D E C I S I O N

"IN THE NAME OF THE REPUBLIC OF ALBANIA"

The Constitutional Court of the Republic of Albania, consisting of:

Vladimir Kristo,	Chairman of the Constitutional Court
Fehmi Abdiu,	Member of " "
Kujtim Puto,	Member of " "
Petrit Plloçi,	Member of " "
Vitore Tusha,	Member of " "
Sokol Berberi,	Member of " "
Sokol Sadushi,	Member of " "
Admir Thanza,	Member of " "
Xhezair Zaganjori,	Member of " "

with secretary Blerina Çinari took under examination in open judicial session on 8 December 2009 the case with Act no. 37/24, pertaining to:

A P P E L L A N T: **SOCIALIST PARTY OF ALBANIA**, represented by Messrs. Saimir Tahiri, Damian Gjiknuri and Myslym Pashaj, with authorisation.

INTERESTED SUBJECTS:

THE PRESIDENT OF THE REPUBLIC, absent.

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA, represented by Mr. Lulëzim Lelçaj, with authorisation.

THE COUNCIL OF MINISTERS, represented by Ms. Marsida Xhaferllari, with authorisation.

THE MINISTRY OF FOREIGN AFFAIRS, represented by Ms. Ledia Hysi, with authorisation.

THE MINISTRY OF DEFENCE, represented by Vice Admiral Kristaq Gërveni, Mr. Rezart Tërshana and Ms. Miranda Zeka, with authorisation.

OBJECT: **The examination of the compatibility with the Constitution of Albania of the Agreement between the Hellenic Republic and the Republic of Albania "On the delimitation of their respective continental shelf areas and other maritime zones to which they are entitled under international law."**

LEGAL BASIC: Articles 131 letter “b”, 134 letter “f” of the Constitution of the Republic of Albania; article 52 of law no. 8577 dated 10 February 2000 “On the organisation and functioning of the Constitutional Court of the Republic of Albania”.

THE CONSTITUTIONAL COURT,

after it heard the *rapporteur* of the case, Xhezair Zaganjori; the representatives of the Socialist Party of Albania, who asked for the complaint to be accepted; the representatives of the interested subjects Assembly of Albania, Council of Ministers, Ministry of Foreign Affairs and Ministry of Defence, who asked for it to be rejected, as well as discussing the case in its entirety,

F I N D S:

I

1. On 27 April 2009, the Republic of Albania and the Republic of Greece, through their respective Ministries of Foreign Affairs, signed an agreement “On the delimitation of their respective continental shelf areas and other maritime zones to which they are entitled under international law”. The agreement entered into was sent to the Assembly for ratification, in conformity with article 121 of the Constitution. According to the explanatory statement that accompanies the agreement sent to the Assembly, the entering into of this agreement came as a need not only to define the maritime borders between the two neighbouring countries but also of the use and economic exploitation of the maritime spaces by the Albanian state. The Albanian party was interested to enter into this agreement since relations between the two countries are held in a climate of cooperation and supported on the principles of good friendship. The two states are parties to the framework convention, the

Convention of the United Nations on the Law of the Sea, which, it is emphasised, has served as the basis for entering into the agreement.

2. A complaint was submitted to the Constitutional Court (the Court) by several political parties, specifically: the Socialist Party of Albania, the Social-Democrat Party, the Party of Social Democracy, the Demo-Christian Party, the Party "Law and Justice" and the Party G 99, with the object of "examining the agreement signed between the Republic of Albania and the Republic of Greece 'On the delimitation of their respective continental shelf areas and other maritime zones to which they are entitled under international law'".

3. During the preliminary examination of the complaint, by decision dated 26 November 2009, taken in a Meeting of the Judges, based on article 52/3 of law no. 8577 dated 10 February 2000 "On the organisation and functioning of the Constitutional Court of the Republic of Albania", the Court by a majority of votes 5 to 4 decided: a) to pass the case to a hearing; b) the standing of the Socialist Party of Albania, c) the rejection of the complaint for the other complaining subjects[1]. In implementation of article 52/3 of this law, when a case passes for examination to a hearing, the procedures for the ratification of the agreement are suspended until this Court renders a final decision.

4. Appellant, the Socialist Party of Albania, claims that the agreement that is objected to is not in compliance with articles 3, 4, 7 and 92/ë of the Constitution, because:

4.1 Full power[*] from the President of the Republic is lacking for the negotiation and signing of the agreement that is the object of examination, something that is in conflict with article 4 of law no. 8371 dated 9 July 1998 "On the entering into of international agreements and treaties" as well as the principles and constitutional spirit of institutional cooperation. The President of the Republic, as the sole representative of the unity of the people, is the organ that on the basis of the law should give authorisation for the negotiation of agreements to which the Albanian state is a party.

[1] In the decision of 26 November 2009, the members of the Constitutional Court who voted in favour of the standing of the SP of Albania were: F. Abdiu, K. Puto, P. Plloçi, S. Sadushi and S. Berberi. Members V. Kristo, Xh. Zaganjori, V. Tusha and A. Thanza voted against the standing of appellant.

[*] Tr. note: This phrase is sometimes also translated as "plenipotentiary powers" but since "full power(s)" is the phrase used in the Vienna Convention, and since it is a closer translation to the Albanian "fuqiplotë", we also use "full power(s)" in this translation.

4.2 The negotiating group of the Albanian party was established by Prime Minister's Order no. 135 dated 23 August 2007 "On the creation of an inter-institutional work group for the determination of the continental shelf with neighbouring countries", for the purpose of determining the continental shelf with Greece, while the negotiations were held, in addition to the continental shelf, also concerning other maritime spaces.

4.3 The title and content of the agreement are unusual. The title should be such as to reflect the content of the agreement, which could have the object of determining the territorial water boundaries, or the Continental Shelf, or the Exclusive Economic Zone, or several of them. International practice does not recognise cases when the title of the agreement is so broad.

4.4 The principle of strict equidistance should not have been applied for the determination of the maritime boundary, which has brought unfavourable consequences for the Albanian state, wrongfully losing a considerable area of sea because the two coasts have different geographic conditions. In its place, the principle of combined equidistance should have been applied with 'ekite'[*] (French equité oe English equity), which makes it possible to achieve a fair and honourable result.

4.5 The baseline from the Albanian state has not been determined in advance, which has importance in the determination of the continental shelf and other areas. The importance of the baseline stands principally in the fact that the coasts of Albania and Greece are not the same, something that also affects the choice of the principle that will be applied for establishing the maritime boundary. Thus, for example, the island of Corfu creates appropriate geographic circumstances for the Greek party, because it is inserted into the maritime area that should have belonged to the Albanian state. In addition, the island of Othonoi creates another northern extension of the Greek maritime space, acting to disfavour the Albanian party.

4.6 The Albanian delegation did not show the appropriate care for determining the status and extent of the bay of Saranda and did not make attempts for the bay of Saranda to gain the same status, while it accepted the request of the Greek party for the bay of Corfu to be treated as a bay with the status of internal waters. This led to a reduction of the area and consequently also to an unjustified approach of the maritime boundary line in the direction of the coast of Saranda, that is, in the disfavour of national interests.

[*] Tr. note: As indicated in the parentheses, this word is borrowed from the English/French analogs. It does not exist in the Albanian language.

4.7 The rock Barketa should not have served as a basic end point from which the measuring began of the equidistant line from the nearest points of the Albanian coast, but as a dividing line of the Greco-Albanian maritime boundary, because it is not a rock but a rocky shallow place. There is no reason for Barketa to be recognised and accorded the right of a maritime space, because the rocky shallows appear and disappear depending on the phenomena of the tide going in and out.

4.8 It is not necessary to determine the border of the maritime spaces between Albania and Greece, because this border was specified previously. In the Florence Protocol of 1913, it has been accepted that the border between Albania and Greece in the area of the channel of Corfu between through the channel, which was never contested by the parties. In addition, by the laws approved by the Albanian Parliament (law no. 8771 dated 24 January 2008) both the territorial waters as well as the internal waters were provided as parts of the Albanian territory.

4.9 The agreement signed was not accompanied by the respective maps, but only with the coordinates of the dividing boundary, which makes the affirmation unclear that “the median line that is determined by the geodesic line that joins the points in the table (article 1/2 of the agreement) is the median line, every point of which is equidistant from the closest points of the base line” (point 1/1 of the agreement). The absence of maps is also related to the principle of transparency, which should have been applied during the negotiation of the agreement in question.

4.10 The negotiation and drafting of the agreement was performed in secrecy and in an absence of transparency. The Government has the obligation to make public all the issues that have an interest, especially those related to the borders of the country and the territory of the state. This is an obligation that also derives from article 23 of the Constitution, which guarantees the right to be informed. Even when the interest of the public appeared for being more informed about this agreement, the Government did not have the will to give explanations.

5. The President of the Republic

5.1 The institution of the President of the Republic says by written document no. 1976/1 dated 3 December 2009 to the Court that it leaves in the evaluation of this Court the assessment related to the compatibility with the Constitution of the agreement that is the object of the adjudication.

6. *The Assembly of Albania*

6.1 Appellant does not have standing because political parties are not general subjects provided by article 134/1 of the Constitution. Only the subjects provided in this provision may initiative an abstract control before the Constitutional Court. Notwithstanding the large number of voters of this party, it is not legitimated in its request, because it does not succeed in justifying the interests that are affected by the object of the agreement. The Socialist Party has the possibility to express its objections and reservations in relation to the agreement during its examination in the Assembly of Albania and not in the way of constitutional control. The absence of this party in the Assembly cannot be replaced by such legal means as a constitutional appeal in an abstract control procedure.

6.2 There is no evidence to prove that the maritime border between Albania and Greece has existed. Furthermore, if the border between the two countries had existed, the need would not have come out to enter into this agreement.

6.3 The absence of accompanying maps is a technical question that cannot make the agreement unconstitutional, because the coordinates are sufficient to define the border.

6.4 The agreement signed by the Albanian party and the Greek party is still in the phases of parliamentary examination in the Assembly, specifically, in the parliamentary commissions. Under those conditions, it is impossible for us to make submissions about several aspects of the content of the agreement.

7. *The Council of Ministers*

7.1 Appellant does not have standing to initiative an adjudication of abstract control of a legal norm, because such subjects have the obligation to argue the link of the case with their interests, which the appellant does not turn out to have done through this complaint. Appellant has not given any argumentation that shows the interest affected by the law that is the object of examination.

7.2 Albania and Greece have never determined the maritime boundaries between them before and for this reason the historical facts presented by appellant are not accurate.

7.3 Public consultation is not a constitutional standard, but is related to political will, and therefore it cannot be such a reason as to make an agreement unconstitutional. This claim can be raised in the political way of expressing opinion, specifically, during parliamentary procedures. Appellant has all the possibilities starting with the parliamentary route to realise

the consultation process, which, according to it, was lacking in the conclusion of this agreement.

7.4 The claim does not stand up for the absence of information and transparency, because appellant itself did not agree to take part in the workings of the Parliament. This is the reason why it did not have the possibility to learn at close hand about the documentation related to the preparation, negotiation and signature of the agreement. In addition to this, appellant does not submit any evidence to show that it was denied the granting of information after a request made officially by it.

7.5 The claim of the absence of accompanying maps is not a reason for invalidity, because in the period of development of digital technology, the determination of the coordinates is more than enough to fulfil the function of determining the border.

7.6 The negotiation of the agreement stretched over a time period of three years, although the interest of the Albanian party for an exact determination of the borders was documented since 1993. All attempts were made by the Government for the negotiations to become known to the public from the moment when there was interest in this issue.

8. ***Ministry of Foreign Affairs***

8.1 The claim does not stand up that the negotiations were done in a short time and with a complete absence of transparency. Negotiations to enter into this agreement began in 2006, and by the Prime Minster's Order no. 135 dated 23 August 2007, an inter-institutional work group was created for this purpose. Many rounds of negotiations were held, and the entire procedure of negotiations up to the final preparation of the agreement was done in full compliance with Albanian legislation and diplomatic practice. Although diplomatic negotiations of this nature are always reserved with respect to the public, when there were requests for information it was given in conformity with law no. 8457 dated 11 February 1999 "On the classification of 'state secret' information".

