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DEMOCRACY AND FREE ELECTIONS

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EDITORIAL

Democracy and free elections

Assoc. Prof. Dr. Juelda LAMÇE

This edition is dedicated to democracy and free elections as cornerstones of a free and just society. It incorporates contributions that delve into the intricate dynamics of law, politics, and governance. In the specific, they focus on the right to vote, the role of political parties in democratic systems, the threat of populism, clientelism, corruption, citizen awareness and other stimulating cutting-edge issues. Selected research papers address challenges on election systems in Albania and abroad, identifying strengths and weaknesses of different system and potential avenues for improvement. Protecting the sanctity of the right to vote, not just as a fundamental human right but also a means to verify the proper functioning of democracy, implies removing barriers to participation, combating voter suppression, and upholding the integrity of the electoral process. Sustaining liberal democratic values necessitate addressing the rising challenge of populism as well, while reaffirming the importance of institutions, checks and balances, and the protection of individual freedoms. In the meantime, breaking the cycle of clientelism and rooting out corruption demand collective efforts from civil society, the media, and law enforcement agencies. A transparent and accountable system will ensure that the interests of the people are truly represented and protected. With this regards, collective efforts and unwavering commitment from all stakeholders – the government, political parties, civil society, and the citizens themselves - are indispensable for a robust democracy and an improved electoral system. To preserve their integrity, citizens are required to actively participate, demand accountability, and stay vigilant against threats that erode democratic values.

Unveiling the Perils – Addressing Clientelism and Corruption in Post-Communist Albania through Enlightened Civic Engagement and Electoral Accountability

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Abstract

This paper provides an overview of the challenges and dynamics surrounding the democratic transition and corruption in Albania over the past 30 years. It highlights the persistent issues of corruption, clientelism, and state capture within the country's

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political landscape. Despite continuous reports from international entities and a growing concern regarding democratic developments, the road to European membership remains arduous. The influence of the same political elite and the re-election of corrupt leaders have contributed to the perpetuation of these issues. The prevalence of clientelism during electoral seasons has further complicated matters, with voters often prioritizing personal benefits over national-interest projects. Clientelism and clientelistic relationships put democratic instruments in jeopardy. In post-communist states, political science has had mixed success in discovering strategies to combat clientelism and ensure free and fair elections. In a post-communist society, the relationship between corruption and electoral responsibility is yet unknown. As a result, corrupt politicians continue to get elected over time. This theoretical paper presents a new technique for boosting citizen awareness about the existing situation of corruption and punishing corrupt politicians through voting. The breakdown of clientelistic links based on distributive advantages from rival political parties to citizens is at the heart of this strategy, as is developing a sense of belonging to a political grouping based on shared values and aims.

Key words: *clientelism, voting behavior, corruption, in-group loyalty*

Introduction

The year 1991 was considered the "golden" year for Albania because of the importance it had in the fight against communism and because of the opportunities that democracy would bring for the development of the Albanian people. It has

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been almost 30 years since that moment and the sacrifices of the Albanian people do not seem to have received any answer yet. The endless reports of the international community on the democratic developments in the country have increasingly lit the alarm on the features that the political leadership in Albania has taken. The level of democracy seems to be following the trend that other countries of the former communist bloc are following. The road to membership in Europe still presents almost insurmountable challenges and the electoral years seem to be still years of 'war' for Albania. The fight against corruption continues to be the headline of every report published by international entities on every dimension of government (Trading Economics, 2020; Freedom House, 2020). Political clashes, implications in corruption scandals, vote buying are some of the most problematic issues in Albania (OSCE/ODIHR, 2023). All these scholars and reports relate to the consequences of communism and the lack of political will to take serious steps in improving these issues and advancing the development of democracy in the country.

Independent reports found signs of state capture, implying that lawmakers crafted legislation to benefit commercial interests. On multiple instances, the administration and the ruling Socialist Party majority in parliament pushed through legislation to safeguard the interests of private individuals and their networks (OSCE/ODIHR, 20021; 2023). According to an evaluation by the Southeast European Leadership for Development and Integrity, authorities who facilitate state capture and enterprises that pressure public officials operate with frightening effectiveness in Albania when compared to other Western Balkan countries (SELDI) (Freedom House, 2020). For the period studied above, one can realize that Albanian democracy consolidation is approximately in the middle (Çabiri and Danaj, 2017). Albania is quite close to having a stable democracy from the standpoint of local governance, but when it comes to corruption, the nation is headed in the direction of a stable authoritarian system. As it will be analyzed below, corruption is mainly spread in governance, which is also ranked as one very problematic category.

As a result, throughout Albania's 30 years of post-communist transition, discussions on political dynamics have captured the attention of various political actors. It is widely acknowledged that the relationship between the communist system and the democratic state apparatus helps to explain the nature of the democratic transition. This relationship explains whether the communist regime was based on an official, rational bureaucratic state apparatus that minimized various phenomena like corruption and clientelism, or whether it was based on informal networks that included interactions based on loyalty and reciprocity combined with patronage, corruption, and nepotism.

Since 1992, the same political elite has dominated Albanian politics, and the same political actors have been re-elected again after time (Today News, 2013).

According to research issued by Transparency International, Albanian citizens' perceptions of corruption improved between 2004 and 2016, although they continued to elect the same political elite (The Global Economy, 2016). Between 2004 and 2008, Albanian individuals' perceptions of corruption grew drastically. Despite the high level of corruption observed by Albanian citizens in 2008 (Transparency International, 2015), the Democratic Party led by Sali Berisha, which was in office from 2005 to 2009, managed to stay in power for the next four years. In 2017, the scenario is the same. The Socialist Party, led by Edi Rama, has been in power since 2014, and despite a high level of corruption observed by Albanian residents in 2016 (Trading Economics, 2020), Rama's government has managed to stay in power.

Citizens should be allowed to punish corrupt politicians during democratic elections, according to traditional perceptions, but empirical variations are observed in the Albanian example, with voters responding in the opposite direction, re-electing corrupt leaders. These conclusions are based on the implicit premise that Albanian voters choose private transfers over national-interest projects on a regular basis. Thus, clientelism, or the distribution of benefits from both political parties and political candidates fighting in the race to citizens, appears to be one of the key reasons why corrupt politicians are not punished by voters over time. Clientelism is a common occurrence, especially during election seasons. Clientelism, defined as a personalized trade between politicians and customers that takes place inside an institutional framework in which both parties quantify transactions, allows politicians to "purchase" electoral support by direct pay. Because politicians gain immediate personal gains (Kitschelt, et al, 1999) through personal channels and direct ties, citizens are less interested in public policies espoused by politicians.

Electoral year seems to be the most appropriate period for political parties to compete not only on the bases of their political platform, but with material stimuli given to citizens also (Gans-Morse, Mazzuca and Nichter, 2013). Through this way voters might trade corruption against some material gains (Manzetti and Wilson, 2007), or strong economic benefits such as: a job offer, a long job contract, etc. Hence, voters treat corruption differently. When voters have clientelistic relations with the corrupt candidates they do not punish him/her, while the corrupt candidate does not have a clientelistic relation with voters, the same voters will punish the corrupt candidate. We call them as: (i) in-clientelistic group (when the candidate and voters share mutual benefits among them) and (ii) out-clientelistic group (when the candidate and voters do not share mutual benefits among them). Thus, the important role of the in/out- clientelistic group in the punishment/non-punishment of corrupt behavior must be highlighted. However, there are expenses associated with the "give-and-take" of tangible gains, and it is difficult to implement in a clear manner (Winters and Weitz-Shapiro, 2013).

The theory of strategic action fields (SAFs)

The theory of strategic action fields (SAFs) provides a rationale for overlooking poor behaviour (Fligstein and McAdam, 2011). According to this theory, individuals belonging to the same interest group are more inclined to overlook poor behaviour rather than punish it. When seeking to explain the asymmetric electoral punishment of corruption, it is important to investigate in-clientelistic groups. Additionally, both classical and modern research on election behaviour indicate that voters assign significant importance to social identities based on factors such as ethnicity, language, religion, or partisanship when evaluating candidates and deciding whom to support (Chandra, 2007; Landa and Duell, 2015). Moreover, studies on retrospective voting emphasize the role of group biases in election decision-making, illustrating that voters perceive corruption differently depending on whether it involves in-group candidates or out-group politicians.

This argument has captured the attention of social psychologists and experimental economists working in the field of behavioural ethics. They argue that although many individuals claim to value honesty and express a desire to punish unethical behaviour, in others (Aquino and Reed, 2002), experimental research indicates that this is not always the case. The existence of ethical dissonance (Barkan et al., 2012) between attitudes and actions can be attributed to biases in human decision-making, particularly in-group loyalty. These effects of in-group loyalty are especially prominent in competitive situations, as noted by Hildreth, Gino, and Bazerman (2016). Therefore, we should anticipate less electoral punishment for corruption when voters share the same political identification as the candidate, while out-group politicians are likely to face greater punishment, as suggested by recent findings. The underlying basis for this unequal punishment lies in in-group loyalty.

Analysing the Complexities of Corruption and Clientelism: A Theoretical Perspective

In various institutional contexts, corruption has been shown to have a detrimental impact on political trust and undermine political legitimacy (Della Porta, 2000; Andersen and Tverdova, 2003), investments and economic growth (Del Monte and Papagni, 2001), as well as equality and poverty (Gupta et al., 2002; You and Khagram, 2005; Uslaner, 2008). Consequently, its consequences are felt extensively throughout a nation, directly harming people's quality of life and sense of security. Free elections are expected to mitigate the occurrence of corruption in a specific

country for the aforementioned reasons. However, historical and current events have shown that corrupt politicians have been re-elected in both emerging and advanced democracies (Rundquist et al., 1977; Reed, 1996; Vivyan et al., 2012; Eggers, 2014). The existing literature provides a comprehensive understanding of corruption and its manifestations, encompassing subtleties such as bribery, clientelism, nepotism, graft, and extortion. Social anthropologists argue that corruption affects interactions between individuals and bureaucracies (Parry, 2000; Miller et al., 2001).

Klitgaard (1988:23) offers a concise and realistic definition of corruption: a corrupt official "deviates from the formal responsibilities of a public role for personal-regarding (individual, close family, private clique) monetary or status gains, or violates restrictions that prohibit engaging in particular 'personal-regarding behaviour'." Building on these insights, Klitgaard developed a sophisticated formula that effectively captures the logic of corruption.

Formula of corruption:
Corruption = Monopoly + Discretion - Accountability (Klitgaard, 1988)
Despite the variations and interpretations that authors have given to corruption over time, different perspectives exist on this issue. Its definitions vary by country and can encompass actions such as law-breaking and favouritism (Redlawsk, McCann, 2005). It is widely recognized that corruption poses a threat to social and economic progress (Rothstein, 2011). A 2014 study conducted by the Pew Research Centre revealed that 76% of individuals in more than 34 emerging and developing nations consider corrupt politicians to be a problem for their country. The research findings also indicate that people view corruption as morally reprehensible.

Unveiling the Mechanisms to Combat Corruption: Strategies for Transparency and Accountability
The perception of information by the public is seen as a key component in the fight against corruption. While the importance of knowledge has been emphasized, some scholars contend that it can often be difficult to uncover corruption because politicians "play different games" to conceal their corrupt behaviours (Besley, 2006). The findings of a study conducted in 2007 suggest that corruption levels fall as information availability rises. The study argues that the digital divide between nations can be seen as a solution to help reduce domestic corruption (DiRienzo, Das, Cort, and Burbridge, 2007). However, despite the crucial importance of information, empirical data has led to a variety of outcomes. On the one hand, other studies confirm that the relationship is not simple (Chong et al., 2015; Vivyan et al., 2012; Muoz et al., 2016). Some findings suggest that information increases electoral punishment by discouraging voting for controversial corrupt candidates

(Winters and Weitz-Shapiro, 2013). Additionally, research has highlighted the function of NGOs. While countries like Georgia, Romania, and Singapore have effectively used NGOs in the fight against corruption, other nations, particularly post-Communist republics, regard NGOs as a foreign invention (Grdeland, 2013).

The author argues that NGOs in the Western Balkans are often perceived as "salary machines" for the middle class or as extended arms of the international community, rather than organizations working for the benefit of society at large. As a result, NGOs face the same fate as state institutions in being perceived as representing "them" rather than "us" (Grødeland, 2013:598). The difficult task of fighting corruption takes time, especially if the phenomenon has developed over time. It needs to start from within society, and in the Western Balkans, political actors and citizens seem to be insufficiently engaged (Grødeland, 2013). One alternative way to fight corruption was proposed during the 15th International Anti-Corruption Conference (IACC, 2012) held in Brasilia. The conference's key conclusions state that public mobilization, including anti-corruption mass movements employing new social media, can help achieve objectives in the fight against corruption (IACC, 2012). However, a vast body of research emphasizes the factors that contribute to the rise of clientelistic politics. According to Robinson and Verdier (2001), these factors include low productivity, significant inequality, and blatantly hierarchical social interactions. Other academics also emphasize the influence of history, culture, and economic development (Robinson and Verdier, 2001).

Why do voters frequently fail to hold dishonest leaders accountable? - The link between corruption and clientelism

This subject has been addressed in a number of research studies in various ways, including: (i) at the individual and group level, and (ii) theoretically and experimentally. Some scholars argue that the effects of information asymmetry may weaken the electoral punishment of politicians, highlighting the significance of partisan and other in-group loyalties (Anduiza et al., 2013), side payments (Manzetti and Wilson, 2007; Fernández-Vázquez et al., 2016), strong economic growth (Klanja and Tucker, 2013), or a lack of institutional clarity (Schwindt-Bayer and Tavits, 2016).

Another important aspect that may influence the lack of punishment for corrupt politicians is the cultural setting. The distribution of advantages to voters by political parties engaged in a contest may be one of the key reasons why voters do not punish corrupt leaders. As a result, citizens continue to support them politically. Clientelism, a widespread practice that is most prevalent

during election seasons, plays a significant role in this context. According to Gans-Morse, Mazzuca, and Nichter (2014), the election season appears to be the best time for political parties to compete not only based on their political platforms but also by offering material incentives to citizens. Through political transactions, clientelism has gained widespread application in political contexts, but experts have begun to see it as a phenomenon that may hinder a nation's economic progress. Social scientists have observed the intricate connection between reciprocity standards in exchanges of goods and services, and they have used the term "clientelism" to describe this connection. In this context, politicians seem to "buy" electoral support by providing cash payments. By using personal contacts and channels to directly benefit themselves, politicians diminish voters' engagement with public issues they advocate (Kitschelt et al., 1999). Politicians can establish direct relationships with their followers by being active in technical administrative infrastructure but not in programming models that reflect aggregate interests.

This type of relationship is characterized by direct personal and material rewards. We define these relationships as clientelistic, which involve two distinct cycles of interaction. First, business representatives with financial resources, specifically powerful businesspeople, strategically share their financial support with politicians. When politicians come to power, they offer their supporters business favours such as public works contracts, subsidies, monopolies, and more. This provides businesspeople with access and protection in an insecure market. Second, middle-class individuals, representing the largest segment of the average voters, can gain material benefits before and after elections. Clientelistic parties invest intensively in administrative infrastructure to reward their supporters in exchange for votes (Kitschelt, 2000). Over time, the idea of clientelism has evolved and is now seen as a "give and take" arrangement where politicians and citizens exchange material benefits. Politicians bribe voters with monetary incentives in exchange for their political allegiance on election day. Receivers are referred to as clients, patrons are politicians, and brokers are intermediaries in this clientelistic relationship. This association is particularly evident in emerging nations (Lawson and Greene, 2014). According to Cain, Ferejohn, and Fiorina (1987), clientelism is a type of interest-group politics.

Political scientists have found profound ways to describe the operation of clientelism, which can work and have a deep effect in all political environments through different strategies. The article by Gans-Morse, Mazzuca, and Nichter (2014) establishes the link between clientelistic parties (political machines) and clientelistic electorates. These strategies include: (i) vote buying - providing benefits to opposing voters to change their vote choice; (ii) turnout buying - providing benefits to immobilized voters to encourage them to vote on election

day; (iii) abstention buying - providing benefits to rival voters to discourage them from voting; (iv) double persuasion - providing benefits to voters to encourage their participation; and (v) rewarding loyalists - providing specific benefits to loyal voters who have supported the political machines over time. The concept of "political machine" dates back to the early 1910s and has been developed further by scholars such as Moisei Ostrogorski, Harold F. Gosnell, and Steven R Erie (as cited in Lawson and Greene, 2014).

Since voters perceive benefits from political parties or candidates, why do they not re-elect them in future elections? Why is it important to research the impact of clientelism on voting behaviour? According to Wantchekon (2003), such studies hold particular significance for several reasons. First, clientelism leads to excessive redistribution at the expense of providing public goods, as politicians divert government resources to favoured segments of the electorate. Second, since budgetary procedures in many countries lack transparency or are discretionary, clientelism tends to favour those already in control of the government, consolidating incumbency advantage in democratic elections. This advantage and the subsequent decline in political competition could incite opposition to political violence, leading to political instability and a potential collapse of the democratic process. Third, a systematic study of electoral clientelism could reveal the existence of gender or generational gaps, incumbency effects, and other results that have important policy implications (Wantchekon, 2003:401).

In-group Loyalty and Clientelistic Relationships: Exploring the Explanation

The present paper highlights the significance of considering both in-clientelistic groups and in-group loyalty in understanding the punishment of corruption. The findings derived from this research carry crucial implications for comprehending the relationship between corruption and electoral accountability. The study proposes that voters belonging to in-clientelistic groups are not motivated to hold corrupt politicians accountable. This assertion aligns with previous research in social psychology and experimental economics, which explores the punishment of unethical behaviour, as well as the presence of group-serving biases in retrospective voting within political science (Healy and Malhotra, 2013). Our analysis leads us to believe that when voters receive benefits from clientelistic public officials and share the same political identity as the candidates in the race, it can result in a detrimental cycle of corruption. Due to the benefits received and the shared political identity, voters refrain from punishing corrupt candidates.

Albanian Case

In the case of Albania, the aforementioned claim can be explained by the communist political legacy, which was based on the principle of loyalty. The attitude towards corruption appears to be deeply ingrained within society. Both voters and politicians have a tendency to manipulate situations in order to benefit from them. Due to the lack of democratic experiences, the Albanian state bureaucracy was primarily established on the foundation of the old regime, which implemented the principle of loyalty (Pellumbi, 2006). This principle, a characteristic of the communist regime, led to the resurgence of old practices such as clientelism, patronage, and the co-optation phenomenon. Consequently, corrupt politicians, through clientelistic relationships, are perceived as a legitimate source of success and as a means to access markets and careers. Family connections and close acquaintances with politicians are the main criteria that determine a citizen's workplace, educational opportunities, business success, ability to engage in unauthorized construction, employment prospects, and property restitution. It is this vertical link between individuals and politics that hinders the establishment of a healthy relationship among stakeholders and political parties.

Furthermore, this vertical relationship can explain the repetitive and stable behaviour of the Albanian electorate. It is worth noting that the dominance of clientelistic relations has persisted in the Albanian political environment for decades, and it seems that no party is interested in changing this dynamic. The main political parties, namely the Socialist Party and the Democratic Party, believe that this relationship reinforces their legitimacy (Krasniqi, 2012). Given the characteristics of the relationship between parties and beneficiary individuals or groups, Lauth (2000) classifies the SP and DP as "clientelistic parties".

In conclusion, due to the high level of corruption and its connection to voting behaviour, and the limited existing literature on the subject, this paper focuses on the Albanian case. The main objective of this study is to contribute to the scarce literature on voting behaviour in Albania. It is interesting to note that Albania has not garnered much scholarly attention, despite being one of the post-communist countries that has not witnessed a change in its political elite since the introduction of pluralism.

The Far-Reaching Implications of Corruption and Clientelism in Albania

The prevalence of corruption and clientelism in Albanian politics has significant implications for various aspects of society and governance. Understanding these

implications is crucial for assessing the challenges faced by the country and formulating effective strategies to address them.

Firstly, corruption and clientelism undermine citizens' trust in political institutions and the legitimacy of the government. When politicians prioritize personal gains and favouritism over public welfare, it leads to a loss of faith in the democratic system. This erosion of trust hampers social cohesion, weakens democratic governance, and impedes effective policy implementation. Secondly, corruption and clientelism have detrimental effects on economic development. By diverting public resources for personal gain, corrupt practices hinder economic growth and exacerbate income inequality. They create an unfavourable business environment, discouraging both domestic and foreign investment. The diversion of funds intended for public infrastructure and services perpetuates poverty and limits opportunities for social mobility. On the other hand, corruption and clientelism weaken the rule of law, as they allow individuals in positions of power to act with impunity. When politicians and public officials engage in corrupt practices without being held accountable, it erodes the principle of equality before the law. This undermines the justice system, fosters a culture of impunity, and perpetuates a cycle of corruption.

It has also to be considered the fact that the prevalence of clientelism perpetuates social injustice by reinforcing unequal power dynamics. In-clientelistic relationships between politicians and voters perpetuate a system of patronage, favouring certain groups or individuals over others. This perpetuates social divisions and marginalizes those who do not benefit from such relationships. Consequently, social mobility becomes increasingly difficult, and meritocracy gives way to nepotism and cronyism. Furthermore, the entrenchment of corruption and clientelism in the political system contributes to political instability. The unequal distribution of resources and opportunities fuels social discontent and can lead to social unrest. Additionally, the persistence of corrupt practices undermines the democratic process, as citizens become disillusioned with the political establishment and are less likely to participate in elections or engage in political activities.

Corruption and clientelism also have implications for Albania's international standing and its integration into the European Union (EU). Persistent corruption undermines Albania's credibility and hinders progress in fulfilling the requirements for EU membership. It raises concerns among international partners and investors, limiting opportunities for economic cooperation and foreign direct investment.

Addressing these implications requires a multi-faceted approach that targets both the structural and cultural dimensions of corruption and clientelism. Strengthening institutional frameworks, enhancing transparency and accountability, and promoting a culture of integrity are crucial steps in combating corruption. Investing in education and raising awareness about the detrimental

effects of corruption and clientelism can foster a sense of civic responsibility and encourage active participation in democratic processes. Furthermore, it is essential to strengthen the role of civil society organizations, promote independent media, and ensure the independence of judiciary to hold politicians and public officials accountable. International cooperation and assistance can provide valuable support in building robust anti-corruption mechanisms and fostering good governance practices.

By addressing the implications of corruption and clientelism, Albania can pave the way for a more inclusive, transparent, and accountable political system. This transformation is essential for achieving sustainable development, enhancing social justice, and securing a prosperous future for all Albanian citizens.

Conclusions

The current scientific paper reveals several important findings regarding the state of democracy, corruption, and clientelism in Albania. Over the past 30 years, since the country's transition from communism to democracy, Albania has faced significant challenges in consolidating its democratic institutions and combating corruption. Despite initial hopes for democratic development and European integration, the political leadership in Albania has been mired in corruption scandals and has struggled to address the issues that plague the nation. The reports from international entities and scholars consistently highlight the prevalence of corruption and the lack of political will to address it. State capture, where lawmakers craft legislation to benefit private interests, has been observed in Albania, indicating a troubling relationship between political power and commercial interests. This has hindered the progress of democracy and contributed to the persistence of corruption in the country.

One of the key factors that perpetuate corruption in Albania is the phenomenon of clientelism. During electoral years, political parties compete not only based on their platforms but also through the distribution of material incentives to voters. This personalized exchange between politicians and voters, where both parties quantify transactions, allows politicians to "purchase" electoral support through direct pay. When voters have clientelistic relations with corrupt candidates, they are less likely to punish them, while corruption by candidates without such relations is more likely to be punished. In-group loyalty and social identities based on ethnicity, language, religion, or partisanship play a significant role in shaping voter behaviour, leading to asymmetric electoral punishment of corruption. The consequences of corruption in Albania are far-reaching, undermining political trust, economic growth, equality, and poverty reduction. The fight against

corruption requires public mobilization and the availability of information to the public. However, the effectiveness of information in reducing corruption is not straightforward, and the role of NGOs in combating corruption varies depending on the context. Cultural factors also contribute to the lack of punishment for corrupt politicians, with clientelism being deeply ingrained in the political process, particularly during election seasons.

In conclusion, Albania's journey towards consolidating democracy and combating corruption has been fraught with challenges. The persistence of corruption, state capture, and clientelism have hindered progress and eroded public trust. Efforts to address these issues should focus on strengthening democratic institutions, promoting transparency, and fostering a culture of accountability. Additionally, public mobilization and the provision of information can play crucial roles in raising awareness and creating a more informed electorate. Only through sustained and collective efforts can Albania overcome these obstacles and advance towards a more democratic and corruption-free future.

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The double relation between democracy and free elections: The Tunisian and Algerian cases

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Abstract

This article aims to demonstrate the double link between democracy and free elections. There must be free elections in a democratic country; free elections are a fundamental point of democracy. Academic literature has demonstrated the existence and importance of this link. In particular, this paper examines the cases of Tunisia and Algeria with an analysis of their latest national elections and the adoption of their latest Constitutions. This examination will follow a comparative method through a micro and macro-comparison analyzing the legislative and constitutional changes in the two countries and their comparison with the Islamic political system and the constitutional model of the French Fifth Republic that influenced the institutions and constitutional productions in North Africa.

