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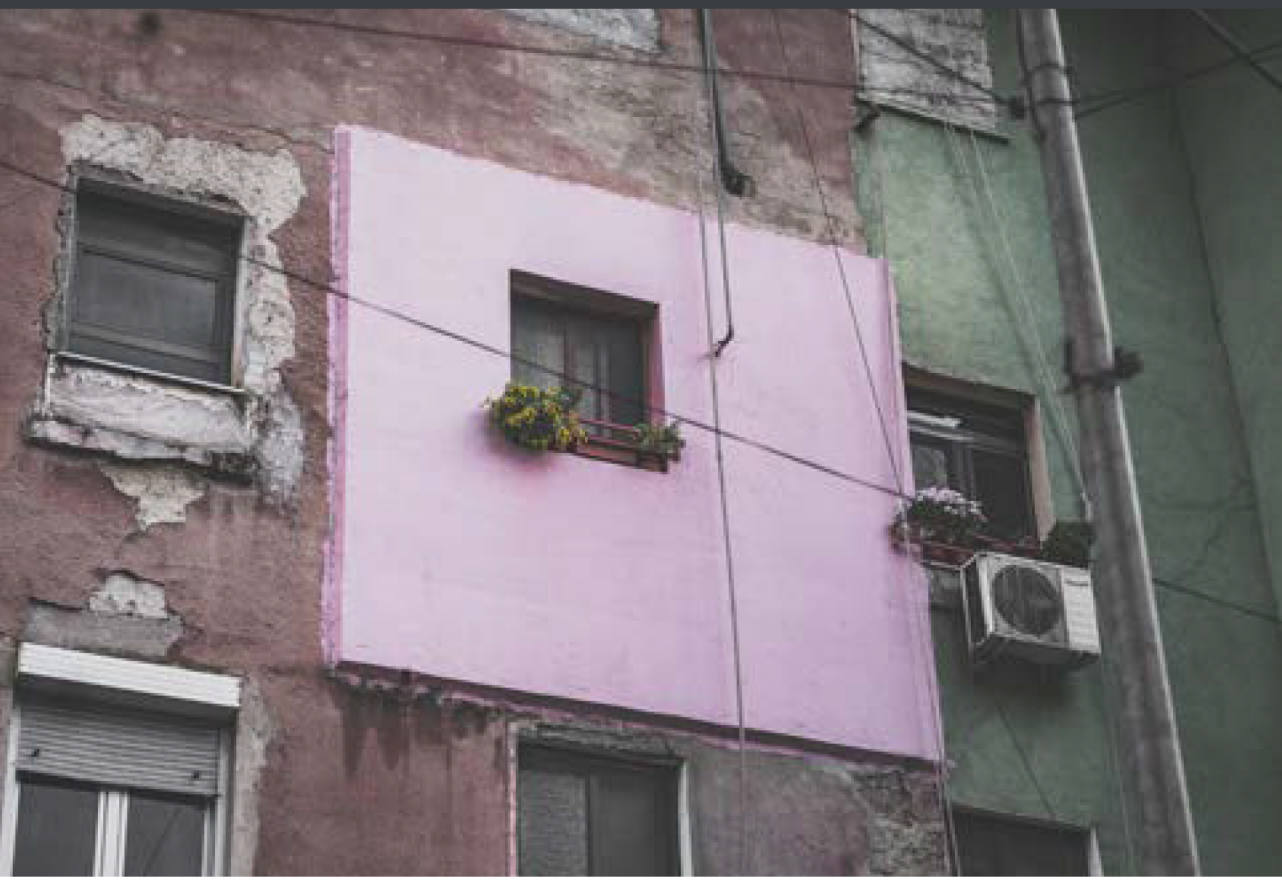

PUBLIC POLICY AND GOVERNANCE IN ALBANIA

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Content

Editorial

Public Policy and Governance in Albania

Prof. Dr. Xhezair ZAGANJORI
Editor-in-Chief

Dear readers,

After a three-year break, we are continuing the law review periodical "Jus & Justicia" of the European University of Tirana. This journal will now have a new format, only in English, – Justicia. The aim is to broaden the spectrum of our readers to also include a larger international audience.

In this number of ***"Ius & Justicia"*** we delve into the nuanced challenges and shortcomings that continue to shape Albania's path in terms of public policy and governance. After the fall of the communist regime in 1990, the country embarked on a journey toward a brighter future and has made commendable progress in its efforts to strengthen democratic institutions, enhance transparency, and improve the lives of its citizens. Nevertheless, while progress has been made, it is imperative to confront the pressing issues that continue to hinder Albania's journey towards effective governance and policy implementation. These critical issues demand scrutiny and thoughtful consideration.

While the country tries to leave behind its turbulent past, it's essential to acknowledge that the democratic process remains fragile. Elections have at times been marred by allegations of irregularities, and political polarization has hampered the effective functioning of democratic institutions. Despite efforts to combat corruption, it remains a significant challenge in Albania. Corruption seeps into various sectors, from law enforcement to public procurement, and erodes public trust. The question remains whether the government's anti-corruption measures are genuinely effective or merely cosmetic.

EU integration process has been a driving force for reforms, democracy and rule of law during the years of transition. At the same time the journey toward EU membership has been marked by delays and setbacks, raising questions about the

effectiveness of reform efforts but also the EU's commitment to the region. The Public Administration Reform program, while ambitious, faces implementation hurdles. Bureaucracy and inefficiency persist, hindering the delivery of services to citizens. Questions arise regarding the government's ability to streamline public administration effectively. The space for civil society to operate freely and hold authorities accountable appears to be shrinking, raising concerns about the protection of fundaental freedoms.

In conclusion, Albania's journey towards improved public policy and governance is fraught with challenges that demand rigorous assessment and action. The challenge lies in crafting policies that genuinely address these disparities and create opportunities for all Albanian citizens. Addressing corruption, strengthening the rule of law, and fostering political unity are paramount. Also, the protection of civil society and media freedom should be a priority.

Thus, this number of **"Jus and Justicia**" highlights the ability of the Albanian institution to navigate these turbulent waters, its capacities and commitment to overcome the challenges that threaten its progress and embracing the reforms needed to build a more transparent, accountable, and equitable society.

Changing the perspective on military service

Prof. Dr. Kristaq XHARO[1]

Dr. Blendi LAMI[2]

Abstract

Recently, there has been a significant development in the realm of regional security involving both NATO and the EU, signifying a deliberate push to enhance their capabilities in terms of military strength. This collaboration marks a pivotal juncture where the policies of the EU and NATO are converging, leading to a departure from the EU's erstwhile characterization as a soft power and its evolution into what can be aptly described as a smart power - a strategic amalgamation of both robust and diplomatic influence. This transformation is likely to set a precedent, influencing even aspirant nations to adopt a similar trajectory.

A notable manifestation of this joint effort is the bolstering of military and technical capacities, particularly evident in the augmentation of military capabilities. Within this context, an area of focus is compulsory military service, a subject that has triggered substantial deliberation in light of the ascendancy of professional armed forces.

This shift has catalyzed a vibrant discourse among advocates and detractors of this transition. The purpose of this paper is to shed light on the myriad benefits that military service can offer to individuals, communities, societies, states, and nations. The ongoing discourse regarding this issue is not confined to a specific

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region, but rather extends across the Western world. In this context, the present paper endeavors to explore and analyze these dynamics within the context of Albania, thereby adding to the broader conversation.

Key words: *mandatory military service, state structure, national power, national security, internal/external threats, social cohesion*

Introduction

Compulsory service – often used as military service - is the responsibility of citizens to their nation i.e., to the most important matters of national interest. The service, often referred to as recruitment, dates to antiquity and continues today, under different names. According to Merriam-Webster Dictionary, "conscription has existed at least since ancient Egypt's Old Kingdom (27th century B.C.), though universal conscription has been rare throughout history. Forms of conscription were used by Prussia, Switzerland, Russia, and other European powers in the 17th and 18th centuries. In the U.S., conscription was first applied during the Civil War, by both the North and the South. The modern, almost universal, system of national conscription dates back to the French Revolution in the 1790s, where it became the basis of Napoleon's largest and most powerful army. Most European nations later copied this system even in peacetime, to serve on active duty and then ready in the reserve force."

Since the beginning of the 21st century, many states have avoided conscription by relying on professional armies on a voluntary basis. The ability to rely on such a model, however, presupposes a degree of predictability regarding the demands of war and conflict, particularly in the operational field. Many states, which have still abolished conscription, reserve the power to resume conscription during wartime or times of crisis. States involved in interstate wars or rivalries are more likely to implement conscription. In a number of countries, the tradition of compulsory service is reflected, while others, either due to economic difficulties or flawed foreign models, have avoided compulsory service.

Evolution of the concept is closely related to moral and political motivation. Jean Jacques Rousseau (1772) in "The Social Contract", strongly argued for compulsory service, as he believed it was the right and privilege of every citizen to participate in the service and defense of the whole society. And according to him, leaving the service to the homeland only to the professional structures (army) was a sign of moral decline. He referred to the chronology of the Roman Empire, which according to him came to an end while the Roman Army was transformed from conscription to a professional force. Similarly, Aristotle in his famous work

'Politics' closely linked armed service from the ranks of the population to the political order of the state. Niccolò Machiavelli, author of "The Prince", was also an ardent supporter of compulsory service and saw professional armies as the cause of the failure of social unity in Italy.

At the beginning of the 20th century, William James (1906), in its classic essay "The Moral Equivalent of War", considered compulsory military or national service to strengthen the unity of a nation, starting with the youth. Some later proponents of this concept, such as Jonathan Alter and Mickey Kaus, support conscription as a way to strengthen social equality, create national consciousness, 'bridge' class divisions, and allow citizens (adults and young ones) to engage in public responsibility (Kapur, 2020). Charles Rangel (2003) called for the restoration of conscription during the Iraq War, not because he seriously expected it to be passed, but to sound the alarm that the current socio-economic situation clearly presented the picture that very few children of the upper class served in the US volunteer armed forces.

Samuel Huntington (1957), in his work "Soldier and State", makes an analysis of the evolution of the military service and the entire armed forces. Although he does not doubt for any reason that the position of the military is considered a 'pure profession', he establishes a relationship between the models of national service. Looking for a harmony between the citizen, the state and the soldier, he also recommends the way to solve the dilemmas that arise in the soldier-state-citizen triangle. It is no coincidence that Huntington's book is used today as a reference material even in the position taken regarding the types and place of compulsory service.

A return to tradition

Currently, conscription has, to a significant extent, been challenged by the professional army, there is a debate between supporters and critics of this process. Supporters argue that conscription promotes macro-level unity in several ways. First, it enables individuals to live, engage and experience important challenges together, creating the common experience of service and responsibility at the level of society or nation. This creates the context to be aware of a general understanding about what civic responsibility is, what should be done and what is required of everyone to serve the country and society. Citizens can understand and even develop an appreciation for the form and action that each should feel for their nation. Above all, researchers argue that such things can bring people together, especially when dealing with the emergence of "environments" characterized with social, cultural, religious, regional, internal or even external threats.

In addition, life in the military can teach individuals more than just saluting each other or learning how and when to use weapons. The training provided goes beyond learning technical skills. This may include individual responsibility, teamwork, initiative, diversity, stress management and collective awareness. But here many people will be able to learn life habits and self-discipline traits, but also self-defense skills. Compulsory conscription means that "no one" will be spared from facing hardship in the most extreme cases.

On the other hand, opponents of compulsory service believe that such commitment violates the free will of citizens, the rights of people to exercise this will. No individual has the final say on whether they should engage in military training and join the military if a nationwide mandatory mandate is executed. Unlike volunteer soldiers who are willing to undergo rigorous training and serve the nation, others often lack essential experience and mobility, ensuring low quality skills. Opponents believe that this could lead to a high degree of hardship for people forced under compulsory military service.

Some time ago, Sweden established the compulsory military system (Sweden brings back . . . 2017, BBC). And Norway extended the mandatory military system to women as well. Denmark has never put it into question, nor Switzerland, Austria, Greece and Turkey. The US commits selective enforcement. Kosovo strongly committed to the creation of the Armed Forces. Several other countries, which have temporarily suspended it, are considering the mandatory system as an issue for resolution. Some time ago, this topic was also considered in Albania.

Compulsory service, which is more directly related to power (military) capacities, as a component of national power and which determine national security issues, forgotten over time in Albania. The times of politicians proclaiming themself as regional champions of pacifism are gone. Furthermore, an issue as compulsory service is related to the national strategy.

Time for debate

The debate is necessary and important, although Albania is behind schedule. This is about a sensitive issue and the lack of reflection can have painful consequences. The issue is related not only to security dimensions, but also to social and national culture ones. No one denies that security in our region, at least for the near future, will continue to remain quite influential, but also fluid. In recent months, neighboring countries have demonstrated that they feel more "secure and calmer" when they increase and display their power capacities, specifically military ones. Despite the economic difficulties, in the north and south of the peninsula they do not hide their commitment to increasing the capacities of conventional power; in purchasing modern weaponry and increasing military budgets.

As they are member or partner countries in NATO, they have returned to their national capacities. None of them, in calm or tense situations, show "euphoria" in the idea that they are NATO member countries. They know about NATO Article 5 and collective defense. However, they understand better than others that NATO is an alliance that requires its own decision-making time with consensus, which is especially complicated when the issue is discussed within its members.

It should be emphasized that compulsory service is not just a military issue. It is like an axiom: in a country where there is no formal or informal institution of national unity, compulsory service is the only institution that can equally place its citizens in front of the same responsibility.

Young people from rich to extremely poor backgrounds can be in one place and one time and feel equal in front of a sublime responsibility that is the nation. Feeling equal as experienced when watching a football match of the national team. They could be challenged and sensitized with the same responsibility, which is greater than parties, beliefs, or localisms. Under this optics, compulsory service cannot be replaced by anything else in social feeling and behavior in the society. Undoubtedly, it affects more than anything the capacities of national power. It is human power and, as Kaplan (1994) says in *The Coming Anarchy*, it is more important than any kind of technology.

According to Pew Research Center, "the U.S. is one of 23 countries where the military draft is authorized but not currently implemented. An additional 60 countries – fewer than a third of the 191 for which Pew Research Center found reliable information – have some form of an active conscription program. The other 108 countries we examined have no legal provision for compulsory military service; 23 of these don't even have conventional armed forces" (Desilver, 2019). There are two types of debates: in countries that have it and in countries where it has been temporarily avoided. The debate was accompanied by referendums in Norway, Sweden, Denmark, Austria, Israel, countries that apply compulsory service. Referenda severely crushed the idea of abolishing military service. In these referenda, almost 70% of those who wanted to maintain military service were young.

Critics, most of whom are oriented by pacifist but also religious inspirations, consider compulsory service as a deviation from individual freedoms and from the principles of faith or an opportunity to promote issues of militarism. Supporters argue that conscription is more than a component of national strength and consciousness. The argument goes beyond the context of the armed forces. It is deeply related to the values, interests and individual and national character, the collective consciousness of the population, but also the responsibility of the elites. In almost all the Nordic countries it has been accepted at the level of national pride. The referendum that took place in Finland in 2013 to abolish compulsory service

failed overwhelmingly. In Sweden, over 70% of young people spoke against ending compulsory service. Such referenda also failed in Switzerland and Austria. Even in Germany there is a very sensitizing debate about imposing the obligation.

NATO or EU member countries apply models that are entirely defined in national references. There is no standard NATO or EU requirement that defines the service model. Denmark, Norway, Greece, Turkey and other NATO members implement the compulsory service model. Other European countries (non-NATO members) such as Austria, Finland, Sweden, Switzerland, etc., implement compulsory service. However, mandatory service is not related only to the concept of combat forces, but also to types of community service.

Does conscription foster nationalism? No. It promotes the highest national values. - Although it is the only environment where the activity starts with the solemn oath and the national anthem, it does not promote nationalism, but vital values. Compulsory military service educates and promotes national values in many ways. First, it is one of the few, if not the only, institution that brings national unity closer to the nation's vital bases and interests. Young people are enabled to understand and develop concepts about the nation, culture and national interests. Nowadays, no other institution develops this process better. Compulsory military service enables people to feel together, especially when faced with identity challenges or threats, with cultural or religious, political or ideological divisions, from any direction that can act. It enables young people to learn and train together, enabling them to share common experiences. Further, it helps the general understanding of life, difficulty and responsibility, which is almost necessary for any kind of subsequent engagement. Compulsory military service does not promote nationalism, but it makes citizens aware of the real concept of the nation and the responsibility of each citizen one for his/her country.

Compulsory service helps bring people together in one country. The reality of citizenship is that it is not an individual endeavor. It is a team sport. The definition of patriotism is the unity of private individuals to create a better public life for the country. When you are a citizen, you feel specific demands to ensure the rights that everyone enjoys, creating the feeling that this is only achieved in social relationships. As emphasized by Huntington in 'Soldier and State', the Founding Fathers of the United States defined virtue through the symbol of the individual who was willing to put aside individual interests in pursuit of a common good.

Most countries already require people to perform acts in the public interest. Although the idea of recruitment is one that for some may be 'scary' or create dilemmas of personal ethics and morality, this can be resolved by confronting the many actions that are clearly in the public interest. Perhaps many of those actions require a 'sacrifice' on the part of the individual involved to ensure the common good for all. If it is placed in relation to such examples of 'sacrifice' as

the payment of taxes or even the activity of public schools in the community, even less compulsory military (national) service is just another of those 'sacrifices'. By setting aside personal commitment for a specific period, usually up to a year, it is possible to gain various other life experiences and professional knowledge that can help you overcome many challenges and be successful throughout your life.

It creates a sense of public identity. When everyone falls into the category of service, then there is a sense of common identity that the state is able and able to create across the country. Citizens have a sense of national purpose that helps identify them all. One of the advantages of conscription in a democracy is that it has more variety, but also more options, than any other state structure. Conscription creates common ground for everyone, so even in the fiercest debate, there is always a common ground that can eventually lead to a moment of compromise.

Does military service work in this model of society? - Military service provides invaluable experiences for each individual. It is a significant change from previous experiences for young people; a change in perspective that can help them see the future on a different level than the spontaneous one, inspire them to work harder in the future, and foster a greater sense of not only national interest, but also responsibility citizen. For young people (but not only) compulsory service turns into a benefit that produces important and equally valuable traits of the individual's character. And indeed, during compulsory service, young people are taught not only respect for authority, self-discipline, behaving and working in a group, but also other skills, dealing with problems and difficulties, management or leadership skills, these qualities for which compulsory service is unique.

