

Comparative Analysis of Albanian Statutes (1912-1939)

Professor Associate KRISTINKA JANCE

Faculty of Law, University of Tirana, Albania

ORCID ID: <https://orcid.org/0009-0006-9842-526X>

Abstract

The history of Albania is marked by numerous challenges faced by its judiciary. From 1912 to 1939, the role of the judiciary was somewhat ambiguous, as it neither made remarkable progress nor fell behind. The evolution of constitutionalism in Albania from 1912 to 1939 is marked by the enactment of four constitutional acts: the Organic Statute of Albania in 1914, the Statute of Lushnja in 1920, the Statute of the Republic of Albania in 1925, and the Statute of the Monarchy of Albania in 1928. However, it is important to objectively acknowledge both the advancements and setbacks of our justice system throughout its history as an independent branch of government. Albania desperately needed legitimacy, affirmation in the international arena, tools, and means to extend its sovereignty and recognition as a fully-fledged state both in fact and in law. Albania's transition from a monarchical system to a more traditional and widely accepted system of governance was seen as favorable by the Albanian population compared to the Republican system. The same individual who had established the Republic and had been declared its President three or four years earlier was the one to institute the kingdom. Zog was seen as a capable leader who could bring stability to Albania and create the necessary conditions for the development of individual and national conscience among Albanians. The first state established by Albanians was recognized with international legal personality.

Keywords: statutes, republic, parliament, kingdom, government

INTRODUCTION

The Albanian constitutional journey began on April 10, 1914, with the issuance of the organic statute in Vlora by the International Commission of Control in Albania. Despite being only 25 pages long, this statute introduced new legal concepts in the country and regulated not only the three branches of government, but also citizen rights, the police, public administration, local governance, economy, commerce, and more. Many of these provisions were new and had a different applicability mindset from what the Albanians were used to during the Ottoman period. The next step in organizing the state was the provisional constitution called the Lushnja Statute, adopted in January 1920 and amended in 1922. This Constitution established a parliamentary system with a regency council that formed the working executive. It provided a solid legal basis for the further development of the country. Unlike the fairly basic Organic Statute of 1914, the Lushnja Statute was much more comprehensive and detailed, explaining the duties and obligations of each institutional branch. The Fundamental Statute of the Republic of Albania (1925) was significantly different from the previous Constitutions. It departed from the Statute of Vlora by removing all references to monarchy and fully embracing a republican form of government. It also differed from the Statute of Lushnja by

completely reorganizing the distribution of power among the state organs. This Constitution, which was approved by the constituent assembly on March 3, 1925, was the third fundamental law to be enacted in the country within twelve years.

The Statute of 1925 expanded the rights and obligations of the three branches of government and adopted a more Western approach to human rights. President Ahmet Zog aimed to become the King of Albanians, which posed a serious constitutional threat as the 1925 Fundamental Statute of the Republic of Albania clearly stated that the form of the republic could not be changed. However, using procedural loopholes, he managed to change the content of Article 141. By adding a clause that allowed decisions regarding statutory changes to be made by a 2/3 majority, he was able to change the Statute and declare himself King in 1928. The new constitution did not substantially differ from the previous one, except that it was modified to accommodate the regime change in Albania in 1928.

1. THE BEGINNINGS OF THE ALBANIAN CONSTITUTION

The constitutional system in the Republic of Albania began after the declaration of independence of Albania on November 28th, 1912. Until then, Albania was under the 444-year domination of the Ottoman Empire. The struggle of the Albanian people for freedom and national identity has not stopped even after the occupation of Albanian lands by the Ottoman Empire in 1479, but the intensification of the Albanian national movement dates back to the League of Prizren which was held on June 8-10, 1878. The efforts of the Albanian people for freedom and independence were crowned with the Declaration of Independence of Albania on November the 28th, 1912. (Haxhiu & Alidemaj, 2023)

According to Anastasi, the independent Albanian state was established through four crucial constitutional decisions. The National Assembly of Vlora made these decisions and are as follows:

1. Albania must achieve independence and freedom.
2. The country must be governed by a temporary government.
3. A group of Wise Men must be elected to support and oversee the government.
4. A Commission must be sent to Europe to represent the Albanian issue to the great kingdoms.

