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CONSTITUTIONAL IDENTITY:
A COMPARATIVE OVERVIEW OF THE ITALIAN
AND ALBANIAN CONSTITUTION

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Constitutional identity: A comparative overview of the Italian and Albanian Constitution

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Abstract

This paper aims at providing a comprehensive and comparative level of the constitutions of Albania and Italy. More specifically, we will focus on the dimension of the positive rights, in correlation with the effective institutions and norms in force. It briefly distinguishes the composition and procedures of election or appointment of the major constitutional bodies in these two states. Part of this study will include a review of the doctrine and jurisprudence and its influence on the drafting and interpretation of the Constitution. It comes out that the Albanian Constitution as newer has provided some more details and specifications based as well on borrowings from the Italian system.

I. Introduction

Italian system was chosen to be compared with the Albanian system not only for the fact of the geographical vicinity, but also having in regard the great similarities that both systems have, since they belong to the same law family, that of civil law. The constitutional development in Albania and Italy, mainly based on their constitutional documents that have laid down the foundation of the constitutional system till to present constitutions, serve to compare each system's main institution. Furthermore the comparison is very important to better understand our national system as well as identify specific institutions present in the Albanian system.

If we make a historical overview of the constitutional documents in Albania and Italy, from the creation of these states, it is noticed that Italy has had only two

· This paper is the written version of the presentation given in panel no.31 on "Constitutionalism and Constitutions" of the ICON-S 2014 Inaugural Conference on "Rethinking the Boundaries of Public Law and Public Space", in Florence on June 27, 2014.

constitutions¹, while Albania has had nine constitutions². Albertine Statute is the cornerstone of the Italian constitutional system and it was the constitution that the King Carlo Alberto donated to the Kingdom of Piedmont-Sardinia on 4 March 1848. So Albertine Statute is an *Octroyée* constitution, which means a constitution donated to the people by the king. Later this statute became also the Constitution of the United Kingdom of Italy in 1861, when Italy joined Piedmont, remaining in power with some small changes, until 1947, when the present Italian Constitution was approved. The similarity of the Albanian system with the Italian system has the roots from the very beginning of the Albanian state with the Organic Statute of 1914. The Organic Statute was also an *Octroyée* constitution with the difference that it was donated not by the king, but by an international body ICC³. Both statutes, Albertine Statute and Organic Statute of 1914, established the monarchical form based on the French Constitution of 1814. The republic form was declared earlier in Albania than Italy. It was the Fundamental statute of The Republic of Albania of 1925, which formally sanctioned that “Albania is a Parliamentary Republic”, while in Italy, republic was declared by the constitution of 1948 that followed Albertine Statute. The main similarity of the Albanian Statute of 1925 with the Albertine Statute is the sanctioning of the bicameral legislative body. The bicameral legislative body in Albania existed only once under the Statute of 1925.

All the Albanian constitutional documents that existed before the entrance into force of the present Constitution of the Republic of Albania have had numerous similarities with the Italian Albertine Statute. The efforts made by Albania to disconnect from the Eastern influence and be alike nearer to the Western countries were followed by the occupation of Albania during the fascist regime and that influenced a lot in the Albanian system. During the fascist occupation (from 1939 until 1943) in Albania acted

¹ Albertine Statute (1848) & the Constitution of the Republic of Italy (1948).

² Organic Statute of Albania of 1914, Statute of Lushnja of 1920, Expanded Statute of Lushnja of 1922, Statute of the Republic of Albania of 1925, Fundamental Statute of the Albanian Kingdom of 1928, Constitution of the Socialist Republic of Albania of 1946, Constitution of the People’s Socialist Republic of Albania of 1976, Law on Major Constitutional Provisions of 1991 and Constitution of the Republic of Albania of 1998.

³ International Control Commission, the representative body of the Great Powers.

the statute, under which all the legislative and executive power in Albania belonged to the King of Italy. Albania under this statute was declared “Autonomous and Hereditary Constitutional Monarchy of the Crown of Savoy Dynasty”. Consequently we can say that the similarity with the Italian system in the past has become even imposed. In both countries, in Albania and Italy, during the periods of the dictatorial regime’s existence⁴, there has not been a real constitutional system. Even though the constitutions have existed, they were only formally constitutional acts, because in reality there has been only a strong hand to lead. To be underlined is the fact that Italy, nevertheless came out from a dictatorial regime, it was able to approve a final constitution. This is a long-lasting constitution that is still at present in force and this due to the fruitful collaboration that all the main political forces had. A completely different situation happened in Albania, where after the turning down of the communist regime, it would suffer hard the consequences of backward mentality, and as a result Albania could not have a real constitution. Only after eight hard and transitory years, in 1998, it became possible to be approved the present constitution that is in force.

The way toward drafting and approving of the Italian Constitution was longer about nineteen months from June 1946 until December 1947, while in Albania the process was carried out in twelve months, since there had been some previous attempts. This was made possible thanks to the successful cooperation among the Albanian political forces and constitutional specialists, but also a precious contribution was made by many organizations representing various groups and society strata, international organizations, mainly during the debates. Another important difference between the two constitutions that is related to the way of approval of the constitution in each of the system is the body that has approved it. Italian Constitution of 1948 was approved by the Constitutional Assembly, a special body, while on the other hand the Albanian Constitution of 1998 is approved by the legislative body, the Parliament and in addition it ran the popular referendum and afterwards it was declared by the President of the Republic. So in terms of approval the Albanian Constitution was widely accepted

⁴ The fascist regime in Italy lasted for two decades, from 1922 until 1943, whilst the communist regime in Albania lasted for almost a half century from 1945-1990.

not only by the representatives of the people, but also by the people itself, a fact that should affect on constitution stability. But the reality shows that after ten years from its entrance into force, Albanian Constitution was amended twice in 2008⁵ & 2012⁶. The Italian Constitution has a specific, as it is triple signed by the provisional President of the State *Enrico De Nicola*, President of the Constitutional Assemble *Umberto Terracini* and the President of the Council of Ministers *Alcide De Gasperi*, that implies the unitary consciousness from which the constitution was born⁷.

