

The “shkrinking” role of the Head of State during the years of transition _____

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Abstract

This paper aims to present the evolution of the role of the Head of State in the institutional and cultural context of post-communist Albania, especially in relation to his responsibility regarding the reasons of the state and as a representative and defender of the permanent interest of society (Schmitt, 1931). Dialectics and tension produced with majorities and Governments; the gradual erosion of the position of the head of state in favor of the executive; the effects on the political system and the ethical totality of the State, as well as the public opinion's perception of the role of the Head of State (Hegel, 1998). From a theoretical stance, the various doctrines of the Theory of the State always make a clear distinction between the concept of the Head of State and the President of the Republic. Within this concept, we can distinguish the form of the state, the form of government and, as a result, the political and institutional power of the Head of State. In this context, based on a structuralist approach, in addition to the presentation of doctrine, facts and historical reasons, the article also seeks to present a perspective on the suitability of a strong or weak president in relation to the political-institutional framework as well as the hierarchy of values in their entirety. Can the democratic election of the President by the people be (re)considered or should the figure of the President be ultimately reinvented?!

Keywords: *Head of State, Constitution, Transition, Society, Hierarchy of Values.*

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I. Historical *excursus* of the role of the Head of State

The concept of the Head of State bears an historical and ideological process driven by the Enlightenment's republicanism, then by outlining the inception with the fall of the monarchies, continuing with the end of the First World War and further. The distinction can be drawn from a vertical point of view as well, where within the category of the Head of State we can find institutions identifying the model of state and the model of governance.

As this parenthesis denotes, the conceptual approach and therefore the extrapolation of the issues that are related to the Institution of the President of the Republic cannot be linear and concentrated, but otherwise structural, integrating in this way the history of the concept of the Head of State, the institution of the President of the Republic, as well as the functions of other constitutional bodies with which the latter interacts.

In fact, this structuralism is also reflected in our Constitution whereby, beyond the chapter dedicated to the President of the Republic, many important prerogatives and functions are enshrined with the aim of describing the role other bodies of the constitution in that regard, such as the Parliament, the Government, the Constitutional Court, etc.

Insofar from the above, this article aims to provide the reader with clear overview on how the concept of the Head of State has been treated throughout history, from early days of the Supreme Council², until the current institution of the President of the Republic. As well, how was the position of the President altered in favor of the executive, from the enactment of the Constitution in 1998 and the following amendments in 2008, 2016 and 2020 thereafter.

Currently, article 86 of the Constitution defines the President of the Republic as the Head of State and representative of National Unity (<http://www.parlament.al/Kuvendi/Kushtetuta>, accessed on 16.01.2022). The doctrine has described the presidential figure as a figure above the parties, emphasizing his role as a defender and guarantor of the state's integrity, and the constitutional order, as well as his ability to influence or balance the decision-making power of the executive, in the interest of society.

The President, as Head of State, does not bear traits comparable to a state's monarch, however he is assumed to embody certain qualities and faculties that give him an ethical and moral superiority making him eligible to become the representative of nation's unity. As such he is called upon to uphold an important role pertaining to this political activism, in order to guarantee the constitutional

² The Supreme Council was a collegial body which acted as a sovran organ with typical competences of the Head of State during the period 1920-1924 and 1943-1944



principles, the good functioning of the institutional and social cohesion, especially in situations of political instability.

As defined in Carl Schmitt's famous postulate in his "Political Theology", the State is viewed as the permanent representative of the highest interests and morals of society", while the Government as the temporary representative of the interests of society. In the same spirit, the Head of State represents the moral authority of the country, the "cold voice of the state", represented by the figure of the Sovran, conveying the knowledge of society's best interest at all points in time (Schmitt, 2006).

In the light of the reconstructions carried out by authoritarian exponents of the constitutional doctrine in Albania but also in countries with roughly similar constitutions, it is appropriate to emphasize, for the sake of the goal of this paper, how the evolution or diminishment of the constitutional role of The President of the Republic, as the guarantor of the above reasons, has proceeded in parallel with the political-institutional framework, the standards of democracy in decision-making as well as the system of social values itself, starting out with the period between the two world wars, the communist regime and up until the present day.

