# The Ability to Pay Principle as the Basis of Tax Justice: Its Absence in the Constitution of the Republic of Albania and the Legal Consequences

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***Abstract***

*The ability to pay principle represents one of the fundamental pillars upon which tax justice in democratic states is built. This principle implies that tax burdens should be distributed fairly, in proportion to each taxpayer's economic capacity, while respecting substantive equality before the law. However, in the Albanian constitutional order, this principle is not explicitly enshrined, unlike in many European Union member states where it is considered a fundamental standard of fiscal policy. Its absence from the Constitution has created interpretative gaps, allowing the legislature to exercise broad discretion in defining tax policies, often at the expense of coherence between fiscal justice and the principle of equality. This paper aims to analyze the theoretical and constitutional foundations of the ability to pay principle, its role in establishing a fair tax system, and the necessity of its explicit inclusion in the Constitution of the Republic of Albania, in line with European standards and best international practices.*

***Keywords:*** *ability to pay, tax justice, substantive equality, Constitution of Albania, principles of fiscal law*

## 1. Introduction

In a state governed by the rule of law, the tax system is not merely a fiscal mechanism for collecting public revenues but also a direct instrument for achieving material and social justice. In this context, *the ability to pay* principle stands at the foundation of every tax system that aims to be fair and proportional. This principle requires that tax obligations be determined in accordance with the taxpayers' real economic capacity, respecting the proportionality between the tax burden and each individual's economic ability.

In legal and economic doctrine, the concept of the ability to pay first appeared in Adam Smith's classical theory of the "four canons of taxation," where fiscal justice was considered an essential component of a rational tax system. In the following centuries, this principle was consolidated as a universal standard in the tax law of democratic states, often reflected in the modern constitutions of developed countries.

In the case of the Republic of Albania, although the principle of equality before the law is enshrined in Article 18 of the Constitution and the obligation to pay taxes in Article 155, there is no provision that explicitly defines the ability to pay principle. This absence creates a significant gap in the constitutional architecture of fiscal justice, resulting in uncertainty in the interpretation and fair application of tax laws.

The objective of this article is to provide a detailed analysis of the legal foundations of this principle, the manner in which it has been incorporated into European legal systems, and to assess the necessity of its explicit inclusion in the Albanian Constitution. The article will also examine the consequences arising from the absence of this principle in administrative and judicial practice, addressing cases in which fiscal policy has violated the principles of proportionality

and substantive equality.

In this context, the analysis will be based on a comparative approach between the Albanian model and those of countries such as Italy, Germany, and Spain, where this principle is constitutionally enshrined. The methodological approach will be both doctrinal and normative, combining the analysis of sources of positive law with evaluations drawn from contemporary legal doctrine and relevant jurisprudence.

This study aims to contribute to the ongoing debates on the reform of the Albanian fiscal system and the strengthening of its constitutional foundations, with the purpose of ensuring that tax justice does not remain a theoretical ideal, but is translated into a stable and predictable legal practice.

## 2. Theoretical and Historical Framework of the Ability to Pay Principle

The principle of the ability to pay represents one of the earliest and most fundamental doctrines of tax justice, deeply rooted in both moral philosophy and constitutional law. It was first articulated by Adam Smith in his monumental work "An Inquiry into the Nature and Causes of the Wealth of Nations" (1776), where he stated that "the subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state." This formulation laid the foundation of fiscal justice through the proportionality of the tax burden, establishing that each individual's contribution to public expenditure must correspond to their real economic capacity. In this way, taxation is not only an instrument for revenue collection but also an expression of moral fairness and social equity. As Gjyli (2009) points out, within the framework of constitutional finance, this principle, together with the principle of legality, forms the two fundamental constitutional pillars that should characterize fiscal legislation in its entirety.

