

Institute of constitutional revision in the Constitution of the Republic of Albania, comparative view

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Abstract

In its very dynamic essence, a democratic society bears the need for continuous reformation and perfection, and that is why the application of reforms represents an inseparable feature for this type of society. The consolidation of the rule of law, the institutional independence, and the cause of justice itself comprise, inter alia, the need for constitutional revision. This study puts forward a theoretical-historical comparative view of the relevant and dynamic issue of the institute of constitutional revision in the framework of the Constitution of the Republic of Albania, as a complex process accompanied by limitations on constitutional revision. The historical evolution of constitutional drafting, modern constitutions, relevant issues, political and social circumstances as well as drafting and adoption procedures, dynamism of constitutions to cope with the course of time achieved by revisions for the purpose of their stability as well as consolidation of the role of constitutions as a factor that facilitates and precedes social development, comprise the pillar of this study addressed in a comparative point of view.

Keywords: Constitution; Institute of constitutional revision; Revision limitation procedures; International and Albanian experience

Introduction

In general, the drafting of a constitution is closely related to an important political and social event. The legal-political thought on constitutions was a result of the developments of the time in relation to the content and purposes of such developments, as well as in relation to the evolution of the rule of law and requirements on the separation of power.

Addressing the institute of constitutional revision is of a doctrinal importance, expressed through the adaptation and coherence of the Constitution with the essential social and economic changes of a society. In this context, the address made by this study to the institute of revision is aimed at a conceptual and comparative analysis focused in the Albanian case, in the light of European standards, identifying the similarities and differences between it and the European constitutional jurisprudence.

Being a complex process, constitutional revision bears specific characteristics in each phase of the legislative process as well as limitations. Taking into account the complexity of the revision process, the Albanian case is addressed focusing on European effective and contemporary experiences.

Constitutional revision as a concept. Content and revision formulas in a theoretical-historical comparative aspect

The concept of constitutional revision was the result of and was conditioned by the need to adapt the formal constitution to the dynamism of social life of the political-economic system. Differently from the viewpoint of the drafters of the first formal constitutions at the end of the 18th century, which generally addressed the constitution as inalterable, the concept nowadays focuses on stability rather than inalterability of constitutions. The need for adaptation with the development dynamism is one of the main reasons why constitutions comprise special provisions envisaging procedures for potential amendments. Such a need led the evolution of the idea of inalterability of constitutions which was based on the prevailing idea of inalterability of the social-political system. A general doctrinaire-historical view on the creation of modern conditions and the complex issues which have accompanied and engaged human and doctrinaire-historical thought in numerous debates that led to the development of constitutional theory, shows that the debates were focused, inter alia, mainly on cardinal issues such as superiority, constitutionality, stability, durability, and changeability of constitutions. It is these debates which have accompanied the long history of constitutions in the continuous process of perfecting the changes they have underwent since the beginning to date. It is widely known that modern constitutions originate in the 13th century, with the adoption of the Magna Carta Libertatum¹, which was aimed at the protection of the rights of people in Britain, limiting the power of the king. This period of time marks the rising of the legal concept which says that “law is to be drafted and passed by the people, while the king only is to promulgate,” opening the way to the legal thought of the Britannic tradition on the limitation of the power of monarchs. On the other hand, the end of the 18th century is considered as the period of the rising of modern constitutions, bringing to the social, political, and legal spheres important documents such as: the Constitution of the United States, 17th of September 1787; Constitution of the republic of Poland,^{3rd} of May 1791²; French Constitution, September 1791, which were the result of aspirations of enlightenment, freedom of nations and human freedoms, war on anarchy, despotism, arbitrariness, intervention of foreign powers, in the end of the 18th century.³

¹ The Great Charter of King John the Landless, 1215

² The second in the world and the first in Europe, even though little has been discussed and written about it

³ The U.S. Constitution was a result of the war for independence from United Kingdom, the French was a result of revolution, and the Polish one was the result of the bloodless changes to ensure the independence of the state and the sovereignty of the nation.

