

The constitutional institution of the President of the Republic of Albania and his legitimacy in the Constitutional Court of Albania

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Abstract

The President of the Republic is the highest institutional figure, which represents the state in a parliamentary republic and corresponding to the level of head of state. The Constitution of the Republic of Albania provides that the President of the Republic is the Head of State and represents the people. Given the importance of the role of president, in this article will aim to treat his function by identifying and innovations that brought the constitutional amendments. The paper is divided in two parts. The first part treats the role of President of the Republic of Albania, the method of his election, competence and method of his dismissal. The second part of the paper treats the relationship with the institution of the Constitutional Court, the president's legitimacy to address the application in the court and cases of constitutional practice.

Keywords: President; Constitutional Court; Constitutional institution; Competences; Amendment.

Introduction

From the establishment of the Albanian state until 1991, upon the approval of constitutional provisions, Albania has been ruled by some government models and the role of the President of the Republic has been exercised in different types. After 1990, for the first time was established the constitutional institution of the President of the Republic, on 30th April 1991, when was elected the first President of the Parliamentary Republic by the multi-party parliament.

The Head of State in the Republic of Albania

The Head of State or the President is a person, whose powers are defined as per the type of government of the country, such as in a totalitarian state he is the absolute official of the public powers, or in some other states where the Presidents has executive powers and in some others he has only a ceremonial role. Despite relevant powers, the Head of State shall represent the unity, continuity and lawfulness of the state.

In the Republic of Albania, the President acting as the Head of State is a monocratic constitutional institution and represents the unity of the people¹. Despite the type of organization or exercise of powers, the Head of State is always elected. His election may be performed in some forms, such as direct election from the people or the presidential elections, by an electoral college, the latter elected by the people or the third form of electing a president is by the assembly. The form of electing the President by the people or by a college is typical of the states that have selected the form of Presidential System or Semi-Presidential System, in a Parliamentary Republic

¹ Point 1, Article 86, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania".

the President is elected by the assembly.

In the Republic of Albania, the Assembly elects the president upon the proposal of a group of not less than 20 deputies. The candidate for president shall meet some criteria, shall be a an Albanian citizen by birth who has resided in Albania for not less than the past 10 years and who has reached the age of 40². For the election of a President, the Assembly holds up to five ballots, the procedure is expressly defined in the Constitution of the Republic³. The President of the Republic is in every case elected for 5 years, with the right to be re-elected only once. The President of the Republic while exercising his duty may not hold any other public position, unless those *ex officio*. Moreover, while exercising his duty, the President may not be a member of a party and may not carry out other private activity⁴. The President is not responsible for actions carried out while exercising his duty and may not exercise other powers besides those contemplated expressly by the Constitution and granted by laws issued in compliance with it.

The Powers of the President

The Powers of the president, based on the legislative technique implemented by the writers of the Constitution, except those provided in Article 92 of the Constitution, are not in sequence but distributed in various chapters⁵. The writers of the Constitution have conceived the role of the President as the arbiter, moderator of the powers and of the regulator as a neutral personality, having an important role in crises settlement, in balancing the powers and performing relevant functions⁶. The constitutional experts have assessed to adapt the institution of the President with the Parliamentary system of Albania and the establishment of a more responsible and stronger government from its foundation⁷.

The powers of the President of the Republic may be classified as per the relation with any constitutional body or with other bodies. Regarding the Assembly, the President has some powers such as to call the newly elected Assembly to its first meeting⁸, to address messages to the Assembly⁹, to promulgate the law ratified by the Assembly within 20 days from its submission¹⁰, to promulgate the law ratified via a referendum¹¹, to give consent for immediate entry into force of the law, under the conditions provided in the Constitution¹², is entitled to return the law for review only

² Article 86, Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania".

³ Article 87, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania", as amended by the Law no.76/2016, date 22.07.2016.

⁴ Article 89, Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

⁵ Reference to the Constitution Debate, volume 1, Tirana 2006, page 320-321.

⁶ Reference to the Constitution Debate, Volume 2, Tirana 2006, page 425; Volume 1, page 319-320.

⁷ Reference to the Constitution Debate, volume 1, page 319.

⁸ Point 1, Article 67, Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

⁹ Point a, Article 92, Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

¹⁰ Point 1, Article 84, Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

¹¹ Point 1, Article 151, Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

¹² Point 4, Article 84, Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the

once¹³, defines the date of Assembly elections and to call a referendum¹⁴, is entitled to dissolve the Assembly if the Assembly fails to elect a new Prime Minister¹⁵, when the Assembly cannot convene during a state of war, the President, on the proposal of the Prime Minister may issue acts having the force of the law¹⁶.

