

# THE DEVELOPMENT OF CONSTITUTIONALISM IN ALBANIA (1912-1938)

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**SUMARIO:** I. INTRODUCTION.- II. APPROVAL OF THE FIRST CONSTITUTIONAL ACTS IN ALBANIA 1913-1915.- III. CONSTITUTIONAL CHANGES AFTER THE CONSOLIDATION OF THE ALBANIAN STATE 1925-1939: BASIC STATUTE OF THE REPUBLIC OF ALBANIA (1925), BASIC STATUTE OF THE KINGDOM OF ALBANIA.- 3.1. Basic Statute of the Republic of Albania (1925).- 3.2. Basic statute of the Kingdom of Albania.-3.2.1. Relation between king and parliament.- 3.2.2. Relation between the King and the bailiff-executive power.- 3.2.3. Relation between the King and Judiciary.- IV. CONCLUSION.

**Abstract:** The development of constitutionalism in Albania from 1912 until 1938 is characterized by the approval of four constitutional acts: the Organic Statute of Albania in 1914, the Statute of Lushnja in 1920, the Basic Statute of the Republic of Albania in 1925, and Basic Statute of the Monarchy of Albania in 1928. These statutes have interrupted the tradition of applying Sharia Law in Albania, by applying models of the most advanced constitutions of the time, such as the monarchies and parliamentary republics of Western Europe and the United States. These acts have been approved in special political circumstances elaborated throughout the paper.

**Key Words:** Constitutionalism - Constitutional History - Albania 1912-1938 - Constitutional Acts - Statues.

## I. INTRODUCTION

Constitutionalism in Albania began with the Declaration of Independence of Albania in 1912. Until 1939 it was developed in four stages. The first stage began with the National Assembly of Vlorë with the declaration of the Independence of Albania on November 28th, 1912, and the consolidation of the first bodies of state power: the Provisional Government of Albania and “Pleqësia” (The Eldership) which exercised the oversight function over the government.

Albania was recognized internationally at the Peace Conference, known as the Conference of Ambassadors in London in 1913, where was also decided about establishing the Albanian Principality with a prince outside Albania, the German prince Wilhelm Von Vid. He was authorized to create the institutions of state power and set the rule of law. A year later, in 1914, the Organic Statute of Albania was approved as the first constitution of Albania. The second phase of constitutionalism in Albania dates back to the approval of the Statute of Lushnja in 1920, when Albania is declared the Parliamentary Republic, with the High State Council, with Collegiate Head of State elected by Parliament, the bicameral Parliament, the highest representative body, the Government as an executive body and the judicial bodies.

The third phase is characterized by the beginning of the consolidation of the Albanian State, with the approval of the Basic Statute of Albania by the National Assembly in 1925 which declared Albania the Parliamentary Republic. This constitution defined the following main bodies: the President of the Republic, the Chamber of Parliament, the Government as well as the independent judicial bodies. The last phase is characterized by the approval of the Statute of the Kingdom of Albania in 1928 which declared Albania a Parliamentary and Inheritable Monarchy, the One-Chamber Parliament, the Government, and the independent judicial bodies. This period is the most stable period of the Albanian state from the Declaration of Independence of Albania in 1912 until 1939 when Albania was invaded by the Fascist Italy of Benitto Mussolini.

## **II. APPROVAL OF THE FIRST CONSTITUTIONAL ACTS IN ALBANIA FROM 1913 UNTIL 1915**

The constitutional system in the Republic of Albania begins after the declaration of independence of Albania on November 28th, 1912. Until then, Albania was under the 444-year domination of the Ottoman Empire. The struggle of the Albanian people for freedom and national identity has not stopped even after the occupation of Albanian lands by the Ottoman Empire in 1479, but the intensification of the Albanian national movement dates back to the League of Prizren which was held on June 8-10, 1878. The efforts of the Albanian people for freedom and independence were crowned with the Declaration of Independence of Albania on November the 28th, 1912.

The National Assembly<sup>1</sup> elected the Provisional Government with

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<sup>1</sup> Note: Until 28th of November 1912 Albania was under the occupation of the Ottoman Empire. Until then Albania only existed as a geographical and ethnic name, but not as administrative one. It was divided into territorial administrative units such as: Vilayets, sanjaks, kazas and nahijas, whose representatives were appointed by the General Governor of the Ottoman Empire. The representatives of the National

Ismail Qemali as Prime Minister and Minister of Foreign Affairs and Deputy Prime Minister Dom Nikolle Kaçorri. The National Assembly elected “Pleqësinë” (The Eldership) as an advisory body with chairmen Mufti Vehbi Dibra. The National Assembly regarding the character of “Pleqësia” (the Eldership) had a lot of discussions. In the seventh session, the last session of the National Assembly, on December 7th, 1912, several issues were raised in regard to the role of the 18 members of “Pleqësia” (the Eldership): will they be deputies, councilors, or senators? Consequently, what quality will “Pleqësia” (the Eldership) have as a state body, will it have the character of the Senate or the Council of State? Does this body have the right to hold the government and ministers accountable and, if they act contrary to its orders, will it have the right to dismiss them? <sup>2</sup>

With the election of the Elders and the definition of its functions, as an advisory body to the government, the National Assembly ended its work on December 7th, 1912.<sup>3</sup> This government did not have a wide range of its authority, because the Greek military troops had occupied southern Albania, while the north and the east had been occupied by Serbian and Montenegrin army troops. At the Conference of Ambassadors in London, on July the 27th, 1913, Albania was declared an Autonomous Principality. On November 3rd, 1913, the six Great Powers: the United Kingdom, France, Italy, Austria-Hungary, Germany, and Russia, appointed Prince Wilhelm Von Vid as prince of Albania.<sup>4</sup> He came to Albania on March the 7th, 1913. After several attempts to form the government of Albania, he formed the government with Turhan Pasha Permeti as prime minister and a career diplomat in the former Ottoman Empire. Prince Vid had wide support from the Great Powers such as Austria-Hungary, Germany, and Italy, but did not have wide support from the local population, which was divided into different provinces.

