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PASQYRË E PËRGJITHSHME E JURISPRUDENCËS SË GJYKATËS KUSHTETUESE SHQIPTARE MBI OBJEKTIVAT SOCIALE TË SANKSIONUARA NË KUSHTETUTË.

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Përmbledhje

Qëllimi i këtij neni është shqyrtimi i instancave të vendosura nga Gjykata Kushtetuese e Republikës së Shqipërisë që përfshijnë nisma kushtetuese në lidhje me përgjegjësinë e shtetit për të përmbushur objektivat sociale të përshkruara në Kushtetutën e Republikës së Shqipërisë. Metodologjia e punës është përshkruese dhe analitike midis studimeve të rasteve të dispozitave kushtetuese dhe vendimeve të Gjykatës dhe jep përgjigje për pyetjet e kërkimit: A është brenda juridiksionit të Gjykatës Kushtetuese të vlerësojë kërkesat që kanë të bëjnë me objektivat sociale? Cilat janë parimet dhe kriteret kushtetuese kombëtare dhe ndërkombëtare që duhet të përmbushen nga veprimet ligjore të shtetit për të arritur objektivat sociale? Qëllimi i kësaj shkrese është evidentimi i mekanizmave kushtetues dhe ligjorë për përmbushjen e objektivave sociale nga shteti, si dhe vështirësitë e hasura gjatë gjykimit Kushtetues nga grupet për realizimin e të drejtave të tyre.

Edhe pse objektivat sociale të shtetit janë përfshirë në Kushtetutë, ato nuk përbëjnë një të drejtë themelore të individit; Megjithatë, përfshirja e tyre në aktin bazë i imponon shtetit detyrimin për të zhvilluar dhe zbatuar politika efektive që synojnë arritjen e tyre, sepse objektivat sociale nuk janë drejtpërdrejt të zbatueshme. Pas analizës, zbulohet se rregullat e sistemit të mbrojtjes sociale të shtetit duhet t'u përmbahen parimeve, vlerave dhe standardeve të kushtetutës si dhe detyrave që rrjedhin nga Karta Sociale Evropiane, të cilat përfshijnë ndalimin e diskriminimit, barazisë, drejtësisë sociale dhe respektimit të të drejtave të njeriut.

Fjalë çelës: *objektivat sociale, parimet, standardet kushtetuese.*

GENERAL OVERVIEW OF THE JURISPRUDENCE OF THE ALBANIAN CONSTITUTIONAL COURT ON THE SOCIAL OBJECTIVES SANCTIONED IN THE CONSTITUTION.

Abstract

The purpose of this article is to review instances decided by the Constitutional Court of the Republic of Albania involving constitutional initiatives concerning the state's responsibility to meet the social objectives outlined in the Republic of Albania's Constitution. The methodology of the work is descriptive and analytical between case studies of Constitutional provisions and Court decisions and provides answers to research questions: Is it within the Constitutional Court's jurisdiction to evaluate requests relating to social objectives? What are the national and international constitutional principles and criteria that must be met by the state's legal actions to achieve social objectives? The purpose of this paper is to highlight the constitutional and legal mechanisms for the fulfillment of social objectives by the state, as well as the difficulties encountered during the Constitutional trial by the groups for the realization of their rights.

Although the social objectives of the state are included in the Constitution, they do not constitute a fundamental right of the individual; however, their inclusion in the basic act imposes on the state the obligation to develop and implement effective policies aimed at achieving them, because the social objectives are not directly applicable. Following analysis, it is discovered that the state's social protection system regulations must abide by the principles, values, and standards of the constitution as well as the duties derived from the European Social Charter, which include the prohibition of discrimination, equality, social justice, and respect for human rights.

Keywords: *social objectives, principles, constitutional standards.*

Introduction

The constitutional judgment is a state's social objectives is a topic that requires a deep study of the doctrine and jurisprudence of the Albanian Constitutional Court. During the study, it was difficult to complete all this doctrinal and legal related to all the points sanctioned in the Albanian Constitution, as social objectives of the state. Difficulties have been found in finding concrete studies in this aspect and legal doctrine, which has addressed the conditions of social objectives. Despite the limitations and jurisprudence are not related to the Constitutional, and the ECHR and the Constitutional courts of other languages, to bring a modest word on this topic, thoughts and suggestions such cases in its open continuation.

