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**Women's Rights as Part of the
Individual and Fundamental Rights and Freedom**

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Abstract: Albania has undertaken important national and international legal commitments to combat discrimination and to promote and make gender equality a reality. In this context, governmental structures, in cooperation with civil society and international organizations, have particularly worked towards improving gender sensitive legislation and policies, building and strengthening structures in support of gender equality and preventing and fighting violence against women and domestic violence. Albanian governments through years have drafted several strategies that sustain and protect women's rights, with the support of several international organizations and various NGOs. Personal rights and freedoms recognized in the context of human rights include a wide range of rights. Analyzing such rights in general terms is a broad-spectrum issue, so in this paper we will only deal with some of them.

Keywords: combat discrimination; civil society; gender sensitive legislation and policies

1. Introduction

The principle of non-discrimination and equality between men and women, being particularly importance in the implementation of law, in addition to legislative and law enforcement institutions, there are other institutional mechanisms that ensure the enjoyment of women's human rights and above all that promote gender equality. (Gruda, 2008, p. 55). The State Gender Equality Mechanism, which consists of a set of state structures, has been set up to promote gender equality progress and ensure the enjoyment of women's rights (Picari, 2008, p. 38). In this analysis, we think that although legal projections and institutions are up and running, much remains to be done to create the right environment for the effective functioning of the institutional mechanism.

2. The Right to Private Property

Property right is a fundamental and very important one in a democratic state. The property right is explicitly provided for in some legal instruments of international and regional character. As far as this is concerned, the applicable legal provisions do not treat property differently. Property right, as one of the fundamental rights, is at any moment a worthy discussion and unrelated to the other rights of each individual and society both for men and women. The Civil Code of the Republic of Albania, Law No. 9235 of 29 July 2004 "On the Restitution and Compensation of Property" and the Last Approved Law no. 133/2015 "On the Treatment of Property and the Completion of the Property Compensation Process"

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treat equally all the entities of the law. The right to private property is guaranteed by Article 41 of the Constitution, also defining ways of gaining property (gifts, inheritance, purchase of property and others as provided for in the Civil Code). This principle is also dealt with in Article 153 of the Civil Code, which prevents the full or partial loss of legally acquired property (except for public needs, expropriations). Civil Code provides for the loss of ownership (Article 191) when it is acquired by another person or when it is abandoned (in this case a notarial act is required). Furthermore, immovable property must be registered in accordance with Article 192 Civil Code. Each co-owner has rights and obligations regarding the property, but they cannot sell their part without first giving the other owners the option to buy it.

3. Protection of Personal Data as a Right Recognized by the Constitution

The protection of personal data is subject to a special law. "Personal Data" means any data for an individual identified or identifiable by this data in a direct or indirect manner. The law also refers to "sensitive" personal data, such as race and ethnic origin, beliefs and political affiliations, religious and other beliefs, health status, sexual life and the criminal state. Treatment of data in the medical field is one of the most delicate moments and where the risk of the fundamental rights and fundamental freedoms of the data subject is greater, since the object of treatment is information related to the intimate sphere of a person, such as data on health status and sexual behavior. What connects the patient with the doctor is the fact that the physician, due to the exercise of his duties, becomes aware of the data related to the health condition of the patient. To correct this moment, the "Code of Ethics and Medical Deontology" was approved according to Law no. 8615, dated 1.6.2000 "On the Order of Physicians in the Republic of Albania". "Code of Ethics and Medical Deontology", in Chapter 2, entitled "Doctor's Tasks to the Sick", Article 21 defines the doctor's obligation to disseminate information related to the health of the patient. Protection of confidentiality. The information that a physician learns in the course of his duty is considered as medical secret. At the wish of the patient the physician is obliged to keep the secrecy even to the family members and other persons, even after the death of the patient, except in cases when it poses a risk to the health and life of others.

Given the strictly personal character of these data, their discovery also exempts close family members. There is only one exception to this obligation and it relates to a general interest, such as endangering other people's lives. Going beyond a personal interest when this can affect the general interest does not constitute a violation of private life.

