



The Historical Evolution of the Albanian Constitution During the XX-XXI Centuries

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Abstract

This paper aims to highlight the historical importance of constitutionalism for a country and the efforts made to finalize it. Referring to the history of the Albanian Constitution, we can see a centuries-old attempt to bring an essential legal act that gives the highest values to the state, not only in the National Legal context but also in compatibility with International Legislation. As it is already known, the Constitution is the state's fundamental law. In the Albanian tradition, the constitution, the notions related to it, and the concepts that originate from it have had less longevity than the state itself. Due to historical circumstances, the Albanian state was created in the last phase of the withdrawal of the Ottoman Empire from the Balkans and the creation of the Balkan states. As a result, it faced double difficulties in the written shaping and implementation of constitutional practices and norms. For the founders of the Albanian state, there was no previous reference document, no close contemporary tradition, and no legitimate institutions from which the constitutional document could originate. What will be important in this paper is that, based on the documentary analysis, there has been a continuous effort by the political bodies, since the Declaration of Independence and up to our days, for a contemporary development and modeling of all the Constitutions of this country, starting from Canons and ending in the current Constitution which the Albanian state obeys today. Also, in this paper, clarifying some misunderstandings or unintentional misinterpretations about the previous constitutional documents will be essential. Based on the bibliography, all the Albanian constitutions without which the Albanian legal state could not function, and functions will be studied with special attention.

Keywords: Evolution, History, Constitution, Albanian

1. Introduction

The constitution is the essential act of state organization. The Constitution contains the norms and rules for the organization of state power and its functioning, especially of the higher state bodies, as well as the relationship between them. According to contemporary researchers, the constitution is a written document with the highest legal power brought by the body representing the legislative power or by a unique constitutional body with a particular procedure that differs from the process by which laws, provisions, and other acts are enacted. The founders of the state faced a minimal political and democratic culture of the then inhabitants, who, for more than five centuries, generation after generation, had lived on the outskirts of the Ottoman Empire under the rule of the constitutional norms of the High Gate. In Albanian culture, there was a local organization based on the rules determined by customary law, which is the Canon, about the dominant state. The canon is a law or a collection of unwritten laws and norms, inherited orally that reflect the economic-social situation of past periods and that, in their time, protected the interests of specific classes and social strata, as well as the

norms of customary law¹. This early and self-organizing institution at the time of the absence of a functional and national state created functional local structures that survived long periods of Ottoman rule. It was inherited in unwritten form but respected by all its subjects, a unique practice for a European country at the same stage of historical development. The canon and its models appeared in different forms. They were based on legitimate local decision-making, on the existence of the assembly of elders and the patriarchal organization, on the institution of faith, and on respect for the religious institution, especially the church². As far as the formulation and implementation of the Albanian constitution are concerned, there has been a century-long effort to reach the model of the 1998 Constitution. In the entire history of the fundamental documents of the Albanian state, only the 1998 Constitution was approved by referendum. Foreign political powers imposed another two; the National Assembly approved three, and the rest through parliamentary voting or similar structures.

2. Methodology

To realize this work, several work methods were followed and combined. The paper is mainly based on research for materials, articles, reports, studies, strategies, and projects related to the organization of the Albanian state and its constitutions over the years. Several research methods have been combined to develop this paper, such as analytical, historical, descriptive, comparative, explanatory, synthetic, and predictive, and almost all of them can be found mixed in the style of the paper.

The analytical method is mainly based on the deep analysis of the provisions provided by all the constitutions for the effect of the study.

The historical method reflects the evolutionary development of the drafting and approval of Albanian Constitutions from the period of Independence to the present day.

The descriptive method used in this paper aimed to identify the current state of the Albanian Constitution and its active or passive role.

The comparative method was used to compare the constitutions adopted by the Albanian state over the years and whether they have maintained the same structure.

The explanatory method was used during the work to clarify the need for installation and implementation in the best possible way of the fundamental law of the state, known as the Constitution.

