



## Constitutional Protection of Human Rights in the Republic of Albania

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### Abstract

*Democracy and the rule of law are lessons from history and people's desires to live an increasingly better life, where human rights are closely linked to the state's obligation to protect and promote them. The Constitution recognizes and ensures human rights and freedoms. The constitution empowers the people thereby implementing democracy and giving the people the opportunity to participate in the exercise of power, such as through elections or referendums. Also, the Constitution determines whether these rights can be limited or not and in which cases. Usually there are reasons such as the protection of national security, health and safety of the public or even the protection of the rights of others and always only with laws issued by the relevant government. Legal and democratic institutions should be expressed through three basic attributes, legitimacy, authority and political power. In this sense, the existence of democracy and respect for human rights must be ensured, through the existence of the rule of law and democratic values in a society where human rights have special importance for democracy.*

**Keywords:** Constitution; democracy; rule of law; Human rights

### 1. The Origin of the Constitution of the Republic of Albania

Albania underwent democratic changes in the early 1990s, leading to the establishment of a constitutional framework in 1992. This included the creation of the Constitutional Court, which was seen as the historical guarantor of the state. The initial constitutional law of 1991 laid the groundwork for a legal and democratic state but lacked detailed provisions for the judicial power. In 1998, the first organic law for the Constitutional Court was approved, outlining its composition, organization, and functioning. This marked the beginning of a new era for Albania, characterized by a true constitutional order and a set of values and principles embodied in the Albanian reality. The approval of the Constitution of the Republic of Albania in 1998 solidified the Constitutional Court's legitimacy as the historical guarantor of the state. The entry into force of the Constitution marked the end of transitional provisions, and a new law in 2000 completed the constitutional and legal framework for the Constitutional Court in Albania.

The constitutional process during the years 1992-1993 involved the drafting of constitutional provisions to fill the gaps inherited from the constitutional law of 1991. The Albanian Constitutional Court was modeled on the German and Italian examples, with relevant adaptations. In 1998, the first organic law for the Constitutional Court was approved,

enriching the constitutional framework with European and international legal practices. This law detailed rules related to the composition of the Constitutional Court, the organization and functioning of the Court, and the general rules of operation, including the examination of cases, parties' rights and obligations, and the suspension of the implementation of acts.

Before 1992, constitutional justice in Albania was a concept based on the experiences of other countries with a Constitutional Court as the guarantor of their fundamental law. The wave of democratic changes in Albania led to the drafting of the constitutional framework, known as the "Laws on the main constitutional provisions," which laid the foundations of a legal and democratic state. The basic principle of state organization was the separation of legislative, executive, and judicial power, with the highest bodies of state power being the People's Assembly and the President of the Republic.<sup>1</sup>

These developments marked a significant shift towards a true constitutional order and the establishment of a comprehensive legal and democratic framework in Albania.

The best and most complete guarantee of the principles of democracy, the principles of the rule of law and basic human rights and freedoms are among the most important problems today, not only for countries that are on the road to democracy, but also for the states with consolidated democracies themselves. And this, especially in new democracies, is done not simply to formally guarantee peace and social security between different layers of the population, much less, simply because of integration. Actually, this happens due to the fact that normally, in democracy as a form of government, the individual has rights.<sup>2</sup>

Basic human rights and freedoms are guaranteed by legal acts, they are constitutional categories because they are protected and guaranteed by the state - that is, by the highest legal act, but they are also provided for in international acts.

