



## The Role of the President in National Security Policies in Parliamentary Republics - The Case of Albania -

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**Abstract:** Albania is one of the former communist countries, which has managed to survive in the wildest form of the totalitarian regime and transform itself into a democratic state. Throughout the process of political and constitutional evolution, the role of the head of state has been irreplaceable, especially in national security matters. The constitutional reform has repeatedly affected the position of the head of state, strengthening it by diminishing its role in the direction of the country. Nevertheless, its constitutional and political authority in the establishment and implementation of national security policies has remained unchanged. Namely, he is also the head of state, but also the General Commander of the Armed Forces. It is precisely these attributes as well as its constitutional role and powers in relation to national security that will be the subject of this research. We will see if the head of state possesses a sufficient mechanism to play a role both in peace and in the war. We will also see its possibilities of influence on national security policies, beyond the exclusive competences of this character. The research method will be the description method and the political analysis method for a case study.

**Keywords:** Commander-in-Chief; Armed Forces; State of Emergency; Parliament

### 1. Introduction

Albania is part of the states that implement the republican system of governance in the form of a parliamentary republic. Parliamentary republicanism is explicitly defined by the Constitution of the Albanian State, in which the state is referred to as a “Parliamentary Republic”. Like other former communist states, Albania is also a new democracy with a little over three decades of parliamentary political culture. To a lesser extent, the totalitarian political legacy, unlike the autocratic one, is one

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of the biggest inhibitors of political pluralism and also of Albanian parliamentarianism. For worse, the totalitarian political legacy, unlike the autocratic<sup>1</sup> one is one of the biggest inhibitors of political pluralism and Albanian parliamentarianism.

The institution of the state president is a new political institution, which in Albanian political history had been missing for decades. Albania had a president only during three years of Ahmet Zogu's presidential government (1925-1928) when the Republic of Albania was declared. The Republic failed to withstand Ahmet Zog's absolutist goals and so soon it became a monarchy with himself at its head. The transformation was not difficult for the fact that the President's powers at that time were similar to powers in presidential systems, even though the Charter of Fundamental Rights defines Albania as a parliamentary republic. (Omari, 1994, p. 190)

So the institution of the head of state in Albania until after World War II was manifested in two forms: the form of the President and the form of the Monarch.<sup>2</sup> Meanwhile, after the war, Albania followed the communist model of governance in the center of which were the "Political Bureau and the communist leader that made up the main decision-making institutions". (Krasniqi, 2013, p. 8)

In formal and juridical terms, the People's Assembly has been designated as the highest governing body under the constitution, but subject to the "general line and directives of the Party of Labor of Albania". (Socialist Constitution, Articles 66-67)

The People's Assembly had a legislative, oversight and election function. Within the electoral and oversight function, the Assembly appointed and dismissed the Presidium of the People's Assembly, the Council of Ministers, the High Court, the General Prosecutor and his deputies. "In reality, the composition of these bodies was set in advance by the Political Bureau of the Central Committee of the Party and the People's Assembly, except that it was unanimously approved". (Omari, 1994, p. 220)

As in the other communist states, the role of the head of state was officially practiced by the Presidium, while actually being carried out by the First Secretary

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<sup>1</sup> All communist states were autocratic, but only a few, including unfortunately Albania, were also totalitarian because they aimed at total control of the lives of citizens.

<sup>2</sup> Within the framework of monarchical governance here we also mean the time of Prince Wiliam's rule (March-September 1914) and King of Italy Victor Emmanuel III, who claimed to have a throne over Albania (1939-1943), but that the great powers refused to recognize that throne.

of the Central Committee of the Party of Labor of Albania (Enver Hoxha). So party leaders in the socialist states were not presidents until the 70s and 80s, while in Albania until 1985, but who in reality ruled over the people.<sup>1</sup>

The Socialist Constitution entrusted its authority on defense and security matters to the First Secretary of the Central Committee of the Socialist Party, who was designated as the Commander-in-Chief of the armed forces and the Chairman of the Defense Council. The composition of the Defense Council was determined by the Presidium of the People's Assembly on the proposal of the Chairman of the Defense Council. So in the security issue the party leader also constitutionally exercised the role of the head of state, while, as is well known and pointed out hereby, he practically controlled everything.