The beginning of the First World War, on June the 28th, 1914, and its rapid expansion throughout the territory of the Balkans created a new reality also for the new Albanian state under the leadership of Prince Vid. The Great Powers which had appointed him on November 3rd, 1913, were now lined up in opposing alliances. On the other hand the provincial leaders of the various provinces of Albania, due to

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Assembly that declared the Independence of Albania, were not representatives of the people elected by the votes of the citizens. They were well known personalities of the Albanian people who had popularity and recognition from the people in the ethnic Albanian majority provinces.

<sup>2</sup> Dhimo Dhima, *Constitutional Law in the People's Republic of Albania*, Law Faculty, State University of Tirana, 1963, p. 43.

<sup>3</sup> Institute of History and Linguistics, *History of Albanian People*, Second Volume, State University of Tirana, 1965, p. 354.

<sup>4</sup> Arsim Bajrami, *Parliamentary theory and practice*, Law Faculty, University of Pristina, Pristina, 1997, p. 229.

personal reasons and various influences from abroad, did not support Prince Vid, so on September the 2nd, 1914, Prince Vid resigned and returned to Germany. From September 1914 until January 1920, Albania was occupied by the military troops of Serbia, Montenegro, France, Austria-Hungary, Italy, and Greece. After the end of the First World War, efforts were made to rebuild state institutions and approve a new constitution. The Congress of Lushnja, known as a great event in the history of the Albanian Nation was held from the 21st until the 31st of January 1920, in which the Constitutional Act for the full independence of Albania was approved. During its working days, Congress elected the high council of 4 people, which would perform the functions of the head of state, and a National Council with 37 members. Sulejman Delvina was elected Prime Minister.<sup>5</sup>

Congress also approved the Basic Statute (the new Constitution of Albania) which gave supremacy to the Monarchy and instead defined the High Council as a collegial body elected by Parliament. After the election of the legislative and executive bodies and the approval of the new Constitution, began the first phase of the construction of the political and Constitutional System in the Republic of Albania. Although there have been frequent parliamentary and governmental crises, Albania was admitted to the League of Nations, and its borders were recognized internationally by its neighbors. On December the 5th, 1920, the government promulgated the Law on the Election of Deputies to the National Council. According to this law, elections were held by indirect voting whereby for every 500 voters a second voter came out, and through the second voter, for every 12 thousand voters, one deputy derived. Only men who had reached the age of 20 were entitled to vote and candidates for deputies could run at the election if they reached the age of 30.<sup>6</sup> At the same time conditions for the organization of parliamentary elections were created, but there was no official registration of the population to use it as a basis for the proper division of election zones, there were no identification documents and most of all it was assumed that above 80% of the population was illiterate which could easily be manipulated at polling stations.<sup>7</sup> The first law on the election of deputies, for the National Council (1923) was replaced by the new law.<sup>8</sup>

This law also preserved the main principles of elections established by the first law, general and indirect two-tie voting (it is about the princi-

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<sup>5</sup> Institute of History and Linguistics, *History of Albanian People, op.cit.*, p. 241.

<sup>6</sup> Institute of History and Linguistics, *History of Albanian People, op.cit.*, p. 49.

<sup>7</sup> Note: until then there was no population registration and the total number of the population was not exactly known, including the number of voters, nationality, religion, gender, percentage of the educated population, etc.

<sup>8</sup> Aurela Anastasi, *Politic Institutions and Constitutional Law in Albania (1912-1939)*, p. 137.

ple of male general voting), which even though did not represent the most democratic expression of elections, prevailed in electoral systems of that time.

The following years show that there cannot be a question of the development of genuine political pluralism, because governments were changed as a result of blackmails, threats, and even the overthrow of governments through armed uprisings. This came to the fore when the so-called most liberal representatives in the Albanian political scene, headed by Bishop Fan Nolin, in June 1924 forcibly overthrew the government led by Ahmet Zogu.<sup>9</sup>

Noli's government was overthrown through an armed uprising led by former Prime Minister Ahmet Zogu. On December the 24<sup>th</sup>, 1924, Ahmet Zogu returned to the top of the Government of Albania. With his proposal, the Constitutional Assembly proclaimed the Republic of Albania on January the 21<sup>st</sup>, 1925, and on January the 31<sup>st</sup> approved the first articles of the Basic Statute by electing Ahmet Zogu as its President.<sup>10</sup>

Three years later, Ahmet Zogu created the political climate in Albania to change the form of government. Thus, on September the 1<sup>st</sup>, 1928, the Constitutional Assembly declared Albania a Parliamentary and Hereditary Kingdom with Ahmet Zogu at its head. At the same time, the Constitutional Assembly approved the Basic Statute of the Monarchy, where the three state powers: the legislative, the executive, and the judiciary were controlled by the monarch.

