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The birth and development of the judiciary in Albania

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Abstract

With the evolution of social relations in our country, society and economic relations suffered difference. This change led to the evolution of law necessity. Initially people apply the rules of morality, and then reaching norms of customary laws nowadays. Gradual development in the economy brought and performing a series of offenses, and these illegal acts and omissions of appropriate instruments for demanding trial and to give justice. Functioning in synchrony of judiciary would be the cornerstone of a democratic state, and that he had fathered a better functioning organs indispensable building as defined by the law and their separation of powers. Justice authorities have often been part of the reform policies for a well-functioning thereof.

Keywords: canon, judicial power, the courts, law

1. Introduction

The overall objective of this work is to make a general overview and difficult to analyze the evolution of the judiciary in Albania since the common law until today. The result of these changes have been historical conditions in which our country has been, and repeated changes of political systems over the years. Our the legislation, but the judiciary is reconstituted according to Western models of time. Albanian and judicial experience, however, dates from the Middle Ages, when the province, began to apply the common law in the form of unwritten codes, Canon. Developing justice since ancient times has had an impact on the development of society and the Albanian judicial system over the years reaching nowadays.

2. A historical overview on judicial power by the Albanian customary law

Since the earliest stages of society, in our country as well as in some other countries of the world, some actions are classified as taboo. Over time evolved the right habits so emerged, which have played an important role in the regulation of social relations, economic development and social relations, bare necessity habits conversion rate of customary law. The Albanian customary law is an unwritten right folk, transmitted from generation to generation by oral tradition that has served to regulate legal relations over the centuries in our country. The Albanian customary law is summarized in Canon. canon is law or unwritten laws and norms inherited orally, which reflect the socio-economic situation of the past periods and that in his time defending the interests of the classes of certain social strata, as well as the entirety of rates customary law. The Albanian customary law was not assimilated by foreign invaders, but its content, retained the original character of the Albanian national and continued to survive and be applied in practice.

Regarding the judiciary part, the Albanian customary law does not recognize a judgment of the court in the sense that we have today. As the court considered canon of honorees. The oldest ones were the heads of the tribes. Without their participation, any decision or action was invalid. Canon of honorees was composed of ordinary people, regardless of their social status, their origin or other differences. They become "the people's court" only by their ability they had to quickly understand the circumstances and the court to interpret them and therefore to set the rules of the Kanun. Regarding judicial instances Canon court knew only one instance.

3. Organization of the judiciary with the announcement of the Albanian State

Battles continued and sustained the Albanian people against Ottoman rule lasted for nearly five centuries. These wars were crowned with the declaration of Independence of Albania on November 28, 1912. On May 10, 1913, the Interim Government decided that to the adoption of new laws were put in force the laws and regulations of the Ottoman government. The government headed by Ismail Kamal adopt Canons of Seniors (Zhurisë), in the canon, and in some other government acts settled rules of organizing the judicial system. According Zhurisë canon, courts will be opened in each sub - Prefecture and will be responsible for civil matters, the offenses, the offenses and crimes tried in Zhuri. Canon of Zhurisë however, as the first act that regulates the construction and proceedings of our country has been implemented very limited (only once implemented, in a case of Elbasan) due to the Second Balkan War, the first war and then world.

