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Invalidity of Employee Resignation in Albanian and European Employment Law: A Comparative Analysis of Legal Frameworks and Judicial Interpretations

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Abstract: *This research article comprehensively analyses the concept of "constructive dismissal" within the framework of European and Albanian employment laws, alongside pertinent case law. The findings, which shed light on this complex legal concept, will provide a deeper understanding and enlightenment to legal scholars, practitioners, and students interested in employment law.*

Constructive dismissal, where an employee resigns due to the employer's conduct rendering continued employment untenable, presents complex legal interpretation and application challenges and poses significant implications for employee rights and employer responsibilities. This study critically examines the statutory provisions and case law governing these aspects of employment law in Albania. Through a doctrinal and case law analysis, the paper identifies the conditions under which resignations may be classified as constructive dismissals, exploring the threshold of intolerable conduct required to substantiate such claims. The research highlights the influence that the European Union directives and comparative legal principles should have on the development of Albanian employment law. By providing a detailed examination of the legal landscape surrounding employee resignation, this study contributes to the broader understanding of employment protections and the need for legal reforms to enhance labour rights.

The study employs a comparative legal methodology, scrutinising statutory provisions and judicial interpretations across various European jurisdictions and Albania. The analysis reveals the doctrinal evolution and practical application of constructive dismissal, highlighting the convergence and divergence in legal standards. While many European legal systems recognise constructive dismissal as a mechanism for employees to resign in response to intolerable employer conduct, Albanian employment law lacks a comprehensive statutory or doctrinal basis for this concept. Through a detailed examination of landmark cases and legislative texts, this article discusses the critical elements constituting constructive dismissal, including employer conduct, employee resignation, and the requisite threshold of intolerability.

The paper strongly advocates for legislative reform to align Albanian employment protections with European standards, ensuring that employees are safeguarded against detrimental employer actions that effectively force resignation. The findings underscore the urgent need for a harmonised legal framework to ensure consistent and fair adjudication of constructive dismissal claims, advocating for reforms that align Albanian laws more closely with European standards. This study contributes to the broader discourse on employment law by providing insights into shaping employee protections against constructive dismissal.

1. CONSTRUCTIVE DISMISSAL IN EUROPEAN UNION COUNTRIES

A resignation occurs when an employee tenders their resignation from their employment and provides the relevant notice period, and the employer accepts that resignation. In doing so, the parties end the employment relationship. The amount of notice an employee must provide on terminating their employment can vary from employee to employee. It may be set out in the

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employee's employment contract, an industrial instrument applicable to their employment, or in the employer's policies.

One of the most significant risks attached to a resignation arises in circumstances where there is doubt as to whether the employee resigned from their employment voluntarily—that is, where it may be arguable that the employee was "forced" to resign as a consequence of the employer's conduct or a course of conduct in which the employer has engaged.

This distinction is important because if it is determined that an employee was "forced" to resign, the termination will be characterised as being at the employer's initiative. The employee may then be eligible to make an unfair dismissal claim.

Constructive dismissal is widely recognised in European employment law and other countries. It occurs when an employee resigns due to the employer's conduct, making continued employment intolerable. In other words, the employee resigns and claims that the resignation occurred not because the employee wanted to leave but because of the employer's intolerable conduct. Because the employee alleges that the employer involuntarily and intentionally or unintentionally coerced the resignation, the resignation becomes a constructive dismissal. The terminology originates from the idea that such a resignation submitted under duress can be seen to have been "constructed" or "created" by the employer.

To convince an arbitrator or judge that unfair constructive dismissal has taken place, the employee must show that:

- The employment circumstances were so intolerable that the employee could not continue to stay on.
- The unbearable circumstances were the cause of the employee's resignation.
- There was no reasonable alternative at the time but for the employee to resign to escape the circumstances.
- The employer must have caused the unbearable situation.
- The employer must have been in control of the unbearable circumstances.

Constructive dismissal generally arises from principles of contract law and employment protection, which seek to balance the rights and duties of employers and employees. While the specifics can vary across EU member states, the core elements of constructive dismissal typically include:

a) *Employer's Breach of Contract*: The employer must have fundamentally breached an essential employment contract term.
b) *Intolerable Working Conditions*: The breach must result in working conditions that a reasonable employee would find intolerable.
c) *Causal Link*: The resignation must be directly linked to the employer's conduct.
d) *Prompt Resignation*: To claim constructive dismissal, the employee must resign within a reasonable time after the breach.

Below are some case law examples in European countries regarding constructive dismissal or cases involving a constructively dismissed employee. All these cases have in common the four criteria mentioned above: the employer's breach of contract, intolerable working conditions, a causal link, and prompt resignation.

In the United Kingdom, to resign and bring a successful complaint of constructive dismissal, an employee must show that the resignation was in response to a serious breach of contract by the employer.

Employees frequently rely on the last straw doctrine to seek to do so. This involves relying upon a series of acts by the employer which, taken cumulatively, amount to a sufficiently serious breach of the employment contract so that the employer can treat the contract as having been repudiated.