### **2.1. Organic Statute of Albania – the beginning of constitutionalism in Albania**

On July the 29<sup>th</sup>, 1913, with the final decision of the Great Powers, the model of government of Albania was defined as an Independent Autonomous Principality.<sup>11</sup> Under Article 6 of the Final Decision of the Conference of Ambassadors in London, the draft of the compilation of the Basic Statute of Albania should be completed by January 1914. Nevertheless, the International Oversight Commission had not completed the statute, therefore Prince Wilhelm von Wied began his activity in the Principality of Albania without constitutional and legal norms. Under Articles 4, 6, 7, and 8 of the Decision of the Conference of Ambassadors in London, functions of the institutions of Albanian Principality are to be performed by the International Oversight Commission.<sup>12</sup>

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<sup>9</sup> Sadik Haxhiu, *Elections, electoral systems and electoral processes – legal, political and comparative aspect*, Published by Brezi 81, p. 260.

<sup>10</sup> Ibid.

<sup>11</sup> Aleks Luarasi, *Legal Acts of the History of the Rule of Law-part two*, Tirana 1999, p. 30.

<sup>12</sup> Aleks Luarasi, *Legal Acts of the History of the Rule of Law-part two*, *op. cit.*, p.30.

The International Oversight Commission formed by the six Great Powers drafted and approved the Organic Statute of Albania which is also the first constitution of the Albanian state. According to this Statute, Albania is formed as a constitutional, sovereign, and hereditary principality under the guarantee of the six Great Powers.<sup>13</sup>

The first provisions of the statute defined its territory, which stated: Albania is indivisible and its territory is inalienable. The borders of the principality are those defined by the six Great Powers. These borders cannot be changed or ratified except by a law and with the prior approval of the six Great Powers.<sup>14</sup> With this constitution, Albania has been declared a neutral state, and its neutrality is guaranteed by the six Great Powers. This neutrality did not exclude the right of Albania to take the necessary measures to protect its territory.

On the other hand, the Prince had unlimited powers in the competencies related to the National Assembly, which is the Legislative Body of the Principality of Albania (paragraph 40), such as summoning, closing, and dissolving the Legislative Body.<sup>15</sup> According to this act, the Prince swears before the National Assembly to strictly respect the fundamental laws of the state. In case of absence, illness, or temporary disability, the prince was represented by a member of his family who has Albanian citizenship or by a high state official. In the absence of such a replacement, the task of appointing the regent was left to the Council of Ministers, which had to act with the consent of the six Great Powers. In case of emergency, the chairman of the Council of Ministers will be legally the Temporary Regent. The prince was head of the civil and military administration and in charge of appointing its officers.<sup>16</sup>

As for the system of government, language, writing, and human rights, the drafters of this constitution were inspired by the constitutions of the Balkan countries, where the Monarchist System of Government dominated. The Organic Statute foresaw a separation of state power. The hereditary prince represented the state and oversaw the work of other bodies. The National Assembly represented the highest constitutional and legislative body, and the executive-administrative power was the Government. The National Assembly was the legislative body of the prin-

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<sup>13</sup> Organic Statute of Albania, chapter 1, paragraph 1. Lushnje, Albania, 1914. 28.06.2022, in <https://constitutions.albasio.eu/wp-content/themes/costituzioni/viewer.php?url=https://constitutions.albasio.eu/wp-content/themes/costituzioni&file=https://constitutions.albasio.eu/wp-content/uploads/costituzioni/STATUTI-ORGANIK-I-SHQIP%C3%8BRIS%C3%8B%201914.pdf>

<sup>14</sup> Organic Statute of Albania, chapter 1, paragraph 2. Lushnje, Albania, 1914, *op. cit.*, p. 1.

<sup>15</sup> Pranvera Xhafaj, *Albanian State and its Constitution*, University of Tirana, Faculty of Social Sciences, Political Sciences Department, 15<sup>th</sup> of September 2015, p. 19.

<sup>16</sup> Organic Statute of Albania, chapter II, paragraph 11. Lushnje, Albania, 1914, *op. cit.*, p. 2.

cipality of Albania. It consisted of members by law, members elected by the population, and members appointed by the prince.<sup>17</sup>

The election of members of the National Assembly was done according to the indirect electoral system, where only men had the right to participate in to elect and be elected. The prince had the right to appoint 10 candidates for members of the National Assembly. The representation of religious communities in the National Assembly is a special feature. Since Albania consisted of three religious denominations: Muslim, Catholic Christian, and Orthodox Christian, it paid special attention to the issue of religious equality.<sup>18</sup>

According to Article 42 of the Organic Statute, members of the National Assembly are the religious representatives of Muslims, Catholics, Orthodox, and the chairman of the Bektashi. According to this constitution, Albania has no state religion. Freedom and public exercise of all cults are guaranteed. In any part of the Albanian principality, discrimination on a religious basis was not allowed to exclude or qualify a person as incapable in terms of entitling civil and political rights, admission to state work, exercising functions, or practicing various professions and activities.<sup>19</sup>

The Assembly exercised its function through parliamentary sessions. Executive power was exercised by the Government which was appointed by the Prince. The local administration was organized in small territorial administrative units. The armed forces had been created by the gendarmerie and militia. This authority the Great Powers entrusted to the Dutch Mission that was stationed in Albania. The judicial authorities were: the council of elders, conciliatory judges, first instance courts, and courts of appeal.<sup>20</sup> It is characteristic that most judges had previously earned their professional qualifications in the capital of the Ottoman Empire in compliance with a law school that did not correspond to the tradition, culture, and judicial organization of Europe. However, they were quickly transformed into contemporary judges acting according to the laws which had been drafted, according to the Italian and Austro-Hungarian

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<sup>17</sup> Organic Statute of Albania, chapter IV, paragraph 41. Lushnje, Albania, 1914, *op. cit.*, p.5.

