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*The court of dictation and its attempts on constitutional
review***

ABSTRACT: The review of the history of law after the establishment of the independent state in Albania, brings completely new data on the constitutional judicial practice. Archival documents reveal interesting facts, left in oblivion due to the interruption of legal succession during the communist system. This study aims to highlight one of the most significant events in the history of constitutional law in Albania. It analyzes the attempt by the Court of Dictation (the highest court until the end of World War II), to exercise constitutional control over the laws. This fact caused a storm of the political regime, which managed to dissolve the Court. The paper analyses the case and concludes that the building of an independent judiciary in Albania is inseparable from the movement for constitutionalism.

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SUMMARY: 1. A brief historical overview of the Court of Dictation in Albania (1913-1944). - 2. Independence concerns related to the Court of Dictation throughout the era of the Albanian Monarchy (1928-1939). - 3. Court of Dictation in the attempts of constitutional control

1. A brief historical overview of the Court of Dictation in Albania (1913-1944)

The Supreme Court of the Albanian State began its journey in May 1913, when the Cannon of Jury foresaw the Court of Dictation as the highest court of the independent Albanian state¹. However, during the early years of independence, it is unclear whether this court functioned or not. We must take the political instability of this period into consideration, due to events happening both within and outside the country in the context of World War I. Additionally, the Organic Statute of Albania drafted by the Great Powers in 1914 and the two subsequent laws on the organization of the judiciary in 1917 and 1919, did not foresee a single Dictation Court with review function, but rather only Appeal Courts². Therefore, we

¹ Canon of Jury, 10 May 2023, Published on the Newspaper “Përlindja e Shqypnies” Year II, February 1914.

² Organic Statute of Albania, 1914, Article 159: Judicial authorities are: 1) the Council of Elders; 2) Peace Judges; Courts of First Instance; 4) Courts of Appeal.

acknowledge the history after the re-establishment of the Dictation Court in 1920, with its headquarters in Shkodra. Initially, it functioned with two branches, one Civil and the other Criminal. However, in 1922, it was reorganized due to the need to reduce financial expenses³, consisting of a single branch with 5 judges.

Following the entry into force of the Statute of the Albanian State in 1922, the Court of Dictation became the sole highest court in the state, operating as a stable entity. Reorganized by the 1923 law on judicial organization, the Court of Dictation comprised a single branch with four members and one assistant, adjudicating civil, commercial, and criminal cases. The way this law envisaged the Court of Dictation left the functioning status of the latter somewhat ambiguous⁴. Furthermore, it was indirectly mentioned by certain provisions of the Fundamental Statute of the Albanian Republic (1925-1928); however, no direct regulation was drafted. Only a few provisions refer indirectly to the Court of Dictation, mentioning the chairs of branches, the Chief Prosecutor at the Dictation Court, and the legal assistants⁵.

The Fundamental Statute of the Kingdom of Albania (1928-1939) clearly envisioned the Court of Dictation as the highest court in the country through specific provisions. At the same time, it referred to special

³ “The High Court of Albania,” Tirana, 2023, p. 46.

⁴ Aurela Anastasi, “The History of Constitutional Law in Albania (1912-1939),” Tirana, 2018, p. 167.

⁵ Fundamental Statute of the Republic of Albania, 1925, Articles 57, 97, 102.

legislation regarding its organization and functioning⁶. For the implementation of these provisions, on April 1st, 1929, the “Law on the Organization of Justice” was promulgated. Based on the Statute and the “Law on the Organization of Justice,” the Court of Dictation was composed of 12 members, with 2 serving as chairpersons in both the civil and criminal branches respectively. Each branch consisted of 4 members and 1 assistant member. The Chief Prosecutor of the State was also established alongside the Court of Dictation⁷.

Researcher Koço Nova has emphasized that during the monarchy period, the Court of Dictation “*was not merely a court of cassation that dealt solely with legal issues but also had adjudicatory competencies on the merits, following the Swiss procedural model.*”⁷ This court continued its work even under the conditions of Albania’s occupation. In the years 1943-1944, during the German occupation, its jurisdiction was extended to Kosovo as well⁸. In 1945, after the end of World War II and the establishment of the communist regime, not only did its name discontinue but also the legal tradition it had created. The Fundamental Statute of the Albanian Kingdom reaffirmed the principle of the separation of powers. Alongside it, the principle of judicial independence and other constitutional principles of the time were enshrined, such as: the non-submission of the courts to any authority

⁶ Fundamental Statute of the Kingdom of Albania, 1928, Article 130: Albania has a Court of Cassation, which is divided into branches according to special legislation. The center of the Court of Cassation is in the capital city.

