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Women's rights in Albania according to national and international legislation

Oljana HOXHAI*, Belinda HALILAJ and Stela MECAL
*Lecturer, Department of Justice, Ismail Qemali Vlora University**

Abstract

In this paper, I am focused on some main issues that have a direct impact on the exercise of women's rights in Albania and in their level of representation in decision-making. I have treated the processes through which their rights have managed to consolidate as a result of the evolution of legislation that protects and guarantees these rights. Albanian women have been forced for a long time to fight for the recognition, acceptance and consolidation of their position in society and for the recognition and enforcement of their fundamental rights, a struggle that is not yet completed. Although their situation has been improved in many areas, the mentality, cultural traditions, social structures and prejudices, which are factors that still, hinder the full and immediate implementation of political and social rights of women in Albania. Of special interest is the treatment of the role that play the national and international institutions and mechanisms they apply that our legislation to be improved and ensure to women the exercise of the rights in different spheres. The foremost is the creation of all legal opportunities that every woman to express its will freely, without being influenced by other people or factors that constrain or abuse with her rights. In the context of women's rights, the article 18 of our Constitution occupies a special place, also known as anti-discrimination article. There are already a number of legal documents with international, regional and national character that determine these rights, also specifying the legal obligations of member states to respect with them in their societies.

Keywords: Women, legislation, right, constitution, international law

1. Introduction

Albanian women generally haven't been recognized more rights, including economic and particularly political rights. They had the opportunity to vote for the first time after World War II, because in that time all Albanian constitutional laws had only known general principle male voting. In studying historical evolution, universal voting has recognized fundamental limitations. From the time that was sanctioned in the Constitution it is presented in two types: male universal suffrage and universal real suffrage which includes women.

It is important to treat women's political rights in relation to principle of equality, which often has a deprivation of rights gender discrimination as the main reason. Equality between men and women is a complex issue. Often it is evident that equality between them requires equal treatment. Therefore men and women equally qualified should enjoy equal treatment in employment. In some cases, the equality between them may require different treatment, because the differences between the two genders may justify or require different treatment.

2. Women's political rights in Albania referring to the constitutional system

The Constitution of the Republic of Albania has sanctioned the principle of equality and gender equality as the constitutional principles, which are closely linked with all other rights principles enshrined in the Constitution, including political rights. Notwithstanding this provision, in Albania, there is still space for discussion, as it has real difficulties in the practical embodiment of the political equality of rights between men and women. If we analyze the issue in context of women's political rights, the legislator has been very careful with the terminology used, leaving no opportunity for discriminatory interpretations.

In any case pronoun is used "all", "none" without presuming gender of rights bearers. "All are equal referring the law. No one should be discriminated against on grounds of gender. " Efficient implementation of this principle, remains an essential condition for the functioning of all the activities of state authorities, but also for the recognition, and ensuring implementation of women's political rights.

Referring to the highest law of our state it is enshrined that: "Every citizen who is eighteen, even on election day, has the right to elect and be elected" It often happens that women's political rights enshrined "de jure" generally turns out to be discriminated "de facto" because of the different positions and roles that men and women have in society. This situation has forced activists to promote women's rights distinction between formal and substantive equality and expand the sphere of activity promotion and political rights of women.

2.1 Real and declarative guaranties in constitutional context

It is necessary to explore the constitutional political rights plan and extension of political women rights in particular. It is with interest to society to objectively assess intellectual potential of Albanian women, to take into consideration their contribution in political life, in which the highest level of representation realizes being active in the highest state instances. The end of the twentieth century was characterized by continuous efforts of women being active and participating in public life and decision-making.

Recently the participation of women in politic is very important, because women can improve their problems if they have the opportunity and access as much as men. Article 45 of the Albanian Constitution affirms the right of vote as a fundamental right and freedom of political character, turning it into a constitutional high interest . Our Constitution does not condition the exercise of political rights by gender of the bearer of these rights. Holders of electoral law are all adult citizens. In studying historical evolution, universal voting had known fundamental deprivations.

From the time that the Constitution sanctioned, real universal suffrage, which included women can assume significant progress on their rights. This can be considered as a great achievement

and arguably the biggest victory in the whole democratic world after World War II, crowned by a series of feminist movements and implemented by all the assistance they provided during this war.

2.2 Implementation of the electoral law

A person must fulfill some conditions which are defined in the Constitution to be the holder of the right to vote. Age requirement, coincides with the sanction of age in our Civil Code. Another condition is related to the ability of being a voter, which is treated in two forms: electoral incapacity due to mental disability and partial disability election, because of suffering a criminal punishment. Another condition relates to the ability of being a voter, which is treated in two forms: electoral incapacity due to mental disability and partial disability election, because of suffering of criminal punishment, involving deprivation of liberty. In both cases, it is common that can only be decided by the court with a final verdict. Citizens may be excluded from the right to vote, only when they are declared mentally incompetent by a court with a final decision.

