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KUFIZIMI I TË DREJTAVE TË NJERIUT NË NJË SHOQËRI DEMOKRATIKE DHE ROLI I GJYKATAVE NË GARANTIMIN E RESPEKTIMIT DHE MBROJTJES SË TYRE

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Përmbledhje

Ideja thelbësore e sistemit juridik, e njohur gjithashtu si Shteti i së Drejtës, qëndron si një element kryesor në demokracitë kushtetuese bashkëkohore. Studimi aktual synon të argumentojë kufijtë dhe dispozitat e ndërvarësisë ndërmjet të drejtave dhe lirive themelore dhe rolit të Gjykatës në shpërndarjen e kufijve të lirive. Metoda e përdorur në këtë artikull është hermeneutike, krahasuese dhe e studimit të rastit. Objektivi i kësaj trajtese është të shqyrtojë kuadrin ligjor të të drejtave të njeriut dhe dispozitat e tyre kufizuese në të drejtën evropiane dhe në Shqipëri. Rezultatet cilësore nga hulumtimi hermeneutik dhe krahasues tregojnë se parashtrimi i thelluar i të drejtave nuk është vetëm një krahasim i vlerave morale dhe këndvështrimeve të ndryshme për të drejtat e njeriut, të cilat janë shfaqur si alternativa më kuptimplote në kohën tonë. Ky konfrontim na përfshin në botën komplekse dhe të paqëndrueshme të politikave bashkëkohore të të drejtave të njeriut dhe të ruajtjes së tyre. Njohja e rëndësisë së tyre dhe marrja e masave për t'i mbështetur drejtpërdrejt kontribuojnë në zgjidhjen dhe balancimin e drejtë të çështjeve në sistemin gjyqësor dhe në pasurimin e përbashkët të shoqërisë.

Fjalë çelës: *Të Drejtat e Njeriut, Shoqëri Demokratike, Liritë, Gjykatat, Konventa Evropiane për të Drejtat e Njeriut, Kushtetuta e Republikës së Shqipërisë*

THE LIMITATION OF HUMAN RIGHTS IN A DEMOCRATIC SOCIETY AND THE ROLE OF THE COURTS IN GUARANTEEING THEIR RESPECT AND PROTECTION

Abstract

The basis of the legal system, also known as the Rule of Law, stands as a key element in contemporary constitutional democracies. The present study aims to argue the limits and provisions of interdependence between fundamental rights and freedoms and the role of the Court in disseminating the limits of freedoms. The method used in this article is hermeneutic, comparative and case study. The objective of this treatise is to examine the legal framework of human rights and their restrictive provisions in European law and in Albania. Qualitative results from hermeneutic and comparative research show that the in-depth presentation of rights is not only a comparison of moral values and different perspectives on human rights, which have emerged as the most meaningful alternatives in our time. This confrontation also involves us in the complex and volatile world of contemporary human rights politics and their preservation. Recognizing their importance and taking measures to directly support them contribute to the fair resolution and balancing of cases in the judicial system and to the Common Wealth of society.

Keywords: *Human Rights, Democratic Society, Freedoms, Courts, European Convention on Human Rights, Albanian Constitution*

Introduction

Democracy, as an approach of state and societal organization, transcended this by instituting the concept of legal governance (Wong et al., 2021; De Sousa Santos, 2020). The fundamental idea of legal governance, also known as the Rule of Law, stands as a pivotal element in contemporary constitutional democracies. This term encompasses a multitude of principles, rendering it impractical to pin down a singular definition (Wong et al., 2021). Nonetheless, researchers of political and legal studies have reached a consensus on its constituent elements (Gerstenberg, 2019; Habermas, 1995). Consequently, within a state grounded in the Rule of Law, the formal adherence to the tripartite division of powers (*legislative, executive, and judicial*), the imposition of state authority on its citizens solely through laws established via well-known, clearly defined, and publicly disclosed procedures, and the principle that no individual is exempt from legal standards are all upheld (Della Porta et al., 2018). Other formal elements encompass the coherence and clarity of legislation, alongside the entitlement to access the judicial system (De Sousa Santos, 2020). Fundamental rights in a democracy can be categorized into four classes – *political rights, civil rights, freedom rights, and social rights* - each underpinning a distinct facet of democracy. *Political democracy*, hinges on universal suffrage and the allocation of political rights to all eligible citizens; *civil democracy*, which rests on granting negotiating autonomy through civil rights to all competent individuals; *liberal democracy*, which guarantees fundamental freedoms like freedom of conscience, religion, press, expression, assembly, and association to all; and *social democracy*, which ensures social rights such as healthcare, education, social security, sustenance, and the equivalent to all members of society (Tridimas, 2014). Before delving into the discourse on the nexus between fundamental rights and democracy, it is imperative to elucidate the concept of fundamental rights. The concept of '*fundamental rights*' entails a nuanced understanding that can be approached from two distinct perspectives: firstly, identifying the fundamental rights themselves, and secondly, determining the entitlements associated with these rights. Much of the ambiguity that often