⁷ Fundamental Statute of the Kingdom of Albania, 1928, Article 132.

⁸ Koço Nova, “The Development of the Judicial Organization in Albania,” Tirana, 1982, p. 77.

except the law (Article 118); the principle of judges' irrevocability (Article 120), formally guaranteeing a judge's tenure as long as they correctly held their position; cases of incompatibility with the judge's duty, etc.

Furthermore, the Statute envisioned fundamental principles of the judicial process, including public trials (Article 123), secret voting in decision-making (Article 124), the obligation to justify judicial decisions and draft decisions based on the law (Article 125), the protection of the accused based on the law (Article 122), and so on⁹. The formal protection of these principles was an important step in shaping the identity of the Court of Dictation; however, it was insufficient to establish an independent judiciary. As highlighted in press sources, the state of Albanian justice at that time remained chaotic¹⁰. There was a high volume of judicial cases and a shortage of judges¹¹.

2. Independence concerns related to the Court of Dictation throughout the era of the Albanian Monarchy (1928-1939)

The Court of Dictation faced political interference and numerous challenges during this period, marked by tense relations with the government at various points. While a certain level of tension between the judiciary and other branches of government is natural and even desirable,

⁹ "The Supreme Court of Albania," Tirana, 2023, p. 48.

¹⁰ For further reference, see: Aurela Anastasi, "The History of..." as cited, p. 174.

¹¹ Albanian Jurisprudence, No. 2, July-September 1935.

as emphasized by author Aharon Barak¹², this wasn't the case for Albania at that time. These tensions escalated to the point of the government dissolving the Court, revealing a lack of judicial independence, which is crucial for a democracy.

To delve deeper into this matter, archival sources, particularly reports from international representatives and media writings of that time, offer valuable insights. From these sources, it becomes evident that an open conflict existed between political and judicial power. Consequently, there's evidence of the Dictation Court being dissolved twice, with the first time in 1925 justified by the need for court reorganization. In a letter from the Minister of Justice, Petro Poga, all members of the sole chamber of the Dictation Court were dismissed. The reorganization split the court into civil and criminal branches, stating, "*Annul the Dictation Court and recreate it into branches (civil and criminal), Your Excellency, for administrative reasons; you are dismissed from your office.*"¹³

The most blatant case of executive interference occurred in 1932 when, by a decree March the 4th of that year, almost all of its members were dismissed from office. The dismissal was executed through a decree of the Council of Ministers, stating that all judges from both civil and criminal branches "*...have actively participated in political currents, behaviors that hinder the accomplishment of their high mission with a free and clear conscience.*"¹⁴

¹² Aharon Barak, "The Judge in Democracy," Morava, Tirana, 2016, p. 236.

¹³ Letter from the Minister of Justice, Petro Poga, of September 14, 1925.

¹⁴ Letter No. 569, of March 4, 1932, from the Prime Ministry. The letter bears the signature of Prime Minister Petro Poga and the countersignature of Minister of Justice, Milto Tutulani.

By this decree, Mr. Agjah Libohova, Head of the criminal branch of the Dictation Court, and members Baltazar Benusi, Salim Luniku, Kol Dhimitri, Neki Delvina, Vasil Bidoshi, Dervish Sula, and Avni Dabulla were removed from their duties. The Dictation Court consisted of 12 members, and from the letter, it is evident that 8 judges and one assistant judge, Mr. Hasan Dosti, were dismissed. However, according to other sources, the last remaining member, Harilla Theodhori, resigned¹⁵. From the information gathered, it appears that 9 judges and one assistant were removed from the Dictation Court. Still, the press of the time expressed that all members of the Dictation Court were dismissed. It is possible that the composition at that time was incomplete, or the press reported an incorrect number of dismissals. In any case, further investigations are needed.

This extensive number of dismissals sparked discussions in the media at the time, particularly in the Italian written press and the reports of international representations in Albania. These discussions delved into whether these dismissals contradicted the principle of the irrevocability of judges, as envisioned by the Fundamental Statute of the Kingdom.