The limitation coming from this work may derive from producing an analysis anchored in European political and legal values. The analysis takes into account the peculiarities of the Islamic world and relies on universally recognized values that identify and characterize a democracy. Finally, the investigation of the link between these two institutions seeks to understand a relevant thing. The presence and

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circulation of constitutional models without a solid democratic political foundation cannot succeed. We witness in these countries an abuse of the French system that renders them incapable of intercepting and accommodating their populations' demands for freedom.

Keywords: d*emocracy, political institutions, constitutional model, free elections, constitution*

Introduction

The legal universe is characterized by the circulation of legislative and constitutional models that affect all continents in different ways. In particular, in this contribution, we attempt to look at the dynamics of the circulation of constitutional models involving Europe and North Africa, specifically France, Tunisia and Algeria. An analysis on this situation, however, should make us focus on what the circulation of a constitutional model entails. In this regard, we emphasize that when a country comes into contact with a legislative product of another state (laws or constitutions) and tries to replicate it within its legislation, the final result may not yield the hoped-for benefits.

Knowing and trying to assimilate some laws or institutes and bringing them into the national context can be more harmful than not having them. Behind a law or Constitution, we always have a specific legal, social and political tradition that presents that legislative product as the synthesis of all those factors. The political system, perhaps even a democratic one, supports any legislative output. That is what happened in Tunisia and Algeria where, despite the Fifth Republic French legal and constitutional tradition presence, the re-proposition of some political and social institutions did not have the same result as in France. The lack of a democratic background has prevented North African states from having well-functioning political and administrative structures. In this sense, we have a significant example from the failure of the US mission to import democracy into Iraq after the 2003 US invasion. As Coyne (2007) stated, exporting democracy is a mission that must consider a country's historical background. Democratization is a gradual path where some authoritarian fallout must be anticipated, especially for territories that are not used to democracy.

Analysing the problems related to the direct link between the circulation of models and the assimilation of laws and constitutions will be the key to understanding the double link between democracy and the right to vote. The former is a condition for this right; at the same time, however, the right to vote becomes a way of verifying the conditions and proper functioning of democracy.

This verification will follow a methodology based on diachronic and synchronic comparison through the contemporary institutes and laws analysis between these three countries without sacrificing the study and understanding of their evolution over time. Later, there will be the use of micro-comparison with a specific analysis of the laws of the three countries mentioned and macro-comparison with an examination of national legal systems and traditions.

This work, however, could entail risks of a lack of a proper framework of political and social institutions in Tunisia and Algeria. We have already learned the lesson of Vatikiotis (1991) in examining the relationship between the phenomenon of constitutionalism and the political structure. The legal situation of North African countries has presented some limitations dictated by analysing these political realities with the categories of European public law. As Sbailò (2022) remembers, it will be necessary to anticipate the internal dynamics of the Islamic world that condition the political institutions that we want to study to have a clear and complete idea about the relationship between democracy and free elections in Tunisia and Algeria. Beyond the institutional and political peculiarities of the Islamic countries of North Africa, there are some points that define a democracy. The EU Handbook for Human Rights Education makes two points to describe democracy. The first is the autonomy of the individual: no one should be subject to rules imposed by others. The second, on the other hand, is equality: the ability of everyone to influence political decisions affecting people in society in the same way.

Focusing on the relationship between free elections and democracy is a relevant point in the analysis of a country. The democratic nature of a State has other ways with which it's possible to assess the political status of a state. On this point, we cannot but consider Schedler's analysis (2002). With a reference to Dahl's work, Schedler says that elections are something that we can have also in authoritarian countries. Democratic countries have free elections if these respect seven points: "empowerment", political elections are about citizens wielding power about future decisions makers; "free supply", democratic elections presuppose the free formation of alternatives; "free demand", the free formation of voter preferences; "inclusion", democracy demands universal suffrage; "insulation", once citizens have freely formed their preferences, they must be able to express them just as freely; "integrity", once citizens have given free expression to their will at the polls, competent and neutral election management must count their vote; "irreversibility", the winners must be able to assume office, exercise power, and conclude their terms in accordance with constitutional rules. Regarding the link between democracy and the right to vote, the analysis by Norris, Frank and Martinez (2013) expands on other considerations. Democracy is not only tested by free and effective voting and respect for the will of the people that emerge from the polls. It's also necessary to assess the rules of conduct of the previous phase. In particular, we consider the

rules under which political forces hold debates and whether all parties can register without unfair restrictions (related to gender, ethnicity or minority membership). At last, if the rules on campaigning give fair space to all candidates and freedom of the press in their opinions.

We will try to analyse the Tunisian and Algerian constitutional systems following the theories that we have quoted before.

The North-African political and constitutional framework

North Africa has been and still is an area characterised by strong social and political instability. Over the years, this area has had numerous constitutional changes (simple restyling operations or the adoption of new Constitutions). These changes have marked the institutional and legal history of the countries in the region. Specifically, this scenario started in the dynamics linked to a 'double constitutional cycle' affirmation. That affected North Africa after the primordial phase of political and legal settlement following the decolonisation and independence of the countries in the area. Sbailò (2022) says the two cycles differ in terms of time. The first cycle coincided with the end of the Cold War, facilitated by Soviet-American competition and the desire of the two powers to incorporate allied states into their respective spheres of influence. Indeed, these political and strategic motivations led some North African countries to enjoy legislative-constitutional freedom in favour of the interests of the political and ruling classes. The subsequent end of tension between the two world powers allowed the Western democracies, in exchange for cooperation and economic support for the countries in this area, to put pressure on the ruling classes to initiate more democratic political and social reforms.

Instead, the second cycle began following the terrorist attack of 11th September 2001. The subsequent declaration of war on international terrorism by the United States and its Western allies led to the need to promote new cooperation with North African countries. The latter, in turn, took advantage of their new advantage position in international political dynamics: the national political and ruling classes attempted to settle their countries' debt positions permanently and obtain a new possibility of unlimited credit from the Western powers. This changed scenario allowed the North African ruling classes to strengthen their power in an autocratic key.

The recent outbreak of the Arab Spring phenomenon comes at the end of this cycle. Following the social protests began in Tunisia and affected neighbouring countries in different ways and with different outcomes. In a first moment, we witnessed legislative and constitutional changes that led to greater democratization at first and then to growing instability. The basis of these political-constitutional changes, as already mentioned in part, has seen important geopolitical events of a different nature. It is also impossible not to consider the historical-political

peculiarities of the countries involved in the various drafting processes. In this regard, constitutional changes in Mediterranean Sunni Islam have also been influenced by internal dynamics within the Ummah, such as the renewed dialectic between the 'statehood of Islam' and the 'Islamisation of society'. In addition to these factors, North African constitutional production has inevitably been affected by the legal and political traditions of the countries that colonized the area. In this regard, we have witnessed the overlapping of local legal experience with that of European origin, especially the French 'Fifth Republic', the most deeply rooted in North Africa. Indeed, the internal affairs of the Islamic world confronted (and continue to do) the state structures that originated and developed following decolonization. The adoption of the French model in the North African region took place outside the context of the 'checks and balances that characterized the jurisprudential experience of the 'Fifth Republic' due to the interpretation of this model in a tendentiously authoritarian key in Tunisia.

The mediation between local and French legal experience falls within the logic of *dīn wa dawlah*. This concept recalls that political-religious polarity at the basis of Islam's expansion. The latter fuels a strong geopolitical tension that undermines the state systems of the countries in this area.

After the explanation of these characteristics, we will focus on the Tunisian and Algerian cases. The aim is to understand the current constitutional set-up in these countries. Then, we will look at the political and constitutional passages that have marked the countries' history and the influence of the French model within it. The aim of this analysis is that the Tunisian and Algerian non-free elections represent the end point of a currently autocratic system and, at the same time, the starting point of a liberal decline in the North African countries. We can say that there is a double connection between free elections and democratic accountability in a country. Free elections are a way to certify the democratic nature of a State and its correct functioning. At the same time, free elections are a basic condition that characterizes a democratic system without which we cannot talk about a democracy. Nordlinger (1968) confirms that connection when he explains the transition from an autocratic political system to a democratic one. This transition can work in a not dramatic way if there is a clear national identity, a central government and popular parties can take votes from the entire population.

The 2022 Tunisian Constitution and its consequences

The current Tunisian Constitution was adopted following a referendum in July 2022. President Saied instituted this vote to strengthen his power. Indeed, the new Constitution reinforced the figure of Saied and the role of the Head of State. The

new constitutional text deleted the one of 2014 that affirmed semi-presidentialism and promoted hyper-presidentialism. This referendum came after some particular institutional events. Saied became President of the Republic in the 2019 elections with 72% of the vote. The political and social situation in the country was chaotic and unstable. Saied intervened to restore law and order through the adoption of anti-terrorism legislation (last adopted in 2003) and had to deal with the economic crisis resulting from the Coronavirus pandemic. The lockdown measures had penalised the small national trade (a strong point of the Tunisian economy) and exports causing clashes and demonstrations.

On 25th July 2021, Saied resigned the government and 'froze' Parliament. He seized executive and legislative power and waived parliamentary immunity, proclaiming himself the 'Attorney General of the Republic'. The national army prevented the Speaker of Parliament, Rashid Ghannushi, and a group of MPs from entering Parliament. Following these decisions, Saied also planned to replace some key figures in the Ministry of the Interior and the economic and financial ministries with men appointed by him. That was the prelude to the Article 80 implementation of the Constitution, the state of emergency. After the legally stipulated thirty days, the Head of State extended his exceptional powers until further notice, causing profound discontent among the Tunisian people and public opinion. At first, these supported the President's measures because they were considered necessary.

These political decisions have strengthened the figure and role of the President of the Republic. That also gave itself the power to decide the institution of referendums. The new political climate explains why the referendum for the new Constitution had a low turnout in relation to the importance of the vote (25%). The new Constitution establishes some significant innovations. Among these, Article 87 states that the President of the Republic exercises the executive function assisted by a government (previously, it was together with the Government). The second relates to the non-reconfirmation of Article 88 of the previous Constitution (the possibility of impeaching the President). The President (Article 67) has the power to present bills with a group of at least ten deputies and no longer with the Head of Government. The President may submit laws independently when they concern treaties and financial rules. In addition, Presidential Bills once again have chronological priority in plenary debate. The other presidential powers concern international treaties. Indeed, Article 74(1) grants the power to ratify treaties and to order their publication to the Head of State. The second paragraph of the same provision recalls the same limits as in the 2014 Charter about international agreements. These need approval by the Assembly of People's Representatives.

The regulation of decrees has also changed. Thanks to Article 70, President can adopt decree-laws with the authorization of the Assembly of People's Representatives for a limited time and a specific purpose. Moreover, the President can also adopt

such acts during the recess from the work of the Assembly with its approval in the first possible ordinary session. Finally, Article 80 states that the Head of State can adopt decrees even when the Assembly is dissolved. Also, in this case, the approval would come at the first possible ordinary session. Decrees have been the most relevant manifestation of presidential power: Decree 2021-69 allowed the President of the Republic to remove many holders of various institutional offices; Decree 2021-80 suspended all powers of the Assembly; Decree 2021-70 imposed a curfew on the entire territory of the Republic to limit the consequences of the Coronavirus pandemic; Decree 2021-117 led to the normalisation of exceptionalism. In particular, this decree provided the definitive explication of presidential power in three points. The first related to decrees: these are deliberated by the Council of Ministers, promulgated by the President and not subject to parliamentary ratification. The second saw the government, initially headed by a Prime Minister, subordinated to the power of the Head of State. Finally, the third allowed the President to give himself the faculty to prepare constitutional reform projects.

The current Tunisia's political and legal characteristics are the legacy of a previous government that failed to meet the people and country's needs. The autocratic drift of the Saied presidency, as described by Biagi (2022), affected the non-free and strongly boycotted voting by the population and increased the social distance with the numerous minorities in the country. These thoughts found significant confirmation in the national elections held between December 2022 and January 2023. These elections led to an unprecedented result in terms of popular participation: only 11.2 per cent of the more than 9 million eligible voters went to the polls. In other words, about one million people. The policy adopted by Saied led all Tunisian political parties to side against the President, despite Saied's call to go and vote to seize the opportunity to regain your rights and stop those who ruined the country. It was not enough. The people did not believe him. The percentage of those who took part in the vote is the worst rejection of Saied's performance. The national media claimed it was the lowest turnout of any election in modern history. This result is lower than the 18% recorded in Haiti in 2015 and 19% in Afghanistan in 2019. International observers noted a general climate of indifference as evidenced by few election posters being put up and almost exclusively local programmes.

The absence of democracy spills over into relations with national minorities and the management of internal migration flows. Saied's speech against sub-Saharan migrants alarmed the UN Committee on the Elimination of Racial Discrimination. He described the arrival of the migrants as an attack on Tunisia's Arab-Islamic identity aimed at changing the demographic nature of the country. There have been incidents of arbitrary detention in the Ouardia centre, where some migrants

have been detained for more than eighteen months. Even today, especially in the south of Tunisia, the population is still anchored to the old national assimilation policies. Menin (2020) reports that the Tunisian population still refers to those descended from XIX-century slaves as *oussif* (slave). This minority suffers from poverty, exclusion from the labour market and limited access to higher education. This reality, although Lecocq and Hahonou (2015) remember that Tunisia was the first country of the Ottoman Empire to abolish not only slavery but also the slave trade with decrees of 1841 and 1846.

From a religious point of view, in the south of the country, there are Christian communities made up of Europeans living in Tunisia and Bahai who, several years later, are still waiting for a cemetery to be allocated for the burial of their dead. This concession, however, is a prerogative granted only to communities that profess one of the heavenly religions. Moreover, these communities can't register their civil marriages because they are not yet recognized by the State as a religious group. On the other hand, from a linguistic point of view, it is recorded that the Amazigh has become a linguistic minority following the Arabisation of the country and that the number of Tafinagh speakers, another example of a Tunisian minority idiom, is gradually decreasing; this is now only spoken in a few villages. Another datum testifying to the double link between the absence of democracy and the lack of elections is related to the presence of women among the candidates at the last elections. In 2014, women participants accounted for 48%; this year, only 15%. One reason for this comes from a law adopted by the Saied government. That stipulates a base of four hundred supporters for those wishing to run for office. Women have found more difficulties entering public places, like bars and cafes. These are the ideal spaces for political discussions in Tunisia.

From constitutional and political viewpoints, the current Tunisian situation remembers the country's conditions during the Bourguiba and Ben Ali Presidency. Even in these cases, we had two hyper-presidential forms of government with autocratic governments that had lifetime presidencies in Africa. Mullin and Rouabah (2016) say that the absence of constitutional laws to limit the re-electability and the implementation of the state of emergency as an instrument of repression of social discontent represented a severe democratic crisis for the country. For the first presidency, the emergency state allowed for a general adherence to a liberal 'rule of law', facilitating more 'effective' modes of power when the rule was considered under threat. For the second one, on the other hand, emergency states strengthened sovereign power to the detriment of opposition forces in the country. A low turnout and unrealistic consensus rates compared to the climate of protest in the country demonstrate this double link between democracy and free elections. The absence of democracy prevents truly free and participatory elections; the lack of such elections demonstrates the lack of democracy or its malfunctioning.

The Tunisian democratic experience after the Arab Spring

The double link between free elections and the democracy of a political system was even more relevant during Tunisia's political and constitutional experience in 2014, following the Arab Spring of 2011. Tunisia was the country that kicked off the Arab Spring, a socio-political event that affected all Mediterranean African states. It is well known that the Tunisian epicentre of this social movement was Sidi Bouzid, 200 km south of Tunis. It was here where the young civil rights activist Muḥammad Būʿ Azīzī set himself on fire, exasperated by the numerous administrative bans, police abuses and local officials that forced him into poverty. Subsequently, this episode gave rise to a country-wide uprising. The origin of the Tunisian Arab Spring and the involvement of the entire population are significant to understand how much people expected a political change in Tunisia. The flight of Ben Ali and the formation of a provisional government led to the re-emergence of the party system and the election of a Constituent Assembly. It was the election of the latter that triggered a political-institutional transition. The work of the Assembly highlighted the desire to maintain the semi-presidential form (with a more central role for the Prime Minister alongside a still strong President of the Republic). Such bi-partisanship would have provided a balance, at the top of the institutions, between the secular and Islamic-popular components.

The social and political premises that accompanied the preparatory work for the 2014 Constitution are significant for understanding the new role and position of the President of the Republic. These two elements have changed; we are witnessing a downsizing of the presidential role in favour of the Head of Government. Article 72 is the first evidence of this relevant change. This provision presents the Head of State as the symbol of state unity and the one who ensures that the Constitution is respected. Article 62 (on the presentation of bills) stated that the Head of State retained the power of exclusive intervention only for those relating to the approval of treaties and the finance bill, whereas for other matters, this power was shared with the Head of Government and a group of at least ten deputies. Finally, the new constitutional system recognized the possibility of adopting decree laws to the Chief of Government and no longer to the President of the Republic as in 1959. Article 78 mentioned presidential decrees with which the Head of State could 'only' decree institutional appointments (from the Mufti of the Republic to the Governor of the Central Bank, among others).

A significant political-institutional difference is in the chapter on executive power. Article 71 of this Constitution stated that this power was exercised by the Head of State and the government headed by the Chief Executive. In addition,

Article 91 also changed the ownership of the definition of the general policy of the State. As of 2014, the determination and control of the latter would no longer rest with the President but with the Head of government. The introduction of Article 93 of the Charter changed the relationship between the President of the Republic and the Government. In fact, according to the 2014 text, the Head of Government is called upon to preside over the Council of Ministers, with the Head of State compulsorily present only in exceptional cases (i.e., when matters concerning national security, defence or foreign relations would be dealt with).

Finally, an important novelty in the 2014 Constitutional Text is the provision, for the first time in Tunisia, of the impeachment of the President. This institution, Article 88, provided that the members of the Assembly could, by a two-thirds majority, submit a reasoned motion to terminate the presidential mandate due to a serious violation of the Constitution. Once this majority had been obtained, the Constitutional Court would decide, also by a two-thirds majority of its members, to remove the President from office. Moreover, the same article stipulated that such a conviction would prevent the Head of State from standing in all subsequent elections.

Reporting on the 2014 political and constitutional experience provides significant food for thought on the reciprocity between free elections and democracy. Indeed, the first elections after the flight of Ben Ali recorded some relevant data. First of all, these elections were the first ones by universal suffrage. Moreover, let us consider the presence of 1508 lists in the elections (only 13% of which were declared ineligible). The independent election monitoring body recorded a turnout of 61% (considering the total number of those registered on the electoral lists). We have already mentioned that 48% of the candidates were women. The 2014 elections also showed that 12% of the list leaders and 50.5% of the voters were women. According to the doctrine, the first two statistics represent starting points for Tunisian society and laws towards gender equality. If we focus on the 2014 Constitution, the resulting analysis may be contradictory, but it certifies a growth in national sensitivity to particular social issues.

The preamble to the Tunisian charter emphasized the Arab identity of the state, although, as described by Canepa (2014), racism and discrimination against black people in the country have entered the national debate. Tunisian society is characterized as strongly homogeneous because of the Arab-Muslim majority's presence. But it has a more stratified and ethnically, religiously and linguistically diverse demographic composition.

This renewed sensitivity to this section of the Tunisian population, unthinkable in the previous Ben Ali regime, led to the introduction of Law No 11 of 2018, which punished discriminatory acts and words. With this measure, the government listened to and took on board the testimonies of several rights associations on the lack of rules that would allow black Tunisians to have political careers or be

appointed to high-ranking professional positions. Quattrini (2018) underlines the importance of the new law. It also provided for the establishment of a National Commission to Combat Racial Discrimination, which was responsible for drafting national public policies to combat racial stereotypes and worked to provide up-to-date data on cases of racism against the black and sub-Saharan populations in the country. Subsequently, Tunisia also ratified several texts on non-discrimination. In particular, several UN Conventions aimed at protecting minorities, guaranteeing them access to national and international justice on an equal footing with the majority of the population. Bringing the situations of certain national minorities to the attention of Tunisian political institutions was a sign of the beginning of a significant political change in the country and a social necessity. Indeed, Tunisia, hit by the economic crisis and high unemployment during the pandemic, experienced serious and numerous difficulties on the part of the population. These conditions hit those who had lived on the margins of the social structure until then particularly.

In doctrine, however, some saw a dangerous *pout-pourri* in the 2014 constitutional text with the introduction of Article 6. The wording of the latter has been described as problematic and ambiguous. It focuses on the point that sees the state as the guardian of religion. The law didn't specify the religion to safeguard; the term guardian does not allow one to understand what role the state plays and the boundaries of its action. Bousbih and Yaallahoui (2015) suggest the *pout-pourri* image. They sustain that a constitutional provision has a merely principled function and will find its definition in terms of implementation in secondary laws. That, however, did not prevent the Venice Commission from expressing its concerns about some provisions (including Article 6). The Commission argued that a state that proclaims itself civilized (on this point, see Article 2 of the Tunisian Constitution) should not be competent to determine what is sacred and deserving of protection. Indeed, such an approach could legitimize the criminalization of blasphemy, with a freedom of expression, conscience and thought limitation.

The 2021 Algerian Constitutions: the illusion of an improvement after 2016

In 2019, Algeria emerged from the long political and governmental experience of Bouteflika. The President had declared his candidacy again. This time, the reaction of Algerians forced him to step back and leave the presidential office. These demonstrations led to the birth of the Hirak movement, which received solidarity from the army. The new elections featured five candidates with experience in previous presidential administrations. The lack of effective renewal in the political class discouraged Algerians from the democratic course that could open up

following Bouteflika's resignation. The 2021 national elections saw the triumph of Tebbun (former Minister of the Interior in Bouteflika's previous administrations). Voter turnout was higher than on other occasions, registering 39%. On the other hand, this data demonstrated disappointment; on the other, enthusiasm for a new name on the political scene after almost thirty years since the last time. He wanted to inaugurate the new political course by adopting a new Constitution that the Algerian people would have to vote on in a referendum. The outcome saw the adoption of the new constitutional text with a 24% turnout.

The principal cause of the participatory failure was the opposition to the Constitution. The Hirak movement and the political opposition considered this new Charter unsatisfactory because it still grants too many powers to the President of the Republic. Specifically, Article 85 confirms the direct election of the Head of State (again by direct and secret universal suffrage); Article 88, on the other hand, stipulates in its second paragraph that the President cannot serve more than two consecutive or separate terms, as was already the case in 2016. On the other hand, the reformed Article 91 of the Constitution confirmed the presidential power to conclude and ratify international treaties and granted the Head of State the new faculty to organize early presidential elections. According to Article 101 of the 2016 Constitution, this faculty rested with the National People's Assembly. In addition, the 2021 Constitution grants the President the power of regulation. Finally, Article 97 of the new Constitution regulates the state of emergency differently from the previous constitutional version. In addition to recognizing exceptional presidential powers, this provision imposes a maximum duration of thirty days and the need, for its prolongation, for the approval of Parliament in a united chamber.

The importance of the elections and the expectations behind this Constitution were significant due to the previous 2016 Constitution. That is the reason why our analysis started from the last Constitution. This Constitution was the result of Arab Spring protests in Algeria. The genesis of the Charter shows how the lack of democracy and free elections that continuously legitimized Bouteflika's government affected the characteristics of the new text. Algeria was an exception during the Arab Spring phase because the country did not feel the social and political effects of Tunisia. The reason was that in Algeria, citizens enjoyed the division of profits from the national oil trade; the social-economic situation was better than in Tunisia. The final text of 2016 saw its beginning in Bouteflika's 2011 speech. The President sought to appease the growing popular discontent and announced his intention to deepen the democratic process and strengthen representative democracy. The long-time span between the President's speech and the year of adoption of the new Charter is related to the different levels of social and political sensitivity by Algerians. Indeed, in the wake of the first consequences of the Arab Spring in Tunisia, the government promoted the establishment of a

Commission on Political Reforms in 2011 for fear of losing power. Then, in the absence of popular pressure on the government, there was a freeze on the work until the next reopening. In May 2014, government opened new consultations on the reform that delayed the presentation of the new text in 2016.

The centrality of the government became even more evident during the first demonstrations related to the Arab Spring phenomenon. Besides adopting social measures, such as increasing subsidies, wages and public spending, the government was also able to exert pressure on the judiciary. At first, to be intransigent in judging the violations committed by the demonstrators and then, at a later stage, to urge a more paternalistic and re-conciliatory attitude. As Smith (1996) says, this constitutional text gave the President of the Republic a central role compared to the 1963 Constitution, despite the presence and importance of the Prime Minister and the National People's Assembly. The reform confirmed the President's superordinate position, even in the face of the expansion of the Prime Minister's prerogatives. Article 91 claims that: the Head of State presided over the Council of Ministers, appointed the Prime Minister, could terminate the latter's functions (albeit after consulting the parliamentary majority) and had the power to conclude and ratify international treaties.

The framework of reforms represented also saw an important role played by the Algerian Constitutional Council, which contributed to the consolidation of Bouteflika's power. Beyond the assignation of formal competencies, we have proof of the absence of a system of division of powers. As Bozonnet (2016) reported, that has allowed the *Pouvoir* to continue to exercise its influence throughout the country.