Prisoners who are serving a sentence involving deprivation of liberty, the Constitution guarantees the right of partial election, so was therefore recognized the right to vote and are excluded from the right to be chosen. Albanian electoral system is characterized by facultative vote. Albanian voter has no legal obligation to go voting and there is no sanction if he abstains. Theories as juspublicistika and dualistic theories, political right to vote epitomized not only as a subjective right of the citizen to the state, but as a reflection of the objective order of public law. Therefore, voters are entitled election not only as a subjective individual right, but as a functional right to exercise a public function as an electoral power. Another condition that must be fulfilled to be eligible for elections is the citizenship.

2.3 The rights sanctioned in the Albanian Electoral Code

Of special interest is the treatment of role played by national and international institutions and mechanisms which they apply to our legislation to improve and to ensure women's exercise of their political rights. The foremost is the creation of all legal opportunities to every woman to express her will freely, without being influenced by other people or factors that constrain or abuse with her rights. Our Constitution is an important guarantee in this regard. It establishes the principles of the Albanian electoral system, in which government is based: in a system of free elections, equal, general and periodic.

Albanian electoral code provides that every citizen, regardless of race, ethnicity, gender, language, political opinion, religion or economic status, has the right to elect and be elected in accordance with the rules provided in this Code. The Electoral Code clearly defines that the voters have an equal opportunity to exercise political rights. The right to choose is regulated equally to all, both women and men. However this is not enough to eliminate barriers created by society and Albanian political class for women's participation in governance. It is necessary to adopt some specific steps, not only in the policies pursued by the state, but also in legislation. One of these action is the gender quotas.

Voters are equal in realizing the right of voting and the right of being elected. Our country has ratified a number of instruments that guarantee women's political rights, as Protocol 1 of the European Convention on Human Rights. Despite the fact that Albanian legislation has a strong treatment of anti-discriminatory and has implemented many international instruments, it is easily

ascertained that the participation of women in public life is very limited. The institution of Ombudsman in his performance has had an active role for understanding and guaranteeing the right of voting, as a basic human right.

Necessity of improvement in the Electoral Code is an application which has found support not only internal factors in the country, but also in the recommendations submitted by the OSCE / ODIHR, or by the Venice Commission of the Europe Council. Government should take immediate steps to change public behavior towards women's participation in the public issues, and taking in consideration adopting a policy of positive action in this regard. Albanian Parliament in 1994 ratified a convention in which stipulates that: "Signatory States undertake all necessary measures to eliminate discrimination against women in political and public life of the country. In particular ensures on equal terms with men, the right:

- a. to vote in all electoral processes and in all public referenda and to be elected to all publicly elected positions ... "*

Participation of women in political and public life in Albania and in the decision making process remains limited. Albania showed the lowest standard of women's representation in parliament after the parliamentary elections of 2005, compared with European countries. To improve this situation, the Ombudsman Institution presented several recommendations for changes to the Electoral Code, setting the quota system and the "defined countries" in parliament and councils of the municipalities with sanctions for their failure to implement.

2.4 The efficiency of gender quota in the Albanian legislation

Electoral Code states that: "... for every constituency, at least thirty percent of multi-name list and / or a name in the first three names must belong to multi-name list to each gender". This means that in the entire list must be at least thirty percent of candidates of each gender, distributed without a certain rule, and / or at least one candidate of each gender in the first three names to each list, for each electoral zone. The problem that arises in this case is that each of the parties or coalition of parties is / free only fulfill one of the obligations.

So either drafting a list of less than thirty percent of each gender, or drafting a list in which the first among three candidates of the list, one of them to be from each gender. If political parties do not fulfill the above rule, the Electoral Code provides a penalty with a value of 30 000 lek for each electoral zone. This applies to large parties also small ones. It is worth to accomplished an objective analysis of the impact that not only brings in processes decision, but above all the impact it brings to our society involvement and representation of certain groups of women parliamentarians, mayors of municipalities women municipal councilors and municipal women.

If we observe the participation of women in the elected organs, central and local elected organs, after recommendations by the national and international we can achieve the conclusion that significantly has been improved the level of representation of Albanian women in Parliament. This achievement came as a result of improving the electoral law. Electoral Code in accordance with the law "On gender equality in society", has determined the quota for candidacy in elected central and local government seeking an involvement of over thirty per cent of each gender on the lists of candidates for local authorities and not less than thirty percent of the lists of candidates for deputies.

