

Ardian Emini - Xhemshit Shala

## **The legal basis for the functioning of the Albanian state and government in 1912**

SOMMARIO: 1. Introduction - 2. Basis of the Judicial System Canon Jury - 3. State institutions - 4. The Canon of Civil Administration - 5. Legal basis of elections - 6. The role of religious communities - 7. Conclusion - 8. Bibliography.

ABSTRACT: The purpose of this article is to highlight the functioning of the Albanian state based on the democratic and legal principles of the time. This paper analyzes the legal basis and that the law was essentially a constitutional act. Its purpose was to regulate local administration, make new administrative divisions and define the powers of local authorities. In particular, the governing philosophy based on the legal spectrum of the time, the participation of society and institutions in decision-making is studied. Ultimately, it attempts to enter into the complex relationship between governance and the legal basis to govern and the role of religious communities that they had in the period of the declaration of Independence.

KEYWORDS: Laws, Independence, diplomatic relations, administrative acts, legal system, electoral system.

## 1. *Introduction*

The declaration of the independence of the Albanian state and the formation of the government was a new practice and a unique model in the entire history of the creation of Albanian governments. Specific was also the component of the election of the prime minister, who through a complete consensus was elected by the assembly, its delegates. Than the elected Prime Minister of Albania, Ismajl Qemali, withdrew from his competence to propose and appoint ministers, requesting the uninfluenced Assembly to fulfil this role. On 3 December 1912, the prime minister addressed the delegates and requesting that they themselves vote nominally for the names of the new government, according to the only criteria of half had to be Muslim and half Christian.

With this new and extraordinary practice for parliamentary systems, the prime minister gave up his right to formation of the government and that the voting was not concluded collectively but was done individually and that the ministers were elected among many competing names.

If the composition of the government is analyzed, we will see that it reflects some important political elements, necessary for that time and the success of the initiative for independence and the creation of the new Albanian state. In this direction, the government was a reflection of the provincial and religious representation, of which there were representatives of three religions Muslim, Catholic and Orthodox. The government of Vlora initially operated only in Vlora, Fier, Lushnjë, Berat, Gjirokastër, etc., from mid-1913 joined Elbasan, Mirdita, Dibra and Lezha, while Shkodra with the surrounding areas were under international administration and Kosovo was occupied by the Kingdom of Serbia. Later, Tirana and Durrës also joined the government.

In terms of the functioning of the political system, the government was the only institution that functioned and exercised its power to the maximum. It remained the only operative body and the only advocate of the Albanian state. The new government, under the circumstances, faced three major challenges: international recognition of independence, protection of the country from further partition and the organization of the new state. In the international aspect, the government encountered objections from the most diverse and realistically, until a formula for the new form of the Albanian state was determined. In the challenge to save from partition, the results were also minimal due to the occupations in the south and the north, inability of the government to a militarily response, as well as the anticipation of a final decision from the Great Powers. In the internal plan, the government also encountered the structures inherited from the old system.

## 2. *Basis of the Judicial System Canon Jury*

The National Assembly and the government worked hard to draft the new legislation of the Albanian state. Other acts adopted by this assembly served to set the foundations of the new state, creating the highest bodies of state administration. Also, the government drafted laws, which were supposed to be the product and decisions of the parliament, for the formation of the core of the new system of justice and administration. For a period of time, the government was forced to recognize and uphold the old Ottoman legislation until new laws were drafted and promulgated.

The first important decision of the government in terms of the organization of the judicial system was that of 5 May 1913, through which was ordered the combination of civil and criminal matters, «the suppression of Jury and the reviewing of religious lawsuits by the mytilers; the appointment of a mufti in each sub-prefecture with a salary of 1,200 gross and inter-prefecture with 1,800 gross each». According to this order, «the decisions of the courts of Albania shall be written in the Arabic language. Muftis shall be examined by His Grace Vehbi Efendi, Shehiskam of Albania, and their operationality shall be decreed by him» (Nicola Guy, 2019).

