

The parliamentary system of governance in Albania

Msc. Estela Hoxha

The main feature of the parliamentary system, is not the existence of parliament, because it exists and in many countries with presidential systems. The most important is the formal supremacy of Parliament that is to say of the legislative power over the other powers¹. Another key feature is the existence of the government as a special administrative body distinguished from the Head of State. So in the parliamentary system, the executive function is divided between the head of state and government. Head of state has some functions that generally have formal character, which in most cases politically are dependent on parliament and government. So the head of state does not perform administrative functions which are competence of the government. What is the foremost in this system is that there is a kind of fusion of legislative and executive branches in parliament, the prime minister, who is head of government, and government members are elected from among the members of parliament and as such are responsible for the latter. Parliamentary form of government configures two important positions: Presidency separated by Prime Minister format which better gives the idea of nation and strong constitutional regime. While the government means Prime minister, ministerial cabinet, administration to whom may have complains about the way of orientation of policy and sewage, this dissatisfaction can also be conducted against the prime minister, although the constitutional framework of regime where Prime Minister operates can not provoke dissatisfaction at public perception.

Today in the world there are many forms of democratic governance. However, in all forms of democracy there is one person who runs the government. This leader can be a king or queen, in a constitutional monarchy system, the prime minister, in a parliamentary system, or president, in a presidential system. There is a possibility that a state may have a hybrid system, where for example, executive powers are divided between the president and prime minister. The latter is characteristic of the parliamentary system. It should be noted that the method of electing the president is not a distinguishing feature between parliamentary and presidential systems. Two methods for electing the president are: a) from the parliament and b) from the people. The election from the people is typical for presidential system and concrete example is the United States of America, but this does not exclude the parliamentary system, for more that today about 75% of European republican countries and all around the world have this way of election of president. Direct election has nothing to do with power, but with the concept on politics, the state and the separation of powers².

¹ Luan Omari “ *Parime dhe instuticione të së drejtës publike*”, f. 115, Tiranë

² Afrim Krasniqi, *Kushtetuta dhe modeli i Presidentit*, botuar në gazetën Shekulli, 15 prill 2008

The Election of the President in Albania is made by Parliament. The procedure for electing the head of state is defined in the Constitution which provides for presidential candidate provides some imperative conditions that must be met, according to Article 86, paragraph 2:

- To Be an Albanian citizen by birth.
- To have stayed not less than 10 latest years in Albania.
- To be 40 years old.

The Constitution requires that the exercise of his function to be in-consistent with:

- Another public function
- being a member of a party or private business³.

President's powers are listed in the Constitution and other specific laws. It is obvious that due to the implementation of the principle of checks and balances governing, President does not have real political power, but interferes in the three powers. But, nevertheless, the head of state performs three main functions:

- 1 - Symbolic function, representing the unity of the people.
- 2 - Head of State is the guarantor of the country's institutions, it ensures the respect for the Constitution, other laws and the rights and freedoms of citizens.
- 3 - The Head of State has also the mission to act, if necessary, as an arbitrator between the various political forces.

Specifically, in the relationship with the Assembly, the President of the country has jurisdiction:

1. To call the newly elected Parliament in its first meeting not later than 20 days after the elections. In contrast Assembly gets together within 10 days from the end of the preceding period. (Article 67 of the Constitution)
2. The President may call the Assembly in extraordinary session (Article 74/2 of the Constitution)
3. Exercise the right of veto. (Article 85 of the Constitution)
4. Promulgates laws. (Article 84 of the Constitution)
5. To direct messages to the Assembly. (Article 92 of the Constitution)
6. Evaluates the request of the people to hold a referendum. (Article 150 of the Constitution)
7. Promulgates the law adopted by referendum. (Article 151 of the Constitution)
8. Distributes the Assembly if it fails to elect the Prime Minister. (Article 96 of the Constitution).