3. The Beginnings of the Albanian Constitution

The first Albanian constitutional beginnings originate from the Conference of Ambassadors in London. What should be underlined is that the first Albanian Constitution is not a product of the national political elites, who declared Independence and created the state in November 1912, but a product of the Great Powers, of diplomats and experts with no organic connection to Albania. The founders of the state at that time, under the leadership of Ismail Qemali after the Declaration of Independence in 1912, made efforts and succeeded in creating legislation for the new state, such as the Law on Jury Law (May 1913) and the Adequate Civil Administration Law (November 1913). In the middle of 1913 in London, the Great Powers formalized the Organic Statute of the Albanian Principality, a document of historical importance for the fate of the first Albanian state created in 1912.

The London Conference's decision was summarized in 11 articles. The first article of this Statute stated that: "Albania is formed as an autonomous, sovereign and hereditary principality according to the first order of birth under the guarantees of the six Powers. The six Great Powers will appoint the Prince." Further, the Statute determined the complete separation from Turkey, the neutrality of the new state, the creation of the International Control Commission (ICC) for civil and financial administration, the responsibility of establishing order and ensuring protection through experts from abroad, etc.

Although a document with 11 points, the statute has extraordinary value for the history of the Albanian state. Its three central values are a. the creation of the state under the auspices of the Great Powers, b. the westernization of Albania through the conditionality for the appointment of a prince at the head of the new state, c. the creation for the first time of legitimate institutions, with international recognition and decision-making power on behalf of the state. After the establishment of Prince Vidi as the head of the Albanian Principality in April 1914, the Organic Statute of Albania was

¹<https://sq.wikipedia.org/wiki/>

²Luarasi, Aleks "History of the state and law in Albania", "Luarasi" Publishing House, Tirana, 2001, pg. 23

drawn up and announced by the International Control Commission (ICC) and Prince Vidi.

The Organic Statute of Albania was transformed into a complete, integral, European, and legitimate form of the constitution of the Albanian state.

The new constitution in the first article stated that "Albania is formed as a constitutional, sovereign and hereditary principality under the guarantee of the six Great Powers, Albania is indivisible, its territory is inalienable, Albania is neutral; the six Great Powers guarantee its neutrality." Unlike other state forms, the new constitution, otherwise known as the Organic Statute, was imposed from the outside, without the participation of Albanians and direct or indirect voting. As a result, in legal terms, it has been criticized as violating the sovereignty of the Albanian state³. The Organic Statute of Albania consisted of 216 articles divided into chapters, namely: Albania and its territory articles 1-6, sovereign articles 7-21, population articles 22-39, legislation articles 40-71, governing bodies articles 72-140, finance articles 141-143, etc. The principal value of this Statute is its creation and promulgation. At the same time, another critical element is the practical implementation, which unfortunately turned out to be impossible in the conditions in which the Albanian state was in 1914. As seen in this Statute, it is of a very high level for the time. From the study that has been made of this Statute, it is observed that almost all the elements of the state known, according to the historian and sociologist Max Weber,⁴ have been sanctioned.

3.1 From declarative constitutions to governing constitutions

During the First World War, Albania was turned into a battlefield by various occupying states. It had a Pric Vidi line of government after they left Albania, and the Organic Statute went out of order. With the end of the First World War and the Albanian efforts to create representative structures at the Peace Conference in Paris and Versailles, the main problem for the new Albanian elite was the transition from the act of state creation (1912) to the concrete implementation of the state. With this objective, delegates from all over the country gathered at the National Congress of Lushnja, which gave life to a new constitutional document of great historical value: the Canon of the Upper Council. Like the London document, the constitutional product of Lushnja also laid the foundations of the new state organization, principles which, at another stage, could be transformed into a broader constitutional document. The document known as the Statute of Lushnja consisted of 6 articles and created the institution of the Supreme Council with the attributes of the head of state. Without touching the form of the regime and without entering into the debate on the throne of Prince Vid created in 1914, the delegates of the National Congress of Lushnja determined that "with the future of the king on the high royal throne, the High Council is automatically recognized and overthrown." Further, the delegates created the National Assembly (National Council) with the attributes of the first Albanian parliament and elected the four members of the Supreme Council and the new government, thus giving life to the de facto new Albanian state. After passing the first stage of international recognition, the establishment of borders, and the state's authority, the deputies collaborated closely on drafting the complete constitutional document, just like the International Commission of Control (ICC) in 1914. The distinguishing basis between the Organic Statute and that of Lushnjales in the fact that the Great Powers no longer drafted this legal act as in the case of the ICC but by the local political elite of this time.

