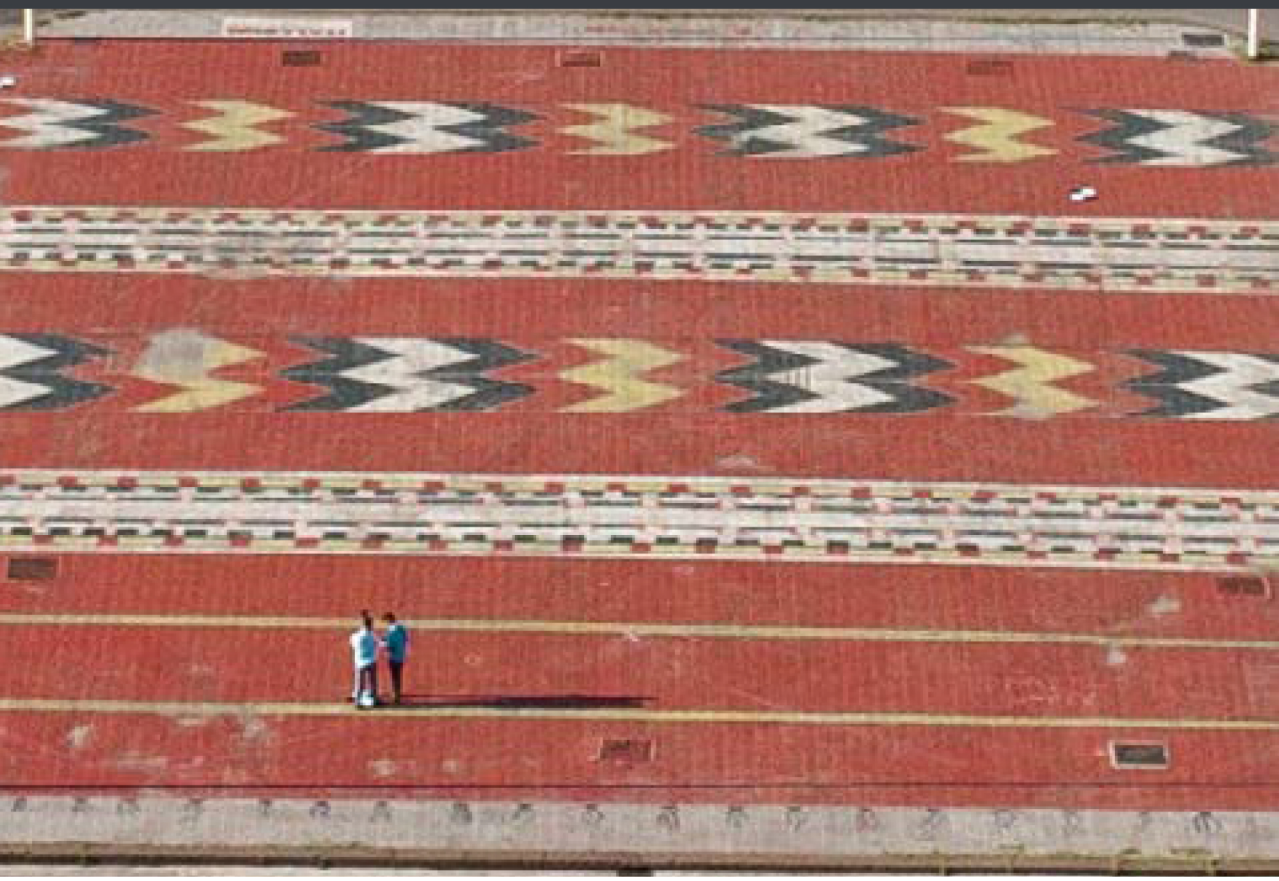
JUS & JUSTICIA
16 ISSUE 1
Editor-in-Chief: Assoc. Prof. Dr. Juelda Lamçe / Scientific Journal of the Faculty of Law, Political Science and International Relations / No. 16, issue 1 / 2022
ISSN 2223-8654



OVERVIEW OF THE DECENTRALIZATION PROCESS IN ALBANIA

Comparative Approach in the Western Balkans

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UETPRESS

ISSN 2223-8654

JUS & JUSTICIA No. 16, issue 1/ 2022

SCIENTIFIC JOURNAL OF THE FACULTY OF LAW, POLITICAL SCIENCE AND INTERNATIONAL RELATIONS

UETPRESS

Published under the series "ACADEMIC JOURNALS".

The journal has been catalogued at the National Library of Albania and the Library of the European University of Tirana, Albania.

(print ISSN: 2223-8654/ online ISSN: 2958-8898)

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www.uet.edu.al/jus&justicia

UETPRESS

Published by:
EUROPEAN UNIVERSITY OF TIRANA / ALBANIA

content

Welcome note

Assoc. Prof. Dr. Juelda Lamçe
Editor-in Chief
Jus & Justicia

Dear readers,

I am honored to present the 15th edition of the academic journal Jus & Justicia. The journal, founded in 2008, is published twice a year by the Faculty of Law, Political Sciences, and International Relations at the European University of Tirana.

I want to express my gratitude to all the colleagues, previous Editors in Chief, Prof. Dr. Ksenofon Krisafi, Prof. Dr. Migena Leskoviku, Prof. Dr. Xhezair Zaganjori, members of the Editorial Board, authors, and peer reviewers, whose contributions have brought a significant impact to the journal.

During these past 14 years, Jus & Justicia has grown substantially, aiming to join the international academic debate. Since 2020 it has published articles only in English. As an interdisciplinary journal, it promotes cutting-edge insights into contemporary legal and political developments. The journal provides a platform dedicated to facilitating the exchange of original works and ideas. The editions published so far have been focused, but not limited to, on post-communist transition, local democracy, constitutional dilemmas, the interaction between the law and society, international diplomacy, justice reform, and recent developments in human rights.

Albania has made significant steps to develop good neighborly relations and regional cooperation, thus contributing to stability in the Western Balkans. It is worth mentioning its continuous contribution to peace and security from a larger perspective of the foreign policy issues, as well as the fact that for the first time, Albania is a non-permanent member of the UN Security Council, one of the most important bodies of the United Nations as it relates to peace and security between nations. In the framework of the latest geopolitical developments, such a position is of the utmost importance and certainly a good starting point to acknowledge within the Albanian academic environment. The rule of law, good governance,

democracy, international cooperation, harmonization of laws with the EU legal framework, among others, remain important areas of engagement and challenges for Albania.

This edition is dedicated to an overview of the Albanian territorial administrative reform, a challenge for the advancement of local democracy and EU integration. It focuses on the decentralization approach, local fiscal autonomy, and the empowerment of the Albanian local state bodies. Professors, researchers, academics, and experts at the national and international level are invited to contribute.

Territorial reform and lack of real decentralization in Albania

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Abstract

Albania has undertaken decentralization reforms at least in two separate instances in the post-communist period. The first was in late 1990s and the second with the territorial reform of 2016. Although the focus of the first was to bring Albania in line with the European Charter of Local Self-Government and the second officially to have a more effective governing of the territory, the real decentralization of power has not taken place. This is not so much because of the lack of proper legal framework or the necessary constitutional changes but mostly because of lack of real political will to delegate power to subsidiaries, to empower municipalities and to create the basis for actual autonomy of the local authorities.

Keywords: *decentralization, territorial reform, Albania, constitutional changes*

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I. Introduction

Decentralization through territorial reform has continuously been a sought-after policy in former communist countries, as various authors have already emphasized early on. For example, Illner (1997) has noted this in regard to the Visegrád countries, respectively Czech Republic, Hungary and Poland in his analysis for reforms undertaken from 1989 and onward. As he has duly observed, although some of these early reforms proved to be initially successful, in the long run, more re-centralization was introduced by national governments. Therefore, these were short-lived structural reforms that could not resist the test of time in this initial post-communist period, which re-introduced the strong central authority. This was mostly because these societies that had experienced totalitarian, post-totalitarian, or authoritarian regimes under communism, had still a legacy of mass supporting a "strong hand" in power. This legacy in turn benefitted the ruling elites that continued to maintain the grip over local authorities.

In the Western Balkans, particularly in the former Yugoslavia's space, the countries have also undergone swift decentralization waves that have relied in both enforcing the new norms of local autonomy, as well as trying to defuse some of ethnic tensions that were more present in national level. For example, after the bloody inter-ethnic wars in former Yugoslavia, incited by the Serbian irredentism, increasing local autonomy and giving more headway to decentralization was the only visible choice for the international actors that supported the reconciliation process. For example, in Bosnia-Herzegovina, full local autonomy for districts such as Brcko, was the only possible remedy after the war and Dayton process. Furthermore, the entire Dayton agreement relied on the concept of decentralization and self-rule among the Muslim, Croat and Serb communities. This made possible co-habitation, self-reliance and increasing local autonomy via decentralization of the regions and as a result, maintained a fragile peace that have lasted until now.[2]

On the other hand, after the second decade of the post-communist period, decentralization in all these countries, particularly in regard to areas such as public utilities, primary and secondary education, more independence in managing their own finances and being able to raise them via local taxes etc., by the municipalities

[2] After periods of reconciliation in Bosnia-Herzegovina as well as in the rest of former Yugoslav space (Savić-Bojanić, Maja & Kalemaj, Ilir, 2021), the fragile peace of B-Hit is actually under threat because of recent moves by the leader of Republika Serbska, Milorad Dodik, to secede and create their own sovereign entity, after the federal government passed a law to punish the deniers of the genocide either by fine or prison terms. Republika Serbska controls 49 percent of territory and more than one third of population under the Dayton Agreement with an absolute majority of population being ethnic Serbs. In doing so, it is supported indirectly from Belgrade and even more directly from Russian Federation, while it is vehemently opposed by the United States and the European Union.

in these countries, has been a constant policy in all the six Western Balkan countries. These are the former Yugoslav republics, minus Croatia and Slovenia, plus Albania and was introduced after the conflict in former Yugoslavia (Bugajski, 2019). As Ahmeti (2013) has argued each of these countries has achieved significant results in decentralization, like Kosovo especially in the area of education and the increase of local revenues as percentage when compared total revenues; Albania in public utilities although it still lags behind in areas such as decentralization of education and local expenditures autonomy, Northern Macedonia and Bosnia-Herzegovina that show remarkable similarity to the Albanian case.

Other studies, show a steadier decentralization policies undertaken by Serbia and Montenegro. An important element here is also the fact that these two are the most advanced countries in the region when it comes to opening the negotiations with the European Union, where certain chapters deal also with matters such as decentralization, local autonomy, territorial and administrative reforms to be able to adjust to structural and cohesion funds of the EU, cross-border policies in line with EU rules and regulations etc. Since these are the only two Western Balkan countries to have actually opened the negotiation chapters with EU, particularly Montenegro that has opened all the chapters and has managed to already close two of them, it is common sense that they are more advanced in this regard than the other four aforementioned.

II. Literature review

There is an abundant literature in the field of decentralization, ranging from global (WB & UCLG, 2008; World Bank, 2004; Jurado & Leon 2020) to Central and Eastern European context (Dmytyrshyn, 2021; Illner, 1997). On one level of analysis there has been great evolution toward the level of regional authority over the past 70 years (Marks et al. 2008a). These authors take into account 42 countries in the period 1950–2006, and conclude that 29 of those countries saw an increase in their levels of regional authority, while 11 saw no change, and only two increased the centralization of authority (Marks et al., 2008a, p. 168). Of course, what happened in the global level in general as a result or direct consequence of globalization which in itself brought '*glocalization*' - the merging or fusion of global and local, could not escape the former Eastern European space once it started its post-communism journey (Leibrecht, M. et al., 2011). This is similar and goes hand in glove with the process of spreading the liberal democracies as the primary form of governance via the three waves of democratization (Huntington, 1993). Democracy as the primary form of increasing citizens' participation in public affairs, together with liberalism that consists of individual rights and liberties as protected

by the Constitution and promotion of free trade which required open borders and increasing *glocalization*, empowered in the end the local authorities, thus making the trend toward greater decentralization the rule of thumb throughout the world.

On the other hand, the new territorial mapping in former Eastern European space was a direct consequence of two factors, one internal and the other external. The internal factors had to do with domestic demographic shifts that the countries in the former communist Central and Eastern European had to face once they started democratic pluralism and market reform processes. The external dimension had to do with the need for conformity and the European legislation that they needed to co-opt in order to increase local autonomy, decentralize power throughout territory and relocate resources more efficiently. In this, they also had plenty to learn from Western countries experience and tons of experts sent from developed countries to assist them with the structural reforms that increased the power of regions. Therefore, the combination of these two forces, led to two distinct stages of reform. The Visegrád countries that started the de-communistization process early, starting with protest movements and government changes in late 1980s were already effectively doing the decentralization reforms by early 1990s.

Whereas, the South-eastern European countries and especially what we now refer as the Western Balkans (former Yugoslav republics, minus Croatia and Slovenia, plus Albania), started the democratic revolutions with their corresponding ups and downs in the 1990s and therefore complied with the European norms such as the adoption of European Charter of Local Self-Government in the late 1990s. It was this period, late 1990s and early 2000s that some significant progress was done in these countries toward both democratic consolidation, the state of local democracy and more decentralization for the regions (Gadjanova, 2006).

Alas, because some of these countries are still a long way to join the European Union, their reforms do not necessarily fit, comply or implement in full with the *acqui communitaire*, the EU legislation that includes decentralization, territorial reform, local autonomy etc. Also, the notable differences in the integration path that these countries have among themselves are not a minor impediment in fully complying with EU directives and legislation regarding local autonomy and decentralization in particular. For example, Montenegro is the most advanced country in the region since it has opened all thirty-three required chapters although it has successfully closed only three of them and it is followed by Serbia as the next most successful country in the region when it comes to the route for full accession. On the other hand, Albania and Northern Macedonia are still waiting to open the first chapters with the EU and therefore waiting for the first inter-governmental conference. Alas, Kosovo and Bosnia-Herzegovina are not foreseen to open such negotiations any time soon, therefore the legal, political and formal requirements of the EU that include local autonomy and real decentralization of power via

empowerment of regions are still a long way to go. If these countries would have been offered a speedier integration path, their "homeworks" in addressing these legitimate would have been more successful, long lasting and more in line with their EU members' counterparts.

III. Methodology

Since Albania is the main focus of this study and the other Western Balkan states serve more as background cases, this paper focuses on exploring the critical junctures of Albanian territorial reforms in order to understand the processes of decentralization. These critical junctures are important periods of ruptures in Albanian political history in the post-communism periods that were also significant in undertaking structural reforms that touched upon and directly or indirectly affected the decentralization and increasing of local autonomy. Such periods are for example in late 1990s or with the territorial reform of 2016. Although the focus of the first was to bring Albania in line with the European Charter of Local Self-Government and the second officially to have a more effective governing of the territory, the real decentralization of power has not taken place, because of lack of real will from the ruling elites of both socialist and democrat political camps. For example, although the 2016 reform cut drastically the number of municipalities and basically removed the concept of communes which were more than three-hundred, had more an electoral aim than to real empower the now enlarged municipalities or to strengthen them financially. As it is argued below, they continue to be highly dependent on central government funding and most of their budget still goes for operational costs, including political appointments rather than for investments.

The paper uses a qualitative research design and seeks through a comparative method to understand Albania's decentralization reforms of post-communist period through critical lenses. It uses a combination of discourse and content analysis to better understand the impact of such critical junctures in shaping the political and public debate and how in turn they helped or worsened the state of affairs in local governance.

After presenting above the main theoretical and comparative state of art in the literature, the paper provides rich empirical evidence below, especially regarding the Albanian case. It also explores new avenues of research and seeks to bring added value through modest policy-making proposals since this is a topic of practical relevance as well as making a contribution in the existing scholarship.

IV. Results

The main results of this paper are that although Albanian has undertaken at least two different waves of territorial reforms with the aim of decentralization before and after the new millennium, we have not had a successful process in this end. This, as it will be argued in length in the discussion session below is because of lack of real political will, half measures without taking into consideration the political and social costs as well as geographical, historical and cultural aspects of certain regions, districts and municipalities. Also, most of these reforms have been made unilaterally, mostly to obtain short-term political benefits, rather than addressing the economic and connectivity issues that would make the newly created districts and municipalities more efficient, more autonomous of central power and more self-sustainable.

Also, the present paper has not only theoretical and empirical added value by focusing on the Albanian case-study seen through comparative lenses, but also policy-making relevance since it coincides with a new political and public debate on coming up with a new and consensual territorial map. This is formally proposed by the Democratic Party and Albanian opposition in tandem with the new electoral reform and other constitutional changes and at least in principle has been agreed by the ruling Socialist Party that a new consensual reform might be part of the political agenda in the next coming months. Therefore, this study hopes to make a modest contribution in the upcoming academic, political as well as public debate.

V. Discussion

As Toska and Bejko (2018) have already argued, the first attempts of decentralization reforms were early on with the adoption of the European Charter of Local Self-Government. The principles of this charter were immediately incorporated into the Constitution of the Republic of Albania from 1998, as well as in the National Strategy for Decentralization (1999); Law no. 8652/2000 'On the Organization and Functioning of Local Government'; and Law no. 8653/2000 'On the Administrative - Territorial Division of Local Government Units in the Republic of Albania.' The 2000 laws which were based on the Constitution of 1998, were new heights in the process of decentralization and in complying with European standards.

Meanwhile, the same authors go on to argue that in 2014 "a 'second wave' of decentralization in Albania, especially in the administrative and fiscal sense"

took place. It was this year when, the Socialist majority undertook unilaterally the territorial and administrative reform (TAR) with the main objective of improving the provision of services to citizens. The opposition boycotted the process which they viewed as a way for the Socialist government to perpetuate itself in power through an electoral salamander which for the Democrats was what the majority was after. The newly devised reforms constituted 61 municipalities instead of the previous 12 districts, 65 municipalities and a full 308 communes that continued until the end of 2015.

In this second wave of decentralization, we had new policies that came in force and were implemented, such as: the 'Crosscutting Strategy for Decentralization and Local Governance 2015-2020' and the action plan for its implementation; Law no.139/2015 'On Local Self-government,' which transferred a number of new functions to municipalities, as well as the Law no. 68/2017 'On Local Self-government Finance,' followed by Law no. 106/2017 'On some Amendments and Additions to law no. 9632, date 30.10.2006, 'On the Local Tax System' (amended). (Toska and Bejko, 2018).

The major problem with the Albanian case is not passing of new legislation, but particularly its enforcement mechanisms or proper implementation. This is the general rule of thumb but also specifically when it comes to real decentralization and increasing the local autonomy. Since the new territorial and administrative reform of 2016, there is very little headway and general progress when it comes to bringing the services closer to the citizens and inhabitants of the rural areas. Also, the number of public functionaries instead of decreasing as the result of downsizing from closer to four-hundred units (municipalities and communes) to only sixty-one municipalities, it has actually increased. The increase is especially accentuated during electoral years, such as with the recent general elections of April 2021, when only in three months prior to elections, there were more than 10 thousand new employments, mostly done as political favours (Haruni 2021). Right now, the total number of central and local governance units is 182 thousand, while the last time that the total number was similar we have to go back to 2002 (Haruni 2021).

This brings us to the main puzzle that this paper seeks to answer: why then we needed a new territorial and administrative reforms that did not bring services closer to its citizens and did not downsize the administration? The main answer fits with the overall scepticism coming not only from opposition, but also from academic circles, different scholars and activists who have written or orally argued in mass media and other public forums that this reform served more as an electoral device, same as gerrymandering in the United States that is done purely for political benefits to the ruling party.

The opinion of the present writer goes alongside this line of logic. Territories without clear economic connection or historical tradition or any cultural and social links, were put together to create politically sound municipalities that benefited the ruling Socialist Party. In such way, they created political strongholds like the case of Tirana municipality, which is by far the most important in the country after they removed Paskuqan and other populous areas that were consistently voting for Democratic Party, which in turn were put together with Kamza municipality, a Democratic Party political stronghold. Furthermore, there is no serious study that argues the reasons why the Tirana region has Kavaja and Rrogozhina as its parts, whereas Kavaja today is de facto united with Durrës. Meanwhile, the presence of Rrogozhina in the Tirana region does not meet any of the criteria of local government in neither physical proximity, nor economic structure or cultural similarity. Kavaja today delegates every institutional service. It delegates the health services in Durrës and the administrative ones in Tirana, thus questioning the logic behind such move as of why is a medical patient sent to Durrës, while the one who needs the services of the prefecture should go to Tirana? These and other absurdities of the current system should be addressed in the new territorial-administrative reform that seems in the way of getting started as a process after the formal calls of the Democratic Party to address such issue as soon as possible via a bipartisan comittee.

At the same time, Kruja has no geographical, historical or socio-cultural links with the Durrës region. The time has come for this municipality, without any connection with Durrës, to join the district of Lezha or Tirana. Lezha is united by culture and economic ties, but also by a closer physical and religious proximity than Durrës. This change should be made in function of the division of deputies. It is finally the time for Tirana to represent itself. Another district that needs to be changed is Vlora. Saranda has no reason to be part of the Vlora region, while it is already connected by the Ionian Sea. This is because the 4 municipalities of this region, namely Saranda, Delvina, Finiq and Konispol, have Vlora in a distance that goes twice as far as Gjirokastra. This will also affect the mandates of the deputies, so that we no longer have a district that produces only 4 deputies. But this must also happen as a result of cultural, economic and social proximity.

And since we are talking of the cultural, physical, and economic proximity, Përmeti could join the Korça region. It just needs a new road infrastructure.

Territorial reform must also take into account a principle: small local governments. Unfortunately, we have noticed a magnification of state administration including local administration in the past four years, culminating with approximately twelve thousand political appointments in the three months before the April 25 elections of 2021. As it is officially reported in the Albanian press, "the number of employees in the state increases by 12 thousand. According

to a recent INSTAT report in June this year, the number of employees in the public administration went to 185 thousand people, the highest since 2002. A year ago, the number of employees in the state was 173 thousand people, while in 2013, when the current Prime Minister took power, were 164 thousand people…" (Panorama 2021). A major problem that persisted in these elections was the use of public administration to support the ruling PS. For example, in one of her interviews right after the elections, the head of the OSCE/ODIHR observer mission, Ursula Gacek, talked of "the misuse of the resources of public administration" and the "fuzzy position between the [Socialist] party and the state" (Kalemaj, 2021).

Therefore, to summarize the answer for the second part of my primary research question, the newly created sixty-one municipalities did not downsize the number of their employees because most of these were *de facto* political employees whose numbers always go up whenever there are elections. This is because these employees and their families are counted as safe voters for the ruling party and there is a clear visible political interest for whoever is in power to continue this un-democratic tradition. Also, it further centralized authority and marginalized communities, particularly in peripheral and semi-peripheral areas.

On the other hand, the administrative units, especially those in the plain area should be reduced, especially where the physical proximity between them is such that it does not violate the principles of local service and this is entirely possible. Of course these are some of potential changes that can make the different districts, regions and municipalities more efficient. Since the Democratic Party has already proposed a new territorial reform that could be consensual and the Socialist Party has agreed in principle and different models are already pre-existing in public debates, such as the one with one-hundred municipalities to correspond a newly electoral map that is also subject to new party negotiations, these ideas presented here can serve as food for thought that have not only empirical relevance but also policy-making impact.

VI. Limitations

The author is aware that the findings of this paper replicate some early findings from public debates, although there is still very scare literature about this issue in the field. This is a topic that has theoretical, empirical but is also policy-relevant. While there is a growing scholarship in tackling this topic from practical point of view and policy relevance as well as it is a matter of fierce political and juridical debate in the field, more literature is needed to understand its theoretical implications as well as its comparative added value.

Therefore, the present paper makes a modest contribution that help the existing theoretical and policy debate but needs to be supplemented with both quantitative and qualitative data that other future works can present in more detail. These future avenues of research can go more thoroughly into what has gone wrong with decentralization processes in Albania, why they have failed to delegate more powers to local authorities, what has to be addressed in the next territorial-administrative reforms etc.

VII. Conclusions

The present paper seeks to serve as a bridge toward understanding more of the implications of the territorial-administrative reform in Albania, its similarities and differences with the other Western Balkan countries, as well as in a broader plane, with the other former communist regions, such as the Visegrád group or Baltic states.

The main implication is that the real decentralization of power, both in vertical and horizontal axes, has not taken place. As stated throughout the paper, this is not only because of the lack of proper legal framework or the necessary constitutional changes but chiefly because of lack of political will to delegate power to subsidiaries, to empower municipalities and to create the basis for real autonomy of the local authorities. These municipalities serve primary electoral objectives and thus they continue to be over-stuffed with *de facto* political employees, to spend most of their budget on operational costs and very little on investment, to be almost exclusively dependent on government revenue that comes in the form of unconditional budget, to be limited in attracting foreign or domestic investment and capital etc.

On the other hand, the paper comes in a timely fashion when a discussion for reconsidering the territorial-administrative reform has been opened by the Democratic Party, which has formally proposed to the ruling Socialist Party that this should be a major point of interaction between the government and the opposition, altogether the electoral reform and vetting of the politicians. Together they might constitute the new constitutional changes that most parties agree that should be done sooner rather than later.

Achieving real autonomy via the process of decentralization means empowering the local authorities to be self-sustainable. It goes without saying that this should include financial autonomy, which is key for increasing municipalities power and making them able to raise awareness, create a certain identity, compete in regional basis and attract more foreign direct investment and tourists, which in turn would greatly expand their revenues. First, by increasing autonomy and real decentralization, and secondly, by amending the existing legislation

to be more compatible with the EU legislation, the focus of tomorrow may be the empowerment of the regions and districts. This can first be done in national level but more and more with an eye to expand it to cross-border enterprises and cooperation, which is the basic philosophy of the European Union and which is greatly supported financially, both in forms of donors and grants as well as foreign direct investment and attraction of capital.

These are not technical matters that may be solely solved by legal amendments or by changing the legislation. This should be chiefly addressed through a political pact, a national agenda and should be done in tandem with the requirements that follow from the European Union chapters once we open the negotiations and must be fully in compliance with *acqui communitaire*. We hope that modest contribution, such as the present academic article, can be also of use when it comes to setting the political agenda and informing public policy, thus bridging the gap between the scholarly and governance worlds. Thus, this serves the triple intention of the article which was to contribute in the expanding scholarship in decentralization and local autonomy by focusing on Western Balkans and particularly the Albanian case, secondly by providing rich empirical information about the developments of these countries in two distinct stages of the transition period and also noting the difference of Albania with the other W. Balkan states and thirdly to be able to provide recommendations that may be useful to policy-makers now that they are in process of potential revisiting the territorial-administrative reform of 2016 and likely coming out with a new proposal.

We hope that the new structural reform will be bi-partisan, long-lasting and address the need for empowerment of local authorities by giving them more powers, strengthening their finances and making them relevant political actors in the long term. This in turn, may also have the additional benefit of reducing the political tensions, increasing the ability of the regions to attract more EU funding, offer more perspectives for employment for the youth, be more attractive as venues for investments etc.

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The territorial-administrative reform in Albania

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Abstract

The territorial-administrative reform determines the changes in the administration because of territorial changes. These processes aim to increase overall capacity of public sector administration, through the creation of local communities with strong autonomy, capable of having the necessary capacities and means to encourage local development in all its aspects. Every reform process must meet criteria such as the existence of the political will, without which it cannot be fulfilled, changes in legislation, discussions at the regional level as well as support from external factors. In our country, the need to apply such a reform came as a result of various factors, such as: demographic changes, large fragmentation of local government units, lack of efficiency in providing services, inequality in local revenues, etc. This paper will show the evolution of administrative-territorial reform in Albania, the history, the reasons behind a new one and the problems.

Keywords: Local democracy, local government, the territorial-administrative reform, decentralization.

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I. Introduction

The administrative reform is related mainly to the reformation of the public administration. While the territorial-administrative reform shows the changes occurring to the administration because of territorial changes. (Teevali 2009, 27) This type of organization therefore represents a structural dimension of public administration and as such should be compatible with functional and organizational decision-making as well as other dimensions of public administration. (Kjellberg 1988, 8-13) Consequently, the solution of the problems that exist in the administrative system of a country, does not come only from changes in relation to a certain dimension, such as territorial changes. A radical change and a coordinated reorganization of the various dimensions of public administration is needed. The goal of a reform is to increase the overall administrative capacity of the public sector, and the amalgamation of local units is seen as a way to ensure this, at the local level. That a reform survives the time, it would be necessary to analyze how this could be in line with contemporary local democracy. What is local democracy? The theory of local democracy appeared when Thomas Jefferson, in the early twentieth century. He began to defend the right of a greater participation of individuals and citizens in the local policies of the United States.

He suggested the creation of small groups of individuals, so that everyone could have the opportunity to participate in these groups and express his opinion on various issues. (Hansel and William 1996, 6; Wolman 1996, 159-160) Jefferson was the first to introduce the idea of popular participation in local government, but James Madison is known as the second advocate of local democracy in the United States of America, as he advocated a system of local government with clearly separated responsibilities of legislative and executive power. (Hindess 1997, 91; Wolman 1996, 161) While in Europe, the advocate of local democracy was John Stuart Mill, who set out his ideas in "Considerations on Representative Governance" published in 1861, a paper that holds the basis of local democracy in Europe. (Stoker 1996a, 5) He stressed that local political institutions should be essential elements for a democratic government as they give us practical and educational advantages. According to him, local interests are also represented through local government, and as such a more efficient provision of services is guaranteed. (Goldsmith 1990, 17; Sanders 1997, 349).

Often the term "local democracy" is equated with that of "local government", but these are not completely the same, as local democracy means mainly community governance, while local government provides the community with the necessary

institutions to achieve this goal. These institutions are the council as the legislative body and the executive bodies. Nowadays things have become more complicated than that, as local institutions have to share their position with new bodies, newly created, such as executive agencies, various networks of partnerships, etc., as a result of the growth and the spread of European Union policies. (Cochrane 1996, 200-201; Mlinar 1995, 146, 159).

A community is made up of various interrelated elements such as affiliation, place, roots, history, tradition, inclusion and self-regulation. (Benest, 1999) Decentralization on the other hand is seen as the most important condition for democracy in local government systems. Why? Because it encourages greater community access to local politics as well as accountability to public pressure. Nowadays the theory of local democracy has little to do with the geographical boundaries of local units and more with interaction with the rest of the world, as communities are no longer seen as separate entities but as part of a wider network. (Mlinar 1995, 149).

These last three decades have brought many changes in terms of administrative-territorial reforms in many Western European countries. These countries have reorganized administrative boundaries, functional divisions, or financial relations between different levels of government. These reforms have been permeated by the idea that small local units (dating back to World War II) were unable to provide the services needed efficiently. (Norton 1994, 37) Such reforms undertaken in Sweden, Belgium, Norway, Denmark or Germany, have begun with structural reorganization and then reorganization of functions and finances. The merging of local units makes it possible to pool the necessary administrative resources for the implementation of larger social programs, which cannot be carried out by small units. (Kjellberg 1988, 44-45).

The main reason for making an administrative-territorial reform remains the increase of the administrative capacity of the public sector and the limitation of its expenses, through the preservation of the features of each of its constituent parts. Another reason is the exclusion of the central government from functions that can be performed by the local government, meaning the increase of political responsibility by already determining what functions the central and local government will have. The local capacity of a unit to operate is based on financial sustainability. This because larger local units have an advantage in economic growth, compared to smaller local units with smaller population. (Walsh 1996, 75) The most important reason to make such a reform is the need to increase the operational capacity of local government units, which are highly dependent on central funding.