The Constitution, which constitutes the highest law in the country, has embodied the principles of protection of basic human rights and freedoms, where it is emphasized in the Preamble that: "The Albanian people ... determined to build a state of law, democratic and social, to guarantee human rights, basic human liberties, with the spirit of tolerance and religious coexistence, committed to the protection of the constant dignity in the center of attention of all state power as a whole. For the first time in Albania, human rights and fundamental freedoms could be discussed only after the 90s, which means that our country has aimed to join with dignity and be an integral part of the civilized world all these years, striving to respect them. This is proven by the goal to build a democratic state, which is based on and respects the best values of democracy, the state of justice, as well as basic human rights and freedoms. The main pillars of the human rights system, which are freedom, equality and solidarity. Freedoms, such as freedom of thought, conscience, belief, as well as that of opinion and expression, are protected by human rights. Similarly, human rights guarantee equality, such as equal protection against all forms of discrimination to enjoy all human rights, including full equality between women and men, and others<sup>1</sup>. The institutionalization of human rights throughout history has taken a long time, and the first sparks are undoubtedly the normative documents, which also had the first elements of the protection of human rights.

The Albanian constitution is part of the evolution of constitutional law and, in this context, reflective of the tendency of new constitutions to define as many criteria for their interpretation as possible. These provisions limit the intervention of the law in some basic aspects of human rights. The Albanian Constitution, defining some reserves which cannot be affected by any kind of law, has taken a very advanced first step towards penetrating the essence of the constitutional protection of the individual, referring directly and expressly to the ECHR. Our constitution, like few others, expressly considers rights not only as subjective rights, but also as objective elements of the legal order, which force the political power to conform to their content, protection and realization.<sup>3</sup>

## 2. Constitution and Human Rights

Treatment by constitutional jurisprudence of the principle of proportionality, as the tool that allows the analysis of the interior and not of the form, constitutes the profile most prominent jurisprudential politics. Constitutional jurisprudence is living proof of the fact that the jurisprudence criteria of the ECHR have been the primary means of analysis Constitutional Court.

The above does not imply an unlimited authority of the constitutional judge for him interpret the Constitution. In

<sup>1</sup> Law number. 7491, dated 29.4.1991, — "On the Main Constitutional Provisions", Chapter II, points A and B

<sup>2</sup> Canaj, E, Bana. S. "European Union Law", Onufri, Tirana, 2014, p. 187

<sup>3</sup> Traja, K. *Drejtësia Kushtetuese*, Tirane, fq.181

defining these borders, they competed in a way continuous to ensure the dominance of the theory of originalism and non-originalism. They still compete with each other, but the theory of originalism has been greatly helped from the development of comparative constitutional law, of comparative constitutionalism, as and of the strong connection that exists today between national constitutional law and law international.<sup>4</sup>

The existence of the Constitution guarantees the implementation of basic human rights and freedoms, to build a state of law, democratic and social, with the spirit of tolerance and religious coexistence, with the commitment to protect human dignity and personality, as well as for the prosperity of the whole nation, for peace, well-being, culture and social solidarity, with the centuries-old aspiration of the Albanian people for national identity and unity, with the deep conviction that justice, peace, harmony and cooperation between nations are among the highest values of humanity, then let's give the deserved trust to the Constitutional Court. What we will get in return is a set of missing values, principles, standards and, obviously, the constitutional culture, which leads us safely towards constitutional harmony.

As a guarantee for Freedoms and Human Rights, the democratic society takes measures that power should not be personalized by any individual or any group individuals and organizations and therefore the spheres of power are independent of each other: legislative, executive, judicial, with the obligation that the state structures in function of these spheres to be transparent, i.e. open, controllable and accountable to the public, avoiding abuses and vesting of power against the law of law. The Government system in the Republic of Albania is based in the division and balance between judicial, legislative and executive powers.<sup>5</sup> The Constitutional Court is a very important institution for its protection human rights. This Court guarantees respect and implementation of the Constitution as and reviews complaints from individuals about violations of their constitutional rights to due process legally, after exhausting all legal remedies for their protection. With the ratification of the European Convention on Human Rights, citizens Albanians have the right to appeal to the Court of Human Rights in Strasbourg after they have exhausted all internal legal steps for the protection of theirs. The institutions created for the protection of human rights are actors of important state-former in democratic systems. In Albania, the institutions that protect basic human rights and freedoms are: the courts, the prosecution, the lawyer of the people, the Commissioner against discrimination, etc.