The emergency state regulation was a particular aspect of the 2016 Constitution and its political and social origins. Bouteflika tried to win the protests by annulling the state of exception imposed continuously since 1993. What was supposed to be a natural constitutional act was presented as a concession. Moreover, the regulations on the state of exception (Article 107 of the Constitution) stated that its establishment was decided by the President of the Republic (after consultation with the other state offices, with the Council of Ministers and the High Security Council). During this period, the Head of State could take any exceptional measure aimed at the independence of the country and its institutions, and the consultation mechanism mentioned above was adopted again when the danger was declared to have ceased.

The social impact of Algerian no-democratic system

Today, Algeria is one of the countries to watch about religious freedom because of its lack of respect. The American report on the subject reported that Algeria does not respect religious freedom, especially that of the many Christians living in the

country. We have relevant examples as the closure of about thirty Protestant religious communities throughout the country. These are places of worship, often buildings dedicated to Protestant worship practice, run by religious associations. According to a 2016 decree on the conditions for non-Muslim worship, worshipper are required to apply for a 'permit' to worship in public places reserved for this purpose. Those who profess 'other' religions do not know who issues these permits. When the new Constitution was adopted in October 2020, the NGO Human Right Watch denounced the right to freedom of belief deletion. This right protects and guarantees the freedom to declare oneself a secular, agnostic or atheist Muslim, to observe or not observe the Ramadan fast without fear of prosecution under the Basic Law. The Algerian authorities denied these accusations. The Minister of Justice, Abderrachid Tebbi, called them "unfounded accusations", assuring that "freedom of worship, guaranteed by the Constitution, is practised within the framework of the law without discrimination" and that the State protects this practice "from any ideological or political influence". As for the people on trial, they were, according to him, 'common law cases'.

The only minority that is mostly included and protected in Algeria is the Berber minority. Article 4 of the 1996 Charter classified Tamazight as an official language. The government would work to promote and develop all the language varieties that characterize it. Moreover, as sustained by Karimi (2016), the state established the Algerian Academy of the Tamazight Language, controlled by the President of the Republic, to promote this idiom as an official language. Finally, it is relevant to note something about the last paragraph of Article 4. The application of these provisions must see the use of the organic law. The provision to protect the Algerian cultural identity was also in the subsequent 2016 Constitution, which also elevated the status of the Tamazight language to an official language and no longer just a national one. This recognition was the result of two different factors: the first, a constitution adopted as an antidote to the first signs of the Arab Spring in the country following the events of 2010 in Tunisia; the second, on the other hand, has to do with the consequences of the demonstrations conducted over the years by the Berber population, which fought to obtain better constitutional protections. One thinks in this regard of the first grievances in 1980, the year of the so-called 'Berber Spring' followed, in turn, in 2001, by the events known as the 'Black Spring'. The latter was a major regulatory success. Indeed, in 2002, Tamazight was recognized as a national language.

Tunisia, Algeria and democracy

The descriptive analysis of the laws and constitutions of the two North African countries was useful to provide a legal and institutional framework in Algeria and Tunisia. Indicating what defines a democracy is not easy; we have had several

theories about it in the literature. As argued by Dixon (1993), a democracy can rely on values and principles that guarantee broad citizen participation in the public life of the country; Schmitter and Karl (1991), on the other hand, give more importance to political and constitutional values such as universal suffrage, limitation of government powers and accountability of political leaders.

But democracy is not just the presence of some principles and/or institutions. These two elements should have temporal continuity and stability inside the cultural and political background of a country. In this regard, we recall Weede's thought (1984). The author believes that a country can call itself democratic if it maintains the subordination of military power to political power, the legislature independence, the presence of a free-market economy and the legal protection of citizens' rights for at least three years. This period is synonymous with the strength and resilience of a country's institutions. The 2014 Constitution experience would seem to comply with Weede's theory since Saied's autocratic drift occurred in 2021. However, we note how the Tunisian project collapsed as the Ennahda party made the same mistakes as the previous regimes (corruption and cronyism). These mistakes created such discontent that Tunisians welcomed Saied's authoritarian policies at first. They saw these as the only way to resolve a social situation of serious crisis. Moreover, as we saw in the introduction part about Tunisia, Saied didn't face significant obstacles to cancel the former national institutional organization.

Beyond the theories that have described democracy in different ways, we can say that free elections are the central point for identifying a democratic country. As stated by O Ojo (2007), the presence of a correct and effective electoral law would allow for the full involvement of the electoral body, which would be able to express its preferences in a free and autonomous manner, actively participating in the political and social life of its country. That, however, represents the end point of a democratic country because other conditions must be fulfilled. MacKenzie (1958) lays down four conditions for free elections. A government administration that runs elections honestly and competently; the willingness of a country's political community to accept even adverse sentiments (e.g., non-participation); a developed party system that expresses the country's political and social plurality; and an independent judiciary that knows how to judge and interpret electoral law.

Around the world we have had numerous examples of countries that chose democracy after becoming independent (African countries after decolonization or those in Eastern Europe after the fall of the USSR). The mere choice of a democratic transition does not imply the presence of democracy, even if one identifies a constitutional model to study in order to build one's legislative system. As stated by Di Gregorio (2012), the establishment of the democratic system in a newborn country must pass through the consolidation phase and the danger of a return to the previous form of government. The enthusiasm for democracy can't delete the

preoccupations for its defence. Moreover, the presence of a party plurality in a country is an additional certification of the good state of a democracy. The plurality of parties is a sign of the population's willingness to participate; it indicates that the world of institutions can intercept the various needs of the people and that it is aware of the heterogeneity of the social, human and cultural fabric present in a country. In this way, we see the state descending into the bowels of society.

Another important aspect is the relationship between a democratic system and minorities, i.e., how legislation and legal awareness of these social groups benefit from the presence and stability of a democracy. A democratic (particularly deliberative) system, according to Wheatley (2003), sees a relevant point in the free association of equal citizens. Therefore, ethnic minority groups demanding recognition of their status and effective representation in the institutions and decision-making and deliberative mechanisms of the country find satisfaction in the democratic form. From a macro-comparison perspective, proof of this now comes from the current European social and political context, which is increasingly multicultural due to the coexistence of different languages, cultures, ethnicities and religions. Cavaggion (2017) states that such a heterogeneous society has challenged the classical model of democracy. This questioning has led to a reconsideration of this form of government to involve all subjects belonging to a state. The political and social paradigm shift is only possible in a democratic system with structures and freedoms to question on gaps in representation. That is because the basis of democracy is the people (think about the Greek origin of the name, "power to people").

Conclusions

The description of Tunisia and Algeria's political, institutional and constitutional set-ups owe their origin to internal political dynamics and the influence of the French constitutional model of the Fifth Republic. The French constitution of 1958 brought strong semi-presidentialism to the country as a consequence of the crisis France was experiencing due to the uprisings in the Algerian colony. The French model has taken root in Tunisia and Algeria for several reasons. Certainly, France's political and territorial ties with the African countries (Tunisia was a French protectorate and Algeria was a French colony) had an impact; in addition, Tunisia also went through a period of crisis following its independence and relied on a strongman who, in the 1959 Constitution, was President Bourghiba. On the other hand, Algeria suffered a period of severe social and political uncertainty following the 1992 elections, the activation of the state of emergency and the civil war beginning. Although Tunisian constitutionalists studied the French text by

translating it into Arabic, as Abbiate (2014) writes, Tunisia was unable to replicate the same institutional set-up as France. The strong role of President De Gaulle has certainly not undermined the system of the division and balancing of powers and has in no way affected the democratic nature of the institutions.

The main difference between the two countries lies in these last points. Barbarito and Fiumicelli (2014) stated that Tunisia did not have a structure of checks and balances in its institutions. The Tunisians reproduced the French political system without capturing the spirit and values. The absence of democratic control within parliamentary and assembly dynamics has led to the rise of political figures who have centralized power in their hands. Let's think about Bourghiba: he had the father of the fatherland title and maintained a continuous presidency, or Ben Ali who continually reinforced his power to the detriment of his opponents. These conditions underlie the lack of free elections due to the fear of losing power on the part of these authoritarian figures. At the same time, however, the lack of free elections represents a condition of non-democracy that is reflected in a country's political and social institutions. The presence and stability of a democratic system would have made it possible to develop mechanisms of greater social involvement as demonstrated by the events of 2014. The presence of a Constituent Assembly, the discussion of minority laws, and the opening to universal suffrage are signs of a living and functioning democracy. On the other hand, a democracy with these characteristics is the condition for the existence of values such as inclusion and participation.

Now that the effects of the Arab Spring have been wiped out and Tunisia is in the grip of Saied's authoritarian politics, what are the scenarios for this country? The events of 2011 that led to the political and social results of 2014 have been politically and constitutionally erased. The dual connection that is the subject of this reflection was further confirmed during the pandemic by Covid-19. The Saied government was able to bend the health and social emergency caused by the Corona-virus to the need to strengthen its power. The absence of counter powers that limit the presidential ones or the lack of fear of not meeting the favors of the population allowed Saied to adopt a state of emergency to overcome the pandemic consequences. Moreover, he prolonged the emergency state without encountering any kind of political resistance. In this case, the French model opted for a state of emergency health, a specific tool that legitimized the exceptional powers of the President of the Republic and the Ministry of Health to what the Constitution recognizes.

Similar reasoning can be replicated for Algeria, considering that Algeria was initially much less influenced by the French legal and political tradition. There were critical relations between the two countries during colonization. Think, for example, of the difficulties of the French colonial legislator in finding a suitable way

to manage, from a purely legislative point of view, the ethnic and cultural diversity present in Algeria. Indeed, the colonial legislator failed in its mission to facilitate the Muslim Algerians in obtaining French citizenship as a right. These lived in the Algerian society of the 1950s, described as dualistic in that it was strongly divided into two factions, colonizers and colonized. Algeria, differently from Tunisia, has not developed a secular spirit in its institutions. Achi (2005) remembers that France allowed Algeria to keep the administration of the Islamic cult in the hands of local institutions. The decree of 27th September 1907 recognized the direct action of the Algerian authorities on the recruitment of Muslim religious personnel and the recognition of allowances to ministers of religion for their functions. Algeria's first constitution as an independent country (1963) developed a political-institutional framework far removed from the French model. As Olivero (2003) highlights, the central role belonged to the *Front de Liberation National* party and the President of the Republic represented the values of the party and the revolution that had led to independence. Algeria only came close to the French presidential model after Bouteflika's electoral success and the constitutional revisions from 1992 to 2008. This system accompanied the end of the civil war but did not replicate the French democratic spirit. On the contrary, it fueled the presidential need to maintain power at any cost. The exceptional measures and the application of the state of emergency used to limit the spread of the pandemic were also instrumentalised in Algeria. On the one hand, they were relevant to limit the contagions; on the other hand, they sought to strengthen the establishment as the police arrested numerous protesters who expressed their political dissent on social platforms and in the squares.

Despite this latest blow against democracy, Tunisia and Algeria (as well as the other African countries of the Mediterranean) have recorded the conscious and educated society's affirmation as a legacy of the Arab Spring. Despite this latest blow against democracy, these two countries (as well as the other African countries of the Mediterranean) have recorded a conscious and educated social structure affirmation as a legacy of the Arab Spring. As Sbailò (2021) indicates, these people understood their position and their role within the national political dynamics, showing a greater capacity to criticize the political events that have affected their countries. In this way, we have had the birth of a youth Islamic public opinion that today has become more and more vigorous and is affecting, in a transversal way, the MENA area to the point of representing a phenomenon with which, Inevitably, the governments of the countries of this area will have to confront each other. This social phenomenon is no longer recognized in a single ideological alternative between "Islamic alternative" and "subjugation to the West". It is relevant to focus on the substantive aspects of the democratic order.

This public opinion is in a position to question the autocratic systems in North Africa today, particularly those examined here, which they apply, based on their

political interests, a distorted version of the semi-presidential form of government and French political experience. In France, a section of parliament criticised the political choice of 1958 and the constitutional recognition of excessive powers to the Head of State. In fact, to date, the President's exceptional powers have only been activated six times. That is because France adopted the semi-presidential model by having a system of checks and balances at its core. In Tunisia and Algeria this constitutional tradition never existed. The current emergence of this transversal Islamic public opinion represents a social product that authoritarian governments are unable to stop and why they do not recognize them as the result of their authoritarian policies.

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Impact of electoral systems and rules on political representation in Albania: shortcomings, changes and fight against their violations

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Abstract

The purpose of the article is to deal with the influence of electoral systems and rules on the strategies of political parties, on increasing voter confidence and on creating a sustainable electoral framework. Through research into the history of elections in Albania, especially in recent years, the article points out that electoral systems and rules have had and have a significant impact on political representation, the behavior of the electorate, the representation of minorities, regional and local representation, accountability, coalition building and public perception. For a democratic and standard development of elections in Albania, it is important to ensure that any reform matches the specific context and needs of the country. A well-defined, accessible and transparent legal framework can help improve the electoral process and minimize delays or confusion. Security and reliability in the electoral process is essential. The flaws and shortcomings that are noticed will be reduced and minimized by tightening the laws that protect the electoral process, accompanied by punitive measures to combat any violation of the electoral rules. This war is one of the current affairs that always accompanies the arena of politics in our country. Encouraging observation and transparency would be the most important and decisive step that would

motivate people to go willingly to vote and be aware that their vote would be valid and transparent. In recent years, Albania has undergone electoral reforms to address some of the challenges related to the election system and has made improvements.

Key words: *electoral system, electoral rules, political party, voters, changes, violation of rules*

Introduction

In the Dictionary of Today's Albanian Language (2006), the word "election" means "Giving the opinions of the electors and expressing their will by means of voting for those who should be elected to leading or governing bodies, popular courts, etc., " while in the Encyclopaedia Britannica (online) it is defined as a formal voting process, through which a person is elected to public office or a political proposal is accepted or rejected. The exercise of voting to choose and to be chosen is one of the basic human rights. In the Declaration of Independence of the United States (1776) it is sanctioned that "(...) all men are created equal, that they are endowed by their Creator with certain unalienable rights, among which are life, liberty, and the pursuit of happiness". The right to vote is as inalienable as the above rights.The progress of human society is achieved through elections, which are the right and responsibility of the voters themselves. Elections are the basis of the democratic system and the source of legitimacy of the governing bodies of a country. Through them, every democratic country tests the functioning and effectiveness of its institutions in different time frames. In Article 21, point 3 of the Universal Declaration of Human Rights (1948) it is written: "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." Nowadays, elections have become one of the most important instruments of democracy, which ensure the participation of citizens in political processes and developments. By participating in elections and voting, voters can influence the improvement of policies that affect their quality of life.

From the way they are conducted, the elections are simultaneously also indicative of a certain social system. The system that allows rivalry, competition, the expression of alternatives through the electoral process, is a democratic system. This system considers voters as equal, guarantees their preferences, ensuring, according to R. Dahl (1971), the opportunity to formulate them, to express them to fellow citizens and the government through individual and collective actions, as and to evaluate them without discrimination because of content or source. This

opportunity is ensured, according to him, on the basis of eight guarantees, the most prominent of which are free and fair elections and the right to vote.

In Albania, the monist system lacked democratic elections, while in the years of democracy the concept of them has changed from one decade to another, thinking and hoping for free and democratic elections. The Electoral Code of the Republic of Albania (2021) in Article 3, Point 2 states: "Elections are held by free, secret, equal and direct voting, according to the rules provided in this Code. Voters freely exercise their right to vote." (p. 4) This will be achieved through electoral reforms, changes and rules for credibility and motivation to participate in voting, fighting voter fear, fraud, manipulation, sale and theft of votes.

The impact of electoral systems and rules on political representation and party systems in Albania

Political representation in Albania is the organization of political parties and other institutions political to represent their interests and goals in power, it is the expression of freedom of speech and human rights to vote and choose their representatives. Political science researchers conclude that they would not have modern democracy without the presence of political parties. In modern societies, they are still the principle agents that initiate the public opinion in the political decision-making process. (W. Hofmeister and K. Grabow 2023)The system of political parties that were created after the fall of communism in Albania is an important aspect of the country's political system. This political system still faces numerous challenges related to corruption, the polarization of the political spectrum, the separation of powers, the incomplete functioning of institutions, the dependence of politics on businessmen and oligarchs, etc.

Electoral systems and rules are two different sides of the electoral process. Electoral system describes the method or manner in which elections are held and how political representatives are selected in a given political system, while electoral rules are the rules and procedures that are established to guide, administer and control the electoral process. Electoral rules can affect the outcome and results of elections, as well as different political representation in electoral bodies.(M. Gallagher & P. Mitchell 2008). D. Farell (2011) calls electoral systems cogwheels in the wheels of democracy that enable its normal functioning, while, according, to A. Lijphart (1991), G. Sartor calls them "the most specific manipulative instrument of politics" (p. 73) Electoral systems determine how votes are translated into seats in the legislature, they can influence the formation and stability of political parties, as well as the representation of different groups within society. Electoral systems and rules play a crucial role in shaping political representation and party systems

in any country. Even Albania has had significant impacts on the political landscape from changes in electoral systems and rules, especially in recent years with the approval of the new electoral reform (2020), with the new reform for the financing of political parties (2017), with the law on increase the involvement of women in politics (2018), with the rules for political representation, demanding more transparency and accountability from political parties, etc. When voters perceive that the electoral system does not adequately represent their interests or leads to political instability, it can erode their trust in this system and in political institutions. It is important to note that the impact of electoral systems is complex and can vary based on multiple factors. Other contextual factors, such as the power of political parties, levels of corruption, the media landscape and voter participation, also interact with the electoral system to shape political representation and partys dynamic in Albania.

Historically, Albania has used various electoral systems, including a majoritarian system, a mixed system and a proportional representation system. According to Euronews Albania (2021), majoritarian systems, the system (majority with national proportional correction), the regional proportional system with closed lists and the last, the regional proportional system with open lists have been implemented in Albania. The electoral system has undergone changes over time and these changes have had implications for political representation and party dynamics. Over the years, our country has experienced major changes between proportional representation and majoritarian systems. In recent years, Albania has undergone electoral reforms to address some of the challenges associated with the proportional representation system. For example, in 2020, a new electoral code was adopted that introduced a 1% threshold for parties to enter parliament. This reform aimed to reduce party fragmentation and increase the stability of the political system. However, it is essential to note that the specific impact of electoral systems may vary based on other factors such as political culture, socio-economic context and institutional arrangements. In our country, the system of proportional representation has contributed to frequent changes in government and coalition formations. The lack of a clear majority party often requires the formation of coalition governments, which can affect policymaking and the effectiveness of governance. Despite efforts to promote gender equality, women remain underrepresented in Albanian politics. The proportional representation system provides an opportunity for parties to promote gender diversity by including more women in their candidate lists.

Undesirable consequences and political instability sometimes come from changes in electoral systems and rules.

The frequent changes that may come in the electoral rules, affect the strategies of the political parties, the lack of trust in the political process and the creation of

a stable electoral framework which is the basis for promoting trust and stability in the democratic system. Another key role is played by: the broad socio-political context, the design of other factors such as political culture, party systems, which are essential to be taken into consideration and evaluated for the effectiveness of the electoral system in our country. Electoral systems can also influence the representation of different regions or localities within a country.

Choosing systems and rules that have fair representation in parliament can ensure that different regional interests are adequately represented. The connection between the elected representatives and their voters has the interaction of giving and receiving a certain opinion about the situation. In majoritarian systems, individual representatives may have stronger ties to their constituents, but may be less representative of the overall diversity of public opinion. The development to enter the political arena for small and new parties is related to the operation of electoral rules, on the other hand, majoritarian systems can present greater barriers for smaller parties, making it difficult for them to participate in representation.

Electoral systems and rules in Albania can shape the dynamics of coalition building and government formation. No single party can win an outright majority, which can lead to negotiation and cooperation between parties, potentially fostering consensus-based decision-making and coalition building and government formation. Electoral systems and rules have a significant impact on political representation and party systems in Albania. It is important that any electoral framework strikes a balance between ensuring fair representation and stability in the political system, while also reflecting the specific context and needs of the country.

The choice of system can affect party fragmentation or consolidation, voter behavior, minority representation, regional and local representation, accountability, coalition building, and public perception. The way parties choose and present their candidates to voters should be very effective and well thought out; they are encouraged to present a diverse range of candidates, appealing to different segments of the electorate, which can lead to increased representation of women, ethnic minorities and underrepresented groups. Parties may prioritize the selection of candidates who are most likely to appeal to the majority of voters in certain constituencies in majoritarian systems. Citizens perceive their votes as more influential in proportional representation, so the design of electoral systems and rules can influence voter participation in politics. Electoral systems have trade-offs between stability and consensus building versus efficiency to encourage greater voter participation. Majoritarian systems can enable more efficient decision-making by providing a stronger mandate to the governing party, but can also lead to a lack of inclusion and potential polarization. All-inclusive representation in reforms and integrity of voters can contribute to the strengthening of democratic

institutions that aim to improve and encourage citizens' trust in the electoral process. It is important to note that the impact of electoral systems and rules is not deterministic and may be influenced by various contextual factors.

Shortcomings and measures for an efficient election process. The changes for the reliability and motivation of participants in the electoral process in Albania

Elections in Albania are often accompanied by reports of suspected violations of election rules, such as vote buying, illegal voter influence, vote counting fraud, and misinterpretation of election law. There are cases when electoral violations are not dealt with in an adequate and responsible manner. A prominent problem is political polarization. There are concerns about the independence and objectivity of the media, as well as their influence on voters. The lack of transparency and accurate information makes the process for free and fair elections difficult. Frequent criticisms are made of the political influence on the electoral institutions, the lack of independent and complete evaluation of the elections, as well as the limited ability of non-governmental organizations to fully monitor the elections. There are sometimes suspicions that judicial decisions on election complaints may be politically influenced, causing a lack of confidence in the judicial system. There are cases when the public administration is illegally used for political purposes and the active government uses administrative resources to gain advantage in the election campaign. In Albania, political tensions tend to increase during the election period. The charged political atmosphere and harsh political rhetoric affect the election climate and the ability of citizens to vote without fear and outside influence. Another critical stage is the end of the election process with the counting of votes. Stopping the manipulation of the vote counting process is a challenge to ensure the transparency and integrity of elections.

In the report prepared for Albania with the support of UNDP (2015) on the June elections of that year, it is noted that the transparency of the electoral process and the delay in issuing the results have reduced the enthusiasm of the voters. Even in the report of the US Department of State (2022), some flaws are pointed out for the parliamentary elections of 2021, related to the control of local administrations, the misuse of administrative resources, the credible claims of widespread vote buying and issuing and illegal use of sensitive personal data.

According to the Institute of Political Studies (2023), even for this year's local elections, the criticisms of the monitors have been addressed in terms of lack of political will, extreme polarization, personalization of politics and abuse of power. Regarding the above, it is important to take steps to address these challenges and

improve the integrity and transparency of elections in the country. This is a process that requires continuous commitment from government authorities, political parties and civil society to strengthen democracy, the rule of law and electoral integrity in the country. Today, a radical change of the electoral system is necessary, producing different balances for political actors. Changes in electoral systems and rules can be part of a wider process of democratic development in Albania. For a democratic development with the right standards in Albania, it is important to carefully consider the potential impacts and ensure that any reform matches the specific context and needs of the country. To ensure a smooth and timely development of elections, efficiency in the electoral process is essential. However, some areas where Albania may have had deficiencies or where improvements can be made to increase the efficiency of the electoral process are evident. Ensuring that the legal framework is well-defined, accessible and transparent can help improve the electoral process and minimize delays or confusion, for guidance on various aspects, including voter registration, candidate nomination, campaign finance and resolution of disputes. If these points were to be realized in a transparent and precise manner, we will have an election process where everyone will be aware of the reality and the supporting power of the sovereign in politics. Well-trained personnel can perform their duties effectively, ensure proper implementation of election procedures, and address any issues that may arise during elections. Regular training programs and capacity building initiatives can contribute to a more efficient and effective electoral process. Introducing automated voter registration, identification and vote counting systems can simplify the process, reduce human error and speed up results.

Public information campaigns in our country are very important that can also encourage voter participation and reduce possible barriers to access. Ensuring that these mechanisms are accessible, transparent and independent is vital. Timely resolution of disputes through fair and impartial processes can prevent delays and maintain public confidence in election results. Establishing robust mechanisms for addressing electoral disputes and complaints is essential for the efficiency and credibility of the electoral process. Establishing clear lines of communication, fostering cooperation and coordinating efforts can help ensure a cohesive and well-coordinated election process. Addressing these areas of improvement can contribute to a more efficient electoral process in Albania, enabling timely elections, increasing public confidence and strengthening democratic governance. Encouraging the observation and transparency of elections would be the most important and decisive step that would motivate all people to go willingly to vote and be aware that their vote would be valid and transparent. By implementing these changes, Albania can build a more credible and inclusive electoral process that motivates participation in voting, strengthens democratic governance and fosters public confidence in the electoral system.

Thus, it is crucial to invest in reliable and well-maintained electoral infrastructure, including voting centers, voting machines and transport systems for electoral materials, because there has been a neglect of the people towards the voting process and transparency for some time that he gives.

Relying on a new technology is also required to maintain public trust, although, according to OSCE/ODIHR (2017), it does not necessarily create trust. Such a case was also used in our country in the 2023 local elections, where the result was faster, but the allusions to the regularity of the final result raise their own questions.

