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‘Constitutional Justice and Social Integration’

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Questionnaire – reply by the Constitutional Court of Albania

Questionnaire

A. Court description

Unless your Court¹ has already provided a description for the CODICES database (www.CODICES.coe.int), we kindly invite you to prepare a short presentation of your Court. This will allow the member courts to get to know each other better. Please briefly set out your Court’s composition and competences under the headings below:

Introduction

I. Basic texts

1. Constitution of the Republic of Albania (Articles 124-134).
2. Law no.8577, dated 10.2.2000 “On the organization and functioning of the Constitutional Court of the Republic of Albania.”

II. Composition, procedure and organization

Article 125 of the Constitution of the Republic of Albania:

¹ Hereinafter “your Court” will refer to your institution, be it a Constitutional Court, a Supreme Court, Constitutional Council or a Constitutional Chamber within a Supreme Court.

1. The Constitutional Court is composed of 9 members, who are appointed by the President of the Republic with the consent of the Assembly.
2. The judges are named for 9 years without the right to be reelected and among lawyers with high qualification and with not less than 15 years' experience in the profession.
3. One third of the members of the Constitutional Court are replaced every three years according to the procedure foreseen by law.
4. The President of the Republic with the consent of the Assembly appoints the President of the Constitutional Court among the ranks of its members for a three-year term.
5. The judge of the Constitutional court remains in office until the nomination of his successor.

III. Jurisdiction / Powers

Article 131 of the Constitution of the Republic of Albania:

The Constitutional Court decides on:

- a) Compatibility of the law with the Constitution or with international agreements as provided in article 122;
- b) Compatibility of international agreements with the Constitution, prior to their ratification;
- c) Compatibility of normative acts of the central and local bodies with the Constitution and international agreements;
- ç) Conflicts of competencies between powers, as well as between central government and local government;
- d) Constitutionality of the parties and other political organisations, as well as their activity, according to article 9 of the Constitution;
- dh) Dismissal from duty of the President of the Republic and verification of the impossibility to exercise his function;

e) Issues relating to the election and incompatibility in exercising the function of the President of the Republic and of the deputies, as well as of their election;

ë) Constitutionality of the referendum and verification of its results;

f) Final adjudication of the individuals' complaints for the violation of their constitutional rights to due process of law, after all legal means for their protection have been exhausted.

IV. Nature and effects of judgments

Article 76 of the Law "On the organization and functioning of the Constitutional Court of the Republic of Albania":

Juridical effects of the decisions of the Constitutional Court

1. The decision of the Constitutional Court, which has abrogated a law or normative act as incompatible with the Constitution or International Agreements, as a rule will have its juridical effects from the date of its enforcement.

2. The decision is retroactive only in case:

a. it concerns a criminal sentencing and such a decision is under execution, if directly related with the implementation of the abrogated law or normative act,

b. it concerns case under review by the courts, unless their decisions have is final,

c. of effects of unimplemented law or normative act.

Article 77 of the Law "On the organization and functioning of the Constitutional Court of the Republic of Albania":

Juridical effects of the judicial decision

Decisions of courts of any instance, which are abrogated by the Constitutional Court have no juridical effect since their proclamation. The case is delivered to be reviewed to the court which decision has been abrogated.

Conclusion

B. Social integration

1. Challenges of social integration in a globalised world.

1.1. What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?

Constitutional Court (hereinafter CC) has taken under examination a number of cases in the field of taxation law and the social security law. There are no cases regarding the asylum law.

In the field of social security law, CC has examined the law “On the supplemental security income of militaries in Armed Forces, employees of the State Policy, Guard of the Republic, Informative State Service, Policy of Prisons, Policy of Rescue and Fire Protection, as well as employees of Inner Service Control in the Republic of Albania (decision no.9, dated 26.02.2007; decision no.33, dated 24.06.2010; decision no.2 dated 18.02.2013).

In the field of taxation law, CC has examined the law “On Value Added Tax,” according to which “The taxpayer is obliged to pay VAT, shown as payable in the tax assessment, or in the subsequent tax assessment, regardless whether he/she has requested the re-examination or has appealed against the tax assessment.” “The General Department of Taxation shall not begin the re-examination for tax assessment in respect of any person, in cases when the person in question has not submitted all the declarations he/she is obliged to in pursuance of this law, or has not paid all the amount of VAT payable from him/her” (decision no.9, dated 02.04.2003).