In relation to the executive power, the President appoints the Prime Minister on the proposal of the party or coalition of parties that has the majority of seats in the Assembly¹⁷, appoints and discharges the Ministers on the proposal of the Prime Minister¹⁸, appoints and withdraws on the proposal of the Prime Minister the plenipotentiary representatives of the Republic of Albania to other states and international organizations¹⁹, on the proposal of the Prime Minister appoints the Director of the Intelligence Service of the State, the President proposes to the Assembly to declare a state of war, and to impose a state of general or partial mobilization or demobilization under the circumstances defined in the Constitution.²⁰

Other powers executed by the President are granting decorations and titles of honors according to law, granting the highest military ranks according to law, exercises the right of pardon, accepts letters of credential and the withdrawal of diplomatic representatives of other states and international organizations, nominates the Chairman of the Academy of Sciences and the rectors of universities pursuant to law, requests opinions and information in writing from the directors of state institutions for issues that relate to their duties, enters into international agreements according to law²¹. The President proposes to the Assembly the election of the Governor of the Bank of Albania,²² proposes to the Assembly the election and dismissal of the Chairman of the High State Control.²³

The Constitution has attributed to the President a guarantee role in the national security and has granted powers to appoint/dismiss high rank commander officials of the Armed Forces, respectively: the President is the Commander-in-Chief of the Armed Forces²⁴ and in peacetime exercises the command of the Armed Forces through

Law no.76/2016, date 22.07.2016.

¹³ Point 1, Article 85, Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

¹⁴ Point gj, Article 92, Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

¹⁵ Point 4, Article 96, Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

¹⁶ Article 176, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

¹⁷ Article 96, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

¹⁸ Point 1, Article 98, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

¹⁹ Point "dh", Article 92, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

²⁰ Point 2, Article 171, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

²¹ Article 92, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

²² Point 2, Article 161, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

²³ Point 2, Article 162, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

²⁴ Point 2, Article 168, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

the Prime Minister and Minister of Defense, upon proposal of the Prime Minister appoints and dismisses the Chief of the General Staff, and upon the proposal of the Minister of Defense appoints and dismisses the commanders of the army, navy, and air force²⁵, declares the state of war according to the circumstances defined in the Constitution²⁶, and other powers related to the administrative functions, grants Albanian citizenship and permits it to be given up according to the law, sets the date of the elections for local government bodies²⁷.

The President in peacetime exercises the command of the Armed Forces through the Prime Minister and Minister of Defence. The Constitution has clearly defined that the President as the Commander-in-Chief of the Armed Forces exercises the command of the Armed Forces through the powers defined by the Constitution. The command of the Armed Forces interweaves many aspects that may be political, strategical, military, technical or just administrative.²⁸

Referring to the previous Constitution, the constitutional amendments removed the power of the President to elect the Prosecutor General²⁹. Upon the approval of the constitutional amendments, changed even his powers related to the judicial powers. According to the Constitution of 1998, the President upon the approval of the Assembly had the right to appoint the members and the Chief of the Supreme Court and upon the proposal of the High Council of Justice appointed the other judges, headed the High Council of Justice and proposed its Vice-Head, upon the consent of the Assembly appointed the members of the Constitutional Court and the President of the Constitutional Court from the ranks of its members. As per the constitutional amendments, the President appoints only 3 members of the Constitutional Court. Meanwhile, the other judges of the Supreme Court are appointed by the President of the Republic upon the proposal of the High Council of Justice, for 9 years term without the right of re-appointment.

The President of the Republic may be dismissed for serious violations of the Constitution and for the commission of a serious crime. In these cases, a proposal for the dismissal of the President may be made by not less than one-fourth of the members of the Assembly and shall be supported by not less than two-thirds of all its members. The decision of the Assembly is sent to the Constitutional Court, which, when verifies the guilt of the President of the Republic, declares his dismissal from duty³⁰. As a Parliamentary Republic, in case the President of the Republic is temporarily unable to exercise his functions or his place is vacant, the Speaker of the Assembly takes his place and exercises his powers until the election of a new President³¹.

²⁵ Point 3, Article 169, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

²⁶ Point 1, Article 171, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016, date 22.07.2016.

²⁷ Article 92, Law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016.