Albanian Heads of State in the transition period

The fall of communism and the elections of March 31, 1991

To make a chronological treatment, it is worth mentioning in advance that the context in which the newborn pluralism was found to function in December 1990 was dissimilar from a jurisprudential point of view. Since there was no real revolution, which, by definition, would overturn the constitutional order at that time, Albania awoke at the dawn of December 8th 1990 after having established the pluralism system, albeit the communist constitution of 1976 was still in force. Ramiz Alia was the Head of State as the Chairman of the People's Presidium based on the 1976 constitution. The first pluralist elections on March 31, 1991, were organized and regulated based on the 1976 communist constitution (<https://shtetiweb.org/2013/10/08/kushtetuta-e-republikes-socialiste-te-shqiperise-1976/>, accessed on 28.01.2023)

A considerable confusion that creates quite a few conceptual problems and fed a variety of opinions about the form of the republic and the positioning of the Head of State in the future constitutional project.

However, this *impasse* was resolved with what was called the revision of the temporary Constitution approved by constitutional law no. 7491, dated April 29, 1991, containing the "Basic Constitutional Provisions", which based on art. 45 repealed the "Social-Communist Constitution of December 28, 1976" (<https://shtetiweb.org/wp-content/uploads/2015/10/Dispozitat-kryesore-kushtetuese-1991.pdf>, accessed on 28.01.2023).

We must recognize the fact that Ramiz Alia acts at the height of the duty of the Head of State, which, by definition, embodies and protects the highest interest of society. Beyond the conspiracies, according to the facts that have been made available, he was the one who negotiated with the Labor Party the constitutional concessions, despite the fact, that the elections of March 31 were deeply won. A role over the parties, typical of the Head of State.

The election of Ramiz Ali as the first President of pluralist Albania

Ramiz Alia was elected President of the Republic of Albania on April 30, 1991, the day after the passage of the “Basic Constitutional Provisions”, a *quasi*-constitution *sui generis*, which on one hand proclaimed Albania as a Parliamentary Republic and on the other hand reserved for the President of the Republic executive powers, decrees with normative force as well as the right to lead government meetings (Lamçe, 2013).

As stated at the beginning of this paper, the position and activity of the Head of State are framed according to the political-institutional context. Ramiz Alia was never accepted as the first president of pluralism and for this reason, despite the broad powers reserved to him by the constitutional law, he turns out to be the weakest president of the post-communist period. After the deep defeat of the Socialist Party (former Labor Party) in the early elections of March 22, 1992, Alia resigned from the office of the President of the Republic on April 3, 1992 (<https://president.al/ramiz-alia/>, accessed on 26.01.2023).

The election of Prof. Dr. Sali Berisha as President of the Republic in 1992 and 1997

Sali Berisha was elected President of the Republic of Albania on April 9, 1992 (<https://president.al/en/prof-dr-sali-berisha/>, accessed on 26.01.2023).

He results to be the most powerful Head of State in the history of transition. His presidency was characterized by a tendency towards the centralization of power and surely, in addition to the legal loopholes of the “Basic Constitutional Provisions” which reserved executive and normative powers, an essential role in this regard was played by his charismatic personality as well as the extraordinary popular support he enjoyed.

It should be noted that Berisha manifested this tendency from the beginning of his political career. At that time, right after the constitution of the Second (II) Legislature of the People’s Assembly on April 6, 1992, Durrës District’s deputy, Bashkim Kopliku, proposed a constitutional amendment that allowed the juridical compatibility with political functions of the Head of State, which was prohibited by



the “Basic Constitutional Provisions” that were in force (Parliamentary Documents, minutes of the parliamentary session 6.04.1992). This request was dismissed in silence and Sali Berisha formally resigned from the position of chairman of the Democratic Party on April 8, 1992 (Zogaj, 2014: 366-367).