For each electoral zone, at least thirty percent of multi-name list and / or the names of the first three multi-name list must belong to each gender. When termed "sexes" necessarily refers to women as this important change in election practice constitutes an important step towards the consolidation of the political rights of women. These rights are already known not only "de jure", because the failure of any of the conditions stipulated in the composition of the multi-name list for this election brings as a result rejection of the list by the Central Election Commission.

Even in local government is enshrined this right. This is achieved through inclusion in the candidate list of over thirty percent of each gender. Gender quotas prescribed in the Albanian legislation and implemented to date in the 2009 parliamentary elections, improved representation of women in Parliament, but could not get the goal that the law "On gender equality in society" intended.

2.5 Practical Problems

The recognition, identification and study of entire problems that have emerged during the election process have had any specific importance. An issue that had continually accompanied the electoral process in our country is family voting. Family voting, constitutes in a direct violation of the secrecy of the vote feature and to the personality of vote principle. It also constitutes a serious violation of the law.

The Constitution establishes the principle, the vote is personal. This dictates the necessity of determining all the rules and procedures that ensure the personal character of the vote, which are determined by the Electoral Code. Albanian electoral code obligates the competent authorities to make correctly voter registration lists, they will give every voter ballots identified by the Voting Center, provide the voting booth, and force each voter to come into this room determined for his vote.

Although these rules are clearly stipulated by the electoral legislation, it is very important because they should be known and respected. In practice, cases were identified showing that these rules are ignored or violated by persons that should respect and guarantee them, paving the way for family voting, which in many cases had resulted in the imposition of the will of the the household head, without taking into consideration the will of his wife or daughter's will.

This phenomenon is still a worrying factor for electoral processes, especially in rural areas and thus need a concrete action, which consists in the application of penalties for those who apply and also for responsible authorities which have the obligation to guarantee the free expression of the will to each person, regardless to gender.

3. The right of legitimate work and gender equality in employment and education

The Constitution proclaims the right of employment and freedom to choose the profession. Constitution recognizes to all citizens, the right to acquire livelihoods through lawful work, which each person chooses and accepts himself. This means that no one shall be subjected to the forced labor. Albanian Labour Code is the most important law regulating labor relations. The principle of equality and the prohibition of discrimination is one of the fundamental constitutional principles that pervades it.

He aimed at preventing any discrimination in the process of employment. Another possibility, the law offered "protection against discrimination", which has provided details prohibition of discrimination in employment, as well as the obligations of employers to implement this principle. Law "Gender equality in society" is a special law that requires employers to take measures to provide non-discrimination and equal employment opportunities for women and men, in every sector and in every working position.

This law explicitly proclaims the right to free choice of profession and employment, the system of professional development training and the constant training and learning system crafts. It has affirmed the right to make a career in work and to promote on the basis of the same standards for both genders, the right to a stable job, same employment opportunities, including the application of the same criteria of selection to work, the right to be informed equally by the employer for work vacancies, the right not to be discriminated or laid off because of marriage, and women in particular, can not be discriminated against or dismissed because of pregnancy or maternity.

The employer must provide equal opportunities for women and men to apply for job vacancies and may not include elements of discrimination based on gender, when he announces a vacancy. He must employ no gender differences in any position or vacancy, at all levels of the professional hierarchy. Also, should create equal working conditions and adequate, and equitable treatment of employees during working relationship.

3.1 The right of being organized collectively

The right to organize collectively, as a part of closely related to women's political rights is a right that significantly reflects the degree of consolidation of democracy in a country. This right is also a constitutional right which is regulated by legislation. Women have played an active role in this regard by creating a series of NGO, which at the most of them provide services to the most vulnerable categories in society. Their initiative is to raise the level of treatment of sharpest social problems, including rape, gender inequality, protection of the children rights etc.

4. Interaction between the Albanian Constitution and international standards for the protection of the women rights

Republic of Albania applies international law binding on. Albania has ratified a substantial part of international instruments relating to the protection of women's rights and human rights in general. The Constitution has defined the place that had international instruments at the interior system as well as the manner of their implementation. An international agreement ratified by law has supremacy over national laws that do not agree with. The norms issued by an international organization have superiority in case of conflict, the law of the country when the agreement ratified by the Republic of Albania on participation in the organization expressly provided direct application of norms derived from it. Because of these characteristics, judges and other stakeholders of the justice system should implement these rates regardless of whether they are "copied" or not domestic provisions.