On 04.10.1914 was approved Organic Statute of Albania, this statute was drafted by the ICC(International Comision of Control). Under Section 159 of the statute, judicial authorities are: Council of Elders, the magistrates, Courts of First Instance, Courts of Appeal. Council of elders consider minor issues associated with damage to buqësi, with a penalty from 10 to 100 francs. Court magistrates consider civil and criminal offense. Courts of first instance, were created in each Sanjak and most important Kazas and consider civil and criminal matters, were also instances of appeal to the magistrates court decisions. The appellate court will consider criminal and civil matters only in the second instance. All judges of the court of magistrates, the first instance and appellate appointed on the proposal of a special commission from the prince. A feature of the judicial system was predicted by the organic statute creating special courts for administrative disputes. These courts would review complaints of physical and legal persons against acts and omissions of administrative bodies. Statute of 1914, there was implemented throughout the territory because of the First World War. Lushnja National Congress held in January 1920 repealed the 1914 statute and set a new court system, which consisted of 18 Courts of Peace, 7 the court of first instance and a court located in the city dictating the Shkodra. According to this decree, the courts of Peace judged civil and criminal, in the first instance by a judge. Extended Statute approved Lushnja dated 08.12.1922, brought significant changes in the organization of the judicial system. Under this statute, organization and functioning of the judicial power exercised Courts of Peace, primary courts and court dictation. A. The government later Zogu after extended statute repealed in 1925 Lushnjes adopted the Statute of the Republic. In the decree dated 05.20.1925 "On the organization of the courts of justice", the organization explicitly provided judicial ways. In stipulates that judicial power is exercised by courts of first instance, courts of appeal and the court of dictation as their highest levels of the judicial system. Courts of first instance stood in the middle of each prefecture and judged by a judge in civil and criminal matters. Appellate courts, stood in the middle of each prefecture, and review decisions appealed to the courts of first instance.

Dictation Court was divided into two branches, civil and criminal judge only in the second instance.

After crossing the Albanian monarchy of the Kingdom Statute was adopted, which declared Albania "democratic kingdom, permanent and heritable." Approval of the Statute brought some changes to the judicial system.

4. The organization of the judiciary in the period of Ahmet Zogu

With the coming to power of A.Zogu was making changes in the judicial system. Initially he abolished the statute of Lushnjës and expanded 1923 law, for the organization and functioning of the judiciary. The government then A. Zogu taking French legislation, passed in 1925 Statute of the Republic. To regulate the functioning of the judicial system A.Zogu, 20/05/1925 approve the decree "On the organization of the courts of justice". In this decree stipulated that," the judicial power exercised by courts of first instance, courts of appeal and the court of dictation as their highest levels of the judicial system.

At the meeting of the Assembly dated 12.01.1928 passed the Basic Statute of the Kingdom of Albania. According to Art. 14. statute provided that the Judicial power is exercised by the courts and their decisions based on the law, given and implemented on behalf of the King. While the manner of the exercise of judicial power, the statute referred to a special law on the organization of justice dated 04.01.1929. The Act provided for the establishment in each sub-prefecture of the prefecture as lower link of the judicial system conciliatory courts, as the second link in the courts of first instance, which called primary courts. The law also stripped the courts of appeal and the court decided dictation, which had jurisdiction in the trial of the case on the merits. In no way can be formed extraordinary courts for political offenses but only when considered necessary, may form a special court by a special law and for a specific time. According damages relating to this law every person has the right to defend its rights in ways acceptable by him. In Art. 135 statute stipulated the establishment of the State Supreme Court.

5. The organization of the judicial power under the Constitution of 1946 to 1968

The Constitution of the Republic of Albania approved on March 14, 1946 marks the beginning of a long process of change, which would continue for most of the communist regime.

The first step of this road has been nr.275 law of 13 August 1946 on judicial organization. In reconfirmed the principle of expediency than judges. The law also lifted restrictions on professional preparation. Changes in procedural law provided that initial investigations were not in the competence of judges. In fact, the law nr.274, dated the 09.08.1946, the figure of the Public Prosecutor, who by then was part of the Ministry of Justice with limited functions representation in court, with this law was defined as a body of the National Assembly with the mission to monitor implementation of the law from anyone who may have violated. So the prosecutor became an active part of the process by developing investigations, criminal charges formulated and making final appeals against decisions of the courts. Appeal for civil cases can take place within six months from the date of the decision, while for criminal cases within one year from the date of the decision, but these appeals had no effect were large and usually only a facade of practice. In 1950 the rule was changed, allowing it only these functions Attorney General or the President of the High Court of Justice. Reforms which were obtained in the following years have

been the most radical in the period after the passage of the law no. 1284 of 09.06.1951 which was finally completed with the ordinances nr.1778 03/12/1953, 03/03/1956 and nr.3365 nr.2226 of 0.1961 to 6.11.