## **2. The President Following the Democratic Revolution**

The constitutional changes of 1991 finally brought to the institutional life the position of the head of state with enhanced powers for a parliamentary republic, as defined by the Constitution. Later in the constitutional changes of 2008, the President's role and his powers were reduced to the level of a ceremonial head of state, typical of a parliamentary republic, as is currently the Albanian state. Albania today is a typical parliamentary republic, which is based on the principle of separation and balance between legislative, executive and judicial powers (current Constitution, Article 7).

The President's institution has been adapted to the status the President bears in pure parliamentary republics with powers in relation to all three powers, but most of these powers are of a "representative and coordinating" character. (Krasniqi, 2015, p. 9)

Since the objective of this paper is to determine the power of the President in relation to the country's defense and security, not of his entire power, here we will analyze only the direct constitutional powers of the President in this area, but also the powers (presidential veto, government report, etc.) that can be used by the President in order to influence security and defense policies.

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<sup>1</sup> Ramiz Alia served as Chairman of the Popular Presidium since 1982 and in 1985 was also elected First Secretary of the Central Committee of the Party of Labor and thus formally the head of state institution was established.

### **3. Presidential Veto and National Security Policies**

The president of the Republic is part of the legislative process, in which he must announce the law within 20 days from the day it was delivered. If the President does not exercise his power to sign or return for reconsideration, the law shall be deemed promulgated and shall enter into force 15 days after its publication in the Official Gazette. The power to reinstate the law can only be used once through a decree, which “loses power when majority of all members of the Assembly vote against it” (current Constitution, Article 136).

We will dwell with this competence for a bit longer to explain the procedure and more importantly the role that the President can play through the suspensive veto right on many issues, including those of defence and security, which are regulated by laws. Moreover, it also illustrates the situation where parliamentary and semi-presidential systems can come up with the manifestation of rivalries for executive powers.

The Republic of Albania is one of the few parliamentary republics where government, power, authorities, administration and command of the armed forces are regulated by a special law. The purpose of this law is: “a) Determining the powers of their constraints, authorities, responsibilities, roles and functions of the institutions and bodies involved in ensuring national defense of the Republic of Albania; b) implementation of the democratic principle of civilian control and direction over the Armed Forces; c) Determining the strategic and operational responsibility for managing and the command of the Armed Forces in peacetime or in cases when extraordinary measures are imposed; d) Clear introduction of the Armed Forces management and command chain in peacetime or in cases when extraordinary measures are imposed”. (Law No.64/2014)

The Albanian Parliament adopted on June 26, 2014 the Law No. 64/2014, which amended the Law No. 8671 (2000) on the powers and authorities of the leadership and command of the Armed Forces, which was in accordance with the NATO instructions.

The new law was returned within the prescribed deadline to the Assembly for reconsideration with the necessary clarifications that argued the rejection of the decree. (Presidential Decree No. 8633)

According to the President’s assessment, the law was in violation of the Constitution and it greatly weakened the position of the head of state, especially in his capacity as Commander-in-Chief of the Armed Forces. It was also assessed that

the new law undermined the balance of executive power for the benefit of the Prime Minister and to the detriment of the President, and as a result, the President can not lead and command the Armed Forces as an independent body and a guarantor of balance of powers.

There were at least four powers of the President that are typical for every Commander of the Armed Forces, which were transferred by the law to the Prime Minister and Defense Minister. Appointments and dismissals of senior superiors, with the exception of the Chief of Staff, under the new law would be made by the Prime Minister on the proposal of the Defense Minister.

With the old law this power belonged to the President as defined by the Constitution. Regarding strategic planning, especially the issue of the plan of deployment and expansion of the Armed Forces in peacetime was entrusted to the Prime Minister, as well as the exercise of the main command position with the Armed Forces during a state of emergency.