On the contrary, their absence, even as it is proven day by day, is turning into a viral phenomenon. Armstrong (2016) writes for News Max that mandatory military service cures many of the ills of today's society - "You want to see your son, your daughter, your nephew and niece, the neighbor's kids, teenagers to be serious, persistent, respectful, disciplined, honorable and prepared for life? It's not an ad for a magic pill - it's just an argument for conscription. Instead, you find the sight you don't want to see, the young people without objectives, without initiative, without self-confidence, up to young people involved in crime, abuse, prostitution since adolescence..." (Ibid). Let's choose.

Conscription adds another layer of responsibility to the state. When conscription exists, then more members of society are involved and directly interested in the day-to-day affairs of their state, who stay alert to current events so they know how safe their loved ones will be. theirs in any given situation. Of course, there will also be a significant desire to understand more about the threats their country is trying to challenge, providing a factor that provides more support. At the same time, this level of interaction makes elected statesmen accountable for their decisions.

Military service can provide people with useful professional skills. Serving in the armed forces means more than knowing how to pick up a gun and how to use it. Military life can teach people specific technical skills that they can use throughout their lives. Many will start a career after their time in the service because of what they learned during their time in training. Responsibility, leadership and teamwork are just a few of the traits that are instilled in each person as they learn how to discipline, display or defend themselves and their country.

There are opportunities to gain leadership skills at your disposal. Even if you don't think military service is the best path to take in your life, the time you spend in the service can help enrich your resume with skills to pursue a career you love. You will have proven and acquired skills and experiences that will allow you to get much needed solution or management experience. Some human individuals may even have completed their degree after being recruited because of the talents they show their superiors. If given a choice between hiring someone straight out of college or an individual with 2-3 years of practical experience, most hiring managers choose the latter option.

Editorialist Kenneth Andreson, when Sweden stopped the compulsory service in 2010, wrote in National Dilemma that "(...) there is a strong basis to fear that with the termination of the military service, another level of disappearance of the public consciousness will be added to the existing one (...) the connection between obligations and rights is always becoming less and less clear." Military service fosters a sense of civic conscience, a phenomenon so severely crushed by political, cultural, religious, origin or homeland divisions.

Our society is more and more frighteningly demonstrating social divisions and differences. No institutional structure faces the phenomenon. Compulsory service is an environment where differences are allowed to melt and unify. Ari Bussel says in New Blaze, that "The Armed Forces are a domain of all, of those who come from rich and poor homes, from different religious groups and practice in religious beliefs, but also secular, with colors of different skin, smart, or even slow, with disabilities, but also healthy, brave and hesitant. The service encourages everyone within a process of the same standard, treating them equally, placed under the same requirements and entrusted with the same great responsibilities, regardless of faith, affiliation, social status or labels of other affiliations".

In lieu of conclusion

There is an ongoing debate about conscription as a responsibility that citizens should feel for their country. In this era, it is very important for the young generation to be involved in such services as it develops a sense of identity and patriotism within

them and makes them understand that every citizen also has obligations towards the country. At the same time, military service prepares and helps young people to develop necessary qualities within themselves, which they cannot get anywhere else. This makes young men and women more serious about living with a sense of responsibility that is born and develops together with them. In a world where crime and violence are common, doing military service will enable them to be responsible and mentally protected against any perceived threat. This would not only create security for them, but also make the whole society safer.

Furthermore, military service can promote national unity in many ways: enabling young people to learn and train together, creating the shared experience of serving in the military. Military service and community service instill feelings of patriotism and love of country in the minds of young people and contribute to their education; therefore, all young people should feel the responsibility of undergoing a period of military or community service.

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Exploring the factors that hinder the penetration of new political alternatives in the party system in Albania

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Abstract

This study explores the entry of new and small parties into the party system in Albania, focusing on the period from 1990 to 2017. It is a comprehensive exploration of the Albanian political landscape from 1991 to 2017, focusing on the role of electoral systems and how they influence party politics. The study underscores the necessity for strong, stable political parties in a thriving democracy and investigates how the electoral system either facilitates or hinders the representation of small and new parties. It investigates the influence of institutional factors, as well as the challenges and strategies related to political survival that these parties face. The analysis reveals how the two-round majority system typically fosters a two-party system, whereas a proportional system can lead to a more fragmented party landscape, often necessitating coalitions for effective governance. The impact of these dynamics was observed during several key periods in Albanian political history, noting the consequences of changes in the electoral system on the party system. The paper also highlights how major parties often manipulate the electoral system, through practices such as gerrymandering, to their own advantage, leading to potential distortions in representation. Furthermore,

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it presents the challenges for new and small parties, emphasizing the importance of financial support and media coverage for their survival and competitive performance.

Key words: *political party, electoral system, new alternatives, gerrymandering, effective number of parties*

Introduction

Between 1991 and 2017, electoral processes in Albania have not merely been periodic exercises to facilitate governance, but have instead taken on the guise of do-or-die battles between the two largest political factions. These confrontations are characterized by the use of all available resources, tactics, and maneuvers. After these combative episodes, the chasm between victors and vanquished remains considerable. In this period, elections were often viewed as opportunities to grasp or maintain power at any cost, rather than as tools to address societal issues. On the contrary, they often exacerbated problems, increasing the political and economic burden on the nation.

A deeper examination of Albanian electoral processes reveals that the fundamental democratic principle - the free judgment of citizens - has been supplanted by the ability of ambitious politicians to craft tactical electoral strategies. These politicians can secure electoral advantages and parliamentary mandates even before the ballots are cast. The continued polarization between the same factions makes the entry of new alternatives increasingly challenging.

Albania is one of the few countries where representative parties that capture parliamentary mandates seldom change. The Albanian Parliament remains predominantly occupied by two historical parties - the Democratic Party and the Socialist Party, which are also the largest parties in the country. This dominance and the ensuing struggle to introduce new alternatives constitute the core issue we seek to explore in this paper.

This study aims to investigate the factors obstructing the emergence of new political alternatives in the Albanian political system. The premise is that from 1991 to 2013, the Albanian party system has demonstrated stability, being primarily dominated by the Socialist Party and the Democratic Party. These parties have managed to attract a significant portion of the electorate. Smaller parties have had occasional representation, yet they have lacked the ability to maintain a consistent presence from one term to another, nor have they been successful in articulating ideas distinct from those of the two major parties.

The third significant entity in the Albanian political system is the Socialist Movement for Integration. While it has maintained a steady presence, its

positioning as a center-left party makes its discourse indistinguishable from that of other left-wing entities in the Albanian political spectrum, thereby, not qualifying it as a new political alternative.

In post-communist countries, including Albania, the first decade of transitioning to a new political regime did not prioritize the creation of new alternatives. The focus was primarily on establishing a multi-party political system with strong political parties geared towards creating and controlling governance, with robust popular support and clear political profiles (Bútora, 2013). However, unlike Albania, other post-communist countries managed to create new political alternatives that restructured the party system after the initial phase.

The question is, why didn't Albania manage to foster new political alternatives? What are the factors that obstructed this development? This study hypothesizes that institutional factors, such as the electoral system, as well as structural factors that blur ideological clarity amongst the Albanian electorate and hinder political parties from developing a clear political identity, are responsible.

Lami and Kocani (2015), in their study on the identity of Albanian political parties, postulated that due to factors like communist heritage, lack of social group structure in urban and rural areas, political culture and elites, international structures imposing a political agenda, and media, both left and right-wing political parties in Albania exhibit elements of the other's ideological stance in their programs and political behavior.

Other scholars argue that Albanian political parties operate on a clientelistic basis, using their power to fill public administration with their supporters and activists (Barbullshi, 2014; Elbasani, 2008; Xhaferaj, 2016; Xhaferaj, 2018). This strategy of capturing the electorate effectively prevents new political parties from making headway, as their lack of power does not enable them to offer incentives to potential voters.

To validate this hypothesis, this paper will analyze the relationship between the electoral system and party system, the fragmentation index, and Albanian legislation, assessing their impacts on the party system. The study will also scrutinize the discourse of the political parties.

Theoretical Framework and Analytical Model

To answer the research question, it's necessary to clarify what the new political alternatives are, how the electoral and party system affects them, and what factors hinder their penetration in Albania. Literature on new alternatives identifies factors such as the electoral system (Duverger, 1954; Lijphart, 1996, Norris 2004) and others like the ideological absence of political parties in our country (Lami

and Kocani, 2013). However, before analyzing the role of the electoral system in the party system, let's understand what political parties are and what functions they serve.

Literature review on the role and function of political parties

Democratic theorists have long debated the role and function of political parties. Most liberal theorists view political parties positively, considering them essential for the functioning of representative democracy. Societies are dysfunctional without parties. These organizations can fulfill a wide variety of functions: representing interests, formulating policies, providing platforms, organizing legislatures, coordinating government activities, developing election campaigns, mobilizing and channeling supporters, structuring electoral choices, linking leaders with activists, and selecting candidates for elected positions. Bartolini and Mair suggest that this long list of functions can be reduced to five main categories: integrating and mobilizing citizens; articulating and aggregating interests; formulating public order; recruiting political leaders; and organizing parliament and government (in Norris, 2004, p.3). However, there are also other approaches that view party organizations as 'greedy interests' capable of distorting or usurping the popular will of the majority. Anti-party sentiment continues to be reflected in public opinion, and confidence in parties remains very low in many countries (Norris, 2004, p.3).

Parties are not the only mechanism through which citizens can mobilize. In states where parties are banned, dissident groups, social movements, and protests provide alternative channels for organizing opposition movements. An independent media can also act as a watchdog and critique government decisions. Referendums are another type of initiative that allows people to express their direct preferences on specific policy issues.

The distinction between interest groups, new social movements, and political parties remains unclear, as many functions are shared. The main difference, however, is that only political parties have the ability to negotiate and reach a compromise among different groups, offer the electorate a program with alternative proposals for fulfilling their demands, recruit candidates for elected positions, and, if elected, pass legislation and oversee the implementation of public policies.

Features of the party system in post-communist countries

The transition from a communist to a democratic system is closely linked to the transformation from a one-party system to a multi-party one, and with this transformation comes the birth of many political parties. To understand the party system in Albania, it's important to look at the features of the party system in post-communist countries. When voters choose new parties, they consider one of

three factors: a) sympathy for the party candidates' personalities; b) expectation of personal and selective advantages that come as a result of the party's victory; or c) production of indirect advantages that come in the form of collective goods and are realized as a result of the party's victory. These considerations give life to three types of parties: a) charismatic; b) clientelistic; and c) programmatic, although in reality these factors can interplay with each other and yield a party typology that displays features of all three types. Given that the competition of programmatic parties is costly and hard to achieve, Kitschelt (1995) concludes that:

- in post-communist countries, political parties will not rely on programs but will be clientelistic and/or charismatic;
- and consequently, democracy in these countries will remain unconsolidated for a long time (p.450-1).

Beyond the broader analyses of partisan systems, specific studies have focused on the heritage parties stemming from communist regimes. Scholars have scrutinized the elements that contributed to the survival and subsequent success of these successor communist parties. According to Grzymala-Busse (2002), the triumph of these parties can be attributed to their ability to reinvent themselves. Intriguingly, the key to their successful metamorphosis lies in their previously tarnished reputations: practices that were once deemed inappropriate during their communist reign paradoxically served as their lifelines during and after the democratic transition.

These parties capitalized on their past in two significant ways: firstly, by rectifying the most disgraceful aspects of their history and secondly, by empowering their elites with resources that transformed them into competitive players in democratic governance. The political resources they wielded were directly connected to their communist past; these assets shaped their responses to the challenges and intricacies of democracy and political transition. Moreover, these resources helped the political elites to comprehend the need for party transformation, aiding in policy implementation and negotiation with the opposition. This ultimately resulted in the creation of responsive programs, opening new competitive dimensions, and facilitating effective election campaigns.

The skills learned from their past experiences determined the capacity of these parties to strategize their organizational transformations. These skills were paramount in facilitating the public resurgence of the discredited parties forced to retreat from power. Centralization and a definitive break from the past enabled such parties to publicly manifest their evolution, strategically enhance their flexibility, and progressively adapt their electoral appeals and behavior.

Even though communist successor parties have exerted influence on party competition, other political actors gained experience and honed their skills in parliamentary and electoral maneuveringand influenced the formation of the party system in Albania. Nevertheless, being the most prominent actors during the authoritarian era and continuing to engage in democratic politics, these parties were well-positioned to considerably shape the early phases of party competition, both through formal institutions and informal practices (Grzymala-Busse, 2002).

Within this context, Albania, akin to other post-communist nations, has grappled with similar challenges and the absence of programmatic parties. Notably, its Socialist Party has not only managed to survive but also emerged as a key actor in structuring the party system.

Perspectives on New Political Alternatives

'Research on 'political alternatives' posits their purpose is to perform better than traditional actors, transform the unsatisfying status quo, and occasionally replace a stagnant political system with a fresh one (Butora, 2013, p.12).The sociological dimensions of emergent parties, their performance, and the demographic of their followers are explored. It scrutinizes their ideological identities, actions, strategies, candidate selection, campaign dynamics, outcomes, and political messaging. Such parties concentrate on engaging the youth, leveraging their political influence, and urging the public to reflect on their distinctive and shared characteristics, assessing their capacity to offer a genuine alternative to the established party system (Butora, 2013, p.12).

Populism, largely employed by "challenger parties," is also utilized by key politicians across both government and opposition to counter populist adversaries, leading to its prevalence in many national policies and party structures (Butora, 2013, p.13).The surge of populism is indirectly attributed to a deficit of informed public discourse on key social, political, and economic issues. This is exemplified in Greece and Italy's economic crises, where parties like SYRIZA and the "Five Star Movement" emerged as new alternatives, winning elections and leading their countries. Similarly, Austria witnessed the emergence of Frank Stronach, promising a transformative "revolution" (Butora, 2013, p.31-34). Positive facets include a genuine aspiration for functional, direct democracy, and the application of deliberative democratic procedures. This encourages the electorate to acknowledge the necessity for political change, often driven by the pressure from new parties stemming from civil society initiatives (Butora, 2013, p.42).

The term "new political alternative" refers to parties interested in novel political issues such as personal freedom, social equality, and life quality. These parties, though narrowly oriented, strive to infiltrate the party system dominated by traditional parties (Spoon, 2011, p. 2). Typically, such alternatives are represented

by small parties catering to a specific populace segment, differing from catch-all parties striving for mass appeal (Kirscheimer, 1966). To be considered a small party, it must focus on limited issues or hold few parliamentary seats (Spoon, 2011, p. 5).

The success of small parties in Western Europe varies. Various factors contribute to this, including systemic factors like electoral rules and institutions, partisan factors such as the interaction between large and small parties, and individual factors, namely voter decisions (Spoon, 2011, p. 7). This study primarily focuses on systemic and partisan factors.

Institutional Factors Hindering the Entry of New Parties into the System

Referring to the literature, there are three main factors in the process of gaining parliamentary seats:

a) The Nomination Phase: Nomination involves legal rules determining party registration and the process through which parties nominate candidates on the ballot.
b) The Election Campaign Phase:This phase involves electoral regulations that determine how much access a party has to electoral resources, including distribution of time for free advertisements in the media, as well as the distribution of public funds or state subsidies for parties.
c) The Election Phase: This phase revolves around the minimum required votes for a party to secure a seat in parliament (Norris, 2004).

Researchers agree that electoral systems have a significant impact on the party system, and the penetration of new alternatives into politics. Referring to Duverger's analysis of the relationship between the electoral system and the party system. Duverger's first law is: (1) "The majority system with one round produces a two-party system." The second law is: (2) "The two-round system and proportional representation produce multi-partyism".

Harmel and Robertson conclude that proportional electoral systems offer more opportunities for the entry of new parties than other systems. Similarly, Harmel (1985: 405) emphasizes that, for some authors, new parties are formed "to wage war on what is perceived to be 'new issues'". While Harmel and Robertson (2001) suggest that rules that facilitate or restrict participation may have an impact on the entry of parties into the "electoral clash". It is shown that new parties are more frequent when institutional structures are soft.

However, even within these systems, there are ways to prevent the penetration of new parties. These obstacles have to do with: a) geographic distribution; b) specific aspects of electoral systems beyond the basic formula, especially the use of voting thresholds, the size of the district in proportional systems, and also; c)

major social divides within a nation (Norris, 2004, p.12).For example, according to (Cox, 1997), the structure of electoral systems plays a significant role in the number of seats produced in an electoral district in the regional proportional system: the higher the level of voter support, the greater the chance of securing a seat. As a result, the smaller the size of the electoral zone (the fewer candidates to come from this area), the higher the formal threshold to be crossed and therefore the fewer parties manage to get a deputy in that area. Social divides are also important because, the greater the number of different ethnic, religious, or language groups in a neighborhood, the greater the chances of increasing party dis-coordination.

In addition to the specifics mentioned above, the frequent and rapid change of the electoral system plays a decisive role in the number of effective parties in a party system (Lago and Martinez, 2009, p.4).

Third parties within a predominantly two-party system, or minor parties in systems with multiple parties, can gain traction from the widespread sentiment against mainstream political parties. Particularly, when such parties employ anti-establishment rhetoric, they can mobilize those who are disillusioned with conventional politics and propose a novel approach to governance. They essentially function as conduits, redirecting political discontent among potential voters towards an alternative form of representation within the prevailing party structure (Lago, Martinez, 2009, p.7).

Legislation has a profound impact on a nation's political landscape. Scholars, however, often question the effectiveness of using legislation to shape party politics, particularly in developing nations with fluctuating political traditions. Although such laws can aid in organizing parties in well-established democracies, they can unintentionally hinder party competition in new democracies where authorities can easily access opposition lists. Even in mature democracies, party legislation can be contentious and yield unintended consequences. To encourage the development and competitiveness of political parties, countries implement policies that may prohibit, permit, promote, protect, or prescribe parties and party activities. These policies, used as ideal models, shape the drafting of party legislation. Generally, countries either eliminate party operations, allow them to function freely, actively support them, favor certain ones, or try to mold them to an ideal model (Janda, 2005, p.7-8).

Access to media is vital and significantly influences the ability of new parties to penetrate a given party system. Media involvement pertains to the opportunities for parties and individual candidates to disseminate their campaign messages. Costs can be offset by public funds, soliciting, or promoting the provision of complimentary time and space from media organizations. Policies offering free media are closely tied to the portrayal of various candidates' campaigns and their engagement in programs accessible to a broad audience, which is a crucial factor in persuading the electorate about the best alternative to choose (Johnston, 2005,p.17).