However, he continued to be *de facto* the chairman of the Democratic Party, maintaining a dominant position. President Berisha exercised his right to issue normative decrees with legal effects periodically and directed also one meeting of Cabinet of ministers Aleksander Meksi’s government (Meksi, 1998). He also dictated a draft Constitution that strengthened and further extended the executive powers of the President of the Republic and led the campaign for the constitutional referendum on November 6, 1994, which was voted down (Zogaj, 2009).

Despite the wind of historical change and the high expectations of the Albanian society for democracy, separation and balancing of powers, freedom, guaranteed rights, tolerance, etc.

Beyond some initial achievements in terms of economic freedoms and on the international level, the period 1992-1997 marks one of the most difficult moments regarding freedom of expression, political freedoms and democratic culture in general, which culminated in the 1996 elections, that were not recognized by the opposition and the international community, the pyramid schemes and the anarchy of 1997 (<https://www.osce.org/files/f/documents/8/c/13567.pdf> accessed on 16.01.2023).

Sali Berisha was re-elected President of the Republic on February 3, 1997, amid the political and economic crisis dictated by the 1996 elections and the escalation of the usury crisis. He resigned from the post of head of state after losing the early elections on June 23, 1997, prior to immediately becoming the chairman of the Democratic Party on July 24, 1997.

The election of Prof. Dr. Rexhep Mejdani as President of the Republic in 1997

Rexhep Mejdani assumed the office of the President of the Republic on July 24, 1997 (<https://president.al/en/prof-dr-rexhep-meidani/>, accessed on 26.01.2023). In spite of the fact that his powers remained equal to those foreseen in the constitutional law of 1991, under circumstances during which the drafting of the New Constitution had begun as a necessary imperative driven by the “fall of state” in 1997, he co-shared these powers with other political and social factors.

President Mejdani appeared as a unifying figure in this regard and played an essential role in the finalization of the 1998 Constitution of the Republic of Albania, as well as several major governance crises during this period, especially in Albania’s role in the Kosovo war and the Rambouillet talks. It may as well be said

that what is called the presidential “*fisarmonica*”, that is, a “strong” president in times of crisis and a “weak” one in times of peace, has worked best during the time of President Mejdani (Tosato, 1946). A politician with integrity who addressed the nation and the rest of the political factors and whose word was actually heard. He completed and finished his term according to the state protocol on July 24, 2002.

The election of Alfred Moisiu as President of the Republic in 2002

Alfred Moisiu took office as the President of the Republic of Albania on July 24, 2002. Proposed by the Democratic Party, then in opposition, he will go down in history as the first consensually selected president of the post-communist area and as the first president to be elected in line with the legal provision of the new Constitution of 1998 now in force (Lamçe, 2013).

He was proposed by the Democratic Party, at that time in opposition, and accepted by the socialist in power in an attempt to indulge the negotiation calls dictated by the international community after the political crisis caused by election irregularities, which also brought ultimately the revision of the electoral code in 2003 (Zogaj, 2009). President Moisiu was positioned as a president above the parties, mainly performing a notarial function as the Head of State. He finished his term according to the state protocol on July 24, 2007.

The election of Bamir Topi as President of the Republic in 2007

Bamir Topi assumed office as the President of the Republic of Albania on July 24, 2007. A central figure of the Democratic Party, proposed by the latter after winning the 2005 elections, he was elected with 84 votes in the last round of voting with the help of 6 deputies “fished” in the ranks of the opposition. The presidential mandate of Bamir Topi was influenced by the strained relationship with the then Prime Minister Sali Berisha. His contributions are few, but impactful, as in the case of the constitutional changes of 2008 and, particularly, on the events of January 21, which caused the definitive disruption of his relationship with Sali Berisha (Topi, 2017). He finished his term according to the state protocol on July 24, 2012.

The election of Bujar Nishani as President of the Republic in 2012

Bujar Nishani assumed office on July 24, 2012. At the time of the election, he held the position of Minister of Justice during the second term of the Berisha Government. He is the first president who was elected by a simple majority based on the amended Article 87 of the Constitution as a result of the Constitutional Reform of 2008. At this point in time, despite the language and the unifying spirit of Article 87,



majorities have the right to elect their president with a 50 %+1 vote (Parliamentary Documents, 2015: p. 23). Therefore, a political president. The mandate of President Nishani is characterized by constant tensions with the socialist Government that came into power in 2013.