8.2 The maritime boundaries between Albania and Greece have never been determined before. The Florence Protocol of the year 1925 only determines the land boundary. Even Albanian legislation over the years has never had a clear determination concerning the maritime border with Greece. The claim of appellant that the concept included in the ICJ decision that "the border is between the Albanian coast and the Greek coast up to and through the Corfu channel" does not hold up, because this concept legally and geographically does not clearly define where this boundary line is located.

8.3 The fact that there are no analogue maps attached to the agreement does not mean that geographical data are lacking. The agreement is accompanied by 150 coordinates, the joining of which forms the dividing line of the maritime boundary between Albania and Greece. Article 16 of UN Convention III on the Law of the Sea provides that: “Coastal states will make the appropriate publication of such maps or lists of geographical coordinated and will deliver copies of them to the General Secretary of the UN”. For this purpose, a maximum number of coordinates has been established, which increases security and precision in the determination of the boundary line.

8.4 The claim that the location of the island of Barketa passes the median line in our waters – if this line were to be between the two coasts- is not correct. The coordinates show that the island of Barketa is to the west of the median line constructed between the two shores. For this reason, that rock has been taken as a reference point for the determination of the baseline.

9. ***Ministry of Defence***

9.1 The borders between Albania and Greece have not been set before, because the Florence Protocol defined only the land boundary and no coordinate is found in that document to determine the dividing line of the maritime boundary between those two countries. Consequently, there has never been another dividing line previously determined by those countries by agreement, but there have existed lines determined unilaterally by each country.

9.2 The claim does not stand that Albania has lost territory, because the dividing line has been made equidistant from the baselines of the respective countries.

9.3 The absence of analogue maps is explained by the fact that digital maps are used more often today in conformity with the Words Geodesic System WGS84, according to which the coordinates are reflected electronically and precisely.

II

I. In connection with the question of the standing of appellant.

10. The interested subjects the Assembly of Albania and the Council of Ministers claim that the appellant does not have standing, because it is a political party that, according to article 134/2 of the Constitution, cannot put the Constitutional Court in motion for an abstract control of acts. According to them, the cases when political parties and other

subjects provided in this provision can address the Constitutional Court have been expressly provided in that provision. They should present arguments that justify the direct and real infringement of their interests, as a consequence of the action of the contested act.

11. The Court evaluates the question of the legitimacy of the appellant *(locus standi*) as one of the principal aspects related to the initiation of a constitutional proceeding. In adjudications of the control of the constitutionality of a norm, the initiating subjects provided in article 134/2 of the Constitution may make a complaint to the Constitutional Court only for issues that are related to their interests.

12. Independently of the issue of the standing of the appellant, the Court has also examined it as a preliminary matter, and in connection with this, has given an expression, by intermediate decision dated 29 November 2009 of the Meeting of the Judges, where, by a majority of votes, the legitimacy only of the Socialist Party of Albania was decided, because of the claims presented in the judicial session held for this purpose, [and] sees it reasonable to stop longer at the reasons that led to legitimating appellant in this constitutional adjudication.

13. The Court judges that appellant has standing *ratione personae* in the sense of the regulation provided by article 134, letter "f" of the Constitution and article 52/2 of law no. 8577 dated 10 February 2000 "On the organisation and functioning of the Constitutional Court of the Republic of Albania" (below: the law on the Constitutional Court). The Socialist Party of Albania (SPA) is a political party registered in the Court of the Tirana Judicial District and created by Order of the Minister of Justice no. 36/1 dated 15 August 1991. Currently, it is the largest opposition party in the country. In the introduction to the charter of this party, it is provided that: "The SPA operates in respect of the Constitution, the laws, the state of law and the parliamentary form of governance for the protection of national sovereignty, order and justice...The SPA follows political objectives through which it aims to protect and promote national interests and values...".

14. In the Court's evaluation, political parties are constitutional organs in the meaning of article 9 of the Albanian Constitution. Based on article 1 of law no. 8580 dated 17 February 2000 "On political parties", they are voluntary unions of citizens on the basis of

joint political interests, ideas, beliefs or points of view, which aim at influencing the life of the country through participation in elections and the representation of the people in the elected organs of power. Further, in article 2 of this law it is provided that political parties "take part in the formation of the political will of the people in all fields of public life, principally through influencing the creation of public opinion and political education, encouraging the active participation of citizens in political life and showing the ability of citizens to undertake public responsibilities and participation in general and local elections".

15. Political parties are central factors of the formation of the political will of voters, undertaking an intermediating role between the citizen and the state organs in a democratic state. This role is realised not only through the conduct of electoral campaigns for the formation of the Parliament from which the Government also comes, but also during the entire period of governance, especially by opposition parties. That is, political parties are the principal actors of the formation of the will of the people, which they (the parties) attempt to transform into the will of the state, if they win in the general parliamentary elections. The results of this process appear mainly in free and democratic elections through which every citizen votes according to his independent political will and convictions.

16. The Court emphasises that it is not sufficient [in a] representative democracy merely to mobilise citizens for elections. The uninterrupted commitment in the process of creation of political will and the preservation of the dynamics of democracy itself is a permanent task of all political parties, both those that are in power as well as those that are in the opposition. Opposition political parties play an important role in the check that they exercise with the special means provided for this purpose against the government in general. This check is realised through such means as: questions, interpellation, investigative commission, a motion of no confidence, which are considered as political control mechanisms. In addition, another effective means is also considered the possibility to put the Constitutional Court into motion for the purpose of a control of the normative acts as to whether they are in compliance with the Constitution or not.

17. The Court already has a consolidated practice in connection with the issue of justifying the interest of subjects included in article 134/2 of the Constitution. The interest of a subject in a case, in the meaning of letters "dh", "e", "f" of article 134/1 of the Constitution,

is considered justified if it manages to be proven by the appellant itself that the negative consequence is direct, that is, it comes directly from the act that is the object of examination, it is real and, as the case may be, it is closely linked with the functions of the respective organisation[2].

18. For the above reasons, it is the assessment of the Court that the possibility of political parties to put the Constitutional Court into motion exists when they object to the provisions of normative acts that infringe their constitutional status and also together with it their participation in the exercise of the will of the state. For this reason, it is for the Court to examine whether a constitutional organ has violated the rights of political parties through a normative act issued by it. In this case, the political party has standing in its requests, if it is a question of a constitutional organ respecting its status, which comes from the Constitution, during the electoral process, such as, for example, the financing of political parties by the state, the granting of an equal opportunity of all parties to take power, and so forth[3].

19. Another possibility of the political parties to invest the Court is related to a violation of the fundamental rights and freedoms that have to do with participation in the formation of the political will of the voters also in cases when those violations come from the court, the office of the administration, including here all the subjects of public law created by the state, for example, a violation of fundamental rights to equal treatment so far as concerns taxation of the gifts of political parties or (not) putting radio-television transmission time at their disposition and so forth.

20. For a political party as a subject qualified by the provision of article 134/2, all those acts whose content entails negative consequences for their constitutional activity in the framework of forming political will are related to their interests. Such may be acts that determine the declaration of assets, their financing by the state or other subjects, the manner

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[2] Constitutional Court decision no. 40 dated 16 November 2007.

[3] Thus, for example, the Court gave standing to the Party of the Union of Democratic Pensionists, which opposed article 71 of the Electoral Code providing for the collection of 10,000 signatures before a notary or before the CEC for new parties that seek to enter the race for the parliamentary elections. According to appellant, a large number of signatures and before a notary or the CEC would make their right to participate in the elections difficult or impossible, because financially it became impossible to collect 10,000 signatures before a notary or the obligation for sending all supporters of the party to the CEC created practical difficulties, removing in reality the right of this new party to compete.

of organisation and exercise of their political activity not only during the elections but also in the period between them, and so forth.

21. For the examination of international agreements before ratification according to article 52 of the law on the Constitutional Court, the Court is also put into motion by one or more political parties, provided that the case is related to its/their interests. In order to evaluate the interest in the case under adjudication, the Court does not rely only on the foundation documents and the charter of the political parties, but also on the extent of membership, their activity and level of political representation in the elected organs. In this view, the right recognised by the Constitution-makers of no less than one-fifth of the deputies to put the Constitutional Court into motion not conditioned on a particular interest is also taken as a reference point.

22. In the case under examination, the Court notes that the SPA is a political subject that in the last parliamentary elections of 28 June 2009 managed to secure 65 mandates in the Assembly of Albania. This fact makes it a special subject among the other political parties. Based on this level of representation, taking account of the special importance and nature of the agreement signed between the Republic of Albania and the Republic of Greece “On the delimitation of their respective continental shelf areas and other maritime zones to which they are entitled under international law’”, the Court judges that the SPA has a legitimate interest in the constitutional sense to ask for the constitutionality of this agreement to be checked.

23. For the above reasons, it is the assessment of the Court that the appellant SPA has standing in its requests for a preliminary control of the agreement entered into between the Republic of Albania and the Republic of Greece “On the delimitation of their respective areas of the continental shelf and other maritime areas that belong to them on the basis of international law”.

II. In connection with the claim of holding negotiations without having full powers from the President of the Republic.

24. Appellant claims that during the negotiations and at the moment of entering into the agreement the Albanian negotiating group was not supplied with full powers from the

President of the Republic. Consequently, the negotiating group did not have the authorisation from the competent organ to entry into negotiations with the Greek party and all the less to enter into the agreement for the delimitation of the maritime areas. The absence of full powers, according to appellant, makes the agreement unconstitutional in the meaning of articles 4, 7 and 92/ë of the Constitution and illegal in the meaning of article 7 of law no. 8696 dated 23 November 2000 "On the adherence of Albania to the Vienna Convention for the entering into of international treaties" and article 4 of law no. 8371 dated 9 July 1998 "On entering into treaties and international agreements". The latter foresees that the delegation will be furnished with full powers by the President of the Republic for agreements to which the Republic of Albania is a party, precisely in order to guarantee respect for the constitutional principles that serve as the fundamental basis for the functioning of the state, such as that expressed in article 3 of the Constitution, which is related to the inviolability of territorial integrity. The absence of full power, according to appellant, constitutes a violation of a constitutional guarantee.

25. The interested subject Ministry of Foreign Affairs, objecting the appellant's claim, argues that full power is a document submitted to the other negotiating power, if the two parties agree on the exchange of full powers, for the purpose of making known the names of the negotiators or the signers of a treaty. Full power is an element of international law and it does not have importance for the internal procedures of the entering into and approval of a treaty. It confirms the full will of the state for the implementation of the obligations that come from the treaty, serving as an element of security for the other negotiating party. The presentation of full powers has the purpose of recognition of the competent persons of the parties to the negotiation. The Vienna Convention recognises the possibility that the parties will not present full powers, if it clear from their practice or other circumstances that those persons are representatives of the state. The absence of full power, according to it, is not an element that affects the form or content of a negotiated agreement and for that reason it cannot be raised as a claim for the invalidity of an international agreement by any party.

26. In the evaluation of the Court, the claim of appellant about the absence of full power issued by the President of the Republic for the Albanian negotiating group during the

negotiations and entering into of the agreement for the delimitation of the maritime areas between Albania and Greece is well-grounded and should be accepted.

27. Based on the materials submitted by the interested subject Ministry of Foreign Affairs, the Court finds that as a consequence of the diplomatic services between the parties (Albanian and Greek) in 2006, there was an agreement in principle that negotiations would begin for the purpose of entering into an agreement for the division of the continental shelf. By Prime Minister's Order no. 135 dated 23 August 2007 "On the creation of an inter-institutional work group for the determination of the continental shelf with neighbouring countries", a work group was created under the direction of the General Secretary of the Ministry of Foreign Affairs. Thereafter, several meetings were held between the members of the work group, as a result of which a plan-strategy for negotiation was drawn up and a drat agreement was also prepared.