The case of Morrow v Safeway Stores plc [2002] EWCA Civ 1539 highlighted that an accumulation of less severe breaches could collectively amount to constructive dismissal, provided they undermine the trust and confidence in the employment relationship.

In Germany, constructive dismissal is addressed under the broader concept of "unjustified termination". In the case of Bundesarbeitsgericht (BAG) Decision 2 AZR 400/08, the Federal Labour Court ruled that if an employer's conduct severely breaches the mutual trust required for the employment relationship, an employee's resignation may be treated as a constructive dismissal. The court requires a detailed assessment of the employer's behaviour and the employee's response.

In Italy, the law addresses constructive dismissal under "dimissioni per giusta causa" (resignation for just cause). The Corte di Cassazione, in Decision No. 8290/2005, stated and recognised that an employee could resign immediately if the employer's conduct constitutes a serious breach of the employment contract, rendering continuation of work intolerable. The decision requires a clear demonstration of the employer's fault and the severity of the breach.

Although the concept of constructive dismissal across EU countries shares commonalities, particularly in requiring a fundamental breach of contract by the employer and creating intolerable working conditions, there are notable differences, for example, when standards of proof are considered. Some countries, like the UK and Germany, require a higher threshold of evidence, emphasising the severity and impact of the breach. Others, like France and Italy, may adopt a more flexible approach, focusing on the overall context of the employer's behaviour.

Another discussed element is the accumulation of breaches, where jurisdictions differ on whether a series of minor violations can collectively constitute constructive dismissal. The UK and Netherlands are more open to considering cumulative effects, whereas Germany and Italy often require a singular significant breach.

In addition, regarding the employee's response time, the promptness of the employee's resignation after the breach is critical. While most EU countries expect timely action, the exact timeframe can vary, with some allowing more leniency depending on circumstances. However, the fact that the resignation occurred immediately or shortly after the employer's breach should be undeniable.

2. EUROPEAN COURT OF HUMAN RIGHTS (ECTHR) CASES ON CONSTRUCTIVE DISMISSAL

The European Court of Human Rights (ECtHR) has addressed various aspects of employment rights, including constructive dismissal, under the European Convention on Human Rights (ECHR) (Council of Europe, 1950). Constructive dismissal cases often involve issues related to Articles 3 (prohibition of inhuman or degrading treatment), 6 (right to a fair trial), 8 (right to respect for private and family life), and 13 (right to an effective remedy). Below are a few ECtHR cases that have contributed to the understanding and development of constructive dismissal jurisprudence.

Saliyev v. Russia (2010)**.** The applicant, a schoolteacher, resigned from his position due to a sustained campaign of harassment by his employer. He claimed that the harassment constituted constructive

dismissal and sought judicial redress. The ECtHR held that the harassment suffered by the applicant violated Article 3 of the ECHR, as it amounted to degrading treatment. The Court emphasised that the right to work in a safe and dignified environment is fundamental and that employers must protect employees from harassment and degrading treatment. This case underscores the ECtHR's recognition that severe workplace harassment can violate human rights, potentially leading to a constructive dismissal claim.

Kudra v. Croatia (2008)**.** The applicant, a public sector employee, resigned after being subjected to prolonged bullying and unjustified disciplinary actions. He argued that his resignation resulted from constructive dismissal and sought compensation. The ECtHR found that the applicant's treatment by his employer amounted to a violation of Article 8 of the ECHR, which protects the right to respect for private and family life. The Court highlighted that unfair treatment and bullying in the workplace can severely impact an individual's personal and professional life. This decision highlights the ECtHR's recognition of the impact of workplace bullying on an individual's dignity and private life, supporting claims of constructive dismissal under Article 8.

Volkov v. Ukraine (2013)**.** A judge was subjected to undue pressure and interference in his judicial functions by state authorities, leading him to resign. He claimed constructive dismissal due to the hostile work environment. The ECtHR ruled that the undue pressure and interference violated Article 6 of the ECHR, which guarantees the right to a fair trial. The Court found that the applicant's resignation directly resulted from the state's actions, amounting to constructive dismissal. This case illustrates the ECtHR's stance that interference with professional duties and creating a hostile work environment can amount to constructive dismissal, particularly in judicial independence cases.

Palomo Sánchez and Others v. Spain (2011). The applicants, trade union members, faced retaliatory actions by their employer, including demotions and changes in job duties, following their union activities. They argued that these actions forced them to resign, constituting constructive dismissal. The ECtHR held that the retaliatory actions violated Article 11 of the ECHR, which protects the right to freedom of association. The Court found that the employer's actions were intended to undermine the applicants' union activities and forced their resignation. This ruling emphasises the protection of employees' rights to unionise and engage in union activities without fear of retaliation, supporting claims of constructive dismissal when employers create intolerable conditions to suppress these rights.

