

The role and legal position of the President in the Republic of Albania. Its relationship with other constitutional bodies

Dr. Sofjana VELIU¹

FACULTY OF LAW, POLITICAL SCIENCES AND INTERNATIONAL
RELATIONS, EUROPEAN UNIVERSITY OF TIRANA
E-mail: sofjana.veliu@uet.edu.al

Dr. Diana BIBA²

ADMINISTRATOR AT KPT - PROFESSIONAL COLLEGE OF TIRANA
E-mail: diana.biba@kpt.edu.al

Abstract

In this article we will try to highlight the figure of the President in a Parliamentary Republic, as is the case of Albania, his role and legal position and the powers that are recognized as a constitutional body. The figure of the head of state in function of the historical context, the forms of government but also his functions and powers, has passed into different forms of models, sometimes as a monarch and sometimes

¹ Dr. Sofjana Veliu is a lecturer in “Constitutional Law” and “Administrative Law” and Head of Law Department Faculty of Law, Political Sciences and International Relations at UET. Her expertise is primarily in the areas of Constitutional Law comparative politics, international relations and European studies. She has publications and scientific journals, as well as participations in national and international conferences.

² Dr. Diana Biba is Doctorate honors in Business law from European University of Tirana, her research is focused in the comparison of the business normative theories, and issues of corporate governance in Albania, including a perspective of EU cases. Diana has extensive experience as corporate lawyer and she has worked as part time academic staff in the European University of Tirana, Law Faculty, for course “Gender and Law”, and later “Human Rights”. Since 2017 she is the Administrator of KPT.

as the president of the country. There have been heads of state who have not only formally enjoyed a primary position in the system of state bodies, exercising control over other bodies, including the parliament, but have also effectively run the state in all senses. Nowadays, with the exception of the French system of the Fifth Republic and to some extent in the Finnish and Portuguese systems, in which the President has very important constitutional powers, in most European countries the head of state is considered the embodiment of the unity of the nation, with the functions of an adviser or arbitrator “super parts” (which stands above the parties), i.e. as a representative of a neutral power, which, as a whole, respects the constitutional norms and, in particular, regulates the relations between political bodies. The role of the President of the Republic within the political-constitutional order takes the form and influence given to the person at the head of that institution. In parliamentary republics, its role is primarily one of guaranteeing political and institutional balances between different powers. Whenever politics is in crisis, as it happens in many cases in Albania, then the role of the President becomes essential. If politics follows its normal course, then his role is merely ceremonial.

Keywords: *The President, Parliament, Constitutional Court, position of head of state.*

I. A brief history of the institution of the President in the Republic of Albania

Since the founding of the Albanian state on November 28, 1912, Albania has experienced various models of government, including an international protectorate, a monarchy, a party state regime, and a parliamentary republic, among others. Throughout this period, the function of the President of the Republic and the Head of State has been exercised in different forms.

The first government headed by Ismail Qemali also enjoyed the powers of the head of state established in 1912. On February 6, 1914, Prince Wilhelm Wied was appointed Head of State by the Conference of Ambassadors. From September 1914 to January 1920, Albania became a battlefield and experienced the change of a series of governments, where the post of head of state was played by different regency governments. On January 8, 1920, the Congress of Lushnja elected the Supreme Council consisting of four members, one of whom would exercise the functions of the President of the State, introducing and restoring the parliamentary government.

The end of the Second World War and the liberation of Albania in 1944 was accompanied by the first parliamentary elections in December 1945 and the



transfer of the function of the President of the State to a collegial body, such as the Presidium of the People's Assembly. On April 30, 1991, with the election of the first President of the Parliamentary Republic by a multi-party parliament, the constitutional Institution of the President of the Republic was created.

II. The position of the President in the parliamentary system

The President of the Republic in a parliamentary republic does not belong to any of the three powers and, on the other hand, does not constitute the fourth power either. In relation to other bodies of various powers, it is considered the highest state body from a protocol point of view. His independence is guaranteed in his embodiment of the unity of the people (Article 86/1-Constitution of the Republic of Albania).

This position of the President originates from the historical development and the need to have a head of state different from the one offered by the absolute monarchical regime. If we were to adhere to the development of the constitutional doctrine, we would have two types of heads of state: "independent" and "dependent". The first is characterized by having essential political powers and being elected directly by the people. A typical example of this variant is the head of state in the USA. In front of him stands the "dependent" President, who is characterized by the lack of political powers that he can exercise alone. This form is supported by most European countries, such as Germany, Italy, Austria.

The head of state who appears in the second form, that is, "dependent", is also called a non-governing President, that is, who is not in charge of governance, because he lacks the relevant powers to exercise this function. Let's concretely analyze some of the powers of the President, grouping them according to the main directions:

III. The President as a representative of the state

The President of the Republic enjoys several powers, which include the following areas:

- a) supervision of state activity (as head of state).
- b) representing the state abroad.
- c) state integrity.