The Italian and Albanian Constitutions, as they are long constitutions of more than 100 articles, they are divided into parts and are structured according to the main issues. The only difference regarding the structural frame is that the Albanian Constitution has the preamble and the Italian Constitution does not have.

II. Principles, freedoms and fundamental rights

The principles on which were built these two constitutions lay down the basis of a democratic and pluralist state. The importance of the essential principles is that they serve as criteria that should to be taken into consideration when the constitutional norms are to be interpreted or implemented. There are Italian constitutionalists as Valerio Onida, who prefer to refer to the concept of “*Constitutional State*” to indicate the actual phase of constitutionalism development, which is characterized by the central role of the Constitution as a set of principles that stipulate the rights and obligations of the parties and articulation or separation of powers⁸.

The comparison relating to the principles is primarily based on the differences that exist in Italian and Albanian system. Italy has paid a specific attention to the principle of labour, giving to the work the right-duty status. Thus, it is ensured not only

⁵ Law No.9904, dated 21.04.2008, “On some amendments to Law no.8417, dated 21.10.1998 “Constitution of the Republic of Albania”

⁶ Law No.88/2012, “On some amendments to Law no.8417, dated 21.10.1998 “Constitution of the Republic of Albania”, as amended”.

⁷ Licia Califano Placci, *Guida ragionata alla Coattituzione Italiana [Reasoned Guide of the Italian Constitution]*, Maggioli S.p.A , San Marino 10 (2010).

⁸ Valerio Onida, Maurizio Pedrazza Gorlero, *Compendio di diritto costituzionale [Compendium of constitutional law]*, Giuffre Editore 149 (2011).

the passive protection, but also the active protection in relation to the work, where the state is obliged to remove all the obstacles that restrict the effective participation of all employees. In Albania the protection of human dignity is provided not only as a fundamental principle, but it is also provided in the preamble as “people’s commitment, the human dignity and personality protection”.

Regardless of religious tradition that has had each state, both states are based on the principle of secularism, but with some differences. Since Italy is the centre of the Catholic independent State, the exclusive jurisdiction to the Catholic Church is recognized by the state only in issues determined according to the specific provisions of Lateran Pacts. In Italy the principle of secularism is not clearly stated in one own article, but it is expressed indirectly by some articles (2, 3, 7, 8, 19 & 22); while on the other side the Albanian Constitution has the highest protection standards because it protects also the opponents of consciousness⁹ due to religious belief.

The peculiarity of the Italian constitution system is that the constitution has sanctioned on the fundamental principles; the development of culture, scientific and technical research, as well as the protection and preservation of the historic, artistic and environmental property¹⁰. This principle is not provided even in the other western constitutions and as such it indicates the modernity of the Italian Constitution and the ability of its drafters that succeeded to identify its importance. The Italian Constitutional Court has made clear in its decision of 1986, the primacy of the esthetical-cultural values cannot be dependent to the other values, including economic values, but indeed it demonstrates that economy itself should be inspired by the culture.

The principles that are at the core of all the fundamental rights and freedoms of the Albanian system are inseparability, inviolability and inalienability. The Albanian Constitutional Court defined as follows:

Juridical security is among the essential elements of the rule of law; however, this principle cannot prevail in any case. This means that if it is presented the case that a

⁹ These persons are not obliged to do the obligatory military service if their religion do not accept.

¹⁰ Article 9 of the Italian Constitution: “The Republic promotes the development of culture and of scientific and technical research. It safeguards natural landscape and the historical and artistic heritage of the Nation”.

different legal regulation of a relation directly influenced by a public interest, with all its essential elements, this natural interest will have priority over the principle of juridical security¹¹.

The public bodies have the duty to respect these freedoms and rights and to ensure their implementation. The Albanian Constitution has a specific aspect because it has provided the cases in which these constitutional freedoms and rights can be limited. The terms of their limiting are such as, the restriction should be done by law, for public interest or in protection of the rights of others and in proportion to the situation that has dictated it. Confusions and many questions, that were raised about what will be understood “*by law*”, were explained by the Albanian Constitutional Court that ‘...*the phrase “only by law” has the meaning...that it is only at the discretion of the legislator and not of the other bodies including also the Council of Ministers... Excluding phrase “only by law” used in the articles 11/3 and 17 of the Constitution, deals with the restriction of the rights and have the same meaning, that of the narrow interpretation, in contrast to other provisions where the word law can be understood more broadly...any other contrary interpretation is a devaluation of the guarantee given by the constitution for the protection of human rights and freedoms...*¹².

But from the doctrine¹³ it is given the opinion that the Council of Minister can only intervene with normative acts that take the force of law, according to the article 101 of Albanian Constitution, to set the limits of the area of the fundamental rights and freedoms. In the view of the comparative analysis, it can be said that in Italy this right is recognized to the Government through the delegated legislation which is also given to the Italian government. Furthermore Albanian Constitution has even provided the cases in which the constitutional rights and freedoms are limited and the conditions of their limits. These limitations should not violate the essence of the freedoms and rights as well as should not exceed the limits provided in the European Convention of Human Rights. To be distinguished is that the Albanian constitutional system provides to the

¹¹ Decision of the Albanian Constitutional Court No.26/.2005.

¹² Decision of the Albanian Constitutional Court No.20/2006.

¹³ See Luan Omari , Aurela Anastasi, *E Drejta Kushtetuese [Constitutional law]*, Shtëpia Botuese “ABC”, Tiranë 80,81 (2010).

ECHR a constitutional level only as regards to the limitations of the rights and freedoms, which is not provided in the Italian system since the Convention was approved after the approval of the Italian Constitution, in 1950. 'These restrictions of ECHR signify the minimum restrictions and do not prevent the national legislation to provide greater protection for human rights and fundamental freedoms'¹⁴.