1. Constitutional overview of social objectives.

The Constitution of the Republic of Albania in its preamble has revealed principles and values, which not only guarantee the basic rights and freedoms of the individual, but also assume responsibility for the future to firmly build a democratic and social state of law, which guarantees these basic human rights and freedoms. The inclusion, although debated¹, in the preamble of the constitution of the term social state in addition to the democratic one, was a new element in the constitutional doctrine and it had to do with the obligations imposed on the state to take social interests into account. This term was used after the Second World War by the Germans to show the people and the world that the policies they would continue to follow would be like this: on the one hand they would allow free competition and development, on the other hand, they would in no way allow the creation of crises, such as those

1 See "Constitutional Debate" volume 2, OSCE publication in Albania p.264.

that led to the establishment of the dictatorship. Under this influence, it was deemed necessary to include the concept of the social state in the preamble of our constitution, but the realization of which would be supported by other constitutional provisions.

In this spirit of the preamble of the Constitution, immediately after the list of economic, social and cultural freedoms and rights by the drafters of the Constitution, it was deemed necessary to include a special chapter in it, in which the social objectives of the state in the fulfillment of needs and rights were set. Their inclusion in a separate chapter clearly showed its modern and innovative spirit.

The social objectives of the Albanian state provided for in Article 59 of Chapter V of the Constitution are:

- employment under appropriate conditions of all persons capable of work;
- meeting the needs of citizens for housing;
- the highest possible health, physical and mental standard;
- education and qualification according to the abilities of children and young people, as well as unemployed persons;
- a healthy and ecologically suitable environment for present and future generations;
- the rational use of forests, waters, pastures and other natural resources based on the principle of sustainable development;
- care and assistance for the elderly, orphans and invalids;
- the development of sports and rejuvenating activities;
- health rehabilitation, specialized education and social integration of the disabled, as well as continuous improvement of their living conditions;
- protection of the national, cultural heritage and special care for the Albanian language.

The social objectives listed in Article 59 of the Constitution, although placed immediately after the head of the basic rights and freedoms of the individual, are not identified with them, since their fulfillment cannot be requested as a right, directly in court².

Social rights differ from social objectives, as the latter are an expression of the goals of the state and the principles of policies drawn up by it for the orientation of activity in general and, in particular, of social policies. The social objectives are an expression of the positive action of the state in favor of persons with disabilities and therefore, their realization is closely related to the conditions, means and available budgetary possibilities of the state. However, they constitute an important indicator to measure the degree of respect for social and economic rights in the country³. The state intends to realize these objectives by respecting the constitutional powers and the means it has, as well as by fulfilling the initiative and private responsibility⁴. The Constitution refers to the law, as the most important instrument that determines the conditions and extent in which the realization of these objectives can be sought. Although it is thought that the social objectives have a declarative character, the Constitution charges the state bodies to undertake the tasks assigned to them to draft policies and issue relevant laws, in accordance with its values and principles. But on the other hand, the Constitution takes care⁵ that, in addition to the standards that must be met, the fact that the measure

2 Article 59/2 of the Constitution of the Republic of Albania approved by Law No. 8417 dated 21.10.1998, amended by laws: no. 9675, dated 13.1.2007; no. 9904, dated 21.4.2008; no. 88/2012, dated 18.9.2012; no. 137/2015, dated 17.12.2015; no. 76/2016, dated 22.7.2016; no. 115/2020, dated 30.7.2020; no. 16/2022, dated 10.2.2022.

3 Luan Omari, Aurela Anastasi "Constitutional right", Publishing house "Dajti 2000", Tirana 2017, Page 89.

4 Article 59/1 of the Constitution of the Republic of Albania.

5 Luan Omari, Aurela Anastasi "Constitutional right", Publishing House "Dajti 2000", Tirana 2017, Page 89.

of their implementation in practice is also taken into account depends on the internal possibilities of the country.

However, the state, in order to fulfill its social objectives, must also implement the commitments it has received from the relevant ratified international acts, which are related to the respect of social and economic rights, such as the European Social Charter⁶, and the European Convention on Freedoms and Rights Man.

2. Social Constitution of Europe, European Social Charter.

The European Social Charter⁷, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a wide range of human rights related to employment, housing, education, social protection and welfare. There is no other legal instrument at the European level that contains such a broad and complete protection of social rights as the protection offered by the Convention.⁸ For this reason, the Charter is considered the Social Constitution of Europe and represents the essential components of the continent's human rights architecture. Since the mid-2000s, the provisions of the Charter have been divided into four groups:

Group 1: Employment, training and equal opportunities: Article 1; 9; 10; 15; 18; 20; 24; 25.

