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## **Referendum on the Constitution dated November 6, 1994 in Albania (The associated political debate and reasons for its failure)**

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**Abstract.** The constitutional reform is one of the most debatable reforms in the Albanian transition period. One of the most critical moments is the Referendum on the Constitution dated November 6<sup>th</sup>, 1994. The way how this process took place, helps us to understand more about the nature and the dynamics of the Albanian events during the transitional period. The purpose of this descriptive - analytic study is to describe, analyze and evaluate the Referendum on the Constitution dated November 6<sup>th</sup>, 1994, in legal, procedural and political aspect as well as its effects on political life in Albania. To meet this objective, we will be delivering an analysis of all events and decisions that took place before, during and after the Referendum on the Constitution, concentrating on the procedures that followed, debates associated to the process, political and institutional attitudes, electoral campaigns, attitudes of political parties towards the content of the draft constitution, reasons of the popular “NO” to the referendum and its consequences. The study relies on official documents of Albanian and foreign institutions (such as OSCE, Venice Commission), the press (newspapers like “Zëri i Popullit”, “Rilindja Demokratike”, “Koha Jonë”) publications from domestic and foreign scholars and memories of the protagonists. At the end, it was concluded that the lack of political consensus and the willingness of political forces to come to an agreement with each other, made the attempt to give the country a constitution failed. The result of the referendum affected the political life in the country by increasing conflicts and political intolerance among the parties. There were problems within the Democratic Party and the governing coalition too.

**Keywords.** Albania, constitution, referendum, political debate, political crisis

### **1. Introduction**

The Constitution is the most basic and highest act of a country. It is the basic law that compasses and expresses the basic principles of a country, the structure and functions of its main entities, basic principles of the political process and elementary relations between the citizens and the State. Constitutional values are determined, considered and accepted as such depending on the society’s conditions or conditions that a certain society is oriented by. These, however, are the product of certain social circumstances, which reflect the principles which judicial (constitutional) order is built upon. When the communist system collapsed in Eastern European countries and former Soviet Union, one of the first acts of new regimes was to pass

solemnly constitutional amendments. As far as Albania is concerned, the events occurring in the end of 1990, raised the hopes for establishing a democratic state, the rule of law, respect for the human rights and freedom, decentralization of power and economy and the European integration. Considering the present situation, the constitutional changes became urgent and necessary. The changes that took place were so radical that it was impossible for the old Constitution dated 1976 to adopt. It was completely inappropriate to be applied and amended and none of its parts could be of use. The Constitution of 1976 was in full contradiction to the reality and could become an obstacle to the social-economic development, protection of Albanian citizens' rights and freedom and pluralist democracy development. It deepened the communist character of the Albanian constitutional order and class character of the state as proletariat dictatorship. Its 2<sup>nd</sup> article stated "*The People's Socialist Republic of Albania is a state of dictatorship of proletariat*", where the Albanian Labor Party was affirmed as the only political force of the country. The Constitution sanctioned marxism-leninism as a leading ideology in Albania (articles 3 and 15) and one of the main basic principles of the Albanian constitutional order was the class warfare (article 4) and building the socialist society by own forces (article 14), private property was forbidden (article 16), it was forbidden to get foreign loan and assistance (article 28), religious activities too were forbidden, etc. The Constitution of 1976 did not accept and recognize the principle of separation of powers, but the unity of power instead<sup>1</sup>.

Ratification of the Albanian democratic constitution turned out to be a longer and more difficult process than expected. Drafting the constitution is a process which has a juridical character in itself, which in other transition countries was handled in a short time, whereas in Albania it spent a great deal of political and juridical energy and took longer. This process started in 1990, with a decision for revising the Constitution in power, and later on, it was reached a political agreement by consensus, which lead to the approval of Law on Main Constitutional Dispositions on April 29<sup>th</sup>, 1991. This package would serve as a constitution until drafting a complete one. The efforts to have an Albanian Constitution in 1994 failed, because by popular referendum, people said "No" to the draft-constitution prepared by a special parliamentary commission. These efforts resulted successful in 1998. The referendum on Constitution in 1994 represents one of the most criticized constitutional reforms in Albania, because of anti-constitutional actions undertaken by public institutions for the approval of the draft constitution at any cost. Considering this fact, we decided to analyze the whole period before, during and after the referendum for the constitution of 1994 in details, concentrating on the procedures, related debates, political and institutional attitudes, election campaigns, attitudes of political parties toward the contents of the draft constitution, the reasons of saying "NO" and its effects.