The principle of equality is treated differently in the two constitutions, as the Albanian Constitution does not provide protection from discrimination for personal/physical conditions, while in the Italian Constitution this principle is a positive and negative obligation to the state. In Albania the equality principle is only a negative obligation requiring from the state only its non-interference and does not require taking measures for removal of barriers as it is required in Italy. Albanian constitutional jurisprudence defined that 'equality in law and equality before the law presumes equality of individuals that are in equal conditions, and only in exceptional cases and for reasonable and objective causes the different treatment can be justified'¹⁵. The Italian constitutional jurisprudence affirms the principle of legal reasoning in defence of the equality principle, by defining that law cannot impose an unjustified discriminatory rule. 'Otherwise the law would be unconstitutional because it violates the principle of equality through the violation of the principle of reasoning'¹⁶.

It is notable that the Italian Constitution does not provide the right of information, but only the freedom of expression. This does not mean that the right to information is not ensured in Italy because in modern democracies the freedom of expression includes also the right to information, in both its aspects, as freedom to express as well as freedom to be informed, which can be guaranteed only by the pluralism of resources¹⁷. The Albanian Constitution has sanctioned the freedom of expression and the right to information separately taking into consideration the key role that media plays in informing the public and that to fight more the corruption it should be respected the right

¹⁴ Decision of the Albanian Constitutional Court No.24/2007 & No.41/2007.

¹⁵ Decision of the Albanian Constitutional Court No.33/2007.

¹⁶ Decision of the Italian Constitutional Court No.108/2011 & No.115/2011.

¹⁷ Diego Solenne, Antonio Verrilli, *Compendio di Diritto Costituzionale [Compendium of Constitutional Law]*, Magioli Editore, San Marino 95 (2009).

to information. Albanian Constitutional Court has stated that 'The freedom of expression and the right to inform, in addition to subjective guaranty as fundamental constitutional rights, are objectively linked also with the principle of building a democratic state declared in the preamble of our Constitution'¹⁸.

With respect to the social rights, Italian Constitution has a greater protection to the people in need, whilst in Albanian Constitution the social assistances are not constitutional rights, but they are provided as social objectives, based this on the fact that social rights are conditioned by economic state availability.

By analysing all the fundamental rights and freedoms, it concludes that there are no significant differences, but only in structuring and grouping them. Italian Constitution, based on the relations that they protect, has classified the human rights and freedoms in four categories: civil; ethical-social; economical; political. Whereas Albanian Constitution sets out the human rights in three groups: individual rights; political rights; economic-social-cultural rights. The peculiarity of the Albanian system is that it also provides the social objectives which differ from the fundamental human freedoms and rights due to the fact that their fulfilment could not be required directly at the court because they express the goals and objectives of the states to meet the social rights and needs.

One of the most important human rights in a democracy is the right to vote, that is why it is worthwhile to focus on how it is presented in both Constitutions. The Albanian electoral system is characterized by optional vote, while the Italian electoral system has a specific as it provides that the exercise of the right to vote is a civic duty. But in reality, there is no sanction for those who do not vote and in fact, it must be said that the liberty of voting is a postulate as well as to the right not to vote¹⁹. In Albania the age limitation is the same eighteen years as for *jus suffragii* as well as for *jus honorarum*, while in Italy there are different age limitations depending to the bicameralism. Thus the right to vote in the Chamber of Deputies is given to persons from eighteen years old, and to the Senate is given to persons from twenty-five years

¹⁸ For more see Decision of Albanian Constitutional Court No.16 dated 11.11.2004.

¹⁹ Massimo Drago, *La costituzione Italiana [The Italian Constitution]*, Alpha Test S.r.l, Milano 84 (2010).

old. On the other side for the right to be elected higher restrictions are asked based on the importance of the room. You have to be twenty five years old to be elected deputy and forty years old to be elected senator. As far as I am concerned the Albanian Constitution should have provided distinction age restriction for *jus suffragii* and *jus honorarum* because in the last Albanian parliamentary election a woman of nineteen years was elected to be a deputy. A nineteen years old person is very young to be elected in the parliament and to decide on important decisions, which sometimes can affect the future of the entire nation. The advantages that Italian system has concerning to one of the most important political rights, as it is the right to vote, is that the Italian Constitution ensures to the non-resident Italian citizens the right to vote by correspondence and to the other citizens of EU states the right to be elected in elected functions.

Italian Constitution, in contrast to the Albanian one, reserves to every citizen a special right, the right to present petition to Parliament only to require legislative measures or to express collective needs. The subject of this right are all the citizens, regardless the restrictions to vote. Besides that and in addition to the right to vote or the right of labour which has the status of the duty-rights, the Italian constitution system identifies specific constitutional obligations; on patria protection, contributing to public expenditures, loyalty to the Republic and respecting of the Constitution and laws as well as the performing with discipline and honour of public trusted functions. Albania as well has these obligations, but they have legal status as are defined in specific laws and as a result they don't have the importance of constitutional obligations.

III. Legislative power

A distinction that can be notified is that according to the Albanian Constitution (article 70) the deputy represents the people whilst as it is said by the Italian Constitution (article 67) the deputy represents the nation. This choice in Albania was done due to the fact that if it was *for the nation*, this will mean that an Albanian deputy has to represent also the Albanian people outside the borders, as it would be the case of Kosovo.

Organization

Italy and Albania as parliamentary republics, based on the principle of separation of powers and check and balances, have the general characteristics of legislative bodies very similar, but with the substantial difference in the legislative body's organization. In Albania the Parliament is unicameral composed of a single chamber with 140 members, selected by a proportional system with multi-named electoral areas, for a period of four years. The mandate of the Italian Parliament is longer than in Albania, it is for five years. Unicameralism in Albania comes as a result of the mainly homogenous population and unitary government. On the other side Italian Parliament is a complex bicameral body composed of two chambers, the Chamber of Deputies (630 deputies) and the Senate of the Republic (315 senators), which have the legislative function exercised by collective activity of the both chambers. 'Bicameralism in Italy is justified above all on the need to ensure an appropriate representation in the instances that came from territorial entities in which, it is distributed the territory of the State'²⁰. Election for deputies is done on national basis, whereas for senators on regional basis, excepting the six whom are elected in the overseas constituency and are life senators. These six life senators are senators by right (the former presidents) and by achievements, the five others whom are appointed by the President of the State among the citizens that have honoured the State through their outstanding achievements in the social, scientific, artistic and literary fields²¹.