Group 2: Health, social security and social protection: Article 3; 11; 12; 13; 14; 23; 30.

Group 3: Labor rights: Article 2; 4; 5; 6; 21; 22; 26; 28; 29.

Group 4: Children, families, migrants: Article 7; 8; 16; 17; 19; 27; 31.

Compliance with the Charter by member states is reviewed by the European Committee of Social Rights every 5 years from ratification. There are two monitoring mechanisms of the Charter: the collective complaints procedure and the reporting procedure. Today, the Charter is one of the most widely accepted human rights standards within the Council of Europe.

Albania signed it in 1998 and ratified it on 14.11.2002. Since the ratification, Albania has submitted 13 reports between the years 2005-2023 on the implementation of the Social Charter. In the 13th report of the Council of Europe regarding its implementation by the Albanian government, in September 2022, for the monitoring period 2017-2020, regarding the implementation of the third grouping of the Charter, "labor rights" has resulted that⁹: "Albania has violated several critical articles of the European Social Charter regarding health protection, safe working conditions, social, medical and welfare assistance, social protection and the right to protection from poverty and social exclusion. Albania has consistently failed to meet the standards for Article 3 of the Charter, which refers to the right to safe and healthy working conditions, due to the government's failure to consult with employers and workers' organizations on relevant issues. There are also no provisions to protect workers from occupational health risks, including psychosocial risks. Furthermore, there were no protections for temporary workers and no consultation with stakeholders at any time. An "inadequate" level of protection for workers against asbestos was also reported as authorities have failed to draw up an inventory of locations that use it or take steps to protect workers where it is present. On the subject of the right to safe and healthy working conditions, Albania failed to implement health and safety regulations. The report found that accidents at work and occupational diseases are not effectively monitored and the activities of the Labor Inspectorate are not effective in practice.

6 Ratified by Law no. 8960, dated 24.10.2002, Official Gazette no. 75, December 2002.

7 <https://rm.coe.int/la-charte-sociale-en-bref/1680a090d3>

8 <https://rm.coe.int/la-charte-sociale-en-bref/1680a090d3>

9 <https://rm.coe.int/albania-september2023-en-2766-2408-4232-1/1680ad398f>

Albania also failed to fulfill its obligations under Article 11 which deals with the right to health protection. The report found that public spending on health is very low and the provision of health care is subject to unnecessary delays. In particular, Albania failed to provide information on life expectancy for urban, rural, ethnic and minority groups. The Albanian state has not provided information about the death rate for specific jobs or proximity to active industrial or contaminated areas. No information was provided on sexual and reproductive health care for women and girls, nor was there evidence of any policies to prevent the premature death of women and girls in this context. Important questions about abortion, maternal mortality, contraception and blood-borne diseases remain non-conformist.

Other concerns were that health education should be included in the school curriculum and that counseling and screening should be provided to pregnant women throughout the country. Even more worryingly, the report noted that the government has not taken adequate measures to protect citizens from environmental pollution. Also, on the subject of vaccinations, there was inconsistency with the right to an efficient program of immunization and epidemiological monitoring, noting that this is not implemented in Albania. The 14th report, which is about group 4 “Health, social security and social protection”, which is expected, has not yet been published. While the government has drawn up national strategies and plans, for the fulfillment of the obligations that come from the Constitution, within the framework of the fulfillment of the social objectives sanctioned in the Constitution¹⁰, and has approved a series of legal and by-laws for each of the points of Article 59 of Constitution.

3. An overview of the jurisprudence of the Albanian Constitutional Court regarding the constitutional judgment of social objectives.