Secret Disclosure. The doctor has the right to disclose the medical secrets of the patient in cases where their concealment risks the life of the patient or when required by a legally recognized body. When the doctor uses the medical records of a patient to publish them he is obliged not to reveal the identity of the patient.

4. The Right to Information

Listed under the constitutional rights, the right to information is regulated in a number of laws. The most important laws regarding this right are such as No. 119/2014 On the right to information. This law regulates the right of access to information produced or maintained by public authorities. Everyone has the right to know the public information without being obliged to explain the motives (Article 3). Everyone has the right to be familiar with public information, through the original document or by obtaining a copy of it in the form or format that enables access in full compliance with the content of

the document (Article 4). In accordance with Article 7 of the Law no. 119/2014 “On the Right to Information”¹, the Transparency Program for the Commissioner for the Right to Information and Protection of Personal Data was prepared. This program defines the legal framework of the activity of the authority within the law no.119/2014 “On the Right to Information”¹. The principle of equality regarding the right to information is fully reflected even in this law. While the Commissioner for the Right to Information and Protection of Personal Data monitors the implementation of the law on the right of information, promoting the principle of transparency in the work of public authorities, in particular by raising awareness and information on issues of the right of information, he makes recommendations for public authorities, regarding the conception and implementation of institutional transparency programs.²

5. Analysis of Political Rights and Freedoms. Active and Passive Voting Rights and the Right to Organize and Collectively Bargain Conclusions and Recommendations

The active and passive voting rights (the right to elect and be elected). These are guaranteed rights by the Constitution and the Electoral Code for all Albanian citizens without gender differences. The Albanian electoral code guarantees that every Albanian citizen, regardless of the race, ethnicity, race, gender, language, political belief, or economic status has the right to elect and be elected in accordance with the rules provided for in this Code. Article 3\2 of the Electoral Code clearly stipulates that voters are equal in exercising the right to elect and to be elected. Our country has ratified a number of instruments that guarantee women’s political rights. But despite this legislation with strong anti-discrimination and international instruments, it is easy to find out that women’s participation in public life is very limited (Representation and Quality of Democracy in Albania, a Gender Perspective, 2006, p. 14).

The right to collective bargaining. This right is also a constitutional right, which is regulated by the legislation in force. Women have played an active role in this regard through the creation of a range of NGOs, which in most of them provide services to the most vulnerable categories in society.

6. Economic, Social and Cultural Freedoms and Rights

In the framework of the group for economic, social and cultural rights is included the right to social security, the right to work, protection against unemployment and the right to equal pay for the same work, the right to a standard of living provides the health and well-being of everyone and the family and the right to insurance in the event of unemployment, illness, disability, old age, the right to education and the right to participate in the cultural life of the community.

7. The Right to Work and Employment

As noted above, the ban of discrimination stands as a fundamental right in both employment and employment relationships. The Labor Code prohibits any kind of discrimination in the field of hiring and occupation and clearly states the meaning of discrimination by, inter alia, classifying as distinction, exclusion or preference as a result of sex that infringes on the individual’s right to be equal in

¹ <http://www.idp.al/index.php/s>.

² <http://www.idp.al/index.php/sq/programi-i-transparences/programi-i-transparences-kdimdp>.

employment and treatment, where such differences, exclusions or preferences should not be considered as discrimination. The Labor Code finds important principles of equality in employment and employment relations. As such we mention: equality in reward (Article 115 provides for the same pay as for women and for men who perform work of equal value), which makes our legislation in line with international standards and ILO Conventions in this field; prohibiting forced labor for everyone without exception; protection and prevention of personality violation and employee dignity as an obligation of the employer, including sexual intercourse; non-collection of information (Article 33) by the employer regarding the employee during the employment relationship (unless these information relate to the professional skills of employees or are necessary for the performance of the contract).

This means not receiving such information as to sexual orientation, marital and family status, and so on union freedom; registration of the employee in social security; the right to training and qualification.¹

Law no. 152, dated 30.5.2013 For Civil Servants - amended by law no. 178/2014, dated 18.12.2014, also stipulates in Article 5, but also in other articles the principle of equality. According to this principle, civil service Administration is governed by the law and is based on the principle of equal opportunities, non-discrimination, merit, transparency, professionalism and political impartiality, as well as ensuring the sustainability of the civil servant and the continuity of the civil service. This law defines the same rules on the conditions and procedures of admission to the civil service, the way of starting and ending work relations, career development, guaranteeing the rights and duties of civil servants, with a view to establishing a civil service sustainable, professional and efficient.