arises in discussions surrounding fundamental rights stems from a conflation of these inquiries and the varied conclusions they yield. This inquiry pertains to the domain of positive law, necessitating a definitive response derived from a meticulous analysis and interpretation of the rules of the different systems (Tridimas, 2014). Fundamental rights are those rights recognized in the Universal Declaration of Human Rights (1948), the International Covenants (1966), and various other international human rights conventions. In a deemed reflection of the qualification of fundamental rights, there is an interaction between political philosophy, inviting normative responses that are not absolute truths but are intertwined with the ethical and political preferences represented by diverse moral and political frameworks, thus grounded in meta-ethical and meta-political standards as dictated by these frameworks (see Scope and Interpretation of rights and principles, 2015). The evaluative standards proposed by the historical evolution of constitutionalism in our democracies appear to revolve around three core principles: *equality, peace, and human dignity* (Habermas, 2001). All the entitlements that ensure harmonious cohabitation and respect for individuals, by ensuring the equality of all in basic entitlements, should be established as fundamental. This includes *social entitlements*, the assurance of which aids in diminishing economic disparities, and the *entitlements of liberty*, which secure the equitable treatment of all personal distinctions - such as nationality, gender, language, faith, political beliefs, personal and societal circumstances, as outlined in Article 16, Paragraphs 1 & 2, and Articles 21-24 of the Albanian Constitution (see the Constitution, 2017; p. 8 and p. 9-10). Different from the preceding inquiries stands the inquiry of entitlement to fundamental freedoms. The response to this query delves into the elucidation of the concept of 'fundamental rights' as posited by legal theory. The theoretical delineation that resonated most with me characterizes fundamental rights as rights universally bestowed upon all individuals - whether in their capacity as persons, citizens, or acting entities - and thus inherently non-negotiable and non-transferable. Much like the definitions assigned to other theoretical constructs, this description of '*fundamental rights*' aligns with a stipulative definition of a formal nature. It does not expound upon the specific contents of these rights, which encompass the necessities and protections deemed fundamental; rather, it underscores the configuration or the logical framework of these rights, acknowledged as the "mental foundations," due to their universal applicability across all holders (Tobin & Donè, 2015). In contrast to proprietary rights such as the right of property and credit, which are exclusive and disposable entitlements possessed by certain individuals, fundamental rights are characterized by their universal nature, rendering them non-negotiable and non-transferable, thereby serving as benchmarks for legal parity (Burdon & Williams, 2016). The formal nature of this definition contributes to its ideological neutrality where fundamental rights ensure extensive empirical and explanatory reach. This feature, in combination, delineates the theoretical framework of constitutional democracy in safeguarding these essential rights for all individuals, as specified in constitutional provisions, serving as boundaries and restrictions on the authority of public institutions (Bilchitz, 2018). The fundamental freedoms, conversely, entail a condition of unrestrained liberty in the domains of freedom of *association, expression, press, speech, and religion* (Giffins, 2016).