²⁸ Law no. 64/2014 "On powers and authorities of conducting and commanding the Armed Forces of the Republic of Albania.

²⁹ Point 1, Law no. 8417, date 21.10.1998, "Constitution of the Republic of Albania".

³⁰ Article 90 Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania".

³¹ Article 91 Law no.8417, date 21.10.1998 "Constitution of the Republic of Albania".

II. Legitimacy of the President in the Constitutional Court and cases of practices

The Constitution of the Republic of Albania has provided that the interests of the bearers of public functions, such as the President of the Republic, Prime Minister, one-fifth of the Assembly members and Chairperson of State Supreme Audit, with the purpose to protect the principles regarding the constitutionalism, rule of law, democracy, human dignity, social equality, etc, cannot be restricted³². The Head of State, being one of the unconditional eligible subjects to put into motion the Constitutional Court, is not compelled to justify his interest.

According to the jurisprudence of the Constitutional Court, the President has put into motion the Constitutional Court through an application to review the compatibility of the law or other normative acts with the Constitution or the International Agreements³³, when has claimed conflict of powers with the Assembly of Albania, such as the case for the election of the new members of the Constitutional Court³⁴. From the practice of the Constitutional Court I would like to mention two cases when the President has put into motion the Constitutional Court through the application to review the compatibility of two laws, for which he claimed that were interfered his powers as the Commander-in-Chief of the Armed Forces and Head of the High Council of Justice, an ex officio role. He will continue to act as the Head of the High Council of Justice until the establishment of the High Judicial Council³⁵.

Regarding the case on reviewing the compatibility of the Law no. 64/2014 "On powers and authorities on commanding the Armed Forces of the Republic of Albania", the president through his application has claimed that some certain provisions of the law restricted his role as the Commander-in-Chief of the Armed Forces, and exceeded the provisions of the Constitution regarding the functioning and commanding of the Armed Forces, impeding the principle of separation and balancing of powers.

Regarding this case, the Constitutional Court by the end of the judgment has assessed that *the provision defining that during the state of emergency and in case of natural disasters, the Prime Minister is directly responsible to command the Armed Forces via the hierarchy of commending is in violation with the Constitution and the role of the President as the Commander-in-Chief of the Armed Forces in cases of state of emergency, which require involvement of the Armed Forces*". Moreover, the Court has abrogated the provision that defined: *"during wartime the President commands the Armed Forces through the Commander-in-Chief of the Armed Forces"*. According to the Court, such provision exceeded the provisions of the Constitution, which does not specifically define the command of Armed Forces by the applicant, the President during wartime³⁶.

Regarding this case, the Court has assessed as incompatible with the Constitution the above-mentioned provision of the law, which provides: *"The Prime Minister upon the proposal of the Minister of Defence dismisses high ranking officers, except the Chief of the General Staff of Armed Forces"*. The Constitution has defined the President as the responsible body to appoint or dismiss the commanders of the army, navy, and air

³² Reference Decision no. 18, date 29.07.2008 of the Constitutional Court.

³³ Point 1, Article 49, Law no. 8577/2000 "On the organization and functioning of the Constitutional Court".

³⁴ Reference to the Decision no. 41, date 19.07.2012 of the Constitutional Court.

³⁵ Point 12, Article 179, law no. 8417, date 21.10.1998 "Constitution of the Republic of Albania" as amended by the Law no.76/2016.

³⁶ Reference to the Decision no.10, date 26.02.2015 of the Constitutional Court.

force, meanwhile the law, subject of the judgement, provided that the Prime Minister had the powers to dismiss the same category of high ranking officers. According to the Court, such provision would create a vagueness situation regarding the responsible state authorities, involved in the process of military careers of the high-ranking officers and their relevant powers in this process, and the Court decided that the provision was in violation with the Constitution.

On the other hand, the Constitutional Court has assessed as not based the claim of the President for the abrogation of the provision that provides: *"The Prime Minister upon the proposal of the Minister of Defence in peacetime approves the plan of the positioning and distribution of the Armed Forces"*. The Court assesses that the approval of the organizational structure of the Armed Forces is a case of technical nature, regulated by law. As a case of military-technical organization, the law has defined the executive power and not the President as the responsible authority to approve this structure.

The Court has assessed that the Constitution has not granted to the President the powers for the appointment, discharge of the military representatives/ attaché, but only the power to appoint and discharge the plenipotentiary representatives. The Court assessed as not based the claim to abrogate the provision that provided that the Minister of Defence delegates the authority of operational command, soldier-group - squad-platoon-company-battalion and of the structures unified to the army, navy, and air force, to the allied commands with which the Armed Forces of the Republic of Albania join mutual missions³⁷. This has been an extensive issue and the Court accepted partially the claims of the President.

