Sabina Grabowska¹

The President as the Subject of Constitutional Responsibility in the Albanian Regulations

Keywords: Constitution, responsibility of the president, constitutional delict

Słowa kluczowe: konstytucja, odpowiedzialność prezydenta, delikt konstytucyjny

Abstract

The article is an analysis of Albanian legal regulations concerning the constitutional responsibility of the president. President for committing a constitutional delict is responsible before the Constitutional Court. The proposal in this regard may submit a group of parliamentarians while parliament may put an indictment. If the Constitutional Court recognizes the merits of allegations made in the indictment, the president is deposited with the office.

Streszczenie

Prezydent jako podmiot odpowiedzialności konstytucyjnej w albańskich regulacjach prawnych

Tekst jest analizą albańskich regulacji prawnych dotyczących odpowiedzialności konstytucyjnej prezydenta. Prezydent za popełnienie deliktu konstytucyjnego odpowiada przed Trybunałem Konstytucyjnym. Wniosek w tej sprawie może złożyć grupa parlamentarzystów, a w stan oskarżenia stawia parlament. Jeśli Trybunał Konstytucyjny uzna zasadność zarzutów przedstawionych w akcie oskarżenia, to prezydent zostaje złożony z urzędu.

¹ ORCID ID: 0000-0003-0530-708X, Ph.D., D.Sc., Department of Political and Media Systems, Institute of Political Science, College of Social Sciences, University of Rzeszów, e-mail: s.grabowska@ur.edu.pl.

An analysis of constitutional responsibility of the republican head of state makes it possible to see far-reaching differences in shaping this institution in individual states. Some specific and worth popularizing elements of the procedure were introduced by the regulations functioning in the Republic of Albania.

The Article 90 of the 1st Constitution of the Republic of Albania states: “The President of the Republic shall not be liable for acts taken in the exercise of office”². However, the paragraph 2 of that article clarifies that “the President of the Republic may be dismissed because of a serious violation of the Constitution and committing a serious crime”. One must define a “serious”³ violation of the constitution. The subject of this article is the president’s responsibility limited only to constitutional responsibility.

In many European countries, including Albania⁴, the exercise of constitutional responsibility relies on constitutional courts and historically is prior to their control of the constitutionality of laws. The delegation of this power to the constitutional court is justified by the fact that this court – as the body appointed for judicial protection of the constitution – implements it by ruling on matters related to the review of the constitutionality of law⁵. Thus, it is justified to include the power to decide on the commission of a constitu-

² National Assembly Act No. 8417 Constitution of Albania of October 21, 1998, approved by a referendum of November 22, 1998, promulgated by Decree No. 2260 of the President of the Republic of Albania of November 28, 1998. (Fletorja Zyrtare e Republikës së Shqipërisë [official state publisher], no 28, 1998, – Kushtetuta e Republikës së Shqipërisë miratuar me ligjin nr. 8417, datë 21.10.1998 të Kuvendit Popullor. Miratuar me referendum më 22.11.1998 Shpallur me dekretin nr. 2260, datë 28.11.1998 të Presidentit të Republikës (FZ RS Nr. 28, 1998), retrieved from: http://www.parlament.al/web/Kushtetuta_e_Republikes_se_Shqiperise_e_perditesuar_1150_1.php (15.10.2018); *Konstytucja Albanii z 1998 roku*, transl. D. Horodyński, E. Lloha, Introduction W. Milanowski, Warsaw 2001.

³ K. Budziło, *Formy odpowiedzialności konstytucyjnej w Republice Albanii*, [in:] *Formy odpowiedzialności konstytucyjnej w państwach europejskich*, eds. S. Grabowska, R. Grabowski, Toruń 2010, p. 39.

⁴ Ibidem, pp. 35–39.