An adequate justification is essential for every judicial ruling. Legal argumentation in the judiciary is constructed on the foundation of legal reasoning. A cohesive legal argumentation relies on interconnected legal sources to adequately support a decision. The provision of suitable legal justification serves to eliminate interpretative uncertainties and enhance the legitimacy of the court by marginalizing non-legal factors, such as political considerations and arguments. This, in turn, fosters legal certainty by enabling individuals to anticipate the applicable rules and adjust their behavior accordingly (Tridimas, 2014). In the interpretation of EU law, the Court of Justice employs various methods such as grammatical, contextual, comparative, and teleological approaches (Lenaerts, 2013). The utilization and combination of these techniques are aimed at providing a conclusive response to any EU law-related matter. Furthermore, principles like the proportionality establish a formal structure that allows the Court of Justice to adhere to legal reasoning rather than political or moral factors (see Field of Application, 2015). Issuing a well-substantiated judgment can be particularly challenging when a

court is required to resolve a conflict between different rights (Geer et al., 2018; Lucifora, 2018). The present study tends to argue the limits and provisions of interdependence between fundamental rights and freedoms and the role of the Court in disseminating the limits of freedoms and the preservation of rights as a constitutional provision.

Method

Analytical-hermeneutical, comparative, and case study reports are used in the present paper. The analytical method will use a scientific approach to explain the phenomenon in a diachronic view. The databases that were consulted were, among others: (1) *European Court of Human Rights (ECHR) decisions*; (2) *ProQuest*; (3) *Sociofile/Sociological Abstracts*; (4) *Albanian Constitution and Venice Commission*. Subsequently, a detailed study of the models, data, and empirical results they contributed was made. The comparative method examines the juridical framework of human rights and freedoms and their restriction clauses in European Law and Albania. Hermeneutical research gives a scientific view of laws, guidelines, and legislations that stipulate the understanding of human rights and freedoms and their restrictions based on specific Court decisions in domestic and international law.

Fundamental Rights and Freedoms in the EU Law

The Treaty establishing the European Economic Community (EEC Treaty, 1997) is recognized for its absence of provisions concerning human rights, especially those crucial for facilitating the free movement of individuals (see Art. 7 of the EEC Treaty and Art. 119; De Burca, 2021, p. 475 et seq.). It was the gradual contribution of the Court of Justice that led to the recognition of the significance of fundamental rights within the legal framework of the European Union. As a clear instance stands the Stauder case where fundamental human rights were considered as “*enshrined in the general principles of Community law and safeguarded by the Court*” (see Court of Justice case 29/69, Stauder, Para. 7). In the ruling of *Internationale Handelsgesellschaft*, the Court established that “*the respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice*” (see Court of Justice, case 11/70, Para. 4). Furthermore, it articulated that the safeguarding of fundamental rights has been influenced by the constitutional customs that are shared among the Member States (see Court of Justice, case 11/70, Para. 4). In the *Nold* case, the Court went on to declare that international agreements aimed at protecting human rights, in which the Member States engage in collaboration or are signatories to, serve as a benchmark to be adhered to within Community law (see Court of Justice, case 4/73, Para. 13). The judicial practices of the Court have only been subsequently supplemented by modifications to treaties. The Single European Act (1993) referred to the advancement of “*democracy based on the fundamental rights acknowledged in the constitutions and legislations of the Member States*” (p. 2). The Treaty of Maastricht (1992) brought about amendments that mandated the European Union to uphold fundamental rights as outlined in the European Convention of Human Rights (2021) and as derived from the shared constitutional traditions of the Member States, serving as fundamental principles of Community law (Art. 1, Para. 2, TFEU). The Treaty of Amsterdam (1997) inserted a clause into the Treaty on the European Union stating that “*the Union is established on the principles of freedom, democracy, respect for human rights and essential freedoms, and the rule of law, principles that are shared among the Member States*” (see Art. 6, para. 1, TFEU). Additionally, the Charter of Fundamental Rights of the European Union (The Charter, 2000) was endorsed concurrently with the Treaty of Nice (2001) and acquired legal force upon the implementation of the Treaty of Lisbon (2007). Concerning fundamental freedoms, the significance of fundamental rights is multifaceted in all the EU conventions. Initially, within the jurisprudence of the Court of Justice, fundamental rights have surfaced in the context of justification whenever a Member State sought to deviate from any of the fundamental freedoms. Every deviation from the fundamental freedoms necessitates compliance with fundamental rights (see Judgment of case C260/89, *ERT AE*,

