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I. Introduction

The end of the Cold War and the collapse of the Soviet Empire have radically transformed the constitutional order of Eastern European countries and the former Soviet republics.¹ Democratic systems of government and respect for individual rights have replaced dictatorship and oppression. As a result, a flurry of drafting efforts during the last decade has brought into being a number of new constitutions, which drastically change the relationship between the people and the state.² In a well-attended

¹ See, e.g., BELR. CONST., *translated in 2 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1* (Gisbert H. Franz ed. & Inter-University Associates, Inc. trans., 1997) (adopted Mar. 15, 1994; amended Nov. 27, 1996); BULG. CONST., *translated in 3 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 87* (Albert P. Blaustein & Gisbert H. Franz eds. & Ivan Sipkov trans., 1992) (adopted July 12, 1991); CZECH REP. CONST., *translated in 5 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 117* (Albert P. Blaustein & Gisbert H. Franz eds. & Gisbert H. Franz trans., 1993) (adopted Dec. 16, 1992); EST. CONST., *translated in 6 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 3* (Albert P. Blaustein & Gisbert H. Franz eds., 1994) (adopted July 3, 1992); HUNG. CONST., *translated in 8 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1* (Gisbert H. Franz ed. & Sándor Gallai trans., 1995) (amended several times between 1989 and 1991); KAZ. CONST., *translated in 9 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 3* (Gisbert H. Franz ed. & Karin Hermanska trans., 1999) (adopted Jan. 28, 1993); KYRG. CONST., *translated in 10 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 95* (Gisbert H. Franz ed. & Karin Hermanska trans., 1999) (adopted May 5, 1993); LITH. CONST., *translated in 11 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1* (Albert P. Blaustein & Gisbert H. Franz eds., 1994) (adopted Oct. 25, 1992); POL. CONST., *translated in 15 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1* (Gisbert H. Franz ed. & Inter-University Associates, Inc. trans., 1997) (adopted Apr. 2, 1997); ROM. CONST., *translated in 15 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 5* (Albert P. Blaustein & Gisbert H. Franz eds., 1992) (adopted Nov. 21, 1991); RUSS. FED. CONST., *translated in 15 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1* (Albert P. Blaustein & Gisbert H. Franz eds. & Federal News Service trans., 1994) (adopted Dec. 12, 1993); SLOVK. CONST., *translated in 16 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 63* (Albert P. Blaustein & Gisbert H. Franz eds. & Peter Bajčík & Tibor Szerződi trans., 1993) (adopted Sept. 1, 1992).

² The rise in importance of the idea of popular sovereignty may be observed in the increased number of constitutions beginning with "We, the people" or similar language. See, e.g., BELR. CONST., *translated in 2 CONSTITUTIONS OF THE COUNTRIES OF THE*

referendum held in November 1998, the Albanian people joined the rest of Eastern Europe in establishing for themselves a democratic constitution.³

The purpose of this Comment is to describe and evaluate two important parts of the Albanian Constitution of 1998: the Fundamental Human Rights and Freedoms and the Constitutional Court. This Comment first provides a historical perspective by outlining the status of individual rights under the Communist Constitution of 1976.⁴ It then explains in detail the rights and freedoms established by the current Constitution.⁵ The Comment turns next to the institutional structure, which protects both the constitutional order and individual rights, and examines how the Constitutional Court carries out its functions.⁶ The Comment concludes with a few observations about issues that remain unanswered by the text of the Constitution.⁷

II. The Constitution of 1976

The 1976 Constitution was praised as reflecting Albania's progress along the Marxist materialist dialectic continuum and marked her entrance into a new phase of socialist development.⁸ It

WORLD, *supra* note 1, at 1 ("We, the People of the Republic of Belarus"); CZECH REP. CONST., *translated in* 5 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 117 ("We, the citizens of the Czech Republic"); EST. CONST., *translated in* 6 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 3 ("the Estonian people"); KAZ. CONST., *translated in* 9 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 3 ("We, the People of the Kazakhstan"); KYRG. CONST., *translated in* 10 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 95 ("We, People of the Kyrgyz Republic"); LITH. CONST., *translated in* 11 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 1 ("The Lithuanian Nation"); POL. CONST., *translated in* 15 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 1 ("we, the Polish Nation"); RUSS. FED. CONST., *translated in* 15 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 1 ("We, the multinational people of the Russian Federation"); SLOVK. CONST., *translated in* 16 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 65 ("We, the Slovak nation").

³ See *Constitution Watch, A Country-by-Country Update on Constitutional Politics in Eastern Europe and the ex-USSR: Albania*, E. EUR. CONST. REV., Fall 1998, at 2, 2 [hereinafter *Constitution Watch*].

⁴ See *infra* notes 8-53 and accompanying text.

⁵ See *infra* notes 62-181 and accompanying text.

⁶ See *infra* notes 182-201, 215-55 and accompanying text.

⁷ See *infra* notes 202-14, 256-60 and accompanying text.

⁸ See ALB. CONST. of 1976, introduction, *translated in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: HISTORIC CONSTITUTIONS 2 (Albert P. Blaustein & Gisbert H.

established “a state of the dictatorship of the proletariat” that expressed and defended “the interests of all the working people.”⁹ The People’s Socialist Republic was “based on the unity of the people round the Party of Labour of Albania” and had as its foundation “the alliance of the working class with the cooperativist peasantry under the leadership of the working class.”¹⁰ All state power within this structure emanated from the working people and belonged to them.¹¹

The 1976 Constitution drew ideas and principles from both the Constitution of the Soviet Socialist Republic of 1936 and the Constitution of the People’s Republic of China of 1954.¹² Especially with respect to the Fundamental Rights and Duties of Citizens,¹³ the 1976 Constitution continued in the tradition of socialist constitutions. It contained a lengthy list¹⁴ of fundamental rights, which, as one scholar commenting on socialist constitutions has noted, was designed “[t]o demonstrate the superiority of socialist democracy over bourgeois democracy.”¹⁵ All citizens, for example, were equal before the law, and no restriction or privilege was recognized on the basis of sex, race, nationality, social

Franz eds., 1981) (“Albania has entered the stage of the complete construction of socialist society. The great historic changes have created new conditions for the continuous development of the revolution and socialist construction.”); *see also* William B. Simons, *Albania: Introduction*, in *THE CONSTITUTIONS OF THE COMMUNIST WORLD* 2, 4 (William B. Simons ed., 1980) (describing the Constitution of 1976); *cf.* U.S.S.R. CONST. of 1977, preamble, *reprinted in* *THE CONSTITUTIONS OF THE COMMUNIST WORLD*, *supra*, at 351, 352-54 (declaring the progress made in the U.S.S.R. under Communist leadership); P.R.C. CONST. of 1978, preamble, *reprinted in* *THE CONSTITUTIONS OF THE COMMUNIST WORLD*, *supra*, at 76, 76-78 (making similar claims).

⁹ ALB. CONST. of 1976, art. 2.

¹⁰ *Id.*

¹¹ *See* ALB. CONST. of 1976, art. 5.

¹² For example, many of the fundamental rights and duties of citizens resemble provisions of the Soviet Constitution, while the preamble is drafted in language similar to that of the Chinese Constitution. *Compare* ALB. CONST. of 1976 with U.S.S.R. CONST. of 1936, *reprinted in* *CONSTITUTIONS OF THE COMMUNIST PARTY-STATES* 37 (Jan F. Triska ed., 1968) and P.R.C. CONST. of 1954, *reprinted in* *CONSTITUTIONS OF THE COMMUNIST PARTY-STATES*, *supra*, at 108.

¹³ *See* ALB. CONST. of 1976, arts. 38-65.

¹⁴ *See id.*

¹⁵ Chris Osakwe, *The Common Law of Constitutions of the Communist-Party States*, 3 *REV. SOCIALIST L.* 155, 190 (1977).

position, or material situation.¹⁶ Women, "as a great force of the revolution," enjoyed equal rights with men at work, in financial compensation, and in the family.¹⁷ National minorities were also assured protection of their cultures and popular traditions,¹⁸ while mothers and children enjoyed "special solicitude and protection."¹⁹ The Constitution also protected the inviolability of the person²⁰ and the home,²¹ as well as the secrecy of correspondence.²²

As a further showing of superiority over capitalist doctrine, fundamental rights included a number of provisions regarding social, economic, and cultural rights.²³ Citizens enjoyed the right to work, "which [was] guaranteed by the state,"²⁴ as well as the "right of rest after work."²⁵ They also enjoyed the "right to education"²⁶ and were "guarantee[d] the freedom of scientific work and literary and artistic creativeness."²⁷ All citizens had a right to obtain "necessary medical services . . . free of charge,"²⁸ and workers were also entitled to "the necessary material means of livelihood in old age, and in case of illness or loss of ability to work."²⁹

Typical of a socialist constitution, the Constitution of 1976 considered rights and duties to be closely intertwined.³⁰ Such

¹⁶ ALB. CONST. of 1976, art. 40.

¹⁷ ALB. CONST. of 1976, art. 41.

¹⁸ See ALB. CONST. of 1976, art. 42.

¹⁹ ALB. CONST. of 1976, art. 48.

²⁰ See ALB. CONST. of 1976, art. 56.

²¹ See ALB. CONST. of 1976, art. 57.

²² See ALB. CONST. of 1976, art. 58.

²³ Cf. Rett R. Ludwikowski, *Fundamental Constitutional Rights in the New Constitutions of Eastern and Central Europe*, 3 CARDOZO J. INT'L & COMP. L. 73, 90 (1995) (discussing the socialist concept of constitutional rights and noting that typical socialist bills of rights contained similar provisions).