The first, the supervision of state activity, is embodied in the role of the President as a representative of the unity of the Albanian people and head of state (Article 86/1 of the Constitution). We find the reflection of this role in the position he holds against the Government or other political forces, which in any case must be neutral, since the President belongs to the entire people, without reference to any specific political orientation. Powers of the President to grant decorations, honorary titles, pardons, ranks, etc. are defined in the Constitution. According to Article 94 of the Constitution, the President of the Republic exercises all those powers that are provided by the Constitution or other laws. He does this through decrees (Article 93 of the Constitution), which, depending on the case, their purpose and subject, are administrative acts. According to this article, the President of the Republic issues decrees. These decrees are divided into four categories:

- *Acts which are presidential in form*, but governmental in content, the content of which expresses the will of the government. These acts are issued based on the Prime Minister's proposal. We can mention the decrees appointing and dismissing the director of the state information service, the commander of the armed forces, the chief of the general staff, the appointment of ministers, etc.
- *Complex acts*, the content of which expresses both the will of the President and the Government, where we are talking about decrees and the exercise of the right of pardon, as well as the one for the appointment of the Prime Minister. Article 96/1 states that "The President of the Republic, at the beginning of the legislature, as well as when the seat of the Prime Minister remains vacant, appoints the Prime Minister on the proposal of the party or coalition of parties that has the majority of seats in the Assembly." Issuing the relevant decree, in addition to the proposal of the Party or coalition that has the majority in the Assembly (also means the prior consent of the person appointed as Prime Minister, (Article 96/1 of the Constitution of the Republic of Albania
- *Complex acts*, the content of which expresses both the will of the President and the Assembly, such as the acts for the appointment of the head of the Supreme Audit Office, of the Governor of the Bank of Albania, for the appointment of the presidents of the Constitutional Court and the Supreme Court, to the General Prosecutor. The appointment of these senior officials requires the reconciliation of the will of the President with that of the Assembly.

- *Presidential acts*, both in form and content, which are decrees for the approval of two members of the Central Commission chosen by the President himself, the decree for returning laws for reconsideration to the Assembly, the decree for setting the date of elections for the Assembly, for local government bodies and for conducting the referendum. Only the law can allow the President to change or cancel the election date, as happened in 2007, when the Assembly was forced to change the Electoral Code to enable this. So, in 2007, the letter “g”, of Article 92, of the Constitution did not allow the President to set the date of the elections beyond the deadline set in the Electoral Code, and for this, the change in the Electoral Code was made to enable The President set a date for local elections beyond the deadline defined in articles 7 and 8 of the Electoral Code that was in force in 2007.

Regarding the role as a representative of the Albanian state in relations with other states, the President of the Republic is considered as a state body, vested with the competence to express the will of the Albanian state, but in no case to form this will alone. The formation of the political will and its expression, according to the principles of parliamentary democracy, expressed in the Constitution, cannot and should not be the responsibility of only one body (Omari, L. Anastasi, A. 2017) Here a distinction is made from the constitutional doctrine, according to which the representation of the state has two sides: the formal side and the material side. Representation of the state on both sides is done by other bodies, such as the Government, the Ministry of Foreign Affairs, etc.

The role of state representation by the head of state has historically remained for cases related to important state events, such as receiving credentials or concluding important agreements, etc. Despite the fact that the President of the Republic receives ambassadors or chargé affairs of other countries and their credentials, he lacks material competence in the field of foreign relations. Even during these receptions and meetings with foreigners, the President must adhere to the line of foreign policy determined by the Government and the Assembly.

The President has no right to exercise the power of forming a specific position different from that defined by the government and the parliament. The competence of the President to represent the country from abroad is limited only in terms of making known the state will, formed by the competent bodies. The formation of the will by these bodies dictates the making known (proclamation) of this will by the President. The appointment of the Prime Minister by the President is a formal Presidential competence³, because it is basically the competence of the electoral entity that won the elections, which proposes the Prime Minister.

³ The appointment of the Minister by the President is a formal Presidential competence because the composition of the cabinet is a substantial competence of the Prime Minister.

The question arises, what about in the second round? Here the President has both formal and essential competence because he plays the role of a manager of the political crisis in the country, he plays the role of an arbitrator in the resolution of a political conflict, appointing a Prime Minister not proposed by the electoral entity that won the elections. This appointment by the President is the fulfillment of his competences as a neutral arbiter in the management of political crises.