The purpose of this analytic study is to describe, analyze and evaluate the referendum on the Constitution dated November 6<sup>th</sup>, 1994, on legal, procedural and political aspect and its effects in deepening the political crisis in Albania. By analyzing the political and legal facts and attitudes, some objectives will be achieved: (I) to identify the efforts in drafting and approving the Constitution in Albania, (II) to describe the political and legal processes of the referendum, (III) to analyze the factors and consequences of the referendum's failure.

The way how the process was managed, helps us to understand more the nature and dynamics of the events in Albania during its transitional period. Democratic processes in Albania during transition have been analyzed broadly by Albanian and foreign scholars such as Elez Biberaj, Valentina Duka, Daut Gumeni, Miranda Vickers, James Phettifer, Fred C. Abrahams etc; many memoirs have been published by the participants in the events such as memoirs of Ramiz Alia, Ylli Bufi, Prec Zogaj, etc; a series of documents by Albanian and

international institutions have been written for evaluating the political, economic, legal and institutional processes in Albania. Reports from the European Union, Venice Commission, Council of Europe, OSCE, World Bank, IMF, etc are of a special importance too. Among all developments, they discussed the constitutional reform in Albania as well, especially Aurela Anastas and Fehmi Abdiu, Venice Commission and OSCE have given a great deal of importance to the process, by analyzing it from juridical viewpoint. All these documents and studies serve as an important information source to our own study, however, its main focus is the referendum for the Constitution of 1994 and conducts an historical, political and juridical analysis of all associated events and decisions. In spite of above mentioned sources, we made use of the press and newspapers like “Rilindja Demokratike”, publication of the Democratic Party, the daily “Zëri i Popullit”, publication of the Socialist Party and the newspaper “Koha Jonë”, publication of the Democratic Alliance Party, all of which reflect the official attitude of political parties.

In the end of this paper, we reach the conclusion that the referendum of the Constitution in 1994 was associated to several anti-constitutional actions and decisions; the debate over the draft constitution that was fierce and overly politicized. Political antagonism and lack of consensus affected the referendum results. Failure of the referendum to approve the draft constitution affected the political life, by deepening the political crisis not only on majority-opposition relations, but the governing coalition as well, even within the PD, which was the party in power at the time.

## **2. Referendum on the Constitution dated November 6, 1994**

### *2.1 First attempts at constitutional changes*

After the University of Tirana students’ strike, Ramiz Alia announced party pluralism on December 11. The Democratic Party of Albania (PD) was created right after on December 12, 1990 followed by other parties such: the Republican Party (PR), the Ecological Party (PE\*), etc. During 45 years of communist dictatorship, Albanian people were denied their freedom and rights, the Labor Party has established the party monopoly, people were kept outside the political decision-making process. Events in the end of 90s raised the hopes on establishing a democratic state, rule of law, respect for the human rights and freedom, power decentralization and European integration. Constitutional changes became urgent and necessary. Since October 13<sup>th</sup>, 1990, Ramiz Alia made the decision of applying changes and additions in the Constitution. A special commission was created headed by Ramiz Alia himself. The Commission was heterogeneous but representative from other parties created later were not involved. On December 30<sup>th</sup>, 1990, the draft constitution was published on the newspaper “Zëri i Popullit”, a publication of the Labor Party. The draft constitution proclaimed political pluralism; protection of human rights; equality under the law; equality between men and women; the right to elect and being elected; respect for minorities; freedom of religion; foreign policy based on friendship, cooperation, peace and international security. On the other hand, the draft constitution preserved communist symbols, agricultural cooperatives and state property, although it recognized private property as well; however, the state was still in control of the economic, cultural and commercial activities (articles 19 and 20). According to it, the President had wide competences. He had the right of legal initiative; the right of veto; the right to appoint and dismiss ministers and high officials in central institutions; the right of issuing normative decrees; he had the right to appoint 4 members of the Constitutional Council; the right to

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\* The acronyms for political party names are used as they are used in Albanian

dissolve the parliament; in exceptional cases, when it was not possible for the parliament to convene, he declared a military mobilization, a state of war, a state of emergency and could chair the meetings of the Council of Ministers (Article 80).<sup>2</sup>

