The constitutional powers of the President of the Republic for setting the date of the elections and the review of this presidential decree for setting the date of the elections

Assoc. Prof. Dr. Jordan DACI[1]
Dean of the Faculty of Social Sciences, Albanian University, Tirana, Albania, Sole Partner and CEO of Daci and Associates, Attorneys at Law and Executive Director of Albanian Rule of Law Center.
E-mail: j.daci@au.edu.al

Abstract

The constitutional powers of the President of the Republic of Albania for setting the date of elections and the review of the presidential decree for setting the date of the elections had never tested the constitutional system of Albania as in the case of the local elections of June 30, 2019. Indeed, not only the country constitutional system failed to properly address all the constitutional issues that were raised, but also the Venice Commission failed to play the expected role as an independent constitutional expertise body and ended up in being a politically correcting expertise body. Nevertheless, away from political discussion and rhetoric, the constitutional analysis

[1] Assoc. Prof. Dr. Daci is a professor of Constitutional Law, Human Rights Law and Criminal Procedure. Experienced legal professional and author of many papers and two books and with a demonstrated history of working of about 20 years in the industries of higher education, government, judiciary, legal practice, legal reforms etc. Author of several legal reforms, law and bylaws adopted by the Republic of Albania and the Republic of Kosovo, author and co-author of several key international reports on Albanian judiciary and experienced attorney at law.

of the President's constitutional power for setting the date of election and the revision of the respective presidential decree constitute important constitutional issues that soon would test again our constitutional system.

Thus, the aim of this paper would be an exhaustive analysis of these two constitutional issues along with other basic constitutional issues that are crucial in understanding the entire picture such as theoretical discussion of the basic notions of a legal system of such as: legal values, legal principles and legal norms, the interpretation of norms, normative acts etc. This analysis will also include a comparative study between several countries that have a similar constitutional framework.

***Keywords*:** *Presidential degree, presidential discretionary powers, interpretation of legal norms, Venice Commission, Election law in Albania.*

I. Introduction

The legal system cannot exist without the principle of legality, which basically embodies the rule that ensures harmony between legal norms through the rule of exclusion of application with another specific norm, according to hierarchical relationships between norms. Meanwhile, the basis of the rule that determines the hierarchy of legal norms, is the importance of the social relationship that the norm regulates. This means that the more important the relationship becomes, the more important the norm becomes, and the more important the norm becomes, the higher it will stand in the hierarchy of legal norms. From another point of view, the importance of the relationship and the legal norm is also a reflection of the importance of the public interest. The latter is the basic rule that determines the limits and the basis of the legitimacy of any action or omission and the exercise of state power as a whole.

However, the legal system does not consist only of norms in the sense of an abstract rule of conduct, but also of general principles and legal values. In terms of importance and order, the first comes values, which determine the content and validity of legal principles.

Indeed, three of the main legal values of a legal system are order, justice and freedom (Steing, 2010). The second are the legal principles which are in two categories, basic principles of law and legal principles and precisely the principles are those who determine the content and validity of legal norms. (Daci, 2011). The third are the legal norms which are divided into: basic written and customary constitutional norms, written and customary constitutional norms, customary legal norms and written legal norms. Among written legal norms, a division is made between norms that originate from acts of special importance that are approved by

a qualified majority and norms that are approved by an ordinary majority, and to continue then from the norms of by-laws to other sources of law.

However, because legal values themselves are some kinds of general basic norms and framework norms on which a legal system is built, legal values are neither less nor more than what we have already presented as legal principles. In fact, the legal values of a legal system can also be identified with the main characteristics of a legal system, as such they define the foundations of a legal system and thus, at the same time, they are also legal principles. So, these three values produce other fundamental principles of law, and the latter produce legal norms. Form this point of view a legal principle is defined as a prevailing standard or set of standards of behavior or judgment assumed to be just standards of behavior for a society or for the entire humanity. Moreover, a legal principle would be understood also as basic norm from which derive other norms.