²⁴ ALB. CONST. of 1976, art. 44.

²⁵ ALB. CONST. of 1976, art. 45.

²⁶ ALB. CONST. of 1976, art. 52.

²⁷ ALB. CONST. of 1976, art. 51.

²⁸ ALB. CONST. of 1976, art. 47.

²⁹ ALB. CONST. of 1976, art. 46.

³⁰ See Ludwikowski, *supra* note 23, at 88 (noting that one of the fundamental characteristics of the socialist concept of constitutional rights was the fact that "along with rights and freedoms, they contained elaborate lists of duties"); see also U.S.S.R.

rights were “inseparable from the fulfillment of [the citizens’] duties”³¹ and, in balancing rights and duties, “the general interest” took priority.³² Some of the citizens’ responsibilities included the duties to work,³³ to educate children according to communist principles,³⁴ to care for their parents,³⁵ and to “protect and strengthen socialist property.”³⁶ All citizens were obliged “to respect and implement the Constitution and other laws” and to preserve and strengthen “the socialist order and the implementation of the rules of socialist co-existence.”³⁷ Thus, while the rights accorded by the Constitution were extensive, so were the accompanying duties. The most significant limitation of rights and freedoms, though, stemmed from the fact that they could not be exercised “in opposition to the socialist order.”³⁸

Despite its many similarities with the “common law” of the socialist constitutions,³⁹ the 1976 Constitution was not a mere copy of either the Soviet or the Chinese constitution. True to its unique version of Stalinist Marxism,⁴⁰ Albania pursued a more radical course than even China or the Soviet Union. In the areas of religious freedom and property rights, the 1976 Constitution

CONST. of 1977, art. 59 (“The exercise of rights and freedoms is inseparable from the performance by the citizen of his duties.”).

³¹ ALB. CONST. of 1976, art. 39; *see also* Simons, *supra* note 8, at 5 (highlighting this new characteristic of the 1976 Constitution).

³² ALB. CONST. of 1976, art. 39.

³³ ALB. CONST. of 1976, art. 44 (In typical communist propagandist words, the Constitution declared that “[w]ork is a duty and honour for every able-bodied citizen.”).

³⁴ ALB. CONST. of 1976, art. 49 (“The parents are responsible for the upbringing and communist education of the children.”).

³⁵ ALB. CONST. of 1976, art. 49 (“The children are duty bound to care for parents who are disabled and lack the necessary means of livelihood.”).

³⁶ ALB. CONST. of 1976, art. 61.

³⁷ ALB. CONST. of 1976, art. 60.

³⁸ ALB. CONST. of 1976, art. 39; *see* Simons, *supra* note 8, at 5; *see also* Ludwikowski, *supra* note 23, at 88 (noting that “under socialist law, the constitutionally guaranteed rights of citizens could not be exercised to the detriment of the interests of the state”).

³⁹ *See* Osakwe, *supra* note 15, at 157.

⁴⁰ *See generally* ELEZ BIBERAJ, ALBANIA: A SOCIALIST MAVERICK (1990) (providing an overview of political developments in Albania); ARSHI PIPA, ALBANIAN STALINISM: IDEO-POLITICAL ASPECTS (1990) (tracing different aspects of historical developments in Albania).

greatly restricted individual rights.⁴¹ The Constitution declared that “[t]he state recognizes no religion whatever and supports atheist propaganda for the purpose of inculcating the scientific materialist world outlook in people,”⁴² and the Introduction boasted that “[t]he foundations of religious obscurantism [have been] smashed.”⁴³ With respect to property rights, the Constitution boasted that “private property and the exploitation of man by man have been liquidated and are forbidden.”⁴⁴ Socialist property was the “inviolable basis of the socialist order” and enjoyed the protection of the state.⁴⁵ Individual rights were limited to “personal property,” which was defined as “income from work and other lawful sources, dwelling houses and other objects which serve to meet personal and family material and cultural needs.”⁴⁶ The Chinese and Soviet constitutions defined “personal property” similarly,⁴⁷ although the Soviet Constitution did permit some

⁴¹ See, e.g., ALB. CONST. of 1976, art. 37.

⁴² ALB. CONST. of 1976, art. 37. Compare ALB. CONST. of 1976, art. 37 with ALB. CONST. of 1946 (revised in 1950, amended in 1953, 1954, and 1958), art. 18, translated in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: HISTORIC CONSTITUTIONS 9 (Albert P. Blaustein & Gisbert H. Franz eds., 1972) (“All the citizens are guaranteed the freedom of conscience and of faith. The church is separated from the State. The religious communities are free in matters of their belief as well as in their outer exercise and practice The State may give material aid to religious communities.”). Consider also the provisions related to marriage ceremonies. The 1976 Constitution simply provided that “[m]arriage is contracted before competent state organs.” ALB. CONST. of 1976, art. 49. The 1946 Constitution, on the other hand, after noting that “[l]awful marriage can be contracted only before the competent organs of the State,” stated that “[a]fter the celebration of lawful marriage the citizens may also celebrate religious marriage according to the rules of their religion.” ALB. CONST. of 1946, art. 19, translated in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: HISTORIC CONSTITUTIONS, *supra*, at 10.

⁴³ ALB. CONST. of 1976, introduction. Neither the Soviet Constitution of 1977 nor the Chinese Constitution of 1978, adopted after the Albanian Constitution had come into effect, made any such statements about religion. In fact, the Soviet Constitution declared that “[c]itizens of the USSR are guaranteed freedom of conscience, that is, the right to profess any religion or to profess no religion at all, and to perform religious rites.” U.S.S.R. CONST. of 1977, art. 52.

⁴⁴ ALB. CONST. of 1976, art. 16.

⁴⁵ ALB. CONST. of 1976, art. 17.

⁴⁶ ALB. CONST. of 1976, art. 23.

⁴⁷ See P.R.C. CONST. of 1978, art. 9 (“The state protects the right of citizens to own lawfully earned income, savings, and other means of livelihood.”); U.S.S.R. CONST. of 1977, art. 13 (“Earned income constitutes the basis of personal property of citizens of the

private enterprise.⁴⁸ This was not the case in Albania.

As in all other socialist countries, the rights granted by the 1976 Albanian Constitution were not “self-executing;”⁴⁹ that is, the 1976 Constitution provided no mechanism for their enforcement. Citizens could not petition a court to obtain relief for constitutional violations. Given that no judicial review was possible, the system operated under the assumption that the legislative body itself was responsible for maintaining the constitutionality of state action.⁵⁰ Indeed, one of the express competences of the People’s Assembly was to “decide[] on the conformity of the laws with the Constitution, and [to] interpret[] the laws.”⁵¹ In this task, the People’s Assembly was aided by the Attorney General, whose duty it was to submit “cases in which the laws and decrees are not in conformity with the Constitution.”⁵²

These constitutional guarantees were of little value in a system that provided no mechanism for enforcement. History proved that broadly defined rights wither away in the face of a dictatorial government, which respects neither the Constitution nor individual freedoms.⁵³

III. The Constitution of 1998

A. *Introduction to the New Constitution*

With the fall of communism in 1990, the Constitution of 1976

USSR. Articles of everyday use, of personal consumption and comfort, and of the subsidiary household, a dwelling, and savings from labor may be held in personal ownership.”).

⁴⁸ See U.S.S.R. CONST. of 1977, art. 13 (“Citizens may have the use of plots of land, made available in the manner provided by law, in order to run a subsidiary household (including the keeping of livestock and fowl), to engage in fruit and vegetable gardening, and also for individual housing construction.”).

⁴⁹ Ludwikowski, *supra* note 23, at 89.

⁵⁰ See *id.* (In socialist countries, “[i]t was assumed the legislative body itself was responsible for maintaining the constitutionality of state actions, and constitutional review could not be exercised by extra-parliamentary bodies.”).

⁵¹ ALB. CONST. of 1976, art. 67.

⁵² ALB. CONST. of 1976, art. 105.

⁵³ See ELEZ BIBERAJ, ALBANIA IN TRANSITION: THE ROCKY ROAD TO DEMOCRACY 71 (1998) (reporting that the communist regime engaged in “gross violations of human and political rights”); see also *id.* at 102 (noting that the Albanian Party of Labor never respected the rights proclaimed in the 1976 Constitution).

lost its relevancy, and Albania faced the task of developing a new constitutional order. To provide an interim structure, Parliament approved in April 1991 the "Law on the Main Constitutional Provisions," which was intended to remain in force until a new constitution could be promulgated.⁵⁴ The task of drafting a constitution that both addressed Albania's historical concerns and guaranteed a government of law proved to be a difficult one. Instability in Albanian political life⁵⁵ prolonged the drafting process. In November 1994, Democratic President Sali Berisha called a referendum and placed a new constitution before the Albanian people, but the draft was rejected.⁵⁶ After the Democratic Party lost power in 1997, writing the new constitution became the task of a government coalition—consisting primarily of the Socialists, Social Democrats, and members of the Democratic Alliance—and the opposition Republicans.⁵⁷ The

⁵⁴ See *id.* at 102-03; RETT R. LUDWIKOWSKI, CONSTITUTION-MAKING IN THE REGION OF FORMER SOVIET DOMINANCE 142 (1996). The 1991 Law on the Main Constitutional Provisions was augmented by chapters on the Organization of the Judiciary and the Constitutional Court, in April 1992, and by the Charter on Fundamental Human Rights and Freedoms, in March 1993. The text of the 1991 Constitutional Provisions as amended in 1992 and 1993 is available at *Constitutional Resource Home Page: Albania* (visited Oct. 18, 1999) <<http://www.urich.edu/~jpjones/confinder/albcon.htm>>.