The Constitution explicitly gives the President the power to use the right of veto on a law passed by Parliament, but that has not yet entered into force, a moment which is currently known as possible when the president declares the law and then it is published in the official newspaper. President may exercise the veto, for constitutional reasons - when the law passed by the parliament and brought to the President for enactment, deemed unconstitutional by the President he uses the right of veto it; legal reasons - when the law is inconsistent with other laws, when the law which is brought to the president contains contradictions within it, the exercise of veto can be done for political reasons - in case of a law which from the procedural and substantive point of view is correct, but the reality of the set of social economic circumstances, political situation in the country does not favor its entry into force, calling it inappropriate. In relations with the Government, the President appoints the Prime Minister with the proposal of

³ Neni 89, Kushtetuta e Shqipërisë

the party or coalition of parties that has the majority of seats in Parliament, at the beginning of the legislature and when the position of Prime Minister is vacant. (Article 96 of the Constitution). Appoints and dismisses the ministers with the proposal of the Prime Minister . (Article 98 of the Constitution).

The powers of the President in the field of justice lie in: Appointment of members Constitutional Court (Article 125/1 of the Constitution). Appointment of judges in case of vacancy in Constitutional Court . (Article 127/3, of the Constitution). Appoints members of the Supreme Court (Article 136/1, of the Constitution). Appoints other judges (Other Judges are appointed by the President of the Republic with the proposal of the High Council of Justice (Article 136/3 of the Constitution). Exercises the right of pardon under the law. (Article 92 of the Constitution). Leads HCJ appoints the General Attorney with the consent of Parliament. Legislative power is exercised by the Parliament. Adoption of law is only his exclusive attribute. Parliament is the only body that enables the adoption of a draft. This power given to the Assembly is foreseen in the constitutional provisions. It is distinguished from executive power⁴ which only in case of emergency, under its responsibility, may issue rules and regulations that have the force of law for taking temporary measures. Constitutional provisions also stipulate the entities which has the power to take a legislative initiative. According to them the Council of Ministers, every deputy, and 20,000 electors has the right to propose laws. In most cases the project laws which comes to the Assembly for consideration are an initiative of the Council of Ministers. The draft is subject to the relevant parliamentary committee for review and then to move to the plenary session. Plenary session decides according to the case for approval or rejection of the draft. The Constitution foresees that the drafts which come for consideration, when is the case, should always be accompanied by a report that justifies the financial costs of its implementation. No non-governmental draft that makes it necessary to increase the expenditures of the state budget or reduces the income, can not be approved without taking the opinion of the Council of Ministers, which must give an opinion within 30 days from the date of receipt of the draft⁵. The Draft is initially reviewed by the responsible commission according to the 3-week schedule approved at the meeting of the Conference of Chairmen. After being reviewed by the commission the draft passes for consideration in plenary. His review begins by discussing the principle and then reviewing each article in its entirety. Parliament, at the request of the Council of Ministers or a fifth of all members, can review and approve a draft with a speed up procedure, but no earlier than one week from the beginning of the screening procedure⁶. This type of procedure is not permissible for review of the drafts which are approved by three-fifths of all members of the Assembly set out in Article 81/2 of the constitution with the exception of letter dh. This derives from the fact that such drafts are of

⁴ (përsa i përket kompetencave legislative).

⁵ neni 82/2 Kushtetuta e Republikës së Shqipërisë

⁶ neni 83/2 po aty

particular importance, and as such can not be passed within a short time for review and approval. For a draft to become law, the Assembly must decide by a majority of votes in the presence of more than half of all its members, except cases when the Constitution provides for a certain majority⁷. Constitutional Dispositions provide "power" without restriction, to any deputy, to take a legislative initiative. But even the 20,000 voters have the right to take a legislative initiative (Article 81 of the Constitution). Cases of popular initiative (the voters) are rare. Their signature associated with their draft as well as relevant relation are gathered by a promoter committee.