Examining the content of Article 120 of this Statute reveals that the principle of irrevocability is affirmed, but within a completely referential provision: *“Judges and State Prosecutors are irremovable from office according to the provisions of the organic law; the qualifications of judges, state prosecutors, as well as the method of their appointment, transfer, dismissal, promotion, demotion, suspension, and retirement, as well as their salaries and rewards, are determined by the organic law*

¹⁵ “Gjykata e Lartë e Shqipërisë” (The High Court of Albania), cited, p. 48.

of justice.” This provision falls short of constitutional guarantees, reducing the principle to a legal safeguard. Therefore, in comparison with the Fundamental Statute of the Albanian Republic (1925-1928), it represents a clear setback. The latter, in Article 103, provided essential guarantees to ensure the irrevocability of judges¹⁶. Among these, it is worth mentioning that judges could only be removed “...*through a decision rendered by a competent court or by a decision of the Court of Dictation for disciplinary offenses*” (art. 103). Meanwhile, in some medias, the violation of this statutory principle was justified by the absence of a specific law regulating the dismissal of judges from their duties. On the other hand, the official press attributed it to the political involvement of the judges. It was written that “...*the government had noticed for some time that the judges of the Dictation Court, in addition to not being up to the task of their duty, were also dealing with matters not related to their high office and were in continuous conflict among them.*”¹⁷ This sentiment is also reflected in the decision of the Council of Ministers, which stated that the dismissal

¹⁶ Foundational Statute of the Republic of Albania, Article 103: Article 103. Judges and prosecutors are ensured irrevocability from their positions. A judge cannot be dismissed from office against their will, except based on a judgment issued by a competent court or by a judgment of the Dictation Court for disciplinary offenses.

A judge cannot be adjudicated for acts related to their office without the decision of the Dictation Court. The decision of the competent authority to bring a judge to trial entails their suspension from duty, as provided by law. A judge cannot be transferred unless they first declare in writing their approval of the new position.

A judge cannot retire without their consent until they have completed the years of service, reached the specified

age set by law, or if physical or mental illness make them unfit for duty. In such cases, their retirement shall be based on a decision issued by the Dictation Court.

The procedure for adjudicating judges and also in cases of disciplinary offenses for legal assistants of the Dictation Court shall be regulated by a special law.

¹⁷ Aurela Anastasi, “The History of...” cited work, pp. 174-177.

occurred because all the judges “...were actively involved in political currents.”¹⁸ However, from the study of the documents so far, we have not found any evidence to support this claim. In no case have we found concrete accusations or facts regarding what the government alleges.

All that was mentioned above leads us to believe that it was not a matter of active participation in political currents. No such fact is supported by the documents of the time. Logically, it would have been impossible for all judges to be equally active in political currents. These facts lead us to conclude that the principle of the separation of powers and the independence of the judiciary were not respected, and the interventions of the executive were quite brutal.

Additionally, we find that there were significant differences between the judges and political power. This finding was also expressed in the reports of international observers of the time, as well as in the media, especially Italian ones¹⁹. In Albania, although some media criticized the events of the time, they did not go so far as to criticize the figure of the Head of State, who was the inspirer of the government’s authoritarianism towards the judiciary.

The young judges, who had returned after studying in law faculties of Western countries such as Austria, Greece, Italy, etc., educated with Western methods, were eager to implement the principle of judicial independence and separation of powers in general. However, in their homeland, they found themselves facing intrusive and, moreover,

¹⁸ Letter No. 569, of March 4, 1932, from the Prime Minister Office, as cited.

¹⁹ Aurela Anastasi, “The History of...” cited work, p. 175-176.

undesirable interventions by the political power²⁰. “*Certainly, no one has dreamed that the judicial power in Albania would be independent,*” wrote the Italian Legation in Albania in its report, “*on the contrary, it has always been a body controlled by the executive power.*”²¹

3. Court of Dictation in the attempts of constitutional control

An analysis of the decision made by the General Council of the Court of Dictation in September 1932 sheds new light on the true cause behind the dismissal of the members of the Court of Dictation. Historical records suggest that the “Law on the Expedited Adjudication of Possession Lawsuits,” enacted in November 1931, may have been a catalyst for the conflict. Previously, historical-legal doctrine has maintained the position that this may have been a mere pretext for dismissing judges due to differing views with the government²².