Legislative procedure

Consequently, based on the organization of the legislative body, the procedure to be followed for the approval of draft laws is simpler in Albania in which the Constitution defines explicitly three voting procedures for the draft law; voting in principle, voting

²⁰ Diego Solenne, Antonio Verrilli, *Compendio di Diritto Costituzionale [Compendium of Constitutional Law]*, Magioli Editore, San Marino 155 (2009).

²¹ See article 59 of the Italian Constitution.

article by article and voting in general. The Italian Constitution defines only the voting section by section and the final voting, but the procedure of reviewing of the bill is more complicated. The specific is that the Committee, itself, can review and directly approve a bill without passing in plenary session, but until there is not made the final approval of the bill, if the Government, or 1/10 of the members of the House or 1/5 of the Committee require, it can be referred to the House for the final voting. To arrive at the final approval of the law, it is necessary that it should be approved by both chambers. There are also differences with regard to promulgation deadline, by the president, of approved laws, which is twenty days from the presentation of the law in Albania and one month in Italy. Moreover Albania recognizes to the President the right to remain silent on law promulgation, and in that case the law is considered promulgated. If it is the case of urgency or of extraordinary measures, in Albania the law enters into force immediately when it is decided by the majority of all the members of the parliament and the president gives his consent and only after it is publicly announced. Whilst according to Italian Constitution, if it is a case to declare a law to be urgent, decided by the absolute majority of the members of the parliament, the law is promulgated within the deadline established therein.

Sessions of parliament

Normal and special sessions of the parliament play an important role in the internal organization of the legislative body. The normal sessions are defined in the constitutional provisions. The Albanian Constitution stipulates that the Parliament conducts its annual work in two sessions, the first of which starts on the third Monday of January and the second session starts on the first Monday of September. According to Italian Constitution the sessions of the Italian Parliament chambers are in the first non holiday day of February and October. Consequently it is noted that Albanian Parliament as well as the Italian one perform their annual work in two annual sessions. The differences are as regards special sessions. These differences are in terms of subjects that have the right to convoke these extraordinary sessions. In Albania the extraordinary sessions can be convoked by the President of the Republic, Prime Minister or by one

fifth of all deputies, whilst in Italy it can be convoked by the President of the Republic, by each respective Chairmen of the Chamber, or by one third of all parliament members.

Regulations of parliament

The Albanian and Italian Constitution provide the principle of regulatory autonomy of parliament. Italy has a regulation for each chamber in order to ensure the independence of the chambers. Besides of regulative autonomy, both Italian legislative chambers have also the accounting autonomy by preparing and adopting their financial statement which is not subject of controlling by the external bodies as the Court of Accounts (*Corte dei Conti*).

The constitutional courts of Albania and Italy have had different opinions on the question if the parliament regulation can be object of constitutional control of the Constitutional Court. The Albanian Constitutional Court has defined the meaning of the regulation of the parliament as ‘a legal act that intends to establish rules of the internal activity and functioning of the Assembly’²² and ‘it can object of constitutional control only for unconstitutionality of laws attributed to the form and only if the provision of constitutional level included in the regulation are unconstitutional’²³ and when are affected provisions of constitutional level that are reflected on it²⁴. [O]n the contrary the Italian Constitutional Court has refused to adjudicate the constitutionality of parliamentary regulations, as they do not enter in the category of “Laws and acts having the force of law” for which the court is called to express under article 134 of the Italian Constitution and the regulatory power that is given to the two chambers guarantees the independence of the parliamentary regulations as well as of the constitutional court and its judgments on legitimacy²⁵. But this exclusion is only in general terms as the Italian Constitutional Court has admitted that a regulation of a chamber can be object of jurisdictional conflict between the State and regions and thus can be under the

²² Decision of the Albanian Constitutional Court No.35/2007.

²³ Decision of the Albanian Constitutional Court No.29/2009.

²⁴ Decision of the Albanian Constitutional Court No.33/2010.

²⁵ Decision of the Italian Constitutional Court No.154/1985.

constitutional control of the Constitutional Court according the regulation of the article 134 of the Constitution.

Inquiry Committees

Recently, in Albania, the question of parliamentary inquiry committees is a delicate debate, since often the opposition requires the establishment of inquiry committees for many issues. The Albanian Constitution provision regarding the committees has an ambiguity as provides that '*these commissions are required to be established when are required by a quarter of all members of Parliament to examine a particular issue*'. In practice, precisely the term "particular issue" has led to confusion as to which are the cases when it is needed the establishment of an enquiry committee. The Albanian Constitutional Court interpreted this term and stated that 'all of those cases that fall within parliamentary control function and containing itself a public interest encompass that term'²⁶. Later, based on the fact that the inquiry committees were used in an abusive way, the Constitutional Court in one of its decisions emphasized that 'the parliamentary inquiry cannot be absolutely unlimited because the inquiry object should have to respect constitutional principles in order that the parliamentary inquiry to be related to legislative activity and that the inquiry to be not used in an abusive way'²⁷. Thus, the Albanian constitutional jurisprudence defined that an inquiry committee cannot be established for an individual but only for a specific issue. With regard to this aspect, Italian Constitution with no ambiguity has defined clearly as when can be established an inquiry committee, only on matters of public interest, but with a specific regulation that this committee has the same powers and limitations as judiciary and only for severe cases to complement and not to replace the judiciary. The Albanian Constitution does not give the same authority as judiciary to the inquiry committees, and their conclusions are not binding for the courts but they can be reported to the prosecution.

Accountability and immunity

²⁶ Decision of the Albanian Constitutional Court No.18/2003.

²⁷ Decision of the Albanian Constitutional Court No.26/2006.

The accountability about the opinions and votes of the members of parliament is another delicate issue. In Albania, deputies do not take accountability on the opinions expressed only in the parliament, as well as for the votes cast in the performance of their function. Italian Constitution does not specify the place of opinions expressed by the members of parliament creating so ambiguity. Therefore was approved a special law²⁸ on the implementation of the article 68 of the Italian Constitution, which clarified that the irresponsibility of the members of the parliament is applied in any case related to the parliament function even if it is out of the place of the parliament. Constitutional jurisprudence²⁹ explained how far this irresponsibility is extended, determining that there should be a functional connection between the parliamentary activity and the opinion expressed outside the parliament, by the Member of Parliament in his quality of member.

