

Information provided by Albania

on

The safety of journalists and the issue of impunity

The legal framework that protects human rights and fundamental freedoms in Albania:

The Constitution of the Republic of Albania (Article 4/2), provides that the law constitutes the basis and boundaries of the state activity (Article 4/1). The provisions of the Constitution are applied directly, except when it is stated otherwise (Article 4/3). The Republic of Albania applies its mandatory international law (Article 5). The Constitution not only envisions the organization of the State (Article 6), but also guarantees all human rights and fundamental freedoms (in its second part).

In the Second Part, the Constitution of the Republic of Albania states the fundamental human rights and freedoms, which are incorporated in the constitutional provisions and define the fundamental human rights and freedoms as universal and inalienable, inviolable and inseparable at the core of all the juridical order. Public authority bodies, in fulfillment of their duties, must respect fundamental freedoms and human rights thus contribute to their realization (Article 15).

The fundamental rights and freedoms guaranteed by the Constitution are: equality before the law (Article 18/1); non-discrimination (Article 18/2); the right of citizenship (Article 19); the rights of national minorities (Article 20); the right to life (Article 21); freedom of expression (Article 22/1); freedom of media (Article 22/2); the right of access to information (Article 23); freedom of conscience and religion (Article 24/1); prohibiting torture, punishment or cruel, inhuman or degrading treatment (Article 25); prohibition of forced labor (Article 26); the right of liberty and security of the person (Articles 27-29, including restriction or deprivation of liberty); the retroactive power of the favored criminal law (Article 29); presumption of innocence (Article 30); guarantees in the criminal process (Article 31); the right not to be acquitted or convicted of illegally collected data (Article 32); the right to be heard before the trial (Article 33); the right not to be tried and punished more than once for the same criminal offense (Article 34); the right to enjoy private life (Articles 35-37); freedom of movement (Article 38); prohibition of deportation (Article 39); the right to housing for foreigners (Article 40); the right to private property (Article 41); the right to a fair trial (Articles 42-43); the right to choose and to be elected (Article 45); the right to collective bargaining (Article 46); freedom of assembly (Article 47); the right to petition (Article 48); the right to work and the rights of the employee (Articles 49-51); the right to social security (Article 52); the right to a normal family life (Article 53); special protection of children, young people and pregnant women (Article 54); the right to health care (Article 55); the right to

information about the environment (Article 56); the right to education (Article 57); freedom of artistic and scientific creation (Article 58/1); Copyright (Art. 58/2).

The projections of the European Convention on Human Rights and its Protocols are fully reflected in our Constitution in the second part, "Human Rights and Fundamental Freedoms" (Articles 15-63). The European Convention on Human Rights has been ratified by the Assembly of the Republic of Albania by Law no. 8137, dated 31.7.1996, published in Official Paper, 1996, No. 20, page 724, date of publication 12.8.1996, entry into force immediately).

There is a clear link between the Constitution and the main international human rights instruments, in particular the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Covenant on Civil and Political Rights of the United Nations (adopted by law) "On the adherence of the Republic of Albania to the International Covenant on Civil and Political Rights" and the International Covenant on Economic, Social and Cultural Rights.

In particular, freedom of expression is enshrined in Article 22 of the Constitution, according to which freedom of expression, including freedom of media (press, radio and television, etc.), is guaranteed. According to the Constitution, prior censorship of communication means is prohibited.

The Constitution provides that limitations of rights and freedoms may only be imposed by law for a public interest or for the protection of the rights to others. The restriction must respect the principle of proportionality, so be proportionate to the state that dictated it. These restrictions cannot undermine the essence of freedoms and rights and in no case may exceed the limits set forth in the European Convention on Human Rights (Article 17).

These freedoms are subject to the general restriction laid down by the Constitution in Article 17, which expressly stipulates that limitations of individual rights and freedoms may be imposed only by law, and only in those cases where exercise without restriction would prejudice the public interest or protecting the rights of others. The restrictions imposed under the provisions must be proportionate to the cause of the dictated restriction. On the other hand, as such, these restrictions do not violate the essence of freedoms and rights by making them useless. Article 17 of the Constitution furthermore guarantees that restrictions imposed by law cannot in any case exceed the limitations provided by the European Convention on Human Rights, ratified by Law No. 8137, dated 31.07.1996.