28. After the drafting of the negotiating strategy with the Greek party, a joint Albanian-Greek commission was created, with representatives of the two parties and experts of the field. In reciprocity with the Greek delegation, notified by means of *note verbale* no. 558 dated 26 March 2009, the members of the Albanian delegation to the joint commission were representatives of the Ministry of Foreign Affairs, the Ministry of Defence, the Institute of Military Geography and the Ministry of the Interior. The procedure of initialling the agreement was made public on 19 March 2009 through the official Internet page of the Ministry of Foreign Affairs. By Council of Ministers Decision no,. 404 dated 22 April 2009, this agreement was agreed in principle, opening the way to its signature. The agreement was signed by the Ministers of Foreign Affairs of the two states on 27 April 2009 in Tirana. After signature, by written document no. 7159 dated 2 June 2009, the agreement was deposited with the Assembly of Albania to continue with the procedure of its ratification in compliance with article 121/a of the Constitution.

29. The Court considers it necessary, in the service of its reasoning, to stop initially at an analysis of the constitutional framework, concretely, articles 4 and 7 of the Constitution as well as the role of the President of the Republic as the highest representative of the state in foreign relations provided by article 92/ë of the Constitution. In addition, the Court will also analyse the concrete provisions of the Vienna Convention on the Law of Treaties of 23 May

1969 and the internal legislation related to the criteria that the delegations of the respective states who want to enter into an international agreement should fulfil.

30. It is generally accepted that the head of state represents the state as a whole, that is, its unity, applying this idea even outside of the country. This position is also taken by the Constitution, which in article 92/ë provides the competence of the President of the Republic to enter into international agreements, according to law. Referring to this provision and the meaning of article 86/1 of the Constitution, it turns out that the President of the Republic has the competence to represent the state in foreign relations.

31. On the other hand, article 100/1 of the Constitution provides that the Council of Ministers determines the principal directions of general state policy. That is, the determination of the essence of relations with abroad is done by the executive, which, in the framework of the realisation of the governmental programme, determines the principal directions of foreign policy, also including membership in international organisations or the entering into of bilateral or multilateral treaties[4]. On the other hand, the expression of this will outside the country, in the name of the Republic, is done by the President, holding to the policies previously determined by the government and/or Parliament, as the case may be.

32. As above, it is valid only in cases when it is a question of agreements with a *political* nature, whilst for other agreements of an economic, cultural, commercial exchange nature and so forth, the government has the authority of representation and entering into them. This is also the reason why law no. 8371 dated 9 July 1998 "On the entering into of international agreements and treaties" makes a distinction between agreements to which the *Albanian state* is a party and agreements where the *Albanian government* is a party. In constitutional doctrine, all those agreements that entail consequences for the existence of the state, territorial integrity, its independence or the position of the state itself in the international arena are considered agreements of a political nature. Especially considered as political agreements are those that are entered into directly with the promulgation, securing

[4] In article 65/1 of the Austrian Constitution and article 59 of the Fundamental German Law it is also provided that all international agreements that need to be ratified by the Parliament are entered into by the President of the Republic or an authority delegated by him, which means the chancellor (the Prime Minister) or the Foreign Minister. Only the cases of agreements that are entered into with the European Union constitute an exception, which present special features beause of the manner of functioning, being based on the will of the chairmen of the governments of the Member States.

or broadening of the position of one state against another state[5]. Such are: agreements for an alliance, agreements for political cooperation, reciprocal non-aggression pacts, [agreements of] neutrality, disarmament, determination of borders and others similar to those[6]. This is the reason why the entry into force of those agreements is also conditioned on the giving of consent by the lawmaker, that is, ratification, because such agreements should be supported on the principle of the democratic legitimacy of the internal organs of a state, in conformity with the principle of democracy.

33. The Court emphasises that the right of the President of the Republic to enter into international agreements is a constitutional function and he exercises it either himself or by giving full powers for the purpose of representation of the state according to international law. Referring to the facts made known by the representative of the interested subject Ministry of Foreign Affairs, it turns out to have become the continuous practice even in other cases of the conduct of negotiations and the signing of agreements to which the Albanian state is a party for the Albanian delegation not to be supplied with full power by the President of the Republic. That is, the practice has been created of not supplying the Albanian delegation with full power unless the other party to the agreement asks for such a thing. In the assessment of the Court, following such a practice leads to the result that there is no constitutional or legal basis, because we are dealing with an unauthorised action by the organ to which the competence belongs. This institutional behaviour, turned into a practice, conflicts not only with article 92/ë of the Constitution, which provides for the role and competence of the President to enter into international agreements, but also with articles 4 and 7 of the Constitution.

34. The principle of the state ruled by law sanctioned in article 4 of the Constitution means the action of all the state institutions according to the law in force as well as the supremacy of the Constitution over other normative acts. Every organ in a state ruled by law should act to the extent permitted by the Constitution and law, not exceeding the boundaries

[5] Decision of the German Federal Constitutional Court dated 29 July 1952 on the so-called "Petersburg Agreement between Germany and France". The question was posed whether the agreement of commerce entered into between the two coutnries was really such (that is, commercial) or hid a political context between the lines. The GFCC argued that this agreement was clearly economic, notwithstanding the fact that it also included delicate issues such as, for example, the exploitation of the assets of the Saar region, a region that had been a key point in relations between the two countries. See similar cases below.

[6] Article 121/1 of the Albanian Constitution provides for precisely this category of agreement as mandatory for ratification by the Parliament after their signature.

defined by them[7]. In this sense, every state institution should have the field of its competences clearly defined within which it has been authorised to act in compliance with the legal and constitutional requirements. In implementation of the principle of the state ruled by law, in article 92 of the Constitution the competences of the President of the Republic are defined, one of which is the entering into of international agreements according to law.

35. The Court stresses that the chairman of the state has the competence to exercise *ius repraesentationis omni modae*, that is, to make known internationally the internal state will and to represent the unity of the state in the international arena. The manners in which the President exercises this function may be: with the participation of the President himself in making known the political position of the state in relations with abroad or by means of transferring representative authority through full powers to other organs, mainly to the government.

In entering into agreements where the Albanian state is a party, as a subject of international law, the participation of the President of the Republic cannot be avoided, whether personally or through full powers. From the legal point of view, representation of the state, as a subject of international law, in relations with abroad by the government, without the prior authorisation of the President, when it is a question of international agreements with a political character, is not in compliance with the principle of the state ruled by law.

36. The President of the Republic is the highest representative of the Albanian state in relations with abroad, in the meaning of article 86/1 of the Constitution, and he has the authority to enter into international agreements as a legitimate representative of the state, according to article 92/ë of the Constitution. Resulting from this is [the conclusion that] either he should have taken part himself in the conclusion of the agreement or, through full powers, he should have authorised the negotiating group for this purpose.

37. The Court considers that the purpose of full powers is the granting of authorisation by the competent organ to negotiate with the other party on issues that are expressly designated in the full object. The representatives of the state furnished with full

[7] Decision no. 14 of the Albanian Constitutional Court dated 21 July 2008.

powers are authorised to negotiate only to the extent determined in the mandate given for representation. In every case, the negotiation and conclusion of the agreement should be done within the boundaries defined in the full powers given by the competent organ. In this way, the representatives of the Albanian state are obliged, for every change, addition or reduction of the object of the negotiations, to ask to get new full powers or a change, addition or reduction of the full powers given, respecting the principle of the state ruled by law.

38. In the assessment of the Court, the question of furnishing the Albanian delegation with full powers by the competent organ for the purpose of entering into an agreement, contrary to what the interested subject Ministry of Foreign Affairs claims, is an issue of internal law, notwithstanding that it is also provided by international law. In order to answer the argument made by the Ministry of Foreign Affairs that the absence of full powers from the President of the Republic is not an element that affects the form or content of an agreement that has been negotiated nor can it be raised as a claim for the invalidity of the international agreement by any party, the Court sees it to be reasonable also to refer to the international framework, concretely, the Vienna Convention on the Law of Treaties of 23 May 1969 (below, the Vienna Convention), to which the Albanian state is also a party.

39. In article 7 of the Vienna Convention, the head of state, the chief of the government and the foreign minister are provided as the representative authorities of a state. The Convention confirms the ability of states to enter into treaties. The treaties are subject to negotiations between the parties, but this does not prohibit the internal normative systems of the states from determining their own rules related to consent or consultation by the organs of each state. In the meaning of article 2/1a of the Vienna Convention, “treaty” means an agreement entered into between states in a written form and regulated by international law by the persons who have authority to represent the state.

40. It has been specified in article 8 of the Convention that “*an act that is related to the conclusion of a treaty, done by a person who cannot be considered authorised on the basis of article 7 to represent the state for that purpose, does not have legal consequences if it is not later confirmed by that state”*. According to article 7, *“a person is considered as representing a State for the purpose of adopting or authenticating [lit. approving or assuring] the text of a treaty or for the purpose of expressing the consent of the State to be*

bound by a treaty if: (a) he produces appropriate full powers; or (b) it appears [lit. it becomes clear] from the practice of the States concerned or from other circumstances that their intention was to [lit. that they] consider that person as representing the State for such purposes and to dispense with full powers [lit. to supply full powers]. In virtue of their functions and without having to produce full powers, the following are considered as representing their State[*]*: Heads of State, Heads of Government and Ministers of Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty".*

41. In connection with relations between states, the presentation of full powers, that is, of a document that comes from a competent authority of a state and which appoints one or more persons to represent the state in the conduct of negotiations, the approval or authentication [lit. assurance or securing] of the text of a treaty, in order to express the consent of a state to be bound by the treaty, or to conclude any other act that is related to the treaty, is not mandatory for the recognition of the representative of the state party. That is, the provision only excludes the submission of full powers to the other party to the agreement, but according to the internal national law, it does not also mean the avoidance or failure to respect the legal requirement of being furnished with full powers for the representation of the state.

42. The Court emphasises that international law regulates the institute of full powers in its acts, but at the same time creates possibilities for the states to regulate in their internal framework the question of the competent organ and the procedures of furnishing full powers, according to the will of the states themselves. The conduct of negotiations between delegations of different states is mentioned in the Vienna Convention as a phase of the entering into of international agreements, but the procedures and modalities for the manner in which the delegation of each state is formed are regulated by the internal law of each state. The representatives of the state should act in compliance with the full power issued by the competent organs through which the persons are determined who will take part in the negotiations (who might be experts of the field, various functionaries or civil servants of the state), the nature and area of the issues that will be negotiated. That is, this authorisation should be expressed in every case as a declaration of the will of the state to enter into

[*] Tr. note: The phrase that follows is 2(a) of article 7; paragraphs (b) and (c) dealing with heads of diplomatic missions and representatives to international bodies are not relevant to this case.

negotiations. In this sense, the Court stresses that from the viewpoint of international law, full powers serve the principle of good faith and the free will of each state to enter into an agreement, for the purpose that it be considered as having been entered into by authorised representatives, not putting in doubt the completion of the commitments that derive from the agreement entered into.

43. The conduct of negotiations between state delegations for the purpose of entering into an agreement has the aim of preparation of a text that afterwards turns into a binding legal instrument in the view of international law, only if the parties express their consent at the international level to be bound by that agreement. This expression of will can be done by means of: ratification, signature (when ratification is not necessary) and adherence. In each case, the state formally expresses its will to be bound by the agreement or treaty to which it desires to adhere[8]. In cases when the internal legislation conditions the entry of the agreement into force with ratification by the Parliament of each state, this process (ratification) cannot be considered as a simply formal act. It constitutes an essential process closely linked to the entry of the agreement that has been signed into force. A state party to the agreement is free, through its legitimate organs, to ratify the agreement or not.

