



## The Human Dimension of the Supreme Law of the State on its 25th Anniversary

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### Abstract

*This article commemorates the 25th anniversary of the adoption of the Constitution of the Republic of Albania, reflecting on its significance and impact on the country's political, social, and legal landscape. It discusses the evolution of Albania's legal system, emphasizing the need for a more humanized approach to law that is accessible and comprehensible to all citizens. The article analysis the disconnection between the law-making bodies and the people, highlighting the importance of constitutional education from early stages of education. It also addresses ongoing challenges in Albanian society, such as emigration and institutional reform, calling for greater accountability and maturity in governance. Ultimately, the speaker advocates for a reimagining of the Constitution as a living document that embodies the values and aspirations of the Albanian people.*

**Keywords:** Albanian Constitution, anniversary, democracy, legal education, societal challenges, political reform, constitutionalism, emigration, institutional maturity, governance, accountability

### 1. Introduction

First of all, I would like to congratulate the organizers of this scientific symposium on the occasion of the 25<sup>th</sup> anniversary of the adoption of the Constitution of the Republic of Albania<sup>1</sup>.

This jubilee of the first quarter of century of the constitution is of fundamental importance to be celebrated as an achievement of a new State, with a problematic past and a judicial culture still to be consolidated. The symposium is a moment of celebration and thanksgiving, but also a need for reflection, in-depth study of the achievements, successes of the implementation of the constitution and the shortcomings and mistakes made in this journey. Its most tangible dimension for people consists especially in the objectives so beautifully predicted and promised in Article 59<sup>2</sup> that

<sup>1</sup> The Constitution of the Republic of Albania was approved by law no. 8417, dated 21.10.1998.

<sup>2</sup> Constitution of the Republic of Albania, Chapter V, Social Objectives, Article 59 1. The state, within its constitutional powers and the means at its disposal, and to supplement private initiative and responsibility, aims at: a) Eemployment under suitable conditions for all persons who are able to work; b) fulfillment of the housing needs of its citizens; c) the highest possible standard of physical and mental health; c) education and qualification of children and the young, as well as unemployed persons, according to their abilities; d) a healthy and ecologically adequate environment for the present and future generations; dh. the rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development; e) care and help for the aged, orphans and persons with disabilities; e) the development of sport and recreational activities; f) health rehabilitation, specialized education and integration of disabled people into society, and continual improvement of their living conditions; g) the protection of national cultural heritage and particular care for the Albanian language.

constitute the core of the Rousseau-type social contract<sup>3</sup>, according to the most advanced model of parliamentary democracies.

Two and a half decades are relatively short for the life of a constitution, but enough to define a 'new', human dimension, closer to the people, closer and for the service of all citizens.

For a long time, the right in Albania, but also in other countries of the east, and here I am referring to the positive one in particular, has been perceived as the fruit of an "Instrument" in the hands of the government. Political power becomes more and more a state, i.e. a totalitarian entity that tends to control every aspect of social life. The state has shown an ever-increasing interest in the right, recognizing it as a precious cement of 'ITS' structure.

The state is only a crystallization of society. It is always the "so-called" democratic state, an ensemble of bodies, institutions, an authoritarian organization, a kind of "factory" of orders, which leave their mark on the right/law. Thanks to its strength and based on the 'myth' of representing the general will, It becomes the representative of the Sovereign through the electoral process. But we must admit that often this syllogism at least often turns into a legal myth<sup>4</sup>.

It must therefore be verified whether the laws of the State faithfully reflect the will of people, or only of the one who holds political power?!

As a result, in the modern State we have the full nationalization of the right in the law, as an expression of the general will of the Sovereign's power.

The representation of the Sovereign, thanks to the expression of the general will, declined qualitatively and personally both at the central and local level during the indefinite years of the democratic transition.

The ever-widening gap that has been created between people and the law-making bodies through the weakening of the direct instruments of representative democracy has brought the result of the ever-more tangible perception that the right reaches its full dimension in its commanding, preventive or even worse punitive character. So not of its natural physiological aspect, as a regulatory need among the mess of human relations or of them in relation to the State, but of a dimension that I would call pathological, that is, of the perception especially prohibitive and binding, punishing and sanctioning, part of a momentum that makes law a kind of monster in the eyes of a normal person or a citizen who relates to the laws only out of the general need to be formally in order with the legal system.