Nr.4406 Law of 24.06.1968 on "Judicial Organization, Article 1 stipulates that the PRA, justice is guaranteed by the People's Courts. Determine in Section 5 are the links of the judiciary: the High Court of Justice, Courts districts, villages courts, city courts and courts of neighborhoods. definition "People's courts", all courts meant to make us understand their popular character. While in Section 2 is a list of some of the tasks and objectives of the legal system, how to resolve issues promptly and fairly, the struggle to ensure respect for moral and socialist legality.

6. Judicial power in transition

As a result of the changes that were happening on our country again legitimated the Ministry of Justice, which was disbanded exist since 1966, but we would stress here the role of the lawyer which the role of the Bar had ceased to exist since vitit1967 and nr.7827 law, dated 31.05. 1994 "on the Bar in Republic of Albania", declares advocacy as free and private profession. With nr.7574 law of 24.06.1992 "On the organization of justice and some changes in the codes of civil and criminal procedure", in which he makes a number of changes and judicial power undergoes a new reorganization. The law does not allow the creation of exceptional courts. Law on constitutional provisions and the law nr.7574 1992 included the creation of the High Council of Justice (HCJ). We passed Law No. 1997. 8275, dated 18.12.1997 "On the Organization of Justice in the Republic of Albania". In this law stipulates that the Court of Cassation is the highest judicial authority in our country which is tasked to perform judicial control and fair enforcement of laws.

7. The judicial system with the Constitution of 1998 until today

In Article 135 of the Constitution of the Republic of Albania stipulates that:

1. The judicial power exercised by the Supreme Court and appellate courts and courts of first instance, which are established by law.
2. Parliament may by law establish courts for specific areas, but in no event extraordinary court.

Pursuant to Article 13 as amended, the Criminal Procedure Code in the first instance judgment made by the courts of first instance, courts of serious crimes and the Supreme Court when it exercises original jurisdiction.

Courts of First Instance judge with a judge or panel composed of three judges.

Also juvenile judgment made by relevant sections generated in the district courts determi Courts adjudicate serious crimes with a panel composed of five judges.

High Court judge at first instance on the basis of initial jurisdiction recognizes that Article 141 of the Constitution. With original jurisdiction should be understood in the first instance judgment or judgment on the merits, as a rule, made by the courts of first instance. It has original jurisdiction when adjudicating criminal charges against the President, the Chairman and members of the

Council of Ministers, MPs, judges of the Supreme Court and judges of the Constitutional Court. ned by decree of the President of the Republic nr.5351, dated 11/06/2007.

The trial in the second degree is made by the courts of appeals.

Appellate courts review matters adjudicated by the courts of first instance. They see the panel of three judges and their decisions are final.

Appellate courts for serious crimes examines the second degree, with a panel consisting of five judges, issues by courts for serious crimes.

High Court judge in colleges with a panel composed of five judges and its bashkuara. Vendimet colleges are final. The number of judges of the High Court of Justice has gone from 9 to 17 and its members can be elected from among the judges with not less than 10 years of activity or lawyers with at least 15 years of activity and great merits professional. It is divided into two colleges, Criminal and Civil. The court may also decide to colleges in joint session cases of appeals against decisions of the HCJ, the requirements for the unification of judicial practice and other cases provided by law. Court decisions must be justified within 30 days of completion of the process and be published in the Official Journal.

