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THE PRESIDENT OF THE REPUBLIC

Past, present and future

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content

EDITORIAL

The President of the Republic. Past, present and future

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This edition of Jus & Justicia Scientific Journal is dedicated to the academic debate on the role and powers of the President of the Republic while exercising the relevant functions in different forms of government. Constitutionally or legally provided powers, limitations, and related implications in presidential, semi-presidential, or parliamentary forms of government vary significantly. The relevant responsibilities and constraints under constitutional provisions define a crucial position in the local and international environment, guarantying democracy, development and peace.

The role of the President in assuring political and institutional balances - such as interacting with legislative and governmental bodies, exercising of veto power, government formation and termination foreign policy powers, etc. - is related not only to the country's institutional framework but also to personality features. The position of the President of the Republic might be "stronger" in times of crises or "weaker" in stable situations. That requires the attention of political and constitutional actors for a critical approach to the check and balance principle and to a solid constitutional architecture.

In most European countries - where parliamentary republic form of government prevails - the role of the President of the Republic is a ceremonial one with limited effective powers. In the quality of the guarantor of the Constitution, the President of the Republic is generally considered the embodiment of the unity of the nation acting *super partes*.

Eventual limits on presidential powers under the guidance of the Venice Commission opinions, involving the attempted impeachment procedure - as recently occurred in Albania, - demand an in-depth and critical analysis of

factors, that may lead to such events, so as to prevent eventual abuse of powers and preserve democracy.

Reference is made as well to recent constitutional events in Albania and the critical stances of international bodies (OSCE/ODHIR) towards the presidential activity during elections, to the campaign of the President against the ruling party, to the language or active interference with other state bodies activities, etc., which call for a responsible exercise of the, limited as they may be, presidential powers, in accordance with the constitutional spirit and provisions, but most of all to exercise his powers in order to meet the Albanian citizens' expectations (Albanian Constitutional Court Decision No. 1 date 16.02.2022).

As sustained by academic contributors in this edition, a reduced role of the President of the Republic confronted to previously recognized powers, is revealed. This leads to an essential need to guarantee the separation of powers and prevent their conflict. The fact that the presidency is held by a party other than the ruling majority may appear to be beneficial to the balance and division of powers. Whereas strong political figures and protagonists covering the position of the President of the Republic may risk devolving into constitutional conflicts, and jeopardize the constitutional relations that should exist between constitutional bodies. In this context, the President cannot be expected (or required) to be more active or dominant in political decision-making processes.

According to another approach, the functioning or non-functioning of political and institutional systems in democratic order are subject to geographical and cultural domains. Authentic endeavors in finding appropriate solutions are an imperative of the time. On the other hand, institutions are not subject to universality. Thus, in times of values crisis and repositioning of state hierarchies in relation to society, it is mandatory to apply an "*ad hoc* doctrine", to provide solutions to the balance between constitutional bodies, including the of Head of State.

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

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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

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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.

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

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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

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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 "gj", 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 competence[3], 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.

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The Constitution of the Albanian Republic.

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 *excurcus* 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 Council[2], 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 Teology", 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 down 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.reformanedrejtesi.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 (Contitutional 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 is 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.
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> 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 (Lauvaux, 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 Matarella, 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 Rambuillet agreement. During the talks of the Rambuillet 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 rapresenatives 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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Presidents in Parliamentary Democracies

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Abstract

Management and administration of a state are important functions to ensure security, protection, and shape environments where peoples of a country live. Depending on the context, various institutional design options have served as basis for governing a country. In democratic societies, three main institutional design options for a country's governance are observed. The first institutional design option is Parliamentarism, where main officials mandate originates from an electoral system. The second is Presidentialism, where citizens can select directly by the vote the Parliamentarian/ Congressman and the President through different election processes. The third is Semi-presidentialism, where there is more integration of the different branches, and the executive and legislative aren't so strictly separated. This abstract gives a snapshot in the current year, about the main powers of the Presidents across Europe, by analyzing the exercising of power of the Presidents that is at an extent is influenced by the election procedure, whether the President derives from the election of the members of the Parliament or by electoral vote of the citizens (https://crsreports.congress.gov). This article provides an overview of the features of the key institutional design options in a country's governance, with a view on the role and merits of Presidents versus types of institutional designs. At the same time, it contributes to raising consciousness about reforms needed in the current governance system, and setting priorities for

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*choosing the institutional rules. The research method used for the purposes of writing of this article, is secondary research. This has involved review of various external sources from a variety of channels. Format sources reviewed have included published datasets, reports, articles, other. The analytical framework covers the following data sets: political systems, regime types, economic freedom, government defense integrity, freedom in the world, corruption perception index. The results indicate for a potential correlational relationship between the governance institutional design and level of development of a country. Data gathered shows that presidentialism and semi-presidentialism are prevailing governance systems. But parliamentarisms countries', tend to perform better in national sectoral assessments. Presidentialism's or semi-presidentialism countries, perform lower and, usual*ly poor, in what is assessed as quality governance, and democratic regimes.

Keywords: *President, presidentialism, parliamentarism, semi-presidentialism, governance.*

I. Introduction

Management and administration of a state are important functions to ensure security, protection, prosperity, and shape environments where peoples of a country live. To implement these functions, delivery of public services, and addressing a country's challenges, governance systems have been established. Depending on the context, various institutional design options have served as basis for governing a country. In his work about political variables, Colomer (2008), writes that institutional design is the choice of rules for collective decision-making.

In democratic societies, there are three main known institutional design options for a country's governance. The first institutional design option is Parliamentarism, - the Parliamentarians and main officials mandate originates from an electoral system. The parliamentary regime facilitates the coexistence of multipartyism with fair representation, socially efficient outcomes, and relatively effective government. In these countries, in most cases the head of state is a separate official from the head of government. The second is Presidentialism – In this system, citizens can select directly by the vote both the Parliamentarian/ Congressman and the President through different election processes. In this system, the President/ head of state is in most cases also the ruler of the government. There is a clearer separation of powers between the legislative branch and the executive branch, both having the legal framework within they can function separately and simultaneously. It is common that in presidential governance, the President and executives belong to different parties, with different platforms and political programs. The third, is

Semi-presidentialism - In this system, there is more integration of the different branches than clear separation as in the presidential system described above, the executive and legislative aren't so strictly separated.

Seen as a very important variable to regulate public life, governance defines the extent to which powers are exercised, responsible decision-making bodies, responsible for law execution, and interpreting the law. Considering the importance of a governance system design for the public interest, it is important to identify features of a sustainable and quality governance. The concept of quality of government (QoG) has emerged as "a key factor" for understanding gaps in development, being theorized as a concept of impartiality in the exercise of power, equal treatment of citizens, provision of "ethical universalism", or guarantee of an "open access order" within a society (see SIEPS, 2018).

This article will provide an overview and explore the features of the key institutional design options in a country's governance, with a view on the role and merits of Presidents versus types of institutional designs. At the same time, the article will contribute to raising consciousness about reforms needed in the current governance system, and setting priorities for choosing the institutional rules.

II. Methodology

II. 1. Research methodology

The research method used for the purposes of writing of this article, is secondary research. This has involved review of various external sources from a variety of channels, including governmental institutional sites, key organizational structures, scientific journals, and other internet sites, which has greatly supported exploring details on the topic. Format sources reviewed have included published datasets, reports, articles, other. This article is conducted based on what is already known about the subject, in such case using a deductive approach. The process has included finding key sources and channels that allowed for data collection, identifying relevant information, categorizing information and synthesizing of content of the sources reviewed.

II. 2. Limitations

Analysis and findings of this work are based on data aggregated from different secondary sources, that have aimed to offer an overview of key features of countries overall, based on their governance institutional design setting, with considerations on the role of the President. While this article has explored and used several global

sources, it does not exclude the possibility that other data sources could have been selected to enrich data and analysis.

Data sources and data sets used, although they cover important aspects of a country's governance, are not standardized. Further, data are analyzed using simple analytical tools (Excel spreadsheets), which have not provided enough details on the correlation between data sets (potential variables). Although, considering the nature of data sets used, and the scope of reports upon which the analysis is based, this article allows for some data generalization. A further analysis though, could be used to further explore key gaps and critical areas identified here. It is recommended that future studies are conducted to further this analysis.

III. Literature review

III. 1. What is a parliamentary democracy?

A parliamentary democracy is a system of government in which citizens elect representatives to a legislative parliament to make the necessary laws and decisions for the country (borgenproject.org); a democratic parliament is one that is representative, open, and transparent, accessible, accountable and effective (ipu.org). According to Cheibub (2021), the government in a parliamentary system or parliamentary democracy derives from the Parliament, to which it is accountable. General elections in these systems are held to choose through a direct vote the members of Parliament, either votes for different parties that then are translated into seats in Parliament. In their work about "Parliamentary Democracy: Promise and Problems", Strøm, Müller, and Bergman (2003), state that. Cheibub, J. A., & Rasch, B. E. (2021).

> Parliamentary democracy is a chain of delegation and accountability, from the voters to the ultimate policy makers, in which at each link (stage), a principal (in whom authority is originally) delegates to an agent, whom the principal has conditionally authorized to act in his or her name and place. The parliamentary chain of delegation is characterized by indirectness and singularity (i.e., at each link of the parliamentary chain, a single principal delegate to a single agent). At each stage of this chain, delegation problems (such as adverse selection and moral hazard) can occur.

The main characteristic in parliamentary system, is the existence of a head of state, being a different person from the head of government. The head of state in a parliamentary system can be:

i) a monarch (constitutional monarchies), where the head of government is in most cases a member of parliament. Monarchy countries are represented by a monarch, who does not factually have political power and plays any important role in politics, but the role is only to represent the country, and this privilege is inherited. In Europe, constitutional monarchy systems are found in United Kingdom, Netherlands, Belgium, Norway, Denmark, Spain, Luxembourg, Monaco, Liechtenstein, and Sweden.
ii) a federal president (federal states), where the federal president is not chosen through a popular vote. Instead, a special committee is formed with the sole purpose of selecting the president via a vote. This governance system is observed in countries like Austria and Germany.
iii) a President (parliamentary republics), not necessarily a political figure, with limited powers and the head of the executive which mandate derives from the Parliament. This form of governance is found to be predominately present in European Union countries, including Latvia, Poland, Finland, Cyprus, Slovakia, Malta, Romania, Bulgaria, Slovenia, Hungary, Italy, Portugal, Lithuania, Ireland, France, Hungary, Greece, Czech Republic, and Estonia. There are only a few cases in parliamentary systems, where the head of government is also head of state. In this case, they are accountable to Parliament, where their mandate's legitimacy derives from Parliament.

III. 2. Governance forms in a parliamentary democracy

Two of the fundamental ways to organize a political system in countries that seek to establish and sustain democracy include presidentialism and parliamentarism. In presidential systems, both the head of the government and the legislature are independently and popularly elected for a fixed term in office. In parliamentary systems, the legislature, but not the government, is popularly elected: the government remains in office if it is at least tolerated by a majority in the parliament. As such, parliamentary systems are referred as systems with assembly confidence or government responsibility.

Parliamentarism

In Europe, the prevailing form of governance is parliamentarianism. The primary overarching feature defining a parliamentary system is the blending of the executive and legislative powers and the accountability of the government to the parliament. The government must have the support of the parliament for it to enter and remain in office. Parliamentary systems can maximize the inclusiveness of parliament and can give rise to coalition governments that are representative of several political

choices, even in divided societies. Parliamentary systems are also inherently flexible, as they enable removal of the head of government or the call of new elections when the majority of parliament no longer supports the government's approach.

The President elected by the parliamentarian, have less power and authority, and instead the higher power belongs to the government, for decision-making, policy making and budget planning, etc. In the federal republics, there is a distribution of power i.e., decentralization of power to the local administration, which has a larger number of responsibilities and competences. There are some exemptions in countries such as Belgium, where the regional organization of the country influences the distribution of power (monarchy and a federal state).

According to Juan Linz, parliamentarism, is seen as a flexible system that provides an easy-to-invoke and relatively cheap mechanism for resolving conflicts between the executive and the legislative powers. This representing a 'built-in' mechanism of conflict resolution that is not available in presidentialism. Strøm (2000), states that parliamentarism should be seen as a single and continuous chain of delegation and accountability, starting with the voters and proceeding to the parliament, the government and the bureaucracy. Scholars of parliamentarism assume that the mere presence of a parliament is seen as sufficient to guarantee the peaceful operation and survival of the political system.

Presidentialism

In a presidential system of Government, governments are likely not to be supported by a majority of the legislature since generally there are no guarantees in the system that such a majority can exist. Gridlocks between the executive and the legislature could arise and can lead to conflict between the two powers, unless the constitution provides for designs that compel them to cooperate. Coalitions are relatively rare as there are limited incentives in the system for individual politicians and their political parties to cooperate with one another and the government. Decision making is normally considered to be decentralized – that is, to be such that the president can respond to proposals originated in the legislature, which are in turn organized in such a way as to allow for political representatives to pursue individualistic rather than partisan strategies. Consequently, the government's ability to influence and implement policy can be reduced. In a presidential system of government, the president is elected for a constitutionally accepted fixed term in office. The head of state is elected directly through popular vote. In such case, this gives the President a broader spectrum of responsibilities and higher authority and possible decision-making competencies.

Linz argues that the fixed term of executive and legislature powers – a key feature of presidentialism, is to be seen as a problem. According to him, fixed terms powers would bring no institutional solutions in case of deadlock between the two powers.

He argues that presidentialism is less likely to sustain stable democratic regimes. While Mainwaring and Shugart, in their article "Juan Linz, Presidentialism, and Democracy: A Critical Appraisal" claim that presidentialism has some advantages that partially offset its drawbacks. They argue that these advantages can be maximized by paying careful attention to differences among presidential systems. They further argue that presidentialism tends to function better where presidencies have weak legislative powers, parties are at least moderately disciplined, and party systems are not highly fragmented.

IV. The President in presidential and parliamentary systems

The key distinction of the role of a President in a Parliamentary country compared to that of a Presidential country, is to which extent the power is exercised and influences the governance.

In countries with a Presidential system, the Head of state, so the President is the one who also governs (e.g. USA, Mexico). In countries with a Parliamentary system, the legislative branch (Parliament) has greater power and the Prime Minister deriving from Parliament rules and exercise the competencies to govern. Heads of state is purely symbolic figure, either it can be a monarch (example England), or a President in Parliamentary systems. Also has the functions of ceremonial and symbolic leader. The President or the Monarch has no real decision-making or policy-making power.

In Parliamentary systems, by law there is a clear distinction of the functions, competencies, and responsibilities of the head of government being the Prime Minister and the Head of State, being a formal figure with very limited powers (either a President, i.e., a popular nonpolitical person elected by the Parliament representing the unity between parties, or a monarch which position is inherited, in constitutional monarchy countries).

In a presidential system, the President is the most important figure that has the greatest extent of power, is the head of the executive, is elected by citizens through a separate election process and is the big "guy" (ozerim.yasar.edu.tr). The member of the cabinets i.e., the Ministers, or the secretaries in case of USA are appointed then by the President itself. This system is characterized by a clear distinction of power because the executive branch (President) and the legislative (the Congress), are separately elected through vote, so in a way they function independently from one another.

Another characteristic of parliamentary democracies is the existence of a multi-party systems that enhances more participation and representation in the seats of Parliaments, more often found in countries that use proportional representation.

This characteristic does not give a single branch to exercise the full power without challenge. Consequently, this can affect that the President and the Head of Governance, are from different parties, so needing to have a clear separation of the spectrum of competencies and responsibilities.

24 countries in Europe have an electoral system for the President, which is different and separated from the electoral system for the national legislature (Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Cyprus North, Czech Republic, Finland, France, Iceland, Ireland, Lithuania, Moldova, Montenegro, North Macedonia, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, and Ukraine). In these countries, the President represents the state, but also might some have some executive power, e.g., to appoint the Prime Minister (the chancellor in Federal countries).

The duration of a President's mandate is generally 5 years in most of the European countries, but it can be shorter e.g., 4-years duration in countries such as Estonia, Latvia, Moldova, or it can be longer such as in Finland and Austria 6 years and Ireland 7-years duration. IFES. (October 2022).

V. The election procedure of a President

A very important institutional decision in any democracy is selection of the electoral system. This is considered as such because it determines the overall political structure and governance rules, focusing on defining the rules of the political game, most importantly, who governs and the competencies and functions of the head of state and the head of the executive. Historically, however, despite the importance of such a decision, rarely has been observed a case when the electoral system is designed or chosen to respond to particular historical and social conditions of a country. To the contrary, the design of the electoral system has been guided and influenced by other neighboring countries systems, or the impact of colonialism in other cases.

Using the Database of Idea on Electoral Systems, regarding whether there is an electoral system for the President or not, European countries can be classified (https://www.idea.int) and crosschecking with other international official websites (https://www.electionguide.org):

- 11 countries in Europe do not apply an electoral system for the President. President is elected indirectly by the Parliament. Examples include Albania, Estonia, Germany, Greece, Hungary, Italy, Kosovo, Latvia, Malta, San Marino, and Switzerland. President is the head of state and has separate power from the executive, or the Prime Minister. Actually, the President in

these cases have limited power is a more honorific figure, promoting peace and inclusiveness between parties and branches of the judiciary, legislative and executive branches.

- 11 countries in Europe have a monarch as the head of state. These are Andorra, Belgium, Denmark, Liechtenstein, Luxembourg, Monaco, Netherlands, Norway, Spain, Sweden, and United Kingdom. The monarch's main function is to represent the state. The Monarch duties, those that are statutory and institutional, are developed over years of history. And further to the state duties, the Monarch also plays a less formal role, that of the 'Head of Nation'. In this case, the Monarch plays an important role in matters related to national identity, unity, and pride; strives to provide a sense of stability and continuity; publicly promotes success and excellence; and supports the ideal of voluntary service.
- 24 countries in Europe have an electoral system for the President, which is different and separated from the electoral system for the national legislature (Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Cyprus North, Czech Republic, Finland, France, Iceland, Ireland, Lithuania, Moldova, Montenegro, North Macedonia, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, and Ukraine). In these countries, the President represents the state, but also might some have some executive power, e.g. to appoint the Prime Minister (either the chancellor in Federal countries).
- 5 territories not applicable (Holy See/ Vatican is one of the last remaining seven absolute monarchies in the world; Gibraltar has almost complete internal self-governance through a parliament, having the British monarch as a head of state; There are three territories under The Crown Dependencies (Guernsey, Isle of Man and Jersey), they have the status of "territories for which the United Kingdom is responsible", rather than sovereign states.)

VI. The power of the President in a parliamentary democracy

The powers of the President are exercised differently in various institutional designs and countries, and their role and authority are clearly defined in the country's constitution. Choosing an appropriate electoral system is the key factor influencing the level of democracy of a country, because it deeply affects the political environment and safety of that country. Countries that have an electoral system for the President, the President is more powerful, and has also executive powers. In countries that do not have an electoral system, but the President mandate derives from the Parliament, the power is modest and its pure symbolic representative of

the state. In this case, being elected by most parliamentarians, and representing a multiparty system, is more likely to promote stability and coherence in a country (www.mass.gov).

A President in a Parliamentary Democracy cannot make laws – the President can veto a law approved in the Parliament. But it is not under the President's full authority to decide whether the law is passed. The power to make a new law is under Parliament's competencies (legislative branch). A President neither can decide how budget money will be spent, or can ask for demonstration of accountability – it is the executive branch (Prime Minister's Cabinet) that is responsible for the revenue collection and planning how the money is allocated and spent, in collaboration with the Parliament (legislative branch). A President cannot interpret laws, this function belongs to the judicial branch, i.e. the Supreme Court, which decides for the meaning and how the laws should be implemented, how laws can be applied to certain circumstances, and have the final decision on different interpretations of law in other levels of any of the branches. Instead, the President sometimes can elect some of the Member of higher judicial institutions.

What a President can, may or shall do, can be categorized as following:

(1) The Head of State.

In a parliamentary republic, the role of the Head of State is performed by the President. The primarily role of the President in such case is mainly representative, but this again highly depends a state's political system. In certain contexts, the President is entitled with representing one's country, performing ceremonial duties, providing civic leadership. When serving as head of state, the President cannot perform certain functions, and these may include: holding other public posts, being a member of a party, or even carrying out other private activity.

(2) Representing the unity of the sovereign

The President is voted secretly by the members of the Parliament, requiring the majority number of the Parliamentarians. Being so, representing most of the Parliament, indirectly represents the unity of the sovereign. The President convenes the newly elected Parliament. They can request the Assembly to meet in extraordinary sessions. The President at different timing can address messages to bring to the attention of the agenda of the Parliament the highest interest and priorities of the citizens.

(3) Representing the state

One of the roles entitled to a President, is carrying out the function of the representative of the nation. In this role, the focus of the President is on matters related to public diplomacy such as promoting a country's image and reputation.

Due to their non-executive status, Presidents are more prone to engage in these types of activities and are less easily compromised by the political decisions of their governments. The President is entitled to coordinate certain diplomatic representatives of other states and international organizations activities, accredited to the country. They serve as a connection with foreign countries, by bridging communications, and have the capacity to organize cultural events of a diplomatic nature. Further, the President can recognize foreign countries, and in some countries, they can lead a country's foreign policy.

(4) Ensuring governance continuity
The mandate of a President usually is longer than of the government or Parliament mandate. This fact is important, especially in specific crisis when the government is not constituted, or during governmental transitions, the state is still functioning. This is important for internal safety and security issues and the international reputation of the country. In some countries where cabinets functions in short duration, or where is a frequent change in short periods of time in the Prime Minister's Office, the President can be the source of continuity to maintain the institutional memory. Also, the role of the President is important when the government is under constitution and the formation of the cabinet takes longer than expected or when parliament is dissolved.