In my opinion, this dimension has been helped by its almost total exclusion from school curricula, ignoring its formative ability, with a very shallow presentation of knowledge.

The law that is taught before coming to university is of a superficial content - at the level of civic education or of any technical school, but that fails to penetrate the level of education of our children. Even that little knowledge is largely undated, poorly labeled and above all without any spirit of citizenship which is necessary in conveying the legal culture in particular and the legal doctrine in general.

I think the time has come to recover an original nature of the right, more essential, closer to people, more humane.

Hermogenian summed up the right with the famous expression: "*Hominum CAUSA*", so the right is a phenomenal nature that cannot exist without the presence of people. *Ubi societa ibi ius!* It is above all an order, and not a physical context or a written text, that awaits human involvement, it is written in history, be it big or small, and it starts at the beginning of human history and comes down to us, because people have continuously interlaced it with their intelligence and feelings, with their ideals and interests, with their loves and hates.<sup>5</sup>

The right and the Constitution as the expression of the highest condensation of the right, as the supreme law of the State, does not come only as a product of a group of jurists, or as an 'ad hoc' legislative process, in our case, on the contrary, it is the most humane and most tangible dimension from all the citizens of the Republic of Albania. It is the need to create a contract of general trust, so that each member of society feels included, protected, guaranteed in the very complicated process of being and becoming a model of a legal entity that feels the constant presence of the State's care.

The human dimension of the Constitution, the fundamental law of our State, must dominate in every aspect of our lives; at the central governmental level; in the ever more important dimension of local autonomy, in academic-university life, but above all in the level of the overall education of society which, in my humble opinion, should start early in our first stages of education and growth.

Many countries that we look at as an example of the model of the legal family from which they come from, give

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2. Fulfillment of social objectives cannot be claimed directly in court. The law defines under what conditions and to what extent the realization of these objectives can be claimed.

<sup>3</sup> *Du contrat social*, Rousseau, J.J., Librairie, Generale Française, 1996, Paris.

<sup>4</sup> For a more in-depth look at the human dimension of the right, we invite you to read: *What is the right?*, Chapter I, pages 13-35, First Lecture on the Right, Grossi, P., 'Luigj Gurakuqi' University, Faculty of Justice, Shkodër, 2015.

<sup>5</sup> First Lecture on the Right, Grossi, P., 'Luigj Gurakuqi' University, Faculty of Justice, Shkodër, 2015

special importance to its study in primary and secondary education. The education of the right for the sake of truth remains a challenge of contemporary modern societies and cannot be started 'only' at the university.

In the vision of the humanization of the right, the bringing of the right in the midst of society, for the people, with the people and in their function, it would be necessary for the booklet of the constitution (of course with comments and explanations attached) to receive the same popularity that the ABC has had in the formation of language for each of us.

In this 25<sup>th</sup> anniversary, the Constitution should have been an anastatic and curated model book, with comments and explanations that reach everyone, and that could be distributed in schools, workplaces and entertainment, in social and cultural ceremonies.

Educating our children to become worthy citizens of a society that still has a long way to go to create a prominent law-making state identity should start from the study of the constitution, perhaps not as a legal or political text but as a text which is the quintessence of our formal contract with the State.

Let's start from the genesis. The conception of our Constitution is the product of a crisis. Of a deep crisis, which initially started as financial but turned into political and social, to reach its peak in the dissolution of most of the institutions, in the infamous year '97. Without wanting to dwell on the consequences of that terrible year for Albanians, I think that, as often happens in the life cycle, after that crisis, the Albanian politics and society reacted and a year later the Constitution of Albania was approved; let me quickly and briefly read its preamble: We, the people of Albania, proud and aware of our history, with responsibility for the future, and with faith in God and/or other universal values, with determination to build a social and democratic state based on the rule of law, and to guarantee the fundamental human rights and freedoms, with a spirit of religious coexistence and tolerance, with a pledge to protect human dignity and personhood, as well as for the prosperity of the whole nation, for peace, well-being, culture and social solidarity, with the centuries-old aspiration of the Albanian people for national identity and unity, with a deep conviction that justice, peace, harmony and cooperation between nations are among the highest values of humanity,