44. The Court considers it necessary to stress that the Vienna Convention defines two principal criteria in the sphere of implementation of international treaties, the principle of *pacta sunt servanda* (article 26), according to which every treaty in force is binding on the parties and should be performed by them in good faith, and the principle that one party cannot use the provisions of its internal law as a justification for the impossibility of its implementing a treaty (article 27). This rule does not infringe on article 46 of the Convention, which provides that a state cannot invoke the fact that its giving consent to implement a treaty has been expressed in violation of a provision of its internal law (for example, by violating the competence of a concrete organ to enter into treaties). A lack of competence in the internal aspect of the state or an unconstitutionality for this reason does not affect obligations according to international law. It is clear that this provision serves the validity of the agreement between the parties, but on the other hand, the entering into and

[8] Shabtai Rossene, Treaties, Conclusion and Entry into force, in: Encyclopedia of Public International Law, Vol. 7 (1995), p. 465.

signature of the agreement by the competent authority also has importance for the internal law, because it has to do directly with the implementation of such constitutional principles as the principle of democracy, of the state ruled by law and the legitimacy of the organ to represent the country in relations with abroad.

45. International law stands neutral so far as concerns the question of what organ acts in the name and for the account of the state, how is the internal political will formed and expressed as well as, furthermore, how does a state behave in relation to internal law or in connection with the norms of international law for so long as it applies the rights and obligations undertaken by it. For the latter, it is important for states by their later actions not to withdraw from the obligations they have undertaken, something that serves international stability and the implementation of the principle *pacta sunt servanda.* This principle does not mean that different states cannot choose different ways and forms of implementation of the norms of international law in their internal legal systems. This is a sovereign right of every state. On the basis of this principle, law no. 8371 dated 9 July 1998 “On the entering into of international agreements and treaties” provides in article 4 for the representatives of the state who are charged with conducting negotiations and signing treaties or agreements with the representatives of other states to be furnished with full regular powers. Full powers are issued respectively by the President of the Republic, when the Albanian state is the subject of a treaty or agreement, and by the Chairman of the Council of Ministers, when the Albanian Government is the subject.

46. The Court stresses again that the finding of the absence of full power by the Albanian delegation in the process of entering into the international agreement does not conflict with article 46 of the Vienna Convention on respecting the obligations undertaken by the Albanian party, because in the instant case, the agreement is subjected to a prior control by this Court, that is, before it is to be ratified by the Assembly of Albania. For this reason, according to the internal Albanian law, the agreement has not yet entered into force and consequently has not begun to have effects, so long as it has not been ratified by the Assembly, according to article 121 of the Constitution. Starting from this fact, in the instant case we are not dealing with a deviation from the obligations that come as a consequence of the entering into of an international agreement in compliance with the generally accepted

rules of public international law, that is, consequently, not with the principle *pacta sunt servanda* either.

47. In the Court's assessment, failure to receive full powers from the President of the Republic for entering into the agreement or the granting of full powers according to the law also conflicts with article 7 of the Constitution, which guarantees the principle of the separation and balancing of the powers. This principle is extended not only to the three branches of power, the executive, the legislative and the judiciary, but also to other independent constitutional organs whose competences have been provided by the provisions of the Constitution. According to this principle, no organ, in the composition or not of one of the three powers, can interfere in the handling and resolution of issues that, as the case may be, would constitute the central object of the activity of other constitutional organs or institutions[9]. Failing to furnish the delegation with full powers from the President of the Republic constitutes a violation of the competences of the President of the Republic foreseen by article 92 of the Constitution, and consequently only of the principle of the separation and balancing of the powers guaranteed by article 7 of the Constitution.

48. Starting from the title of the agreement that is the object of investigation, the Court finds that the Albanian delegation not only did not receive full power from the competent organ to start negotiations and later to sign the agreement with the Republic of Greece, but from the formal legal point of view, even the respective authorisation issued by the Prime Minister was not respected so far as concerns its object. That is, Order no. 135 of the Prime Minister dated 23 August 2007 is entitled "On the creation of an inter-institutional work group for the determination of the continental shelf with neighbouring countries". On the other hand, if we refer to the final agreement entered into between the Republic of Albania and the Republic of Greece, in its title the object of the agreement turns out not to have been only the determination of the continental shelf, but also *"…other maritime zones to which they are entitled under international law"*. That is, it turns out that the Albanian party had negotiated for a broader object than that for which it was authorised, exceeding the boundaries of the authorisation given for the object of the negotiations and later their concretisation in an agreement between the two parties. This exceeding of the object of the

[9] Decisions of the Albanian Constitutional Court no. 25 dated 5 December 2008, no. 19 dated 3 May 2007, no. 11 dated 2 April 2008.

authorisation by the negotiating group makes the agreement incompatible with the principle of the state ruled by law guaranteed by article 4/2 of the Constitution.

49. In addition, the Court considers that the procedure provided by the law on treaties entered into with the approval from the Council of Ministers of the text of the agreement also does not turn out to have been respected. Article 5 of that law provides that “for agreements to which states or governments are parties and the initiative is by our side, the respective ministries first receive the opinion of the Ministry of Foreign Affairs and the other interested ministries and central institutions, before the entering into of treaties and agreements is proposed to the Council of Ministers”. The Council of Ministers gives approval in principle for international agreements and treaties that are entered into in the name of the state or of the government.

50. Going on, article 6 provides that “when an initiative to enter into treaties and bilateral and multilateral international agreements is taken by our state, the respective ministries and other central institutions draw up the texts of the drafts, as to which they take the opinion of the Ministry of Foreign Affairs, the Ministry of Justice and interested ministries. The comments that the other state might make, which change the content of the draft of the Albanian party or a counter-draft that might be presented by it, after being studied by the respective ministry or other central institution, are submitted to the Council of Ministers for approval in principle, together with the opinions of the interested ministries and other central institutions, as well as the opinion of the Ministry of Foreign Affairs”.

51. From the materials submitted during the adjudication it the case, it turns out that Council of Ministers issued decision no. 653 dated 11 June 2009 “On the proposal of the draft law ‘On the ratification of the agreement between the Republic of Albania and the Republic of Greece for the delimitation of their respective areas of the continental shelf and other maritime areas that belong to them on the basis of international law”. The procedure of approval in principle of the agreement by this organ is not reflected, making the process incompatible with the requirements of article 5 and 6 of the law on treaties.

52. From the above, it is the assessment of the Court that failure to furnish the Albanian delegation with regular full powers by the President of the Republic has brought as

a consequence a violation of the competence of the head of state as the competent organ for the representation of the Albanian state in relations with abroad. The absence of regular full powers by the Albanian delegation clashes with the internal constitutional and legal framework related to the determination of the formal criteria for the negotiation and entering into of international agreements. As a consequence, this incompatibility also affects the essence of the agreement entered into by the Albanian state, which, in any case, should express its will in conformity with the requirements of the internal legislation. For this reason, the Court reaches the conclusion that the agreement signed between the Republic of Albania and the Republic of Greece for the delimitation of the maritime areas between the two countries was entered into in violation of the requirements of articles 4, 7 and 92/ë of the Constitution.

III. In connection with the principles and criteria of constitutional control of an international agreement by the Constitutional Court.

53. Before the Court gives an expression about whether the claims of appellant are grounded in relation to the content of the agreement that is the object of adjudication, it considers it necessary initially to make known the control criteria on which it will rely during their examination.

54. Considering the object of the complaint, based on article 131/b) of the Constitution, the Court controls international agreements before ratification by the Assembly in connection with their compatibility with the Constitution. In the exercise of this control, the Court takes account of the internal law and concretely the provisions of the Constitution, as the highest normative act in the country. For the concrete case under adjudication, the Court will base itself on article 3 of the Constitution, which guarantees among other things the integrity of the territory, because the object of the agreement being controlled is the determination of the maritime areas that belong to Albania. Furthermore, notwithstanding the title of the agreement, in practice, as will also be reasoned in the following, it is principally a matter for the determination of the internal waters and the territorial waters in the south of Albania. Those waters are considered by the internal law as well as international law as an exclusive part of the state territory, and for this reason they are subjected to the territorial sovereignty of the Republic of Albania.

55. In addition, taking into account that the issues of the determination of the borders as a whole and the maritime borders in particular are not only questions of internal law but also of international law, because of the recognition and acceptance of the boundaries not only by the states party but also by international institutions, for this purpose the Court will also refer during its control to the international acts that regulate the principles, manners and procedures of delimiting the maritime boundaries between states. Specifically, the main international act that regulates those issues is the UN Convention on the Law of the Sea of the year 1982 (known as the Montego Bay Convention). In addition, during its control the Court will also refer to other acts and generally accepted principles of international law as well as the practice of international arbitrations and courts in connection with the principles followed in the delimitation of maritime spaces in cases that are similar or close to the case that is the object of examination.

56. The control of international agreements is one of the most special competences of the Constitutional Court, because it has to assess whether the constitutional principles and norms in the field of foreign relations have been respected. Foreign relations are not only a question of the internal constitutional order of a country, but also of international law, to the extent the state undertakes rights and obligations. In the field of international relations, we distinguish two sides: the formation of the will and its expression. The evaluation of the need or interest to enter into an international agreement is a political act. The question of whether this political act is in conformity with the internal normative framework (meaning the Constitution) and with state interests as a whole is of a legal nature. Precisely here the constitutional control done by the Constitutional Court is focused.

57. This control is complex in the case of foreign relations, because in some cases foreign relations present difficulties, all the more when constitutional control over political acts brings in itself the danger of interference in questions that affect not only internal political interests but also those in relations with other countries or international organisations to which the specific state is a party. Nevertheless, it is now a consolidated practice in general for constitutional courts also to exercise control over aspects of the decision-making of the executive or the legislator related to foreign relations, taking the fundamental constitutional principles as a control criterion.

58. The Court stresses that during the constitutional control of an international agreement, it is important to keep in mind respect for the principle of the state ruled by law, which takes on priority against a possibility of conflicting with the general rules of international law, recognised today by the term "international rule of law"[*]. When the interpretation of an international agreement is set out for examination before a constitutional court, the application of general principles for this purpose is unavoidable. According to those principles, every agreement should be interpreted in such a manner that the parties will reach the objective as to which they decided to enter into that agreement. On the other hand, a larger or broader obligation than that for which the parties expressed their initial will should not result from the agreement.

59. When the Constitutional Court interprets the content of an agreement and reaches a conclusion about its compatibility with the national Constitution, it supports its conclusion only on the verification of respect for the fundamental constitutional principles in the text of the agreement. In this case, the Constitutional Court takes account of the principle that the political organs of the state have relied on the constitutional principles in order to enter into an agreement and have had the will to reach a result in compliance with them[10]. That is, constitutionality, good faith and good will are presumed in the entering into of the agreement, so long as a different conclusion has not been reached from the constitutional control. The constitutional control of the Court to assess the constitutionality of the agreement that is the object of the adjudication will be supported on the basis of the principles and criteria mentioned above.

60. From the broad range of claims of the parties, in addition to the standing of appellant and the absence of full powers dealt with above, It is the Court's assessment that attention should be focused on, and it should group, primarily those that have constitutional importance for the case being judges, and specifically, the claims related to: a) the title and content of the agreement as well as the need to determine the respective maritime spaces, b) the implementation of the principle of strict equidistance for the division of the maritime spaces that belong to the two countries, c) the effect of the islands and reefs in the

[*] Tr. note: The phrase in quotation marks is in English in the original.
[10] Decision of the German Federal Constitutional Court in connection with the agreement signed between France and Germany concerning the status of the Saar region, dated 4 May 1955.

determination of the maritime spaces and ç) the failure to submit analogue maps as an accompanying part of the agreement. The Court emphasises that the claim for the absence of transparency during the holding of negotiations for entering into the agreement, for the case under adjudication, does not present itself in a constitutional dimension.

III

IV. On the title and content of the agreement as well as the need for defining the respective maritime spaces.

61. Appellant claims that the title and content of the agreement that is the object of adjudication are *sui generis* and a deviation from international standards and practices. In this framework, according to it, its object should have been better and more clearly defined, in conformity with the requirements and the need for the delimitation of the respective maritime spaces.

