

THE IMPACT OF THE CONSTITUTIONAL LAW SYSTEM IN THE DEVELOPMENT OF THE POLITICAL PARTIES

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Purpose:

The political parties are an important element of the development of a democratic system. The democratic system is linked to the legal system that in turn requires the observance of the principle of legality by all central and local administrative bodies. Also there is the constitutional legal framework on the organization and functioning of the political parties. Both in the Constitution and in the law there are not only set the conditions to create a party, but also some fundamental principles upon which cannot be created political parties that promote racial, religious and regional hatred etc. The constitutional law system is closely linked to the political parties as long as these find themselves to this system.

Research Methodology/Approach: In this paper we will focus on how the constitutional law system has contributed to the political parties. How it has affected the system in being a single party during the one-party system or political pluralism after the advent of democracy. The amendment of legislation has affected the change of political parties. Through the comparison method we will point out those elements that have changed the political parties since their genesis.

Findings: What serves as finding is the fact that in the history of the political parties in Albania the political parties have not always had the role of the sister parties throughout Europe. Political parties in Albania came more into the scene and took place after 1990. After this year, when in Albania was established the political pluralism changed the situation for political parties. Now the parties not only had already improved the legal framework, but in 1998 was adopted the Albanian Constitution that specified in its articles modalities for political parties.

Value: The value of this work consists in the fact that it is an original work based on different historical facts which have led to the development of the political parties. Highlighting the role of the political parties as an important promoter of the functioning of the state makes this an important study. All political game is organized by the parties themselves which with their candidates affect law making, decision-making, in other acts issued by the central government.

Paper type: Academic Research Paper

Key words: law system, constitutional, political parties, organization, state.

Introduction

The political parties are an essential element of political life. Political parties are not phenomena that have arisen in the contemporary era. They have existed as political groupings in Rome or ancient Greece. In the classical liberal period, there have been treated as parliamentary groupings: the "Right" or the "Left", deprived of a real stability in the country. Afterwards it was accompanied by the expansion of voting and the transformation of political parties from meetings of elite groupings to true parties of measures. The latter are characteristic of modern states. All this led to the necessity of constitutional recognition of political parties as a social formation important thing that happened for the first time in Italy with the constitution of after World War II¹. Then validation in the constitution was spread to all the countries of Europe.

Viewing the history we can say that the period of the birth and the development of political parties have gone through various stages. As mentioned in the beginning there were political groups, then these groups took a more organized form and today political parties are an important tool in the functioning of the state. This development came not only as a result of historical development, but there was aid even from the authors whose definitions showed the main elements composing political parties. So, various authors tried to give definitions of political parties emphasizing different elements, the plurality of persons, organization, purpose, content, etc.

The French constitutionalist Benjamin Constant defined a political party as: "a group of people who hold the same

political doctrine." Marx and Engels in their definitions of political parties put the emphasis on ideology, and Lenin on the organizational aspect². These initial definitions for political parties were improved later and especially at the time when political parties became part of the constitutions in different countries. The presentation of the organization and functioning of political parties in the constitution gives them a greater role as influential in the state system of the government. If the constitution gives the general principles, then it is the special law for political parties that specifies in detail the organization and functioning of political parties.

The meaning of the political parties

The first works about political parties in the world have been published around the end of the XIX century and early XX century. These works were dedicated to the three founding fathers of political parties, Moisei Ostrogorski, Roberto Michels and Max Weber. Ostrogorski as a social reformer was for the creation of modern reformed political parties, which had a crucial role in policy-making³. A supporter of liberal philosophy was against criticism that qualified political parties as mechanisms of political conflicts or as organizations with military discipline. He called for a reform to replace the existing parties with parties which would be more active in solving problems. Roberto Michels another founder of political parties dedicated their creation to their distinguished

¹ Omari L., Anastasi A., *Constitutional Law*, Tirana 2008, pg. 175.

² Omari L., *Principles and institutions of the public law*, Tirana 2004, pg. 157.

³ Brechon P., *Les partis politiques*, Juillet 1999, pg. 7.

predecessors, Mosca and Pareto⁴. He was inspired by the elite theories protected by them. He published in 1911 in Germany, a paper about the oligarchic tendencies of political parties based on a sociological analysis of the functioning of the German social-democracy. Created to be instruments of competitive democracies, parties are inevitably a place of oligarchy derivative. He says that the innovations of competitive democracies lead to centralization and bureaucratization of the parties, which should be able to take quick decisions.