Another function of the Assembly is the election function or otherwise called the function to elect. office. Parliament as the supreme legislative institution has responsibility in choosing constitutional bodies or those established by law. Deputies are responsible for electing the Prime Minister, the members of the Council of Ministers and the approval of his political program. Consequently, the government is closely linked with the parliamentary majority. The Assembly also elects the President of the Republic. Also according to constitutional provisions The Assembly gives its consent for the appointment of members and Chairman of the Constitutional Court. In connection with judicial powers Parliament has the right to give consent for the appointment of the Chairman and members of the Supreme Court. The Assembly elects the Advocate of People, the General Attorney 1, the President of the High State Control, Bank Governor, Central Election Commission, etc.. The Parliament has also the function of controller. Assembly as the highest legislative institution exercises control not only on the executive but also over the constitutional institutions or those created by law by itself to verify the legal framework approved by it. To enable this control, the Assembly holds a series of legal control mechanisms provided in the constitution and in the Rules of Assembly. In the framework of competences of control it is worth to be mentioned the control that it exercises over the executive through legal instruments such as sessions of questions, motions, motions on matters of government policy implementation, enforcement and its positions on various issues. Another important constitutional means in the "hands" of opposition that is given to Parliament is the right to establish investigative commissions⁸ to examine a particular issue. It should be noted that the conclusions drawn from these committees are not binding on the courts, but can be notified to Prosecution, which evaluates, according to certain legal proceedings. Thus, the role of Parliament is not alone in making laws, but also in control of their implementation.

⁷ neni 78/1 po aty

⁸ Gjykata kushtetuese me vendimin nr. 18, datë 14.05.2003 në interpretimin që i bën kësaj çështjeje shprehet se ...”kjo e drejtë shërben njëkohësisht edhe si një mjet në duart e pakicës parlamentare për të ushtruar kontroll kryesisht kundrejt ekzekutivit dhe për të kërkuar vënien përpara përgjegjësisë të mbajtësve të pushtetit. Në një sistem parlamentar, duke qënë se qeveria formohet nga shumica parlamentare, e cila ka në dorë shumë mjete të tjera ligjore, e drejta e kontrollit hetimor i është njohur sidomos pakicës, që duke i patur të kufizuara mjetet e saj, ta shndërrojë atë në një instrument të fuqishëm kushtetues” duke vazhduar më tej se ...”e drejta e ¼ së deputetëve për të ushtruar hetim parlamentar nuk mund të konsiderohet absolutisht e pakufizuar. I vetmi kufizim i saj është i lidhur me detyrimin që, objekti i hetimit, të jetë në përputhje me respektimin e parimeve të sanksionuara nga kushtetuta”.

Characteristic of the parliamentary system is that executive power is exercised by the President as well as the government, but with clearly defined powers. Part of the executive power are central and local authorities, on top of which stands the Government as a constitutional body. The Government itself consists of the Prime Minister, Deputy Prime Minister and ministers who are constitutional bodies. Their function and powers are defined in the fundamental law of the state in the Constitution. The formation of the government is stipulated in the constitution, according to which the President of the Republic due to the proposal of the Prime Minister appoints the new government in two cases: 1 - when the old government has completed its function or two - when the government fails for different reasons. So on one side is the President who appoints the Prime Minister and other ministers and on the other side is the Parliament that gives the approval of the government. All this is regulated by a whole procedure, which in many countries, most of it consists of unwritten rules, such as the so-called constitutional arrangement⁹. The Constitution provides the right of the Prime Minister to lay before Parliament a motion of confidence¹⁰. He carries this right when he thinks that his positions are shaky or when he requires a parliamentary support before applying a reform or implementing an important program.

One of the functions of the Government is the administrative one. One must understand the fact that the Government should not be seen merely as a bureaucratic organ group but the most essential is that they are governing bodies. These two functional elements are connected with each other. The Administrative function of government, is expressed through central bodies collected in the ministry, and many peripheral organs, whose jurisdiction is limited under a small territorial unit¹¹. The activity of the state administration is focused on two areas, the limits of political activity and the management of administrative activity. In this context are included, the acts, and issuance in the form of guidelines and decisions by the Council of Ministers. As far as the activity of political direction is concerned, not only government participates, but also the Parliament. In the Constitution it is enshrined the supremacy of the Prime Minister in the exercise of political leadership. This is expressed in Article 102 / b, c, d when it is sanctioned;

- Prime Minister drafts and presents the main general state policy and is responsible for them, ensures the implementation of legislation and policies approved by the Council of Ministers;
- Ensures the implementation of legislation and policies adopted by the Council of Ministers;
- Coordinates and supervises the work of the members of the Council of Ministers and other institutions of the central state administration.