II. On the legal system, legal values, legal principles and legal norms and the interpretation of norms

Just like Kelzen described the Constitution as the basic norm the Constitution would be defined also as a body of legal principles that define the content and the form of all other legal norms. This idea is similar to definition of the Joseph Raz (1972, 824 n4) that classifies legal principles and legal rules as *general legal norms*, allowing for the existence both of particular legal norms and of other legal standards that are not norms (because they do not guide behavior directly). (As cited by Joaquín R.-Toubes Muñiz, 1997: 270). Regardless of any minor difference, we should keep in mind that both legal rules and legal principles are legal norms since both provide standardized manners of behavior for subjects of law. The sole possible difference would be the nature of the norm of behavior they provide. In case of legal principle, the norm has a general nature and serves as a generalized standard of judgment for undetermined number of cases that imply the application of the general norm. Meantime, in case of legal rule, the norm of behavior is applicable just in well defined circumstances or relationships and cannot serve a generalization standard of judgment. Thus, legal principles are just legal norms, but different from legal rules, principle are norms of general application that do not consider specific legal facts. (K. Gunther - as cited by Joaquín R.-Toubes Muñiz, 1997: 299.).

By being a kind of basic norms, the legal principles represent the general consensus on basic society understandings. They are a kind of default rules of behavior that cannot be changed by a just ad hoc decision of any state body, but sole through a generally taken decision that would not be against the reason. From

this perspective, the legal principles are rules of human behavior that used to be considered as just before the law started being written. These rules of behavior that we consider today as principles were so important for humanity at the time when the human beings started writing the law that was not considered necessary to write them down, since they were all well memorized in people' mind and they still continue to be learned and considered by humanity as legal maxims through people' collective memory.

Meantime, based on different levels of cognitive complexity, Legal principle can be classified 'inter alia' into: Basic legal principles, composite legal principles (Cankorel, 2008: 184) and Complex Legal Principles. (Cankorel, 2008: 188).

These principles represent people widely accepted general or common understandings of law understood as jus (jus) and law as lex. One of the basic legal principles is that of "proportionality". This principle embodies in itself basic standards for the administration of justice, that is, it defines the basic criteria for judging a conflict of rights, which is ultimately the true function of the justice system. The principle of proportionality is also a key principle for international law, where the doctrine of proportionality is one of the main standards of judgment.

Another distinction between legal principles can be done based on their theoretical and legal importance as an expression of their legal prevalence or the hierarchy of legal principles. As mentioned above, legal principles are simply legal norms, since the norms are the basic element of a legal system. All the other elements are derivates of legal norms. As such, legal principle within themselves can be further classified into different categories based on their hierarchical order. From this perspective, the constitutional principles as the basic principles of the entire system of legal principles are the fundamental source of other principles. Such principles are known also as basic legal principle, since they are the basic general norms upon which is built the entire legal system. Constitutional principles are the most important legal principles because they define the content and the meaning of all other legal norms, including constitutional norms. Since constitutional principles are also the source for the rest of constitutional norms they can be interpreted and understood just in the context and in the light of the Constitutional main principles. In second order are classified the ordinary legal principles. However, from this point of view just as legal norms or laws are in this sense extensions of basic norm or the Constitution (norms), legal principle are also extensions of constitutional principles.

In essence, legal norms and any rules of conduct are intended to order the performance of something, to prohibit the performance of something or to leave a subject free to perform or not to perform a certain action. All these basic notions of law make sense as long as they are understood and applied within a rule of law state. For Hegel, *the law represents the general will of society*. Meanwhile, for

supporters of the theory of natural law, such as Thomas Aquinas, etc., the law is the source of human reason (Anquinas, 1225–1274), it is sacred and eternal and determines the validity of human law (Anquinas, 1225–1274).

Even John Locke *thought that the fundamental natural law also governs the legislature. (J. Locke. Printed for Thomas Tegg; W. Sharpe and Son; G. Offor; G. and J. Robinson; J. Evans and Co.: Also R. Griffin and Co. Glasgow; and J. Gumming, Dublin. 1823, pp. 162).* In any case, human reason ends when logic ends. From this we come to the general principle of law that *'in claris non fit interpretatio*' or when the norm is clear there is no need for interpretation. At the same time, as the most famous Chief Justice of the Supreme Court of the USA, John Marshall, said, *interpretation cannot lead to the creation of a new norm, because this is only up to the legislator.*

Precisely this explanation of the basic notions of the legal system helps the understanding of the discussion on the issue of the constitutional powers of the President of the Republic to set the date of the elections and the acceptance or not from the constitutional point of view of the different consequences that brings their different exercise in certain factual and constitutional contexts.