These and some other changes related to the appointment of military attaches and delegation of operational command competencies to foreign superiors in cases when Albanian military units become part of international missions compelled the President to exercise his right to return the law for reconsideration. The Assembly ignored the President's reasoning and brought down the President's decree with an absolute majority. Since the Assembly showed no understanding of the required and well-reasoned changes, the President, in the name of constitutionality, addressed the matter to the Constitutional Court, which considered that most of the articles regulating the issues mentioned above were in violation of the constitutional provisions and as such they were annulled (Decision No. V-10/15) Whereas, the Constitutional Court rejected the President's claims for the appointment of military attaches and military representatives to international organizations as well as the delegation of authority for operational direction with the justification that they were issues of operational and tactical level rather than strategic issues.

So this case best explains the importance of the two competences discussed here: the return of the law for reconsideration and the submission of the law to the Constitutional Court, which if used by active presidents can strengthen the presidential role even in the parliamentary republics.

#### **4. Relations between the President and the Council of Ministers**

In relation to the Council of Ministers, the President has no significant influence because the executive power falls largely within the competence of the Government, which has a subordination relationship only with the Assembly rather than the President. The Council of Ministers constitutes the executive body of the Assembly, which “defines the main political directions of the country” and which is politically responsible only before the Assembly (current Constitution, Article 100).

The role of the President is important when the government is formed after the elections or after it is dismissed by means of a motion of confidence or non-confidence. Perhaps this role can be used to influence the appointment of defense and security ministers since the Constitution does not explicitly require ministers to be appointed and dismissed “on the proposal” of the Prime Minister, but only “with the Prime Minister’s proposal” and that within 7 days from the day of the proposal it may be interpreted as an opportunity to disagree with the Prime Minister’s proposals, meaning political agreement is required. However, according to the Constitution, the final authority in the process of appointing and dismissing the ministers is the Assembly, because the presidential decree of the Prime Minister’s proposals for both nomination and dismissal of ministers within 10 days from the day of decree must be examined and approved by the Assembly of the Republic. Even if ten days pass as interpreted by the Constitutional Court, they can not automatically terminate or start the work of the proposed and decreed ministers without the consent of the Assembly. Therefore, debating and voting of the President’s decree should take place even if 10 days have passed and in this case the debate is not enough only for the formal aspect of appointments or dismissals but is substantial. (Decision No. V-6/02)

In terms of President’s right to appoint senior security and defense officials, a close co-operation between the Prime Minister and the President is required. As we mentioned in the above context, the nomination and dismissal of the Chief of Staff of the Armed Forces is done by the President on the proposal of the Prime Minister, while the appointment of the commanders of land, sea and air forces is also made by the President, but according to the proposal of the Defense Minister. (Current Constitution, Article 169.3)

In addition, upon the proposal of the Prime Minister, the President is the authority that appoints and dismisses the Director and Deputy Director of the National Intelligence Service. (Law No. 8391)

## **5. President as the General Command of the Armed Forces**

The Armed Forces of the Republic of Albania consist of ground, sea and air forces. The Constitution stipulates that the President is the Commander-in-Chief of the Armed Forces. In exercising his duty, the President is assisted by the National Security Council, which is the advisory body of the President of the Republic. According to the Law on Authorities of Governance and Command of Armed Forces of the Republic of Albania, No. 64/2014, Article 10, the National Security Council is an advisory body that supports the President of the Republic in the exercise of constitutional and legal powers and responsibilities, which shall be convened and chaired by the President whenever he deems necessary and according to an order defined by the President himself. Permanent members of the council are: the Speaker of the Assembly, the Prime Minister, the Minister of Defense, Foreign Affairs, Justice, Finance, Energy and the Minister of Transport. In addition, permanent members are as well: Chief of Staff of the Armed Forces, General Director of Police and Director of the State Intelligence Service. If needed, the President may invite other participants according to topics discussed in the Council. "The Council discusses and gives opinions on issues of security, defense, arms control and any other security issues". (Law No. 8391, Section 10.6)