During the 20th century, this principle evolved and gained constitutional relevance within European legal doctrine, particularly in the German, Italian, and Spanish systems. In Germany, the concept of *Leistungsfähigkeitsprinzip* (principle of contributive capacity) became a cornerstone of fiscal justice, interpreted by the Federal Constitutional Court as a direct manifestation of the principle of substantive equality enshrined in Article 3 of the Grundgesetz. Similarly, the Italian Constitution explicitly enshrines the ability to pay in Article 53, which declares that "everyone shall contribute to public expenditure in accordance with their ability to pay." The Italian Constitutional Court has relied on this provision to evaluate the proportionality and fairness of tax legislation, turning it into both a constitutional norm and an interpretative criterion for fiscal justice. Spain followed a comparable approach, embedding the same principle in Article 31(1) of the 1978 Constitution, which provides that "all shall contribute to the financing of public expenditures in accordance with their economic capacity." In these European models, the ability to pay principle has transcended its purely economic meaning to become a constitutional safeguard against fiscal arbitrariness and a guarantee of equal treatment before the law.

Beyond its constitutional and legal dimension, the ability to pay principle carries a strong ethical and social significance, serving as a bridge between economic efficiency and social justice. A tax system that ignores the real financial capacities of its citizens risks eroding public trust and undermining the legitimacy of the state. Therefore, tax justice is not merely a matter of technical design, but a reflection of moral responsibility and the social contract between government and citizen. In the context of modern welfare states and the European Union, this principle forms the basis of progressive taxation, where tax rates rise proportionally with income, thereby functioning as a concrete mechanism to reduce inequality and promote substantive equality.

Although international public law instruments do not explicitly codify this principle, its spirit is evident across several key documents. The Universal Declaration of Human Rights (1948) through Article 7 emphasizes equality before the law; the European Social Charter (1961) calls for fair distribution of fiscal burdens; and the OECD guidelines promote progressive taxation as a path toward fairness and stability. Likewise, EU directives on fiscal transparency and anti-evasion policies aim to preserve proportionality between income and taxes paid, implicitly recognizing the principle of ability to pay as an interpretative standard of fiscal justice.

In this broader legal and ethical context, the incorporation of the ability to pay principle into the Constitution of the Republic of Albania would represent an essential step toward aligning national fiscal policy with European constitutional traditions and principles of justice. Such inclusion would elevate the principle from a doctrinal and policy-based notion to a binding constitutional norm, ensuring that taxation in Albania is grounded not only in efficiency and legality but also in equity, proportionality, and the moral legitimacy of public contribution.

## 3. Analysis of Albanian legislation and the absence of the principle of ability to pay in the Constitution

### *3.1 Albanian constitutional framework*

In international legal doctrine, the principle of the ability to pay is defined as the notion that "tax burdens should be distributed among individuals in proportion to their capacity to bear them" (Britannica, 2024). According to Pressman (2018), this principle serves two fundamental purposes: first, to ensure a fair distribution of the tax burden, and second, to promote the ideals of equality and utilitarianism. He further emphasizes that any taxation system which disregards the taxpayer's actual economic capacity ultimately "undermines the fundamental principle of fiscal justice." Hence, the ability-to-pay principle constitutes not merely an economic or fiscal guideline but a moral and constitutional standard that underpins equitable taxation.

In the Albanian constitutional order, this principle has not yet been explicitly recognized or developed as an independent criterion for constitutional review by the Constitutional Court. The Court's jurisprudence has primarily focused on two aspects: the formal principle of equality, as enshrined in Article 18 of the Constitution, and the principle of legality in taxation, which governs the creation and imposition of fiscal obligations. Consequently, the application of equality in taxation remains predominantly formal, ensuring that all citizens are equally obliged to pay taxes, while the material dimension of equality, relating to individuals' differing economic capacities, remains largely unaddressed. This imbalance demonstrates a structural limitation in the Albanian constitutional framework, where tax equality is recognized in principle but not substantively realized in practice.

In contrast, Western legal systems have long treated the ability-to-pay principle as the fairest and most rational criterion for the distribution of the tax burden. As Tipke and Lang (2010) observe, this principle is inseparable from the concept of substantive equality, which requires that individuals contribute to public expenditure according to their real economic means. In these jurisdictions, constitutional courts have interpreted the ability-to-pay standard as a constitutional guarantee of justice, ensuring that tax legislation respects both proportionality and equality before the law.