The decisions made during the meeting of the Assembly of Vlora are the earliest sources of Albanian constitutional law. They represent the initial constitutional framework upon which the progressive and patriotic ideas of our patriots were built. The acts of the Assembly of Vlora laid the foundation for a state governed by constitutional principles and non-arbitrary governance, limited by the rule of law. (Anastasi, 2003)

In December 1912, the Conference of Ambassadors addressed the Albanian question by determining Albania's political-legal status and defining its borders. The Conference decided to create an autonomous Albania under the sovereignty of the Sultan, limiting the ambitions of Balkan states. However, this decision disregarded the Declaration of Independence by the National Assembly of Vlora.

In November 1913, the Great Powers chose German Prince Wilhelm von Wied as the prince of Albania, ignoring the will of the Albanian people expressed in the decisions of the Vlora National Assembly.

The International Control Commission (ICC) started its activities in mid-October 1913 and became a central authority of power. Prince Wied was presented with

the crown of Albania by an Albanian delegation appointed by the ICC. Prince Wied was recognized as the prince of Albania by the Great Powers and other states. During Prince Wied's rule, Albania continued to depend on the Great Powers and the International Control Commission (ICC). The ICC drafted the Organic Statute of Albania, based on decisions made at the Conference of Ambassadors, and it was imposed on the Albanian government, being approved on April 10, 1914. This statute established Albania as a constitutional, sovereign, and hereditary principality under the guarantee of the six Great Powers.

As for the system of government, language, writing, and human rights, the drafters of this constitution were inspired by the constitutions of the Balkan countries, where the Monarchist System of Government dominated. The Organic Statute foresaw a separation of state power. The hereditary prince represented the state and oversaw the work of other bodies. (Haxhiu & Alidemaj, 2023, p. 590). Article 4 of the Statute confirmed Albania's status as a semi-sovereign state by stating that treaties, conventions, and international agreements made between the Ottoman Empire and foreign powers would remain in effect. The decision to maintain, modify, or abolish the immunities and privileges granted to foreigners under capitulations was left to the discretion of the six Great Powers.

According to Article 42 of the Organic Statute, members of the National Assembly are the religious representatives of Muslims, Catholics, and Orthodox, and the chairman of the Bektashi. According to this constitution, Albania has no state religion. Freedom and public exercise of all cults are guaranteed. In any part of the Albanian principality, discrimination on a religious basis was not allowed to exclude or qualify a person as incapable in terms of entitling civil and political rights, admission to state work, exercising functions, or practicing various professions and activities. (Haxhiu & Alidemaj, 2023, p. 591)

The Statute also specified the hereditary succession of the throne of the Albanian Principality within Prince Wied's family. The prince, as the head of the royal family, established the law for his dynasty and held authority over civil and military administration. Prince Wied could enact legislation by issuing decrees that required the countersignature of the head of the council of ministers and the relevant minister. Furthermore, the prince was responsible for convening elections for the National Assembly and had the power to call, adjourn, or dissolve it. An article in the Statute declared that Albania would not have an official state religion. Prince Wied had significant powers over the National Assembly, including the right to convene regular or extraordinary sessions, to close or adjourn sessions, and the authority to dissolve the Assembly before the end of its four-year legislative term and also appointed the president of the Assembly from among its members, and all legislative decisions made by the Assembly required the prince's approval. Ministers were appointed by the prince, and they took an oath before him, relinquishing their powers to him in case of resignation. On September 3rd, 1914, the Prince stated that he was forced to leave the country, unable to perform his duties and Turhan Pasha Government did not provide a resignation. According to Article 11 of the Organic Statute, the sovereignty of state power, in cases without the possibility of the exercise of power by the Prince, may be exercised by a senior state functionary. (Sherifi, 2012)

2. THE STATUTE OF LUSHNJA

The Congress of Lushnja, which took place from January 28 to 31, 1920, played a crucial role in solidifying the unity of the Albanian people. Representatives from all

regions of the country gathered in Lushnja with a central focus on reviving the Albanian state, which had been established on November 28, 1912. The Congress emphasized the right of the Albanian people to preserve their nation and strongly opposed the plans of the Peace Conference to divide Albania. After the First World War, only the government formed by the Parliament of Lushnja was able to appear in the international area. (Faniko & Omeri 2015)

According to Shtino, the Lushnja Congress became an expression of the national will to exercise sovereignty without foreign mandates or protectorates, marking the maturity of the country's self-determination and self-regulation capacities. It provided the country with a new capital (Tirana) and laid the foundation for a secular state, maintaining an equal distance in its relations with the traditional religious communities. (Shtino, 2015, p.8)

The Congress not only reaffirmed the country's independence but also took immediate measures to organize the Albanian state. It outlined the constitutional principles of the state in a document known as the "Statute of Lushnja," which became the first constitution of the Albanian state approved by a national assembly. The statute addressed the form of government by establishing the High Council to fulfil the duties of the "Royal Throne," indirectly maintaining the monarchy as a temporary form of governance for the Albanian state.