Via its decision no.16, dated 25.07.2008, CC has examined the law “On taxation procedures in the Republic of Albania,” which has undergone several amendments. In this case, CC examined the legal provisions regarding the prepayment of fines as preconditions to lodge lawsuits with the court. (*“Before being presented in judicial examination, the taxpayers are obliged to pay 15% of any fine and interest...”).*

Furthermore, CC has examined the Customs Code of the Republic of Albania regarding the prepayment of customs duties, which has provided for that: *“When the appeal is rejected, the appellant shall pay the rest of the fine, 60%, and may appeal against the definitive decision of the Director General at the judicial authorities within*

30 days from the date of the notification of the rejection of the appeal by the customs authorities.” (Decision no. 18, dated 23.04.2010)

1.2. How were issues of social integration or conflict transformed into legal issues?

Law on legalization, urban planning and integration of unauthorized buildings.

In Albania, the rapid internal migration has led to informal land occupation and massive unauthorized buildings, making the property related problems even more difficult. During the 1990s, a part of population of several counties migrated to city areas, in search of better opportunities to earn money, despite the lack of an adequate housing infrastructure or providing of public services. State authorities failed to prevent the illegal occupation of land and the unauthorized buildings.

In 2006 was adopted the law on legalization, urban planning and integration of unauthorized buildings, which, together with additions and amendments that were made, provided a mechanism for legalization of unauthorized buildings and building additions, and created a mechanism for approval of urban planning. This law also established a mechanism for the transfer to the claimant of the ownership rights of the land where the legalized object was built, and provided for a compensation right to the former owner, as well as a formula for calculating the compensation.

Law "On the Status of militaries in the Armed Forces of the Republic of Albania"

Due to the specific character of duties and military services, and fulfillment of obligations to join NATO, in 2004, the active militaries and reserve personnel (released or retired) enjoyed the same status as militaries, without creating any kind of separation between these categories.

After several amendments made to this law, it divides the militaries of permanent active service into two categories for the purpose of benefiting the early or seniority retirement: the militaries who have been retired by the entry into force of the law "On the Status of militaries in the Armed Forces of the Republic of Albania") and the militaries who have been retired after the entry into force of this law. For these two categories, both the previous and the amended laws have recognized to all the militaries the right to benefit the early or seniority retirement at the measure of 50

percent of the salary of reference, adding 2 percent of this salary for each year of seniority in service on the seniority of 15 years for men and 12 years for women. While according to the previous law, the pension payments went up to four times as much as the basic pension at national level, the new law reduced the early pension payments for retired militaries by the date of entry into force of the law on the status. For these militaries, this payment goes up to the measure of the maximum pension at national level, equal to twice as much as the basic pension. With regard to militaries, who were early retired after the entry into force of the law on status, the maximum payment is differentiated according to their respective grades and it is much more favorable as compared to the payment given to militaries that have been retired by the entry into force of the law on status. The new law does not allow the militaries, who have been retired by the date of entry into force of law on status, to be granted early retirement pension when they get employed, but it recognizes the right to benefit the early retirement pension, even if employed, to the militaries who have been retired after the entry into force of the law on status, depending on the new job position.

1.3. Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?

Yes, there does exist a trend towards an increase of these cases before the CC.

The return of arbitrary taken property to the lawful owners gave rise to the need of dealing with the tenants of state housing property to be returned to the former owners.

Since 1993, there have been enacted a number of legal provisions attempting to regulate this economic, legal and social problem. In its decision no.26, dated 02.11.2005, CC examined the law "On compensation and restitution of property," which had in focus the tenants' rights. So, according to the previous provisions, the state required to resolve the housing problem by making the claimants owners on the basis of the same criteria on which benefited the other part of population, whereas the contested provision did not explicitly foresee these state obligations. This provision tries to guarantee the housing through law rent housing, law interest loans

or rental housing compensated by the state. Later on, via its decision no.11, dated 04.04.2007, CC examined the same issue (issue of tenants), reaffirming the main consequences stemming from the amendments of law provisions that provided for a conceptual change in relations between the on the one hand and the tenants on the other hand. In 2013, CC examined the normative act and the law “On the release of residencies to the lawful owners by the homeless citizens, residents in residencies that are property of expropriated subjects.”

In the same year, CC examined the application of national association of invalids regarding the “Status of paraplegic and quadriplegic invalids.²” CC has also examined two more applications³ of the blind people’s association regarding some amendments to the law “On the status of blind people,” and the National Council of Persons with Disabilities for the declaration as incompatible with Constitution, Convention of the Organization of United Nations on the Rights of Persons with Disabilities, European Convention on Human Rights, of points 7 and 9, of article 3, of the law “On protection from discrimination.”

Please give two or three typical examples (please refer to the précis in the CODICES database, when you have already contributed these cases. Otherwise, please consider sending précis/summaries to be included in the CODICES database).

2. International standards for social integration

2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?