The most important laws of the Albanian government were: The Canon of Jury introduced in May 1913 and the Adequate Code of Civil Administration 22.11.1913, two laws that constitute the first acts of the organization of the judicial system and the administrative organization of the new Albanian state. As a whole, the two laws marked a clear distinction from the Ottoman system of justice and local administration and thus, constitute the main source of Albanian law. In memory of the Canon of Jury which constitutes the first Albanian law establishing and organizing the justice system, 10 May is honoured as the day of justice (Luan Omari, 1970). The Canon of Jury marks a great achievement in the creation of judicial power, since unlike the Ottoman model, it sanctioned the establishment of independent courts, depriving the administrative bodies from the right to administer justice. According to the Canon, no state body could be involved in matters of justice. The Canon determined a new form of judicial organization, the levels of the courts, their scope as well as the judicial and appeal procedures (Anastasi, 1998).

The Canon determined the level of courts: the first instance court and the second instance court. Courts would be established next to each prefecture. The judging panel in the courts of the second instance consisted of seven members. Likewise, he raises the judicial jury, as an expression of the will of the

people in the administration of justice. The jury was chosen by the local bodies, a continuation of the Albanian tradition. Members had to be between 20-75 years old, provided they paid tax to the government, were lawyers by profession, healers, farmacists, merchants, etc., and otherwise the a high school education to be a must. The prefecture and local government officials could not be members of the jury and judges. The jury's decision was taken by secret ballot, with a majority of votes. In fact, historical sources prove that this practice was implemented in one case in Elbasan and several cases in Tirana. There is no evidence that it has been implemented in other districts (Nicola Guy, 2019).

In general, due to the fragility of governance, a limited administration of only in some areas and the intense political and economic situation within the country, the civil and criminal legislation could not progress normally.

### 3. *State institutions*

With the commitment of the new government, a series of measures were taken for the establishment of new state institutions and drafting of legislation. In the field of property ownership, the government as well approved the Canon of Compensation in May 1913, which dealt with justice, especially in villages, damages and problems of agriculture. Regarding the police, the government approved in May 1913 a «Regulation for the creation of the Albanian Militia». In the regulation approved by the Government of the Albanian state, related to the organization and the role of the militia, provided were the details of its fundamental functions towards the protection of citizens' lives and private and public property. According to the government, a special mission of the militia, until the creation of the national army, would also be to defend the country. The organization of the militia was based on prefectures and sub-prefecture levels, and that every male aged 20-40, with the exception of teachers, those who had served in the army, would be obliged to serve in the militia. The law had foreseen payment for every person gathered into the militia, either as an active recruit or for training. Every militia effective had to be armed and in national uniform.

Also in December 1913 the government announced the decree for the formation of the Albanian gendarmerie. The decree included the main roles of gendarmerie, payments for the services, details on the uniform, the obligation to have a horse, the obligation to serve anywhere, etc. Following this policy, the government parallel to this, set up the «Office of the Greatness» for military organisation which had no visible activity. It undertook to engage foreign specialists for police and military assistance and guidance, but without concrete

results. On 4 December 1913 the government announced the formation of the Main Headquarters of the National Armed Forces. Its chairman was major Ali Shefqeti and the headquarters was in Vlora near the Ministry of War. The headquarters would have a secretariat, the commission for regulations and exercises, the commission for police and gendarmerie training, as well as the construction commission. According to military historiography, «the main headquarters was conceived and built, but it also acted theoretically and practically as a main body of the Ministry of War. It was practically the main responsible body for the organization, preparation and professional management of the combat activity of the Albanian Armed Forces. All projects and reports for the Ministry of War sent to it by the offices or even by other military circles, passed through the Headquarters». The same sources estimate that this «headquarters dealt directly with issues and problems related to the organization and conduct of defensive battles in the southern and southeastern part of Albania against the Greek chauvinists, but also in the northeastern part of the country (Elena Kocaqi, 2019)». At the same time, the Headquarter handled supplies of weapons, ammunition and medical drugs for the Albanian military forces in the areas of combat operations. Meanwhile, this headquarters dealt with the organization of the forces and structures of the Army, drafting of regulations and guidelines on the organization, living, training and activity of the Army and Albanian Gendarmerie. And thus, took care and followed the completion of the forces with clothing, with heavy weapons and even the drafting of dictionaries with explanatory military terms in the Albanian language». Despite the evaluations and criticisms, the creation of this institution itself despite the symbolism, circumstances and real impact, basically is the testimony of political and military culture of the political and military leaders of the government of Vlora. A decision with symbolic values of the government was the act of 13 September 1913, for the declaration of the Albanian language as official language (Rabka Robert, 2016). The decision obliged all administrators to have good knowledge «writing and reading» of the mother tongue and it was suggested that all persons who would like to join in service of the government «to not waste time but send their requests to the government offices with details on education and experience». The decision obliged all service servants, to pass the Albanian language exam, and announced termination from their jobs in case they cannot prove a good knowledge of Albanian language. In the same day, the decision of the Ministry of Education to open school in Albanian language came into force. According to the decision, schools are obligatory for all children. Private schools were allowed to operate with the government permit, provided that the programme and the schools texts are to be approved by the Ministry etc.