In relation to this project, professor Ismet Elezi wrote on the newspaper “Zëri i Popullit”: *While it is true that the Constitutional Project contains some important principled changes, that affect basic principles, expand the basic rights and obligations of people and make new arrangements in state organization, they still remain in the framework of the changes and do not constitute a new Constitution. As such, it does not reflect all political, economic and social developments of the country. Lets take the example of state organization. The project arranges the tip of the pyramid by establishing the function of the President of the Republic, whereas the entire state pyramid, from the Parliament to the village people’s council stays as it was.*<sup>3</sup> In his book “Albanians” Edwin Jacques states: “... in the proposed constitution visible traces of the Stalinist roots of the regime were preserved,”<sup>4</sup>, whereas Valentina Duka wrote: “Draft constitution of December 1990 did not respond to the new conditions of political pluralism. Not only did it not mark a sharp division with communism, but in many respects, it responded to the needs of the communists to retain power and the ambitions of Ramiz Alia, who wanted to stay at the helm of the country by being elected president.”<sup>5</sup>

The first pluralist elections dated March 31<sup>st</sup>, 1991 made the Albanian Labor Party a winner. It hastened to ratify the Constitution “with hopes of preserving the old order as much as possible.”<sup>6</sup> The PD opposed the draft constitution, according to V. Duka, *because of many powers given to the president and the historical role of the Labor Party.*<sup>7</sup> Although the Labor Party had the necessary number of votes in the Parliament to pass the Constitution, it asked for the opposition approval too. By agreement, The Labor Party and the Democratic Party, by proposal of the later, was decided to draft a legal package to play the role of temporary constitution. The document entitled “Law on Main Constitutional Dispositions” passed by the Parliament by full consensus on April 29<sup>th</sup>, 1991. The constitutional dispositions would be in force until drafting and approving a new full Constitution.

According to Constitutional Dispositions, Albania was a parliamentary republic. Its main principles were: equality under the law, respect for human rights and freedom, political pluralism, division and independence of powers; equality of all property forms to be sanctioned; parliament’s competencies, being the highest state institution, were expanded: it applied sovereignty on people’s behalf, oriented internal and foreign policies for the state (articles 15 and 16); president’s competencies were diminished, he/she should not have party functions.<sup>8</sup> The Constitution of 1976 was invalidated. The Law on the Main Constitutional Dispositions was the final break from the communist dictatorship and was adopted by full consensus by the Parliament. In 1992-1993, amendments to the Main Constitutional Dispositions were adopted which related to juridical power, local government and the human rights.

1991 was the year of disturbing disorganization for the society and the state. The state was too weak, public order and citizens’ safety were seriously affected. Lack of social discipline was present everywhere, despair and anxiety prevailed among the people. The Albanian economy was in dire straits; high unemployment, lack of production, destruction of national assets, state finances were going through their worst period, state debt was at very high levels. After a deep political crisis, it was agreed to hold early parliamentary elections. The election took place on March 22, 1992, and resulted in a landslide victory for the Democratic Party (the PD entered the elections in a coalition with both Republican Party and Social-democratic Party). It was represented by 92 parliamentarians in the Parliament of 140 seats; the entire governing coalition had 100 parliamentarians. The new Parliament elected Pjeter Arbneri as its own chairman, Sali Berisha as the President of the country and Aleksander Meksi as Prime Minister.

### *2.2 Right-wing governance and constitutional reform*

An important task for the new parliament was drafting and approval of the Constitution of the Republic of Albania. For this purpose, by decision of the parliament, in April 1992, a special parliamentary commission was set up, which would draft the constitution. The 40-member commission consisted of parliamentarians, lawyers and prominent experts in various fields. The commission was headed by Aleksander Meksi; the representation of each party in the commission was determined in proportion to their representation in parliament. Well-known names of the politics at the time were among its members such as: Kudret Çela, Tritan Shehu, Rustem Gjata, Fehmi Abdiu, Theodhori Sallaku, Kristaq Traja, Bashkim Caka, Kastriot Islami, Leontiev Çuçi, Idajet Beqiri, Paskal Milo, Petrit Kalakula etc. The deadline for the commission to submit the draft constitution was December 1992, and during January-March 1993 the draft would be discussed and approved by parliament.