Human rights are closely linked to the state's obligation to protect and promote them, as recognized and ensured by the Constitution. The constitution empowers the people, implementing democracy and providing opportunities for participation in the exercise of power, such as through elections or referendums. It also determines whether these rights can be limited and under which circumstances, typically for reasons such as national security, public health and safety, or the protection of the rights of others, always with laws issued by the relevant government. The principle of the rule of law is one of the basic elements of democracy as a form of government. It is guaranteed through constitutional norms and other legal acts, and its application in everyday life is necessary for the functioning and development of a free society, peace, social security, and the well-being of the population, while respecting the fundamental rights and freedoms of the individual. The constitution of the Republic of Albania is one of the most efficient legal documents in terms of respecting the fundamental rights and freedoms of the individual. Democracy, the rule of law, and human rights go hand in hand with human development, reflecting a basic commitment in favor of freedom, well-being, and dignity of the individual.

These elements are essential for ensuring the existence of democracy and respect for human rights, through the rule of law and democratic values in a society where human rights have special importance for democracy.

### 3. The rule of law, democracy and the implementation of human rights

The principle of the rule of law is one of the basic elements of democracy as a form of government. The guarantee through constitutional norms and other legal acts, as well as the application of this principle in everyday life, are necessary conditions for the functioning and development of a free society, for peace and social security, the increase of well-being for all layers of the population, respecting the fundamental rights and freedoms of the individual as best as possible. Countries with consolidated democracies have long since identified the main standards of the principle of the rule of law, have taken the necessary measures and defined the relevant mechanisms for the most complete and effective guarantee of its special elements. Their experience has been and remains a valuable help even for new democracies, in their long and difficult path to join the civilized world with dignity.<sup>6</sup>

<sup>4</sup> Zaganjori, Anastasi, Methasani (Çani), Çani Shteti i së drejtës në Kushtetutën e Republikës së Shqipërisë, Tiranë, Shtëpia Botuese Adelprint, 2011 pg.172

<sup>5</sup> Article 7 of the Constitution of the Republic of Albania.

<sup>6</sup> Anastasi, A. "Constitutional Right" Tirana, 2010, pg.56

Democracy itself offers the provision of a series of fundamental rights and freedoms of the individual. Also, the constitution of the Republic of Albania is one of the most efficient legal documents in terms of respecting the fundamental rights and freedoms of the individual.

Democracy, the rule of law and human rights go hand in hand with human development, because the development and realization of human rights are based on the same motivation, they reflect a basic commitment in favor of the freedom, well-being and dignity of the individual. Therefore, currently, emphasis is placed on two of the most decisive factors affecting the strengthening and future extension of democracy, economic development and political leadership, because, as many authors point out. Economic development makes democracy possible, while political leadership makes it real. This new concept of development, in contrast to the classical concept, does not perceive development simply in economic and material dimensions, on the basis of which rights and freedoms were justified in the second plan in the name of the principle of profit maximization. On the contrary, it implies and requires, in addition to the expansion of the catalog of freedoms and human rights, starting from the freedom to eliminate poverty to the benefits from various services, but at the same time, it considers them as companions of development by including them in "package of fundamental rights" mandatory to implement.

Therefore, in today's conditions, the level of democracy and the rule of law are estimated to create opportunities for sustainable economic growth and making appropriate political decisions in favor of development, and on this basis, the need for a reassessment of civil rights is evoked and political, economic and social, both quantitatively and qualitatively, where first, I would underline and reinforce the thesis that with the development and consolidation of democracy, its connection with human rights and freedoms and the state of right, it becomes more and more powerful. <sup>7</sup>As simultaneous phenomena, on the one hand, democracy and the rule of law establish governance for the benefit of all by promoting, guaranteeing, protecting and realizing human rights and freedoms, and on the other hand, the realization of the rights and freedoms of to the human being constitutes the pivot and establishes safe foundations for the implementation of democracy. <sup>8</sup>

Secondly, of particular importance is the thesis that democracy, the rule of law and human rights and freedoms are not static, given once and for all, but constitute a process that begins, is guaranteed, consolidated and deepens continuously in the course of history.