What is worth mentioning is that such reforms, which change the boundaries of local units, cannot be successfully if implemented in less than a decade, such

a conclusion comes from the study of successful reforms in Western European countries. The aim of a reform should be to create local communities with strong autonomy, capable of having the necessary capacities and means to encourage local development in all its aspects. The reform that it is required to be undertaken, must meet criteria such as, the existence of political will, without which a reform cannot be fulfilled. From the legislative point of view, there are constitutional changes that will determine the basic territorial division of a country, which will necessarily bring the need for political will, which will be translated into pro votes, during the voting in the halls of parliaments. After the change of the constitution, other laws on public administration, local government and its organization, or local finances should be changed.

Changes in the law should be made based on a complex analytical process and applied in all aspects that require changes. Then all the services provided to the public and the way they will be provided must be legally regulated. In order for a reform to achieve its intended objectives, each service provided to the public must find a specific regulation in law. Such regulation is the adaptation of the law on local government financing. This is done not only in the law on the State Budget, but also in other acts on which local budgets are drafted. In this regard, we must keep in mind that fiscal decentralization must go in direct proportion to the decentralization process of other public services. Local tax laws need to be adapted to reform and reflect changes. The process of harmonization with the legislation of the European Union must be considered during the modification process. The experience of the member states of the European Union in the implementation of the reform gives us four important steps that must be considered during the design and implementation of the reform.

First, the existence of a political consensus on the need for reform, the objectives as well as how the reform should be done. Secondly, there is a need for strong support from international institutions, especially those of the European Union that have similar issues at work. Their recommendations can be as important as the technical assistance itself. Third, technical discussions at the expert level as well as discussions with the political class and civil society on the definition of competencies or criteria for the division of the territory. Fourth, the implementation of the reform requires a strong education of local leaders on how to implement and operate, by making study visits to see closely the operation in other countries where such reforms have been successfully implemented.

Administrative-territorial reform becomes more important in Albania when problems such as fiscal efficiency and decentralization of public services come to the fore. The division that existed in about 370 local units did not meet the efficiency criteria, nor did it encourage an optimally regulated relationship between the local and central government subdivisions. Moreover, it was an already ongoing request

of the European Union to establish larger administrative units or development regions, in order to be responsible for managing pre-accession funds on the social and economic development of the candidate countries. The previous division of units, as per year 2000, in terms of regional development efficiency was not at its best, as it was based on the concept of symmetrical decentralization of functions and competencies, without distinguishing between the size of local government units or their capacities to perform these functions. (Decision 19/15 of the Constitutional Court of the Republic of Albania). This was also proved by the fact that in many cases regional development policies had failed over the years, as well as by the fact that inequality in regional development and imbalances between regional development had not been reduced or eliminated on these regions.

The reasons for these failures were on the one hand the lack of power, which means limited competencies and weak local institutions, and on the other hand the fact that a proper study had not been done on how to create and delimit the regions created in 2000. The division was made on the basis of those local bodies and institutions that existed, already adapting some designations, such as the transition from district to county, as a term widely used in the literature and practices of European countries. As a result, regions were created without such a common interest or profile and which did not help in their development. The reform development process should have included consultation on two very important elements. The decision on reform should be the result of a consensus reached between the political class, defining the need for reform and its main directions, but on the other hand should also be the result of extensive consultation with civil society and stakeholders affected directly from this reform. In addition, a preliminary study of all different documents, studies, expertise in the relevant field is needed, in order to find the most possible variables and the most appropriate alternatives for the Albanian reality.

II. The reforms in Albania

The Constitution of the Republic of Albania in article 108, point 2, determines:

> "Administrative-territorial divisions of local government units are determined by law on the basis of common economic needs, interests and historical tradition."

Not only due to the fact that it is defined in the Constitution, which is the basic law of a country, but also in practice, the historical, cultural and customary tradition passed from one generation to another, is a very important element and criterion, essential for a sustainable administrative division. The territory of our

country, with the first ethnographic provinces, is also a criterion that must be kept in mind for a territorial division. As a result, we cannot make arithmetic divisions, dividing population numbers and not taking into account the extent of geographical space, distance, history and different areas, their traditions on which civilizations have built over the years, ethnocultural, and in our concept even the development livestock and agriculture. More important, both the Constitution of our country and the main document on which is based and protected local government and autonomy, namely the European Charter of Local Autonomy, provide that for any change or territorial reform, it must be taken the opinion of the people that is directly influenced by this. Sami Frashëri, the main scholar and ideologue of the Renaissance, in his work "Albania what has been, what is and what will become" (Shtupi, Vasjari, Zenuni; 2013), foresaw the villages as basic organs of local government. At that time, over 90 percent of the population lived in villages. The place was divided into 15 communities which were divided into 3 or 4 *kazas*. The government was made up of 15 governors and 50 deputy governors.

Every small town would create a council which included people with the education and wealth needed to be part of the council, normally it included the most prominent names of the time who had received the proper education abroad and owned the property that was required. This division was because of the Turkish occupation and was transmitted to the Albanian reality, leaving not many opportunities for study regarding the criteria used or the reason for making this division. After the Declaration of Independence on November 28, 1912, the country inherited the administrative division of the Ottoman Empire into: *sanxhak*, *kaza* and *nahije*. (Shtupi I, Vasjari A, Zenuni Xh, 2013). As the prime minister, Ismail Qemali defended the idea that the country should be divided according to the Swiss model, into three cantons based in Shkodra, Durres and Vlora. But, after the arguments of his collaborators, on November 22, 1913, he signed the law called "The current Kanun of the civil administration of Albania", which created a unitary state, divided into: prefectures, sub-prefectures and provinces.

According to the Organic Statute of Albania approved by the Six Great Powers in Vlora on April 10, 1914, also known as the first Constitution of Albania, although imposed, the country was divided into 7 sanjaks-prefectures which were: Shkodra, Elbasan, Dibra, Durres, Berat, Korça and Gjirokastra. These were divided into *kazà* (sub-prefectures) and *nahije* (municipalities). The government of Prince Vid survived only 6 months, March-September 1914, therefore the Statute remained merely a historical document. The Organic Law of November 26, 1921 defined the municipality as a body of local government, which was established in every town and village with more than 250 houses. They had a council that was elected every three years as well as their chairman. Municipalities were later established according to Article 13 of the Law on the Implementation of the Civil

Code of February 1928. The period 1928-1939, is known also as the creation of a local governing tradition, in addition to the efforts of the King Zog regime to establish and strengthen governing structures country, in accordance with the monarchical political system. In 1927, the territory of the country was divided into 10 prefectures, 39 sub-prefectures, 69 provinces with 2351 villages. While in 1934 it was divided into 10 prefectures, 30 sub-prefectures, 160 communes and 2351 villages. In 1940 there were 10 prefectures, 30 sub-prefectures, 23 municipalities, 136 communes and 2551 villages.

The administrative division of the country during the years 1946-1992 underwent changes in accordance with the stages of economic, social, demographic development of the one-party political system. Suffice it to mention that in 1990 the population had increased almost 3 times from that of 1945, while other socio-economic indicators were incomparable with those of the pre-liberation. After the adoption of the Constitution on March 14, 1946 and the law on popular councils on August 8, 1946, on August 22, 1946, the first post-liberation law on administrative-territorial division was adopted, according to which, the country was divided into 10 prefectures, 39 sub-prefectures, 116 municipalities and 2711 localities. Compared to 1939 there were 64 fewer municipalities and localities emerged as new units. But this division did not last long as with law nr. 500, dated 6.11.1947, the previous units that were prefectures, sub-prefectures and municipalities were replaced by: 47 districts, 22 cities, 573 localities and 2602 villages.

The sites consisted of several villages that today can be compared to municipalities. Other changes took place in the years 1953-1957 according to which 10 regions were created: Shkodra, Tirana, Durres, Elbasan, Vlora, Berat, Korca, Gjirokastra, Dibra and Kukes. During these years, the division into 4 regions was tried, but with the decree of February 1958, the country was divided into: 26 districts, 39 cities, 203 localities and 2655 villages.

The administrative division of "unit" eventually disappeared as it was not successful. This division continued until 1966, but then with the decree no. 42227, dated February 14, 1967, the new administrative-territorial division was approved, which resulted the longest life of the communist system, as it continued until 1990. The changes made in this period affected only certain administrative units, in response to proposals from local government bodies in the districts. In this decree comes out for the first time the term of the "united village", while the localities were significantly reduced. According to this law in 1968 the country was divided into 26 districts, 65 cities, 437 united villages, 178 localities, 2,641 villages. Subsequently, the number of cities, neighbourhoods of cities and united villages increased, and the localities were merged. The administrative divisions during the communist period were reflections of the demographic changes of the population, but also because of the policies of the centralized economy of that time. In these

divisions were set up local government bodies, with the relevant popular councils, whose activity, as well as that of state bodies, was permeated by the principle of centralism called democratic, but which in fact were dependent on the central government.

Thus, at the end of 1990, Albania was divided into 26 districts, 67 cities, 539 united villages and 2,848 villages. The city of Tirana consisted of 3 regions, with 63 neighbourhoods.

III. Administrative division after the 1990s

Law no. 7491 "On the main constitutional provisions" of 1991 was the first legal base of the administrative division. The latter was amended, and these changes were reflected in the law no. 7570 "On the organization and functioning of local government" of 1992, where in its first article was defined the administrative division- territory of the country in communes, municipalities and districts. By decision of the Council of Ministers in June 1992 the country was divided into 36 districts, 44 municipalities and 313 communes. In 2000, when we had an organic law on local government in Albania, the country was divided into 36 districts, 65 municipalities and 309 communes. The Constitution of the Republic of Albania adopted in 1998 sanctioned that local government units are communes or municipalities and regions as second levels of local government (Constitution of Albania, Article 108). In this way, the districts were merged to pave the way for the creation of counties composed of several basic units of local government with traditional, economic and social ties and common interests where regional policies are built and implemented and where they are harmonized with state policy.

The Law on Administrative-Territorial Division of Local Government Units of July 2000 (Law 8653/2000), made possible the amalgamation of 36 districts and created 12 regions. The basis for the functioning of local government was set out in the Constitution, which stated that in a democratic political system "local government in the Republic of Albania is established on the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy."

Adoption of various laws regarding local government legislation, such as the Ratification of the European Charter of Local Self-Government in 1999, the Decentralization Strategy in the same year, law no. 8652 "On the organization and functioning of local government" of 2000 or the law on segregation administrative-territorial 8653/2000, and other acts have already established a contemporary local governing tradition and practice which carry both positive and negative sides. One of the negative aspects lies in the fact that while the second level units were reduced

almost 3 times, the number of basic units, especially in the municipalities, remained the same, although over the last decade, population movements inside and outside the country have increased at a rapid pace and the number of inhabitants for some units has decreased significantly. This contradiction could be resolved through the amalgamation of small units and the creation of those with larger population. This practice was achieved with the new administrative-territorial reform that was implemented in 2015, within the new local elections.

IV. The need for new territorial reform

There are many reasons why a territorial reform in Albania was strongly sought. This reform would not only be effective for the Albanian reality but should resisted the time. Therefore, this reform should have been well studied and well aligned with the norms of the European Union, given that we aim at EU membership in the short term. One of the main reasons for the need of this reform was the high financial cost of maintaining a large number of staff in local units, which no longer generated income, and no longer provided services to citizens, due to the mass movement from the areas, from rural to urban and developed ones. Thus, in most local units the number of people per unit and administrative costs no longer justified their existence. The state budget was overcharged with salaries and social security expenditures of the administration of these units, which did not realize the main purpose of their function. This was due to the fact that the non-generation of income led to a lack of funds to invest. On the other hand, for a small country like Albania, with a small population, seen in the optics of European reforms, the presence of such large number of local units was unnecessary. In the European continent we find cases where there are countries with a population and area several times larger than Albania, but with a number of local units several times smaller.

The need for administrative-territorial reform and reorganization was determined by several factors (Report on the draft law "On administrative-territorial division of local government units in the Republic of Albania, 2014; 12)" which we will talk about below:

Demographic changes. Over the years the population in local government units has changed a lot. According to the 2011 census, 330 units have a population of less than 10 thousand inhabitants, and 232 units have a population of less than 5 thousand inhabitants. In municipalities the average population is 4300 inhabitants, where half of them have a population of less than 3100 inhabitants. More than half of the population, 53% live in municipalities, where of these the largest part of the urban population, i.e. those living in municipalities, are concentrated in

8 main and largest municipalities of the country such as Tirana, Durres, Vlora, Elbasan, Shkodra, Kamza, Fieri and Korça. The average population in the municipality is 22,600 inhabitants, but in fact more than half of the municipalities have a population of less than 7,800 inhabitants. (Report on the draft law "On administrative-territorial division of local government units in the Republic of Albania, 2014; 12) Thus, since 2000, when the last administrative-territorial reform was undertaken, a series of changes have occurred not only demographically, but also social, cultural, and economic. The country has changed a lot in the last 15 years as a result of population movements inside and outside the country.

According to the data obtained from INSTAT (Report on the draft law "On the administrative-territorial division of local government units in the Republic of Albania, 2014; 12-13) in the 2011 census", the population of Albania was 2,831,741 inhabitants, where the density is 98.5 inhabitants per square kilometre, and 53.7% of it live in urban areas. Consequently, it is understandable that such a change would lead to changes in local government units, where some units are overcrowded and have to provide more services to citizens, which is not possible to achieve with proper efficiency. On the other hand, there has been created local units which have a very small population as a result of migration, that makes their existence and the administrative costs unnecessary.

The second factor was the large fragmentation of local government units. Our country has an area of 28 thousand square kilometres, and a fragmentation of 373 local units (according to the penultimate reform made in 2000).

It is seen that such a division for a small area constitutes a large fragmentation. In 23 local units of Gjirokastra district, there are less than 2 thousand inhabitants. Such units have the same rights and obligations as those units that have a very large population, where is concentrated the population. As a result, the unit cost of providing services in these areas with a small population increases greatly and does not justify their existence.

In fact, the existence of these small units, i.e. with small population is in direct proportion to the democratization of government, where the people feel more represented, but on the other hand this fragmentation does not allow the development of reforms that lead to decentralization, as there is no capacities as well as financial means. A local unit with a very small population cannot generate income, as income depends on various per capita taxes as well as businesses. As a result, not having the necessary financial means, the local unit is forced to receive funds from the central government, thus becoming dependent on it, and consequently lacks decentralization.

Lack of efficiency in service delivery. (Report on the draft law "On administrative-territorial division of local government units in the Republic of Albania, 2014; 15). This is another important argument needing the administrative-territorial

reform, as it is directly related to the provision of public services and use of public funds by units.

From the data obtained from the Ministry of Finance (according to the above report), for 2012, 70% of the units have not made any investment, i.e. have not made investment expenditures. This means a lack of service delivery to citizens, as a lack of investment means fewer new roads and schools, fewer parks and city development.

From the collected data it is concluded that about 27% of the budget, local units use for capital expenditures and 37% for employees' salaries. But there are those local units that use about 80% of their budget for employee salaries. In this case we cannot talk about providing services to the citizen (since this is the main goal of local government units). The cleaning service is a basic service for the citizens, where the cleaning tax is the basis for maintaining and providing this service. At a time when there is such a high fragmentation of units, where the demographic distribution of the population is very unequal, then the collection of this tax also varies from one unit to another. As such, the service will not be able to be provided in the same way in every local unit, where in some we will have a better offer and in others a service not of the right quality or a service that is not offered at all. As a result, in units with small population, the cost of this service is higher. This shows that we have different costs for the same service in different local government units, although these are all located within the Albanian territory.

According to studies, it has been noticed that the cost of administrative expenses is inversely proportional to the number of the population. The administrative cost starts to decrease as the population grows. This is because the units with the highest population numbers have the opportunity to generate more revenue and as a result can provide more services.

Income inequality in the country. (Report on the draft law "On the administrative-territorial division of local government units in the Republic of Albania, 2014; 18) As we said above, the population has a great impact on local revenues.

Thus, those units with a larger population generate more revenue. Tirana and the main municipalities of the country generate most of the local revenue, over half of them. This shows that cities with larger population generate more revenue, a plus factor in the need to reform and merge smaller units into larger units.

The cleaning fee and the small business tax are two revenues that are mainly collected by local units and that mainly generate revenue. But there are those small and geographically remote local units that have not realized any income from these taxes, nor from the cleaning fee and no longer from the small business tax. This normally means that in these units no cleaning service is provided for the residents of that unit, so this unit has failed in its function of providing service to its citizens. On the other hand, we have local units, again those with a small population or that

are geographically located deep in the mountainous areas, where there is no small business at all, or the tax on it is not collected at all.

Another pro-reform reason is the fact that local units must fulfil their functions, provided by law. One such function is road infrastructure.

From the analysis of the road infrastructure inventory in the jurisdictional map before the reform it has been seen that the administrative jurisdiction of the local units is very limited to efficiently administer the road infrastructure, as many roads involve more than one local unit. On the other hand, the division of the investment into parts according to the units and their jurisdictional map has not been at all efficient. As a road connecting two or more local units has to be tendered as a fund by two or more units, a process which not only lasts but may be different in time from one unit to another. There are more documents as well as more procedures, which means double work for a procurement object that can be tendered alone without fragmentation. Also, the firms that provide such services, participating in tenders, are not the same from one unit to another. Thus, in large units, where the business is more developed, even firms that offer such a service or public work are more numerous, which enables competition in quality and cost. While in small and underdeveloped local units, the lack of such businesses leads to a lack of quality and as a result tenders are given to those companies that are, not guaranteeing full competition. So, even making investments requires less fragmentation, which turns out to be more productive and efficient in providing them. Even the service of providing drinking water or that of disposal and processing of urban waste is more efficient in smaller fragmentation for the reasons mentioned above.

The integration processes as well as the need to adapt with the EU governance, at several levels, has also been the reason for the reform.

This is because according to a document published by the Council of Europe, over 60% of decisions taken at the level of the European Union, have a direct impact on municipalities, provinces or regions. While 70-80% of public investments in Europe are made by regional and local authorities. These figures are clear indicators to show how much more and more local and regional government is gaining importance at the European level, both in terms of the economy and the lives of citizens.

Conclusions

In conclusion, the need for administrative-territorial reform has come as a result of major demographic changes in the country in local units and the high level of fragmentation that has hindered full decentralization, as there is a pronounced lack of human capacity and inefficiency in service delivery. The high fragmentation has

made the goal of democratization, the main goal, not achieved as a result of this. Decentralization has resulted in asymmetric, as it has led to the strengthening of some local units and the weakening of some others, making the provision of services to citizens not the same everywhere. There were local units that do not generate any revenue and consequently do not provide any services. The fragmentation of local units has led to fragmentation in the provision of key public services, such as road infrastructure, drinking water service, disposal and processing of urban waste, where in some units are provided to the required standard and in others are not provided at all, as no revenue is generated for their provision.

It is estimated that the reform was necessary to ensure efficiency in services, greater legitimacy and democratization of local government bodies. (Report on the draft law "On administrative-territorial division of local government units in the Republic of Albania, 2014; 23)

Thus, not only to adapt to reforms and coexistence with other EU countries, as a result of integration processes, but above all to translate the cutting of all those unnecessary administrative expenditures into further funding for investments, the Albanian government, assisted by foreign experts, undertook to carry out the administrative-territorial reform, a reform which had been discussed a long time ago, but which had never been implemented.

The reform also affected the country's legislation, as it would bring about the change and adaptation of many legal or sub-legal acts, but what is more important, it could also bring about the change of the basic law of the country, the constitution. To prepare and amend a number of laws and bylaws, or if necessary, the Constitution, requires not only a very good expertise that takes its time, but on the other hand a certain majority translated into a number of votes in Parliament. Such a big and deep reform, which would bring drastic changes in the administrative and territorial organization of the country required time, which was not enough, as it was required that the new local elections of June 2015 'be held based on new organization. All this led, trying to rush to implement the reform within their deadlines, to become an accelerated reform, without a well-drafted legislation, which would be ready to enter into force once implemented the reform. As a result, the reform carried out quickly had neither the consensus of the opposition nor the broad consultancy among the people to the extent necessary for such a sensitive reform.

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Local government in Albania and Kosovo: comparative overview

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Abstract

The purpose of this article is to file the administrative-territorial reforms, conducted by Albania Republic, in a comparative point of view with some other countries, especially with Kosovo Republic as a result of their past. Looking at the historical evolution of reforms in these countries with different local governance systems, and analysis of the latest developments will give us a deeper knowledge about the topic. This comparison would address reforms of the political bodies of local government (such as those relating to political accountability and decision-making in local government),

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with regard to administrative structures, because only by looking at both sides of the currency of the local government can we get a complete picture of the changes and improvements to be made. The decentralization process and reforms, as well as the territorial and administrative reform (TAR) and its effects in the country, were subject to extensive debates among experts and the media, especially during last years .Comparison aims at providing knowledge about the terminology and concepts used in the comparison of countries and characteristics of each country in connection with the territorial administrative reforms carried out, followed by a reformation of the local government. This treatment is based on the legal framework of local government, taking a look at its changes over the years, analyzing and decentralization strategy. The article offers concrete conclusions based on the performance of this multilateral process and its implementation in local units of state.

***Keywords**: decentralization, local government, territorial administrative reform, challenges*

I. A brief history of Albanian administrative-territorial reform

Albania is currently facing the progress of the economic situation, governance policies for its progress in the European Union (EU) integration process which is considered to be the most strategic national priority. To be part of the European Union, Albania must meet certain criteria such as the rule of law, the state of law, market economy, etc. However, Albania has gone through a period of extraordinary transformations in all areas. Integration process relies on the reforms undertaken by the Albanian state, which require its inclusion all actors in society. Local government, though not one of the key actors in managing this process, is again influenced by integration processes both in organization and in operation. As one of the links of power, it must be adapted to the changes and dynamics required by integration processes by bringing closer to the citizens the benefits of this process. However local government has a long history of its development immediately after the declaration of independence of Albania in 1912.

II. Decentralization in Albania

Decentralization is the right of local government but also the process where the responsibility regarding the exercise of a certain competence passes from the central to the local government. The higher the level of decentralization the better is the governance and effectiveness in exercising competencies. This

process is closely related to the principle of subsidiarity, according to which public responsibilities in relation to meeting the needs of citizens should be exercised by those bodies that are closest to the citizens. Decentralization as a process can be political, financial and administrative. As a rule, these three types go as a whole, because for an ideal decentralization it must exist in these three components, as power itself consists of these three components. In order to limit as much as possible the exercise of a public power that can be arrogant and unlimited in competencies, it has become possible for the local government and its bodies to be granted different rights in the development of their functions. to fulfill obligations to citizens. One of the ways of fulfilling the functions is the fiscal decentralization of these bodies, through which they can fulfill the obligations towards the citizens without being dependent on the central government. The right to impose local taxes and fees, to collect them and then use them according to the needs of the local government is certainly one of the most fundamental rights of local governments that gives them independence from the central government.

There are several types of decentralization, first of all we have *political decentralization* when the responsibilities related to the exercise of political competencies pass from the political authority at the center to the local level. This can be achieved through representation by local political offices of central political bodies. These local offices organize the work and activities of various political activities as well as local political elections. There is also *administrative decentralization* in those cases when the responsibilities for exercising certain public functions are transferred from central, to local bodies. This is achieved by laws or other special bylaws through which the transfer of competencies takes place. But this administrative decentralization also requires financial decentralization, as every law or sub-legal act also provides for the financial effects related to its implementation (Dobjani,E.2016) Thus financial decentralization requires the transfer of funds and the relocation of financial power from the center to the local level. Only through the provision of these funds, the provision of financial power, local bodies can meet the needs of citizens and respect the principle of decentralization provided.

Decentralization reform has progressed consistently during 1998 and 2000, based on Constitution (1998) European Charter for Local Self-Government and the National Strategy Decentralization, adopted in 1999. The most important step was approval and implementation of Law no.8652, dated 31.07.2000 *"On organization and Functioning of Local Government*" which sanctioned the rights and competencies with European Constitution and Charter for Local Self Government and that followed by other laws governing the activity of local government and consolidation of Autonomy.

Decentralization and related reforms are at the center of attention in transition countries and emerging economies. The debate about deepening decentralization through increased autonomy and greater responsibilities for local governments is largely based on applied economic theories, especially those related to public finance.

Objectives of good governance and economic gain seem to have also driven this process over the years. This approach has resulted in different forms of local government organization and different levels of fiscal, administrative, and political power transferred vertically from the central government to local governments.

In these circumstances, decentralization is 'traded' as an essential instrument for economic gain (Rodrígues-Pose, A. & Krøijer, A., 2009), since it brings with it the provision of goods and public services by local governments, in line with consumer-community-voter preferences. The fiscal decentralization in Albania is one of the most important reforms to democratize the country. This reform is aimed at a clearer division of functions and responsibilities of both levels of government, and in some way requires a degree of autonomy to local level. Autonomy brings responsibility, which means that the local government unit decides to carry the costs for citizens, and must take responsibility over the quality and quantity of the services offered. All these principles are the basic elements that should guide reform of fiscal decentralization in Albania, which is in the early stages of development.

To have performance for the implementation of reforms, the government program should focus on applicable implementation of institutional relations to and incentive mechanisms that can create a healthy framework of accountability for public service delivery at local level, affecting the ability of stability macroeconomic and storing it. A gradual increase in autonomy of local fiscal revenue, the authority to perform (freedom of establishment) applying parallel to the fiscal transparency and vertical control mechanisms, delivers improved efficiency and accountability. (Law 68/2017, "On the finances of local self-government").

Fiscal decentralization reform should be guided by the principle that "finance should follow responsibility."Membership in various international bodies has given a special priority to local government. In the center of this paper is the analysis of fiscal decentralization of local government, specifically addressing the priorities, competences and responsibilities assigned to this government during this complex process. Local government is regarded as government closer to citizens, and for this the increasing of its competence, financial resources and an active community participation in decision making will increase the responsibilities of power.

III. Some aspects of the reform and local governance in Albania

The Constitution of the Republic of Albania in its article 13 determines (Law 8417, dated 21.10.1998): *Local government in the Republic of Albania is established on the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy.* (Article no.3, Law no. 139/2015 "*On local self-government*").

The fact that such a principle has a constitutional definition indicates the importance it has been given, at least from a formal legal point of view. According to this, local self-government through autonomy and decentralization has been sanctioned with the highest status, the constitutional one. According to the constitutional definition of the principle of decentralization, a step in its implementation was the approval of the National Strategy for Decentralization and Local Autonomy (DCM no. 615, dated 02.11.2000).The first decentralization reforms were registered following the approval of the European Charter of Local Self-Government, the principles of which were included in the Constitution of the Republic of Albania (1998), the approval of the National Strategy for Decentralization (1999), Law no. 8652/2000 'On the Organization and Functioning of Local Government' and Law no. 8653/2000 'On the Administrative-Territorial Division of Local Government Units in the Republic of Albania'

In 2014, the Albanian Government undertook territorial administrative reform (TAR), with the main objective of improving service delivery to citizens. Rated as one of the main government reforms, the organization of local government in 61 municipalities created the premises for local government reform and deepening decentralization in the country. In this regard, the following acts were drafted and approved:

- 'Cross-cutting Strategy for Decentralization and Local Government 2015-2020' and the action plan for its implementation;
- Law no. 139/2015 '*On Local Self-Government*' which, among other things, transferred to the municipalities an exclusive title and new functions;
- Law no. 68/2017 'which was further followed by law no. 106/2017 'On some Amendments and Addenda to Law no. 9632, dated 30.10.2006, '*On the Local Tax System*'.

The major demographic changes that characterized the history of the two post-communist decades, the fragmentation of local government in the delivery of local public services and the democratic representation of voters, poor efficiency in the delivery of public services, inability to promote and support local economic

development and inequalities among local units, were the basic arguments that led to territorial consolidation in 61 new municipalities in 2014[3].

III.1. Basic features of local government organization

Based on the organization and functioning of local authorities, there are several characteristics that distinguish local government which are:

- Decentralization;
- Local autonomy;
- Subsidiarity;
- Competence.

Principle of Decentralization - Any government whether central or local operates on the basis of several principles, so that governance is more successful and flexible, so that citizens are satisfied with the services provided by central and local government bodies. Two of the most principles important of local government are autonomy and decentralization.

Autonomy means that local government bodies exercise their activity independently from central government. Constitution of the Republic of Albania, has sanctioned that local government is established on the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy. Decentralization and local autonomy have made it possible to increase the operational capacity of the bodies of local government in the exercise of public functions of a local character. Changes in the local government system for equipping with relevant attributes began as early as 1992 with the radical transformation of previous structures of local government bodies. Such an objective was set on a legal basis with The Constitution of the Republic of Albania and with the approval by the Assembly of the "Charter European Union of Local Autonomy ". (Law no. 8548, (1999)"On the Ratification of the European Charter of Local Autonomy").

The principle of Subsidiarity - Relations between the bodies of government units local with central government bodies are based on the principle of subsidiarity and of cooperation for solving common problems. The foundation of the principle of subsidiarity is the principle of performing functions and exercising competencies at a level of governance as close to the community as possible, given the importance and the nature of the task, as well as the requirements of efficiency and economy.[4]

[3] See arguments supporting the territorial and administrative reform, presented in: "*Reforma Administrative Territoriale, Analizë e Situatës së Qeverisjes Vendore në Shqipëri*", (2014) Ministri i Shtetit për Çështjet Vendore.

[4] Seen / https://idmalbania. org/wp-content/uploads/2015/01/manuali_i_observatorit_qytetar_2014. pdf, on 22.03.2021.

Therefore, it should be referred to self-government and local autonomy as the opposite of central government.

Legal Principle of Local Government Units - This is one of the most important principles important for the creation, establishment of Local Self-Government Units that should have the status of public legal entities based on an organic law for their establishment. Article 4 of the Law on Local Self-Government attributes to these local bodies the position of public legal entities as an important element for the development of the purpose and objective for which it was legally established.

IV. Some aspects of the reform and local governance in Kosovo

The competencies of local government are regulated by the Constitution of Kosovo and the Law on Local Self-Government. The purpose of this law is to enable the existence of a sustainable system of local self-government and to improve the efficiency of public services. In Kosovo, the competencies of the municipality are divided into proper, delegated and extended competencies. The organization of local government in Kosovo is based on the European principles of local self-government institutions. The municipal bodies representing the local government are the municipal assembly and the mayor. (Article 17 of the Law on Local Self-Government, of Kosovo)

The mayor is elected by direct vote of the citizens. The municipal administration is organized in directorates, which are headed by directors, who are appointed and dismissed by the mayor. The number of directorates varies from municipality to municipality, with a maximum of 14 directorates and a minimum of 4. Furthermore, municipalities have the right to enter into cooperation with other municipalities for the purpose of development and common interests. The activity of municipal bodies in terms of hierarchy is subject to control by the Ministry of Local Government Administration and other sectoral ministries. Proper (basic) competencies mean full and exclusive competencies that belong only to municipalities. To further protect the rights of non-majority communities in local governance , the Constitution stipulates that laws related to the boundaries of municipalities, their establishment or dissolution, the definition of the extent of municipal powers and their participation in inter-municipal and cross-border relations. Areas that are the competence of municipalities are related to services and daily needs of citizens or essential services, in order to ensure the proper quality of these services but also to regulate them according to the specifics and needs of citizens of certain geographical locations.