In the course of time, the concept on the constitution was equalised as an entirety of fundamental rules which establish the policy of a country, as a contract, a social agreement between the citizens and government officials, which specifies their respective rights and serves as fundamental guarantee of the rights of citizens and from of power. The Constitution, as the highest fundamental law, is the basis of the modern state. It is given a special supreme status, as the source and spirit of the entire legislation, and as a result, it provides the grounds for the organisation of the work of all bodies of the state and citizens, the grounds of state's legal order. Any law or administrative act which doesn't comply with the constitution is consequently invalid. With the rising and adoption of formal constitutions, different constitutional doctrines conceived them differently. However, they all meet in the same idea that the Constitution implies the highest sanctioned law of a country, in the formal as well as material aspect. These foundations also served as ground for the conception and drafting of the current Constitution of the Republic of Albania.⁴

The constitutional theory provides different opinions, especially on the mutual relations between constitutional law and constitutional reality, which implies the systematic collection of opinions, theses, and scientific ideas on the creation, stability, and amendments of constitutions. This way, the creation of modern constitutions was accompanied by the concept of superiority of the constitution in the hierarchical system of norms, and as a result, by the principle of constitutionality which became the centre of the whole political system. It was not by chance that the political and legal though in this period was focused in the superiority and stability of the constitution as the foundations of all other norms, the political and legal landscape of the society with stable state structures. Superiority and stability are the elements which detach the constitution from the daily political developments and even from elected politicians, which enables and ensures the stability of the democratic system itself. Therefore, a stable constitution ensures that some fundamental structures of the state stay above politics and ensure the intangibility of the state system, regardless of the electoral results or of the political parties winning the elections. Due to its importance, the issues of stability, superiority, and changeability of the constitution have been in the focus of a theoretical debate which has accompanied the history of constitutions, because on the one hand, the superiority of the constitution is highlighted, but on the other hand, in the political point of view, constitutionality considers and identifies the constitution as a large social pact. Such debate was materialised and led to the drafting of the so called rigid constitutions which envisaged no change or expressively

⁴ These principles are identified in the preamble of the Constitution, in the first part, but not only. E.g. we can list Article 1&1-Albania shall be a Parliamentary Republic; A.2&1- Sovereignty shall belong to the people; A.7- The governance system shall be based on the separation and balance of powers; A.15&1- Fundamental human rights and freedoms shall be indivisible, unalienable, inviolable, and stand on the foundations of the entire legal order; A.15&2- Public power bodies must respect fundamental human rights and freedoms and contribute for their application, etc.

prohibited their amendment,⁵ and even if the possibility for amendments was envisaged they put certain procedural barriers which made it hard to undertake constitutional amendments or additions. Their character and essence shows why such constitutions were relatively few and their number was limited compared to the constitutions which expressly envisaged their amendment and it also shows why they didn't last long. Thus, the stability of the constitution is relative and is not defend and does not derive from its inalterability. Constitutions change to adapt to new realities, which cannot be foreseen in the time when it is drafted. According to many authors, a constitution is not just a legal text or an act of normative rules, but it is also an expression of cultural development, means of self-introduction of the people, reflection of cultural heritage, and foundation for the future.⁶ This is the reason why history has known and will know constitutions of different types which have gone through processes of change led by factors such as theories, different ideas and opinions of philosophers and classical authors, political party programs, social experience and development, radical evolutions and changes of the systems in the course of time, traditions of respective countries and their ancientness, as well as regional and global developments, etc. Depending on the aforementioned factors, the revisions made have been general⁷, partial⁸, or revisions of individual articles.⁹ In the current reality, constitutions can be revised, in certain parts of course, and revision is always made in compliance with the provisions envisaged by the effective constitution itself. When it comes to revision, there are different types of constitutions, flexible and rigid. Their difference stands in the easiness of procedures for their revision. Flexible constitutions provide procedures according to which revision is relatively easier compared to rigid constitutions, the procedures for the revision of which is qualitatively more difficult. However, whether flexible or rigid, a constitution provides guarantee of duration and stability, and as a result, it cannot undergo revision according to the will of the political majorities coming into power. Therefore, the majority of authors of constitutional law state that the revision of the constitution requires maturity and not spontaneity, it requires caution and seriousness, while the procedure must be qualitatively different and much more complex compared to the process for the amendment of other laws, so for the constitution not to become subject of frequent amendments resulting from political developments, alternations, or opportunism.

⁵ The Spanish Constitution of 1912 and the Greek Constitutions of 1911 and 1952 were as such, but they were the only ones to expressly prohibit their amendment.

⁶ See Häbrele, Peter, *Der Verfassungsstaat und seine Reformbedürfnisse*, in: Christian Meier-Schatz (ed), *Die Zukunft des Rechts* Basel 1999, pg.210.