Para. 43). Several instances emerged subsequently where the assertion of fundamental rights resulted in a limitation of fundamental freedoms and vice versa (see Court of Justice: Judgment of case C-112/00 and Judgment of case C-208/09). Here, fundamental rights constrain fundamental freedoms and provide some leeway to those Member States and private individuals who invoke fundamental rights against fundamental freedoms. Conflicts between fundamental freedoms and fundamental rights may lead to a clash between the provisions of the TFEU regarding the two assets. However, the jurisprudence of the Court of Justice has played a role in incorporating fundamental rights into the EU legal framework. While these two concepts exhibit certain resemblances, they also possess distinct characteristics (Skouris, 2006 p. 233 et seq.) Fundamental freedoms, as well as fundamental rights, hold a constitutional status within the legal framework of the European Union (Kombos, 2006). Derived from the jurisprudence of the Court of Justice, it can be deduced that both fundamental freedoms and rights are recognized as foundational principles of EU law (see Court of Justice: Judgment of case C-265/95, Paras 24 and 27). Despite their fundamental character, they are not absolute and can be subject to limitations. Nonetheless, distinctions exist between the two concepts. Fundamental freedoms are constrained to matters concerning the internal market and necessitate a transnational component. Conversely, fundamental rights have a broader scope of application and are applicable even in purely domestic contexts (Skouris, 2006). Deviations from the fundamental freedoms (but not rights) are permissible in exceptional circumstances based on different states or public interests, but they must be carefully interpreted.

Fundamental rights and freedoms and their limitation in Albania

As philosophical thought underscores, no individual exists as an isolated entity (Habermas, 2008). Human beings inherently possess a social nature and are thus predisposed to communal living. Consequently, to maintain a well-ordered society, individuals must acknowledge and uphold the rights and freedoms of all, within a framework of mutual respect. Absolute freedom, if pursued at the expense of societal welfare and the rights of others, does not exist (Sen, 1993). Human rights restrictions are a manifestation of a societal-wide agreement between the requirements of the state and the entitlements of the individual. This equilibrium is crucial to avert the state's compromise at the expense of human rights. Human rights are inherent rights and therefore serve as antecedents to the state itself. Safeguarding them necessitates the safeguarding of a socio-political framework, which is rooted in acknowledging the necessity of human rights protection. The state's operational requirements and the human rights facilitating the respectable operation of individuals within the state are integral components of the identical constitutional framework that simultaneously advocates for human rights while constraining them, ensuring the entire system's functionality (Badar, 2003). This is the core constitutional dialectic. Unrestrained exercise of rights and liberties by one or more individuals will inevitably clash with the rights and concerns of other individuals or the public's interests. To settle disputes of this nature, the Constitution as the Supreme law means of a country, has established explicit criteria for when and why the restriction of fundamental rights is warranted (Badar, 2003). From a case-study examination, the legal framework in Albania also offers a comprehensive representation of the provisions and constraints surrounding human rights within a specific context, as guided by the principle of "*according to the law*." The Constitution upholds various principles, with the foremost one being highlighted in the preliminary Preamble, signifying the Albanian People's commitment "... to establish a lawful, democratic, and social state, to safeguard fundamental human rights and freedoms, ..., while vowing to safeguard human dignity and individuality..." (p.2). One of the most accomplishment of the Albanian Constitution is rooted in its contemporary and meticulous oversight of legal and institutional standards at the constitutional level, particularly regarding fundamental human rights and freedoms, placed in Part II immediately following the Fundamental State-building Principles. Article 4 establishes that the right forms the foundation and boundaries of the state's actions, with the Constitution being the Supreme Law in the Republic of Albania (p.3). Within this frame-