(5) Ensuring the political neutrality and balance of the state
The President is proposed by the group of Parliamentarian (the number required changes from country to country) and is elected through a voting system by the Parliament. Being so, the President represents most of the Parliament, where at most times it is required a higher majority in the number of votes needed to be elected (for example 2/3 of the votes in the Parliament; but this is different from country to country), than needed to create the governance (e.g., simple majority 50% + one vote). By which means that the President symbolizes the unity of the Parliament. The President ensures neutrality between state's, maintaining a healthy separation between the government that is party-politically influenced and the other state institutions that are supposed to be citizen-oriented and not being affected by politics. The head of state could not directly influence and interfere the leading and ruling processes of those institutions, but with their neutral role, should be able to avoid any possible influence of parties.

(6) Civic leadership
The President has the official status as a civic leader. They promote the highest values of people and keeps up the aspirations of a country that might include hosting different ceremonial events with national or international public figures,

supporting or participating in different activities to encourage the civic engagement and empowering local communities. The President can make speeches and talk directly to the people about problems, representing the best interest of all the people. However, there is a distinction to be noted between civil leadership and political interference. To protect the independence of some institution, by law is clearly defined that the President cannot make public comments in many jurisdictions that could be interpreted as politically controversial. Even if it's not under the President's responsibility to find solutions to sectorial aspects of the governance, their presence and engagement can play a role and influence the outcome for a safer and better environment for all, enhancing the improvement of the quality of life. The President can choose to engage in different economic, social, health, cultural events, the most relevant at a specific time for the communities.

(7) Discretional powers

Defined as the autonomy to practice own professional judgement, for governance-ruled affairs, discretional power is one of the responsibilities conferred to a President. A President may be entitled with certain discretionary powers, which, as defined in a country's constitution, are to be executed at the President's personal discretion. Despite this authority to exercise discretional powers, the President is limited to practice their discretion in the performance of certain official duties. Such examples include a President's responsibility to signing a treaty ratified by the parliament, but where their power to refuse signature is simply missing. A President's presence weighs more as an institutional authority to strengthen the legitimacy of government acts. Discretional powers of a President include also granting medals, titles of gratitude and awards, in recognition of a valuable contribution. In certain countries, a President is entitled to accredit and receive ambassadors, appoint certain high-ranking officials, formally promulgate laws (put a law or decree into effect by official proclamation). A President exercises the right of pardon in accordance with the law. Another very important discretional power of a President is exercising the role of a constitutional arbiter or guarantor - an extraordinary political intervention.

(8) Appointing certain high officials

In some countries, the law defines that the President is empowered to appoint specific high officials and/ or civil servants, but specifics and the extent to exercise this power varies by country. The President is responsible, depending on the country context, to:

i) Appoint the Prime Minister, and/ or recommend appointment and/ or dismissal of the other members of the Cabinet and the Undersecretaries.

ii) Appoint and release members of government/ State officials in cases as provided by law.

iii) Appoint and dismiss judges, or Magistrates in compliance with the law.

iv) Appointments in the defense sector, including promoting generals; appointing the Commander of the Security Force, appointing and dismiss the commanders of the army, navy, and air force.

v) Approving the Head of Supreme Courts and judicial bodies. The President could, appoint and dismiss Chief Prosecutor and prosecutors, issue the post of President or Vice-President of the Supreme Administrative Court, of the Supreme Civil and Criminal Court and of the Court of Audit, appoint the Chief/ Chancellor of Justice of the Supreme Court, propose the President of the National Office for the Judiciary, and the Prosecutor General.

vi) Appoint and recall diplomatic missions: The President appoints and releases plenipotentiary representatives of the country to other states and international organizations; receives the credentials of diplomatic agents accredited in country, appoints and dismisses heads of diplomatic missions.

vii) Appointing Governor of the Bank. The President appoints the President of the Budget Council, the Governor and Deputy Governors of the National Bank, the heads of autonomous regulatory organs, or other members of the Bank's Board.

viii) Academic appointments and leadership experience: The President nominates the Chairman of the Academy of Sciences, the rectors of universities and university professors pursuant to law; confirms the President of the Academy of Sciences, the President of the Academy of Arts.

ix) Other appointments: The President may appoint citizens who have honored the Nation through their outstanding achievements in the social, scientific, artistic and literary fields; appoint and dismiss federal civil servants; appoint the Chair of the Central Election Commission, appoint the Director, Deputy Director and Inspector General of the Intelligence Agency.

(9) National Defense

The President plays an important role in the National Defense of a country. Examples show that national defense and security of a country is often chaired by the President. The President could hold the prime responsibility for the conduct of foreign relations, which may include holding the power to deploy forces abroad, engage in military operations when such action is deemed necessary to maintain

the security and defense of the country. When it comes to managing matters related to security and defense, these are chaired by a President. The President serves also as the commander-in-chief of the armed forces, and in specific contexts serves as the supreme commander of national defense. It is noted that in some countries the President is the Commander in chief of the nation's Armed Forces, and in some other countries the command shall be exercised by the government.

(10) Diplomatic role
Many country's constitutions explicitly stress functions and responsibilities of the President that focus on their role as a Diplomat. The role of a head of state is codified in the Vienna Convention on Diplomatic Relations, a Convention ratified by 191 sovereign states. According to this Convention, the head of state in the generic sense presents international treaties (treaties.un.org).

(11) A non-executive president
A non-executive president is a symbolic leader of a state who performs a representative and civic role and separates the representative embodiment of the permanent institutions of the state from the leader of the incumbent government. A non-executive president is found in almost all parliamentary republics. Examples include Bangladesh, Dominica, Germany, India, Italy, Lebanon, Malta, Mongolia and Vanuatu. Bulmer, E. (August 2014) page VI.

VII. Analytical framework

The secondary research conducted, has contributed to the overall design of this article, including the design of the analytical framework, that will be used to identify patterns across countries and identify potential trends in national development matters.

The analytical framework used for the purposes of this article, involves collection and analysis of the following data sets:

TABLE 1

Political system	Regime Type	Index of Economic Freedom	Government Defense Integrity Index	Freedom in the world	Corruption Perception Index (CPI)
Parliamentarism					
Presidentialism					
Semi-presidentialism					

VII. 1. Results

VII. 1. 1. Regime Type

According to Democracy Index 2021 - Economist Intelligence measure of democracy[2], less than half (45.7%) of the world's population now live in a democracy of some sort, a significant decline from 2020 (49.4%). Even fewer (6.4%) reside in a "full democracy"; this level is down from 8.4% in 2020, after two countries (Chile and Spain) were downgraded to "flawed democracies". Substantially more than a third of the world's population (37.1%) live under authoritarian rule, with a large share being in China.

TABLE 2

	Full democracy	Flawed democracy	Hybrid regime	Authoritarian regime
Parliamentarism (*8 not ranked)	7/43	23/43	8/43	5/43
Presidentialism (*6 not ranked)	3/58	12/58	20/58	23/58
Semi-presidentialism (*1 not ranked)	1/28	9/28	4/28	14/28

(DEMOCRACY INDEX 2021, Democracy Index 2021,)
Note: Other countries not included in this list have either a socialist or monarchy system of governance.

Out of 151 countries[3], only *11 countries have Full democracy*; of which seven are parliamentarism governance systems, three presidentialism, and 1 semi-presidentialism. *44 of these countries have a Flawed democracy*, where Presidents in 19 of these countries have limited/ceremonial power, 17 having the President as Head of state and government and in 8 countries the President being the Head of State. *34 countries have a Hybrid regime*, where Presidents of 27 countries serve either as Head of state and government (22) or Head of State/ diplomacy (5). *46 countries are under an Authoritarian regime*, with the President serving as Head of State and Government or Head of State, in 43 cases. Of these countries, their territories are mainly in Africa, Asia, and Latin America.

Out of 51 countries having a parliamentarism governance system: *7 have full democracy* (scoring 8 and above, out of 10), with 6 countries being in Europe,

[2] Economist Intelligence Democracy Index measures democracy in five categories: I- Electoral process and pluralism; II- Functioning of government; III- Political participation; IV- Political culture; V- Civil liberties.

[3] Oceania and microstates don't have a classification on the regime type (16 states in total).

and only one in Africa (Mauritius), and in all cases with the President having limited/ceremonial power; *23 have Flawed democracy* (scoring under 8, out of 10); *8 have Hybrid regime* (scoring under 6, out of 10); *5 have an Authoritarian regime* (Ethiopia, Iraq, Lebanon, Myanmar, and United Arab Emirates), where the President has either Limited/ceremonial power (3), or serves as Head of state and government (1) or Head of State (1). From countries with a parliamentarism governance system, 36 have the President exercising limited/ceremonial power. Less than 50% of these countries, are territories located in Europe.

Out of 64 countries applying a presidentialism governance system, *3 have full democracy*, in all cases with the President being Head of state and government (Costa Rica, South Korea and Uruguay); *12 have Flawed democracy*; *20 have Hybrid regime*; *23 have an Authoritarian regime*. From countries with a presidentialism governance system, 61 have the President exercising the role of Head of State and Government. Around 45% of countries with a presidentialism governance, are in Africa, 31% in Latin America, and 17% in Asia.

Out of 29 countries applying semi-presidentialism governance system, only one (Taiwan), has full democracy; 9 have Flawed democracy; 4 have a Hybrid regime; and 14 have an Authoritarian regime. The President exercises the role of the Head of State or Head of State and Government, in 26 cases.

VII. 1. 2. Index of Economic Freedom

The Index Economic Freedom 2022[4], has measured economic freedom of countries based on 12 quantitative and qualitative factors, grouped into four broad categories, or pillars, of economic freedom: 1- Rule of Law (property rights, government integrity, judicial effectiveness); 2- Government Size (government spending, tax burden, fiscal health); 3- Regulatory Efficiency (business freedom, labor freedom, monetary freedom); 4- Open Markets (trade freedom, investment freedom, financial freedom). Each of the twelve economic freedoms within these categories is graded on a scale of 0 to 100. A country's overall score is derived by averaging these twelve economic freedoms, with equal weight being given to each.

The data from the Index report show the following state of economic freedom for countries based on their governance system type:

TABLE 3

	Free	Mostly free	Moderately free	Mostly unfree	Repressed
Parliamentarism governance (*2 countries are not ranked)	4/41	11/41	14/41	7/41	5/41

[4] Index of Economic Freedom is an annual guide published by The Heritage Foundation, a Washington's think tank. The Index covers 12 freedoms – from property rights to financial freedom – in 184 countries.

Presidential governance	0/58	5/58	14/58	26/58	13/58
Semi-presidential governance (*2 countries are not ranked)	1/26	2/26	4/26	12/26	6/26

(UNESCO Global Report 2021-2022)

VII. 1. 3. Government Defense Integrity Index

According to the 2020 Government Defense Integrity Index (GDI)[5], nearly two-thirds of countries face a high to critical risk of corruption in their defense and security sectors. Countries that score poorly in the GDI have weak or non-existent safeguards against defense sector corruption and are more likely to experience conflict, instability, and human rights abuses. According to this report, 62 per cent of countries receive an overall score of 49/100 or lower, indicating a high to critical risk of defense sector corruption across all world regions.

With a view of the GDI data as per governance system types of countries, the following can be summarized:

TABLE 4

	Very low risk	Low risk	Moderate risk	High risk	Very high risk	Critical risk
Parliamentarism (*18 countries are not ranked)	0/25	3/25	10/25	6/25	4/25	2/25
Presidentialism (*37 countries are not ranked)	0/21	0/21	5/21	5/21	7/21	4/21
Semi-presidentialism (*14 countries are not ranked)	0/14	1/14	2/14	4/14	3/14	4/14

(UNESCO Global Report 2021-2022)

VII. 1. 4. Freedom in the world

Freedom House's flagship publication Freedom in the World - a standard-setting comparative assessment of global political rights and civil liberties, assesses political rights and civil liberties around the world. *Freedom in the World* analyses the electoral process, political pluralism and participation, the functioning of the government, freedom of expression and of belief, associational and organizational rights, the rule of law, and personal autonomy and individual rights. In their 2022 publication report, the following data have been reported:

[5] The GDI assesses and scores 86 countries across five risk areas – financial, operational, personnel, political and procurement – before assigning an overall score.

TABLE 5

	Free	Partly-free	Not free
Parliamentarism governance	23/43	16/43	4/43 (*all of which authoritarian regimes)
Presidential governance	12/58	23/58	23/58
Semi-presidential governance	9/27	9/27	9/27

In the Global Report of World Trends in Freedom of Expression and Media Development, it is shown that in the Asia and the Pacific, and Latin America and the Caribbean regions (123 journalists killed in each region), have the highest number of reported killings of journalists. This is followed by the Arab region (90 journalists killed), while less than a quarter of the total number of killings took place in Africa, Western Europe, and North America, and Central and Eastern Europe combined.

VII. 1. 5. Corruption Perception Index (CPI)

According to the Corruption Perceptions Index (CPI)[6] countries with well-protected civil and political liberties generally control corruption better, while countries who violate civil liberties tend to score lower. Though, corruption levels are at a worldwide standstill. Two-thirds of countries score below 50, indicating that they have serious corruption problems, while 27 countries are at their lowest score ever. The highest scoring region is Western Europe & European Union (66/100), and the lowest scoring region is Sub-Saharan Africa (33/100). (Transparency International, Corruption Perceptions INDEX ,2021)

Denmark, Finland, and New Zealand, each score 88 (top three in the list), followed by Norway, Singapore, Sweden, Switzerland, the Netherlands, Luxembourg and Germany that complete the top 10. Except Singapore, the other 9 countries are territories in Europe (Western Europe). Venezuela, Somalia, Syria, and South Sudan, are at the bottom of the index. Countries experiencing armed conflict or authoritarianism tend to earn the lowest scores, including Venezuela, Yemen, North Korea, Afghanistan, Libya, Equatorial Guinea, and Turkmenistan. Overall, the CPI shows that control of corruption has stagnated or worsened in 86 per cent of countries over the last decade.

Viewing the CPI scores, based on political systems countries represent, it is noted that the average score for countries having a parliamentarism governance, is 50.62 (out of 100), compared to 34.01 (out of 100) with countries having a presidential governance system, and 37.18 (out of 100) for countries with semi-presidential governance system.

CPI average (out of 100), according to institutional design options:

[6] The index ranks 180 countries and territories by their perceived levels of public sector corruption according to experts and businesspeople. It relies on 13 independent data sources and uses a scale of zero to 100, where zero is highly corrupt and 100 is very clean.

TABLE 6

	Total average	Full democracy	Flawed democracy	Hybrid regime	Authoritarian regime
Parliamentarism governance (43 countries)	50.62	75.43	49.10	42.13	36.6
Presidential governance (58 countries)	34.01	64.33	43.16	32.8	26.35
Semi-presidential governance (26 countries, one not ranked)	37.18	68 (*one countries only)	51	32.5	26.69

VII. 2. Discussions

Analysis of key reports and data sets covering political and economic elements of a country's' governance, indicate for a potential correlational relationship between the governance institutional design and level of development of a country. The data gathered from various data sets of international reports, showed that presidential and semi-presidential governance systems overall prevail throughout the globe. But countries applying a parliamentarisms governance system, tend to perform better in national sectoral assessments; while countries having a presidentialism's or semi-presidentialism governance system, perform lower and, usually poor, in what is assessed as quality governance, and democratic regimes. This supports Juan Linz argument that presidentialism is less likely to sustain stable democratic regimes, and other scholars finding who say that the mere presence of a parliament is seen as sufficient to guarantee the peaceful operation and survival of the political system.

This article analyzed five global datasets (Regime type, Economic freedom, Government Defense Integrity, Freedom in the World, and Corruption Perception Index), versus the institutional design setting of a country's governance system, and found that:

Countries with a parliamentarism governance system have more democratic regime types, compared to presidentialism governance systems, which appear to have a more hybrid or authoritarian regimes. Parliamentarism governance systems are found mainly in Europe, and of those having a hybrid/ or authoritarian regime, are found mainly in Asia. Presidentialism governance systems are found mainly in Latin America, Africa, and Asia, and of those having a hybrid/ or authoritarian regime, are found mainly in Africa and Asia. Similarly, semi-presidentialism governance systems, are mainly found in Africa.(DEMOCRACY INDEX 2021, Democracy Index 2021)

Countries with a parliamentarism governance system, more than half, have free/ moderately free economic freedoms; while more than half of presidentialism governance systems, and more than half of semi-presidentialism governance

systems, are mostly unfree, or have repressed economic freedoms. Such countries face risks about rule of law, government size, regulatory efficiency, open markets. (2022 Index of Economic Freedom)

Half of countries of with a parliamentarism governance system, face low to moderate risk of corruption in their defence and security sectors; while two-third of countries with a presidentialism governance system, face high to critical risks. The same is noted for countries with a semi-presidentialism governance system.

For all countries, drafting a new constitution or amending an existing one is a stimulating challenge, but also a demanding process from both a political and technical standpoint. This report presents the results of a benchmarking exercise conducted by the OECD of possible constitutional provisions, reflecting the experiences of OECD member countries. The components covered include economic and social rights, the system of government, multi-level governance, constitutional review, fiscal governance, and the role and functioning of central banks. OECD (February 2022).

Regarding political rights and civil liberties, it is observed that countries with pparliamentarisms are either free or partly free, with only a small percentage being reported as non-free (all of which authoritarian regimes); while in presidential countries it is noted that they are either partly free (about half of the countries) or not free (about the other half). Semi-presidential countries are reported to be a third free, a third partly-free and a third not free.

Countries with a parliamentarism governance, tend to score better in the protection of civil and political liberties, while countries with a presidential and semi-presidential governance, score much lower. This indicates higher violation of these rights in countries with such institutional design settings.

Considering the role and status of the President as a civic leader, who promotes the highest values of people and keeps up the aspirations of a country, it can be deliberated that in presidential and semi-presidential countries, this critical role has failed to be accomplished, while certainly there are present gaps in parliamentarism societies as well.

VIII. Conclusions

Political instability has been an issue all over the world and continues to escalate in different countries in Europe and wider. Conflicts all over the world have arisen, and although between specific countries, their consequences affect the wider population. An important role in this, has played the political system of a countries. Looking at countries in conflict, or those that have critical issues with national freedoms and good governance, it is noted that their governance system,

institutions, processes, and practices are fragile, or do not purposely guarantee such freedoms and rights to their citizens.

The governance system of a country appears to have a meaningful role in securing respect for human rights, rule of law, political pluralism, efficient delivery of public services, economic freedoms, and many others. While different governance institutional settings seem to secure these in different scales, specific systems (presidentialism and semi-presidentialism) do not manage to achieve this. These systems indicate for serious problems in managing to meet a minimum requirement of political, economic, and civil rights. The governance system should be guided by national interests, and not fulfillment of personal interests, or perspective.

Governance systems should be designed such that allow for political and institutional processes and outcomes to achieve national development goals, by delivering effectively human rights: civil, economic, political rights. Institutions of governance should redesign themselves to guarantee a state of welfare to all.

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MISCELLANEOUS

Property rights in theory versus practice: the current process of evaluation and compensation of property in Albania

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Abstract

In the latest and current attempt to solving the 30-year-old problem of the process of restitution of the rights of former owners in Albania, the Government has implemented a new methodology of evaluation of properties to be compensated. However, despite the remedy being in place for more than 6 years now, the domestic authorities have failed to materialize their predictions, with most intermittent deadlines having been missed, due to poor initial planning, numerous delays in implementation, poor execution, as well as necessities in amending the law. At the same time, these delays, especially the Government taking more than a year and a half to institute the necessary amendments to the law, pursuant to the findings of the ECtHR and Constitutional Court, have also put at risk the implementation of the law as a whole and the missing of the final deadline of 2026, for the finalization of the process.

***Keywords*:** *Property rights, law, ECtHR, methodology, statistics.*

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I. Introduction

Beginning in 1991, as a result of a change in the political system, a large-scale national privatization of state and common properties was possible for the first time since 1990. During the initial phase of the new transformation process, private ownership and the rights derived from it were legitimized in four main categories of property, including residential properties, agricultural lands, buildings, and industrial or service lands, as well as properties demanded by their documented pre-1945 legitimate owners. In addition to these categories, on a regular basis, newly modified laws on privatization and land ownership rights applied to property owned by the state and local units. The political, economic, and demographic changes that occurred during the 1990s caused confusion and difficulties in the implementation of laws and land control, despite the institutional and legal actions taken by the Government to implement the reform of land and property rights during that decade.

In 1993, the Albanian government initiated legal measures to compensate property owners whose land was seized by communist authorities between 1944 and 1992, with the property compensation law (Parliamentary Assembly, 1993) under which former landowners might request the return of up to sixty hectares of their property. Numerous amendments were made to this law following its enactment, which demonstrated, over time and with the implementation of the Constitution of the Republic of Albania, the need for a more robust framework in this regard.[3] These first efforts culminated with the 1998 Constitution (approved on November 22, 1998) which stipulates that property rights must be determined in an impartial and non-discriminatory manner. (Parliamentary Assembly, 1998).

Following the enactment of the Constitution and the enshrinement of the right to property as a fundamental right under this document, Parliament enacted the Law "On Restitution and Recompense of Property", which overturned the 1993 law, (Parliamentary Assembly, 2004) including the clauses of public interest and equitable compensation. In addition, this law expanded the property compensation choices available to applicants, and monetary and in-kind restitution sum was no longer restricted. Under Article 6 of the law, Expropriated entities were to be recognized with the right of ownership and their immovable properties were to be returned without limitation, with the exception of agricultural land, which was to be returned or compensated up to 100 ha, in case the expropriated subject or his/her heirs did not benefit from the implementation of Law No. 7501, dated 2 19.7.1991 "On Land".

[3] The Law was amended by laws No. 7736/1993, No. 7765/1993, No. 7808/1994 No. 7879/1994, No. 7916/1995, and by law No. 8084/1996.