According to Article 135/2 Assembly may establish special court for fields but never extraordinary court. Among Art.138-146, we find a number of provisions for all courts of first instance and of appeal: the remaining time in office of judges can not be limited and their wages and benefits can not be reduced, courts propose and manage their own budget, judges are independent and respect the Constitution and the law, all judgments given on behalf of the Republic. Judicial decisions are announced publicly at every opportunity.

8. The Common Strategy of Justice

After a long and difficult transition, Albania, the European Community potential candidate must deepen reforms in the justice sector. Considering judicial reform and essential priority, the Council of Ministers (CoM) on 20.07.2011, approved the decision nr.519 "On approval of the Justice crosscutting policies and its Plan of Action".

The Common Strategy of Justice: This paper presents a strategy covering all sectors of the judicial system, which aims to improve the system, greater access to justice, increase public confidence in the sector and the acceleration of European integration. This strategy is based on existing policies for membership in the European Union and presented in a number of key documents such as the "National Strategy for Development and Integration 2007-2013", "National Plan for the implementation of the Stabilisation and Association Agreement" and "European Commission Opinion on Albania's application for EU candidate status."

Currently Albania's judicial system is composed of a number of institutions and bodies:

- Courts
- The High Council of Justice (HCJ)

- Office of Judicial Budget Administration (OAJB)
- National Judicial Conference
- School of Magistrates
- Attorney and Judicial Police
- Ministry of Justice
- Directorate General of Prisons
- The official publication of the Center (OPC)
- State Bar
- Institute of Forensic Medicine
- Freelancers

Intersectoral strategy underlying principles are: judicial independence, impartiality, responsibility to the Constitution and the law, access to justice, transparency and quality of service. Entry into force of the Stabilisation and Association Agreement has made this strategy have a European approach. This is accompanied by the need for increased education in the judicial system operators in connection with European legislation and practice of the European Court of Justice.

In this process the current challenges of the justice system are: the proper functioning of the judicial system, not only in access communitaire acquis, but above all on effective respect for the law court process faster and more efficient, to protect the rights human, especially for the most vulnerable categories; international cooperation as the basic premise for integration processes.

9. Albania on the road towards EU

It should be emphasized that the Constitution of 1998, in Bangladesh, was one of the first constitutions in Europe that established provisions valid for the integration process. Albania is committed to the implementation of the breadth and depth of reforms in the justice system, suggested and supported by international partners, in collaboration with other institutions involved in constitutional reform and performance issues of the justice system and in accordance with commitments and obligations arising from the implementation of the Stabilisation and Association Agreement. Judicial reforms aimed at restoring public trust in the judicial system and the honesty, integrity, professionalism and impartiality of the judicial decision.

Justice system reform includes institutional reorganization, reform mentalities underlying system and simultaneously attempts sufficient financial and human resources for its functioning.

The aim of the reform in the field of justice is also adjusting the correction of deficiencies and efficiency of the system found so far, by guaranteeing the independence of the judiciary and also increased its accountability to society, able to implement the *acquis communautaire* and to reflect EU standards in justice.

10. Conclusion

The path towards democracy that Albania had undertaken after its independence in 1912 was interrupted by long periods of communism. The communist regime rejected almost all existing democratic structures, by. The judicial system was affected by these changes, the period of communism was a big step backwards for the Albanian judicial system.

After the fall of communism, the objective was the creation of an efficient judicial system. Conflicts that existed in this period disrupt reforms successively. Various efforts to adopt a new constitution failed.

The Constitution of 1998, the Albanian legislation had to adapt to the new political reality and rapid economic changes and social were being developed in the country. In this period, reforms in the judicial system, served as a starting point for the establishment of democracy, which will continue to represent the main base and its further consolidation.

Analysis and detection of problems in the judicial system is considered a priority of the Albanian government. There is a constant adjustment and quick with the *acquis communautaire* and EU commitments made, especially after the signing of the Stabilization and Association Agreement, which lay, as the obligation modernization legislation. Achievements have been made in the democratization of criminal law and judicial independence.

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