work, Article 17 of the Constitution specifically restricts the decision-making authority of the representative of the sovereign, namely the legislator, to the safeguarding and preservation of human rights (p.5). These ***rights can only be limited in cases of public interest or for the protection of the rights of others***. Any restrictions imposed must be proportionate to the circumstances that necessitated them. Furthermore, these limitations must not infringe upon the essence of freedoms and rights. Additionally, the Constitution stipulates that the limitations imposed by the law must never surpass those outlined in the European Convention on Human Rights and Freedoms (Art.17, Para.3). The Constitution establishes a connection between the implementation of popular sovereignty and specific regulations. Although Article 2, Point 1 of the Constitution states that “*sovereignty in the Republic of Albania belongs to the people,*” (p. 3) this does not automatically mean that the people can exercise sovereignty without any conditions. The concept of popular sovereignty is a broad principle that is realized through the specific guidelines outlined in the Constitution (*see Articles 16 and 17 of the Constitution, p.5*). Liberal democracy and human rights have a nature of interdependence, interconnectedness, mutual support, and symbiotic relations. The definition of democracy itself cannot be complete without the inclusion of human rights. Conversely, the effective protection of human rights can only be achieved within a democratic state(). A fully functioning democracy not only fosters an environment that embraces diversity but also upholds equality and safeguards individual freedoms. It is increasingly becoming the most reliable safeguard against the concentration of power in the hands of a select few, which directly leads to the violation of human rights(Cohen,2008). Therefore, the most effective safeguard for human rights lies in a stable democratic environment that is firmly rooted in the principles of the Rule of Law. Concerning the connection between liberal democracy and human rights in Albania, the Universal Declaration of Human Rights encapsulates this connection through Article 21, Paragraph 3. This article emphasizes that the authority of public power is rooted in the will of the people, which must be expressed through free elections held periodically. These elections should adhere to principles of general suffrage, equality, and secrecy of the ballot, or any comparable procedure that guarantees the freedom to vote (see the Universal Declaration of Human Rights, specifically Article 21,1948). The same principles are encompassed in Albanian Constitution Chapter III Articles 45-48. Part II of the Albanian Constitution is specifically devoted to the fundamental principles of essential human rights and freedoms, serving as a comprehensive (albeit not exhaustive) compilation of these rights. The Constitution presents an intriguing classification and significant delineation of fundamental rights and freedoms. These are categorized into “*personal freedoms and rights*” (Chapter II), “*political freedoms and rights*” (Chapter III), and “*economic, social, and cultural freedoms and rights*” (Chapter IV). Additionally, the Albanian constitution showcases innovative elements such as the inclusion of Chapter V dedicated to “*Social Objectives*”, Chapter VI focuses on the establishment and role of the “*People’s Advocate* (Ombudsman), and the incorporation of the “*European Convention on Human Rights*” as an integral part with quasi-constitutional status. The Albanian Constitution advocates for the protection of fundamental rights and freedoms enjoyed by all citizens. However, Article 27 (p.7) introduces a constitutional provision that allows for the limitation of these rights and freedoms. The Constitution has adopted a specific approach that entails the inclusion of a single article that outlines the criteria for such limitations. The cumulative verification of these criteria is crucial in determining the acceptability of the restrictions imposed on rights and freedoms. According to this formula, limitations on rights and freedoms can only be imposed by law, and solely to serve the public interest or protect the rights of others. Moreover, these restrictions must be proportionate to the circumstances that necessitated them. Additionally, it is emphasized that these limitations should not infringe upon the essence of freedoms and rights and must not exceed the restrictions outlined in the European Convention on Human Rights. This formula acknowledges that while the Supreme law of the state allows for the limitation of rights and freedoms, such limitations will only be deemed justifiable if they align with the fundamental principles enshrined in the Constitution (Article 17, p. 5). The same principles are also mandated by the European Court of Human Rights (ECHR) and serve as pillars of the jurisprudence of the European Court of Human Rights. It is crucial now to highlight the delineation, as articulated in paragraph 2 of Article 17, of the uppermost benchmarks to which these limitations are confined. These benchmarks encompass 1) the identification and definition of an essence for each entitlement, an essence