⁵ M. Granat, *Zakres kompetencji sądów konstytucyjnych państw Europy Środkowej i Wschodniej w „innych sprawach”*, „Przegląd Sejmowy” 2001, No. 4, pp. 116–120.

tional tort within the scope of the power of the constitutional court. Many authors, including E. Zwierzchowski⁶, M.A. Nudel⁷, L. Garlicki⁸, A.M. Ludwikowska⁹, and R. Marcic¹⁰, classifying the areas of activity of the constitutional court, mention the constitutional liability for violation of the constitution or acts as one of its powers.

The issues related to the proceedings in the matter of bringing the president to account for the constitutional tort are regulated by the Art. 90 of the Constitution, which clarifies the regulations of the Assembly of the Republic of Albania¹¹. Proceedings on bringing the president to constitutional liability before the Constitutional Court were regulated in the Act on the organization and functioning of the Constitutional Court of the Republic of Albania¹².

Albanian regulations narrowed the scope of the constitutional tort to a serious violation of the constitution. However, they do not define what a “serious” violation of the constitution is¹³. They left an assessment of the significance of

⁶ E. Zwierzchowski, *Zakres działania europejskich trybunałów konstytucyjnych*, „Studia Iuridica Silesiana” 1984, vol. 9, p. 139.

⁷ M.A. Nudel, *Konstytucyjny kontrol w kapitalistycznych gosudarstwach*, Moscow 1968, pp. 73–110.

⁸ L. Garlicki, *Sądownictwo konstytucyjne w Europie Zachodniej*, Warsaw 1987, pp. 165, 173.

⁹ A.M. Ludwikowska, *Sądownictwo konstytucyjne w Europie Środkowo – Wschodniej w okresie przekształceń demokratycznych*, Toruń 1997, pp. 99–102.

¹⁰ R. Marcic, *Verfassung Und Verfassungsgericht*, Vienna 1960, p. 90.

¹¹ Resolution No. 166 of 16 December 2004, the regulations of the Assembly of the Republic of Albania (FZRS no110, 20.01.2005) – Rregullorja e Kuvendit të Republikës së Shqipërisë, miratuar me vendimin nr. 166, datë 16.12.2004 (FZRS Nr. 110, datë 20.01.2005), retrieved from: http://www.parlament.al/web/Rregullorja_e_Kuvendit_te_Republikes_se_Shqiperise_e_perditesuar_1154_1.php (15.10.2018).

¹² Act No. 8577 of February 10, 2000 on the organization and functioning of the Constitutional Court of the Republic of Albania – LIGJ No. 8577, datë 10.2.2000 Për organizimin dhe funksionimin e gjykatës Kushtetuese Të Republikës Së Shqipërisë, retrieved from: <http://www.gjk.gov.al> (15.10.2018).

¹³ For example, also the Italian provisions regulating the proceedings regarding the constitutional responsibility of the president clarify the concept of “serious” violation of the constitution, and even “attempted” constitution. The concept of an attack on the constitution is interpreted by the Italian doctrine as an intentional (culpable) action to overthrow the institution of the state or to damage public freedoms, C. Mortati, *Istituzioni di diritto pubblico*, Padova 1991, pp. 552–553. They should therefore be understood as an act or omission intended to overthrow constitutional institutions or to amend the constitution or change the form

the constitutional tort to the constitutional judiciary, which will have to clarify the concept of “serious violation of the constitution”¹⁴. Leaving an unspecified concept of “serious” violation of the constitution gives authorized entities a certain “margin of freedom” to determine whether a given act or omission fulfills the hallmarks of an attack on the constitution or its serious violation.

In the constitutional law, the concept of a “serious violation of the constitution” should not be equated with the concepts appearing under criminal law¹⁵. However, definitions functioning under criminal law may deliver a clue to the Constitutional Court in a case concerning the constitutional responsibility of the president¹⁶.

Parliamentarians can initiate the procedure for prosecuting the president in connection with committing a constitutional tort. The Albanian law has granted the right to submit a proposal to a group of at least a quarter of the total number of deputies¹⁷. The request should be submitted to the chairman in writing and contain a justification. Moreover, a violation of the constitution must be serious¹⁸.