In 2014, Law no. 9583, dated 17.7.2006, established the Property Restitution and Compensation Commission, to determine the legality of the district committee's decisions on the claims raised by various applicants for their return and compensation, an institution that has since undergone changes numerous as a result of numerous laws and decisions of the Constitutional Court.[4] In addition, for the first time, this law permitted the filing of claims for pecuniary damages resulting from the delayed enforcement of Property Restitution Commission decisions and the accompanying loss of profits. This statute was changed at the start of 2006 (Article 23 – Compensation fund). The State Committee for Restitution and Compensation has been dissolved. The Property Restitution and Compensation Agency was founded under the Ministry of Justice. The Agency's regional commissions were known as regional offices. According to Law No. 10207 of December 23, 2009, (Parliamentary Assembly, 2009) all regional offices would be closed and decision-making authority would be transferred to the central body. In tandem with these legislative amendments, the Constitutional Court delivered a series of judgments involving property rights and potential amendments or repeals of this law's constituent norms.[5]

In conditions where the majority of claims filed with state or judicial authorities were not reviewed within a reasonable amount of time and remained pending for more than a decade; where a significant number of cases were awaiting evaluation by the European Court of Human Rights; whereas significant portion of the law had been amended through various judicial and legislative means;[6] the property

[4] The Committee was changed to the Property Restitution and Compensation Agency and the latter's functions underwent further changes with Law No. 9583, dated 17.7.2006, Law No. 10 207, dated 23.12.2009 and the decision of the Constitutional Court No. 27, dated 26.5.2010.

[5] Decision No. 26/2005 for the repeal as contrary to the Constitution of the Republic of Albania of Article 9of the law. The Constitutional Court accepted the request of an association of tenants in former state houses in private ownership and declared that: "changing the law favorable to a certain group of the population is not justified by any inherent public interest. It is true that the amended provision favors the owners of flats, but on the other hand it discriminates against another group (however small in number), violating the minimum right to live, that of having a shelter. Denying the right of the renters to become owners, terminating their lease without guaranteeing another shelter, are actions that cannot be reconciled with the public interest.

[6] Law No. 9388, dated 4.5.2005, announced by decree No. 4594, dated 1.6.2005 of the President of the Republic of Albania, Alfred Moisiu, Published in Official Gazette No. 44, page 1603; Law No. 9583, dated 17.7.2006 promulgated by decree No. 5001, dated 28.7.2006 of the President of the Republic of Albania, Alfred Moisiu, Published in the Official Gazette No. 81, page 2786; Law No. 9684, dated 6.2.2007 promulgated by decree No. 5203, dated 8.2.2007 of the President of the Republic of Albania, Alfred Moisiu, Published in Official Gazette No. 11, page 180; Law No. 9898, dated 10.4.2008 promulgated by decree No. 5690, dated 29.4.2008 of the President of the Republic of Albania, Bamir Topi, Published in Official Gazette No. 62, page 2736; Law No. 10 095, dated 12.3.2009 Published in the Official Journal No. 53, page 2479; Law No. 10 207, dated 23.12.2009 promulgated by decree No. 6383, dated 13.1.2010 of the President of the Republic of Albania, Bamir Topi, Published in Official Gazette No. 194, page 8573; Law No. 10 308, dated 22.7.2010 Published in the Official Journal No. 1127, page 8573; Law No. 55/2012, dated 10.5.2012, promulgated by decree No. 7495, dated 24.5.2012 of the President of the Republic of Albania, Bamir Topi, Published in Official Gazette No. 61, page 3017; Law No. 49/2014,

restitution and compensation mechanisms were failing; the majority of claims filed with state or judicial authorities were not reviewed within a reasonable amount of time and were pending for more years before domestic and international courts, where the latter had consistently found breaches of human rights and issues with the current mechanism,[7] the ECtHR issued its first pilot judgment for Albania on the issue of property rights (ECtHR, Manushaqe Puto and Others v. Albania, 2012). In this judgment, the Court identified a fundamental structural flaw: *the failure to implement final court and administrative decisions regarding the right to property restitution or compensation*. In reaction to this ruling, after more than three years, in 2015, the Albanian Government passed a new property legislation that overturned the former law 9235/2004, as amended. (Parliamentary Assembly, 2015).

II. The protection and guarantee of the constitutional right to property according to law no. 133/2015

It was proposed that the Law no. 133/2015, would prioritize the protection and guarantee of the constitutional right to property, to ensure its restoration in cases of unjust alienation of rights, in accordance with the principle of legal certainty and the rule of law, as well as the exercise of the right to expropriation, of property following fair compensation and in full balance with the public interest. As a result, the law attempted to establish a new compensation scheme: there is no restitution of the property taken by the communist regime, just monetary or in-kind compensation.

Under the new mechanism, all final decisions on the restitution and compensation of property will be subject to a financial assessment in which the property recognized for compensation is valued based on the cadastral reference the property had at the time of expropriation and the restituted property is valued

dated 8.5.2014, promulgated by decree No. 8575, dated 27.5.2014 of the President of the Republic of Albania, Bujar Nishani, Published in Official Gazette No. 76, page 2705; and Law No. 47/2015, dated 7.5.2015, promulgated by decree No. 9107, dated 21.5.2015, of the President of the Republic of Albania, Bujar Nishani, Published in Official Gazette No. 84, page 4405.

[7] Among the key judgments against Albania in the field of failure to respect the property rights of former owners are Beshiri and Others v. Albania, ECtHR decision, dated August 22, 2006, application No. 7352/03; Driza v. Albania, decision of the ECHR, dated November 13, 2007, application No. 33771/02; Ramadhi and Others v. Albania, Decision of the ECHR, dated November 13, 2007, application No. 38222/02; Vrioni and Others v. Albania, ECtHR decision, dated December 7, 2010, application No. 35720/04 and 42832/06; Eltari v. Albania, ECtHR decision, dated March 8, 2011, application No. 16530/06; Çaush Driza v. Albania, ECtHR decision dated March 15, 2011 pertaining to application No. 10810/05; Sharra v. Albania, ECtHR decision, dated 10.11.2015, applications Nos. 25038/08, 64376/09, 64399/09, 347/10, 1376/10, 4036/10, 12889/10, 20240/10, 29442/10, 29617/10, 33154/11 and 2032/12; and Bici v. Albania, ECtHR decision dated December 13, 2015, pertaining to application No. 5250/07.

based on the difference between its current cadastral reference and the value of this property, according to the cadastral reference it had at the time of expropriation, (*Article 6- Evaluation methodology*).

Moreover, according to the law, final decisions that only recognized the right to compensation are assessed financially, according to the cadastral reference that the property had at the time of expropriation, and in the absence of a fixed cadastral reference, this assessment is made taking as a reference the cadastral reference, according to the origin of the property, which is located closest to the property to be compensated, based on the value map at the time of entitlement.

In accordance with the purpose of implementing this law, the Property Management Agency (PMA), the newly created institution that replaces the Property Restitution and Compensation Agency (PRCA), was required to review property claims that had been submitted but not reviewed by the PRCA, as well as accept and decide on new property claims presented to it, within ninety days of the law's entry into force (*Article 26 - Property Management Agency*). According to Article 27, the 90-day deadline cannot be extended under any circumstances, either by judicial or administrative decision. The process of reviewing pending property claims must be concluded within three years of the date of implementation, or by February 23, 2019 (*Article 34 - Deadline for completing the process*). Pursuant to Article 34 of the Law, if the PMA fails to consider the submitted requests for the recognition of property rights within three years, the applicant may launch a civil action in the civil court of first instance. According to Article 29, a decision of the PMA recognizing (or not recognizing) property rights and the right to compensation may be appealed to the relevant court of appeal within thirty days of its announcement. In accordance with Article 30 of the statute, the PMA's final decision would be registered with the Immovable Property Registration Office (IPRO). It was anticipated that the entire process of recognizing and paying past owners would be finished within a decade.

On April 21, 2016, the President of the Republic of Albania, one-fifth of the members of the Albanian Parliament, the People's Advocate, the Republican Party, the Association of Legitimate Owners "Albanians," the Association "Our Province," the Association "Bregdeti," and the Association "Pronësi me Drejtësi" appealed the constitutionality of Law No.133/2015, to the Constitutional Court. In 2016, before issuing a judgment, the Albanian Constitutional Court requested an opinion from the Venice Commission on the compatibility of the new law with the principles of the ECHR on property rights. (European Commission for Democracy Through Law, 2016).

According to the opinion of the Venice Commission the smaller amount of compensation paid to the former owners satisfies the proportionality criterion of Article 1 of Protocol 1 of the ECHR. Taking into account the Opinion, the

Constitutional Court of Albania announced its decision in 2017 declaring illegal only Article 6 items 3 and 5 of Law No.133/2015, as amended. (Constitutional Court, Decision no. 1, 2017). The Court noted that the content of paragraphs 1 and 2 of Article 6 of Law No. 133/2015, as amended materializes the compensation formula's fundamental principles. The remainder of Article 6 controlled specific situations that, based on their substance, are considered of as a new expropriation since they involve the reassessment of possessions that have already been returned or compensated. In this regard, these two laws cause legal certainty difficulties, notably resulting in legislative uncertainty and unpredictability.[8] According to the Court, taking into account the particular circumstances of Albania, it is arguable that the new and effective legislation satisfies the criteria of proportionality provided by Article 1, Protocol 1 of the ECHR and that the intervention appears to have a legitimate purpose, given that the purpose of Law No.133/2015, as amended is to effectively resolve the problem of the property of the current owners through recognition and compensation within a reasonable period of ten years. Regarding the petitioners' arguments regarding the financial compensation scheme outlined in Article 7 of this law, the Constitutional Court lacked the required majority to reach a ruling on the merits; hence it decided to reject the claim. As a result of this judgment, the property compensation procedure continued, with the Property Management Agency serving as the lead entity in charge of its administration. Despite initial successful efforts to unblock a process that had seen significant delays over the years, the extremely high number of cases for initial review, as well as the significant number of applications for evaluation of decisions given by the PRCA and PRCC-s over the years, bogged down the process and led to a failure of keeping up with the initial deadlines set by the law, on the financial evaluation of all unassessed final decisions that have recognized the right to compensation, forcing a high number of former owners who already have a final property recognition decision, to address, through a new process, the Tirana Administrative Court, with their requests for evaluation.

The Tirana Administrative Court, for 2021, has a backlog of 1574 cases, accumulated over the years. At the same time, the Administrative Court of Appeal has started the reporting year 2021, with a significant backlog (stock) of 15,157 cases, accumulated over the years, with 11,760 general administrative cases, 1,733

[8] Paragraph 41 of Decision No. 1 dated 16.01.2017, CC, "...In this context, the legislator must take into account to what extent the physical compensation provided for in article 6, items 3 and 5, is fulfilled by other articles of the law in order to avoid overlapping or collision among the provisions of the law. The provision of repeated and uncoordinated regulations between them in essence and the consequences they bring ambiguity and therefore violate the principle of legal certainty. Under these conditions, the Court considers that the content of items 3 and 5 of Article 6 of Law 133/2015 is not in accordance with the principle of legal certainty, since the calculation of the benefited area and what will be deducted or added according to the formula provided in item 1 of article 6 is unclear and creates confusion in implementation as far as citizens' expectations are concerned."

labor cases and 1,664 cases without opposing parties. - The Supreme Judicial Council - Report on the state of the judicial system and the activity of the Supreme Judicial Council for 2021.

III. The implementation of the law in practice by the responsible institutions

The Property Management Agency has handled a large number of requests for first recognition and requests for compensation based on earlier rulings over the past five years. In 2016, this institution financially assessed 1869 judgments with a total value of 11,883,227,764 ALL, and 419 applicants filed petitions for the execution of the financially assessed decisions. Among these petitions, 197 were compensated, and the total value of all benefits is 1,805,417,553 ALL. Regarding the applications that got monetary compensation based on a special request, four applicants with a total monetary value of ALL 91,869,447 profited. Approximately 5,700 fresh requests for acknowledgment of ownership were submitted within the law's 90-day deadline (Law 133/2015, Article 27 - Handling of requests). By the end of the year, the Property Management Agency had issued 1,000 final rulings. (Property Management Agency, 2017).

In 2017, the Property Management Agency published a total of 4038 decisions from the years 1993-1994, which recognized the property right to compensation, of which 118 decisions were published in 2017; 6941 decisions of 1995 that have recognized the right to compensation; and a total of 4,877 decisions from 1996 that recognized the right to compensation. In total, until the end of 2017, the PMA assessed a total of 15,856 decisions from the years 1993, 1994, 1995 and 1996, which recognized the right to compensation of expropriated applicants, of which 11,936 decisions were assessed in the period January-December 2017. However, during 2017, the Property Management Agency made financial compensation through special requests for 12 applications with a total value of ALL 348,631,590. According to the progressive compensation of 20%, 30% and 40% of the property, the subjects benefited from financial compensation in the value of ALL 97,434,259. With regards to compensation in nature, for the period January - March 2017, 11 requests (out of 96 requests in total) were treated with compensation from the land fund available to the PMA; for the period April - June 2017, 6 requests and for the period July - September 2017, 5 requests were handled with compensation in nature from the land fund available to the PMA, in total 22 requests. Regarding the applications presented for recognition of ownership (new requests) to this Agency, 2529 requests were issued a decision, most of which were returned for further completion of the documentation of the files. (Property Management Agency, 2018).

In 2018, the Property management Agency continued the work with the financial evaluation of the final decisions for compensation, completing the financial evaluation of 9458 decisions not previously evaluated. 8,642 decisions were financially assessed with a value of ALL 34,156,228,643, while 632 decisions were considered compensated with reference to Article 7, item 2, of the law, which was later repealed by the Constitutional Court in its decision of February 2021.184 decisions were recognized with the right of first refusal. The statistics and low numbers of new cases administration and evaluation this period raise questions about the Agency's efficiency. During the period of January - December 2018, the PMA registered 429 applications for financial compensation and compensation in nature and 18 decisions were executed, distributing from the Financial Fund, a value of 35,521,553 ALL and from the Land Fund, an area of 568,909 m2 with a financial value of ALL 116,637,991. During this period, in terms of special request decisions, 129 applications were received, of which 86 were new applications: 86 applications/files were executed which benefited from the first installment, with a total value of 1 507 504 425.56 ALL. Furthermore, the second installment for 10 applications and the third installment for 2 applications were prepared. During the period of January - December 2018, the PMA handled only 3,000 requests for ownership recognition, while the number of files submitted for review in this category of requests had a total of 12,950 files. (Property Management Agency, 2019).

In 2019, the Property Management Agency continued the work with the financial evaluation of the final decisions for compensation, completing the financial evaluation of 1558 decisions, registering 149 applications for financial / physical compensation and 59 decisions with the right to financial compensation were executed and from the land fund and for 22 decisions, the closure of the proceedings was decided. In relation to the execution of decisions with a special request, it turns out that 115 subjects applied, and during the year, 190 files were taken into administrative review, where 97 applications were treated with a decision, of which for 86 applications, the PMA continued with the payment of installments. Meanwhile, for 11 applications it decided to end the administrative procedure. Until the end of this year, which also coincides with the end of the three-year deadline for evaluating unhandled claims (February 23, 2019), the Property management Agency completed the handling of 9,512 claims, out of a total of 16,462 unprocessed claims (claims filed under previous laws and new claims under Law No. 133/2015, as amended). (Property Management Agency, 2020).

According to Article 34 para.2 "Deadline for the end of the process", for 6950 unprocessed claims, the PMA continued with the notification procedures, noting that for the recognition and compensation of the claimed property, the applicants would have to address the court of first instance, of the place where the property is located.

This fundamental element in the law, which constitutes an objective and subjective right for all potential applicants, and of the entire process of recognition and compensation of property (the short deadline for recognition of new claims) failed to be met by the competent authorities, showing the deep deficiencies in the provisions of the implementation of this law and the marked lack of objective planning on the needs of the process, which in the present case further aggravate the situation of the applicants, as well as of the local judicial institutions.

During the period of January-December 2020, 43 decisions were updated that recognized the right to compensation; 67 new applications for financial/ physical compensation were registered, and the process of reviewing files that were previously filed continued, 67 new applications were administered and 25 decisions were executed. In relation to the execution of decisions with a special request, 55 new requests were administered and 80 applications were treated with a decision, of which for 75 applications the PMA continued with the payment of installments, while for 5 applications it was decided to end the administrative procedure. (Property Management Agency, 2021).

The Property Management Agency, until 23.02.2021, has evaluated a total of 26,092 final decisions for compensation covering decisions allotting property rights issued in the years 1993 to 2013. However, for this year, only 11 decisions that recognized the right to compensation and 6 applications for execution have been updated. (Property Management Agency, 2022).

This stalemate in the administrative activity of the PMA was explained as an effect of the decision of the Constitutional Court of February 15, 2021, published in Official Gazette No. 37, dated March 11, 2021. In this judgment, the Court decided to partially grant the petition of the "Pronësi me Drejtësi" association, ordering the repeal, as incompatible with the Constitution, of Article 7, item 2, letters "a" and "b", of Law No. 133/2015 "On the treatment of property and the completion of the property compensation procedure" and the repeal, as incompatible with the Constitution, of items 16/2, 16/4, and 18 of DCM No. 223, dated 23.03.2016 "On determining the rules and procedures for the evaluation and distribution of the financial and physical fund for property compensation", as amended. It is estimated that a total of 4,141 decisions with a financial worth of about 18 billion ALL will be affected by this decision and the upcoming modifications to the law and the accompanying CDMs will further slowdown the process as a whole. (Constitutional Court, Decision no. 4, 2021).

From the entry into force of Law No. 133/2015, as amended, until December 31, 2021, the Property Management Agency has executed only 794 decisions with a value of 7,842,824,600.14 ALL, from a total of existing and new filed requests of more than 40,000.

Concerning the evaluation of new requests for recognition of ownership, during the first five years of the implementation of Law No.133/2015, as amended, a total

of 16,462 unprocessed applications were registered with the PMA (requests filed under previous laws and new requests under Law No.133/2015, as amended), of which only 9,512 were administered with a final decision, while 6,950 applicants were notified to withdraw the documents from the PMA and address the local courts.

In 2017 and 2018, there were more than 20,000 cases administered by the PMA, according to the agency's case statistics. However, the number of files administered has decreased over the past three years, and the same trend can be observed in terms of the number of decisions issuing financial compensation, evaluating new requests for recognition, and notifying applicants of the need to supplement their files with the necessary documentation. In the past two years, there has been a discernible decrease in activity, with virtually no decisions for financial compensation, no decisions for new evaluations, and very few decisions for financial compensation in response to special requests. This slowdown was justified by the PMA with the decision of the Constitutional Court on the unconstitutionality of the provisions of Article 7 of the Law and the uncertainty that it would create, as well as the need for the amendment of the law by Parliament before further continuation. In actuality, despite the increased number of applications that this adjustment will bring to the PMA, it has no influence on the practices that are currently awaiting examination by the institution.

IV. European Court of Human Rights assessment of the efficiency of the legal remedy for property rights restoration

Due to the fact that a large number of cases for initial recognition are already before the district courts for consideration of their merits, the process of property compensation, which is already in the second half of the legal term established by the law itself, reveals a number of fundamental problems with its implementation, including: a) the low number of cases completed with full execution; b) the low number of applications that have found a final assessment; and c) the high number of cases that have not yet been completed.

As a result of the progression of the property compensation process in the system established by the new law, and the latter's inability to resolve the property issue within a reasonable timeframe, an increasing number of cases, in addition to those already submitted, have been presented to the European Court of Human Rights. In a number of decisions, including Gjergo and Babicenko v. Albania, the European Court of Human Rights has analyzed the new system established by the 2015 law.

According to the ECtHR, the 2015 law provides a variety of forms of compensation, and it is not the ECtHR's role to establish the hierarchy of

compensation determined by local authorities. The court determined that the Government has utilized *"alternative forms of compensation"* as instructed in the pilot judgment Manushaqe Puto and Others. Despite this, the Court determined that Article 25 of the Law and the relevant Decisions of the Council of Ministers for its implementation lack the necessary legal certainty according to the fundamental provisions of the Convention (ECtHR, Agim Beshiri v. Albania and 11 other applicants, 2020, para.180).

The court also considered the reality in Albania, where a large number of illegal structures, including former owners' properties, have been built throughout the country. In order to maintain social peace, the Government has been forced to intervene multiple times by passing legislation aimed at regulating illegally erected structures. This scenario was accounted for in the relevant law, which provided for the recognition of former owners' claims for compensation when restitution is physically or legally impossible. According to the Court, if adequate compensation is provided in accordance with ECtHR case law, there is no imbalance between the parties' respective interests (Para. 181 *ibid.)*

Concerning the remedies available to applicants, the ECtHR emphasized that the law established a claimant's ability to appeal the PMA's decisions on the recognition of property rights and the right to compensation to the relevant appellate court. (Para. 182 *ibid*.) In addition, the law gives claimants the right to file a civil action in a court of first instance with general jurisdiction if the PMA fails to render a decision within three years on ongoing property claims. In this regard, the Court raised a number of questions regarding the procedure that national courts will follow when deciding on pending property claims, as well as how they will conduct financial assessments and carry out other responsibilities that were formerly the PMA's purview. (Para. 183 *ibid*.)

The court also noted that the 2015 Law on Property grants the former owner the right to file a civil action with the Administrative Court in cases involving the PMA's failure to determine the financial assessment within the statutorily mandated three-year period. Taking into account not only all of the legal measures, but also their implementation in practice, the Court affirmed in its decision that local authorities, who are in the best position to assess the practices, priorities, and competing interests at the domestic level, have a large degree of discretion in selecting forms of compensation for property rights violations.