Some of the areas that are included within the proper competencies of municipalities are:

One of the main competencies of municipalities is *Local economic development***.** Municipalities should ensure that they collect information and data on the state of the local economy, then analyze them in order to determine strategies and then implement them. Among the measures that can be taken for local economic development are: facilities for businesses; simplification of procedures for opening new businesses, tax exemption, strengthening the financial and economic management capacities of local municipal officials, support for businesses and farmers, stimulating the employment of citizens in municipal businesses in exchange for a degree exemption. tax incentives, local leadership to regularly visit firms to understand community efforts, fundraising from the municipal budget for investments in new businesses that cannot get loans from financial institutions, training of start-ups for management, marketing and planning skills, drafting strategies for reactivation and economic reintegration of the diaspora, attracting investors, foreign donors, etc.

IV. 1. Urban and rural planning

Municipalities determine the overall direction for their municipalities through long-term planning. Examples include assembly plans, financial plans, municipal strategic statements, and other strategic plans. The vision that it is achieved, is one of the most important roles of local government. The way the municipality uses its land also determines the process of its future development and statutory planning decisions are complex and often contradictory. Decisions concerning municipal property are responsibility of the municipal assembly, consequently members of the municipal assembly are required to be informed of the processes by which they are required to decide. Being clear about the roles they have is one of the key requirements for a good governance process. Strategic planning includes municipal development planning, regulatory urban planning and but also their amendment.

The Assembly approves these plans after the factual situation is recorded by the relevant directorates, usually the directorates for strategic planning and sustainable development, in cooperation with the property directorates, urban planning directorates or cadaster directorates, depending on the municipality. After completing the plans, they are approved by the municipal assembly. The approval of municipal acts related to urban and rural planning is regulated by Article 11 and 12 of the Law on Local Self-Government, Article 10 of the Law on Spatial Planning, the Law on Treatment of Illegal Constructions, the Law on Allocation and Exchange of Property municipal real estate, relevant municipal statuses, and relevant municipal regulations. Members of the municipal assembly should understand that the development planning of municipalities is important

for the future of the community where they live, so before making decisions they should first inform the citizens they represent about the project plans, then listen to the remarks and eventual advice, and finally review all the information they possess to make specific decision. This is very important because it often happens that something is proclaimed during the election campaign, while it is not mentioned at all in the plans of the municipality, and this also happens due to the lack of proper information of the members of the assembly.

IV.2. Provision and maintenance of public and municipal services

The local government is responsible for managing and delivering a range of quality services to their communities, such as water supply, wastewater treatment, local transport, public health, maintenance of recreational areas, local road maintenance and public libraries. The citizens themselves evaluate the quality of these services, so it is imperative that members of the assembly establish regular lines of communication with their community, in order to convey their remarks to the municipal executive. Assembly members can play a very positive role in the activation of citizens by processing their remarks or suggestions regarding municipal services. The population of municipalities in Kosovo consists mostly of young people, so members of the assembly should use the social platforms provided by the Internet in order to be as close as possible to the citizens and take into account their needs, so that services can be accessed as much as possible.

Unfortunately, although the Law on Local Self-Government provides that the exercise of competencies in this area is the exclusive competence of municipalities, in practice this is not possible as a large part of services are provided by public enterprises whose status is relatively defined independent of the municipality. However, members of the assembly should put pressure on these enterprises to provide the best possible services, as well as be informed about the ownership of public enterprises responsible for providing municipal services and the procedures to whom these enterprises are accountable. Information on ownership and procedures on how the municipal assembly can hold these enterprises accountable can be found in the Law on Public Enterprises and its amendments.

V. The relationship between local and central government (a comparative survey for both countries)

In the theoretical legal concept, the state exercises its absolute power over the citizens by forcing them, through coercion to respect legal norms in power. The state consists of all those state bodies which perform on behalf of and on behalf of the state certain state functions. The state body is the link relevant organizational

state, e.g. parliament, government, government, directorate etc. Each of these bodies has a certain role and position based on the competence that is provided by law or a sub-legal act. All these bodies exercise power state. State power has the ability to make decisions, to issue orders, to ensure their implementation also with the use and monopoly of physical restraint, in case this is necessary, punish those who violate the established order and to resolve in court also the various social conflicts. Based on form of state building, the Albanian state is a unitary state, in a regime democratic politics with the form of government of a parliamentary republic. Not always unitary states are centralized states, as a good part of the unitary states are decentralized (Omari, L.2015). Albania, as a unitary state, has governance organized on two levels, in central level and local level. Between the two levels of government there is one interdependence relationship. In general, it is the central government bodies, who takes strategic decisions, which are then implemented by local government bodies. The organization of these powers is clearly defined in the Constitution of the Republic of Albania and the relevant legal and regulatory framework in Albania. Relations between the bodies of local government units and their relations with the bodies of central government are based on the principle of subsidiarity and cooperation for solving common problems. Pursuant to the main legal framework, several other bylaws have been adopted, which for the most part focus on the application of the principle of local autonomy, although their implementation often has left to be desired. On the other hand, Albania's membership in the Council of Europe and the approval of the European Charter of Local Autonomy is a legal obligation to respect the principle of local autonomy. (Article 114, Constitution of the Republic of Albania). The Charter provides that: The principle of local autonomy should be recognized in domestic legislation and, if possible, by the Constitution. On the other hand, Article 13 of the Charter stipulates that the principles of local autonomy contained in this Charter apply to all categories of local communities that exist in the territory of the signatory state. The executive power, or the government with all its administrative apparatus takes care of many areas, taking initiatives, creating institutions, controlling, etc.

VI. The situation of Kosovo

The central government has a certain relationship with the local government. The ratio between central and local government, in the sense of the Law on Local Government is built mainly on the basis of local government´s oversight and control by the central government. Supervision of local government, respectively relevant municipalities is carried out by the relevant Ministry of

Local Government. Supervision of municipalities by the central government is administrative oversight. The administrative oversight of municipalities has several objectives which are defined by the Law on Local Self-Government. These objectives are to strengthen the ability of local self-government bodies in fulfilling their responsibilities through counseling, support and assistance; ensure the legality of the activities of local self-government bodies; ensure that the rights and interests of citizens to be respected. Administrative oversight by the central government, always is done in accordance with the Constitution of the Republic of Kosovo and the Law on Self-Government Local and in no way can it exceed the principle of constitutionality and legality. (Article 74. Law no. 03 / L-040 on Local Self-Government,Republic of Kososvo).

Administrative oversight of municipalities cannot infringe and restrict the rights of municipalities and other local authorities in the management of matters which are guaranteed by law. Review and administrative supervision of municipalities no may infringe and restrict the rights of municipalities and other local authorities in the management of matters which are guaranteed by law.

As stated above, the supervision of municipalities is done by the relevant ministry for local government. The mayor is competent to make them available all information to the supervisory authorities, within the supervisory process of municipalities in the Republic of Kosovo. There are two types of oversight administrative supervision of municipalities and that: consideration in the field of own, extended competencies limited to review of legality and review in the field of delegated competencies, relating to the examination of the lawfulness and appropriateness of actions. The appropriateness of actions in this case is not clarified in the Law on Local self-government, but implies the appropriateness of actions, in the report with the actions of municipalities, based on the framework legislation. An important part of the administrative review of municipalities by central government, as mentioned above is the review of legality. Law on Self-Government Local in the Republic of Kosovo defines two types of review of legality and those are:

- Regular review of legality.
- Mandatory review of legality

All acts of the municipality are subject to regular review of legality, that approved by the mayor and the municipal assembly. Acts which are subject to review regular legality are acts that were issued in the previous month and the same must be submitted for review by the tenth (10th) of each month. On the other side, the following acts are subject to mandatory review of legality: general acts approved by the municipal assemblies; decisions regarding activities joint partnerships

for cooperation; adopted acts within the framework of the implementation of delegated competencies. All acts that are subject to mandatory review of legality are sent to the supervisory authority, within seven (7) days from their issue date. The supervisory authority conducts the review within 15 days, from the act´s issue date. After sending the acts for review by the municipality, the same are recorded and sent to the Legal Department for Municipal Monitoring, within the relevant ministry for Local Self-Government. (Article 6.2. Regulation No. 10/2019)

In the context of the control of municipalities by central bodies, it is important to emphasize that the Assembly of the Republic of Kosovo, the President, the Government, and the People's Advocate have the right to raise in the Constitutional Court the compatibility of the municipal statute with the constitution. This competence enables the main state bodies through the Constitutional Court to assess whether the statute of a respective municipality is in accordance with the provisions of the Constitution of the Republic of Kosovo. Until now, since the establishment of the Constitutional Court of the Republic of Kosovo, there has not been a single case when the central bodies have raised the compatibility of the statute of a municipality in the Republic of Kosovo with the Constitution.

VII. Conclusions and Recommendations

The last three years were characterized by important steps towards the decentralization of governance from the central to the local level within the framework of the National Strategy for Decentralization and Local Governance 2015-2020. The implementation of these reforms had as a common denominator the empowerment of local government and the improvement of the quality and efficiency of local public service provision. The analysis of available data and indicators suggests that the biggest barrier to further progress lies in the low level of local financial autonomy. Reliance on intergovernmental transfers from the central government may have stimulated the somewhat lazy and opportunistic behavior of the municipalities. Given these circumstances, and to meet the intended goals of the reforms, policymakers should reflect on the following recommendations:

- Establish a clear division of competencies and responsibilities for the provision of public services.
- Establish a clear connection between sources of revenues (what constituents pay) and the services and investments realized (what constituents receive).
- Effectively deepen fiscal decentralization to enable accountability, transparency, and accountability to the community by ensuring a certain equilibrium between responsibilities and rights of citizens and decision-making powers.

- Strengthen information, monitoring, and accountability mechanisms; and
- Increase central and local institutional capacity to build and implement a successful decentralization model.

Though it is still too early to draw conclusions, the increase in overall expenditures (and personnel expenditures in particular) does not align with the main objective of the TAR – increasing operational efficiency and shrinking administrative costs. In the allocation of investments, the adoption of a bottom-up approach could create better conditions in which to address the needs of the communities that the municipalities represent. The expenditure level is just one side of the equation, and the only side that can be assessed with the data currently available. We cannot yet assess whether expenditure growth has translated into improvements in the quality of local public service provision. In conclusion, territorial changes need to be subjected to a study of economic and social character, by experts in the field on the basis of well-defined criteria based on perspective developments and avoiding the interventions and interests of political parties.

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Acting as a pivot state. A new dimension for the Albanian foreign policy

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Abstract

Recent changes in the world order have modified the behavior of small states. The current structure of international system nowadays greatly influences the foreign policy of a small country. Albania as a small state has shown the first signs of adaptation to this new context. The power vacuum in international politics as no country or group of countries has the political and economic leverage to drive an international agenda or provide global public goods is the main factor leading to some recalibration in foreign policy agenda. This essay suggests that the new format in international relations has dictated a new strategy on foreign policy.

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A pivot state, as referred in the study, shows flexibility not only to survive but also benefit from the current system. The results of this study show that Albania, exposed to these changes, has taken steps towards a new foreign policy agenda. Having healthy relations with the US, guiding the country towards membership in the European Union, strengthening ties with Turkey or opening the door to large investments from the UAE are creating momentum for this move towards a pivot state.

Key words: *new world order, fragmentation, Albanian geopolitical space, foreign policy with alternatives, alliance, pivot state*

I. Introduction

New global order has been used as a designation for certain periods, during which the balance of power has changed and consequently the role of individual states. In addition to the international arena, during such a period there are profound changes in the structures of states and ideologies on which the functioning of power is based. Despite different interpretations, the new world order underscores a world governance in terms of joint efforts to identify, understand or address problems beyond the possibility of nation-state solutions.

The Western alternative of Albania is clear and oriented towards Brussels and Washington. Messages for these two orientations are present in every election campaign and normally in the Albanian institutional line. The United States has already announced that it has common interests with Albania, mainly for "the development of a new European security architecture, including the expansion of the North Atlantic Treaty Organization (NATO), combating terrorism, and strengthening democratic institutions and stability throughout Southeastern Europe" (Embassy fact sheet). In short, Albania's stability is paramount to the US.

Albania is also part of the policies of the European Union, which does not contradict the American line. The EU focuses on Albania not only in the field of security (as in the case of the US), but it also monitors the process of Albania's integration into the Union and aims to carry out deep reforms for the transformation of the country. Despite Euro-skepticism, Albania is part of the European Union's grand strategy. So, the Western line is already an integral part of Albanian electoral platforms.

However, considering the changes in the current international system, Albania has shown the first signs of adaptation to a foreign policy with alternatives.

II. Literature review

Small states constantly strive to play a certain role in the international system. This role does not depend solely on their capacities. Accordingly, the small state can be defined as "the state which is characterized by limited national capabilities and the way by which it uses such capabilities in achieving the objectives of its foreign politics, to make a comparison between its capabilities and other countries' capabilities. It must be perceived as a small state by its leaders and other states' leaders in the international system" (Galal, 2019, p 46). This author identifies the criteria for the small states: national capabilities; relationship between gaining power and its arrangement in the international system; and the element of perception (ibid).

In this framework, it can be noted that the actual structure of international system nowadays greatly influences the foreign policy of a small country. The current international institutional framework seems to be in crises and deeply affecting the foreign policy agenda of a small country. As shown during the pandemic Covid-19, the contemporary global order is widely said to be in crisis. However, states seem to know how to adapt to the new order. According to Eilstrup-Sangiovanni and Hofmann (2019), "what we are witnessing is not the collapse of the current world order, but rather its transformation and adaptation into a broader, more flexible and multifaceted system of global governance – a change within the order rather than of the order" (p 1).

This new global order in the eyes of Bremmer (2013) comes as G-Zero. "A G-Zero World is one where we have an absence of global leadership. And I think there are a lot of reasons for it. The United States is less willing, as we've seen, to provide the guidance of the global economy and global security—it doesn't want to be the global policeman. We've heard that very clearly from President Obama. It doesn't want to be the lender of last resort. It doesn't want to bail out the Europeans. Doesn't want to lead globalization. It's just not popular" (Gray, 2013).

In his book "Every Nation for Itself: Winners and Losers in a G-Zero World", Bremmer (2012) explains "the growing G-Zero power vacuum in international politics as no country or group of countries has the political and economic leverage to drive an international agenda or provide global public goods" (p. 26). As such, this author provides four scenarios for the future world: the G2—a U.S.-Chinese partnership; Concert—a G20 that actually works; Cold War 2.0—or something worse; a world of regions—to each his own; and scenario x—the G-subzero.

Current analyses lead us to believe that the international system is closer to the scenario: a world of regions—to each his own. Such agenda creates the possibility for the states to set their own agendas. So, according to Bremmer (2012), the small states have two options – becoming pivot or shadow states: a pivot state is a country able to build profitable relationships with multiple other countries without becoming overly reliant on any one of them; or becoming shadow states, those that would want to have the freedom of pivot states but remain frozen in the shadow of a single power (p. 94).

Acting as a pivot, small states must show readiness and flexibility not only to survive but also benefit from the current system. Albania, as an example of a small state, is trying to pursue a foreign policy with alternatives, as it is having healthy relations with the US, setting an agenda towards membership in the European Union, strengthening ties with Turkey and opening the door to large investments from the UAE. Taking such stance in the current system seems very likely as a formula for success.

III. Understanding the international institutional framework: which NATO does the prime minister refer to for assistance?

Prime Minister Rama openly stated after the meeting of the OSCE Permanent Council in Vienna, that Albania is a NATO country and any attack on us is an attack on NATO. This declaration came as a reaction to the interest of journalists for the threat coming from Iran, after a message issue by supreme leader of this country (**Çdo** sulm mbi ne, 360 grade).

With these words, Mr. Rama refers to the principle of collective protection of the founding treaty of NATO. This principle is reflected in Article 5 of the Washington Treaty, which states that "an attack on an ally is considered an attack on all allies." (Collective defense - Article 5). It should be noted that this article has been applied only once in the history of the Alliance after the 9/11 attacks against the US, when NATO intervened in Afghanistan.

This principle was reiterated in the final statement of the NATO summit, held in London in December 2019, although many divisions have recently emerged between NATO members (London Declaration, 2019). After the Alliance suffer a shock when President Trump declared that NATO was "obsolete" and its members did not pay the required percentages for its operation, before the London summit (Johnson, 2017), President Macron added a dose of skepticism about NATO. He said that NATO suffered "clinical death" (Nowak, 2020, p. 1). However, this summit ended with a positive political statement, at a time of many challenges such as confronting and defining terrorism; the form of confrontation with Russia; and the functioning of the collective defense.

However, the main leaders of the allied countries presented different views on the three above issues. In fact, such views caused cracks within the organization.

Even though the second priority point underlines Russia's position, all three issues point to the direct danger posed to Albania in the context of the US-Iran clash. In the current situation of NATO, when its common mechanisms seem not to properly work, will Article 5 be reactivated, in case of aggression by an allied country?

According to Bremmer (2021), "America's NATO allies—the former Soviet republics Estonia, Latvia, Lithuania, and former Warsaw Pact member Poland, in particular—will remain on alert for years. Estonia and Latvia are home to a larger percentage of ethnic Russians even than Ukraine. A troubled history with Russia and the anger stoked by the fight for Ukraine makes Poland the most aggressively anti-Kremlin voice in Europe. Further feeding the anxiety are Eastern European fears that Russia cares much more about the future of its former communist allies than Western Europe or America ever will, and that Moscow will fight harder and longer to preserve its influence in Ukraine than Washington, Brussels, or Berlin will defend Ukraine's right to self-determination" (Bremmer, 2021. p. 12).

In case of a Russian attack, Article 5 of the North Atlantic Treaty will obligate the United States to enter a war. How much public support can any US president expect if he is one day forced to honor that pledge? In March 2014, YouGov asked one thousand adult Americans if the United States should use military force if Russia attacks one of its neighbors. Just 40 percent said the United States should defend Poland, 29 percent would support a defense of Turkey, and just 21 percent would support a U.S. defense of Latvia. All three are NATO members. Only 56 percent of those surveyed would defend Britain. (Calabria, 2014). Therefore, Bremmer (2021) concludes that "if you can barely get a majority of Americans to support a defense of Britain, it's clear that the American people want no more foreign wars of choice" (p. 33)

The situation in NATO - a political and military alliance - is in a kind of stagnation, where the political dimension is not matching the military one. European Union is in a similar situation: the technical side often clashes with the political one (as happened, for example, in the case of non-opening of negotiations with Albania: European Commission gave the green light for the opening of negotiations, while some political segments – i.e., some member states - objected to the recommendation given by the Commission). In this kind of decision-making paradox, Albania found itself in a possible conflict with Iran.

Albania, in its vision for NATO, makes a projection of two NATOs: the military machine that plans collective defense in Europe and beyond, and the political alliance that fluctuates depending on the agendas of the leaders of the member countries.

The first NATO seems to function well. The London Declaration produces optimism in this regard, as follows:

> NATO guarantees the security of our territory and our one billion citizens, our freedom, and the values we share, including democracy, individual liberty, human rights, and the rule of law. Solidarity, unity, and cohesion are cornerstone principles of our Alliance. As we work together to prevent conflict and preserve peace, NATO remains the foundation for our collective defense . . . We reaffirm the enduring transatlantic bond between Europe and North America, our adherence to the purposes and principles of the United Nations Charter, and our solemn commitment as enshrined in Article 5 of the Washington Treaty that an attack against one Ally shall be considered an attack against us all (excerpt from the London Declaration at the Summit on 3 - 4 December).

The second NATO – the political one – is in trouble. First of all, it should be noted that the Alliance has a deep internal problem. The so-called Quad - the US, Britain, France and Germany, which has defined the West's orientation in recent decades, has not functioned since the beginning of the Trump presidency. In addition to Trump's unilateralist dimension, the US has often ignored allies in many of the decisions (most recently, the withdrawal of troops from the Kurdish area in northern Syria). There are other "anomalies" of the second NATO, such as Turkey and France do not agree on the form of confrontation for the terrorist threat; Turkey rejects NATO's plan for missile installations in the Baltic region, to protect Europe from Russia; allies urge US to consult with them on the withdrawal from Syria; Turkey ignores allies over conflict with Kurds; Poland and the Baltic states have different approaches to the Russian threat; to Macron, Europe's security depends on good relations with Russia; Germany is ambiguous as, on the one hand, considers Russia a great threat, and on the other hand, cooperates with it for the Nord Stream pipeline; after Brexit, Britain seeks to reinvent itself, as it tries to strengthen transatlantic relations and European security, avoiding to become a "second-tier player", as Donald Tusk has put it; Macron has proposed a European army as an alternative to NATO, etc.

Is NATO's problem deeper than these diagnoses? In addition to being "obsolete" and in a "clinical death", Friedman (2019) considers NATO anachronistic for the present time. The question is whether, in the current context (with two NATOs), the Alliance will be able to withstand a major crisis:

> NATO's outdated structure will remain in place for now – and it will continue to squander scarce resources on sustaining itself and to evade questions over its usefulness . . . I am merely trying to explain the process that is underway. The purpose of NATO, to protect the security of the Euro-American world, will not go away .

> . . NATO was created with a single mission in mind: to prevent or defeat a Soviet invasion of Western Europe that could, if successful, lead to Soviet domination of the European Peninsula and achieve what neither Hitler nor Napoleon could accomplish. It would also bond Soviet natural resources and manpower to Western Europe's industry and technology and thus, again as Napoleon and Hitler dreamt, change the global balance of power. Given that Europe and the United States had already lived through two world wars, the worst-case scenario appeared to be quite plausible. Possibilities had turned into realities throughout the 20th century, so ignoring the possible was not an option. (Friedman, 2019).

As "NATO was built for an extraordinary situation, in which a third world war was reasonably possible, NATO would only function in a united Europe in a "single geopolitical unit, a single political commitment and a single military structure" (Friedman, 2019). If one of these dimensions does not work, then Europe falls into chaos and NATO will not be able to stabilize it. Therefore, Friedman's statement that "NATO is an anachronism that has survived longer than its mission" is prominent.

What is it going to happen in case of an Iranian aggression against Albania (a real current crisis)? Would France and Germany intervene against Iran? What would be the position of Hungary, a NATO ally already in very good relations with Russia? Will Turkey maintain neutrality? Will Greece be destabilized? These questions and others find answers to the divisions mentioned above. It seems that the second NATO, the political one, will take the decision towards the first NATO, the military one.

In this context, Prime Minister Rama is politically correct, as he refers to NATO in the above statement. But he might think of US – not NATO as a whole unit.

Even US, a friendly country to Albania, has its own deep problems. Zakaria (2020), in a article in the Post, warns that the US - because of Trump's decisions - no longer has a clear foreign policy, emphasizing that:

> Trump does not have a foreign policy. He has a series of impulses — isolationism, unilateralism, bellicosity — some of them contradictory. One might surge at any particular moment triggered usually by Trump's sense that he might look weak or foolish. The US is known for its reliability and careful planning, but "this reputation is being abused across the globe (Ibid.)

Taking into consideration the current state of American foreign policy, Zakaria (2021) delves on his argument about unclear US foreign policy under Biden administration, underlining that "after almost eight months of watching policies, rhetoric and crises, many foreign observers have been surprised — even shocked — to discover that, in area after area, Biden's foreign policy is a faithful

continuation of Donald Trump's and a repudiation of Barack Obama's". He concludes that "if Biden continues his current course, though, historians might one day look back on him as the president who normalized Donald Trump's foreign policy."

All this shows us that US is not that focused on protecting other states and is being unable to find its own path in foreign policy. Such situating leads us to presume that a country like Albania needs to choose another course in its own foreign policy.

IV. Coronavirus - the bedrock for a new global order

There is more and more talk of a new global order following the coronavirus pandemic. A new global order has always emerged after a long and bloody war. The Westphalian system, which guaranteed peace in Europe for about 150 years, was established after a 30-year war. The Congress of Vienna established another balance of power that relatively pacified Europe until the First World War. This is what also happened after the First World War, after the Second World War and after the Cold War. This is what happened after the 9/11 attacks, and this is what is happening now, both times, in unconventional ways.

After the fall of the Berlin Wall and the start of the war in the Persian Gulf in 1991, President Bush (the first) declared that "a new world is being born, a world quite different from what we know." (Bush, 1990). These words are like the words we, the witnesses to the coronavirus pandemic, articulate almost daily. Although Bush meant American hegemony in a new era, a new configuration occurred around the world.

We have witnessed a new order that arose after 9/11. A similar insecurity gripped the world. After the terrorist attacks, there was talk of a new geopolitical era. Again, despite the motives of the terrorists and subsequently the American reaction to the implementation of specific geopolitical strategies, this event transformed the world.

As in the coronavirus era, it was the time when the West faced a new and invisible enemy: terrorism had neither an army nor a nation. It was an abstract enemy. Bockstette (2008), a researcher at the Marshall Center, puts it this way: "Terrorism is defined as political violence in an asymmetrical conflict that is designed to induce terror and psychic fear (sometimes indiscriminate) through the violent victimization and destruction of noncombatant targets (sometimes iconic symbols)."

It should be noted that the 9/11 attacks changed the relationship of societies with governments, mainly Western ones, having as reference the field of security and defense. Basic questions were raised open for discussion, as they are today, in

the time of the coronavirus: What level of security should a government provide to its citizens? How can democracies cope in the event of such crises? Will the endless war lead to tyranny? Is a collective or individual response needed across countries?

Today, the world is facing another invisible enemy. With so many deaths, science seems incapable of dealing - at least currently - with this pandemic. With the idea that the pandemic will be defeated, it is to be noted that great transformations are taking place in human behavior, in the social structure, as well as in the relations between states. This change will be even deeper.

According to Morgenthau (1978), "it stands to reason that not all foreign policies have always followed so rational, objective, and unemotional course" (p. 4 - 15). Despite the humanitarian side of the consequences caused by the coronavirus, it is worth mentioning some phenomena that will affect the reconfiguration of a new order, during this phase of the pandemic.

The virus shed light on current US policy, where the leadership tends to revive the economy despite lost human lives. There is a growing profile of China, which has elevated its image around the world: from being a "victim" of the virus, it is now offering aid to the most powerful Western countries. The virus raised the barriers between European countries, reaffirming the European Union's deep weakness in decision-making processes. Italy and Spain have failed in terms of pandemic response strategies. Other countries such as South Korea, Taiwan and Singapore have shown skills in fighting the virus, which demonstrates their effectiveness. Even a country like Iran, unable to deal with the virus, could undergo regime change. Small states will be even more easily influenced by large and regional powers. It is important to note that a new global order is being formed on some foundations created by this pandemic.

In these conditions, "COVID-19 has exposed the fragility of nation states and indeed the existing world order. It hasn't brought about anything new. It exposed the weakness of all states, seeing themselves as post-industrial, walking backwards into the future, unable to seemingly affect that future and just looking at the rubble of their past" (Wintermeyer, 2020). This situation leads to changes in foreign policy of nation-states.

V. Rama, 2021 political campaign and foreign policy

Being protagonist in the campaign and foreign policy

One of the main elements of the electoral campaign of the Socialist Party for the elections of April 25 was the protagonism of its chairman and at the same time the prime minister, Mr. Rama - a technique that has been used by him in previous

campaigns. It should also be noted that Mr. Rama - compared to previous prime ministers - has shown unprecedented foreign policy skills. This ability has its source primarily in his understanding of the role that Albania can and should have in the arena of international relations.

During the campaign, Mr. Rama often sent messages to the electorate from foreign countries. The role played by Turkey and the United Arab Emirates during the campaign can be noted (roles that translate into the strong Rama-Erdogan bond and the significant investment of the Emirates).

Foreign policy with alternatives

Bremmer (2020) uses the term "pivot state" to describe a state that is able to build profitable relationships with one or more major powers and - at the same time - not become dependent on any of them. This capability helps to avoid influence - in terms of security and economy - from a single state (p. 3). This term is mainly used in the literature for medium power, but its application cannot be limited. Beyond the use of the term, Mr. Rama (in this case, the embodiment of a protagonism in the electoral campaign and the strategy of the Albanian foreign policy) simply understood that Albania does not have only one or two alternatives in foreign policy.

Albania has historically had very good relations with Turkey, which has been seen with suspicion from the West. But the doses of friendship have increased. Over the last eight years, we have witnessed a deepening of Turkey's role in Albania - moreover during the election campaigns - mainly through a personal diplomacy of the respective heads of state. Turkey openly showed its support for Mr. Rama - among others in the cases of building a hospital in Fier for two months and sending air traffic controllers in a time of crisis for the government. These were two very clear messages for the Albanian electorate.

Another alternative has been made possible by significant investments for Albania: the investment in the port of Durres by a powerful UAE company. In an interview with CNN, Arab investor Mohamed Alabbar advertised Albania and echoed its achievements. He even called Albania "New Europe", with indicators that attract large investments. According to Alabbar, Albania is distinguished for "impressive economic growth, labor force, government that works day and night to become part of real Europe". (Of course, these statements are taken with reservations by anyone familiar with the situation in Albania.)

In addition to applying these two lines of foreign policy in the exercise of his duty, Mr. Rama used them successfully during the campaign. There are other lines that are not very visible but are harmonized with the current Albanian foreign policy, such as a separation with Russia, a controlled distancing with China or a hostile attitude towards Iran.

VI. American withdrawal and exposure of Albania

Failure in foreign policy?

Many analysts are mentioning the failure of American foreign policy. The last two decades are coming to an end with the capitulation in Afghanistan. The war in Iraq - as well as in Afghanistan - not only took a lot of financial resources - but ended in a moral catastrophe for the world superpower. The military intervention in Libya resulted in the overthrow of a dictator but created a chaos that destabilizes North Africa. In Syria, the US left behind the Kurds who sacrificed in the fight against ISIS. President Trump's tenure changed regional and global balances, legitimized autocracies, and severely damaged the liberal international order created by America itself. The abandonment of Ukraine is a typical example of another misguided planning. It is widely acknowledged that these successive failures have occurred because of the lack of a clear American strategy.

From the Albanian point of view, it is noticed an American foreign policy without a clear orientation that normally damages Washington's position in the global arena, but at the same time exposes its close allies to many risks - including Albania. The projection of this American foreign policy must be seriously considered by Albanian policymakers.

The global environment has changed since the Cold War. Several other powerful poles have emerged in the international system, therefore reducing American strength. However, US military power still provides an umbrella of security in Europe, which is essential to European prosperity. With these changes, there is a transatlantic unity in dealing with China and Russia, but the previous consensus is no longer effective.

As part of the withdrawals, after the withdrawal of troops from Iraq and then from Afghanistan (countries at war), the US plans to withdraw troops from countries in peace (from Germany, Japan and South Korea). These countries have prospered economically from American military defense. But times have changed.

The departure of American troops from Germany sent a strong signal. This maneuver was justified by the Americans as a result of a sophisticated strategic planning, but was essentially the concretization of an earlier warning. Quite simply, the US no longer has the financial capacity to afford high military spending. The move undermines NATO, Europe's security and America's own ability to influence.

In these circumstances - especially with the catastrophic scenario of the US withdrawal from NATO - the European Union must take more responsibility for

its own security. But is it possible for Europeans to defend themselves without America, given that their security infrastructure has American foundations? The International Institute for Strategic Studies analyzed the following scenario.

A high-level group of senior experts and government officials from France, Germany, Poland, the UK and the US addressed a fictional scenario that involves a US withdrawal from NATO, followed by multiple crises in Europe", answering the following questions: "How will Europeans organize their security and defense if the US withdraws from NATO? To what extent will future European security be based on mutual solidarity, ad-hoc coalitions or a bilateralisation of relations with the US? Which interests would the respective European governments regard as vital and non-negotiable? What role would the US play in European security after the withdrawal?" (Fix, 2019).