However, the general feeling of the participants in the local and parliamentary elections has improved over three decades, increasing the number and confidence of those who vote and the negative performances shrinking continuously. This was also affirmed by the Albanian Prime Minister at the conference initiated by the Local Coalition of Observers (2016).

Citizens are better understanding that participating in voting is responsibility and fulfillment of their duty, it is an opportunity for changes and for solving daily problems in the community where they live or even beyond, to benefit from more services from the central government and it local, to prevent vote manipulation, to represent the community in government etc.

The fight against violations of election rules

Violation of electoral rules is a well-known problem in every democratic country. It appears in the form of election fraud, voter intimidation, vote theft and buying, candidacy of persons with criminal records etc. This phenomenon characterizes the electoral process even in the most advanced democracies. Even in the most developed democracies, such as the American one, fraudulent practices of elections take different forms, such as: leaflets with false election rules, leaflets advertising the wrong date of elections, fraudulent messages on the Internet, robots with false information, etc. (Deceptive Election Practices and Voter Intimidation 2012). According to CNBC Tv, the FBI in early October 2022 warned voters of possible election crimes ahead of that year's midterm elections, in the categories: frauds with the votes or voters, campaign finance violations, and civil rights violations, including voter intimidation. In Albania, there have been reports of suspected cases of electoral fraud and pressure on voters during election processes. These reports include allegations of vote buying, pressure on voters, manipulation of the vote counting process, and violations of other electoral justice rules.

The fight against these phenomena is one of the current events that always accompanies the political arena in Albania. It is imperative to implement measures to diminish this domineering spirit: efforts are made to ensure that the bodies

responsible for organizing and supervising the elections are independent and have the necessary capacity and resources to carry out their duties independently and right; ensuring an independent and transparent monitoring of the electoral process, which can help detect and punish cases of electoral fraud; increasing education and raising public awareness can help reduce voter intimidation and electoral fraud; improving the legal system to deal more effectively with election violations; guaranteeing the support and independence of organizations and civil society to help detect and report cases of electoral fraud; the assistance of international organizations and friendly countries for monitoring, technical and diplomatic assistance, to ensure transparency and accountability, as their reports and recommendations affect the improvement of electoral processes and the addressing of potential issues; strengthen the creation of independent and impartial electoral dispute resolution mechanisms to address complaints and allegations of irregularities in a prompt and fair manner and toughen laws protecting the electoral process, accompanied by punitive measures to combat voter intimidation, electoral fraud and corruption.

"Koalicioni per Reforma, Integrim dhe Institucione te Konsoliduara" (2021) notes that in the parliamentary elections of 2021 the topic of the day during the campaign was vote buying, voter intimidation and other electoral crimes, while The International Institute of Middle East and Balkan Studies (2021) in the analysis before this year's general elections lays out the need for more consultation and transparency in the lists of candidates, avoiding candidates with criminal records It is important to continue the effort to address the challenges of electoral fraud, voter intimidation and vote theft and buying in Albania. At the same time, a commitment of citizens and their support for electoral integrity are essential to create a fairer and more convenient electoral system for everyone.

Conclusions

Albania has a tremendous potential for development and prosperity, yet it is the poorest country in Europe. This happens because throughout the long period of transition the political elite has not reached a complete social consensus, without which no country can move forward. The Albanian political system still has challenges to overcome. The Albanian state and government must normalize the political scene, reach a general consensus on the main strategic national interests, thus ensuring an efficient electoral system and the support of the citizens for the progress of this system. It is necessary that the Political Parties, and the institutions that stand above the parties, must guarantee the citizen to exercise the right to vote freely and without being influenced by anyone. The first necessity is the

punishment of the persons responsible for the election violations, in order to convince the citizens that justice is equal for all.

The maximum commitment of the election administration at all levels is necessary to guarantee the smooth running of the election process, especially during election day, in cooperation with the state police, to avoid intimidation of voters near the polling stations. The presence of officials and public servants near the polling stations and their media messages, which can be perceived by voters as propaganda messages, should be avoided. Electoral commissions should be independent and operate in accordance with established rules to guarantee accurate and reliable results.

The electoral subjects should also avoid the unnecessary presence of their militants on the voting day, to allow voters to vote according to their will. The lack of trust in the electoral process in general is present, therefore organizations dealing with voter education should pay attention to pre-election education, convey messages about a sense of civic responsibility and the impact on improving the quality of life in the community. Political culture and party systems, which are essential for the electoral process, should also be taken into consideration. In this process, it is important to establish a balance between guaranteeing fair representation and stability in the political system. Electoral systems and rules play a decisive role in shaping political representation and party systems. The comprehensive representation in reforms and integrity of voters can contribute to the strengthening of democratic institutions that aim to improve and encourage citizens' trust in the electoral process. Today, a radical change of the electoral system is necessary, producing different balances for political actors. The efficiency and reliability of the electoral process are achieved with more powerful mechanisms for coordinating efforts, establishing clear lines of communication, addressing and resolving electoral disputes and complaints. In recent years, citizens are more interested in voting, linking this with civic responsibility, with the possibility of changes in the future, with the addition of community services, etc.

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Populism and its impact on the relationship between democracy and liberalism

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Abstract

The aim of this article is to analyze the relationship between democracy and liberalism, and the impact that populism has on it. According to Mouffe, the relationship between liberalism and democracy arises from conflict and will continue to cause conflict. The rise of populist movements within a democracy is one of these conflicts. The starting point of this article is the theory of Alexis de Tocqueville, who identifies liberalism with the concept of freedom and democracy with the principle of equality; and according to him, liberal democracy aims at reconciliation and the coexistence of freedom and equality. Regarding populism, the main assumption is that it has a negative impact on the relationship between democracy and liberalism. The methodology used is qualitative, based on the interpretation of the theoretical framework and the analysis of different approaches and attitudes of different authors and studies.

Key words: *democracy, liberalism, equality, populism, constitutionalism*

Introduction

The aim of this article is to analyze the internal contradiction of liberal democracy, which emerges from the growing influence of populism in these societies. The question of whether populism and democracy are truly compatible, has returned

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to the political focus given the continued electoral success of populist parties across Europe and the increasing opportunities they have gained to reach government in recent years. The contention is that the growth of the phenomenon of populism has a negative effect on the relationship between democracy and liberalism.

Contemporary theories on democracy

The term "democracy" is one of the most used and analyzed terms by various authors and philosophers. Nowadays, where democracy is the reality of most countries in the world, the need to know what a democratic system is and how it differs from other systems is just as great. There are many theories and theorists who have tried to explain this concept. Some of them try to explain what democracy is like, others present what democracy could be, and another group analyze how democracy should be. The difference between these three groups of researchers is quite large, since the approach they have to democracy often causes them to have clashes of opinions, thus creating rival theories.

The evolution of the concept of democracy

The origins of the term democracy are thought to date back to Ancient Greece. If we were to analyze democracy from the etymological side, it means the government of the people (demos-people, kratos-order, government). In ancient Greece democracy tended to be seen with a negative connotation (Heywood, 2008). Thinkers like Plato and Aristotle, for example, saw it as a system of rule by the masses at the expense of the wise and wealthy. Until the 19th century the word continued to have pejorative connotations, suggesting a system of "mass rule". Although in Ancient Greece this was what various philosophers and authors meant by democracy, over time this term evolved and no longer means the same thing. In the following, we will deal with the evolution of the concept of democracy, seen from the point of view of three different thinkers Respectively, Aristotle, Tocqueville and Schumpeter.

Aristotle was the first to bring a complete and revolutionary theory of democracy, which is studied today with great interest by political researchers and not only. Regarding Tocquevill, we can say that his political theory paved the way for the development of the modern theory of democracy. He has been called by various authors not only as "the first theorist of modern mass democracy", but also as "the classic analyst of modern democracy" (Schmidt, 2012). On the other hand, Schumpeter, with his work that has been considered as "theory of democracy for the elite", "theory of competitive leaders" or as "theory of competitive elites", brought a new perspective and explanation of democracy that had reactions and different attitudes from political science researchers and not only. Also, we will

analyze the relationship between democracy and equality, and we will try to answer the question of whether more democracy means more equality.

Democracy and equality

In this section, we will discuss the relationship between democracy and equality. It is difficult to examinate this topic because "democracy" is a very vague and comprehensive term. It is often used as an amorphous synonym for good government, including all that is desirable in a state. Of course, when seen in this light, the concept of democracy loses its unique and analytical meaning. If democracy means only excellent and desirable government, we do not need to speak of democracy at all; we should only talk about the forms of equality that should characterize a contemporary state (Post, 2006).

In a democratic society, equality has the following dimensions: a) political equality; b) legal equality; c) moral equality; d) equality of opportunity. *Political equality* means that every person has the right to vote and run for office. No one should have more than one vote and constituencies should have roughly the same population to ensure that every vote is counted equally. *Legal equality* means that all people (citizens and non-citizens) are entitled to the same protection under the law. That is, no one should be discriminated by law because of birth defects such as color, ethnicity, gender, or heritage, or because of personal choices such as religion, group membership, or employment. *Moral equality* indicates that every citizen should be treated with equal respect and dignity in the eyes of the law and government regulations. Among the most important forms of democratic equality guaranteed by equal protection of the law is *"equality of opportunity"*. This means that the law must not unfairly harm anyone in their ability to claim a variety of social goods such as education, employment, housing and political rights.

From classical Greece to the twentieth century, concern about the effects on equality has led to both support and rejection of democracy. Throughout most of human history, most intellectuals not only saw equality as a defining characteristic of democratic government, but opposed it for that very reason. Although Aristotle and Plato disagreed on many things, each of them saw democracy as a form of class rule in which, as Plato said in his book The Republic, the majority triumphed. And he agreed with the argument later made by Aristotle in his book Politics that constitutions reflect class interests. With the few and the rich in charge, the result is oligarchy. With power in the hands of the majority or the poor (demos), the product is democracy. In each case, power is used not impartially but to favor the dominant group or class, that is, democracies work to equalize the living conditions for the majority (Broadbent, 2001).

Various authors and scholars consider democracy the best form of government, not because it is likely to make the best decisions (perhaps it does), but because

it gives citizens an equal right to make laws. Others also think that democracy has authority that other regimes lack, and that the democratic origin of laws at least sometimes gives us the duty to obey them. Finally, some believe that the two are related: as citizens of a democratic state, we have a moral duty to obey (at least some) democratically made laws because they are the result of an egalitarian procedure (Viehoff, 2014).

According to another view, democratic governance is based on a commitment to political equality. The ideal of political equality states that political institutions should be organized in such a way as to distribute political position equally to all citizens. The task of normative democratic theory, according to the common view, is to articulate an attractive interpretation of the ideal of political equality and then trace its implications for the design and reform of political institutions (Wall, 2006).

What does it mean for a form of government to be autonomous? Democracy is not the same thing as popular sovereignty, a state in which the people exercise ultimate control over their government. Popular sovereignty is also found in forms of popular fascism in which a dictator carries the "true" and spontaneous approval of an entire society. Democracy is also not identical to majoritarianism, in which the majority of people exercise control over their government (Post, 2006).

Equality has always been seen as a core democratic value and for a brief period in the twentieth century it actually became the guiding principle for many governments. After World War II, almost all North Atlantic democracies consciously adopted policies that were radically different from those of the prewar years (Broadbent, 2001). A distinctive element of a democratic society is that it must give equal opportunities to all its citizens in order for the democratic process to work. When a country is democratized, it must necessarily be liberalized, firstly by guaranteeing equal opportunities and freedoms for all. Building on this achievement, the process continues to represent citizens through the creation of inclusive political institutions (Acemoglu & Robinson, 2012).

John Stuart Mill argued that not only does everyone have an equal claim to happiness, but this also "includes an equal claim to all the means of happiness" (Mill. 1954: 58). Equality, he emphasized, is the norm of justice, which first justifies political democracy and then economic and social regulations within a society. Those who want inequality have a responsibility to justify it. According to the libertarian argument, inequalities can occur for a variety of reasons that have nothing to do with merit. But as long as these inequalities are the result of voluntary interactions between people, they are acceptable since no one was forced to do anything. According to Smith, the selfish pursuit of wealth and the injustices that follow are acceptable as long as they lead to greater prosperity for all (Smith, 2012).

Successer consequentialist theorists such as Friedrich Hayek continued along this line of reasoning. Hayek recognized that those who became wealthy through business ventures and capitalism were not always more deserving than others. They simply did a better job of effectively estimating the value that people would place on a given set of products and services (Hayek, 1960). Another justification for inequality is offered by libertarians, who admit that inequality can be developped for arbitrary moral reasons. But we should not try to fix the problem as long as the imbalances are caused by non-coercive means. To do this, a very strong state would have to be created, which would inevitably hinder the freedom of its people. Robert Nozick essentially accepts Rawls's claim that inequalities arise for morally arbitrary causes. Many individuals who are not virtuous succeed, while many others who could deserve better, suffer in poverty (Nozick, 1974). We can embrace Rawls' view that inequality can only be justified if it serves the interests of the least advantaged (ie, as long as it increases the absolute income of the poorest) (Rawls, 1999). Political morality in a democracy has little to do with the morality of the family or personal life. As the ancient Greeks understood, it is about trying to build more equal societies.

Despite democracy, it seems that some people are still treated differently than others. Due to the fact that equality of opportunity is an ex-ante equality, it cannot ensure actual equality. According to the perspective of ex ante equality, opportunities are evaluated based on the situation and possible outcomes for different levels of effort that individuals can exert. Ex-ante compensation is often justified by the need to equalize the value of people's opportunities. As a result, we see nations with relatively high democratic rates enduring great wealth inequality. Although the United States (US) have had representative democratic institutions for a long time, the distribution of wealth is much more unequal than in some "new" democracies, such as some of the Eastern European countries. Brazil also experiences extreme income inequality, while China, whose democratic institutions are questionable, faces a much more balanced distribution of income. Given this, it is logical to question whether the notion that "more democracy equals more equality" is correct, or whether there is more than simple causality (Lambert, 2017).

1.2 Liberalism and its values

Liberalism has been the dominant doctrine of the West for about four centuries, but for a long time it was not called "liberalism". Although the theory originated in the distant past, the word is relatively new. Even though we call Locke or Montesquieu liberals, the term was unknown to them. Liberalism was the result of the dissolution of feudalism and the rise of a market and capitalist society in its place. In its original form liberalism was a political doctrine. He attacked absolutism

and feudal privilege, advocating instead constitutional and later representative government (Mulhall & Swift, 2012).

Where did liberalism come from? Liberalism arose in Europe and other parts of the world as a defense for a new form of living in peace, tolerance, exchange and voluntary cooperation, from which everyone benefits. Liberalism offered a defense to these peaceful forms of living against absolutism. During the debates about the proper form of the state and the organization of power, the ideas of liberalism became stronger, more radical and more influential. Liberalism arose as a defense of the freedom of civil society against the claims of absolute power, against monopolies and privileges, mercantilism, protectionism, war and public debt, and in favor of civil rights and the rule of law. This movement had several sources, such as the idea of individual rights coming from the Salamanca thinkers who defended the market economy and the rights of the Indians conquered by the Spanish, as well as the doctrine of natural law and natural rights offered by German and Dutch thinkers. But we can say that the full liberal movement came to England with the Levellers, who fought in the civil war (1642-1651) alongside the parliamentarians for limited constitutional government, for freedom of trade, for freedom of religion, for the protection of property and for equal rights for all (Palmer, 1959).

In all scholarly discourses, liberalism is interpreted in multiple and contradictory ways: as a vanguard project contested and constitutive of modernity itself, a detailed normative political philosophy and a hegemonic mode of governance, the justifying ideology of unbridled capitalism and the most opulent ideological source of for its limitation. For some, liberalism is a product of modernity, even the telos of history. For others it represents an unfolding nightmare, signifying either the vicious logic of capitalism or a descent into moral relativism. For some others, it is a sign of ambivalence, the ideological prerequisite for living a fairly comfortable life in rich democratic states (Bell, 2014).

Liberalism and liberty

In his reasoning of liberalism in the Encyclopedia of Philosophy, Maurice Cranston, making the inexplicable claim that "By definition, a liberal is a man who believes in liberty" (Cranston, 1965: 458), immediately goes on to note that since different people at different times have meant different things by liberty, "liberalism" is correspondingly ambiguous. Unfortunately, not only do different people at different times interpret differently the concepts that characterize the liberal tradition, but in addition there has always been an intractable disagreement among contemporaries about the proper use of these concepts and thus about the nature of liberalism.

"Liberalism," says Mr. Broadhurst, "does not intend to make all men equal—nothing can do that. But its purpose is to remove all obstacles created by men, which

prevent all from having equal opportunities" (Reid, 1885: 48). The affirmative part of this definition can be further shortened to "ensuring equal opportunities for all". But it is necessary to note that "Liberalism does not seek to make all men equal", that is, that by aiming at equal opportunities, it does not try to produce a uniformity of wealth or an equality of social conditions, but it merely aims to ensure "equal opportunities", which may result from the removal of "obstacles of human origin". Mr. Joseph Cowen, in his speech delivered during the general election of 1885, says much the same. From these definitions of liberalism, offered by prominent liberals, we can conclude that the object of liberalism is to ensure "equality of opportunity" for all people, and it follows that any attempt to approximate an equality more extensive, such as equality of wealth or social conditions, would involve a departure from true liberalism, as long as it had the effect of making opportunities unequal. People will always be unequal in wealth, in social position, and even in the degree of happiness due to their fate, as long as they are born with different abilities, in different environments, and with different conditions and sensitivities.

All that "Liberalism" can do is to provide every man with "equal opportunities" for the exercise of whatever faculties he may possess: unfettered by any obstacle which nature has not herself imposed. This expression "equal opportunity" is almost identical to the older and more traditional word "liberty".

Without liberty, it is clear that people could not choose the time, place, means, or methods of obtaining the necessities of life, and the more crowded a community becomes, and the more artificial the condition of living within it, the greater is the need for liberty for the individual, upon whom depends the responsibility of making a living for himself and perhaps for others. Therefore, as Locke says, "the end of law is not to abolish, or restrain, but to preserve and extend liberty (Locke, 1924: 19). Hayek takes a principled stand on this aspect of liberalism, saying in his book "The Constitution of Freedom" that a "society that does not recognize that each individual has his own values, which he has the right to follow, cannot have respect for the dignity of the individual and cannot really recognize liberty (Hayek, 1960: 79).

In a speech held on political principles, the English liberal politician and journalist, Mr. Joseph Cowen states that by liberty he means much more than liberty of movement, or the liberty to buy at the cheapest price or to sell in the most expensive market. He says that by liberty he means liberty of thought, speech and development. According to him, physical liberty makes us free agents; intellectual liberty gives us the power to act in accordance with our sense of right and wrong; religious liberty enables us to make the decisions of our conscience, our rule of conduct; and civil liberty gives us the possibility of growth. The idea that runs through these definitions is that of self-sovereignty. If our wills do not originate in ourselves, we have no personal liberty; if our convictions are controlled by

our prejudices, and our conscience is controlled by our passions, we have neither mental nor moral liberty; if we have to practice or pay for ways of worship imposed by others, we have no religious liberty; and if any power claims the right to impose laws or taxes on us without our permission, we have no civil liberty (Duncan, 2015). What makes liberals unique is that they support liberty on principle, unlike many others who may be pro-liberty by chance or on *ad hoc* terms.

Democracy and liberalism

In political philosophy and theory, the compatibility of liberalism with democracy has long been taken for granted. A large number of authors claim that while liberalism and democracy are inextricably linked, problems in liberal democratic societies arise either as a result of excessive reliance on liberal values to support democratic institutions or as a result of the unequal distribution of democratic opportunities and liberal values. However, the link between liberalism and democracy is currently subject to intense criticism. Some thinkers claim that a certain institution or behavior in a free society prevents the full development of democracy. In their book On Democracy, Cohen and Rogers argue that true democracy requires the public to influence government decisions (Cohen & Rogers, 1983). According to some authors, democracy endangers the liberal ideals of individual freedom and rights and weakens the liberal institutions of free enterprise and private property. This is the libertarian position, which Newman critically analyzes in his book "Liberalism at Wit's End" (Newman, 1984). Finally, some intellectuals challenge liberalism itself, claiming that democracy cannot be achieved within a liberal framework. Benjamin B. Barber supports this view of a strong democracy. Strong democracy, as opposed to liberal democracy, is, in Barber's view, a distinctly contemporary type of participatory democracy better suited to the circumstances of political life. Liberal democracy keeps individuals separated and in pursuit of individual, private interests, in contrast to the efforts of strong democracy to unite them in the pursuit of common goals (Barber, 2003).

The distinction between liberal and democratic notions highlights a one-sided tendency: liberal doctrines ultimately limit freedom to the standards of procedural law while expanding democratic concepts of equality and justice. According to liberal ideology, equality is a procedural idea of every person having the same legal rights. When liberalism becomes procedural, it tends to ignore the deep tensions that exist between pluralistic liberalism and uniform conceptions of democracy. The liberal values renewal, while the democrat aims for social integration. The main difference is that democracy relies on society, while liberalism relies on the individual (Thigpen, 1986).

The relationship between liberalism and democracy is historically contingent and conceptually contradictory. Proponents of liberalism do not seek to clearly

define and articulate, especially in the past, the tension between liberal ideals of freedom and democratic equality. The individualistic principles of liberalism are often at odds with the principles of democracy (Dryzek, 2002). Specific characteristics of liberalism include a desire for individual liberties, a one-sided focus on individual rights, and a wariness of possible overthrows of the democratic majority. On the other hand, the political ideals of democracy, such as equality between citizens, freedom, respect for law and justice, create some kind of tension between these two concepts (Held, 2006).

Carl Schmitt argues that politics cannot be transformed into a "safe phenomenon", since democratic equality requires inequality. If this essential distinction is ignored, an apathetic individualistic humanitarian ethic is created. The indifferent idea of equality, which does not need an explanation of the relation between equality and inequality, loses its political content; it has been eclipsed by other domains of human interactions (especially economic) in which inequality reigns (Schmitt, 2000). Since equality is defined narrowly and explicitly, primarily as a state of circumstances of equal freedom for people, the conflict between freedom and equality disappears; these ideas become abstract terms. Neutral ideals of equal freedom for abstract persons replace the actual person and the essential political notion of equality.

This is the absolute position of liberalism. The idea of individual equality is defined indifferently. This position advocates minimizing the contradiction between the concepts of liberalism and democracy. As tensions subside, however, the individualistic definition of liberalism becomes more abstract. The ideology of democracy turns into the ideology of liberalism. To preserve and strengthen liberalism, democracy becomes a tool, method and procedure. As a consequence, the neutrality of these policies encourages the apathetic stance of liberalism (Vanberg, 2021).

Despite political life being an expression of active citizenship, liberals insist on neutrality regarding different conceptions of the good. On the basis of individualistic principles, they are separated from the notions of "common good". This division is based on the negative idea of freedom, whose basic requirement - not to violate the freedom of "individuals" - is too vague. The democratic way of life is characterized by an active, coordinated process of power redistribution and decision-making. According to Michalel Walzer, citizens must rule themselves: democracy is a political method of distributing power (Walzer, 1983). A special democratic action determines the commonality (homogeneity) of relations. By deontologizing politics and morality, political liberalization neutralizes the environment for democratic action and preserves the conditions for heterogeneity.

The liberal concept of freedom legitimizes the anthropology of diversity. The utilitarian style of liberalism primarily defines freedom as the absence of external

constraints, or as a negative freedom. Individual freedom is a major priority in neo-military versions of liberal democracy: "Individualism tells us that society is something more than individuals only when those persons are free (Hayek, 1996: 38)." Compared to other values, freedom is an undeniable value associated with natural individual rights. When discussing the dilemma of the individual and society, priority is always given to the individual. "Society" is a minimalist reality, a legal and procedural system carefully defined to reduce barriers to individual self-expression. Everyone should have the same freedom to pursue their interests, as long as no one's rights are abused. This equality is seen as formal and procedural equality, a constitutional guarantee that no one can exceed what is allowed (Berlin, 1958).

In the second half of the 19th century, the liberal and democratic ideals have merged with each other and this has caused them to often get confused. Thus, even in everyday life, when someone was referred to as a liberal, democratic qualities were often worn and vice versa. As a result, almost everyone mistakes these terms for synonyms. The difference between liberalism and democracy becomes more and more pronounced when the latter begins to be perceived as a maximally equal society. Moving on to a material assessment, we can say that democracy is the introduction of popular power in the state, while liberalism is about limiting state power (Bobbio, 1990).

According to the writings of Norberto Bobbio in his book "Liberalismo e Democracia", democracy is one of the three answers to the question "who has sovereign power?" In other words, who commands the state? The answer of democracy is "The majority, the people". On the other hand, liberalism is one of two answers to a particular question: "How is sovereignty exercised?" This means: how do those who are in charge of the state actually exercise power? The liberal answer is: "Whoever commands, commands only certain things and has limited authority (ibid.)!"

These two questions - "who is the sovereign?" and "how do they rule?" - are therefore heterogeneous and their responses have a long history as independent variables. For example, before the seventeenth century, no state was either liberal or democratic (in ancient Athens, at the height of its "democratic" phase, less than 30% of the adult population had the right to vote) (Thorley, 2005). In the nineteenth century, there were liberal but not democratic nations in Western Europe, but now there are liberal and democratic states in the same region. More disturbing, also because it directly contradicts the common misconception that conflates liberalism and democracy, is the fact that democratic but not liberal states have existed and continue to exist around the world, including Europe, since the nineteenth century and continue to exist today too.