As we emphasized above, on the one hand, the social objectives provided for in the Constitutional provisions have a declarative character, but on the other hand, the basis of the state are the principles and values sanctioned in the constitution¹¹, which the state has the duty to respect and protect. According to the jurisprudence of the Constitutional Court¹², the social protection of persons is realized through two mechanisms: first, through the implementation of the guarantees expressed in the economic-social rights and freedoms, provided for in Chapter IV of the Constitution, and second, through the fulfillment of social objectives through their materialization in laws, in reference to Article 59 of the Constitution. In its jurisprudence, the Constitutional Court has consistently held the position that the fulfillment of social objectives is not included in the circle of issues that belong to the jurisdiction of constitutional control. The Constitutional Court has found as unfounded the claim of the petitioners for the violation of the principle of legal certainty, holding the position that the fulfillment of social objectives is not included in the circle of issues that belong to the constitutional jurisdiction since “the nature of the benefit of the compensation for the transport service, energy electricity and fixed telephony due to disability, is an expression of social protection realized through the fulfillment of social objectives, in the sense of Article 59 of the Constitution. This benefit as a social objective is fulfilled within the constitutional powers and means available to the Council of Ministers¹³. In the following, it is argued that the social objectives are an expression of the positive action of the state in favor of persons with disabilities and therefore, their realization is closely related to the conditions, means and available budgetary opportunities of the state. But the court reasoned that: “In any case, these restrictions must not violate the essence of the right and must respect the constitutional requirements provided for in Article 17 of the Constitution.” It is precisely the limits established in Article 17 of the Constitution that must be evaluated and taken into account in the case of the constitutional judgment of the measures taken by the Council of Ministers, or the legislator who

10 https://shqiptarja.com/uploads/ckeditor/6565de8108aa9RENJK_684_Strategjia-e-Mbrojtjes-Sociale-2024-2030.pdf. “Strategjinë kombëtare për mbrojtjen sociale 2024-2030”; VKM Nr.276 “Plani Kombëtar për Personat me Aftësi të Kufizuar 2021-2025”

11 Article 3 of the Constitution of the Republic of Albania.

12 Decision no. 34, dated 28.05.2012; no. 37, dated 13.06.2012; no. 10 dated 18.03.2013 of the Constitutional Court.

13 Decision no. 10 dated 18.03.2013 of the Constitutional Court of the Republic of Albania.

set the constitutional standards whether or not they violate the essence of the right. The constitutional judgment in such cases will have to first check if the law has not been approved in accordance with the Constitution. Article 59/2 of the Constitution imposes obligations on the legislator, that it is the law, which must determine the conditions and the measure in which the realization of social objectives can be sought, and not the Council of Ministers. Limitations of the rights and freedoms provided for in the Constitution can only be imposed by law for a public interest or for the protection of the rights of others. This is due to the fact that the absolute reservation of the law, according to the definition made by the constitutional doctrine, requires an issue to be regulated only by the law in a strictly formal sense. The Constitution has also sanctioned that anyone, when he remains unemployed for reasons independent of his will and when he has no other means of living, has the right to help under the conditions provided by law¹⁴.

While the Constitution imposes obligations on the bodies of public power, that in fulfilling their duties, they must respect the basic human rights and freedoms, as well as contribute to their realization¹⁵. In its jurisprudence, the Constitutional Court has referred to the principle of human dignity as a value that must be guaranteed by the state, in fulfillment of its social objectives, but has not clarified what are the obligations derived from this value for the legislator in the cases of drafting a law which determines the conditions and extent in which realization of these objectives may be required. The Constitution in its first articles has sanctioned that “The independence of the state and the integrity of its territory, human dignity, rights and freedoms, social justice, constitutional order, pluralism, national identity and national heritage, religious coexistence, as and the coexistence and understanding of the Albanians with the minorities are the basis of this state, which has the duty to respect and protect them”. Meanwhile, human dignity as a basic constitutional value¹⁶ imposes on the legislator the obligation to take of measures to respect and guarantee this value since in a democratic society, which is based on human dignity and the principle of equal enjoyment of basic rights by all individuals, it must guarantee the fulfillment of basic life needs for everyone. According to jurisprudence of the Court “living with dignity includes not only the need for interaction or cooperation in society, but also the need not to be left aside by the state.

The court guides the legislator, specifically the parliament, that even in the case of taking legislative measures to realize a certain public interest, such as keeping public finances under control or guaranteeing economic security in the case of the category of individuals who have limited the ability to fully enjoy constitutional rights, like the rest of the population, should be in the special attention of the legislator. It has also established a standard in terms of the drafting of legislation in fulfillment of the social objectives of the state by sanctioning that: “In any case, these regulations must comply with the principles, values and constitutional standards as well as with the obligations arising from the European Social Charter that are : equality, social justice, respect for human rights and prohibition of discrimination.¹⁷