The main message was that transatlantic relations were seriously threatened in the event of NATO's abandonment by the US. In the event of this imagined crisis in the Western Balkans (a Russian-backed coup), most NATO member states (NATO without the US) would be reluctant to apply the principle of collective defense under Article 5 of NATO. They would try to enforce Article 4 - consultations in case of security breaches and impose sanctions on Russia. In short, Europe would be unprepared and incapable of facing this threat.

This scenario served to reach some conclusions. From the German perspective, the US withdrawal from NATO posed an existential threat to security. The French thought that NATO could not exist without the US and offered a new structure for the EU collective security. The UK would become a crucial player in Europe's security and determine the future architecture of Europe's security (embodiment of a historical cycle). Poles did not believe in Europe's capacity to organize collective defense and were inclined to make bilateral agreements with the US. For the Americans, aid to European security had to stop and Europe had to prepare to manage its own crises. This is the chaotic situation that Europe may face in the event of US withdrawal from NATO (Ibid).

Albania's exposure

A small country like Albania, currently with strong ties to the US, would be subject to significant consequences in the event of US withdrawal.

Firstly, the American departure means the weakening of the European Union and the fall of Albania under other influences. Russia will feel free to penetrate the Balkans. Turkey will consider itself the master of the Balkans. China will aggressively use economic diplomacy. The main European countries will compete for the Albanian geopolitical space. But in the current crises these countries (mainly Italy and Austria) will be very reserved. This withdrawal would help advance other powers into the Balkans.

Secondly, the withdrawal from Europe will reduce the military capabilities in the Albanian geopolitical space, which translates into a reduction of political and economic influence. Without the US presence in NATO, common interests in the field of security will fade. Moreover, the imposing American diplomacy in Albania - so necessary for the discipline of the Albanian political class - will be weakened further. This will also lead to non-implementation of reforms and reduction of US-funded projects.

Thirdly, the American departure from Europe will increase divisions between major European countries. These divisions will lead to a decline of their influence in Albania - which would create room for other powers. The European Union cannot replace NATO, as it has no common military structure or foreign policy.

VII. Conclusion: The new order and Albania as a pivot state

Many countries have succeeded in the new order as they follow Bremmer's maxim "The future belongs to those who show flexibility." In the new global order, connecting with multiple partners is essential.

In "Each State for Its Own: Winners and Losers in a G-Zero World," no state (not even the United States) has the capacity to set an international agenda. In this new decentralized order, a state must have the ability to have alternatives. The small area does not always limit the geopolitical options of a state, which is reflected - for example - by Singapore. (This case does not reflect Albania at all, but it serves as an example to understand the idea of the pivot state).

In today's fragmented world, where no major power sets the international agenda, winners and losers will be determined by the ability to find and utilize the right alternatives. It seems that the Albanian Prime Minister has understood this dimension and is applying it in foreign policy. At this point, the question arises as to whether this foreign policy is well-thought in the form of a genuine strategy or works according to the needs of the moment. Therefore, it would be in the best interest of the future of the country for the chosen strategy to be subjected to in-depth analysis of the geopolitical implications of being involved in certain alliances.

This analysis aimed to draw attention to the importance of Albania's partnership with the US, but the possible US withdrawal must be considered. What is a possible solution in case of American withdrawal from the region? One would be to project Albania as a pivot state.

In fact, Albania has begun to be outlined as a pivot state, although it is at the beginning of this process. Bremmer (2020) uses this term to describe a state that can build profitable relationships with many other great powers, without

relying too heavily on any of them and not creating dependence on any of them. This defense capability allows a central state to avoid another country's influence in the areas of security and the economy. In today's volatile world where the international system is seriously threatened, the pivot states will be more protected, as they will know how to create the right balances with the great powers. Otherwise, Albania will join the ranks of states on the opposite side of this spectrum - the "shadow states" that are forced to accept the influence of a single power.

Prime Minister Rama's initiatives to have healthy relations with the US, to guide the country towards membership in the European Union, to strengthen ties with Turkey or to open the door to large investments from the UAE create momentum for this move towards a pivot state. This coveted position - according to the format suggested by Bremmer - seems very difficult to achieve. However, the analysis of these issues emphasizes the need for a national medium-term and long-term strategy, which foresees realistic scenarios for the future.

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Justice, political ethics, and democracy. Assessing two levels of government

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Abstract

Fiat iustitia ne pereat mundus, literally 'Justice must be done so the world may not perish'. It is a famous Latin proverb that forms the basis of modern jurisprudence. Both in the original version, 'Fiat iustitia e pereat mundus', implying, 'Let justice be done, and even the world may perish' – and in our adjusted version, justice must be at the basis of human society, at least in a democratic political system.

However, what kind of justice is most congruent with today's pluralist democracy? The one is grounded on ethical intersubjective a priori mediation or directly applied justice regardless of its consequences. How can today's democracy and comprehensive doctrines be compatible with negotiating pluralism and gaining stability within Albania successfully? To answer the above questions, in this article, we will use John Rawls' response, introduced in his 1993 book Political Liberalism.

Furthermore, another goal of this article is to elucidate the Albanian politician's ethics outlook. In this regard, a set of fundamental questions arise here. For example, why do our politicians act as they do? Is there e proper political way to act? To cope with these questions, we will analyze Max Weber's essay Between Two Laws *to grasp*

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the current Leader's type of ethics. Weber's classification of the ethic of conviction and ethic of responsibility, and to what extent he prescribes each ethic to the 'ideal politician', will be at the heart of this line of reasoning

The article proceeds into four key sections — the first deals with assessing the Leader's political ethics in current Albania. The second section provides a parsimonious classification of the current state of Albania's democracy; the third section offers a short analysis of the Socialist Party government, both central and local, whereas the last part provides a solution for democratic consolidation through the empowerment of the Constitution.

Keywords: *justice, political ethics, democracy, Constitution, Albania, Government, Rawls.*

Assessing Leader's political ethics in post-communist Albania

Fiat iustitia ne pereat mundus, in the version used by Emmanuel Kant (2004) in his work *Towards Permanent Peace,* justice must be the basis of human society, at least in a democratic political system. As a result, what form of justice may we consider bringing Albanian society on the tracks of legality. Justice that comes through intersubjective mediation, grounded on the public political culture of e democratic society or justice applied directly by the arising leaders based on their comprehensive truth (Rawls, 1993). In today's Albania, a rampant injustice prevails in almost every interaction between politics and society. Political leaders applied justice based on an extreme version, namely 'Let justice prevail, and the world (Albania) may be destroyed'. But then again, is this a *reasonable* principle. Is it legitimized by the public reason (Rawls, 2005, pp. 443; Habermas, 1992, pp. 306–308; Habermas, 2008, pp. 114–147) is it a shared principle so that the ruling elite does not enjoy the permanent idea of holding the truth in their pocket?

According to Max Weber, the goal is to distinguish between being and beings and find out the 'polytheism of values'. In the face of a world that makes no sense, Weber points out that it is up to people to give meaning to the world. Because of the world's unenchanting, men displaced the Gods and transformed the world into a sterile environment of his rational action. Consequently, under this variance and incompatibility with the new values, the acceptance of one set necessarily leads to the exclusion of the other set. Max Weber calls this phenomenon a 'clash of values', which we also meet within the same sphere of interaction. For example, in his essay *Between Two Laws* (Weber, Gerth, Mills, 1958; Deflem, 2008, pp 37-55). Weber analyses the concept of 'polytheism of values' - which he borrowed in part from John. S. Mill - a concept that in the

ethical field translates into dualism, between *ethics of principles* – also known as the ethics of ultimate ends or beliefs – and the *ethics of responsibility*. The first form of ethics refers to absolute principles, which function regardless of their consequences. For example, religious ethics are the ethics of revolutionaries and other conditions that run based on fixed principles, irrespective of the results. In contrast, the ethics of responsibility always considers the relationship between purposes, means, and consequences. Not including absolute principles, the ethics of responsibility always run considering the implications of its action; that is, the consideration of the results is its *modus operandi*. Respectively, the ethics of principles and responsibility are two opposite and incompatible ethics, which refer to two diverse ways of understanding politics. According to Weber, ethics of principles is *apolitical*, revealed by anyone who acts according to his principles without asking whether his action can transform the world. Instead, the ethics *of responsibility* is inextricably linked to politics because it never loses attention from the consequences of an action.

During the years of transition in Albanian, justice transmitted by political leaders resembles that of Ferdinand I of Habsburg. These leaders applied justice grounded *on the apolitical* ethics of ultimate goals. Justice as a normative judgment without mediation, namely as *fiat iustitia (e) pereat mundus*; 'blind' justice that does not respond to the conditions in which it operates. Neither of these leaders ruled considering dissent and the existence of a plurality of opinions in society but prescribed justice based on their comprehensive truth. Nor of them succeeded in fostering a shared democratic political vision but focused merely on applying their rational ideas. In doing so, they persuasively abused the *ethics of responsibility* as one of the fundamental political principles of a democratic society.

Classifying Albania's democracy

In 2016, political philosopher Jason Brennan (2016) published a controversial book called *Against Democracy*. According to him, democracy is not necessarily the fairer political system than other forms of government and does not empower citizens or create reasonable results for all. Brennan proposes replacing democracy with another form of government, otherwise known as 'epistocracy'. Following the analysis, two questions arise that require a more in-depth answer on the shape of the political system that Albania has taken during the post-communism period. Is epistocracy an alternative to democracy, and does Albania meet the conditions classified as post-democracy or post-political? (Mouffe, 2018)

Epistocracy is a system in which the votes of individuals who can prove political knowledge are worth more than the votes of individuals who do

not have this knowledge. In other words, it is a system that favors the most politically informed citizens. We have objections to Brennan's proposal because it sounds exclusive and elitist, but his argument is interesting enough to open theoretical and empirical debate. Brennan takes up an idea already articulated by Giovanni Sartori (2016) on the limits of democracy, assuming the existence of active citizenship in politics. Brennan metaphorically divides the electorate into three categories: the Hobbits, the Hooligans, and the Vulcans. The first, Hobitts, shows no interest in politics, much like in Tirana. The city where the Mayor gained votes for the quality and precision of the white pedestrian lines, more than for the destructive concrete of the capital. While the Mayor calmly promotes and 'perfectly arranges' the city's affairs, his administrative machine paces autonomously, deepening the capital's damage without being disturbed.

The second is Hooligans, rebels who do not dare to organize a revolution, often transform politics into a spectacle every time the Party appeals to them. This commitment is fatal, which polarizes public opinion that ultimately no longer understands where their common interest lies. The third is Brennan's favorites, the Vulcans, who own the knowledge and analytical skills, have an open mind, and try not to fall into sterile conversations. Brennan goes on to underline that voting is not simply an individual choice but an 'exercise of power over others' that must always be used responsibly because political choices fall on all citizens without distinction. Those who abstain 'are generally Hobbits', while the voters 'are Hooligans'. According to him, 'the problem is that many theories of democracy assume that citizens behave like Vulcans.'

Nevertheless, Brennan hopes that one day Vulcans will reign, but he presents no convincing evidence that they exist. Brennan has no desire to specify how an epistocracy can work, which is understandable. He outlines some options, like extra votes for graduates, an epistemological council with veto rights, a qualifying exam for voters. However, he does not pause long to predict what could go wrong.

In the Albanian context, the political parties have had a *sui generis* trajectory. From relatively open parties in the early years of democracy, which acted as a filter between institutions and popular will, they have already been transformed into monocratic parties, associating the Leader with the Party. i.e., Berisha's party, Nano's Party, Meta's Party, Basha's Party, Rama's Party. The omnipotent leader concept shows whom the voter is acquainted with, who he is, and whom he aspires to be. This Leader is like a guru to this voter, given that the latter feels alienated and politically incapable of expressing personal ideas. This voter reads the guru's thoughts in headlines or hears them on TV shows. The usual slogans of politics, the most famous faces of it are his political compass. He does not have even the slightest critical spirit and personal filter because, according to him, what the Leader publicly articulates is the only and the absolute truth.

Brennan boldly highlights the political 'disease' of democracy in our time, which is the lack of a general culture that offers opportunities for political insight, the lack of which is the genesis of the political deficit that seeks to transform every one of us into a 'hooligan-style fan' of leaders. Political fanaticism is the classic expression of political servility and loss of identity. At this point, the average Albanian who is not yet a 'Vulcans' is faced with a forced choice. Either remain at the service of Party schemes, already transformed into interest groups, or enslaved to general situations, when the only remedy is escaping defeating the inner fantoms. In conclusion, the loss of identity is the same as that of a crawling servant, a condition in which the political ethics of post-communist leaders has transformed people's political mindset. By choosing a self-referential ruling class, post-communist leaders kept the most educated from giving guiding ideas, bringing the political participation into a closure. Today, many of these leaders entered the office through the support of hooligans, but not those quoted by Brennan, the real ones. That is a notorious phenomenon that furthers the need to reconsider the wrong path of Albanian democracy and the imperative need to find alternative ways to push for the *openness* (Ferrara, 2014) of the political representation of every citizen. Transcending Brennan's trichotomy through the radicalization of democracy suggested by Gramsci (1975) followed by political theorists like Laclau and Mouffe (1985).

On the other hand, the sociologist and political scientist Colin Crouch (2000), praised and criticized for his book titled *Post-democracy*, posed the problem of the erosion of democracy by the extremization of economic liberalism, when few voices had articulated this danger. According to Crouch, in today's democracies, even as elections continue to take place and influence governments, the debate over them is a well-controlled spectacle. Conducted by groups of professionals experienced in persuasion techniques and practice on a limited number of issues, selected by these same groups. The mass of citizens are passive, receptive, and even apathetic, merely reacting to their received signals. In addition to the spectacle of electoral 'war', elites who stand exclusively for economic interests in closed interaction with elected governments privately decide politics, and this is the model of what Crouch labels *post-democracy*.

All the same, the Belgian scholar Chantal Mouffe (2018), in her book *On Left Populism*, prefers to call this political situation *Post-political*. Accordingly, under the pretext of the modernization imposed by globalization, the political parties have accepted the dictates of financial capitalism and the limits imposed by the latter to interfere in state affairs and distributive policies. As a result, this political style drastically reduced the role of parliaments and institutions that allow citizens to influence political decision-making. Elections no longer offer the opportunity to choose existing alternatives through traditional parties. The

only thing allowed by *post-politics* is a bipartisan alternation between center-right and center-left parties. Anyone who opposes central consensus and the dogma that no alternative exists to financial globalization passes for an extremist and is disqualified as a populist.

Both diagnoses are present more than ever in today's Albania. In close collaboration with the political power, the financial interest groups control the country's main spheres of justice (Walzer, 1986). The current democracy in Albania shows continuity with the old model of the communist system, where the role of the Party remained unchanged as a provider of all sorts of power. Furthermore, the function of the Political Party should not be limited only to conveying the interests of society towards the political system as in the old system, but also to an educational role towards democratic values.

Especially in a small country like Albania, the opportunities to exercise this role are even more significant. In the last three decades, parties have oriented themselves towards absolute possession of power by extending their influence to every sphere of the individual's life. This phenomenon led to a further reduction of the organizational capacity of society and difficulties for new social movements' birth as crucial prerequisites for the democratization and the emancipation of society. By analogy, we borrow Habermas' terminology, which announced a "colonization of the world-life" resulting from the tight control that the state and the market exert more and more over the society. Respectively, the state through legalization and the market through the philosophy of consumption are appropriating any space for free public debate on the objective concerns of society. In the same vein, SP has created a "partisanship of the world-life" by controlling every space of the system in a capillary way, with the final aim of preventing the free vote (Çullhaj, 2017).

This omnipotent power stifled the citizens' self-determination initiative by making possible what Almond and Verba (1963) called *the reduction of personal political competence of the ordinary person's belief of his influence on politics*. This way of exercising political power once again gives citizens the idea that they have no means to exert pressure on the Party and at the same time on the government and that obedience to authority remains part of their partisan culture. Consequently, the transition to the democratic system did not bring citizens the expected change for freedom of action and organization, leaving the Albanian political system to be included in those democracies considered by the literature as *enfeeble democracies* (Ferrara, 2021).

In today's political conditions, it is imperative that critical feeling is awakened through self-awareness that the political domain belongs to the people. Post-democracy and post-politics speak us for the ill use of democracy as a tool to take over political power and not to remedy the new challenges of liberal

democracy. We must bear in mind that the foundation of liberalism was and stays constitutional justice and the separation of powers, on the condition that there are opposing interests in society that must be mediated in that specific place like the Parliament. In this modern agora, where *the most reasonable* is elaborated (Rawls, 1993).

To conclude, Albania satisfies a triple democratic political state that the authors define as a phenomenon of current politics: post-democracy, post-politics, and enfeeble democracy. Nevertheless, what is the solution? According to Mouffe, in pursue of Gramsci's point of view, it is necessary to set up a 'new hegemony that allows the radicalization of democracy'. Not by moving away from the liberal democratic system, but by building *a people* and combining 'different resistance battles' into an 'equivalent ratio of differences'. In short, according to the Belgian political scientist; *Opposing post-democracy [and post-politics] does not mean abandoning liberal principles such as the separation of powers, the right to vote, civil rights, the multi-party system, but their [further] protection and radicalization* (Mouffe, 2018) (Ferrara, 2021; Raws, 1993).

Governing without *reasonable* principles. The case of the Socialist Party

The Socialist Party (here and after SP), as a left-wing Party, should prioritize the reduction of inequalities but register as a balance sheet of government a deepening of the poverty based on international reports[2]. Not to mention the mass emigration of educated people where, according to the Albanian Institute of Statistic (INSTAT), 53% of refugees have attended secondary and higher education in the last decade. According to the survey data, among those who left, 54% of them had a high school diploma, professional or general training, or a higher education diploma. 14% of emigrants in the period 2011-2019 attended university education. Data shows that of the people who emigrated alone and not with their families, 24,749 of them had a higher education degree and a doctorate. This number is higher because no emigrant family member lives in our country. For this reason, the INSTAT was unable to find the exact profile of the economic status, age, and education of the emigrated families in total, representing 50% of all emigrants who left during the period under review. (http://www.instat.gov.al/; Revista Monitor, 2020).

[2] The Economic Review's autumn report for Europe and Central Asia shows that the crisis caused by COVID-19 is increasing poverty, a consequence of rising unemployment. The World Bank predicts that moderate poverty - the share of the population living on less than $ 5.5 per person per day - will increase by about 5%. According to the bank's estimates, this indicator, which currently stands at 35.6%, should be around 41.5%. https://a2news.com/2020/10/07/paralajmerimi-i-bb-thellohet-varferia-415-e-popullsise-me-me-pak-se-55-dollo-ne-dite/ (Accessed on, 07.06.2021)

On the other hand, in the perspective of a Left government, which should focus on strengthening the state apparatus, a worrying phenomenon for the economic policies of the SP still is the Public-Private Partnership. Through PPPs, tens of millions of euros in Albanian taxes go to foreign investors, from tenders for concessions and incinerators to hospital services that hit a sizable part of the budget (www.reporter.al). Let us pause for a moment on the phenomenon of PPPs that characterized the politics of the SP in its government, both central and local, to convey to the reader a vision of the Albanian Left compared to the reasonable/most reasonable Rawlsian standard.

Over the past decade, governments in Albania have acted through the application of secret contracts with businesses or, in other words, 'confidential'. According to Balkan Investigative Reporting Network (here and after BIRN) (www.birn.eu.com and www.reporter.al), public authorities in Albania, including central and independent government institutions, have decided to keep 236 public procurements secret. From 2008 to 2018, there were 20 classified as 'confidential' contracts in the DP-SMI coalition period. While in the period 2013-2017 of the SP-SMI government and the Socialist Party government from 2018 onwards, there were 216 'confidential' contracts. This praxis reached its peak in 2018 with the 76th 'confidential' contract. These contracts are agreements settled in the name of liberalization, privatization, deregulation in the public service sector.

It should be clear to everyone that contracts of this type radically interfere in the life of every citizen and have negative consequences for the state budget, limiting competition between economic operators and generating added costs to taxpayers. Furthermore, the lack of public discussion and information on the content of these contracts is not only a restriction of law and democracy but eventually its cancellation despite the reasons behind it. The secret negotiations on these contracts are in the hands of the two levels of government, and some investors selected by them as the most 'suitable', who decide how Albania should be in the decades to come. Regardless of the content, this practice is still disturbing, and equally disturbing is the fact that a leftist government is applying it.

The reason for this secrecy is apparent. According to the Left, people are 'immature', so they can make caprice about the 'necessary' investments that the government decides by itself. Consequently, the people assumed infantile could organize violent demonstrations, and the support for the opposition groups that oppose such practice may rise. In short, people can create annoying situations that would damage the 'good order' of the services that arise from the PPPs. Therefore, it is better to put everyone in front of the *fait accompli*, justifying at the end that the 'financial impossibility of the state' requires us to act without wasting time to enjoy a better public service immediately.

Thus, Albania's current concern is not the *nanny* state entwined with regulation classically for a leftist government but the PPPs. Hobbes imagined the state as a monster in his definition, where everyone must give up their freedom to live in security and peace. People voluntarily should join the old Leviathan to avoid a greater evil, chaos, and violence against all. Today in Albania, the Leviathan is no longer the state but are PPPs. They use the state to secure 'confidential' deals, to strengthen further these interests to the detriment of the public interest. To conclude, in a nutshell, the problem is that no one has legitimated the new Leviathan because it creates opportunities and privileges for a few chosen and closes them for the rest of the population. The legitimacy has been taken from the people by a left-wing 'democratically' elected government

Democratization through Constitution. A novel solution for democratic consolidation

In countries where the liberal Constitution was adopted, it brought a variety of successes in various areas of life. On the one hand, the liberal model has fully realized the historical mission entrusted to consolidate democracy in a plurality of political systems that coincide with the constitutional experiences of Western Europe and those countries that have adopted the Anglo-Saxon cultural model. It can be said that the success of the liberal Constitution is accomplished in the political systems of a nation-state. Instead, it cannot be denied that the liberal model represented a reference point for the political systems of the Communist bloc - a permanent attempt by the latter to democratize and modernize its constitutional structures - after the fall of the regimes. However, in this second group of states, the success of liberal constitutionalism appears partial. The functions and attitudes of the liberal constitutional model, a common denominator, can be found for the two political orders considered.

According to Habermas, the liberal model can present itself as an instrument of resistance and reaction in the phases of political legitimation to the undemocratic myths and an agent of consolidation of democracy in the later stages. These phases coincided with the loss of authoritarianism in 1945, the construction of the welfare state, and the constitutional experiences of post-communist countries. This trajectory reveals the victory of democracy over autocracy, which is an event that, according to Habermas, is a *sine qua non* for those who have long not appreciated the universal spirit of this political enlightenment (Haberams (1998); Bermeo, 2016, pp. 5– 19; Berman, 2017, pp. 29 – 38)

The affirmation of the liberal Constitution itself is explained by a series of reasons, not reducible only to the difficulty of transplanting the liberal model into

ex authoritarian political systems, willing to accept only some basic principles, rejecting others. Through these considerations, it is easy to understand how some political systems are subjected to a double challenge, on the one hand, the solution of development problems and, on the other, the modernization of their institutional structure. The theories of transition challenge the phase of democratic and constitutional consolidation. (Stepan and Skach, 1993) In this sense, the image described by the political analysis is particularly motivating to highlight the indeterminacy of democratization processes. Therefore, in Huntington's words, 'every wave of democratization corresponds to a wave of setbacks, an insecure democratic system, or authoritarian regression' (Huntington, 1991, pp.17-20).

In Albania, the Constitution somehow is not considered a set of shared values and norms, thus ignoring its axiological content concerning the processes of democratic consolidation. The deficiency of constitutional ethos and an honest approach towards the Constitution as a fundamental instrument to guarantee stability, legitimacy, and continuity centered on common basic principles seems to be the leading cause of the fragility and weakness of the illiberal democracy of today's Albania (Cianetti, & Hanley, 2018, pp. 243-256; M⊘ller, J. 2008, pp. 555– 561; Çullhaj, 2019). This gap has led the Albanian political system to move to the category of *electoral democracy*, namely, a system that merely organizes periodic elections. With the political style of the SP, democracy has undergone a regression towards *pseudo-democracy* or *semi-democracy* characterized by strong authoritarian tendencies (Collier and Levitsky, 1997). It is worth mentioning that governing for two electoral terms without establishing a Constitutional Court makes sense regarding the form of democracy the SP created.

The nature of the constitutional transition processes is an added precondition for the consolidation of democracy. Suppose this factor is ignored, as in the Albanian case. In this scenario, democratic stagnation is guaranteed or, the highest success that can be achieved is an empty democracy, the same as today's political model. Thanks to the political style of the SP, the constitutional order in Albania and the democratic system are in decline. The latter canceled progress in the constitutional and political sense, proposing a different concept of democracy, in stark contrast to the ethos of liberal democracy. These elements, the illiberalism of today's system, and constitutional stagnation cannot be considered contingent and linked to the difficulties met by the SP in solving development problems and modernizing the institutional setup.

Since becoming a dominant majority, the SP has slowly begun to merge the essence of the Constitution with its political vision, creating a relationship of dependence between the degree of compliance with the Constitution and the electoral result. Owning the government, it realized that those in power could

very well exercise this activity without the constitutional control that the latter's spirit implies. The importance of the Constitutional Court, the independence of the judiciary, or popular referendums have remained interesting topics only for classes and academic conferences. In practice, they are annoying obstacles for those in power, and they want to remain as such. Consequently, it is not the government that has to adapt to the needs of the Constitution, but it is the Constitution that must adapt to the needs of the government. If SP prefers this political style, there is no reason to complicate his enterprise with constitutional limitations. It means that it is not the Constitution made by the people for the people, to the people, but the Constitution interpreted in such a way that the SP can continue to remain a majority in Parliament.

It is said that democracy's sincerity is manifested in the loyalty with which the ruling Party is ready to give up control, respecting the rules of the game of democracy, and above all, knowing how to lose. Nevertheless, democracy exhausts when the Party that fought to uphold democratic regulations to come to power is willing to break them to stay in power. We want to emphasize that what is happening today results from a politics without principles, much less left-wing. Justice reform insisted on separating the judiciary from political power, yet, thanks to alliances, the separation of the career in the new Court from political influences was not achieved. This phenomenon will continue to make the judiciary dependent on the Executive and violate the Constitution's spirit. Political corruption will continue to triumph. Whoever is and will be an 'executive controller' has well understood that the Constitution creates an annoying web of rules and nothing more (Khaitan, 2019).

As for the fact of the decision-making process of the SP, which acted far from conforming to the more reasonable Rawls standard, for illustration, we come to the aid of the last two decisions taken by the Constitutional Court and the Administrative Court. With these decisions, the Court intervened in the country's legislation, curbing the will of the Executive, which extended its power beyond the limits set by the Constitution and applicable laws. With the Court's decision, the principle of separation of powers was simultaneously respected and established legal limits to the Executive's activity. However, what is the problem? Let us analyze them in a single file?

The amendments made in 2017 to article 262 of the Albanian Penal Code stated that 'The organization of gatherings and events of people in squares and places of public crossing, without having obtained authorization according to special provisions, or when the organizers violate the conditions established in the authorization request, constitutes a crime punishable with a fine or imprisonment of up to one year'. The essence of this change, classifying the protest as punishable, is meant to curb protests and public organizations, which are the

essence of a functioning democracy. In January 2020, the Shkoder Court of Appeal asked the Constitutional Court to declare the changes to the Criminal Code unconstitutional, making protests organized without authorization a criminal offense. With the sentence of 04.05.2021, the Constitutional Court repeals the first paragraph of article 262, which states; 'Without the prior authorization of the competent body according to special provisions' of the Penal Code of the Republic of Albania as it is incompatible with articles 17, paragraph 1 and Article 47 of the Constitution of the Republic of Albania'. The decision of the Court is a positive sign to keep the Executive within the constitutional framework. If the Constitutional Court had not been 'frozen', but its reform had been planned at the end of the reform and not at the beginning of it, as some constitutionalists of the country argued, we would have another political dynamic. Freedoms and political rights, important to Rawls, would have a more outstanding guarantee of being respected even under the pressure of an Executive that acts without a self-limitation of principle.

The second case relates to the alienation of the property of the Tirana Botanical Garden. A bit of history. The Tirana Botanical Garden was built in 1964 and occupied an area of fifteen hectares of vegetation and greenery, found near the Artificial Lake of Tirana. Completed in 1971, the Garden has a phytogeographic collection of cultural and scientific value and is part of the University of Tirana. The Garden is used for educational purposes, a tourist attraction, and is considered a small green paradise and the favorite green place in Tirana. However, the Council of Ministers, on 17.07.2019, decided that Botanical Garden would become the property of the Municipality of Tirana. The decree issued that the Botanical Garden becomes the property of the Municipality of the Capital.

The Municipality of Tirana is denied by law from changing the destination of the assets that are not in its ownership; it remained unclear which activity this space would have been used, an area so rare in the capital. The public's reaction was almost insignificant, except for a part of the students, professors, and employees of the Faculty of Natural Science (www.exit.al); no significant reactions were recorded for this event due to law 262 in the penal code. The community begins to self-censor its sensitivity, especially to post-material values such as environmentalism or the violation of the principles of democracy or liberalism. The only official reaction came from the former Rector of the University of Tirana, Mynyr Koni. He considered the government's decision to transfer the Botanical Garden from the University of Tirana to the Municipality of Tirana as unfair, expressing his opposition to the decree because it violates the autonomy of the University of Tirana and is in total contradiction with the Higher Education Law 80/2015. On November 15 - 2019, the Rector Koni filed a lawsuit with the Administrative Court of Appeal against the decision, which

transferred authority to the First-Degree Administrative Court 232/5000 (www.exit.al). However, justified from a Rawlsian perspective, no conditions have been met to place this decision in public debate.

Furthermore, it does not meet any criteria considered more reasonable for us. However, on 07.05.2021, the Administrative Court annulled the government's decision and ordered the transfer of the Botanical Garden to the Municipality of Tirana, which will continue to be owned by the University. Although the final argumentation has not yet emerged from the competent courts, it should be noted that it is still the law that intervenes to place limits on the unlimited exercise of power for any institution that operates within the limits of law and justice. These two decisions are the epitome of a functioning system of liberal democracy and perhaps the only tool left for society to resist any arbitrary and irrational power.

Finally, we close this section with the analysis of a disturbing phenomenon in the world today, namely the detachment of liberal principles from democratic processes. Twenty years ago, Fareed Zakaria wrote an essay in Foreign Affairs magazine entitled *'The Rise of Illiberal Democracy* (Zakaria, 2003). According to him, democracy is progressing, but not in its best form. At that time, he was writing; 'From Peru to the Palestinian Authority, from Sierra Leone to Slovakia, from Pakistan to the Philippines, we are witnessing the rise of a disturbing phenomenon in international life: illiberal democracy'. His idea was to protect the individual from the abuses of a tyrant and the abuses of democratic majorities. Zakaria made an interesting prediction about this growing phenomenon for the alienation of the nature of democracy from within (Çullhaj, 2017). According to him, electoral democracy as a means of government choice in post-communist countries does not necessarily coexist peacefully with liberalism if the latter sets constitutional and institutional boundaries to democracy.