Within the aforementioned, freedom of expression may be limited to protect the individual reputation, but libel laws, like all other limitations, should be proportionate to the damage caused and not going beyond as what is necessary in special circumstances. In Albanian legislation related to the civil and criminal there are provisions for the protection of the person in cases of defamation or insult or for those named "cases of overruns of the right of expression"

The Albanian Criminal Code contains a number of provisions that anticipate "insult", "defamation" and "humiliation" related to specific subjects. Specific provisions also are listed for defamation and offense while there are special protection only for certain subjects such as public officials (the president, foreign personalities), and the flag. The Penal Code makes a difference between "insult" and "defamation", and also anticipates a fine as well as the aggravating circumstances for each one.

- **Article 119** - Insult - "Intentional insulting to a person constitutes criminal contravention and is punishable by a fine from fifty thousand to one million five hundred thousand leks. When it is committed publicly to the detriment of several persons or more than once, constitutes a criminal contravention and is punishable by a fine from fifty thousand to three million leks. "

- **Article 120** - Defamation - "Intentional dissemination of statements, and any other information, knowing that they are false, affecting the honor and dignity of a person, constitutes a criminal contravention and is punishable by a fine from fifty thousand to one million five hundred thousand leks. When It is committed publicly, to the detriment of several persons or more than once, constitutes criminal contravention and is fined from fifty thousand to three million leks. "

The procedural rules for the adjudication of offenses relating to insult and defamation are provided in the Criminal Procedure Code.

Criminal offenses of defamation (Article 120) and insult (119) are followed with the appeal of the accused victim. The injured party has the right to make a claim in the court and to participate in the trial as a party to validate the indictment and seek compensation for the damage (Article 59/1). For these cases the appeal is made in court by the accused victim (Article 284/5). The ordinary court is the only prosecuting body for criminal offenses prosecuted on the accusation victim's request. In this judgment, the prosecutor participates in the adjudication of these cases and, depending on the case, he requests the punishment of the defendant or his innocence.

The Civil Code of the Republic of Albania contains two articles that do not directly deal with the notion of insult or defamation but they entitle the person who has suffered a moral impairment to seek redress for the violation of the honor, dignity, of the right to person's name.

As treated in the section on Albanian criminal legislation, apart from the material damage, the person affected in cases of his "violation of dignity" may also seek to restore his honor and dignity, violation of the right to name, violation of adherence of privacy, a violation of the memory of a dead person.

Specifically these articles are Article 617 "Fraudulent and incorrect publications" and Article 625 "Responsibility for non-pecuniary damage".

- **Article 617** provides the right to refuse to publish inaccurate, incomplete or fraudulent data. This Article provides in particular that: "When it is established that a person has a responsibility towards another person, because he has published inaccurate, incomplete or fraudulent data, the court, upon

the request of the injured person, shall oblige the other person to publish a refutation in the an appropriate way. The court may order the publication of the refutation even when it is established that the disclosure of the data is not unlawful and guilty, and that their author was not informed of the inaccurate or incomplete nature of such data. "

• **Article 625** states for liability on non-pecuniary damage. This article provides, in particular, that: "A person suffering from non-pecuniary damage has the right to be rewarded when: a) has suffered an impairment of his or her health, physical or psychological integrity; b) his honor, personality or reputation has been violated; c) the name right is violated; ç) respect for private life is violated; d) the memory of a dead person is violated. In these cases, the spouse of the deceased person or his relatives up to the second generation may claim the compensation of non-pecuniary damage. "

Concerning the concrete data, according to the specific subject, we cannot identify concrete data, since the statistical data available from the Ministry of Justice are data provided by the courts based on the criminal offense which is processed and judged by the subject. From the consultation with the data in the section <http://www.drejtesia.gov.al/statistika/> , for the last three years there are statistics on civil cases (Article 608-654) according to the table below.

Types of cases	Civil cases completed in 2015	Civil cases completed in 2016	Civil cases completed in 2017
Lawsuits for causing the damage (Article 608-654)	2570	1755	1850