IV. The position of the President as head of state

In addition to these powers, the President has been recognized by the Constitution with other duties related to his role otherwise known as “notary of the state”, that is, with the signing of various acts. This term means that the President has a series of duties or rights vis-à-vis other bodies, which he performs through the acts he directs to them such as:

- promulgation of laws (Article 84/1).
- appointment of members of the Government (Articles 96, 98).
- appointment of ambassadors (Article 92/dh).
- appointment of Supreme Court and Constitutional Court judges (136/1, 125/1).

Regarding these powers, it is generally considered that we are dealing with legal practices that, as a rule, are implemented or initiated by other state bodies, but that for their entry into force and final implementation, the President of the Republic needs to be put in motion, which, based on the principle of legal certainty and that of constitutionality, must announce them by means of decrees dressed in the form of a presidential act.

from this point of view, the comparison of the President with a notary is not exceeded since the task of the latter consists precisely in the direction of proving the originality and legal accuracy of a document. The notary does not carry out this task in a mechanical way, by only putting his signature, but he checks, advises and validates the content of the document. This is also how the head of state acts. It is not for nothing that the former German President and former Chairman of the Federal Constitutional Court of Germany, Roman Herzog, (Article 93/1 of the German Basic Law) has stated that “...*the President, without whose signature the legal act does not enter into force, has the actual possibility that by not signing or hesitating to sign an act, to say his important word*”.(Article 84 of the Constitution)

What value does this word have, what legal power, what competence does the President have regarding the control and validation of the act when issuing



his decrees? These are crucial questions and the key to determining its position vis-à-vis other bodies. This should be seen as closely related to the powers of the president according to the constitutional definition.

V. Regarding the decision of the Constitutional Court for the dismissal of President Meta

The decision of the Constitutional Court must be read clearly by both parties: the parliament to understand that it cannot be used in function of the political agendas of the day and violating any norms of parliamentary political life, and on the other hand it must be read by the president, who must to behave as the head of the Republic, a state leader who represents the best values of the country and should limit his rhetoric, returning to the functions of the head of state. The trial of the president by the new Constitutional Court “for serious constitutional violations” happened at the same time as the investigations that the new SPAK prosecutor’s office is conducting for suspected corruption with investments and incinerators. (Amicus Curie Opinion

par. 47). The court also emphasizes that in the context of a serious violation of the Constitution, the acts of the President must be real, i.e., concrete and not hypothetical, to the extent that they dictate his dismissal from office, to restore order constitutional and the restoration of public trust in the Constitution and the institution of the President.(see decision no. 1 dated 16.02.2022.V-1/22 of the Constitutional Court).

VI. The role of the President in relation to setting the date of the general and local elections

The division of competences into formal and substantive is important to determine the type of jurisdiction, whether it is judicial or constitutional. The Constitution stipulates that the President sets the date of elections for general, local elections or referendums. The question arises, is this a formal or essential competence? We cannot say that this is a completely essential competence of the President. This is due to the fact that the exercise of this competence is closely related to the periodicity of elections and their periodicity is determined by law (Omari, L 2015).

This means that this competence is not completely essential. Does the law recognize the right of the President only to set the date of the elections and not to change it? The act against the President’s decree for the postponement of the date of the elections is an individual administrative act, as its object is to set the date of

the elections for the Assembly. For this reason, the review of this act does not fall within the constitutional jurisdiction, but in the judicial one (See Constitutional Court decision no. 150/2017) Regarding the jurisdiction for presidential decrees, they are individual administrative acts and not normative acts, as well as acts of the political direction of the country and acts of an executive nature.⁴ Therefore, they should be attacked in ordinary courts and not by the Constitutional Court. They are subject to abstract control in two cases:

- a) due process of law - control of the essence of the procedures,
- b) exhausting the means of appeal.

In relation to the judicial power, he cooperates with other bodies of the appointment of judges and constitutional judges. In cases of the appointment of members of the GJL according to Article 136 of the Constitution and in the appointment of members of the GJK according to Article 125 and their oath before the President according to Article 129 of the Constitution. He is also involved in the selection procedures of KED members according to Article 149/d of the Constitution. The Constitution also provides for the mobilization of the Constitutional Court (Article 134.1 of the Constitution). Even his legitimacy to mobilize this court is unconditional with legal interests. He has the right to request abstract control as long as it is not conditioned by the justification of a legal interest. Abstract control is provided in Article 131 of the Constitution for the compatibility of the law with the Constitution and international agreements; compatibility of international agreements with the Constitution.