62. The Court stresses that international maritime law, as an entirety of the norms and principles of international law (the treaties and norms of the customary international law) which regulate the issues of the use of the sea (also including its bed and the subsoil), the exploitation of its resources as well as questions of jurisdiction over the maritime spaces, ships, installations and activities within those spaces has known important developments in the period after the Second World War[11]. Contemporary international maritime law is the result of the confrontation of various interests, dialogue, concessions and compromises between states on questions that have to do with the division of maritime spaces as well as their most effective use and exploitation in the national interest.

63. The legal regulation of seas and oceans was for a long time based on the so-called doctrine of “high seas” or “freedom of the open sea”, at the foundation of which stood the idea that all the spaces of the seas and oceans did not belong to anyone, therefore they should be open and free for navigation and exploitation for all states without distinction. An exception was made only for a narrow belt of water (maritime) that adjoins the shore, which was considered that for purposes of security and exploitation should have been under the full sovereignty of the coastal state. In this same period, the width of this belt of water was

[11] Günther Jaenicke, Law of the Sea, in: Encyclopedia of Public International Law, Vol. 11, Northholland-Oxford (1989), p. 174.

determined to be three nautical miles, because such was the distance a cannon ball could be shot at that time[12].

64. For centuries on end, the principle of "freedom of the open sea" was implemented on a broad scale by the majority of state. It was recognised as a norm of international customary law and a fundamental principle on the basis of which the entire legal regime of the seas and oceans was built. Furthermore, we also find it as such in the International Convention of the Open Sea of the year 1958, as well as the UN Convention on the Law of the Sea of the year 1982 (articles 86-115), but now under new conditions, because the space of the Open Sea had been shrinking and shrinking (being reduced) constantly, because of the permanent interest of coastal states in extending their sovereignty and their sovereign rights more and more, both in the Territorial Waters as well as in the other maritime spaces that washed their shores.

65. The interest of the coastal states in extending their sovereignty and their sovereign rights in the direction of the Open Sea had, as its main purpose, the best possible, exclusive exploitation by them of particular maritime spaces for economic interests, national security, scientific exploration, protection from pollution, and so forth, which became especially evident around the middle of the Twentieth Century. The development of modern technologies made it possible for the sea, its bed and subsoil to be exploited for various purposes and with a greater and greater effectiveness, especially for fishing, the extraction of oil and gas, the extraction of rich veins with many minerals, exploitation for sand, gravel and so forth. On this basis, immediately after the Second World War, many coastal states declared in a unilateral way not only the widening of their territorial waters from three to 12 nautical miles (in some cases, more or less than that)[13], but also the extension of national jurisdiction over the continental shelf and the respective maritime space up to 200 nautical miles[14].

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[12] The so-called "cannon shot rule" – *"Terrae potestas finitur ubi finitur armorum vis"* – which means that the power of arms also determines the power of the land at sea. This maritime belt with a width of about three nautical miles would be considered as a part of the territory of the coastal state with the name Territorial Waters [lit. Sea].

[13] Thus, for example, the Republic of Albania, with the decree of the year 1976, had determined the breadth of its territorial waters as 15 nautical miles.

[14] As is the case of several countries of Latin America.

66. The unilateral declaration and the considerable expansion of sovereignty and the sovereign rights of coastal states in considerable sea and ocean spaces created many problems in international relations. The seas and oceans generated more and more disputes and conflicts between states. For the management of this situation, even the United Nations became seriously engaged. After preparatory work of several years, in 1958 the First International UN Conference was held on the Law of the Sea, at the end of which, it became possible for four conventions to be approved, specifically, the Convention on Territorial Waters and the Contiguous Zone; the Convention on the Continental Shelf; the Convention on the Open Sea and the Convention on Fishing and Conservation of the Living Resources in the Open Sea[15].

67. Meanwhile, the number of states that considered unacceptable many of the problems and solutions offered in the framework of the four conventions adopted at the First UN Conference on the Law of the Sea of 1958 was growing larger and larger. In this connection, a visible effect also came from the expansion of the United Nations with new member states, mainly because of the process of de-colonisation of the decade of the 60s of the previous century, which made possible the birth of many new sovereign states that sought the creation of a new international economic order at the foundations of which would be more equality, justice and honesty. In this framework, the problems of international maritime law, and concretely the division, use and rational, effective exploitation in the fairest and most equal manner of the maritime spaces and their resources had a special priority. It was considered to be more fair for a general international conference to be called, which would discuss and regulate in its entirety and on a new basis and philosophy all the problems of international maritime law.

68. The Third UN Conference on the Law of the Sea started work in 1973 and ended with the adoption of the Convention in 1982[16]. This Convention is one of the most important

[15] It was attempted to solve or comlete many problems and unclear points that were found in the four conventions of the First UN Conference of 1958 through the Second UN Conference on the law of the sea called in 1960, in which 88 coutnries and several Specialised UN Agencies took part. Because of disagreements and the contrary interests of states on several of the main issues dealt with there, the proposed amendments did not manage to be approved by the required majority of states participating in this conference. That is, the Second UN Conference on the law of the sea had no concrete result.

[16] It was opened for signature on 10 December 1982 in Montego Bay of Jamaica. For nine consecutive years, representatives of about 160 UN member states had marathon negotiations and discussed, debated and reached the necessary compromises that made the success of this conference possible. The Convention entered into

and valuable documents drawn up in the framework of the UN. It is considered as "the Constitution of the law of the sea", as a principal reference point for all the questions that have to do with international maritime law. A new and compete legal regime is created through it for the seas and oceans, which is adapted to and harmonises the different interests of states. The Convention harmonises quite well the existing norms of international maritime law (of treaties and of customary international law) with the new norms that amend or affirm concepts not previously known or treated by traditional international maritime law, thus reflecting the needs, tendencies and interests of various groupings of sovereign states. Through the 320 articles and nine annexes that, according to article 318 of the Convention, are considered an integral part of it, a broad range of delicate and varied problems of international maritime law are regulated. On its basis, coastal states have the direct interest and right to undertake, as the case may be, the necessary steps that make possible the extension of sovereignty, sovereign rights or national jurisdiction in particular maritime spaces.

69. The Court notes that the UN Convention on the Law of the Sea defines the basic rules and principles, the general rights and obligations of states party in the field of international maritime law. Its implementation in every concrete case requires that the framework rules of the Convention be taken into account, both in the drafting of the national legislation as well as in the dialogue or negotiations that have the purpose of the conclusion of the respective agreements between the parties interested in the field of maritime law, especially in connection with the division, use and exploitation of the various maritime spaces. Also in this framework, in the function of resolving the case that it is examining, the norms and principles of the Convention also serve as a central orientation for the decision-making of the court or of an international arbitration about conflicts or problems of international maritime law.

70. That is, the Convention on the Law of the Sea is the basic document that has priority over every other legal-international regulations in this field, including here even the four Geneva conventions approved in the First UN Conference on the Law of the Sea.

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force on 16 November 1994, one year after the Republic of Gujana became the 60th state that ratified it. The Republic of Albania ratified the Convention on 23 June 2003, making it the 143rd state party, while the Republic of Greece had ratified it on 21 July 1995, making it the 78th state party. Currently, the UN Convention on the Law of the Sea has 158 member states. The last ratification is that of Switzerland on 1 May 2009.

However, it is important to emphasise that the UN Convention on the Law of the Sea does not change the prior rights and obligations of the states party that derive from other international agreements that are in harmony with it (see the second paragraph of article 311 of the Convention). Taken as a whole, the maritime spaces that are re-confirmed or brought as innovations in the UN Convention on the Law of the Sea can be divided into maritime areas in which the coastal state exercises sovereignty or sovereign rights and maritime areas in which the coastal state does not exercise any of them. Concretely, taking part in the first category are: Internal Waters, Territorial Waters (the Territorial Sea), the Continental Shelf, the Contiguous Zone and the Exclusive Economic Zone, whilst in the second category, the Open Sea and Zone.

71. The Court considers it important for analysing [lit. in the service of] the claims of appellant to stop briefly to explain the meaning, breadth and legal nature of the maritime areas that enter into the first category, because the Open Sea, that part of the sea that does not include any of the maritime areas mentioned in the first category (see article 86 of the Convention) is free and open for exploitation for all states in conformity with the provisions of the Convention (articles 87-115 of the Convention), while the Zone, as a new concept in the UN Convention on the Law of the Sea, which includes the bed of the sea and ocean as well as the subsoil beyond the border of national jurisdiction (see article 1 of the Convention) is considered and treated as joint property (*res communis*) of the entire international community.

72. *The Internal Waters (maritime)*, according to article 8 of the Convention, are considered the landward waters from the baseline where the breadth of the Territorial Sea begins to be measured. The breadth of those waters is determined depending on the method selected for drawing the baseline. There are two such methods according to the Convention: a) *the normal baseline*, which is the lowest water line along the entire coast (article 5 of the Convention) and b) *the straight baseline*, which is formed by joining the points of land that extend the farthest into the sea (article 7 of the Convention). This method is especially used in cases when the coast is very irregular or broken up. From the above, it turns out that it is a question of the Internal Waters in this sense, especially in cases when the straight baseline method is applied for measuring the Territorial Sea. In a more general sense, waters of bays (according to the criteria of article 10 of the Convention), waters of shore ports, river deltas

and so forth are also included in the notion of Internal Waters. Because of closeness of the land as well as the importance that they present in the point of view of security and exploitation for economic and commercial purposes, the Internal Waters are considered as part of the territory of a coastal state. The territorial sovereignty of the state extends completely into those waters, the airspace over them as well as the seabed and subsoil below those waters (article 2 of the Convention). However, in cases and particular parts of the Internal Waters, the right of peaceful passage may be recognised to ships of third states.

73. *The Territorial Sea (Territorial Waters)* is that belt of water next to the coast, in which the coastal state has the right to exercise its sovereignty. According to article 2 of the Convention, those waters too are considered as an integral part of the territory of that state, not open to question, as its dominion. No state can deny or case doubt on the rights and obligations of a coastal state to the Territorial Sea, recognised and exercised in compliance with the norms of international law. The breadth of the Territorial Sea may go up to 12 nautical miles, from the baseline that is defined in conformity with the provisions of the Convention (article 3 of the Convention). Also according to the Convention, the sovereignty of a coastal state is also fully extended in the airspace over the Territorial Sea as well as the seabed and its subsoil below those waters (article 2/2 of the Convention). It is also important to stress that in this case too, the right of peaceful passage is recognised to ships of third states (see articles 17-20 of the Convention). A coastal state may approve laws and rules related to the peaceful passage of those ships in its Territorial Sea, but always in compliance with the standards and requirements of the Convention (see articles 21-32 of the Convention).

74. *The Continental Shelf* in the legal meaning is a notion recognised and implemented for the first time in international practice only after the Second World War, for the purpose of its exploitation for economic purposes, especially for the extraction of oil, gas, various minerals, etc. In the geological meaning, the Continental Shelf was recognised long ago, meaning that part of the bottom (bed) of the sea that stretches as an extension of the land from the point where the latter meets (touches) the sea, up to the point where the seabed undergoes an immediate lowering. This distance normally can go up to about 80 kilometres from the sea shore. However, it can change from one place to another. In the maritime areas

where the seabed begins immediately in very great depths, practically there is no Continental Shelf in the geological meaning.

After the Continental Shelf in the geological meaning ends, the so-called *continental slope* begins, which normally extends up to 100 kilometres from the coast and the depth which goes up to about 5,000 metres, and after it the so-called continental platform (*continental rise*) with a smaller slope and an extent of up to about 4,000 kilometres and varying depths, but not greater than that of the continental slope. With the conclusion of the continental rise, normally the deep ocean bed begins. The three last declivities of the bottom of the sea taken together, the continental shelf in the geological meaning, the continental slope and the continental rise, form the so-called continental frame (*continental margin*) according to the Convention.