The Albanian regulations governing the procedure for bringing the president to constitutional accountability differ slightly in other countries. The dif-

of government by means prohibited by constitutional provisions of Italy, F. del Giudice, *La Costituzione Esplicata. La Carta fondamentale della Repubblica spiegata Articolo per Articolo*, Napoli 2009, p. 233. C. Fusaro believes that the attack on the constitution is not every violation of it, but only those with negative features, aimed at undermining the foundations of the constitutional order, C. Fusaro, *Il presidente della Repubblica. Il tutore di cui non riusciamo a fare a meno*, Bologna 2003, p. 71.

¹⁴ As was the case with the constitutional liability of the President of Lithuania, where, before the opinion, the Constitutional Court of the Republic of Lithuania had to determine what and to what extent the constitutional tort was.

¹⁵ Act of 27 January 1995 No. 7895 Criminal Code of the Republic of Albania – LIGJ No. 7895, datë 27.1.1995 Kodi Penal i Republikës së Shqipërisë.

¹⁶ P. Chrzczonowicz, *Problem odpowiedzialności konstytucyjnej i karnej Prezydentów Rzeczypospolitej Polskiej i Republiki Włoskiej*, [in:] *Konstytucjonalizm włoski i polski w aktualnych fazach ich przemian. Materiały z sympozjum. Toruń, 2 czerwca 2005*, ed. Z. Witkowski, Toruń 2005, pp. 194–202.

¹⁷ Article 90 para. 2 Constitution of Albania; T. Jankowski, *System polityczny Albanii*, [in:] *Systemy polityczne państw Europy Środkowej i Wschodniej*, eds. W. Sokół, M. Żmigrodzki, Lublin 2005, pp. 95–96; J. Wojnicki, *System konstytucyjny Albanii*, Warsaw 2007, p. 42.

¹⁸ Article 112 para. 1 of the Regulations of the Assembly of the Republic of Albania.

ference is that these regulations provide participation in parliamentary proceedings regarding the commission of the constitutional delict by the president of two parliamentary committees. The Article 112 of the Regulations of the Assembly of the Republic of Albania authorizes the President of the Assembly to forward the application together with the documentation to the Committee on Legal Affairs, Administration and Human Rights¹⁹. The commission consists of twenty-seven members and three alternate members. Within 15 days, the committee examines the application and presents a report. The Assembly of the Republic shall conduct a plenary debate on a committee report within seven days. If the Assembly rejects the submission to hold the president to constitutional responsibility and the submitted report, the proceedings in this matter are terminated. If the Assembly adopts the application together with the report of the Committee on Legal Affairs, Administration and Human Rights, a committee of inquiry in this matter shall be appointed within two days. The inquiry commission is required to question the president and hear his position on the allegations made in the application. Upon completion of the work on the request of the committee of inquiry, a report on its work is immediately forwarded to the President of the Assembly of the Republic, who appoints the meeting within twenty days of receiving the committee's report²⁰.

In Albania, the president may receive copies of the application and other documents to enable him to respond to the allegations, but he must submit a request for forwarding them²¹. Access to documents allows the president to participate in the debate and present his position in written or oral form. It is not clear whether the president's representative, e.g. a lawyer, can also participate in the debate.

The Assembly of the Republic of Albania decides to prosecute the president by a two-thirds majority in a secret ballot²². The resolution is forwarded

¹⁹ Komisioni për Çështjet Ligjore, Administratën Publike dhe të Drejtat e Njeriut. More data available at: http://www.parlament.al/web/Komisioni_per_Ceshtjet_Ligjore_Administraten_Publike_dhe_te_Drejtat_e_Njeriut_10033_1.php (20.10.2018).

²⁰ Article 112 para. 4 of the Regulations of the Assembly of the Republic of Albania.

²¹ Article 112 para. 3 of the Regulations of the Assembly of the Republic of Albania.