<sup>18</sup> Note: at this time there was no population registration, so the exact number of the population was not known and in particular the composition of the population according to religious denominations. But it was considered that approximately 65% of the population belonged to Islamic religion, around 20% belonged Orthodox Christian religion, and around 15% belonged to Catholic Christian religion. Religious tolerance was very special, because there has never been any inter-religious conflict in the history of the Albanian People. All governments until then and later, consisted of representatives of the three religious communities. Even though the Albanians were predominantly Muslims, the greatest hero of the Albanian nation of all time was and is Gjergj Kastrioti-Skenderbeu, who fought for 25 years in a row against the Ottoman Empire 1443-1468.

<sup>19</sup> Organic Statute of Albania, chapter III, paragraph 32. Lushnje, Albania, 1914, *op. cit.*, p.4.

<sup>20</sup> *Ibid*, Chapter X, paragraph 129.

law schools. The constitution for the first time guaranteed free public education, whereby primary school became compulsory.<sup>21</sup>

The local administration was organized according to the old naming of the Ottoman Empire time. Albania was divided into seven sanjaks, which are: Shkodra, Elbasan, Dibra, Durrësi, Berat, Korça, and Gjirokastra. The capitals of these sanjaks are the cities whose names the sanjaks themselves bear, except the Dibra sanjak, whose capital was assigned by the government.<sup>22</sup> Sanjaks are divided into kazas and kazas into nahijas.<sup>23</sup>

Sanjaks were directly under the responsibility of the Ministry of Internal Affairs. The leader of the Sanjak has under his subordination gendarmerie and the police, but all his actions had to be undertaken in cooperation with the Ministry of Internal Affairs. The Sanjak had the Sanjak Council, whose members were elected according to the indirect electoral system, analogous to the election of deputies of the National Assembly. Kaza was administered by a kajmekam.<sup>24</sup> He was under the subordination of the Mytesarif - the leader of the sanjak. Kaza also had the Kaza Council, which was elected indirectly. The leader of Kaza was called Kajmekam. Nahija was composed of a group of villages geographically and economically connected, with a population of 4000- 7000 people<sup>25</sup> that was led by a Mydyr.

Nahija was the initial level of local administration and is close to the municipal system that is in Albania today. Judicial authorities were organized as follows: Council of Elders, Conciliation Judges, Courts of First Instance, and Courts of Appeal.<sup>26</sup> The Organic Statute foresaw the principle of two instance adjudication and appeal, as one of the contemporary standards for decision-making in the courts. The statute did not provide extraordinary legal remedies against verdicts of the Appeal Court the highest instance of the judicial system in Albania at that time, but the Prince had the right to pardon and amnesty persons convicted by the courts with a final verdict.

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<sup>21</sup> Note: During the domination of the Ottoman Empire, by imperial law was prohibited opening of Albanian schools in Albania. Muslim Albanians were considered as Turks, whereas it allowed Catholic and Orthodox Albanians, who were explicitly less than Muslims, to open schools in Greek or Italian languages, but not in Albanian.

<sup>22</sup> Organic Statute of Albania, chapter VI, paragraph 95-97, Lushnje, Albania, 1914, *op. cit.*, p.11.

<sup>23</sup> Note: Sanjak was an administrative unit during the time of the Ottoman Empire, with different land extensions according to historical periods and with a Mytesarif as a leader. Kazaja was the administrative unit with extended power of the kajmekam during the time of the Ottoman Empire. Many kazas constituted a sanjak. Nahije was an administrative subdivision, which included several villages during the Ottoman occupation of Albania. Many nahijas constituted a kaza.

<sup>24</sup> Organic Statute of Albania, chapter VI, paragraph 119. Lushnje, Albania, 1914, *op. cit.*, p.14.

<sup>25</sup> Ibid, Chapter IX, paragraph 132.

<sup>26</sup> Ibid, Chapter X, paragraph 139.

## 2.2. Statute of Lushnja (1920)

After the First World War and after the departure of foreign military troops from Albania, opportunities for the establishment of government institutions in Albania were created. From the 21st until the 31st of January 1920 in the city of Lushnja, a Congress was organized to establish the government institutions, which could not function during 1914-1920, due to the occupation of the territory of Albania by foreign armies (Italy, Austria-Hungary, France, Serbia, and Greece). The Congress of Lushnja approved the act of constitutional character - the Statute of Lushnja which affirmed the main constitutional principles of the Albanian state. The statute contained the basic principles for the organization and functioning of the country and its institutions. This statute was supplemented by the Statute of the Albanian State of 1922 which recognized the monarchical form of government and affirmed the division of three state powers: legislative, executive, and judicial.<sup>27</sup>

The Organic Statute of Lushnja defined the monarchy as a political regime and legitimized the continuity of institutions, based on Article 29 of the Organic Statute of the April, 1914. The legal norms approved as "Basis of Kanun of the High Council"(law), respectively there were six paragraphs that affirmed basic constitutional principles of Albania.<sup>28</sup> However, the Congress of Lushnja was more advanced because it sanctioned full sovereignty of the Albanian State, and de facto and de jure removed any power from the organic Statute of Albania, which, as we know, it had put Albania under the subordination and control of the Great Powers.<sup>29</sup>

The Lushnja Statute is the first written Constitution of Albania and was approved by the representatives of the Albanian people, based on the practices of the positive constitutions of European countries. This act provided the structure of the higher state bodies, their competencies, and also the relations between these bodies. According to this act, the main body in the system of the state apparatus is the National Assembly (Congress). The National Assembly was the highest representative body of the Albanian State, from which the other high state bodies emerged (were elected).<sup>30</sup> Congress of Lushnja elected the High Council that consisted of the Collegiate Head of State composed of four persons: Aqif Pasha Elba-

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<sup>27</sup> Aurela Anastasi, *History of Constitutional Law in Albania: 1912-1939*, Publishing House Pegi, Tirana, 2007, p. 24-46.

