protection of human rights. Furthermore, since 1995, Albania has been a member of the Council of Europe and has signed and ratified a great number of important documents adopted by the Council of Europe. From this point of view, by accepting the above-mentioned international documents, Albania is committed to respecting and protecting, with no discrimination, the human rights of all Albanian nationals, including the national minority people as well. The government has generally respected the human rights of its citizens and Albania succeeded, over the last few years, in its important effort to implement the main international conventions on Human rights, it condemns racial discrimination and is undertaking legislative, judicial and executive measures in order to eliminate practices of racial discrimination, although some critical problems remain. An interim constitution, the "Law on Major Constitutional Provisions", has governed the country since 1991.

Unsuccessful drafts of government and opposition date 1993, 1994, and 1995. The 1998 Draft Constitution was approved by Parliament on 21 October.

Constitutional Law: Albania

Preliminary Note: this table is accompanied by an explanatory note

Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Coexistence with minorities Article 3	The independence of the state and the integrity of its territory, dignity of the individual, human rights and freedoms, social justice, constitutional order, pluralism, national identity and inheritance, religious coexistence, as well as coexistence with, and understanding of Albanians for minorities are the bases of this state, which has the duty of respecting and protecting them.		
Fundamental rights Article 15	The fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the basis of the entire juridical order. The organs of public power, in fulfilment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realisation.		
Equality before law Article 18	All are equal before the law. 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 ancestry. No one may be discriminated against for reasons mentioned above if reasonable and objective legal grounds do not exist.		
National minorities Article 20	Persons who belong to national minorities enjoy full equality before the law in the exercise of human rights and freedoms. They have the right to freely express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop it, to study and to be taught in their mother tongue, as well as unite in		

	organisations and societies for the protection of their interests and identity.		
Freedom of conscience and of religion Article 24	Freedom of conscience and of religion is guaranteed. 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. No one may be compelled or prohibited to take part or not in a religious community or in religious practices or to make his beliefs or faith public.		
Superiority of international law Article 122	Any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law. The amendment, supplementing and repeal of laws approved by the majority of all members of the Assembly, for the effect of ratifying an international agreement, is done with the same majority. An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it.		

EXPLANATORY NOTE

ALBANIA / CONSTITUTIONAL LAW

All laws have to comply with constitutional provisions regulating the fundamental rights and freedoms of a person and of a citizen. The law constitutes the basis and the boundaries of the activity of the State. The Constitution is the highest law in the Republic of Albania. The provisions of the Constitution are directly applicable, except when the Constitution provides otherwise (art. 4).

The Republic of Albania has ratified both International Covenants on Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women. The Convention on the Rights of the Child, The Convention against Discrimination in Education, The Convention for the Protection of Human Rights and Fundamental Freedoms, 1951, The Framework Convention for the Protection of National Minorities, and the UNESCO Convention against Discrimination in Education.

The Constitution of Albania confers special status on the international instruments to which the Republic of Albania is a party. Articles 121 and 122 of the Constitution stipulate that any ratified international convention constitutes part of the domestic legal system. They are directly applicable, except when they are not self-executing and their application requires the adoption of a law. International agreements have priority, in case of conflict, over the laws of the country when the direct application of the norms contained in an international organisation is expressly stipulated in the agreement.

Moreover, articles 60 to 63 of the Constitution establish the People's Advocate (Ombudsman) to defend individuals' rights and freedoms from unlawful or improper actions or failure to act on the part of organs of the public administration. Each person, group or non-governmental organisation representing those who claim to have had their human rights violated have, according to law, the right to forward a complaint and to request intervention for redress, after having pursued every possible legal avenue. After investigation, the People's Advocate may dismiss the case; present recommendations to the bodies to rectify the violated rights; recommend an investigation by the public prosecutor; or recommend the dismissal of the guilty officials.

The People's Advocate shall exercise its activity for the protection of human rights and freedoms as defined by the constitutional provisions and by the laws. The provisions of Law No. 8454 shall also apply to protect the rights of foreigners, whether they are residing lawfully in Albania or not, refugees, as well as stateless persons within the territory of the Republic of Albania, pursuant to the terms set forth by law. Article 12 of the Law on the Ombudsman provides that "every individual, group of individuals or non-governmental organisation that claims that his/their rights, freedoms or lawful interests have been violated by the unlawful or improper actions or failures to act of the organs of the public administration shall have the right to complain or notify the People's Advocate and to request his intervention to remedy the violation of the right or freedom. Pursuant to article 29, "the People's Advocate may assist, give opinions and make recommendations in the drafting of reports and other documents by the Albanian State on human rights and freedoms in the Republic of Albania".