²² A. Żukowski, *Prawo wyborcze na urząd prezydenta w Albanii*, [in:] *Prawo wyborcze na urząd prezydenta w państwach europejskich*, eds. S. Grabowska, R. Grabowski, Warsaw 2007, p. 209.

to the Constitutional Court by the Chairman of the Meeting within five days of its adoption²³. The resolution should be accompanied by the justification for allegations of serious violation of the constitution²⁴. If the Assembly adopts a resolution to indict a president in connection with committing a constitutional tort and he resigns or the term expires, the proceedings are discontinued by the Constitutional Court. They may be resumed at the request of the President or the Assembly of the Republic of Albania²⁵.

The Constitutional Court of Albania consists of nine members, appointed for a nine-year term by the president, with the consent of the parliament. Cases related to committing a constitutional tort by the president are decided by the tribunal on a plenary session in the presence of not less than two-thirds of the total number of judges²⁶.

The procedure regarding constitutional liability by a constitutional court begins when an indictment passed by the court is submitted by the parliament. Before the commencement of preliminary proceedings, the chairman of the Constitutional Court sends a copy of the indictment together with justification and evidence to the president so he could respond to the charges.

The preliminary examination of the application is carried out in Albania by three judges. If any deficiencies are found in the documents, a deadline is set to supplement them and the reasons for returning the application are indicated. The judges examine the application formally, not substantively. If the application is deemed to have been submitted by an unauthorized person, the judges shall adopt a resolution not to proceed. If the application meets the requirements, it is forwarded for further investigation²⁷.

The president of the Albanian Constitutional Court sets a date for the hearing and announces at least ten days before its date²⁸. The court conducts proceedings regarding the constitutional liability of the president in open court in the presence of not less than two-thirds of all judges. The date of the meet-

²³ Article 112 para. 4 of the Regulations of the Assembly of the Republic of Albania.

²⁴ Article 61 para. 2 of the Act on the Constitutional Court of Albania.

²⁵ Article 65 of the Act on the Constitutional Court of Albania.

²⁶ Article 125 of the Albania Constitution, art. 7, 32 of the Act on the Constitutional Court of Albania.

²⁷ Article 31 Act on the organization and functioning of the Constitutional Court of Albania.

²⁸ Article 38 para. 2 of the Act on the Constitutional Court of Albania.

ing shall be notified to the president and his defender who have the right to attend the meeting. The regulations do not mention the participation of a representative of the Assembly of the Republic of Albania in a meeting of the Constitutional Court. Incorrect or missing notification will postpone the meeting. If, despite proper notification, the president does not appear at the meeting of the Constitutional Court, the proceedings are conducted in his absence. During this time, the president may submit explanations in writing. The court may summon experts or witnesses to the meeting and request additional documents²⁹. If a party provides additional evidence that may affect the judgment, before issuing the judgment and after closing the meeting, the Constitutional Court may resume the trial³⁰. The court shall issue the judgment by a majority of votes, but the judge may submit a dissenting opinion.

The analysis of the main proceedings before the constitutional court brings several conclusions. Regulations that provide for preparatory proceedings, as is the case in Albania, should be considered justified. Thanks to this, the main hearing can proceed efficiently, without having to adjourn the sitting, due to formal deficiencies in the indictment.

In Albania³¹, if the Constitutional Court judges by its judgment the justification of the charges specified in the indictment, the president is *ex constitutione* removed from office. This means that the judgment of the Constitutional Court contains only a decision on guilt or innocence. The judgment does not serve to determine the penalty as it results from the provisions of the constitution.

After establishing the president *ex officio*, he entrusts the full powers to the President of the Republic Assembly³² and elections are held within ten days of the judgment of the Constitutional Court³³.

The analysis of the proceedings regarding the president's constitutional liability leads to the conclusion that it is consistent with the regulations adopted in

²⁹ Articles 32–43 of the Act on the organization and functioning of the Constitutional Court of Albania.

³⁰ Article 44 of the Act on the organization and functioning of the Constitutional Court of Albania.

³¹ Article 90 para. 3 Constitution of Albania.