## **2. We Establish this Constitution<sup>6</sup>**

Today, after 25 years, the deep political-institutional crisis continues to characterize Albanian politics. In the political articulation of the overwhelming part of it is precisely the constitutional charter: the product of a political agreement at the genesis, but also of several other agreements afterwards, always according to the statements made in the interest and for the good of the Albanians, but it must be said, lacking continuously the consensus and the consent of the Albanian society. This is one more reason that the education and recognition of the spirit of the Constitution of Albania must start from below, from society, since historically we use the creation of an efficient, dignified and respectable state as a problematic euphemism.

On the occasion of the 25<sup>th</sup> anniversary of the "birth" of the constitution, we definitely have a lot to celebrate too. We must be aware that Albania's state past is not characterized by stable political regimes from the point of view of the State of Law. Our political systems since the creation of the first State in 1912 are mainly political regimes based on the exercise of violence, extremely ideological (especially the communist regime) and with a dominant dose of the cult of the individual that is the common denominator not only of the regime of Zogu and Hoxha, but which has continued to be a constant in the diatribe of the power during the transition transition, definitely characterized by a stable competition of the two main political forces which have concentrated their leadership in a limited number of individuals. Three decades of post-communism did not create the possibility of a democracy functioning according to constitutional principles (I recall here that the first paragraph of the article of the constitution declares: Albania is a parliamentary republic), but the quality of the parliament, its proper functioning or the guarantee of the check and balance mechanisms of a modern democratic system are still a mirage of our young state.

### *2.1 What has been the reaction of Albanian society to this protracted political-democratic and social transition?*

On the human level, the most spontaneous reaction of Albanian society is that of emigration. The reasons are complex! I will not analyze them here for reasons of time, but they are related both to our internal past but also to globalization as a phenomenon that changes the social structure around the world. Faced with an open world, we also react like everyone else. Internal immigration to rural areas and more industrialized urban centers cannot be left unmentioned. This is another social trauma that massively affects each of the regions that make up our country. The basic reason, at least in

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<sup>6</sup> *The Constitution of the Republic of Albania was approved by law no. 8417, dated 21.10.1998.*

appearance, is the improvement of the economic situation, but the new dimension of emigration is, in my opinion, a total loss of hope in the improvement of the situation on the part of the Institutions, and here I am not talking only about the state ones, but also the loss of confidence in all the cardinal areas of the public such as Education, Health, Public Safety, and last but not least Justice.

The dimension of the wound of emigration, but also internal immigration, is today one of the most tangible problems of contemporary Albanian society, and even though it is included in the Constitution of the Republic of Albania as a fundamental law of the State, there is still much to be done for the vote of immigrants and their passive and active representation in central and local representative bodies.

Another social aspect that characterizes and has been the common denominator of these 25 years of the State/Constitutional Republic in Albania is the continuous reforming dimension of the legislation (seven changes in 25 years is a lot), starting from the constitution itself, which beyond the new age has undergone a series of partial or total changes both in the balance of powers and in specific constitutional institutions.

Beyond two-sided judgments, what worries me more as a lawyer is not the need for indefinite political reforms, but the displacement of the need to always blame the 'law' as a form of responsibility for its implementation. Legislative inflation is a global problem in this time of essential changes, but its translation into a constant need for constitutional changes in the name of reforms often justified precisely by the inalienable demands of international partners, I believe, hides a dimension of institutional, political and judicial immaturity of our extremely pragmatic and little LEGALLY INSTITUTIONALIZED politics.

*"A good constitution is not enough to ensure the happiness of a country. A bad constitution can be enough to bring about his misfortune" says Guy Carcassonne.<sup>7</sup>*

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<sup>7</sup> Separation of powers and independence of constitutional institutions, Omari, L., Academy of Sciences of Albania, "Elena Gjika" Publications, Tirana 2011.