According to the Constitution, the powers of the President of the Republic are defined by law as the Commander-in-Chief of the Armed Forces, those of the Commander of the Armed Forces and their dependence on the constitutional bodies. This law also defines the hierarchy of control, power and command authorities with the Armed Forces, in which the Assembly is the highest supervisory and governing body, which by law adopts the national security strategy and military strategy as two of the basic defense and security documents as well as strategic plans for the development and modernization of the Armed Forces. Also, the Assembly exercises the powers of parliamentary control through the relevant committee, and directly by each MP, because everyone has the right to ask questions, request information and demand interpellation on all matters pertaining to security and not only. (Zaganjori, Anastasi & Çani, 2011, p. 255)

In the hierarchy defined by law and deriving from the Constitution, immediately after the Assembly, both in circumstances of peace and war comes the President. In the alleged circumstances of war, the impression may be that the President is in charge of the hierarchy, but that is not the case because the President will take protective measures only from necessity created because of an urgency which will only be valid if legalized by the Assembly.

Thus, the President is second in the hierarchy of leadership and command with the Armed Forces followed by the Council of Ministers, Minister of Defense, Chief of Staff of the Armed Forces, commanders of the land, naval and air forces, and the Commander of the support forces. The hierarchy includes the Commander of AF in times of war, who is named by the President with the proposal of the Prime Minister.

In times of peace, the leadership over the Armed Forces belongs to the President through the Prime Minister and Defense Minister, while in a state of war either directly or through the Commander of the Armed Forces. (Law No. 64/2014, Article 9.2)

The Chief of Staff of the Armed Forces answers to the President, Prime Minister and Defense Minister for running the FA activities. In this context, we also add the obligation that the Director of the State Intelligence Service (SHISH) has to inform the President about the state of national security. The SHISH Director is subordinated to the Prime Minister, but has a constitutional and legal obligation to keep the President informed in his capacity as the General Commander and also as Chairman of the National Security Council, whose permanent member is also the Director of SIS. (Law on National Intelligence Service, No. 8391)

## **6. Authorizations in Cases of Emergency**

The Constitution of the Republic of Albania regulates three situations that require extraordinary measures: war situation, state of emergency and state of natural disasters.

For all three situations, it has established co-ordination and subordination relations between the three main authorities for ordering and overseeing the implementation of extraordinary measures taken in these cases. In such cases, the Assembly is the centrepiece of final decision-making, while the President and Prime Minister are the authorities of the initial joint response. Indeed, the Constitution requires



cooperation to be conducted in the event of a threat of war or war, and in the event of a state of emergency or natural disasters, the Council of Ministers is the main authority and in relation to subordination it only responds to the Assembly.

In the event of an aggression, the President, at the request of the Council of Ministers, declares the state of war and Decree on the instatement of the state of war, in which the limitations of the rights must be determined and submitted to the Assembly within 48 hours from its signing. The Assembly must consider it immediately and decide by a majority vote of all its members.

The situation is different in the case of external threats, which endure deferral in decision-making or in the event of a joint defense obligation stemming from an international agreement. In such cases, “the Assembly is the authority declaring the state of war, it decides for the state of mobilization and general or partial demobilization” on the basis of the President’s proposal. In both situations the President commands with AF directly or through the commander appointed by him and proposed by the Prime Minister.

Unlike these situations, in which the President has a special role, in cases when the constitutional order and public security are at risk, the Council of Ministers addresses the Assembly with the request for the declaration of the state of emergency in a part or entire territory of the state and which may not last more than 60 days, respectively upon a new decision of the Assembly for another 30 days. If the police forces fail to restore order, the Assembly may decide on the intervention of the Armed Forces. Now there is a kind of a constitutional vacuum since the Constitution does not regulate who will be the supreme authority in relation to AF after the Assembly decision for their intervention in order to restore constitutional order or public security. According to the Law on Powers and Authorities of Management and Command of Armed Forces, “after the end of the state of emergency the Prime Minister reports to the Assembly on the use of the Armed Forces during this period”. (Law No. 98/2015, Article 22.4) This legal norm makes one realize that he, that is, the Prime Minister leads the Armed Forces in the event of a state of emergency and therefore has to report. Even in the first draft of the law on governmental authorities, the Government explicitly determined that in cases of emergency and armed disasters, the Prime Minister manages directly with the Armed Forces.