The Constitution of the Republic of Albania, while containing several provisions related to taxation and equality, does not expressly enshrine the ability-to-pay principle as a normative standard. The most relevant provisions in this context are:

- Article 18, which guarantees equality before the law;
- Article 155, which provides that "everyone is obliged to pay taxes and other financial obligations, determined by law"; and
- Article 156, which establishes the competence of the Assembly to impose taxes and stipulates that "no taxes or fees may be imposed except by law."

These articles form the formal constitutional foundation of Albania's fiscal system, ensuring legality and uniformity in taxation. However, they fail to establish the substantive criteria of tax justice, namely, the principle that taxation should correspond to each individual's economic capacity. In essence, the Constitution ensures formal equality, that everyone must pay, but not material equality, that everyone must pay in proportion to their ability to pay. This absence creates a normative and interpretative vacuum, allowing fiscal policy and legislative practice to evolve without a clear constitutional benchmark for fairness or proportionality in taxation. Recognizing and incorporating the ability-to-pay principle within the Albanian constitutional framework would thus represent a significant step toward aligning national fiscal justice with European constitutional standards and ensuring that taxation in Albania reflects both legality and genuine equity.

The absence of the ability-to-pay principle in the Albanian Constitution produces a series of significant legal, economic, and social consequences that directly affect the fairness and legitimacy of the fiscal system. First, it weakens constitutional control, as courts lack a substantive benchmark for evaluating the material fairness of tax laws, which in turn limits their capacity to ensure proportionality and equity in taxation (Pressman, 2018). Second, it grants excessive discretion to the fiscal legislator, allowing governments to modify tax policies without any constitutional constraint concerning proportionality or distributive justice, thereby transforming fiscal decisions into matters of political convenience rather than normative consistency (Tipke & Lang, 2010). Third, the absence of this principle creates a risk of material inequality, since, as Clemens et al. (2023) emphasize, individuals with higher incomes are inherently more capable of bearing greater tax burdens than those with lower incomes; ignoring this standard leads to systemic distortions of justice and economic imbalance. Fourth, it contributes to the erosion of public trust, as taxpayers perceive the relationship between the tax burden and their real economic capacity as arbitrary and inconsistent. Finally, it results in the weakening of fiscal legitimacy, because in the absence of a moral and constitutional foundation, the tax system tends to be viewed as a mere political or revenue-generating instrument rather than as a mechanism of social justice and equitable

contribution (Musgrave, 1959). Collectively, these consequences underline the urgent need for the inclusion of the ability-to-pay principle either in the Constitution of the Republic of Albania or, at minimum, in an organic fiscal law, thereby establishing it as a fundamental standard for ensuring fiscal justice, substantive equality, and the moral legitimacy of taxation.

### *3.2 The Law "On Tax Procedures" and Its Principles*

Law no. 9920, dated 19.05.2008, "On Tax Procedures in the Republic of Albania", constitutes one of the central pillars of the Albanian fiscal system, setting out the general procedural and substantive rules governing the relationship between the tax administration and taxpayers. Within its normative framework, the law defines a series of general principles: legality, equality, transparency, proportionality, and cooperation in good faith, which serve as the guiding standards for the interpretation and implementation of tax norms. However, despite this comprehensive set of guiding principles, the principle of ability to pay (parimi i aftësisë për të paguar) is not explicitly articulated as either a foundational norm or an interpretative standard.

This omission is not merely terminological; it reflects a substantive gap in the architecture of Albanian fiscal law. As noted by Zusi (2019), the absence of explicit constitutional and legislative recognition of the ability-to-pay principle leaves the Albanian tax system vulnerable to arbitrariness and fiscal opportunism, where changes in taxation often respond to short-term political or budgetary objectives rather than to consistent standards of fiscal justice. Kalo (2020) similarly highlights the tension between formal equality and substantive tax fairness, arguing that the lack of a constitutional anchor for this principle undermines the coherence and predictability of tax policy. In other words, while the law ensures that taxation must be lawful and uniformly applied, it does not guarantee that it must also be equitable in proportion to the taxpayer's economic capacity.

In regional comparative doctrine, particularly in Southeast European scholarship, the concept of "tax capacity"—understood as the individual's real economic ability to contribute to public expenditures—is occasionally discussed as a theoretical benchmark (Krasniqi, 2022), but it remains absent as a constitutional or statutory category in Albania. This means that, in practice, the Albanian tax system continues to operate primarily on formal-legal principles, without a clearly defined normative mechanism to assess or adjust the fiscal burden according to economic ability.