⁷ Such are the changes made depending on the transition from one to another social and state organisation system, or radical changes from dictatorship to democracy, e.g. Constitution of the Republic of Albania (1998) which sanctioned the new democratic system following the collapse of dictatorship in the early 90s

⁸ As the constitutional amendments made by the Parliament of Albania on the 21st of April 2008

⁹ E.g the constitutional amendment made in 2007, Article 154, product of a political agreement for the increase of the number of CEC members from 7 to 9, or Article 109/1, regarding the duration of the mandate of the elected local government bodies from 3 to 4 years.

The issue of revision is organically linked with the procedures set forth by the constitution itself. The procedure implies a series of acts lined according to some principles, and the failure to undertake them consecutively as specified leads to the violation of the principle. Nowadays, democratic constitutions specify special conditions, means, timeframes, and techniques for their revision. This results in difficulties for the revision process because the level of difficulty applied in such revisions, compared to other laws, is directly related to democracy and its stability. In the technical-legal aspect, such difficulty provides for having a political consensus of a wide majority between the parliamentary majority and the opposition when it comes to revisions to the constitution, a consensus which must be wider compared to other laws. In this aspect, the constitutional revision technique is the specification of the law-making procedure through strengthening, augmentation, or addition of conditions, so to make sure the agreement of a very wide political majority is indispensable. In the meantime, it is worth pointing out that no constitution regulates its general revision. Constitutions provide for revision only in certain parts in order to guarantee their stability and duration. Moreover, so to preserve their essence even when under revision, constitutions expressively and clearly specify the parts which may not undergo revision, which are inalterable, thus imposing the so called absolute limitations, or limitations related to general principles which represent the grounds of legal order, provisions sanctioning fundamental rights and freedoms of citizens, of the governance, etc. Such limitations are expressively sanctioned in many constitutions, but there are also constitutions, such as the Constitution of the Republic of Albania, which do not expressively sanction limitations. Such limitations are expressively specified in some constitutions following the 2nd World War. Thus, Article 89 of the French Constitution states “The republican form of government shall not be the object of an amendment”¹⁰. The same stance can be found in Article 110&1 of the Constitution of Greece: “The provisions of the Constitution shall be subject to revision with the exception of those which determine the form of government as a Parliamentary Republic and those of articles 2 paragraph 1, 4 paragraphs 1, 4 and 7, 5 paragraphs 1 and 3, 13 paragraph 1, and 26.”¹¹

Even though the Constitution of the Republic of Albania specifies no explicit statement of absolute limitation in any specific article, this doesn't mean it doesn't specify limitations to revisions. The content of the constitution itself shows there are limitations of an absolute type, even though they are not explicitly stated.¹² Such conclusion derives from the identification and following of the spirit of the constitution as well as

¹⁰ Summary “Constitution,” Albin Publishing House, Tirana, 1995, pg. 79.

¹¹ Summary “Constitution,” Albin Publishing House, Tirana, 1995, pgf. 149, 80, 81, 82, 86).

¹² The following cannot be subjected to amendments: Principles representing the foundations of the state and its governance, sanctioned in the first part – Fundamental Principles; fundamental human rights and freedoms which “stand on the foundations of the entire legal order,” Article 15; sovereignty of the people Article 2; separation of powers Article 7; independence of the state Article 3; pluralism Article 9 etc., because the amendments of these would result in the change of the democratic essence and content of state. Therefore, no majority, regardless of number, would be legally justified to make such amendments.

constitutional traditions, the preservation of which is very important, and often these elements are stronger than an article which explicitly prohibits the revision of certain parts of the constitution. In fact, it is not that difficult for politicians to give a formal impression that certain constitutional amendments are legal even in cases when they go against the Constitution and its spirit. History has also shown cases of existence of expressively stated revision limitations which have been bypassed due to instability and political opportunism.¹³