Before the amendment of 2012³⁰, the Constitution of Albania ensured to the parliamentary deputies a wider criminal immunity compared to the Italian members of the parliament, because Albanian deputy had immunity to criminal prosecution and was requested an authorization from the parliament, except the cases when the deputy was apprehended in the act of committing a crime or immediately after committing a grave crime. Now they can be under criminal prosecution as the Italian members of Parliament without the conditioning of parliament authorization. The criminal prosecution immunity existed in the Italian Constitution, but it was abolished earlier in 1993³¹. Actually in Albania it is required parliament authorization in cases of personal or home control, arresting or deprivation of personal freedom of any kind, which is the same with the amendments of 1993 of the Italian Constitution. Italian Constitution goes further and provides to members of the parliament a better protection by requiring such an authorization also in the cases of monitoring of conversation or communications and size of mail.

²⁸ See article 3 of the Law No.140, dated 20.06.2003, "Provisions for the implementation of the Article 68 of the Constitutions as well as concerning of criminal proceedings against highest offices of the State".

²⁹ See decisions of the Italian Constitutional Court No.329&417/1999, No. 298/2004 & No.304/2007.

³⁰ Law No.88, dated 18.09.2012, "On some changes in the Law No.8417, dated 21.10.1998 "Constitution of the Republic of Albania", as amended".

³¹ Constitutional Law No.3, dated 29.10.1993, "Amendment of Article 68 of the Constitution".

The relationship between international and national law

Both systems being analyzed, even though that they belong to the same law family of civil law, they differ regarding to the relationship between international and domestic law. In Italy as part of the dualist system, the international law and national law are independent and conducted in parallel. Each of them can borrow from the other special norms and apply them in practice, but neither of them can prevail over the other³². Unlike Albania that belongs to monist system, where international law has priority over other normative acts. As we mentioned above the Albanian Constitution, in distinction to the Italian Constitution gives to international law and especially to ECHR a privileged position, only as regards the limitations of rights and freedoms provided in ECHR which is in the equal level with the Albanian Constitution. In the hierarchy of norms after the Albanian Constitution and ECHR, only as regards limitations of rights and freedoms, are the ratified international agreements. Thus in Albania the ratified international agreements are superior to the laws and these international agreements are directly applied except the cases when its implementation requires the issuance of a law. In cases of conflict between an international agreement ratified by law and a law, based on the Albanian constitution determinations, the international agreement should prevail. The judges in such cases must apply directly applicable international agreement, without directing to the constitutional court. In Italian system the adoption of international agreements is done by the “execution order” by giving to the national interpreters, theirs interpretation. As Italy is in the EU, the EU Law has direct effect and is superior to national law. The amendments of the Constitution of 2001³³ distinguished the community obligation from those of international, as the community law has direct effect while for the international law has to express the judge.

IV. Role of the President

³² Arben Puto, *E drejta Ndërkombëtare Publike [International Public Law]*, Shtëpia Botuese “Albin”, Tiranë 28 (2004)

³³ Constitutional Law No.3, dated 18.10.2001, “Amendments to Title V of Part II of the Constitution”.

The Albanian and Italian constitution provide to the president the same role and position, as the neutral arbiter of the three powers and guarantor of the Constitution. This similarity is because both constitutions have determined the same form of government as a republic. Again Albanian Constitution takes care not to put the nation term, so the president represents the unity of people (article 86) whereas Italian President represents the national unity (article 87). Comparing the requirements to be elected as president, it can be distinguished that the minimum age required is different (40 years old in Albania and 50 years old in Italy), as well as other conditions which are mentioned only in respective Constitution. So the candidate for president in Albania has another condition, that of being resident in Albania for not less than the ten recent years and the nationality from the birth, which can be explained with the great changes that happened in Albania after the 1990, as the significantly grow of brain drain phenomena. Under the Italian Constitution the condition of nationality is not conditioned by the birth, but it is another condition, that the presidential candidate should enjoy civil and political rights. Thus, in Albania the conditions for presidential candidate are more restricted than in Italy, where there are not conditioned with the nationality from the birth and the recent residence. Even the procedure of the Italian president election is simpler and less prolonged up to three ballots with the two-third majority. After the third ballot, if it is not achieved the two third majority of the joint session of the members of both chambers of parliament, an absolute majority suffices to elect the president. The procedure for the election of the Albanian President can be prolonged only up to five ballots of which up to the third ballot is required not less than the three five majority and for the fourth is sufficient the absolute majority. The particular aspect of Albanian constitution is that the ballot is considered done even if it is not presented any candidate. Hence, if in the fifth ballot no candidate has obtained the required majority or it is not presented any candidate than the parliament has to be dissolved and is required to be organized new parliamentary elections within forty-five days of its dissolution. The Italian Constitution has not limited the number of ballots after the third ballot, which means that if it is not reached the two-third majority up to three ballots, than the number of ballots can be without end, waiting the achievement of absolute majority. The Italian President is

chosen by a greater representation, because in the ballot together with the parliament members participate as well as the delegates of the regions (three delegates for each region, only *Val d'Agosta Region* has one delegate). As a result, the Italian President is elected by a greater number of persons (1003) and has a bigger support among people.

President's mandate is different in the two systems; it is five years for the Albanian President and seven years for the Italian President. The Italian Constitution is not pronounced about the re-election of the president, contrary to the Albanian Constitution that allows only one re-election of the president, except the case of when the president has given resignation before the end of his mandate, which in that case cannot candidate in the next presidential election after his resignation. The mandate of the president can be suspended in cases of temporary or permanent inability. In the case of temporary inability of the President, the Speaker of the Parliament (in Albania) or the President of the Senate (in Italy) will take president place and exercise his powers. Both constitutions have a gap as regards the explanation and determining of these two concepts of inability, which were explained by the doctrine. The Albanian Constitution defines explicitly which can be the case of permanent inability of the president consisting in not performing the duty for more than sixty days and in this case the Parliament with the two third of all its members decide to send the case before the Constitutional Court which proves ultimately the fact of the president's inability. The intervention of the Constitutional Court is not provided by Italian Constitution, according to which in cases of President permanent inability the President of the Chamber of Deputy should call the date of election for the new president.