Despite the loyal and constitutional correctness, referred in German as *Verfassungstreue*³, greatly reflected in his support on the Justice Reform of 2016, the voice of the President was rarely heard and his role was subject to a tendency that stripped him off of the status the Head of State is meant to maintain. The latter revealed in several instances, such as the removal of the photo of the Head of State in official institutions and the replacement of the highest state hierarchy on several diplomatic ceremonies (Nishani, 2020). Nishani completed his term according to the state protocol on July 24, 2017

The election of Ilir Meta as President of the Republic in 2012

Ilir Meta assumed the office of the President of the Republic of Albania on July 24, 2017. Former Prime Minister, former Speaker of the Assembly, and leader of the Socialist Movement for Integration, Ilir Meta is elected by a simple majority with the support of the Socialist Party. This is also the last act of the SP-LSI ruling coalition 2013-2017, which paved the way for an unprecedented clash between the Head of State and the Government. Given the absence of the constitutional court due to the dismissal of the majority of its members by the Independent Qualification Commission (<http://www.reformanedrejttesi.al/>, accessed on 11.01.2023) as well as the withdrawal of the opposition from the institutions, the clash between President Meta and the Government that led to the intervention/mediation by several national and international institutions, the Venice Commission among others. All culminating in the final act, the accusation of treason and the beginning of the impeachment procedure by the Socialist Party, which passed the parliamentary process with 2/3 of the votes but was overthrown by the Constitutional Court with the decision 1/2022 on January 16, 2022 (Constitutional Court, https://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php, V. 1/22, accessed on 20.01.2023).

He finished his term according to the state protocol on July 24, 2022, to become reappointed as the head of the LSI the very next day.

The election of Bajram Begaj as President of the Republic in 2022

Bajram Begaj assumed office as the President of the Republic of Albania on July 24, 2022. He was elected by a simple majority from the Socialist Party. Begaj is a former high military who served as Chief of the General Staff of the Albanian

³ *Verfassungstreue* – German constitutional loyalty. Important principle elaborated mainly by German constitutional law.

Armed Forces. He is also a well-known professor of Medicine. His main challenge is to address the actual interests and concerns of the society.

II. The debate about a “too strong” or “too weak” president

There is quite a lot of controversy among researchers about the dialectic between a “too strong” president and a “too weak” president. The Italian constitutionalist Egidio Tosato made an early attempt to reconcile these two opposing views. He tried to highlight the impartiality of the head of state concerning the party game, presenting an idea of the President being the holder of a “neutral function”, which aims to “ensure that all the constitutional bodies of the state function according to the constitutional plan” (Tosato, 1946). While in the case of stable majorities, clearly legitimized by the popular vote, the head of state finds himself playing an almost notarial role. On the contrary, when the political framework is fragmented, the head of state promotes the minimum of homogeneity and political solidarity, necessary for the functioning of the representative democratic system (Baldassari, 1997).

In this last situation, even when he does not have the legal “levers”, the head of state, with the moral authority entrusted to him, tends to expand the influence, and encourage the decision-making institutions, the law-enforcement institutions, or the political forces so that they all act in accordance function of the common objectives of the state community.

This delicate task is carried out through a series of formal and informal means, among which the power of the message addressed to the parliament (Article 92 of the Constitution), the power of the message addressed to the nation, the use of various means of communication to express one’s opinion and attitudes, as well as his decrees. By exploiting these means, the Head of State exhausts one by one the stages of his attempt to promote the responsibility of institutions and parties for fulfilling the expectations of general interests.

The Head of State must strictly supervise the exercise of the responsibilities of all institutions concerning the public’s expectations, and in no case should he remain silent if he deems that these responsibilities are not undertaken in line with the spirit of the law, accordingly.

By definition, the relationship between the Head of State and the government tends to always be tense. A problematic relationship by nature that aids in the improvement of the performance of both parties. Among other things, the guarantees and legal immunity attributed to the Head of State during his time in office are based on this logic.