The establishment of enduring new parties demands a significant number of voters to modify their behavior in a unified manner. This process is expensive due to the need to negotiate and publicize a minimum threshold. After a party system is established in the founding elections, new political entities and previous non-viable parties will decide on re-entry into competition based on their chances of winning a seat. This decision is largely influenced by the intensity of the ideological contest between political parties in their propositions to the electorate.

Methodology and Theoretical Framework

This paper focuses on analyzing the factors that have hindered the penetration of new alternatives in the Albanian party system. The work begins with the premise that, even after 25 years of political pluralism, the same parties continue to dominate the Albanian political scene. Despite the occasional emergence of political movements seeking change, these have not been sustainable.

The central question this work aims to answer is: What factors hinder the penetration of new political alternatives in Albania?

The work employs both qualitative and quantitative methodologies. Primary sources include leaders' speeches, election results, and legislation. Secondary sources revolve around the literature written about political parties. Through this work, we aim to identify the factors that have prevented the penetration of new alternatives, focusing on two perspectives:

- ***The institutional approach*** within the ***structural – functionalist approach.*** The structural-functionalist perspective posits that the ambiguity in political ideology and an insufficient articulation of post-materialist issues contribute to the challenges in presenting new alternatives within the Albanian political system. The crisis in ideology has indeed impacted Albanian political parties. In fact, the issue of representation in Albania can be traced back to the inability of the two primary parties to establish a solid ideological identity for themselves and the voters they aim to represent. Within this framework, we will explore the role of the institutions in the party system in Albania. Institutions like electoral systems could block the entry of new alternatives. The level of institutionalization of the party system (Mainwaring and Torcal, 2006): the higher the institutionalization level, the lower the probability of a change in the number of stable parties. As a result, in a well-defined party system, we have fewer chances to observe stable new parties. In other words, once parties have developed strong loyalties with politicians or their ideological labels, changing voting habits becomes challenging, and the chances for new parties to be votable are reduced.

Political parties, in their inability to construct distinct social and political identities such as urban or rural, liberal or conservative, cosmopolitan or nationalist, etc., primarily stimulate voter engagement by aligning with needs for reform and Euro-Atlantic integration processes, irrespective of their ideological implications. Interestingly, these concepts, which fall under the ideology umbrella, remain unstable among Albanian political parties. The underlying causes of this scenario are linked to the constantly shifting socio-economic circumstances within Albanian society (Lami, 2013). As per Lami and Kocani (2013), the ideological uncertainty of Albanian political parties can be attributed to five primary factors: 1) The legacy of Communism; 2) The lack of structured social groups in rural and urban areas; 3) The political culture and political elite; 4) International structures dictating the agenda; and finally 5) The influence of the media.

According to Kitschelt (1995), in nations like Albania, where the former elites led the transition and secured key roles across all sectors, primary concerns revolved around law and order, and de-communization. Both successor communist parties and anti-communist factions advocate varying facets of an authoritarian agenda. Post-communist elites present themselves as agents of stability who can combat crime and uphold security, casting their rivals as instigators of chaos. Anti-communists, on the other hand, push for rigorous de-communization, advocating for the exclusion of a large group from equal participation in political and economic spheres. As a result, party system divisions are not on ideological lines and programmatic differences. Political competition remained personalized due to the lack of programmatic political structuring, hindering the emergence and positioning of new alternatives within the system. In this context, to answer the question, the paper follows these lines:

- Analysis of the party system to see what the main political parties of this system are. To analyze the party system, the Laakso and Taagepera (1979) formula is used.
- Analysis of the electoral system from 1991-2017 to see the influence of the electoral system (if this is the case) of the electoral system on political parties.

The Evolution of Albania's Party System

Tracing the Origins of Post-Communist Political Parties in Albania

Pluralism in Albania took root in 1991, following the collapse of communism. Since then, Albania has held parliamentary elections in 1991, 1992, 1996, 1997, 2001, 2005, 2009, 2013 and 2017. In the 1991 elections, the Socialist Party won the

majority with 175 seats, followed by the newly - formed Democratic Party with 75 seats. The following table shows the elections' results from 1991 till 2017:

TABELA 1: Partitë parlamentare dhe shpërndarja e vendeve në parlament në periudhën 1991-2017.[3]

Political Party	1991	1992	1996	1997	2001	2005	2009	2013	2017
Socialist Party (former Communist Party)	169	38	10	101	73	42	65	66	74
Democratic Party	75	92	122	24	32	56	68	49	43
Republican Party		1	3	1	5	11	1	3	
Legality Party				2	4				
National Front			2	3	3				
Liberal Unity				1	2	1			
Social Democratic Party		7		9	4	7			1
Unity for Human Rights	5	2	3	4	3	2	1	1	
Demo Christian Party				1		2			
Democratic Party				2					
Agrarian Environmentalist Party				1	3	4			
Party of National Unity				1					
Democratic Unity				1					
The United Right of Albania				1					
Committee of Veterans	1								
New Democratic Party					6	4			
Democratic Alliance					3	3			
Socialist Movement for Integration						5	4	16	19
Party for Justice, Integration and Unity									3
Christian Democratic Party								1	
Social Democracy						2			

Party System Fragmentation Index

Albania's party system exhibits a long-standing political stability. This stability is primarily manifested through the ongoing political contest between two key political parties in the country's political sphere. The first entity draws upon historical ties, such as the Socialist Party, which evolved from the country's communist past. The second entity, the Democratic Party, emerged in 1991 as a powerful and near-hegemonic force, arising from the ranks of opposition, primarily due to its anti-communist stance (Këlliçi, 2011, p.11).

[3] The table is based on the Reports of the Central Election Commission for 2001-2017, OSCE reports for 1997, Afrim Krasniqi book "History of Albanian Political Parties" for 1991, 1992, 1996.

Following Sartori's categorization, Albania's party system takes the form of moderate multipartism, characterized by two coalitions, each dominated by a major party (Këlliçi, 2011, pp 9-10). Up until 2001, however, the party system in Albania displayed more characteristics of a bipartite rather than a moderate multipartite structure. The electoral systems implemented since 1991 (Leëis 2001, Biberaj, 2011) have seen the establishment of a de facto two-party system. This system is shaped not just by the electoral formula allowing for a second round to achieve an absolute majority, but also by the inherent conflict that arose during the transition from one political regime to another. Interestingly, a similar two-party configuration was observed in the initial elections of many Eastern countries that shared political circumstances akin to those of Albania (Këlliçi, 2011, p.10).

The era from 1992 to 1997 marked a transition towards stabilization for Albania's party system. Several factors were considered in this assessment, including the duration of the party system. Between 1992 and 2009, the country was governed by two coalitions, with minimal essential shifts in the influence of different political actors. The stability of transitions between governing coalitions is another crucial factor to consider (Këlliçi, 2011, p.13).

According to the fragmentation index or the Effective Number of Parliamentary Parties (ENPP) by Laakso and Taagepera, the ENPP is calculated using the formula: $N= 1/\Sigma Si2$, where 's' signifies the proportion of parliamentary seats held by party 'i'. For Albania, this translates into:

TABLE 2: Party System Fragmentation Index for Albania (1991-2017)

Viti	NEPP	Electoral System	Party System
1991	1.82	Majoritarian System	Two party system
1992	1.96	Mix electoral system	Two party system
1996	1.31	Mix electoral system	Two party system
1997	2.12	Mix Electoral System - Paralel	Two party system
2001	2.65	Mix Electoral System	Two party and a half
2005	3.64	Mix Electoral System	Multi- party system with a dominant party
2009	2.21	Closed Regional Proportional	Two party system
2013	2.78	Closed Regional Proportional	Two party and a half
2017	2.55	Closed Regional proportional	Two party and a half

This index primarily provides a quantitative measure and does not necessarily indicate the actual influence of these parties. It doesn't tell us how significantly the larger parties can dictate the formation of coalition governments or vice versa. Dualism in the party system features three distinct characteristics: (1) over time, major parties develop such a significant gap with other parties that (2) they

attain an absolute majority, and (3) they are capable of forming a government independently, without needing coalitions (Sartori, 2003, p.57).

Considering this, we can deduce that Albania experienced party dualism between 1991 and 2001, during which major parties could form governments without coalition support. This trend is also mirrored in the fragmentation index. To glean more qualitative information about the party system's dynamics and to determine if the electoral system has an impact on it, we have constructed a table that combines the ENPP, the applied system type, and the electoral system type as classified by Blondel.

This table clearly shows that the electoral system is closely linked to the party system, influencing it. The mathematical formulas of electoral systems greatly affect the increase or decrease in the fragmentation of the party system. We distinguish that in the years when we have a change in the electoral system, we also have the greatest changes in the fragmentation of the party system, while during the years when we have not had a change in the electoral system, we do not have major changes in the party system. However, it is difficult to draw a final conclusion about this because it can be seen that in Albania, the electoral system has changed many times, to the point that it is difficult to distinguish a clear pattern. Precisely for this reason, we will consider the approach of the major parties towards the smaller parties: how they have used electoral thresholds, media, state funding, and other strategies to prevent the penetration of small parties into parliament.

Party Approach - Legislation and Manipulation of the Electoral System

Legislation on the financing of political parties in Albania and Access to Media

The term "legislation for parties" refers to the entirety of the state legislation regarding what parties are allowed or not allowed to do - what is legal and illegal in party politics: this generally includes legislation that defines what constitutes a political party, the form of activities that parties can develop, and what forms of party organization and party behavior are regular (Janda, 2005, p. 3).

In 1992, there was a change in the electoral law. The new electoral law stated that the People's Assembly would consist of no less than 140 deputies, of which 100 were directly elected based on a single list for each party and 40 from proportional representation. In each area, the candidate who received an absolute majority of votes in the first round was declared the winner. If no candidate received more than 50% of the votes, a second round of voting would be held between the two candidates who received the most votes in the first round.

From these elections, we also have the formation of new parties such as the Republican Party and the Social Democratic Party, parties which are still present in our country's political life. In the years 1996,1997 and 2005, it is noted that during 1997 there was a significant increase in small parties achieving representation in parliament, which many researchers attribute to the unrest that our country was going through at that time.

For the 2005 parliamentary elections, the Electoral Code would change again. Proposals made by a parliamentary commission for amending the Code consisted of voting being conducted in one round, counting votes in a centralized manner, a new division of electoral zones, and changes to the procedures for drawing up electoral lists.

This electoral year was accompanied by a "trick" from the parties called the Dushku phenomenon, where in majoritarian part of the electoral system, the vote was cast for the deputies of DP or SP, while in the proportional part the vote was cast for the candidates of the smaller parties. In this year, the small parties had their best representation in the parliament.

Under the pretext of eliminating the Dushku phenomenon, the Democratic and Socialist Party, took the initiative to change the electoral code in 2008. The Albanian electoral system changed from a mixed system to a regional proportional system (140 seats for proportional representation chosen from party lists in the regions corresponding to the existing administrative divisions). Smaller parties opposed this change, arguing that it could effectively exclude them from Parliament.

And with this change in the electoral code, we have the 2009, 2013 and 2017elections, where in 2009 we see that there is a significant increase in the number of small parties participating in elections. Looking at changes in Albanian legislation for political parties during the years 1991-2016, which are presented in the table below, we notice that the changes made are not always conducive to easing the inclusion of new alternatives.

Apart from changes in the electoral code regarding electoral systems, there are other changes related to the difficulties of penetration such as: in 2011 the legislation makes it difficult to create a new party because it requires at least 3,000 citizen signatures to register a political party (article 10) versus 300 signatures required in 1991 (article 10).

According to the OSCE's 2013 report: "Political parties registered according to the Law on Political Parties, as well as independent candidates, could register as electoral subjects. Lists of candidates from non-parliamentary political parties competing individually (outside of coalitions), or in coalitions that have fewer seats in the outgoing parliament than the number of parties in the coalition, had to be supported by the signatures of respectively 5,000 or 7,000 registered voters, collected nationwide. Independent candidates needed the signatures of at least

one percent of voters (but no more than 3,000 voters) registered in the respective area. After being given the opportunity to make corrections, the CEC approved all candidate lists, which included a total of 7,149 candidates, including 2,753 women." From this paragraph, we clearly understand the difficulties that new alternatives face from Albanian legislation from the first step of collecting signatures for registration.

TABLE 3: Summary of Albanian legislation for political parties

Year	Articles
1991	Article 10: The request for the formation of a political party must be signed by at least 300 people. Article 17: Political parties are legal entities. They have assets to carry out their activities. Political parties have press, their propaganda tools, and the relevant implementing institutions. Article 18: The financial and material sources of political parties consist of: 1. membership fees; 2. any property gained in a legal way; 3. income from economic and socio-cultural activity; 4. financial aid in the amount determined in the state budget, approved by law by the People's Assembly. Article 20: For newly formed political parties, the measure of initial state financial and material assistance is determined by the Council of Ministers based on the number of members and territorial expansion of the parties. Financial aids are no more than 2 percent of the annual budget allocated for financing parties Article 22: For each national or local electoral campaign, special financial aid is provided from the state budget, according to the criteria set out in electoral laws.
1992	Article 6: The People's Assembly consists of no less than 140 deputies, of which 100 are directly elected in single-member zones, while additional compensatory mandates are given to candidates who are on the lists of subjects at the national level, according to the proportion of votes won in the first round.
1997	Article 3: Article 6 is amended as follows: "The People's Assembly consists of 155 deputies, of which 115 are directly elected in single-member zones, while the other 40 additional mandates are given to candidates who are on the lists of subjects at the national level, based on the votes won during the voting in the first round, according to the rule set in Article 11."
2011	Article 2: In Article 10, the second paragraph is changed as follows: "The political party is registered upon a request signed by no less than 3,000 founding members. The request for the registration of a political party is deposited at the Secretariat of the Court of First Instance of the Judicial District, Tirana and must contain, for each founding member: a) name and surname; b) personal number; c) residence. In the decision on the registration of the political party, the court also indicates the number of founding members." "Article 17: The financial and material resources of political parties consist of membership fees, public funds, including financial assistance in the amount specified in the State Budget approved by law by the Assembly, non-public funds, which are financial donations, donations in kind, services, sponsorships, loans or various guarantees, as well as any other financial transaction.". "Article 19 1.: Every year in the State Budget a fund is set which serves as public financial assistance for the annual activities of political parties. The financial aid provided in the State Budget in non-election years, as a rule, cannot be less than the aid provided in the previous year. 2. This fund is divided according to the following rules: a) 70 percent, according to the number of deputies won in the last parliamentary elections. Each parliamentary party receives financial assistance in accordance with the number of deputies it has won based on the electoral system provided in the Electoral Code; b) 20 percent, equally, between parliamentary parties; c) 10 percent, according to the percentage won among political parties that participated in the last parliamentary elections and won over 1 percent of the votes nationwide. The part that remains undistributed from the 10 percent is added to the 70 percent fund and distributed to parliamentary parties.

Media's Role

The political process has undergone a transformation due to the interplay between the media and political codes. Politicians address television audiences, who in turn are the electorate. This dynamic reveals the trend of politics exploiting television for its agenda, while also being influenced by it (Lami, 2011, p.71).

Starting from the interrelationship between politics and media, the electoral code is observed to encompass detailed rules about portraying the electoral campaign in news broadcasts and informational programs of both public and private channels. Albanian legislation mandates the public broadcaster (TVSH) to offer free airtime to all political parties, proportionate to their representation in parliament. Accordingly, the Central Election Commission (KQZ) prescribes that parties with more than 20 percent of parliamentary seats are allotted 60 minutes, other parliamentary parties receive 30 minutes, non-parliamentary parties are given 10 minutes, and independent candidates have 5 minutes.

However, the OSCE reports in 2009 and 2013 indicated that the media outlets under scrutiny did not meet their obligations to allocate half of the designated time to parliamentary parties with less than 20 percent of the seats. Smaller parties were not given the media coverage they were entitled to as per the Electoral Code. The two most significant political parties notably exceeded the 90-minute limit for paid advertisements, but the relevant authorities either overlooked this or failed to take action. As a result, other parties resort to conducting meetings on a smaller scale and distributing leaflets only in areas where they predict support. Social media is extensively used by most parties throughout the campaign. Direct debates between candidates or political party leaders are rare, and key personalities were notably absent (OSCE, 2013, p.16). The time granted by legislation to parties without parliamentary representation (i.e., emerging alternatives) is minimal. Further compounding the issue is that media outlets often don't honor this allocated time, making it difficult for these parties to gain traction within the political system. Without the means to convey their message and programs to a wider audience, there's a shortage of information about their existence and the solutions they propose to the electorate.

Electoral System Manipulations

This section draws on several years of OSCE reports to investigate and decipher the various manipulations enacted by the two dominant political parties. These actions serve to impede the progress and potential influence of newer political entities. The primary considerations in this context are the size of the electorate and the electoral threshold.

The 2001 electoral code established a distinct "mixed" electoral system characterized by interdependent majority and proportional components. The system mandated the election of 100 deputies from single-member zones and an additional 40 deputies from a national electoral zone based on party lists or coalitions. If no candidate secures an absolute majority in a single-member zone, a second round of voting is required. To be considered for the allocation of the additional 40 seats, parties must secure at least 2.5% of the valid national votes, while coalitions need to secure 4%. One critique from the OSCE regarding this year's elections highlighted the protracted procedure and the frequent need for repeated rounds of voting in certain electoral areas. This situation provides opportunities for the potential manipulation of the system, disadvantaging new and smaller parties which must meet high electoral thresholds to be included among the 40 proportional mandates. Their challenge is further amplified when they fail to meet these thresholds or choose to compete outside of the coalitions created by the two major parties. In such instances, the electoral threshold becomes a barrier to the successful entry of new alternatives.

The 2005 elections, held under the same mixed system, exhibited signs of manipulative practices within the legal structure that governs the system. Practices, termed as "Mega-Dushk", can lead to disparities between the votes accrued by parties and the ultimate distribution of mandates. These discrepancies may significantly amplify the inequalities inherent in the electoral system, potentially contravening the constitutional principle of proportionality. Typically, in proportional distribution systems with an electoral threshold, votes cast for pre-election parties and coalitions that fail to meet the legal threshold are not considered in the mandate distribution process for the Assembly. Such issues are typically mitigated more by including less influential parties in pre-election coalitions than through tactical voting, as was observed in the 2001 Assembly elections. Pre-election coalitions usually fortify the constitutional objective of proportionality, contrasting with party strategies that are reliant on de facto pre-election coalitions that are only officially recognized post-elections.