In 1840, the liberal thinker Alexis de Tocqueville prophesied this latest development, which he called "majority rule." A large and overwhelming majority

of the citizens of a state can elect a despot who abolishes freedom of the press, dissolves opposition parties, and orders the arrest and execution of opponents, and not only elect him in the first place, but continue to vote for and support him in different ways. If the mind is clouded by the powerful statement that "if an idea or action is acceptable to the majority (of my family members, classmates, co-religionists, my national group, "the people"), then it is right," it is difficult to perceive such realities. Since tyranny has been seen as unfair for thousands of years, it seems inconceivable that there could be anything resembling a "popular tyranny" (Tocqueville, 1969).

Norberto Bobbio, on the other hand, even if he believed that he could not accept a democracy that lacked the inviolable rights protected by liberalism, believed that "it was unlikely that a non-democratic state would guarantee fundamental freedoms" (Bobbio, 1990: 6-7).

Equality and liberty

The concepts of liberty and equality have been constantly debated by an overwhelming number of authors, and the results of these debates, for the most part, have been inconclusive. This shouldn't come as a surprise to anyone. First, the people participating in the discussion are rarely particularly clear about what their topic is, which results in misunderstandings almost all the time. Discussion also has a tendency to proceed by merely stating principles rather than trying to discover an underlying basis for them; as a result, incompatible conclusions reached by different discussants are immune to rational objection or qualification, which, once again, makes disagreement unsurprising. Last but not least, participants in a discussion almost always have special interests or a personal agenda, both of which make it difficult to conduct a responsible and unbiased analysis (Machan, 2002).

If there was a real battle between equality and liberty in today's society, according to the statements of a prominent living philosopher, liberty would give way to equality (Dworkin, 2000). From this conclusion it naturally follows that the two are competitors, a view which has been strongly and repeatedly refuted by a number of writers in recent times. This is something that needs to be clarified now. Due to the fact that there are several aspects that must be distinguished in this context, the question of whether or not these two are competitors cannot be immediately answered with a "Yes" or "No" (Machan, 2002).

Let us analyze the egalitarian position regarding this discussion. Their theses are two: 1) liberty does not produce equality, and 2) equality is liberty. For egalitarians, liberty does not help or add anything to equality. While in the equality-liberty relationship we have a symbiosis, where equality gives liberty at the same time. So they deny the importance of liberty and attribute all the credit to equality. But

is such a thing true? The thesis that liberty does not produce equality is stable, especially equality in outcome. But it is not correct to say that liberty is not needed and that it is merely a complementary element of equality. Slaves are equal, but they are not free. In this way, we must accept the importance and value of both equality and liberty (Sartori, 2017).

Regarding the second thesis, ie that equality is a form of liberty, this should be defined more clearly. If we say that some equality can be presented as liberty, this is true (eg, equal laws for citizens is a form of liberty).

So, we can say that liberty and equality are complementary to each other and this has been proven by the development and experience of liberal democracy. As we mentioned before, Tocqueville identifies democracy with equality and liberalism with liberty. But this does not mean that democracy is only equality and liberalism only liberty. Liberal democracy is a tangle of two strands, liberalism and democracy. If we pull the liberal thread, it does not mean that all kinds of equality disappear, since liberalism itself is based on juridical-political equality and is against any equality bestowed from above. Liberty is a vertical extension while equality is a horizontal extension. The logic of equality can be described as unequal opportunities to become equal, while the logic of liberty is the opposite: equal opportunities to become unequal (ibid.: 205).

Liberal democracy and the end of history

In the late 1980s and early 1990s, the global political map underwent profound changes. The fall of the Berlin Wall, the dissolution of the Soviet Union and the crises of communist governments in Eastern Europe created new topics in political debate. During this period, a new topic of discussion appeared in world politics: "The end of history". It advanced several arguments for and against the future of liberal democracy. In 1992, Francis Fukuyama published The End of History and the Last Man, a book in which he explained the concept. According to Fukuyama, the twentieth century was marked by the struggle between liberalism and absolutist ideologies, such as fascism and Marxism. Liberal democracy was threatened by two great opposing ideologies, fascism and communism, which presented radically different conceptions of a decent society. With the dissolution of the Soviet Union, liberal democracy lost its opposing ideology, namely communism (Bijukumar, 2008).

Fukuyama, unlike Hegel and Marx, thinks that history does not end with the development of a society without communist classes, but with the triumph of "democratic capitalism" - liberal democracy (Fukuyama, 1989: 6). Fukuyama argues that liberal democratic capitalism can serve the desires of citizens through the freedom to vote and the recognition of rights by the moral liberal state. The end

or goal of history is the "thirst for knowledge" realized through liberal democracy. The end of history has occurred because the universal and homogeneous state that embodies mutual recognition fully satisfies their desires. Fukuyama defines liberal democracy as "a legal state that recognizes specific individual rights or freedoms from government control" and "the right of all individuals to vote and participate in politics" (Fukuyama, 1992: 42-43). According to Fukuyama, increasing industrialization can result in liberal democracy. In this context, he presents three different forms of argument. First, only democracy is capable of reconciling the complex system of competing interests that a contemporary economy generates. Second, effective industrialization creates middle-class communities that require political engagement and equal rights. Third, trying to govern a technologically evolved civilization causes dictatorship or one-party control to deteriorate over time (ibid.: 216).

Fukuyama argues that liberal democracy offers a superior path to modernization and growth. He believes that the emergence of stable liberal democracies has been influenced by cultural influences. The degree and type of national, ethnic and racial awareness of a country is the first. Before a stable democracy can be formed, a strong sense of national unity is essential. Second, the country's religious principles should be beneficial to liberal democracy (ibid.: 216-217).

Illiberal democracy?

With the end of the Cold War, the progress of democracy has slowed significantly. At the same time, there has been a disturbing trend, even in parts of Europe, of a "backsliding" of liberal democracy, that is, a dissatisfaction with the real benefits of democratization in terms of economic well-being. More frightening is the claim made by Steven Levitsky and Daniel Ziblatt in early 2018 that democracies continue to be destroyed not by tanks and generals, but by democratically elected governments (Levitsky & Ziblatt, 2018). This disenchantment with liberal democracy in Eastern Europe is evident from the Democracy Index rankings, where the entire region has regressed since 2006. This trend is worrying as almost 25 years of democratization in Central and Eastern Europe have not produced a completed democracy (Democracy Index 2017, 2018). Furthermore, the rise of populist, nationalist and indeed illiberal political groups in various European countries demonstrates this trend. The term "illiberal democracy" refers to nations that nevertheless adhere to the trappings and rituals of democracy, such as elections, but whose actual practice is problematic in terms of free and fair elections, civil and political rights, and, most importantly, , law enforcement.

The seemingly straightforward process of defining common words like democracy is, in reality, quite difficult. If we are content with the literal definition,

"rule of the people", a full description of the variety of this type of regime in the modern sense is still lacking. Similarly, relying only on the conduct of elections does not tell us much about the conditions or quality of any government, so other characteristics are required to define the democracy of any given nation. The result is a phenomenon known as "surname democracy" (Collier & Levitsky, 1997). According to T. F. Rhoden, the term "democracy" requires, in many cases, additional information in order to be a more or less true representation of reality, or an adaptation on the current basic meaning of the term (Rhoden, 2015: 563).

It seems that we have to agree with Zakaria on this point, that when we use the term "democracy", we are often referring to much more than to leaders elected by the people. In fact, Zakaria's definition of liberal constitutionalism—separation of powers, rule of law, and most importantly, civil liberties—seems to be what is commonly understood by the word democracy (Zakaria, 1997). According to Rhoden, current concepts of democracy have liberal elements, even if they are ineffective in reality. In an ideal world, civil liberties and the rule of law are linked to free elections and civil liberties. That is, elections lead to civil liberties, which in turn lead to the rule of law (ibid.: 571).

By itself, democracy is not synonymous with effective governance. In fact, in the absence of constitutional liberalism, the implementation of democracy in divided countries has actually fueled ethnic strife, nationalism and even war. Even if we can agree on the definitions of democracy, we have a new challenge. Between liberal democracy and outright authoritarianism lies a zone of uncertainty. Even according to the Democracy Index, most governments are neither full democracies nor authoritarian regimes, but lie between these two groups (Democracy Index 2017). Some scholars use so-called "reduced subtypes" of democracy or authoritarianism to help navigate the perilous seas of endless and often contradictory definitions (Collier and Levistky, 1997).

To add to the confusion, elections, the central democratic procedure, have a significant legitimizing role regardless of our initial position. Therefore, the methods of democracy have been accepted almost worldwide, even if the essence of liberalism has not been accepted (Rhoden, 2015: 569). Appeals to the notion of majority rule are likely to remain the prevalent norm among nations, therefore, we accept that democracy can be seen as the only fully viable form of government (Diamond, 2002). The number of "thinner varieties of democracy" has been increasing due to the fact that the techniques of the democratic process are easy to import and adapt, although the liberal substance is difficult (Møller & Skaaning, 2010).

Thus, there is a serious risk of "pseudo-democracy", given that elections can often be controlled and influenced (Diamond, 2002). As Çullhaj contends "the schism that is taking place in [post-communist] countries, between democracy

and liberalism, shows how difficult it is to build a democratic ethos" (2019, pp.55). In many cases, elections and other democratic institutions are simply modified models of authoritarianism, not a flawed version of democracy, with the dual objective of legitimizing the incumbent's control and protecting him against democratic reforms. It is also important to highlight the different attitudes of the regimes towards the law, especially when the new policies are at odds with the current legislation or even the constitution. Once the disagreement becomes apparent, this kind of effort should be thwarted in a liberal democracy. However, illiberal governments, especially in Hungary, seem to work differently. Instead of abandoning or revising such plans, the alternative is to change the composition of the constitutional court (or any other government body) in order to limit its jurisdiction. In the end, it is the Constitution that is seen as requiring change, not the newly enacted illegal legislation. The purpose of constitutions and laws is not to be followed, but to be changed to suit the political needs of the ruling party (Nyyssönen & Metsälä, 2021). As Zakaria reminds us, the rule of law is compromised if legislation is used only for political purposes, and the power to easily change a state's legal system to suit any need, places certain members of society above the law (Zakaria, 2003).

The return of populism as a threat to liberal democracy

The liberal heritage (rule of law, respect for individual freedom, minimal government, etc.) and the democratic tradition (equality, popular sovereignty, etc.) combine to create liberal democracy. Consequently, it is possible to create a liberal state that is not democratic. But a democratic state without liberal leanings is also viable. The relationship between liberalism and democracy, according to Mouffe, arises from conflict and will continue to cause conflict. The rise of populist movements within a democracy is one of these conflicts (Mouffe, 2000). Populism is probably one of the most overused and misused words in and out of the academic world. Sometimes it seems like almost all politicians, at least the ones we disagree with, are populists.

There is a belief that populism must have something to do with the people who originally called themselves populists. Consider the Russian Narodniks of the late nineteenth century and their philosophy of Narodnichestvo, which is often translated as "populism." It was a movement of Russian students and intellectuals who idealized the rural peasantry and believed that they should form the basis of the revolution to overthrow the Tsarist regime. Another movement that is considered populist was the agrarian movement in the USA in the 1890s that later became the People's Party. The movement was created to oppose the demonetisation of silver

and was the first to arouse skepticism towards the railways, banks and political elites. They adopted the name "populist" from the Latin word "populus" (the people) and their message was to "get rid" of the plutocrats, aristocrats and all the "crats", establish the power of the people and everything would be fine (Canovan, 1981). Although the term populism appears in both cases as a description of itself, the two situations were extremely different. The Russian Narodniks were a group of middle-class intellectuals who supported a romanticized picture of rural life, in contrast to the US Populist Party, which was primarily a mass movement led by farmers advocating a dramatic change in the system political (Hofstadter, 1969).

The local commune was seen by Narodniks as a political model for the nation as a whole. In addition, they promoted a "return to the people" for leadership and political input. Different scholars believe that there must be a reason why "populism" evolved simultaneously in Russia and the United States in the late nineteenth century. The idea that populism was closely related to agrarianism or that it was necessarily a revolt of reactionary, economically backward groups in rapidly modernizing societies arose from the fact that both movements were concerned with farmers and peasants. This idea persisted at least until the 1970s (Müller, 2016).

The roots of "populism" in the United States in particular still lead various scholars to believe that populism must be at least partly "popular" in the sense of favoring the less advantaged or bringing the excluded into politics. This idea is supported by a look at Latin America, where populist proponents have always emphasized the inclusive and emancipatory nature of their movement in what is still the continent's most economically unequal region.

Populism and democracy: allies or opponents?

Attitudes regarding the relationship between democracy and populism are diverse. A group of authors see populism as a threat and opponent of democracy. For them, democracy clearly has a good connotation, but populism generally has a negative connotation. Populism is seen as a danger to democracy as it violates its basic principles and strives for an authoritarian system as an alternative (Müller, 2016). The main differences between democracy and populism give us a clearer picture to understand the points where these two concepts differ, which prompts the authors to think that they are opponents.

A liberal democracy must provide certain basic civil and political rights in addition to being an electoral democracy (that is, a democracy in which individuals have full voting rights and frequent, free and fair elections are held, the results of which are unpredictable). They include the freedom to pursue one's interests, to have views in politics, society and culture and to be allowed to do so without

government interference. Minorities must be respected no matter how "unpopular" they may be because of the inviolability of these liberties, with their rights often enshrined in a constitution or otherwise protected by legislation. Political rights provide people with the opportunity to be actively involved in their nation's politics through membership in organizations, lobbying, demonstration, and other means. Freedom of expression, diversity of information and civic pluralism support and are enhanced by the enjoyment of full political rights by the people. The democratic ideal requires that the authority of the majority be limited and regulated, even if it is in some sense sacred, in order to ensure that it never results in tyranny over others (Sartori 1987: 32).

The basis of populism is undoubtedly "the people" as a political subject, and this feature is also more controversial since it is difficult to arrive at a clear and consensus definition of "the people". The fact that "the people" are hostile to the "establishment" or the "elite" is not very helpful as such words are vague and context dependent. Populism embraces the foundations of democracy and popular sovereignty, seen simply as the exercise of majority power, but is wary of constitutionalism to the extent that formal, limited institutions and structures make it difficult for the majority to carry out their will. He has a more pessimistic attitude towards liberal safeguards for marginalized people and groups (Henrik, 2020).

Democracy allows the majority to elect representatives whose decisions may or may not be in line with what the majority of citizens anticipated or desired, while populism claims that the decisions of a populist government cannot be called into question since "the people" have chosen like this. Democracy assumes that choices made after following democratic processes are not inherently "moral" in the sense that all resistance must be seen as immoral, while populism assumes that there can be a morally sound choice even when there are strong moral disagreements (Müller, 2016). Populism can undermine the "check and balance" of liberal democracy and the separation of powers using the idea and practice of popular sovereignty. Also, populism can encourage a plebiscite transformation of politics, which undermines the authority and legitimacy of elected and unelected political bodies that are essential to "good governance", such as central banks and inspection offices, as well as political institutions such as parties and parliaments. Ironically, the majoritarian, anti-elite thrust of populism can easily promote a shrinking of "politics" and lead to a shrinking of the actual democratic space by promoting an opening of political life to non-elites (Mudde & Kaltwasser, 2012).

Another group of authors see democracy and populism as allies and complementary to each other. According to them, there is a clear and favorable relationship between populism and democracy. Populism encourages popular sovereignty and majority rule, at least in principle. Or, as John Green puts it,

"Populism is democratic at its core, even though many populist leaders (once they come to power) may not be democratically minded." Therefore, populists are often thought to play a particularly useful role in the early stages of democracy by providing the voice of the people, criticizing the authoritarian elite, and promoting the holding of free and fair elections (Mudde & Kaltwasser, 2012). The link to representative democracy is also very useful. According to these authors the claim that populism is fundamentally opposed to representation has been made by some writers, but it is exaggerated. Despite the fact that many populists protest against their country's representatives or claim that the system of representation is ineffective and should be expanded by plebiscite means, they object only to the wrong form of representation—not to representation in general. Populists are willing to accept representation from "the people", not from the "elite" (remember that this distinction is moral, not situational) (Mudde, 2004).

Concluding remarks

The ambivalence of the relationship between populism and liberal democracy is a direct result of the internal contradiction of liberal democracy, which is the conflict between the democratic promise of majority rule and the reality of constitutional protection for minority rights. Populism is definitely on the side of majority rule in this conflict. Furthermore, populism is antagonistic to diversity and the protection of minorities as it is a fundamentally monist ideology that says there is a "general will of the people". As a result, populism is based on the idea that politics takes precedence over all other institutional centers of power, including the judiciary. After all, the "general will of the people" - that is, *vox populi, vox dei* - cannot be limited by anything, not even constitutional guarantees (ibid.: 1175). Moreover, it is possible that populism develops in part as a result of democracy itself. Since the latter is based on the regular holding of free and fair elections, it provides a channel through which the population can express their dissatisfaction with the political system. In addition, democracy creates ambitions that, if unfulfilled, can result in political unrest and provide an enabling environment for populism to flourish. Populism needs strong leadership and can come into conflict with liberal democracy. Independent institutions such as the judiciary play an important role in the protection of fundamental rights and this should be independent of politics. But this means that they can also take decisions that are not popular: popular movements accuse these institutions of threatening the sovereignty of the people. Populism is seen as a danger, but also as a possible remedy for politicians who are too far removed from "the people" (Mudde & Kaltwasser, 2012). The intriguing illustration that Benjamin Arditi suggests to show the connection between

populism and democracy may have some merit. According to Ardit, populism is similar to a drunken participant at a dinner party who exhibits poor table manners, is rude and may even start "flirting with the spouses of other guests". However, it is equally possible that he is telling the truth about a liberal democracy that has forgotten its fundamental goal of people's sovereignty (Arditi, 2005).

In our opinion, democracy cannot be an ally of populism, since the principles and beliefs of these two entities conflict and harm each other. Populism has the potential to encourage the development of a new political cleavage (populists vs. non-populists), which prevents the formation of strong political coalitions, and can result in the moralizing of politics, which makes it very difficult (if not impossible) reaching agreements and compromises. It is true that liberal democracy is in danger, but this is not a sufficient argument to demand a new solution, much less the establishment of a populist government. Various authors consider populism as a "medicine" for politicians who have moved away from the people. I would, in fact, call populism a "disease" of liberal democracy. And we cannot claim to replace liberal democracy with its "disease", but we must try to improve it and correct the possible defects it has. Populism shows a number of contradictions. First, populism rejects political parties, but is itself a political movement and, in most countries, a political party. It also criticizes the political elites, but he himself is represented in the elections by a charismatic leader. If democracy had anything to do with populism, it would be to avoid underestimating it. Regardless of insults, ridicule or rejection, populism is a very important ideology and political logic, and this is shown by its presence in the political systems of a significant number of countries in the world.

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The role of political parties in the constitutional order in Albania

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Abstract

One of the main problems of Albania since the overthrow of the communist dictatorship and the beginning of the transition in 1991 has been the consolidation of a functional constitutional democracy. Having a functional and applicable constitutional order by all institutions and mechanisms has been a significant challenge for Albania. Political parties are one of these mechanisms or vital elements in maintaining and improving the constitutional order in Albania.

In democratic regimes, political parties continue to be the most important bridge between the state and the mass of society. Political parties are the institutions that hold the position of a political leader in society, and democratic states cannot survive if they do not have political parties that fulfill their functions in consolidating, preserving, and improving democracy. The object of this study will be political parties in Albania and their role in the consolidation or not of the constitutional order during the period of democratic transition. In this study, the three main parties in Albania are taken as case studies, namely the Socialist Party of Albania, the Democratic Party of Albania, and the Socialist Movement for Integration.

Key words*: constitutional order, political parties, constitutional provisions, democracy, consolidation.*

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Introduction

Since the overthrow of the totalitarian communist regime and the introduction of a multi-party democratic system in 1991, the political history of Albania has been marked by numerous challenges and problems. The democratic system in Albania remains fragile and has not been consolidated for three decades now, since the time when multi-party elections were held for the first time in Albania on March 31, 1991. Therefore, having a functional and applicable constitutional order from all mechanisms, institutions, and parties has been one of the most critical challenges for Albania. This has also resulted from the fact that the Constitution of the Republic of Albania was approved and entered into force only in 1998, that is, several years after Albania had started its democratic transition.

In the framework of achieving a functional and applicable constitutional framework, political parties play a key and almost irreplaceable role. And this, because, in democratic systems, political parties continue to be the main connecting bridge between the state and the masses of society. The main object of our study will be the role of political parties in Albania in improving and consolidating the constitutional order. Through this paper, the constitutional provisions for political parties in Albania will be analyzed, and a conclusion will be reached as to how political parties fulfill their role in the constitutional order. The constitutional provisions that are studied here for the role of political parties in the Constitution of Albania are: *the participation in the formation of the political will of the people in all areas of public life; the ensuring of political competition; and participation in general and local elections; the inspiring of masses for active participation in public life; the organization and functioning of political parties based on intra-party democracy; the maintaining and implementation of the role of mass representatives*. By studying the applicability of these constitutional provisions from the three main parties (the Socialist Party, the Democratic Party, and the Socialist Movement for Integration, which are taken as case studies), we will understand whether or not the political parties in Albania fulfill their role in the constitutional order.

Methodology of the study

Through this paper, the author of the papers aims to analyze and explain the relationship that exists between political parties in Albania and the constitutional order in the Republic of Albania. The study explores the constitutional definitions for political parties in Albania as well whether political parties do fulfill their role

in the constitutional order. For this purpose, in this paper, we use the interpretive methodology to study, review and interpret the literature. The paper is mainly based on secondary data obtained from verified reports issued by national or international institutions, organizations, and media.

The study goes through the following main steps:

- Literature research on parties and constitutional order.
- Research: collection and selection of various documents, reports, and studies of international and national organizations;
- Research: collection and selection of legal documents, such as the Constitution of the Republic of Albania, the Law on Political Parties, or the Code of Conduct of Albanian Political Parties etc.
- Collection and selection of statistical data related to the internal organization of political parties, their bodies, party structures, constitutional order, and official sources of domestic and international data.

The objectives of this study are to highlight the constitutional provisions for Political Parties in the Constitution of Albania, to analyze the role of political parties in the constitutional order in Albania, and to study how political parties fulfill their role in the constitutional order in Albania. The study hypothesizes that *if the political parties in Albania do not function according to the constitutional provisions, they do not fulfill their role within the constitutional order.*

In the following section (III), we will briefly discuss the birth of constitutional orders and political parties in the world, where some of the main theories and concepts existing in the field literature will be presented. Then, section IV presents a brief history of the birth of political parties in Albania, explaining the five stages through which the history of political parties and the party system has evolved. Finally, section V is dedicated to the case study of the three main political parties (the Socialist Party, the Democratic Party, and the Socialist Integration Movement) in Albania, where the applicability or not of the constitutional provisions of these parties in the Albanian political environment will be analyzed and explained.

The advent of constitutional orders in the world

Constitutionalism

One of the most interesting fields of study in political philosophy is the explanation of the reasons for the birth and development of the modern state. One of the main theories regarding the inception of the state since ancient times is the Social

Contract, which also introduces the idea of the emergence of constitutional order (constitutionalism) for the first time in literature.

Constitutionalism is the idea, often associated with the political theories of John Locke and the founders of the American republic, that government can and should be legally limited in its powers. Its authority or legitimacy depends on compliance with these limitations (Stanford Encyclopedia of Philosophy, 2022). The early beginnings of constitutional orders (constitutionalism) start with Social Contract Theory. Regarding this theory, several philosophers have tried to explain the social contract, its necessity, and justification. Among these philosophers are Thomas Hobbes, John Locke, Rousseau, and John Rawls. In his book "Polyarchy," Robert Dahl expresses that modern constitutionalism is based on two main principles:

- Representative government, which enables citizens to participate in public affairs and hold their governments accountable.
- Protection of rights, especially due process, freedom of speech, and religious tolerance, through which citizens are safeguarded from abuses of power (Dahl, 1971).

These principles of "representative governance and the protection of rights can be expressed in terms of inclusion and contestation" (Dahl, 1971: 4), notions that have gradually expanded and deepened over time. Majority rule, meaning free and fair elections that result in the election of candidates voted by the majority of the electors, judicial independence, the existence of political parties as main mechanisms for channeling and translating public expression into policies and a strong constitutional culture are seen as main features of constitutionalism (Tushnet and Bugaric, 2022).

Theories of Social Contract

Social contract theories, almost as old as modern political philosophy itself, is the view that people's moral and/or political obligations depend on a contract or agreement between them to form the society in which they live. "The term "social contract" refers to the idea that the state exists only to serve the will of the people, who are the source of all political power enjoyed by the state. The people can choose to give or withhold this power. The idea of the social contract is one of the foundations of the American political system" (Kelly, 2019). However, social contract theory is rightly associated with modern moral and political theory and is given its first full exposition and defence by Thomas Hobbes. After Hobbes, John Locke and Jean-Jacques Rousseau are the best-known proponents of this enormously influential theory, which has been one of the most dominant theories

within moral and political theory throughout the history of the modern West (Internet Encyclopaedia of Philosophy IEP).