As a result, the Court determined that there was no unresolved issue in the law regarding the efficacy of its mechanism that would call into question the efficacy of the legal remedy in this regard, (Para. 215 *ibid.)* concluding that it was an effective remedy pursuant to Article 13 of the Convention. The Court also found no violation of the former owners' rights in terms of the proportionality of the burden borne by the applicants in limiting their compensation against the public interest,

recalling the Wolkenberg case in which it accepted the government's argument regarding the need for a compromise between the claimants' expectations and the state's budget constraints in an exceptional situation, resulting in a reduction of the co-ownership compensation. (ECtHR, Wolkenberg and Others v. Poland, 2007).

In the case of compensations when the property's current value is exponentially greater than its value under the original cadastral reference, the court found problems with the burden of proportionality between the rights of former owners and the public interest. The court noted that the use of the initial cadastral reference of the expropriated property as the basis for conducting the financial evaluation is not an arbitrary act by the state authorities. However, due to the adoption of such a referral criterion, some applicants may receive only a modest amount of compensation, despite the fact that the value of their expropriated property has increased over time. Under these conditions, the remedy is only effective if the total amount of compensation – regardless of the form of compensation – reaches at least 10% of the value to which the applicants would have been entitled if the financial assessment had been conducted according to the current cadastral reference. Given the general level of sacrifice that the new compensation scheme imposes on former owners, the court determined that the 10% minimum threshold for the amount of compensation can be deemed reasonable (Agim Beshiri v. Albania and 11 other applicants, 2020, para. 209).

The ECHR reexamined anew, in April 2021, the situation of property compensation in Albania, in the Ruçi and Bejleri case, in which it noted that after the Beshiri and Others decision, the Constitutional Court of Albania issued a decision regarding the constitutional evaluation *in abstracto* of certain provisions of the Property Law of 2015, repealing articles 7 (2) (a) and (b) as well as certain implementation provisions. (ECtHR, Ruçi and Bejleri and 191 other applicants v. Albania, 2021).

In reviewing local judicial developments, the Court noted and approved the fact that with the repeal of Articles 7 (2) (a) and (b) of Law 133/2015, which regulated the determination of the financial assessment when a former owner had previously received partial compensation for an expropriated property, the financial assessment determination was no longer governed by those provisions. The court followed the instructions and attempted to implement in practice the ECtHR's instruction that the amount of compensation should not be less than 10% of the amount the former owners would be entitled to receive based on the property's current market value. (Para. 24, *ibid*) Despite the above conclusion, the Court drew attention to the provisions made in paragraph 222 of the Beshiri and Others decision, regarding the conditions that must be met by the authorities in order for the solution to continue to be effective, particularly the granting of compensation for not less than 10% of the value to which the former owners are

entitled, if the financial assessment is made with reference to the current cadastral reference of the expropriated property.

V. The practical aspects of the application of property law within the domestic legal framework and the need for further modification to reflect new circumstances

Following the Beshiri and Others ECtHR decision, on 15 February 2021, in response to a second request for the evaluation of the constitutionality of certain provisions of the Property Law of 2015 and the supplementary Decisions of the Council of Ministers, the Constitutional Court issued a new judgment (CC (V-4/21)), through which it filled the gaps left by the 2017 decision, in which the latter had not considered the merits of the claim in relation to Articles 6 (1) (a) and 6 (2) (a) of the Convention.

In its decision, the Constitutional Court found that Article 7 (2) (a) and (b) regulates situations in which a former owner has previously obtained partial restitution of expropriated property. It was noted that, based on updated information provided by the government, a substantial number of applications, 10,120 out of 26,091, submitted for financial review were affected by a change in cadastral reference over time. Therefore, it was up to the legislature and not the executive branch to determine how the minimum threshold of 10% for the amount of compensation established by the European Court in the Beshiri and Others decision should be applied in this category, including cases in which the former owners had previously received compensation or partial restitution, affected by the provisions of Article 7 of the law.

As a result, the Constitutional Court determined that the calculation method defined in Article 7 (2) (a) and (b), which had not been altered since the ECHR's decision in Beshiri and Others, did not meet the 10% threshold, and that the interference with the property rights of the former owners was disproportionate. Article 7 (2) (a) and (b) of the Property Act of 2015 was therefore repealed. (para. 59-68, CC (V-4/21)). The Constitutional Court postponed the implementation of its decision by six months from the date of its announcement and ordered Parliament to adopt new legislation within the same time frame in order to fill the legal void left by the repealed provisions, a provision of the decision's enacting clause that Parliament failed to abide to for more than a year and a half.

In August 2022, the government proposed some changes to Law No. 133/2015.[9] In the latter, further to the codification of the 10% threshold suggested by the ECtHR

[9] Approved by Parliament though Law no. 77/2022 "For some additions and amendments to Law no. 133/2015 "For the treatment of the property and the finalization of the property compensation process", published on the Official Gazette no. 168, dated 15.12.2022.

in the Beshiri and Others case, for the guarantee of the rights of former owners who would be unjustly burdened from the change of the cadastral reference of their property (Article 1, *ibid*), a new iteration of Article 7 was proposed, in order to complement and complete the nullified provision with the rules governing the methodology of evaluation of the law, which was omitted in the previous iteration. This new provision defines clear rules for the financial assessment of properties whose cadastral reference has not changed, as well as those whose cadastral item has changed, depending on whether the final decisions have recognized the right to restitution and compensation of the property, or only the right to compensation. Additionally, in accordance with the Beshiri and Others decision and the decision of the Constitutional Court, this provision also guaranteed the minimal amount of 10% of the value of the property to the recognized owners, according to the current cadastral reference.

According to this formula, the final decisions that have recognized the property rights of the owners, when the cadastral reference of the latter has changed, are evaluated financially, calculating the value of the property recognized for compensation, based on the current cadastral reference. Following this step, the value of the property already restituted/compensated is calculated according to the methodology of Article 6 and the value of the restituted property is deducted from the value of the property recognized for compensation, calculated according to the current cadastral reference. If the value of the already restituted/compensated property is greater than the value of the property recognized for compensation, then the expropriated subject is considered compensated. In cases where the value of the property recognized for compensation is greater than the value of the property already restituted/compensated, the financial assessment of the final decision, which recognized the right to restitution and compensation of the property, is equal to 10% of the resulting difference, deducting the value of the restituted/compensated property from the value of the property recognized for compensation.

All these amendments, aligning the law with the judgments and decisions of the ECtHR and domestic courts, were passed by Parliament on November 18th 2022, despite the protests and objections by the opposition. (Parliament of Albania, 2022).

In parallel to these domestic and international procedures, the Civil College Chamber of the Supreme Court of Albania ruled in a binding decision dated February 7th 2018, that against the decisions of the Appeals Court, which examines appeals on matters of law and substance, a petition may be made to the Supreme Court, which will have exclusive jurisdiction. (Supreme Court of Albania, 89th Unifying Judgment, 2018)

In accordance with Article 29 of Law No. 133/2015, as amended, this will also apply to appeals of PMA decisions that recognize or refuse to recognize ownership

rights or the right to compensation. In accordance with Article 19 of the Property Law, all appeals against the amount of compensation determined by the PMA will be reviewed by the Administrative Court of Appeals. (Para. 71 *ibid*).

In addition, the Chamber ruled that the court of first instance in whose jurisdiction the disputed immovable property was situated would hear all civil actions and eventual counterclaims of third parties relating to rights claimed in relation to properties for which the PRCA or PMA had ruled in favor of a former owner. (Para. 63 *ibid*).

Regarding the retroactive application of the Property Law of 2015, the Supreme Court clarified that the 2015 Law applied retroactively to all property valuation proceedings initiated prior to its entry into force. If the proceedings involved other matters, they would be evaluated according to the law in effect at the time they were initiated. Therefore, the Supreme Court concluded that all civil actions filed against the decisions of the PRCC or PRCA prior to the enactment of the 2015 Law would be heard by the courts of first instance within whose territorial jurisdiction the contested immovable property was situated.

With the exception of the judgment of the Civil College Chamber of the Supreme Court, which addressed procedural issues on the rights of applicants to appeal specific decisions and the relevant institutions to be addressed, the majority of the Constitutional Court's decisions lacked the establishment of a new legal precedent or legal doctrine. Instead, it relied on the judgements and arguments of institutions such as the Venice Commission or the European Court of Human Rights. At the same time, these judgments lacked in their effort to be enforced by the Government, with the latter failing to implement new measures for more than a year and a half since the rendition of the latest Constitutional Court judgment, despite the letter allotting only 6 months for such amendments.

VI. Final considerations

On the basis of the current reference of the evaluation and compensation process and the actions taken by the various administrative and judicial bodies, domestic and international, a number of conclusions can be drawn on the practical implementation of Law No.133/2015, as amended, the subsequent bylaws, the activity and administrative practice of the PMA, as well as the analysis of domestic and international decision-making bodies regarding the effectiveness of the remedy introduced by this law.

The process of compensation of properties of previous owners or their successors has been viewed favorably by the majority, if not all, Government and international actors, notwithstanding the obstacles and challenges encountered

in practice. The authors of this paper tend to disagree with this evaluation based on two simple metrics: the failure of the PMA to adhere to the deadlines for the implementation of the different steps of the process, particularly in regards to the recognition of new claims, and the consistent failure of the PMA to address new and already existing claims into a consistent stream of administered cases, reducing the number of cases evaluated in the later years to nearly zero, thereby jeopardizing the integrity of the system as a whole.

Despite the changes in the meaning of the law during the past five years and those pending as a result of judgements by the Constitutional Court and the European Court of Human Rights, the legal framework and its implementation have become much more stable. However, this stability has come at a high price for Albanian property owners, who after more than three decades are still navigating the administrative and legal landscape in search of a solution to their problem. Despite the legal framework stabilizing in recent years, the failure of the lawmakers to have succinct norms in the law since its genesis, and the necessity to intervene with new legal provisions, after more than 5 years following judgments by international and domestic courts, as well as the failure of administrative actors to adhere to the already existing legal deadlines, has thrown the entire system into disarray, with applicants now having to address again the administrative as well as new judicial institutions, and beginning a new procedure that they had started and re-started for the past three decades, every time the previous laws failed to materialize a remedy, new bylaws were enacted, and the laws and bylaws were deemed unconstitutional by the Constitutional Court or international tribunals.

In light of the fact that the current law is in its sixth year of implementation, and not even half of property claims have found a definitive solution, with many applicants addressing the courts anew and many others appealing PMA decisions, history appears to be repeating itself, with the current initiative risking to become yet another failure among the numerous Government initiatives in this field.

The Committee of Ministers of the Council of Europe, the Venice Commission, as well as the domestic judicial authorities, and the European Court of Human Rights have evaluated and confirmed the effectiveness of the current mechanism recognizing and compensating property to owners dispossessed by the communist regime. The problem with these conclusions, as identified by the authors, is that the vast majority, if not all analyses of the law are theoretical, and not a single evaluation to date has focused on the law's merits, present application, and efficiency of the work of the Property Management Agency, which has *"shut its doors"* in the later years due to numerous reasons. Neither the European Court of Human Rights nor the Committee of Ministers of the Council of Europe, nor the highest domestic courts have reviewed the efficacy of the law in practice, which would reveal a completely different reality than the evaluation *in abstracto* undertaken in all prior evaluations.

With the continuation of the process, the issuance of the Constitutional Court's ruling in 2021, and the expected implementation of the amendments to the law, a new cadre of cases will be reevaluated by the Property Management Agency, resulting in a new backlog of case files and additional delays in the future. The process has been stalled for more than two years, suspended pending legal and by-law amendments, a deadlock that does not merely suspend proceedings for claimants pending a compensation decision and delivery, but which opens a new process for more than 4000 applicants, to whom the state obligations, prior to the legal amendments, were considered fulfilled, but now will be reevaluated.

In principle, at its inception, Law No. 133/2015, as amended, was envisaged as a tangible option that the authorities believed would help solve the great and difficult impasse in our country for the restitution and as of now simply compensation of properties. The question that arises naturally following the findings on the implementation of the legislation in question is: *"Is the law No. 133/2015, as amended, of those dimensions and effective enough to constitute a final tool for solving this problem and ending the transitory system of the fundamental right of ownership?"*. The answer of the authors of this article is that, speaking from historical experience, where most initiatives excelled in their implementation in the first years, but were bogged down eventually, due to poor initial planning or resource management, is that the future of the current law is ominous, unless urgent steps are taken to remedy the situation.

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Open Season – Elections during Pandemic in Albania

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Abstract

The parliamentary elections in Albania took place on 25th March 2021 and they were won by the Socialist Party. Even though elections took place during the pandemic, the pandemics itself had a minor impact on the process. With the exception of making compulsory a two-week quarantine for those entering the country and thus making it impossible for the Albanian emigrants to cast their vote, the election campaign was organized similarly with the preceding campaigns without concerns for social distancing. The real change which eventually influenced the campaign was the change in the electoral law from closed to open list. For the first time, the party and the party candidates pursued different strategies. In addition to the official campaign, there was an underground campaign with vote buying and exercise of influence which aimed and achieved to transfer vote from the top of the top of the list to candidates in the middle or even lower part of the list. This made possible to observe and understand the internal conflicts within the parties.

***Keywords*:** *political party, electoral system, pandemics, vote buying, glass cliff.*

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I. Introduction

The general elections of 25th April 2021 took place amidst of the global COVID-19 pandemic. The Socialist Party overwhelmingly won this election with 74 seats (the same result of the elections of 2017) out of a parliament of 140 seats. The Democratic Party "Alliance for Change" got 59 seats (a huge improvement compering with the 43 seats of 2017) and the Socialist Movement for Integration (SMI) got only 4 seats which is a very poor result comparing with the 18 seats it won in the 2017 elections. Other small parties such as Republic Party (RP) and Party for Justice and Unity (PJU) managed to secure seats as part of the coalition with DP. These elections provided SP with its third mandate to govern the country, to the great disappointment of the opposition parties. Elections were contested by all opposition parties and SP was accused of vote buying.

The elections were considered as very important due to the special circumstances in which they took place. Albania was hit by an earthquake in November 2019 and suffered great loss in people and materials. The country was still in an emergency when the pandemic hit. However, what made these elections of particular importance was that in February 2019, the opposition parties, both DP and SMI have rescinded all their parliamentary mandates won in the elections of 2017. Likewise in 2021, in 2017 both DP and SMI have accused SP of vote buying and corruption. After SP, which had the majority in parliament, voted down the initiative of DP and SMI on vetting the politicians, in one of the many rallies organized by the opposition parties against the government, the two main opposition parties rescinded all their mandates. The Central Elections Commission (CEC) attempted to fill the vacant seats with the remaining registered candidates, but it was not possible to fill all the vacant seats. In the last two years preceding the elections of 2021, the parliament had functioned with only 122 deputies out of the required 140. The opposition parties requested snap elections, but SP didn't agree with this. Because of unmet demands, both DP and SMI didn't participate in the 2019 local elections and as result SP won 60 out of 61 mayoral positions and municipality councils. Thus, SP gained absolute control over the central and local government.

Nonetheless, in June 2020, the SP and the extra-parliamentary parties reached a political agreement on the necessary changes to the electoral code. The debate for the right electoral law in Albania has been a permanent topic in the heated discussions on elections in Albania. Electoral reform has been a constant in all the political debates among politicians, political analysists, and civil society. The elections results have always been contested and the electoral law is blamed for the distortion of the results. The existing electoral law is approved by law No.10019,

dated 29 Dec.2008. Since then, it is amended several times. It was amended by Law No.74/2012 dated 12 July 2012, by Law No.31/2015 dated 2 April 2015 and two times in 2020 (law no.101/2020 dated 23 July 2020 and law no.118/2020 dated 5 October 2020). The amendments were made in almost all aspect of the code such as structure of the CEC, public and private funding of the campaign, misuse of public resources, gender balance on candidate lists, campaign coverage in the media, election dispute and resolution, electronic voting, voting from abroad and voting and counting technologies. However, the most significant one was the change in the electoral system, from closed list regional proportional to open list regional proportional. Consequently, the ranking of candidates in party lists was important for as long as the candidates in the lower part of the list didn't ensure enough preferential votes to surpass relevant list's quotient.[2]

II. The Electoral System – Open List Regional Proportional

II.1. Changes in the Electoral System

Electoral systems are considered as one of main institutional choices that highly influences and has fundamental consequences on the political system (Norris, 2004: 4). Albania has applied different electoral systems since its first democratic elections in 1991. In 1991 it applied a single member constituency (Krasniqi, 2008: 31) for a parliament with 250 seats. Those of 1992 have been a mix of double-ballot majoritarian with proportional, with the proportional part aiming to correct the final results of the elections so that the result could be as proportional as possible (Edgeworth and Soares, 1992: 39). Those of 1996 and 1997 were a mix of double-ballot majoritarian with proportional, but this time without its proportional aspect (De Gregorio *et al,* 1996: 4; Kaplan and Knapp, 1997: 30). The system changed again in 2001 and in 2005. It was again a mix of majoritarian and proportional, but in 2001 it remained a double-ballot majoritarian with re-taking the compensatory aspect of the proportional and in 2005 it was made simpler by making the majoritarian part a single-ballot and keeping un-changed the compensatory aspect of the proportional (OSCE, 2001: 4; OSCE, 2005: 4). The system changed again in 2009 to closed list regional proportional (OSCE, 2009: 6) and in 2020 in open list regional proportional. Thus, the system has been subject of changes and rather than framing the party system it was framed by the political parties. In the words of Diamond and Platneer 'among the many structural and historical variables that affect democracy, few are more open to rapid and intentionally designed changed than the electoral system' (2006: ix).

[2] The quotient is established by diving the number of votes received by the number of mandates won by the list in the respective district (OSCE, 2021: 7).

Even though the change from mix to regional proportional was made upon recommendations to ensure proportionality (OSCE, 2005:25), with the adoption of the regional proportional in 2009, the small parties were the ones which lost their seats and relevance in the party system. Exception are the elections of 2017, where SMI got 18 seats, which was an unprecedent number for a small party until that moment. Indeed, the regional proportional with high thresholds in small constituencies works to the detriment of small parties whose electorate is not concentrated in one or few constituencies but rather dispersed throughout the country (Sartori 2001: 93-94). The electoral system is 'the most specific manipulative instrument of politics' (1968: 273). As such it can be changed to reflect the needs of those who designed it. The choice of manipulation is wide indeed. It varies from the type of the system such as proportional, majoritarian or a mix of them to the specific rules for each system. Even the much-praised proportional system does not necessarily produce a multiparty system. The outcome depends a lot on the size of the representative body, the district magnitude, the threshold (Lijphart, 1994: 10-12; Shugart and Wattenberg, 2001: 10). The outcomes of the elections depend a lot on the rules and rules are determined by the political actors to protect their interests.

In Albania, like elsewhere, the electoral system *per se* does not influence the party system. The political parties designed the constituencies' borders, the number of mandates per constituency, the threshold, the number of seats and the electoral formula. Parties created and dissolved coalitions, at times based on ideological affinities and sometimes despite of that. Indeed 'each electoral system contains a different array of biases (...) and those who decide among such systems can chose in effect, to prefer a set of biases over another. And to prefer one over another is to make a policy choice' (Nohlen, 1998: 28). Elections after all are a political and not a technical process.

The recent changes in the system from closed list to open ones aimed at bringing the MPs closer to the electorate, strengthen their position and voice within the parliamentary group and the party and decrease the control of the leader over the party. Furthermore, with open list it was thought that parties would include candidates with better biography, people with no criminal records as it has been the case with the lists of 2017 and the lists of the mayors in 2019. However, the change in the system meant that the candidate could not receive automatically his/her seat in parliament based on the ranking in the list, because the seat was conditional to the performance of the candidate in terms of votes received. That highly influenced the strategy of the candidates in the 2021 elections.

In an interview with Deutche Welle, the Head of the Electoral Commission of Albania, Mr. Ilirjan Celibashi commented that the new electoral law would permit voters to choose their preferred candidate and not accept with closed eyes

the candidate ranking made in an arbitrary way by the head of the party as it has been the case in the previous elections. Nonetheless in less than two months before the elections it was not clear whether the voters could cast one or more votes for their preferred candidates, or whether they could vote across party lists. In March, one month before elections, the Central election Commission started an education program for voters providing guidelines on the voting process including activities aimed at first-time voters and vulnerable groups. Topics included the concept of new electronic voter identification, new design of the ballot paper, voting procedures and vote-buying. Nonetheless the rules and regulations were not clear until one month before elections which made it difficult for the voters to understand the process. Information on the electronic voter identification and the layout of the ballot paper were especially un-clear leading to confusion among voters on the day of elections and a high number of invalid ballots (OSCE, 2021:.8). In this confusing situation the candidates had to start the "open season" to find supporters in a situation where the competition was across party lines and within the party. The expectation was that the party structures would support the candidates at the top of the list, and when the party leader were at the top of the list, votes would be cast for him and the party.

The change of the electoral system made possible the resurfacing of the old problems of majoritarian system which was vote – buying. Candidates draw lines within each 'imagined' constituency to create dedicated areas or mini constituencies where only one candidate was allowed to conduct a political campaign. Candidates in 2021 would attempt to preserve the same behaviour pattern as before and link the "mini" constituencies with their names. Easier said than done. The ballot paper made it difficult for the candidates to run their "personal" campaign.

The new Electoral law divided Albania in 12 constituencies corresponding to 12 administrative regions. The size of the constituency varied upon criteria such as the number of citizens registered in the respective district and the request to ensure the equality of the vote. The largest constituency was Tirana with 36 and the smallest was Kukës with three MPs. The new electoral law stipulates that "the number of candidates in the multi-name list many not be less than the number of seats to be elected in the respective electoral zone, plus two" (Article 67.4). This change was introduced on 5 October 2021 and it was considered as discriminatory to small political parties who had to provide candidates for all seats to be elected in a given electoral zone (OSCE, 2021: 6).