<sup>28</sup> Aurela Anastasi, *Politic Institutions and Constitutional Law in Albania (1912-1939)*, *op. cit.*, p. 40.

<sup>29</sup> Dhimo Dhima, *Constitutional Law in the People's Republic of Albania*, *op. cit.*, p. 47.

<sup>30</sup> Look at: Historical documents and materials from the struggle of the Albanian people for freedom and democracy 1917-1941, Publication of the Directorate of State Archives of R.P.SH., Tirana 1959, p. 22-23. Cited by Dhimo Dhima; *Constitutional Law in the People's Republic of Albania*, Law Faculty, State University of Tirana, 1963, page 47.

sani, Dr. Mihail Turtulli, Monsignor Luigj Bumqi, and Abdi bey Toptani.<sup>31</sup> Congress also elected the Senate (which was a one-chamber parliament) consisting of 37 members, which in the conditions of foreign occupation, when it was not possible to hold regular elections, performed the function of parliament, thus electing Sylejman Devine as Prime Minister.<sup>32</sup>

According to Article 1 of this Statute, the High Council was obliged to verify and approve decisions taken by the Government and approved by the Parliament. Through this article, a division and balance of state powers have been entrenched, especially of the parliament as the highest legislative power and the High Council as the highest political and executive power which exercised the duty of regency.

The statute also specified the modality of government election, as well as the way for the solutions to parliamentary and government crises. According to Articles Two and Three of this Statute, the High Council decrees the government, after voting by the Parliament (Senate). If the government does not get approval from the Parliament three times in a row, then the High Council had the duty to convoke the National Assembly (Congress). Independence and balance of the power of the High Council and Parliament are sanctioned under Article 4, where neither the High Council was entitled to dissolve Parliament, nor was Parliament entitled to dissolve the High Council. In case of conflict between these two bodies, the National Assembly (Congress) was the one to decide.

This statute did not specify the number of deputies (members) to be elected in the upcoming elections. In general, the decisions of the Congress of Lushnja were the beginning of a new period in the democratic development of Albania and constitutional law, a development that would culminate with the acceptance and implementation of the Expansion of the Lushnja Statute. In this period, for the first time, the principles of parliamentarism are affirmed, such as the appointment and dismissal of the Government by the Senate, as well as the exercise of parliamentary control over it. Although the first Albanian parliament extended its legislative activity in a short period, it managed to pass several important laws. The legislative activity of the National Assembly (Congress) ended in December 1920, when the parliament was dissolved, thus opening the road for the first elections in Albania in March 1921. For the first time in 1921, Albania organized free elections and

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<sup>31</sup> Note: It is worth emphasizing that since the declaration of independence of Albania until today, the representation of religious denominations in the highest organs of state power has always been balanced. Aqif Pasha Elbasani and Abdi bey Toptani were Muslims, Dr. Mihail Turtulli was an Orthodox Christian and Monsignor Luigj Bumqi was a Catholic Christian. This representation of religious denominations was not defined by any legal act, but politically even nowadays is applied in Albania at key functions of the state.

<sup>32</sup> Institute of History and Linguistics, *History of Albanian People*, *op. cit.*, p. 468.

legitimized the representative and executive bodies elected through the people's vote. From the parliamentary elections held in March 1921, the country was represented by 78 members. From this period, the parliament began to appear regularly as a body that emerge from the people, with clearly defined tasks according to the standards of the time. Unlike the Statute of Lushnja of 1920, the Parliament of Albania in 1922 approved the Extended Statute of Lushnja. This statute was a modification and concretization of the Statute of Lushnja of 1920 which contained only six articles.

The extension (amendment) that was made to the Statute of Lushnja in 1922, which in history is known as the Statute of the Albanian State, transformed this act into a genuine constitution with the highest legal power in the state and sanctioned the plenipotentiary of the parliament. The extension of the Statute of Lushnja was realized by making multi-dimensional changes. Its structure resembled the contemporary constitutions of the time. The Extended Statute of Lushnja had 129 articles, divided into parts and chapters. Part A contained provisions governing the form of the state governance, then the state bodies such as the High Council, which exercised the bailiff (executive) function through the Government, and the Judiciary that functioned through the regular courts, which had to bring verdicts solely based on positive laws. Part B of the Statute contained provisions that sanctioned the status of the Parliament, the election, and revocation of parliament members, their mandate, the organization of the work of the parliament, its competencies, parliamentary groups, the relation of the Parliament with the Government and the High Council, the organization of the parliamentary groups as well as their distribution. For the first time, also the organization of parliamentary sessions is sanctioned, which were two: the spring and autumn sessions.