that is inviolable under all circumstances and for any rationale, and 2) the imposition of restrictions delineated by the ECHR as a definitive limit. The principles of constitutionality and the rule of law, espoused by the Constitution of 2017, are designed to ensure a democratic system where the concept of the “majority” is distinct from that of “the people,” and where the notion of the “State” is separate from that of “society.” Consequently, neither the State nor most voters or parliamentarians can lay claim to absolute power. Conversely, it is not solely the State that finds itself constrained by the obligations outlined in the Constitution. While advancing and safeguarding individual autonomy, the Constitution ensures the proper functioning of the rights and liberties of all individuals. Through provisions such as Article 17, among others, the Constitution affords the State the ability to place certain limitations on individual rights and freedoms, aiming to maximize benefits for others, communities, or the public, depending on the circumstances. To qualify as “right” (Article 17 of the Constitution), the restriction of a fundamental right must adhere to certain conditions: 1) exclusively and only by law, 2) to safeguard a common good or the rights of others, 3) it should be commensurate with the circumstances that necessitated it, 4) the limitations must not infringe upon the essence of freedoms and rights and 5) the constraints must not surpass the boundaries outlined in the European Convention on Human Rights (ECHR). Concerning the initial requirement, within Albanian constitutional doctrine and application, there has existed a discourse on whether the phrase “only by law” specifically pertains to the particular legislation ratified by the Assembly following the protocol outlined in the Constitution (Articles 81-85), or more broadly, even under the umbrella of “based on the law”. The objective of this article is that, when faced with limitations, not only should the additional criteria outlined in it be adhered to, but for the fullest assurance possible, only one entity should hold authority, specifically, the most senior legislator. The phrase “*only by law*” signifies that, if there arises a need to restrict a right granted in the Constitution, then the evaluation falls within the legislator and other entities, such as the Council of Ministers. This stance has been adopted by the European Court of Human Rights in its jurisprudence. The safeguarding of the “*public interest*” is also a rationale for the lawmaker’s implementation of a limitation on an individual’s right by the Constitution. The lawmaker should promote the public interest both in the intended aim and the actual impact resulting from the regulation. Article 18 of the Constitution addresses the issue of equality and discrimination. Just like the constitutional provisions that embody the principle of freedom are spread across various articles of the Constitution (such as Articles 22, 23, 24, etc.), the articles that elaborate on equality (Articles 45/4, 54/1/2, 55/1) are not limited only to Article 18. Equality stands as a fundamental value in contemporary society. The Constitution contains a significant provision in Article 18 Paragraph 2, which outlines various factors (such as gender, race, religion, ethnicity, language, political, ethnic or philosophical beliefs, economic status, educational status, social or parental affiliation) that cannot be used as grounds for unfair discrimination. This is further elaborated in Paragraph 3, which allows for discrimination under specific circumstances, provided there is a rational and objective legal basis. The Constitutional Court has emphasized that: “*The principle of equality, provided for in Article 18 of the Constitution, requires that all citizens be equal before the law, not only in the fundamental rights provided for in the Constitution but also in other legal rights. On the other hand, the Constitution of the Republic of Albania, sanctioning the principle of equality before the law, has not given it the meaning of an absolute right, because it has simultaneously defined the conditions of limitation in the exercise of this right. The third paragraph of Article 18 of the Constitution accepts the limitations of the right to equality with the fulfillment of some special conditions, namely reasonable and objective legislation. This principle requires that all subjects be treated in the same way, but does not formulate prohibitions that differentiated treatments can be made when individuals and groups are not in the same or similar conditions, or when there is a reasonable and objective justification, established a reasonable and proportional relationship between the means used and the goal that is intended to be achieved*” (p. 5) and that: “*Only in exceptional cases and for reasonable and objective reasons can the different treatment of certain categories that benefit from this be justified right*”.(p.5). Considered as a whole, the principle of equality and non-discrimination, as outlined in the three paragraphs of Article 18, does not necessitate identically treating all individuals. Rather, it requires that *individuals in similar circumstances be treated equally, and in cases where differential treatment occurs, there must be a reasonable and justifiable justification*. The underlying principle is

that if differential treatment is to be applied, it is essential to demonstrate both a genuine and tangible distinction between two individuals or social groups, as well as the fundamental necessity and logical defensibility of such differentiation in achieving a legitimate objective. Only when these two conditions are met can we deem the difference as non-discriminatory. If the law establishes distinctions or differentiations among individuals or groups, these differentiations must be clear and serve a legal purpose. From a holistic perspective, human rights and freedoms, along with their constraints in a democratic nation, stem from a common foundation and reflect the collective principles of a particular society. For these principles to be deemed as “right,” they must embody a well-functioning and judicious society that upholds the Rule of Law and is safeguarded by legal mechanisms like the Constitution, the Constitutional Court, and the judicial system.