The design of the ballots with number and names of the candidates was approved by the Commissioner on 01 April. The design of the ballot paper was especially difficult in Tirana, the largest constituency with 36 seats. Since it was an obligation to provide candidates equal to the number of seats, it became difficult to fit all the names in the ballot paper. The political parties and coalitions which contested the

elections in Tirana were the SP, DP, SMI, Social Democratic Party (SDP), Albanian National Front (NF), Albanian Democratic Movement (ADM), Democratic Politics, Popular Unity Alliance, Hashtag Initiative, New Movement Party, New Democracy Alliance, and Movement for Change plus an independent candidate, for a total of 433 candidates. In this situation, the Socialist Party proposed to remove the names from the lists and replace them with numbers. Amid heated discussions and objections from the opposition parties, the Complaints and Sanctions Commission (CSC) of the Central Election Commission changed the content of the ballots excluding the names of the candidates and on 4 April this decision was upheld by the court (OSCE, 2021: 8). This heavily undermined the process. One of the main reasons for changing the electoral law was to provide voters with the opportunity to choose themselves the preferred candidate. However, the ballot paper without the names of the candidates made it difficult for voters to get to know the candidates in the list and for the candidates themselves to introduce themselves to the whole constituency.

II.2. Vote buying

The parties' official narrative during the elections was to guide people to vote for the party, without specifications for the number of the candidates. Thus "the burden" of establishing links with the electorate and making known their respective number fell on the candidates' shoulders. The burden was especially heavy for the new candidates. Even though the entry of new names, people with clean past, remarkable achievements in life and no links with criminal activities, was one of the most proclaimed achievements of the amended electoral code, the ballot paper made it almost impossible to introduce themselves to the electorate. The new candidates without an established infrastructure, without the support of the party, with poor connection with the constituency and no access to media had it impossible to make themselves known to the voters, let alone attract their support. Out of the 19 candidates who surpassed the relevant quotient, 4 candidates got a seat due to the change in their original position on the list. In the constituency of Tirana (CEC, Lista e Kandidatëve (Candidate List) Tirana)[3] results were such that reveal some of the most important aspects of the campaign strategy of the Socialist Party and candidates. At first sight the greatest part of those in the top list and mainly those who had a position in government like the Minister of Infrastructure, Energy and Telecommunication, Minister for Relations with Parliament, Minister of Health and Social Welfare, State Minister for the Reconstruction, Minister of Justice, provided for themselves enough votes to get elected. They were among those for whom the ballots were casted the most and this was

[3] https://kqz.gov.al/results/results2021/results2021.htm#

expected. Even though Decision no.9[4] of the Regulator of the Central Election Commission stipulates that in the four months prior to the election day it was not allowed for the party in public office to conduct activities such as distribution of permits validating illegal construction, registration of property titles, employment or dismissal of staff of public institutions, increase of wages, pensions, provision of financial or social support, reduction or abolition of taxes, waving of fines/taxes, or privatization all these happened (OSCE, 2021:16). Ministers continued with official engagements throughout the campaign. They regularly appeared at vaccination centers, wearing facemasks and t-shirts with "No.12" (the SP ballot number), inauguration of several major infrastructure projects such as the new Pediatric Hospital in Durrës on 18 November 2020[5], the opening of the first regional hospital for coronavirus in Elbasan on 15 December 2020[6], increased budget for tumoral medicines on 4 Feb 2021[7], increase in the number of ambulances on 5 January 2021[8], inauguration of the opening works for the construction of the new regional hospital in Fier on 22 January 2021[9], opening of the new health center in quarter 13 in Tirana on 30 January 2021[10], construction of the new homes for those who lost them during the earthquake of 2019[11], inauguration of roads

[4] Vendim_Nr.009_210309-_Procedurat-e-funksionimit-dhe-mirembajtjes-se-portalit-procedurat-dhe-afatet-e-hetimit-administrativ-te-denoncimeve-dhe-vendimin..pdf (kqz.gov.al): https://kqz.gov.al/wp-content/uploads/2021/03/Vendim_

[5] Manastirliu: Pediatria e re në Durrës do të shërbejë edhe për trajtimin e pacientëve të vegjël me COVID, në rast fluksi në QSUT: https://www.balkanweb.com/manastirliu-pediatria-e-re-ne-durres-do-te-sherbeje-edhe-per-trajtimin-e-pacienteve-te-vegjel-me-covid-ne-rast-fluksi-ne-qsut/

[6] Hapet spitali i parë rajonal për koronavirusin, Manastirliu: Covid-5 në Elbasan, ka 81 shtretër https://kohajone.com/hapet-spitali-i-pare-rajonal-per-koronavirusin-manastirliu-covid-5-ne-elbasan-ka-81-shtreter/

[7] Dita Botërore e Kancerit, Manastirliu në Spitalin Onkologjik: Do të zgjerojmë llojshmërinë e barnave tumorale falas: https://ntv.al/dita-boterore-e-kancerit-manastirliu-ne-spitalin-onkologjik-do-te-zgjerojme-llojshmerine-e-barnave-tumorale-falas/

[8] Manastirliu: Me shtimin e ambulancave, kemi dyfishuar edhe ekipin e Urgjencës Kombëtare: https://www.vizionplus.tv/36-ambulancat-e-reja-manastirliu-kemi-dyfishuar-edhe-ekipin-e-urgjences-kombetare/ ; 36 ambulanca të reja/ Rama: Lemeria e çerekshekullit është pas krahëve: https://www.vizionplus.tv/36-ambulanca-te-reja-rama-lemeria-e-cerekshekullit-eshte-pas-kraheve/ ; 36 autoambulanca, me sirena ndezur në qendër të Tiranës, Rama: Shpëtuam nga karakatinat e PD-LSI: https://abcnews.al/36-autoambulanca-futen-me-sirena-ndezur-ne-qender-te-tiranes-rama-shpetuam-nga-karakatinat-e-pd-lsi/ ; "Hata kombëtare"/ Rama prezanton flotën e re të autoambulancave dhe 'sulmon' opozitën: Imagjinoni sikur pandemia ta kishte gjetur Shqipërinë me katërrrotakët e…: http://www.panorama.com.al/hata-kombetare-rama-ne-prezantimin-e-flotes-se-autoambulancave-sulmon-opoziten-imagjinoni-sikur-pandemia-ta-kishte-gjetur-shqiperine-me-katerrrotaket-e/

[9] Hapet kantieri i Spitalit Rajonal në Fier: https://www.infrastruktura.gov.al/hapet-kantieri-i-spitalit-rajonal-ne-fier/

[10] Hapet qendra e re shëndetësore në lagjen 13, Veliaj: Ofrohet i njëjti shërbim, si në qendër, edhe në periferi: https://www.balkanweb.com/hapet-qendra-e-re-shendetesore-ne-lagjen-13-veliaj-ofrohet-i-njejti-sherbim-si-ne-qender-edhe-ne-periferi/#:~:text=Hapet%20qendra%20e,2021%2011%3A41

[11] Rama iu dorëzon çelësat e shtëpive të reja banorëve/ Ironizon Bashën nga Thumana: https://www.cna.al/2021/12/24/rama-iu-dorezon-celesat-e-shtepive-te-reja-banoreve-ironizon-bashen-nga-thumana/;

on 26 March 2021[12], inauguration of the airport of Kukës on 18 April 2021[13], improvements of works in the hydropower of Koman on 05 February 2021[14].

This strategy provided SP and particularly the candidates involved in the activities with a significant advantage. Furthermore, even thought it was prohibited, "public employment increased significantly in the lead up to the elections, in the period immediately preceding the moratorium on authorization of new employment in the public administration' (OSCE, 2021: 16). Media reported the distribution of municipal grants approved in the week prior to elections under the reconstruction program. Thus, local administration controlled fully by SP provided all its support to enforce the vote buying strategy of the party in office. An increased number of new employments in the public administration was also observed despite the moratorium to do so (*Ibid*). According to INSTAT between the third and fourth quarters of 2020, employment in the public sector increased by 6 per cent (from 171,975 to 182,547), which is indeed very high if compared with the same period of 2018 and 2019 when it has been 1 and 0 per cent respectively. On 24 December, government authorized an additional of 2,472 positions *(Ibid).*

Last but not least, during the campaign, a database with personal information, contact information and voting preferences of around 900,000 Albanian citizens was leaked. The scandal was called the scandal of "patrons". SP didn't dismiss the veracity of the information. On the contrary Prime Minister Rama and subsequently other SP figures included the term in their vocabulary and used it as an indicator of the strength and well organization of the party[15]. He even thanked them and compared with the door-to door activists. However, in a time where distribution of incentives, jobs, tax cancellations are used to hook undecided electorate the role of the "patrons" reporting on the party preferences of citizens is far from being admirable.

Rindërtimi, Rama dhe Ahmetaj në Fushë-Krujë: 128 shtëpi përfundojnë brenda dy muajsh, 15 pallate do të jenë gati në vjeshtë: https://www.gazetatema.net/2021/03/14/rindertimi-rama-dhe-ahmetaj-ne-fushe-kruje-128-shtepi-perfundojne-brenda-dy-muajsh-15-pallate-do-te-jene-gati-ne-vjeshte/ ; Veliaj i dorëzon çelësat e shtëpisë familjes në Pëllumbas:Asnjë parti nuk i imponohet qytetit dhe...: https://www.youtube.com/watch?v=Kd5SoTEkUQY ; Të dëmtuar nga tërmeti, Veliaj i dorëzon çelësat e shtëpisë së re familjes Kasa në Bërzhitë, 'Do të dalim faqebardhë nga rindërtimi': https://report-tv.al/lajm/te-demtuar-nga-termeti-veliaj-i-dorezon-celesat-e-shtepise-se-re-familjes-kasa-ne-bezhite-do-te-dalim-faqebardhe-nga-rindertimi

[12] SKANDALI/ Belinda Balluku inaguron rrugën TEG – Farkë, në 2017 e përuroi Damian Gjiknuri: https://joq-albania.com/artikull/848649.html

[13] Sot fluturimi i pare ne aeroportin e Kukesit | Lajme-News: https://www.youtube.com/watch?v=Mem0-mduysM

[14] Balluku në Koman: Mirëmenaxhuam kaskadën e Drinit: https://www.infrastruktura.gov.al/balluku-ne-koman-miremenaxhuam-kaskaden-e-drinit-per-te-mos-krijuar-permbytje/

[15] Rama flet për patronazhistët: Shkojnë derë më derë për të fituar zemrat, u jam mirënjohës: https://abcnews.al/rama-flet-per-patronazhistet-ps-eshte-nje-familje-e-madhe-me-te-angazhuar-u-jam-mirenjohes/; Belinda Balluku: Ne jemi patronazhistët më të mirë të Ballkanit, patronizhojmë edhe ata që kanë humbur rrugën: https://www.gazetatema.net/2021/04/22/belinda-balluku-ne-jemi-patronazhistet-me-te-mire-te-ballkanit-patronizhojme-edhe-ata-qe-kane-humbur-rrugen/ .

Nonetheless while this explains the victory of the predominant figures of SP, it fails to offer an explanation of the full picture of the results.

II. 3. The underground campaign of SP

With the approaching of the elections of 25th of April, the candidates started their 'open season' of votes and voters. It took the form of a door-to-door campaign where young people would ask voters whether they knew the MP of their constituency and what were the problems that needed to be addresses by the said MP. The question posed by to the potential voters was problematic in the way it was build. With the changes in the electoral code of 2008, since 2009, the electoral system changed from mix member electoral system to closed regional proportional and thus constituencies didn't have any longer only one MP but rather a list of MPs from all political parties. In Tirana the list was 33 MP and the likelihood that the simple citizen would know all "his" MPs was very small. Nonetheless, the candidates and their teams employed the same electoral campaign strategy they or the party had employed when only one MP would win in the majoritarian electoral system. Candidates were assigned the role of increasing the number of voters and every candidate was assigned an "area" proposed to the electorate as a constituency, even when it was not. It is a strategy of the party for a better management of its human resources where each candidate is assigned an area to manage. It goes without saying that candidates do not interfere in the areas of each other, or at least it is expected that they should not interfere. The constituency is not divided equal the number of the MPs it produces but rather equal the number of the MPs that the party believes it would produce and thus candidates listed in the lower part of the party list support those at the top of the list. The changes in the electoral law though made it possible to vote for the candidate in addition to the party. This change of the electoral system from closed list regional proportional to open list changed the game. As an abundant amount of theoretical literature and ample evidence from the ground indicate, the open list electoral system opened the door to those placed below the "line", those who otherwise would have never had the opportunity to win had the law not been changed.

While the "big names" managed to conduct their campaign in their mini constituencies with the help of media coverage, support of the public administration and party structures, others managed to do so without all these. To the biggest surprise those how received most of the votes in Tirana were two names far from the safe list. Fatmir Xhafaj, former Minister of Internal Affairs 2017-2018, involved in a scandal at the time and forced to resign, won more than everybody else, an overwhelming of 16,737 votes, more than the Minister of Infrastructure,

or Minister of Health and that of Reconstruction whose presence in media had been the most pronounced of all. Even though he was at the 23rd place in the list he managed to be an MP. The second surprise, and perhaps the biggest are the 15,697 casted ballots for the completely unknown Orlando Rakipi, originally placed as number 30 in the 36 candidates list. Rakipi managed as well to collect more than all the ministers and Vice Ministers present in the list. Son of a former MP from the Party for Justice, Integration and Unity, who was forced to resign as MP in 2018 for criminal activities not declared, Orlando who have never been member of SP and didn't receive any support from the party structures is one of the most voted MPs in the newly elected parliament. The irony is that he took the place of Ervin Bushati, the head of the SP electoral campaign in Tirana, who even though placed as no.3 in the list, with his very poor performance of only 2,990 votes couldn't manage to retain his place in parliament. Other candidates in the list who didn't perform well are Najada Çomo (placed 2nd in the list) who won only 1,583, Ermonela Valikaj with 2,310 votes (also in the safe list as number 13) and Fidel Ylli with 2,715 votes even though a former MP and placed at number 15 in the list. Prime Minister Rama didn't contest in Tirana. He chose to be in the lists of constituencies of Durrës and Vlora.

The results indicate that there have been two campaigns: the shining one with lights, music and fanfares and the underground one. The head of the electoral campaign in Tirana, Ervin Bushati considered the victory of SP as his own success as well despite the fact that he didn't win himself. This means that even though he was the head of the electoral campaign, of the official one, he couldn't manage the real one, the underground one. At the moment it is difficult to understand whether the underground campaign is 'second vocal part' of the choir or the 'lead singer's main melody' (Xhaferaj, 2021). It is difficult to understand whether the underground strategy has the blessings of SP Chairmain Rama, or the candidates have used other networks to 'catch' votes, networks outside of the control of the centre. According to Rama, the leading members of the party, those with more experience had to stay in the 'grey area' of the lists, because they had to stay in the head of the "battle"[16]. This was proposed also as a strategy to force candidates with long experience in party and government to increase their efforts for attracting more voters. By working to increase the number of the votes casted for them, they would bring more votes to the party. However, the socialist party has received pretty much the same number of votes comparing with 2017. In 2017 SP received 764,750 votes and in 2021 it got 768,251 votes. It is clear that the experienced candidates didn't bring new votes but rather divided among them the existing electorate of the party.

[16] Zgjedhjet në Shqipëri: Çfarë risish sjellin listat e PS e PD?: https://www.dw.com/sq/zgjedhjet-n%C3%AB-shqip%C3%ABri-%C3%A7far%C3%AB-risish-sjellin-listat-e-ps-e-pd/a-56813141

III. Uses and Abuses of Pandemic

Even though the amended Electoral law stipulates that Albanian citizen living abroad has the right to vote and can vote out-of-country (Article 24), the service was not offered to citizens living abroad. In the previous elections, citizens living abroad have returned and voted in their respective Voting Center (VC). However this didn't happen in the 2021 elections. Even though the electoral code was amended twice during 2020, more than one year after the start of the pandemic, no efforts were made to adjust to the new circumstances. While it was the first time for Albania to held elections in a situation of pandemic, examples from other countries could have been followed and applied. From data gathered from electoral management bodies, state institutions, media, and election observation reports Asplund *et al.* calculated that 52 national elections were held in 2020. Therefore, examples of elections in times of pandemic were ample and could have been taken, adapted to the country situation and applied.

Article 108 of the Electoral code foresee special voting arrangements for those who cannot vote themselves. According to the article "a voter who, for physical reasons, is unable to perform the voting procedures him/herself, may request the assistance of a family member or another voter, who is on the voter list for that polling unit". Persons unable to vote are defined as people with disabilities who should declare their inability to the mayor of the local government unit who prepares the voter list for the respective voting center, to register them se voters who cannot vote themselves (point 6). In cases of blind voters, special voting devices that allow voters to read or understand the ballot paper and vote independently are to be distributed to the voting centers. Even though the amendments to the electoral code were made in 2020, months after the pandemic and with plenty of examples from other countries, no efforts were made to expand the special voting arrangements in order to mitigate against Covid-19 transmission.

Examples extended special voting arrangements included early voting, postal voting, proxy voting, home and institutional-based voting by mobile ballot box, and Covid-19 arrangements in polling station (Asplund *et al.,* 2021). Following is a summary of the neighboring or regional countries who made use of special voting arrangements to mitigate against Covid-19 transmission. North Macedonia has used early voting arrangements to accommodate Covid-19 infected voters and those in self-isolation at their home. Poland expanded postal votes during pandemic and made use of proxy voting as well. Croatia, Czech Republic, Montenegro and North-Macedonia made use of home and institutional-based voting by mobile ballot box. Special voting arrangements at the polling station were made in Czech Republic. Therefore, the examples were ample indeed. However, in Albania no efforts were

made to apply any of this voting arrangements. As mentioned above, out of country voting even though recognized was not organized and, in this regard, Albania is pretty much similar with other countries (Asplund *et al.*, 2021, Covid-19 Impact on Arrangements in Polling Stations Abroad). However, in Albania there is a very good tradition of Albanian living abroad who come back during elections to cast their vote. While this added frustration and confusion to the already confused situation caused by the ballot paper and the new electoral system, it also placed barriers to those coming from abroad to vote.

On 19 April 2021, the Technical Committee of Experts for the management of the pandemic, issued an order that those coming for the Orthodox Easter (one week after elections) would have to quarantine themselves for two weeks (OSCE, 2021: 12). While the Committee of Experts didn't address specifically those coming to vote, the decision nonetheless influenced them, regardless of whether they were infected or not, vaccinated or not. Thus, the lack of efforts to address special arrangements for voters amidst of a pandemic had a negative impact on the voting of those coming from abroad and intending to vote. This has also influenced on a low voter turnout at 46.3 per cent. According to the Ministry of Health, the number of persons hospitalized or in self-isolation due to COVID-19 infections on election day was around 22,000.

The decision was contested by the opposition parties and civil society organizations and was considered as a breach of human rights and the right to vote, especially in a situation when anti-covid measures of social distancing were not being respected in the many rallies organized by both socialist party and especially the opposition parties[17]. In a event of SP, even the vice Minister of Health, Mira Rakacolli is not respecting the social distancing and is not wearing a mask[18].

The COVID-19 preventive measures, including social distancing, were not always respected, especially in the overcrowded VCs observed and voters often did not remove their face mask for the purpose of identification, and the inking procedure was not strictly adhered to (OSCE, 2021: 25).

While pandemic didn't influence traditional campaign in terms of meeting and social distancing it took a great place in the political discourse[19] (OSCE, 2021:14).

[17] PS mbyll fushaten nga Vlora, Rama: Nuk keni pare gje akoma : https://www.youtube.com/watch?v=TJ4wnlgRSOk ; 'Ligj me dy standarde': Tubimet politike në fushatë rrisin riskun e përhapjes së COVID-19: https://www.reporter.al/2021/03/26/ligj-me-dy-standarde-tubimet-politike-ne-fushate-rrisin-riskun-e-perhapjes-se-covid-19/ ; Election 2021 Tirana Municipality Violated Law on Run Up to Elections: https://exit.al/en/category/election-2021/ ; PS dhe LSI përmbyllin sot fushatën elektorale: https://exit.al/ps-dhe-lsi-permbyllin-sot-fushaten-elektorale/

[18] "Ishte një incident"- Spahia i përgjigjet Rakacollit: Shkele masat anti-Covid për hir të partisë, papërgjegjshmëri epike!: http://www.panorama.com.al/ishte-nje-incident-spahia-i-pergjigjet-rakacollit-shkele-masat-anti-covid-per-hir-te-partise-papergjegjshmeri-epike/;

[19] Databaza e PS-së/ Vëzhguesit vendor ngrejnë shqetësimin: Pandemia dhe tërmeti po përdoren për fushatë: https://www.standard.al/2021/04/15/databaza-e-ps-se-vezhguesit-vendor-ngrejne-shqetesimin-pandemia-dhe-termeti-po-perdoren-per-fushate/

The party list in Tirana was headed by one among the most prominent figures in the fight against the pandemic: the head of the Infective Hospital Najada Ccomo. Chosen as a symbol of success in the fight against the pandemic, in her introduction as a candidate for MP, Prime Minister Rama said "You have my word that we don't want you to become like us, but we want to become like you"[20].

Last but not least, Prime Minister Rama used social distancing rules to stand alone in front of the public as the lonely trooper[21]. Scenes where he alone introduced candidates for MPs appearing in the TV screens became famous and rather than respecting social distancing rules with the electorate were used as social distancing between him and his 'comrades' of the party.