Part C of the Statute regulated the Executive power exercised by the High Council and the Government. Part C of the Statute also regulated the organization and functioning of the judiciary, which was completely divided and independent of the Executive, Parliament, and Government. Additionally, the extension of the Statute of Lushnja sanctioned, for the first time, the principles of building judicial bodies, principles which are still sanctioned today in modern constitutions. For the first time, also the organization of parliamentary sessions is sanctioned, which were two: the spring and autumn sessions.

Such principles were: appointment of judges, independence of judges, non-revocation of judges, non-appointment of judges by politics, the conduct of the open trial, etc.

### **III. CONSTITUTIONAL CHANGES AFTER THE CONSOLIDATION OF THE ALBANIAN STATE 1925-1939**

From the Congress of Lushnja in 1920 until the return of Ahmet Zogu to power on December 24, 1924, there were frequent parliamentary and governmental crises in Albania. These were primarily due to the political mentality which was the continuation of Ottoman political thinking and on the other hand, the lack of experience and parliamentary culture of the European type. Two political parties that operated in Albania were: the People's Party and the Progressive Party. They represented two different concepts for the construction of the Albanian state and law. The People's Party was led by Orthodox Bishop Fan Noli and the Progressive Party was led by Ahmet Zogu. In the first historical phase, political parties differed greatly from today's party models: they were more associations of individuals with one political point of view or political project than institutions with a stable organization, elected structures, and regular party activity. Having no programmatic or ideological identity, structure, and functional activity, the first two political parties, the Progressive Party and the People's Party were dissolved in 1923.<sup>33</sup>

In their political programs, each party was committed to the democratic system of competition, freedom of choice and expression, the rule of law, etc., which are principles of democratic states and societies. During this period, the constitutional law of the Albanian State was developed based on the Basic Statute of the Republic of Albania and the Basic Statute of the Kingdom of Albania, which was also the main source of Albanian constitutional law.

#### **3.1. Basic Statute of the Republic of Albania (1925)**

The Constitutional Assembly on January 21, 1925, abrogated the Monarchy and proclaimed Albania a Republic, then on January the 31<sup>st</sup>, elected the President of the Republic Ahmet Zogu, and on March the 2<sup>nd</sup>, approved the Basic Statute of the Republic of Albania. This constitution was drafted based on contemporary constitutions of the time. For the first time after the Organic Statute of 1914 and the Statute of Lushnja of 1922, this constitution in its written preamble precisely stated: "The Albanian Nation is free and independent, head up, for its past time and with full of confidence for the future".

The structure of the constitution was a continuation of the Statute of Lushnja, with quite some modifications. The Constitution was divided into four parts and four chapters.<sup>34</sup> In the first part, the bodies of

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<sup>33</sup> Wilhelm Hofmeister, K. Grabow, *Political Parties, Functions and Organization in Democratic Societies*, Published by Konrad Adenauer Stiftung Foundation, Tirana 2017, p. 85.

<sup>34</sup> Preamble of the Basic Statute of Republic of Albania - 1925, in <http://licodu.cois.it/?p=379&lang=en>

state power were defined which are: the bicameral Parliament consisting of the Senate and the Chamber of Deputies, which until then was the one-chamber parliament; The Head of the Republic instead of the Monarchy, and the Judiciary bodies. This form of state regulation was more of a model of the American System of Government. Parliament consisted of two chambers which, according to its powers, were analogous to the USA Senate and House of Representatives. The difference between this constitution and the US constitution was the form of election of representatives of both houses of parliament. In the USA both houses of Congress were elected by popular vote. Senators across federal units, (50 federal units from senators) while congressmen (435) depend on the size of the electorate in the federal units. In Albania, the Senate consisted of 18 elected senators, two-thirds were elected by the people, according to the special law on elections, and one-third were appointed by the President of the Republic.<sup>35</sup>

While in the USA the president is elected according to the indirect electoral system - a system of electors, in Albania the president was elected with two-thirds of the votes of the two chambers of the Albanian parliament. The president had competencies that went beyond the powers of the American president. He was entitled to appoint the president of the Senate among the senators and had broad authorizations to dissolve parliament. If the Chamber of Deputies encounters objections from the Senate on any decision or law, and the Chamber of Deputies insists on its opinion, the President of the Republic had the right, with the consent of the Senate, to dissolve the Chamber of Deputies.<sup>36</sup>

Through these competencies, the President had very wide control over the Senate and the Chamber of Deputies.

Legislative power was exercised by the Chamber of Deputies and the Senate. The Chamber of Deputies performed its work in sessions: Spring and autumn sessions. The constitution provided the free parliamentary mandate as a high standard of democracy. Draft laws that were approved in the Chamber of Deputies were sent to the Senate for approval, and if they were rejected in the Senate and returned to the Chamber of Deputies, then those draft laws could not be put on the agenda in that parliamentary session. Special innovation of this constitution was the institution of the High Court. According to Article 57 of the Constitution in case of aggravated treason, against state security, by the decree of the President of the Republic, the High Court could be put into work, which consisted of five senators and two judges of Dictation. This trial was analogous to the political accountability procedure of high officials of the state administration in the USA of *impeachment* type.

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<sup>35</sup> Second Part of the Basic Statute of Republic of Albania - 1925.

<sup>36</sup> Article 56 of the Second Part of the Basic Statute of Republic of Albania- 1925.