Hobbes's political theory is best understood in his theory of human motivation and the social contract, which is based on a hypothetical state of nature. As for human nature, Hobbes has elaborated in his book "Leviathan", that macro-human behaviour is basically the totality of micro-behaviours, even when some behaviours are invisible to us. From Hobbes' point of view, we are essentially very complicated organic machines, responding to the stimuli of the world mechanistically and in accordance with universal laws of human nature (Internet Encyclopedia of Philosophy IEP). In addition, Hobbes further explains human nature, stating that "All men follow only that which they perceive to be in their best interest. All men pursue only what they perceive to be in their own individually considered best interests – they respond mechanistically by being drawn to that which they desire and repelled by that to which they are averse (...)". Everything we do is motivated solely by the desire to better our own situations, and satisfy as many of our own, individually considered desires as possible. We are infinitely appetitive and only genuinely concerned with our own selves." (Internet Encyclopedia of Philosophy IEP; Hobbes [1651] 2005).

Based on his perception of human nature, Hobbes builds a compelling argument as to why human beings should be willing to submit themselves to political authority. He does this by imagining persons in a situation prior to the establishment of society, in the State of Nature (Internet Encyclopedia of Philosophy IEP). Hobbes states that "[t]he justification for political obligation is this: given that men are naturally self-interested, yet they are rational, they will choose to submit to the authority of a Sovereign in order to be able to live in a civil society, which is conducive to their own interests" (po aty). The first and most important law of nature commands that each man is willing to pursue peace when others are willing to do the same, all the while retaining the right to continue to pursue war when others do not pursue peace. This is made possible with the help of the Social Contract which allows them to have a life other than that available to them in the State of Nature" (Internet Encyclopedia of Philosophy IEP). This contract, according to Thomas Hobbes consists of two distinct points:

1. First, they must agree to establish society by collectively and reciprocally renouncing the rights they had against one another in the State of Nature.
2. Second, they must imbue some one person or assembly of persons with the authority and power to enforce the initial contract. (Internet Encyclopedia of Philosophy IEP).

In other words, to escape the State of Nature, individuals must agree to live together under common laws and establish a system to enforce those laws. The

sovereign, who has the authority to punish those who breach the social contract, plays a crucial role in ensuring cooperation and creating a functioning society. Although living under the authority of a sovereign may be harsh, it is considered preferable to the chaotic and unpredictable nature of the State of Nature. According to Hobbes "the Social Contract is the most fundamental source of all that is good and that which we depend upon to live well. Our choice is either to abide by the terms of the contract, or return to the State of Nature, which Hobbes argues no reasonable person could possibly prefer (Internet Encyclopedia of Philosophy IEP).

Constitution, Constitutionality, and Constitutional Order

The Constitution always remains a source of inspiration for scholars, who delve into its drafting history and the philosophy that underlies it. This interest stems from the fact that one can find almost everything within its content. As the autobiography of power relations, both tangible and intangible, within every human group, the Constitution represents the biography written at the moment of its inception. Constitutions are crafted during or after periods of turmoil, and as such, they often bear the imprints of past fears, which are deemed the best advisors in the process of constitution-making. They are formulated based on negative experiences, with the aim of preventing the recurrence of those experiences (Bala, 2014).

The Constitution defines the principles upon which the rule of law is constructed, and any subsequent laws or regulations must align with these constitutional principles. It serves as the primary law or legal act of a country, with all state laws and regulations being subject to its provisions. In some countries, the Constitution is also referred to as the fundamental law or the basic statute. Typically, the Constitution outlines the nature of the state, delineates the responsibilities of its governing bodies, and provides a framework for other state laws. In most democratic and authoritarian countries alike, the Constitution incorporates a charter of human rights and freedoms, which must not be violated by the state's institutions or by other laws enacted by the legislative body (Sajó & Uitz, 2017). Another definition of the Constitution pertains to its regulation of the relationships between the document, the state, the legal system, and the citizens (Anastasi & Omari, 2017).

Constitutionality

According to Bala (2014), constitutionality is used in various ways. Firstly, according to Bala, this term signifies an essential constitutional principle in both the formal and political sense. The term "constitutionalism" has been used throughout human

history to encompass the entire movement for constitutionalism, the adoption of a written Constitution, and the limitation of incumbent powers (Bala, 2014). Constitutionality in the positive-legal sense entails ensuring the alignment of all legal acts with the Constitution. This aspect is based on the concept of "legal hierarchy," which involves harmonizing all lower acts with higher ones. The positive legal definition aligns with the formal meaning of the Constitution.

Constitutional Order

Establish a state with a consolidated democracy, simply drafting a constitution is insufficient. The consolidation of democracy extends beyond a mere written constitution. A state with a consolidated democracy necessitates the presence of both a constitution and a functional constitutional order in its environment. However, what exactly does "constitutional order" mean? According to Ghai (2010), constitutional order refers to a fundamental commitment to constitutional norms and procedures, which are demonstrated through behaviour, practice, and the adoption of norms. The International Institute for Democracy and Electoral Assistance provides a more comprehensive explanation of this concept. According to IDEA (2014), the constitutional order encompasses more than just a constitutional text. Drafting the constitutional text is merely a small part of the challenge involved in establishing a constitutional order within a country. Establishing a democratic constitutional order is a complex and long-term process. According to IDEA (2014), this process may include customs, conventions, norms, traditions, administrative structures, party systems, and judicial decisions that are integral to the practical functioning of the Constitution.

The establishment of political parties in Albania

Political parties are an essential and irreplaceable institution for the implementation of democracy, serving as the foundation upon which political pluralism is built and functions. They play a crucial role in the representative and legitimizing processes, acting as constitutional subjects with high civic mobility and leadership skills. Furthermore, political parties significantly influence the shaping and democratic functioning of society and the state. Through their political programs, candidates, electoral competition, and active participation, they contribute to fulfilling the constitutional principle of governance based on a system of free, equal, periodic, and general elections. Additionally, parties provide alternatives and offer diverse solutions to the problems faced by citizens, society, and the state (Hofmeister, 2022).

The history of political parties and the party system in Albania

The first period began with the formation of the state and the representation system, spanning from 1920 to 1924. It commenced with the creation of the first parliamentary institution in 1920. The initial historical phase of political parties differed significantly from the party models seen today. According to Afrim Krasniqi (2017), political parties were more like associations of individuals united by a political viewpoint or project, rather than institutions with stable organization, elected structures, and regular party activities.

The second period occurred from 1925 to 1939 and was characterized by a state government without political parties. During this time, Albania transitioned from a republican system to a monarchy. Political organizations were prohibited by law, and only individuals participated in elections. This approach aimed to establish stability rather than a functioning democracy.

The third phase in the history of political parties and the party system in Albania took place from 1939 to 1944 and involved the existence of war parties. Albania was occupied by Nazi-fascist forces during this period, but some political organizations still operated in the country. The political movements during this time gave rise to several parties dominated by military organizations and agendas (Krasniqi, 2017: 86).

The fourth stage marks one of the most crucial periods in Albania's political life. From 1944 to 1990, the country experienced a government with a single party, known as the one-party system. This system prevailed throughout all aspects of social and state organizations, with a single dominant party.

The fifth and final phase encompasses the establishment and functioning of political pluralism, starting from 1990 until the present day. With the introduction of political pluralism, the foundations for democracy were laid. This period is characterized by a democratic multiparty system, with approximately 126 political parties being formed and allowed to engage in political activities (Bugajski, 2002; Krasniqi, 2009; Kajsiu, 2014; Xhaferaj, 2018: 21, 22).

The main political parties in Albania

Several parties have served as political subjects in the party system, but three have been the main parties of the Albanian political background in the 31 years of political transition. These are the Socialist Party of Albania, the Democratic Party, and the Socialist Movement for Integration (Xhaferaj, 2018: 22; Xhaferaj, 2014). Since these three parties will constitute our case studies, we will briefly explain the history of their creation, organization, and operation in the Albanian political landscape.

Socialist Party of Albania

The Socialist Party of Albania is currently the governing party in Albania. It was born in 1991 after the Party of Labor of Albania merger. The leader of this political force is Edi Rama. This party was initially founded in 1941 under the name of the Communist Party of Albania, and in 1948 it changed its name to the Labor Party of Albania. At the PPSh (Labor Party of Albania) Congress in 1991, a decision was made to change the party's name from the Labor Party of Albania to the Socialist Party of Albania. The Socialist Party was in opposition from 1992 to 1997.

The Socialist Party remains the largest party in the country. This party has governed the country during the years 1991, 1997-2005, and from 2013 to date. The SP is a party with a social base, with liberal attitudes towards the communist past, with support for the older age groups and the new generation (Krasniqi, 2017). The Socialist Party of Albania is the most important one on the left spectrum in Albania and has the highest number of members (Krasniqi, 2017). Its dominant figures are the former president Fatos Nano between 1991-2005 and the current prime minister of Albania, Edi Rama, from 2005 to date.

Democratic Party of Albania

The Democratic Party is a center-right political party in Albania. The Democratic Party was the leading party in the governing coalition after the elections of 28 June 2009. However, after losing the 2013 elections, it switched to the opposition.

The Democratic Party (PD) is the country's second-largest party. This party governed the country between 1992-1997 and 2005-2013 (Xhaferaj, 2012). PD was the first democratic opposition in Albania, it was the first citizen-based party, critical of the communist past, supportive of the middle age group, and considered a center-right party (Krasniqi, 2017). This reflects the conservative ideology this party followed in its first years in the country's party system. The Democratic Party is the most important party of the right and the only competitive party of the Socialist Party (Krasniqi, 2017). This party was the first party with functional democracy (the beginning of the 90s), a process which slowed down in the following years, where it reached the peaks of conflicts within it during the years 2019-2021-2022.

Socialist Movement for Integration

The Socialist Movement for Integration is Albania's third main political party. The party's full name is "Levizja Socialiste per Integrim", and the LSI initials are used in the symbol, flag, seal, and all official documents of this party. This party was created in 2004. Ilir Meta was the chairman of LSI since its foundation, but after being elected the President of Albania, Petrit Vasili was elected as the head of the

party in April 2017. After the results of the elections of June 25, 2017, after the resignation of the chairman Petrit Vasili, who proposed a change of the party's leadership, proposing Monika Kryemadhi as chairman. This party was created as a faction of the Socialist Party of Albania in 2004. LSI is a party of the left spectrum, with a solid organization, especially in some districts. There is no difference in her program with the SP. Its success is conditioning the majority and entering the government with two major parties (Krasniqi, 2017).

Enforcement of constitutional provisions by political parties in Albania: the case study of Socialist Party, Democratic Party and Socialist Movement for Integration

Constitutional and Legal Definitions for Political Parties in Albania

In a governing system with constitutional democracy, political parties have an extraordinary political role in the preservation and development of the constitutional order of that country. Ylli Bufi has stated that "the existence of political parties is vital for the functioning of democracy" (Hofmeister, 2022; van Biezen, 2004). In the Constitution of the Republic of Albania, Article 9 states that:

- Political parties are created freely. Their organization must comply with democratic principles.
- Political parties and other organizations whose programs and activities are based on totalitarian methods, which incite and support racial, religious, regional, or ethnic hatred, which use violence to seize power or to influence state policy, as well as those of a secret character, are prohibited by law.
- The financial resources of the parties, as well as their expenses, are always made public.

Based on the list of tasks that Political Parties have in maintaining and developing the constitutional order, we will study how many political parties in Albania implement or perform these tasks and whether political parties fulfil their role within the constitutional order in Albania. Some of the constitutional obligations for political parties in Albania are:

- Participate in the formation of the people's political will in all areas of public life (Article 2, Law on Political Parties).
- Ensure political competition and participation in general and local elections (Article 2, Law on Political Parties).

- Ensure accountability and transparency.
- Inspire active participation in public life (Article 2, Law on Political Parties).
- They inform the general public with accurate information, avoiding fictitious data, and influence the formation of public opinion and political education (Article 2(c), Law on Political Parties).
- Draft political agendas.
- Establish a connection between the governed and those who govern.
- Promote and encourage measures for public involvement.
- Bear political responsibility.
- Organization and functioning based on democratic principles within the party.
- Increase the credibility of leading institutions.
- Nominate candidates for public positions.
- Organization as public institutions, not private ones.
- Maintain and fulfill the role of representing the masses.
- Carry out public activities.
- Organization in accordance with constitutional provisions.

Political parties participate in the formation of the political will of the people in all areas of public life

David Roberts (2017) contends that political will exists when a sufficient set of decision-makers, with a common understanding of a problem assigned to the formal agenda, commits to supporting a commonly perceived, potentially effective political solution. Like in any other sphere of life, including politics, the concept of "distribution of preferences" exists, which relates to who wants what. This concept becomes even more evident in the ambitions and desires of political parties. Each political party in Albania knows well what it wants. The problem is that their narrow interests often hinder the achievement of political will in Albania. As Çullhaj comments "[i]n Albania, the Constitution somehow is not considered a set of shared values and norms, thus ignoring its axiological content concerning the processes of democratic consolidation" (2021, p.69). Let's consider some specific cases where the lack of political will has caused problems in maintaining the constitutional order in Albania.

First Case:
According to auditors of European Union funds, "the lack of political will hindered the reform of justice in Albania." An audit of the funds that the European Union invested in the Western Balkans for strengthening the rule of law concluded that the millions of euros had a limited effect in this direction due to the lack of political

will for reforms in these countries (Bayer, 2022). Regarding Albania, the report notes that positive developments supported by EU funds were impeded by a lack of political will, resulting in limited success in advancing key reforms (Bayer, 2022). "EU support for the rule of law in the Western Balkans [including Albania] has clearly not been successful in bringing about comprehensive change," says Juhan Parts, a member of the court's audit group, in the critical report (Bayer, 2022).

Second Case:
In June 2011, Voice of America published the report "The lack of political will is hindering the fight against corruption" by the well-known organization "Transparency International," which monitors corruption worldwide. This report criticizes Albania for the lack of reforms in the justice system, political interference in the appointment of public sector employees, and the lack of a professional and independent administration in the parliament (VOA, 2011). According to this report, the Albanian Parliament has been unable to approve a series of important reforms due to the opposition's boycott (VoA, 2011).

Ensuring political competition and participation in general and local elections

Article No. 2, point C of the Law on Political Parties states that: "Political parties participate in the formation of the people's political will in all areas of public life and mainly through participation in general and local elections." Therefore, one of the constitutional obligations of political parties in Albania is to participate in general or central elections and local government elections. However, we have often witnessed in Albania that parties in the opposition have "threatened" not to participate in the elections, even though they were registered as political entities and exercised the function of the opposition. In 2019, local elections were held in Albania for mayors and municipal councils in the 61 municipalities. These were the first elections where the opposition parties did not participate. According to the OSCE/ODIHR final report, "The local elections of June 30 were held without much consideration for the interests of the electorate. The opposition decided not to participate, while the government was determined to hold the elections without the opposition. In a climate of deadlock and political polarization, voters did not have the opportunity to choose between several policy options. In a total of 31 out of 61 municipalities, mayoral candidates ran unopposed" (OSCE/ODIHR, 2019).

The two opposition political forces at the time, namely the "Democratic Party of Albania," together with the other coalition party, the "Socialist Movement for Integration," decided not to field their candidates for the local elections of June 30, 2019. This resulted in a lack of open political competition for the local elections,

clearly indicating a violation of the constitutional provisions regarding the role of political parties in the constitutional order in Albania.

Inspiration of the mass for active participation in public life

Another role that political parties have in the constitutional order in Albania is inspiring the masses for active participation in public life. Active mass participation in public life means that different groups of individuals, interest groups, and organized groups, in various forms, actively participate in the country's public life.

One indicator that determines whether political parties promote participation in political life is the number of members in political parties. Political parties have experienced significant losses in their membership, indicating that they no longer inspire the masses to be active in political life. People's trust in political parties has largely been eroded. Another indicator that provides an overview of citizen participation in political life is voter turnout. Unfortunately, the number of citizens who abstain from voting in elections for central or local government has significantly increased. According to the Central Election Commission, in the 2019 elections, only 22.96% of the electorate participated, with 811,727 voters out of 3,536,016 eligible voters in the country (OSCE, 2019). Similarly, in the 2021 elections, out of the 3,588,869 eligible voters, only 1,662,274 cast their votes, accounting for 46.33% of the total (OSCE, 2021). Both statistics clearly demonstrate a considerable portion of the electorate abstaining from voting. This trend is primarily attributed to the failure of political parties in Albania to inspire and mobilize the electorate based on specific programs and ideologies. Instead, they rely on targeted clientelist incentives (Sqapi, 2022; Sqapi, 2020; Xhaferaj, 2018), which has led to a gradual loss of credibility in political parties over time (Çullhaj, 2019).

Another telling indicator of political parties no longer inspiring the masses to engage in political participation is the high number of Albanian citizens emigrating from the country in recent years. Disillusioned by the political situation, many Albanians have fled the country in search of better opportunities abroad.

Philosopher Jean-Paul Sartre once said, "the most difficult war is the war within the species." This expression by Sartre aptly reflects the state of internal democracy within political parties in Albania. The lack of internal party democracy in Albania is evident in several elements, including:

- Institutionalism of different factions or the allowance of different opinions within the party.
- Authoritarianism of the party leader.
- Limited or fictitious race for party leadership.

In Albanian political parties, being a member with a different opinion from the party majority or, more specifically, differing from the party leader, often leads to expulsion from the party. The internal distribution of power is done in favour to the leader of the party enhancing thus his power over the party (Xhaferaj, 2018, pp. 89-92). An example of this occurred within the Socialist Party when Ilir Meta, the former leader of the Socialist Movement for Integration (a faction that split from the SP in 2004), expressed opposing attitudes and opinions to Fatos Nano, who was the chairman of the Socialist Party at that time. Ilir Meta openly expressed dissatisfaction with the party's leadership. However, the Socialist Party leadership, under Fatos Nano, did not respond to the requests for new elections within the party and retained Nano as chairman. In this situation, Mr. Meta left the SP and founded the Socialist Movement for Integration.

Another case within the Socialist Party is the 2016 incident. In 2016, former member of the SP, Ben Blushi, openly spoke about the statutory violations committed by the party's chairman, Edi Rama. Blushi, along with his supporters and other Socialist Party members, signed a letter addressed to the Chairman of the Commission of Statutory Guarantees of the SP. The signatories expressed their dissatisfaction with the leadership of the SP. Unfortunately, despite Blushi's efforts, the Socialist Party did not accept the requests made by Blushi's group and reaffirmed Edi Rama as the party leader without holding internal elections. Consequently, Ben Blushi and his supporters split from the Socialist Party and founded the Libra Party.

The situation at the Democratic Party is very much the same. The foundations of internal democracy within the Democratic Party, which had already been tested multiple times in the '90s, faced another challenge in 2015. Two months after the initial failure in the local elections of 2015 under the leadership of Lulzim Basha, the first voices of dissent against him and his leadership began to emerge. Jozefina Topalli and Eduart Selami were among the initial proponents of these dissenting voices within the DP. The fragmentation of the party followed in the subsequent years. The crisis within the Democratic Party deepened even further when Lulzim Basha expelled the former historic leader of the DP, Sali Berisha, from the party's parliamentary group. Following the declaration of Sali Berisha as non-grata by the United States of America, Chairman Lulzim Basha expelled Berisha from the parliamentary group of the DP. This moment paved the way for the DP to splinter into several factions: Basha's supporters, Berisha's supporters, and those who did not align with either camp, proposing alternative solutions. Fatbardh Kadilli, who belonged to the third group, established the new PD forum called the "Democratic Initiative." Kadilli offered an alternative solution that differed from Basha or Berisha. The Democratic Party found itself

divided into rivalling factions, posing the main challenge of internal division with conflicting camps vying for control of the party. Neither side recognizes the legitimacy of the other, further highlighting the party's unwillingness to accept factions and differing opinions.

Maintaining and implementing the role of mass representative

Political parties are formed, organized, and exist primarily with the objective of attaining political power or assuming executive positions. To achieve this goal, they register as electoral entities and participate in both general and local elections. They present themselves as representatives of the masses by presenting candidate lists to compete in the elections. However, according to Ylli Bufi (2010), party members and the general electorate increasingly feel that they are not adequately represented in the lists of political parties in Albania (Xhaferaj 2018, p.103). The lists are dominated by individuals who were previously unknown for their public involvement, attempting to portray themselves as ordinary people when they are not. Some even boast about having no connection to politics. Even if they are elected, they fail to gain popularity among the electorate.

In essence, this demonstrates that their connection with the electorate is almost non-existent, and this is not a coincidental occurrence. Party leaders include individuals on the party lists who have no affiliation with the electoral district in which they are competing. But, for representation to hold meaning, it is essential for a political candidate seeking election from a particular electorate to originate from that electorate. Only a candidate who is familiar with the concerns and challenges of their electorate can be a worthy representative.

Furthermore, non-participation in elections serves as an indicator of a lack of representation. For instance, the Democratic Party and the Socialist Movement for Integration failed to fulfil one of the constitutional and legal provisions for political parties when they chose not to compete in the 2019 local elections. When Democratic Party and the Socialist Movement Integration decided to escalate their stance by collectively withdrawing from their parliamentary mandates acquired in the 2017 elections, they withdraw their representation for the electorate that voted and supported them. Although the law allows for individual representatives to withdraw from their mandates, it does not anticipate such collective actions by political parties. Consequently, through the withdrawal of their parliamentary mandates, the Albanian opposition in 2019 left their constituents without representation in the Parliament.

Conclusions

The main purpose of this paper was to present a theoretical and analytical overview of the relationship between political parties and constitutional order in Albania. The aim of this study was to provide a comprehensive and clear overview of the effects of this relationship on preserving and improving the constitutional order in Albania. Based on the constitutional provisions for political parties as stipulated in the Constitution of the Republic of Albania, our analysis revealed that the main political parties in Albania, due to the lack of political will and their narrow interests, have failed in their mission to form the political will of the people. When DP and SMI didn't contest in the local elections of 2019, they failed to fulfil the constitutional provision of ensuring political competition and participation in elections. The OSCE/ODIHR (2019) report highlighted the fact that the local elections of 2019 were held with little consideration for the interests of the electorate. As for the third constitutional provision, inspiring the public/people for active participation in public life, we observed that the political parties in Albania do not fare well in this. Two indicators that support this observation are the drastic drop in the number of members in political parties and the very low voter turnout in elections.

Regarding the fourth constitutional provision, we find that the biggest problem of Albania's three main political parties (and not only them) is the lack of organization and their functioning based on internal democracy. Throughout this paper, we have provided various examples that demonstrate how Albanian political parties consistently disregard the democratic norms and principles outlined in the Constitution and the Law of Political Parties. They exhibit authoritarian tendencies in their internal functioning, impeding factions and differences in opinions within their ranks, and conducting limited or fictitious contests for party leadership. Lastly, with respect to the final constitutional provision concerning the maintenance and implementation of the role of mass representation, we have also observed that the three main political parties in Albania fail to fulfil it through their selection of representatives, election boycotts, and withdrawal of parliamentary mandates, leaving their electorate without due representation. Based on these findings, we can conclude that the hypothesis of this study is valid. Political parties in Albania do not fulfil their constitutional role because they do not operate in accordance with the constitutional provisions.

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In the dilemmas of International Law. Case study, Russia's war in Ukraine

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Abstract

The ongoing conflict in Ukraine has profoundly affected the individuals, living in the affected territory and other parts of the globe. Several academics believe that the recent aggression against Ukraine and the absence of a coordinated international response indicate the failure of international law today. Concerns over such a failure prompt a re-evaluation of the tools available under international law for preventing wars or hastening their peaceful conclusion. In this paper, the author will analyze the importance of these instruments, arguing that they play a fundamental role in preventing direct threats and avoiding the use of force. At times, they go above and beyond the collective security mechanism of the United Nations Security Council. It is adequate to remember that "war is a continuation of the negotiation process that fails to find a resolution through peaceful means," as mentioned by the war and conflict theorists, Clausewitz and Thomas Schelling. Perhaps, it goes to the idea or the real purpose of several norms of international law to make the military option less attractive than the peaceful one. The case of Russian aggression in Ukraine demonstrates the limitations of international law in preventing violations and aggression but also

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highlights the importance of continuing to evolve and improve international legal frameworks. Despite its limitations, the author conclude that international law remains vital for promoting peace and stability in the global community and should be continually evaluated and strengthened, to address complex problems.

Kew words: *International Law, Russia's war, aggression, peaceful means, UN Security Council, Ukraine***.**

Introduction

The Russian aggression in Ukraine continues to attract the attention of many researchers and political analysts of international law, apart from public condemnation from all sides, shaking the outlines of the international order (Research Division, 2023). International institutions and many countries worldwide have adopted resolutions condemning Russia's unprovoked and unjustified war in response to this attack. However, Russia seems unhindered by the prolongation of this armed conflict. It continues to assault intensively and inhumanely without distinction between military and civilian facilities, causing a significant number of victims and massive displacement of Ukrainian residents. The General Assembly and the Secretary-General of the UN called this crisis a "moment of danger," heading for a global massacre (Turak & Macias, 2022). Even after that, it seems impossible to prevent Russia's continuous attacks. Sanctions implemented by the Western countries on Russia have not stopped the aggression. Due to Russia's veto or China's attitude, the Security Council of the United Nations cannot unanimously adopt a resolution (Ahmadi et al., 2022). Moreover, many countries are still reluctant to join the Western sanctions not only because of their ties to Russia but also because of Vladimir Putin's threats that *"anyone who would undertake to intervene in this conflict - if you think of doing such a thing, I assure you that you will face such great consequences that you have never faced before in history"* (Jankowicz, 2022).