In December 1922, the parliament approved the Extended Statute of Lushnja, the first constitution of an entirely Albanian product, the first approved constitution, and the first functional constitution in the history of the 100-year-old Albanian state. 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.

In the events of June and December 1924, all the institutions he created were tested and proved unable to resolve the disputes between them institutionally. Therefore, at the end of 1924, the democratic multiparty system came to an end, and the institutional life was based on the model of the Congress of Lushnja or its Extended Statute. Supporters of the return of legality, referring to the political and state institutions of the period before June 10, 1924, initiated rapid constitutional changes and proclaimed the need to change the form of the regime: the transition from the principality to the republic. With the approval of this change, the period of Albania's leadership by Prince Vidi or the High Council, as a

³Omari, Luan, "Parliamentary system. Parliament in Albania", Tirana, 2004, pg.15

⁴Christopher Pierson, "Modern State", AIIS Publishing House, Tirana 2009, pg.18

substitute and executor of power in the absence of the Prince, came to an end.

In January 1925, the new parliament voted for the republican form of government and elected Ahmet Zogu as the President of the Republic. Officially, only in March 1925 did the new republican constitution come into being, called "The Basic Statute of the Albanian Republic." The Statute determined that "Albania is a Parliamentary Republic headed by a president" and "sovereignty comes from the people." Consisting of 142 articles, it is 100 percent the product of a political current in the Albanian parliament.

The statute is the first constitutional document that banned the existence of political parties and experimented with the republican model in Albania. In most of its concepts, the Statute had positive innovations; it referred to the French and Italian models in the establishment of institutions, and it allowed the experimentation of the parliamentary system with two chambers for the first time, creating the institution of the Senate as a balancing and maturing institution in the political system. However, the President of the Republic, elected for a 7-year term, received the leading powers, including the power of being both the Prime Minister and the nominating body for one-third of the members of the Senate.

3.2 The monarchy of 1928 and its end in Albania

The republican model survived only three years to give way to the restoration of the monarchy, now as an Albanian throne and an entirely Albanian product. With the help of Italy, the Albanian Monarchy was established in September 1928, and the President of the Republic became the first and last king of the Albanian state. The constitutional document of the Albanian Monarchy was called "The Fundamental Statute of the Kingdom" and was officially implemented in December 1928, three months after the parliament elected the sovereign. The Statute sanctioned that "Albania is a Democratic, Parliamentary and Hereditary Kingdom." The new statute canceled the two-chamber parliamentary model and returned to the one-chamber model, created the institution of the Council of State, and laid the foundations of state organization based on the well-known practices of some Western monarchist countries.

Its 243 articles remain the most extended, most detailed constitutional document. It is also a unique Albanian product, approved indirectly through the parliamentary vote and the absence of political and public opposition. The 1928 statute guided the governing model of the Albanian state for 11 years, thus becoming the most stable and functional document and governing model during the first half of the last century. Its balance must be seen in the context of the time and circumstances when it was practiced, the political system it produced, and the trend toward authoritarian models in most regional and European countries. In April 1939, Italy, identified with fascism, established its occupation in Albania and staged the union of the two countries into a single state.

With the country's occupation, the period of Zogu's leadership and the political and constitutional model he created ended. Italy created institutions of dependence in Albania and, in June 1939, adopted a constitutional document of political vassalage as the basis of state functioning during the next 3-4 years. The general provisions of the Fundamental Statute of the Kingdom (1939) stated that: "A constitutional monarchical Government governs the Albanian State. The throne is inherited after the Salic League from the dynasty of His Majesty Victor Emmanuel III, King of Italy and Albania, Emperor of Ethiopia." The entire constitutional document consisted of 54 articles, all powers were directed by the Emperor (through his viceroy), and Albania practiced for the first time the party-state model, where the Fascist Party was identified with the state and the only political force in the Assembly (parliament) created by Italy in occupied Albania. After the capitulation of Italy in September 1943, the local Albanian elites tried to develop new state institutions and restore the monarchy before 1939, but without the presence of the former king Zog.