⁵⁵ See BIBERAJ, *supra* note 53, at 162-63 (recounting the difficulty of establishing a new constitutional order in Albania). Between 1991 and 1998, Albania had eight governments led by the following persons: Fatos Nano (Socialist), Ylli Bufi (Socialist), Vilson Ahmeti (Unaffiliated), Alexander Meksi (Democratic), Alexander Meksi (Democratic), Bashkim Fino (Socialist), Fatos Nano (Socialist), Pandeli Majko (Socialist). See *id.* at 92, 114, 127, 139, 303, 325, 339; *Constitution Watch, supra* note 3, at 4.

⁵⁶ See BIBERAJ, *supra* note 53, at 162; LUDWIKOWSKI, *supra* note 54, at 145-46; *Constitution Watch, A Country-by-Country Update on Constitutional Politics in Eastern Europe: Albania*, E. EUR. CONST. REV., Winter 1995, at 2, 3 (reporting that "[e]ighty percent of the population participated in the referendum, and only 41 percent of the participants voted in favor of the draft"). The Albanian opposition characterized the draft as a "presidentialist Constitution with a weak judiciary unable to protect rights," *Constitution Watch, supra*, at 3. One commentator, however, has argued that voters did not base their decisions on the substance of the draft but rejected it primarily because of dissatisfaction with the Democratic Party's economic performance and anger at government corruption. See BIBERAJ, *supra* note 53, at 175 (noting that "the majority of Albanians did not notice the subtleties of the judicial system and presidential powers that the opposition found so objectionable").

⁵⁷ See *Constitution Watch, A Country-by-Country Update on Constitutional Politics in Eastern Europe and the ex-USSR: Albania*, E. EUR. CONST. REV., Fall 1997,

Democratic Party subsequently boycotted the drafting process and ultimately urged the people to reject the draft proposed in the November 1998 referendum.⁵⁸ Despite the boycott, more than ninety percent of those who participated in the referendum approved the Constitution, which became binding on November 28, 1998, Albania's Independence Day.⁵⁹

The new Constitution is comprised of eighteen parts, which establish a government based on the principle of separation of powers, define relations between the central and local governments, and set out individual rights and freedoms.⁶⁰ For the first time in its history, Albania made individual rights enforceable against the state and adopted a Constitutional Court.⁶¹ It is to those two aspects of the Constitution that this Comment now turns its attention.

B. The Fundamental Human Rights and Freedoms

Part Two of the Constitution codifies an extensive bill of rights.⁶² No fewer than forty-nine of the 183 articles in the document proclaim the rights and freedoms of the individual.⁶³ Part Two consists of six chapters which establish specific types of

at 2, 5 (reporting that the Albanian Parliament had appointed Sabri Godo, chairman of the Republican Party, and Arben Imami, minister of legislative reform, as co-chairs of the Constitutional Commission).

⁵⁸ See *Constitution Watch*, *supra* note 3, at 2.

⁵⁹ See *id.*

⁶⁰ See KUSHTETUTA [CONSTITUTION] arts. 7 (separation of powers), 108-15 (local government), 15-63 (personal rights and freedoms) [hereinafter ALB. CONST.]. All citations to the Albanian Constitution in this Comment refer to the translation by Kathleen Imholz and Krenar Loloçi, published in 1 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1 (Gisbert H. Franz ed. & Kathleen Imholz & Krenar Loloçi trans., 1999).

⁶¹ See ALB. CONST. arts. 42, para. 2, 124-34. Although the 1992 and 1993 amendments to the Law on the Main Constitutional Provisions provided enforceable constitutional rights and established a Constitutional Court, see Law on the Main Constitutional Provisions ch. V, art. 39, ch. IIIA, arts. 17-28, available in *Constitutional Resource Home Page: Albania* (visited Oct. 18, 1999) <<http://www.urich.edu/~jpjones/confinder/albcon.htm>>, the Constitution-al Provisions were intended to operate only as a temporary measure until a permanent constitutional structure could be designed. See *supra* note 54 and accompanying text. The new Constitution is the first document to provide such a permanent structure.

⁶² See ALB. CONST. arts. 15-63.

⁶³ See ALB. CONST. arts. 8-11, 15-59.

rights and freedoms. Chapter I outlines General Principles,⁶⁴ Chapter II is dedicated to Personal Rights and Freedoms,⁶⁵ Chapter III focuses on Political Rights and Freedoms,⁶⁶ and Chapter IV describes Economic, Social and Cultural Rights and Freedoms.⁶⁷ Chapter V sets forth aspirational Social Objectives,⁶⁸ and Chapter VI introduces the new institution of the People's Advocate.⁶⁹ The Constitution enumerates both positive and negative rights, which, with the exception of the rights expressed in Chapter V addressing Social Objectives, are enforceable against the state and may be defended in court.⁷⁰

1. General Principles

The Albanian Bill of Rights begins with a declaration that fundamental human rights and freedoms "are indivisible, inalienable, and inviolable and stand at the basis of the entire juridical order."⁷¹ Organs of public power are obligated to respect such rights and freedoms, as well as contribute to their realization.⁷² With a few exceptions, these fundamental rights and freedoms apply to foreigners and stateless persons within the territory of Albania, as well as to Albanian citizens.⁷³ Moreover, they also extend to juridical persons, so long as these persons comply with the law.⁷⁴

The Constitution recognizes that certain limits on fundamental rights may be necessary in a society committed to balancing the

⁶⁴ See ALB. CONST. arts. 15-20.

⁶⁵ See ALB. CONST. arts. 21-44.

⁶⁶ See ALB. CONST. arts. 45-48.

⁶⁷ See ALB. CONST. arts. 49-58.

⁶⁸ See ALB. CONST. art. 59.

⁶⁹ See ALB. CONST. arts. 60-63.

⁷⁰ See ALB. CONST. art. 42, para. 2. ("Everyone, to protect his constitutional and legal rights, freedoms, and interests . . . has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.")

⁷¹ ALB. CONST. art. 15, para. 1.

⁷² See ALB. CONST. art. 15, para. 2. A comparison may be drawn here with the German Basic Law principle of a social state (*Sozialstaatlichkeit*), which obligates the legislature to work toward the realization of constitutional rights. See Donald P. Kommers, *German Constitutionalism: A Prolegomenon*, 40 EMORY L.J. 837, 865 (1991).

⁷³ See ALB. CONST. art. 16, para. 1.

⁷⁴ See ALB. CONST. art. 16, para. 2.

interests of its members.⁷⁵ Such limitations, however, must be “for a public interest or for the protection of the rights of others,” and must be established by law.⁷⁶ The Constitution establishes a test of proportionality between the interest advanced and the limitation imposed.⁷⁷ Ultimately, the restriction of a right may not exceed “the limitations provided for in the European Convention on Human Rights.”⁷⁸ By incorporating the European Convention on Human Rights, the Constitution effectively provides an objective, external standard by which the Albanian state must measure its actions.

The General Principles also recognize equality of all before the law and prohibit unjust discrimination on a number of grounds.⁷⁹ The list of prohibitions is not exclusive, however, and allows for a future expansion of these grounds.⁸⁰ Yet, the prohibition on discrimination is not categorical, as the Constitution states that unequal treatment may be permissible if “reasonable and objective legal grounds . . . exist.”⁸¹ The text, however, is not clear as to how compelling such grounds must be.

The Chapter on General Principles concludes with a provision granting “full equality before the law” to national minorities.⁸² The Constitution protects minorities’ rights to “freely express . . . their ethnic, cultural, religious and linguistic belonging.”⁸³ Moreover, it recognizes minorities’ right to be educated in their “mother tongue” and to “unite in organizations . . . for the protection of their interests and identity.”⁸⁴

⁷⁵ See ALB. CONST. art. 17.

⁷⁶ ALB. CONST. art. 17, para. 1.

⁷⁷ See *id.*

⁷⁸ ALB. CONST. art. 17, para. 2.

⁷⁹ See ALB. CONST. art. 18, para. 2 (“No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry.”).

⁸⁰ See *id.* (The words “such as” indicate that this list is not all-inclusive.)

⁸¹ ALB. CONST. art. 18, para. 3 (“No one may be discriminated against for reasons mentioned in paragraph 2 if reasonable and objective legal grounds do not exist.”).

⁸² ALB. CONST. art. 20, para. 1.

⁸³ ALB. CONST. art. 20, para. 2.

⁸⁴ *Id.*

2. *Personal Rights and Freedoms*

The Chapter dedicated to Personal Rights and Freedoms is the longest chapter of Part Two of the Constitution. Its twenty-four articles embed in Albania's fundamental charter many guarantees against state intrusion in private life.⁸⁵ First, the Constitution declares that "[t]he life of a person is protected by law,"⁸⁶ and guarantees freedom of expression,⁸⁷ the right to information,⁸⁸ freedom of conscience,⁸⁹ and freedom of religion.⁹⁰ It also bans cruel, inhuman, or degrading torture and punishment,⁹¹ and prohibits forced labor except during the performance of military service, during a state of emergency, and when decreed by judicial decision.⁹² All have the right to choose their places of residence⁹³ and may go freely out of the country.⁹⁴

The Chapter goes on to list the circumstances under which a person's liberty might be limited⁹⁵ and sets out the procedural requirements for the protection of a person's rights.⁹⁶ For example, one whose liberty is taken away "has the right to be notified immediately . . . of the reasons for this measure, as well as the accusation made against him."⁹⁷ Furthermore, "he has no

⁸⁵ See ALB. CONST. arts. 21-44.