Another important technical element is the setting of timeframes on constitutional revision, which was very widely used in the early stages of modern constitutionality and it is used even currently. This element is also based on the logical line of superiority and stability of the constitution, setting barriers on constitutional revision by a temporarily formed parliamentary majority. In this context, the prolongation of timeframes is aimed at long reflection on a constitutional revision decision and for it to be taken by a wide majority composed of representatives of the people in different periods of time, so that the amendments are well-thought, are not casual, and have wide cross-legislatures support. Such technique is effective in several democratic countries and it is based on the principle of sovereignty of the people as well as on the idea of non-exclusion of generations, but their participation in the revision processes. E.g. the Constitution of the Netherlands specifies a procedure as follows: publication of a revision project voted in the Parliament, dissolution of the two chambers of the States General (denomination of the parliament). The new chambers approve the revision with a majority of 2/3 of votes.¹⁴ Article 112 of the Constitution of the Kingdom of Norway sanctions that the proposal for the amendment of any part of the Constitution is to be submitted to the first, second or third Storting (denomination of the parliament which is composed by Lagting and Odelsting) after a new General Election and be publicly announced in print. But it shall be left to the first, second or third Storting after the following General Election to decide whether or not the proposed amendment shall be adopted.

Such amendment must never, however, contradict the principles embodied in the Constitution, but solely relate to modifications of particular provisions which do not alter the spirit of the Constitution, and such amendment requires that two thirds of the Storting agree thereto.¹⁵ Such limitations are also found in the Constitution of Greece, in Article 110&2&3 mentioned above.¹⁶

¹³ In the Albanian constitutional history, there is the case of the fall of the Fundamental Statute of the Republic (1925), which sanctioned the republican form of the state, replacement with the Fundamental Statute of the Kingdom (1928), which sanctioned the Kingdom, even though Article 141 of the Statute of the Republic expressively stated that "the republican form of state may not be changed." For more information see: Aurela Anastasi, "Political institutions and constitutional law in Albania 1912-1939", Tirana 1998, Luarasi Publishing House, pg.119-129

¹⁴ Summary "Constitution," Albin Publishing House, Tirana 1998, pg.93-94

¹⁵ Summary "Constitution," Albin Publishing House, Tirana 1998, pg.204

¹⁶ Summary "Constitution," Albin Publishing House, Tirana 1995, pg.150

Moreover, constitutions also specify other special rigid procedures for their revision, related to rigorously following some well-specified phases for the application of the adaptation of a revision, which consist in:- conditions imposed for the initiation of a revision, which is different to the law-making initiative;- indispensable quorum required to examine a draft-revision, which is different to the one required for the examination of ordinary laws; the qualified majority required in the event of revision, which is different to the one of ordinary laws; subjection to parliament's revision towards the people's referendum.

A better illustration of this is given by the following articles of some constitutions of some democratic states as well as procedures envisaged in the Constitution of the Republic of Albania.

Article 89 of the Constitution of the French republic sanctions as follows: "The President of the Republic, on a proposal by the Prime Minister, and Members of Parliament alike shall have the right to initiate amendment of the Constitution. A government or a Member's bill to amend the Constitution shall be passed by the two assemblies... The amendment shall have effect after approval by referendum. However, a government bill to amend the Constitution shall not be submitted to referendum where the President of the Republic decides to submit it to Parliament convened in Congress; the government bill to amend the Constitution shall then be approved only if it is adopted by a three-fifths majority of the votes cast... No amendment procedure shall be commenced or continued where the integrity of the territory is jeopardized. The republican form of government shall not be the object of an amendment."¹⁷ Article 44 of the Constitution of the Republic of Austria specifies that "Any total revision of the Federal Constitution shall upon conclusion of the procedure pursuant to Article 42¹⁸, but before its authentication by the Federal President be submitted to a referendum by the entire nation, whereas any partial revision requires this only if one third of the members of the House of Representatives or the Senate so demands 42".¹⁹ Article 138 of the Constitution of the Republic of Italy specifies that "Laws amending the Constitution and other constitutional laws shall be adopted by each House after two successive debates at intervals of not less than three months, and shall be approved by an absolute majority of the members of each House in the second voting. The said laws are submitted to a popular referendum when, within three months of their publication, such request is made by one fifth of the members of a House or five hundred thousand electors or five region councils. The law submitted to referendum shall not be promulgated if not approved by a majority of valid votes.