Civil Servants are all employees of central or local public administration institutions, who exercise public authority in managerial, organizational, supervisory or executive functions. The civil service is built and operates on the basis of principles of professionalism, independence and integrity, political impartiality, transparency, service to the public, career continuity, accountability and correctness in the implementation of the legislation in force. The law does not contain discriminatory provisions regarding the requirements for admission to the civil service and the manner of admission to it through open competition based on merit.

Some of the civil servant's rights are: Guaranteed work in the civil service, in compliance with legal provisions, promotion and parallel movement, in accordance with the law, state protection, the right to work outside office and working time, if such a thing does not represent a conflict of interest with their official duty and does not prevent them from exercising it, union freedom regulated by a special law (Gerxhi, 2009, pp. 27-38).

¹ The Labor Code includes in its content an important chapter (10 / B) titled "Special Protection for Women", which contains legal arrangements that consider the special role of woman-mother in society. It is worth noting: the prohibition of work for pregnant women and new mothers (Article 104), maternity leave (Article 105 of the Labor Code and law no.7703, dated 11.05.1993 "On Social Insurance"), Article 106 of the Labor Code, see Law no. 7703, dated 11.05.1993 "On Social Insurance", amended), the invalidity of the termination of the employment contract by the employer during the period of maternity leave or the adoption leave (article 107), prohibition of night work for pregnant women (Article 108). So, in terms of work includes: the right to paid leave of 20 minutes every 3 hours for rest, the ban on holding weights above 20 kg for women. Regarding the difficult jobs, the Council of Ministers sets special rules for the duration and conditions of performing difficult or dangerous jobs for the elderly over the age of 16 and for pregnant women. Night work for pregnant women is prohibited but in other cases the Council of Ministers sets special rules for cases when women's night work is allowed. The right to pay wages (12 to 15 days a year) in the case of indispensable care for children as a right of non-discrimination of the mother and child of the child (Article 132).

8. The Right to Health Care and the Protection of Women's Health

In this context, a large number of laws are in place which aim at respecting and protecting the social rights and the health of women. As such we mention Law no. 8876 dated 4.04. 2002 “On Reproductive Health”, Law no. 8045, dated 7.12.1995 “On Termination of Pregnancy”, Law no. 7870, dated 13.10.1994 “On health insurance in R. Sh”, Law no. 7703, dated 11.05.1993 “On Social Insurance”, Law no. 8045, dated 7.12.1995 “On Termination of Pregnancy”. These laws guarantee the respect of every human being at the very beginning of life, the right to information and counseling of women before termination of pregnancy, rules and procedures on termination of pregnancy and provision of health care services for termination of pregnancy and treatment of possible complications after the termination of pregnancy. Termination of pregnancy is permitted only when unwanted circumstances are determined in this law and in any case with the consent of the woman. The law gives the right only to the woman as the sole and sole subject in giving consent for termination of pregnancy.

While Law no. 8876, dated 04.04.2002 “On Reproductive Health”, protects the reproductive rights of each individual and couple and ensures that each person's reproductive rights are protected in accordance with national laws and policies and international standards. The law often addresses women in a special way to a particular subject in this context. Thus, every woman, free and excluded from any form of discrimination, compulsion and violence, has the right to be controlled and to decide freely on all matters relating to her sexuality and sexual and reproductive health. The law underlines the principle of equality between men and women. It emphasizes the mutual respect of equal relationships between women and men during sexual intercourse and reproduction. This implies the respect, no impact of integrity of each, the guarantee of every individual in decision-making for the exercise of reproductive rights according to their will and interest free of discrimination, compulsion and violence. Men and women have the right to preserve sexual cells. The law shows special care in the protection of safe motherhood and deals with assisted medical reproduction techniques.