In Italy the majority required to impeach the President for high treason or violations of the constitution is the absolute majority of all members of the parliament. The Albanian constitution has chosen a greater majority in the cases of president impeachment for serious violation of the constitution and for serious crimes. The proposal is done by not less than one fourth of the parliament members and supported by not less than two thirds of all members. This regulation is argued due to the fact of providing to the president an independent position from the party that has the majority. Nevertheless the Italian Constitution has vested the President with broader

competences compared with the Albanian one. The most important power is the right to issue decrees having the force of law. In Albania the president does not have this competence normally, but only during the state of war, when the parliament cannot be assembled and by the proposal of the Council of Ministers. Consequently only in this particular case the Albanian President can issue acts having the force of law and which have to be approved by the parliament at its first meeting. Thus the Albanian Constitution conditions the right of the president to issue decrees having the force of law with the state of war, the inability of the parliament to assembly, proposal of the Council of Ministers and their immediate approval by parliament.

V. Executive power

The Italian Constitution stipulates explicitly the composition of the government as a collegial body consisting of the President of the Council and the individual Ministers who together constitute the Council of Ministers. According to the Albanian Constitution, within the Council of Ministers is included also the Deputy Prime minister, which body is not foreseen in the Italian Constitution as it is considered as not necessary government body, but it is foreseen by law. Even the number of ministries is foreseen in the law in Italy and is not determined by the Prime Minister as is in Albania. The Albanian Prime Minister has the discretion to choose the number of ministers and send to parliament for approval not only the program of the Council of Ministers but also the composition of it. The procedure of appointment of the Prime-Minister is complex in Albania. The President of the State appoints the Prime Minister upon the proposal of the party or coalition that has the majority in parliament and if the candidate for Prime Minister is not approved within ten days, then the President has to appoint a new candidate. If it is not approved even the second name, than the Parliament, itself, within ten days chooses a new Prime Minister who has to be appointed by the President of the Republic. In case of failure of the Parliament to approve the prime minister, the President dissolves the Parliament. On the other side the Italian Constitution gives the authority to the President of the Republic to appoint the President of the Council without conditioning the proposal of political parties, but in reality the President of Republic always consults with

representatives of parliamentary groups. Then, within ten days the President of the Council of Minister and the Ministers have to get the confidence of both Chambers of the parliament. If one or both the chambers give an opposing vote, this does not entail the obligation to resign. In Italy, before 2008, had existed the rule of acceptance with reserve of the President of Council assignment and after the verification of the parliamentary parties ready to support his government, the name was taken back to the President of the Republic to remove the reservation. Since it was only a simple formal passage, it was removed.

In both systems the Council of Ministers apart their essential competencies in determining the general politics of the government has some rights relating legislative power. For this comparative study, it is important the legislative power of the Council of Ministers. It is noted that in Albania the Council of Ministers has only the right to issue “normative acts having the force of law” (article 101) acts of which, according to the Italian Constitution are named “decree laws” (article 74). The condition to issue as normative acts having the force of law as well as for decree laws are the same; the need and the urgency, under the responsibility of executive body for taking precaution measures, but differ from the term needed for the act to be approved by the legislative body. This term in Albania is within forty-five days from the issuance of the act of the executive body, which is longer in Italy sixty days. The forty-five day term, based also on the interpretation done by the Albanian Constitutional Court³⁴, is a preclusive term and the disapproving decision of parliament has an *ex-tunc* effect which means from the time of approval and is an *ex post facto* law with retroactive consequences. The publication in the Official Journal of these acts is not needed in Albania, but the Constitutional Court deems that for normative acts having the force of law, for which it is not necessary the publication in the Official Journal, their public notice is a constitutional obligation of the authority that issued it. The Italian Constitution leaves no room for interpretation because it has stipulated as constitutional obligation the publishing of decree laws.

³⁴ See Decision of the Albanian Constitutional Court No.24/2006.

Besides the issuance of decree laws, to the Italian Government may be delegated from both Chambers of Parliament by a delegating law the issuance of legislative decrees, but only for a limited time and for specified purposes, and in respect of the pre established principles and criteria. Concluding it can be said that the Italian Council of Minister possesses a broader legislative power than the Albanian one.

Another institute that is worth comparing is the institute of confidence and no confidence motion of the parliament. What is distinctive in Italy is that it does not provide the possibility of a confidence motion after the confidence vote that government had taken to parliament. Albanian Constitution, with the amendments of 2008³⁵, gives to the Prime Minister an important right by letting in his hand the fate of the legislative body if such does not approve the motion of confidence. This authority gives the right to the Prime Minister to dissolve the parliament in case the parliament withdraws the confidence motion. Even the motion of no confidence has some differences, because in Italy the motion of no confidence can be required by one tenth of the members of each Chamber and should be motivated. Whilst in Albania, the motion of no confidence can be required by one fifth of the deputies and in the meantime by proposing a new Prime Minister, which is a constructive vote of no confidence similar to that of Germany. Italian jurisprudence recognizes also the motion of no confidence to a single minister, whereas Albania does not foresee either in legislation or in jurisprudence. The Italian Constitutional Court adjudicated that:

'...each Chamber has the right to approve a no confidence motion even to a single ministerIn front of this individual no confidence motion the Prime Minister can transfer, as happened always in the past, the issue of confidence of the entire government³⁶, based also on the constitutional article 95/2 according to which the ministers are collectively responsible for the acts of the Council of Ministers and individually responsible for the acts of their own ministries'.

³⁵ Law No.9904, dated 21.04.2008, "On some changes in Law No.8417, dated 21.10.1998, "Constitution of Albania".

³⁶ See Decision of the Italian Constitutional Court No. 7/1996.

Moreover the Italian Constitution in the title of the government has included also Public Administration and Auxiliary Bodies as National Council for Economics and Labour (consultative body for Government and Parliament), the Council of State (legal administrative consultative body), the Court of Accounts, but these bodies are not part of the government structure. Albanian Constitution has foreseen as constitutional organ The Supreme State Audit, which has similarity with the Court of Accounts.