Regarding the legislative field, the High Council was obligated to approve every law passed by the representative body and to take measures for its implementation. In this way, it did not have the right to sanction laws, only to proclaim them. Similarly, the High Council's power in forming a new government was also limited. In the event of the government's resignation or dismissal, the High Council would appoint a new prime minister who, along with the government he formed, would begin work only after receiving the approval of the representative body. The latter could reject the chosen cabinet head up to three times in succession. The High Council would function as a collegial body without a designated head. Its members were chosen by the Congress, while any vacant positions would be filled by the National Council. The High Council did not possess the rights and privileges of a monarch. Although it replaced the king, it did not have the legal characteristics that define a monarch as the head of state. The High Council's legal status was that of a regency, which in legal theory refers to the temporary individual or collegial exercise of the head of state's powers in a monarchical form of government.

The Lushnja Congress established the Senate as a high organ of the Albanian state, but its nature didn't match its name. Unlike the traditional second chamber found in parliaments, the Senate functioned as the representative body or national parliament. The Senate's representative character was evident from the decisions made at the Lushnja Congress regarding its legal status. It began functioning as the parliament of the Albanian state from the outset. It was increasingly emphasized that "this is a parliament, not a senate."

The Senate, or National Council, would carry out legislative activities for the Albanian state, and all laws it approved would have full force. The High Council couldn't annul them (absolute veto) or return them to the National Council for reconsideration (suspensive veto). The Senate also had the power to appoint and dismiss the government and oversee its activities. Once appointed by the High Council, a new government needed to obtain a vote of confidence from the National Council. If the council declined to approve the vote of confidence, another government would be established. Should two additional successive governments be turned down, it would be deemed a dispute between the High Council and the National Council. The National

Council operated independently from the High Council, as outlined in the "Foundations of the Canon," which outlined a procedure for resolving conflicts between them.

In such cases, the High Council was required to convene the National Assembly, which would decide whether to dismiss the High Council or dissolve the National Council. At the Lushnja Congress, the third high organ formed was the Government or Cabinet. The formation of this entity was linked to the Congress's decision to overthrow the anti-national government of Durrës. When analyzing the legal status of the three high state organs created at the Lushnja Congress—the High Council, the Senate (National Council), and the Government—it is evident that the theory of separation of powers was followed in their formation.

The Lushnja Congress was an important event in the establishment of Albanian parliamentary democracy. It set up key constitutional entities such as the Senate (also known as the "National Council"), the Government (the Cabinet), and the High Council. The Congress also created a constitutional act called the Statute of Lushnja (The Foundations of the Canon of the High Council), which outlined the fundamental structure of the provisional state and provided a general outline for the future political and constitutional regime. (Shtino, 2015, p.9)

3. THE EXTENDED STATUTE OF LUSHNJA 1922

The "Statute of Lushnja" was a brief constitutional act with only six articles, which did not provide specific guidelines for the organization of the state. As a result, there were ongoing discussions about the legal-constitutional relationships between the various bodies created based on the decisions of the Lushnja Congress. This led to the need for the "Statute" to be expanded, a task that was left by Congress itself. During the time the National Council, elected at the Lushnja Congress, was active, no efforts were made to complete the "Statute." This issue was specifically addressed by the National Council, which emerged from the elections held at the beginning of 1921. At the proposal of progressive deputies, a Special Commission of 12 members was formed to draft the relevant project. The extension of the Statute of Lushnja was approved on December 8, 1922, and published in the Official Gazette on February 27, 1923. The parliamentary debate and proceedings for the approval of the expanded statute began on September 11, 1922, during the 39th session. (Shtino, 2015, p.10)

The Extended Statute of Lushnja was a progressive constitutional document considering the historical conditions of Albania in the early 1920s. Its approval was significant in the political struggle at the time to uproot feudalism and democratize the country's life. According to Xhaferri, the new document was much better quality, more European in norms, more democratic in product and legitimacy, and more functional in separation and balance of powers. It consisted of 129 articles and dealt with all the problems of the functioning of the state.