The President of the Republic has the strongest form of immunity provided by the Albanian legal system. Based on Article 90 of the Constitution, the President

of the Republic “is not responsible for the actions carried out in the exercise of his functions, except for high treason or serious violations of the Constitution” Unlike parliamentary immunity, that of the President of the Republic covers not only opinions but all “acts” performed in the exercise of the duty.

Furthermore, unlike in the case of the immunity of ministers and the prime minister, the Parliament cannot authorize judges and prosecutors to proceed against the Head of State (Constitutional Court, 1996). Notice should be given to the fact that this holds true merely for functional crimes. Extra-functional ones, according to constitutional jurisprudence (which also recognizes that this distinction is not always easy to make), are not covered by immunity. (Anastasi, 2011)

The only exceptions to this irresponsibility are two very serious crimes: high treason and serious violations on the Constitution. Albania is one of the few Parliamentary Republics that has faced such a case with President Ilir Meta. A case that was dismissed by the Constitutional Court with decision no. 1 date 16.02.2022 (Constitutional Court, V-1/22).

The Constitutional Court was called upon in the case of the confrontation between the President and the socialist majority to judge the general position of the President of the Republic in the constitutional system, in a dispute that includes him as both an institution and a natural person. With regards to the latter, decision 1/22 of the Constitutional Court provides for a rich jurisprudence.

After the Constitutional Court sanctioned in point 68 of the decision that no one is above the law, and no one can endanger the constitutional order, expressively stating:

68. The court notes that the constitutional institution of impeachment aims to uphold the principle of the rule of law, which requires the rule of law, in the sense that no one is above the law and the Constitution is protected in any case. (Decision).

The Constitutional Court also clarifies the criteria that are supposed to be embodied by the Head of State and based on these high qualities of representation are legitimized all the immunities, privileges, as well as the legal and constitutional guarantees enjoyed by the President. Points 124, 125, 126, and 127 of decision 1/22 of the Constitutional Court, beyond the fact that they put an end to the discussions on the issues related to the legal responsibilities of the President, provided a complete framework on the criteria for eligibility of the head of state, which may result in the most important framework to this day, for the procedure of the future selection of the Head of State as the highest representative of society's interests (V-1/22).

In point 124, among other things, the Constitutional Court states that:

The purpose of granting this immunity to the Head of the State is, on the one hand/, to emphasize the dignity, weight, and importance of the public function

and, on the other hand, to provide opportunities for him to fulfill his duty with due courage.

And for the importance of this jurisprudence made by the court, art 124, 125, 126, 127:

124. Next, the Court finds that Article 90, point 1, of the Constitution, stipulates that the President is not responsible for acts committed in the exercise of his duties. The purpose of granting this immunity to the President of the State is, on the one hand, to emphasize the dignity, weight, and importance of the public function and, on the other hand, to create opportunities for him to fulfill his duty with due courage. In this view, it is about the protection that the Constitution has given to the President, the measure of which is determined in four directions: the protection is offered to the individual who exercises the office of the President (*ratione personae*); this protection extends throughout the time of exercising the office, which means that it ends when the President's mandate ends, but it operates indefinitely for every act performed in the office (*ratione temporis*); protection is offered to him in any place, inside or outside his office, when it comes to presidential acts, as this protection does not exist even in his office if the President performs acts unrelated to his office (*ratione loci*); this protection covers only the acts that the President performs in the exercise of his duties, which includes any act for fulfilling the powers granted by the Constitution and the law (*ratione materiae*).

125. The court assesses that the constitutional provision of non-responsibility for acts committed in the exercise of duty is not absolute. It can be limited to special circumstances, expressly defined by point 2 of Article 90 of the Constitution, which is a serious violation of the Constitution or the commission of a serious crime. In other words, the constitutional responsibility of the President, regardless of whether the acts were performed or not in the exercise of his duties, is an exceptional case, which derives from the principle of the rule of law and that of the separation and balancing of powers.