VI. Judicial power

In the constitutions, part of this analysis, since the first article of the title of the judicial branch, can be noticed a difference. In Italy the justice is given in the name of the people. Albania has a distinct provision, in view of the fact that the previous constitutions of the dictatorial regime predicted that the justice is given in the name of the people was thought more reasonable the justice not to be given any more in the name of the people, and as a consequence it was stipulated to be given in the name of the Republic (article 146/1).

The composition of the judiciary in Albania is provided in the Constitution, which provides the existence of three levels of the judiciary as the first instance courts, the appellate court and at the head is the Supreme Court. Italian Constitution does not provide the compositions of the judiciary branch. As for the normal jurisdiction the Italian legislation provides the first instance courts as are the Peace Court, Tribunals and Court of Assisi; second instance courts as the Court of Appeal and the Court of Assisi Appeal and the Court of cassation. Analyzing the composition of judiciary in both systems it is concluded that in Italy the system of courts is well organized by dividing the competences between them and facilitating each other's work. Besides the Italian Constitution has a specific provision as comprises the direct public participation in the administration of justice, and the cases and forms of participation are provided in a particular law.

A principal focus by both constitutions is given to the High Council of Justice, which is not a judicial body, but has competences relating to the career and activity of judges as it deals with their admissions, appointments, transfers, promotions and

disciplinary measures. The Italian High Council of Justice has more members, a total of twenty seven, compared to the Albanian one which has only fifteen members. As regards ex officio members it is ascertained that there are no big differences, as are the same the President of the Republic, the Head of Supreme Court, but differentiates the third member who in Albania is the Minister of Justice (article 147) whilst in Italy the General Prosecutor of Cassation Court (article 104). As for the elected members Italian constitution provides that two thirds of the twenty four members that remain (in total sixteen members) are elected from the ranks of simple judges, and one third (eight members) are elected by Parliament in joint session from among university professors of law and lawyers with fifteen years of experience (article 104/4). On the other side, according to the Albanian Constitution only three members are elected by the Parliament by not determining from which professions and the other nine members are elected from the National Judicial Conference. Given the fact that in Albania the Constitution does not provide specification for the elected members by Parliament, there have been many legal debates, which were resolved by the interpretation done by the Constitutional Court. In its decision of 2006³⁷, the Albanian Constitutional Court decided that in order to have a balanced representation, the members elected by Parliament should be chosen not by the ranks of judges but among lawyers working in various professions. This decision of the Albanian Constitutional Court can be interpreted as a borrowing from the regulation of the Italian system. The mandate of elected members is longer in Albania five years, whereas in Italy is for four years.

The Albanian Constitution, as newer, has some more specifications given that provides explicitly (article 147/6) by not letting to the legislator to decide, on the cases when the judges can be dismissed by the High Council of Justice. Hence the judge is allowed to appellate the decision of HCJ at the Supreme Court. The Constitutional Court has interpreted that 'the right of appeal to the Supreme Court against the dismissal decision of HCJ, does not mean, that as for prosecutors is no provided directly such a right, they do not have the right to require at the court their jurisdictional-civil rights'³⁸.

³⁷ See Decision of the Albanian Constitutional Court No.14/2006.

³⁸ See Decision of the Albanian Constitutional Court No.38/2003.

But this appeal is provided only in cases of dismissal and not in the cases of other measures such as may be of those of disciplinary. The Constitutional Court of Albania³⁹ has determined that the Constitution does not leave any space to legislators, that in term of empowerments of the standard of judges' protection, to include in the constitutional jurisdiction of the Supreme Court also the appeal review against disciplinary measures.

VII. Constitutional control and amendments

Both constitutions have provided as part of constitutional guarantees the existence of the Constitutional Court, but have differences concerning the composition, the way the judges are elected, the conditions to be elected, the appointment of the Chairman of Constitutional Court and on the renewal of composition. The Italian Constitutional Court consists of fifteen judges, whilst in Albania it consists of nine members. The judges are nominated for a period of nine years without the right of reappointment. In Italy, nomination of all members of the Constitutional Court is done by different bodies, five judges by the President of the Republic, five judges by Parliament in joint session and the last five judges by the ordinary and administrative supreme Courts. Albanian Constitution has a different regulation by giving to the President of the Republic the right of nomination and conditioning it with the consent of the parliament. Judges of the Constitutional Court are selected mainly from the ranks of lawyers with high qualifications, who in Albania is required to have at least fifteen years of experience in the profession, while in Italy due to the importance of the duty is required a higher experience of twenty years. What is specific in Italy is that among the judges of the Constitutional Court can be selected even the retired judges, whilst in Albania the mandate of the judges of Constitutional Courts ends if they reach the age of seventy. From this point of view, it seems that the Italian Constitution, taking in consideration the importance of the duty and the high professionalism that the judges of the constitutional court should have, has provided high standards for the judges of this important court.

³⁹ See Decision of the Albanian Constitutional Court No.24 & 25 /2007.

There are differences also in the nomination of the Head/Chairman of the Constitutional Court. So, in Albania the Chairman is nominated among the members of the Constitutional Court by the President of the Republic with the consent of the Parliament for a period of three years. Italian Constitution provides that the Chairman of the Constitutional Court is selected among its members according to the rules established by law and has a mandate of three years with the right of re-election, but in any case by respecting the expiry term of the constitutional judges' mandate (nine years).

When Italian Constitutional Court declares the constitutional illegitimacy of a law or of an enactment having the force of a law, the act ceases to have effect the day following the day of the publication of the decision, while in Albania this decision enters into force in the same date of its publication in the Official Journal. But, in the Albanian Constitution (article 132/2) it is provided that the Constitutional Court itself can decide that a law or another normative act to be repealed in another date.