TABELA 4: The size of the electoral zone during 2009-2017

Electoral Zone	Size of the Electoral Zone 2009	Size of the Electoral Zone 2013	Size of the Electoral Zone 2017
Berat	8	8	7
Dibra	6	6	5
Durrës	13	13	14
Elbasan	14	14	14
Fier	16	16	16

Gjirokastër	5	5	4
Korca	12	12	11
Kukës	4	4	3
Lezha	7	7	7
Shkodra	11	11	11
Tiranë	32	32	36
Vlore	12	12	12

One of the most notable alterations to the electoral system lies in the territorial demarcation of electoral zones. The party in power invariably attempts to delineate a geographic layout that is beneficial to itself while simultaneously proving disadvantageous to both the main opposition party and emerging or smaller parties. The concept of gerrymandering embodies this principle, entailing a strategic division of a state into electoral districts to favor a certain political party. This is achieved by increasing the number of supporters in stronghold electoral districts while constraining the voting power of other parties into minimal districts. This scenario was recurrently observed in Albania during various governmental periods from 1991 to 2017.

Starting with the 1991 elections, the Labour Party, or the Socialist Party, was responsible for administering the elections, crafting the electoral map, and setting the electoral rules. Accusations arose that the government intentionally developed an electoral map that disproportionately favored rural areas—where the government secured an overwhelming majority of its deputies—over urban areas that traditionally supported the opposition. However, an electoral map that varies in voter count from one zone to another does not precisely constitute gerrymandering. Instead, gerrymandering pertains specifically to manipulation of the map, irrespective of the number of voters.

The 1996 government under President Sali Berisha, borne from the 1992 elections, held an absolute majority in parliament. With two-thirds of parliament, the government had the authority to alter the electoral code and the electoral map, thereby reshaping local power dynamics. This government exercised this authority, introducing an electoral law that compromised the principle of proportionality between votes won and deputies elected. Albania was segmented into 115 electoral districts based on government-dictated criteria. This led to a decline in the weight of proportionality in the allocation of parliamentary mandates, from 40 to 25. Regrettably, the principle of proportionality, enshrined in the Albanian constitution, appears to have been faithfully implemented only in 1992.

By 2001, the struggle for a favorable electoral map extended beyond socialists versus democrats; it also encompassed intra-socialist disputes. Influential deputies

within the socialist camp exerted their influence on the map creation process to maximize their electoral advantages.

In the 2005 elections, the votes were evenly split, giving rise to the "last box" problem. The newly redrawn electoral map favored the Democratic Party, representing a form of reverse gerrymandering. Around 2007, when the Socialist Party attempted to thrust the nation into political and constitutional crises by refusing to participate in local power elections, the issue was that in the event of early elections, the Democratic Party's chances of victory were virtually indisputable with the 2005 map. This situation led to the conclusion that the victor in Albanian elections is determined more by the map than by the voters.

A subsequent electoral reform in Albania was implemented in 2008, following an agreement between the two major parties. On this occasion, there was no manipulation of the electoral map, as the parties relied on an existing map, that of the country's division into counties. Despite this, discrepancies between the number of votes won and the deputies elected persisted.

Regrettably, the common pattern of electoral map changes preceding governmental changes in Albania has fostered the impression that electoral "reforms," often disguised as redistricting, play a decisive role in determining election winners. Furthermore, achieving a level playing field between the parties has typically required a crisis, necessitating an assertive opposition that relentlessly works to destabilize the country as a prerequisite for reaching an agreement on electoral "reform."

The OSCE concluded in 2013 that "The CEC was politically divided and could not approve the distribution of mandates. In the absence of a proposal from the CEC, parliament made the decision and distributed the mandates based on the 2009 population statistics (instead of those of 2013), undermining the principles of the regular legal process and equality of vote."

To uphold the principle of vote equality, the allocation of mandates for electoral districts should be based on the most recent population distribution statistics, as stipulated by law. Reference to existing literature also identifies electoral size as a significant factor that influences the integration of new alternatives. Analysis of election results in larger counties reveals a higher incidence of small or new parties nearing the electoral threshold.

OSCE reports highlight that manipulations in the electoral system occur when smaller or emerging parties form coalitions with the two dominant parties. This tactic often results in many small party candidates appearing on the major party lists, particularly those of the Democratic and Socialist Parties. Although this strategy may enable these parties to reach the electoral threshold, it also risks their being overshadowed by the two dominant parties.

Conclusions

Democracy needs strong and stable political parties, with the ability to represent citizens and to offer political alternatives that demonstrate their ability to govern for the public good. The weakening of the ties between citizens and their elected leaders, the decrease in political activism, and the increase in the skill of anti-democratic forces have constantly challenged political parties. Strong political parties are decisive in open, competitive democratic politics, especially in emerging democracies.

The central idea of this work revolves around the fact that the law often imposes restrictions on party competition, even in liberal democracies. Electoral systems, for example, use a legal minimum threshold to exclude small parties from official positions. Rules for election campaigns determine television advertising time depending on specific criteria such as the minimum vote or parliamentary seats a party has. Legislation may prohibit extremist parties that advocate violent overthrow of the state or act in a way that endangers internal security. Political parties can be registered as charitable or non-profit organizations, but they are not excluded from the general body of civil code laws, like other NGOs, e.g., from rules that prohibit Hate Speech, unfair dismissal of employees, financial irregularities, or the requirement for equal promotion opportunities for employees. The most important question that arises is whether some parties are unfairly penalized or unfairly advantaged by legal rules, e.g., if small and peripheral parties are systematically disadvantaged by rules for access to voting, public fund distribution, and/or the electoral formula for translating votes into parliamentary seats.

Based on what we have stated above, the electoral system greatly influences the party system, making it possible to facilitate or hinder small and new parties from achieving representation. It is the mathematical formula of these systems that make this possible. Upon analyzing electoral systems, we found that the two-round majority system tends to foster a two-party system. However, the proportional system leads to a more fragmented party system, as forming a government without a coalition isn't particularly challenging. To put it differently, while the majority system tends to be restrictive, the proportional system creates more opportunities for new alternatives to emerge.

We observed this dynamic when examining the impact of the electoral system on the party system from 1991 to 2017, a period spanning the post-communist elections. It's clear that during the years when the majority system was in place – essentially the first pluralist elections – we predominantly saw a two-party system. When legislative changes led to the adoption of a mixed system between

2001 and 2005 – where 100 mandates were determined by the majority and 40 by proportionality – there was an increase in the representation of small and new parties. This period witnessed the highest level of representation for such parties.

In 2008, changes were implemented once again, motivated by an agreement between the two major parties to marginalize smaller parties, leading to the adoption of a proportional system. Paradoxically, while proportionality theoretically increases the fragmentation index of the party system, the threshold requirements and complex mathematical formulas make it extremely difficult for small and new parties. On the flip side, this proportional system also hinders major parties from forming robust governments, necessitating coalitions with smaller parties. A case in point is the governing coalition formed between the Democratic Party and the Socialist Movement for Integration, marking the first time in Albanian history that a left and right party cooperated in this manner. This led to the establishment of broad-based alliances, which facilitated small parties in reaching the electoral threshold, while simultaneously overshadowing the major parties.

The meteoric rise of a small party like the Socialist Movement for Integration exemplifies this. In 2009, the party managed to secure four mandates, but by 2013, their previous coalition with the Socialist Party resulted in a significant increase to 16 mandates. This, in essence, represents a distortion of the vote. However, this leads us to the relationship between these parties and their ideological standpoints. Alliances formed in such a way often demonstrate ideological overlaps, sometimes to the point of erasing any distinct ideological differences. This phenomenon discourages small parties from challenging the hegemony of the major parties, while the major parties continue to associate with these smaller entities due to pragmatic considerations. The absence of a clear political distinction among parties, regardless of their size or novelty, is noteworthy. These parties often resort to utilizing similar theses to garner as much of the electorate as possible. This trajectory steers us towards the creation of pragmatic, clientelist parties, rather than ones driven by distinct and coherent political programs.

We must not overlook the fact that major parties, who hold decision-making power, can manipulate the electoral system to serve their own interests. Throughout the years, Albania has experienced the phenomenon of gerrymandering, where the governing party can alter the electoral map to its advantage. This is often done under the guise of "territorial reform", strategically designed to maximize votes.

Reports from the Organization for Security and Co-operation in Europe (OSCE) have highlighted further manipulations related to the size of electoral districts and electoral thresholds. These manipulations distort the principle of proportionality, which is a constitutional right. The manipulation of the electoral system, exemplified by the 'dove scheme' implemented in 2001 and 2005, demonstrated how the Democratic Party skillfully exploited this mechanism to its benefit.

Electoral systems can pose significant challenges for political parties, particularly for those that are newly established. The challenges are compounded when there's interference in favor of the two primary parties. To survive, compete, and fulfill their democratic duties during and between election cycles, parties require financing. This research underscores the critical role of financial support for new parties, which is necessary for their successful integration into the country's political sphere.

Access to funds and television coverage are two key factors that enable parties to disseminate their message and mobilize their supporters. As a result, parties are increasingly reliant on financial resources to cover the cost of routine activities between elections and during election campaigns. This reliance extends particularly to the direct public income allocated to parliament members, parliamentary party groups, and national and regional organizations.

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Parties also benefit from indirect subsidies from the state, such as tax exemptions and service payments. Data from the Central Election Commission, which includes a declaration of party funds and expenditures during the 2009 and 2013 elections, clearly indicate that public funds for new alternatives are virtually nonexistent, rendering their campaigns almost negligible.

From this analysis, we reiterate that even in the written press, the percentage of publication and display of news during the campaign is in favor of large parties and the new or small parties that are cited have managed to become parliamentary parties, regardless of the number of mandates achieved. The exception is the New Democratic Spirit party, which was formed before the 2013 elections, but piques readers' curiosity because of the dynamics it brings. It is very clear from the extracted fragments that the differences are very small. What is important for parties is to capture as much of the grey electorate as possible, but to achieve this you need to differentiate yourself positively in the mind of this electorate. This is

achieved by serious and programmatic parties, which not only declare that they are different from others but also show it with deeds in front of the electorate, being different.

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Proportional Electoral System: a guarantee for women's participation in decision-making in Albania

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Abstract

Despite Albania being a member of NATO and making significant strides toward the EU, its challenge remains the construction of a functional democracy. There is a clear correlation between women's participation in politics and the level of democracy. Data show that in countries with functional democracies, women's representation in parliament varies from 35% to 49%.

The issue of increasing women's participation in politics is not merely a matter of numbers and percentages. The real issue lies in their actual influence in the decision-making process within political parties. Therefore, women's contribution to political parties should be seen not only as a right but also as a societal necessity. The objective of this work is to analyze the results of this change both in terms of quantitative and qualitative representation criteria.

***Keywords*:** *women representation, electoral code, proportional system, politics, power.*

Introduction

Empowering women in society and encouraging their participation in decision-making is a constant priority in the global public debate. This issue is a perennial and ubiquitous topic on the agendas of world decision-making centers, from

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the United Nations Security Council and the General Assembly to specialized agencies of the United Nations (UN), the European Union, and others. The inclusion of gender equality and women's empowerment in the highest level of the UN's 2030 Agenda has spurred the adoption of best practices and legislative interventions worldwide to ensure women's inclusion in decision-making and non-discrimination. The frequency of addressing this issue, closely linked to the broader issue of gender equality, is almost inflationary. However, states have made progress in enacting laws that protect and ensure women's presence in decision-making processes across the globe.

The European Union, inspired by the authority of the European Court of Human Rights (ECtHR), leads this effort. The European Union supports and encourages its member states, as well as aspirants, in creating strategies for developing legislation that promotes women's participation in political life and ensures gender balance in representation. The two main institutions responsible for drafting gender policies in the EU are the Advisory Committee on Equal Opportunities for Women and Men (established in December 1981) and the European Institute for Gender Equality, established in December 2006.

From the perspective of Albanian society, gender equality remains a significant challenge, requiring the attention of social and political actors. Referring to statistics on gender disparities in Albanian society, numerous gaps are evident in employment, participation in political decision-making, property ownership, and more. Despite continuous positive steps to increase women's representation, Albania still lags behind in terms of women's representation in politics and governance. Despite legislative adjustments in line with EU directives and best practices, traditional masculinity, as an old social stereotype, remains a powerful obstacle.

The increase in women's participation in politics was extensively discussed by political parties during the Electoral Reform in 2008 and its subsequent update with OSCE/ODIHR recommendations in 2012. In the final amendments to the Electoral Code, a 30% quota for women's representation was guaranteed. Legal guarantees and obligations on this issue were reduced compared to previous requirements, ignoring the fact that in the last three local elections, women, with their votes, constituted more than half of the voters and, at best, were represented by 19% of the seats in Parliament (ISP, 2014).

In the post-election assessment report for the 2013 local government elections (November 2013 - January 9, 2015), prepared by the Coalition of Domestic Observers on January 14, 2015, issues related to women's representation are clearly highlighted. This report was supported by the Small Grants Program of the U.S. Embassy in Tirana, and it was strongly promoted by the Embassy, resulting in the addition of an extra point to Article 67, Point 6 of the Electoral Code, which

stipulated that "For each electoral zone, at least thirty percent of the multi-name list, and one in three of the top three names on the multi-name list, must belong to each gender," thus making a valuable contribution to the political participation of Albanian women (Electoral Code of the Republic of Albania, 2008). Meanwhile, according to Article 164, if a deputy, from the underrepresented gender who won the mandate according to Point 6 quoted above, resigns, they are replaced by a candidate of the same gender, regardless of their position on the list. This provision automatically led to the inclusion of five more women in the parliament upon the resignation of deputies who took ministerial positions (*Ibidem*). It should be noted that during this process, in the case of the replacement of female candidates in the Lezha and Durrës districts, some of the women who received the mandate of deputy from the Central Election Commission (CEC) refused it as a personal choice. Additionally, they cited pressure or political decisions from the party forums to which they belonged. In the multi-name lists presented for the 2013 Parliamentary Elections and the most recent ones in 2017 by the three largest parties in the country (PS, PD, and LSI), they failed to meet the legal obligations stipulated in Article 67(22) in several districts, and measures taken by the CEC in these cases included fining the electoral subjects (Central Election Commission).

In a population where 50% consists of women, participation in decision-making positions of both sexes should be in equal quotas. However, global statistics generally speak of male-dominated societies, where women's participation can mainly be imposed through international organizations. For this reason, the Beijing Platform recommended that states provide for at least a 30% representation of women in parliament, a platform that has also been implemented in Albania but is primarily used for propaganda by political parties in the run-up to elections. They always emphasize that women should have a significant voice in decision-making and in the Albanian parliament. This paper aims to provide a general overview of Albanian women's participation in the active politics of the country.

The empowerment of women and the electoral system: an inseparable pair

There are numerous reasons why the emphasis is consistently placed on the participation of women in politics and, above all, in parliament. First and foremost, equal opportunity for participation is everyone's right. In addition, studies show that states with fewer than 30% of female representatives in parliament are less democratic and more discriminatory. Secondly, women and men have different perceptions of a country's policy priorities (Thomas 1991; Carroll 2001). Facts demonstrate that women are more involved in laws that benefit women, children,

and families. Consequently, gender equality in representation enables better protection of women and their issues. The third element, highly significant, is that evidence suggests improved governance and reduced corruption due to women's participation.

Women's representation in parliament is an indicator of complex dependencies, as it depends on many factors simultaneously. It is difficult to analyze the dependence of this indicator from each of the factors independently, as they interact in their functional reality. Nevertheless, in this section of the analysis, we will examine the dependence of this indicator on the type of electoral system and structural variables of the systems. The dependence on this factor is presented in a pleasant space for independent analysis, due to the concrete nature of the various types of systems and the constituent variables of the "electoral system" factor.

The electoral system is just one of several factors that influence the representation of women, and its effects largely depend on the specific political and social conditions of each country. Gender scholars unanimously conclude that "electoral systems have a significant impact on gender balance" (European Commission, 2013). Different electoral systems offer different terrains for women's representation in parliament.

Electoral systems can be classified into families based on the processes by which they translate votes into parliamentary seats. The history of pluralism has seen a considerable number of electoral systems, but the main categories are: the majoritarian system, the proportional system, and the mixed system. Each of these main groupings has various derivatives but retains the basic characteristics of the main grouping. The influencing factors of these families of electoral systems on the gender representation in parliament are the same as those of their versions. Proportional systems and their influence on gender balance Researchers Larserud and Taphorn have concluded: "Countries that implement proportional representation systems have a higher percentage of women in their parliaments than those with majoritarian systems."

There is a significant quantitative difference regarding parliamentary representation of women in countries that have used the proportional electoral system compared to countries that have used the majoritarian system. Scholar Norris concludes: "Women's representation in world parliaments is about twice as high in countries with proportional electoral systems as in those using majoritarian electoral systems" (Norris, 2006:197-213). He analyzes data as well from 53 different countries worldwide in 1999 and concludes that "...women occupy an average of 20% of parliamentary seats in countries with proportional systems, 15% in countries with mixed systems, and only 11% in countries with majoritarian systems" (Norris, 2000). The analysis of elections worldwide in 2012 shows that countries based on proportional representation resulted in 25% of women elected

to their parliaments, compared to 14% for majoritarian systems and 17.5% for mixed systems.

France's case is a concrete realization of the above conclusions. Gender quotas set in the "Equality Law" in France for all levels of government are constant. The other factor, the type of electoral system, varies depending on the level of government where elections are held. In this case, the dependence of the gender representation result on the electoral system is directly observed, as the other factor, "gender quota," is constant. In France, within the European Union, the effectiveness of a legislative quota can be influenced by the type of electoral system used. The "Equality Law," adopted in 2000 and amended in 2003 and 2007, essentially requires parties to have an equal number of men and women among their candidates in all elections. However, it is applied differently depending on the type of electoral system in use.

Regarding European Parliament's elections, regional and local councils, a proportional list system is used; gender equality on lists and the use of the zipper rule in ranking is mandatory. For National Assembly elections, a majoritarian voting system is used. The results are impressive. The most recent elections based on proportional lists have produced 46% women among French representatives in the European Parliament and 49% in regional councils, compared to only 26% in the National Assembly (European Parliament, 2010).