126. In constitutional jurisprudence, it has been affirmed that the provision of responsibility for the President as Head of State, dictated for special reasons, shows the importance of the duty of respecting the Constitution and the place its preservation and protection occupies in a democratic state. This responsibility applies to everyone and, especially, to those who are charged with important state functions (see decision no. 2, dated 14.02.1996 of the Constitutional Court).

127. Even from the discussions of the drafters of the Constitution, it is evident that they have taken care that it provides for the preservation of the appropriate ratio between the inviolability of the President and his responsibility. According to them, the President in a parliamentary republic, as a rule, is immune in such a way that it exempts him from responsibility.



These privileges and tensions between the president, the executive, and the judiciary institutions have ignited the debate on the “accordion powers” of the Head of State: weak governments have produced strong presidents; delegitimized parliaments have produced very active presidents; governments with strong parliamentary support have reduced the President’s margin for maneuver to the point that the image of the “presidential accordion” seems suggestive, meaning that in order for it to be played harmoniously, it must be able to adapt to the institutional dynamics” (Louvaux, 1990). The case of Albania is indicative of this dialectic.

III. “Presidential *Fisarmonica*”. Three cases to describe the degradation of the dialectic between the Head of State and the Executive Power

Many constitutionalists consider the Head of State “the great regulator of the constitutional game”, especially in Parliamentary Republics (Louvaux, Ceccanti, 2012). His power “opens” in times of crisis and “closes” in times of peace, just like an accordion. Given the fact that, during the selection process of the Head of State, several indicators are taken into account concerning his integrity and personal trajectory, therefore attributing him a certain moral authority, it is deemed that the President takes the stage in times of crisis as a natural expectation of the society, that can be affiliated to the famous concept “*Ausnahmezustand*”, a state of exception, given by Carl Schmitt (Schmitt, 1922).

If we were to analyze the case of the last two presidents in Italy, Giorgio Napolitano, and Sergio Mattarella, despite the fact that the Italian constitution does not give the President these kinds of means or normative levers to influence solutions or decision-making, merely thanks to their personalities they have dictated the solutions of all political crises in Italy during the last 15 years. A good tradition that is consolidated in every presidential term. But how has the “presidential *fisarmonica*” evolved in Albania all throughout the post-communist transition?

The role of President Rexhep Mejdani in the Rambuje talks in 1999

President Rexhep Mejdani played an essential role during the Kosovo war and especially in the influence that the Albanian political factor would have in the signing of the Rambouillet agreement. During the talks of the Rambouillet Conference, which laid the foundations of the new state of Kosovo, there was constant pressure on the Kosovar delegation not to sign the agreement or to abandon the negotiations with Slobodan Milosevic, which would have resulted

in a grave historical mistake. Although the new constitution of 1998, no longer dictated any legal mechanisms for decision-making, President Mejdani driven by his personality, persistently pushed for the alignment of the Albanian political class in support of the signing of the agreement, thus helping President Ibrahim Rugova, whom in turn was quite clear about what the signing of this agreement would mean for the future of Kosovo (Zogaj, 2009).

The role of President Bamir Topi in the protest of January 21, 2011

The protest of January 21, 2011, apart from being a violent protest, also produced 4 innocent victims, for which several soldiers of the Guard of the Republic were convicted. At that time, the prosecution started the investigations and ordered the detention of some of the army officials of the Guard, but these orders were not executed by the State Police. President Topi, upholding the role of the guarantor of the legal and constitutional order, called for the permission of the investigation according to the law and the constitution, but in return he was accused to being the “villain” (Topi, 2015).

President Bujar Nishani in defense of the right to protest in 2016

In 2016, the Municipality of Tirana started the construction of a recreational complex in the artificial lake park in Tirana. Some citizens and civil society representatives wanted to protest since the construction were being done in a protected area. They were denied the right to protest as a constitutional prerogative and were also physically assaulted by the representatives of the company that had undertaken the project. Under these conditions, they asked for a meeting with the Head of State, who joined them in a protest at the lake park as a sign of solidarity, with the aim to give the message that the right to protest must not be violated in any case. The municipality and the other institutions not only did not comply with the guarantee of the constitutional right to protest addressed by the Head of State but launched a lynching campaign at his expense as obstacle on the city’s development and the construction of the playground, therefore driving the President’s act entirely out of context. Apparently, the “presidential accordion” is a guarantee that has been completely degraded in the Republic of Albania, and even more so the concept of state hierarchies.

