

The Historic Legal Development of Albanian Fundamental Charter

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Abstract

This paper is born from the desire to deepen the constitutional evolution in our country: Albania. The constitution is understood as a commune of rules which compose a state legal order. It is based on juristic values like the respect of human dignity and the freedom of individual, put as general principles of activity orientation of civil community. To understand better and in a comprehensive way the complex constitutional system of our country, initially is needed to be analyzed the legal route of its historic evolution, particularly in the light of legal- constitutional importance that has covered in the actual constitutional structure. The main focus of this actual argument is that of the analysis of characteristics of different constitutional Charters and their evolutional processes- being those the Statutes of Constitutional Law, to close with the constitutional order of Fundamental Charter of 1998. The main target of this research is that of the analysis of the constitutional system led by the Constitution of 1998. Before we make this, we think that is reasonable to present in chronological order the most important institutional politic events which have indicated the Albanian constitutional history, being sure that in this way, we can understand the present be looking at the past.

Keywords: Constitution, Law, Legislative Process, Emigration

1. Introduction

In our country after the installment of political pluralism more and more is made a diurnal topic the issue of the creation of legal state or 'rule of law'. Naturally, the request for the installment and consolidation of such state isn't only a characteristic of our country, but of all countries which have left the communist system (Omari 2004, p. 1). Beginning from the 90s of last century, the small country of Balkan is put in the attention of public opinion due to the emigration phenomenon. Have passed approximately twenty five years from the beginnings of 90s where the students of Tirana University started that protest which in a few months shook the communist regime of Ramiz Alia, the successor of Enver Hoxha. The general crisis that came together with the emigrant exodus form a historic stage: it is closed the dictatorship period and starts a new stage. To understand the new democratic challenges which are present in Albania, we must have in mind the historic constitutional evolution of this nation.

Albania has had disturbed history: has passed from the status of west suburb of Ottoman Empire, which lasted till in 1912, till in the situation of general closing along the years of Enver Hoxha's regime. This suburban character together with the mountaineer morphology of the territory including old-time characters of autochthonous population has secluded Albania as an isolated nation, a place between borders that has created in the scientific community a lot of curiosities and different types of anthropologic studies. There haven't been organic studies over the constitutional law, even if the last times is demonstrated the opposite.

2. The Legal Order after the Ottoman Domination

In the first part, we concentrate to two adopted statutes in our country after the long Ottoman domination, in particular way, analyzing the legal institutional structure of state and the separation of powers.

In a modern elaborate law, the custom isn't seen as an important source of law. The custom acts with this characteristic as an exception. The custom expresses the social relations of the past, meanwhile with its active character of juristic creation the relations cannot be regulated by the norms of customary law (Omari 2004, p. 315).

The independent state of Albania, despite the fact that hadn't put an official government form, was created as a state with parliamentary system. The parliamentary role was exercised by the Assembly (Omari 2004, p. 153-160), which

after the end of its tasks saved the privilege of the highest State organ; even if in difficult situations the Assembly hadn't the possibility to collect and the caretaker government, based in vicarious powers of Assembly, had in its hands the whole power exercising the administrative and legislative activities.

In the first Monarchy, the statute was approved on 10 April 1914 by the international supervising commission, as representative of Big Powers. Its importance was essential because it was a direct product of its desire and in the same time threw the democratic basements for this new state. The statute was composed with 216 articles separated in charters. The main from the constitutional views were: Albania and its Territory (article 1-6), Sovereign (article 7-21), People (article 22-39), Legislation (article 40-71), Organs of Government (article 72-140), Justice (article 159-169) and Foreign Relations (article 211-212).

In the continuation of this writing we can concentrate at all ratified statutes after the announcement of independence.

Always in the 1st Monarchy was approved the second, "Statute of Lushnje" (21 January 1920), this time only as an work of national assembly. After the 1st War from the all governments which were created in our country, only the government formed by the Parliament of Lushnje could appear at international arena. An important step toward the security of international recognition the government made in August of 1920, when linked with Italy the agreement for the recession of Italian troops from Vlora. Based on this agreement, the two agreements agreed for the change of their representatives (Puto 2010, p. 181).

In 1922 this was in fact object of change by the side of National Council which gave the new name of "The Extended Statute of Lushnje". After three years, in 1925, the Republic of Zog (1st Republic) favored compilation of essential statute, after, on 1 September 1928 as the President of Republic, King Zog decided to change the governmental form of state by changing back in a Monarchy (2nd Monarchy), at which was self-styled the Sovereign. The statute of Albanian Kingdom was composed of an entrance and ten titles. From the 2nd title "state sovereignty" was obvious how much powers were given to the king, including the right of veto to parliament and the exercise of the competences in the exercise of the executive function that exercised between ministers. The sovereign was not accountable, was inviolable for every done act. It was a statute that was loaned from the European constitutional monarchy models

In the next decade, on 16 April 1939, by the help of Benito Mussolini was happened the personal union with the dental plane of Italian king, Vittorio Emanuele III (3rd Monarchy).