75. The geological meaning of the notion of the Continental Shelf has served as a starting point for the determination of its legal nature in the Convention on the Continental Shelf of the year 1958, as well as in the UN Convention on the Law of the Sea. In the former, the Continental Shelf was defined as "....the seabed and subsoil joined to the coast but outside the space of the Territorial Sea, up to the point where it reaches an immediate depth of 200 metres...."[17]. The 1982 Convention changes this definition visibly, so far as concerns extent, as well as concerning the external boundaries of the Continental Shelf in the legal meaning. Specifically, in article 76 of that Convention, it is stressed among other things that "the Continental Shelf of a coastal state includes the bottom of the sea and its subsoil… which extends beyond the space of its Territorial Sea as a prolongation of the land territory …to the outer edge of the continental margin, or up to a distance of 200 nautical miles from the baseline from which the breadth of the Territorial Sea is measured, if the outer edge of the continental rise does not exceed that distance" (see point 1 of Article 76 of the Convention). According to the Convention, in no case should the Continental Shelf in the legal meaning exceed 350 nautical miles (see point 6 of article 76 of the Convention).

76. The Court notes that, according to the Convention, the geological notion of the Continental Shelf differs considerably from its legal notion. Whilst the Continental Shelf in

[17] See United Nations Treaty Series, Vol. 499, p. 311.

the geological meaning begins at the point where the land meets the sea, the Continental Shelf in the legal meaning begins at the point of the seabed where the breadth of the Territorial Sea ends. On the other hand, the Continental Shelf in the legal meaning, according to the UN Convention on the Law of the Sea, may also include the continental slop and the continental rise, as different notions in the geophysical meaning[18]. A coastal state exercises the rights of sovereignty over the Continental Shelf, for the purpose of the exclusive exploration and exploitation of its natural resources. No one else may do such a thing, without the express content of the coastal state itself (see points 1-3 of article 77 of the Convention). The exercise of these rights by a coastal state should not be confused with territorial sovereignty, that is, the sovereignty that every state exercises over its territory, also including here the Internal Sea Waters and the Territorial Sea[19].

77. However, it should also be stressed that the rights of a coastal state over the Continental Shelf does not depend on any kind of title to this space. The determination of its boundaries, as the case may be, through a unilateral act or agreements with one or more other states that are opposite or adjoining does not have the purpose of creating this right, but only confirming its existence, over the Continental Shelf. In its decision in the case of the Continental Shelf in the North Sea, the International Court of Justice (ICJ) emphasised among other things that the rights of a coastal state to the Continental Shelf exist *ipso facto* and *ab initio*[20]. Unlike the regime of the Territorial Sea, the sovereign rights of a coastal state to the Continental Shelf do not also extend over the waters and the air space above it. On the other hand, in the exercise of its exclusive rights over the Continental Shelf, a coastal state should not violate, in an unjustified manner, navigation or the other rights and freedoms that all states have, in conformity with the regulations of the Convention (see article 78 point 1, 2 of the Convention).

78. *The Contiguous Zone (or Continuous)* is the maritime space continuing along the Territorial Sea, over which the coastal state has several limited competences, principally of an administrative nature. The breadth of the Contiguous Zone may go up to 24 miles from the baseline where the breadth of the Territorial Sea begins (see article 33/2 of the

[18] In more detail see Christos L. Rozakis, "Continental Shelf ", Encyclopedia of Public International Law, Vol. 1. (1992), pp. 783-792.
[19] Ian Brownlie, Principles of Public International Law, Pub. 7 Northholland-Oxford (2008) p. 107.
[20] Ibid, p. 787.

Convention). That is, the Contiguous Zone may extend up to 12 other miles after the end of the external boundary of the Territorial Sea. According to the Convention, in this space the coastal state may exercise various controls that have the purpose of implementation of its legislation on customs, fiscal, health or immigration issues, within its Territory or Territorial Sea (see article 33/1a of the Convention). Furthermore, the coastal state has exclusive jurisdiction over objects of historical and archaeological importance that might be found in the Contiguous Zone (see article 303/2 of the Convention). It is clear that according to the UN Convention of the Law of the Sea, the Contiguous Zone cannot be considered any more as a part of the Open Sea, but as a part of the Exclusive Economic Zone.

79. *The Concept of the Exclusive Economic Zone (EEZ)* is one of the most important innovations of the UN Convention on the Law of the Sea. It is defined by it as the space beyond and next to the Territorial Sea and which does not exceed 200 nautical miles from the baseline where the Territorial Sea being. According to the Convention, the EEZ consists of the waters from the surface waters to the seabed, as well as the seabed itself and its subsoil (see article 56/1 of the Convention). However, the rights of a coastal state to the EEZ so far as concerns the sea bed and its subsoil should be exercised in conformity with the provisions of Part Six of the Convention, which are devoted entirely to the Continental Shelf (see article 56/3 of the Convention). In the EEZ, the coastal state exercises the rights of sovereignty for the purpose of economic exploitation (principally fishing), exploration, preservation and development of natural resources whether alive or not, etc. Compared to the regime of the Territorial Sea, the authority of a coastal state in the EEZ, as also on the Continental Shelf, is more limited. At any time, other states enjoy the right of freedom of sailing in and flying over those waters, the right of putting cables and underwater piping as well as every other use of it that is in conformity with the regime of the High Seas. For this reason, it is generally stressed that the EEZ has a *sui generis* legal regime[21].

80. The Court emphasises again that in the constitutional point of view, the Internal Waters and the Territorial Sea are considered as genuine parts of the state territory up to 12 nautical miles from a baseline, the air space over them and the bed of the sea and their subsoil. In these spaces, the internal legislation of the coastal state is applicable without any

[21] Shigeru Oda, "Exclusive Economic Zone", in: Encyclopedia of Public International Law, Vol. 2, (1995) pp. 305-312.

doubt. On the Continental Shelf and in the EEZ, the coastal state exercises sovereign rights only so far as concerns exclusive exploitation and use for economic purposes (articles 56 and 77 of the Convention), scientific research and for their protection (article 61 of the Convention). That is, in distinction from the regime of the Internal Waters and the Territorial Sea, the sovereign rights of the coastal state to the EEZ and the Continental Shelf are exercised only for the activities mentioned expressly in the Convention, notwithstanding opinions or a tendency to extend the notion of "sovereign rights" in the direction of similarity with the notion of "territorial sovereignty"[22].

81. For the above reasons, a clear distinction should be made that when it is a question of determining the Territorial Sea of a coastal state, we have to do at the same time with setting its state boundaries in the true meaning, while when it is a question of determining the maritime spaces such as the Continental Shelf and the EEZ, where the coastal state exercises only several sovereign rights, one can speak about maritime boundaries. The ICJ speaks clearly about this problem in a case examined by it in connection with division of the Continental Shelf in the Black Sea between Romania and the Ukraine, declaring among other things that:: "*... the maritime boundary that delimits the Continental Shelf and the Exclusive Economic Zone should not be confused with the state boundary that divides territories. The first defines the limits of the maritime spaces in which the coastal state, on the basis of international law, exercises several sovereign rights for specific purposes. The latter determines the territorial limits of the sovereignty of the state*"[23].

82. Referring to the above standards, the Court observes that there are several constitutional violations in the agreement that is the object of adjudication, which grouped together are as follows:

82.1 Before the conduct of the negotiations, the maritime spaces should have been clearly defined as well as the respective maritime shores on the basis of which this delimitation should have been made. In this framework, the nature and legal status of each of the maritime spaces that were to be delimited should have been taken into account as well as the respective maritime shores on the basis of which this delimitation would be made. In this framework, the nature and legal status of

[22] See note 17, p. 787.
[23] Decision of the International Court of Justice, Romania/Ukraine, 3 February 2009, paragraph 217.

each of the maritime spaces that were to be delimited should have been taken into account.

82.2The agreement that is the object of examination bears the title “Agreement between the Republic of Albania and the Republic of Greece for the delimitation of their respective areas of the Continental Shelf and the other maritime areas that belong to them on the basis of international law”. In fact, as it also turns out from the respective maps presented in the concrete case, at least so far as concerns the Republic of Albania, about 90% of the maritime spaces divided with the Republic of Greece are Internal Waters and Territorial Sea, Specifically, of 150 circles that serve for the delimitation of the maritime boundary from the bottom part of the Canal of Corfu up to its north, 140 of them have radii that are smaller than 12 nautical miles. That is, the agreement in question does not divide the Continental Shelf in the legal meaning, as was said in the title, but principally the Internal Waters and the Territorial Sea.

Over those waters, in the air space over them and in the sea bed and subsoil under those waters, the Albanian State exercises full territorial sovereignty. They are an integral part of the territory of the Albanian state, at a time when other states are recognised to have the right of peaceful navigation or other rights in conformity with the provisions of the UN Convention on the Law of the Sea. It is clear that because of the relatively small distance between the respective shores, the agreement that is the object of investigation in essence deals principally not with the designation of maritime boundaries in the general sense, but with the determination of state boundaries in the true sense between the two countries.

82.3In this sense, especially in the area of the Channel of Corfu, the Albanian party should have clarified ahead of time the nature and effects of the international acts on the delimitation of the state borders of the Republic of Albania, as well as the practice followed in this connection. The state borders have existed, naturally also including the boundary of the Territorial Sea between the Republic of Albania and the Republic of Greece *in the Protocol of Florence dated 27 January 1925 for the Delimitation of the Southern Border of the Republic of Albania, it is stressed, among other things, that “...the land border breaks the Ionian Sea and the Bay of Ftelia according to a perpendicular line in the general

direction of the coast, up to the boundary of the territorial waters...“). Therefore, only the cases of overlapping claimed or the need for making this state border (the outside line of the Territorial Sea) should have been verified, in conformity with the provisions of the UN Convention on the Law of the Sea.

82.4 In dividing the maritime spaces, the determination of the baseline by the two states plays an important role. Although it is not mentioned expressly in the agreement that is the object of examination, from its provisions and the respective maps, it turns out that in the case of the Republic of Albania, the criterion of the low-water line along the respective seacoast is taken as the criterion in the determination of this line. On the contrary, in the case of the Republic of Greece, the criterion of the straight baseline has been taken as the criterion. This is the result not only because of the closing of the Bay of Corfu (with an area of over eight billion m2), but also in the northern part of the Corfu Channel, where the baseline joins the external shores of all the islands or reefs of the Greek party without exception, giving them full effect, notwithstanding their location, size, whether they are inhabited or not, and so forth. This appears clearly from the circles drawn for the determination of the Median Line. Also in this framework, the Albanian party wanted for the internal legal base to be made precise and the main criteria of the Convention about drawing the baselines were studied, verified and determined ahead of time.

82.5 The characteristics of the Albanian seacoast should have been taken into account, and in this framework, the space (area) of the maritime Internal Waters gained by each party because of the drawing of the baselines. It appears clearly that according to the agreement that is the object of examination, in the concrete case, there is a pronounced disproportion in the disfavour of the Albanian party.

V. In connection with the claim about the application of the principle of strict equidistance.

83. Appellant claims that in determining the maritime boundaries with Greece, the principle of strict equidistance should not have been applied, since because of the irregular coasts of the Greek territory, this principle has brought an unfavourable result for the Albanian party, which turns out to have lost a considerable area of water.

84. The Court points out that the maritime spaces defined by the UN Convention on the Law of the Sea and over which a coastal state exercises sovereignty or sovereign rights have a nature, breadth and regime different from one another. However, what is mutual for those spaces is the great and multi-dimension interest that they have for the coastal state. Several of them are considered integral parts of the territory of the coastal state. In others, a coastal state exercises the rights of sovereignty and has exclusivity of exploitation in conformity with the provisions of the Convention. In this sense, it is more than necessary to determine *ratione materia* and *ratione loci* of the coastal state in the maritime spaces that pertain to it. For these reasons, making these spaces precise, or in a more general sense, clearly defining the extent of the jurisdiction of coastal states whose coasts are next to or facing one another is an issue that is as important as it is difficult and delicate. At the same time, it also serves the avoidance of disputes or uncertain situations in relations between states that are washed by the waters of the sea.