From the beginning, the Statute determined: "A constitutional monarchical government governs the Albanian state. The place of the King is temporarily occupied by the High Council, with the rights and duties finally assigned in this Statute. The Elders of the Supreme Council exercise legislative power." The Extended Statute of Lushnja was the fundamental basis on which the Albanian state functioned during the years 1922-1924. (Xhaferri, 2023). The Extended Statute of Lushnja addressed the form of government and sovereignty, particularly the principle of popular sovereignty, which had gained broad acceptance during and after the Lushnja Congress.

The most important organ in the state mechanism remained the one exercising legislative power. Its name was changed from the National Council to the

Parliament. It consisted of a single chamber, which held sessions both regular and extraordinary. Regular sessions were convened twice a year for three months, while extraordinary sessions were called by the High Council to discuss urgent matters proposed by the Government.

The Extended Statute of Lushnja stipulated that the Parliament would be elected every four years. The Statute focused on the two main aspects of the right to vote without extending to a third aspect, such as the connection between the elected and the electorate, including the voters' control over their representatives and their right to recall them.

The Statute of Lushnja placed special emphasis on defining the relationship between Parliament, the High Council, and the government, as well as their respective powers. These two key issues reflected the high legal-constitutional status of the Parliament within the mechanisms of the Albanian state at that time.

The Statute left the High Council in an indirect dependency and the government in direct subordination to the Parliament. Although the High Council's dependence on the Parliament was not explicitly stated in the Statute, the Government was entirely under the control of the Parliament and was politically accountable only to it. Ultimately, the High Council's dependency was implied, as its activity was entirely conditioned by the Parliament.

The Parliament's authority and legal-constitutional standing set it apart from the other two state organs, as evidenced by the special powers bestowed upon it by the Statute. The Statute referred to the High Council as "the highest head of state" (Article 60). This body continued to consist of four members, with their term of office limited to three years, and re-election was prohibited for two consecutive terms. The High Council held what was called executive power.

The Extended Statute outlined the competencies of the High Council, which, as in the Lushnja decisions, were quite limited. The primary restriction was that the High Council could not interfere in legislative activities. When it came to the government, the High Council did not exercise any power: it had no authority to approve or dismiss the government, as these were actions taken by the Parliament. The Government or Cabinet was defined as the organ exercising "executive power." This legal position of the Government was consistent with the decisions of the Lushnja Congress. However, the Expanded Statute elaborated on this role in three key areas: first, the relationship between the Government, the High Council, and the Parliament; second, the qualifications required for appointing a minister; and third, the responsibilities of the Government and its members. The Extended Statute of Lushnja also addressed the rights and freedoms of citizens. In enshrining these rights and freedoms, the Statute categorized them into two groups: civil rights and political rights.

4. THE TRANSITION FROM REPUBLIC TO MONARCHY

On January 25, 1925, the Constitutional Assembly proclaimed the Republic of Albania. Ten days later, the Constitutional Assembly elected Zogu President of the Republic of Albania, being at the same time the head of the executive power—a political and military field which strengthened Albania's positions. (Goxhaj & Licaj 2015)

According to Spahiu, when Ahmet Zogu became President of the Republic in 1925, he aimed to establish a government that would benefit the people of Albania and bring order to the country. This government would be based on institutions and would regulate Albanian society and politics, which had been in chaos since the declaration of independence thirteen years earlier. Importantly, Zogu's actions did not indicate a

rejection of the monarchy, as he left open the possibility of royal continuity. (Spahiu, 2018)

The Parliament convened on June 7, 1928, and argued that the existing Statute of Albania did not fit the present Albania as it did in 1924 and 1925. The Constituent Assembly, comprised mostly of former deputies, senators, and ministers, started its work in Tirana on August 25, 1928.

During the discussions on the political form of the Albanian state, representatives of the Zogist regime in the Assembly justified the transition from a republican form of government to a monarchical one with demagogic reasoning. After the discussions, on September 1, 1928, this Assembly approved Article 1 of the new Fundamental Statute, declaring Albania a "Democratic, Parliamentary, and Hereditary Kingdom" and naming Ahmet Zogu as King Zog I through a "Special Decision." The Constituent Assembly completed the review and approval of the Fundamental Statute on December 1, 1928, and on the same day, it transformed itself into Parliament. On that same date, the Fundamental Statute of the Albanian Kingdom came into effect.