In 2000, the Office of National Minorities was established at the Ministry of Foreign Affairs. In line with the domestic legislation, the Office has the duty to follow the fulfilment of international obligations and commitments of Albania in the area of national and linguistic minority rights. It establishes and conducts the official dialogue with the minority communities, their organisations and representatives and presents their concrete problems and complaints to the government. In addition, the Office encourages and backs up their legitimate activities aiming to preserve and further develop their linguistic, cultural, religious and national identities and assists in providing a proper climate for better inter-ethnic understanding

Criminal Law: Albania

Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant Jurisprudence	Remarks
Genocide	Criminal Code, Art. 73	Requires the execution of a premeditated plan for the total or partial destruction of a national, ethnic, racial or religious group, combined with any of the following acts: intentionally killing a member of the group, inflicting serious physical or psychological harm upon members of the group, placement of members in living conditions which are so difficult as to cause the physical destruction of the group, application of measures to prevent births within the group, forced transfer of children from one group to another.	Imprisonment, for between ten years and life time.		
Crimes Against Humanity	Criminal Code, Art. 74	Extends to killings, massacres, imposition of	Imprisonment, for between 15 years and life time.		

		slavery or internal exile and to deportations, as well as to every act of torture or other inhuman violence committed for political, ideological, racial, ethnic or religious reasons.			
Obstructing the Activities of Religious Organisations	Criminal Code, Art. 131	Punishes persons who purport to prohibit the activities of religious organisations, or create obstacles to the free exercise of religions.	A fine, or imprisonment for up to three years.		
Destroying or Damaging Places of Worship	Criminal Code, Art. 132	Punishes persons who destroy or damage any place of worship, or who cause the partial or total loss of valuable items.	A fine, or imprisonment for up to three years.		
Obstructing Religious Ceremonies	Criminal Code, Art. 133	Punishes persons who purport to prohibit or create obstacles to participation in religious ceremonies, or the free	A fine, or imprisonment for up to one year.		

		expression of religious beliefs.	
Denying equality of the citizens	Criminal Code Art. 253	Discrimination by a worker holding a state function or public service conducted because of his capacity or during its exercise, when the discrimination is based upon origin, sex, health situation, religious or political beliefs, trade-union activity or because of belonging to a particular ethnic group, nation, race or religion, which consists in creating unfair privileges or in refusing a right or benefit deriving by law.	Sentenced to a fine or up to five years of imprisonment
Inciting nationality, racial and religious hatred or conflict	Criminal Code Article 265	Inciting national, racial and religious hatred or conflict as well as preparing, propagating, or preserving with the intent of propagating,	Sentenced to a fine or to up ten years of imprisonment

		of writings with that content			
Treatment of convicts	Law No. 8328 of 6 April 1998, “On the rights and treatment of convicts”, Article 5	The treatment of convicts should be non-discriminatory on the grounds of gender, nationality, race, economic and social situation, political viewpoints and religious beliefs.			
Information for convicts	Regulation of the Prisons adopted by the Decision of the Council of Ministers, No. 96 of 9 March 2000, Articles 13, 45, 53 and 63	Convicts must be informed in the language they understand about the rules of the prison, the modalities of serving their sentence, the rights and obligations of prisoners, etc.			

Civil and Administrative Law: Albania

Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note

Provision	Scope	Consequences of breach	Relevant Jurisprudence	Remarks
Labor Code (Law No. 7961, dated 12 July 1995, published in Flet. Zyrt. 1994, Vol. 16), Art. 9	Prohibits Discrimination (1) Every type of discrimination in employment or professional life is prohibited. (2)			Labour Code as amended by Law No. 8085, of 13 March 1996 covers labour relations in both the public and in private sectors,

“Discrimination” means any distinction, exclusion or preference that is based on race, color, sex, age, religion, political conviction, national origin, social origin, family relations, or physical or mental handicap and that infringes an individual’s right to equal treatment in employment. Distinctions, exclusions or preferences that reflect requirements for a specific position are not considered to be discriminatory. Special protective measures for employees provided pursuant to this Code by a Decision of the Council of Ministers or under collective agreements are deemed non-discriminatory.

prohibits any sort of discrimination in employment or in professional life

Code of Civil Procedures Article 2

Article 2, second paragraph, of the Code of Civil Procedures provides that “Persons who do not know the Albanian language can use their own mother tongue.

They must be advised of evidence and proceedings through a translator.”