A telling illustration of this deficiency is the evolution of personal income taxation in Albania over the past two decades. The system has oscillated between progressive taxation (based on income brackets and ability to pay) and flat taxation (uniform rates irrespective of income level), without any accompanying constitutional or judicial debate on the implications for fiscal equity. This pattern reveals that the absence of the ability-to-pay principle as a binding constitutional or legal standard allows for an excessive degree of political discretion in shaping tax policy. Fiscal reforms are thus driven primarily by economic expediency and political ideology, rather than by a stable principle of tax justice.

Moreover, the lack of a constitutional reference to the ability-to-pay standard weakens the judicial control of taxation. The Constitutional Court, in reviewing fiscal legislation, has so far relied on the principle of legality and the formal notion of equality, but it lacks a substantive benchmark to assess whether a tax norm imposes a disproportionate burden relative to the taxpayer's real income or wealth. In the absence of such a criterion, the judicial review of tax fairness remains limited, and fiscal justice becomes a matter of policy rather than of law.

From a normative and systemic perspective, the non-inclusion of the ability-to-pay principle in the Law "On Tax Procedures" represents a missed opportunity to align Albania's fiscal framework with European constitutional traditions. In jurisdictions such as Italy (Article 53 of the Constitution) or Spain (Article 31), the principle serves not only as a constitutional guarantee but also as an interpretative rule that guides both legislators and judges in determining fair tax obligations. The integration of a similar standard in the Albanian legal order would strengthen legal certainty, predictability, and moral legitimacy in taxation.

In conclusion, while Law no. 9920/2008 provides a solid procedural foundation for the functioning of the tax system, it remains doctrinally incomplete in the absence of an explicit recognition of the ability-to-pay principle. The incorporation of this principle—either through constitutional amendment or legislative reform—would not only harmonize the Albanian system with European standards but also ensure that the imposition of taxes is guided by both economic rationality and social fairness, transforming taxation from a purely fiscal tool into an instrument of substantive justice and democratic legitimacy.

## 4. Comparison with the Standards of the European Union and the Constitutional Models of Member States

The principle of ability to pay has become a cornerstone of fiscal justice within the European constitutional tradition, serving as both a moral and legal criterion for equitable taxation. Although the European Union lacks direct competence to harmonize the internal tax systems of its member states, its normative framework, rooted in the principles of fiscal justice, proportionality, and equality, reflects the pervasive influence of this doctrine. According to Lang (2014), the essence of tax justice within the EU is not limited to formal equality before the law, but extends to substantive justice, whereby each individual contributes to public expenditure in proportion to their real economic capacity. This principle is not merely theoretical: it has been gradually shaped and consolidated through the jurisprudence of the Court of Justice of the European Union (CJEU), which has, in landmark cases such as Schumacker (C-279/93) and De Groot (C-385/00), recognized that taxation must consider the taxpayer's personal and family circumstances to reflect their true ability to pay. Thus, while not expressly codified in the EU Treaties, the CJEU's jurisprudence has transformed the ability-to-pay doctrine into an interpretative standard of fiscal equality, guiding the interpretation and application of national tax measures in conformity with fundamental rights and proportionality.

This European normative orientation is reinforced by Directive 2011/16/EU on administrative cooperation and tax transparency, which obliges member states to maintain a proportionate balance between fiscal objectives and taxpayers' economic capacity (Terra & Wattel, 2021). The directive operationalizes the principle of proportionality in fiscal matters, ensuring that measures to prevent evasion, ensure compliance, or collect revenue do not impose excessive or unjust burdens relative to the taxpayer's means. In this way, the European legal order recognizes, albeit indirectly, that taxation must not only serve efficiency but also uphold moral legitimacy and distributive fairness.