⁸⁶ ALB. CONST. art. 21.

⁸⁷ See ALB. CONST. art. 22, para. 1.

⁸⁸ See ALB. CONST. art. 23, para. 1.

⁸⁹ See ALB. CONST. art. 24, para. 1.

⁹⁰ See *id.*

⁹¹ See ALB. CONST. art. 25.

⁹² See ALB. CONST. art. 26 ("No one may be required to perform forced labor, except in cases of the execution of a judicial decision, the performance of military service, or for a service that results from a state of emergency, war or natural disaster that threatens human life or health.").

⁹³ See ALB. CONST. art. 38, para. 1.

⁹⁴ See ALB. CONST. art. 38, para. 2.

⁹⁵ See ALB. CONST. art. 27, para. 2 (providing that a person's liberty may not be taken away except when 1) he is imprisoned by the court; 2) he fails to comply with court orders; 3) there exist "reasonable suspicions that he has committed a criminal offense or to prevent the commission by him of a criminal offense;" 4) he is a minor and needs supervision for the purpose of education; 5) he carries a contagious disease, is mentally incompetent and dangerous to society; or 6) he is an illegal immigrant).

⁹⁶ See ALB. CONST. art. 28.

⁹⁷ ALB. CONST. art. 28, para. 1.

obligation to make a declaration and has the right to communicate immediately with a lawyer."⁹⁸ If a person's liberty is taken away extrajudicially, the person has a right to address a judge at any time, and the judge is required to rule on the legality of the action within forty-eight hours.⁹⁹

Protections against unjust criminal convictions are enhanced by a prohibition against ex post facto laws,¹⁰⁰ by the establishment of a presumption of innocence,¹⁰¹ by guarantees against self-incrimination or incrimination of one's family members,¹⁰² by a prohibition against double jeopardy,¹⁰³ and by a number of procedural safeguards during trial.¹⁰⁴ Accused persons enjoy the right to be heard before being judged.¹⁰⁵ The right to be heard is unavailable, however, to one "who is hiding from justice;"¹⁰⁶ thus, in absentia convictions appear to be constitutional.

The Constitution also recognizes the inviolability of one's residence and allows only searches conducted pursuant to law.¹⁰⁷ Individuals are guaranteed the "freedom and secrecy of correspondence"¹⁰⁸ and have the right to keep personal data confidential.¹⁰⁹ Moreover, "[e]veryone has the right to become

⁹⁸ ALB. CONST. art. 28, para. 1.

⁹⁹ See ALB. CONST. art. 28, para. 4.

¹⁰⁰ See ALB. CONST. art. 29, para. 1. The Constitution does make an exception to this general rule. One may be charged after the fact for acts which, "according to international law, constitute war crimes or crimes against humanity." *Id.*

¹⁰¹ See ALB. CONST. art. 30 ("Everyone is considered innocent so long as his guilt is not proven by a final judicial decision.").

¹⁰² See ALB. CONST. art. 32, para. 1 ("No one may be obliged to testify against himself or his family or to confess his guilt.").

¹⁰³ See ALB. CONST. art. 34 ("No one may be punished more than one time for the same criminal act nor be tried again, except for cases when the re-adjudication of the case is decided on by a higher court, in a manner specified by law.").

¹⁰⁴ See ALB. CONST. art. 31 (establishing the rights to be notified of offenses charged, to have time and space to prepare a defense, to have the assistance of a translator free of charge, to be assisted by counsel, and to question witnesses).

¹⁰⁵ See ALB. CONST. art. 33, para. 1 ("No one may be denied the right to be heard before being judged.").

¹⁰⁶ ALB. CONST. art. 33, para. 2.

¹⁰⁷ See ALB. CONST. art. 37, para. 1 ("The inviolability of the residence is guaranteed.").

¹⁰⁸ ALB. CONST. art. 36.

¹⁰⁹ See ALB. CONST. art. 35, para. 1 ("No one may be obliged, except when the law

acquainted with data collected about him, except for the cases provided by law.”¹¹⁰ This section also establishes a right to “request the correcting or expunging of untrue or incorrect data or data collected in violation of the law.”¹¹¹

Unlike the Constitution of 1976, the current Constitution guarantees the right to private property¹¹² and allows expropriations “only for public interests”¹¹³ and “only against fair compensation.”¹¹⁴ Significantly, the Constitution also provides that “the freedom, property, and rights recognized in the Constitution and by law may not be infringed without due process.”¹¹⁵ All are guaranteed the right to appeal judicial decisions to a higher court,¹¹⁶ and all enjoy a right to indemnification when “damaged because of an unlawful act, action or failure to act of the state organs.”¹¹⁷

3. *Political Rights and Freedoms*

The Chapter on Political Rights and Freedoms grants the rights to vote and to run for public office to all citizens who are eighteen years old,¹¹⁸ with a few well-defined exceptions.¹¹⁹ The Constitution recognizes the right to organize for any lawful purpose¹²⁰ but prohibits the creation of organizations or societies that pursue unconstitutional purposes.¹²¹ All enjoy the right to

requires it, to make public data connected with his person.”).

¹¹⁰ ALB. CONST. art. 35, para. 3.

¹¹¹ ALB. CONST. art. 35, para. 4.

¹¹² See ALB. CONST. art. 41, para. 1 (“The right of private property is guaranteed.”).

¹¹³ ALB. CONST. art. 41, para. 3.

¹¹⁴ ALB. CONST. art. 41, para. 4.

¹¹⁵ ALB. CONST. art. 42, para. 1.

¹¹⁶ See ALB. CONST. art. 43 (“Everyone has the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise.”).

¹¹⁷ ALB. CONST. art. 44.

¹¹⁸ See ALB. CONST. art. 45, para. 1.

¹¹⁹ See ALB. CONST. art. 45, para. 2 (“Citizens who have been declared mentally incompetent by a final court decision do not have the right to elect.”). Also, those who are “serving a sentence that deprives them of freedom have only the right to elect,” and not the right to be elected. ALB. CONST. art. 45, para. 3.

¹²⁰ See ALB. CONST. art. 46, para. 1.

¹²¹ See ALB. CONST. art. 46, para. 3.

meet peacefully and without arms,¹²² as well as the right to petition the government.¹²³

4. Economic, Social, and Cultural Rights and Freedoms

The Chapter on Economic, Social and Cultural Rights and Freedoms balances a concern for the welfare of individuals with pragmatism regarding the limited means of the state. The Chapter declares that “[e]veryone has the right to earn the means of living by lawful work that he has chosen or accepted himself.”¹²⁴ Yet, while all are free to choose their profession or place of work,¹²⁵ the state does not undertake to provide the means of livelihood for those within its borders. Rather, the Constitution limits itself to ensuring the right to unite in labor organizations¹²⁶ and the right to strike.¹²⁷

The state does, however, guarantee other economic rights. For example, “[e]veryone has the right to social security in old age or when he is unable to work,”¹²⁸ and one who remains unemployed for reasons beyond his or her control and has no other means of support is entitled to “assistance under the conditions provided by law.”¹²⁹ Also, “[c]itizens enjoy in an equal manner the right to health care from the state,”¹³⁰ and “[e]veryone has the right to

¹²² See ALB. CONST. art. 47, para. 1. The law, however, may prescribe some limitations on peaceful meetings in squares and places of public passage. See ALB. CONST. art. 47, para. 2.

¹²³ See ALB. CONST. art. 48 (“Everyone, by himself or together with others, may direct requests, complaints or comments to the public organs, which are obliged to answer in the time periods and conditions set by law.”).

¹²⁴ ALB. CONST. art. 49, para. 1.

¹²⁵ See *id.*

¹²⁶ See ALB. CONST. art. 50 (“Employees have the right to unite freely in labor organizations for the defense of their work interests.”).

¹²⁷ See ALB. CONST. art. 51, para. 1 (“The right of an employee to strike in connection with work relations is guaranteed.”). Some limitations on the right to strike are permitted, however, in order to “assure essential social services.” ALB. CONST. art. 51, para. 2.

¹²⁸ ALB. CONST. art. 52, para. 1.

¹²⁹ ALB. CONST. art. 52, para. 2.

¹³⁰ ALB. CONST. art. 55, para. 1.

health insurance.”¹³¹

As in other European constitutions, marriage and the family enjoy special consideration under the Albanian Constitution.¹³² “Children, the young, pregnant women and new mothers have the right to special protection.”¹³³ Furthermore, “[c]hildren born out of wedlock have equal rights with those born within marriage,”¹³⁴ and all children have the right to be protected from “violence, ill treatment, exploitation and their use for work.”¹³⁵

On the social front, everyone has the right to an education,¹³⁶ and both mandatory primary education and general high school education in public schools are free.¹³⁷ Everyone has a right to be informed about “the status of the environment and its protection,”¹³⁸ and “freedom of artistic creation and scientific research” are guaranteed to all.¹³⁹ To that end, copyright is also protected by law.¹⁴⁰

5. *Social Objectives*

Completing the basic structure of rights and freedoms, the Constitution sets out objectives in areas in which the state “aims to supplement private initiative and responsibility,” so long as there are “means at its disposal.”¹⁴¹ The state, for example, will strive (1) to help all persons who are able to work obtain “employment

¹³¹ ALB. CONST. art. 55, para. 2 (“Everyone has the right to health insurance pursuant to the procedure provided by law.”).