To properly discuss the events and dynamics surrounding Russia's war in Ukraine, it is crucial to understand the fundamental principle of international law applied to wars and conflicts (Sassòli et al., 2022).A timeline of every conflict in history, both ancient and modern, might be challenging to put together. There have been many conflicts between the states throughout the years; the one currently occurring in Ukraine is neither the first nor the last. In addition, at this point, states and the international community have made significant efforts to reduce the risk of wars, by creating legal restrictions and raising awareness of the risks and obligations of participants in conflict, in the international community.

Understanding the main principles of international law can be helpful in analyzing the current conflict in Ukraine. Whether international law has failed, along with the international institutions handling matters of peace and war, raises many concerns and dilemmas. Of course, this is such a current and troubling issue that international politicians and numerous law and war experts are still evaluating. The author will attempt to solve this dilemma that is so prevalent in today's public discourse by addressing many areas of law and war. It is crucial to address whether the conflict between Russia and Ukraine is justified by international law.

Both states at war, such as Russia and Ukraine, are part of *Protocol I* and members of the *Geneva Convention (1949)*[2]. Numerous researchers, such as Sean Watts, Winston Williams, Ronald Alcala, view Russia's aggression in Ukraine as an international armed conflict that is recognized, governed, and accepted in principle by the *Geneva Convention (1949)* also based on *Protocol I (1977)*[3], which aim to interpret the methods and means in which the war takes place, as well as international humanitarian laws (Watts et al, 2022). The most recent statements made by Russian emissaries about the causes and consequences of the start of this war are meant to serve as an alibi for Russia to escape its obligations under international law (Human Rights Watch, 2022).

Methodology

In this paper, the author utilizes a combination of primary and secondary sources to examine the underlying factors that have led to the current conflict. The author employs an International Law approach to thoroughly analyze all the intricacies involved. This qualitative research draws upon a variety of resources, including books (considered primary sources), as well as public media articles and news reports that provide insights into the ongoing situation in Ukraine. Additionally, the author incorporates the legal foundations of international law by referencing relevant articles of the United Nations in the paper. The nature of this conflict necessitates the author's comparative analysis, focusing on the fundamental laws of war, to comprehensively address and understand the context of conflictual behavior. A key aspect explored in the paper is the concept of international humanitarian law, commonly referred to as the *"laws of war,"* which primarily aims to protect civilians and non-combatant groups from the dangers associated with armed conflict. Furthermore, the theoretical concepts underlying the paper trace their origins back to the writings of St. Thomas Aquinas in the 1200s, specifically

[2] One of a series of agreements concerning the treatment of prisoners of war and of the sick, wounded, and dead in battle first made at Geneva, Switzerland in 1864 and subsequently accepted in later revisions by most nations.

[3] Protocol I, deals with international armed conflicts, a term that includes civil wars.

the *"just war"* doctrine. During the 17th century, as Europeans fought prolonged wars that eventually resulted in the Peace Treaty of Westphalia (Mingst, 2010) in 1648, the notion of a just war became prominent again. Following the massive loss of life during the First and Second World Wars, the concept resurfaced and gained renewed attention (Clark, 2015). Said so, the article is based on the principle that, there are only three justifications recognized by international law for the use of armed action against a sovereign state:

1. When a country is defending itself;
2. When another country had asked a country to send troops, such as when Russia legally sent troops to Syria at the request of the Assad regime;
3. If the UN Security Council determines that the war is legal under Article 51 of the UN Charter, in this case, we can mention, as an example, the invasion of Kuwait by Saddam Hussein, an event that led to the authorization of a multinational military response by the Security Council.

The laws of war could be categorized into two groups; one regulates whether it is legal for one state to go to war against another or *jus ad bellum*[4]. The other set demonstrates how each actor should behave amid war conflicts or *jus in Bello*[5] (Bethlehem, 2019).

The breach on International Law

Russia's conflict with Ukraine fails to meet any criteria for a just war. The expansion of NATO and the EU did not constitute hostile actions against Russia, while Ukraine's neighbor is actively engaged in a war against it. International law recognizes Ukraine's right to self-defense and to seek outside military assistance. The obstacles have come from Russia's privileged position as a permanent member of the UN Security Council. First, fading norms of sovereignty have led to some of the bloodiest moments in world history.

Putin's aggressive war on Ukraine poses a significant threat, as it sets a dangerous precedent for other nations to violate principles of sovereignty and *jus ad bellum*. The disregard for these principles has implications not only for individual states but even for the global community (Howard, 2022).

Regardless of the causes of the conflict, all war parties are subject to *jus in Bello*, generally known as international humanitarian law (IHL). It does not state

[4] Jus ad bellum, refers to the conditions under which States may resort to war or to the use of armed force in general.

[5] Jus in bello, regulates the conduct of parties engaged in an armed conflict.

whether the war's cause is legitimate or not. Instead, this corpus of law protects the fundamental rights of war victims regardless of which party they represent (International Committe of the Red Cross, 2010).

The fundamental principles of IHL are the four Geneva Conventions:

1. The first convention, which dates to 1864, mandates that the wounded and sick must be equally protected and that medical facilities cannot be attacked while fighting occurs.
2. The shipwrecked are included in the first convention under the second.
3. The third mandates that all parties to a conflict must treat prisoners of war humanely and provide neutral nations or organizations access to prison camps for inspection.
4. The Fourth Convention was adopted in 1949 after World War II. It requires UN member states to act against individuals who commit crimes such as rape, forced prostitution, torture, the expulsion of illegal immigrants, and other offenses that cause significant physical harm or suffering. The convention also includes three additional protocols that extend protection to victims of internal conflicts, self-determination struggles, and actions against racist governments (Basic Rules of the Geneva Conventions and their Additional Protocols, 1949).

On February 24, 2022, when Russia occupied Ukraine, it was in breach of international law. This act was in violation of UN Charter 2(4) *(UN, Charter of the United Nations and the Statute of the International Court of Justice, 1945)*, an event that consists in the indisputable prohibition of considering the armed force, to the territorial and spatial integrity of a specific country as well as the political independence of any country that is a member of the UN. There is no legal or factual basis for the justification provided by Putin and other Russian officials that it is recommended that it can go as far as the use of force, based precisely on Article 51 of the UN Charter[6]. Specifically, Article 51 says that "none of the points mentioned in this Charter puts into question the right of individual or collective self-defense, in cases where an armed attack may occur against a United Nations member country (Johnson, 2022).

[6] Article 51 "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

There is no evidence to suggest that Ukraine has launched any military actions versus the Russian state or another UN member state, nor has it made any threats to do so. Even if Russia had any evidence to support its claims that Ukraine had attacked Russian citizens in the Luhansk and Donetsk areas of Ukraine or there were intentions to do so, any response in collective self-defense would be prohibited by Article 51. Russia's argument has no legal value because Luhansk and Donetsk are not recognized as member countries of the UN and therefore fall outside the scope of collective self-defense permitted by the article. Beyond their differentiation from Ukraine and the recognition of their independence from Russia, these territories are not recognized as states under international law (Bellinger, 2022).

Crimes committed by Russia appear to be entirely against international law. Even at a cursory glance, Russia is currently involved in three types of crimes: an aggressive war, war crimes, and genocide. Most UN General Assembly members recognized Russia as the aggressor at the start of the conflict. Furthermore, although Russia's veto authority prevents or hinders UN Security Council action, numerous states accused Russia of violating *jus ad bellum* at a Security Council meeting on September 27, 2022 (Beurret, 2022).

Based on the evidence found by the Independent International Commission of Inquiry - UN, on the Ukrainian state and population, the International Criminal Court has confirmed war crimes against civilians and the innocent population, specifically murders and sexual violence, based on a gender discriminatory mentality (Human Rights Council, 2022). Eventually, the International Court of Justice received evidence from over a dozen states accusing Russia of committing genocide in Ukraine (ICJ, 2022). All these crimes are horrible, but the crime of aggression jeopardizes the foundation of international law, which enables all states to coexist without constant border threats. Peace is only possible when international law is respected. Russia's leaders must take responsibility for their actions.

The "Special Convention on the Prevention and Punishment of the Crime of Genocide," commonly referred to as the genocide convention, identifies five actions that may lead to charges of genocide, whether they occur during wartime or not. Based on the Genocide Convention, the concept of genocide[7] is defined as '*the intention of one party to destroy (partially or entirely) a national, racial, religious, ethnic, or population group*". Determining whether genocide has occurred primarily relies on the intent, not the total number of deaths. The convention lists several violations, including creating living conditions intending to physically destroy a group, inflicting severe physical or mental harm on group members, implementing measures to prevent group births, and forcibly removing children of the group to

[7] The word "genocide" was first coined by Polish lawyer Raphäel Lemkin in 1944 in his book Axis Rule in Occupied Europe. It consists of the Greek prefix genos, meaning race or tribe, and the Latin suffix cide, meaning killing. Genocide was first recognised as a crime under international law in 1946 by the United Nations General Assembly.

another group. Article 1 of the convention requires parties to punish and prevent genocide (Chetail, 2002).

However, Putin's allegation that Ukraine committed "genocide" against Russians in Luhansk and Donetsk is an excuse to justify Russia's use of force. Nonetheless, it does not give Russia the right to attack Ukraine under any circumstances. It is important to note that Ukraine has not engaged in any activities intended to destroy an ethnic, racial, religious, or national category. No proof exists of an intention to destroy any group in eastern Ukraine entirely or in part, as defined by the Genocide Convention. The use of power to prevent genocide operations or significant human rights violations is not authorized by the Genocide Convention or the UN Charter (Joshua S. Goldstein et al, 2001), even when the Ukrainian State may have violated the human rights of Russian citizens in the east of Ukraine (Hinton, 2022).

Ukraine's quick counter-offensive has exposed even more horrible crimes committed by Russian forces on Ukrainian civilians and military troops as if to demonstrate the complete opposite. These are added to a long list of crimes against humanity uncovered in places like Bucha and Irpin (Al-Hlou, et al, 2022).

Discussion

The war in Ukraine has uncovered a range of crimes, from acts of aggression to crimes against humanity and even genocide, being consistently attributed to Russia. Examining these crimes to gain a deeper understanding of the situation and distinguish between the different categories of offenses is crucial. Moreover, reflecting on these crimes can also provide insight into their potential implications for the future of global peace. This situation may compel us to approach and treat the context of conflictual behavior in comparative analysis with the fundamental war laws. Let us consider human rights between nations, synonymous in some instances with the laws of war, at its most basic level. It safeguards civilians and other non-combatant groups from the possible consequences of an inevitable armed conflict.

If we look at the war, the ways, the means, and strategies from the perspectives of all parties involved, the most important rule is that war parties must constantly distinguish between uniformed civilians and troops. Attacks should never be directed toward civilians. Under these conditions, the two parties involved in the armed conflict are required to take the necessary measures to eliminate damage to the population and civilian property. Respecting war laws means avoiding unauthorized attacks between military forces and civilians or attacks that would significantly damage innocent civilians (UN, 2019). Undoubtedly, the Ukraine

events once again highlight how ruthless and vicious the Russian army has been toward the civil population.

Mainly, based on international law, the territorial integrity of states must be respected. The last act of the Russian state, which consisted of recognizing Luhansk and Donetsk as independent countries, openly violated international law, which aimed at the sovereignty of a country and secession from a country. In no case is it legitimate for some areas of a state to declare secession from the state as part of an independence movement. Although this is a minority opinion, some international law experts argue that corrective secession from Donetsk and Luhansk could be justifiable in extreme cases where individuals have experienced severe human rights violations by their government (United Nations, 2022).

Russia's recent actions follow a similar pattern as the 2014 annexation of Crimea, which was annexed after a controversial referendum and than declared the independence from Ukraine (Milano, 2014). While many European countries and the United States reject Russia's annexation of Crimea and consider it an annexation of Ukraine, seeing Russia as an occupying power, the annexation of Donetsk and Luhansk has not occurred yet but remains a possibility in the future. Only a few UN members will likely recognize the areas as self-proclaimed independent countries, even if Russia does not seek to annex them. Most of the European countries and USA can most likely consider the above two areas as illegally appropriated by Russia, especially if Russia annexes them. South Ossetia and Abkhazia, two Georgian provinces that proclaimed independence in 2008, were previously acknowledged by Russia as independent states. Only four other UN members, Venezuela, Syria, Nicaragua, and Nauru, acknowledge the region's independence (Wolff, 2023).

Russia did not recognize Kosovo's 2008 declaration of independence from Serbia, arguing that the Kosovo population did not qualify for corrective secession as they were not a distinct population. Despite this, Kosovo has gained recognition as an independent state by over one hundred UN member nations. While the US and several European nations support Kosovo's independence, they consider the case unique and not a precedent for other territorial disputes (García & Gutiérrez, 2008). Russia has faced and is expected to continue to face further isolation and other sanctions from international bodies beyond the financially solid measures that other countries, such as the USA, have consistently decided. The actions of Russia are considered legal under international law by only a few states and legal authorities. The Council of Europe took another punitive measure by suspending and excluding Russia from participating in the EC Parliamentary Assembly and the Committee of Ministers (Council of Europe, 2022). In addition, the Security Council - UN confirmed an act resolution asking Russia to stop military operations in Ukraine immediately. Meanwhile, Russia reacted by vetoing this resolution, based on the fact that it is a permanent member of the Security Council. A non-

binding resolution demanding that the Assembly of the UN hold an emergency session specifically to review Russia's activity has also been approved by the Security Council by voting 11 to 1 (with Russia voting against it and three abstentions), (Corten & Koutroulis, 2022). The "Union for Peace resolution,"[8] also known as the 1950 UN General Assembly Resolution 377(V), stipulated the event of an impasse in the Security Council, the General Assembly would take up the issue at once and provide recommendations of member countries in the direction of cooperative action. This resolution is under the UN General Assembly(Carswell, A. J., (2013).

In 2014 following the annexation from Russia to Crimea, General Assembly passed a resolution condemning the actions of Russia and urged countries not to recognize it as a threatening and discriminatory act for Ukraine's sovereignty, political independence, and territorial integrity. The resolution was passed with an overwhelming majority. The General Assembly may also demand that the UN launch an investigation into Russia's actions and recommend that Russia be subject to sanctions or that Russia be suspended or expelled from several UN bodies (Euractiv Intelligence, 2022). The International Court of Justice (ICJ) received another claim from Ukraine against Russia, claiming that Russia falsely used the Genocide Convention to extenuate its Ukraine annexation. Regarding the actions of Russia in Crimea and eastern Ukraine, the ICJ currently considers two allegations made by Ukraine in 2017 (International Court of Justice, 2017). Putin and other Russian officials might be the subject of an ICJ war crimes investigation.

Charter 2(4) of the UN[9] does not give them the right and strictly forbids different nations to use military force and threaten other nations with war. There are two exceptions to this rule. First, Chapter VII of the Security Council may recommend the use of armed force with explicit approval, including from its permanent member countries. This phenomenon is currently impossible to happen due to Russia's veto power. Second, under Article 51 of the Charter, states may use force in self-defense only if it meets the criteria of proportionality and necessity (UN, Charter of the United Nations and Statute of International court of Justice, 1945).

Ironically, the Russian state stated the justification of defenses, making claims that Ukraine can possess and be equipped with nuclear weapons, always with the exceptional contribution of allied countries: in other words, a situation involving preventative self-defense. It is Russia's responsibility to support its use of force with the argument that it is necessary for self-defense, yet this pretext may be

[8] On 3 November 1950, the General Assembly adopted resolution 377 A (V), which was given the title "Uniting for Peace", which states that if the Security Council, because of a lack of unanimity among its five permanent members, fails to act as required to maintain international peace and security, the General Assembly shall consider the matter immediately and may issue appropriate recommendations to UN members for collective measures, including the use of armed force when necessary, to maintain or restore international peace and security.

[9] Article 2 (4) of the Charter prohibits the threat or use of force and calls on all Members to respect the sovereignty, territorial integrity and political independence of other States.

unstable given that ongoing attacks do not meet the standards for necessity or proportionality (Milanovic, 2022).

The Security Council is empowered to pass resolutions that allow for actions such as economic sanctions; however, in exceptional cases, the use of armed force is allowed to prevent violations of international normative acts. For instance, in 1990, when Iraq invaded Kuwait, the Security Council passed Resolution 678, which permitted the use of "all necessary means" to compel Iraq to withdraw from Kuwait (UN, UNIKOM, 2003).

On February 25, 2022, Albania and the US co-proposed an act-resolution for the Ukraine state that demanded that Russian military forces leave Ukraine, that the Minsk Agreements be fully implemented, and that human rights law be respected. The nations' division was also evident during the Security Council negotiations: China abstained from voting in favor of a less restrictive Chapter VI resolution, while India kept its usual neutral position. The initially proposed resolution was subsequently modified, as the focus was placed on "aiming towards a constructive dialogue" while avoiding immediate action. Russia eventually succeeded in blocking the resolution. The nations' division was also evident during the Security Council negotiations: China abstained from voting in favor of a less restrictive Chapter VI resolution, while India kept its usual neutral position.

The initially proposed resolution was subsequently modified, as the focus was placed on "aiming towards a constructive dialogue" while avoiding immediate action. Russia eventually succeeded in blocking the resolution (UN, 2022). International legal expert Rebecca Barber, makes an insightful statement about the potential contribution of the UNGA to the implementation of the Uniting for Peace Resolution (UPR). The United Nations Peacekeeping Resolution (UPR), established in 1950 amid the Korean War, was created precisely to avoid the veto that the permanent member countries of the Security Council could impose (Barber, 2021). In cases where the Security Council fails to support international security and peace due to the call of the UPR, such as in the 2010 Kosovo Advisory Opinion, the UN has the authority to intervene and suggest collective action. It is essential to understand that the UN's opinion merely serves as a primary recommendation (ICJ, 2010) .

At the same time, Ukraine took the appropriate measures by starting the appropriate procedures at the International Court of Justice (ICJ)[10], precisely in January 2017 with the claim related to the "*violations*" provided by the International Convention for the Suppression of the Financing of Terrorism *(ICSFT)* and International Convention on the Elimination of All Forms of Racial Discrimination *(CERD)*. In the event that the International Court of Justice can decide in favor of Ukraine, the UN Security Council has the duty to approve the

[10] ICJ, also known as the World Court, is the main judicial organ of the UN. The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

implementation of the decision. But one should not overlook the fact that the exercise of the jurisdiction of the ICJ regarding the contentious procedures is completely dependent on the approval of the member states. This points to the fact that the jurisdiction of the ICJ does not necessarily apply to Russia. The only way is for the states to rely on a treaty that provides for the possibility of judicial settlement in the ICJ and has been ratified by both parties (Marchuk, 2017). Even though the application was submitted about five years ago, everything has stayed the same. Even if the ICJ decides to favor Ukraine, the UN Security Council must approve the decision before it can be implemented.

Furthermore, Ukraine filed a complaint with the International Court of Justice (ICJ) on February 26, alleging that Russia should be held accountable for the genocide inflicted upon the civilian population, which serves as a pretext for its aggressive actions. However, attaining the desired result appears remote. The failure of international law to impede Russia's encroachment underscores the dominance exerted by the most influential and powerful states, revealing Ukraine's vulnerability. In order to establish enduring peace in the region, it is imperative for the international community must support Ukraine. (ICJ, Application, Instituting Proceedings filed in the Registry of the Court on 26 February, 2022).

Conclusions

Understanding these factors and how they impacted the Russo-Ukrainian War is crucial to recognize the value of international law and any potential restrictions it might have. A substantial set of international norms protects territorial integrity and institutions that handle territorial conflicts when they occur; these norms no longer serve as explicit standards that forbid aggression but as barriers intended to prevent wars. From this point on, international law should offer a much broader and more complex set of instruments to encourage opponents to avoid using force to resolve their conflicts objectively. International law may have little to offer in these circumstances, but even if it is not likely to be helpful for the time being, the needs to evolve and safeguard the main purpose might request a more thorough changes on the bodies, UN charter articles, in order to functionally prevent the conflicts in the future.

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Reflections on some aspects of how the Public-Private Partnerships are building the Country: the Albanian case in a comparative view

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Abstract

Public-Private Partnerships are one of "the hottest" topics in Albania at the moment for their wide application and the problems related to them. In recent years, Albania is increasingly using these forms of Public-Private cooperation, to help to develop the country both in terms of infrastructure and services. Due to the great importance

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of their application, national political actors and international bodies are becoming more and more alert to the problems that these forms of cooperation are showing, in order to be able to solve the most acute and immediate problems in this direction, also in the framework of membership of Albania in the EU. For this purpose, this paper analyzes some aspects of the legislation and operation of PPPs in the country in a comparative view with the legal framework of the EU and some European countries.

In this paper, are used several scientific methods such as the analytical, comparative and data collection methods also taking into account the primary and secondary sources.

The conclusions and recommendations of this paper are related to the positive evolution that this institute has already had and should have in Albania in terms of legal regulation and increased transparency of PPPs procedures, but also to the problems that appear in relation to corruption in tender procedures, the weakness of institutions, the lack of the capacity of the PPC and the Administrative Court to deal with the large number of appeals in this field etc.

***Keywords**: Public-Private Partnerships (PPP in Albania), EU legal framework on PPPs, PPP regulation in Member States*

Introduction

The present work is intended to offer a reflection on some of the most important aspects on the theme of Public-Private Partnerships (PPPs) in Albania in a comparative view with the EU *acquis* and the main European States. The goal of this paper is not to exhaustively analyze all the aspects related to PPPs, since it is impossible to analyze them in one article, but to bring a general overview of the local legislation, to highlight the main problems that are evident currently in this field. The comparison with some of the most developed countries in Europe may seem a little courageous, but in the historical context in which we are, when Albania intends to become part of the EU, it must necessarily implement the EU legislation and must follow the best legal practices of the EU the Member States even in the legal framework regarding Public-Private Partnerships. The countries taken into consideration are Great Britain[3], Spain, France, Germany, and Italy. In fact, it is not easy to define the volume of transactions carried out in PPPs in the various European countries, as there are no uniform classification criteria for such operations that allow comparison. However, it is possible to use the available data to try some comparisons, albeit at an indicative level. The comparison of

[3] Even though Great Britain is not a member state since January 31, 2020, it has been analyzed as one of the first countries where the Public- Private partnership form of cooperation has been used

the available data together with the analysis of the regulatory peculiarities of the Member States taken into consideration may constitute an important contribution to the national debate on the critical issues of a regulatory nature that do not favor the "fair" participation of privates in the construction of infrastructural public wo rks.

In Europe, PPPs have been used mainly for infrastructure, and in terms of project value they have been more concentrated in the transport sector. However, the education and healthcare sectors dominated in the mid-2000s. Meanwhile, in the European and global Emerging Markets and Developing Economies (EMDEs), PPP investments in infrastructure have been mainly concentrated in the energy sector, followed by transport. Since 2020 we have had an increase in the number and value of user-financed projects in Europe by type of PPPs (Martijn, J.K., Sun, M. Y., Lindquist, W, Mooi, Y. N., Ozturk, E.O., Selim, H., Khachatryan, A. 2023).

The theme of infrastructure financing has recently taken particular importance at a European level, especially in developing countries such as Albania also in consideration of the contribution that the infrastructural development is potentially able to offer to the resumption of the competitiveness and to the economic growth.

Vast and substantially uniform sources support, in fact, the existence of a causal link between a country's infrastructural endowment and the economic development. On the other hand, there is a lively debate about the fact that infrastructure financing must take place with public investments: creative accounting mechanisms can mask in the form of public investment, costs that should be classified as current expenditure, also public investments could displace other potentially more productive investments. In this sense, the adoption of Private-Public Partnerships could help to identify the best mix.

The debate on these issues, together with the generalized contraction of public investments in recent years, partly due to the need to contain public spending imposed by the Treaty of Maastricht in 1992, has fed a growing interest in Europe toward alternative models for financing public works and towards forms of Public Private Partnership (PPP). With this expression we intend to refer to all those "forms of cooperation between public authorities and the business world that aim to guarantee the financing, construction, renovation, management or maintenance of an infrastructure or the provision of a service" (European Commission, Green Paper, 2004, 327 of 30 April 2004).

According to Birn Albania-Concessions Database, there result 219 Concession Contracts in Albania of 15 Contacting Authorities of a total value of 4.276,21 million Euros. If we consider a division of Public-Private Partnership projects by category we can say they are divided in natural resources and services. In the category of natural resources 95.3% of them are contracts that have as their object the construction of Hydropower plants, 4.2% the mines and 1% other. While in

the category of Services, 62.1% of them belong to the Logistics and Transport sector, 13.8% to the environment sector, 13.8% to the health sector and 10.3% to the financial and economic sector[4].

Public-Private Partnership in Albania

What is a Public-Private Partnership?