#### 4. *The Canon of Civil Administration*

The Canon was the most important law drafted by the Albanian government. It was discussed and approved in November 1913, about a year after the creation of the government. The approval of this document in the government was a political test for all its members. The different points of view about the issues addressed led to harsh and long debates. Such was the debate about the new administrative divisions. Prime Minister Ismajl Qemali defended the idea of dividing the country into four cantons, according to the Swiss model, but the majority of the government voted against, defending the idea that the division into cantons was a great danger for the unity of the country and the violation of state integrity.

Basically, the law was a constitutional act. Its purpose was to regulate local administration, make new administrative divisions and define the powers of local authorities. On its basis, the country would be divided into prefectures, sub-prefectures, provinces and villages, with an important supervisory and leadership role of the Ministry of Internal Affairs. In this new critical division, geographic and cultural differences as well as the number of inhabitants were taken into account, and their constituent villages could not be farther than three hours from each other. The main incumbent in local government would be the prefect, with extended authorities in the administration of the entire unit. They would be appointed by the government and under the prefect's orders would be the police and the gendarmerie. The prefect itself would be advised by an Administrative Council and a General Council. The first was composed mainly of the main leaders of the social, economic and cultural sectors, the second from the members appointed because of the position and those elected by votes. The prefect bore a special role in decision-making, but in case of conflict, he would have to seek the opinion of the superior body in the central government. At the sub-prefecture level, the sub-prefect would lead the main office and a special council with representatives of religious communities, while in the areas of cities and provinces, a general council would function, consisting of 6-12 members elected by the citizens themselves. The election procedures were defined in detail in the Canon. This body would have the responsibility of making the main decisions regarding the administration of the problems. As can be seen, there is a combination of the concepts of centralization and democratic decentralization for local level officials. Despite the new elements in the territorial and administrative organization of the country, the model and the rules determined in this law were not implemented because the Albanian government resigned two months after its approval.

## 5. *Legal basis of elections*

In the practice of the decisions of the Assembly of Vlora for the election of the prime minister and ministers, the democratic model of elections was applied. Democratic notions were also manifested in a number of other processes, appointments and elections of high officials of the administration. But the only official document on the notions of electoral processes inherited from the government of Vlora, remain in the chapter on elections, in the «Appropriate Canon of Civil Administration». Herein are presented the details of the organization of the election process in prefectures and provinces, the rights to vote, to run and to be elected. Specifically, the article (Luarasi, 1999) determines that the right to vote belongs to male citizens over the age of 21 who meet certain criteria, such as: civil and political rights, being not convicted, pay taxes; own a building, land, business or inherits such; who works in the administration, etc. Religious preachers, teachers, doctors, judges, administrative assistants, etc. have special voting rights. The law denies the right to vote for women, soldiers, policemen, gendarmes, servants, etc.

When it comes to the right for run and to be elected, the criteria are even more restrictive. Thus, according to this law, civil servants, those who do not have civil rights, people in debt, mentally ill, those sentenced to 1 year in prison, those convicted of acts of vagrancy, as well as those who are in the service of another state have no rights to run for candidate. In contrary to the minimum age of 21 years for the right to vote, in the right to be elected this age is reduced by another 1 year. The law also defines strict rules for the drafting of the list of voters, its publication in populated areas, the procedures for correction, appeal, trial and, finally, the procedures for voting and counting votes. Thus, the sub-prefect delegates two people accompanied by gendarmes who go to the provinces to organize the voting process. They instruct the chosen elders to elect a voting committee of 6 people, which has the attributes of setting the date of the elections. Each voter receives a voting ticket, which is made of white paper. Voters are obliged to write the names of the candidates they support and at the end the ballot boxes are sent to the sub-prefecture. Here, in the presence of the judge, the box is opened and the votes are counted. The candidates with the most votes are also the winners of the elections. When the votes are equal, the winner is drawn. As it also emerges from the legal basis of elections provided by law in December 1913, the mentality of the elections at that time was contemporary and the electoral practice is the same as that of many western countries. The law failed to be implemented in practice, because the government

failed to develop any elections, however it served as a good basis for the electoral laws that would be drafted and implemented in the 20s.