Today's problem with illiberal governments is that they came to power legitimately and not by force, especially in post-communist countries, where the Constitution and institutions have stabilized. However, this was just a time of democracy and not an ethos ingrained in these societies. In conclusion, according to Freedom House (www.freedomhouse.org), in 2018, transition nations experienced the most significant decline in the 23-year history of this project's founding: 19 out of 29 countries fell in their overall democracy ratings. For two consecutive years, there have been more established authoritarian regimes than established democracies. Viktor Orban considers liberal democracy as one of the government options among others, adding that, according to him, this system is incapable of meeting the government's goals as a protector and guarantor of the nation's interests.

Consequently, Orban favors 'illiberal democracy' in the example of countries like Turkey or China. Trump's coming to power confirmed Orban's approach (Kreko, & Enyedi, 2018, pp. 39-51). According to Nate Schenkkan (www.freedomhouse.org), 'illiberalism' is not a derogatory word for 'policies we disagree with', but it is an ideological position that rejects the need for independent institutions as control over the government. It should be noted that the trajectory is different in countries with established democracies and different in countries with fragile democracies.

Conclusion

According to Levitski and Ziblat (2018), many observers in the USA find comfort in the American Constitution, which was designed precisely to discourage and dissuade demagogues. Two basic norms had kept the balance of control in the United States before Donald Trump took power. The first one is mutual *tolerance*, which means that competing parties accept each other as legitimate rivals. The other is self-control, or the idea that politicians should exercise *forbearance* to set up their institutional prerogatives. In summary, the authors point out that Donald Trump did not foresee the collapse of American democracy; what remained of most concern to them was the political legacy he would leave behind.

Unlike the United States, a cultural clash is underway in European Union between liberal and illiberal states. Illiberal states cause a ripple effect not only upon their internal politics, transforming institutions into dysfunctional ones, but this institutional dysfunction is also reflected at the European level, putting the correct functioning of the system in difficulty. Consequently, an immediate response from Brussels is needed to limit this phenomenon, empirically and in the abstract, as a guarantor of the values of liberal democracy.

As for countries with fragile democracies such as post-communist ones, the task of dealing with the phenomenon of illiberalism appears even more challenging. The schism that is taking place in these countries, between democracy and liberalism, shows how difficult it is to build a liberal ethos. According to Darhebdorf, after the 1989 revolution, founding a civil society with a liberal ethos would take sixty years. Of course, this statement is more than correct in today's Albania. The essential condition is that we must never and under any circumstances agree with this type of approach as commonly happens in Albania. Instrumentally, some public individuals position themselves as supporters of the phenomenon of illiberalism. This attitude is destructive. Because when liberal values deteriorate, an added vigilance is needed since it

is the most critical moment in which authoritarianism appears and must not be tolerated but must be kept under constant pressure. Liberal democracy has positioned itself as the future political horizon and ought to be defended with determination.

In this article, we analyzed Rawls' principle of the most *reasonable*. We then applied it to the political style of the Albanian Left represented by the Socialist Party and the principles behind its politics. From the above analysis, the Left followed the principle *fiat justicia ne pereat mundus*; blind justice applied without mediation. Government in both levels effectively functions as autocracies as long as the Rawlsian principle of the *most reasonable for us* has never been considered, let alone implemented. Regarding the decision-making process of the SP, which acted far from conforming to the Rawls standard, reasonable/most reasonable, by way of example, we have come to analyze two recent rulings of the Constitutional Court and the Administrative Court. If the Constitutional Court had not been suspended, meaning its reformation must have been planned at the end of the reform and not at the beginning, as some constitutionalists of the country argued, we would have had another political dynamic. The freedoms and political rights so crucial to Rawls would have a more outstanding guarantee of being respected even under an executive's pressure that acts without a self-limitation of principle.

Additionally, we tried to answer the question that today Albania is classified as Post-democracy, Post-political, or enfeeble democracy? Jointly these diagnoses are revealing themselves more than ever in today's Albania. Financial groups, in close collaboration with political power, already control everything in the country. People's awareness of their political, constitutional rights earned over the years has been fading away.

Finally, the analysis focused on the relationship between the degree of respect for constitutional principles and the political style of the SP government. The emphasis here is that what is happening today is the consequence of a politics without principles. The justice reform insisted on separating the judiciary from political power, yet, thanks to alliances, the separation of the career in the new judiciary from political influences was not achieved. This phenomenon will continue to make the judiciary dependent on the Executive and will continue to violate the spirit of the Constitution. Political corruption will continue to prevail.

In short, what is the solution? As Chantal Mouffe points out, it is necessary to create a new hegemony that allows the radicalization of democracy. Not by moving away from the liberal democratic system, but by building a people and combining different resistance battles in an equal relationship of differences.

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Holding "free and unfair elections": the electoral containment strategies used by incumbent political parties in Albania to secure their grip on power

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Abstract

The purpose of this article is to highlight the clientelistic strategies and informal practices that the ruling political parties in Albania use during the elections to ensure an unfair advantage in their favour over the opposition challengers. One of the main characteristics of the political developments of the transition period in Albania since 1991 has been the flourishing of informal practices and clientelist networks of political parties within state structures, which has produced an extreme politicization of these

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institutions. These strategies that in general terms we label as "clientelistic" and that have been used to a large extent by the incumbent political parties have had a direct negative impact on the conduct of free and fair elections in Albania by distorting their main goal: to reflect the will of the people. This is because such clientelist strategies, together with the informal practices/mechanisms that accompany them, have influenced the creation of an unlevelled playing field, and have produced a hyper-incumbency advantage in the electoral contests between political parties in Albania. The case of the recent elections held in Albania on 25 April 2021 will be the empirical case of this study, in which are evidenced the electoral containment strategies and practices that the ruling political party used to provide an unfair advantage in its favour and to secure its grip on power.

Key words: *Democratic Elections, Unfairness, Clientelistic Strategy, Ruling Parties, Party Patronage, Incumbency Advantage, Unlevelled Playing Field.*

I. Introduction

Thirty years ago, at the peak of what is known as the "third wave" of democratization and where different authoritarian/totalitarian regimes were overthrown one after another, there was a strong teleological tendency in the literature that was best reflected by the transition paradigm (O'Donnell 1996) that the way to democracy was now open and that the new regimes that were holding competitive elections in their environments would gradually move towards the deepening and consolidation of their democracy. As Rose and Shin have pointed out, various studies at the peak of the third wave of democratization went so far as to treat the institutionalization of electoral competition as sufficient to consolidate democracy (Rose & Shin, 2001: 332). However, what really happened in many post-communist countries was that the panorama of political developments was not so enthusiastic, and the transformations of their regimes did not lead to the consolidation and well-functioning of democracy in their environments, despite the expectations of the different authors within the paradigm of transition. One of the main characteristics of many of the new post-communist regimes, of which Albania is also a part, was the holding of pluralistic elections between different political parties, but which were always associated with problems in all three phases of the electoral process (before, on and after the polling day). To distinguish some of the tactics and mechanisms that incumbent political parties have used in their "electoral containment strategies" to secure an advantage over their competitors in opposition, they range from the authoritarian control and selective application of "rules of the game" to the detriment of their opposition challengers, the violation of the civil and political

rights of citizens, the effective restriction of their right to choose freely between political options, and to the forms of intimidation and corruption of voters related to vote-buying practices and providing various tempting incentives to secure their votes. Andreas Schedler warned about these electoral developments in the new third-wave democracies, "the danger of forgetting that the modern history of representative elections is a tale of authoritarian manipulations as much as it is a saga of democratic triumphs" (2002: 36).

Regarding the crucial importance of the elections in the new post-communist regimes, where their outcome also determined the holder of power in a fierce competition between the parties where typically "the winner takes it all", Elklit and Svensson expressed that "it is not surprising that politicians and voters in formerly colonized states or nondemocratic countries – as well as individuals, countries and international organizations that subscribe to democratic principles – take a great interest in elections and referendums. Yet this has contributed to the development of a distorted picture of the process of the transition: the poll itself has become the focus of attention…" (1997: 34). In this way, the ruling political parties in post-communist countries, and especially in Albania, which also constitutes the case study of this paper, have increasingly developed clientelistic strategies and informal practices within state structures and institutions, to provide unfair advantages over their opposition challengers in the electoral competitions that have taken place. In doing so, they have distorted the development of regular electoral processes in their environments by creating an unlevelled playing field and producing an unfair hyper-incumbency advantage in the electoral contests between the political parties.

Identifying and emphasizing clientelistic strategies and informal practices evolved within state structures and institutions by the ruling political parties and actors in Albania to ensure institutional and resources advantage in their favor in the elections will be the main goal of this study. First, in the next (II) section, we provide the theoretical and normative considerations based on relevant literature of when elections can be considered free and fair, and then (in Section III) explain some of the contingent related strategies of when democratic norms in the conducting of elections are violated by the political incumbents.

II. Theoretical and Normative Considerations on "Free and Fair" Dimensions of Elections

Among the many contentions observed in the literature between different authors regarding the definition of democracy, a certain consensus can be evidenced in their agreement that elections are its most essential component.

Thus, for them, free, competitive, and fair elections are the *conditio sine qua non* of a well-functioning democracy and its defining component. In this line, Samuel Huntington, following the Schumpeterian tradition, defines democracy "[as a political system that exists] to the extent that its most powerful collective decision makers are selected through fair, honest, and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote" (1991: 7). Similarly, Di Palma argues that democracy is "premised ... on free and fair suffrage in a context of civil liberties, on competitive parties, on the selection of alternative candidates for office, and on the presence of political institutions that regulate and guarantee the roles of government and opposition" (1990: 16).

However, what should be emphasized about elections, even in the case when they are conducted periodically and with reasonable competitiveness, is that they are not always classified as democratic. Neither Andreas Schedler has pointed out in relation to this, "democracy requires elections, but not just any kind of elections. The idea of democratic self-government is incompatible with electoral farces. In the common phrasing, elections must be "free and fair" in order to pass as democratic" (2002: 38). In this sense, a set of norms and principles must exist and must be applied in all the circumstances so that we can classify the elections held in a specific country as democratic, and they must offer to the free, equal, and unhindered citizens the opportunity of effective choice to elect their future decision makers.

These above definitions of democracy given by Huntington and Di Palma are both focused on centrality of elections, to which they add some surrounding conditions and prerequisites in order to distinguish a regime as democratic (or polyarchy) or not. Regarding the surrounding conditions and prerequisites necessary for elections to be classified as democratic, they have to do with *freedom, fairness, and competitiveness as* critical dimensions to fulfill democratic standards. Following Robert A. Dahl and Guillermo O'Donnell, the democratic ideal of elections requires that: all citizens enjoy "unimpaired opportunities" to formulate their political preferences; they are "free" in order to make real choices, in that citizens are not coerced when making their voting decisions and when voting; to "signify" them to one another; and to have them "weighed equally" in public decision making, in that each vote should count equally, and be counted as such without fraud, irrespective of the social position, party affiliation, or other qualifications of each one (Dahl 1971: 2; O'Donnell 2001: 12-13).

Also, further specifications regarding the dimensions of "free" and "fair" of democratic elections are given by Elklit and Svensson, which also outline certain evaluation criteria for each of their respective indicators. Thus, regarding the dimensions of "free" and "fair" elections, these authors define them as follows:

"*Freedom*, as Dahl notes, contrasts with coercion. Freedom entails the right and the opportunity to choose one thing over another. Coercion implies the absence of choice, either formally or in reality; either all options but one are disallowed, or certain choices would have negative consequences for one's own family's safety, welfare, or dignity. *Fairness* means impartiality. The opposite of fairness is unequal treatment of equals, whereby some people (or groups) are given some unreasonable advantages. Thus, fairness involves both *regularity* (the unbiased application of rules) and *reasonableness* (the not-too-unequal distribution of relevant resources among competitors" (Elklit & Svensson 1997: 35).

Thus, *freedom* (of voters) is a vital dimension of democratic elections as it determines the possibility of citizens' participation and their effective choice for the political parties/candidates in the contest in the absence of various constraints or impediments. As Schedler points out in this regard, "democratic elections are mechanisms of social choice under conditions of freedom and equality" (2002: 39). Likewise, on the other hand, the dimension of fairness is equally crucial for the classification of elections as democratic as it has to do with the equal opportunities offered to the voters to make real choices, but also to the political competitors in the contest to be able to compete on equal terms. "In competitive elections, the opportunities available to various groups are especially important. There should be no question of any group or political party having a greater chance of winning the election than any other group… the notion of "levelling the playing field" epitomizes this aspect of "fairness". (Elklit & Svensson 1997: 36).

Building on these two main dimensions ("free" and "fair") of democratic elections, Elklit & Svensson also compile a list of evaluation criteria with the respective indicators [of these two dimensions], so that an election assessment (or the evidenced cases of their violation) can be done for each of them. The checklist given by these authors and presented below in Table 1, as they point out, is not exhaustive but represents a schematic outline of the assessment process (Elklit & Svensson 1997: 36) of when elections can be considered "free" and "fair".

TABLE 1: Checklist for Election Assessment Dimensions

Time Period	"Free"	"Fair"
Before Polling Day	- Freedom of movement - Freedom of speech (for candidates, the media, the voters and others) - Freedom of assembly - Freedom of association - Freedom from fear in connection with the election and the electoral campaign - Absence of impediments to standing for election (for both political parties and independent candidates) - Equal and universal suffrage	- A transparent electoral process - An election act and an electoral system that grant no special privileges to any political party or social group - Absence of impediments to inclusion in the electoral register - Establishment of an independent and impartial election commission - Impartial treatment of candidates by the police, the army, and the courts of law - Equal opportunities for political parties and independent candidates to stand for the election - Impartial voter-education programs - An orderly election campaign (observance of a code of conduct) - Equal access to publicly controlled media - Impartial allotment of public funds to political parties (if relevant) - No misuse of government facilities for campaign purposes.
On Polling Day	- Opportunity to participate in the election	- Access to all polling stations for representatives of the political parties, accredited local and international election observers, and the media - Secrecy of the ballot - Absence of intimidation of voters - Effective design of ballot papers - Proper ballot boxes - Impartial assistance of voters (if necessary) - Proper counting procedures - Proper treatment of void ballot papers - Proper precautionary measures when transporting election materials - Impartial protection of polling stations.
After Polling Day	- Legal possibilities of complaint	- Official and expeditious announcement of election results - Impartial treatment of any election complaints - Impartial reports on the election results by the media - Acceptance of the election results by everyone involved.

Source: Elklit & Svensson 1997: 37.

Taken together, these criteria or attributes of "free" and "fair" dimensions constitute the possibility of the effective choice of citizens in democratic elections. But, on the other hand, in practice, there is also the possibility that one or more of these criteria are violated through different strategies/tactics that political incumbents use to gain (an unfair) advantage over their opposition challengers. To best illustrate the *effective democratic choice* of citizens and when an electoral process (from its beginning during the election campaign to its end after the

counting of votes and the announcement of the winners) can be considered as free and fair, Andreas Schedler uses the metaphor of the chain: taken "together, these conditions form a metaphorical chain which, like a real chain, holds together only so long as each of its links remains whole and unbroken… If the chain of democratic choice is broken anywhere [in the checklist items], elections become not less democratic but undemocratic" (Schedler 2002: 40-41). The normative premises and conditions (listed in the specific indicators in Table 1) make sense if they are in function of complementing and supporting each other. But in practice, as we will argue in the next section, incumbents' parties or authoritarian elites often choose different contingent strategies/tactics to violate [some] of democratic indicators of elections listed above, which ultimately aim to give them an unfair advantage over opposition challengers in the contest.

III. Contingent Strategies and Tactics Used by Incumbents in Violation of Norms of Democratic Elections

The list of potential strategies and tactics that can be pursued by incumbent political parties to violate one or more of the indicators in the above (Table 1) checklist can take different proportions in the restriction of the effective democratic choice of citizens in elections, therefore an elaboration of them is necessary to be given here. "Rulers may choose a number of tactics to help them carve the democratic heart out of electoral contest" (Schedler 2002: 41-42).

First, a strategy that can be pursued by authoritarian rulers in certain settings to limit the "risk" that may come to them from the elections, is by circumscribing the scope of elective office through the use of *reserved positions* (e.g., enabling certain public authority positions to be elected and some others not), or by establishing *reserved domains*, which limits or cut off the effective decision-making power (Schedler 2002: 42) by authorities that people have elected. Such strategies would automatically classify elections as undemocratic as they place severe restrictions on the sovereignty of the people in electing their decision-making authorities.

The second strategy of electoral containment that can be pursued by authoritarian rulers and that affects the creation of an unlevelled playing field between the political parties in the contest has to do with the *possible exclusion or the fragmentation of opposition forces* in order to have an unfair advantage. As Schedler expressed concerning this strategy that violates the norms of democratic elections, often "ruling parties' hand-tailor legal instruments that permit them to exclude opponents from electoral competition" (2002: 42). This strategy that restricts the possibility and access to the electoral arena of opposition forces [even by fragmenting their participation through specific electoral laws/provisions) is

unfair in that it creates an unlevelled playing field between the political parties in the electoral contest (as listed above in Table 1, in the evaluation criteria of the *"fair"* dimension before the polling day).

A third strategy, which can be followed by the ruling political parties in their electoral containment strategy, and thus effectively limiting the opportunities of the opposition parties to compete on equal terms in the democratic electoral contest, has to do essentially with the *unequal and dishonest access* that they enjoy in the state's abundant resources and the media. In this way, by not guaranteeing equal opportunities for political parties and independent candidates, as well as by misusing the government facilities and the state budget for campaign purposes [of the ruling party], the conditions of fairness in the electoral race are directly violated. "This unfairness has to do with money and the media. Usually, electoral authoritarians enjoy ample access to public funds and favorable public exposure. The whole apparatus of the state—often including government-run media—is at their beck and call, and they often can harass or intimidate privately owned media organs into ignoring opposition candidates (Schedler 2002: 43).

In another strategy to limit the possible "surprises" that may come from the uncertain outcome of elections, political incumbents may also *restrict through practical and informal ways the citizen's suffrage*, which is often done through subtler ways for the purpose of gaining advantages over oppositional forces. These practical and informal ways of restricting the right to vote of citizens may include control mechanisms that can be imposed on them, collecting their ID Cards to prevent them from going to the polls etc.

Another strategy of violating the democratic norms of holding elections, also related to the previous one, is through the exercise of various *forms of pressure and coercion on voters* in expressing their political preferences. Regarding the infringement of this important norm of democratic elections, the strategies used by the political incumbents range from the intimidation of voters, the provision of tempting incentives through party patronage, the clientelistic vote-buying strategy, etc., that ultimately distort the electoral competition and equal opportunities for political parties in the contest.

Finally, another potential strategy [also not uncommon] for violating the attributes and norms of democratic elections, and usually pursued by incumbent parties after the polling day, has to do with the *"redistributive" election management.* Schedler states in this regard that, "rather than devising a minimally neutral framework of competition, they [political incumbents] impose strongly "redistributive" rules to keep an eventual loss of votes from turning into a loss of power (2002: 45). In this strategy, which has to do essentially with administration and management of the electoral process, violations of democratic election norms by incumbent political parties can range from fraudulent practices and manipulation of their outcome by alienating the people's will, to politicized

administration of the electoral process and up to the treatment not impartial of election complaints by the relevant institutions.

In practice, it often happens that authoritarian/political incumbents pick one or more of these tactics/practices in violating the normative premises of democratic elections to ensure an electoral containment strategy, and thus, also limiting the opposition's possibilities to win the elections. As we will show in the section, where the case of election conduct in Albania is taken as a case study, different strategies/tactics of electoral containment followed by the incumbent political party have influenced the creation of an unlevelled playing field and have produced a hyper-incumbency [unfair] advantage over opposition competitors in the electoral contest.

IV. Free and Unfair Elections: The Electoral Containment Strategies Used by Incumbent Parties in Albania to Hamper Political Power Rotations

One of the main features that have characterized the political developments and the very defective nature of the democratic system in post-communist Albania since 1992, has been the conduct of very problematic elections, which has not provided at all free, equal, and fair conditions for the political parties in the electoral contests. Elections in Albania have always been contested by the oppositional political parties regarding their irregularities, unfairness, fraudulent practices, and the extreme politicization that accompanies the entire process of their conduct. However, if there is a feature that could be distinguished in the conducting of various electoral processes in Albania since the founding elections in 1992 until today is that there has been a gradual shift in the electoral containment strategies pursued by ruling parties to make it more difficult the possibility of their overthrow from power by oppositional political forces. Thus, if in the 1990s these strategies of electoral containment could be classified as authoritarian (by violating the attributes of freedom dimension of elections such as the impediments to standing for election by political parties and independent candidates, infringing the civil and political freedoms of citizens, and by fraudulent and manipulative practices by the incumbents), in our present day, the electoral containment strategies pursued by ruling parties have gone further towards the use of more subtle informal (mainly clientelistic) practices and mechanisms that guarantee them an institutional and resources advantage in their favor over the opposition competitors. Thus, through these clientelistic strategies and informal mechanisms are being violated increasingly the indicators/attributes of the *fairness* dimension of democratic elections, by creating in this way, an unlevelled playing field and a hyper-incumbency

advantage, and by effectively limiting the opportunities for opposition parties to compete on equal terms to win the elections. Now, let's move on to the explanation of some of these strategies (used by the incumbent political party in Albania in the case of the last parliamentary election held on 25 April 2021) that violated the attributes of fairness of the democratic election.

One of the main strategies pursued by the incumbent Socialist Party for securing votes and providing an unfair advantage over the opposition political parties has been the use of *party patronage* for electoral purposes. In fact, the use of party patronage has been a long-standing phenomenon of the Albanian political scene, with different political parties across time that have used state positions as spoils to reward their loyalists. "From the very start of regime change, Albanian political parties have treated the state as a piece of property to be distributed among respective militants and loyalists without any consideration of professional credentials or requirements for the job. The recruitment of political militants and loyalists in key state institutions – privatization boards, public companies, the judiciary, security services, public administration, constitutionally independent entities, and even the academic system – was instrumental in controlling the spoils of the state" (Elbasani 2017: 27-28). However, the strategy of party patronage has become more sophisticated in the present day, with Albanian parties increasingly using it not only to reward their "loyalists" but also as a way to secure votes from the floating parts of the electorate. Thus, the ruling Socialist Party since 2013 in Albania, used the almost absolute dominance it had over the central public administration (and the local one at the same time, where it governs in 59 out of 61 Municipalities of the country) with about 183,500 employees as an effective way to ensure unfair advantage in obtaining votes from the electorate. In this direction, also various [informal] mechanisms of control, pressure, and even intimidation have been developed for public employees in order to secure votes for the ruling party. As stressed in a Monitoring Report of Elections of 25 April, "Public administration employees at the local level have submitted allegations to KRIIK observers in which they claim to have been subject of pressure to engage in the campaign, in the form of active participation or to secure electors for the ruling political force[3]. Such allegations also include blackmail or intimidation for dismissal or non-benefit of social services" (KRIIK 2021: 27). Likewise, the employment in the public administration by the ruling party was increasing with the approach of the election date as a way to entice the electorate to vote in its favor. Public employment increased significantly in the lead up to the elections, with the Albanian government (led by the Socialists) which authorized exclusively an

[3] Also, in ODIHR Final Report on Elections of 25 April 2001, there are findings on attempts that many civil servants, a group vulnerable to pressure, were encouraged to vote for the ruling party (OSCE/ ODIHR 2021: 16).

additional of 2,472 positions in the public sector (on 24 December 2020), just one day before the entry into force of legal moratorium on the authorization of new employments (OSCE / ODIHR 2021: 16), while about 11,000 new positions in the administration were added in the period just six months before the elections.

Another strategy in violating the attributes of fairness of the democratic election by the ruling party has been through *the misuse of state resources and capacities.* This strategy of misuse of the government facilities and state budget to gain electoral advantage by the incumbent party directly undermined the equal opportunities of (opposition) political parties to stand for the election and their ability to compete in a leveled playing field. As noted in executive summary of OSCE/ODIHR final report on elections of 25 April 2021 in Albania: "The ruling party derived significant advantage from its incumbency, including through its control of local administrations and from the misuse of administrative resources. This was amplified by positive coverage of state institutions in the media" (OSCE/ ODIHR 2021: 1). Regarding this strategy, the ruling [Socialist] party used several ways (by misusing state resources) in attempts to influence the vote by providing different incentives and enticements for the citizens. First, in this regard, we can mention the earthquake compensation funds allocated by the government for the affected citizens precisely during the electoral campaign period. Nearly half of this compensation fund allocated by the government (about 70 million Euros) to the 11 Municipalities[4] and then to the affected citizens, were distributed precisely one month before the election date of 25 April 2021, within the limits of what the Electoral Code considered as the start of the election campaign. In this way, the incumbent Socialist Party had the opportunity to control the distribution of earthquake compensation funds "effectively" and "thoroughly"" as an incentive to provide an electoral advantage. Secondly, another practice used to provide a (clientelistic) incentive in order to influence the citizen's vote has been through the distribution of issuance of permits validating illegal construction during the time of the pre-electoral campaign, something that the Albanian Electoral Code also prohibited. This legal norm though openly contradicted the legal framework in force[5], did not prevented the officials [of the Socialist Party who directs the agency] from distributing over 6300 legalization permits validating illegal construction of citizens during the months of the pre-electoral

[4] All of 11 Municipalities (Tirane, Durres, Kruje, Kamez, Kurbin, Shijak, Vore, Kavaje, Rrogozhine, Mirdite, Lezhe) where the funds were distributed, were led by the Socialist Mayors and Councilors because of the boycott of the local elections of 30th June 2019 by the main opposition parties.

[5] Decision No. 9 of the Regulator Commission (CEC) provides that in the four months prior to election day, prohibited activities include the distribution of permits validating illegal construction, registration of property titles, use in the election campaign of state resources, use of pre-university school students, employment or dismissal of staff of public institutions; furthermore, there should be no acts providing the increase of wages, pensions, financial or social support, reduction or abolition of taxes, waving of fines/taxes, or privatization (Cited in OSCE/ODIHR 2021: 15).

campaign to ensure electoral advantage. Third, in the frame of the misuse of state resources and capacities, the Albanian government led by the Socialists also intensively used the vaccination program as a way to gain electoral advantage by positive coverage of Ministers and the Prime Minister. In this regard, as stressed in a Monitoring Report of Elections, "the vaccination campaign was used massively in function of the electoral campaign, not being divided in nature as an institutional campaign, as an obligation of health institutions and that of the government of the Albanian state to vaccinate and ensure the health of the population" (KRIIK 2021: 27). Thus, the dividing line between the work of public institutions and the campaign activities of the ruling party was blurred again by misusing administrative resources and state institutional activity in order to gain an electoral advantage over other opposition parties.

Other strategies used by the ruling party in Albania in violation of the attributes of the fairness dimension in democratic elections have to do with *unequal access to the media and the non-transparent financing of the election campaign.* In this regard, the greatest (positive) media coverage that the ruling Socialist Party enjoyed during the electoral campaign period in front of the opposition competitors also contradicted the legal criteria set out in the Albanian Electoral Code, by thus violating the equal opportunities for political parties and independent candidates to stand for the elections. Thus, in the findings of a Monitoring Report of Elections of 25 April 2021, it is stated that: "In the three weekly reports published by AMA for the period March 26-19 April 2021 in relation to this monitoring, it was noted that the airtime given to the ruling Socialist Party in news broadcasts, political shows and live broadcasts is higher than that given to the Democratic Party… it is noticed that the main televisions in the country, private national, which cover a large part of audience of the country, have devoted more television time to the Socialist Party in their news broadcasts than the Democratic Party. While the coverage for the SMI and SD parties remains under the airtime defined by the Electoral Code. In this report, it is noticed that all televisions have not given the defined space to any of these parties" (KRIIK 2021: 33-34). Also, in this report was noted even that there is an imbalance in the reporting of news editions [of political parties, favoring the incumbent Socialist Party and its officials like the Prime Minister, Ministers on political news coverage] on Albanian Public Radio and Television, which has a primary legal obligation to be balanced (KRIIK 2021: 31; OSCE/ODIHR 2021: 20-21). An imbalance in the media coverage of the political activities of political parties that violate the attribute of equal access in the publicly controlled media and that demonstrates again the incumbency advantage and the unlevelled playing field in which the electoral contest takes place in Albania.

Quite problematic is even the "dark" financing of electoral campaigns in Albania, which also violates the principle of equal opportunities of political

parties to stand for the elections and ultimately distorts the fairness conditions of electoral contests. Thus, although the Law on Political Parties in Albania and the decisions of the Regulatory Commission (CEC) require that political parties must submit their campaign donations and spending records within 60 days after the election (by also placing spending limits on their campaign), transparency regarding activities and the financial expenses of the parties during the campaign can be said to have been non-existent, reducing in this way "the possibility of voters to make an informed choice based on knowledge of the sources of campaign funds" (OSCE/ODIHR 2021: 18). Political parties in Albania, especially the ruling party which enjoys even more funding opportunities (informally or/ and illegally) by the "strong groups" in the electoral districts (Manjani 2017) and by business companies, have never reported accurate data on their real incomes and real costs that they spend during the campaign period, thus hindering transparency and distorting the election contest by playing unfairly. This was also stressed by the monitoring report on elections of 25 April 2021 in Albania: "the shadow campaign continues to be a very disturbing phenomenon and one of the ways to hide the expenditure of the election campaign" (KRIIK 2021: 31); but also, by the OSCE/ODIHR Mission final report in which is emphasized the need that "consideration should be given to requiring contestants to disclose their campaign incomes and expenditures before election day" (2021: 18).

Lastly, but not in terms of its significance, another strategy of electoral content pursued by the incumbent political party in the elections of 25 April 2021, and which directly violates the attributes and normative premises of the free choice of citizens in democratic elections, has to do with *clientelism and voter corruption through vote-buying practice.* The "control" of elections through the clientelistic practice of vote-buying, but also by various incentives and intimidation forms towards citizens, clearly has serious implications for the unfairness of the conditions in which the electoral contest between political parties takes place. This because, it distorts the will of the citizens in democratic elections and violates the equal opportunities that political parties have to fight for their votes giving a hyper advantage to the incumbent political party, which has much more access to resources and money for buying the votes, or for the distribution of jobs or other spoils of the state. This clientelist strategy is somewhat similar and overlaps to some extent with the strategy of the misuse of government resources and capacities for electoral purposes by the ruling party, but it should be noted that the financial resources that a party has (especially the incumbent one, which enjoys even more ties with "strong groups", the business, etc.) can be much more enormous and undeclared, and in this way can be made available for the vote-buying practices. Regarding this clientelistic vote-buying strategy that the incumbent Socialist Party (especially, but not the only party) used in the last parliamentary elections in Albania to have an

(unfair) electoral advantage and to make it much more difficult the political power rotations, there were many reports in the Election Monitoring Reports in Albania, but also from the high number of denunciations that were made public by the media (despite the great difficulties of evidencing the vote-buying cases). In the very first paragraph of OSCE/ODIHR final report on elections of 25th April 2021, it is stated that, "allegations of vote-buying by political parties were pervasive during the campaign and a high number of investigations were opened in this regard" (2021: 1). Some media providers and political parties, in particular those of the opposition, filed with Special Prosecution Office (SPAK) a series of denunciations of attempts to buy votes in cash or in kind, and cases of intimidation of electors [threats of job dismissal, termination of social assistance, or pressure to vote for the ruling party through the so-called "patronage system" and the supervision by the party "patronageists"], while a significant number of cases were made public by the media. SPAK opened criminal proceedings for 91 cases (KRIIK 2021: 10, 23-24). Practices that were unfair and violated the attributes of democratic elections, producing a hyper-incumbency advantage and an unlevelled playing field for the political parties competing in the 25 April Parliamentary Election in Albania.