The Constitutional Court, in response to the request of the President for the Constitutional Review of this Law, abolished the Articles of Conduct on the grounds that: “The President cannot deviate from the exercise of his role as

Commander-in-Chief of AFs in cases of extraordinary situations, which require the involvement of the Armed Forces” (Decision No. V-10/15, item 30) By analogy one could add that this also applies to other circumstances that pose a risk of natural disasters if FA involvement is required. The President, even in circumstances of peace, is the Commander of the Armed Forces although he exercises this competence through the Prime Minister and Defense Minister, since the latter hold political responsibility in front of Parliament, but not the President. But this does not mean that during this period the command passes to the Prime Minister or Defense Minister.

The third case requiring extraordinary measures is the situation of natural disasters, declaring “a state of natural disaster”, which according to the Constitution may be decided by the Council of Ministers, notwithstanding the Assembly and the President, but for no longer than 30 days. Extension of the state of emergency (which means the time limit for the use of extraordinary measures) can only be done with the consent of the Assembly.

Constitutional considerations make it clear that the powers of the President are sufficient to carry out his function as head of state and as Commander-in-Chief of the Armed Forces, though at the same time a control mechanism is provided to ensure the rule of law. On the basis of these constitutional definitions, Albanian constitutionalist Sokol Sadushi considers that the President may be subjected to three kinds of controls: popular, judicial and parliamentary control. (Sadushi, 2012, p. 117) While the first type can degenerate into a revolution, and the second is difficult to achieve quickly in war circumstances, parliamentary control remains the most efficient mechanism.

The President’s report with foreign policy also implies issues of national defense and security. Nearly most of the international relations are overwhelmed with national security interests, which are at the center of every state, even when they are realized within the framework of collective defense. The President of Albania in the capacity of the head of state represents the state in external relations, though he neither leads nor manages the foreign policy. The conception of foreign policy is the responsibility of the Assembly, namely of the Council of Ministers. The Council of Ministers defines the main directions of the overall state policy, while the Prime Minister “conceives and presents the main directions of the overall policy and is responsible for them”. (Constitution, Articles 100 and 101) This implies that the conception of foreign and security policies is the responsibility of the government and that in their conception the President participates only through

the National Security Council, and in terms of implementation he has the right to represent the state as a competence inherent.

In the field of foreign policy, the President has the standard competence of the international treaty and authority (which the majority of heads of state have) for the appointment and release of diplomatic representatives of Albania in other states and international organizations, which he exercises on the basis of cooperation with the government because appointments and dismissals must precede the respective proposals by the Prime Minister.

The President is also the authority that receives credentials and withdrawal of diplomatic representatives from other states and international organizations accredited in the Republic of Albania.

## **7. Conclusions**

The Republic of Albania is a typical parliamentary republic, which, unlike some parliamentary republics of the Balkan region (Macedonia, Serbia, Kosovo, Croatia), has not allowed executive for bicefal power between the President and the Prime minister, nor even for competitive power in favour of the Government, or the Prime Minister respectively. On the other hand, the President maintained the common powers of the head of state and supreme commander of the Armed Forces as the main institution of unity and continuity of the state.

One can also conclude that the President of the Republic of Albania is one of the main political factors in the field of national defense and security. His role is irreplaceable in circumstances of a state of emergency and in a state of war. His power in this area can be achieved in cooperation and coordination with the Council of Ministers and with the Assembly, as all competencies are interdependent with other institutions and conditioned by the check and balance relation on which the Constitution of the country persists.

For more, as in other countries of the same political system, the role of the head of state will be greater, in cases of a proactive personality, who may also use other inclusive constitutional powers in order to strengthen his role on national security policies. And, conversely, in cases when of a passive personality, his role will be smaller.

With little difference, the President of the Republic of Albania possesses the same powers that the heads of states with a parliamentary system usually have and hence

enough to fulfill his mission as Head of State and as Commander-in-Chief of the Armed Forces.

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