They combined two historical elements: the Albanian monarchy and the model of the Lushnja Congress (the Supreme Council instead of the king). Thus, they created a new experimental constitutional model, later partially recognized by the German occupying authorities. The legal basis of the new experimental system was laid with the decision of the National Assembly in October 1943, by which all the decisions taken by the Assembly of April 12, 1939, along with the crown of Victor Emanuel III and the Statute, were overturned, decreed by him in June 1939. The Assembly delegated the competence of the executive power to the High Council chosen by him and the legislative power to the parliament in cooperation with the Council, taking as a legal reference the Statute of December 1, 1928. Of the 54 articles approved by this Assembly, 15 created a legal basis of importance for the political position of Albania, but without significant influence on the international position due to the circumstances under the German occupation, de facto as the primary decision-making authority in the country. During the period October 1943-October 1944, several governments were created, and regular elections were held for the Supreme Council; however, in the middle of this mandate, in May 1944, another parallel reality was born, which would determine the political fate of Albania throughout the 4 / the next five decades. This ended the monarchist model in the centuries-old Albanian history and, with it, the constitutions that this model produced.

3.3 *The Socialist System during the years 1944-1990 and the Constitutions in Albania*

In May 1944, the political and military forces grouped under the NPSH and assisted by allies of the communist movement held the Përmet Congress, where political decisions were taken with a direct impact on the political system and the form of government in Albania. The National Liberation Anti-Fascist Council was created at the Congress, from which the National Liberation Anti-Fascist Committee (CAN) and the central political bodies of the ACP emerged. At the CAN meeting (May 1944), it was decided to cancel the monarchy, prohibit the royal family's return to Albania, recognize the regional councils as the only legitimate power, continue the fight against the invaders and other political forces, and create a provisional communist government.

There are six articles, the shortest constitutional document in the 100-year history, but the most influential because of the system they produced and implemented with the establishment of the communist regime. In November 1944, the communists took power; a year later, in December 1945, they held elections without the presence of the opposition and the alternative vote, and in January 1946, the republican form of the state was established under the name "People's Republic of Albania." As a result, in March 1946, the first constitutional document of the communist period, the "Statute of the People's Republic," was implemented. In articles one and two of the Statute, it was stated that "Albania is a People's Republic, where all power originates from the people and belongs to the people," which "executes its power through the representative bodies of state power, which are the councils popular which were born in the national-liberation war against fascism and reaction also represent the greatest victory of the main masses of the Albanian people."

The document was an almost identical imitation of the model of the constitutions of the countries in the Soviet sphere, especially the Yugoslav model. It was formally approved by the National Assembly, a body with parliamentary functions created by the AKP. After breaking off relations with Yugoslavia, eliminating the opposition, taking complete control over the state, nationalizing property, and recognizing the new regime within the Soviet sphere of influence in the world, the LPA decided to review and amend the constitutional document. The change was implemented in 1950, including the official name from "statute" to "constitution." The constitution of the RPA had two more articles than the constitutional model of 1946. However, from the beginning, it emphasized that "Albania is a people's republic, a state of workers and peasants" and that "the political base of the RPA is the popular councils that arose during the national-liberation war against fascism and reaction and were strengthened with the historic victory of this war and during the construction of the foundations of socialism."

This constitutional document deepened the ideological nature of the state and society. It remained in force until 1976, when ties replaced the friendly relations between Albania and the USSR with China, followed by the policy of complete isolation from the East and the West. The 1976 constitution is the most ideological and static document in the history of the Albanian state. From the beginning, it is emphasized: "The People's Socialist Republic of Albania is a state of the dictatorship of the proletariat, which expresses and protects the interests of all employees. The People's Socialist Republic of Albania relies on the unity of the people around the Party of Labor of Albania. It is based on the alliance of the working class with the cooperative peasantry under the leadership of the working class."

With a particular article, the constitution defines that the PLA "is the only leading political force of the state and society," that "in the People's Socialist Republic of Albania, the ruling ideology is Marxism-Leninism" and that "based on its principles, the entire social order is developed, socialist." This Constitution comprised 112 articles and had the same extreme measure of ideology and identification as the classic party-state model. All other institutions stem from the same spirit and ideological model. In this way, the three constitutional models of the communist regime reflected the three phases of its development: the period of dominance of Yugoslav ties, then the supremacy of Soviet concepts, and finally, the principles of a country that has decided to isolate itself from the rest of the world, supporting this choice with ideological arguments and alibi.