85. The delimitation of the maritime spaces nevertheless appears quite complicated because of the considerable extent of these spaces, the proximity of the coastal states to one another, the varied and different configurations of the sea coasts, the presence of islands or other factors that might and should be taken into consideration in the determination of the maritime boundaries, or for the contrary interests and priorities that coastal states also have, and so forth. Precisely for those reasons, the UN Convention on the Law of the Sea defines several of the general methods, principles and rules that should serve as a principal orientation for the division of maritime spaces as a whole. In this connection, in addition to the provisions of the Convention, the norms of customary international law are also a very valuable assistance, as they have been worked out and applied through concrete instances of decision-making by various international courts or arbitrations (see article 287 of the Convention).

86. On the basis and for the implementation of the above norms and principles, in the first instance it is the duty of the states directly interested, in good faith and through dialogue, to conclude the respective agreements on the determination of maritime spaces. If this is not possible for any of a number of reasons, they refer the case on determining the maritime borders in good faith to an international court (the ICJ, the International Tribunal on the Law of the Sea (ITLS) or an international arbitrator selected by them. As a rule, separate

boundaries should be determined for every maritime space. However, there are cases in practice where the parties agree for questions of the boundaries of several maritime spaces be treated and resolved together. This happens especially when the maritime spaces have a close legal regime and nature, such as the case of the EEZ and the Continental Shelf. In the case of the Internal Waters and the Territorial Sea, we repeat that the sovereignty of the coastal state is complete and also extends over the air space as well as the seabed and its subsoil, up to 12 nautical miles.

87. For the delimitation of the maritime areas, the principle of the Median Line has been applied initially in the majority of cases, as the line that is equidistant at every point of it from the baseline or the maritime shores of the interested states. However, the strict application of this method, both in the cases when the coasts of the interested states are facing one another (the median line) as well as when they are adjoining (the line of equidistance) has shown that it often did not give a fair and honest result, principally because of a series of circumstances and particularities that are observed not infrequently in every particular case. For this reason, in two of the four UN Conventions of 1958 on international maritime law, specifically, the Convention on the Territorial Sea and the Convention on the Continental Shelf, it is expressly provided that in delimiting those maritime spaces, the method of the Median Line should have been followed, but also taking account of special circumstances (respectively in article 12/1 of the Convention on the Territorial Sea and article 6 of the Convention on the Continental Shelf). The configuration of the coast, the presence of islands or not and so forth was understood as special circumstances, at least in the case of the Territorial Sea[24].

88. The Constitutional Court sees it of interest to point out that the ICJ, in its decision of 1969 on delimiting the boundaries of the Constitutional Shelf in the North Sea between Denmark, Holland and Germany, stressed among other things that the strict implementation of the Median Line method often creates pronounced inequalities, which are added more and more with the passage from the land in the direction of the sea. Therefore, according to it, the principles of justice and honesty (*equitable principles*) should according to it be applied in the delimitation of maritime boundaries, through which it becomes possible to achieve a fair

[24] Lucius Caflish, Maritime Boundaries Delimitation in: Encyclopedia of Public International Law, Vol. 11 (1989) p. 213.

and honest solution (*an equitable solution*) between the parties. According to it, it is exactly this principle that reflects customary international law, at a time when another method, that of the Median Line, is in open violation of it. This position of the ICJ was to be reconfirmed, also by it, in a decision of the year 1982 about the division of the Continental Shelf between Libya and Tunisia. Furthermore, in this decision it goes on to make it even more precise that "... Equity is a general principle that should be applied in a direct way as a norm of international law", therefore, as such, it is binding on the court[25].

89. The Court emphasises that in the service of the arguments given by the ICJ in these decisions, it is clear that the problem of delimiting the maritime spaces becomes even more complicated in the framework of the Third Convention, because as was also shown above, it visibly broadens the national jurisdiction of coastal states in the direction of the sea. Exactly for this reason, the UN Convention on the Law of the Sea, for the first time and through a series of provisions, directly or indirectly, clearly defines the principle of Equity[26] as a fundamental principle that should be applied in the division and exploitation of maritime spaces. Concretely, in addition to the mention in paragraphs 4 and 5 of the Preamble, the Convention requires its implementation also in the delimitation of the Territorial Sea (article 15), the Exclusive Economic Zone (article 74/1), the Continental Shelf (article 83/1), and so forth. Furthermore, the principle of Equity is also expressly mentioned as a main criterion for the resolution of disputes about the division of maritime spaces, as in the case of the EEZ (article 59), and so on.

90. In fact, it is expressly and in an identical manner said in articles 74/1 and 83/1 of the Convention, among other things, that "The delimitation of the EEZ (respectively also of the Continental Shelf) ... should be done on the basis of the norms of international law, as defined in article 38 of the Statute of the ICJ, for the purpose of reaching a fair and honest solution (*equitable solution*)". In article 38 of the ICJ's Statute, nothing more is done than a rank listing, according to importance, of the sources of international law that serve as a basis for the resolution of cases by that court. According to it, those sources are: international conventions (article 38/1a), international custom (article 38/1b) and the general principles of

[25] See ICJ Reports 1982, paragraph 71 of the decision.
[26] Equity (English) Equité (French) – according to natural law, this means justice and honesty that takes the interests of the parties into consideration. Webster's Third International Law Dictonary Vol. I (1993) p. 769.

international law recognised by civilised nations (article 38/1c). Several auxiliary sources of international law are also given in point 1c of article 38 of the Charter.

91. For the above reasons, it seems clear that the Convention singles out Equity as a norm of customary international law, as a main principle of it for the delimitation of the EEZ and the Continental Shelf, and not simply as a method in the determination of these spaces. Meanwhile, unlike articles 74/1 and 83/1, article 15 of the Convention defines the Median Line (equidistance) as a method for delimiting the Territorial Sea between states that are facing or next to one another. However, just as in article 12/1 of the 1958 Convention on the Territorial Sea, in the second sentence of the same article (article 15 of the Convention) it is stressed that this method cannot be applied if it is necessary to take into consideration any (fair) historical title or other special circumstances involving the respective spaces. By historic title the right is understood of a state to keep in its possession a piece of land or particular maritime space that, under normal conditions, would not belong to it according to the norms of international law. The most typical case in international maritime law is that of the historic bays, which are considered as internal sea waters, notwithstanding that they do not meet the criteria of a "bay" according to article 10 of the UN Convention on the Law of the Sea (the criterion of being semicircular and with an entry space smaller than 24 nautical miles).

92. In addition to this, as was emphasised above, *special circumstances* generally is understood to mean the configuration of the coast, the presence of islands and so forth. For this reason, notwithstanding the theoretical debate about the distinction between the meaning of the expression "*special circumstances"* of article 15 of the Convention and "the principles of Equity", it is rightly emphasised that through the notion of "special circumstances", even in this case there is an intent to avoid the injustices that might come as a result of the mechanical implementation of the Median Line (equidistance). That is, in essence, if such (special) circumstances are found, even in the delimitation of the Territorial Sea, the implementation of the principle of Equity is required. This is also confirmed by international practice and jurisprudence[27].

[27] The case of France-Great Britain in 1977, the case decided by arbitration between Dubai and Sharjah where the island Abu Musa was treated as a special circumstance, and others. For more, see Lucius Caflisch, Maritime Boundaries Delimitation, EPIL Vol. 11. p. 213.

93. Equity as a legal concept has been recognised and described as corrective justice, as a possibility of correcting or completing the law during its application in practice. On this basis, it was thought that it became possible to achieve the general objectives of the law, within a concrete situation, that could not be foreseen at the time of its approval (approval of the law). In other words, through it, a fairer result was aimed at, which it was supposed that the legislator would have wanted to reach, if he himself had the possibility of foreseeing the concrete (exceptional) case[28]. The supporters of this concept provided three different ways to implement Equity in international law, specifically, 1) *intra legem*, which means its implementation within the boundaries of international law, 2) *praeter legem*, as the possibility of filling in a legal gap and 3) *contra legem*, although as an exception and for this reason extremely rarely, as a possibility to act contrary to the general regulation of international law[29]. However, the principle of Equity as a general principle of international law, recognised by civilised nations, assumes an important place for the first time in an express manner in the UN Convention on the Law of the Sea of the year 1982. It appears there as a fundamental criterion, a central point of orientation and a reference that should be taken into consideration for the division and exploitation of maritime spaces. As such, it has binding force of a general nature.

94. The Court notes that the principle of Equity has also been taken as a reference point by international courts and arbitrations. In this sense, when the international courts apply the principle of Equity, they apply a binding norm of international law and they do not act *ex aequo et bono*, that is, when with the consent of the parties to the conflict, in the absence of a concrete international norm, they shall have the right to find the most honest solution and to balance their interests as well as possible[30]. Nonetheless, the content of the principle of Equity, the manner of its implementation in international practice, becomes possible only through agreements between states or the decisions of international courts or arbitrations. Only through them does it take on life, receive value, importance and the meaning for which it was created. They serve as a basis for the determination of the principles or the elements that should be taken into consideration in every particular case, in

[28] See: Equity in International Law in: Encyclopedia of Public International Law, Vol. 2 (1995), p. 109.
[29] See *ibid*, p. 109 (referring to the ICJ on the 1969 case of the North Sea).
[30] See article 38/2 of the ICJ Charter – See paragraph 85 of the ICJ decision in the case on the determination of the Continental Shelf in the North Sea, 1969.

order to reach the final result that is desired, a fair and honest solution (*an equitable solution*).

95. The Court also observes that considering the international practice in the delimitation of maritime spaces in conformity with the regulations of the UN Convention on the Law of the Sea, it is necessary to follow a particular methodology. Initially, there is a determination of the maritime space or spaces, in the international legal meaning, that will be delimited, and it is also verified whether there are different claims or an overlapping by the states whose shores are washed by them. In this framework, the line of the respective coast is also determined, on the basis of which the right is derived to be granted the particular designated maritime spaces. Later, a provisional dividing line is established, using "a method that is objective from the geometric viewpoint and appropriate to the geography of the area where the delimitation will be realised"[31]. As a rule, this provisional line is the Median Line or the Equidistant Line from the shores of the continental land of the respective states. After this, in the service of the principle of Equity, a correction of the provisional boundary line on the basis of a series of concrete circumstances is made, so as to guarantee the most equitable [lit. fairest and most honest] division of the maritime spaces between the parties. In the end, in order to verify whether the elements taken into consideration have guaranteed a fair and honest solution or not, the so-called proportionality test is applied, as an aspect of checking the principle of Equity, which takes into consideration or establishes in a correct proportion the maritime spaces gained by each coastal state, in compliance with the respective criterion applied, which usually is the length of the coast, the magnitude of the island, and so forth[32].

96. The Court observes that even in the cases when the principle of Equity is applied, not infrequently, the principle of the Median Line or the Equidistant Line has been used as a starting point, but already corrected in a later phase, in the service of reaching the most equitable [lit. as fair and honest as possible] solution between the parties. Furthermore, there may be cases in practice when even the strict Median Line can still be as used a dividing line between the maritime spaces, which means its application without it being necessary to make the respective corrections, but always if only through this method (that is, the Strict Median

[31] Decision of the ICJ for the case of Romania-Ukraine, 2009, p. 116.
[32] See: Maritime Boundary cited above, p.800. In the decision for determining the ontinental Shelf between Tunisia and Libya, the ICJ stresses among other things that it "starts its analysis by bringup up the principle that the land dominates the sea, and more specifically, the coast of each party".

Line), the desired result is reached, that is, the fair and honest solution that is the final intent of the principle of Equity.

97. This has especially happened in cases when the continental land shores are facing and at a considerable distance from one another and between them there are no islands or other circumstances that should be taken into consideration according to the provisions of the UN Convention on the Law of the Sea. Such is the case, for example, of the agreement between the Republic of Albania and the Republic of Italy "On the Continental Shelf", signed in Ancona, Italy, on 13 July 1991. In other cases, we may have a Simplified Median Line, which "snakes" in the middle of the maritime spaces in order to guarantee the "fair and honest solution", while in many more cases, the so-called Modified Median Line, which takes into consideration the concrete factors or elements that should be kept in mind in order to guarantee the principle of Equity[33].