No woman should be forced to be pregnant. The woman is entitled to a safe motherhood and for the avoidance of unwanted pregnancy, which may threaten her life. Women's life should not be exposed to the risk associated with pregnancy, birth, and other barriers to gender inequality. Every woman has the right to health care during pregnancy, for maternity assistance and to benefit from the application of methods and practices that minimize the risk to her health or the health of the fetus, the newborn and the child. Motherhood and the child have the right to health care and special support. Pregnant women receive free medical coverage of pregnancy, maternity and postnatal pregnancies, particularly prenatal and postnatal examinations. Pregnant women have the right to perform compulsory examinations free of charge from the doctor and receive free personal pregnancy attendance.

9. The Right to Marriage and Family

Marriage, as the institute of law, relies on the moral and legal equality of spouses in a sense of love, mutual respect and understanding as the basis of unity in the family. Sound family and marital relationships are a contribution to the elimination of gender stereotypes. Everything begins in the family and is transmitted to society. For this reason, rightly, if we want to know how to respect the principles of non-discrimination and gender equality in a society, it is very effective to carry out this analysis for the family as well. Both the marriage and the family as very important institutions enjoy the special protection of the state. The general principles outlined by these institutions are: i) the principle of reciprocity of rights and obligations ii) the principle of equality of rights and obligations iii) placement on all the interests of: children, marriage, family iv) reciprocity: in faithfulness, for moral help, for

material help, for cooperation in the interest of the family and coexistence. The family code is divided into three parts. The first part deals with general principles, the second part is dedicated to spouses and the third part is dedicated to children. This Code regulates the marriage relationship by providing the same conditions and prohibitions as for the woman and husband, the invalidity, the termination of marriage and the consequences of its settlement, the rights and obligations arising from the marriage, the personal and property relations of the spouses, maternity issues and paternity, adoption, guardianship etc. The Family Code throughout its dimension is depicted by principles such as reciprocity in rights and obligations, equality of spouses in relation to one another, children, marriage and family, non-discrimination due to being a man or a woman.

Equality between spouses has been recognized as a social concept and as a principle of family law only as a result of great efforts for progress and development. Previously, this equality not only did not find legal sanction, but, on the contrary, both social morality and the legal provisions themselves justify the inequality and discrimination of women.

The rights and obligations between spouses do not violate and affect the essence of their human rights. Marital rights and obligations are of special importance also for guaranteeing the rights enjoyed by children born of this marriage.

Article 50 of the Family Code expressly states that “By marriage, both husband and wife shall enjoy the same rights and undertake the same obligations.” In all legal provisions of this Code that deal with marital rights and obligations, we observe that they are treated as rights and obligations for each spouse, without distinguishing between husband and wife. Each of them has the right and the obligation to express free and full will in relation to the main issues of marital life, including issues related to children born of marriage, to provide assistance for the realization of coexistence and the family but even undertake legal initiatives to reverse the actions of another spouse that hinder his/her exercise of marital rights and obligations. For some rights and obligations spouses preserve some kind of autonomy, while others leave no such possibility. Given the importance of having a spouse’s right or obligation, depends as well the spouses’ autonomy. Marriage as a relationship makes married spouses of a status stemming from their being man and woman. This marital status gives them certain rights and certain specific obligations of a personal/non-pecuniary nature, such as: the obligation and right to loyalty, the obligation and the right to moral assistance, spouse’s surname, child’s name, obligation and the right to a common life, citizenship, representation as rights-obligations of a material nature/material we mention: Obligations for material assistance, spouse's contribution to the obligations arising from marriage - Their measure may be determined by the contract if there is one, or - their extent depends on the spouse’s conditions and abilities. The family code is presented under a contemporary dimension in terms of equality, reciprocity and non-discrimination in order to protect marriage and family as well as the rights and obligations of all its members. Note Articles 52 and 54 of the Family Code: When spouses do not agree on the child’s surname, then Article 52 of the Family Code orders that the child will receive the father’s surname. According to Article 54 of the Family Code, spouses “... will contribute to the needs of the family in accordance with their conditions and capabilities”. This means that if they do not have equal conditions and abilities, so will their contribution be. The mother of the child born out of wedlock has the right to ask for the recognition of the paternity of the child even when she has not reached the age of majority. It should be emphasized that these restrictions do not violate the essence of the right to equality between spouses because children and family are paramount.