In this way the Prime Minister ensures the program designed by the government to be actually realized in practice in a unique way, keeping the unity of political and administrative direction, coordinating and controlling the work of ministers and other central state administration. Ministers lead separate branches of public administration. Another feature of the executive power is that the organs who exercise this power could issue

⁹ Aurela Anastasi, *E drejta Kushtetuese*, f. 165, Tiranë 2004

¹⁰ Kushtetuta e Republikës së Shqipërisë, neni 104, Tiranë 1998

¹¹ Aurela Anastasi, *E drejta Kushtetuese*, f.168, Tiranë 2004

normative acts. These acts have as a rule a typical law conception, but do not have the same shape. The acts provided by the government are in the form of decisions, guidelines, but also orders such as individual acts of Prime ministers and Ministers. But the acts issued by the government should be according to the laws of Parliament, here it is expressed precisely power and interdependence of the executive to the legislature. In certain cases laws of the Council of Ministers receive the same legal force as acts adopted by the Parliament. But these acts have extraordinary and temporary character. Such acts must be approved by Parliament within 45 days, otherwise they lose their power. Parliamentarism in Albania is developed in different stages, but I can not say that it has a long history of its implementation and development in Albania. It has appeared in various forms with special features and distinct depending on historical conditions. However, like any process in our country, parliamentarism has evolved towards further democratization and development. In Albania parliamentary system although with limitations, begins with the creation of an independent Albanian state in 1912¹². The first legislative acts were sanctioned in the decisions of the National Assembly of Vlora, which effectively represented the highest state organ and was expressing the will of the nation. Later parliamentarism was sanctioned even in statutes such as the Status drafted by the ICC in 1914, although it remained just a simple sanction because the beginning of world War prevented the formation of such an organ. The effort of the Congress of Durres to recover the Albanian state did not prove to be successful, this duty was undertaken by Lushnja Congress. It created the Senate, the first Albanian Parliament which later called itself the "National Council". The National Council had wide powers in relation to the High Council which did not enjoy the right of veto for the laws approved by the parliament. Regime that was decided by the Congress of Lushnja, referring to the authority given to the National Council, was "assembly mode". Statute of Lushnja was expanded and this fact made it the most important legal act of the time that is known in history as the first Albanian Constitution. In this period it was also changed the title of the National Council in Parliament. On 21st January 1924 to 2nd March 1925, it was held in two periods, the Constitutional Assembly which only in the second period reached to adopt the Fundamental Law of the State. From 1925 to 1928, the Fundamental Status determined Albania parliamentary republic, but in fact it gave great powers to the chairman of the republic (Ahmet Zogu), giving to this republic a presidential nature. It was only a transitional phase towards the establishment of the monarchy by Zog on 1st September 1928. By continuing journey in history, the years of Italian occupation in Albania are characterized by the disappearance of parliamentarism. With the Constitution of the year 1946 Albania was sanctioned as People's Republic of Albania. During the period of monist party system the role of the Popular Assembly remained unchanged. It was called in ordinary session twice a year, which lasted 2-3 days. Legislative activity actually acted under the control of the Presidium of the National Assembly. During this time the Albanian citizens lived in a political system where the head of state carried an extremely strong position, which was followed even after 1991. It was not possible to be done political changes within a short period