III. The constitutional powers of the President of the Republic for setting the date of the elections

In article 4, as well as in the preamble of the Constitution of the Republic of Albania, the principle of the rule of law is declared, which is one of the most basic and important principles in a rule of law state and democratic society. As such, it is an independent constitutional norm; therefore, its violation constitutes in itself a sufficient basis for declaring a law unconstitutional. This principle means the rule of law and the avoidance of arbitrariness, in order to achieve the respect and guarantee of human dignity, justice and legal security. *(See Judgment No. 55, dated 27.07.2016 of the Constitutional Court of Albania).*

In Article 4, the second paragraph of the Constitution it is declared: "The Constitution is the highest law in the Republic of Albania". Declaration of the supremacy of the Constitution, by placing it at the top of the pyramid of legal norms, constitutes an essential aspect of the rule of law principle. This principle obliges all public authorities to exercise their powers only within and on the basis of constitutional norms. The legal acts issued by these bodies must be in accordance with the higher legal acts, both in the formal and the material sense, *(See Judgment No. 9, dated 23.03.2010 of the Constitutional Court of Albania).*

Respecting the hierarchy of normative acts is an obligation derived from the principle of the rule of law and coherence in the legal system. The principle of the

rule of law implies the action of all state institutions according to the law in force, as well as the supremacy of the Constitution over other normative acts. The legal order is not an equivalent arrangement of norms, but a hierarchical system, which consists of different levels of validity, and at each of these levels there is a norm or group of norms, which have a certain legal power. The pyramid of normative acts, sanctioned in Article 116 of the Constitution, defines the relationships between legal norms, which are based on the ratio of their superposition/subordination. This pyramid of normative acts has the Constitution at its top, which serves as a source for other legal acts. Consequently, in cases of conflicts between norms with different legal powers, the norm with the highest power prevails in relation to the other norm. *(See Judgment No. 16, dated 10.04.2015 of the Constitutional Court of Albania).*

Article 4/3 of the Constitution provides that the constitutional provisions are applied directly, except when the Constitution provides otherwise. According to this fundamental principle, when the constitutional rule is expressly provided for, it cannot be avoided or exceeded, but must be directly applied. The constitutional exception provided for in this provision means that the constitutional norms may not be directly applied, when the Constitution has specially tasked the relevant state bodies to issue laws and other by-laws, in order to regulate relations in various fields and in accordance with the hierarchy of norms. So, the Constitution contains provisions that regulate its implementation directly or indirectly. The adjustments made by the Constitution cannot always be complete or exhaustive, as it is not intended to regulate in detail every issue of the organization of the political-social life of a country, but only the basic principles and criteria on which it must be based. Although some issues related to the state order can be provided in detail by it, there are still many aspects of the organization of institutional life to be provided by laws or other normative acts, as the case may be. *(See Judgment No. 22, dated 24.04.2015 of the Constitutional Court of Albania).*

Also, the Constitutional Court in its practice has emphasized that if we are dealing with a legal norm, which is not based on specified constitutional principles and regulations, but on extra-constitutional excesses, both in form and in content, then this situation would necessarily imply the violation of the principle of the hierarchy of norms. This is a consolidated position of the Constitutional Court in several cases, in which it emphasized that *"what the Constitution did not intend to do, the law cannot do. Therefore, it cannot be accepted that it has omitted without mentioning such cases...". (See Judgment No. 29, dated 09.11.2005 of the Constitutional Court of Albania).*

Article 2 of the Albanian Constitution, in its sections 1 and 2, provides as follows: *Sovereignty in the Republic of Albania belongs to the people. The people exercise sovereignty through their representatives or directly.* Meanwhile, his representatives

according to Article 1 in relation to Articles 3, 4 and 45 of the Constitution, are elected via free, equal, general and periodical elections. According to point 1 of article 2 of the Albanian Electoral Code of, the date of the elections is the date set by the decree of the President of the Republic. Meanwhile, in our case, referring to the Decree of the President of the Republic *No. 11199, dated 10.06.2019 "On the repeal of decree no. 10928, dated 05.11.2018 of the President of the Republic "On setting the date of elections for local government bodies" and Decree of the President of the Republic No. 11211, dated 27.06.2019 "On setting the date of elections for local government bodies"*, local elections, dated June 30, 2019, and that the elections should have been held on October 13, 2019. Thus, the act throughout is set the date of election, it is the Decree of the President of the Republic, which, in concrete terms, no longer has sated the date of June 30, 2019, as the election data for local government bodies".