Grand Chamber Judgment in Demir and Baykara v. Turkey (2008). The applicants, trade union officials, were dismissed from their positions following their involvement in union activities. They claimed constructive dismissal due to their employer's hostile and retaliatory actions. The Grand Chamber held that the actions against the applicants violated Articles 11 and 14 of the ECHR, emphasising the importance of protecting trade union rights and prohibiting discrimination. The Court recognised that creating a hostile work environment to suppress union activities could constitute constructive dismissal. This landmark case reinforces the ECtHR's commitment to protecting trade union rights. It supports the principle that creating intolerable working conditions to suppress these rights can lead to constructive dismissal claims. The ECtHR's case law on constructive dismissal demonstrates a broad interpretation of human rights protections in the workplace, where the key implications include the recognition of severe workplace harassment, the protection of private and family life, reasonable and realistic job performance targets, etc. These decisions should serve as a background for the national jurisdictions so that the national courts incorporate ECtHR standards into their jurisprudence, ensuring that harassment, bullying, unsolved grievances or retaliatory actions in the workplace are recognised as grounds for constructive dismissal. Legislators should

create a comprehensive framework strengthening the legal protections of employees and provide clear remedies when constructive dismissal claims arise.

Constructive Dismissal within Albanian Employment Law. While "constructive dismissal" is a well-established concept in many European employment law systems, protecting employees who resign due to intolerable working conditions created by their employer, the Albanian employment law almost lacks the concept of constructive dismissal, particularly its criteria compared with the broader European context. Albanian employment law is primarily governed by the Labour Code of the Republic of Albania, Law No. 7961, dated 12.07.1995, amended. The Labour Code outlines employers' and employees' rights and obligations, but does not explicitly mention the term "constructive dismissal."

The Labour Code allows either party to terminate employment contracts with or without cause, subject to specific notice periods and conditions (Articles 140-147). Regarding unfair dismissal, Article 144 of the Labour Code protects against unfair dismissal, stipulating that an employee can challenge a dismissal that is not based on valid grounds such as serious misconduct or poor performance. The Labour Code outlines the employer's duty to respect the employee's dignity and ensure safe and healthy working conditions.

Nevertheless, the Labour Code does not explicitly address situations where an employee resigns due to the employer's conduct. Article 143 allows employees to resign with notice, but does not detail the circumstances under which resignation could be considered constructive dismissal. Article 154, paragraph 2, stipulates the immediate termination of the job contracts for both the employer and the employee but does not provide situations when the termination of the job contract made by the employee is justified.

A more distinct and elaborated view is needed if attempting to make a comparative analysis with European employment law, using the latter's concepts, doctrine, and case law in Albanian employment law. This is because, usually, for not saying most of the time, in cases where an employee resigns, he cannot claim constructive dismissal. However, specific provisions could be leveraged to argue a case resembling constructive dismissal, drawn from principles found in other European jurisdictions.

a) *Employer's breach of contract:* In many EU countries, constructive dismissal involves a significant violation of the employment contract by the employer. Albanian law's provisions on the employer's duties (Article 38) could be interpreted to support such claims, although this is not explicitly stated.
b) *Intolerable Working Conditions:* The requirement for employers to provide safe and dignified working conditions can serve as a basis for claims that intolerable conditions forced a resignation, aligning with the principles of constructive dismissal.
c) *Judicial Interpretation:* Without explicit statutory recognition, the concept of constructive dismissal in Albania would rely heavily on judicial interpretation. These interpretations should align with the international standards and the precedents from European Court of Human Rights (ECtHR) rulings.

To date, limited case law in Albania directly addresses the concept of constructive dismissal. The absence of explicit statutory provisions means that cases involving intolerable working conditions typically fall under broader claims of unfair dismissal or breach of contract.

However, Albania is a party to several international conventions that impact its employment law framework, which influences its domestic rules in compliance with its international obligations.

Albania is a member of the Council of Europe and is bound by the ECHR, which includes protections against inhumane or degrading treatment (Article 3) and the right to a fair trial (Article 6). These provisions can indirectly support arguments related to constructive dismissal.

Albania has ratified various ILO conventions that emphasise decent working conditions and the protection of workers' rights, which can influence the interpretation and application of national labour laws.

To comply with international obligations and standards, the Labour Code must be amended to recognise constructive dismissal explicitly. This would define a situation where an employee resigns because the employer's conduct makes continued employment untenable. The consequences of this kind of dismissal must also be regulated.

3. CONCLUSION

While Albanian employment law does not currently explicitly recognise constructive dismissal, provisions within the Labour Code can be interpreted to provide some protection against intolerable working conditions. Albania could benefit from legislative reforms addressing constructive dismissal to align more closely with European standards and better protect workers' rights. Enhanced judicial interpretation and public awareness are also crucial in ensuring adequate protection for employees facing adverse working conditions.

Some of the recommendations that could be made to ensure consistent and fair treatment of constructive dismissal claims that may arise in Albania may include the establishment of a harmonised definition of constructive dismissal in Albanian law that encompasses the essential elements recognised by other jurisdictions that are far more developed both on its legal doctrine and relevant employment case law. It is also necessary to establish guidelines detailing types of employer conduct that can lead to constructive dismissal and implement procedural safeguards to protect employees who claim constructive dismissal, including access to legal representation and expedited hearing processes. In addition, promoting awareness and training programs for employers and employees on constructive dismissal rights and obligations will foster a better workplace for everyone.

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