¹⁷ Summary "Constitution," Albin Publishing House, Tirana 1995, pg.79

¹⁸ Regards conditions when a law can be deemed authentic and be published

¹⁹ Summary "Constitution," Albin Publishing House, Tirana 1998, pg.16

A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of two-thirds of the members".²⁰ Article 110&2&3&4&6 of the Constitution of Greece specifies that the need for revision is approved by the chamber of MPs with a majority of 3/5 of the members, in two ballots, held at least one month apart, the Chamber shall express itself on the matter of revision with absolute majority of its members. There is a minimal 5-year timeframe between two revisions.²¹ Article 79/2 of the Basic Law for the Federal Republic of Germany, sanctions the indispensability of approval in Bundestag and Bundesrat with a majority of 2/3 of each chamber.²² Article 5 of the U.S. Constitution envisages that The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, also as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof ..., on condition that no amendment made before 1808 does not violate points 1 and 4 of paragraph 9 of Article 1 as well as no state is stripped of the equal right of vote in the Senate without its consent.²³ Article 131 of the Constitution of the Republic of Macedonia states that decisions to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives and that the draft amendment of the Constitution is confirmed by the Assembly by a majority vote of the total number of Representatives and then submitted to public debate. The decision to change the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives.²⁴ Articles 154, 155, and 158 of the Constitution of the Republic of Bulgaria state that the right to a revision initiative belongs to 1/4 of the representatives of the people and to the President. The National Assembly shall pass any act to amend or supplement the Constitution by a majority of three-fourths of all National Representatives, by three votes taken on three different days, while the approval of the new Constitution is made by the Grand National Assembly²⁵. Articles 136, 137, and 138 of the Constitution of the Republic of Croatia sanction that the right to propose Constitutional Amendments belongs to 1/5 of the members of the Chamber of MP's, the President of the Republic, and the Government; the Chamber of MPs, after receiving an opinion from the Chamber of regions, decides on the majority of votes of all MPs whether the amendment is to be made, and the

²⁰ Summary "Constitution," Albin Publishing House, Tirana 1995, pg.300

²¹ Summary "Constitution," Albin Publishing House, Tirana 1995, pg.150

²² Summary "Constitution," Albin Publishing House, Tirana 1995, pg.186 -187

²³ Summary "Constitution," Albin Publishing House, Tirana 1995, pg.408-409

²⁴ Summary "Constitution," Albin Publishing House, Tirana 1998, pg. 176

²⁵ Summary "Constitution," Albin Publishing House, Tirana 1995, pg.47

Chamber of MPs decides on the amendments of the Constitution by a majority of 2/3 of votes of all MPs.²⁶

Article 177 of the Constitution of the Republic of Albania envisages that the Initiative to revise the Constitution may be undertaken by no less than 1/5 of the Members of Parliament. Thus it is an exclusivity of the Parliament. The draft is approved by a majority of 2/3 of the members of the Parliament, which, in certain cases, may decide whether the law on Constitutional revision is to be subjected to referendum or not.

This comparative overview shows the differences between a rigid Constitution and a flexible Constitution²⁷. Moreover, it is clear that this issue regard special stricter procedures when it comes to revision, and, regardless the differences, all constitutions bear some kind of "rigidness" deriving from its characterising role, functions, advantage, superiority, and stability.

There are different opinions in the theoretical aspect about the rigidity or flexibility of the Constitution and the inclinations towards one of the approaches. Based on the theoretical advantages of a rigid constitution, some authors say that nowadays the world is dominated by rigid constitutions. Other authors, taking into account the flexibility of flexible constitutions, consider it to be more suitable for certain countries, especially the ones undergoing transition. However, experience shows that in such countries, the priority lies in abiding by the constitution, consolidation of the legal framework pursuant to it, and not in the frequent amendment of the Constitution. There are many reasons behind it. One of these reasons can be found in the fact that the constitutions of such countries are relatively new,²⁸ and they have been drafted on the grounds of global democratic traditions, experiences, and achievements, giving them the chance to collect and sanction the newest institutes of global constitutionality in their constitutions. Legislation in general, including constitutional legislation, follows a rational principle, rising and adapting with multidimensional development realities, becoming a supporter, voice, and encouragement for such developments, as expressed by Edmund Jacoby who stated that "social progress can be achieved only by borrowing the testing method from science, thus undertaking pragmatic reforms."²⁹ Therefore, we can say in general that in such constitutions, which reflect long experiences of global constitutional democracy, it is still soon to talk about outdated institutes.