No doubt that the ratification of the European Convention on Human Rights and likened reformed the entire Albanian legislation and legal practice standards of the member states of the Council of Europe. International Covenant on Civil and Political Rights, is ratified by Albania in 1991 and includes: the right of self-determination: the people should decide on their political status, the right to live, the right of the failure to submit to torture and other inhumane, the right

of incontinence in slavery and any other form of subjugation, the right of liberty and the right of the security of person, the right to humane treatment and dignity in the event of conviction, the right not to imprisonment in case of failure of settlement of a contractual obligation and the right of free movement and choice of residence freely.

4.1 *International Covenant on Economic, Social and Cultural Rights (1966)*

International Covenant on Economic, Social and Cultural Rights has been ratified by Albania in 1991 and includes: the right to work, the right to fair working conditions and favorable, the right of association, the right to social security, rights in connection with family, including the mother's right to work and children's right of special protection, the right of an adequate standard of living, the right of a better physical condition and mental condition that state is able to guarantee, the right of education, the right of participating in cultural life and the right to benefit from scientific progress.

4.2 *The Convention on the Elimination of All Forms of Discrimination against Women - (CEDAW)*

International Convention on Economic, Social and Cultural Rights which was ratified by Albania in 1994, different from other international conventions succeeds in bring about the center of humanitarian law concerns precisely women, those who constitute half of humanity. This was the major reason who brought the drafting of a document or additional instrument only for women, a tool that will underpin the implementation of these conventions and of course what is most important to deal more closely with the de facto situation of women around the world.

Discrimination against women occurs in every society, including those most emancipated. CEDAW was designed to end discrimination against women, especially in key areas such as political, family, in terms of employment, the social insurance and health care. In order to combat the gender-based discrimination, CEDAW requires States Parties to recognize the important contribution of women in economic and social development, in the family and society which they belong. Different from the international instruments mentioned above, which refer to the discrimination simply as a "distinction" based on sex, CEDAW provides a detailed explanation of the meaning of discrimination, in particular against women. Indeed in 1992, CEDAW expanded definition on discrimination against women by making part of this determination and gender-based violence against women.

The Convention on the Elimination of All Forms of Discrimination against Women requires states parties to take corrective action at two levels in order to provide the necessary equality to women in political and public life: First, States parties shall providing women the right of voting in all kinds of elections and public referenda to anonymously, so no more confidence vote and opinion according to husband or father.

Secondly, CEDAW actually considers as fundamental the right of voting to women, but at the same time confirms that only the vote is not enough for a true and real participation of women in the political processes of the country. States should provide women the right to be elected to public office and to keep the leadership positions in the public and non-public. These rights can be achieved by including the women on candidate lists for the government, through the quota system, through the elimination of gender restrictions for certain government positions,

increasing the number of women in government developing programs and through programs encreasing the development of leadership role.

5. The regional systems of protection and promotion of human rights

Just as universal instruments in protection of human rights, were built several regional systems, which usually provide a higher standard of rights and the application of them. Supremacy of regional systems is their capacity to address the complaints more efficiently. In the case of the courts, can be provided with compensation decisions binding. Furthermore, the recommendations of the Commission of Human Rights are generally taken more seriously by the respective states.

Recommendations may result not only in cases-examples in interpreting and clarifying measures and instruments of human rights, but also to changes in national law in order to approximate it with the international obligations of human rights. Also, regional systems tended to be more sensitive to cultural and religious issues when there are valid reasons for them. It is indispensable a comparative overview between our legislation and other legislation, primarily to western states, to understand how our state protects and guarantees political rights of women.

It is also worth comparing the level of women representation in the region of highest decision-making bodies in relation to the representation of Albanian women. Our country is taking concrete measures to harmonize the national legislation with the European one to guarantee maximum rights and equal opportunities to women.

6. Conclusions

Women's rights in Albania must first apply at the national level. However difficulties may be encountered such as gaps in good governance, such as the judiciary or the dministration which is often corrupt and inefficient. The main objective of Albanian state to achieve gender equality is the progressive harmonization of legislation with the European Community in terms of working conditions, especially health and safety at work, of equal opportunities and facilitating cooperation Albanian employment policy .

In the context of strengthening to numerous economic reforms and integration process, is always aiming to support the appropriateness of Albanian social security system with the new economic and social system. It is essential the inclusion of the adjustment in Albanian legislation regarding to working conditions and to equal opportunities for women. It should be noted that in Albania, transition period has influenced negatively on the integration of women into the labor market, causing significantly decrease of participation of women in decision-making. This has influenced the participation of women remains low in comparison with other countries of Central and Eastern Europe.

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