The “Law on Expedited Adjudication of Possession Lawsuits” introduced several provisions that differed from the Articles of the Civil Code of 1929 concerning the preclusion period for filing possession lawsuits. Notably, the Civil Code stipulated a one-year timeframe between the date of dispossession or disturbance to the date of the lawsuit. Conversely, the

²⁰ Roberto Morozzo della Roca, “Nationality and Religion in Albania (1920-1944)”, Tirana, 1994, p. 113.

²¹ ASA (Albanian State Archives), F. 263, D. 4, V. 1932.

²² Koço Nova, “Judicial organization in Albania”, work cited in p. 77-85 & Aurela Anastasi, “History of...”, cited, p. 176.

“special law,” as mentioned by the Court of Dictation²³, allowed such a lawsuit to be filed at any time based on a title of ownership.

Under this legal framework, the Peace Court in Shkodra adjudicated a lawsuit concerning the re- establishment of possession brought by the landowner against the defendant, who possessed the land as a tenant farmer based on a “*sharecropping*” contract but claimed to have acquired ownership of the land through preclusion. At the conclusion of the case, the court imposed the obligation on the defendant “*to return and surrender the disputed land to the plaintiffs.*”²⁴ The defendant appealed the judgment to the Court of Dictation in Tirana, specifically to the Civil Division.

The Civil Division examined the constitutionality of the “Law on the Expedited Adjudication of Possession Lawsuits” and found that it was in violation of the Constitution due to its retroactive nature. The principle of non-retroactivity of the law was expressly sanctioned in the Fundamental Statute of the Albanian Kingdom: “*Laws cannot have a retroactive nature, except those that facilitate criminal sanctions.*”²⁵ The Civil Division of the Court of Dictation argued that the court in Shkodra “*had not considered the provisions of Articles 218 and 232 of the Fundamental Statute... and this justifies the annulment of the judgment.*”²⁶ Therefore, the Civil Decision

²³ The judgment of the General Council of the Court of Dictation, No. 14, of September 3, 1932.

²⁴ Judgement of Shkodra Peace Court, no. 764, of 12.12.1931.

²⁵ Fundamental Statute of the Albanian Kingdom, cited, Art. 218.

²⁶ Judgment of the General Council of the Court of Dictation, No. 14, of September 3, 1932.

annulled the decision of the Peace Court of Shkodra, prompting a retrial of the case.

In the reasoning of the judgment of the Civil Division of the Court of Dictation, two constitutional issues related to upholding the fundamental law of the State were raised: the principle of non- retroactivity of laws and the direct application of the Statute as the fundamental law of the state by ordinary jurisdiction courts.

Regarding the principle of non-retroactivity of the law, the Civil Division argued: *“It must, therefore, be assessed whether that provision aligns with the principles of public law that underpinned the basis of the organization of our State...”* Further in the reasoning, the court emphasized that *“...the failure to consider preclusion completed as mentioned above before November the 5th, 1931²⁷, or the decadence from the right of possession lawsuit... constitute violations of acquired rights and as such fall within the prohibition outlined in Article 218 of the Fundamental Statute”* (author’s emphasis)²⁸.

Regarding the direct application of the fundamental law of the State by ordinary jurisdiction courts, among other things, this court stated: *“it should be assessed whether the judge possesses the authority to refrain from applying laws in cases conflicting with those principles. Moreover, the judge, in the exercise of judicial power, is obligated to abide by the principles outlined in the Fundamental*

²⁷ In its decision no. 14, of September 3, 1932, the General Council of the Court of Dictation refers to the law “On the expedited adjudication of possession lawsuits,” using different dates for it. Besides November 5th, 1931, they also utilized the dates November 18th, 1931, and November 16th, 1931.

²⁸ Judgment of the General Council of the Court of Dictation No. 14, of September 3, 1932.