IV. Glass Ceiling or Glass Cliff

In the elections of 2021 out of the 1871 registered candidates, 732 or 40% were women (CEC). In the SP campaign launch, 11 out of 14 speeches were delivered by female candidates. There was prominent campaigning by female ministers. The leader of the DP presented a program on gender equality. Women made up approximately half of the SMI candidate lists, which also included a strong youth element (OSCE, 2021: 14). The main parties all attempted to increase the visibility of women as candidates in the campaign, and the mandatory quota for women was exceeded in most candidate lists. Women received over one third of the seats in the new parliament. In the outgoing parliament, women were underrepresented with 26 per cent of seats (36 MPs). However, in the government they held more than half of ministerial posts. In the last elections, women received 48 seats (34 per cent). At a first glance all looked perfect. However, this is not the complete story. The list of the Socialist Party in Tirana was headed by two complete new figures, who have never been part of the politics. One of them, the granny Luljeta Bozdo became famous after the earthquake of 2019 when in different opinion and talk shows gave her expertise with regard to the quality of construction and upon this was included in the team of reconstruction by Prime Minister Rama. She was considered the epitome of expertise and having a clean past made her a perfect candidate to run. The second in the list was Najada Ccomo, the Director of Infective Hospital who had been in the frontline in the fight against the COVID-19. The logic behind this was similar with the one applied for Luljeta Bozo. At first sight it

[20] Najada Çomo kandidate për deputete e PS-së në zgjedhjet e 25 prillit/ Rama: Komandantja e vijës së zjarrit. Nuk duam të bëhesh si ne, ne duam të bëhemi si ty: https://ata.gov.al/2021/03/04/najada-como-kandidate-per-deputete-e-ps-se-ne-zgjedhjet-e-25-prillit-rama-komandantja-e-vijes-se-zjarrit-nuk-duam-te-behesh-si-ne-ne-duam-te-behemi-si-ty/

[21] Rama prezanton skuadrën, e nis me Bozon dhe Çomon: Të gjithë në sulm për Shqipërinë e së ardhmes: https://a2news.com/2021/03/10/rama-prezanton-skuadren-e-nis-me-bozon-dhe-comon-nisim-vrapimin-drejt-se-ardhmes/;

seems good news. However, both women were exposed to harsh attack from the opposition. From being respectable women, all of a sudden, a great deal of attacks were directed towards them. A declaration of Bozo on communism received widespread criticism. Similarly, Najada Çomo received a lot of critiques for poor management of the pandemic. The problem is that the three main ministers who dealt with the pandemic and the reconstruction after the earthquake were part of the same list. If they have been successful their names should have been at the top of the list, holding thus the responsibility for the successes or failures. Regardless of their involvement in the management of the pandemic and the reconstruction both Çomo and Bozo were not responsible for the perceived successes or failures. Those responsible were a little bit down the list and as such they were the ones to hold the pressure of the public. If the Minister of Infrastructure and that of Health (both women) are in the same list, then placing two other women at the top should not be served as an attempt to achieving gender equality. Rather than women trying to break the glass ceiling they looked like walking on a glass cliff and what makes things worse they were there to protect other women with longer career and greater responsibilities who continued un-disturbed by the pressure of media their individual electoral campaign.

V. Conclusions

The parliamentary elections in Albania took place on 25th March 2021 and they were won by the Socialist Party. Even though elections took place in the midst of the pandemic, the pandemic itself had a minor impact on the process. With the exception of making compulsory a two weeks quarantine for those entering the country and thus making it impossible for the Albanian emigrants to cast their, the election campaign was organized similarly with the preceding campaigns without concerns for social distancing. Breaches of the social distancing rules were very rarely penalized. However, the pandemic itself took a central role in the discourse of the campaign and the fight against it was portrayed as a success by SP. The real change which eventually influenced the campaign was the change in the electoral law from closed to open list. For the first time, the party and the party candidates pursued different strategies. In addition to the official campaign there was an underground campaign with vote buying and exercise of influence which aimed and actually achieved to transfer the vote from the top of the list to candidates in the middle or even lower, who have "fallen from the grace" of the party leader.

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"Veriphobia" and process: after all, we must still be old-fashioned purists[1]

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Abstract

The main objective of this critical review is to evaluate how the concept of truth is interpreted and used by procedural doctrine. As a rule, based on common sense, legal authors mistakenly use the expression, which causes phenomenon called Veriphobia. Seeking the contribution of epistemic concepts, in which the expression of truth has a character of mere propositional value, we will seek to give a new function of rationality to the term in the process. It is possible, from the link between a supposed "sick ambition for the truth" and violations of citizens' guarantees and rights – as if the latter were a necessary prerequisite for achieving the former – to find the most varied examples that demonstrate the inconsistency of existing terms and concepts in the debate. I will face, fundamentally due to the limitation of the present study, only two of them, however, the adopted logic can be transferred to the others without major damages. The objective, in fact, will be to demonstrate that, despite the legitimate concerns with procedural formalities and guarantees, the idea of searching for the truth seems quite distorted by its opponents.

***Keywords*:** *Epistemology; Process; Truth; Propositions; Justice.*

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I. A Brief Introduction

In Brazil, but not only here, especially in the criminal sphere, but not restricted to it, the theme of the search for truth has fomented heated debates. Some texts, contrary to the idea that it embodies a procedural objective, structure arguments by placing the afore-mentioned investigation as the fundamental basis of authoritarian systems, typical of procedural orders averse to individual guarantee (Vargas, 2012: 237-265).

One of the reasons given for the fact that there are still defenders of the truth as the scope of the process, say their opponents, would be an optical clouding of the investigative/accusatory phenomenon, since pro-truth analysts would continue "seeing the criminal process with the myopic view of the civil process", especially those who embrace "Taruffo and/or the Spanish school of test epistemology", even if they are "serious and well-prepared people" (Lopes, 2020).

I confess that, except for the "well-prepared people", I have the myopic view of civil procedure, I ignore, in fact, most of the "fundamentals of criminal procedure" – something that I cannot get rid of, unfortunately, for the time being -, well as I am a graduate of the Girona school of test epistemology and, for a time, I was mentored by Michele Taruffo in Pavia.

Despite of all this, I believe that there is no objective impediment to shedding light on some concepts that have remained quite confused in the texts of some authors opposing the search for truth in recent times. At the outset, it is essential to eliminate – and the scientific method advises so – dubious terminologies. As it is possible to notice, in order to make an unconditional defense of the position contrary to the search for truth, expressions of little technical precision and with meanings of quite questionable conceptual density are used, which are, as a rule, filled in according to its users' argumentative convenience. that have a high rhetorical content, such as "authoritarian process", "statism", "publicism" etc.

II. Dubious Terminologies and the *Veriphobia*

Although it is not possible here to draw deeper observations on such terms, as it would require very broad digressions on social and political sciences that the present space does not allow me to do, the fact is that, in addition to the academic dishonesty of the method itself, the comparison remains compromised by the own lack of precise conceptualization of each of them. There is no doctrinal consensus on what the essential elements would be for qualifying a process as adversarial or

inquisitorial. In addition, paragoning the two categories as if they were exclusive constitutes yet another technical error. This is due to the simple fact that no system is purely adversarial or exclusively inquisitorial. Whatever the content given to the expressions, it's clear that the orders have characteristics that can be attributed to both types, all of which are therefore mixed.

The basic rule for the applicability of the extensionality axiom is that the elements are clearly defined. However, about the subject, "It should be remembered that the doctrine of civil law countries also tends to allude, in this context, to the 'inquisitive principle' (or 'inquisitorial') and the 'device principle'. In fact, similar expressions are used, quite equivocally, in relation to heterogeneous issues, such as the initiative to initiate the act, the delimitation of the object of the judgment, the possibility of ending it through a unilateral or bilateral act of composition of litigation, the scope of the devolutionary effect of the appeals (…) making it difficult , not to say making it unfeasible, to adopt such a comparison mechanism" (Barbosa Moreira, 2007: 42).

As if the comparative methodological inconvenience mentioned above were not enough, another point, now of a practical nature, points to a relational inconsistency between adversarial (or predominantly adversarial) proceedings and observation of guarantees /inquisitorial process (or labeled as such) and violations of fundamental rights. There is no direct and mandatory link between the adoption of a system and the achievement of frequently invoked values. Just as an example, the Innocent Project of the United States of America demonstrates how a system considered adversarial can become an instrument of false factual settlements and, consequently, of great injustice, being, above all, authoritarian precisely because of the misunderstandings and lack of controls objectives about decisions about facts (www.innocenceproject.org/all-cases/).

In more pragmatic terms, authoritarianism in a given legal system cannot be analyzed in the abstract, but one must, punctually and concretely, investigate the institutes and legislation separately. Furthermore, it would be superficial to attribute, *a priori* and in a general way, the characteristic of authoritarian to a certain judge only and only for participating in the judiciary of a State that adopts this or that system. By analyzing the subject in this way, it would be labeling magistrates almost in a deterministic way.

A study focused on a preponderance of despotic positions on the part of judges and other authorities in a given legal culture, at least in our eyes – myopic, as others said -, would have more fruitful results and adherent to reality if carried out in frank dialogue with history and sociology. To attribute to procedural rules the responsibility for a predominance of an authoritarian character of its operators is to grant procedural science a much more important role in the cultural life of a society than it actually has. It seems contradictory to me to believe that someone,

an operator of the law, will be compelled to be authoritarian just because the procedural system adopted was X or Y.

The causes for a magistrate or any other person who holds power to behave with abuse are, in fact, very more complex. Just as a suggestion, assuming that authoritarianism could be contained by the simple adoption of adversarial rules, or, on the other hand, that a judge linked to full respect for constitutional and individual guarantees would be forced to dictatorial conduct only and only because he appears as an actor in a system that seeks to settle correctly the facts, as reality itself shows us, seems to me a generalizing simplification without any adherence to reality (Adorno, 2019).

What moves the Brazilian debate on the search for truth, in reality, as it happens in other areas of knowledge, especially in those so-called socio-political ones, is the game of argumentative convenience, which takes place through the use of an abstract and ideal frame of the ideologically pre-selected model, comparing it with the concrete problematic experiences of the opposing system that one wishes to combat. The consequence of this, as is easily deduced, are exaggerations that tend to change concepts and ideas, equating different things and distancing similar issues, imposing, moreover, almost insurmountable obstacles to a frank debate. However, it stands out, although they almost never appear as explicit premises, which would be academically desirable for a satisfactory critical analysis developed by the legal community, the fact is that the objection to the search for truth occurs, as a rule, from a perspective clouded by individual options , which generate an almost automatic challenge to terms and positions contrary to the proposition initially assumed, causing distortions in paths and concepts, as already mentioned, and jeopardizing the improvement of the state method of dispute resolution, including with regard to the observation of guarantees .

It is possible, from the link between a supposed "sick ambition for the truth" and violations of citizens' guarantees and rights – as if the latter were a necessary prerequisite for achieving the former – to find the most varied examples that demonstrate the inconsistency of existing terms and concepts in the debate. I will face, fundamentally due to the limitation of the present study, only two of them, however, the adopted logic can be transferred to the others without major damages. The objective, in fact, will be to demonstrate that, despite the legitimate concerns with procedural formalities and guarantees, the idea of searching for the truth seems quite distorted by its opponents.

The first case that I would like to invoke is that of forced confessions, notably those obtained in investigative phases.

According to its scholars, the assumption of the accused, based on bluff and psychological manipulation (Moscatelli, 2021: 387-388), is nothing more than the result of a procedure that arrives "very quickly to a suspect of the crime (...)"

and "as has been observed since the first ethnographic studies carried out on the subject in Brazil: first, the suspect is identified and then his guilt is reconstituted" (Vargas, 2012: 25).

Now, for the epistemological doctrine that was dedicated to the theme of pseudo-investigations, what happens in cases like the one mentioned is nothing more than feigned reasoning ("sham reasoning"), in which the pseudo-investigator defends the "truth" of a previously established proposition, with the which, therefore, he had previously committed himself to (Haack, 2011: 59).

The applicators of methods that aim at a confession at any cost, in other words, are not "sick for the search for the real truth", using the expression coined by others elsewhere, but rather are eager for the corroboration of their own versions, formulated who knows how, regardless they find support in the phenomenal plane. The search for the truth, in these cases, understood in a conceptually correct way, would not only open new investigative fronts, but would also be able to contribute elements that would corroborate the exclusion of false hypotheses, including a potential untrue confession.

The second example I would like to borrow from opponents of the search for the truth is the one in which a judge in a very important case in Brazil would have told the accuser that "The defense has already put on its little show (Lopes, 2019). After having his messages leaked, it is possible to suspect that the magistrate, in collusion with the accusing body, ignored the defense posture precisely because he had previously been linked to the condemnatory hypothesis. There are those who even claim that the option for conviction, regardless of what happened in the process, was guided by the magistrate's personal interests.

Without making further value judgments about the case, what I try to highlight is that there was never, in concrete, assuming that the suspicions are true, the search for the truth. There was, however, a pseudo-investigation of the type of false reasoning or "fake reasoning", in which the pseudo-investigator believes that a certain proposition will benefit him by formulating eloquent defenses of an idea "surprisingly false or impressively obscure" (Haack 2011: 59).

In every area of knowledge, therefore, in order to make significant advances, it is essential to face the chosen object with scientific aptitude, exactly the element that is absent in the examples brought by the afore-mentioned opponents of the search for truth. Susan Haack, in introducing his study called "Confessions of an Old-Fashioned Purist", quoting Charles Sanders Pierce, states that: "*to reason well it is absolutely necessary to possess... such virtues as intellectual honesty and sincerity and love for the truth*" (Haack, 2011: 57).

In summary, the search for the truth, if carried out and understood correctly, would partially resolve the dissatisfactions of the mentioned "veriphobics", consubstantiating, as has already been said by much more authoritative people, not

in a violation, but in the support of procedural guarantees, especially that referring to a fair sentence. (Herdy *et al.*, 2020).

Therefore, I propose that, rather than abandoning the embrace of Taruffo and the teachings of the Spanish epistemic school on proof, we put the lens of Haack's old-fashioned purism on it. Perhaps, in this way, we can cure our myopia, adjust the terminological focus and remove barriers that, even seeing, can hinder us.

III. The Truth Bearers

Facing the issue of truth through a negative bias in the previous topic, that is, undoing mistakes that normally the procedural doctrine incurs when dealing with the truth in the process, it is appropriate, for the moment, to deal with the subject from a positive perspective, that is, it is now worth defining truth in logical-epistemic terms and conceptualizing, according to the philosophy of science, what can be understood by something true. And, for this to be done satisfactorily, it is fundamental, in precedent terms, to face what the bearers of truth would be.

Carriers of truth are understood to be what can be true or false (Costa, 2005: 1). There are, according to logical studies, some candidates to be carriers of truth. Treating them here in a discriminated manner, in addition to complementing the previously developed reasoning, would be of great value considering that procedural doctrine and jurisprudence, whether civil or criminal, as a rule, use indistinctly, as if they were interchangeable, the expressions "facts" and "statements about the facts", serving the reflections about the bearers as basic clarifications for a correct approach to the truth.

The first candidates for truth carriers are people, things and events. According to the example of Costa (2005, p. 1), "healthy" is an adjective attributable to living beings. Animals and plants are healthy. However, the qualifier is often used for, for example, food, which is not living beings. Saying that "cookies are not healthy" is nothing more than an ellipsis to say that "cookies make the living being that eats them unhealthy". The living being, therefore, is the proper bearer of the predicate "healthy", with food only being the derived bearer of said predication.

Likewise, it is common in everyday life to formulate phrases such as: this Picasso is fake, this whiskey is real, João is fake. However, by predicating truthfulness or falsity to objects or people, one is actually formulating elliptical statements in relation to these same objects or people. In the first case, the meaning of the sentence would be equivalent to saying that "the picture being observed was not painted by Pablo Picasso, the famous Spanish painter". In the second and third examples, they can be interpreted as synonymous with "this drink was produced according to traditional Scottish rules to characterize it as whiskey" and, respectively, "John is

treacherous" or "John says false things". Thus, people and things are only derivative carriers of truth, the carrier itself being what is said about them (Ubertis, 1992: 11).

In this way, the second candidates for truth-bearers arise: sentences about things and people. Lopes Jr. and Khaled Jr. (2022a) structure the following criticism: "The inquisitorial system effectively reintroduced *cognitio*, the penal procedural apparatus of the enemy of Ancient Rome and structured a ritual in which the subject of knowledge confronts an objectified body, from which a "truth" must be extracted, which confirms what the inquisitor chose as "truth from the beginning".

As for the final part of the transcribed excerpt, it has already been pointed out that rationalism distances and combats "sham reasoning", which is why the authors' critical notes cannot be addressed to whom they mention as a target. Notwithstanding the dubious concept of truth employed, what matters for this note is that, for language theory, the act of referencing has no relationship with objectifications of bodies, as suggested by Lopes and Khaled. It is, on the contrary, an extremely common linguistic act intended to isolate an object, a person, a fact, a state from the other possible similar ones to attribute meaning to the sentence. The authors themselves, in the text and in the afore-mentioned excerpt, refer without any intention of objectifying the reference. Therefore, the criticized "body-object" system, which, according to them, would have been "incorporated into the Criminal Procedure in simplifying and abstract constructs of "search" for truth by correspondence", has nothing to do with the evidentiary rationalism defended here (Strawson 1964: 96-118).

However, they too, from a logical perspective, seem not to be proper carriers. There is a logical principle called the principle of invariance of truth: what is true or false remains true or false (Haack, 2002: 120-122).

Phrases such as: *"(...) power not only represses, but also produces effects of truth and knowledge, constituting truths, practices and subjectivities" or even "The inquisitive sensibility around which the idea of real truth is articulated it has a triple genesis and foundation: juridical-inquisitorial, political and scientific. This heterogeneous formation does not come as a surprise: Foucault points out that, in fact, there are several places in society where the truth is formed, where a series of rules of the game are defined, from domains of knowledge, as is the case, in in particular, legal practices*" (Khaled, 2009: 31,35). In addition to the clear sham reasoning, the transcribed lines demonstrate that its author is dealing with something completely different from the concept of predication to propositions without any relation to the logical principle of invariance.

Thus, the statement "I am reading the present text now" may be true for the reader, but false if used by the same reader's parent. In the same way, "esta nevando", "it's snowing" or "sta nevicando", phrases that are different from each other, will all be true if it is, in fact, snowing outside. Thus, for something to be the bearer of

truth itself (apophantic), it seems that the phrase itself about things or people is not enough, but it needs to contain something else that can characterize it as such.

Making use, for the time being, of what Frege, in German, called *Sinn*, translated as meaning (1973: 49-84), it is possible to say that sentences, when referenced *(Bedeutung),* gain specific contours, acquire a meaning of its own. Returning to the retro examples, if, when stating "I am reading the present text now", the references are, in fact, the reader and not its parent, the "present text" refers to what is written here and the "now" is the exact moment in which it is read, then the meaning is specific, being able to attribute to it the predication of true or false. This meaning is called a proposition.

From what has been exposed so far, it can be intuited in a very brief way that not all the structures of a language are carriers of truth. First of all, for them to carry the properties of truth or falsehood, it is fundamental that they are complete structures that have meaning. In a statement such as "bicycle look at fish", for example, nothing can be said about its truth or falsity precisely because of the impossibility of establishing a correspondence between its object and its reference in the world. Likewise, interrogative or even imperative structures do not support such predication. There is no reason to say that the following phrases "Is the vaccine from company X effective against the Coronavirus?" and "Take and vaccinate X, you denialist!" can be true or false. Therefore, the carriers of truth (the propositions) will be descriptive sentences in which the sender seeks to direct his words to the world.

Haack (2002: 120-122) states that linguistic structures considered to be truth-bearers must satisfy at least two conditions, namely: *"(i) one can trust that they will not change their truth-value*" (principle of truth). invariance) and "(ii) *all things of the relevant kind are true or false*".

However, before moving on to a critical analysis of the various concepts of truth existing in philosophy, some further observations should be made regarding the relationship between the plane of references, language and propositions, all with the primary aim of eliminating so many other confusions, noted in the scope of the procedural doctrine when dealing with the theme of truth in the process.

Some of the commonplace statements put forward as the basis for the mistaken connection between the search for truth and the authoritarian process, a structuring relationship of *Veriphobia* already discussed, are that the concept of truth would be "*tendentially dogmatic*", which would link it "*to the idea of totality and excess*", expressing itself "*materially in the inquisitorial syste*m". With regard especially to the correspondent view adopted here, it would be a "*pretention of full adequacy and entirely corresponding to reality*", "*where the truth is not understood as a point of tension, but as correspondence and full adequacy*", which would allow us to conclude that "*this truth tends to be one, it is a dogmatic truth that is positioned as*

absolute and intolerant, that feeds itself and simultaneously collaborates with power" (Khaled, 2009: 30-31).

The first conceptual mistake that can be called attention is regarding the absolute character mentioned there. At no time did epistemologists or jurists adept at seeking truth in the process conceive it as an "*incontestable knowledge, as a totality, which can only be animated by a hubris*". There is an unacceptable equation between knowledge, truth and proposition. Truth as correspondence is absolute by a logical principle of exclusion: either the proposition finds support in the phenomenal plane or not, that is, it is either true or it is false, with no third possible genres, being, therefore, independent from the current power.

The existence of non-bivalent logical strands is not ignored. The so-called Sorites Paradox, for example, aims to problematize the bivalent application to vague concepts of common language. There is, obviously, no space to debate the fuzzy logics here. However, just so that the point is not left open, mention is made of a simple example, but sufficient for what we want to expose here. For propositions like "the passion fruit on the table are yellow", one can, by approximation and only by approximation, predicate their true value. This is due to the simple fact that, if you look closely at the passion fruit, it will certainly be possible to notice different colors and shades of yellow (green, orange, red, etc.). Thus, opponents of bivalence would claim that the proposition is neither true nor false. The error seems to be in the analysis of the enunciative formulation, since it is incomplete. If the assertion were "passion fruits are exclusively yellow", then the predication would undoubtedly be false. If the predication is a simplification of "passion fruits are predominantly yellow", then it could be attributed to the true predication. The question, therefore, is not in the predicative bivalence, but in the propositional construction. For further details on propositions of the genre, see Whitehead and Russell (1963: 91-109).