Among the European constitutional models, Italy stands as the clearest and most mature embodiment of the ability-to-pay principle as a constitutional norm of fiscal justice. Article 53 of the Italian Constitution (1948) explicitly states: "Everyone shall contribute to public expenditure in accordance with their ability to pay." This concise but profound formulation has elevated the ability-to-pay principle (capacità contributiva) to the rank of a constitutional right and duty, integrating economic rationality with moral fairness. The Italian Constitutional Court, through a long line of decisions, has interpreted Article 53 not as a mere declarative clause but as a binding constitutional standard that guides both the legislative and judicial branches in shaping and reviewing fiscal policy. In its landmark Decision No. 143/1973, the Court declared that the principle of ability to pay is "a substantive guarantee of tax justice" and that any fiscal provision which disregards proportionality between an individual's economic capacity and their tax burden violates the core of constitutional equality.

Italian constitutional doctrine, as developed by scholars such as Falsitta (2019), Marongiu (2016), and Gallo (2011), views Article 53 as the moral and legal compass of the entire fiscal system. It embodies the synthesis between the ethical dimension of equality and the economic dimension of taxation, ensuring that tax obligations reflect not only the state's fiscal needs but also the citizen's real capacity to contribute. Furthermore, this principle has served as a constitutional parameter for judicial review, empowering the Constitutional Court to invalidate tax laws that impose arbitrary, regressive, or discriminatory burdens. Over time, Italian jurisprudence has also linked Article 53 with Article 3 of the Constitution (on equality before the law), forming a dual constitutional axis of legality and substantive fairness in taxation.

This integration of moral, economic, and legal elements makes the Italian model particularly relevant to the Albanian constitutional context, where such a nexus remains incomplete. The Constitution of the Republic of Albania, despite guaranteeing equality (Article 18), imposing the duty to pay taxes (Article 155), and reserving tax creation to the Assembly (Article 156), does not define the qualitative standard by which tax fairness is to be assessed. Consequently, while the Albanian framework ensures formal equality, that all citizens are subject to the same tax laws, it fails to provide a substantive criterion determining how the burden should be distributed according to economic capacity. Unlike the Italian Constitution, which establishes a clear and justiciable link between ability, obligation, and fairness, the Albanian Constitution remains limited to the legality of taxation, not its justice.

This distinction is more than theoretical, it has concrete institutional and societal implications. In Italy, the explicit constitutionalization of the ability-to-pay principle allows the Constitutional Court to act as a guardian of fiscal justice, reviewing whether taxation respects proportionality and the taxpayer's real means. In Albania, however, the Constitutional Court lacks such a material benchmark. Its jurisprudence has largely confined itself to assessing procedural legality and equality of application, without examining whether a tax norm is proportionate to the taxpayer's contributive capacity. As a result, fiscal laws in Albania can vary significantly with each change of government, reflecting political expediency rather than a stable moral and constitutional standard.

Moreover, the Italian model demonstrates how the ability-to-pay principle serves as a constitutional limit on legislative discretion. The Parliament cannot impose taxes solely for revenue generation or political motives; it must ensure that every fiscal measure respects the balance between public interest and individual capacity. This has contributed to a culture of constitutional accountability, where fiscal policy must justify not only its economic effectiveness but also its ethical legitimacy. By contrast, the absence of such a limitation in Albania allows the executive and legislative branches to redesign tax systems (as evidenced by the oscillation between flat and progressive income taxation) without any constitutional scrutiny on the fairness of distribution.

Another significant difference lies in the normative hierarchy of the two systems. In Italy, Article 53 belongs to the constitutional block of legality, meaning that ordinary tax legislation must be interpreted in conformity with this principle. This interpretative obligation has had profound doctrinal effects: it has shaped the principle of proportionality, the prohibition of confiscatory taxation, and the duty of solidarity between citizens and the state. In Albania, however, since the principle is absent, fiscal interpretation depends primarily on the Tax Procedures Law (No. 9920/2008), which provides procedural guarantees but lacks any substantive ethical dimension. This results in a fragmented fiscal framework, where legality prevails over justice, and where taxation is seen as an administrative act rather than a constitutional relationship of shared responsibility.

From a comparative perspective, adopting an Italian-style constitutional provision would yield multiple benefits for Albania. First, it would create a binding standard of proportionality, allowing the Constitutional Court to evaluate whether a fiscal burden is excessive relative to the taxpayer's means. Second, it would promote stability and predictability in fiscal policy, reducing the risk of politically motivated tax reforms. Third, it would elevate fiscal justice from a policy goal to a constitutional imperative, aligning Albania with the European tradition that views taxation as an expression of solidarity, equality, and democratic legitimacy.