*Statute, with particular attention to Article 232, ensuring non-application of laws that go against the provisions of the Kingdom's Fundamental Law.*²⁹

When the case was sent for retrial, the Peace Court in Shkodër, with its decision of February 16th, 1932, upheld its previous decision no. 764 of December 12th, 1931. Furthermore, this decision was appealed and reviewed again “by the losing party, and it was further examined in the Civil Division of the Court of Dictation, which, with its decision on February 23rd, 1932, referred the case to the competence of the General Council of the Dictation.”³⁰

Following the chronology of the court proceedings, as per the decision of the General Council on September 3rd, 1932, it is observed that Judgment No. 80 of the Peace Court in Shkodër was announced on February 16th, 1932, three weeks before the decree for the dismissal of the judges of the Dictation Court. On the other hand, the decision of the Civil Division of the Dictation Court is dated February 23rd, 1932, just 10 days before the Council of Ministers' decree for the dismissal of the judges.

The General Council of the Court of Dictation handled this case on September 3rd of that year, following the appointment of the new panel of judges for this court. It is clear that the dismissal of all the judges is related to this judicial decision. This is further evidenced by the writings in the contemporary press, where the reason for the dismissal of the judges is attributed to the “Law on the Expedited Adjudication of Possession Lawsuits,” which had retroactive effect, contrary to the Fundamental

²⁹ Ibid.

³⁰ Ibid.

Statute³¹. Furthermore, the official press had expressed that the positions of the judges would be temporarily replaced by individuals deserving of such a high role³². In essence, the decision of the General Council of the Court of Dictation on September 3rd, 1932, was rendered after all members of the Court had been replaced.

Furthermore, we observe that the aforementioned decision of the Civil Division remains the only constitutional review of the norm carried out by the Court of Dictation. With the decision of the General Council of this court on September 3rd, 1932, the possibility of judicial review of laws by ordinary courts was closed.

At the outset of this decision, the court states: “*According to the Fundamental Statute, in our State as in any other State, the rights and duties belonging to various authorities are divided and limited. In this manner, none of the authorities, namely the legislative, executive, and judicial powers, are permitted to encroach upon each other’s sphere of action—a principle that perfects the regulation and well-being of the general community. Otherwise, instead of regulation, there would be disorder and anarchy, actions that are fundamentally contrary to the creation, existence, and stance of any State.*”³³

Thus, the General Council concludes that, according to the Fundamental Statute, the judge is not endowed with the authority to ascertain whether a law enacted by Parliament aligns with statutory provisions or contradicts them. The Court states that the Statute does not bestow upon the judge

³¹ Aurela Anastasi, “History...”, cited, p. 177.

³² Newspaper “Besa”, no. 190, of March 7, 1932.

³³ Judgment of the General Council of the Court of Dictation, of September 3, 1932.

the power to provide an authoritative interpretation of laws. “*According to Article 226 of the Fundamental Statute, this power directly belongs to the legislative authority.*”³⁴

It is clear that the real cause of the conflict was neither the political activism of the judges nor the genuine debate on the retroactive effect of the “Law on the Expedited Adjudication of Possession Lawsuits.” The true cause lies in the government’s stance on the constitutional oversight by ordinary courts raised in this judicial case. This greatly alarmed King Zog and his entire political circle, as this precedent would pave the way for constitutional review by ordinary courts. This could have been in line with the model of the United States, which would in itself, imply a limitation of the King’s political power. Such a precedent could have established constitutional judicial control on a case-by-case basis and, consequently, would have been an impetus for the development of liberal democracy.

This way, constitutional control by ordinary courts in Albania was halted before it even began. Later, the French practice of prior constitutional review through the Council of State, a constitutional advisory jurisdictional body, was adopted. Another possibility for this control was self-control exercised by the Parliament through authentic interpretation of the norm.

In this case, the principle of direct application of the Constitution’s provisions was also affected, a principle previously advocated by the doctrine of the time. Stavro Vinjau, in his work “Constitutional Law.

³⁴ Ibid.

Lessons for the practical course of Justice,” published in 1923, among other things, emphasized: “...laws, decrees, and orders..., when in contradiction with the Fundamental Statute, have no power and every subject has the right and duty not to obey them... Similarly, the judiciary is obligated not to apply these unconstitutional laws, etc.....”³⁵.

It seems that the judicial decision of the General Council of the Dictation Court, reinstated after the dismissal of its members, represents a significant step backwards even in relation to the legal doctrine of the time. It highlights once again that the efforts to institute constitutionalism in Albania are inseparable from the broader movement to build an independent Albanian state as a liberal democracy with an independent judiciary.

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