Max Weber is often regarded as one of the pioneers of political parties approach with the political element⁵. Above all we should remember his insistence on the professionalization of politics in the modern era. Politics became for a large group of people a main activity. According to him, the parties are defined as organizations with free participation that require the participation of their leaders in power and allowing militants to defend a case or benefit because of their loyalty to the leader. Thus the parties were developed in the XIX century in a rational and legal way as well as more organized. But dominance of important policy is increasingly competed by modern party organizations which have been transformed into real vehicles.

Legal and constitutional system, parties in Europe

In Article 49 of the Italian Constitution it is defined that: «All citizens have the right to freely associate in political parties in order to contribute with democratic methods to national politics». This provision is closely related to Article 18 of the Italian Constitution, the right of association «Citizens have the right to organize freely, without authorization for purposes that are not prohibited by criminal law».

In the Italian Constitution it is defined that any political party which will be developed and function will happen only on a democratic basis. Also its impact on the state or participation through representatives in the state will be built on a democratic basis. Beyond that this provision of the Constitution does not elaborate other elements of political parties, the way of organization and functioning of political parties. In fact, it is the Italian doctrine that explains and interprets broader the concept of political parties.

The Italian author T. Martines defines the key elements of the political parties that are on the one hand, a multiplicity of persons, namely the organization and on the other a goal or an ideology. The main element «ideology» requires the existence of a stable organization for the implementation of the party's main goal⁶.

In the Constitution of Kosovo that entered into force on 15th June 2008 there is no separate article for political parties. In the Constitution of Kosovo is only defined the freedom of association under Article 44 as follows: «Freedom of association is guaranteed. Freedom of association includes the right of everyone to create an organization without obtaining any permission, to be or not to be a member of an organization and to participate in the activities of an

organization. «So in this constitution are given the modalities of organizing citizens in different organizations and is not talked specifically about political parties. This constitution is different from the Italian and Albanian Constitution that have the creation of a political party defined. Perhaps this deficiency will be remedied by amending the constitution by adding the article for political parties as well as with the adoption of a law on political parties.

In Germany and France are set out in the constitution the political parties respectively in Article 21 of the German Basic Law and in Article 4 of the Constitution of France. And in these constitutions as well as in Italy it is evident the creation of political parties on a democratic basis. But in England there is no written constitution, they are defined in the respective political party's law.

The development of political parties in Albania from 1912 until 1945

Political parties in Albania are not of a very early time. There have been attempts to political organizations since the time of Scanderbeg state and during the existence of the pashalik in Albania. Whereas in 1912 when the Albania's independence was proclaimed, there were not created or made evident political parties as was happening in Europe.

At the beginning of the XX century two parties were created in Elbasan, the People's Party and that of the Beys and Shkodra was created a pro Italian party⁷. Political parties were created not only within the territory of Albania, but also in the Albanian diaspora in the world for instance in the U.S. was created the Autonomous Party. In Romania, in the Albanian community there were established two parties, one pro Slavic and a pro Greek. A significant role in this area played even the Albanian deputies in the Turkish parliament, who because of the unfulfillment of some of their requests with Albania emerged in opposition forming a party that was called the Liberal Party⁸.

The continuous efforts of Albanians for creating political parties (or political groups) began to crystallize in the 1920s and onwards. It was the period of works of Lushnja's Congress in 1920. For this historical period of the development of Albania speaks even an author such as Bernd Fischer who states that political parties and the Albanian Parliament rose in an unknown terrain, in difficult historical circumstances and in conditions of a lack of democratic experience⁹.

After Lushnja's Congress a law was passed on political parties. Shortly after the adoption of this law on October 10th, 1920 a group of MPs came up with a political program under the name of «National People's Party»¹⁰ with main leaders Fan Noli and Ahmet Zog. The party announced even its program where was present the protection of the

⁴ Brechon P., *Les partis politiques*, Juillet 1999, pg. 8.

⁵ Brechon P., *Les partis politiques*, Juillet 1999, pg. 9.

⁶ Martines T., *Diritto costituzionale*, Milano 2005, pg. 627.

⁷ Krasniqi A., *Political parties in Albania* (1920-2006), Tirana 2006, pg. 28.

⁸ Krasniqi A., *Political parties in Albania* (1920-2006), Tirana 2006, pg. 29.

⁹ Fischer B. J., *Albania at war, 1939-1945*, Purdue University Press, July 1999, pg. 49.

¹⁰ Dervishi K., *The history of Albanian state, 1912-2005*, Tirana 2006, pg. 115.

rights of citizens regardless of religion, freedom of speech, the pursuit of a peaceful foreign national policy, the creation of a modern administration to guarantee civil rights.