Article 7 of the Constitution provides for the principle of the separation of powers which basically aims to avoid the conflict of interest in relation to the function of approving the law, its implementation and the control of its implementation and which is related to three basic powers such as the legislature, the executive and the judiciary .

The Constitution of the Republic of Albania, like many constitutions of developed Western countries, reserves to the President of the Republic, the role of balancer, liaison and multiple control between the three powers in question, based on the interest of the public or the people, which is the source of the legitimacy of all power state as a whole. This is because his position does not have a conflict of interest like the three holders of the three main powers. Based on the content of our constitution, the President as the head of state represents the unity of the people, especially since the legislative and executive powers never represent the will of the whole people, but only the majority. Even the latter in our case, due to the electoral system, at best usually represents no more than 25% plus one of the entire voting populations.

The exact function of the President of the Republic is clearly understood if we compare it with the Constitution of Romania, which in Article 80 expressly provides for the following: *The President of Romania represents the Romanian State and the guardian of the national independence, unity and integrity of the country. The President of Romania maintains and supervises (implementation) the Constitution and the regular functioning of public authorities. Within this competence, he acts as an intermediary between the powers of the state, as well as between the state and society.*

The Greek Constitution also recognizes an essential role for the President, which expressly provides within the section "Structure of the State" in its article 26/1, where it is stated that the *Legislative Power will be exercised by the Parliament*

and the President of the Republic and the same Article 26/2 also provides for the executive power.

The constitutions of other countries make similar provisions. For example. in the Italian Constitution, in its article 87, it is expressly provided that: *Art. 87. The President of the Republic is the head of state and represents the national unity... Determines the elections of the chambers and determines their first meeting.* Likewise, Article 89 of the Croatian Constitution expressly provides that *"the President of the Republic calls the elections for the Croatian Parliament and calls its first meeting"*.

Meanwhile, the Constitution of Albania unequivocally provides in its article 92, letter gj) that the President of the *Republic "determines the date of the elections for the Assembly, for local government bodies and for the conduct of referendums"*. Meanwhile, Article 93 stipulates that *the President of the Republic issues decrees in implementation of his powers*.

Thus, in this particular case, it is precisely the Presidential Decree that marks the date when the elections will be held and therefore also constitutes the ordering basis for the Central Election Commission to start preparations and also marks the birth of other rights and obligations for political subjects and voters, including the substantive powers of the Electoral College and its exercise time. These powers are exercised directly and are very clear and have no limitations, except for the limitation of Article 65 of the Constitution, which does not provide that the mandate of the Assembly lasts 4 years, but that the Assembly is elected every four years (as mistakenly understood by many individuals including the CEC in the case of the local elections of June 30, 2019). This is normal, since such a process as the general political elections cannot be the product of such a rigid time limit, since the development of the elections is dictated by many known and unknown factors. In this sense, the Electoral Code, in articles 8, 9 and 10, provides that the Presidential Decree can set the date of the elections between March 15 and June 30 or between September 15 and November 30. Therefore, the President could have chosen the second period as provided by the Electoral Code, since Article 65/1 itself foresees the possibility that the mandate may continue beyond the 4-year term when in the last word it says*: "In any case, the Assembly remains in office until the first meeting of the newly elected Assembly"*. Meanwhile, the provision in the second paragraph has defined the limitation of the period with the closest period that precedes the date of the end of the mandate of the assembly and that the election periods are set in the law on elections. Based on the wording of the provisions in question, the Decree for the local elections of June 30, 2019, was precisely limited to the first period. On the other hand, based on the general constitutional principles from articles 1-14 of the Constitution, the President of the Republic in the current conditions enjoyed the legitimacy in revoking his decree for the date of June 30, 2019. This, because in essence, holding elections under the conditions where we

were, practically undermined the very basic principles on which the state operates. By undermining, I mean first the obvious risk of worsening the crisis and the very clear possibility of a social clash that would have undermined the very function and existence of the state.

Thus, within the framework of the systematic interpretation, Articles 1, 2, 3, 4 and 7 of the Constitution take precedence over Article 65 of the Constitution and any other following article. In this way, the power of the President for scheduling elections takes absolute power in any circumstance, beyond the provisions of Article 65 of the Constitution or the Electoral Code and is not related to the duration of the mandate of the Assembly, since in any case the fundamental constitutional principle of institutional continuity of mandates prevails until the replacement of any elected or appointed person by the newly elected or appointed person.