Code of Administrative Procedures Article 11	Article 11 of the Code provides that: (a) In relation to private persons, the public administration is guided by the equity principle, i.e. no one shall be either privileged or discriminated against because of gender, race, religion, ethnicity, language, political, religious or philosophical views, economic, academic, social situation or parental affiliation; (b) The public administration’s actions which limit the fundamental human rights recognised by the Constitution, international agreements, laws and by-laws with a view to protecting the public interest and others’ rights shall, however, respect the proportionality principle and never violate the core freedoms and rights. This means that the public	According to the article 14 of the Code of Administrative Procedures, the organs of the public administration and their officials are responsible for the damages that they may cause to private persons through illegal decisions, illegal refusal to take decisions, and giving incorrect information to private persons, with respect to the Status of their case, for any reason or as provided by law	The Code of Administrative Procedures includes in an explicit way the principles of good administration because the right of the people to have good governance is considered as one of the human rights. This Code includes principles such as: the correct procedures and the right to a defence; elimination of discrimination; the reserving of all the considerations relating to the issue and the exclusion of those that do not deal with it; the keeping and maintenance of the documents; the elimination of unnecessary delay; the assurance that the information is understandable and clear; giving the correct advice; the
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	<p>administration's actions shall be such as to require:</p> <ul style="list-style-type: none"> -the fulfilment of public legal interests; -the application of appropriate means and in proportion to the objective to be achieved. 		<p>implementation of the determined rules and decisions;</p> <p>dissemination of the information with regard to the right of appeal in cases of an unfavourable decision to a citizen;</p> <p>acknowledgement of the letters and responses to them; transmittal of letters (complaints) to the competent organ or service;</p> <p>apology for mistakes; the functioning of an adequate system to deal with complaints, etc.</p>
Code of Civil Procedures Article 116/2	<p>Article 116, second paragraph provides that: courts must call in interpreters and translators when questioning or providing documents to persons who do not understand the Albanian language.</p>		
Law No. 8580, of 17 February 2000, "Law on political parties" Article 7	<p>Article 7 of this law forbids the registration of the parties when their internal organisation is in opposition to democratic principles, when their creation violates</p>		

	<p>constitutional provisions, when they promote and support racial, religious, regional or ethnic discrimination, when they are based on totalitarian methods, etc.</p>		
<p>Law “On the right to hold meetings” Article 1</p>	<p>Article 1 of Law “On the right to hold meetings” provides that “the citizens of the Republic of Albania, without any distinction because of sex, race, language, religious faith, ethnic group, economic and financial, educational or social condition, political creed, parents affiliation etc; have the right to hold public meetings”</p>		
<p>Law on the pre-university education system (1995)</p>	<p>Law No. 7952 of 21 June 1995, “On the pre-university education system”, guarantee the respect for the international norms on human rights and the elimination of discrimination. The Law stresses that “education in the Republic of Albania is a national priority”,</p>		

that it is conducted “in accordance with the international agreements and treaties ratified by the Republic of Albania” and that it “respects the rights of children and adults” (art. 1). This law broadly reflects the integrity of the non-discrimination principle and the protection of the person from discrimination, treating them in the context of respecting the provisions, principles and standards of international agreements on basic human rights and freedoms in the field of education. This law guarantees: (a) The equal right of the citizens of the Republic of Albania to all levels of pre-university education, regardless of social situation, nationality, language, sex, religion, political views, health status and economic level (art. 3); (b) The right of national

	<p>minorities to education in their mother tongue and to study their national history and culture (art. 10).</p>		
<p>The Law On public and private radio and television (1998) Article 4</p>	<p>The Law No. 8410 of 30 September 1998 “On public and private radio and television in the Albanian Republic” guarantees access to electronic media for national minorities. The law guarantees freedom of radio and television activity and their editorial independence (arts. 4, 5). Article 4 stipulates that “the activities of radio and television stations impartially respect the right to information, political trends and religious belief, personality, dignity, the private life of the individual, as well as his fundamental rights and freedoms”.</p>		
<p>The Law On public and private radio and television (1998) Article 36</p>	<p>Article 36 provides that “radio and TV programmes must respect the individual’s personal dignity and fundamental rights, impartiality,</p>		

comprehensiveness and pluralism of information, children's and adolescents' rights, public order and national security, Albanian language and culture, constitutional and human rights of citizens and national minorities in conformity with international conventions ratified by the Republic of Albania, and Albanian religious diversity".

The Law On public and private radio and television (1998) Article 37

Article 37 of this law provides that "the use of the Albanian language is compulsory for all programmes, apart from musical works with their text in a foreign language, programmes of teaching foreign languages, broadcasts that are particularly directed to national minorities and those of local radio and television entities which are licensed for broadcasting in national minorities' languages".

The Law On public and private radio

Article 38 of the Law provides that public and private

and television (1998) Article 38	radio and TV stations are forbidden to broadcast programmes, which incite religious and racial hatred, and information which violates the private life of citizens. Further the Law states that “the broadcasting of programmes that encourage violence, aggression, national and racial hatred, etc. is prohibited”.
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