After 1921, two other parties were created. So, Ahmet Zogu created a new party which was renamed Government Party or Conservative Society 'Clique'. With the creation of this party Zog tried to strengthen his personal power¹¹. On the other hand Fan Noli with his supporters created the Democratic Party. This party was a continuous form of the old rate of People's Party while maintaining the character of its liberalization.

For this political movement in Albania was expressed even Faik Konica, in his masterpiece «Comedy of Parties». He regarded with skepticism political developments in Albania and did not value the two created parties both for the purpose and for the organization and operation mode¹².

During the years 1945-1990

At the end of the Second World War the role of the communist party in Albania was strengthened and was more evident. The party was established on 8th November 1941 and after the war it tried to solidify its position. This is the beginning of a period of communist dictatorship in Albania, which can be divided into two periods; first period of 1944-1976 and the second from 1976-1990.

The first period On 11th January 1946 the Constitutional Assembly that had emerged from the elections of December 1945 abolished the monarchy and declared Albania a People's Republic. For the first and last in the Constitutional Assembly there was a real opposition, but was eliminated very quickly with communist methods. On 16th March, 1946 the Assembly adopted the first Constitution in Albania¹³. This constitution was the prelude to the start of operation of communism in Albania.

In realization of this, efforts to strengthen the role of the Communist Party in Albania and to establish the dictatorship of the proletariat increased. Thus began the rights and political freedoms started to be constrained, to avoid political pluralism in order to open the way to the existence of only one party, the communist one etc..

The second period The new constitution, which was adopted on 28th December 1976 by the National Assembly declared Albania the Socialist People's Republic based on the dictatorship of the proletariat. After the year 1976 the Communist Party was strengthened even more and in the party's first congress changed its name to the Party of Labour of Albania. The main aim of the party was eliminating any attempt for the creation of any other party in Albania. This was written in the Constitution which in Article 3 was stipulated that: «The Party of Labor of Albania is the only political force leading the State and society».

Even though in the Constitution was defined the right of the organization at that time in Albania was not allowed another political force with the exception of the Labour Party. So, in this period the rates provided in the

constitution were fictitious. This was an unprecedented case and absolutely contrary to international policies. At a time when in Europe political pluralism was associated with democratic states, in Albania things were going in the opposite direction. Of course the reason for this was the fact that for the leader of the Labour Party of that time was easier the dominance in Albania without political pluralism, that is, without opposition.

After the year 1990

In 1990 after the collapse of one-party totalitarian system in Albania important democratic changes occurred. These changes affected every area of legislation, economy, politics, etc. As a result of this a new era beginning in Albania was approved the law no. 7491 dated on 29.04.991 «On Basic Constitutional Provisions». Since in the period in Albania there was no constitution, this law played the role of a constitution. Immediately striking in this law is the sanctioning of political pluralism and an article much more democratic for political parties. In Article 6 of law no. 7491 dated on 29.04.991 «On Basic Constitutional Provisions» it is stated that: «Political pluralism is one of the basic requirements of democracy in the Albanian state.

Political parties and other organizations set up and conduct their activity in accordance with the law. They are completely separate from the state. The political activity is prohibited in the barracks and military institutions of the Ministry of Defense and Ministry of Internal Affairs, Ministry of Foreign Affairs and diplomatic missions abroad, prosecution, investigation sectors, courts, etc. «The way of departmentation and de-politicization of bodies should be made by law». So at first sight this article presents an important principle in the Albanian state that of political pluralism which in previous constitutions of monist system not only was inexistent, but also could not be expected.

This paragraph would be further followed by a definition of parties. It was the time to have a security for pluralism and for the existence of non-parties incorporated in the state. This argument found itself in the second paragraph specifying the creation of political parties according to the law and the fact that they are separate from the state. It became very important and great attention was paid to it by the state of that time. Further guarantee that the law established for the existence of overseas parties was even their non-interference in important institutions such as the Ministry of Interior, Ministry of Defense, prosecution, etc. It was necessary for its own condition that the Albanian state was passing in 45 years to have such detailed definitions in law no. 7491 dated on 29.04.991 «Basic constitutional provisions».

This law reflected even better those important political changes that occurred in Albania after 1990. So, the Albanian Labor Party changed its name to the Socialist Party of Albania. While in December of 1990 a group of students and intellectuals created the Democratic Party of Albania as the first opposition party. In the first multi-party elections that were held in March in 1991 the Albania's Socialist Party won the majority showing clearly that was still the influence of the former regime. But this situation

¹¹ Fischer B. J., *King Zog and attempts for stability in Albania*, Tirana 1996, pg. 81.

¹² Konica F., *Comedy of parties*, December 1923, pg. 24.