¹² Luan Omari, *Sistemi parlamentar*, Tiranë 2004, f153

of time. Just after 5 decades appeared the first signs of parliamentarism. This shows that parliamentarism since the declaration of independence and onwards failed to have roots. But also there is a continued tendency for continued deployment of parliamentarism, despite being experimented various forms of government, parliamentary, monarchist, even with presidential nature (A.Zogut republic.). However I would say that these continued tendencies of the implementation of parliamentarism, created a kind of tradition in the way of the governing, so I think it has its impact on the implementation of parliamentarism as the best form for Albania. The existence of a ghost parliament in the period of monism and the concentration of power in the hands of the party – state showed the loss of the democratic values of parliamentarism. Monism period was characterized by a brutal dictatorship which led to an institutional backwardness, but dimension of this negative impact of communism was extended to all areas of the Albanian society, the consequences of which are felt even today. The existence of a single ideology, complete control of state activities, the control of means of information, and public opinion, the elimination of human rights and fundamental freedoms, the establishment of a police regime, are essential elements of communist dictatorship, part of bitter experience that served as a lesson for not turning back. but to support and establish in Albania the parliamentary democracy. Fear of dictatorships of the past, made the Albanians in to support the parliamentary system as the best form of government, thus avoiding the monarchy or presidential system. The law for the Main Constitutional disposes of 1991 does not solve the problem of the government system though it approaches more to the presidential system of government (the large number of presidential powers). On this issue, that: "Why in Albania it is better parliamentary system?" Afrim Krasniqi said: "Of course the best. Despite the obvious problems and difficulties for a country with only 80 years of state history and a few years of functional democracy, parliamentary republic model after 1990 has been positive and functional. In comparative terms it has proved incomparably better than the model of popular or democratic republic of 1946 and 1976." ¹³ Another positive aspect of parliamentarism that can be seen as the most appropriate for Albania is the possibility of representation, that is to say Parliamentary Republic is the system that provides the best representation of people, more than the existence of a monarchy, "Monarch is what he or she is and it is a person who does not change, though in Albania it is not claimed the establishment of an absolute monarchy, although there are monarchists who think about this. Monarchy is a system relatively exceeded, even those countries which are concurrently monarchy and democracy are constitutional monarchy where the monarch has a symbolic role, a role which is played to us very good by the President. To have a presidential system like that of America should have a very strong constitutional reassurances, should have a tradition of respecting the institutions, which in Albania we don't have, so it is better to have a strong parliament than a strong president" ¹⁴. So the main reason why it was decided parliamentarism in Albania was to avoid the concentration of power in the hands of one person. In addition, we can

¹³ Marrë nga intervista e zhvilluar me Afrim Krasniqin, Tirane 2008.

¹⁴ Marrë nga intervista me Ermal Hasimja

say that the conditions that have led to the establishment of parliamentarism in Albania are also the impact of governance models in most countries of the region and Europe, disappointment and decline of constitutional monarchy models, the need for governance and the team rotation , not a single leader, and the need for greater breath of democracy, through competing political parties . Support to parliamentarism was noticed even at the attitude of people to constitution project of the year 1994 which was objected by referendum of the 1997 referendum on the monarchy or republican system which the latter refused. Draft of 1994 sanctioned the major powers of the president, mainly in the form of decrees of the law, the power associated with high-level appointments to the judiciary, as well as in relation to the government (government meeting and its direction in special situations). The approval of which would lead the country into a semi-presidential system, it contained a mixture of the presidential parliamentary model. Draft Constitution of 1994 did not change much from the constitutions of the post - communist countries which were adopted in Eastern Europe. It could foresee the standard principles of separation of powers principle, the principle of parliamentary democracy, the principle of the protection of fundamental freedoms and human rights, etc. Failure to approval of the draft Constitution was the result of several causes or factors: The first factor - has to do with the frustration of citizens against the inept government of the Democratic Party, with the economic crisis. The second factor - the phenomenon of corruption and abuse of power and other negative phenomena which had an impact on the people who through a referendum rejected it. So it was more of a critical vote on governance than the proposed constitution itself. With the change of political system in 1992 it was promised and the citizens were looking forward to its realization , in 1994 the right party was in half of mandate and many promises were not fulfilled, so that citizens found an opportunity to punish the government shortcomings. The second reason that is qualified as political and is connected with obstructions which the opposition made to the adoption of a new constitution supported by the Democratic Party. The third factor - was the splitting of the ruling coalition, the passage of the DP and any allies on one side and most of the political parties on the other side against the draft. This led to the conversion of the vote in a protest and political vote against the government, not directly against the draft. The fourth - was foreign influence on the citizenship section of conditionality for the head of the Orthodox community. This influence was very great, especially in southern cities, where voting against the project was massive and in deep distance. However, we should not deny the fact that there are positions such as: Berisha tried to approve the Project Constitution, because he was president at that time, and wanted to concentrate as much power in his hands. And one of the reasons why people rejected this, is because Berisha turned this not into a draft constitution draft but on a more personal project¹⁵. The first challenge for parliamentary democracy in Albania was to build relations between the government and opposition. In the period of 1992-1996, the Democratic Party had superiority