#### 6. *The role of religious communities*

As expected, religious communities would have an important role in the period of the declaration of Independence. A number of personalities of the three religious faiths participated in the acts of creation of the new state. Each community was also represented in the government and the senate. A Catholic cleric was appointed as the deputy prime minister, a Muslim cleric was appointed to head of the senate and his deputy was an Orthodox. The government reflected an equal division between Christian and Muslim ministers, relationships that were reflected as well in the international delegations and other levels of state representation (Vlora, 2000). The role of the Muslim community was even more important, because the country came from a long period of Ottoman rule and the Albanian Muslim religious institutions were still controlled by Turkey. Of course, foreign influences, in any case, had negative and positive consequences, but a clearer analysis of the factors and the role of religious communities will be made in the separate relevant topic. In retrospect within the period 1912-1913, it should only be emphasized that the great influence of religious communities was more expressed especially in the later period of the arrival in Albania of a German Christian prince, at the head of the Royal Front. The main figures of the Muslim faith united against the pro-Western positioning of the government of Vlora and the statements of Prime Minister Ismajl Qemali against the candidacy of any German Christian prince at the head of the royal throne (Lef Nosi, 2008).

#### 7. *Conclusion*

The government of Vlora remained in its role under extraordinary circumstances for about 14 months. For a series of imposed motives, but also due to its own mistakes, the government failed to fully exercise its power and governmental authority. The government failed to achieve successes in dealing with the situations created in the Albanian territories, especially in the southern areas and those of Kosovo (Bernd Fisher, 1996). Initially, it extended its authority to a limited area, mainly in Vlorë, Fier, Lushnjë, Berat, but in cooperation with Esat Toptani, its area of control also extended to Central Albania. Later, the authority of the government of Vlora was also accepted by the northern cities,



with the exception of Shkodra occupied by Montenegro and Kosovo occupied by Serbia. In order to unify the country and expand the government's authority, Prime Minister Ismajl Qemali and his government agreed to give the post of Interior Minister to Esat Toptani, the most influential man in the area of Tirane - Durres. This action did not last long and the consequences fell directly on the government and its authority.

The government critics stated that the government did not take any measures to disarm the Turkish army in Albania, especially in the Vlora area where a part of it operated. The government acted against most of the feudal lords and feudal landowners, who had thought that with independence they would achieve greater profits and privileges (Vllamasi, 2000). The measures of the government were half-hearted reforms only in the oratory and very soon some of the other layers also increased their skepticism towards it. Also, the negative impact on developments in the country and the quality of administration was also caused by the appointment of about three months of the Prime Minister on a diplomatic mission in the western capitals and the lack of control of the power within.

A series of incidents, including those about the new royal successor, led to the fall of government authorities and the strengthening of its opponents. The parallel government from Toptani, the Eldership of Central Albania established in Durrës in October 1913 which controlled many of the cities of Central Albania also had a negative impact. Just as it was said above, the government also made opponents from the highest leaders of the Muslim community, with influence in the areas run by Toptani. The biggest shake of confidence for the government and the prime minister came during the period of debates about the future prince of Albania. The evidence that was brought about the possibility of the prime minister's involvement in Istanbul's secret effort to name an Ottoman Muslim prince at the head of the Albanian throne, was accompanied by criticism.

The other action to the detriment of the government was the parallel activity of the Great Powers, first with diplomatic representatives and then with the International Control Commission. This structure acted in rivalry with the government of Vlora, so it also symbolically set its headquarters in Vlora. In these circumstances, the mandate of Ismajl Qemali at the head of the government and of the new Albanian state did not last long. In fact, after five months in office in March 1913, the leadership powers of Albania passed to the international factor. In this form, the government of Vlora was forced to accept every international decision.

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