Another reason consists in the need to cultivate the equipment of the political class and other entities with the necessary constitutional culture so to increase awareness on respecting the Constitution and the law, because the inadequate level of such culture

²⁶ Summary "Constitution," 1998, pg.134

²⁷ The Albanian Constitution along with the German, Bulgarian, Macedonian, etc. fall under the category of relatively more flexible constitutions compared to the constitutions of U.S., Netherlands, Norway, etc., which are characterised as rigid constitutions

²⁸ E.g. The Constitution of the Republic of Albania has been effective for 15 years and has been revised more than once.

²⁹ Edmund Jacoby: "Best philosophers of all time," "Spektër" Tirana, 2006, pg.277.

has often led to the failure to abide by them and has facilitated the preservation of a certain mentality which doesn't look towards the future but only the present. Global experience has shown that even during the darkest times and systems of human society, the problems and deviations have not derived so much by the laws but mainly from abuse and failure to enforce them. In countries with a consolidated democracy, Democracy stands before everything, while law and its enforcement comprise the main part of democracy. The difference between such countries and those undergoing transition comes by the inadequate level of constitutional culture of the political class of the countries under transition, which doesn't have a positive impact in the process for the establishment and consolidation of rule of law and in the concept on law, which the political class in such countries translates or amends for the interest of circumstances or daily politics. There are many examples when countries undergoing transition have failed to abide by the constitution.³⁰

Another reason is related to the often unstable political developments which characterise such countries, leading to the creation of problems, stalemates, as well as crises. In order to bypass such problems, the political class, especially the government, tries to find a solution by revising the fundamental document time after time, putting the revisions in service of political opportunism and narrow party interests. An argument being mentioned in the political spheres of such countries is that the votes that give them the majority, also give them the possibility to revise the constitution and constitutional institutions for the purpose of their political programs. This argument is both wrong and dangerous, as expressed by Tocqueville who criticised some aspects of American democracy saying that the governance of a majority can be as oppressive as the governance of a despot. If political parties started to apply this kind of stance every four years after winning elections, we would have a state which is restarted every four years. The Constitution is the very guarantee for this not to occur. It is not by chance that in the sphere of countries under transition there are displays of reminiscence of strict governance with the risk of return to authoritarianism. They have a pluralist and democratic appearance but start to give power to just one person, being the prime minister or the head of the state, preparing the "democratic" performance also through the use of constitutional revisions, trying to centralise the power, affecting the balances between powers so that leaders may gain power among the power. Consequently in such countries, the improvement of the political constitutional education and culture of the political class becomes an indispensability and priority to ensure the necessary stability of the political state

³⁰ An example of the failure to abide by the constitution is the case of the Parliament of Albania which didn't respect the 2-3 year timeframe from the entry of the Constitution into force on the regulation of issues related to expropriations and the confiscations made before the approval of that Constitution. Concretely, Article 181 obliges the Parliament that within 2-3 years from the 28th of November 1998, thus maximum 28 November 2001, to have issued the laws "on the fair regulation of different issues related to expropriations and confiscations made before the approval of this constitution, being led by the criteria set forth in Article 41."

system, as well as to develop and strengthen democracy and rule of law, through necessary reforms of a democratic nature.

Revision and revision procedure of the Albanian Constitution of 1998

Albania's equipment with a Constitution following the change of systems, meant the creation of immovable and stable foundations for the democratic, political, and state social system under construction and its future. In 1990, after the fall of the Berlin Wall, Albania was also involved in the movement for radical change of the system. The pluralist system was approved, the Constitution of 1976 was repealed, in absence of a constitution the Parliament approved the Main Constitutional Provisions³¹, and efforts started being made to draft and approve a Constitution which would replace the provisions. On the 21st of October 1998, the Parliament of Albania approved the new Constitution and decided to put it on referendum. It was adopted on the 28th of November 1998 following approval by referendum on the 22nd of November. The Constitution was drafted following a long, fully democratic, politically inclusive process and it was supported and assisted step by step by the EC and the Venice Commission. It was considered to be in full compliance with European democratic standards and beyond. It was a democratic constitution which specified clear balances between powers and which prohibited the constitutional possibilities of returning to dictatorship models.³²It is this very Constitution which enabled the signing of the SAA and NATO membership.