³² Article 91 para. 1 Constitution of Albania; J. Wojnicki, *Zgromadzenie. Parlament Albanii*, Warsaw 2005, p. 31.

³³ Article 91 para. 2 Constitution of Albania; A. Żukowski, *op.cit.*, p. 212.

other European countries, which, as the adjudicating bodies in such cases, have been taken by constitutional courts. The only exception is that two committees (standing and inquiry) participate in the parliamentary stage of the proceedings.

Thus, the procedure consists of three stages: parliamentary, judicial and – after obtaining a conviction – the third stage, which consists of the implementation of the judgment of the constitutional court and ordering elections to the office of the president.

The first stage of the procedure is submitting to the parliament a proposal to constitutionally hold the president, which initiators can only be parliamentarians, and the chairman of parliament examines the application in formal terms, but does not initiate the proceedings. Then the application is sent to the parliamentary committee, which task is to examine the merits of the application and prepare a report on the work and present it at the parliamentary meeting, and if the parliament votes for, then the application along with the other documents is sent to the committee of inquiry. After the commission's work is finished, the parliament becomes acquainted with the results of this work and adopts a resolution on bringing the president to constitutional responsibility. If the parliament recognizes the legitimacy of the charges against the president, a debate on the matter takes place before adopting the resolution. After the parliamentary stage is over, the resolution on prosecuting the president is passed, the documents are forwarded to the Constitutional Court and the second stage of the proceedings begins.

The second stage begins at the Constitutional Court, where preliminary proceedings are carried out, i.e. a formal examination of the parliament's request for the president to commit a constitutional tort constituting an indictment in the case. The main hearing is then conducted, during which the constitutional court examines the case and gives its verdict.

An analysis of the Albanian regulations regarding the constitutional responsibility of the president leads to the conclusion that the commission's power is, to a certain extent, dependent on the date on which the commission is to draw up a report. Thus, when the Albanian regulations give the commission fifteen days to carry out this task, its power is limited to familiarizing itself with the allegations contained in the application and examining their legitimacy on the basis of the documents in their possession. It can also ask for opinions from experts, although due to time constraints it is much more difficult.

I think that the subject of the constitutional responsibility of the president should be clarified. It is not about the willfulness or inadvertence of the president's actions, because his office and advisers should be aware of the effects of the president's actions. Clarifying the scope of responsibility should consist in clearly defining in law which actions of the president violating the constitution or statute are subject to constitutional liability. It seems that this group should include, first and foremost, acts or omissions that harm the state's system and its functioning, which can be described as serious. In addition, the rules should specify how to interpret the concept of "serious infringement" to avoid possible misunderstandings and conflicting interpretations.

Albania's constitutional and statutory provisions do not regulate the situation, the repeated submission of a request to prosecute the president for the very reason. In my opinion, if Parliament did not support the proposal in this matter, it is unacceptable to indicate the same act as the basis for the next proposal. Re-submitting an application for the same acts is, however, justified after revealing new evidence and circumstances relevant to the case.

The analysis of the main proceedings before the constitutional court leads to the conclusion that regulations which provide for preparatory proceedings should be considered justified. Thanks to this, the main hearing can proceed efficiently, without having to adjourn the sitting, due to formal deficiencies in the indictment.

Limiting constitutional liability to the person of the president, as well as entrusting adjudication in this respect to a constitutional court is a solution found in many European countries³⁴. The president's relatively low powers also have consequences in terms of his responsibility for the constitutional tort. Therefore, the Albanian legislator did not treat the proceedings regarding the commission of the constitutional delict by the president in a special way. Thus, the narrow normative regulation devoted to this institution in the legal order translates into little interest in the doctrine on this subject. This may in the future create serious practical difficulties related to the enforcement of the president's constitutional responsibility.

³⁴ A. Ludwikowska, *Sądownictwo konstytucyjne w Europie Środkowo – Wschodniej*, Toruń 2002, p. 141; S. Grabowska, *Modele odpowiedzialności konstytucyjnej prezydenta we współczesnych państwach europejskich*, Toruń 2012.

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