¹³² See ALB. CONST. art. 53, para. 2 (“Marriage and family enjoy special protection of the state.”). Compare ALB. CONST. art. 53, para. 2 with GRUNDGESETZ [CONSTITUTION] [GG] art. 6(1), translated in 7 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 97, 107 (Albert P. Blaustein & Gisbert H. Franz eds., 1994) (“Marriage and family shall enjoy the special protection of the state.”). The Albanian Constitution also recognizes every person’s “right to get married and have a family.” ALB. CONST. art. 53, para. 1.

¹³³ ALB. CONST. art. 54, para. 1.

¹³⁴ ALB. CONST. art. 54, para. 2.

¹³⁵ ALB. CONST. art. 54, para. 3.

¹³⁶ See ALB. CONST. art. 57, para. 1.

¹³⁷ See ALB. CONST. art. 57, para. 5.

¹³⁸ ALB. CONST. art. 56.

¹³⁹ ALB. CONST. art. 58, para. 1.

¹⁴⁰ See ALB. CONST. art. 58, para. 2.

¹⁴¹ ALB. CONST. art. 59, para. 1.

under suitable conditions,”¹⁴² (2) to fulfill “the housing needs of its citizens,”¹⁴³ (3) to obtain “the highest possible standard of health, physical and mental,”¹⁴⁴ (4) to provide education to all children, the young, and the unemployed,¹⁴⁵ (5) to preserve a healthy environment “for the present and future generations,”¹⁴⁶ (6) to ensure “rational exploitation of forests, water, pastures and other natural resources,”¹⁴⁷ (7) to care for and help “the aged, orphans and persons with disabilities,”¹⁴⁸ (8) to develop sports and recreational activities,¹⁴⁹ (9) to integrate disabled people in society,¹⁵⁰ and (10) to protect “the national cultural heritage.”¹⁵¹ Unlike other rights and freedoms guaranteed by the Constitution, “[f]ulfillment of social objectives may not be claimed directly in court.”¹⁵²

6. *People’s Advocate*

The creation of the position of the People’s Advocate underscores the importance of fundamental rights and freedoms in Albania’s new constitutional order. The People’s Advocate is an independent institution,¹⁵³ whose objective is to “defend[] the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration.”¹⁵⁴ The People’s Advocate is elected by three-fifths of the members of the Assembly,¹⁵⁵ serves a five-year term

¹⁴² ALB. CONST. art. 59, para. 1(a).

¹⁴³ ALB. CONST. art. 59, para. 1(b).

¹⁴⁴ ALB. CONST. art. 59, para. 1(c).

¹⁴⁵ See ALB. CONST. art. 59, para. 1(d).

¹⁴⁶ ALB. CONST. art. 59, para. 1(e).

¹⁴⁷ ALB. CONST. art. 59, para. 1(f).

¹⁴⁸ ALB. CONST. art. 59, para. 1(g).

¹⁴⁹ See ALB. CONST. art. 59, para. 1(h).

¹⁵⁰ See ALB. CONST. art. 59, para. 1(i).

¹⁵¹ ALB. CONST. art. 59, para. 1(j).

¹⁵² ALB. CONST. art. 59, para. 2.

¹⁵³ See ALB. CONST. art. 60, para. 2 (“The People’s Advocate is independent in the exercise of his duties.”).

¹⁵⁴ ALB. CONST. art. 60, para. 1.

¹⁵⁵ See ALB. CONST. art. 61, para. 1.

with the right of reelection,¹⁵⁶ and enjoys the same immunity as a judge of the High Court.¹⁵⁷

To qualify for this position, an individual must be an Albanian citizen, must have obtained a post-secondary degree, and must have "recognized knowledge and recognized activity in the field of human rights and law."¹⁵⁸ "The People's Advocate may not take part in any political party [or] carry on any other political, state, or professional activity" while in office.¹⁵⁹ He must "present[] an annual report before the Assembly"¹⁶⁰ and may also "request the Assembly to hear him on matters he determines important."¹⁶¹ "The People's Advocate has the right to make recommendations and to propose measures when he observes violations of human rights . . . by the public administration,"¹⁶² and "public organs and officials are obligated to present to the People's Advocate all documents and information requested by him."¹⁶³

7. *Limitations of Constitutional Rights*

Consistent with the Constitution's perception of fundamental rights and freedoms as "indivisible, inalienable, and inviolable,"¹⁶⁴ a person may not be deprived of these rights, except through due process of law.¹⁶⁵ In cases of emergency, however, public interest may necessitate some curtailment of individual freedoms. To accommodate such pressing needs, the Constitution contains specific provisions regarding Extraordinary Measures.¹⁶⁶ Even in a

¹⁵⁶ *See id.*

¹⁵⁷ *See* ALB. CONST. art. 61, para. 3. The People's Advocate can be discharged only by a three-fifths vote of the Assembly, acting "on the reasoned complaint of not less than one-third of the deputies." ALB. CONST. art. 62, paras. 1, 2.

¹⁵⁸ ALB. CONST. art. 61, para. 2.

¹⁵⁹ ALB. CONST. art. 61, para. 4.

¹⁶⁰ ALB. CONST. art. 63, para. 1.

¹⁶¹ ALB. CONST. art. 63, para. 2.

¹⁶² ALB. CONST. art. 63, para. 3.

¹⁶³ *See* ALB. CONST. art. 63, para. 4.

¹⁶⁴ ALB. CONST. art. 15.

¹⁶⁵ The only exception to this rule has already been noted. *See supra* note 106 and accompanying text. A person may lose his right to be heard before being judged if he is evading justice. *See* ALB. CONST. art. 33, para. 2

¹⁶⁶ *See* ALB. CONST. art. 170-76.

state of war, a state of emergency, or a natural disaster, however, the state organs are not empowered to limit certain rights.¹⁶⁷ When acting under authority of Extraordinary Measures, state organs can act only as long as those conditions exist and must specify the rights which are being limited.¹⁶⁸ Thus, safeguards are in place to protect against abuse of emergency powers.

8. *Evaluating the Rights and Freedoms Provisions*

The drafters of the Albanian Constitution may have benefited from the length of time that passed between the fall of the communist regime and the approval of the Constitution. Because Albania was one of the last countries to finalize its constitutional project,¹⁶⁹ the experience of other Eastern European nations may have proven instructive in the constitution-making process. Part Two of the Constitution appears carefully designed to protect individual rights and liberties against possible intrusions by a totalitarian state.¹⁷⁰ The Constitution reflects lessons learned from the country's communist past and emphasizes the role of the individual in a democratic society.¹⁷¹ Moreover, it recognizes the importance of private property and the need to encourage creativity and innovation.¹⁷² Even more significantly, the Constitution allows citizens to protect their rights through judicial action¹⁷³ and ultimately to seek redress through the Constitutional

¹⁶⁷ See ALB. CONST. art. 175 (listing specific rights that may not be curtailed). For example, the government may not suspend equal treatment before the law, discriminate on certain grounds, limit the rights of minorities, curtail freedom of conscience or of religion, subject anyone to torture, or declare individuals guilty of offenses *ex post facto*. See *id.*

¹⁶⁸ See ALB. CONST. art. 175, para. 3.

¹⁶⁹ See *supra* note 1 (listing the Eastern European and former Soviet nations that have changed their constitutions since 1990, and when the new constitutions were adopted).

¹⁷⁰ See ALB. CONST. arts. 15-63.

¹⁷¹ See ALB. CONST. arts. 21-48; *supra* notes 85-123 and accompanying text (enumerating a long list of personal and political rights and freedoms).

¹⁷² See ALB. CONST. arts. 41-42, 58; *supra* notes 112-14, 139-40 and accompanying text (discussing protections for private property and creative endeavors).

¹⁷³ See ALB. CONST. art. 42, para. 2 ("Everyone, to protect his constitutional and legal rights, freedoms, and interests . . . has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.").

Court.¹⁷⁴

True to its Western European outlook, the Constitution acknowledges numerous positive rights; yet, in this area, the Albanian drafters may have been more cautious than their Eastern European neighbors. In the final balance, monetary concerns may have outweighed liberal aspirations. For example, while the Albanian Constitution contains several programmatic provisions aimed at improving the standard of living for Albanian citizens,¹⁷⁵ it explicitly declines to make them self-enforcing.¹⁷⁶ Moreover, the positive rights that have been recognized are much narrower in scope than those found in other constitutions. Thus, unlike the citizens of Lithuania, for example, the citizens of Albania have no right to "rest and leisure."¹⁷⁷ Also, the vague right "to social protection of work"¹⁷⁸ pales in comparison with the Slovak worker's right to remuneration "sufficient to ensure the employee's dignified standard of living," to protection "against arbitrary dismissal and discrimination at the place of work," and to "adequate rest after work."¹⁷⁹ The Albanian Constitution does recognize that "[c]itizens enjoy in an equal manner the right to health care from the state."¹⁸⁰ The meaning of this right, however, is rather vague. Does it prohibit discrimination without committing the state to providing a particular level of care? Does the care have to be free of charge? The text is not clear on these

¹⁷⁴ See ALB. CONST. art. 131(i) (granting the Court jurisdiction to decide on the "final adjudication of the individual complaints for the violation of their constitutional rights to due process of law, after all legal means for the protection of those rights have been exhausted").

¹⁷⁵ See ALB. CONST. art. 59; *supra* notes 141-52 and accompanying text (describing in detail the Chapter on Social Objectives).