As evident from the above data, in the case of elections using the proportional system, the result of women's representation was nearly twice as high as in cases where the majoritarian electoral system was used, a conclusion that aligns perfectly with Norris' findings above. This conclusion is further reinforced by a simple analysis of several other countries, not only in Europe, where the statistical indicator clearly shows the positive impact of proportional systems on gender representation compared to majoritarian systems in parliament (European Commission, 2013).

Not surprisingly, women's parliamentary representation in New Zealand increased significantly from 21.2% in 1993 to 29.2% in 1996 after the country switched from a majoritarian electoral system to a mixed proportional system. In the 2008 elections, the highest percentage of women representatives to date (34%) was achieved there. The latest data for women's representation in Germany (32%) is like that in New Zealand (Krennerich, 2008). Another noteworthy case is Lithuania, with a parallel system, where the percentage of elected women in majoritarian areas over the years (1992: 7%, 1996: 16.2%, 2000: 8.4%, 2004: 18.3) is lower than that of women elected in proportional areas with party lists (1992: 7.1%, 1996: 20%, 2000: 12.8%, 2004: 22.9%). Among the best examples are the 2006 elections in the Palestinian territories, which resulted in the election of 17 women out of 132 representatives. All 17 women were elected through the proportional list, and none from the single-member constituencies.

In Europe, most states apply the proportional system for national parliamentary elections, a fact that can be considered quite favorable for women's representation. Among the member states of the Council of Europe, only the United Kingdom, Azerbaijan, and France (with its two-round system) use the majoritarian system for national parliamentary elections. In United Kingdom and France, the figures for national parliaments are much lower than those for female representatives in the European Parliament, where a proportional electoral scheme is applied.

The significant impact of electoral systems on the representation of women in parliament is clear when we analyze countries that do not apply gender quotas but have a proportional voting system compared to those that apply political gender quotas and have a majoritarian voting system. In circumstances where the influence of the electoral system is non-existent, logically, systems that apply gender quotas, i.e., majoritarian systems, should result in higher female representation in parliament (Report to the Venice Commission). From the data analysis, we can see that many European countries that did not apply gender quotas during the recent elections analyzed in the report but have a proportional electoral system in place had higher female representation results in parliament. For example, Finland with female representation in parliament at 42.5%, Denmark with 39.1%, Poland with 23.7%, and Latvia with 23% (Krennerich, 2008).

Gender quotas

Apart from the electoral system, the effective implementation of gender quotas is an institutional factor of great importance for achieving gender balance and equality of outcomes, as well as balancing interests and contributions. They aim to balance the representation of women in decision-making bodies with their existential presence in society based on analyses of contribution, experience, needs, and interests. In fact, empirical analyses show that gender quotas provide one of the most proven means of women's parliamentary representation. This is why the Committee of Ministers recommends that member states of the Council of Europe adopt legislative reforms to establish equal thresholds for candidates in elections at all levels, ensuring the participation of each gender in parliament, aiming for balanced gender representation (CoE, 2010, Recommendation 1899).

While the European concept of "true gender equality" presupposes moving beyond this level of "critical mass" of women's representation. However, this minimum threshold is relatively higher than Dahlerup's "critical mass," which is the first researcher to introduce this concept into political and academic discourse (after developing Elizabeth Moss Kanter's theory of tokenism in 1977) by claiming that "30% is the 'critical mass' point for women's legal representation, and whenever women make up less than 30% of the general legislature, they face many difficulties

in being recognized as legitimate participants in a specific political environment" (Dahlerup, 1988: 275-298). Gender quotas aim to improve gender balance in politics and executive decision-making bodies, public administration, as well as in the private sector. The quota system places the responsibility for recruitment not on individual women but on those who manage and control the recruitment and selection process. Today, quota systems aim to ensure that women are elected to at least 30%, 40%, (Dahlerup, 2006: 19), or achieve true gender equality of 50-50%.

In some countries, quotas have been applied as a temporary measure until barriers to women's entry into politics are removed. However, the analysis of all European countries and worldwide indicates that in most of them, quotas have not been limited in time. This shows that the challenge of achieving equal gender representation, especially in decision-making bodies, remains as relevant as ever. This mechanism emerged as a response to the difficulties women faced in increasing their representation in parliamentary, executive, or administrative decision-making bodies due to numerous hidden social-economic barriers, despite the removal of formal legal barriers. Norris concludes in one of her studies that three significant factors determine the adoption of quota laws in most democracies:

1. The political system as defined by electoral and party systems, and legislative competition;
2. The party context determined by party ideology and organization;
3. Demand and supply factors in the recruitment process based on social background, resources, and motivation (Norris, 1996: 184-215).

Her conclusion raises the need for an analytical consideration of the impact of all three factors in the process of establishing and implementing quotas. However, experiences and statistics from all countries that have implemented quotas confirm that quotas are precisely what enable change in the politics of public equality, shifting from "equal opportunities" to "equality of results."

Within the European Union, there are currently 17 countries applying political quotas, while 8 others apply legislative quotas. Finland, Denmark, and Latvia do not have any quotas in place, as the gender balance in these countries is already consolidated, and their respective governments have considered gender quotas unnecessary. Globally, there are now 100 countries applying various types of gender quotas, political, legislative, and reserved seats. The decision to introduce or not introduce a quota is increasingly influenced by international organizations' recommendations and developments in various national contexts.

The European Union itself clarified the legitimacy of positive actions in support of women by adopting the "Revised Directive on Equal Treatment of Men and Women in the Labor Market," which left no room for interpretation on this aspect. Positive actions in support of women and gender quotas have also been put before

the judiciary in many other European countries, such as Switzerland or Italy. In Italy, the Constitutional Court invalidated the relevant Gender Equality Law in 1995, a stance entirely contrary to that of the Spanish Constitutional Court in 2008, which declared the Gender Equality Law constitutional (Rodríguez-Ruiz, 2009). In this fierce battle of recent decades, quota experts and advocates have developed comprehensive legal, political, and technical strategies to counter their opponents' arguments. The main argument has been the very high level of gender imbalance in political and executive decision-making bodies, compared to the population, the percentage of women in it, as well as their level of education and training.

According to quota advocates, these do not discriminate against men but rather compensate for discrimination against women. They prevent the undemocratic imposition of their gender preference lists by party leaders, typically men, on voters in elections. Quotas give voters the "opportunity for true equality" to choose between the two constitutive genders of society, men, and women, thus serving social equality and democracy, ensuring the best and most efficient use of human resources, presenting and advocating for the needs and interests of women, as half of society, and improving policymaking (Phillips, 1995). Quotas are directly related to the discussion of why women's representation is important. Researchers Dahlerup and Phillips provide three fundamental arguments and a fourth motivating one related to the necessity of gender balance in decision-making, for which the quota mechanism is necessary. According to them:

1. Women make up half of the population and have the right to occupy half of the seats in decision-making (the justice argument).
2. Women have different interests and experiences (biological or social), and they must be represented equally to present and defend them (the experience argument).
3. Women and men have partly conflicting interests, so men cannot represent women (the group interest argument).

A fourth argument concerns the importance of women politicians as role models who can pave the way for other women (Dahlerup, 1978: 139-172)

In a logical analysis of the basic principles of equality and democracy, women's representation in decision-making is crucial since the opposite situation would seriously undermine these principles:

- The foundation of democracy lies in the principle that the legitimacy of power to make decisions for people, their lives, society, and the country must come from the choice of those affected by these decisions. Women make up half of the world's population, and in this context, decisions affecting them should be their choice.

- People, in terms of equality, are also politically equal. In this context, women have the right to be politically equal participants in executive and other political decision-making.
- Women's participation in politics is both a responsibility and a guarantee to create a more equal and democratic world. The various stages of development in different countries with varying levels of women's representation serve as a clear indicator of the truth of this thesis (Xheka, 2015).

Women in the Albanian Parliament

The origin of Albanian parliamentarism dates to 1920 with the Congress of Lushnja, which elected a High Council of 4 members to carry out the functions of the Government and a National Council of 37 members to perform the functions of the Parliament (Lamani, 2003).

In this first parliament of the Albanian state, as mentioned in the historical excursus in Chapter One, no women were elected. Similarly, in the three subsequent legislatures of 1921, 1925, and 1928, the Albanian parliament consisted of 100% male deputies. Albania at the time had dominant patriarchal characteristics. To give an example, in Albania in 1937, the Parliament passed a law prohibiting veils for Muslim women. The reaction caused by this law was significant nationwide. King Zog sent his three sisters, dressed in Western attire, to Shkodër to promote the law.

The elections following liberation were those for the Constituent Assembly on December 2, 1945. For the first time in this process, women participated in voting, and they were granted the right to vote and be voted for. Due to the demagogic ideology of the system, for the first time in this parliament, 6 women were among the 82 total seats. Their number formally increased from one legislature to another, reaching a record of 35% in the legislature of 1974-1978. While their number increased from one legislature to another, as seen in the table below, their role and voice were nonexistent. The People's Assembly of the dictatorship era was a formal body that convened only twice a year. The role of the women who were formally deputies of the assembly was entirely formal, in the service of the dictatorial power.

TABLE 1: Representation of Albanian Women in Parliament

Legislature	Total Number of Deputies	Men	Women	Percentage of Women
1945 – 1950 Legislature I	82	76	6	7%
1950 – 1954 Legislature II	121	104	17	14%
1954 – 1958 Legislature III	134	118	16	12%

1958 – 1962 Legislature IV	186	170	17	9%
1962 – 1966 Legislature V	214	189	25	11.6%
1966 – 1970 Legislature VI	240	201	39	16.2%
1970 – 1974 Legislature VII	264	193	71	27%
1974 – 1978 Legislature VIII	250	162	88	35%
1978 – 1982 Legjislature IX	250	169	81	32.4%
1982 – 1986 Legislature e X	250	172	78	31%
1987 – 1991 Legislature XI	250	179	71	28%
1991 – 1992 Legislature XII	250	240	10	4%
1992 – 1996 Legislature XIII	140	132	8	5.7%
1996 – 1997 Legislature XIV	140	119	21	15%
1997 – 2001 Legislature XV	155	144	11	7%
2001- 2005 Legislature XVI	140	132	8	5.7%
2005 – 2009 Legislature XVII	140	130	10	7%
2009 – 2013 Legislature XVIII	140	117	23	16%
2013 – 2017 Legislature XIX	140	113	27	19.3%
2017 – present Legislature XX	140	101	39	28%

From the historic year of the first pluralistic elections in 1991, after the fall of the dictatorship and up to the completion of this work, Albania has held 9 rounds of general parliamentary elections. Albania held its first pluralistic elections after the collapse of the 50-year dictatorship in 1991. (Krasniqi, 2009.) The elections of 1992 and 1997 are considered premature, and the mandate of the preceding parliament for these two elections lasted no more than a year. The electoral systems applied in these electoral processes varied from one process to another. Thus, in the first pluralistic elections on March 31, 1991, the electoral system applied was the majoritarian one with two rounds. In the 1992 elections, there were two significant changes: first, the transition from a parliament with 250 deputies to one with 140 deputies, and second, the change of the electoral system from majoritarian to a mixed proportional electoral system.

The electoral system applied in the parliamentary elections of 1996 was again a mixed system, but unlike that of 1992, it was no longer dependent but independent. The government's mandate in 1996 was very short, only one year, leading to the 1997 elections. In the 1997 elections, a mixed, semi-independent electoral system was applied again. The electoral system used in the 2001 elections for the Albanian Parliament was a mixed dependent system, with minor modifications in 2005.

It was in 2009 when, following approval by the Albanian Parliament in 2008, the "Gender Equality in Society" Law and the introduction of gender quotas both in this law and in the Electoral Code brought about the first changes in the

electoral system. For the first time, a legal gender quota obligation of 30% for underrepresented gender was established.

Monitoring the first elections after the introduction of the electoral quota reveals various tactics used by political parties to avoid the 30% female representation in Parliament. The two largest parties in the country, PD and PS, in Kukës added a fifth female candidate to their respective candidate lists, exceeding the number of (4) possible mandates. This phenomenon was repeated by PS in Lezhë, where an eighth female candidate was added, surpassing the possible number of 7 seats. For this purpose, gender quotas were respected only because the last name added at the end of the list was a female candidate. (Albania. ACER & ASET. (2009) Parliamentary Elections in Albania 2009)

In the 2009 elections, it became evident that the major parties did not meet the 30% quota requirement for female candidates. Neither of the two main parties, PD or PS, achieved the 30 percent target. PD's lists contained 29.3% women, while PS's lists contained 28%. These percentages were reached only after corrections were requested by the Central Election Commission (CEC). Overall, out of the nine parties portrayed in this study, only five achieved the 30 percent goal. An examination of the smaller parties reveals that the newest party, Party G99, had the highest number of women on its candidate lists. It had 54 women, or 38.6% of the total, followed by LSI with 30.7%, PDK with 30.7%. PR had a list with 29.3% women; this number was achieved after a list correction requested by the CEC. A total of one hundred eighteen female candidates, or 24.7% of the total of 477 candidates, were presented on PSD's lists. In general, smaller parties had higher percentages of female candidates compared to the two larger parties, PD and PS.

During the 2013 elections in Albania, parties chose to use a demagogic maneuver, placing some women at the top of the list but putting most of them at the bottom. None of them chose to place a woman in every three candidates throughout the list. However, the authority of the CEC to reject a party candidate list that did not comply with the quotas is an effective coercive procedure, if put into action. The European Commission Progress Report for Albania in 2013 highlighted that "Women continue to be underrepresented in public positions. In the 2013 general elections, the three main parties were fined for not respecting the gender quota on the list of parliamentary candidates."

Concluding remarks

There is a clear correlation between women's participation in politics and the level of democracy. Data show that in countries with functional democracies, women's representation in parliament varies from 35% to 49%. Increasing women's

participation in politics is not merely a matter of numbers and percentages. The real issue lies in their actual influence in the decision-making process within political parties.

Proportional electoral systems are a much friendlier environment for implementing gender quota systems, both legally and politically. Researchers Larsen, Tamphorn, and Norris have concluded in their studies that proportional systems offer many more opportunities to increase the representation of women in parliament.

In general, it's easier to establish a quota system within a proportional electoral system because it allows for a larger number of candidates on party lists, and parties consciously try to balance their lists to gain as many votes as possible, as explained earlier when analyzing gender quotas. In their efforts to attract votes from all social categories, political parties themselves are interested in having candidates from both genders on their lists. The obligation to adhere to the gender quota in countries where it exists, ensures for certain the placement of women on candidate lists. The sanctioned percentage for gender quotas varies from continent to continent and among different countries. Globally, this percentage ranges from 10% to 50%.

European Union countries have the highest gender quota percentage globally. Experiences from different countries that have implemented and enforced gender quota systems show that, despite the widely accepted conclusion of their significant role as an effective mechanism in gender balance, the effects of this system are not immediate. It takes a certain amount of time for an established quota system to produce its effects, and this time depends on a variety of specific conditions and situations.

In this context, the Albanian case confirms this thesis, considering that the application of the new regional proportional system did not immediately achieve the desired number of women in parliament. However, there has been a noticeable increase from the 2009 elections to the recently concluded ones in 2017. The analysis of the Albanian case confirms once again that the lack of clear rules for candidate ordering on lists and sanctions for non-compliance with quotas are essential elements that dictate the failure of the quota system.

Based on the failure to achieve gender quotas in Albania, which is tolerated by the law and obliged by Recommendation 1899 of 2010, there is a need for a rapid revision of the Electoral Code to make the gender quota obligation a real one and not just demagogic. The reason for such a situation is argued to be the fact that the established legal quota was not accompanied by strong rules for candidate ordering to ensure 30% of women in parliament. The only defined rule was placing a woman among the top three names on the list and/or having 30% of the entire list composed of women. The sanctions for non-compliance with the quota were also weak, limited only to a fine of 1,000,000 Albanian lekë (after the amendment

of the code) by parties that did not comply (Article 175 of the Electoral Code). A superficial assessment of these two elements and especially the use of the phrase "and/or" leads to the conclusion that the code itself was the legal instrument that created conditions for political parties to avoid achieving this 30% goal, leaving it simply as a demagogic aim and not a real one. The Albanian Electoral Code allowed another loophole in this regard. By not specifying the maximum number of candidates on party lists, it allowed them to place 30% of women at the end of the list, even exceeding the possible parliamentary seats for certain constituencies.

Despite the above analysis, it must be said that it did produce a significant increase in women's participation in the legislature. The elections with the new regional proportional system in 2009, 2013, and 2017 brought interesting developments in the representation of women in parliament, significantly increasing their numbers to 23 in 2009, 27 in 2013, and 39 in the recent 2017 elections, which, truth be told, is a satisfying figure. If we carefully analyze the table above regarding the composition of parliament from one legislature to another, we will notice that since 2009 when the electoral system changed from a mixed one with a majority dominance to a proportional system with closed lists, the number of women in parliament has increased significantly. Thus, from 6% in 2001 and 7% in 2005, it reached 16% in 2009, 19.3% in 2013, and approximately 28% in the last elections of 2017. It remains to be seen whether with the installation of the new legislature, the mechanism of women elected resigning from their positions, as in the cases of Lezhë, Durrës, Berat, and Vlorë in the 2013 elections, will not occur. To avoid these situations, Albanian legislation should integrate other punitive and restrictive mechanisms for political parties and even for the holders of the mandates.

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Facing diversity: Islamic marriages and human rights[1]

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Abstract

This paper aims to analyze the challenges of facing diversity when it comes to Islamic marriages and human rights. The qualification of rights as universal has been questioned in the Islamic world because it reflects only the Western concept of human rights. Despite the codification of positive law norms, in some Islamic tradition countries, there are still difficulties in recognizing a set of universally recognized positive rights. In terms of co-existence between secular and religious law, it is fundamental for religious norms to be aligned with the international legal order in general and the protection of human rights in particular. Nonetheless, when addressing these issues, it is assumed that the logic of clash of civilizations serves as a deterrent to any effort toward understanding and seeking common solutions.

Keywords: *Islam, marriage, human rights, codification, modernization of family law*

Introduction

The qualification of rights as universal has been questioned in the Islamic world because it reflects only the Western concept of human rights (Cilardo, A. 2006). The discussion on the concept of human rights in Islamic countries is essential

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when considering its impact on matrimonial relations: from the choice of a partner to the expression of consent, to the rights and duties of spouses and to the *filiation* relationship (Pasquale, L. 1995). Unlike Western declarations that emphasize human rights, Islamic declarations emphasize the duties of humans in relation to their rights (Cilardo, A. 2002:126). The reservations of Islamic countries regarding some provisions of the Universal Declaration of Human Rights express the different theological-confessional concept of human rights in Islam. Some authors argue that "when it comes to universality of human rights, the debate *secularism versus religion or culture* is somewhat artificial, as many principles of international human rights law coincide very clearly with religious principles" (Andrews, P. 2003: 613-614).