According to Art. 8, Law No. 125/2013 Amended by Law No. 88/2014 Law No. 77/2015 Law No. 50, dated 18.07.2019 "On concessions and public-private partnership", "Public-Private Partnership is a form of long-term co-operation regulated by a contract between the public partner who is the contracting authority, and the private partner that can be one or more economic operators. In this contract, the private partner undertakes the obligation to provide public services to the users of services within the scope of the public partner's competencies and/or the obligation to provide the public partner with the prerequisites for providing public services to service users and/or activities within the scope of its competences".

In this context, the private partner has several obligations related to the financing, design, construction/reconstruction/renovation, operation, and maintenance of the new or existing public infrastructure facility.

In relation to the fulfillment of the above obligations, the private partner usually assumes risks related to the realization of the objectives of the Public Private Partnership. However, the risks are shared between the parties, where each of them usually assumes the risks related to the respective tasks.

The method of remuneration of the private partner is defined in the contract and includes, in addition to regular direct payments from the public partner, the rights to use public works or public service as well as other forms of financial support.

Depending on the remedies, as well as the breakdown of the main risks inherent, a Public-Private Partnership in Albania can be realized in one of the following forms: Public works with concession; Concession of public services; public works contract; a public service contract.

Also, in Albania, Concessions/Public-Private Partnerships can be given for the realization of the works and for providing services for many sectors and purposes. In transport (rail system and rail transport such as the rehabilitation of railway infrastructure Fier-Ballsh, Fier-Vlora, ports e.g. the construction of a yacht port in the city of Durres and in Shengjin, airports e.g. Mother Teresa International Airport which is the biggest concession of a value of 73+ million euros, roads such as the improvement, construction, operation and maintenance of Arbri road,

[4] Partneritetet Publike Private në Shqipëri, http://ppp.reporter.al/ (last accessed 2 July 2023)

tunnels, bridges, parking such as the construction of underground Rinia Park in Tirana, public transport); production and distribution of electricity and heating energy such as the construction of the hydropower plant on the river Devoll; water production and distribution, treatment, collection, distribution and management sewage, irrigation, drainage, canal and dam cleaning; waste management, including collection, handling, transfer and depositing them; telecommunications; science and education such as improving the educational infrastructure in the municipality of Tirana; tourism, entertainment and hotel; culture and sport; health such as the free checkup health service and the hemodialysis service; social services; prisons and judicial infrastructure; rehabilitation of land and forests; industrial parks, mines and similar infrastructure for support; business; housing; building of public administration, information technology and infrastructure database; distribution of natural gas; rehabilitation and urban and suburban development; agriculture[5] (Law No. 125/2013 Amended by Law No. 88/2014, Law No. 77/2015 Law No. 50, dated 18.07.2019 "On concessions and public-private partnership")

Law No. 125/2013 Amended by Law No. 88/2014, Law No. 77/2015 Law No. 50, dated 18.07.2019 "On concessions and Public-Private Partnership" also determines that the procedure for granting Concessions/Public-Private Partnerships is implemented in accordance with the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment, reciprocity, and legal certainty.

But are these principles applied in Albania? From the broad debate about the PPPs, often not only political actors in the country but also important financial authorities in the world have denounced cases of violation of procedures contrary to the law which have implicated the investigative authorities responsible for conducting investigations in relation to scandals in word.

Among these, we can mention the case of Dunwell Haberman, which through its subsidiary in Albania „DH Albania" won a tender of about 20 million dollars for one of the segments of the „Unaza e Madhe" in Tirana. The company is suspected of having committed two falsifications to secure the contract in Albania. The first time by falsifying the date of creation; in Dalaweare the company was registered on June 25, 2018, while in Albania it has filed documents, as if it existed since June 1998. The second document, which is suspected of being falsified, is a certificate from the Secretary of State that the firm has no fiscal obligations to the state. The spokesman for the Secretary of State, Doug Denison, told VOA that there was no request from the firm for the certificate, nor was any document issued[6].

[5] Partneritetet Publike Private në Shqipëri, http://ppp.reporter.al/ (last accessed 2 July 2023)

[6] Skandali me tenderin për Unazën, edhe Delaware nis hetimet, (12 July 2018) https://top-channel.tv/2018/12/07/skandali-me-tenderin-per-unazen-edhe-delaware-nis-hetimet) (last accessed 2 July 2023)

Another case that has caused a stir in the Albanian media is that of the tender for supervision for the reconstruction of the health centers for 2023. SPAK's investigations into corruption with the tender of the Ministry of Health have so far led to the imprisonment of four suspects together with the Secretary General of this Department. The prosecution announced that it has arrested the administrator of the company, ‚DRICONS', and the engineer who are accused of corruption as they are the people who intervened by giving the Secretary General of the Ministry of Health, 330 thousand ALL in bribes to influence her to announce the winner in the tender for the reconstruction of health centers. The winner of the tender with a limited fund of ALL 805 thousand was announced on June 1, while SPAK intervened on June 2 when the bribe was given[7].

During the year 2022, the Special Structure against Corruption and Organized Crime (SPAK) registered 422 criminal proceedings in the field of corruption, a figure that marks an increase from the previous year with 83 more proceedings, or about 65.6% of the criminal offenses registered. Article 258 of the Criminal Code „Violation of the equality of participants in public tenders or auctions" has the highest number of registered criminal proceedings with 92 registered criminal proceedings[8].

Concession/Public Private Partnership contract and the procedures for granting concessions/public-private partnerships

The Public-Private Partnership contract is considered „a public work contract or public service contract, which meets the conditions, which define it as a Public-Private Partnership, and which is signed between the contracting authority on the one hand and the economic operator selected as the most successful bidder".

In the Republic of Albania, the responsible institution that guides and harmonizes the activities for the development of Concessions and Public-Private Partnerships is the Ministry responsible for the Economy[9], which coordinates the work with the Unit for handling Concessions/Public-Private Partnerships, assists the contracting authorities and performs other related functions with the study, monitoring, and analysis of European and international trends in the field of PPPs.

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[7] I dha 330 mijë lekë ryshfet Sekretares së Përgjithshme të ‚Shëndetësisë', ndalohet administratori dhe inxhineri i kompanisë që fitoi tenderin, (2 July 2023) https://shqiptarja.com/lajm/i-dha-330-mije-leke-ryshfet-sekretares-se-pergjithshme-te-shendetesise-per-nje-tender-ndalohet-administratori-dhe-inixhineri-i-kompanise-qe-fitoi-tenderin (last accessed 2 July 2023)

[8] Spak, 422 procedime për korrupsion, dominojnë tenderat – 208 të pandehur, 92 dosje për procedura prokurimi, 86 për shpërdorim detyre (22 April 2023), https://scantv.al/spak-422-procedime-per-korrupsion-dominojne-tenderat-208-te-pandehur-92-dosje-per-procedura-prokurimi-86-per-shperdorim-detyre/, (last accessed 2 July 2023)

[9] Art 9.1of Law No. 125/2013 Amended by Law No. 88/2014 Law No. 77/2015 Law No. 50, dated 18.07.2019

Also, an important role is played by the Ministry Responsible for the Finance, which evaluates, approves, and monitors concession projects and their implications from a financial point of view[10].

Another very important actor is the Public Procurement Agency[11], which monitors the compliance with the competitive procedures of Concessions/PPP after signing the contracts, taking administrative measures, and setting fines in case of violations. The Concession and PPP Projects Selection Committee[12] is another body that is in charge of selecting Concession/PPP projects. Meanwhile for the examination and granting of the Concession/Public-Private Partnership, the contracting authority, in coordination with the Concessions Handling Agency (ATRAKO)[13], creates the Commission of the Concession/Public-Private Partnership.

The contracting authorities who can undertake a procedure for granting Concessions/Public-Private Partnerships are the line ministries and the local government units[14]. Currently, in the database of concessionary and Public Private Partnership projects signed by the Albanian government during the period 2004-2020, there are 15 Contracting Authorities (Kamez Municipality, Tirana Municipality, Vlore Municipality, Ministry of Education, Sports and Youth, Ministry of Interior, Ministry of Agriculture, Food and Consumer Protection, Ministry of Economy, Trade and Energy, Ministry of Energy and Industry, Ministry of Finance and Economy, Ministry of Infrastructure and Energy, Ministry of Environment, Ministry of Public Works, Transport and Telecommunications, Ministry of Health[15]).

According to Artt. 23-32 of the Law No. 125/2013 Amended by Law No. 88/2014 Law No. 77/2015 Law No. 50, dated 18.07.2019 "On concessions and Public-Private Partnership", the Concession/PPP contract is drawn up in writing and signed by the representative of the contracting authority and the bidder selected as the most successful. All Concession contracts and Public-Private Partnerships, provided in the Republic of Albania are registered in an electronic database.

The law stipulates that the Contracting Authority must wait for the expiration of the period for accepting complaints before concluding the contract. If the successful bidder withdraws from the contract or does not submit the required guarantees and instruments within the specified time, then the contracting authority may make a new decision to award the contract to the next ranked bidder.

[10] Art 10 Ibidem
[11] Art 11Ibidem
[12] Art 12/1 Ibidem
[13] Art 18 Ibidem
[14] Art 13 Ibidem
[15] Partneritetet Publike Private në Shqipëri, http://ppp.reporter.al/ (last accessed 2 July 2023)

The contract defines the rights and obligations of the parties. It must be drawn up in accordance with the tender documents, with the information contained in the contract notice, with the selected bidder and the contract award notice. Another element of this contract is the concession fee, which is paid in the manner specified in the concession contract. Also, the Concession/PPP contract has a certain term and according to the law in force, this term cannot be longer than 35 years.

The procedure for awarding Concessions/Public-Private partnerships begins with the publication of the contract announcement and ends with the publication of the winner's announcement for awarding the contract or with the decision to terminate the contract awarding procedure. In awarding Concessions/Public-Private Partnerships, the contracting authority can use several forms of procedures that are defined in the law. In order to continue the process of selecting the winner, at least one valid offer must be accepted. The evaluation criterion for awarding the Concession/Public-Private Partnership contract is the most economically favorable offer, based on various criteria related to the object of the Concession/Public-Private partnership, which include quality, technical merits, aesthetic, functional and environmental characteristics, management costs, cost-effectiveness, provision of services after delivery of products and technical assistance, delivery date and period of delivery or period of completion of works, price of service for final beneficiaries, amount of concession fee.

The regulatory framework at the Community level

The absence of uniform discipline

Increasingly, the public sector is seeking the cooperation of the private sector in the realization of public works and public services. This is due to the lack of economic resources and appropriate technology. This cooperation has materialized with the growth of Public-Private Partnerships that are also widely used in Europe, especially in the last 20 years.

The debate launched in Europe about the Private-Public Partnerships related to the financing of infrastructures and/or the management of related services has not yet led to the elaboration of a uniform discipline at a community level and uncertainties remain in the classification of some operations. The term "Public-Private Partnership" was first encountered through the provisions of Regulation (EU) 1303/2013 which defines the common rules applicable to the European Investment Structure. It was defined as a form of cooperation between public bodies and the private sector, aimed at improving the provision of investments in infrastructure projects or other types of operations, the provision of public services

through risk sharing, the pooling of private sector expertise or additional sources of capital. (Regulation (EU) 1303/2013 of the European Parliament and of the Council of 17 December 2013)

Let us recall that the European Commission itself questions about the adequacy of the Community law to the specific characteristics of the PPP. In this regard, the International Monetary Fund, focuses on the importance of a correct evaluation of Public-Private Partnership operations in national public accounts, concluding that it is necessary to evaluate in real and substantial terms, rather than formal, the impact of this type of operations on public budgets[16].

However, the European institutions have always encouraged the development of PPPs in the EU. In this context, we cannot leave without mentioning the (Green Paper) published in 2004 where we have a definition of PPPs which are considered as "forms of cooperation between public authorities and the business world that aim to guarantee the financing, construction, renovation, management or maintenance of an infrastructure or the provision of a service".

The Green Paper of 2004 sets out the guidelines of the phenomenon, in compliance with the principles of competition and equal treatment imposed by the Treaty and the Community Directives on procurement. With reference to contractual PPPs, the European Commission has made some interesting considerations in terms of concessions and finance of projects, legal institutions that correspond to the standard model of PPP for the duration of the relationship, the financial commitment of individuals, and risk-sharing.

There are different models applied in the individual Member States and in any case regulated differently. The Commission is particularly concerned with ensuring that these forms of cooperation are not in any way evasive of competition rules; the search for greater flexibility in the awarding procedures finds the limit in respect of the community principles enshrined in the Treaty and in the secondary Community law.

First of all, Public-Private Partnerships are characterized by the relatively long duration of the relationship, which includes cooperation between the public partner and the private partner in various aspects of a planned project. Most of the PPP contracts last 20 to 30 years, some of them last less while few of them last more than 30 years[17].

Regarding the way of financing the project, they are usually partially financed by the private sector, often through complex agreements between different actors.

The public partner usually determines the objectives to be realized for the public interest, the quality of the services to be offered, the prices, taking over

[16] Public-Private Partnership Legal Resource Center, https://ppp.worldbank.org/public-private-partnership/library/public-private-partnerships-international-monetary-fund, (last accessed 2 July 2023)

[17] Public- Private Partnership Legal Resource Center. Introduction, https://ppp.worldbank.org/public-private-partnership/PPP_Online_Reference_Guide/Introduction, (last accessed 2 July 2023)

the supervision and monitoring of the realization of these objectives. Meanwhile, it is the private sector that plays the role of the economic operator by designing, completing, implementing, and financing the project. Regarding the distribution of risks between the public partner and the private partner, usually, the private partner is the one who bears the risks of the PPP even though the latter is not mandatory.

Concerning to the concessions - characterized by the direct link between the private and the final user, under the control of the public partner - the Green Paper indicates that a complete Community discipline is not imminent, similar to that of public procurement, mainly due to the diversity of the national disciplines and for the continuing will of the States to maintain an important role in this area.

The Community law of public procurement does not know a specific definition of project financing which is accompanied with an autonomous and specific discipline, while it regulates the procurement of public works and the public works concession. Project finance is clearly distinguished in the Green Paper by the classical concession model, of which it now represents a variable rich of autonomous characteristics. Among the different types of contractual PPPs, project finance can be part of the contract model Design Build, Operate, Transfer (DBOT), in which the private operator designs, builds, finances totally or partially, and manages a public work that, at the end of the contractually agreed period, is sold to the entity. The Green Paper refers to the Private Finance Initiative, which represents primarily a British application.

In fact, even the Green Paper does not provide a proper juridical definition of the Partnership. What is contained in the Green Paper represents, if anything, an analytical description of the phenomenon, born from a concrete observation of the practice that seeks to highlight the points of contact with the law of public contracts and concessions.

The purpose of the Community Legislation is not to define legal categories, but to recognize the experiences of cooperation between the public and private sectors in Europe, focusing on the specification of competition rules. Regarding the terminology, considering the different forms of public-private partnerships, the same formulation of the contractual partnership refers to both the concession and the so-called Private Finance Initiative (PFI) of Anglo-Saxon origin.

The need to maintain a greater budgetary discipline, at the local and national levels, has given a strong contribution to the growth of the PPP market and its diffusion as an alternative solution for financing public works. In fact, they offer a great accounting advantage to governments, making it possible to transform higher present expenses into higher expenses (or lower revenues) in the future, and for the way in which public budgets are built considering the first and not the latter, that represents an immediate relief for financial management.

In here, it deserves to mention the decision of EUROSTAT of 11 February 2004 concerning the accounting treatment in national accounts of contracts signed by the public administration within the framework of partnerships with private companies, which have as their object the creation of specific infrastructures (assets), intended for public use and the subsequent provision of services, generated using the same. The decision applies only in cases where the State is the main acquirer of the goods and services provided by the infrastructure, whether the request comes from the same public party or comes from third parties. For the purposes of the off-balance accounting of PPPs and, therefore, of its classification as a private investment, the transfer of risks is the key element. The decision, in this regard, establishes that the assets related to these forms of PPP should not be classified as public assets when two conditions are met: the private partner assumes the construction risk; the private partner assumes at least one of the two risks of availability and demand (New decision of Eurostat on deficit and debt Treatment of public-private partnerships 18/2004, 11 February 2004).

With the 2014/23 directive, the issue can be considered definitively overcome as the new discipline also includes grants, including those where the main payer is the public administration.

The decade between the 2004 Green Paper and the new 2014 Public Contracts Directives was marked by an intense debate, but no proposal was fully accepted and approved. Other issues have been abandoned or radically reconsidered.

Finally, it can be said that since the Commission does not consider a legislative instrument related to PPPs as a more efficient instrument, PPPs will be carried out on the basis of national laws implementing the Classical Directive, the Utilities Directive, or the provisions implementing the Concessions Directive (Bogdanowicz, P., Caranta, R. and Telles, P, 2020).

The Regulation in some Member States of the Public-Private Partnership contract

Some EU countries are interested in regulating the phenomenon of Public-Private Partnerships before ours. Not all legal systems, however, have a proper legal definition of a Public-Private Partnership contract. Also, not all countries have adopted special laws for PPP and some countries such as France, Spain, Germany have multiple PPP or concession laws, which regulate specific sectors. Meanwhile, most PPP contracts in EU member states are governed by EU directives on the award of concession contracts (Martijn, J.K., Sun, M. Y., Lindquist, W, Mooi, Y. N., Ozturk, E.O., Selim, H., Khachatryan, A. 2023).

Also in different European countries, the PPPs definition is different. Whatever their definition, however, in Public-Private Partnership relations, the basic

objective for the public party is the selection of the best contractor and the best offer, as well as after the conclusion of the contract, its execution according to the predetermined conditions.

Already since the early nineties, the United Kingdom has begun to involve individuals in the construction of public works of greater complexity in order to reduce the costs in charge of the public sector and increase the efficiency in the construction of infrastructure. According to data, the UK was the first country in the world to develop the concept of Public-Private Partnerships[18]. With more than 700 in operation with a total capital value of £57 billion the PFI/PF2 project has been the predominant form of PPP in the UK[19]. In the UK there is no specific law for PPPs. They operate according to the general legal framework of the United Kingdom, of contracts, commercial companies, competition, and tax law, which applies to PPPs as well as to other projects. The legislation gives the appropriate powers to the local government and public bodies to promote PPPs[20].

In France, in 2018, a decision was made to reshape and modernize the French PPP legal framework as there were around 30 different texts governing PPPs. The PPP Code was finally decreed at the end of 2018 through Decree No. 2018-1074, dated November 26, 2018, Decree No. 2018-1075, dated December 3, 2018 and Decree No. 2018-1225, dated December 24, 2018. The PPP Code entered into force on April 1, 2019. Since then, there have been no major changes in the legal framework of PPPs[21]. In Germany, there is no organic regulation of Public-Private Partnerships[22]. Also the simplification law on Public-Private Partnership, so-called ÖPP-Beschleunigungsgesetz, which entered into force on 7 September 2005, did not lay down specific rules for project financing and Public-Private Partnerships but merely modified the previous regulatory framework introducing a series of elements of simplification and greater flexibility, including the introduction of the institute of competitive dialogue, aimed at encouraging and promoting the realization of works according to the public-private partnership scheme. The *Projektfinanzierung*, therefore, is governed mainly by the general provisions on public procurement and related sector regulations, with regard to the urban, building and environmental aspects of the project to be carried out.

[18] PPPs,https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/266818/07_PPP_28.11.13.pdf, (last accessed 2 July 2023)

[19] Managing PFI assets and services as contracts end, Comptroller and Auditor General (5 June 2020), https://www.nao.org.uk/reports/managing-pfi-assets-and-services-as-contracts-end/(last accessed 2 July 2023)

[20] The Public – Private Parnership Law Review: United Kingdom (20 April 2023), https://thelawreviews.co.uk/title/the-public-private-partnership-law-review/united-kingdom (last accessed 2 July 2023)

[21] A general introduction to public-private partnerships in France (20 April 2023), https://www.lexology.com/library/detail.aspx?g=71d0142a-c112-4b55-8bf4-f68d0773b371#:~:text=In%20France%2C%20public%E2%80%93private%20partnerships,activity%20each%20year%20on%20average (last accessed 2 July 2023)

[22] Public Private Partnership Legal Resource Center (13 January 2022), https://ppp.worldbank.org/public-private-partnership/library/ppp-laws-concession-laws-germany (last accessed 2 July 2023)

As for the more strictly contractual profile, the German practice knows different contractual models, used according to the needs that actually need to be met. Among these the most important is the c.d. Betreibermodell or DBOT (Design, Build, Operate, Transfer) of the Anglo-Saxon model. In Spain, In Spain, PPP constitutes a type of public policy that involves cooperation between a public entity and a private partner with the aim of implementing, financing, and managing public infrastructure including facilities, services and utilities. (Law 9/2017) in force since March 2018 changed the classification of the previous Spanish public procurement law where there were three main types of PPP contracts: public works concession contracts; public service management contracts; and partnership agreements between the public and private sectors. Also, on December 30, 2020, the government approved Royal Decree-Law 36/2020 establishing urgent measures for the modernization of public administration and the implementation of the government's recovery, transformation and resilience plan. Being a decentralized state made up of 17 regions, the three institutional levels are included in the PPP[23].

In Italy the Public-Private Partnership (PPP) is commonly referred to forms of cooperation between public authorities and private entities, with the purpose of financing, constructing and managing infrastructures or providing services of public interest: the law no. 11/2016 laying down the principles underlying the new Code of Conduct, by marrying the principles provided by the latest Directives 2014/23/EU, 2014/24UE, 2014/25UE on Public Procurement, already aimed at the ambitious objective of public-private integration in order to increase the resources available and to acquire innovative solutions also from a financial point of view, with specific reference to financial project institutions and financial leasing of public and public works.

Conclusions and Recommendations

In this paper, we have analyzed some aspects of the legal regulation and operation of PPPs in Albania in a comparative perspective. This work was carried out considering the current legislation of Albania the EU legal framework and the legislations of some European countries, taking into consideration primary and secondary sources.

Firstly, let us highlight some of the factors of the development of the phenomenon in Albania in the last 20 years. The use of PPP models allows for an improvement of the effectiveness of the intervention planning phase and of the general quality of the built infrastructure and of the services provided, as well as to determine

[23] The Public-Private Partnership Law Review: Spain (20 April 2023),https://thelawreviews.co.uk/title/the-public-private-partnership-law-review/spain, (last accessed 2 July 2023)

the introduction of mechanisms that stimulate an effective competition between private parties in infrastructure construction and management costs. It also grants the provision of Infrastructure and Services accelerated through the mobilization of the private sector capital. Using PPPs we will have an improved level of public management because the government has time to focus on the management instead of concentrating on the requirements related to the operational aspect of the service insurance.

There are different models of Private Public Partnerships applied in the individual Member States and in any case regulated differently. In the case of Albania in a comparative view with the best models of the EU countries according to our analysis and to valuable data we can conclude that the Albanian legislation regarding the PPP has largely followed the EU Recommendations and Directives. The Albanian model is much similar to the European countries models. The main problem we have is not the lack of legislation, but the failure to apply and implement it properly.

According to the report of the European Commission Albania 2022 Report, the Law on Concessions and Public-Private Partnerships (PPPs) is partly in line with the EU Directive on the award of concession contracts. Also according to this report, although Albania has evolved in the field of the public procurement by updating the legislation, introducing an electronic system of complaints, developing training for public procurement, making an online data base available for informing the public in relation to PPPs, efforts should be made to stop corruption in the procurement procedures. Some of the recommendations included in this report also have to do with the monitoring the implementation of the law in relation to PPPs by increasing the use of the award criterion of the most economically advantageous tender and with increasing the efforts to approximate the legislation in the field of concessions and public-private partnerships with the EU acquis. Finally, it is also required to improve the capacity of the PPC and the Administrative Court to deal with the large number of complaints in this field. (European Commission, Brussels 12.10.2022, final, Commission Staff Working Document, Albania 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Communication on EU Enlargement policy)

Also, the IMF reported that Albania has not yet fulfilled the recommendations of 2016 of the Public Investment Management Assessment (PIMA). According to the IMF, the value of the projects continues to be drawn up outside the budget process, while these contracts were as much as 40% of GDP in 2022, presenting high levels of risk for the economy and fiscal stability. According to the IMF, the Albanian government should strengthen the role of the Ministry of Finance

in the procedures, by increasing human capacities. The IMF has also requested transparency for the contracts concluded during the pandemic period[24]

Unfortunately, the Albanian experience has shown that even though we have a special primary legislation with the regulation of PPPs, there have been a number of problems that have to do with corruption in the granting of PPPs. For this reason, it is recommended to strengthen the internal control in the procedures for awarding PPPs, from the very beginning, without waiting for criminal proceedings on the tenders, which according to statistics in recent years are the most numerous in number.

The weakness of institutions in the selection of projects, the management of contracts, may create risks in the future. Therefore, it is important to strengthen their role. Risks must be monitored throughout the process (IMF, 2021).

Finally, in order to carry out projects for the improvement of collective service, we need a state capable through its central, regional and local organizations, to emerge and identify the needs of citizens and businesses, to design such services, to entrust a competitive way for private people to build tangible and intangible infrastructure and their management, to draw up calls, to select competent persons in the appropriate functions with transparent competition procedures and not to recruit persons for important duties based on nepotism, to write and enforce rules, to verify results, to make rapid decisions and to follow these consequent actions. In order to achieve these results, incisive reforms and well-developed capacities are to be implemented, or modes to operate of public administrations which, when acquired, made operational, and increasingly applied, improve the quality of collective services.

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