It is important to note that the Constitution does not provide details on the duration of the mandate and on the modalities of setting the date of elections for local government units, but article 10 of the Electoral Code refers to its articles 9 and 8, which also refer regarding this issue to Article 65 of the Constitution. So, the President can exercise this power independently from any possible political agreement.

In the case of the President of the Republic, the issuance of a decree which revokes a previous decree, such as the one regarding the decree of June 30, 2019, as the date of local elections, is the logical continuation of his discretionary power to schedule elections. This is because, in no case this competence has been given to any other body. Thus, only the President can change the date of the elections even in cases where the other constitutional bodies also agree to such a thing.

At the same time, the practice so far has allowed the date of elections to be changed several times with political agreements, which are considered as sources of constitutional norms, which in terms of source and importance are of primary importance and therefore stand higher even than constitutional norms, except from the basic constitutional principles. From this point of view, these practices have already become part of constitutional customs as a fundamental source of constitutional law, which, since they emerge through the comprehensive political mechanism of political parties, can be understood also as a revision of the constitutional framework or the social contract. This means that when the constitutional mechanisms are absent or fail to restore the balances, the only way to restore the balance is the political agreement which marks precisely a new social contract that cannot conflict with the basic constitutional principles nor with the values of the legal system. It should be emphasized that any interpretation beyond these frameworks would be a departure from the logic of the doctrine and the very logic of the legal system and the rule of law itself, making any further discussion completely worthless.

IV. Revision of the presidential decree for setting the date of the elections

The Presidential Decree is basically a constitutional act with a normative character that aims to regulate a legal relationship without determining the circle of subjects that would be parties to this relationship. Most of the presidential powers are exercised through normative decrees that provide for abstract or general rules of conduct, etc., but the possibility of the existence of decrees with an individual character or which target a group of precisely defined legal subjects and not of a general character is not excluded. The theory of law considers a normative act, an act which equally regulates like a law. Meanwhile, the word law in the English language has more than 5 meanings.

Concretely, according to the famous English dictionary of law, Black's Law Dictionary, the first meaning of 'Law' "*is a solemn expression of legislative will. It orders, permits and forbids. It announces rewards and punishments. Its provisions generally relate not to solitary or singular cases, but to what passes in the ordinary course of affairs*." (ST. Paul, Minn 1910, pp.700-701.). Consequently, the law and a normative act provide rules of conduct with a general impact on society and are not limited to a single case or a certain group of people, nor to a particular issue. (J. Daci, Goethe Frankfurt am Main", Paper series No. 024 / 2012 Series B). In the meantime, in Article 2 of Law no. 49/2012 "On administrative courts and the adjudication of administrative disputes", as amended, is provides as follows: *"Normative sub-legal act" is any will be expressed by the public body, in the exercise of its public function, which regulates relations defined by law, establishing general rules of conduct and which is not exhaustive in its implementation."*

Meanwhile, Article 10 of the same law specifies more precisely the normative act that are its scope. Specifically, it is said that *"The Administrative Court of Appeal examines in the first instance, disputes having as object normative by-laws, as well as other cases provided for by law"*. Therefore, this Article provides rules about the normative acts that are issued as bylaws, meaning the acts of the Council of Ministers, etc. In no case the presidential decree for setting the date of the elections is a sub-legal act, but it is a pure constitutional act.

Based on the function and nature of the Presidential Decree for scheduling elections, it is clear that it is a pure normative act. Consequently, referring to Article 131 of the Constitution, the examination of the constitutionality of this decree could be done only by the Constitutional Court.

Also, it is worth noting that the idea that the constitutionality of such a decree can be evaluated by the Administrative Court of Appeal or even worse by

the Electoral College is completely wrong. This is because the very fact that in this case is not being assessed the legality, but the constitutionality. Indeed, this decree is a continuation of the exercise of a constitutional power and originates from the constitutional norm. Thus, this clearly shows that these bodies have no powers to assess the constitutionality of this decree even within the framework of the principle of constitutional subsidiary. Meanwhile, in the case of the Electoral College, the situation is quite simple, since the College does not exist and has no power to act, as long as there are no elections and for issues that have nothing to do with the elections. This means that without a presidential decree there are no elections and also there are no election issues to be examined by this college, since elections and election issues originate from the moment when the election date is announced. Therefore, election issues would not exist in absence of elections.