Likewise, the Family Code has provided for the intervention of a public authority (court) (Articles 58-64) when one spouse does not wish to fulfill his obligations voluntarily. The court is put into motion at the request of another spouse. Such cases are: authorization by a spouse’s court to carry out legal actions

in the interests of the family, in cases when the other spouse opposes or is unable to do so (Article 58); representation of a spouse in cases where he is unable to express his will by another spouse (Article 59), supplementing one's spouse with the urgent needs of the family, such as family retention, child-raising, family interests and the resolution of other urgent situations (Article 60), cases where one spouse does not meet the obligations of and endangers the interests of the family.

10. Protecting Women against Domestic Violence

Domestic violence is defined by Albanian law as “any act or omission of a person against another person resulting in the violation of the physical, moral, psychological, sexual, social and economic integrity exercised between persons who are or have been in a relationship family”. In most cases, violence is directed at: women within the couple, children from parents, children, parents, parents to the elderly, people with disabilities.

For the first time, provisions on domestic violence are found in the Family Code. Indeed, the Code protects spouses from spousal violence, thus making a limited treatment of the protection of other family members. Article 62: The spouse against whom violence is exercised has the right to appeal to the court upon request for urgent removal of the spouse who exerts violence against the spouse. The importance of this provision of the Family Code lies in the fact that through it a standard was introduced which was followed by a thorough elaboration in a separate law, Law no. 9669\18.12.2006 “On Measures against Violence in Family Relations”. The purpose of the law is to prevent and reduce domestic violence in all its forms, by appropriate legal measures, and to guarantee the protection of legal measures of family members who are victims of domestic violence by paying particular attention to children, the elderly and people with disabilities.

Violence is not just a symptom of a marriage or coexistence in a crisis, but generally an unacceptable behavior that a law has to deal with. Institutional responses to the situation of domestic violence against children have radically changed mainly due to the impact that derives from the concrete implementation of Law no. 9669 “On Measures against Violence in Family Relations”.

Women are predominantly affected by domestic violence. Therefore, domestic violence is often seen as one of the forms of gender-based violence, as it is exercised against women precisely because it is a woman. Law no. 9669, dated 18.12.2006 “On Measures against Violence in Family Relations” is a law of an administrative, non-criminal nature. It functions as a tool more than the Criminal Code. There are two main authorities against domestic violence: “Administrative Authorities and Judicial Authorities”.

The law provides for a full framework of protection measures against victims of domestic violence. In this way, this law goes beyond the measures provided for in the Family Code, providing high security and protection for the child and his/her relatives on the one hand and rehabilitation of the perpetrator on the other. The measures are of protection character, victim rehabilitation, and economic character. The courts shall issue, as the case may be, a protection order or an emergency protection order.

11. Conclusions

To implement a gender-responsive policy, a conscious institutional environment is required. Gender issues have already been put in a new institutional and legal perspective. States and key institutional actors have the potential to contribute to greater gender equality. Today, the dimensions of freedom have expanded, society is more aware of women's rights and the role they have in society. In the Albanian

society with a masculine orientation, with strong doses of the traditional mentality that legitimizes the power of men continues to survive and produce gender stereotypes, violence, discrimination and inequalities in the opposite sex. The still strong presence of gender stereotypes and domestic violence is the clearest evidence that the gender inequality problem is present, structural and complex. One of the causes of the slow movement on the path of social emancipation is the fact that many activities are perceived as an exclusive issue of women. Promoting women's rights and initiatives to improve their statute in society is often done from a feminist point of view. The fact that women's rights are legalized as an integral part of human rights is a progressive step in the path of democratic development of the country. But the pathetic rhetoric for the respect of women's rights cannot hide the gray reality, disadvantages, barriers and social problems faced by women in their efforts to participate and equal status in society. The transition process from a centralized economy to the economy of the market is accompanied by two trends that go against the analogous trends in developed industrial countries.

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