Conclusive remarks

Globalization, characterized by its diverse nature, has been identified not only as the age of human rights but also as the era marked by clashes between civilizations (Sklair,2009). This implies that it is not just a clash of moral values, but also a clash of differing perspectives on human rights, which have emerged as the most appealing alternative to moralism in today’s world. The conflict between those who perceive human rights through the lens of cultural relativism and those who view them as universal or individual rights brings into question the moral foundations upon which human rights are based. This confrontation immerses us in the complex and volatile world of contemporary human rights politics. The acknowledgment and acceptance of the principle of ensuring human rights are so crucial and fundamental to modern liberal-democratic constitutions that we can assert that there is an inherent correlation between democracy (characterized by pluralism) and the safeguarding of basic human rights and freedoms. This connection is maintained through a systematic legal process, adhering to specific criteria (Lucifora,2018; Lenaerts,2013). Human rights are not fixed and universally agreed-upon categories and concepts, but rather they evolve and adapt in response to changing historical and political circumstances. They are directly influenced by the specific demands and needs of distinct groups within society. Like other normative traditions, human rights are a product of their time and context (Krivokapic,2016). In today’s legal landscape, human rights hold a significant importance. The understanding of human rights is situated within the framework of constitutional law, both at the national and international levels. The objective of these frameworks is to establish institutionalized mechanisms that safeguard human rights against abuses of power by state entities. Simultaneously, they aim to contribute to the definition of the conditions necessary for human life and the holistic development of individual human beings. The universality of human rights serves as the cornerstone of international human rights law, with most states ratifying multiple human rights treaties to uphold universal principles (Krivokapic,2016). While human rights are deemed inalienable and essential for freedom and a decent quality of life in the Western political tradition, they are not boundless. Instead, they can be subject to limitations by specific criteria and a formal legal process, guided by the principle of autonomy. Pluralist democracy, as in the case of Albania, can be understood as a political-constitutional system that is shaped by the constitutional rights of individuals. The defining achievement of modern constitutions lies in their establishment of human rights as the fundamental principle for organizing the State. This goes beyond a mere separation between authority and freedom, instead seeking to reconcile and coordinate these opposing forces, with the human individual at the center (Lenaerts,2013). The independence of the judiciary plays a crucial role in any democratic society, as it ensures the separation of powers, upholds the rule of law and safeguards human rights. It is an integral part of every democratic constitution, either explicitly or implicitly. As the present paper highlighted, in the case of Albania, the constitutional framework explicitly guarantees judicial independence in Article 145/1, stating that *judges are independent and subject only to the Constitution and laws* (p.30). The High Judicial Council is entrusted with the responsibility of safeguarding the independence, accountability, and effective functioning of the judiciary in the Republic of Albania, as outlined in Article 147 of the Constitution (p.30). By exercising constitutional authority, which is an

extension of judicial control, the Constitution is effectively regarded as “law” in the legal sense rather than a mere political statement. The independence of the judiciary serves a dual purpose in a democratic society. Firstly, it guarantees the fair and impartial application of the law, ensuring due process for individuals involved in legal proceedings. Secondly, it safeguards democracy and constitutional values. These two components, impartiality, and independence of the judge are interdependent yet distinct. Recognizing their significance and taking measures to uphold them directly contribute to the equitable resolution and balance of cases in the judicial system. In safeguarding the fundamental rights and freedoms enshrined in the Constitution, the Constitutional Court plays a crucial role. In contemporary European democratic systems, constitutions, and Constitutional Courts, in line with the European Court for the Protection of Human Rights (ECHR) not only serves as guiding principles but also as legal force. The responsibility of upholding and enforcing these constitutional norms has been entrusted to the judiciary, particularly the Constitutional Court, which acts as a mediator and arbitrator. While recognizing the individual right to appeal to the Constitutional Court, it is also crucial to balance and maintain the integrity of the constitutional system. The same arguments are in line with several research that confirmed the role of the Court in protecting and delineating human rights and freedoms (Haglund,2020; Milej,2018; Popelier,2017; Valea,2012; Winicott,1994).

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