Ultimately, this decree remains in force until another decree is issued or it is annulled solely and exclusively by the Constitutional Court.

V. Does the President of the Republic have discretionary power to set the date of election?

In reply to question of the Constitutional Court of the Republic of Albania, the Venice Commission in its brief Amicus Curie Opinion regarding the election of 30, June 2019 has reached the following conclusion: *"36. Additionally, the Venice Commission noted in its Report on choosing the date of an election that "the power to choose the date of the elections is [...] not a discretionary power, as the Constitution or the electoral law gives compulsory indications as to the period in which the elections will have to be held." (See. Venice Commission, Report on choosing the date of an election (CDL-AD(2007)037), para. 10).* In fact, as previously analyzed, the President does not have an unlimited discretionary power, but this conclusion is somehow misleading, by giving the perception to the common reader that this is under any circumstance like this, while it is not. From the right constitutional point of view and not via a politically correct language as the one used in this amicus curie opinion, the President of the Republic has full discretionary power to set the date of election, within the two elections period as provided in the Election Code. This means that in case of the local election of 30 June 2019, the President did not postpone the election from June to October, but just changed it within the election's periods, without exceeding his constitutional power. As stated in the same report *"Additionally, the Commission stated in its Report on respect for democracy, human rights and the Rule of Law during states of emergency: Reflections that "[i]n ordinary circumstances, elections must be held periodically. [...] Postponement is a restriction to the periodicity of elections and has to be foreseen*

in the law, be necessary in the concrete circumstances and be proportionate."17 (see. Venice Commission, Report ,19 June 2020 (CDL-AD (2020)014), para. 92.). Therefore, the question is, are the provisions of the electoral code that provide for two election periods to be discretionally chosen by the President to set the election date, a solid legal base from the same point of view of this opinion? The answer is yes. In addition, a careful analysis of the political situation prior to 30 June 2019 makes the decision of the President to change the date constitutionally proportional. An essential part of the proportionality analysis would be also the prevailingness of the fundamental constitutional principle of political pluralism over the other common constitutional principle of the periodicity of elections. Indeed, in reply to the question no.2 of the Constitutional Court (Given that the principles of periodicity of local elections and political pluralism are provided as fundamental principles, what would be the interrelation between them in a situation where there is a risk of violation of each of these principles? Which one could prevail over the other?), the Venice Commission has stated 'inter alia' that: *"As presented, question no. 2 would suggest that the principles of periodicity of elections and of political pluralism could be potentially in conflict and that in such a situation, one would have to take precedence over the other. From a legal point of view, such a binary approach seems, if not at all, rarely applicable."* In fact, as explained in the beginning of this article legal principles, including fundamental or common constitutional principles are just legal norms of a general nature that serve as generalized standards of judgment for an indefinite number of cases, and which imply the application of the general norm. Meanwhile, in the case of legal norms, the norm of behavior is applicable only in circumstances or for well-defined relationships and cannot serve as a general standard of judgment. Thus, legal principles are only legal norms, but different from legal rules, principles are norms of general application that do not consider specific legal facts. From this point of view, just in case of legal norms, also the conflict between legal principles cannot be avoid and, in our case, it was obvious that these two principles could not be respected at the same time and we would agree with the Venice Commission that this a rare case when the political pluralism would precedence over the principle of the periodicity of election. This conclusion is also supported by the fact that the periodicity of election is less important than the political pluralism, since without the last one, there is no need for elections and any election in absence of pluralism would not be election for a rule of law and democratic state. Even from systematical point of view the principle of the periodicity of election has a lower hierarchical range than the political pluralism. In fact, pluralism may be a legitimate aim for interfering with periodicity, but for that aim to prevail, the interference should have a legal basis and be proportionate... *(Amicus Curie Opinion par. 47.)* Just like "the postponement of elections or cancellation of the previous decision on the

Election Day to lead to a discussion among the stakeholders and guarantee the choice for the electorate, there was at least a legitimate aim for the postponement. Avoidance of possible upcoming conflicts in society and safeguarding democracy can be considered a legitimate aim to postpone the elections." *(See 39. The Venice Commission stated in the 2019 Opinion on the scope of the power of the President to set the dates of elections.).*

To conclude, the President of the Republic under the Constitution of the Republic of Albania, has unlimited discretionary powers to set the election date within the limits of the two election periods foreseen in the Election Code.