After a series of meetings initiated by the UN between legal experts from Saudi Arabia and European jurists - to define the compatibility of human rights with the *Shari'a* - Saudi Arabia refused to sign the 1948 Declaration of Human Rights because it was considered in conflict with *Shari'a*, stating that: "The denial by our state does not imply indifference to the objectives that these documents aim to pursue, namely the dignity of man; rather, it means the firm will to protect, guarantee, and safeguard the dignity of man [...] by virtue of the Islamic dogma revealed by God and not by legislation inspired by materialistic considerations and therefore subject to continuous changes". (Pacini, A. 1998: 8).

Islamic legal scholarship identifies two different types of actions: one between man and God (*ibadat*), the other between man and man (*mu'amalat*). (Berger, 2018). Ontological equality and functional inequality coexist as there is a distinction between the human value of the individual and their social function. The discourse on human rights today is not so much tied to the intrinsic nature of Islam but rather to the historical-political context that surrounds and determines it. The role recognized today for women in Muslim countries varies within each country depending on social class and place of residence. Furthermore - and this is the determining factor - political will prevails over the religious sphere, either promoting or hindering the recognition of human rights. There are examples of individual countries in this regard, both of policies promoting human rights (the enactment of the Tunisian Personal Status Code in 1956) and of policies of regression (the Algerian Family Code).

Codification of human rights in Islam: historical overview

The codification of human rights in Islam began, albeit in its early stages, with the Kuwait Conference on Human Rights in Islam in 1980. The emphasis is placed on the fact that human rights (Article 42 of the document expressly recognizes *the*

pioneering role played by Islam in their promotion) are considered *divine gifts based on the provisions of Shari'a and Islamic religion*, and not mere *natural rights*. Their codification represents *a solid foundation for the effective exercise of human rights and fundamental freedoms and for safeguarding these rights from any attempt at violation* (Cilardo, A. 2002).

The second attempt at an Islamic declaration on the theme of human rights is the Declaration of Human Rights in Islam in 1990. In contrast to the first, this one used purely legal terminology, making it formally not dissimilar to the United Nations Declaration of 1948. This latter declaration also represents a theoretical statement, not expressly providing for any instrument of ratification or formal accession by Islamic countries. From a content perspective, the Organization of Islamic Cooperation (OIC) Declaration follows the same conservative theological line as the previous one; the subject of the rights referred to is the believing Muslim.

The reference to Islamic law is even more explicit when establishing the different rights and duties of spouses. In fact, Article 6 states: "Woman is equal to man in dignity; her rights are equivalent to her duties. She enjoys civil rights, is responsible for her economic independence, and has the right to retain her maiden name and family ties. The husband has the duty to support the family and is responsible for its protection." This second Islamic declaration on human rights follows the same conservative line as the first one.

The Arab Charter on Human Rights of 1994, drafted by the Committee on Human Rights of the League of Arab States, represents a departure from the earlier documents. Unlike the previous ones, this document does not contain any direct reference to Islam or Islamic religious law. The primacy of citizenship over any other affiliation is evident in Article 2, which guarantees every person under the jurisdiction of one of the contracting states "the enjoyment of all rights and freedoms established by this Charter without distinction of race, color, sex, language, religion, or opinion."

While the previous declarations referred to the traditional doctrine that the source of power is God and the administration of this power belongs to God's messenger on Earth, the Arab Charter, in Article 19, solemnly states that: "The people are the source of power." The law referred to in the Charter is the civil law of the state (*qanun*) rather than Islamic religious law (*Shari'a*). The Charter establishes the primacy of civil law over religious law and asserts the absolute equality of all citizens. In the absence of more explicit references, some authors believe that there has been a tacit reference to Islamic law for family law matters concerning Muslims and to the norms of their personal status for those belonging to other religions. An innovative element is Article 40 of the Charter, which provides for a monitoring mechanism (the Committee of Experts on Human Rights) to oversee the incorporation of the Charter's provisions into the legal systems of individual states through the ratification process.

These Islamic documents legitimize principles enshrined in non-Muslim-derived acts, also creating a connection with the values of the Islamic tradition. Therefore, the reinterpretation of universally accepted human rights principles in the light of *Shari'a* principles has given these documents a wholly original character (Angioi, S. 1996: 27). The concept of "equality of rights" should be understood considering the roles and functions of spouses within the family; this is why they are considered not equal but "equivalent".

The Charter of 1994 was revised in May 2004 to align its provisions with international standards on human rights. The most significant change from the previous version is the affirmation of the principle of universality of rights. Furthermore, while in the 1994 Charter, the Cairo Declaration and international documents are considered on an equal base, in the 2004 version, contracting states "reaffirm" the principles of United Nations documents while merely "taking into account" the Cairo Declaration (Tramontana, F. 2005).

Important innovations concern marital matters. Article 3 obliges states to adopt all necessary measures to ensure effective equality and equal opportunities between men and women in the exercise of the listed rights. While Article 2 of the 1994 version prohibited sex-based discrimination, Article 3 of the 2004 version states that "men and women are equal in dignity, rights, and duties." Article 30 commits states to prohibit all forms of violence within the family, especially against women and children. Article 33 of the 2004 version explicitly states that "there can be no marriage without the free and full consent of the spouses". Article 29, which governs the citizenship of children, leaves significant discretion to the national legislator, who may adopt the measures they deem most appropriate in accordance with their nationality laws. Article 43 prohibits states from reducing the legal protections granted under other international treaties.

However, the 2004 version of the Charter was criticized for not establishing the equality of spouses, leaving it to the legislator to guarantee rights and duties in marriage and at the time of its dissolution. Furthermore, it did not address the right to marry without restrictions based on race, nationality, or religion. This right must be exercised according to existing rules (Article 33). The main criticism was related to the absence of mechanisms for practical implementation of the Charter. National legislators are given broad discretion, so much will depend on the interpretation given to individual provisions[3].

There is a current trend toward a more modern interpretation of Islam to reconcile the classical view of Islam with human rights. Some reformist Arab

3 In 2009, the Arab Human Rights Committee, was established to monitor and oversee compliance with the Charter. The Statute of the Arab Court of Human Rights was approved by the Ministerial Council of the League of Arab States on 7 September 2014. There has been much criticism by civil society organizations of the Statute, which call for states not to ratify it until it is comprehensively amended, in https://unimelb.libguides.com/c.php?g=928011&p=6704321

intellectuals believe it is possible to promote a "finalist" interpretation of the *Holy Qur'an* as a method to renew Muslim culture (Pacini, A. 1998), considering the historical context in which it was revealed. Once the real intention of the *Holy Qur'an* regarding that context is understood, it would be possible to creatively reform it considering current circumstances. The concerns on the compatibility of the *Shari'a* with European Convention of Human Rights have concluded on the need for reconciling the various positions and create bridges of understanding between Sharia law and the Convention (Gutiérrez, 2019: 16). Thus, it is necessary to explore possible points of concordance and disagreement between different concepts of human rights to identify a common "hard core" of values, which can be reached through different paths.

Receiving the *Shari'a* principles in matrimonial regulations

The diversity of values on which each individual legal system is based impedes the free circulation of different matrimonial models (Ferrari, S. 2008: 377). Islamic marriage, both in the international - private and in the confessional sphere, cannot be attributed to a single category. It presents peculiarities that reflect in the first case the degree of reception of the *Shari'a* in the positive law of the individual states of Muslim tradition, and in the second, the influence of the thought of the various legal schools in each country.

If in Western democracies the relationship between civil law and religious law is addressed through reference to the principle of secularism and absolute respect for individual and collective religious freedom, in Islamic societies, religion acquires an overall relevance that is necessarily intertwined with temporal choices. The approach proposed to these diversities is the "intercultural" model, a new social synthesis that allows us to overcome the situation of mere co-presence to give rise to a process of mutual exchange (Donati, P. 2007).

Islam, due to its unique historical origin, played a crucial unifying role, establishing not only a single religious message but also a single law, "the Law" or the *Shari'a*. Its influence in contemporary legal systems has deep roots and reflects the relationship between the state and Islam, a relationship that can take different qualifications:

a) The state can be defined in the Constitution as an Islamic state.
b) It can indicate the Muslim religion as the state religion.
c) It may simply emphasize that the majority of the population is Muslim.

Throughout history, there has been some resistance to codification in Muslim-majority countries, determined by the concern of making the law too rigid. This resistance led to unsuccessful codification efforts initiated under the Abbasid Caliphate. The first steps in the process of codifying *Shari'a* were taken by the Ottomans in the 16th century, when Sultan Suleiman I (1512-1520) issued a decree establishing the *Hanafi* school as the official and mandatory school of the Ottoman state. This rule of a single mandatory school, initially applied by the Ottomans in Egypt and subsequently in all Arab countries, represents the first step towards codification.

Over time, the application of *Abu Hanifa's* preferred opinion on matrimonial issues became restrictive, necessitating the codification of personal status laws. In 1916, two *Sunni* measures were enacted (El Alami D. Hinchcliffe, D. 1996: 35-37): a) the first allowed wives to request divorce if their husbands were absent and did not provide for their support; b) the second permitted divorce in cases of the husband's dangerous illness.

Personal status laws remained non codified until 1917 when the "Family Rights Law" was enacted, regulating marriage and divorce for Muslims, Christians, and Jews. This legislation aimed to abolish religious courts (which were not subject to state control) and codify family regulations in line with various religious practices.

After the dissolution of the Ottoman Empire, the evolution of law and justice in Arab countries occurred through a slow and gradual process. Efforts were made to reopen the door that scholars had declared closed in the early generations, that is, direct access to sources (Noja, S. 1968). Laws and codes were enacted based on the European model, where the *Shari'a* was no longer the sole but one of the sources of law. *Fiqh* regarding personal status emerged transformed, becoming the law of the state, changing or even abolishing some classical institutions.

The degree of the *Shari'a* reception in different countries can be divided into three simplified approaches (Musselli, L. 2007:38):

- States that, in pursuit of religious purity, largely refer to confessional regulations (e.g., Iran and Afghanistan).
- States that adopt a "modernized" version of the *Shari'a* by enacting special laws and codifying marriage norms (e.g., North African countries).
- States that follow a secular regulation (Turkey).

Following this three-fold classification, it is noted that Turkey takes a radical position due to its strong secular elements, while Saudi Arabia and Iran are classified as theocratic confessional countries. In an intermediate position, and therefore classified under the second category, are the North African countries.

In Turkey, despite 99.8% of the population is Muslim, the legal system is entirely secularized. Religion is not only not mentioned in the Constitution, but the preamble firmly declares that there will be no interference between religion and the state, in accordance with the principles of secularism. Iran and Saudi Arabia are countries where the *Shari'a* is the only source of regulation, and religious authorities have the power to veto legislation. The key principle guiding the legal system in these countries is to reject any law contrary to Islam. In North African countries, the *Shari'a* is one of the sources of law, and there is a mixed (religious/ secular) judicial system. For example, in Egypt, whose Constitution recognizes *Shari'a* as the main source of law, *Shari'a* courts are integrated with a Western legal system, and a secular Supreme Court has the final say on personal status matters.

The general trend of replacing the *Shari'a* has seen two major exceptions. The first concerns family law, where generally the provisions of the *Shari'a* have continued to be applied (except for Turkey). The exception is represented by two categories of states that have not followed the general process of legal modernization but have claimed a stronger adherence to Islamic orthodoxy even on a legal level: very conservative Muslim-majority countries such as Saudi Arabia, Oman, and other Gulf States, where *Shari'a* still has a wide application.

Analyzing the reception of *Shari'a* in state law involves evaluation on four levels:

a) Recognition of Islam and the invocation of *Shari'a* principles in the Constitution.
b) Reception of *Shari'a* in substantive law.
c) Influence of classical law on personal status.
d) Judicial system.

a) At constitutional level, the evolution in Islamic states can be observed in two significant phases. The first phase spans from the end of World War I to the 1950s, characterized by the adoption of Constitutions inspired by Western models in various sovereign or protectorate states, including Pakistan, Iran, Egypt, Iraq, Syria, Lebanon, Transjordan, Morocco, Tunisia, and Libya. The second phase, which began in the 1950s (and is still ongoing), involves the rejection of Western models, the concentration of political power in the hands of national leaders often representing the armed forces, explicit reference to Islamic values, and, in Arab countries, the Arab nation.

The constitutional recognition of Islam as the state religion does not necessarily lead to significant consequences in the organization of power, as in Algeria, Tunisia, Egypt, Jordan, and Yemen. In other states, it implies a privileged status, as in Iran, Pakistan, and Saudi Arabia. Lebanon maintains an equidistant position from all religions, while in Turkey, the organization of power is constitutionally separated from Islamic religion.

Some Constitutions declare Islam as the official religion of the country or state that *Shari'a* is one of the normative sources, or "the" normative source. For example, the Constitution of Saudi Arabia states that the primary source is the *Holy Qur'an* and the *Prophet's Sunnah* (traditions); Article 4 of the Iranian Constitution states that all laws must be based on Islamic principles; Article 227 of the Pakistani Constitution establishes that all laws must conform to Islamic prescriptions as per the *Holy Quran* and *Sunnah*, and no law conflicting with this principle can be enacted.

All Constitutions of North African countries declare Islam as the state religion: Article 2 of the Egyptian Constitution, Article 2 of the Algerian Constitution, Article 6 of the Moroccan Constitution, and Article 1 of the Tunisian Constitution. The constitutional models of Arab countries continue to be characterized by the internal division between Muslims and non-Muslims, with more pronounced consequences in conservative countries. The legal consequences of this division of society into Muslim and non-Muslim citizens vary from country to country.

- Some states have a unified legislative and judicial system for all citizens, though this doesn't always guarantee complete equality between believers and non-believers.
- Others lack a codified family law, and judges must refer to classical Islamic law, with all its contradictions.
- Still, others have specific legislation for Muslims based on different schools of thought.
- In some countries, there are different laws and jurisdictions for Muslims and non-Muslims.

b) Regarding the reception of the *Shari'a* within the legislative system, there are liberal systems where *Shari'a* is not considered a source of secular law, and conservative systems where *Shari'a* constitutes the primary (or nearly exclusive) source of law, directing the entire legal system. This ranges from the case of a secular Constitution (Turkey) to states where the *Holy Qur'an* is the paramount constitutional and normative source, to others that consider it one of the sources of legislation.

In the 19th century, the Ottoman Empire began to follow the Western example by introducing new codes for civil, commercial, and criminal matters, officially codifying much of the "laws" in Arab countries. After World War II, with the exception of Turkey, other countries adopted hybrid legislative systems that applied classical Islamic law with significant influences from European legal codes. The process of adopting foreign legal models, known as legal acculturation (the transformation of a legal system on a large scale due to contact with different systems),

is still ongoing and represents the quest for balance between "fundamentalism" and modernization (Castro, F. 2007: 115-116). Positive legislation in modern legal systems has reduced the strength and supremacy of *Shari'a*, limiting it more and more to a moral, ethical-religious norm without competent judicial bodies for its direct application.

b) As for Personal Status Laws, this is the area where *Shari'a* continues to exert a significant influence in almost all Muslim countries. The rules governing matrimonial issues constitute the essential core of Islamic law. These rules are not derived from civil codes but constitute separate texts. The "personal" nature of these laws does not refer to private international law (related to issues of state and personal capacity), but rather to the personal application of this group of rules. Personal Status Laws regulate marriage, personal and financial relationships between spouses, parenthood and related maintenance obligations, guardianship, donations and successions.

The phenomenon of Personal Status Laws reflects the principle that the law applicable to individuals within a single state organization is not uniform for all but refers to specific regulations based on the individual's characteristics. The *Shari'a* is applied to Muslims by Muslim judges, while non-Muslims are governed by their own rights administered by their respective religious judges. The term "Personal Status" is retained even after the unification of applicable law within the territory. Then, codified Islamic law is applied, in whole or in part, to all citizens as the sole law of the state.

c) At judicial level, a dual system of religious courts and civil ones, is common in many Middle Eastern and African countries (Noja, S. 1968). With the exception of Saudi Arabia and Iran, where *Shari'a* is almost entirely applied, religious courts typically deal with family and personal matters, while other matters are subject to different sources of law and fall under secular courts. In Middle Eastern countries, for example, Lebanon has both "state" courts and religious ones, having jurisdiction over private law issues like marriage, deaths, and inheritance.

The process of *modernization in family law* (Fico, I. 1996: 180-181) has achieved significant results only in very recent times[4]. Jordan was the first among Arab countries to adopt a Family Law Code in 1947, which replaced the Ottoman law previously in force. This was later replaced in 1976 by a new Personal Status Law. In North African countries, Tunisia adopted its own Personal Status Code in 1956, introducing substantial innovations, including the abolition of polygamy and

[4] Three areas can be distinguished: a) the countries of the Arab East and Egypt of *Hanafi* influence (the official school of the Ottoman Empire); b) the North African countries of the *Malichite* tradition; c) Somalia and Yemen, where *Shafi* law predominates.

repudiation. Morocco also approved a similar set of laws called the *Mudawwana* between 1957 and 1958. However, Libya and Algeria decided to pass similar laws only in 1984.

In the North African context, Egypt is the only country that has not adopted a comprehensive code in this area. The legislature has only intervened in specific areas, avoiding the repeal of *Shari'a* norms, which still remain in force, albeit with some more advanced aspects due to reforms introduced by President Sadat. The situation is different in Lebanon, where the Ottoman law of 1917 is still in force. This law applies only to *Sunni* Muslims, while other religious communities in the country are subject to their own laws and the jurisdiction of their respective religious courts.

With the exception of Turkey, where the Swiss Family Code plays a prominent role in the legal system, we can distinguish between countries where family law is the national law adopted by the legislature, such as Egypt, Morocco, and Tunisia, and countries where family law is subject to the control of religious authorities, such as Bahrain and Lebanon. In the former, the marriage rules set by the legislature are rearrangements of the *Shari'a* prescriptions. In the latter, family matters are not under the jurisdiction of the state but of religious authorities, who have jurisdiction over all issues related to the personal status of Muslims. Lebanon has always been a unique case in the Arab world, characterized as a secularized multi-confessional state with seventeen recognized religious communities, granting complete autonomy to religious authorities to decide on family matters.