¹⁷⁶ See ALB. CONST. art. 59, para. 2 ("Fulfillment of social objectives may not be claimed directly in court.").

¹⁷⁷ LITH. CONST. art. 49, *translated in* 11 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 8 ("Every person shall have the right to rest and leisure, as well as to annual paid holidays. Working hours shall be established by law."); *see also* POL. CONST. art. 66, para. 2, *translated in* 15 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 15 (noting that an "employee shall have the right by law to specified days free from work as well as annual paid holidays").

¹⁷⁸ ALB. CONST. art. 49, para. 2.

¹⁷⁹ SLOVK. CONST. art. 36, *translated in* 16 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 75.

¹⁸⁰ ALB. CONST. art. 55, para. 1.

points. One can compare this language with the much clearer text of the Lithuanian Constitution, which notes that “[t]he State shall take care of people’s health and shall guarantee medical aid and services in the event of sickness.”¹⁸¹

Despite the narrower scope of its positive rights provisions, the Albanian Constitution is a liberal document which offers significant protection to human rights. It provides a flexible structure which the Albanian people can expand as they develop a democratic tradition. Most significantly, unlike the communist Constitution of 1976, the current Constitution combines an extensive bill of rights with structural avenues through which those rights can be protected and enforced. Those structural safeguards, embodied in the Constitutional Court, are the subject of the following discussion.

C. The Constitutional Court

The 1998 Constitution constructs an elaborate scheme for the maintenance of the constitutional order. Part Eight establishes a Constitutional Court [*hereinafter* Court], which functions to “guarantee[] respect for the Constitution and make[] final interpretations of it.”¹⁸²

¹⁸¹ LITH. CONST. art. 53, *translated in* 11 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 8; *see also* POL. CONST. art. 68, para. 2, *translated in* 15 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 15 (“Equal access to health care services, financed from public funds, is assured by public authorities to citizens, irrespective of their material situation.”).

¹⁸² ALB. CONST. art. 124, para. 1. The prominent placement of these provisions may be an indication of the importance of the Constitutional Court in the Albanian system of government. If the structure of a document is interpreted as conveying a message about its meaning, in other words if “[t]he topography of [the document] is a product of its geology,” MAURO CAPPELLETTI, JOHN HENRY MERRYMAN & JOSEPH M. PERILLO, *THE ITALIAN LEGAL SYSTEM: AN INTRODUCTION* 229 (1967), then the importance of the Constitutional Court cannot be underestimated. The provisions relating to the Constitutional Court come immediately after provisions outlining the functions of the Assembly, the President of the Republic, the Council of Ministers, Local Government, and Normative Acts and International Agreements. *See* ALB. CONST. arts. 74-123. In contrast, a prior draft listed the Constitutional Court provisions at the very end of the Constitution, as Part XVII, and they were followed only by measures regarding the Revision of the Constitution and Transitory and Final Dispositions. *See* DRAFT ALBANIAN CONSTITUTION AS OF AUGUST 4, 1998, *available in* *Constitution of Albania* (visited Oct. 18, 1999) <<http://www.urich.edu/~jppjones/confinder/ALBANIA.htm>>.

I. Institutional Concerns

a. Composition of the Court

The Court consists of nine members who are “appointed by the President of the Republic with the consent of the Assembly.”¹⁸³ The judges are selected from “among lawyers with high qualifications”¹⁸⁴ and must have work experience of “not less than 15 years in the profession.”¹⁸⁵ While on the Court, a judge may not engage in “any other state, political or private activity.”¹⁸⁶ Judges serve on the Court for nine years without the right of reappointment.¹⁸⁷ One-third of the Court, however, is “renewed every three years, according to the procedure determined by law.”¹⁸⁸ If a judge’s seat becomes vacant before his term has ended, the President, with the consent of the Assembly, appoints a new judge to that seat to complete the term of the preceding judge.¹⁸⁹ The proceedings of the Court are directed by the Chairman, who also is appointed by the President with the consent of the Assembly.¹⁹⁰ The Chairman is selected from the ranks of the Court and serves a three-year term.¹⁹¹

b. Protection of the Members of the Court

The Constitution grants specific protections to judges serving on the Constitutional Court. A judge of this Court “cannot be criminally prosecuted without the consent of the . . . Court.”¹⁹² He

¹⁸³ ALB. CONST. art. 125, para. 1.

¹⁸⁴ ALB. CONST. art. 125, para. 2.

¹⁸⁵ *Id.* A cursory reading may miss the curious consequences of this requirement. Experience in the profession seems like a quality that every judge of the Constitutional Court should have. In November 1998, however, when the Constitution went into effect, this requirement of 15 years of experience assured that every member of the Court would have begun his career during the communist rule of Enver Hoxha. It seems that until 2005 (15 years after the fall of communism in Albania) service in the Constitutional Court is legally limited to those who received their training under the communist regime.

¹⁸⁶ ALB. CONST. art. 130.

¹⁸⁷ *See* ALB. CONST. art. 125, para. 2.

¹⁸⁸ ALB. CONST. art. 125, para. 3.

¹⁸⁹ *See* ALB. CONST. art. 127, para. 3.

¹⁹⁰ *See* ALB. CONST. art. 125, para. 4.

¹⁹¹ *See id.*

¹⁹² ALB. CONST. art. 126.

may be “detained or arrested only if apprehended in the commission of a crime or immediately after its commission.”¹⁹³ In such circumstances, the detaining or arresting authorities must notify the Court immediately.¹⁹⁴ The Court may “consent . . . to send[ing] the arrested judge to court.”¹⁹⁵ If, however, such consent is not forthcoming within twenty-four hours, the authorities are “obliged to release” the judge.¹⁹⁶

c. Removal of the Members of the Court

Removal of a judge from office can occur only under certain circumstances. Article 128 provides that “[t]he judge of the Constitutional Court can be removed from office by the Assembly by two-thirds of all its members for violations of the Constitution, commission of a crime, mental or physical incapacity, [and] acts and behavior that seriously discredit the position and reputation of a judge.”¹⁹⁷ The Assembly’s decision, however, is not final.¹⁹⁸ It must be reviewed by the Constitutional Court, which must verify “the existence of one of these grounds” and “declare[] the removal from duty of the member of the Constitutional Court.”¹⁹⁹

Article 127 also contains removal provisions. This section provides that a judge’s term ends when the judge “is sentenced with a final decision for commission of a crime;” when he “does not show up for duty, without reason, for more than 6 months;” when the judge “reaches 70 years of age;” when he resigns; or when he “is declared incompetent to act with a final judicial decision.”²⁰⁰ “The end of the term of a judge is declared with a decision of the Constitutional Court.”²⁰¹

¹⁹³ *Id.*

¹⁹⁴ *See id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ ALB. CONST. art. 128.

¹⁹⁸ *See id.*; *cf.* U.S. CONST. art. 2, § 4 (noting that upon conviction for a high crime or misdemeanor, removal from office is immediate).

¹⁹⁹ ALB. CONST. art. 128.

²⁰⁰ ALB. CONST. art. 127, para. 1. Interestingly, this section does not provide that a judge’s term ends upon his death. *See id.*

²⁰¹ ALB. CONST. art. 127, para. 2.

2. Assessment of the Structural Provisions

The constitutional design of the Court seeks to reconcile two conflicting goals. First, it is intended to allow the Court to reach its decisions without undue political influence. In serving its role as the guarantor of respect for the Constitution, the Court should be able to invalidate even politically popular laws, if they violate the Constitution. Given that judges cannot be reappointed, they will not be unduly concerned with pleasing the legislature or the President, who jointly hold the power of appointment. Article 128 further enhances the independence of the Court by granting the Court power of review over the Assembly's decision to remove a judge from the Court.²⁰² If the Assembly overreaches and attempts to use its removal power simply for political reasons, the Court is free not to "verify" the existence of one of the constitutional grounds for removal.²⁰³

The organizational structure of the Constitutional Court aims to promote another goal. It seeks to infuse political influence into the process of constitutional interpretation. The rotation of one-third of the Court every three years allows for change, while preserving continuity in the decision-making process.²⁰⁴ The power to renew the Court entirely within nine years also gives the President and the legislature some control over a "loose cannon" Court.²⁰⁵ Moreover, the Assembly may remove a judge for "acts and behavior that seriously discredit the position and reputation of a judge."²⁰⁶ What acts and behavior fall within this provision is left unanswered. What seems unusual about the structure, however, is that the majority of the Court must agree that the acts of their peer do indeed "discredit" the bench, as the Assembly contends.²⁰⁷

²⁰² See ALB. CONST. art. 128 ("The decision of the Assembly is reviewed by the Constitutional Court, which, upon verification of the existence of one of these grounds, declares the removal from duty of the member of the Constitutional Court.").

²⁰³ See *id.*

²⁰⁴ See ALB. CONST. art. 125, para. 3.

²⁰⁵ The Albanian rotation provisions are similar to those used by the French *Conseil Constitutionnel*, which also is renewed completely every nine years. See F.L. Morton, *Judicial Review in France: A Comparative Analysis*, 36 AM. J. COMP. L. 89, 98 (1988).

²⁰⁶ ALB. CONST. art. 128.