3.4 *Constitutions after the 90s - the democratic model of constitutional government*

At the end of 1990, the democratic movement changed the system and, with it, the separation from the constitutional and political model of 1976. From December 1990 to April 1991, including the first multi-party electoral process in March 1991, a system was experimented with a dualist political system, a multi-party system in a country where the anti-democratic 1976 constitution was still legally in force. With the new multi-party parliament, all political forces agreed to annul the 1976 constitution and temporarily adopt a series of norms and constitutional provisions known as "Main Constitutional Provisions." At the head of the law "On the Main Constitutional Provisions," it was said: "Albania is a parliamentary republic."

National sovereignty originates from and belongs to the people. The Republic of Albania is a legal and democratic state. Human dignity, rights and freedoms, the free development of his personality and the constitutional order, equality before the law, social justice and social support, and pluralism are the basis of this state, which has to respect and protect them." The article stated: "The fundamental principle of state organization is separating legislative, executive and judicial power. The people exercise their power through their representative bodies and a referendum." All these are unique notions in the state's history and make a clear difference with any other constitutional and governing form. The power of the Main Constitutional Provisions was to extend until the passage of the new consensual constitutional project in the parliament. This process failed in 1993 and then with the voting of a government constitutional project in the referendum of November 1994. In this way, the Main Constitutional Provisions remained in force until 1998.

During the seven years of their operation, the central institutions of the state were created, and the foundations of the constitutional principle of separation and balance of powers were laid. Based on the Main Constitutional Provisions, two parliamentary election processes took place, the Constitutional Court was established, and primary legislation was adopted for all state and public sectors. In 1998, the ruling majority and international partners began drafting the Constitution. This process ended with the voting in the referendum and the decree on the national day. The 1998 Constitution marks the first and only constitutional document voted by the citizens, the first complete constitutional document of democratic Albania, and a stable and qualitative basis of the concept and aim for a free, fair, and integrated state. At the top of the Constitution is defined the parliamentary nature of the state and the principle that "governance is based on a system of free, equal, general and periodic elections."

Further, the Constitution defines political, social, economic, and legal rights and the division and balance of power between the central powers and institutions in the country's political and governing system. The parliament remains a unicameral system; the parliament elects the President, the executive power belongs to the government, the judiciary is a separate power in the governing system, and several other institutions, such as the Bank of Albania, the Supreme Council of Justice, the Supreme State Audit, The Central Election Commission, etc., receive democratic constitutional protection. The final document of the text of the Constitution of Albania, approved by referendum in November 1998, remained intact until 2003 when the debate about the Central Election Commission led the parties to change the constitutional principle of electing its members by law. The political parties sought and established the political balancing of the CEC, changing the essence of its constitutional article. However, direct changes to the Constitution were made only in January 2007, nine years after the approval, again related to the reference point of the composition of the CEC, increasing the number of members by two.

Although the 1998 constitution received the vote of the citizens, it is worth noting that it was a one-sided product of trust because only one political party participated in the ballot and voted for or against the constitutional project. In the century balance, we have constitutions that come or are imposed by powers outside us (1914 and 1939). These constitutions are imitations of ready-made political models (1946 and 1950), experimental constitutions (1920 and 1922), unique constitutions (1925 and 1976), and constitutional models based on norms accepted as positive standards (1991 and especially 1998), etc.

Below will be a table containing all the Constitutions of the Albanian State from 1912 until today, where details of the approval, implementation, duration, content of the articles, and the drafting and approval bodies are given.