The Head of the Republic is elected at the joint meeting of the Senate and the Chamber of Deputies for a term of seven years, by an absolute majority of votes, if two times in a row was not elected by an absolute majority, the third time he was elected by a relative majority.<sup>37</sup>

The President of the Republic exercised full executive power. So the government did not exist at all. The ministers were proposed and appointed by the President of the Republic, but no decision had legal enforcement if it was not signed by the minister of the respective department. He was entitled to appoint all other executive functionaries at the state level and regarding the competencies and powers given to him by the constitution, he had greater executive power than the monarchs of the constitutional monarchies of the time in the neighboring Balkan states. The judicial power had no difference from the Lushnja Statute of 1922. The same constitution sanctioned the independence of the judiciary to the legislative and executive branches. Thus, with this constitution courts were obliged to make their decisions based only on the constitution and applicable laws. Even in this constitution, the chapter on human rights is placed at the end of the constitution's text. This was decided because the structure of drafting the constitutions of that time had approximately this typesetting. These rights were constitutionally sanctioned, but they were not properly respected. Especially the pursuit of political opponents was rude, and they were fought to the point of physical elimination.

### **3.2. Basic statute of the Kingdom of Albania**

The Basic Statute of 1925 abrogated the monarchy and proclaimed a republic with a very powerful political, executive, and representative president. The transition from a governmental system of the Parliamentary Republic to the Parliamentary Kingdom has a personal ambition and it is associated with the name of Ahmet Zogu. However, the transition from one form of governmental rule to another was not easy and the legal and political fields had to be carefully prepared. This is due to the important reason that Ahmet Zogu was not the heir to any royal throne.<sup>38</sup>

On August the 25<sup>th</sup>, 1928, the Constitutional Assembly began its work for the revision of the Basic Statute of 1925 for the proclamation of the Parliamentary Monarchy by the Republican System of Government. In the legal dimension, the only difficulty was the change in the "Basic Statute of the Republic" (1925) which sanctioned that "the republican form of the state cannot be changed in any way." To amend this article, the Head of the Republic (who was Ahmet Zogu himself), on June 1<sup>st</sup>, 1928 requested the meeting of both chambers of parliament (Senate and

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<sup>37</sup> Part C, Article 69 of the Basic Statute of Republic of Albania - 1925.

<sup>38</sup> Aurela Anastasi, *History of Constitutional Law in Albania: 1912-1939*, op. cit., p. 24-46. Publishing House Pegi, Tirana, 2007, p. 24-46.

Chamber of Deputies) with justification to review the shortcomings of the Basic Statute.<sup>39</sup>

Finally, just six days after the opening of the Constitutional Assembly, on September the 1st, 1928, the Constitutional Assembly approved Article 1 of the new Statute of the Albanian State, thus declaring Albania a “Democratic parliamentary and hereditary Kingdom with Ahmet Zogu as King of Albanians.” In this way, the ruling class, through the Constitutional Assembly, achieved the predetermined goal: it abrogated the republican system of government, approved the Basic Statute of the Albanian Kingdom, and established the Parliamentary Monarchy. After the approval of the amendment of the Statute, the latter entered into force and acted as the fundamental Statute of the Albanian Kingdom until the occupation of Albania by Fascist Italy on April 7th, 1939, when the First Albanian Monarchy was finally abrogated.<sup>40</sup>

The new constitution of the Parliamentary Monarchy had significant changes in its structure and the competencies of state bodies. Instead of the President, we have the Monarch, instead of two chambers (the Senate and the Chamber of Deputies) we have Parliament. Relations between these state bodies changed completely. Now the main body of state power was the Monarch. Legislative power was exercised by the king and parliament, executive power was exercised by the king and government, and the judiciary was independent, but the monarch decreed judges, and their decisions were made on behalf of the king and not on behalf of the people.

### 3.2.1. *Relation between king and parliament*

According to this constitution, the Legislative power is exercised collectively by the King and the Parliament which consists of one Chamber.<sup>41</sup> Legislative initiatives belonged to the King and Parliament, they had to be approved in parliament and decreed by the King. The king was entitled to veto for not decreeing draft laws. Parliament realized its work in two regular sessions. It could be summoned to extraordinary sessions only at the request of the King. The King had the power to dissolve parliament and convene the first constitutive session of the new parliament. This constitution abrogated the institution of political accountability of high state officials in front of parliament which was analogous to *impeachment* in the USA.

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<sup>39</sup> Afrim Krasniqi, *Political Systems in Albania*, Ufo University Press, Tirana, 2009, p. 127.

<sup>40</sup> Dhimo Dhima, *Constitutional Law in the People's Republic of Albania*, *op. cit.*, p. 58

<sup>41</sup> Article 8, Chapter II of the Basic Statute of Kingdom of Albania-1928, in <http://shetiwet.org/wp-content/uploads/2012/10/Statuti-i-Mbretnis-Shqiptare.pdf>

### 3.2.2. *Relation between the King and the bailiff - executive power*

According to this constitution, the King of the Albanians is His Majesty Zogu I, from the famous Albanian family Zogu. King bears the title "His Majesty" (Sa Majeste); the heir "Prince of the Albanians" His Highness (Son Altesse); Queen Mother and Queen "Her Majesty"; Brothers from Father and sons of the King "Princes"; Sisters from Father and His Daughters "Princesses".<sup>42</sup>

The inheritance of the Royal Throne belongs to the King's eldest son, and the inheritance continues generation after generation in a straight line, male after male.<sup>43</sup> He was the main bearer of the executive power. The king was the head of state, had full immunity for his actions; represented the state inside and abroad; was the Supreme Commander of the Armed Forces. The government was nominated by the King and then received a vote of confidence from Parliament. Ministers had limited parliamentary immunity for their work and their actions within the government.