IV. A lesson from the past

With the success of the “counter-revolution” in 1924, Ahmet Zogu would be reconfirmed as the most powerful figure in the country, and his re-ascension to the leadership of the country was already an irreversible fact.



The events of this period would be followed by the resignation of the Vrioni Government and the decision of the High Council to call Ahmet Zogu himself to form the new Government. Among other things, the High Council would decide upon the meeting of the Constitutional Assembly, which was dissolved on June 2, 1924, with the task of approving the Basic Statute of Albania.

The Constitutional Assembly on January 21, 1925, decided that the Albanian State would have parliamentary model of governance and that the Head of the State would be found as a figure who could ensure the security of public order and institutional guarantees, a figure that would in turn coincide with the person of Ahmet Zogu (Council of State, vol 2). The Assembly would be dissolved only after adopting the Basic Statute of the Republic of Albania that would be approved on March 2, 1925.

With regards to the legislative power, the Statute would opt for the alternative of bicameralism, i.e., the exercise of legislative power by the Parliament comprised by two Chambers, the Chamber of Deputies, and the Senate.

The Chamber of Deputies would consist of deputies with a 4-year mandate, representatives of 15,000 people according to Article 11. Thus, unlike the predecessor legislature, the deputy was representative of a larger number of individuals ranging from 8,000 to 15,000 people. (Omari, 2001).

In article 14 it was laid down that “the deputy does not only represent the district but the nation as a whole” and in article 15 it was stipulated that “the deputy cannot be given any orders by his constituents/electors” (Council of State, vol 2).

On the other hands, the establishment of the Senate as the Upper House was an innovation in the institutional history of the Albanian State. The creation of this body appeared as anachronistic. According to Article 49 of the Statute, the Senate consisted of 18 elected members, “two thirds from the people as per the special laws in place and one third from the President of the Republic”.

According to Article 52 of the Statute, no one could be elected as a Senator “without having reached the age of 40, and without having, in addition to the qualities assigned for deputies, one of the following traits (Council of State, vol. 2):

- a) *Degree from any institution of higher education.*
- b) *Former minister or former deputy*
- c) *A high-ranking civil or military official, who has demonstrated patriotism by clear evidence, as well as complete and convincing knowledge of the laws.*
- d) *A high-scale merchant or industrialist who has shown complete mastery and is well-known in the economic field”.*

The President of the Senate was chosen by the Head of State from among other senators and could replace the Head of State in cases where he was absent or was

unable to exercise his functions. The mandate of the senator, unlike the mandate of the deputy which lasted 4 years, would last 6 years.

As far as the legislative procedure is concerned, the draft laws had to follow an *iter* that started in the Chamber of Deputies and ended in the Senate. Thus, Article 53 stated that “any draft law accepted by the Chamber of Deputies before being submitted to the President of the Republic for approval, will go to the Senate for consideration and voting”. If the Chamber of Deputies disagrees with the Senate on any decision or law, and the Chamber insists on its opinion, the President of the Republic has the right, with the consent of the Senate, to dissolve the Chamber of Deputies. If the new Chamber also insists on the opinion of the first Chamber, then the decision of the new Chamber is final”.

Thus, through this article, the supremacy of the President of the State over the Chamber of Deputies, who through “cooperation” with the Senate could dissolve the Lower Chamber, is easily noticed.

As noted above, the legislative process ended with the promulgation of the draft law by the President, who, among other things, had the right to veto, a “*veto*” similar to the ‘pocket veto’ of the US President, which operated under the reverse principle of the ‘*tacit consent*’ of the Senate. The veto of the President of the State had a suspensive character, meaning that if the President of the State did not promulgate the law within 2 months, it was considered as if he had used the right of veto silently, ‘*Tacita negationem*’.

Finally, the Albanian Parliament (1925-1928), according to the provision of the Statute, could exercise functions even in a joint meeting.