Regarding the amendments of the constitution, the Albanian Constitution has more specifications. It provides the majority needed to take the initiative for amendments of the constitution, the cases when this initiative is absolutely prohibited, the majority needed to approve these amendments and when these amendments can be passed through a referendum vote. Thereby not less than one fifth of the Parliament members has the initiative to amend the constitution and should be approved by not less than two thirds of all Parliament members. Comparing with Italy, this majority is greater. Italian Constitution provides only the majority needed for the approval of an amendment of the constitution or constitutional laws, which is the absolute majority of all members of both Chambers of the Parliament in the second voting, as these amendments shall be adopted by each Chamber after two successive debates at intervals of not less than three months⁴⁰. Only the Albanian Constitution foresees the cases when it is prohibited absolutely the initiative to amend the Constitution and these during the period of time when are taken extraordinary measures. In this aspect to be

⁴⁰ See article 138 of Italian Constitution.

mentioned is the fact that the Italian Constitution explicitly prevents to change the form of the republic, which cannot be a matter of constitutional amendment (article 139).

Subject to the referendum, in Albania, may be not only the amendment of the constitution approved by Parliament but also that of the draft amendment⁴¹. Draft constitutional amendments can be sent to vote in the referendum, when it is decided by Parliament with two thirds of all its members and the referendum should be done no later than sixty days from approval of it in Parliament. In this case the draft-law on amendment of the constitution enters into force after its ratification by referendum. In both systems, part of this comparative analysis, the approved constitutional amendment can be subject to popular referendum when it is asked by one fifth of all members of the parliament, but with the distinction that in Italy this right is reserved also to five hundred thousand voters or to five Regional Councils. Whereas the Italian Constitution prohibits categorically holding of a referendum, if the constitutional law has been approved in the second voting by each of the Chambers by two thirds of all its members. On the other side Albanian Constitution prohibits the President (article 177/6) to return to review the approved law by the parliament for the amendment of the constitution. The President is obliged to declare the law approved by referendum, which enters into force on the date provided in it. What is more the Albanian Constitution provides the time when can be presented the constitutional amendment on the same case after its rejection. If the draft law on amendment of the constitution is not approved by the Parliament then it should pass at least one year from the date of its rejection to be presented again before the Parliament. Likewise, if a constitutional amendment is rejected by a popular referendum, this amendment can be presented for the same case only if it passes three years from the date of its rejection.

Conclusion

Albania and Italy has similar Constitutional systems. The influence of the Italian system has been significant since the formation of the modern Albanian state. The First

⁴¹ See article 177 of Albanian Constitution.

Italian Constitution, known as the Albertine Statute has served as an example for all of the Albanian Constitutional documents that existed before the implementation of the current Constitution. There are many reasons, which can explain the similarities between these two constitutional systems. Perhaps, the most important one is the affiliation to the same family law as both states are part of the Civil Law. In addition, geographical vicinity has influenced a lot, not only in the similarity between people and their customs but also in their constitutions, which are like a mirror and reflects the ideas of the people and their customs. Furthermore, both states Italy and Albania suffered from dictatorship regimes, which impacted them long after their collapse. However, it is important to emphasize that Italy was able to approve a democratic constitution immediately after the fascist regime, which is still in force even nowadays with a few amendments. On the other side, Albania was not able to approve an authentic constitution due to the long duration of the communist regime over 50 years. In my opinion, another reason which hampered Albania to choose the same route as Italy in the constitutional implementation was the inherited mentality from the past. We can say that, in the past the similarities can be seen as a result as well as the force of imposing the Italian supremacy in the legal system. Nowadays, the similarity between these two constitutional systems can be explained by the desire of Albania to join the European Union and the free will to be closer to the Western Countries.

The principles, which are the cornerstone of the Italian and Albanian Constitution, determine the foundations of these democratic and pluralistic states. They are in synchrony with the universal principles that are part of many democratic countries. Besides the similarities that exist between these two constitutional systems there are many specific differences among them. For example, Italy has approached the principle of the protection and preservation of historical, artistic and environmental assets, in order to dedicate special protection to its heritages. This shows the uniqueness of the Italian constitution and it is in line with it as a developed country. Another special principle of the Italian Constitution in the frame of the analysis with the Albanian Constitution is the labor principle which is provided as a duty-right. The particularity of the Albanian constitution relies on granting the European Convention the highest level

of supremacy in regards to the restriction of human rights and freedoms. Another special place is dedicated to the freedom of religion, where it protects the right to believe and not to believe and is based on the tradition of the unity and peaceful coexistence of various religions.

Regarding the three branches of government, the main difference is in the legislative branch; Italy is based on a bicameral system, while Albania on a unicameral system. Furthermore, in Italy Parliamentarians represent the nation, while in Albania they represent the people. The reason behind choosing the word people is to ward off the questions that may arise due to the representation of citizens of Kosovo who have Albanian nationality. In regards to the executive power, the Albanian President is considered as an arbiter and guarantor of the Constitution and represents the unity of the people and not of the nation like in Italy due to the same reasons as for Parliamentarians. These provisions constitute another component of the Albanian constitutional identity impacted by the national identity of Albanians. In addition, with respect to the executive power the only element that can be individualized in the Italian system is enhanced competences in the legislative recognized to the Government as it can issue decree-laws as well as legislative decrees when this competence is delegated by the two houses of the parliament. From the other side the electoral system, changed by the Albania constitutional amendments of 2008 is based on a regional proportional system borrowed from the Spanish system which has a heterogeneous population and a territorial division into regions. This is a fact that indicates that Albanian Constitution has borrowed from systems which - are not adapted to the reality and characteristics of Albania. Albanian Constitution has borrowed from other systems beside Italian one like the Spanish system in regards to the electoral system; it is a regional proportional system. Spain has a heterogeneous population and a territorial division into regions, which is not the case of Albania.

Hence, it is concluded that Albanian Constitution is mainly based on the Italian system, with few influences from other Western European countries systems, which are adapted most of the time to the Albanian reality. However, sometimes these borrowings are made upon the political interest and not on the characteristics of the Albanian

system, which can seriously affect the constitutional identity of Albania. For that reason, some may think that, Albania does not have its own constitutional identity, but it only has a constitutional document, based on different democratic systems. It is seen as a desperate attempt to copy from the best constitutions of the developed countries but at the same time as an inferior inheriting from the past.

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