

The Role Of Constitutional Court Of Albania On The Protection Of Human Rights (The Albanian Perspective)

Bashkim Dedja

President

Constitutional Court of Albania

**Honorable Mr. President of the Constitutional Court of Turkey,
Honorable colleagues, honorable participants,**

Constitutional review has been considered as an indispensable element, since a Constitution, however modern it might be, under any circumstances could not be perfect or uninterpretable.

There is no doubt that the Constitution of Albania promotes the democratic values generally accepted by the western European countries and developed democracies. It has sanctioned the principles of constitutional democracy as: the rule of law, democracy, pluralism, separation of powers, human rights, human dignity, etc. The spirit and attitudes of this Constitution can be identified since the very beginning, in its Preamble:

"We, the people of Albania,

... with determination to build a social and democratic state based on the rule of law, and to guarantee the human rights and freedoms ..."... establish this Constitution".

As it has been explicitly foreseen by article 15/2 of the Constitution, the organs of public power, in fulfilment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization.

Furthermore, the organs of public power shall respect the constitutional values and principles, in order to subject their whole activity to the establishment and respect for the rule of law and social state.

Let's explain a little bit more from structural aspect the human rights part under the Constitution of Albania....,

The second part of the Albanian Constitution "Fundamental Human Rights and Freedoms" is almost identical with the Universal Declaration of Human Rights and the European Convention on Human Rights.

The second chapter of the Constitution has sanctioned the **personal rights and freedoms** as: the right to life, freedom of expression, the right to information, the freedom of conscience and of religion, right to human treatment and respect for dignity, taking away of liberty in conformity with the law, not being accused without reasonable doubt, not being declared guilty for a criminal offence that was not provided for by law at the time of its commission, the freedom and secrecy of correspondence, inviolability of residence, the right of property, etc.

Then, the Constitution continues with the **rights of procedural character** as: the right to fair trial, the right to appeal a judicial decision to a higher court etc. Whereas, the third chapter has provided for the **political rights and freedoms** as: the right to vote, the right to organize collectively, freedom of association, the right to protest, the right to complain to the public organs, etc.

The fourth chapter of the Constitution has stipulated the **economic, social and cultural rights and freedoms** as: the right to work, the right to unite freely in labour organizations, the right to social protection of labour, the right to strike in connection with labour interests, the right to family life, the right to special protection of children, pregnant women and new mothers, the right to health care, the right to education, artistic creation and scientific research.

The drafters of Albanian Constitution have been very prudent when determining a separation line between social rights and social objectives, since the constitutional definition of these rights depends on the economic situation, the social and cultural development of the respective state.

More specifically, it has been established a separate provision with regard to the so called "**social objectives**",¹ which represent the positive action of the state in favour of employment of all the persons who are able to work, fulfilment of the housing needs of citizens, the highest possible standards of physical and mental health, education and qualification of unemployed persons, a healthy and ecologically adequate environment for the present

1 Article 59 of the Constitution.

and future generations, care and help for the aged, orphans and persons with disabilities, etc. Their realization is closely related with the conditions, available budgetary means and possibilities of the state. The fulfilment of social objectives cannot be directly claimed in court. The law defines under what conditions and to what extent the realization of these objectives can be claimed.

It is worth mentioning that the Constitution has given to international agreements ratified by Albania the status of being integral part of the internal legal system, what implies that the provisions of these agreements have the same effect as the country law, and their violation can be pretended by the individuals in the same manner as for the internal laws.²

Convention has been placed in the same position with our Constitution, regarding the limitations that can be imposed on the human rights that in no case may exceed the limitations provided for in the ECHR.³

In the framework of protection of fundamental human rights and freedoms, Constitutional Court has been guided by the standards established by the ECtHR. In its decisions, the Constitutional Court has stated that ECHR, as an instrument for the protection of human rights, offers only the minimal standards for the protection of these rights, and the states shall not be hindered to go beyond this limit.⁴ The Constitutional Court gives substantial contribution to the creation and development of constitutional doctrine.⁵

Constitutional Court has often dwelled on the individuals' right to due process of law, what represents even the mostly exercised competence

2 Article 122 of the Constitution.

3 Article 17/2 of Constitution

4 See decision nr.38, dated 23 December 2003. In this decision a prosecutor addressed the Constitutional Court to repeal a decision of the Supreme Court. By decree of the President of the Republic the applicant has been transferred from one prosecutor institution to another. This decree was appealed in the Court. Supreme Court nullified the judgment with the argument that the President's decrees, including those for the removal or transfer of prosecutors, cannot be challenged in court because they are constitutional acts and not administrative acts. This restriction was based even on the jurisprudence of the ECtHR that had justified the restriction of access to the court to a certain category of public functionaries. Constitutional Court repealed the decision of the Supreme Court, stating that the applicant was denied the right to appeal pursuant the Article 42 of the Constitution. ECHR stipulates a minimum of rights that shall be respected by countries member, but these countries are not prevented to provide a greater protection than the ECHR.

5 Sadushi. S. Constitutional Justice in progress, Editions Toena, Tirana 2012, chapter "The Constitutional Court, the institution that render constitutional justice", pg.103.

since the moment of its foundation. While examining the constitutional complaints, the irregularity of court trials has been considered as evident by the Constitutional Court in cases when the individuals have been denied a number of rights such as: *the reasoning of violations attributed to the individual, preliminary notification of charges, respect of the right to be heard and defended, the equality of arms, contradiction, the right to effective appeal, the right not to be adjudicated twice by the same panel of judges for the same case* etc.

Nevertheless, this authority of the Constitutional Court, taking into consideration the way how it has been exercised, being mainly focused on the procedural control of the process and not on the substantive aspect, has been often criticized and the Albanian state is penalized for violations that could have been repaired within the Albanian system by the Constitutional Court.

Therefore with new changes of Constitution and organic law of Constitutional Court, some new developments have taken place, especially regarding individual complain, as an exceptional and subsidiary remedy that can be exercised following the exhaustion of other remedies by individuals whose fundamental rights and freedoms are violated as a result of an act of public authorities. After enforcement of this instrument, specifically from 1 march 2017, individuals may file an individual application to the Constitutional Court of Albania upon violation of any of their fundamental rights and freedoms as protected by the European Convention on Human Rights (ECHR) and guaranteed under the Constitution. Individual application to the Constitutional Court according to the amendments is a broader remedy and effective one according to article 13 of ECHR. The court should address this new competence accordingly⁶.

Dear all, Dear colleagues,

The justice is the highest right. We should be referred to it as to a common value, which stands above all and should be respected by all. Justice stands even above the Constitution itself. Interpretation of the Constitution by the Constitutional Court, in the spirit of justice, remains a challenge, as it is the promotion by society of the standard to respect the fundamental human rights and freedoms, as well as the constitutional principle of the rule of law.

Thank you very much for your attention!

⁶ Changes with Constitutional Law no.76/2016, dated 22.07.20016 (article 13) and the Law no.99/2016 "On the organization and functioning of the Constitutional Court of Albania", (article 71 and 71/a).