²⁰⁷ *Id.* Compare this approach with that expressed by the United States Supreme Court in *Nixon v. United States*, 506 U.S. 224 (1993). There, the Court denied the

The Constitution seems unclear regarding the circumstances under which a judge can be removed for the commission of a crime. Articles 126, 127, and 128 do not adequately address this issue. Assume, for example, that a judge of the Constitutional Court commits a crime. Article 126 provides that “the judge . . . cannot be criminally prosecuted without the consent of the Constitutional Court.”²⁰⁸ If the Court does consent to the prosecution, then the case will be heard in the ordinary court system.²⁰⁹ Suppose the judge is “sentenced with a final decision” for the commission of the crime.²¹⁰ Under Article 127, the term of the judge would end.²¹¹ Yet, Article 127 also provides that the “end of the term of a judge is declared with a decision of the Constitutional Court.”²¹² The question is whether, in reaching this decision, the Constitutional Court would be able to review the determination of guilt reached by the ordinary court system or whether the Court must take the ordinary court decision as final. Again, no clear answer emerges from the text. Article 128 further complicates the issue. Under that Article, one of the grounds for removal of a judge is “commission of a crime.”²¹³ But under that same provision, the Constitutional Court is empowered to verify

former district judge’s claim that the Court could review his conviction by the Senate and removal from office. Speaking for the Court, Chief Justice Rehnquist noted that “judicial review would be inconsistent with the Framers’ insistence that our system be one of checks and balances” and dismissed an argument that “would place final reviewing authority with respect to impeachment in the hands of the same body that the impeachment is meant to regulate.” *Id.* at 234-35.

²⁰⁸ ALB. CONST. art. 126.

²⁰⁹ *Cf. id.* (“If the Constitutional Court does not give its consent within 24 hours to send the arrested judge to court, the competent organ is obliged to release him.” (emphasis added)). The term “court” appears to refer to an ordinary court. Yet, it is unclear which court in the ordinary system would try such a case. Article 141, in outlining the jurisdiction of the High Court—the highest court of the ordinary system, states that the High Court “has original jurisdiction when adjudicating criminal charges against . . . judges of the Constitutional Court.” ALB. CONST. art. 141, para. 1. While this provision makes clear that a judge of the Constitutional Court *may* be tried by the High Court in a criminal matter, it does not resolve whether a Constitutional Court judge *must* be tried by the High Court. Article 141 does not say that the High Court’s jurisdiction is exclusive. Thus, a reasonable reading of the text leads one to believe that a Constitutional Court judge also may be tried by another court of the ordinary system.

²¹⁰ ALB. CONST. art. 127, para. 1(a).

²¹¹ *See id.*

²¹² ALB. CONST. art. 127, para. 2.

²¹³ ALB. CONST. art. 128.

the existence of one of the specified grounds and must review the decision of the Assembly.²¹⁴ Should such review power be applicable when an ordinary court decision is involved? The Constitution seems to be silent on the point.

Further questions arise from a careful reading of Article 128. Does this provision empower the Assembly itself to try a Constitutional Court judge in order to determine whether a crime has been committed? Or does the Assembly vote on the issue only after the judge has been convicted in the ordinary court system? If the latter question is answered in the affirmative, then the Assembly has the power to review a decision of the judiciary branch of government, which seems to violate separation of powers principles. Also, what happens if the Assembly fails to muster a vote of two-thirds of its members? It appears that the country would be left with a judge who has been convicted of a crime yet cannot be removed from office.

Having discussed the institutional framework of the Court, this Comment turns next to the Court's jurisdiction.

3. Jurisdiction of the Court

a. Subject Matter

The Albanian Constitution has adopted a system of mixed concrete and abstract review, similar to the German model.²¹⁵ Thus, upon the request of specified governmental actors,²¹⁶ the Court has authority to comment abstractly on the constitutionality of a law even in the absence of a case or controversy.²¹⁷ The Court may also decide a constitutional issue when such a determination

²¹⁴ *Id.*

²¹⁵ See ALB. CONST. art. 131; cf. Ludwikowski, *supra* note 23, at 97 & n.75 (explaining that concrete review involves raising constitutional issues before lower courts in connection with a specific case or controversy, while abstract review allows governmental actors to submit a law or hypothetical constitutional question to the Court for review (citing Mauro Cappelletti & William Cohen, *Two Methods of Reviewing a Constitutional Question: "Incidenter" and "Principaliter,"* in COMPARATIVE CONSTITUTIONAL LAW: CASES AND MATERIALS 84-90 (1979)).

Appendix A provides a chart illustrating the jurisdiction of the Court.

²¹⁶ See *infra* notes 238-41, 246-51 and accompanying text for a detailed list of those actors.

²¹⁷ See ALB. CONST. art. 131(a)-(d).

is necessary for the disposition of a case.²¹⁸ Moreover, the Court may rule on cases that are brought by individuals, for “the violation of their constitutional rights to [the] due process of law” if these individuals have exhausted “all legal means for the protection of those rights.”²¹⁹ The Court has broad authority as the final interpreter of the Constitution.²²⁰ In carrying out its duty, the Court is “subject only to the Constitution.”²²¹ Indeed, the Constitution fairly lends itself to the view that the Court is an institution that stands outside and above the legislative, executive, and ordinary judicial powers of the state.

Under Article 131, the Court has the power to review legislation and decide on the “compatibility of the law with the Constitution or with international agreements as provided in Article 122.”²²² This provision resembles Article 93(2) of the German Basic Law²²³ and seems to grant the Court only the power of *a posteriori* abstract review.²²⁴ When the constitutionality of international agreements is at issue, however, the Court can assess

²¹⁸ See ALB. CONST. art. 145, para. 2.

²¹⁹ ALB. CONST. art. 131(i).

²²⁰ See ALB. CONST. art. 124, para. 1.

²²¹ ALB. CONST. art. 124, para. 2. Compare ALB. CONST. art. 124, para. 2 with ALB. CONST. art. 145, para. 1 (regular judges are “subject only to the Constitution and the laws” (emphasis added)).

²²² ALB. CONST. art. 131(a). Under Article 122, a ratified international agreement “has superiority over laws of the country that are not compatible with it.” ALB. CONST. art. 122, para. 2.

²²³ See GRUNDGESETZ art. 93(2), translated in 7 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 132, at 149 (noting that the Federal Constitutional Court shall rule “in case of disagreement or doubt as to the formal and material compatibility of federal or Land legislation with this Basic Law”).

²²⁴ This reading is supported by the fact that, with respect to unratified international agreements, the Court is granted explicit *a priori* abstract review powers. See ALB. CONST. art. 131(b). Constitutions that grant *a priori* review powers are generally explicit about such intentions. See, e.g., ROM. CONST. art. 144(a), translated in 15 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1, at 34-35 (The Constitutional Court has the duty “to pronounce on the constitutionality of laws *before their promulgation* at the request of the president of Romania, one of the presidents of the two chambers . . . the Supreme Court of Justice, at least 50 deputies or at least 25 senators, as well as, officially, on initiatives revising the Constitution.” (emphasis added)). Moreover, *a priori* abstract review powers are relatively rare; of all of the constitutions cited in *supra* note 1, only the Romanian Constitution provides for *a priori* abstract review. See *id.*

their “compatibility . . . with the Constitution, prior to their ratification.”²²⁵ The Court also has power to review the “compatibility of normative acts of the central and local organs [of government] with the Constitution and international agreements”²²⁶ and is charged with resolving “conflicts of competencies between [the three] powers [of government], as well as between central government and local government.”²²⁷ The Court may also decide the constitutionality of political parties²²⁸ and of referenda and their results.²²⁹ Finally, the Court is responsible for resolving any issues regarding the election of the President and the members of the Assembly, as well as their “incompatibility in exercising the functions” of their respective offices.²³⁰

Serving as a check on the power the Assembly, the Court plays a role in “verif[y]ing] the guilt of the President of the Republic” and “declar[ing] his discharge from duty” under Article 90.²³¹ The Court also “verifies conclusively” whether the President is so

²²⁵ ALB. CONST. art. 131(b).

²²⁶ ALB. CONST. art. 131(c).

²²⁷ ALB. CONST. art. 131(d). For example, under Article 115, the Court has the power to review a decision of the Council of Ministers to dissolve or discharge a “directly elected organ of a local government unit.” ALB. CONST. art. 115, para. 1. The dissolved or discharged organ, however, must complain to the Constitutional Court within 15 days of the decision by the Council of Ministers for this review power to be activated. *See* ALB. CONST. art. 115, para. 2.

²²⁸ Under Article 9, certain political parties and organizations, such as those “based on totalitarian methods” are prohibited. ALB. CONST. art. 9, para. 2. The Court determines whether a group’s program and activities fall within the provisions of Article 9. *See* ALB. CONST. art. 131(e).

²²⁹ *See* ALB. CONST. art. 131(h); *see also* ALB. CONST. art. 152, para. 1 (“The Constitutional Court reviews preliminarily the constitutionality of the issues put for a referendum.”).

²³⁰ ALB. CONST. art. 131(g); *see also* ALB. CONST. art. 70, para. 2 (“Deputies may not simultaneously exercise any other public duty with the exception of that of a member of the Council of Ministers.”); ALB. CONST. art. 89 (“The President of the Republic may not hold any other public duty, may not be a member of a party or carry out other private activity.”).