V. Conclusion

The aim of this study was to identify the strategies and practices, which in general terms, we classified as *clientelistic*, that the incumbent political parties in Albania have used to ensure an unfair electoral advantage over their opposition competitors. These strategies and practices have increasingly characterized the development of electoral processes in Albania and, are unfair in that they create an unlevelled playing field and produce a hyper-incumbency advantage in the electoral contest between the political parties by making much more difficult the possibility of the political power rotation between them. Among these clientelistic strategies and practices, we mentioned *the party patronage, the misuse of state resources and capacities for campaign purposes* by the ruling party, *the unequal access to media and non-transparent financing of electoral campaigns* along with *the use of "filthy" money* in it, as well as the *vote-buying practice*, which remained widespread in the last parliamentary elections held on 25 April 2021 in Albania. In this study, it was argued that such [clientelistic] strategies and practices violated some of the attributes of the fairness dimension of democratic elections, characterizing the latter in Albania in what the authors call "less-than-democratic-elections" (Merkel & Croissant 2004: 205). Electoral containment strategies pursued by the ruling parties (as the case of the Albanian election conduct in this study showed) constitute an interesting field to be studied further also in other post-

authoritarian countries, as long as we may say that the focus of the political incumbents has shifted increasingly toward the development of sophisticated informal/clientelistic practices to "control" the outcome of the election and to secure their grip on power.

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The revalution proces in Albania during 2016-2021

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Abstract

The constitutional reform related to the system of justice realized in 2016 in Albania, was welcomed with a positive enthusiasm by all stakeholders, civil society, business groups, including the political class who voted for this reform unanimously. One of the goals of the implementation of this reform is not only the restoration of new justice institutions and the strengthening of existing ones but above all the re-evaluation of all judges and prosecutors who are part of the judiciary in three main aspects: - asset valuation, a background and integrity check to discover the links to organized crime and a qualification assessment. The total number of all judges and prosecutors in the Republic of Albania is over 800 subjects, starting from the courts of the first instance and the prosecutor's offices near them to the Constitutional Court. The re-evaluation process is carried out by two new constitutional institutions that are established and function for a transitional period, the Independent Qualification Commission (IQC) as a first instance with a mandate of 5 years, and the Appeals Commission (AC) as a degree second with an 8-year term.

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More than four years have passed since the beginning of the activity of these two institutions and the results they have given are very significant when almost half of the entire body of veto magistrates has not gone through this process, while a considerable number of judges have resigned. On the other hand, many constitutional and legal issues have arisen concerning the vacancies created in the Constitutional Court, the High Court, and other judicial and prosecutorial bodies, the quality of the new magistrates who will become part of the judiciary, and meritocracy or not by those magistrates who have stayed in the system to those who have left. The results provided so far by the Qualification Commission, the Appeals Commission have increased public confidence in the cleansing of the judiciary by judges and prosecutors who do not deserve to be part of the judiciary, but at the same time there have been delays in litigants, to get a faster and better service due to vacancies created in the system and the loss of real independence that must demonstrate magistrates who have not yet been re-evaluated.

For all these results that have been produced so far, it is necessary to be careful that the cleansing of the judiciary by magistrates who do not deserve to be part of this system does not create undeserved subjective discrimination and at the same time go in the election as soon as possible of new members of the judiciary with persons who do not have the necessary qualifications which would seriously affect the quality of the judiciary in the Republic of Albania.

Keywords: *constitutional reform, re-evaluation process, judiciary, Independent Qualification Commission*

I. Establishment of the Independent Qualification Commission and Special Appeal Chamber

The constitutional reform related to the system of justice adopted in 2016 in Albania, was welcomed with a positive enthusiasm by all stakeholders, civil society, business groups, including the political class who voted for this reform unanimously. One of the goals of the implementation of this reform is not only the restoration of new justice instit
utions and the strengthening of existing ones but above all the re-evaluation of all judges and prosecutors who are part of the judiciary in three main aspects: - asset valuation, a background, and integrity check to discover the links to organized crime and a qualification assessment. The total number of all judges and prosecutors in the Republic of Albania is over 800 subjects, starting from the courts of the first instance and the prosecutor's offices near them to the Constitutional Court.

The re-evaluation process is carried out by two new constitutional institutions that are established and function for a transitional period, the Independent

Qualification Commission (IQC) as a first instance with a mandate of 5 years, and the Special Appeal Chamber (SAC) as an appeal body with a 9-year term. Four and eight years have passed since the beginning of the activity of these two institutions and the results they have given are very significant when almost half of the entire body of veto magistrates has not gone through this process, while a considerable number of judges have resigned (Baldwin, John. 2000). On the other hand, many constitutional and legal issues have arisen concerning the vacancies created in the Constitutional Court, the High Court, and other judicial and prosecutorial bodies, the quality of the new magistrates who will become part of the judiciary, and meritocracy or not by those magistrates who have stayed in the system to those who have left.

The results provided so far by the Qualification Commission, and the Special Appeal Chamber have increased public confidence in the cleansing of the judiciary by judges and prosecutors who do not deserve to be part of the judiciary, but at the same time there have been delays in litigants, to get a faster and better service due to vacancies created in the system and the loss of real independence that must demonstrate magistrates who have not yet been re-evaluated. The purpose of implementing this reform is not only to meet one of the standards related to the integration of this country in the European Union but also to increase the quality of service in terms of ensuring the fair justice in favor of citizens and business groups. It remains to be seen how this reform guarantees these goals with a positive character, based on the results that have been produced during these four years, as well as on what is intended to be achieved in the future, for its final implementation. (Law no. 76/2016 dated 22.7.2016 "On some additions and changes to the law no. 8417, date 21. 21.10.1998," Constitution of the Republic of Albania).

The biggest judicial reform since the fall of communism, a good example for the rest of the Western Balkan states that are in the process of the European integration and fearless fight against the corruption and organized crime – that is how the experts and the European diplomats have been referring to the judicial reform that started in Albania in 2014 (https://europeanwesternbalkans.com). The assistance of European Union and USA experts who have assisted in the strengthening of the judiciary bodies in Albania after the fall of communism through OPDAT, USAID, and EURALIUS programs, have seen that beyond the various legal reforms and promises taken by the judiciary itself legislative and executive, the increase in the independence of the judiciary, the professionalism, and honesty of justice officials has left much to be desired, despite flagrant cases or numerous complaints from citizens and business groups. (Law no. 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania").

In early 2017, just six months after the adoption of constitutional amendments related to justice reform, the United States Embassy revoked non-immigrant visas for some Albanian judges and prosecutors after concluding that these officials did not qualify for these visas.

The US Embassy took this action ahead of the expected vetting process, which will assess the links of certain officials to corruption, as well as in response to a case involving flagrant abuse of an official visa by a high-level prosecutor and his wife. which led to the revocation of their visas (https://www.droni.al). This stance of the United States Embassy was an alarm bell that showed that constitutional and legal changes would not just stay on paper, but would bring the long-awaited changes to cleanse the judiciary of corrupt judges and prosecutors. The temporary re-evaluation of all judges and prosecutors (vetting process) has advanced steadily, continuing to produce tangible results, hence meeting the condition for the first IGC.

Under the aegis of the European Commission, the International Monitoring Operation has continued to oversee the process. More than 286 dossiers have been processed thus far, resulting in 62% dismissals, mostly for issues related to unjustified assets or resignations. (https://ec.europa.eu). During the COVID-19 lockdown period, the vetting institutions have continued to perform a number of important investigative activities in remote modality. The vetting institutions have resumed public hearings in June 2020. Albania has some level of preparation in the fight against corruption. Albania has continued its efforts towards the establishment of a solid track record on investigating, prosecuting and trying corruption cases (Law no. 95/2016 "On the establishment and organization of institutions to fight corruption and organized crime". Official Gazette no. 194, date of publication 20/10/2016.)

II. The vetting process in practice

The vetting process started its activity in 2017. In June 2017, IQC and KPA were constituted, and only at the beginning of September 2017, they started their activity for those charged by the Constitution of Albania and the law. (Study on access to justice in Albania, UNDP, 2017). Being granted the candidate states in 2014, Albania introduced constitutional reforms to open the judicial reform process. The main goal of such changes has been to strengthen the judicial system's independence, to increase the system's effectiveness and the public trust in justice. The goal has planned to become a reality through a two-steps process:

- a re-evaluation of the existing judges and introducing and establishing the new self-governing judicial and anti-corruption institutions.

- all judges and prosecutors have been vetted in three main aspects: the re-evaluation of assets, background, and integrity check to discover the links to organized crime and a qualification assessment. The process has been led by the newly established Independent Qualification Commission (IQC) and the Appeal Commission (https://europeanwesternbalkans.com)

Many difficulties have been encountered in this process, starting from the constitution of the vetting bodies. Beyond the support of international partners, the new judicial vetting bodies were adopted on June of the 2017 parliamentary elections, through a broad political consensus. The approval was made with a long delay, as well as through the last-minute compromise, where the two main political parties gained indirect benefits by avoiding the initial principles on which justice reform was formulated.

The selection of vetting structures was done through a tacit party consensus, where at least half of their staff represent the minimum to average standards of professionalism and prestige in the justice system (https://njihreformennedrejtesi.al). The reform of the legal framework of the justice system took place in a relatively polarized political climate, which led to the simultaneous disapproval of the first seven organic laws of the justice system. (http://www.osfa.al). An appeal to the Constitutional Court against Law no. 84/2016 for constitutional amendments that define the vetting process and a temporary suspension of this law`s implementation by the Constitutional Court, can be considered as factors that caused the delay in the establishment of the Vetting Institutions. The Constitutional Court rejected the request for the unconstitutionality of this law with the Decision no. 2, dated 18.01.2017 (http://www.osfa.al).

In early 2017, just six months after the adoption of constitutional amendments related to justice reform, the United States Embassy revoked non-immigrant visas for some Albanian judges and prosecutors after concluding that these officials did not qualify for these visas. The US Embassy took this action ahead of the expected vetting process, which will assess the links of certain officials to corruption, as well as in response to a case involving flagrant abuse of an official visa by a high-level prosecutor and his wife. which led to the revocation of their visas. (https://www.droni.al/). This stance of the United States Embassy was an alarm bell that showed that constitutional and legal changes would not just stay on paper, but would bring the long-awaited changes to cleanse the judiciary of corrupt judges and prosecutors.

The transitional re-evaluation of judges and prosecutors, otherwise known as vetting, is a very important but also complex process as it is an extraordinary and transitional in the reform of the justice system that will be carried out only once, so it has a historical significance (http://www.osfa.al/). The vetting institutions

are Independent Qualification Commission (IQC), the Public Commissioners (PC) and the Appeal Chamber (AC) - are working under the oversight of the International Monitoring Operation (IMO), deployed by the European Commission in cooperation with the United States of America (https://ec.europa.eu/). Getting out of the system of corrupt and professionally incompetent judges is one of the greatest achievements of the Justice Reform. Many who desperately thought that their complaints against corrupt prosecutors and judges would never be heeded and that they would remain in undeserved public office until the end of their term, with justice reform and the vetting process, this skepticism gets the answer it deserves. We can say that the effects that this process is producing on 70% of the dismissed persons have been positively received by the public opinion, including experts and legal professionals, which can be said that the re-evaluated process is on the right track regardless of the number of judges, and prosecutors who have been verified in a year (*the process could have been faster, but it is still producing results that give credibility to vetting bodies*).

The constitutional amendments made to the Constitution of the Republic of Albania in 2016, for the establishment of bodies for the re-certification of judges and prosecutors with transitional effect, in terms of international constitutional law are original and there is no second example that has been applied in the same way in other countries, including those of the Balkans or Eastern Europe. (Law no. 115/2016" On the governing bodies of the justice system ". Official Gazette no. 231). The failure of justice reform undertaken in Serbia during the period 2006-2010, where about 900 judges and prosecutors who left the justice system due to vetting were returned by the Constitutional Court decision was an example of applying differently a reform to the justice system (http://avokatia.al/revista/19-avokatia).

Thus, the establishment of temporary vetting institutions was considered necessary to be provided directly in the Constitution to avoid political pressures and any other pressures that conflict with interest with this reform that is being implemented. If the same reform had been envisaged in the organic laws, the risk of undermining this reform to fail would be many times greater. To contribute for increasing public confidence during the process, it is estimated that better transparency of the vetting bodies will help in this regard. Also, for transparency to the public, during the hearing, the rapporteur or the trial panel must respect the principle of confidentiality. The principle of "tools" equality is an element of "fair trial" extensively elaborated in the jurisprudence of the Strasbourg Court. This principle includes the right to give a reasonable opportunity to the party to present its version of the case, realized through the three main minimum requirements:

- the right to present evidence;

- the right to challenge the evidence against the subject of vetting;
- the right to present arguments about the case.

The second claim is closely related to the principle of adversarial proceedings, which means the right of the party:

- to get acquainted with the evidence and the process;
- to comment on the other party's evidence (https://www.osfa.al).

In some decisions of IQC has been noticed that refusal to take the evidence required by the subject of re-evaluation, such as the appointment of an independent expert, the summoning of witnesses, etc. Specifically, this was observed for the decisions of the IQC for the subjects B.T; R.G; D.R;. E.M; where it turns out that only the legal basis of the refusal is cited, but it is not argued why we are in front of the causes and circumstances provided in this provision (*ibid*). The Public Commissioner has an essential role in the integral implementation of the re-evaluation process and in guaranteeing the highest possible standard of investigation, trial, and decision-making, as well as in the protection of the public interest. By the end of 2018, the Public Commissioner was not to a real test, mainly due to the small number of entities vetted and the permanent assistance of the IOM.

Thus, in 16 complaints made by public commissioners, in 38% of cases, it was the initiative that came in the form of a recommendation from the IOM that led to the official complaint by them.

In 62% of other cases, the initiative to make a complaint to IQC was because of public commissioners themselves. Among the most sensational initiative of public commissioners are the appeals against the leaders of the Supreme and Constitutional Court (http://isp.com.al).

These concerns and not only are some of the perceptions of public opinion and the political class that the decisions of IQC and KPA do not treat in all cases with the same standard different cases and prosecutors who have committed property violations, where some go through the process of vetting and some not.

KPC has a five-year term that expires at the end of August 2022. This is a real concern because three years and two months have already passed since the beginning of its activity. While the number of cases it has reviewed is only 35% of the total number of judges and prosecutors to be re-evaluated. (In the part of the Annex of the Constitution, Article C)

A major problem of the vetting process is the filling of vacancies that are currently created in the Supreme Court, appellate courts, and courts of the first instance where the number of judges and prosecutors who have not passed the

vetting is many times greater concerning the number of judges and prosecutors appointed by the School of Magistrates (the number of those leaving is many times greater than the number of magistrates entering the system). In 2020 the number of vacancies in the courts of appeal has increased by 50% and also there are currently 16 vacancies in the Supreme Court and five vacancies in the Constitutional Court. On the other hand, filling 15 vacant High Court seats, requires that candidates coming from the appellate court or courts of the first instance, must afford successfully the vetting process and to have at least 13 years of experience as a judge (Article 47/5 of Law 96/2016). Vacancies for appellate courts can be filled by candidates coming to the first instance courts who must afford successfully the vetting process and to have at least seven years of experience as a first instance judge. The vacancies created in the Constitutional Court during 2017-2020 were extremely concerning and had completely paralyzed the activity of this institution with important constitutional functions for resolving constitutional disputes and the final interpretation of the Constitution, and particularly claims regarding incompatibility of laws with the Constitution and individual's appeals regarding the right to due process (http://www.osfa.al).

These delays may have had consequences or may impair the efficiency of the trial and the justice system sought by citizens from the first instance courts, in the courts of appeal, to the Supreme Court. There is an overload of files carried over from previous years. An insufficient number of newly appointed judges (currently three judges out of nineteen), who handle more than 35,900 files created over the years awaiting trial, the lack of function of the High Judicial Council regarding the appointments of the High Court members, there are several reasons of inefficiency of the Supreme Court (https://top-channel.tv).

However, despite the fact that almost the half of the judges have been dismissed in the process and the data provided by investigative journalists, due to the lack of the consequences in terms of filing criminal charges for those who have been proved as ineligible to keep their posts, the concern remains whether the process will bring the real change remain very high. Accompanied by the long-lasting procedures and a lot of delays, vetting process has betrayed high exceptions from the very beginning (https://europeanwesternbalkans.com).

The IQC was successful and made headlines in the media and public life with the sensational dismissals of several members of the Constitutional Court and the Supreme Court. IQC with its decisions broke the myth of inviolability and created the necessary environment for a re-evaluation process at all levels of the judiciary and the prosecution. The success of this process was so great that the model of vetting injustice was considered as a solution for both vetting in the police and politics (https://isp.com.al).

However, problems arising from the crisis in the Constitutional Court, the Supreme Court, the High Inspector, and later with the High Judicial Council

and the High Prosecution Council, the IQC changed the list of priorities of the re-evaluation process several times. The crisis created dilemmas as to whether it would have been more effective to start vetting proportionately at all levels or to start as it started, by the Constitutional Court and the Supreme Court. The other problem the KPA faced was following the verification standards. The Constitution provides for three standards, three evaluation criteria, but in more than 30% of cases, the IQC made decisions based on the evaluation of only one standard, mainly property. (*ibid*, p. 27). Referring to the IQC data for the period from the drawing of lots and until its final decision, on the topics of re-evaluation, it turns out that there are large differences for different entities. For example, to decide on the subject K. S, the head of the Administrative Court of Appeal, the IQC decided after about 20 months, with much more than for any other subject of re-evaluation. There are other names in the list of subjects that have been re-evaluated from 16 to 18 months, which according to the law should not have lasted more than 60 days to 90 days, or two to three months. (*ibid*, p. 28).

The real situation in justice institutions due of the revaluation process during 2018-2021.

Viti	Vendime nga KPK	Dispozitivi i vendimit			Rekomandime nga ONM	Vendime te shqyrtuara nga IKP	Ankime	Mos ankime	Ne proces shqyrtimi ende pa vendimarrje	Ankime te shqyrtuara nga KPA		
		Konfirmim	Shkar-kime	Ndërprerje						Ankime te përfun-duara	Ne proces pritje	Seanca te zhvilluara
Shkurt- Dhjetor 2018	77	33	29	15	5	77	16	61	-	4	2	17
Janar- Dhjetor 2019	127	55	44	28	5	127	13	144	-	11	1	68
Janar- Dhjetor 2020	103	35	38	30	3	103	16	87	-	9	9	48
Janar-Dhjetor 2021	166	61	66	39	8	160	14	146	6	13	4	75
Totali	473	184	177	112	21	467	59	408	6	37	16	200

From this actual situation, 473 decisions have been issued by the KPC for subjects of re-evaluation (judges and prosecutors), of which 184 have been confirmed in office, 177 have been dismissed, and for 112 it has been decided to terminate the re-evaluation process due to resignation, retirement, or for natural reasons (death). Regarding the decisions taken by the KPC, public commissioners

have made 59 appeals, while 408 decisions they have made no appeals, and in the meantime, they are assessing the possibility for appealing or not appealing 6 decisions. KPC's International Operation has advised public commissioners to file a complaint in response to 21 KPC's decisions during 2018-2021.

During four and a half years of activities of the re-evaluation bodies, 2/3 of the entire judicial and prosecution bodies have either been dismissed or have resigned without facing the re-evaluation process.

One hundred and ninety-two (192) vacancies for judges and prosecutors created in the judicial system are the result of the implementation of the justice reform that was undertaken in 2016. In some dismissal decisions, it was noted that IQC has decided to complete the revaluation process only on the property criterion, not completing and not considering the investigations on the criterion of evaluation of integrity and professional skills. In these decisions, based on the results of the administrative investigation into the property, the trial panels have assessed that the property criterion is sufficient for the decision-making process regarding the transitional re-evaluation of the respective subjects (https://www.osfa.al/).

Most discharges relate to issues related to unjustified assets. These concrete and credible results have significantly strengthened the justice system by consolidating the independence, impartiality, professionalism, and accountability of the judiciary (https://www.parlament.al/). With six months left in the KPC's mandate to re-evaluate judges and prosecutors, a concern that has arisen in the circle of domestic and foreign experts is whether or not it is necessary to make further constitutional and legal changes to extend the mandate to the members of the KPC for at least another two-year period, leading to a total of seven years of their period in this process, as important as it is delicate for the consequences it has created and is creating in the judiciary.

Regarding the above issue from the table of senior officials on the occasion of the 5th anniversary of the Judicial Reform, an opinion was given by the General Prosecutor regarding the vacancies created in the prosecution structures. He stressed the fact that: "We risk that the stock of files that are being created by some prosecutors, become almost unaffordable in terms of delays in organizing the prosecution structures in view of what will be done with the court map. This requires other measures, different in the School of Magistrates, such as the duration of years of study for students. "The third year should be a working year", while he added that the map of the court should be changed urgently. (https://euronews.al/al). On the other hand, the EC, through the reaction of Genoveva Ruiz Calavera, emphasizes that "vetting is going in the right direction" and that "the EU and the US are fully committed to continuing to support the reform of the judiciary in Albania, to guarantee the right of citizens to a democratic society where no one is above the law".

Ms. Calavera argues that the vetting process for judges and prosecutors is moving in the right direction and that is in the public's interest to report directly to the International Monitoring Operation (IOM) on justice reform, corruption cases, and lack of professionalism in the judiciary. "In the last six months, the IOM has received about 250 complaints from individuals, private enterprises, civil society organizations, and public institutions. This willingness to contribute shows that citizens believe that vetting is going in the right direction to respond. These are legitimate public aspirations." says Calavera. She considers the results of the vetting so far "very tangible" and notes that "the vetting will continue for several years to complete the evaluation of over 800 judges and prosecutors" (https://www.dw.com).

The same attitude has held Ms. Yuri Kim, Ambassador to the USA, stated that justice reform has not been easy, but now we are seeing results. She referred to the vetting process, where she said that many corrupt prosecutors and judges have already been fired (https://euronews.al/al). Likewise, Mr. Luigi Soreca, EU Ambassador to our country, stressed the fact that: "*The implementation of justice reform represents a new era in the rule of law in Albania. It is one of the most important steps taken by the country in the 30 years since the fall of the dictatorship.*" (https://euronews.al/al/)

Constructive attitudes regarding the postponement of the vetting bodies have been held by experts who have followed this procedure continuously in relation to the results of the re-evaluation of judges and prosecutors. Prof. Afrim Krasniqi, director of the ISP, told DW "*Justice reform remains the most positive development in Albania in the last two decades. But in the meantime, the five years of its implementation so far have shown that the legal basis and expectations of this reform were built on inaccurate data, based more on passion and the will to carry out the reform than Albania's capacity for such deep and horizontal reforms."* He also points out that "*Justice reform has taken place in Albania in the last five years, but the new justice system has not yet delivered justice. There is still no functioning justice system to end corruption and clientelism. There is still no guarantee that anyone who breaks the law will face justice, regardless of state, political, financial, or social position"* (https://www.dw.com).

Prof. Dr. Aurela Anastasi, a constitutionalist academic, thinks differently about both constitutional amendments and human resources. The constitutional amendments of late July 2016 are the foundation of Judicial Reform. They have proven to be effective for a radical change of the justice system and its reconstruction according to the latest European model. The constitutional amendments introduced detailed principles and adjustments regarding constitutional guarantees. "For the independence of the judiciary and the integrity of the judge" she told DW ("Aurela Anastasi "For a better understanding of justice reform, Tirane, 2016). In order to maintain a more objective position on the need to extend the term of

the vetting bodies, the members of the Socialist Party in the Legislative Council of the Assembly decided to turn to the Venice Commission for amendments of Albania Constitution in order to extend the mandate of the Vetting institutions, until the end of 2024. The request for extension of the mandate of the Independent Qualification Commission and the Public Commissioner was also supported by representatives of the European Commission and vetting institutions in a hearing with the Council for Legislation in the Assembly of Albania.

Maciej Popoeski, Chairman of the Board of International Monitoring Operation, IOM at the European Commission, said that he supported the initiative of the assembly to amend the Constitution in order to extend the mandate of vetting institutions (https://top-channel.tv). The Venice Commission held positions on this issue in March 2016 and November 2021. Regarding the opinion given by the Venice Commission in March 2016, it was emphasized these points "T*he Venice Commission is not in a position to indicate exactly how much time will be necessary to vet all sitting judges and prosecutors. It is conceivable that in the most complex cases vetting procedures may take more than three years, or even longer. It is the legislator's responsibility to ensure that the persons subject to the vetting cannot artificially delay the vetting procedures, and that commissioners, members of the IQC, and judges of the SQC have the necessary resources and powers to complete the procedures in a reasonable time. (*Strasbourg, 14 March 2016 Opinion No. 824 / 2015 CDL-AD (2016)009)

It would be desirable to set a fixed time limit of about 3-5 years on the length of time for which the IQC and the SQC would exist.

Contrary to the above opinion, the Venice Commission in its last opinion given in November 2021, has expressed that about 800 magistrates and legal assistants are currently undergoing the vetting process, which began in February 2018. These are 2020 data, and they do not include the vetting subjects who have resigned or reached retirement age. From the available data, until July 2021, it appears that ICQ completed the vetting process for 421 subjects. By June 2022, 71 reassessment processes are expected to be completed. At the end of the 5-year mandate, it results that ICQ has completed the re-evaluation process for 500 subjects (magistrates), and a total of about 300 other cases will remain uncompleted. These uncompleted processes, according to the constitutional provisions will be passed for review to the High Judicial Council for Judges and the High Prosecution Council for Prosecutors. (Strasbourg, 26 November 2021 Opinion No. 1068 / 2021 CDL-REF (2021)096.)

The default constitutional scenario (continuation of cases left by the Councils - High Judicial Council, High Prosecution Council) carries the risk that the Councils will need approximately one year to establish their own internal rules and procedures and to build the capacity to take on these tasks while having many

other important tasks to perform in the management of courts and prosecutor's offices during the transition, while the vetting/vetting process is ongoing. Therefore, it risks further delaying the verification process and hindering the Councils in their functioning. Forecasts based on the results produced so far show that verification by ICQ could be completed by December 2024 (the most positive scenario). Thus, according to such projections, the revaluation process in ICQ is forecasted to be completed in 2024, and considering the time needed for Councils to establish the regulatory basis, relevant structures, and mode of operation to carry out the vetting process, the councils would need 3 and a half years to complete this process. So, the deadline in such a case would be longer than the deadline that ICQ and PC need to complete the vetting process according to the forecasts above. Having said that, the extension of the mandate of the ICQ and PC according to the proposal of the legal initiative would be in line with the recommendations of the Venice Commission in the opinion CDL-AD (2016) 009 in the current situation; while the continuation of cases by the councils would fall in contradiction with this opinion as the deadline for completion of the process is longer than the proposed intervention. (Law no. 115/2016" On the governing bodies of the justice system ". Official Gazette no. 231)

The number of new judges, prosecutors, assistants and legal advisors who have graduated from the School of Magistrates, during the years 2017, 2018, 2019, 2020, and who have recently entered the justice system is 73 magistrates. Due to the vetting process, 177 judges and prosecutors were dismissed and for 112 it was decided to terminate the re-evaluation process for resignation, retirement or natural causes (death), which in total is 289 judges and prosecutors less in justice system. Currently, 216 judges and prosecutors are missing in the justice system. The total number of vacancies /absences that will be created by 2022 amounts to about 280 judges and prosecutors. On the other hand, we should not forget that the number of new magistrates admitted to the School of Magistrates in 2020 academic year is ninety (90); forty judges, thirty prosecutors, and twenty legal assistants and advisers. Due to the vetting process, this number is the same as the justice officials who came out today. If the School of Magistrates continues at this pace until the end of 2025, all vacancies that may be created by judges and prosecutors who are not going through the vetting process or are resigning will be filled.

III. The role of the School of Magistrates before and after 2021 related to Justice Reform in Albania

With regard to the role of the School of Magistrates before and after 2021, related to Justice Reform in Albania, the data is the following: (https://www.magjistratura.edu.al/)

- No candidate for judge and prosecutor was registered during 2014-2017;
- Eight candidates for judges and three prosecutors who were graduated from the Magistrates' School in 2016 and began practicing in 2017;
- Ten candidates for judges and six candidates for prosecutors were registered during 2015 -2018 and started practicing the profession for which they graduated from the School of Magistrates in 2018;
- Fifteen candidates for judges and ten candidates for prosecutors who registered in 2016-2019, started practicing the profession for which they graduated from the School of Magistrates in 2019;
- Thirteen candidates for judges and two candidates for prosecutors who were registered in 2017-2020, started practicing the profession for which they graduated from the School of Magistrates in 2020;
- Six candidates ex officio were registered in 2018-2020 and started practicing the profession as judges for which they graduated from the School of Magistrates in 2020;
- No candidate for judge and prosecutor has been registered in 2018 - 2021, and as a result, there will be no appointment of new magistrates in 2021.
- Currently, the third year of the School of Magistrates (2019 - 2022) is attended by twenty-four judges and twenty-two prosecutors. In addition, twelve legal advisors and legal assistants have been graduated in 2020;
- Currently, the second year of the School of Magistrates (2020 - 2023) is attended by forty judges and twenty-six prosecutors. Six legal advisors and three legal assistants have been graduated (in 2021);
- Currently, the first year of the School of Magistrates (2021 - 2024) is attended by thirty-six judges and twenty - four prosecutors. There are also six legal advisors and one legal assistant who will graduate in 2022.
- It has been announced in the media that the first year of the School of Magistrates (2022 - 2025) will be attended by 120 candidates for judges, prosecutors, advisors and legal assistants, but there is still no official decision from the HJC.

Recently in a public appearance in early January 2022, the Minister of Justice, Mr. Ulsi Manja, held the position that the number of candidates to attend the School of Magistrates in an academic year should increase from 80 which is currently to 120 (https://tvklan.al). Accepting such a large number of candidates for judges and prosecutors, including legal advisers, increases the risk of reducing the quality of individuals who will become part of the new judiciary. From the statistical data for the competition in the School of Magistrates, in recent years there are on average two candidates for a position of judge and prosecutor. Throughout the history of the School of Magistrates from 1997 to 2017 have competed over 200 candidates

for 10 seats for judges and as many candidates for prosecutors. One of the reasons that fewer candidates compete in the School of Magistrates has to do with the re-evaluation process that will be applied to the successful candidates as well as the fact that candidates must already have at least three years of experience after graduating from law school to compete in this school. These obstacles have reduced the number of competing candidates for the highest educational institution in the field of justice, even though the number of law students completing their studies each year in Albania goes over 1000.

The same big opening about changing the functioning of the judiciary was made in the Republic of Albania in 1992 by the Political Party that won the elections that year. On the basis of the justice reform that was undertaken after 1992, dozens of individuals with a six-month course had the opportunity to become judges and prosecutors, even though most of them had no a law degree. The candidates who became judges and prosecutors that period after a six-month course had previously worked as agronomists, teachers, veterinarians, engineers etc.

It was 1992 when the President of the country at that time decided to open a 6-month Accelerated Course to produce the so-called "Poplarp Judges" (http://dodonanews.net).