VII. Conclusions

If we were to define the role of the president in a parliamentary republic, then we can say that it is mainly limited to the formal or protocol aspect, as well as to the political representation of the state. Even in the Constitution of the Republic of Albania, the unifying character of the entire people is embodied in the figure of the

⁴ The Constitutional Court has described the decree for setting the date of the elections as an “individual administrative act”. The Constitutional Court has concluded that “In the present case, the College finds that the act against which an appeal has been filed, the decree of the President of the Republic, which is an individual administrative act, as its object is only to set the date of the elections for the Assembly of Albania. For this reason, the College considers that this act does not fall under the jurisdiction of this Court but within the jurisdiction of the administrative courts and for this reason, the petitioner is not legitimate to turn to this Court with the object of the request. The conformity or not of the decree of the President of the Republic with the provisions of the Electoral Code is not in the jurisdiction of this Court, but in the jurisdiction of the administrative courts or, as the case may be, of the Electoral College and as such cannot be examined by this Court.”



President (as the unity of the people). The president is a constitutional body, but not a public administration office; he is elected by democratic means, but does not bear political responsibility. He is not subject to the orders of other bodies, nor to any control, but only to the Constitution and the laws, and he has the duty to respect and protect them. The head of state has the role according to the one known by the regimes of parliamentary republics, that is, of a non-governing president.

For this reason, his functions should be seen in the direction of maintaining legal security and enforcing the law, checking the regularity of the acts of the highest constitutional state bodies (remember his comparison as a state notary), representing the state and the people as a whole and the embodiment in him of the unity of the people and guaranteed by the Constitution. (Iljazaj, E, 2018)⁵.

With the constitutional reforms, the powers of the President of the Republic have been significantly reduced, however, the role of this institution often depends on the personality of the person who takes that position. Often the importance of the President in Parliamentary Republics depends on the political context. (Omari, L. Anastasi, A. 2017) If the political climate is cooperative, then his role becomes formal and ceremonial. But, if the political climate, as happens in most cases in our country, is conflictual, then the role of the President becomes important. His powers are in the form of an accordion, open and close depending on the political situation.

It is important to ensure the separation of powers and not their conflict. That the institution of the presidency belongs to a party different from that of the ruling majority, this may at first sight seem healthy for the balance and division of powers, but if at the head of that institution there is a strong political figure and protagonist, then this relationship risks turning into a conflict, which irreparably damages the constitutional relations that should exist between them.

In this sense, the President cannot be expected (or required) to be more active or dominant in political decision-making processes, which he can never exercise alone (such as the appointment of ministers, ambassadors or judges), only because this decision-making also includes the institution of the President. Our constitution has clearly chosen the preferred profile of the head of state, so that he or other bodies, with all the desire or needs that arise from time to time in the political and social developments in the country, cannot change it with initiatives outside of those foreseen constitutional provisions. Article 94 of the Constitution provides that the President cannot exercise other powers, except those expressly recognized by the Constitution and given to him by laws issued in accordance with it. As long as the constitutional and legal framework remains unchanged, the role of the President will continue to remain so. However, any serious problem or concern for

⁵ Seen on <https://shtetiweb.org/2017/12/13/dy-qendrimet-e-para-te-nje-presidenti-stature-te-forte-politike/>

the state and society requires the involvement of more than one institution and the undertaking of such initiatives that lead to fruitful and sustainable solutions over time. 25 years after the adoption of the Constitution in 1998, we must remember that the institution of the President is in dire need of a law for its operation, to clarify and discipline inter-institutional powers and relations. This is in the hands of the majority, the parliament, and this can be done to avoid further conflicts.

References

- Omari, L. Anastasi, A. (2017) "Constitutional Right" updated edition, Dajti Publishing House 2000, Tirana
- Anastasi, A. (2004) Constitutional law. Dajti Publishing House. 2000, Tirana
- Omari, L (2015) Principles and Institutions of public Law"- Political organization of society and the structure
- Decision V-6/02, dated 18.01.2002 of the Constitutional Court of Rep. of Albania, published in: Summary of decisions of the Constitutional Court of RS 2002 (2003), pg. 13.
- Decision V-2/05, dated 18.01.2005 of the Constitutional Court, published in FZ no. 26/05, page 275.
- Decision no. 150/2017 of the Constitutional Court Summary of decisions of the Constitutional Court of RS 2018), pg. 7.
- Decision no. 1 dated 16.02.2022.V-1/22 of the Constitutional Court: Summary of decisions of the Constitutional Court of RS 2022), pg. 36.
- Opinion of the Venice Commission stated of 2019 on the scope of the power of the President to set the dates of elections (Albania).
- Constitution of the Republic of Albania- <https://qbz.gov.al/preview/635d44bd-96ee-4bc5-8d93-d928cf6f2abd>
- Iljazaj, E.(2018) "The first two positions of a President with a strong political stature" MAPO, on <https://shtetiweb.org/2017/12/13/dy-qendrimet-e-para-te-nje-presidenti-stature-te-for-te-politike/>
- The Constitution of the Albanian Republic.