On the other hand, Khaled Jr. (2009, p. 31), during his critique on the absolute nature of truth, he mentions the following excerpt from Foucault: "power not only represses, but also produces effects of truth and knowledge, constituting truths, practices and subjectivities". Well, if the truth is produced to sustain power, then it will not be absolute and immutable, but variable according to the prevailing power. If constituted by those in power, then it will not have "correspondence and full adequacy" to the reference, but will be the result of a formulation in which the phenomenal plane is irrelevant and, many times, uncomfortable. In this view, there is a clear confusion between the absolute value of truth and the authoritarian imposition of versions previously chosen as "true". What epistemology preaches, on the contrary, is that "every scientific discipline should be organized, in principle, as X represents any scientist, arbitrary, since science aims at the truth and, therefore, must impose itself on anyone regardless of the will of the holder of power" (Da Costa, 1999: 30).

However, in order to establish this relationship between the object of the proposition and what actually happened, knowledge is fundamental. Knowledge, in turn, will never be absolute, but in levels and degrees (Taruffo, 2009, p. 82-92). Nor will it be indisputable. On the contrary, in an honest investigation, when verifying the falsity or inconsistency of a belief, the investigator must abandon the proposition and formulate others compatible with the new discoveries, being the contradictory and the contestation of informative premises, inferential rules and conclusions the engines for cognitive evolution (Taruffo, 1992: 401-408).

Precisely for this reason, the abstract and empty idea of truth used by "veriphobics" does not hold up. When speaking epistemically of truth in the process, one is, in strict terms, only attributing predication to the propositions that are already found in the core of a complaint, an initial petition or even the respective defenses (Ubertis, 1992: 9). In other words, the search for truth in the logical-epistemic sense has nothing to do with the "*aletheia*" mentioned by them, but rather means assigning values to the propositions that make up the procedural representation of the conflict.

IV. Conclusions

As has already been said numerous times, it is difficult to understand what the authors understand as truth. What can be said with great certainty, however, is that they are not dealing with a predication attributable to a proposition. On the contrary, they make a clear confusion between reference, proposition and predication of truth. Lopes and Khaled (2022a), despite making critical notes directed at rationalism, expressly mentioning Taruffo, Ferrer and Ferrajoli as direct targets, they clearly did not understand the foundations of the rationalism they allegedly combat. So much so that Khaled (2009, p. 33), on another occasion, suggests that "perhaps the most appropriate option is a third alternative, based on another notion of truth: *veritas*. In Latin, truth is *veritas* and refers to the accuracy of a report as to its fidelity to what happened". Now, the proposal considered by him as appropriate, in view of everything that has been exposed in the present thesis so far, is much closer to what rationalism and its authors take as a premise than what he, Khaled , fights and attributes to rationalists.

As can be seen from the previous lines, the debate between supporters of evidentiary rationalism and opponents of the search for truth is based on different conceptions of what the very concept of truth would be. There is great confusion on the part of some, as will be seen in detail in the items below, between statements about the facts and their narratological characteristics, procedural representation of the conflict, propositions and predications of truth. More than that, the notion

of correspondence, which has a defined content, is interpreted, as a rule, similar to equivalence, since the authors use common sense to fill it in their writings. Everything permeated by a high dose of idealism, ends up making the debate almost obstructive of progress.

Thus, as another attempt to establish the theoretical bases of the present work, the following topics will have as their object precisely the dissipation of such confusions, making clear the concepts that will be adopted and the pertinence of their use in the process.

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Existing forms of the state and its types

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Abstract

The state is present in every activity of a country. It controls, regulates, supervises, authorizes, or prohibits illegal and useless activities. The main purpose of the state is to maintain order and stability in society. From Antiquity until today, it has existed in different forms, which have been reflected by philosophers of different periods. Plato recognized forms of the state: aristocracy, timocracy, plutocracy, democracy, and despotism. For Aristotle, the forms of the classical state were a monarchy, aristocracy, and democracy, which could end in tyranny, oligarchy, and polity, respectively. Even Montesquieu classifies the above three forms, which can end in despotism. The meaning of the form of the state includes the form of government, which expresses the principles and the way of organization of the higher bodies of the state; the form of political rule, which is determined by the system of methods of its realization and the form of state organization, which is determined by the principles of the territorial construction of the state. The dominant forms of government have been monarchy and republic. Monarchy is a state ruled by a single person (monarch, king, or emperor). Monarchy appears in absolute, constitutional, or parliamentary forms. The republican form of government represents the direction of the state by an individual or a collective. In ancient times, republics were democratic or aristocratic, while today republics are parliamentary and presidential. In parliamentary republics, the head of

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state is elected by the parliament and has fewer powers, while in presidential republics the president is elected by the electorate and has greater rights and powers. Some other forms of governance have also been applied, such as the minimal state, in which the individual should enjoy as much freedom as possible and the state should be limited only to protection against violence, fraud, theft, guaranteeing the implementation of contracts; the developing state, whose role is to intervene in economic life to promote industrial growth and economic development; the social-democratic state, which intervenes only to make social restructurings, to mitigate the inequalities and injustices of the free market; the state of the dictatorship of the proletariat, which controls the entire economic and social life of a country, it is comprehensive and influences every aspect of human existence. The type of state is determined by its economic-social base. The state is classified into a state of slavery, a feudal state, a bourgeois or capitalist state, and a socialist state. The real functioning of a state also requires the implementation of some requirements to be effective, to move away more and more from the features and indicators of a weak state, and, therefore, also failed in fulfilling its historical mission.

Keywords: *state, a form of state, function, monarchy, republic, type of state*

I. Introduction

The state is present in every human activity of a country: from education to economic administration, from social welfare to health, and from maintaining order within the country to external protection. The state shapes and controls, while, where it does not modify or control, it regulates, supervises, authorizes, or prohibits. Even those aspects of life that are usually considered personal or private (marriage, divorce, abortion, religious worship, and similar), cannot avoid the role and influence of the state. It is not surprising, then, that politics is often understood as the rule of the state.

Such an approach has also been used by Marxist theorists of our time, who conceive of the state as a mechanism that mitigates class conflicts to ensure the long-term survival of the capitalist order.

Of course, ideological debate and political parties tend to revolve around the function or role of the state. What should the state do and what should be left to the individual and associations to do? Thus, the nature of state power has become one of the most fundamental issues of political analysis today, with the debate over the state affecting some of the deepest and most enduring divisions in political theory.

II. Forms of the state

The forms of the state have existed from Antiquity until today and have been reflected by philosophers of different periods. For Plato, the forms of the state were: aristocracy, timocracy, plutocracy, democracy, and despotism. Aristotle thought that the classical state is not a product of man, it is not historical; it exists for itself in nature as an expression of an immutable natural order (Solari, 1990:23). The forms of this state, according to him, were a monarchy, aristocracy, and polity, which he called true forms. According to him, these forms could degenerate into tyranny, oligarchy, and democracy, respectively.

According to Aristotle, a state governed in the interest of all is a monarchy. If the monarch rules arbitrarily in his favor, this form degenerates into tyranny. A state ruled by a few people for the common good is an aristocracy. If they use their power selfishly and put wealth above intelligence and patriotism, the aristocracy becomes an oligarchy. A state governed by all the people for the common good is a polity.[2]

If, however, most people, realizing their differences, govern in the interests of the poor, politics in its complicated form becomes a democracy.

Even Montecchio classifies the above three forms (Dunning, 1916: 400), which end in despotism, when the drafting of laws, their execution, and judgment are concentrated in a single body. According to him, the value of each form is relative. Democracy as a form is impossible because political virtue and the spirit of equality disappeared. The aristocracy cannot live because moderation between the ruling classes has ceased. Monarchy is impossible because honor among rulers has weakened, while despotism, by its nature, is unstable. (Gettell, 1923: 253).

The notion of the state's form indicates how it is organized. The meaning of the form includes:

- the form of government, which expresses the principles and the way of organization of the higher bodies of the state;
- the form of political rule, which is determined by the system of methods of its realization;
- the form of state organization, which is determined by the principles of territorial construction of the state. This can be unitary or federal.

[2] Polity is a form of government, "in which the government is in the hands of the people, who exercise it for the common good. In the Aristotelian lexicon, politics is opposed to democracy which, although it is also the government of the people, nevertheless aims, neglecting the common good, to unfairly favor the poorer classes." (Retrieved from https://www.treccani.it/enciclopedia/elenco opere/Vocabolario_ on_line , accessed on September 13, 2022).

These elements fully give the concept of the form of the state.

From the forms above, we will only deal with the form of government. It is an important element, even formally the most important of the form of the state, because it has to do with the organization of the higher bodies of state power, as well as with the scale and the way of people participate in the governance of their state.

The most popular forms of government that have guided the lives of the peoples of the world have been the monarchy and the republic.

Monarchy is one of the earliest forms of government. It represents a state ruled by a single person, a monarch, king, or emperor. This type of state inherits rule from one generation to the next in the hands of its most direct heirs. Monarchy appears in absolute, constitutional, or parliamentary forms.

Supporters of the absolute monarchy were Thomas Hobbes and Niccolo Machiavelli. Hobbes saw the state as an institution founded on the consent of individuals, which must be absolute to preserve peace among men, who by nature are always inclined to be in a state of war (Gettell, 1923: 220). In an absolute monarchy, the monarch rules with absolute power over the state and government. This is best embodied in the expression of Louis XIV "The state is me". His authority is unlimited by law, tradition, or custom, and power is attributed to him by divine right (Ganrer, 1910: 88). All laws are made by the king, and the people have no choice but to obey or go into anarchy. The king is not responsible for his actions except before God. Monarchy is hereditary, therefore the divine right of the king had to pass from father to son. The king has the right to rule by decrees, issue laws, and give punishments. There are such monarchies: Oman, Saudi Arabia, Brunei, and similar.

In the constitutional monarchy, the monarch is the subject of the constitution, a symbol of national unity and state continuity. The king is the head of state, but his powers are limited by the constitution, which includes a series of rules and rights. His political power is limited. In a constitutional monarchy, according to Locke, the form of government depends on who has the supreme power. Accordingly, the form of the state depends on that who has the power to make laws. (J. Locke, 2005). Such monarchies are Morocco, Bahrain, Bhutan, and similar.

A parliamentary monarchy is also a type of limited monarchy, similar to a constitutional monarchy. In these monarchies, the exercise of power is not concentrated only in the hands of the monarch but is distributed among various organs of state power. The monarch is the embodiment of the symbol and unity of society. Parliamentary monarchy exists today in several countries, such as Spain, Sweden, Belgium, the Netherlands, and similar.

Republic originates from the Latin Respublika, which means public affairs. The republican form of government represents the direction of the state by an

individual or a collective. The states of France, Italy, and similar. have individual bodies, while the countries of the former eastern democracies, such as Albania, Bulgaria, Yugoslavia, the USSR, and similar., had a collective body, which led through the Presidium of the People Assembly.

In republican regimes, the head of state, individual or collective, is elected for a fixed term directly by the electorate or by a representative assembly.

In ancient times, republics were either democratic or aristocratic. Athens was a democratic republic. The Athenian Republic represents a direct democracy, with a strong influence on western democracies.

Rome was an aristocratic republic. The Roman Republic was established around 509 BC. and was ruled by magistrates elected once a year and by assemblies with various representatives. During the heyday of the Roman Republic, all powers were governed by a constitution that defined a set of norms and balances on the separation of powers. Today, the republics are parliamentary and presidential.

In parliamentary republics, the head of state is elected by the parliament and his role is reduced. Such republics are Albania, Kosovo, North Macedonia, Italy, Germany, and similar. The powers of the president in parliamentary republics are reflected in their constitutions and are fewer than in presidential republics. The powers of the Italian, Macedonian, Kosovar and Albanian presidents, reflected in the respective constitution, are more or less the same. In each of these constitutions, it is written that the president represents the republic and the unity of the nation. He is impartial and stands above the parties. His function does not agree with the exercise of any other public profession or function in a political party. But it doesn't happen like that in every case. Thus, the last former Albanian president during his mandate not only supported but was involved in concrete activities, supporting one side of Albanian politics.

In presidential republics, the president is elected by the electorate and has greater rights and powers than the president of a parliamentary republic. Presidential republics are the USA, Argentina, Mexico, and similar.

However, the type of state and the form of government essentially depend on the political regime. On the other hand, the difference between democratic and non-democratic states lies in the degree and level of implementation of democracy and citizens' rights both in theory and in everyday life.

Although overall time and socio-political developments have enabled two of the most classical forms of government, the republic and the monarchy, which we discussed above, in different eras other intermediate forms have appeared, bearing special characteristics of developments and traditions economic - cultural of these peoples. Thus, several forms of governance have been applied: The minimal state, which is a product of the theories and concepts of classical liberal theorists. One of the representatives of the liberal theory of the minimalist state is Robert Nozick

(1938 - 2002) - who "In opposition to the various forms of utilitarianism and, above all, to the noncontractual of J. Raws, N. - has theorized in his main work "Anarchy, State and Utopia" (1974), individualistic liberalism, in which the function of the state is limited to the security of individuals and the protection of individual rights (theory of minimum state)... (Dizionario di storia, 2010). According to him, people have basic rights, which no one should violate. One of the offenders that violate these rights is the state, and this is the reason why it requires a state with a reduced role in performing traditionally recognized functions.

According to liberal theorists, the individual should enjoy as much freedom as possible. This view was widely expressed in the theory of the social contract, although in general, it undermines the role of the state itself.

From this point of view, the value of the state lies in the ability to exercise control and limit the behavior of individuals in society, which contradicts the principles of minimal state theorists. According to Heywood (2002), "The state is only a protective body and its main function is to create a framework for public peace and order within which citizens can live as they see fit. According to Locke's famous saying, the state should be like a "night watchman", which is called to help only when the social order is threatened." (Heywood, 2002: 117).

This definition limits the state to only a few functions: to maintain internal order, guarantee and respect the agreements or contracts between citizens, and protect its citizens from the dangers that may come to them from outside.

Other economic, social, cultural, moral, and other responsibilities belong to the individual and civil society and not to the state.

According to liberal theorists, the state should be limited only to protection against violence, fraud, theft, and guaranteeing the implementation of contracts. Even Herbert Spencer (1820 - 1903) speaks for freedom and the intervention of the state in people's lives. Every time the state intervenes in society to help those who are less favored, to improve their lives, it worsens their condition, therefore "the state with its laws should not regulate society in any way, but in at best it should concern itself with the functions of public order." (Heywood, 2002: 117).

The developing state, whose role is to intervene in economic life to promote industrial growth and economic development. The purpose of this intervention is not to replace the market with a socialist system of planning and control but as an attempt to build a partnership between the state and the main economic interests. A classic example of a developing country is Japan. Since 1945, the Japanese Ministry of International Trade and Industry has assumed the role of developer, which, together with the Bank of Japan, helps to realize the projects of private investors, making the Japanese economy more competitive in international markets. This type of state was also established in other Asian countries, such as Taiwan, South Korea, Singapore, and similar., which" (...) introduced into the economic and

political life (...) an accelerated economic growth "under the tutelage of the state" (Civici, 2013: 4). The developing state of the Asian model is already affirmed as an effective instrument to guarantee accelerated economic growth. Nowadays, with the emergence of globalization, competing states have emerged.

The social-democratic state intervenes only to make social restructuring, following the implementation of the principles of social justice and equality. The principle of equality means the application of the principle of uniform or even, but not uniform, distribution. Equality criteria mean the implementation of rights, opportunities, and outcomes. In countries such as Austria and Sweden, state intervention has been guided by developmental and social-democratic priorities. The key to understanding the social-democratic state is to move from a negative view of the state, which sees it as a necessary evil, to a positive view, according to which the state is considered a means of expanding freedom and promoting justice. The social-democratic state is an ideal of both modern liberals and socialist democrats.

This type of state does not focus so much on the development of the economy, but on equality and the fair distribution of wealth. The social-democratic state is an active actor in helping to alleviate the inequalities and injustices of the free market. This is an attempt to eradicate poverty and reduce social inequalities. The inclusion or adaptation of welfare policies has led to the birth of the so-called social welfare states, whose responsibility has been extended to the promotion of social welfare among citizens. According to political scientist Andrew Heywood, "the social-democratic state is a state that helps and is committed to the principle of empowering the individual." (Heywood, 2002: 119).

The state of the dictatorship of the proletariat, in contrast to the developing states and the social-democratic states, whose goal remains "interference in the economic life of a country to support a large private economy" (*ibidem*), takes control of all the economic life of a country. The best examples were the states of communist countries, such as the USSR, and the states of Eastern Europe, which included Albania. In these countries, the only leading force in all political, economic, and social activity was the Communist Party. "The governance system based on the mono-party rule has important economic implications. The Party ensures the continuity of economic policy (...) the national scene is heavily dominated by the Party, and economic and non-economic objectives are closely integrated into the totality of state action (Wilczynski, 2008: 22). These states completely banned private businesses and established a planned and centralized economy. "(...) in the Soviet Union land and factories, mines and housing are owned by the state or by cooperative societies. And the state (...) represents working people" (Sloan, 1937: 69).

The justification for state collectivization stemmed from the socialists' fundamental preference for common property over private property. With the

notion of "collectivization", they understood the disappearance of private property in favor of a system that was economically and politically based on the development of the common or public property.

The theorists of this theory saw this period of the state as transitory and temporary, but, in contrast, the collectivized state of the USSR – was intended to become permanent, more powerful, and more bureaucratic.

The state of the dictatorship of the proletariat is the last form of state that appeared in the arena of history, the form of the totalitarian state, which represents the most extreme, direct, and iron-handed form of intervention and control of every vital cell, from the personal to the general.

In essence, the totalitarian state is an all-encompassing state whose influence affects every aspect of human existence. This type of state controls not only the economy but also education, culture, religion, family life, and similar. "When we look at Soviet industry, education, entertainment, or scientific institutions, we find that they are wholly owned and controlled by public bodies, whether the Government of the USSR, or national republics, or a local authority." (Sloan, 1937: 37). The main pillars of such regimes are a comprehensive surveillance process, terror policing, and a widespread system of ideological manipulation and control. In the doctrines of totalitarian states, such as that of the former USSR, Albania, and similar., the activities and role of civil society, as well as their private sphere in the life of the country, were prohibited.

III. Types of states

The state acts as a political governing organization directed by a social group, as a mechanism in its hands. The content of the state indicates the type of state and the main leading social force, which exerts the greatest influence on political power in society. The form of the state is the specific political organization of society. The type of state should be understood as the totality of its characteristic features, which also express its political-social content. The economic-social base of the state determines its type. Usually in the historical, legal, and political literature, based on the character of the state, they are classified into slavery state, feudal state, bourgeois or capitalist state, and socialist state.

In addition to the above-mentioned criteria, such as sovereignty, independence and formal recognition by other states, the real functioning of a state also requires the implementation of some requirements to be effective and to move away more and more from the features and indicators of a state weak and, therefore, also failed in fulfilling its historical mission.

The state is effective when it controls and taxes its entire administrative territory and when all or most of the population obeys the government's laws. Effective government is the product of satisfactory welfare and the rule of general security. While corruption is a minor problem. Effective states tend to be the best and collect significant amounts (25 - 50%) of taxes. Among the effective countries today, we can single out Japan, the USA, and the countries of Western Europe.

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The state is weak when the phenomenon of crime has penetrated the country's governing policy, and often the decisions made in its governing structures do not serve the majority of the population, but a small group of oligarchs connected to the crime. The government does not have the strength to establish the rule of law, as a result, drug trafficking, corruption, poverty, and insurgent movements thrive there. Justice is bought. Democracy is more preached than practiced and elections are usually vulnerable. Tax collection is low. Income from natural resources, such as the sale of chrome or other underground minerals, which are the real estate of the people, goes into private pockets, as happens in Albania. Most of the countries in Asia, Africa, and Latin America are weak. Some of them are so weak that they are almost failed states.

The state is failed when there is no national government, even though some of the failed state countries claim otherwise. In a failed state warlords and drug, lords do whatever they want. No law is recognized and enforced, except the law of the strongest. The purest justice is equivalent to the strength and rule of the strongest. Only outside assistance and pressure keeps them from disappearing altogether. Bogota, for example, cannot control the wild areas of Colombia, where guerrillas and drug dealers control the area.

IV. Conclusions

The state is the main condition for an organized society and a legal order to regulate social and state relations. It has existed in various forms.

The meaning of the form of the state includes the form of government, which expresses the principles and the way of organization of the state; the form of political rule, which is determined by the system of methods of its realization and the form of state organization, which is determined by the principles of the

territorial construction of the state. The most popular forms of government have been monarchy and republic. The monarchy is ruled by a single person. It exists in three forms: absolute, constitutional, and parliamentary. The republic represents the direction of the state by an individual or a collective. In ancient times, republics were democratic or aristocratic, today they are parliamentary and presidential. In parliamentary republics, the head of state is elected by the parliament, while in presidential republics the president is elected by the electorate and has greater rights and powers.

Other forms of governance have also been applied, such as the minimal state, which is limited only to protection against violence, fraud, theft, guaranteeing the implementation of contracts; the developing state, whose role is to intervene in economic life; the social-democratic state, which intervenes only to make social restructurings; the state of the dictatorship of the proletariat, which is all-encompassing and affects every aspect of human activity. The type of state is determined by its economic-social basis and can be: a slaveholding state, feudal state, bourgeois or capitalist state and socialist state. The real functioning of a state requires effective and increasingly distant from the weak and failed state.