VI. Conclusion

Albanian Constitutional framework regarding the powers of the President of the Republic, like many other modern or even old constitutions of democratic countries provide very general rules. These rules are clear and well written and their enforcement would never raise issues if all constitutional actors act in good faith to the Constitution as well as to public interest. At the same time, political crises and especially constant political crises that have been lasting for more than three decades in Albania, are the perfect environment to produce constitutional issues that have never been thought when these constitutional rules have been written. In addition, this environment become very atypical in absence of a functional Constitutional Court and a quasi totally failed judiciary system as the one in Albania in 2019 '*inter alia*' due to vetting process. Indeed, these factors have contributed to an increased legal insecurity before and after the local election of 30 June 2019, initially canceled by the President of the Republic and later postponed for next October 2019, but still held on 30 June 2019 by the Central Election Commission and the ruling party of the country.

However, now after several years, after a Constitutional Court judgment, and two opinions from the Venice Commission, we can draw the conclusions that the President of the Republic has discretionary power to set the date of election within the election's periods provided in the Election Code. This discretionary power includes also the power to postpone the election date with the condition that such postponing shall comply with the election periods and their time limits set in the Election Code or with another 'ad hoc' legal base and always pursuing a legitimate interest and in a proportional manner and by securing also the compliance with both, the basic constitutional principle of political pluralism and election periodicity principle, as well as other basic principles of law in a rule of law state.

By providing discretionary powers regarding this matter, the Constitution makes the President of the Republic the only constitutional body that has power to review

a presidential decree setting the date of elections. At the same time, this decree is a pure constitutional normative act, and thus it can be examined sole on the basis of constitutionality and such revision can be done sole by the constitutional court.

Bibliography

Black, H. C. (1999). *Black's Law Dictionary*. Second Edition. ST. Paul: M.A. West Publishing Company.

Locke, J. (1998). *Two treaties of government*. Cambridge University Press.

Daci, J. (2011). Legal Principles, Legal Values, and Legal Norms: are they the same or different? *Academicus International Scientific Journal*, ISSN 2079-3715. No.1.

Daci, J. (2012). Law in Post-Communist countries: Case of Albania. Proceedings of the XXV. World Congress of Philosophy of Law and Social Philosophy, University of Frankfurt Germany, "Goethe Frankfurt am Main", Paper series No. 024 / 2012 Series B "Human Rights, Democracy; Internet/intellectual property, Globalization". URN: urn:nbn:de:hebis:30:3-248826. http://d-nb.info/1054043272.http://nbn-resolving.de/urn:nbn:de:hebis:30:3-248826. Dewey Decimal Classification: 340 Recht. Institutes: Rechtswissenschaft.

Judgment No.55 dated 27.07.2016 of the Constitutional Court of Albania.

Judgment No.9, dated 23.03.2010 Constitutional Court of Albania.

Judgment No.16 dated 10.04.2015 Constitutional Court of Albania.

Judgment No.22 dated 24.04.2015 Constitutional Court of Albania.

Judgment No.29 dated 09.11.2005 Constitutional Court of Albania.

German Federal Constitution.

Constitution of the Republic of Italy.

Constitution of Croatia.

Constitution of the North Republic of Macedonia.

Constitution of the Republic of Albania.

Constitution of Rumania.

Opinion no. 1049/2021 cdl-ad (2021)037 or. engl. European Commission for democracy through law (Venice Commission) Albania amicus curiae brief on the competence of the constitutional court regarding the validity of the local elections held on 30 June 2019.

Opinion of the Venice Commission stated of 2019 on the scope of the power of the President to set the dates of elections (Albania).

Opinion of the Venice Commission 19 June 2020 (CDL-AD (2020)014).

Steing, P. (2010). http://law.hku.hk/lawgovtsociety/stein.pdf.

Stein, P. & Shand, J. (2011). *Legal Values in Western Society*. Edinburg University Press. http://law.hku.hk/lawgovtsociety/stein.pdf.

Anquinas, T. (1947). *Summa Theologica.* Benziger Bros.

https://d2wldr9tsuuj1b.cloudfront.net/15471/documents/2016/10/St.%20Thomas%20Aquinas-Summa%20Theologica.pdf .

Anquinas, T. *Summa Theologica. I-II, 96,4; II-II, 60.2,6. As cited in* Brust, S. (2009) Ancient and modern: natural law and universal moral principles. *The Catholic Social Science Review* 14 (2009).