Thirdly, in the context of the dynamic process of democracy and the rule of law as systems promoting human rights and freedoms, Albanian society currently faces challenges that still have more to do with shelling than with the deepening of democracy. In western democracy, as a result of a long democratic tradition, the institutions that were once a clear political product, today have been consolidated and have gained a marked autonomy from politics, and therefore the focus is on the further deepening of democracy, society Albanians still have a lot to do in terms of the independence of institutions, which are still a product of the media, of the political process and cannot be evaluated outside of it, of increasing citizen trust towards them, of increasing the spirit of citizens' criticism, for more autonomy in the face of the power of the authorities, etc.<sup>9</sup>

Fourth, the rule of law and equality before the law are imperatives of every democratic state. This imperative takes on special value in the conditions of a society in transition, with a fragile, undeveloped democracy, such as Albania, where there are laws and regulations, but their operation and implementation is not at a satisfactory level, which directly affects the state of human rights and freedoms, in their guarantee and realization.

Fifth, there is currently more and more talk about a decision-making democracy, in which voters are not left and treated only in the element that delegates power and does not participate in decision-making, on the contrary, the citizen must occupy that place in the political system that apart from the expression of his will with a vote, must participate in decision-making, enter as a constituent element of this process. Elections are the essence of democracy, the practice of being governed is the vitality, implementation and maintenance of democracy as a system of promoting human rights and freedoms.

Finally, current developments dictate the importance of conceptualizing the connection between "respect for human rights", "level of democracy" and "rule of law" with the economic, utilitarian and material dimensions of development. This point of view takes on an added value, especially in the conditions of the financial crisis that a number of countries are currently going through.

<sup>7</sup> Nathanaili, P. "History of the Modern World" pg 15

<sup>8</sup> P. Kabo, "Authoritarianism In Transition" Tirana, 2006 pg.75

<sup>9</sup> Idem pg.77

### 3. Conclusion

The Constitution of Albania has provided for its respect as a value of the state human rights, defining them as indivisible, inviolable and inalienable in the foundations of the legal order, forcing state bodies, in especially the bodies of justice, to adhere to the Constitution and the law. at the same time has defined the Constitutional Court as the final authority for interpretation of the Constitution and compliance of laws with the Constitution, while individuals have been recognized the right to present before this Court issues related to violations of their rights by public authority, i.e. of guaranteed rights with the Constitution. In these cases, the Constitutional Court grants constitutional justice, and its function is to ascertain the fact of violation of rights and fundamental freedoms from the bodies that have adopted decisions or undertaken acts concrete. She is the guardian of the Constitution, as well as makes the constitutional judgment violation of human rights. Regarding the issues of human rights and fundamental freedoms during the year 2014, cases of violation of the right to information, violation of it have been identified human rights by the police, non-respect of prisoners' rights, procrastination of judicial and administrative procedures, violation of property rights, rights arising from labor relations, non-fulfillment of citizens' needs for housing, problems with benefiting from the social security system and assistance economic, problems in the free and effective exercise of the right to education and health care, the state of the rights of minorities in the country, etc.

In conclusion, we can say that respect for fundamental rights and freedoms of man has a special importance for the existence of a democratic state and a stable legal order. Guarantee and promotion of human rights requires higher standards of protection, since in many cases they are themselves state authorities that violate human rights. Also, the Constitution of the Republic of Albania guarantees rights and freedoms basic human rights according to European standards.

International law is incorporated into domestic legal systems, through the recognition and application of international conventions, therefore, by themselves the fact that the norms of international law are the foundations on which it is built the internal legal system of the state to guarantee and protect the rights of to man. The Constitution of Albania has provided for the respect of the state as a value human rights, defining them as indivisible, inviolable and inalienable in the foundations of the legal order, forcing state bodies, in especially the bodies of justice, to adhere to the Constitution and the law.

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