After this synthetic entry, we can reason how happened in such a short historic period (1912-39) with the emancipation of five statutes and modifications of the form of state, there wasn't a democracy of legal stabilization of our country. What were the motives? There are a lot of possibilities that with the coming of dictatorship it could be given a solution to these problems.

3. A Comparison of Promulgated Constitutions in the Second Republic during the Dictatorship

The second part of this writing we can concentrate on the study of promulgated Constitutions in the 2nd Republic during the dictatorship of Enver Hoxha, and in their comparison.

The changes that happened in our country during the time of foreign occupation and its finish, from view of the international law can be equaled with a governmental change. In 1944 wasn't mentioned the recognition issue of Albanian state, but that of Albanian government. The recognition issue was mentioned with the creation of caretaker government in the 2nd meeting of antifascist national council in Berat, in 1994. The request of recognition the Albanian government sent to the governments of big allied powers and to the governments of other states after the meeting of Berat (Puto 2010, p. 184).

There are two constitutional charters: the first, promulgated in 1950 during the Albanian Demotic Republic and the second, promulgated in 1976 in the Albanian Socialist Demotic Republic. In this period was obvious that the country was blocked by the totalitarian dictatorship of Enver Hoxha. In the past communist regime in some cases were appeared some common decision of Central Committee of Party of Work and of Council of Ministers. At the same time, in these cases the decisions of governments had the values of party directives. This thing was a typical expression of the antidemocratic practice of the existence of party state, in clear opposite with concept of legal state (Omari 2004, p. 305).

Except of this, the two constitutions was similar according to the state sovereignty, with the demotic assembly put as a supreme organ of state, but was true that existed distinctions. They are composed by an integration of communist ideology that is composed by one side through the consolidation of sovereignty of the demotic assembly and the head of state, and the denial of rights of freedoms. This happened because with the 1st constitution was put a governmental system more transistor and with the purpose to liberate Albania from every foreign occupation. But, one time that Albania was free and independent, the nation was enforced to create a solid system of state organization.

The 2nd constitution was directed toward a bigger integration to communist ideology that was differentiated by one

side, from the violation of the rights of freedoms and by the other side, between the sovereignty strengthening of the demotic assembly and the head of state.

Among the others, the constitution of 1976 specifies clearly the role of party leaders and conditioned *marksizm-leninizm* as an ideology of Albanian State. With the ratification of 2nd constitution, the country was isolated more and was found before a constitutional legal order.

We arrive at the conclusion that with the 1st constitution, Albania had in disposal only a caretaker governmental system to finalize with the typical governmental form of totalitarian regimes.

4. The End of Communism and the Road Toward Democracy

In the 3rd paragraph of this writing, we are concentrated at the form of parliamentary government which was re-established after the end of communism and have retaken in analysis the steps that Albania took during the democracy with the end of communism, the first attempts of legality of a democratic system where the whole legal order was based in the constitutional law of 1991. The debacle in the countries of East Europe of communist regime created new opportunities for the installment of the rule of law (Omari 2004, p. 33). This constitutional law was approved quickly and in its redaction didn't take any constitutional expert to consultate, but politicians without experience in constitutional law. It was integrated with other coming laws that disciplined different organs of state judicial system. Even if the constitutional law has affirmed the first fundamental principles of a real rule of law, its survival was becoming impossible.

The answer for this was the coup d'etat made in 1997, where in fact, was ready a new project of constitutional in collaboration with European Community as warrantor of all political forces in country, and because when the all central organs of state, with the popular personages of public law, different international organizations etc, were preparing the corpus of that which in the period of one year would be the Albanian Constitution of present days.

To analyze deeper the constitution of Republic of Albania which has entered in power on 28 November 1998, it has been modified in 2007, 2008 and lastly in 2012. In this 3rd Republic we are concentrated in the treatment of the main organs of republic order and in the separation of powers. The changes were important because had reviewed some essential problems that would bring in crisis the governmental form and the constitution.

The constitution of 1998 is considered from very national and international experts to be very long with 183 articles and with a lot of complexes. It is distinguished for a separation of powers in guaranty of democratic state and in function of political pluralism.

The governmental form is parliamentary one, characterized by a trust relation that links the government with the parliamentary majority. The state organization was again sanctioned that "Demotic Assembly is the highest organ of state power and the only legislative".