This reform would be strongly opposed by the Former Chief Prosecutor Maksim Haxhia, who in the parliamentary interpellation on Monday, September 7, 1992, at 17.00 in the Albanian Parliament said "… I *would like to inform you before this Parliament, the President, and the public our firm stance against regressive thinking for the creation of so-called multi-month training courses for judges. Accepting this means raping justice and deliberately leading society to anarchy*". Even the Former Minister of Justice Kudret Çela opposed the opening of such a course, who in the proposals he presented concerning this reform held this position "… *A variant that greatly alleviates this great hunger would be possible to take students of senior courses from the Faculty of Law and why not also from senior correspondence law courses (full 4 years' studies). These are much better in terms of vocational training compared to those students who are in high school and undergo an accelerated 3-4-month court.* (Notebook of Parliamentary Speeches, Book 5, p. 1693, ed. 2009).

This reform replaced judges and prosecutors who served during the Monist Regime with unqualified persons. It had its consequences over these last thirty years that drove the political class through the concerns of society and business groups and always with the support of international partners to undertake the justice reform in the constitutional changes that were made in 2016. (Law no. 97/2016 "On the organization and functioning of the prosecution in the Republic of Albania"). Meanwhile, Albania's deep judicial flagship reform continues, with a comprehensive vetting process being undertaken for all judges and prosecutors

and the establishment of new judicial structures. New appointment procedures and national investigative offices will guarantee a much greater protection from political influence and greater independence. More than 50 percent of the judges and prosecutors so far reviewed by the Independent Qualification Commission have been removed following vetting, largely due to their inability to justify their wealth. The process has resulted in a serious shortage of judges, critically in the Constitutional Court, and created serious backlogs across the judicial system (https://www.un.org.al/).

The concern for the justice reform that took place in 1992 and the comparison with the constitutional and legal reform undertaken after 2016, it allows many candidates to enter the system for judges and prosecutors during an academic year (there have been 90 magistrate candidates for 2020). The normal number of students that have studied at the School of Magistrates from 1997 to 2016, has been too low (from 10-25 in maximum for one academic year). This fact risks the quality and professionalism of those who will continue to serve as judges and prosecutors and who will replace those who currently have precisely the lack of professionalism and problems with their wealth.

The role that the School of Magistrates must play in relation to vacancies created by Justice Reform in Albania, was the topic of a joint meeting of the governing bodies of the justice system charged by the Constitution and the laws. This meeting was organized at the School of Magistrates on September 7, 2021, for the academic year 2021-2022. In this meeting, there were discussed issues related to the good administration of the justice system in the context of the progress of justice reform and within the responsibilities that each institution has in today's developments. The participants in the meeting pointed out that measures should be taken to meet some important conditions in order to make the School of Magistrates support the reform in the best filling of vacancies. Also, some conclusions were identified that were supported by all participants as follows:

- acceptance of 80 candidates to attend the School of Magistrates in an academic year;
- despite the high admission quotas of recent years and those expected for at least the next two years, the process will still require at least three academic years.

Improving the daily work practices of each institution

A. Regarding the School of Magistrates

- Re-evaluation of the continuing education program, with a view to reducing it, in order to avoid the overload of judges and prosecutors and to

create the opportunity for specialized training of entities that are part of the continuing education program in the school.

- Comprehensive re-evaluation of the programs to involve judges or prosecutors in mock trials, mentoring, and so on, in order to avoid wasting time that could be spent on judicial activity.
- Priority commitment to make efficient the orientation of the curriculum of pre-professional and professional internships, mentoring, mock trial organizations, and so on, in order to prepare for the profession of judge and prosecutor at the end of two or three years of the initial training program.
- Increase the technical capacity of the school for the development of online or hybrid training.

B. The High Judicial Council and that of the Prosecution.

- Compilation of the court map as soon as possible is one of the effective measures to mitigate the shortcomings in the system.
- Ongoing follow-up of the need for structural or legal changes in the system that facilitate the adjudication of cases or their administration in general.
- Re-evaluation of the systems for selecting and verifying candidates for judges and prosecutors graduating from the School of Magistrates in order to expedite the entry into the system.
- To enable the third-year interns of the School of Magistrates to be welcomed into the system and to be given the opportunity to help in the administration of cases, the drafting of acts, and the giving of opinions for their solution.

Possibility of legal improvements

The participants in this forum discussed and agreed on a set of issues that should constitute an end as legal changes:

a. The third year of the initial training program in the School of Magistrates was conceived as a practical internship year, to be turned into a working year as magistrates. To be assigned to duty immediately following the completion of the second year in the School of Magistrates.
b. Counselors and legal assistants have the opportunity for career development within the judiciary.
c. The process of assessing the wealth and image of candidates for masters at the end of studies at the School of Magistrates can be removed.
d. The law should clearly provide for the figure of the legal assistant in the court of the first instance (https://www.magjistratura.edu.al).

On 28.12.2021, in a joint roundtable between the Ministry of Justice, the High Judicial Council, the High Prosecution Council, the General Prosecutor, and representatives of civil society, the proposal forwarded by the HJC to the Ministry of Justice is to reduce the number of district and appellate courts, as well as administrative courts of the first instance. It is thus proposed that "out of 22 district courts with general jurisdiction, six administrative courts of the first instance and six appellate courts of general jurisdiction will be reorganized into 12 courts of general jurisdiction and two administrative courts of the first instance, and one appellate court ". Regarding the Judicial Charter, the Minister of Justice, Mr. Ulsi Manja, emphasizes that justice reform is in the consolidation phase. The Albanian government has contributed to justice reform, raising a payroll system to dignified levels. "The review of the court map is a process dictated by the reality of the judicial system in the country to guarantee the maintenance of a fair balance and the possibility of access to justice" (https:// top-channel.tv).

According to the Open Society Foundation for Albania, the new justice map jeopardizes the implementation of justice reform" and that there can be no justice for the citizen away from the citizen. The concentration of courts and files can undermine the length of proceedings, which, although dispersed, have major problems about deadlines for reviewing court cases. (Strasbourg, 26 November 2021 Opinion No. 1068 / 2021). Violation of these deadlines also contradicts the recent decision of the Constitutional Court, which stressed that the vetting process and all judicial reform cannot be considered as an excuse for the delay of court proceedings (https://www.gazeta-shqip.com).

The Constitutional Court has given recently some decisions regarding the delays that have been created in the judiciary institutions about the review of civil criminal and administrative cases as well as complaints/recourses, within a reasonable time as one of the main criteria of a due process of law, due to the process of vetting. Among others in decision no. 37 dated 05.11.2021 of the Constitutional Court, it is pointed out "In assessing the overall duration of the proceedings, the Court considers to show a more cautious approach, given the changes brought by the reform of the justice system in our country and its effects, especially regarding the number of judges in the courts and a large number of civil administrative and criminal cases pending. However, the Court has emphasized that the provision of this Reform cannot justify delays, as the state is obliged to organize the entry into force and implementation of such measures in a way that avoids prolonging the consideration of pending cases. Although some methods can be applied by the courts to temporarily accelerate the adjudication of cases, if even such a solution results in procrastination and turns into a problem of structural organization, then the state must ensure the adoption of more effective measures, and to organize the

judicial system, to guarantee the right to make a final decision within a reasonable period (see decision no. 33, dated 01.11.2021 of the Constitutional Court).

The main focus of the last four years of justice reform has been vetting process, exclusion from the system of individuals who do not meet one of the three constitutional criteria, leaving out of focus other important aspects of reform, such as new entries in the system, career system, improving quality of work in the administration of justice, transparency and increased independence and professionalism. We should not forget that the reevaluation process is not the whole Justice Reform, but only one of its constituent stages (https://njihreformennedrejtesi.al). As we mentioned above should be given essential importance not only to the exited from the justice system of judges and prosecutors that does not meet the criteria of professionalism, economics, and integrity but also the way of opening the School of Magistrates in Albania. The lack of vacancies in the judiciary today should not lead us to rush to recruit young magistrates who do not have the necessary professional, ethical, and moral integrity to make a difference to those who they are replacing.

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Democracy and democratic freedom from a philosophical perspective

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Abstract

The system of democracy and freedom has been the ideal of human society stretching from antiquity to the present day. The purpose of this paper is, through research, to reflect within the limits of an article the concepts and attitudes of philosophers and thinkers of different periods regarding these basic elements of social life. In Antiquity, Plato, Aristotle, and Pericles did not have the same attitude towards democracy and governance. Later philosophers like Hobbes and Locke did not conclude in favor of democracy. John Locke and many other philosophers also pointed out the danger that comes to the minority from the "dictatorship of the majority". Montesquieu supported the position of governing the people through his representatives. Rousseau initiated the theory of sovereignty as the basic condition for the creation of the democratic state, while Carl Friedrich addressed the basic requirements of democracy. Democracy in itself means a certain form of leadership or government, which is carried out in the name and interest of the majority. Democracy guarantees and harmonizes the duties and rights of the individual with those of society. The system of democracy undergoes constant changes in response to the requirements of the time. But in a true democracy, no right of a majority can be absolute. Therefore, the rules of a fair democratic

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game must be respected and the minority must, in any case, be guaranteed equal rights and opportunities so that, in the future, through free voting, in principle, a majority can be formed. The system of Western democratic standards includes not only the formal declaration of the principle of people's sovereignty but also the institutionalization of human rights and the creation of real conditions for the people's wider and more effective participation in the running of their state. The experience of democratic life raises constant demands for the deepening of democracy, which involves very important problems. People's relations with freedom have been and remain the subject of philosophical studies, about which different opinions have emerged. Spinoza did not accept the restriction of freedom of thought and speech. Loku divided it into natural freedom and freedom in society. For Montesquieu and Rousseau, freedom was the right to do everything lawfully. Kant linked the limits of freedom with the good of the general, while for Nicene, freedom is the will for the independence of unique thoughts on existence. Today's freedom and human rights theories focus on inclusive participation in social life.

Keywords: *democracy, state, people, principles, values, freedom, governance*

I. Introduction

The millennial history of mankind has proved that the desire of people to live freely and with equal

rights before the law and society have known no other system better than democracy. Although the words "democracy" and "freedom" are reminiscent of the working principles of communication vessels and have an organic connection between them, they are not synonymous with each other. And this is because the structure of democracy consists not only of the system of inherited theoretical ideas and concepts that are enriched in the living laboratory of people's lives but also of the way they are put into practice.

The notions of democracy and freedom include the way the people are governed, their division and categorization, and the choice of the form and content of the best democracy for society as a whole. However, it must be said that the principles and values that form the foundations of modern institutions, without which there is no democracy, such as political freedom, universal suffrage, political pluralism, and the representative assembly, have not been created for only one or two centuries.

Philosophers' views on democracy, freedom, and other human rights, such as the fundamental rights of man, the individual, and human society, have been

enshrined and sanctioned in treaties, various international conventions, and the Compendium of International Acts (1993). Thus, Article 25 of the International Covenant on Civil and Political Rights, a general international treaty in the field of human rights, adopted by the United Nations in 1966 and signed by a large number of states, states, inter alia, that every citizen has the right to participate in the conduct of public affairs directly or through freely elected representatives, through equal voting and secret ballot, to elect and be elected, as well as to perform various public functions in conditions of general equality.

This newly mentioned act and many other similar formulations of important international documents in the field of human rights serve as basic criteria for the definition of democracy and democratic freedom and are therefore recognized and respected by the member states.

II. Democracy: the political system where power is exercised by the people

Democracy, as the power of the people, is an ancient ideal with a long history. A large number of theories are known today that have tried to explain the causes of the birth of democratic regimes and the strength of civil society within certain social systems.

Although democracy has its origins in Antiquity, its most mature form is used in countries where a pluralistic society develops and the legislative, executive, and legal powers in their activities are separate and independent so that none of the state's leaders has unlimited and uncontrollable power.

Various philosophers, thinkers, and leaders have given formulations that enrich and amalgamate both the meaning and content of the term "democracy" and its application in everyday life. In Ancient Greece, there was no common position on democracy and governance. Plato pointed out that democracy exercised control over the government through those who knew how to govern, i.e., populist demagogues. Aristotle argued that government by the people meant government by the poor, who feared they might expropriate the rich.

Pericles called it democracy because the Athenian government favored the majority over the minority. He underlined that democracy was related to tolerance, but did not talk about majority rule. According to him, the laws ensured equal justice for all.

Both Hobbes and Locke imply the political equality of citizens, but neither expressly concludes in favor of democracy. John Locke and many other philosophers pointed out the danger that comes to the minority from the "dictatorship of the majority", while for Montesquieu, in a democracy, sovereign

power should belong to the people and not a single individual, which means that the people should control the government through its representatives.

The tendency to recognize and implement the principle of sovereignty is closely related to the notion of democracy as a special form of government of the people. Therefore, according to S. Pellumbi (2013), even Montesquieu about three centuries ago declared that "important for a republic is the spirit of laws, that the right be treated as a science, that the political freedom of the citizen is seen as a guarantee for its security, and that true equality be valued as the soul of the state" (p. 31).

The theory of the sovereignty of the people, as a basic condition for the creation of the democratic state, was initiated by the greatest progressive thinker, who also preceded the French Revolution in the late eighteenth century, the eminent French philosopher Jean-Jacques Rousseau. Rusoi (2007) states: "The government regulates the relations between the state and the sovereign, taking into account the general will and the protection of civil and political freedom" (p. 80) and argues: "The government legally exercises executive power. For the state to be in balance, the power of the government must be equal to the power of the sovereign. (p. 137) The principle of the sovereignty of the people was intended to implement in practice the important democratic principle of the legitimacy of state power by the people themselves and not by another mechanism or instance outside of it. The aim was that the people should exercise sovereignty directly or through their representatives, so that the deputies remain in contact and under the control of the electorate (the people), and that the representative body should oversee the activities of the executive power. This is more or less the concept of the notion of democracy as the government of the people and under its control. The principle of the sovereignty of the people enables the concretization of the central idea of democracy, that state power is truly exercised by the people themselves.

The idea and goal of recognizing and implementing this form of democracy as a form of government closely related to the principle of sovereignty of the people have been for a long time and will remain to define ideas, although in many cases, as in the past and even today, this idea remains an illusion. But it is even worse when the illusion turns into disillusionment, especially when it is abused through conceptions and applications of the so-called systems of popular democracy or proletarian democracy by dictators such as Lenin, Stalin, Brezhnev, Enver Hoxha, Ceausescu, Milosevic, Pol Poti, Fidel Castro, et al.

Carl Friedrich (1994) has talked about the basic requirements of democracy. He divides them into three groups. The first group includes the institutional conditions of democracy, which, according to him, are: the existence of a capable and agile bureaucratic apartheid; modern legislation; effective justice;

separation of powers; effective diplomatic service; the existence of a system for resolving disputes; and the interpretation of the constitution. The second group defines social conditions, including economic development and economic well-being, conditions of information through free media, harmonization of different interests in society, etc. In the third group, Friedrich includes cultural features. In this case, he emphasizes the political traditions of the population as well as the willingness of consensus and reconciliation of interests between different groups of the population. Friedrich raises the need and necessity of establishing a kind of balance in society and politics.

Democracy means a certain form of government or government which is carried out in the name and interest of the majority. It is a state constitution of both small and large states, where power comes directly or indirectly from the citizens based on political freedom and equality, broad political rights, and the participation of all citizens in adulthood. Democracy is essentially a rule, which is a symbol of a secular order; the people are of their descent, the only thing authorized. Ownership and exercise of power must come from the citizens.

On the one hand, democracy embodies a certain philosophical and political meaning, a social condition, and a rule that touches the entire pyramid of society, from the bottom to the top. Its implementation in practice encompasses a range of forms and tools that have enabled and stimulated several abusive efforts on its behalf. However, at the forefront of the dangers is the misuse of democratic labels, theories, and seductive words by totalitarian regimes and military dictatorships, similar to those that seek popular support through democratic labels, theories, and seductive words. In essence, they are the ones who flagrantly violate the principles on which democracy is based. On the other hand, even when not used merely for propaganda purposes, the words "democracy" and "democrat" are used to adorn and cover regimes and individuals that have nothing to do with ruling on behalf of the majority. The support of the low cultural level of the working masses and the use of a powerful propaganda arsenal in defense of totalitarian and dictatorial regimes is reminiscent of the role of the iron ax, which cannot knock down even a single tree without the help of the tail of wood.

Today's theories on democracy aim to present it as a set of democratic values, not without contradiction, in short, a political system whose essence is related to the widest possible participation of people in the exercise of public affairs and in the construction of public policies for creating general well-being. A democracy is a system of government that comes from the people, works with the people, and for the people. The authors of these theories have accepted the fact that a modern regime is called democratic when most people have the right to vote to elect their leaders. "The strength of democratic ideals, the will, and the human mind have nurtured a deep and inspiring meaning in history, from Pericles in ancient Athens to Vaclav Havel in Czechoslovakia, from Thomas Jefferson's

Declaration of Independence in 1776 to Andrei Sakharov's speeches in 1989. Sh. Taipllari (2006) has defined it as "government by the people," where the highest power belongs to the people and is exercised directly by them or by their elected representatives, according to a free electoral system. (p. 53) For Abraham Lincoln (Dhamo, M. 1999), "Democracy is a government that belongs to the people, comes from the people, and serves them" (p. 18).

Democracy is the system that guarantees and harmonizes the duties and rights of the individual with those of society. Rights are the most fundamental and constructive elements of a democratic government. The demands of human society in every country for greater rights in daily life and ensuring more active and decision-making participation in the bodies of the legislative, governing, and justice systems lead to the continuous improvement of democracy.

The permanence and endless spiral of the level of democracy lead us to the conclusion that, despite the trend and the progress before it, real democracy has never existed and will never exist. This is also the reason why the system of democracy undergoes constant changes under the requirements of the time, realizing a form of government, regime, or political system where power is exercised directly by the people through elected bodies by free vote, where citizens enjoy the freedom of full and equal rights, such as, for example, intra-party and inter-party competition and alternatives, representation of different interests, fair and free elections, the opportunity for voters to make choices between different candidates and policies, the real power of parliament, separation of powers, guaranteeing the rights of all citizens, the rule of law, etc.

The concept of democratic development includes the developmental couple that consists of moving forward and developing the individual as well as society itself. Misunderstanding of democracy leads to anarchy and chaos. The content of democracy embodies the meaning given to Abraham Lincoln as a government of the people, by the people, and for the people, whose values remain inalienable. In this sense, we would argue that all socio-political systems must necessarily pass through the "scanner" of standards of demands for freedom and democracy of peoples that differ from each other by the degree of their mastery.

Democracy involves the rule of the majority and respect for minorities, for the fact that they are part of the people and, therefore, should not be treated unequally.

From this point of view, democracy is seen as a form of political organization that ensures the rule of the majority and the respect of the minority, creating spaces for the free competition of political alternatives. But democracy is also the form of political organization that enables political competition for different alternatives to economic development, which ensures free initiative and private property. History has seen cases where particular individuals, dressed in power and with authoritarian tendencies at the helm of power, have used the concept

of democracy to disguise their evil intentions, hitting or reducing fundamental human rights, distorting the essence of democracy by applying only some of its elements, to misinterpret the interests of a part as the interests of the whole society. Abraham Lincoln's later definition expresses the initial embryo of the ideal of democracy rather than its real being. Democracy can not be imposed on any society, but it is neither a gift nor can it become someone's permanent property. To protect it, it must be fought every day by all citizens, without any distinction.

Embodying several similar meanings, we note that the term "democracy" encompasses the meanings related to the people and the magic they possess in economic, political, and cultural life as producers and consumers of material goods as well as builders and implementers of all the powers of a civilized society. At first glance, the notion of "democracy" represents a harmonious harmony with the notion of "people" and its rule. But just as this notion of democracy did not include women and slaves in ancient Greek society, minors and the mentally ill are excluded today. But the term and meaning of democracy, i.e., the rule of the majority, must navigate difficult "paths" when it comes to the notion of an absolute majority, which also enjoys the right to decide. The more democracy is in a country, the more favorable economic conditions it creates for the broad masses of the population and the more the state represents the largest mass of the population. On the other hand, no right of any majority can be absolute.

It is worth noting that the application of the principle of majority decision-making in a democracy also has its limits. Under no circumstances should the regime imposed by the majority turn into tyranny for the minority. In a democratic state, the majority must govern and make decisions, always following the constitution, democratic laws, and rules. It should not be forgotten for a moment that, although it is in the direction of the state, the majority continues to compete with the minority, which has its alternatives through the political program and which, normally, in the next elections is presented as an alternative aimed at seizing political power itself through a competitive program as opposed to the program of leaders who lost elections. Therefore, the rules of a fair democratic game must be respected, and the minority, in any case, must be guaranteed equal rights and opportunities so that, in the future, through free voting, in principle, a majority can be formed. But, of course, such an ideal state in practice is difficult to find. Therefore, this always remains an objective towards which contemporary society aims.

In today's modern society, democracy embodies different features from that of ancient Athens but retains the characteristics of a representative, pluralistic democracy based on the concept of statehood. Democracy is the system that guarantees and harmonizes the duties and rights of the individual with those of society. Rights are the most fundamental and constructive elements of a

democratic government. In the implementation of representative democracy, voting citizens do not make decisions about the organization of their lives but delegate these rights to their representatives. Experience has shown that no system of government is perfect. And in this context, philosophy and political science have offered people the most acceptable system of all systems to date, with the many benefits but also the disadvantages that accompany it. Despite the great advantages of representative democracy, it has not escaped the remarks of Rousseau (2008), who noted with despair: "However, from the moment a people surrender to the representatives, they are no longer free" (p. 313).

What are the issues that are good for the people to decide and which issues should be left to individuals? Such a question reopens the debate on the relationship between the public sphere and the private sphere. Models of democracy built on the principles of individualism usually offer a limited democracy in political life. It follows from this perspective that democracy aims to build, through several processes of popular participation, a framework of laws within which individuals can do their job and pursue their interests. Consequently, democratic elections are appropriate only for specific issues related to the community, while in other cases, democracy constitutes a restriction of freedom.

Another alternative to democracy has been developed by the Socialists and the Radical Democrats. According to radical democracy, democracy is not just a framework of laws within which individuals do their jobs, but a general principle that is applicable in all areas of life. People are considered to have fundamental rights to participate in all kinds of decisions that have to do with their lives, and democracy is simply the collective process by which this is done. From this point of view, democracy is seen as friendly to the freedom of individuals and not as an enemy of freedom. Restriction of liberty occurs only when such principles are ignored, and from there, oppression and exploitation begin to flourish.

The experience of democratic life raises constant demands for the deepening of democracy, which includes very important problems. Democratic institutions must be built not only at the level of the central government but also in local government structures. Local democracy is embodied in the right of citizens to elect their representatives in local government bodies. As Elliot Bulmer (2015) writes, "To address these issues, many constitutions contain a separate chapter or series of articles on local democracy. These may include provisions for establishing local democracy structures, providing for local elections (and sometimes for local referendums and other forms of public participation), and delegating powers and duties to local authorities (p. 6).

It is critical for the functioning of local democracy that the legitimate existence of local bodies is ensured to ensure the most adequate representation in decision-making. The European Charter of Local Self-Government (2012) stipulates that the organization of free and fair elections, public participation in

the affairs of a local body, and the transparency of this process are the principles on which local democracy is based. Kakumba and Singo (2008) state that citizens and other stakeholders should be voluntarily involved in any decision-making of local structures in a functioning local democracy. Citizen participation is their involvement in administrative policy-making activities, such as setting the level of service, budget priorities, and acceptability of physical construction projects, orienting government programs according to the needs of the community, building public support, and encouraging a sense of cohesion within society. In Albania, according to the Nationwide Assessment of the Local Government Situation (2020), the involvement of stakeholders in the decision-making process receives the highest rating, while the lowest rating is for civil and civic engagement. Morina, Muçaj, Nikaj, Shasivari, and Balaj (2021) find that citizens are not active enough even in the Republic of Northern Macedonia.

For a functioning local democracy, the balance between the effective services of local bodies and the regular accountability of these bodies is also important. In Albania and other post-communist countries, the imbalance between these two indicators is also known. Local democracy is functional when all citizens, the private sector, and non-governmental organizations are involved in the decision-making and accountability processes of local bodies.

The system of Western democratic standards includes not only the formal declaration of the principle of people's sovereignty but also the institutionalization of human rights and the creation of real conditions for the people's wider and more effective participation in the running of their state. This democracy aims to be realized through the greatest possible rapprochement of citizens with state power. Among other things, citizens are given the opportunity and given an effective means not only to resist power but, most importantly, to oppose and change it. Given all this, it can be said that a free and democratic regime excludes any kind of arbitrary and authoritarian rule. Democracy means constitutional governance in a state; it means democratic legitimacy of political power; separation of state power; recognition and respect of political and civil rights; etc.

III. Democratic freedom is the absence of oppression, dependence, and restrictions

People's relations with freedom have been and remain the object of philosophical studies, about which different opinions have emerged. Freedom is certainly a fundamental value, which is widely proclaimed and defended by thinkers and all political actors. Philosophers and thinkers of different historical stages have tried to describe the possibilities of its realization.

Freedom, as a natural right, is the essence of thinking according to individual beliefs and free will. The concept of freedom is an essential indicator of the development of a society and its citizens about the constraints facing all powers: the legislature, the executive, and the judiciary. In a more practical sense, freedom is nothing but the desire to fulfill or realize our needs and desires, concerning the possibilities and reality in which we live. The Dutch philosopher Spinoza (2013) states that "a people or a public body of citizens is a majority of people, who through a social pact act as if they were led by a single mind" (p. 61).

Spinoza's above idea openly expresses the view that the sovereignty of a state derives from the people. Individuals unconditionally obey their state, although the right of opinion cannot be restricted because they enjoy the right of reasoning and judgment according to their mind. Spinoza (2013) would warn that "when a government seeks to restrict the freedom of thought and speech of its citizens, even when they obey the law, it acts irrationally and endangers its very existence" (p. 63). By presenting such views on the values and dangers that threaten freedom, he would conclude that "the more people accept and participate in the exercise of political power, the more powerful that state is" (p. 77). This is the source of the acceptance of the principle of opposition and dissent as an expression of democracy for all members of society, regardless of party affiliation, to triumph over reason over passions in defense of common interests. For Spinoza, democracy is the most natural regime, because it embodies the freedom that nature has given to every human being and best realizes the goals of the state because, through free assemblies, the people draft for themselves the laws that will govern it.

John Locke occupies a special place in political science and philosophy because of the way he handled the concept of freedom. According to Loku (2005), freedom is divided into two types: freedom that operates under the will of the unit to decide and freedom that is subject to the unstable, insecure, unknown, and arbitrary will of the individual. Man's natural freedom is defined as being free and unyielding from man's major powers or powers, retaining only the law of nature as the fundamental law of law; freedom in society is defined as remaining under legislative power that has been exercised with understanding for the common good.

Montesquie (1967) saw the limit of freedom in the obligation to obey the law and demanded that others do the same. It is important to keep in mind what independence is and what freedom is. Freedom is the right to do whatever the law allows. "If a citizen can do what they forbid, there is no more freedom, because everyone else would have equal power" (p. 205).

Rousseau envisioned an ideal society of free and equal people. He considers a man free only when he is bound by the laws within which he has some influence.

According to him, the basic challenge of a democratic society is the development of man and the affirmation of his personality.

Rusoi (2017) believed that good governance should have as its basic objective the freedom of its citizens. He calls freedom more important than peace when he writes: "What makes our species truly prosperous is not so much peace as freedom" (p. 44). Therefore, according to him, the best form of government in modern society is one that affirms the individual freedom of all citizens, with acceptable restrictions due to the existence of property rights and laws. He strongly believed in the existence of certain principles of government that, if implemented, could provide members of society with a level of freedom that at least approximates the freedom enjoyed in the natural state of man.

In his philosophical works, Rusoi (2008) describes the necessary principles that social institutions must apply, at the top of which he defines the preservation of "natural" freedom. Therefore, he stressed that "to give up personal freedom means to give up personal quality as a human being, the rights of human nature, and even his duties." (p. 195) However, his ideas about freedom and democracy were inextricably linked with the establishment of the rule of law, that is, law that is the result of the general will, where the general will is also the desire of the sovereign, the people. Demonstrating high regard for the law as a sacred value, Rousseau would extend this appreciation entirely to all the powers of laws, the prohibition of which he accepts only when it comes to saving the homeland.

Rousseau finds that many of the ideas, such as property, law, and moral inequality, that have been imposed on man have no basis in nature. The most important characteristic of the state in a state of free nature is that people enjoy complete physical freedom and are free to do essentially what they want. Rousseau alternates the pros and cons of the state in the state of free nature, but he generally values it for the physical freedom it guarantees to people, allowing them to be unencumbered by the binding influence of the state and society. Rousseau (2008) conditioned his conception of a democratic society on the demand: "To find a form of socialization which protects and preserves, using all the common force, the person and property of each member; a society in which each one, by joining all others, nevertheless obeys only himself, and remains free as before" (p. 202).

The rights of all individuals are guaranteed by the fact that they are part of the decision-making but, above all, by the existence of the general will, which, aiming at the common good, necessarily aims at the freedom of everyone, which is the basic condition of the common good. However, the concept of freedom in a democratic country is defined as a right that allows it to pass laws passed by society and bodies elected by the people. All these paths, orientations, and sanctions with philosophical, legal, and political character preserve as a sacred

and inviolable formulation the postulate that a people is free when it is governed by the laws that it has formulated for itself. Kant conceives of the restriction of freedom in the abstract. According to Kant, the limits of freedom for every human being are related to the common good.

The concept of freedom, according to the German philosopher Nietzsche (1999), enriches, deepens, and expands its boundaries; that freedom is the will that makes you responsible for yourself, that has the property to distance yourself from others and separate you from their influences for unique thought independence on existence (p. 28).

For Spinoza, freedom was perfect rationalism; for Leibniz, it was the spontaneity of intelligence; for Kant, autonomy; for Hegel, the acceptance of the necessary; for Hobbes, freedom meant the absence of external obstacles to movement; for Croce in modern times, it was the extension of eternal life; and for Rousseau in France, freedom has the same fate as laws; it rules or collapses with them.-Friedrich von Hayek, a well-known economist, and political scientist, used the term "constitution of freedom" instead of the term "social democracy". By this, he meant many elements that enabled the coexistence of the individual with society. Democracy has an organic connection to our freedom and rights. But every freedom has its own vital space organized horizontally and vertically. "Freedoms" are different, although, in essence, they remain "constitutional rights" for every individual (citizen).

Today, there is a clearer and fuller attitude to freedom. Suffice it to mention that the program of the German Social Democratic Party (Hamburger Program 2007) reads: "Every human being is called and empowered to be free. Society decides whether he can fulfill this call... Only those who know they have sufficient social security can use their freedom. "The freedom of the individual ends where it violates the freedom of others." Anyone who expects others not to be free cannot be free in the long run." (p. 16) Human personality also develops in society. The Hamburger Program (2007) states that "each person should be able to define his or her life in community with others." We are striving for a free and equal society in which every person can freely develop their personality without losing their dignity and freedom. " (p. 15) Inclusive participation in social life prevails over today's theories of individual freedom and rights.

IV. Conclusion

Democracy and freedom cannot be understood without each other. They have been and remain the subject of discussion in the circles of philosophers and thinkers, but also in various institutions and associations. Different attitudes towards

democracy in antiquity had explicable reasons. However, in ancient Greece, this concept began to take shape with the thoughts of Plato, Aristotle, Pericles, etc. The latter was closer to today's stay.