¹⁵ Ermal Hasimja, marrë nga intervista e zhvilluar me të.

over other parties because it had an absolute majority in parliament, so the Democratic Party had 92 seats, 38 seats Socialist Party, Social Democratic Party 7 seats, and other seats; Union Human Rights, the Republican Party and other minor parties¹⁶. This advantage enabled PD to form and lead the executive thus taking over the running and development of the country. Although it gave to PD full opportunity to lead the country, and it had also the other disadvantage because the party was exposed to the risk of failure, because of the heritage of the past, the political situation, economic and social situation. Reports position - opposition in Albania failed to reflect a parliamentary culture. Opposition in most cases chose boycott as a method of action in parliament, and on the other side with the ant institutional actions by pushing political crisis, economic, social and crises aiming at early elections. On the other hand during the elections the losing party accused the other for abusation, manipulation etc.. This phenomenon became constant, creating a negative image of Albania in the international arena which looked suspiciously to the ability of the Albanian state to build a stable democratic society. The Allowance of the pyramids in 1997, brought in Albania a civil war in which were killed thousands of citizens and burned many cities across the country. The permission of them was one of the greatest illusions of Albania because it came in a sudden and very rapid way, robbing the money of the people and being a source of rebellion among other citizens so it resulted in damage to the image of Albania in the world. Additionally, this led to multiplication by zero of all the results that were achieved before. Another challenge was to overcome the constitutional crisis by enacting a new constitution. In 1992, it was set up a committee to draft the Constitution. But this process led to discord between government and opposition. Democratic Party wanted to have a new constitution which establishes a strong executive power by strengthening the powers of the president, similar to the French model or that of the United States, so a system combining parliamentary and presidential. The opposition led by the Socialist Party and the Socialdemocrats, insisted for a typical parliamentary model, where the role of the president was formal. On the other hand the need to draft the Constitution was immediate, since Albania was the only post – communist country which had failed to issue a new constitution after the fall of the dictatorship. Albania in this period was under pressure from internal and external, as the Council of Europe conditioned membership of Albania, with a new constitution. Commission reached to finish the text of the draft of constitutional but in 1994 it fell by referendum. On 28 November 1998 entered into force the Constitution of the Republic of Albania, which was assessed by European organizations as full compliance with European standards. Confronted with the policy of total closure in relation to the international community Albania had as priority, opening to the international community, adhesion and integration in many international mechanisms. Since the beginning of transition Albania restored diplomatic relations with many countries, and also started the process of integration into European and Euro-Atlantic institutions. On its way to regional and European cooperation, Albania faced many challenges such as the 1997 spring event which stopped relations with many countries. Kosovo

¹⁶ Fletorja Zyrtare e Republikës së Shqipërisë, Nr.2/92, f.99

war also created problems taken into consideration that Albania had a prominent role and many European governments showed attention and care towards it. Practical implementation of the constitutional principle of separation and balance of powers. From a country with tradition a 50-year direction of one party it passed in the model of separation of powers, the prohibition of the role and impact of the party in many institutions and decision-making, in governance team, etc. The institution of elections, base of the democratic system, has not always been functional. These were and still remain to be the major challenges. Still today there is disagreement between the institutions and powers due to flawed application of this constitutional principle, which underlies the model of parliamentary democracy¹⁷.

Another challenge was the institutional design because they were taken without change from the models of other countries without caring whether these were appropriate for the conditions of Albania. Challenges have been among the most different beginning from the lack of a democratic culture, that is absent in Albania. Nonfunctioning of the elites and the will to accumulate power in their hands, this is more distinguished to the Democratic Party in some cases to the Socialist Party because it has been negligent. The design of institutions is not done to have democratic institutions but to serve a particular purpose, of a person or a party¹⁸. This obviously relates to the experience of the past, with a tradition already accumulated of the elite forces from the examples of the party – state of the period of the communist state. Showing lack of democratic culture and implementation of its principals.

¹⁷ Afrim Krasniqi, marrë nga intervista e zhvilluar me të

¹⁸ Ermal Hasimja, marrë nga intervista e zhvilluar me të