The new constitution of the Parliamentary Monarchy introduced significant changes to its structure and the powers of state bodies. The relationship between these state bodies underwent a complete transformation. Under the new system, the Monarch became the main body of state power. Legislative authority was shared between the king and parliament, executive authority was shared between the king and the government, and the judiciary remained independent.

However, the monarch appointed judges and their decisions were made in the name of the king rather than on behalf of the people. According to Professor Ahmetaj, the statute allowed the King to nominate the Council of State through double candidates selected by a special commission consisting of the Prime Minister, the President of Parliament, and the Minister of Justice. He also had the right to nominate and dismiss the President of the institution.

The law required Council members to enjoy civil and political rights, have no criminal convictions, and be between 30 and 60 years old. The Council consisted of three sections: the judiciary, administration, finance, and national economy. The Council was granted the authority to interpret ambiguous provisions and review decisions made by the Administrative Section of the Council of State and Administrative Councils of prefectures and subprefectures under Article 5. Additionally, as per Article 7, the Council of State was required to notify the relevant executive and legislative authorities about any proposed cancellations, partial changes, or general laws and regulations that did not adhere to the customs of the country or contradicted existing laws.

Thus, it was responsible for ensuring the alignment and compliance of all aspects of the various legislation and regulations in force. It's important to note that the decisions of this institution carried consultative power. The law stipulated that "General Meetings are chaired by the President of the State, or in his absence, by the deputy elder. All members of the Council participate in these meetings, and the Secretary-General attends without the right to vote. (Ahmetaj, 2014)

CONCLUSIONS

From 1912 to 1939, Albania underwent significant constitutional and governmental changes. The Statute of Lushnja was initially established to create a foundation for an independent state. However, it was later expanded in 1922 to introduce a bicameral

system, aiming to balance powers. This system faced challenges in practice due to the lack of political pluralism and an unrealistic representation.

While the first and 1914 statutes limited Albania's sovereignty, the Statute of Lushnja and its expansion sought to strengthen independence and create stable state institutions. During this period, Albanian institutions evolved from being externally supervised to a more independent and sophisticated structure, but also more centralized, particularly after the proclamation of the monarchy.

The transition from a Republic to a Monarchy in 1928 was a major change influenced by Ahmet Zogu's personal ambitions and external influences. This move aimed to consolidate power and create a stronger symbol of national unity but fell short of fulfilling the initial ideals of the Statute of Lushnja. The evolution of constitutional statutes in Albania during this period reflects the challenges of establishing stable state institutions in a turbulent political and social context. It emphasizes the importance of a balance of powers, rights guarantees and the inclusion of political pluralism for a functional democracy.

REFERENCES

1. Anastasi, A. (2003), *Up-To-date approach to The Albanian Law of The Period 1912 – 1914*, Studia Albanica.
2. Ahmetaj, L. (2014) *The Transition of Albania from Republic to Monarchy*, European Scientific Journal Edition Vol.10, No.31.
3. Faniko, I., Omeri, A. (2015), The Historic Legal Development of Albanian Fundamental Charter, Mediterranean Journal of Social Sciences Mcser Publishing, Rome-Italy, Vol 6 No 6 S2.
4. Goxha J., Licaj, L. (2015), *The Development of Albanian Legislation and the Codification Process During the Zogist Period*, European Scientific Journal Edition Vol.11, No.31
5. Haxhiu, S., Alidemaj, A. (2023), *The Development of Constitutionalism in Albania (1912-1938)*, Historia Constitucional N. 24.
6. Spahiu, E. (2018), *The Necessity of the Albanian Kingdom and Its Legality* Interdisciplinary Journal Of Research And Development, Vol. 5, No. 4.
7. Sherifi, E. (2012), *Institutions That Returned the Sovereignty of Albania. 1920*, Academic Journal of Interdisciplinary Studies Published by Mcser-Cemas-Sapienza University of Rome, Vol 1 No 2.
8. Shtino, R. (2015), *Gjeneza e Sistemit Parlamentar Shqiptar dhe Krahsimi i tij me ate Italian*, Teze Doktorature, Universiteti i Tiranes, Tirane , Available online at: <https://www.unitir.edu.al/Wp-Content/Uploads/2016/01/Doktoratura-Redi-Shtino-Fakulteti-I-Drejtësisë-Departamenti-I-Te-Drejtës-Publike.Pdf>
9. Xhaferri, M. (2023), *The Historical Evolution of the Albanian Constitution During The XX-XXI Centuries*, Interdisciplinary Journal of Research and Development, Vol 10 No 3 S1.