A more complete concept was formed with the beginnings of the European Renaissance. Although they did not all hold the same views, the philosophers of this era were united by the idea that power belongs to the people in a democracy, and that power in a democracy is a government that comes from the people, belongs to them, and serves them.

The principles and values that underlie true democracy (political freedom, universal suffrage, political pluralism, and representative assembly) have been established in recent centuries. Democracy encompasses not only theoretically inherited ideas and concepts that are constantly being refined but also how they are implemented.

Democracy is constantly improving and strengthening in its demands on society for greater rights in daily life and more active decision-making participation in the bodies of the legislative, governing, and justice systems. These demands are not at the same level among different peoples, and the degree of development of democracy is not the same.

In a democracy, opportunities are created for political competition, for different alternatives to economic development, for personal initiative, and for securing private property. Ownership and exercise of power must come from the citizens. In a democratic state, the majority must make decisions following the constitution, democratic laws, and rules and must compete with the minority, which has its alternatives. Today's democracy embodies features different from those of antiquity but retains the characteristics of a representative, pluralistic democracy based on the concept of statehood. Experience has shown that no system of government is perfect. Based on this, it can be said that a free and democratic regime respects the freedom and rights of citizens, excluding any kind of arbitrary and authoritarian rule. The freedom of the individual is the fundamental value. It is the essence of thinking and acting according to beliefs and free will. It is the desire to meet the needs of the citizens.

In a democracy, the duties and rights of the individual are guaranteed and harmonized with those of society. The respect for the rights and freedoms of citizens are basic conditions of its existence.

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Judicial institutions, ADR reform and their necessity in the Albanian reality

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Abstract

The concept of separation of powers was put forward by one of the most prominent representatives of the French Enlightenment, a prominent jurist and political thinker Charles Louis Montesquieu (1689-1755) to prevent the abuse of power and create conditions which "different authorities can mutually restrain each other. So, the topic of this paper it is the evidence of the current situation in Albania in terms of judicial institutions, legality, functional and practical importance in a democratic state and the functions they perform.

The separation of powers has political and natural preconditions. The political reason for the separation of powers lies in the danger of the concentration of power by one body, in the need to control three independent powers over each other. Natural preconditions are necessary for the adoption of laws, their implementation, and the administration of justice. Thus, the legislature (Parliament) produces laws while the executive (government) implements the laws. Courts (Constitutional Court, courts of general jurisdiction, courts of arbitration) deal with specific cases to which other government bodies and citizens are parties.

The article analyzes the main criteria, legal bases, and necessary conditions, consequences of the lack of judicial institutions and finally recommends the emergence

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need of the creation of an arbitration court as an alternative dispute resolution ADR, a tool widely used in developed democracies. A good justice system, both in the legal and organizational framework, in the civil field is an essential guarantee for the rule of law and respect for human rights. These rights take on legal value when the individual goes to a court that administers justice in a short period of time and in this way it creates trust in the public.

A state with a well-organized justice system (where there are alternative means of resolving ADR disputes) for all spheres, be they civil, administrative, criminal or family, etc., is the main indicator for institutional reform, distribution of the burden enabling the delivery of justice on time and without delay. Above all, the individual has the opportunity to choose the means by which he will solve his problem. On the other hand, such a good organization would also enable the increase of work efficiency and the quality of the given judgments.

Key words: *institution, law, principle, jurisdiction, arbitration court, international law, dispute, human rights*

I. Introduction

The judiciary is a sphere of public power, characterized by the following characteristics: exclusivity; independence and impartiality; carried out through legal procedures; procedural stages for the implementation of actions and court documents, defined by law, the binding nature of court decisions etc. The judicial system of the state is to administer justice, so it must ensure the stability of sentences and decisions, the possibility of correcting judicial errors and the strict observance of procedural rules at all levels. The most important, the sentences and decisions of the courts, which have entered into force, must be executed without fail, allowing no evasion for reasons of utility. One of the most important constitutional freedoms is the equality of all before the courts, which is the foundation of the rule of law.

People who thought of this problem long time ago, noticed that the concentration of state power in someone's hands inevitably leads to negative consequences. The higher this concentration, the higher the chance of arbitrariness and abuse. This is evidenced by the decades old experience of mankind. The most devoted rulers, in whose hands all the threads of power were concentrated indefinitely, sooner or later became obscene tyrants who knew only their authority, who violated freedom and disregarded the inalienable human rights. This experience prompted the search for ways to overcome such negative phenomena.

The idea that the main directions (branches) of state power should be divided and trusted in "different hands" has gained wider recognition and continues to

maintain it to this day. This will interfere with usurping intentions, and with it the abuse of power and arbitrariness. Most often, the supporters of this idea (concept) are of the opinion that state power includes three branches - legislative, executive, and judicial. The spheres of their organization should be clearly defined, they should not interfere with each other. The division of powers would follow each of them, would place it in a certain framework and balance.

The principle of separation of powers not only distributes the functions of state power among the three branches of government, but also establishes their independence and mutual balance. The principle of separation of powers is also important to ensure that mutual control and balance of powers do not lead to the appropriation of judicial power by any other power (Bradley & Ewing, 2007).

State power is exercised by the relevant bodies. Power is related not only to institutions, officials, but also to the functions that belong to them, and the implementation of such functions. The meaning of the word "power" is interpreted in the basic sense as a right, power and will over someone, freedom of action and orders, in other words leadership and the right and ability to dispose of, command, control someone, something.

It would be wrong to reduce the judiciary simply to the court just as a state body because power is what this body can and should do. Basically, it is a power, a function, but not an executor. So, power should be understood not as a body or system of bodies that exercise it, but as a right, based on law, one should understand the ability of these bodies to perform certain actions and the very implementation of these actions.

The correct understanding of the relationship between the functions of law and the courts is very accurately expressed by the principle established in the UK: "the law is there where the means of protection are". The judiciary, on the other hand, it is the competence given to the special bodies of the state, the courts, to resolve issues in their competence that arise in connection with the implementation of the law and the implementation of these competencies through constitutional, civil, criminal, administrative or arbitration procedures and so on, in accordance with procedural forms that create guarantees of legality and justice.

In a democratic state governed by the rule of law, there is a general rule that both the state itself and citizens' associations and free individuals must relate their actions to the law. But, conflicts of their interests, different understandings of the law are inevitable, which causes legal conflicts. The adoption of laws by the representative bodies, the implementation of these laws by the executive power itself cannot prevent such conflicts and ensure the unwavering observance of the law by all its subjects, to ensuring order and law. This task is performed by law enforcement agencies, and above all the courts as an independent link of state power, including its specific tools and apparatus protects the rights and freedoms of the people, protects law and justice.

A democratic state governed by the rule of law adheres to completely different ideas about the role of judicial institutions (Costa, Zolo & Santoro, 2007). A market economy based on private property and free enterprise, the scope of the courts is growing tremendously, and the most important task of state power is the protection of human rights and freedoms Cela E. (2015). In defense of constitutional freedoms, the court is placed in the position of a mediator between the state and the individual, between different natural and legal persons. Zurn (2007) in its studies found that, an independent judiciary, becomes the core of the rule of law and constitutionalism which is the main guarantee of the freedom of the people. The rule of law is based on the executive branch, from which comes the main threat to rights and freedoms. On the other hand, this threat is counterbalanced by the legislature, which produces democratic laws, (ratifies bilateral agreements BIT, conventions, approximates domestic legislation with that of the European acqui communitaire, recognition of the decisions of foreign courts) as well as by the courts, which the law essentially control the executive branch (Bermann, 2017).

The judiciary, in terms of material and technical basis, is the weakest of the three powers, but it is above them, possessing the weapon of the natural law, that the main burden falls on preventing the transformation of violence into a method of law. It is not difficult to imagine the large volume of legal conflicts that must be faced in this case, especially in such a dynamic developing society as the Albanian society today. But the mediating role can only be more effective if it is based on the respect and trust of both parties, if the independence, professionalism, and incorruptibility of the judiciary are real.

II. Civil Justice and Courts as a Public Good

The state targets some goods, the value of which depends on legal provisions, and some of these goods must be provided by private entities. Privatization of justice is a government responsibility rather than an asset. The judiciary should be understood as an essential element of a democratic state where the courts have the power to give binding decisions to anybody based on the Constitution and law.

States have less interest in the civil judicial system and reforms have a bill and they have not always been successful. The private market on the other hand offers ADR competing courts (Bercovitch & Jackson, 2009).

The state is not engaged in direct management but is engaged in policy modernization. The state is the main actor in overseeing and guaranteeing the standard of civil justice provided by private professionals. Given that the civil process is costly, complex and delays, and given that many of the reforms are done in the dark and are not based on research and evaluation, the solution to this

situation would be the Alternative Dispute Resolution - ADR (which has less costs, stress-free, no delays, a more effective and faster process). We can say that we are facing the privatization of dispute resolution and the establishment of an arbitral tribunal would be the best and alternative form to the ordinary courts.

And this has its efficiencies and advantages: It has more access to justice and then access to court. Especially for disputes in the field of trade, investment, consumer - ADR solution with free and full will of the parties to the dispute. The tendencies of the private courts are towards the protection of the private interest and not the public one as it happens in the state courts.[2] At the end of the process there is a final decision, which is binding for the parties to the conflict. Procedural rules are designed to ensure a fair legal process. Arbitrators are trained and professionals in the field, who are obliged to respect the legal framework and protect the rights of individuals.

From a comparative point of view with ordinary courts, the judicial process is costly and there are delays until the final decision, a process which is of several stages. The parties have no control over the process and the outcome which is uncertain. In the courts not all disputes maintain a standard, while in the courts there is a standard that leads to the setting of precedent. In arbitration the parties voluntarily decide the procedural rules and the process itself is more flexible and friendly.

III. Due process in Arbitration under the ECHR[3]

According to human rights, people have the right to go to the court, but they as well, have the right to resign from court. In the case of Strain Greek Refineries and Stratis Andreadis v. Greece (1994) the ECtHR set a minimum of procedural guarantees under Article 6/1 of the ECHR), (Føllesdal, Peters & Ulfstein, 2013:288). Further, in the case of Lithgow & others v. UK (1986), the ECtHR ruled that each trial panel and not only state courts, but also bodies set up to deal with several specific cases. In the case of Bramelid & Malmstrom v. Sweden (1979) it was held that the state should provide a mechanism to check the fairness and correctness of arbitration proceedings. In Suda v. Czek Republic (2010) there was the following decision: "the applicant may not be required to undergo an arbitration procedure for which he has not previously agreed". In Suovaniemi & other v. Finland case (1999) the ECtHR stated that: "the waiver of an applicant's rights to an impartial judge should be seen as effective for the purposes of the Convention". In the case

[2] Multinational investors can no longer view emerging economies as passive recipients of whatever benefits investors wish to bestow or as dominated by corruptible leaders willing to make deals for personal gain.

[3] https://www.echr.coe.int/Documents/Convention_ENG.pdf

of Tabanne v. Switzerland (2016), itwas also stated that, the applicant voluntarily and without obligation waives the opportunity to file disputes in ordinary courts.

The Geneva Convention of 1961[4] provides that: "States Parties shall develop their own domestic law relating to arbitration for the settlement of cross-border trade disputes". After that, the ICSID Convention was constituted for exclusively investment disputes referring to bilateral agreements. The European Community legislation gives priority and legal development of ADR (alternative and extrajudicial procedures). In 2002 the European Commission introduced the Green Paper on ADR. In 2008 the European directive was issued: Directive 2008/52 / EC "On some aspects of mediation in civil and commercial matters". Later, in 2013 came out Directive 2013/11/ EU "On consumer ADR"; Digital Agenda for Europe 2010 (COM (2010) 245) Consumer Protection- improvement of ADR system for e-commerce.

The new EU legal system related to ADR provides that they have a great potential to provide not only an effective solution, but also a fast and cheap one between consumers and traders (independence and impartiality; transparency of proceedings; effectiveness; legality and justice). Arbitration courts, as opposed to state courts, are completely independent of the general judicial system. But all these courts have common tasks such as: the duty to protect the constitutional system, the political and economic system, the provision of law and order, the protection of the rights and interests of citizens.

Unfortunately, the judiciary is still a weak point in Albania. The principles of constitutional and judicial procedure are being implemented with difficulty because there is opposition and pressure from other powers. Despite the declared legal and social guarantees of a judge, such as impartiality, immunity, independence, etc., they can often not be fully secured due to the lack of a technical and material basis. In addition, corruption of judges has become a major problem for the judiciary today. Moreover, the problem of the effectiveness of the courts in Albania is ensuring the execution of Court decisions, which are sometimes ignored. Non-compliance with court decisions is a characteristic feature of the entire Albanian legal order. The court is in fact the highest and last instance, and it should enter into force only when the rest of the system of power fails.

The solution to this problem is not the eradication of these reasons by coercion, but the formation of such a state of public awareness and legal culture, in which no body, official or citizen has the part of the desire to act contrary to a court decision. This will be the best guarantee for the full and short execution of court decisions.

In conclusion, despite the significant changes in the legal foundations of our society, many fundamental new normative legal acts and other court documents that regulate it are still far from being perfect. Much work needs to be done to

[4] Law No.8687, dated 9.11.2000 On the accession of the Republic of Albania to the "European Arbitration Convention".

improve the "quality" of the judiciary, for which it is necessary to ensure the real independence of judges, the material and technical basis for the bodies that administer justice and, most importantly, to bring the regulatory and legal framework in place in accordance with current requirements (such as the Code of Arbitration Procedures), the basis of which will serve and the Constitution of the Republic of Albania, which although has provided the basic principles of the work of the judiciary, cannot regulate all aspects of the work of judicial authorities. This requires newer Codes and a larger number of regulations governing the administration of justice.

IV. Mediation

Today, in Albania mediation to resolve disputes amicably who completed the previous law (2003 no. 9090) conducted in accordance with the applicable provisions of law no. 10385 of 2011 "About mediation in resolving disputes". Article 1 of Law No. 10385 defines mediation as an activity (a non-litigation case), by which the parties seek to resolve their dispute by an independent third party (the mediator) to achieve a solution that does not conflict with the law. The necessity for creating the law on mediation in Albania came shortly after the adoption of Directive 2008/52 / EC, 21 May 2011 of the Council and the European Parliament "On certain aspects of mediation in civil and commercial matters", the purpose of which was the facilitation and promotion of friendly approach to solving / alternative disputes by encouraging the use of mediation and ensuring a balanced relationship between mediation and litigation.

The importance of mediation from the viewpoint of the characteristics of the procedure stems in the fact that based on - the principle of equality of parties, the confidentiality of data, respect the flexibility of transparency of procedures, neutrality will of the parties in the process and finally, the final decision has advisory nature rather than binding to the parties.

On the other hand, though the mediation procedure is less formal than for example arbitration proceedings, however, the reconciliation agreement is binding for the parties (article 22, 1, Law No. 10385). Compared to the law No. 9090, of 2003, the new Law No. 10385 of 2011 expands the types of disputes that are permitted to be resolved through mediation. Besides the civil, commercial, family and some criminal cases, the new Law No. 10385 of 2011 includes also also disputes related to labor law which are laid down in the Labor Code, but specified also as matters falling within the scope of the law on mediation. Another novelty regarding mediation procedure in Albania is that the disputes in cases where only one of the parties to the conflict resides in the Republic of Albania.With this

regard, there are two cases when the mediation procedure is initiated: The first case is voluntary, depending on the request of the interested parties involved in the conflict who ask for mediation resolution . Another case is when the court is the initiator of the mediation procedure, particularly in the field of civil, commercial, family or labour law. In conclusion, regarding the legal power of mediation, it is worth noting that if an agreement is reached, it is necessarily applicable. Parties are obliged to implement them immediately and voluntarily, otherwise this agreement required the issuance of the writ of execution.

Mediation as a profession in Albania is still in development; recently it has been institutionalized in legal culture and relatively innovative in our jurisprudence. Despite this fact, the Albanian judicial practice has proved that a majority considered civil cases, such as in family, in certain cases from the criminal has been resolved amicably.

V. Role and the importance of the Arbitration Court

The basis of welfare of any country can be called the economic activity of natural and legal persons, one of the indicators of which is the stability of economic circulation. It should be noted that the manner and duration of resolving an economic dispute depends on the degree of development of legislation and the level of legal knowledge of the participants in the legal relationship.

Most such conflicts are resolved by the participants in the circulation themselves without the involvement of intermediaries. But it must be acknowledged that a significant proportion of disputes remain unresolved due to a lack of willingness to understand or due to a misunderstanding between the parties regarding the object of each other's conflict, ignorance of the legislation or negligence and violations of the principle of entrepreneurs' trust in the activity and most importantly the lack of alternative means of resolving disputes such as domestic arbitration. The party of the conflict, which considers its rights violated, goes to the ordinary court to protect them and to resolve the conflict competently. Regarding the guarantee of the domestic legal infrastructure for the absorption of foreign investments, Albania has taken a step by ratifying the 1965 Washington Convention "Convention on settlement of investment disputes between states and national of other states" (Hepburn, 2017, Gjuzi, 2018). But this is for foreign citizens on the one hand and the host country, in this case Albania. Regarding natural and legal persons within the Albanian legal framework, there is no arbitration court.

After the 1990s in Albania, with the honoring of systems, institutional and legal reforms began for the adoption of new legislation, new codes (changes or edits that regulate their procedural activity), private law was developed, etc. In

Albania, the current state of economic relations must be considered and trends in the improvement of legislation must be present, including foreign legislation, regulation of ways of resolving disputes arising in the field of business, which allows us to call it a conceptually new legal act.

It is indisputable that among the aspects of assessing the attractiveness of a country's market investments, aspects such as transparency and predictability of the legal regulation of the procedure for resolving potential economic conflicts are very important. One of the central countries in the group of legal norms that form the basis for the development of entrepreneurial activity belongs to the institute of arbitration for dispute resolution and analysis of the practice of applying different types of conciliation procedures in case of economic conflicts.

The emergence of this type of courts, with special jurisdiction and representing an appropriate structure, rapidly influencing changes in economic life, among others should be one of the serious steps of justice reform (the possibility of developing effective mechanisms for the law, protection of the market economy in Albania). Of particular importance is the criterion for determining the jurisdiction of cases in arbitral tribunals in accordance with the nature and object of the dispute.

Regarding the increase of economic activity of commercial organizations and the development of a system of legal regulation of this activity, it is necessary to separate the category of litigation related to the implementation of business law, as the essentially economic conflict is examined in courts of general jurisdiction (commercial section as in the case of bankruptcy law enforcement) and in arbitral tribunals courts that have issued sometimes conflicting decisions. As a result, this category of disputes can be passed into the jurisdiction of the arbitral tribunals, based on their economic, entrepreneurial nature. In accordance with the nature of arbitration procedure, promoting the formation and development of business partnerships, the formation of customs and ethics of business circulation, is one of the main purposes of the arbitral tribunals.

The implementation of this task is facilitated by the presence of two factors: the need to maintain the stability of economic circulation through the development and establishment of civilized partnerships between its parties, based on the norms of business ethics and trust, and the ability of competent judicial bodies to led to the settlement of the dispute. All of this offers the arbitral tribunals an excellent opportunity to be mediators influencing the resolution of the dispute. This problem is resolved by the arbitral tribunals by all possible legal means, namely through a trial based on following principles: the principle of free access to arbitration; the principle of good faith; the principle of procedural equality of the parties; adversarial principle; the principle of combination of oral and written language; the principle of optionality; the principle of collegiality; the principle of legal certainty and the principle of confidentiality Cela E. (2016).

VI. Conclusions

Civil justice cannot be provided by state institutions alone. A good justice system (both in the legal and organizational framework) in the civil field is an essential guarantee for the rule of law and respect for human rights, and these rights acquire legal value when the individual goes to a court which gives justice in a fast period of time and in this way it creates trust in the public. Developed countries in the world today, have reached evolution in terms of alternative ways of resolving disputes ADR, a non-judicial order to reduce the workload of the ordinary courts such as negotiations, mediation, arbitration, reconciliation. The state must ensure an efficient judiciary, provide a budget for the courts and implement long-term reforms, which guarantee an effective judiciary as people need flexibility, speed and as little cost as possible, as well as guarantees of a fair legal process. People are tired of the long process in the courts which means we have to move towards organizing and strengthening ADR tools.

Researchers and practitioners recognize the great potential of this procedure as the proceedings confidential saving cost and time, a process of relationship that gives parties control over the issue and often the results are more satisfactory than those of a judicial process. At the same time, try to strengthen civil justice as a public good, which meets the expectations of the social purpose in the effective execution of individual rights, which is healthy in a developed society. Thus, generally, the larger states of the European Union have developed policies aimed at reducing the workload of the courts and improving the indirect consequence of the quality of administering justice through mediation or other procedures. Given that Albania is in the process of implementing justice reform (and the reforms have a bill and have not always been successful), it is recommended that there be a strategy for promoting and strengthening ADR in Albania. An assessment of the situation so far should be made to realize a strategy for the near future.

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BOOK REVIEW

Human rights & constitutionalism
Global phenomenon and its impact on the Albanian Constitutional Acts-DR. DENAR BIBA

Dr. Sofiana Veliu

In November last year (2021) Dr. Denar Biba promoted at premises of the European University of Tirana his book "human rights & CONSTITUTIONALISM", a philosophical and legal analysis on human rights in general and their outline in Albanian constitutional law - under the logo of publishing house- UET Press.

This book is introduced in a field of special interest such as human rights, when these rights from the global historical perspective, are becoming increasingly indispensable to be protected and guaranteed. An ambitious, multifaceted and interdisciplinary work is intended through this book which, although generally appears like a structure divided into two parts, (on one hand human rights and, on the other hand, their constitutionalisation,) all its chapters have a linking bridge between the two which in every respect complements each other's meaning.

In the words of the author himself, "this book aspires modestly to shed light on the *concept* of human rights, its *genesis* and *philosophical basis* on which they rely, as well as to reflect the *capacity* of international human rights law and Albanian constitutional law to create a synergy, focusing on the standards achieved, in recognition and acknowledgment of the fact that human rights, beyond any reasonable question, enable us to live a life with more dignity, a life that only so deserves to be lived".[1]

The book is introduced on the cover as a provocation to the reader: the title is clearly grammatically incorrect, but it is no coincidence if one learns that the author's goal is the humanization of human rights, their descent from the pedestal where we naively placed them, not to trivialize and demystify them, but

[1] Denar Biba, *Human Rights and CONSTITUTIONALISM*, Publishing House UETPRESS, Tirana, September 2021.

to deconstruct, recognize and understand them correctly, so that we can use them wisely, when it is prerequisite and not when we need them.

Quite interesting is the way how in the *Introduction* the author begins with a painful story from the Albanian context of human rights violation during the communist dictatorship, extracted from the story of Father Zef Pllumi in his memoir book "Rrno për me tregue" ("Live to tell"), part of the investigative process after his first arrest in 1946. Rather than a human experience in difficult situations, the author seeks to strongly emphasize respect for human dignity, as a human being, stemming from the philosophical concept of human rights according to natural law, but which cannot be guaranteed without international acts and national constitutions, in order to build a moral order for their protection. In my opinion, the author intentionally begins with such a story, to start with the idea that human dignity should be considered as the supreme human right. The concept and historical development of human rights is a clear presentation for the reader, who is introduced to the main theories of philosophical thought of human rights put into a certain historical and political context, which also reflects the most influential thinkers in the field of law, but also in a way the reader does not find it hard to understand the position held by the author himself, embracing the theory that protects and guarantees human rights in the most effective and practical manner.

The emergence and promotion of human rights in international law is an interesting chapter of the book, where the author analyses the most important acts on human rights giving us a clear overview of the Universal Declaration of Human Rights and Conventions on these rights. They are also sparingly addressed, nevertheless to the proper extent, as well as constitutional legislations and relevant acts of Europe, America, Arab world and Asia. Quite interesting is the overview regarding geography, politics and culture in terms of protection of human rights in the Arab world and in Africa and the comparison with countries of the region and the American continent. The reader finds ample information and a well-argued legal analysis regarding the specifics each region has determined for the protection of freedoms and rights.

An interesting presentation in the book by the author is also the notion of generations of human rights, which according to him, appear not as ultimately defined concepts and categories, but which vary depending on historical and political conditions and depend directly on the demands of particular population groups. The author refers to the idea of dividing the "3 generations" of human rights, according to the Czech-French lawyer Karel Vasak and finds his proposal valid, inspired by the 3 motives of French Revolution:

- first generation consisted of civil and political rights *(Liberté)*
- second generation on economic, social and cultural rights *(Égalité);*
- third generation of collective rights or solidarity *(Fraternité).*

The peculiarity of this notion is that it does not see these generations as exclusive to each other but all three generations should be treated as cumulative, intertwined and interdependent. In the context of the frequent dynamics of freedoms and human rights, the author brings to our attention a *"fourth generation"*, which have recently been perceived as "rights" for the protection from risk posed by the rapid development of the technological-scientific revolution, and above all, from bio-technology, informatics where the situation created by the global pandemic itself proved this, as a sensitivity to these rights.

For the first time - to my knowledge - an Albanian author through this book (Chapter V) offers to the Albanian reader a full presentation of the *philosophical debate on human rights*. Through this work and within author's skills, human rights are traced and analysed as they are materialised from one social, economic and political environment to another, and are not commonly accepted as prefabricated structures; questions of an existential nature, raised over years by human society are highlighted, and attempts are made to give answers, according to the brightest minds, authorities in the field. The reader will face dilemmas such as: are human rights *derived* from a superhuman power, or are they simply conventions, human inventions, in an attempt to make his life better? Do they have a certain specific *weight*; are they equal to each other; do they *change* with the change of other political, social and economic circumstances? Who do human rights belong to, or in other words: who is the *subject* that can claim them? Where are human rights based, what is their philosophical *basis*? Do they exist *universally*, or do different *cultures* also enforce different human rights? What about *Albanian constitutional law*, how was their presentation? Which *school* of human rights did our constitutional fathers follow, from one constitutional act to another? Was this a conscious choice or not? What can be said about *dimensions, efficiency* over years?

The second part, which is the central object of the book, analyses in an original and critical manner the human rights in the constitutional acts of Albania, focusing on the Constitution of 1998. This part of the book makes a clear reflection of the development of constitutionalism and constitutions, the way they are conceived in some countries, regionally and internationally, where a special part, in view of the relationship between law and the notion of state, is dedicated to constitutionalism and human rights in Albania. The historical overview in the Albanian context undergoes several important historical stages

through acts issued from 1913 to 1993, introducing us at the same time to the development of constitutional law that, in a way, follows on a step by step basis the development of the Albanian state itself to the present day.

The following analysis focuses on the elements of the Albanian Constitution of 1998, influenced by the connotations of natural law on human rights, without underestimating the definitions of fundamental principles according to the *guiding principles* of the catalogue of fundamental rights and freedoms. Ambitiously, the author does not suffice only with the normative analysis of human rights in the Constitution, but through the questions that arise, such as freedom or equality, cost of human rights etc., he attempts to promote the legal debate on the concept of constitutional principles, going further with the idea that, in the future, the concept of human dignity, from a constitutional principle, will be conceived as a constitutional *right.* As an argument in relation to this part, the author brings to attention some of the Constitutional Court decisions (decision, no. 65, dated 10.12.1999, decision no. 34, dated 20.12.2015 etc), which are memorable in the multitude of decisions it has rendered, valuing the principle of human dignity, as a principle from which other rights can be enjoyed. It further analyses the concepts on principles that are in fact directly related to the provision of fundamental rights and freedoms in the Constitution. Although the questions raised in this chapter are elaborated and argued within the space allowed by the scope of this paper, the author is aware that ideas and problems related to the issues he raises, require a broader approach, thus probably designing a separate study in the future.

Based on his experiences as a legal advisor at the Supreme Court and Constitutional Court, as well as in public positions such as that of the Chairman of Central Election Commission, the author *"avails himself"* of the experience in these institutions to analyse the concept of *constitutional procedural guarantees.* These guarantees are analysed in both doctrinal and jurisprudential terms, highlighting the essential elements, such as the rigidity of the Constitution, self-enforcement of its provisions, as well as the limitation of human rights only by law.

The focus in the context of *constitutional jurisdictional guarantees* is shifted more to the role of ordinary judges (*a quo*), who, as the author states, share their role as guarantors of constitutional rights and freedoms in full subsidiarity with the Constitutional Court. This means that without proper philosophical interpretation, without highlighting the meaning and purpose of the norm/ rule in judicial proceedings, those rights that are declaratively enshrined in the Constitution cannot be protected and obviously we cannot speak of an independent judiciary.

Special attention regarding the constitutional jurisdictional guarantees for the protection of freedoms and human rights, is paid to the constitutional

bodies, such as the People's Advocate (Ombudsman), Constitutional Court etc, explaining and stressing their constitutional role and function, but also the constitutional responsibility these bodies have, for the protection of individual freedoms and rights.

The People's Advocate (Ombudsman) appears from a very interesting and controversial point of view, in terms of his function and competencies that the Constitution recognizes as such, such as his role of informing, explaining, recommending etc. The author emphasizes the lack of an instrument with legally binding effect in his hands, which "fades" the role of the People's Advocate as an independent constitutional body for the protection of human rights and freedoms, thus calling into question the effectiveness of the Ombudsman as a protective instrument for the purpose of Articles 13 and 15 of the ECHR. However, with an objective attitude, the author deems that the institution of the People's Advocate, within the constitutional and legal framework, notwithstanding its recommendatory function, has adequate capacity to contribute to the guarantee of fundamental rights and freedoms, because its presentation as such institution, less conflicting and cost-free over time, has enabled to increase the confidence of complaining individuals.

The role of Constitutional Court remains equally important and in the focus of this publication, where the author, with a high level of professionalism, in addition to clarifying the constitutional position of this body, properly analyses the situation with the latest constitutional amendments of 2016, where special attention has also been paid to the Individual Constitutional Appeal (ICA), as a fresh component in view of expanding constitutional jurisdiction. On the other hand, he mentions the negative consequences that may lead to the overload of the Constitutional Court and not infrequently to potential disputes between it and ordinary courts. Regarding the protection of individual rights, although in some of its decisions against Albania ECHR has mentioned ICA as an ineffective remedy for some rights (as long as the Constitutional Court decisions have a purely declaratory effect and there is no compensation in favour of the party), this element is viewed optimistically by the author, because the interpretation of the concept of due process principle is seen not only in procedural terms but also in the substantive one. Further, ICA prevents unconstitutional actions of public authorities. However, the author does not hesitate to be critical regarding the changes of 2016, where according to him, Law no.7561, dated 29.04.1992 *"On some amendments and additions to Law 7491, dated 29.04.1991, "On the Main Constitutional Provisions"* more specifically regulates the *"correction of consequences and compensation of damage caused".* Following the new changes, there is no longer the correction of consequences but only the compensation of damage caused.

A few words as book reader

The publication in question, as I have stated in the presentation held at the premises of UET, comes at a key moment, as a delayed and missing book for the audience. Although there are similar publications in the field by other scholars, the author brings this publication as a philosophical approach to human rights and constitutionalism, producing both a bold and qualitative work. This book, although not the first from the author, reflects his maturity in the professional field and the valuable experience over years, and in my view, also the sensitivity as a human being, which has rights and should enjoy them.

It is worth noting that this book is also the product of a very rich bibliography and accurate scientific reference, which serves as a valuable contribution not only for students of Law Faculties, but also for us as lecturers in the field of law that, in cases when we would like to conduct our studies in this field, we will undoubtedly refer to such a paper of scientific value.

I cordially congratulate the author for the publication of this serious study and wish him further success!