Ultimately, the Italian constitutional experience demonstrates that the ability-to-pay principle is not a mere fiscal doctrine but a constitutional value that embodies the moral foundation of the social state (Stato sociale). It integrates fiscal efficiency with human dignity, ensuring that the obligation to pay taxes does not become a burden of necessity but an act of civic participation and mutual responsibility. For Albania, embedding this principle in the Constitution would represent a transformative step—bridging the gap between formal equality and substantive justice, and harmonizing its fiscal framework with the European constitutional model of moral, legal, and social balance in taxation.

## 5. Critical Assessment and Proposals for the Inclusion of the Ability-to-Pay Principle in the Albanian Constitution

The analysis of the Albanian tax system reveals a structural imbalance between formal equality, which ensures that all taxpayers are treated uniformly under the law, and substantive equality, which demands that taxation correspond to each individual's real economic capacity. As Musgrave (1959) argued, genuine fiscal justice can only be achieved when taxes are distributed in proportion to the real sacrifice made by individuals, not merely through identical legal treatment. In this light, the Albanian system appears fair in form, yet not necessarily fair in substance. The current constitutional and legislative framework focuses on the legality of taxation rather than on its moral proportionality, resulting in a system that satisfies procedural requirements but often neglects the deeper dimension of distributive justice. Kalo (2020) observes that, in the absence of a constitutional principle guiding fiscal justice, tax policy in Albania is highly vulnerable to short-term political considerations, frequently prioritizing revenue goals over the principle of economic proportionality. This weakness has created a fiscal environment where justice functions as a policy aspiration rather than as a constitutional obligation.

In comparison with the European constitutional models, Albania remains in a transitional phase. In states such as Italy, Spain, and Germany, the ability-to-pay principle serves as a constitutional compass that integrates legality with justice, ensuring that taxation reflects both economic reality and ethical fairness. In contrast, Albania applies fundamental tax principles largely as administrative tools rather than as constitutional standards, which undermines predictability and moral legitimacy in fiscal governance. As Lang (2014) notes, when tax justice is not anchored in constitutional principles, societies face crises of trust between citizens and the state, because fairness becomes a matter of political discretion instead of constitutional duty.

This context justifies the growing consensus among scholars and practitioners that Albania should explicitly enshrine the ability-to-pay principle in its Constitution. Doing so would produce several transformative effects. First, it would strengthen the rule of law in fiscal matters, by linking legality with proportionality and substantive equality. The inclusion of this principle would ensure that taxation ceases to be a mere instrument of revenue collection and becomes a

constitutional expression of justice and equity. Second, it would enable more effective constitutional control: the Constitutional Court would have a clear, substantive benchmark to evaluate the fairness of tax legislation and to limit the risk of political arbitrariness in fiscal decision-making (Tipke & Lang, 2010). Third, it would foster alignment with European Union standards, as fiscal justice and proportionality are central to the European Tax Morality Framework (Terra & Wattel, 2021), which promotes convergence in the ethical foundations of taxation. Fourth, it would serve as a guarantee of social justice, ensuring a fair distribution of the tax burden and reducing income inequality, in line with the moral logic emphasized by Falsitta (2019). Finally, as Pressman (2018) points out, constitutional recognition would enhance long-term stability in fiscal policy, shifting focus from short-term political cycles to the enduring ethics of fiscal justice and state legitimacy.

Of course, part of the legal doctrine has expressed reservations regarding the constitutionalization of this principle. Schneider (2015) warns that embedding fiscal principles at the constitutional level may reduce the flexibility of tax policy, limiting the state's capacity to respond swiftly to economic crises or public emergencies. Similarly, several Albanian fiscal experts express concern that such a standard might invite subjective judicial interpretations, particularly in a legal system where economic reasoning in law is still evolving. Nonetheless, these concerns appear secondary when weighed against the systemic benefits. As Serrano (2020) argues, constitutional inclusion does not constrain fiscal policy, it merely renders it predictable, transparent, and accountable, anchoring it to moral and legal coherence.