### 3.2.3. *Relation between the King and Judiciary*

The judiciary is independent of legislative and bailiff-executive power. Judges and prosecutors were elected according to the law and were decreed by the King. They were obliged to perform their duty without political influence. Court decisions could not be changed and their execution cannot be stopped or suspended by any other power, whether Legislative or executive. The Supreme State Court was established to judge the Ministers, assistant members, members of the State Council, the Oversight Council as well the Chief State Prosecutor, for the crimes committed during or on duty.<sup>44</sup> This trial was formed by the decree of the King. Judicial decisions are not made in the name of the people but in the name of the King.

This constitution was in force from September the 1st, 1928 until April the 7th, 1939. Despite the absolute concentration of power in the hands of the king, the state and its institutions had stability. All bodies, whether of central or local administration, had developed and flourished to an extent rarely seen later in the history of the formation of the Albanian state. Especially, justice and codification of legislation are held to be one of the most modern of the time, which were not only inspired by Western European countries' legislations but also served as the basis for their development during other subsequent governments.<sup>45</sup>

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<sup>42</sup> Article 98, Chapter II, Part A of the Basic Statute of Kingdom of Albania-1928.

<sup>43</sup> Article 50-51, Chapter II of the Basic Statute of Kingdom of Albania-1928.

<sup>44</sup> Article 135, Chapter II, Part B of the Basic Statute of Kingdom of Albania-1928.

<sup>45</sup> Pranvera Xhafaj, *Albanian State and its Constitution*, *op. cit.*, p. 30.

#### **IV. CONCLUSION**

The constitutional system in the Republic of Albania has been developed in particular stages of national history. It begins with the declaration of independence of Albania by the National Assembly on November the 28th, 1912, and the establishment of the first bodies of power: the Provisional Government of Albania, the High Council, or "Pleqësia" (the Elders), and establishment of other executive bodies. Even though the representatives of the National Assembly were not elected by popular vote, they were the representatives of the Albanian people who had fought against the 5<sup>th</sup>-century occupation of the Turkish Empire as well as against the Greek, Serbian, and Montenegrin occupiers. Even though the Provisional Government was not recognized by any state, it created a new undisputed reality, so the great powers: Great Britain, France, Germany, Austria-Hungary, Italy, and Russia agreed to recognize the Albanian Principality with a foreign prince in charge of Albania.

The Organic Statute of 1914 represents the first constitution of the newly formed Albanian state. This constitution could not be functionalized in practice, because it was drafted by experts of the 6 Great Powers who did not know the political climate, mentality, culture, and tradition of the Albanian people which was dominated for 5 centuries by an empire (Ottoman Empire) through the military organization of state institutions. However, the Organic Statute contained the basic structure of state institution-building, with the separation of the three state powers and the supremacy of the Crown Prince. This statute was advanced with the approval of the Statute of Lushnja in 1920 which recognized the continuity of the Organic Statute of 1914 but expanded and advanced it further, giving it the character of a contemporary constitution, from the preamble, the structure of bodies of power, protection of freedoms and human rights, administrative, political, territorial division and even to the final provisions.

After the recognition of the borders of Albania in 1920 and its entry into the League of Nations, begins the establishment of the new country and the functionalization of its institutions per the constitution in power. After the establishment of the first political parties and the organization of the first parliamentary elections in 1920, Albania detached away from the Eastern mentality and political culture (former Ottoman Empire) and took the path of establishing state institutions and the rule of law, of the European type. The first attempt was when in 1925 the Constitutional Assembly abrogated the Monarchy and declared Albania the Semi-Presidential Republic. The republican system of government could not withstand the challenges of the time, so the Constitutional Assembly in 1928 declared Albania a Parliamentary and Hereditary Monarchy, approving the Basic Statute of the Monarchy. After the proclamation of the Monarchy until 1939 when Albania was occupied by Fascist Italy, the Albanian

state was stabilized in the political sense, consolidated at the legislative and administrative level, and integrated into various international institutions.

The constitutional system in Albania from 1914 when the Organic Statute was drafted until the adoption of the Basic Statute of the Parliamentary Monarchy in 1928, is the most prosperous history of the establishment, development, and consolidation of the Albanian rule of law and constitutionalism of the Albanian State in particular.

Through these constitutional acts, these qualitative changes were made in the organization of the state and law in Albania, such as:

- The detachment of Albania from the legislation that was established by the Ottoman Empire where the Sharia Law was applicable and instead of that the setting of contemporary legislation that was separated from religion.
- Constitutional sanctioning of the equality of religious denominations: Muslim, Catholic, Orthodox Christian, and the Bektashi community.
- Representation of religious communities in state bodies such as the Supreme Council, Senate, and the Chamber of Deputies.
- Establishment of state bodies according to the system of division of state power and their balancing, which was the first stage of establishing the rule of law.
- The accountability of the government to the parliament.
- The accountability of the President to the Parliament.
- The administrative-political-territorial division of Albania according to the system of prefectures of different Western European countries.
- Independence of judicial bodies from legislative and executive bodies.
- Constitutional guarantee of protection of freedoms and human rights.
- The right of citizens to elect their political representatives in representative bodies through free voting.
- As well as the drafting of modern legislation, taking into consideration the most advanced experiences of European countries, especially taking as a model Roman law, Public and Private law, as well as absorbing the basic principles of the Austrian Civil Code and the French Civil Code.

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