In relation to this principle and according to the ECHR, if the state has been given a wide space to take appropriate measures for social policies, the role of the Court is to determine if they fall within the limits of “reasonableness”. The state is not limited by a rigid principle of non-deterioration of social rights, as long as the measures follow the goal of the general welfare and are applied in a progressive and proportionate manner¹⁸. Likewise, in the case of *Larioshina v. Russia* (2002), the ECHR stated that “A value of pension and social benefits wholly insufficient to protect the applicant from physical, mental harm or situations of degradation incompatible with human dignity, may raise a problem under Article 3 of the Convention”. While the Federal Constitutional Court of Germany has emphasized that it is the duty of the state to ensure the minimum conditions for an existence of human dignity

14 Article 52/2 of the Constitution of the Republic of Albania.

15 Article 15/2 of the Constitution of the Republic of Albania

16 Decision no. 20/2006 of the Constitutional Court of the Republic of Albania

17 Decision no. 10 dated 18.03.2013 of the Constitutional Court of the Republic of Albania

18 ECHR decision *Valkov and others v. Bulgaria*, no. 2033/04). 2002 *Larioshina v. Russia*

through state benefits if necessary. According to them “there is a fundamental right to guarantee a vital minimum that is compatible with human dignity.” In this decision, it has sanctioned that it is the legislator, and not the executive, that should create social benefits and determine their levels on the basis of a transparent and appropriate procedure, in accordance with the current need, community development and existing living conditions¹⁹. The legislator, in function of the constitutional obligation to realize social objectives, must keep in mind the notion of a minimum core of human rights and freedoms, as developed by the United Nations Committee on Economic, Social and Cultural Rights²⁰. The Committee has held the position that “each state party has the obligation to respect a minimum core that fulfills the minimum essential level of every right. Article 2(1) of the Convention obliges each state party to take the necessary steps, making maximum use of the resources available to it. If a State Party attributes its failure to meet its minimum obligation to a lack of available resources, it must demonstrate that every effort has been made to use all available resources to meet, as a matter of priority, those obligations minimum.” It is precisely these standards that must be taken into account, not only by the state during the drafting of legislation for the drafting of measures and criteria, for the fulfillment of social objectives, but also by the court itself when examining the requirements for the fulfillment of the constitutional standards of the legislation on social objectives.

4. Conclusions and Recommendations

The state’s obligation to fulfill social objectives originates from the Constitution, but the detailed rules of the social protection system are not defined by the Constitution itself, so in this regard the legislator enjoys discretion in defining these rules. However, this discretion is not unlimited since the principle of legal certainty, as a constitutional standard, developed by the jurisprudence of the Court imposes on the legislator the obligation to define clear, stable and above all non-arbitrary legal criteria, and must not to delegate the taking of concrete measures to the Council of Ministers, given that according to the reports of the Council of Europe, Albania has violated several critical articles of the European Social Charter. The Constitutional Court, in its jurisprudence, without justification and in an ambiguous manner, has a priori avoided the jurisdiction of the constitutional control of laws by deciding that the fulfillment of social objectives is not included in the circle of issues that belong to the jurisdiction of the constitutional control, as in its practice it has been expressed that the principle of legal certainty also protects other legal rights. Meanwhile, legal certainty and the protection of acquired rights, of legitimate expectations, as constitutional standards constantly addressed by the jurisprudence of the Court, constitute elements of the principle of the rule of law, sanctioned in Article 4 of the Constitution.

Another constitutional standard that must be taken into account for the fulfillment of social objectives is that the state, in order to guarantee human dignity, an acceptable standard of living as well as the preservation of the interests of all layers of society, can change the implementation mechanism of these rights, especially when there is no financial possibility for proportional redistribution of available funds, or when these measures are dictated by the need to eliminate or prevent real risks to economic security, but in any case, these restrictions should not affect the essence of law and must respect the constitutional requirements provided for in Article 17 of the Constitution.

19 BVERFGE 14, 99, 2 BVR 840/06 of July 24, 2008,) Selected publications of the German Federal Constitutional Court, Decision of July 25, 2008.

20 The Committee on Economic, Social and Cultural Rights (CESCR) is a body that monitors the implementation of the International Covenant on Economic, Social and Cultural Rights by state parties. This committee was established by resolution no. 1985/17, dated 28 May 1985, of the Economic and Social Council of the United Nations (ECOSOC). Albania is a state party to the International Covenant on Economic, Social and Cultural Rights since October 4, 1991.

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