It has been emphasized that the common religious background characterizes Islamic family law in all Muslim countries. However, an equally important factor in the evolution of law, especially family law, is tradition. The flexibility and adaptability of Islamic law to different environments, through reference to local customs - which enjoys wide recognition unless it is clearly contrary to fundamental legal principles - have allowed it to develop in vast regions of the world.

The process that has led to the predominance of state law is now considered irreversible in all contexts where the process of codification has begun and is developing. On the other hand, it is evident that this process must continually face the influence and symbolic legitimacy that *Shari'a* holds in Islam, an influence that persists despite the modernization of the law in many countries. This influence concerns important issues, such as the condition of women, the universal human rights, and freedom of conscience, particularly in the context of family law, where challenges related to women's status and human rights are prominent.

Islamic marriages in the International and European legal framework

The challenges of meeting the needs of immigrants in Europe have involved experts in debates concerning the right to cultural identity in the context of family law (Buechler, 2012: 197). Since 1992, the European Commission on Human Rights ruled on the request of the Dutch authorities to issue a residence permit to the son of the first wife of a Moroccan (Campiglio, 2008: 45-46). He regularly resided in the Netherlands with his second Moroccan wife. The permit was denied by the local authorities as the right to family reunification was limited to a single wife and her children. The Commission, questioned on the violation of the right to respect for their family life pursuant to art. 8 ECHR, recognized the existence of an interference in the appellants' family life, but underlined the legitimacy of said interference pursuant article 8, paragraph 2, arguing that States enjoy broad freedom in immigration matters, so interference is not only in accordance with the law but also necessary in the context of immigration controls.

As per the right to family reunification, the preamble of Directive 2003/86/EC (recital 11) specified that: "respect for the values and principles recognized by the Member States, in particular where women's rights come into consideration (...) justifies that requests for family reunification relating to polygamous families may face restrictive measures". Member States are not required to recognize polygamous marriages, legally contracted in a third country, which may conflict with their domestic legal system. However, this does not affect the obligation to consider the best interests of the children born from such marriages[5].

Polygamous marriage and the recognition of repudiation as a valid form of divorce operated by some Member States, have been subject to the scrutiny of the Commission as well, which has specified that "the simple attribution of effects to certain legal statuses or to acts carried out according to the law of the State of origin, does not in itself implies a general compatibility between the *Shari'a* and the founding values of the European legal systems" (Benigni, 2008: 10). The attribution of such effects, moreover, can only take place in the application of rules of private international law or bilateral agreements.

The European Parliament condemns forced marriages and calls on Member States to ensure that polygamy is kept illegal. When questioned about the daily

[5] See Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, in https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:en:PDF

application of Koranic law within European territory, the Commission specified that "no decision issued by jurisdictions that have not been created according to the constitutional rules of the Member States can and must have legal value" (Benigni, 2008: 14). The duty of each State to monitor its own legal framework does not exclude the power of them to establish new special forms of jurisdiction or dispute settlement. However, accepting an institution or the legal effect of acts and conduct, in implementation of private international law, does not automatically imply acceptance of the *Shari'a*.

Recently, the relation between human rights, the *Shari'a* and "interpersonal law" in family matters, was questioned in the ECtHR case *Molla Sali v. Greece* (Application no. 20452/14). The ECHR unanimously held that there had been a violation of Article 14 read in conjunction with Article 1 of Protocol No. 1. With this regard, some authors have argued that *applying some of Sharia rules by individuals in the private sphere may be permissible as part of their freedom to observe the precepts of their religion, but it should not be endorsed or enforced by the state* (Brzozowski, 2018). Others have stressed out the challenging co-existence of secular and religious law as well as the exceptional recognition of direct application of religious law and jurisdiction (Koumpli, 2019).

Concluding remarks

In conclusion, from the examination of the concept of human rights in Islam within the institution of marriage, we can draw the following conclusions, albeit briefly:

a) The plurality of legal schools within Islam does not allow for a uniform classification of marriage regulations.
b) In some Muslim-majority countries, there is a trend to regulate matters that were traditionally considered religious affairs with their own legislative acts, thereby unifying and organizing state law in matters of marriage and family.
c) State law, once reorganized, deviates in several ways from classical Islamic law, as it considers essential and unavoidable needs of modern society, such as respect for certain fundamental human rights and the certainty of legal status.
d) Today, unlike the past, the formal source regulating family relationships is state law, highlighting the objective possibility of evolution and modification of codified norms. Examples of such evolution can be seen in areas like polygamy, divorce, and the changing role of women within the family.

Thus, family regulations are no longer exclusively governed by a religious law but are instead directly regulated by state law. This state law, in turn, takes the Islamic religious law as a reference model but deviates from it and adopts different solutions whenever it proves insufficient or inadequate for essential needs of a modern state. It is now to this state-derived family law, rooted in religious tradition, that scholars must refer to for a better understanding of related legal issues.

Despite the codification of positive law norms, in some Islamic tradition countries, there are still difficulties in recognizing a set of universally recognized positive rights. Nonetheless, when addressing these issues, it is assumed that the logic of clash of civilizations serves as a deterrent to any effort toward understanding and seeking common solutions. In terms of co-existence between secular and religious law, it is fundamental for religious norms to be aligned with the international legal order in general and the protection of human rights in particular.

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Brief historical overview of the evolution of "obligatio" and "contractus" in the Roman law: their influence on the Albanian legislation[1]

PhD. Renata KAU[2]

Abstract

Roman law has influenced many legal systems throughout the world, including the Albanian legislations, this also as a result of the centuries-long conquests of these countries by the Roman Empire, which have left traces both in the culture of these countries and even in the legislations. The law of obligations and contracts is one of the broadest and most important areas of civil law. The best understanding of the contemporary notions related to these institutes requires a deeper knowledge of the Roman notions of "obligatio" and "contractus" throughout the entire period of the development of the history of the Roman law.

In the course of history, these institutes have influenced the customary collections and the Albanian legislations up to the present day, configuring Albania in different periods in the category of the civil law countries with Romanist origins. Currently, even though the institution of obligations and contracts has strong Romanist bases, so much so that even in modern codifications we find definitions of the notions of "obligatio" and "contractus" of the Roman law, new forms of contracts have arisen as a result of the development of the market economy.

Keywords:*"obligatio" "contractus", source of obligation, roman law, Albanian legislation*

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Introduction

If in the Albanian literature we are often used to treat Roman law in the most general terms, this paper has as its main purpose the more specific analysis of some aspects related to the evolution of the notion of *obligatio* and of its sources and the treatment of the notion of *contractus* in different stages of the development of the Roman law, as well as the influence these institutes have had on the Customary Codes and on the Albanian legislation. The treatment cannot be exhaustive for the breadth of the topic, so it is limited to the above-mentioned aspects. This paper provides to make a review of the best quality literature related to the Roman and Albanian law of obligations and contracts. The methodology used in this paper is historical, descriptive and comparative.

The law of Roman obligations and contracts has influenced the Albanian legislation since ancient times. Canons and other Albanian Customary Collections are based in most cases on the ancient Roman codes. In the "Kanun" the influence of the law and the Roman tradition are equally considerable for two reasons: in the South due to the influence of the Byzantine tradition, known above all through the work of Harménopoulos, in the North due to the connection with a tradition of the Roman origin also preserved jealously in local customs, as an indication of one's identity (Boccia, A. &Vito P. 2014).

The same applies to the modern codes, starting from the Code of Ahmet Zogu, which is also influenced in the part of obligations and contracts by the Italian and French Civil Codes based on the Roman law. Although Albanian law during the period of the People's Socialist Republic of Albania is mainly based on the Soviet law, there is no lack of Romanist elements. Contemporary Albanian law is also influenced by modern codes which have Romanist origins.

The law of obligations at various stages of the development of human history takes on different aspects and reflects new relationships between people. It has a dynamic character and is mobile in comparison with other branches of law. This is due to the very nature of the legal relationships that it regulates. Once the economic basis and the economic relations of a given society have changed, this has inevitably been accompanied, sooner or later, also by changes in the legislation that regulates these relations. On the other hand, each law, new legislative act causes changes in the way of regulating a specific legal relationship. This phenomenon is clearly expressed currently in Albania, where the economic and legislative changes have paved the way for each other in the new development of the market economy into which all civil circulation has entered.

Also, with the changes of recent years, the ratio between state and private property has changed in favor of the latter. As a consequence, the legal relationships of the obligation have also changed and will change due to the same fact that the legal nature of one of the elements of these relationships, which is their object, has changed.

The obligations

The notion and history of the Roman obligation

The problem of the origin of the *obligatio* is one of the most discussed topics of the Roman doctrine, first of all in relation to the question of which was the most ancient source of obligation, the *obligatio ex contractu* or the *obligatio ex delicto*. It is not a matter of knowing whether the *delictum* or the *contractus* existed before, but to which of the two types of figures the origin of the *obligatio* should be connected (Talamanca, 2003; Grosso, 1963; Arangio Ruiz, 1984; Sanfilippo, 2002).

Against the opinion of the precedence of the *obligatio ex delicto*, there is another opposite thesis, which connects the *obligatio* to figures that fall within the *contractus*, conferring to a subsequent period the assumption of the *delictum* as a source of obligation (*Grosso*, 1963; Talamanca, 2003).

The first attestations of the use in the juridical sense of *obligare* and *obligatio* are found only between the 2nd and 1st centuries B.C. In the previous era, the relations of obligations were structured differently regarding some essential aspects (Talamanca, 2003). In the Institutions of Gaius there is no definition of obligation. The related study begins (III 88) with a simple *"nunc transeamus ad obligationes"*.

In Justinian's Institutions (3, 13) we find a definition by a postclassical glossator of Gaius *"obligation est iuris vinculum, quo necessitate adstringimur alicuius solvendae rei, secundum nostra e civitatis iura"*. This definition unfortunately is incomplete in the part that should be its essence, the words *"alicuius solvendae rei"*. Therefore, if in our definition we take the obligation to "pay something" literally, we leave aside the innumerable obligations which have an object other than the giving of one or more things. In the ancient law the *obligatio* does not consist in the pure and simple duty, freely assumed, to observe this or that behavior in relation to someone, but in the submission to the domestic power of one's own or another's creditor, a submission which is so salient in the social conscience of the time as to push back into second line the duty of conduct to which it relates (Arangio Ruiz, 1984).

In thcontractualof evolution, which ended at the end of the republican age, the idea of *obligatio* extends from the contractual obligations to the criminal ones.

Originally, the private crime, i.e. the one whose sanction depends on the initiative of the injured party, was subject to revenge on the person, and only later the revenge was avoided with the payment of a sum of money by way of composition. Firstly, the composition was conventional, left to the free agreement between the offender and the injured, but in a second time it became legal, imposed by the State, whether the amount was determined a priori or whether the determination rested with an arbitrator. An example is that of the personal injuries falling within the category of *membrum ruptum*, regarding which the XII Tables have "*si membrum rupsit, ni cu meo pacit, talio esto*". The law of retaliation (an eye for an eye, a tooth for a tooth) already represents a progress compared to the limitlessness of the primitive revenge, but a new and more important advance is marked by the *"ni cum meo pacit"* clause, which officially recognizes the faculty of conventional composition. Having legalized the settlement system, and at the same time reduced the ancient *obligatio - pledge* to the juridical duty to observe the behavior voluntarily assumed towards another person, the position of the offender coincided with that of someone who had contracted a debt so to the *obligationex contractu* was juxtaposed the *obligatio ex delicto* (Arangio Ruiz, 1984).

In the two series of obligations, from agreements and from illicit acts, which present themselves as responding to common principles, there are some that the classics called *obligationes*, and others to which that name was given, only in the Justinian's compilation. Thus, of the numerous illicit acts described in the sources of the Roman law, only four (*theft, robbery, iniuria, damnum iniuria datum*) are considered by the classic sources of *obligatio*, while this did not arise, for example, in the case of the actions *de effusis et deictis* and *de positis et suspensis* (Arangio Ruiz, 1984).

In the Canon of Labëria, the obligation is a juridical relationship, through which a person (debtor) is obliged to give something, or to perform or not a certain action for the benefit of another person (the creditor) (the one who gave the loan) and this has the right to ask for something, whether or not the specific action is performed (Elezi, 2006). While there is no definition of the obligations in the Kanun of Lekë Dukagjini and in the Statutes of Scutari.

2.2. The classification of the sources of the obligations in the classical jurisprudence in general, in the Gaian works, in the Justinian compilation, in the Byzantine law, in the Italian and Albanian Civil Codes

The legal facts that are the presupposition of their creation are called sources of obligations. In general, they are facts of human will, but there are licit and illicit ones too. The former has the name of *contractus*. There are two categories of licit acts. The first, which is the most numerous, includes bilateral declarations of will

be issued for the purpose that one or both of the parties are bound to maintain a certain demeanor (e.g. mortgage, stipulation, sale). The second category includes non-bilateral licit acts, or acts not performed for the purpose of creating an obligation, and other situations from which the legal system gives rise to an obligation: thus, the *legacy per damnationem*, *the payment of undue payments, the management other people's business, the guardianship.*

A characteristic of the illicit act is that the obligation arises against the will of the agent, and as a sanction for the non-compliance with a logically prior rule (the thief does not steal to be obliged to pay the penalty, but the obligation to pay it, derives from not having fulfilled the primary precept not to steal).

The question of the sources of the obligations concerns first of all the classifications made in this regard by the Roman jurists. The classifications mentioned in the sources date back to Gaius. In the *Institutiones*, the treatment of the *obligationes* begins with a *summa divisio* (Gai 3. 88): *quarum summa divisio in duas species diducitur: omnis enim obligatio vel ex contractu nascitur vel ex delicto* ("of which - i.e., of the obligations - the first classification provides for two species. Every obligation arises, in fact, from a contract or from a crime").

This bipartition becomes a tripartition in the *Res cottidianae*, where in lb. II states (D. 44. 7. 1 pr.): *obligations aut ex contractu nascuntur aut ex maleficio aut proprio quoddam iure ex variis causarum figuris* (obligations arise either from a contract or from a crime, or separately from a series of individual cases"), in essence the classification of art. 1173 of the Italian Civil Code. In Justinian's Institutiones the general approach changes: *the summa divisio of obligationes* becomes that between *obligations civilis* and *praetoriae* (I.3.13.1). Therefore, the tripartition in the *Res cottidianae* is transformed, in the Institutiones of Justinian, into a quadripartition, where the obligations arise *ex contractu aut quasi ex contractu aut ex maleficio aut quasi ex maleficio* ("from contract or quasi-contract or from crime or quasi-crime": I.3.13.2).

According to the art. 1097 of the Italian Civil Code of 1865, the sources of the obligations were, as is known, five, the contract, the quasi-contract, the crime, the quasi-crime, and the law. That classification had been criticized, as lacking a solid basis starting from Roman law, even if article 1097, in compliance with the desire to return to pure Roman principles, was considered the almost literal translation of the famous text of Gaius (Inst 3, 13, § 2), which states that the obligations *"aut ex contractu sunt, aut quasi ex contractu, aut ex quasi maleficio"*. This is the second and, it seems, the last alteration elaborated by the Byzantine schools of the two Gaian classifications: one, contained in the *Institutiones*, which enunciated only two sources of obligations *(contractus, delictum)* the other, contained in the *Res cottidianae,* which considered three *(obligations aut ex contractu nascuntur, aut ex maleficio, aut proprio quodam iure ex variis causarum figuris).*

The opposition of the quasi-contract to the contract and of the quasi-delict to the delict was not only reproduced by the legislation that preceded the Italian Code of 1865 but was also justified. In reality, however, the fivefold distinction was found to be incomplete and lacking any real foundation, especially with regard to the figures of quasi-contract and quasi-delict.

In compiling the project for the new book of obligations, while it was initially decided not to maintain Justinian's fivefold distinction of art. 1097, it was discussed whether, wanting to indicate the sources of the obligations, it was more correct to restrict both only (fact of man and law) or to add others. But article 5 of the 1936 project had already stated as sources of obligations "the contract, the illicit act and any other fact capable of producing them by virtue of the law", and article 1173 substantially repeated the content, substituting, in the last part, the words "by virtue of the law" with the others "in accordance with the legal system": a purely formal modification which does not affect the content of the provision.

According to article 1173 of the current Italian Civil Code "The obligations derive from a contract, from an illicit act or from any other act or fact capable of producing them in accordance with the legal system". So, the sources are reduced to three. The last part of the article establishes an innovative principle for the Civil Code of 1942: the principle of the atypical nature of the sources of obligation. Reference to the legal system implies reference not only to the law, which already contemplates typical acts or facts producing obligations, but also to acts or facts not provided for in specific and, therefore, atypical rules. These, therefore, can produce obligations in the cases in which such suitability is recognized by the legal system.

In the Canon of Lekë Dukagjini there is no division of the sources of obligations as in the Institutions of Gaius, but by reading the Canon it is possible to arrive at the conclusion that the obligations here too arise from a contract and from a delict. Furthermore, the obligation can be contracted, in fact, either through a thing or by means of words, or consent. Customary law recognized as sources of the creation of the obligations the sale, the loan without interest, the pledge, the gift, and the infliction of damage (At Shtjefën Gjeçovi, 2010). The obligation is contracted through something, for example in the case of a loan, the Canon recognizes the simple loan: "you will give me back what I gave you". While the obligation by means of words is put into place through question and answer, as for example in the case of the guarantee, in which whoever guarantees for another, says to the debtor in the presence of serious people: "I guarantee for you, but think about it, that if you don't intend to pay, tell me right now because I'm preparing to pay for you. Persuade yourself well: I can't bear to be ashamed".

While the Canon of Labëria is codified according to the requests of the juridical techniques in the form of a Customary Code, faithfully preserving the content of the inherited norms, arranged according to the object of the juridical relationships

which are arranged. In the Canon of Labëria the sources of the creation of the obligations are the contracts (verbal or written), the infliction of damage, and the unjust enrichment (Elezi, 2006).

The Statutes of Scutari is another collection of customary rules and is composed of 268 chapters. In it, is regulated the city life, paced on the cadences of a religious calendar, structured by thematic blocks: the public law and relations with the king; the construction and maintenance of houses; the activity of the mill and taverns; the agricultural labor law; the working and wage conditions; the city constitution; the rules of judicial procedure; the legal status of the clergy; the civil right; the criminal law. Given the structure of the Statutes, obligations do not form a separate chapter, but in various sections the obligations arising from contracts and delicts and the related pecuniary penalties are mentioned (Nadin, 2010).