98. The Court observes that the implementation only of the principle of strict equidistance in the agreement that is the object of adjudication is in violation of the international standards as well as with the obligations that derive from article 3 of the Constitution of the Republic of Albania. Specifically, in article 1 of the agreement it is emphasised among other things that the maritime boundary between the two countries will be set in conformity with the principle of equidistance, which is expressed by the median line, every point of which is equidistant from the nearest points of the baseline (both continental as well as of the islands) from which the breadth of the territorial sea waters is mentioned. This principle is also mentioned in the introduction of the agreement. It seems clear that in this case, the application of the strict Median Line, which does not take account of any of the special circumstances that might be found when a delimitation of the maritime spaces is done. Furthermore, it is expressly said that this principle will also be applied in determining the boundary line between the island spaces. The application of that principle is judged by the Court to be in open violation of the provisions of the UN Convention on the Law of the Sea, with the practice of states and with the decisions of international courts or courts of international arbitration.

[33] David Anderson, Modern Law of the Sea, Selected Essays, Martinus Nijhoff Publishers, Leiden, Boston, Negotiating Maritime Delimitation Agreements, pp. 370-382.

99. The Convention and contemporary international practice determine as the basic principle for the division of maritime spaces that of Equity, the aim of which is to reach a result between the parties that is as fair and honest as possible. In its service, initially, the principle of the Median Line may be applied, but which is later corrected on the basis of the special circumstances that are found in every concrete case. It has also been stressed above that the principle of Equity is applicable not only for the division of the Continental Shelf and the EEZ, in implementation of articles 74/1 and 83/1 of the Convention, but also in the division of the Territorial Sea between facing shores and those near one another, because according to article 15 of the Convention, the presence of such circumstances as the length of the shore, its form, the existence and nature of islands or reefs, and so forth, are understood by the notion "special circumstances".

100. The principle chosen in the agreement that is the object of examination for setting the maritime boundary (strict Median Line) between the Republic of Albania and the Republic of Greece does not take account of all those circumstances. This position becomes even more problematic if we take account of the fact that in the concrete case, it is not a question of setting the maritime boundary in the general meaning, but principally for setting or making precise the state border between two neighbouring states.

VI. In connection with the claim of not taking account of the presence of islands or reefs in determining the maritime borders.

101. Appellant has claimed that in the service of the principle of Equity, in delimiting maritime borders, the agreement that is the object of adjudication should have taken good account of the effect that islands or reefs have in this case. On this basis, according to it, especially problematic are the case of the island [rock] Barketa, the boundary line across from the bay of Saranda, and others.

102. The Court notes that among the principal factors that should be taken into account in order to guarantee the fair and honest solution intended by the principle of Equity for all maritime spaces are the presence of natural islands, the configuration of the shore[34]

[34] Case of the North Sea in 1969, Tunisia-Libya in 1982, Libya-Malta in 1983, Guinea-Guinea Bissau in 1977 and others.

and its length[35], the physical and geological structure of the sea bottom, natural resources and access to those resources[36], and so forth.

103. The presence of natural islands is a very important element that obviously affects the delimitation of the maritime boundaries (spaces). In fact, in article 121 of the Convention, after the meaning of a natural island is defined in the first paragraph, it is emphasised that as a rule, they also generate the same maritime spaces as the other parts of the territory. The third paragraph of this article makes clear the distinction between islands and rocks, specifying that the latter (that is, rocks), when they are not inhabited nor do they have economic activity, cannot have an EEZ or a Continental Shelf.

104. In this framework, article 13 of the Convention may also be mentioned, in which it is said that a low-tide elevation (in fact, a reef [lit. rocky mass]) if it is entirely or partially located between the boundaries of the Territorial Sea "may be used as a baseline to measure the breadth of the Territorial Sea" and if it is outside this breadth, it cannot have its own Territorial Sea (article 121/2). If this rocky mass is in the shallows, that is, next to the shore, it might have an influence and be taken account in the determination of the baseline, while its presence near the external boundary of the Territorial Sea doubtless should not have an influence on determining it.

105. However, the Court stresses again that in every concrete case, the general principles of the Convention, international jurisprudence and practice and also the doctrine of international law in this field should be taken into consideration. On this basis, it can clearly be seen that the amount of this influence depends on a series of factors, such as the magnitude of the island, its configuration, whether it is inhabited or has economic life or note, its position (location) (near the shores, near the external boundary of the Territorial Sea, on the Continental Shelf or the EEZ), and so forth. Normally, those circumstances should be evaluated individually for every island (unless they form an archipelago in the meaning of the Convention) and always in the service of the principle of Equity, with the intent of reaching the fairest and most honest result, as specified in the Convention itself (especially through the preamble and articles 15, 74 and 83 of it).

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[35] Case of the Gulf of Maine Canada/USA in 1984, Libya-Malta in 1985, and others.
[36] Case of the North Sea in 1969 and others.

106. International judicial theory and practice have shown that according to the circumstances, an island may be given full effect, partial effect, no kind of effect or any kind of effect, but it gains little maritime space in the delimitation of the maritime spaces[37]. There are cases when islands have been given full effect[38] and here, as a rule, the boundary line passes between the islands that belong respectively to the two parties. But there are also cases when the islands have been given partial effect[39] or have not been given any effect at all but have gained a limited maritime space[40], or when the islands have been given neither an effect nor a maritime space[41].

107. For the above reasons, the Court judges that, in the meaning of the concept "*special circumstances"* and in the service of the principle of Equity, in setting the boundary line between Albania and Greece, the Albanian party should have taken into consideration the characteristics of the seashore of the two countries, and especially the presence of islands or reefs in the water spaces that are the object of delimitation. Their effect in determining this line, as we have also shown above from international jurisprudence and practice, should have been done individually, in the service of reaching a final result that was as fair and honest as possible for the two countries. Concretely, the Court considers that the process of delimitation should have passed through several phases leading to the adoption of a provisional boundary line which is later corrected in the service of the principle of Equity. In this sense, not only the effect of the inhabited islands Lazareto, Erikuza and Othonoi should have been evaluated separately, but even the principal island of Corfu itself. The agreement (wrongfully) gives all of them full effect in setting the boundary line, making them completely equivalent with the continental land of our country.

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[37] See also in more detail Derek W. Bowet "Islands", in Encyclopedia of Public International Law, Vol. 2 (1995) pp. 1455-1457.

[38] For example, the determination of the maritime zones between the USA and Mexico; Venezuela and Great Britain.

[39] The cases of determination of the maritime spaces between Holland and Venezuela, Greece and Italy (islands of Othonoi and Erikuza), Iran and Saudi Arabia (island of Kharg), Libya and Malta, and so forth.

[40] The cases of determination of the maritime spaces between Italy and Tunisia, Ireland and Great Britain (Rockall), Qatar and the United Arab Emirates (Abu Dhabi-Dalyina), Australia and Papua New Guinea.

[41] The cases of determination of the maritime spaces between Canada and Denmark (Greenland – the island Hans), France – Spain (bay of Biscay – small islands and rocky places on both sides), etc. The Schilly islands gained half effect according to article 6 and 58, the case of Romania with Ukraine, Dubai Sharjah, and others.

108. It is not accidental that according to the agreement on the division of the Continental Shelf between the Greek Republic and the Italian Republic dated 24 May 1977, the islands of Othonoi and Erikuza were given partial effect. On the other hand, another very important problem of the agreement that is the object of examination is the treatment of the reefs or shallows of Barketa, which turns out to have been given full effect, making it equivalent to the Albanian continental land, notwithstanding that we are dealing simply with a small uninhabited rocky mass, without economic life. Furthermore, for its very position, it has had a significant effect on moving the boundary line that separates the Territorial Sea of the two countries.

VII. In connection with the claim of not submitting analogue maps as an accompanying part of the agreement.

109. Appellant claims that during the holding of negotiations and the signing of the bilateral agreement, the negotiating group was not supplied with analogue maps for the purpose of reflecting the line that determines the delimitation of the maritime spaces between the two countries.

110. The Court considers the claim of appellant not to be well-grounded and for this reason it should not be accepted. Article 16 of the Convention on the Law of the Sea provides that “coastal states will give due publicity to the maps or lists of coordinates and will deposit a copy of each of the maps or the respective lists with the General Secretary of the United Nations”. Since this provision contemplates as an alternative the drafting and publication (delivery) of digital maps (through digital geographical coordinates), it turns out that the Albanian state has met its obligation in the meaning of article 16 of the Convention. For this reason, no absence of maps accompanying the agreement entered into between the Republic of Albania and the Republic of Greece is found.

VIII. In connection with the constitutionality of article 2 of the agreement.

111. Notwithstanding that it has not been claimed by appellant, the Court also finds that article 2 of the agreement under examination shows constitutional problems. This article provides that: *“In implementation of the UN Convention on the Law of the Sea, the Republic of Greece in the side of the maritime boundary that is located next to the Republic of Albania and the Republic of Albania in the side of the maritime boundary that is located next to the*

Republic of Greece will not ask for or exercise for any purpose sovereignty, sovereign rights or jurisdiction over the water, the seabed or the subsoil".

112. Not only is this regulation not found in any of the provisions of the Convention in question or from its general spirit, but neither is it met with in the normal practice of states or international jurisprudence about questions of maritime law. It is obvious that states do not have the right to exercise sovereignty, sovereign rights or jurisdiction in maritime spaces that belongs to other states. Such a thing cannot happen, all the less when it is a question of the Territorial Sea, in which a coastal state doubtless has full sovereignty not only over the waters, but also over the air space over them as well as the sea bed and its subsoil, because all together, in this case, they are considered as an integral part of the territory of the coastal state. In the instant case, practically we have to do primarily with setting the boundary line between the Territorial Sea of the two countries. Pursuant to the above, not only is the meaning and purpose of this provision unclear, but, as it has been formulated, it could create problems and unclear points in the practice of the two states.

113. For the above reasons, in conclusion the Court considers that the agreement entered into between the Hellenic Republic and the Republic of Albania "On the delimitation of their respective continental shelf areas and other maritime zones to which they are entitled under international law" is incompatible with the Constitution so far as concerns the questions related to: a) the failure of the Albanian delegation to have regular full powers from the President of the Republic for holding the negotiations and entering into the agreement; b) serious deficiencies in the content of the agreement; c) the failure to apply the basic principles of international law for the division of the maritime areas between the two countries for the purpose of reaching a fair and honourable result; ç) not taking account of the islands as special circumstances in the delimitation of the maritime areas.

FOR THESE REASONS:

The Constitutional Court of the Republic of Albania, in reliance on articles 131 letter "b", 134 letter "f" of the Constitution of the Republic of Albania; articles 49/2 and 51 of law no. 8577 dated 10 February 2000 "On the organisation and functioning of the Constitutional Court of the Republic of Albania" unanimously

D E C I D E D:

- The declaration of the agreement entered into between the Hellenic Republic and the Republic of Albania "On the delimitation of their respective continental shelf areas and other maritime zones to which they are entitled under international law" as incompatible with articles 3, 4, 7 and 92/ë of the Constitution.

- This decision is conclusive, final and enters into force on the date of publication in the Official Journal.

No. 37/24 of the Basic Register
Decision No. 15

Tirana, 15 April 2010

M E M B E R	**M E M B E R**	**C H A I R M A N**
/Kujtim Puto/ (s)	**/Fehmi Abdiu/ (s)**	**/Vladimir Kristo/ (s)**
M E M B E R	**M E M B E R**	**M E M B E R**
/Sokol Sadushi/ (s)	**/Vitore Tusha/ (s)**	**/Petrit Plloçi/ (s)**
M E M B E R	**M E M B E R**	**M E M B E R**
/Xhezair Zaganjori/ (s)	**/Admir Thanza/ (s)**	**/Sokol Berberi/ (s)**

Identity with the original certified
GENERAL SECRETARY
Kujtim OSMANI