Table 1: Historical Albanian Constitutional Table from 1913-2008

No.	The naming of the Constitution	The form of Government	The content of the Articles	Period of Approval	Repeal	The duration	Authority Responsible for Approval
1	Organic Statute of Albania	Principality	11	29.07.1913	10.04.1914	1 year	Conference of Ambassadors in London (CAL)
2	Organic Statute of the Principality	Principality	216	10.04.1914	31.01.1920	1 year + 6 years without function	Prince Vidi + International Control Commission (ICC)
3	Statute of Lushnja	Principality	6	31.01.1920	08.12.1922	2 years	The National Assembly
4	The Extended Statute of Lushnja	Principality	129	08.12.1922	02.03.1925	3 years	National Council
5	Fundamental Statute of the Republic	Republic	142	02.03.1925	01.11.1928	3 years	National Assembly
6	Basic Statute of the Kingdom	Monarchy	234	01.12.1928	22.10.1943	11 years	The parliament
7	Basic Statute of the Kingdom	Monarchy	54	03.06.1939	22.10.1943	4 years	National Assembly
8	Regulations for the Supreme Council	Monarchy	15	22.10.1943	27.04.1944	1 year	National Assembly
9	Regulations of KANÇ-i	-----	6	27.04.1944	14.03.1946	2 years	National Liberation Anti-Fascist Council (NALC)
10	Statute of the People's Republic	People's Republic	96	14.03.1946	05.07.1950	4 years	National Assembly

No.	The naming of the Constitution	The form of Government	The content of the Articles	Period of Approval	Repeal	The duration	Authority Responsible for Approval
11	Constitution of the People's Republic	People's Republic	98	05.07.1950	28.12.1976	26 years	Popular Assembly
12	Constitution of the People's Socialist Republic	Socialist People's Republic	112	28.12.1976	29.04.1991	15 years	Popular Assembly
13	Main Constitutional Provision	Parliamentary republic	46	29.04.1991	21.10.1998 (with law nr.8417)	7 years	Popular Assembly
14	The Constitution of Albania	Parliamentary republic	183	*21.10.1998 ⁵ *22.11.1998 (Referendum) *28.11.1998 (Decree of the President)	21.04.2008	Unchanged for 10 years	Referendum
15	The Constitution of Albania ⁶	Parliamentary republic	183 ⁷	13.01.2007	L. 16/2022	15 years changed seven times from 2007-2022	Assembly

4. Conclusions

The constitution and constitutional notions have faced the same features of the values of the democratic system: ignorance, fragile tradition, the creation of strong leaders instead of solid institutions, and criticism of its legitimacy and concrete products. Constitutional studies focus more on constitutional experiments than their notions, practices, and evolutions. The experimental nature of our constitutional system has also been influenced by experiments in the forms of government and the governing model, in the import of different forms from abroad, and in the tendency to adapt the political system to the constitution, not the other way around. The constant criticism that the Albanian parties have more power than the Constitution recognizes, that interpretable spaces in the Constitution are used and misused by the politics of the day to justify their unilateral political acts and that the fragility of the representative system stems from the fragility of the notions themselves, constitutional norms and institutions, are indicators that the Constitution, despite all the progress, has not yet become an indisputable point of reference for politics and citizens. The experimental nature and offering of changes to the Constitution to avoid periodic political crises or to change specific elements of governance has hurt the creation of a culture of reference to the Constitution and legislation.

The constant evaluations of international monitoring institutions show that Albania has good legislation, but critical law enforcement practices also apply to the relationship between established constitutional principles and the crucial way in which they are implemented in practice. The positive trend of the last decade for a large number of constitutional practices in politics, for addressing the Constitutional Court in the name of the protection of constitutional principles, the increasingly inclusive public debate in the unilateral processes of constitutional changes or the signs of civil reaction and citizens in defense of special constitutional norms are a positive and encouraging signal for a new relationship between the informed citizenry and the culture of law and respect for the Constitution of the Republic of Albania. I believe the maturation process will require much more time than the longevity of constitutional norms and practices. Still, it remains the only mechanism for a society with functional democracy and the rule of law.

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⁵The Constitution of Albania was approved by the People's Assembly with the law no. 8417 dated 21.10.1998 and approved by Referendum on 22.11.1998, announced by decree no. 2260, dated 28.11.1998 of the President of the Republic of Albania.

⁶The Constitution of Albania has been amended 7 times, starting with Law no. 9675, dated 13.01.2007, continued with changes during the years 2008 Lgj. 9904, year 2012. Lgj 88, year 2015, Lgj. 137, year 2016, Lgj 76, year 2020, Lgj. 115 and the last change was made with the law no. 16/ of 2022.

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