In 1929, came into force the Civil Code of Ahmet Zog with 932 articles for the obligations, while customary law was applied in the Mountains. In Ahmet Zog's Civil Code the sources of obligations are the contracts, the unilateral promises, the unjust enrichment, the management of other people's affairs and the tort. The main contracts were the sale, the rental, the company, the order, the deposit, the mortgage, the pledge, etc. (Kodi Civil 1929, 2010).

In the Civil Code of the People's Socialist Republic of Albania, the obligation is a legal relationship, through which a person (the debtor) is obliged to give something or to perform or not perform a certain action for the benefit of another person (the creditor) and the latter has the right to demand something to be given to him, or an action be carried out or not (Kodi Civil i R.P.S. të Shqipërisë, 1981). According to this code, the state organizes, directs, and develops all the economic and the social life with a single and general plan. The main source of the creation of the obligations in the People's Socialist Republic of Albania are the acts of planning of the socialist economy different from the competent bodies. Obligations also arise from legal actions established by law and especially by contract, by the infliction of damage and by the unjust enrichment. Obligations can also arise from juridical actions which are not foreseen by the law, but which are not in contradiction with the law, with the economic plan of the state, with the rules of the socialist morality and which have no purpose of damaging the state.

The planning acts create the obligation of enterprises, of the agricultural cooperative institutions and of the social organizations for the stipulation of the contracts. The contract stipulated in these conditions regarding the content must respond to this act. When the conditions of the contract do not comply with the planning act, those are invalid and have to be changed in accordance with the planning act. The conditions of the contract, which are in accordance with the planning act, can be changed only with the change of this act. Even in the Civil Code of the People's Socialist Republic of Albania, obligations arise from

a licit and an illicit act. As regards the obligations arising from an illicit act, the person who negligently and unlawfully causes pecuniary damage to the other is obliged to compensate for the damage caused. The person who caused the damage is not liable when he proves that the damage was not his fault. The person who has caused the damage, being in the condition of the necessary protection, is not obliged to compensate for it.The person who caused the damage, being in conditions of extreme need, is obliged to compensate it. But the court, considering the circumstances in which this damage was caused, may assign the obligation for its compensation to the third person in whose interest the person who caused the damage acted or to fully or partially absolve the obligation to compensate both the third party and the person who caused the damage. Furthermore, according to this code, obligations also arise from unjust enrichment. The person who has received or saved an asset to the detriment of another person without a legitimate cause or for a cause that has not occurred or has expired, is subsequently obliged to return what he has benefited or saved to the detriment of the other.

In the current system, science, legal doctrine, and the Albanian legislation treat the law of obligations and contracts as the special part of civil law. The Albanian Civil Code defines the obligation as a legal relationship by which a person (the debtor) is obliged to give something or to perform or not perform a certain action in favor of another person (the creditor), who has the same right, to ask to be given something or to have an action carried out or not (Kodi Civil i Republikës së Shqipërisë, 1994). According to the Albanian Civil Code, obligations arise from contracts or from the law. Most of the laws of the advanced countries foresee the contract as the main source, with full civil legal nature, which causes the arising of the rights and obligations of the parties. But are also sources of the arising of the obligations: an illicit act in the form of the infliction of damage, an illicit act in the form of unjust enrichment, the case of unilateral promises.

Contract obligations

The evolution of the notion of contract

In the most ancient Roman law, the terms *contrahere* and *contractus* did not indicate one of the sources from which the contract arose, but the obligatory bond, the obligation itself, and more precisely, in opposition to the bond deriving from a delict, that deriving from a licit act, from the deal, also referred to as *contractus.* Their meaning did not depend on the will of the subjects in the arising of the obligation (Grosso, 1963; Sanfilippo, 2002). Both the noun *contractus* and the verb *contrahere* appear in the sources during the second half of the 1st century B.C.

But in the classical jurisprudence, especially in the transactions of the *ius gentium*, in which the obligation arises from the mutual consent of the parties, the concept was formed according to which, in every bilateral transaction of commerce, the productive force is in the "agreement" between the parties, which in some cases is sufficient on its own for the obligation to arise, in others, however (in the matters of the civil law) it must be covered in solemn forms or accompanied by the performance of certain acts. At the end of the classical age *contrahere* and *contractus* take on the new subjective meaning of "to agree, convention" and refer only to those obligations that arise by convention between the parties (however manifested), while they no longer apply to those other obligations that arise by a licit act yes, but not conventional, (e.g. "undue payment") (Riccobono).

According to the prevalent terminology in the classical jurisprudence (in the classical Roman law and in the Justinian law), contracts are called those bilateral juridical transactions of the *ius civile* (in antithesis to the *praetorium*) which are intended to produce obligations: whether in the specific case the idea of the agreement of will, or consent (which occurs, in the thought of the ancients, only for *consensu contracts*), whether the intention to bind oneself or to oblige others to use of certain forms *(verbis and litteris contracts)* or in the delivery of certain corporal things *(re contracts)*. Moreover, the failure to differentiate from contracts another category of licit facts producing obligations forced jurists to bring the former closer, using analogy, to sources of obligation that were not bilateral agreements.

In the Justinian Compilation and in the modern doctrine, the term contract has been accepted in the meaning of "agreement as a source of obligation". In the Justinian law, the category of contracts, while widening to include analogous relationships that were protected only by praetorian law, conversely rejects definitively the sources of obligation that cannot be traced back to an agreement of will *(conventio, consensus)*. This agreement, which for the classics was very often pushed into the background by the real or formal element, is now an essential requirement of all contracts: whether the consent is sufficient, however expressed, to produce the bond *(contratti consensu)*, whether that it must be given a certain form *(contratti verbis and litteris)* or accompanied by the delivery of things *(contratti re)*.

The consent, which represents the subjective element of every contract in the Justinian's conception, is opposed by the cause as an objective element. By cause of a juridical transaction, we mean the fundamental intention of the parties: in terms of contracts, and according to the opinion that we deem most correct, we can call "cause" that behavior or that commitment of the counterparty on the basis of which each of the parties agrees to the contract. Thus, the cause of the sale is for the buyer in the seller's obligation to pass on the enjoyment of the thing to him, for the seller in the buyer's obligation to pay him the price. However, it must be

remembered that, as in general for legal transactions, contracts can be causal and formal, and that only for the former the existence of the cause is essential: in formal contracts the spoken or written word dominates, and the absence of each justifying cause can only give rise to an exception, by means of which the defendant debtor cannot deny the obligation, but assert the iniquity of demanding its execution in the circumstances of the case.

In Roman legal law the definition of the contract as an agreement between the parties for the result of an evolution that began during the classical age and was definitively completed only in the Justinian age.

In fact, a general and abstract category of the contract was not known, but individual figures of *obligationes ex contractu*: with the term *contrahere* the Romans referred to the bilateral obligatory bond, arising from a juridical relationship and weighing on one subject against another, without there was also a reference to the deed of establishment of the obligatory bond[2].

The bilateral compulsory bond, according to this configuration, could also be implemented with an act of a single subject.

In the Postclassical-Justinian age, the use of the term *contractus* began to generally indicate bilateral agreements. In this way, it was admitted that the category could also include agreements of will, which were previously protected by the praetorian law.

The most recent doctrine has had the opportunity to point out that the often repeated affirmation according to which Roman law did not have a complete conception of the contract as a general instrument, knowing only individual contracts, proves to be insufficient, having instead to establish when it reached to conceive the binding effectiveness of the pact, regardless of belonging to the individual known typical categories: this is an awareness undoubtedly achieved in Justinian law. It has also been said that "the new orientation of the classical thought, in opposition to the rule of the *ius Civile*, had already found the foundation of commercial contracts in the agreement, i.e. in the will of the parties", it is believed, however, certain "that the *contractus,* whatever its meaning, comes to constitute an autonomous point of reference when it is juxtaposed to the illicit act among the sources of the obligation"; the negotiating meaning of the term *contractus* would be accentuated, according to the same doctrine, in the Gaian tripartition which distinguishes, in addition to the contract and the crime, other facts productive of obligations *(D. 44.7.1 pr.- Gaius II Aureorum: obligationes aut ex contractu nascuntur aut ex maleficio aut proprio quodam iure ex vàriis causarum figùris).*

For us today contract undoubtedly means agreement, convention, aimed at the establishment, extinction, modification of legal relationships. But, as has been well observed, contracting in common language retains a different meaning, analogous to the Latin *contrahere* (though perhaps even more restricted in certain contexts);

and it is precisely from this meaning that we must start to evaluate the *contractus* of the Romans. The rules on contracts arise from a variety of sources of law, which today make up a more complex and articulated picture than the one we were used to until towards the end of the last century.

First of all, nowadays is accentuated the role of the contract as a producer of juridical rules, therefore as a source of law. The "normative" dimension of the contract has already manifested itself variously in the past, in relation to the phenomena that have been mentioned when speaking of the relationship between contract and norm (normative contract, collective agreements, associative agreements, general contract conditions). But the phenomenon is experiencing a stronger impulse today, and new manifestations. The role of the contract as a source of law is enhanced by the processes of economic globalization, in which the large multinational companies are the protagonists that assisted by the large international law firms create the standard contractual models to be applied to the countless transactions carried out every day on the world markets. The living law that regulates economic operations is identified less and less with state law, and more and more with that produced by these contractual sources (Gambaro&Sacco, 1996).

The Albanian science, the legal doctrine and legislation treat the law of obligations and contracts as the special part of the civil law. The law of obligations has been considered by scholars in general and civil law scholars as one of the most important parts of civil law. Rightly, it is emphasized that "it is the most voluminous and universal branch of law" (Alishani,1989). "The matter of the law of obligations is the obligation itself - quid obligation"(Dauti, 1998).

In the Albanian Canons (The Canon of Lekë Dukagjini, the Canon of Labëria, The Statutes of Scutari) we do not find a definition of the contract, even if these codes regulate various types of contracts.

Contracts in the Albanian Civil Code of 1929

The publication in 1929 of the first Civil Code of Albania, called Zogu Code (from the name of the sovereign) constituted a new element for the comparison with the Roman law: in fact, similar to many other civil codes of the time, it followed a precise scheme and regulated institutions that also had their roots in the Romanist traditions (in particular it can be noted that the Albanian Civil Code of '29 refers to the sources of the Italian Civil code of 1865).

Foreign laws, and in particular the French, the Italian and up to a certain point the German and the Swiss laws, would have inspired the Albanian legislator to recognize and set important and fundamental principles in its provisions, such as: the equality of all the citizens, the emancipation of the land ownership and

the freedom to engage in the economic activities. The entry into force of the Civil Code of Zog also entailed the pertinence of the Albanian civil law in the (Roman-Germanic) civil law family, definitively separating it from the Ottoman law. This code is represented with a more progressive content than the whole juridical-civil regulation, which was applied in our country until that time.

The originality of the 1929 Civil Code lies in the fact that in its fourth book, the Italian French project of 1928, "On Obligations", came to life. The fourth book of this Code was entitled "The ways of acquiring and transmitting property and other rights over things". This book, which also demonstrates the authenticity of the Civil Code of 1929 from the reference models, presents the joint work of an Italian French commission under the presidency of two outstanding jurists of the time, Edouard Lambert and Vittorio Scialoja, and which had the aim to unify the law of obligations in Italy and France. Almost all the articles in this book from 1067-2047, refer to the joint French-Italian project "For the Obligations". In the fourth book of the Code was presented a separation between the law of property from the law of obligations, like the French Civil Code. The institution of the contract was regulated by about 800 articles. This code regulated in detail all types of contracts including the contract of work or of reconciliation. The Civil Code of King Zog I for the first time provided for "the marriage contract, which had to be made with a public deed before the notary before the celebration of the marriage". The marriage contract was regulated on the basis of the provisions of the Italian Civil Code of 1865 and of the French Civil Code of 1804.In Lekë Dukagjini's Kanun, "the woman had no right, neither on the children nor on the house". Furthermore, the woman had no inheritance rights over the inheritance left by her husband or her children. She had the right to remain in her dead husband's house, or to leave her house. So seen in the historical context, the matrimonial regimes have the beginning of their development with the approval of the Civil Code of 1929, which for the first time established a single system for the whole country.

In the other titles of this section, starting from the 4th to the 24th, the Civil Code of Ahmet Zogu deals with the different types of contracts, both the traditional ones as well as the new ones that emerged following the development of the capitalist relations of the time. The contracts are regulated according to the Italian Civil Code of 1865 and that of the Napoleon Code of 1803.

Contracts during the People's Socialist Republic of Albania

The economic system of the countries with a communist regime (USSR, China, Albania, etc.) is characterized by the prohibition of the private ownership of the means of production, considered a source of exploitation, while the concept of the consumer goods, whose ownership is instead permitted, has been different in

various periods and in various countries, according to the ideological rigidity of the regimes. The means of production of collective ownership (state or cooperative) include land (at most leased to peasants) and the main industrial plant. The state is also recognized as having a monopoly on international trade. Acting under a monopoly regime, the state can set prices, which, however, plays a reduced role in the socialist economies. The allocation of resources is not based on the market, but on planning. Overall, the system proved capable of achieving an increase in the quantities produced, albeit at very high human costs and with a great waste of resources, but it failed to guarantee sufficient technological progress and to supply goods of acceptable quality. In the Civil Code of the Socialist Republic of Albania, obligations and contracts are governed in Chapter V by art. 139 to art. 181 and in Chapter VI of the art. 182 to art. 314.

The V Chapter deals with the meaning of the obligations, the sources of the obligations, the meaning of the contract, the stipulation of the contract, the obligations with several subjects, the change of the subjects of the obligations, the fulfillment of the obligations and the consequences of the non-performance, the end of the obligation, the contestation of the debtor's legal actions. The characteristics of the socialist law were visible in the articles that made up the Civil Code. This feature came because of the fact that the jurists who drafted it had been educated in the Soviet schools, however we cannot say that, even indirectly these jurists had not also tried to introduce elements of the Germanic law.

The contract was a legal action, in which were completed the duties of the state plan, as well as the material and cultural needs of the citizens. When, for the implementation of the state plan, companies, institutions, and agricultural cooperatives had to supply or sell products and goods to one another and carry out works or services they used to make a contract between themselves.

Citizens entered contracts to satisfy their material and cultural needs, as well as for the enjoyment and the disposition of their personal property.

The content of the contract had to be in accordance with the law, with the duties of the state plan, with the principles of the state's economic policy and with the rules of socialist morality.

In the 19th century, the intensified contacts with the West and the spread of university culture allowed Romanist models to break into Eastern Europe.

Contracts in the current Albanian Civil Code of 1994

Having abandoned the socialist path, the countries of Eastern Europe have made their own liberal solutions victorious in the West. Everywhere written constitutions are drawn up that cannot be modified by the ordinary legislator and are guaranteed by a constitutional court, and also the constitution of the socialist

period is restructured for this purpose. Everywhere the principle of legality and the independence of the judge are proclaimed. Wherever the rule of law is wanted (Gambaro &Sacco, 1996).

The abolition of the political monopoly of the Communist Party paves the way for the development of the democratic institutions: for the rivalry between parties, for the free elections, for the creation of a parliament with real power, for a government based on a parliamentary majority, and so on. For the stability of democratic institutions, there must be guarantees of individual freedom and autonomy. Among the most important are the law of private property and the defense of private contracts (Kornai, 1995).

We are currently faced with the phenomenon of globalization which from a legal point of view is nothing more than the sum of two "events" that occurred simultaneously at the end of the 20th century, that of the delocalization of manufacturing activities and of the qualitative leap in the development of information technologies. The sum of the two phenomena has led to an increase in international trade acts. This historical fact has relaunched the discourses that evoke the concept of the *lex mercatoria* (Ponzanelli & Amato, 2006). In the context of the *lex mercatoria*, the parties through the contract can not only regulate the object of the same, but also designate the applicable law and the state or arbitral jurisdiction to which they want to submit the resolution of any disputes and which therefore the contract is, the legal instrument of globalization (Zoppini, 2006).

The regulation of the Institute of contracts in the Albanian Civil Code is a cross between the Italian and German law.

The Albanian Civil Code, for the first time accepted and enshrined in its provisions the theory of freedom of the contractual will, together with its three directions and the institution of the interpretation of the contract (artt. 681-689).

In the Civil Code the general part is organized in the seven titles of the IV Part and in the I Title of the V Part. The general part deals with the fundamental principles on which the law of obligations is based, the meaning of the juridical relationships of the obligation, the elements and their types, the meaning of the contract, the manner of its stipulation, the types of the main contracts, their conditions, the means ensuring the fulfillment of the obligations deriving from the contractual and the non-contractual field, the cases of the exchange of persons in a legal relationship of obligation, the manner and order of the fulfillment of the obligations between the parties, the meaning, the cases of non-performance of the obligations, and the consequences deriving from it, the manner of the conclusion of the obligations, etc. This part also deals with the obligations that arise for the parties in the field of non-contractual relations.

The special part deals with the special and most important contracts that are encountered in the civil circulation with the characteristics, particularities, and

obligations of each party in these contracts, with the manner of their conclusion, the resolution of disputes between the parties, with their essential and general conditions etc.

In the Civil Code the special part is included in Title II of Part V. This Title has in its content XXIII chapters, each representing a specific type of contract. The Albanian Civil Code in this part follows the line of the Italian Civil Code.

Conclusions

In this paper was carried out an investigation of the origin of the *obligatio* in the Roman and the Albanian law in order to better understand the origin of *obligatio* in the contemporary law. The notion of *obligatio* and its sources have Romanist origins. However, in this paper, it has been established that this notion, together with its sources, has evolved with Roman law from the Institutions of Gaius to the Code of Justinian. The same applies to the notion of contracts, which like many notions was perfected in the Justinian era.

In conclusion, the history of the law of obligations and contracts in Albania has undergone to frequent changes according to the various systems in which Albania has passed. An important role in the Albanian legislation over the years has also been played by the invasions of Albania by different countries, which have left important traces of their culture and legislation in our country.

From the Customary Collections to the modern codifications, the field of obligations and contracts is mostly based on Roman law.

In Ahmet Zog's Civil Code the obligatory relationships were regulated by following the Italian French project which was based on the Roman law too. While from the comparison of the rules of obligations in the Albanian Civil Code of 1994 it emerges that it was mostly based in the Italian Civil Code.

Finally, although in the current codes, the notions of *obligatio* and *contractus* have their origin in Roman law, this field is experiencing a continuous development with the arising of new contracts because of the development of the market economy.

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