¹³ Anastasi A., *Constitutional Law*, series of lectures, Tirana 2004, pg. 51.

would not remain the same since in the early elections in April in 1992 the Democratic Party won the majority marking an important step for the further democratization of the Albanian state, for the party's principles itself. A number of new parties were created in Albania in this period.

Law no.7491 dated on 29.04.1991 «On the main constitutional provisions» remained in force until 1998 when the Albanian Constitution was adopted, the first constitution with democratic principles.

The Italian model of the appearance of political parties in the constitution was followed by many other states as well as Albania. If we compare Article 49 of the Italian Constitution with Article 9 of the Albanian Constitution we see that there are many similarities. The only thing is that the Albanian constitutionalist has tried to present the political parties more explicitly. Specifically in Article 9 of the Albanian Constitution in its fundamental part it is provided that:

1. *Political parties are created freely. Their organization shall conform to democratic principles.*
2. *Political parties and other organizations, programs and activities of which are based on totalitarian methods, which incite and support racial, religious, regional or ethnic groups that use violence to take power or to influence state policies, as well as those with confidential nature are prohibited by law.*
3. *Financial resources of the parties and their expenses are always made public.*

In this article such elements of political parties are meant as organization, multiplicity of people, content and purpose. Within the meaning of Article 9 there should be made a distinction between the position of the party as a «private» instrument necessary for the determination of national policy and the position of the party as incorporated in institutionalized state itself and the body's own attribute to determine the will of the state. The first position is typical of democratic states, while the second, it is common for socialist and authoritarian states¹⁴.

If the Constitution gives the general principle is the law no. 8580, dated on 17.2.2000 "On political parties" that gives the definition of political parties and treats them wider. In Article 1 it is stated that: "Political parties are voluntary unions of citizens on the basis of ideas, beliefs or views shared political interests who seek to influence the life of the country through participation in elections and representation of the people in elected bodies of power ". In this article are defined the key elements of political parties. The Albanian Constitution has paid attention to the purpose of the establishment and functioning of political parties.

Given the bitter experience in 45 years of dictatorship of the party-state has the constitutionalist has well defined in the second paragraph of Article 9 two conditions: 1 - the creation of programs of political parties based on democratic principles and, 2 - prohibition of the creation of parties contrary to democratic principles.

With the exception of the principles prescribed in the Constitution for the organization and functioning of parties the constitutionalist was careful to have a check made to them by the state. The state does not control only the organization, operation and guarantees the rights of individual members of political parties, but it also controls even the way of their financing. And this is a very important element of the political parties to operate on a democratic basis and to avoid investments from illegal ways. The state always requires that the parties' financial resources and their expenses to be made public.

In conclusion

It is easily understood that the political parties are the engine of a policy of a state or even of making laws as long as political parties are part of the parliament. In history we could not proclaim the existence of political parties, but simply some political groups with conflicting interests. Many authors have provided definitions of political parties in view of their meaning. Some tied necessarily parties with power, but generally in different countries they are identified as organisms that affect the choice or send representatives in elected bodies, as foreseen by the Albanian law.

Different countries have paid special attention to political parties as the basis of the creation of modern democratic societies. But usually in constitutions are provided only general principles for political parties and further extensions are left to the special laws for political parties. If we would compare the past when the parties were simply political groupings with the present time, where they are guaranteed in constitutions we would see that the parties have changed a lot. They have changed in the organization, function, control and mentality. This change is reflected very well in the interaction between the Constitution and special laws.

This is evidenced even in Albania since the early efforts of politicians or Albanian patriots to establish political parties, (Noli or Zog) and today we have organized and well constructed parties.

What prevails is the fact that until 1945 there was bipartization in Albania, two political parties, the Zog's Government Party and the Democratic Party of Noli. From 1945-1990 in Albania there was a one-party system represented by the Party of Labour of Albania. After 1990 to 2009 there was a multiparty system. In 2009 the Electoral Code was amended and was established the regional proportional system for general elections.

This system favors large parties or coalitions. And this is what happened to political elections held on 28th June 2009 when the coalition Alliance for Change which was even joined by the coalition Socialist Alliance for Integration was the winner and in the opposition remained the coalition Union for Change. Under this electoral system there is the tendency to return to a bipartization concept or two political coalitions.

So the constitutional and legal system has significantly contributed to the development and political maturity of political parties in Albania. The Constitution now guarantees the existence of parties built on democratic

¹⁴ Omari L., Anastasi A., *Constitutional Law*, Tirana 2008, pg. 175.

principles and controllable by the state. The more efficient the methods of controlling the state the more positive will be the performance of political parties in Albania. This

performance will probably affect the political stability so necessary for the euroatlantic integration of Albania.

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