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Political representation in positive law

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Abstract

Looking at political representation in the norms and provisions established or positioned in the legal order, we can say that the Albanian legal order contains norms that try to preserve the autonomy of each representative, which formally positions political representation as a situation of representativeness. The legal order also contains norms which, starting from the idea of a permanent relationship between the representatives and the represented, discipline the moments and ways through which these relationships connect the representatives with the represented. However, political representation beyond the relational dimension must be manifested above all in terms of the representation of national unity and sovereignty. Only in this way can political representation enter into symbiosis with the very concept of the State of the right to guarantee subjective rights beyond sectoral or corporativist influences. In this sense, the institution of banning the mandatory mandate is sanctioned in positive law, as one of the fundamental principles of contemporary constitutions. However, the political-juridical reality has been able to establish this principle not only through strictly political behavior but also through normative corollaries. This paper aims to highlight the constitutional and legal moment in which political representation is located. To highlight how political representation approaches positive law when it tries to relate both to the representative and "popular sovereignty". Finally, the paper manages to conclude in critical terms on political representation, on its relationship with the represented subjects, and its bias in favor of political parties and their leadership.

Keywords: *Political representation, Constitution, positive law, mandatory mandate, political party.*

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I. Introduction

As per the Kelsenian model, the State does not have a personality of its own, much less a unique will, the expression of which would be the laws. When it is said that "the majority of parliamentarians and the will they exercise are identical to the will of the whole people" for Kelsen, this is nothing more than "a fiction, unstable from a psychological point of view (Kelsen, 1923 a: 165-166). Kelsen writes that "under certain conditions, certain actions of some persons - that is, of certain organs of the State - are charged not to them (that is, not to the organs that issue them), but to the State" (Kelsen, 1923b: 407-408). Thus, the very unity of the people is inconceivable except in legal terms. The unity of the people is presented from a legal point of view as "the submission of all to the state legal order" (Kelsen, 1929a: 35). What appears to us as a general interest is nothing more than a temporary pact between organized interests. "There is no general interest, but always and only the interests of groups that in any way seek to appropriate state power, the will of the State" (Kelsen, 1923: 478-489). Thus, Kelsen continues, seeing that the interests are conflicting between them, the general interest does not necessarily express the interest of the most powerful group, but is "the result, the compromise between opposing interests" (Kelsen, 1929b: 56).

According to Kelsen, the formalism of law guarantees the conditions for the free development of conflict between the parties and provides for the alignment of the result that emerges from the compromise between the groups.

The politicization of administrative law has and should have the same goal, politicization which should be almost total by listing every legally disciplinary aspect, to avoid discretionary power as much as possible (Kelsen, 1929/1982). For Kelsen, the Constitution as a formal act follows the same logic, for him "The Constitution expresses the political forces of a determined people, it is a document that proves a situation of relative balance in which conflicting groups for power remain until the arrival of a new order. If the demand to modify the constitution increases to the point that it cannot be put aside, it is a clear sign that there has been a displacement of forces that seeks to express themselves in the constitutional plan" (Kelsen, 1929/1981).

II. Literature review

Looking at political representation in the norms and provisions established or positioned in the legal order, we can say that the Albanian legal order contains norms

that try to preserve the autonomy of each representative, which formally positions political representation as a situation of representativeness. The legal order also contains norms which, starting from the idea of a permanent relationship between the representatives and the represented, discipline the moments and ways through which these relationships connect the representatives with the represented.

Finally, the legal recognition of political parties and their functions conditions the usual legislation such as laws, sub-legal acts, parliamentary regulations, and practices of institutions.

Being able to categorize the norms based on which the relationship between the representatives and the represented is legally recognized, we can start with the first group, which includes all those norms from which the concept of "the people" is evidenced.

Opening a small parenthesis, by people we understand a group of individuals who have some common objective characteristics (e.g., language, history, residence, etc.). The term people belong to that of "Nationality", i.e., "the people" who live in their State, and by the term "nationality" we mean a people mobilized towards political, economic, cultural autonomy", nationality in turn belongs to citizenship, and in conclusion, we can synthesize "people as unity of all citizens" (Demarchi, Ellena, Cattarinusi, 1994: 1350).

For our Constitution, "The People" is a unitary subject, whose interests inherit those of the individuals and groups that make it up. So, we are talking about all those provisions through which an exchange is carried out, in the broad sense of the word, between the People, the Republic and the State, precisely to underline that the people have a unity, a will, thus also a subjectivity of its own. In this sense, with the affirmation of popular sovereignty sanctioned in Article 2 point 1, it is emphasized that "Sovereignty in the Republic of Albania belongs to the people. This is further reinforced by point two of the same articles where it is quoted that "The people exercise sovereignty through their representatives or directly".

Among other things, Article 45of the Constitution, can legitimize the perception of the active electorate as a public function, and of elections as an activity directed exclusively at the formation of some State bodies. Article 70 point 1 should be added to these provisions, according to which "Deputies represent the people and are not bound by any mandatory mandate", thus underlining the principle of representation and the so-called "prohibition of mandatory mandate". It is precisely the latter, as it is also called the principle of the free mandate, through which the representative receives a mandate that is not legally bound by the instructions or orientations of the voters. So, once the elected person receives the mandate, he has no obligation, at least legally, to the voters for his activity.

At first glance, this may not seem very popular, but let's continue. Although we do not have specific legal obligations, we still talk about obligations between the

parties only in the context of the principle of political representation, that is, due to the fact that even though the representative does not feel legally bound by the voters to follow a predetermined line of behavior, he must still to account with his re-election, where voters can penalize him by not re-electing.

This elevates the relationship to political representation, surpassing the private one. So, the prohibition of the mandatory mandate is a necessity for the enforcement and non-degradation of political representation. In this sense, the European Council has expressed itself, which considers the mandatory mandate "an unacceptable requisite for a State that aims for democracy", therefore the institution of banning the mandatory mandate should be a key issue (Venice Commission, 2004). In Albania, even though the institute is directly sanctioned in the Constitution, the regulatory laws and the debate on this issue have been poor considering the importance and side effects that would have an efficient non-functioning of the institute. The logic is that of predicting specific sanctions for established relationships or those that can be established between interest groups and particular MPs. These reports often degrade into what is often referred to as "clientele", "capture", etc.

Where the phenomenon would corrupt the discretionary decisions of the representatives and with them of the bureaucracy, the decisions that should follow a rational and efficient line of resource allocation would be replaced by arbitrary and inefficient decisions, then occur in the situation where Albania has been around for a long time.

III. Albanian legislation on political representation

In relation to the positive law and the need for the provisions that discipline the prohibition of the mandatory mandate, in addition to the above-mentioned constitutional article, which anyway has a general weight, we can refer to: 1). Article 28 of Law 9367/2005 on the prevention of conflict of interests in the exercise of public functions, as amended by Law 9475/2006, Law 9529/2006 and Law 86/2012, and specifically for the figure of the deputy, it is provided that: a) not may be a leader or member of the governing bodies of profit-making organizations; b) cannot exercise private activities that generate income in the form of a natural commercial person, partnership of natural commercial persons of any form, independent professions of lawyer, notary, licensed expert, as well as consultant, agent or representative of profit-making organizations and cannot be employed, full-time, in another position; c) cannot actively own any share or share in the capital of a commercial company, if it results in a dominant position in the market; 2) we can also refer to law 9049/2003 on the declaration and control of assets,

financial obligations of elected officials and some public servants, amended by law no. 9367, dated. 4.7.2005, by law no. 9475, dated. .9.2.2006 and with law no. 9529, dated 11.5.2006, and with Law No. 85/2012 dated 18.09.2012, specifically in article 3 of this law the periodic obligation to declare the income of the deputy is provided and in article 25/1 the control that can be exercised to verify the authenticity and accuracy of the data contained in the declaration is provided ; we can finally refer to article 89 and 90 of the Electoral Code, which regulates the financing of electoral subjects from non-public funds and the registration of the latter. However, the law, at least in Article 90 of the registration of non-public funds, is delimited only to the figure of the political entity, which coincides with the political party, coalitions of political parties, as well as with the candidate proposed by the voters according to Articles 69 and 70. do not provide for the registration of public funds that personally interest the candidates of political parties and party coalitions, so in this case the code regulates only the funds that go in the name of the party entity and not the funds that specific candidates of a party can receive. It must be said that this is an important deficiency, taking into account the constitutional provision of the prohibition of the mandatory mandate, in Article 70 point 1, according to which "Deputies represent the people and are not bound by any mandatory mandate", in the light of the consolidated doctrinal interpretation this should be read that the deputy is not bound by any binding mandate even towards the party or coalition that proposes him as a candidate (Ciancio, 2008: 259-298). Thus, under the dictates of the principle of the free mandate, the candidate, after being elected deputy, can move from one coalition to another and from one party to another without having legal obligations to the party or the electorate, except for those of political representation which are chosen at the time of re-candidacy or his re-election. Therefore, in coherence with this, the registration of non-public funds received not only by political entities, parties, coalitions of parties and candidates proposed by voters, but also funds that can be received individually by all candidates from any entity that proposes them must be provided.

The principle of banning the mandatory mandate, as we saw, is the cornerstone of building a system that stays away from the influences of "third parties", anyway in Albania we are still at the forefront of dealing with the topic, seeing the discussions that the institute has had in western countries (Rodriguez, Modena, 1984).

The most prominent opinion is the one that sees the Parliament's decisions as free in following the suggestions that come from outside, however, the deputy has the opportunity to withdraw from these suggestions precisely under the tutelage of the free mandate, however, such behavior would have its consequences which would be evident in the relations with the party (Crisafulli, 1958: 606).

Following the norms that regulate political representation in positive law, we can mention Article 73 of the Constitution which foresees the non-responsibility

of the deputy for the thoughts, opinions and votes expressed in the Assembly in the exercise of his functions. This provision is also in line with the autonomy and independence of the representative, which can also be extended outside the Parliament (Zegrebelsky, 1979: 43). In this line, we can also add article 79 of the Constitution, which in point two provides for the conduct of the meetings of the Assembly with closed doors, thus separating the representative from the control of the electorate, we can also mention article 65.1 of the Constitution. which foresees the principle of prorogation (§), configuring the Parliament as a permanent body, and exalts as independent of the electoral fact, even if for a short time, the quality of being a representative of the people. On the other hand, there is the Regulation of the Parliament, which recognizes a series of norms from which an adequate guardianship of the position of the parliamentarian against his parliamentary group originates, which is the design of the political party within the Parliament (Savignano, 1967: 223). It is therefore this ratio of norms that allow and justify the disagreement of individual attitudes from those of the group.

Among other things, only in one provision of the Constitution, the representativeness of a body is separated from popular elections. Thus, in article 86 point 1 of the Constitution according to which the President of the Republic is the Head of State and represents the unity of the people and connecting this with Article 90, comma 1, which removes the responsibility of the President for the acts performed in the exercise of his duty and consequently removes the responsibility towards his constituents regarding the political orientations that these may have. All these examples seem to strengthen the idea that in the Albanian legal order, representation is simply a situation, fading representation as a relationship.

In the same light, the lack of provisions related to the responsibility of the elected to the voters should be read. To further reinforce the fact that in Albania political representation can be interpreted as simply a situation of representation, it is evidenced by the electoral law which regulates parliamentary elections, which has adapted a completely proportional system, where political representation itself resembles the representation of opinions and not of will. Consequently, in the electoral system that Albania has adopted, the decision on the formation of the Government and on its program belongs to the political forces that are in the Assembly and not directly to the electorate, which in turn ends up giving a representative warrant as if it were a "blank check" (Ragazzoni, 2012).

The notion of the people contained in the article of the Constitution is not only that which considers it, but also that of the people which consists of many citizens taken individually, equal among them, where everyone is the holder of fundamental rights and a member of sovereignty fractions (Crisafulli, 1957: 34). In confirmation of this, we can call the article where the active electorate is presented as an individual right, recognizing the personal interest of the voter in exercising

the right to vote. The recognizes the right to vote of all citizens (who are voters) and provides for the personalization of the vote and its equality, at the same time it prohibits certain laws from departing from the principle of universal suffrage.

Our constitution considers that the general will should be as effective and as legitimate as possible. The representative and executive bodies of this will must be renewed periodically and at the same time must emphasize the fact that in the last moments of the mandates these bodies must exercise as little power as possible, and in certain cases completely limit it. The reasons for this imposition must be seen in the light that in the period preceding and following the dissolution of the Assembly, the latter suffers a "withering" of its legitimacy, a renewal of representation and legitimacy is required, and the decisions in the last "torments" are not effective, the representativeness of the deputies is now considered faded, and therefore the legitimacy of the body to take constitutionally important decisions is also considered faded. This is confirmed by the example where the Constitution, in article 65 point 4 provides that "the Assembly cannot issue laws during the period of 60 days before the end of its mandate until the first meeting of the new Assembly" or in article 88 point two paragraph 2, where it is quoted that "When the presidential mandate ends in the six months preceding the end of the mandate of the existing Assembly, the procedure for the election of the President begins no later than 60 days before the end of the mandate of the Assembly", i.e. during the last 60 days of the Parliamentary mandate , the Assembly cannot elect the President of the Republic, because his legitimacy is considered to have faded. In this sense, the word should be interpreted that the 60 days of the end of the term should not only not start the procedure but also not finish it, thanks to the fact that in this period the decision-making legitimacy is considered to have faded, so the forecast goes beyond the procedural start, rationally including the conclusion or more precisely the deliberation.

In an analogous way, the final mandate of the Government should be considered, which in this period should perform simple organizational functions. However, what is important to emphasize is the fact that the temporary and limited duration of the Assembly creates a systemic relationship with the political responsibility of the Government towards the latter, in the sense that this responsibility is presented as a surrogate of that directly to the people. This is because the representatives model their attitudes towards the Government, according to the judgments of the electorate about good governance, often putting in place mechanisms that lead to extra-parliamentary crises. Because of this fact, of a premature renewal of political representation where crises are severe, the constitution provides for the institution of premature dissolution of the Assembly in article 65 point 3 of the Constitution, in article 67 point 1. part 2, in article 96 point 4, in cases of motion of confidence, Article 104 of the Constitution and cases of motion of no confidence, Article 105 of the Constitution

Always in the framework of political representation, we must also look at those provisions that discipline the so-called institutes of direct democracy, such as the referendum for the repeal of a law, which here must be seen as functional of political representation, that is, as an instrument of the represented people to control prescribed Acts of Parliament (Constitution, Part 11).

Finally, we also have the provisions on political parties, among which Article 9 of the Constitution stands out. which recognizes the freedom of their creation. So, recognizing all citizens the freedom to join the party, on the one hand, they are recognized to compete in a democratic way to determine the policy and direction of the country and on the other hand, it is forbidden that the Albanian political order is organized according to a mono-party regime that is, it is guaranteed through the Constitutional provisions that a pluripartidism system is implemented in Albania. This is further reinforced by clause two of Article 9 of the Constitution. Where it is quoted that: "Political parties and other organizations, whose programs and activities are based on totalitarian methods, that incite and support racial, religious, regional or ethnic hatred, that use violence to seize power or to influence state policy, as well as those of a secret character are prohibited according to the law".

For these reasons, the importance and mediation of the political party in relation to representation are directly recognized in the Constitution. Thus, Article 68 point 1 expressly recognizes the political party and coalitions of political parties, the status of the liaison, that is, the fact that there is a connection between the voters and the political party, that the voters practically vote for the candidates proposed and supported by the parties is recognized.

IV. Conclusions

In the final analysis, the effective representatives of the people in Albania are the political parties, this is demonstrated by the fact that the political parties in Albania have introduced a plebiscite element, where the electorate by voting chooses between different political programs and at the same time shows confidence in a leadership or defined leadership class. This fact is reinforced even more by all those norms which have introduced the proportional electoral system into our legal order by strengthening the political parties themselves and their leadership. In this sense, seeing the central role of political parties, it is necessary to look in the light of special importance not only those norms that regulate the electoral system (we are talking about the electoral code approved by law no. 10019 dated 29.12.2008) where parties operate, but also those that sanction the formation, financing, freedoms, and obligations of political parties[2].

[2] We are referring to those norms that start from the aforementioned constitutional articles, in the special laws that regulate the formation, activity, financing of parties up to those norms of the parliamentary

To avoid that the parties are representatives of the people dissolved from any relationship with the people themselves and with the concrete interests that they express, a revitalization of all those norms and provisions that guarantee parliamentarians an appropriate autonomy to parties or lists is required theirs.

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regulation that regulate the activity of parliamentary groups.

BOOK REVIEW

Family law through practical cases:

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The family is considered in most cultures as the main pillar of the society. Today more than ever, with the advance of the progress and the complication of the social structure, the family is at the center of heated debates, between those who would like it to remain rigid in its traditional form and those who would like it to be more flexible and open to protect anyone.

Meanwhile, everywhere in the world, legislation in the field of family law is undergoing to a continuous change in the face of this social evolution, which today more than ever openly demands the rights of its individuals. This change in some places is more coherent and faster, in other places slower and static. Although for most people the family is very important, and it can hardly be seen beyond the traditional forms we are used to, perhaps today we should recall that famous Latin proverb *"Coniunctio animi maxima est cognatio"* and reflect.

The book "Family law through practical cases" edition of 2022 of the Mediaprint publishing house of the well-known Professors Arta Mandro & Juelda Lamçe, comes as an excellent practical manual of the family law in the context where this field is undergoing to very important transformations of its institutions.

The work is the result of the combination of the long academic and practical experience of its authors, who enjoy an indisputable prestige in the field of family law, as experts in the field of children's rights, mediation, gender equality and non-discrimination, as well as in the field of international law.

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The work in question, as immediately understood from the title, does not constitute a simple volume on family law, but represents one of the most ambitious projects that the authors decide to realize, that is, the collection of the most relevant cases in family law. It is a work destined to become one of the points of reference for all legal practitioners who have to deal with the discipline of family law.

With this work, the authors aim to provide students and lawyers with an organic and in-depth treatment of the entire family code discipline through practical cases. And in the analytical deepening through the study of practical cases for family law institutes lies the greatest value of this book, setting it apart from other Albanian legal publications for its uniqueness and originality because it brings a valuable western model for enhancing practical knowledge in relation to this field, what will make this book inseparable from the theoretical manuals of family law.

The work undoubtedly constitutes a relevant innovation by bringing the traditional and contemporary disciplines to the reader through a voluminous, selected and comprehensive case study. Through the practical cases treated which are based on the most recent decisions of Albanian and international jurisprudence, the book exceeds what is codified by highlighting the latest developments and trends and accentuating through current issues in the Albanian family law sector, the separation from the traditional family law and the new dynamics of its transformation as a result of the social changes.

Divided into 3 parts, the work offers a complete treatment of all the institutes of family law in an exhaustive form, putting the student and the lawyer in front of practical situations that require diagnosis and at the same time find solutions through the lines, contributing to the reinforcement of their analytical skills and logical reasoning. This work stands out for its modern treatment of family law topics, understanding 'family' in its broadest and most current sense.

The work takes into account the latest regulatory innovations and the current jurisprudence by exhibiting a collection of practical cases accompanied by commentaries and legal references following the structure of the family code: from the principles of the family code, the spouses, the marriage and the property regimes, to the children, the adoption and the guardianship.

For each practical case there are presented the objectives, the circumstances of the case, the questions posed for discussion, practical advice and orientation answers focused on the legal basis, the court practice in correlation with the decisions of the Supreme Court, the decisions of the Albanian Constitutional Court and of the Strasbourg Court. Through the questions, the practical advice and the orientation answers that focus on the topics that are presented in the practical cases, it is intended to highlight with simplicity and clarity the legal, the economic and the property aspects related to the family law in transformation that are brought to the attention of the reader and of the legislator. In this perspective,

the discussion is complemented by a large number of notes with references dedicated exclusively to the doctrine and the jurisprudence in order to facilitate their identification and controversial orientations. The volume, through the most selected case studies, aims to offer to students and professionals the most suitable training and consultation tools.

The casuistry is not limited to what currently finds a solution in the Albanian legislation, but also affects issues that have not yet been taken into consideration in the context of the Albanian legislation, such as the cohabitation or the homosexual marriages. This is a widely debated topic and by presenting a practical case, the authors open an important discussion through questions, orienting the reader with Recommendations such as Recommendation CM/Rec (2010)5 of the Committee of Ministers for Member States on Measures for the War against Discrimination due to Sexual Orientation or Gender Identity and practical cases of the European Court of Human Rights. In the end, the reader is free to have his own opinion. This modern treatment beyond the taboos in the context of the Albanian society first of all educates the students in the auditorium, then it is a "blow" for everyone even for the adults, without imposing opinions, to see beyond. But this is not the only case that shows how far-sighted the authors are in dealing with the case study. Often, with their critical opinion, they dictate the legal vacuums to the legislator, making this manual very useful for everyone.

In the exposition of the practical cases, the authors do not refer only to a selected doctrine and jurisprudence, but also bring their original and sharp personal reflections, presented in a measured style, characterized by a rigorous and effective vocabulary, typical of the well-known authors who have a brilliant knowledge of the logical and legal categories in the field of the family law.

In this sense, it is essential to remember that the analysis of the jurisprudence and the knowledge of the basic decisions taken in this field and which find treatment in this work are points of advantage for the students, the jurists, the lawyers engaged in the court cases, to whom this book will serve as an important manual of the most relevant case studies, and a reference point for solving concrete issues.

In this way, the work is presented didactically and systematically, offering an interweaving of legal norms and modern jurisprudence that highlight the chaos that the evolution of this field is bringing and the need for changes in the legislation.

The authors address the phenomena of the family law through several scientific methods, proving an essential work done with great skill and a series of researches through a great personal investment. The work flows simply and clearly, that makes the reading pleasant and interesting. It is also characterized by the completeness of the treatment. Between the lines the reader perceives the passion, the tireless work, and the expertise of the authors with an undisputed authority and prestige in the country and abroad. This work arouses the interest not only of the students

or lawyers but also of the professional operators who have an inevitable connection with the family law and represents an important contribution not only to the contemporary legal culture, but on several levels in the context of such a complex and variable society.

Beyond the appreciation I have for the two authors as a passionate reader of law books, but also for the awareness that the relationship between legal science and legal practice is full of mutual encouragement and inseparable, because if the law helps to solve the practical cases, practice also changes the law, I can say that this book is a very important innovation and an example to follow for the Albanian legal publications.