²³¹ ALB. CONST. art. 90, para. 3. Under Article 90, the President “may be discharged for serious violations of the Constitution and for the commission of a serious crime.” ALB. CONST. art. 90, para. 2. “A proposal for [] discharge of the President may be made by not less than one-fourth of the members of the Assembly and must be supported by not less than two-thirds of all its members.” ALB. CONST. art. 90, para. 2.

incapacitated that a new President must be elected.²³² Under Article 140, the decision of two-thirds of the members of the Assembly to discharge a High Court judge also is subject to review by the Constitutional Court.²³³

The final paragraph of Article 131 grants the Court authority to adjudicate violations of individual rights. It provides that the Constitutional Court decides on “final adjudication of the individual complaints for the violation of their constitutional rights to due process of law, after all legal means for the protection of those rights have been exhausted.”²³⁴

As the preceding discussion demonstrates, the Constitution gives the Court a very broad field of operation. However, that domain is not infinite. For example, the Court cannot act on its own motion.²³⁵ Indeed, this is a change from the provisional constitutional framework (as expressed in the “Law on the Main Constitutional Provisions”) which existed between 1991 and 1998.²³⁶ Under that law, the Constitutional Court could “start[] action on a complaint or on its own initiative.”²³⁷ As the Court may not act on its own motion under the present Constitution, the issue of standing becomes important.

b. Standing Before the Constitutional Court

The following actors have an unrestricted right to put the Court

²³² ALB. CONST. art. 91, para. 2. Under Article 91, “if the President cannot exercise his duties for more than 60 days, the Assembly by two-thirds of its members [may] decide[] on sending the issue to the Constitutional Court,” for a conclusive verification. ALB. CONST. art. 91, para. 2.

²³³ See ALB. CONST. art. 140 (“The decision of the Assembly is reviewed by the Constitutional Court, which, upon verification of the existence of one of [the specified constitutional] grounds, declares his discharge from duty.”).

²³⁴ ALB. CONST. art. 131(i).

²³⁵ See ALB. CONST. art. 134, para. 1 (noting that the Court may be put into motion *only* on the request of a prescribed group of actors).

²³⁶ See Law on the Main Constitutional Provisions ch. IIIA, art. 25, *available in Constitutional Resource Home Page: Albania* (visited Oct. 18, 1999) <<http://www.urich.edu/~jones/confinder/albcon.htm>>; see also LUDWIKOWSKI, *supra* note 54, at 145 (describing how the Constitutional Court functioned under the interim Constitutional Provisions).

²³⁷ Law on the Main Constitutional Provisions ch. IIIA, art. 25, *available in Constitutional Resource Home Page: Albania* (visited Oct. 18, 1999) <<http://www.urich.edu/~jones/confinder/albcon.htm>>.

in motion: the President of the Republic;²³⁸ the Prime Minister;²³⁹ “not less than one-fifth of the deputies [of the Assembly];”²⁴⁰ and the Chairman of High State Control.²⁴¹ Ordinary judges also have the power to raise constitutional questions.²⁴² If a judge “finds that a law comes into conflict with the Constitution,” she is not allowed to apply it.²⁴³ Rather, she must “suspend the proceedings and send the issue to the Constitutional Court.”²⁴⁴ Thus, pursuant to Article 145, paragraph 2, every court has standing before the Constitutional Court.²⁴⁵

Other constituencies are allowed to seek constitutional interpretations from the Court as well, but only if their requests concern “issues related with their interests.”²⁴⁶ Included in this group are: the People’s Advocate;²⁴⁷ organs of the local government;²⁴⁸ organs of religious communities;²⁴⁹ political parties and other organizations,²⁵⁰ and individuals.²⁵¹

4. *Decision Making in the Court*

The Court “decides with a majority of all its members.”²⁵² Its

²³⁸ See ALB. CONST. art. 134, para. 1(a).

²³⁹ See ALB. CONST. art. 134, para. 1(b).

²⁴⁰ ALB. CONST. art. 134, para. 1(c).

²⁴¹ See ALB. CONST. art. 134, para. 1(d). “The High State Control is the highest institution of economic and financial control.” ALB. CONST. art. 162, para. 1. It supervises “the economic activity of state institutions and . . . juridical persons” in which the state owns more than fifty percent, and oversees “the use . . . of state funds by the organs of . . . government.” See ALB. CONST. art. 163.

²⁴² See ALB. CONST. art. 134, para. 1(e).

²⁴³ ALB. CONST. art. 145, para. 2.

²⁴⁴ *Id.*

²⁴⁵ See ALB. CONST. art. 134, para. 1(e).

²⁴⁶ ALB. CONST. art. 134, para. 2.

²⁴⁷ See ALB. CONST. art. 134, para. 1(f).

²⁴⁸ See ALB. CONST. art. 134, para. 1(g); see also ALB. CONST. art. 115, para. 2 (“The dissolved or discharged organ has the right to complain, within 15 days, to the Constitutional Court, and in this case, the decision of the Council of Ministers is suspended.”).

²⁴⁹ See ALB. CONST. art. 134, para. 1(h).

²⁵⁰ See ALB. CONST. art. 134, para. 1(i).

²⁵¹ See ALB. CONST. art. 134, para. 1(j).

²⁵² ALB. CONST. art. 133, para. 2.

decisions “have general binding force and are final.”²⁵³ They “enter in force the day of their publication in the Official Gazette,” but the Court may provide that a “law or normative act is to be invalidated on another date.”²⁵⁴ The Constitution provides that “minority opinions are published together with the [majority] decision.”²⁵⁵

Article 132 provides that the Court “only has the right to invalidate the acts it reviews.”²⁵⁶ This provision is somewhat ambiguous. It seems to deny the Court the power to invalidate legislation that is not properly before it for review. That is, the provision forbids the Court from escaping the prohibition against acting on its own motion.²⁵⁷ Yet, the language is imprecise. The word “acts” might be referring to the “normative acts of the central and local organs” mentioned in Article 131(c).²⁵⁸ If that interpretation is correct, then could the Court invalidate *laws* (not *acts*) that are not properly brought before it, i.e., laws about which the opinion of the Court was not sought? If the provision was truly intended to constrain the Court’s review, the word “matter” might have been a better choice than “act.”

Several other aspects of the decision-making procedure raise issues of interpretation as well. First, Article 133 provides that “[a]cceptance of complaints for judgement is decided from a number of judges as determined by law.”²⁵⁹ The meaning of this provision is not clear. Is it intended to make the Constitutional Court a discretionary court like the United States Supreme Court? Could the Court refuse to hear a case even though a clear constitutional violation has occurred and the complaining party has standing under Article 134? Does the provision apply to all complaints for judgment, so that a request by the President to review the constitutionality of a piece of legislation could be

²⁵³ ALB. CONST. art. 132, para. 1. Another article provides that these decisions are binding on all courts. *See* ALB. CONST. art. 145, para. 2.

²⁵⁴ ALB. CONST. art. 132, para. 2.

²⁵⁵ *Id.*

²⁵⁶ ALB. CONST. art. 132, para. 1.

²⁵⁷ *See supra* notes 235-37 and accompanying text.

²⁵⁸ ALB. CONST. art. 131(c) (The Constitutional Court decides on “compatibility of normative acts of the central and local organs with the Constitution and international agreements.”).

²⁵⁹ ALB. CONST. art. 133, para. 1.

rejected by the Court? Or is a better reading of this clause to say that it does not extend to those actors who have unrestricted access to the Court? Answers to these questions cannot be easily discerned from the text of Article 133.

Another problem arises in interpreting Article 133, which notes that the Court “decides with the majority of *all* its members.”²⁶⁰ Does this mean that a majority of the Court’s members is required to form a quorum? That is, do five members need to be present before the Court can even consider an issue? Or do five judges have to concur in the decision before the Court can resolve an issue? If the latter meaning was intended, what happens when the judges split four to three to two? Since a “majority of *all* the members” is five, can the Court in such a case not reach a decision? Does the constitutional issue remain unresolved? If the Court cannot decide, for example, whether a proposed law violates the Constitution, does the legislation stand or is it presumed to be unconstitutional? Again, the text fails to answer these questions.

IV. Conclusion

Overall, the Albanian Constitution of 1998 is a masterful fundamental charter. It is both firm, in providing specific protection of certain fundamental human rights and freedoms, and flexible, in allowing possibilities for future growth in this area. In a new and ingenious way, it approaches a careful balance between aspirations and economic practicalities. The institutional framework the Constitution provides is sensitive to the need to insulate judicial review from transitory populist pressures and to the requirement that a constitution adequately protect democratic, majoritarian values. The Constitution is largely successful in providing a comprehensive outline of the rights of the individual and of the structure and function of the Constitutional Court. Yet, as with any document, ambiguities do exist. This Comment has highlighted some of them; the task of resolving these difficult questions remains with legal scholars and with the Constitutional Court, as they address issues of constitutional interpretation in the future.

EMIN S. TORO

²⁶⁰ ALB. CONST. art. 133, para. 2 (emphasis added).

Appendix

Structure and Mandate of Albanian Constitutional Court

Composition and Recruitment

Number of members	9
Appointing authorities	President with consent of the Assembly
Length of term	9 years (3 judges replaced every 3 years)
Age limit	70 years maximum
Requisite qualifications	Lawyers with high qualification; work experience not less than 15 years

Constitutional Review Authority

<i>A priori</i>	Only for international agreements
<i>A posteriori</i>	Yes
Abstract review	Yes
Concrete review	Yes
Incidental	Yes
Direct	Yes

Effect of Decision

<i>Inter partes</i>	No
<i>Erga omnes</i>	Yes

Power to Refer Constitutional Controversies to the Court Possessed by:

Absolute power to refer	President of Republic; Prime Minister; not less than 1/5 th of deputies; Chairman of the High State Control; every court (incidental only)
Power to refer for issues related to their interests	People's Advocate; local government; religious communities; political parties; individuals