The international influences on the Constitution of Albania regarding the issues of social integration are the international acts and the practice of European Court of Human Rights.

2.2. Does your Court apply specific provisions on social integration that have an

² Decision of CC no.10, dated 18.03.2013

³ Decision of CC no.14, dated 17.04.2013 and decision no.48, dated 15.11.2013

international source or background?

Yes, in its decision no.48 dated 15.11.2013, CC has been referred to the Directive 2000/78 of the European Commission "On establishing a general framework for equal treatment in employment and occupation."

2.3. Does your Court directly apply international instruments in the field of social integration?

Yes, CC directly applies the Convention on the Rights of Persons with Disabilities; European Convention on Human Rights; European Social Charter.

2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?

Yes, CC expressly refers to international instruments in the application of constitutional law.

2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?

No, CC has not encountered conflicts between the standards applicable on the national and on the international level.

Please indicate a few typical examples (if possible by reference to cases in the CODICES database).

3. Constitutional instruments enhancing/dealing with/for social integration

3.1. What kind of constitutional law does your Court apply in cases of social integration - e.g. fundamental rights, principles of the Constitution ("social state"), "objective law", Staatszielbestimmungen, ...?

In cases of social integration, CC applies the economic, social and cultural rights and freedoms, as well as social objectives respectively found in Chapters IV and V of the second part of the Constitution.

3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by

individuals?

CC decides on the final adjudication of the complaints of individuals for the violation of their constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted. In its jurisprudence, CC has stated that in cases of violation of social rights that have not been included in the standards of rights to due process of law, it does not have the competence to examine them (decision no.74, dated 15.06.2012, the Panel of three Judges of the Constitutional Court has stated that: *The right to work has not been included in the standards of rights to due process of law as interpreted by this Court and the European Court of Human Rights. Consequently, it considers that this claim does not fall under the competency of the Constitutional Court*).

3.3. Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?

CC examines the complaints of individuals for violation of their constitutional rights to due process of law, but only after all legal remedies for the protection of those rights have been exhausted.

CC is competent to examine the acts issued by the government for settling the social conflicts, in cases when these acts are not in conformity with the Constitution.

3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?

When the CC considers that certain legal provisions come against the Constitution, it annuls these provisions.

3.5. Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?

CC does not exercise a priori control. It exercises only a posteriori control of the legal norm. Due to this kind of control it can exercise, CC could not act preventively to avoid social conflicts.

Our Constitution has clearly expressed the binding force of Constitutional Court decisions over all the constitutional bodies, public authorities and courts. Decisions of the Constitutional Court have general binding force and are final. They constitute constitutional jurisprudence and therefore have the effects of the force of law. The unquestionable influence of CC decisions is such as it imposes over all the state bodies, not excluding even the courts, the binding force of the statement of reasons of its decisions. The statement of reasons of CC decisions has the force of law, what stems from the authority of this organ to say the last word on issues that other bodies have already stated their opinion (decision no.5, dated 07.02.2001).

3.6. Has your Court ever encountered difficulties in applying these tools?

No

3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?

No

Please provide a few typical examples (if possible also by reference to cases in the CODICES database).

4. The role of constitutional justice in social integration

4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

In its practice, CC has considered that the social protection might be realized by two mechanisms: firstly, through the application of guarantees expressed in economic and social rights and freedoms (chapter IV of the Constitution); and secondly, through the fulfillment of social objectives, i.e. through their materialization in laws, in conformity with article 59 of the Constitution. The content of social and economic rights, which by nature are positive rights, should be interpreted as closely related with the state obligation to play an active role and guarantee to the citizens the adequate means for their basic needs in cases of disasters, diseases, disability, old age and unemployment (decision no.33, dated 24.06.2010 of CC). The fulfillment of

social objective that the state aims to achieve should be done within the constitutional competences and means available to the state.

In its jurisprudence, CC has considered that the social and economic rights are different from social objectives, since the latter are an expression of the state goals and principles in order to make social politics. Social objectives reflect the positive activity of the state in the social framework and the realization of these objectives is closely related with the conditions, means and available budgetary possibilities of the state.

In this context, CC has considered that the fulfillment of social objectives is not included in the range of issues falling under the constitutional jurisdiction (decisions no.34, dated 28.05.2012 and no. 37, dated 13.06.2012 of the CC).

4.2. Does your Court de facto act as 'social mediator', or/and has such a role been attributed to it?

No

4.3. Have there been cases, when social actors, political parties could not find any agreement, they would 'send' the issue to your Court which had to find a 'legal' solution, which normally should have been found in the political arena?

Cases aforementioned in point 1.2

Please provide a few typical examples (if possible by reference to cases in the CODICES database).