According to Article 141 (Omari, 2001):

- *The two legislative bodies, on the proposal of the President of the Republic, have the right, which body, during their special meetings, to take decisions by two-thirds to change the provisions of the statute, we declare the need for the change*
- *The two legislative bodies, after having taken this decision in particular, meet together and proceed in deliberations.*
- *Decisions on changes to the Statutory Orders are made by two-thirds of the votes of all representatives that comprise the joint meeting.*
- *In this way, the authentic interpretation of the Statute is also done.*
- *The republican form of the State cannot be changed in any way”.*

So, the Parliament in a joint session had the right to amend, change or interpret in an official ‘authentic’ way the provisions of the Statute. However, the article prevented the change of the republican form of the State.

V. Conclusions and recommendations

In a certain way, as long as the functioning or the non-functioning of political and institutional systems in democratic societies is subject to geographical and cultural domains, authenticity in finding appropriate solutions is an imperative.

Unfortunately, institutions are not subject to universality, and in the midst of this value crisis, as well as the repositioning of state hierarchies in relation to society, it is practically mandatory to apply an “Albanian doctrine” in order to resolve the issue of balances between institutions and the role of Head of State thereof. The Albanian academic community and civil society should be more convincing in their attempt to avoid the shrinking of the Head of State.

A debate that gravitates periodically whenever the end of the presidential term approaches is that of the election of the President by the people. First, it should be noted that a president elected by the people while maintaining these very same powers as enshrined in the constitution would make little to no sense. An oblique relationship between legitimacy and power would be created. What is the point of having a president, whose figure is vested with the legitimacy attributed by the vote of the people, without being able to exercise executive powers? If we want to turn Albania into a Presidential Republic, where it is the president rather than the prime minister the one who governs, then this premises would make sense and we could engage discussions for such a solution. Despite that, the election of a president by the people, both in the presidential and semi-presidential case, would most likely reproduce the same electoral challenges that take place for the parliamentary elections. Thus, with the same parties and their leaders in the race for seat of the Head of State, besides the risk of producing a king-president, the dreams of any contender from civil society or the academic world that may voice his support on the theses under review, would be ultimately vanished.

A president by the people looks more like an exotic thesis than a realistic solution for recreating the figure of the president.

The Head of State is involved in the institutional totality and based on this fact, elements must be found that can help him in the exercise of his responsibilities, starting first and foremost with the delineation of the criteria and faculties that make the candidate eligible to occupy the highest role in the hierarchy of state. In this regard, the decision 1/2022 on the issue of the dismissal of President Meta provides us with the jurisprudence and a clear framework of how the President of the Republic ought to be like, reasons that legitimate the entirety of legal guarantees reserved for him. Secondly, yet again, the jurisprudence of the Constitutional Court provides the premises for the strengthening of the presidential decree in other spheres that include the public interest.

Currently, the presidential decree somewhat retains its validity in the case of appointments. The case of the non-decree of Gent Cakaj as Minister for Europe and Foreign Affairs and the legitimation of this decision by the Constitutional Court, offers an additional tool to preserve the Presidential legacy as the Head of State (26/2021, https://www.gjk.gov.al/include_php/previewdoc.php?id_kerkesa_vendimi=3261&nr_vendim=1, accessed on 12.12.2022).

However, to conclude, as mentioned on the outset of this analysis, there is a dichotomy between the system of values in the society and the Head of State. It is difficult to provide solutions in a context where not only the position of the Head of State, but all social hierarchies are put into question. As such, fueling a continuous negative development in our society and becoming one of the main reasons for the mass departure of Albanians.

In the current state of crisis of values and the strong interdependence among the political power that fosters an adaptation towards predetermined realities, the “cold voice of the state” represented by the President must lead the whole dialectic. As Carl Schmitt preannounced, the Sovran is called to embody his powers and to address the sustainable interest of the society in time of great crisis. If his voice is missing in this *scenario*, it means that the fundament of the state and constitutional order has “shrunk”. For sure, the academic community will have to deal with a new concept of the Head of State in the Albanian society in the near future.

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