As a relatively new Constitution, the Constitution of the Republic of Albania, basing on and benefiting from successful experiences of constitutionalism following the 2nd World War, includes a special part³³ on eventual amendments it may undergo. Both the title and content of this part are about partial amendments and not about manner of repeal or adoption of a new Constitution. In the meantime, it provides for a revision process which is not easy, classifying it in the group of rigid constitutions. This is shown by a literal view of Article. According to Article 177&1, the initiative to revise the Constitution, as an exclusive prerogative of the Parliament, differently from an initiative on another law,³⁴ may be taken by not less than 1/5 of the Members of the Parliament. Moreover, paragraph 3 sanctions that in order for the draft to be approved it is necessary to have the votes in favour from not less than 2/3 of all MPs, which indispensably requires the achievement of a wide consensus³⁵. Furthermore, in accordance with point 4, the Parliament may decide with 2/3 of the members that the constitutional draft-amendments are put on referendum, which in fact makes it more

³¹ Adopted on 29 April 1991

³² For more information see "Constitution and explanatory materials" published by QAKAPP,1998

³³ Part 17, entitled "Revision of the Constitution"

³⁴ Article 81 of the Constitution of RA, according to which the right to propose laws belongs toeach MP....

³⁵ Requires the consent of at least the largest opposition, thus not just an opposition party

difficult. However, paragraph 5 specifies that it is mandatory to hold a referendum when it is requested by 1/5 of all MPs. This creates favourable opportunity or referendum since it gives the possibility of further reflection giving a parliamentary minority the right to subject the amendments to the people's approval. In paragraph 6 of Article 177, the Constitution sanctions that "The President of the Republic may not return for re-consideration a constitutional amendment approved by the Assembly," while in accordance with paragraph 7 "the law approved by referendum shall be promulgated by the President of the Republic." Considering paragraph 6 as an obligation for the President to sign the law approved by the Parliament, different authors consider this stance to be unfair.³⁶ In fact, this paragraph must be considered in two aspects: First, the Constitution doesn't oblige the President to sign the constitutional amendments proved by the Parliament, because this paragraph explicitly states that "The President of the Republic may not return for re-consideration a constitutional amendment approved by the Assembly," which doesn't prevent the President from having a stance on the law and from refusing to promulgate it.³⁷ And in this case, the law would become effective following the expiry of the 20-day timeframe³⁸. Second, like many authors, I think that this limitation is legally and logically justified, because in order to repeal a presidential decree on the re-consideration of a law, according to Article 85&2, it is necessary to have the votes of the majority of all MPs, while the law on constitutional amendments is approved by 2/3 of all MPs.

However, regardless of the difficulties envisaged as strengthening measures in the revision process, the Constitution of the Republic of Albania has undergone several amendments during its 15-year life. The first amendment, which was approved unanimously by the Parliament, was made through law *No.9675 dated 13 January 2007*.³⁹ On the 21st of April 2008, just a little more than a year after the first amendment, the Parliament approved through *Law No.9904*, a package including important substantial amendments which affected 10 articles,⁴⁰ and for which a dilemma rose whether they were a priority conditioned and dictated by the stage of development of democracy and rule of law in Albania or not. Following approval in the Parliament and entry into force, these amendments⁴¹ were accompanied by a wide political and public

³⁶ Meidani Rexhep, "Constitution: Balance sheet and perspective," Toena, 2009, pg. 54.

³⁷ See Article 84/2 of the Constitution

³⁸ See Article 84/1 of the Constitution

³⁹ The amendments consisted in the extension of the mandate of local governance bodies from 3 to 4 years and in the increase of the number of CEC members from 7 to 9, in the fulfilment of the request for representation of a parliamentary party in the Commission. Regarding these amendments, I think that the extension of the mandate of local officials and the recommendation of the Venice Commission and the EC Congress of Local and Regional Authorities was logical, while the other amendment was unjustified and dictated by conjectural reasons.

⁴⁰ A. 64,68 on the electoral system; part XII "Central Election Commission," was repealed; A. 65, 67 on the start and end of the legislature; A. 87,88 on the procedure for the election of the President; A.104,105 on confidence and non-confidence motions; A. 149 on the specification of timeframes in the relation between the Parliament and the General Prosecutor.