The President through an application to the Constitutional Court required the abrogation of the Article 7, Law no.101, date 31.07.2014 "On some additions and changes of the Law no. 8811, date 17.05.2001, "On the organizing and function of the High Council of Justice", as amended, which provided that: *"The High Council of Justice, upon the proposal of the President, elects from the members elected by the Assembly a Vice-Head"*, as in incompatible with the Constitution.

In this application, the President has claimed that the legal provision limited the power of the President of the Republic as the Head of the High Council of Justice, because the Constitution has provided that the President of the Republic may propose as a candidate for the Vice-Head from all the members of the High Council of Justice and not only from a certain list.

Referring to the legal amendments opposed by the President, the Constitutional Court has assessed that *"the representation of the judicial power in the High Council of Justice remains unharmed, regarding the number and their direct relation with the court (acting as a judge)*. On the other hand, the Vice-Head of the High Council of Justice exercises duties that are more related to administrative power, meaning that is not entitled of a dominant position in the activity of the High Council of Justice, related to the administration of the judicial power. As a conclusion, the Court has assessed that the election of the Vice-Head of the High Council of Justice from the members elected by the Assembly, does not constitute violation of the principle of separation and balancing of powers³⁸.

³⁷ Reference Decision no. 10, date 26.02.2015 of the Constitutional Court of Albania.

³⁸ Reference to the Decision no. 16, date 10.04.2015 of the Constitutional Court of Albania.

By treating the role of the President of the Republic as an important institutional figure in our country and by evidencing the amendments of the Constitution in my research, I have aimed not only to treat theoretically the issues but to put in evidence the relations created with the Constitutional Court in cases when this Court is put into motion by the President of the Republic. Referring to the above cases, it is evident that the President has used his constitutional right to put into motion the Constitutional Court by requiring through the constitutional court activity and by interpreting the Constitution the explanation of various issues. Therefore, the Constitutional Court establishes and consolidates its jurisprudence.

Conclusions

The rule of law, sanctioned in the Article 4 of the Albanian Constitution, means the operation of all the state institutions as per the applicable law and the supremacy of the Constitution toward the other normative acts. Any organ in a rule of law shall act to the extent provided by the Constitution and the law, not exceeding the defined limits. Consequently, for any state institution should be clearly defined the ground of using relevant powers, for which is authorized to act in compliance with the constitutional and legal requirements³⁹. Therefore, regarding the constitutional role of the President, his powers are defined according to the principle of the rule of law. The Constitution does not aim to regulate in detail any issue regarding the organization of the social and political life of a country, but only the basic principles and criteria that it shall operate. Often, the Constitution on purpose leaves spaces to be regulated by the lawmaker, not to impede the political, economic, social and cultural initiatives from the political parties or the government. Even the jurisprudence of the Constitutional Court explains the content of the constitutional provisions by settling any dispute that may arise in the relations of the President with the other institutions. Therefore, because of his position as *super partes*, the President cannot be an effective commander of the Armed Forces, but from the other hand his constitutional role as the Commander-in-Chief of the Armed Forces cannot be deemed as honorific. As per above, even that from the hierarchic point of view the President is the Commander-in-Chief of the Armed Forces, he cannot exercise commanding authority of the technical-military nature over the Armed Forces by his initiative or to give military orders, because this would mean that he exercises another public function and would have responsibility for the performed actions.

Based on the special characteristics that bear the position of the President as the Commander-in-Chief of the Armed Forces, the writer of the constitution has included even the executive power for exercising the command of the Armed Forces. This has aimed to give the option to the President to cooperate and to consult with the executive, as a necessary link to exercise the command power of the Armed Forces. As the result of this cooperation, the President exercise command of the Armed Forces as per the constitutional frame.

The constitutional amendments emphasized the honorific role of the institution of the president, which supports his neutral role by representing the unity of the

³⁹ Reference to the Decision no. 15, date 15.04.2010 of the Constitutional Court Albania, par. 34.

people in respecting the principles on which is established the Parliamentary Republic of Albania. The constitutional amendments did not affected the eligibility of the President in the Constitutional Court. Moreover, the President is one of the most important subjects with unconditional eligibility in the consolidation of the constitutional jurisprudence.

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