In this regard, drawing inspiration from the Italian and Spanish constitutional models, a proposed amendment could be introduced in Part VIII of the Albanian Constitution, immediately following Article 155, under the title:

*Article 155/1: The Ability-to-Pay Principle*

*"Every citizen is obliged to contribute to public expenditures in proportion to their economic capacity. Tax policy and fiscal legislation shall respect the principles of justice, proportionality, and substantive equality."*

Such a formulation would create a constitutional foundation for fiscal justice, providing a concrete standard for judicial review, an ethical basis for tax reform, and full alignment with the European constitutional tradition of equitable taxation. It would also reframe the relationship between the state and the citizen, restoring trust, transparency, and legitimacy to the fiscal system.

In the absence of this principle, fiscal justice in Albania remains fragmented and politicized, driven more by changing political agendas than by enduring standards of equality and fairness. As Lang (2014) compellingly concludes, "Tax justice is not a normative luxury, but the very pillar upon which the legitimacy of every modern state rests." Thus, incorporating the ability-to-pay principle into the Albanian Constitution is not simply a matter of legal drafting, it is an act of institutional maturation and moral evolution, essential for consolidating the rule of law, strengthening social cohesion, and aligning Albania with the European model of constitutional fiscal justice.

## 6. Conclusions and Recommendations

### *6.1 Scientific Conclusions*

From the analysis conducted, it results that the ability-to-pay principle represents an essential element of substantive tax justice, which is missing as an explicitly expressed norm in the Albanian constitutional order.

Although the Albanian Constitution recognizes formal equality (Article 18) and the obligation to pay taxes (Article 155), it does not contain a standard that guarantees the fair distribution of the fiscal burden in relation to the taxpayers' economic capacity.

This absence has clear consequences:

- It weakens constitutional control over fiscal laws;
- It allows room for political arbitrariness in the formulation of tax policy;
- And it undermines citizens' trust in fiscal justice.

A comparison with the European Union member states (such as Italy, Spain, and Germany) shows that the ability-to-pay principle has been conceived as a constitutional guarantee, not merely as an economic principle. This makes the tax system not only efficient but also legitimate in the eyes of citizens. In this respect, Albania, as a candidate country for EU membership, has the obligation to align not only its tax laws but also the fundamental principles upon which they are built.

According to Lang (2014) and Pressman (2018), a tax system can be considered fair only if it is based on "equality of outcomes, not merely equality of treatment." This approach is currently absent from the Albanian framework, where tax justice often remains at a declarative rather than institutional level.

### *6.2 Recommendations for Constitutional and Fiscal Reform*

In light of these findings, this article proposes the following concrete measures:

1. Explicit inclusion of the ability-to-pay principle in the Constitution. This could be achieved through a new article, similar to Article 53 of the Italian Constitution, which would establish the connection between the tax obligation and the taxpayer's real economic capacity.
2. Drafting of an Organic Law on Fiscal Justice. Such a law would operationalize the principles of proportionality, transparency, and substantive equality at every level of fiscal policymaking.
3. Strengthening the role of the Constitutional Court. The Court should be equipped with clearer standards to assess the *material fairness* of fiscal laws, not merely their formal legality.
4. Inclusion of socio-economic impact assessments (tax impact assessments) in the process of adopting any tax law. This practice, already used in several EU countries, ensures that every fiscal change is evaluated in relation to citizens' real ability to pay.
5. Establishment of an Independent Fiscal Council. This body would have an advisory and oversight role to ensure that fiscal policies do not violate the principles of tax justice and ability to pay.

In conclusion, tax justice is not merely an economic objective but a fundamental principle of democratic order. In the absence of the ability-to-pay principle, Albania's tax system risks remaining technically correct but morally unjust. The constitutional recognition of this principle would represent a legal and institutional act of emancipation, aligning Albania with European standards of fiscal justice and strengthening the foundations of the rule of law. As Falsitta (2019) aptly states: *a state that does not measure its fiscal justice according to its citizens' real capacity to contribute is not a just state, but merely a powerful one.*

This is the moment for Albania to transform fiscal justice from a declarative norm into a constitutional one.

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