⁴¹ Debates before the approval of amendments in the Parliament were held only about the electoral system, while no preliminary discussion or debate process was held about the other issues.

debate which is still ongoing. Different opinions were expressed and in certain cases the opinions excluded each other.⁴² Remarks were addressed both on the procedure followed as well as on the essence and content of the amendments. The main remark on the procedure consists in the unjustified haste, the lack of examination from a special committee, the lack of discussions with experts, actors, civil society etc. On the contrary, they were addressed as a very common law would have and not like essential constitutional amendments. The procedure was against the whole process on the drafting and adoption of the Constitution.⁴³ There were and there are still remarks and reactions on the content of the amendments, including the change of the electoral system, but mainly regarding other spheres. There is this almost widely accepted idea that they were dictated mainly by conjectural party interests. The third amendment of the constitution was approved through *Law No.88/2012*, and was related to the issue of immunity, as an old internal and international requirement.

The current stage of the country's development, the expectations of important reforms, like the justice or administrative-territorial reforms, the experience and consequences of the constitutional amendments made to date, the issues of the constitutional order, as well as the EU accession perspective, represent factors which dictate and condition the identification, discussion, and undertaking of necessary amendments to the Constitution, with the purpose of improving it in front of the developments and challenges in the closure of the prolonged transition period, as well as in the aspect of creation of a legal infrastructure to precede Albania's EU integration process.

Conclusions

The issue of constitutional amendments for the purpose of imperative reforms in the justice sector or the administrative-territorial reform, as well as reforms many other sectors which have been proposed during political discussions and beyond, and the expectations regarding the EU candidate country status, is sharp and complex, is legal and political and social, and it cannot be reduced in just listing the amendments

⁴² Two parties, the DP and SP, the consensus of which enabled the amendments, considered the latter (even though after the 2009 parliamentary elections the SP publicly withdrew from this stance) as a factor which marked the departure of the country from electoral deformations, created an anti-crisis environment, built the bases for a stable government; they also considered them as the coronation of one of the most responsible processes among the democratic ones for the purpose of consolidating the legal state and as a fulfilment of a higher task specified following the invitation to NATO. The majority of other parliamentary and non-parliamentary parties from the whole political spectrum did not agree with such considerations. The same thing applies to non-party, impartial, professional and intellectual opinions which almost all agreed that the amendments (except for the ones on the electoral reform, even though there is room for reflection also here) were not consulted, hasty, non-transparent, non-indispensable, and that they violated and deformed inter-institutional relations and balances of powers in a modern functional democracy.

⁴³ The process for the adoption of the Constitution was a long one; not just when it comes to the time, 1992- 1998, but mainly because after several versions, the final draft which was drafted after the 1997 parliamentary elections with the assistance of experts from European structures, it was subjected to wide discussions in the ad-hoc parliamentary committee as well as in roundtables, with participation of legal experts, specialists of different sectors, and civil society. After approval of the Parliament, the text of the Constitution was subjected to final adoption by referendum.

as they were a mere cover of the current constitutional legal order. They represent an imperative materialised in well-defined objectives, required and dictated by the conditions, circumstances, processes, and challenges of the current and future development. This issue is wide, multidimensional dynamic, and very important. The debates about this issue, opinions and comments, thoughts and reasoning, awareness and viewpoints, and remarks and suggestion may be infinite. As the topic cannot be exhausted, this comparative study analysis is aimed at drawing attention on the need to approximation, adaptation, and application of western experience in the constitutional revision process, which is a very serious matter characterised by the need for an optimal amount of time available so to collect and consult the opinions of the largest part of the society, as well as by certain rules according to which constitutional amendments may not be rendered effective within the mandate of the Parliament approving the amendments. In this framework and in the conditions of Albania, it would be useful if certain aspects of constitutional amendments, especially timeframes, would be approximated with consolidated democratic experience.

The need and requirements to revise the Constitution, even in the less important parts, leave alone the important parts as occurred in April of 2008, dictate the specification and identification of the main orientations so to reflect the changes of the political and state reality in order to influence the further democratic development and development of rule of law. This requires serious studies, wide political and public discussions, participation of not only political representatives but also experts and professionals of law, and especially constitutionalists. In this point of view, the issues addressed and many other relevant ones, especially the expected reforms in the justice sector and the administrative-territorial one, which have just started to be conceived, as well as many others discussed not only by politicians but also many other actors, which pose the need for constitutional amendments, require and dictate a process which is rigorously specified through a package of amendments which preserve the spirit of the Constitution and which guarantee that the Constitution would not be affected as many times as political parties clash with each other, so to prevent the creation of a serious precedent which would allow political parties to politically “occupy the state” and would allow the executive power to have a “privileged” position compared to the legislative and judicial power, with attributes to exert their functions.

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