It is known that in the actual democratic system, the parliament is considered as the most authentic expression of people volition, its purposes are determined in constitution. The right of control over executive that is spread through the ratification and the faith motion to government doesn't mean that there is interference in its competences. With the constitutional changes the appearance of a distrust motion is conditioned: it can be appeared by twenty percent of deputies by proposing a new prime minister with the votes of 50% plus one of deputies (Omari 2011, p. 45).

Now, with the made changes in the distrust motion, the prime minister is the 'king' of the parliament and this can be considered as abuse of its position and a lot of analysts have considered it as a tendency toward a 'prime ministerial' republic (Omari 2011, p. 46).

Differently to the past constitutions of the socialist state, now the head of state would be anymore the presidium of demotic assembly (a collegial organ), but the president of republic, chosen by the demotic assembly for five years with the vote of all deputies (Omari 2004, p. 49).

From the reading of the actual constitutional charter is distinguished the strengthening of the government's role before the other constitutional projects and this in conformity with dominant order of the 21st century doctrine.

The constitutional text presents similar characteristics and institutes with that of European west constitutions, for example: from France and Spain, the institute of the Ombudsman and from the Italy the parliamentary mode.

This is a constitution that represents the synthesis of the aspirations of a free nation in the search of a political stability.

It isn't rights to be thought that the changes of the governments in a state aren't interested to any international law. Those are interested to any view: from the view of the capability of a government to represent the state in international relations (Puto 1999, p. 202).

Now, the Albanian Constitutional Court is obliged to guarantee the respect over the constitutional charters in its final interpretation, at those are directed the all suspicious interpretations to decide a final solution (Abdiu 2001, p. 96).

Being that the constitution is over every other normative act, it is protected by the constitutional court. In this sense, the constitutional view is one of the explanations of the expressed arguments by Alexander Hamilton at "Federalist Papers" (Hamilton 1980, p. 624-625). At the corpus number 78 Hamilton (1755-1804) supports the theory that: *"No legislative act opposite with the constitution can be valid. To deny means to assert that the one who has some special functions, is more important than the one who deputes, that the slave is higher than the owner... The interpretation of the rules is a specific duty of courts. In constitutions it is considered as an essential law. So, it must be verified a discrepancy between the constitutional law and the normal one and naturally, to be given a preference to the one to which were have the bigger obligations. Their decisions must be based on the essential law and not on those which are not essential."*

5. Conclusions

In the end of this writing is important to makes some final reflections. Initially, we must reason over the fundamental stages of the constitutional process in Albania. From the 1st Statute of 1914 adopted by the International Commission after the long Ottoman occupation to that of 1928, which in fact was inspired by the model of European Constitutional Monarchies. The importance of the Statute of 1914 is significant because it has been the 1st fundamental text of an independent state. A state that after the 2nd World War would close its borders for every foreign person, which would be encroached in the dictatorship of Enver Hoxha represented by the Demotic Constitution of Republic of Albania of 1950 and the Demotic Socialist Constitution of Republic of Albania (1976).

It was overpassed from the situations that have bring the end of the communist regime where is fundamental to reflect at the democratic constitution of 1998.

A complex and articulated constitution which will be ranked between the most developed in west world. The solid separation of powers in guaranty of democratic state is a touchable sign of this development and the prosperity of the institutions to go through a political stabilization. But a constitution only cannot crate social consciousness because it can only propose solutions.

Every social operator, jurist and every member of society should reflect the aspects that the new constitution presents in their today lives. Only in this way these values can bloom in the spirit of this nation, which now is afraid to think.

In this honest phase we should ask ourselves that which will be the coming perspectives of Albania, the new challenges to face and which will be the barriers which should be passed.

During this research as we mentioned in the beginning of this writing we are based on the low image of the institutions and is right that this is one of the problems which aren't chosen yet. A part of the Albanian feels outside the state institutions. The history of Albanians is a history of a rebellious nation to have their own state and for this reason, the Albanian citizen proves a differentiation from the public institutions and what represents the state.

A situation which is becoming worse because of the absence of the 'good governance' in public administration and can be guaranteed only by the range of the independent public functionaries, recruited over the rule of transparency and the public competitions. In a similar contest will be needed a lot of years that this constitution can enter in the people minds, according to Gorge Vedel: "the constitutional law is the law of the public authority" and in a democratic state, the constitutional law reflects the individual freedom and regulates the relations between the individuals and public authorities, in this sense the constitutional law is called according to Louis Favoreu " the essential constitutional law", but clearly the task can be simplified from the contact and the comparison with the other European countries, the role of the international organizations I very important for the development of Albania, which is an opportunity that is denied for forty years and the association process in European Community is configured to heighten the country from the actual situation.

From the made considerations till now seems to arrive at the moment where to be free from the usual places and the permanent thoughts to face the problem of the Albanian constitution development.

As it is seen this is a complex and difficult issue that seeks theoretical researches and other practical verifications of daylong applications

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