During the first months under the government ran by Meksi, profound economic reforms were undertaken, based on the policy of "shock therapy". Just three months after the deep victory in the parliamentary elections, the Democratic Party's position was shaken by the result of the first pluralist local government elections, held on July 26, 1992. The Democratic Party had won a larger national percentage of votes than the Socialist Party (SP), but the latter had won a larger number of municipalities and communes, a larger number of representatives in the councils of districts, municipalities and communes. The reason for these results in the local elections were the effects of economic reforms on population. After the local elections, the PD went through an internal crisis, a fierce clash between the 2 groups; the strong wing in the PD, that of President Berisha and critics of the Berisha wing, which included some of the founders of PD. The debate ended with the expulsion of Berisha's opponents from the Party, and some others that left PD voluntarily. Those expelled from the Party formed the Democratic Alliance Party (PAD). These events caused the PD to lose 6 parliamentarians.

Relations between the majority and the opposition were not very good. The Socialists accused the government and the PD of failing to keep economic promises, practicing violence and pressure on the opposition, lack of consensus and cooperation, lack of transparency, censorship and distortion of information, dismissals of political nature, nonconstructive attitude of the President, etc. These accusations were not welcomed by the government and the Democratic Party which put harsher tones against political opponents both in parliament and in the press.

1993 was the year when the constitution should be adopted. According to the decision made in April 1992, the draft constitution was to reach parliament in January. Delays in this process made the socialist parliamentary group to request clarifications from the chairman of the commission for drafting the constitution, Aleksandër Meksi, for the work performed until now. In the parliamentary session dated March 16, Mr. Meksi described the work progress and asked for a postponement of the deadline for submitting the draft constitution to the assembly, assessing the deadline as short. The Parliament voted to extend the deadline by another 3 months, but on June 16 the draft constitution had to be submitted to the Parliament by the committee. On June 16, Mr. Meksi, in his capacity of chairman of the committee, presented the project to the parliamentarians. In his speech he stressed that this project was drafted by a working group composed of specialists in the field of constitutional law and was submitted for remarks and review to the parliamentary commission for drafting the constitution. The project applied the suggestions of the Venice Commission, was based on constitution models from European democracies and countries in transition having similar experiences as Albania.

According to the draft constitution, the Constitution had to be approved by a Constitutional Assembly and the Parliament had the right to amend it.<sup>9</sup>

The Democratic Party and its parliamentarians described this draft constitution as a draft of European standards and its drafting within the set deadlines as another promise kept by the PD. The socialist and social-democrat parliamentary groups, the parliamentarians of the Democratic Alliance Party and PBDNJ held the same position, calling the drafting of the constitution unconstitutional and contrary to the decision of the Assembly as it was drafted by a group of specialists and not by the special parliamentary commission set up by the assembly. Based on Article 44 of the Main Constitutional Dispositions (MCD), according to which: “*The provisions of this law operate until the approval of the Constitution of the Republic of Albania, whose draft will be compiled by the Special Commission charged by the Parliament. The composition of the commission and the deadline for the submission of the draft Constitution are determined by a special decision of the Parliament*”. Only the commission formed by the Parliament had the right to draft the constitution.

In his speech at the parliamentary session, the Socialist parliamentarian, Fehmi Abdiu said that *the Commission, which was the only that had the attribute to prepare the relevant project, had no right to assign its attribute to a working group whoever it is, therefore, the letter of Mr. Meksi stating that the draft constitution prepared by the working group charged by the commission, was of illegal content. As the working group had no legal attribute related to this issue, taking such action was considered unconstitutional.*<sup>10</sup>

The Socialists called it a violation of constitutional principles and opposed Article 131 of the draft constitution, which stipulated that “*The Constitution is approved by a Constitutional Assembly which consists of members of today's parliament and representatives of each elected constituency according to defined criteria by special decree of the President of the Republic*”. According to Kastriot Islami (Socialist parliamentarian), the way to approve the first constitution of the pluralist system could not be foreseen in the constitution, [because without the total approval of this constitution, this article had no effect] but it should have been sanctioned by a law outside the constitution, which should be approved by the Parliament as a constitutional act, ie by 2/3 of the votes.<sup>11</sup> Regarding the establishment of the Constitutional Assembly for the approval of the constitution, Skënder Gjinushi (chairman of the PSD) stated that the president did not have the authority to issue a decree for the establishment of the Assembly, as defined in the aforementioned article.<sup>12</sup>

In his statement, at the end of the parliamentary session, the socialist parliamentary group stated: “*We will come to the plenary session only when the constitutional commission will present us its draft*”.<sup>13</sup> The same position, boycotting the work of the parliament until the presentation of the draft constitution, was held by Skënder Gjinushi on behalf of the Social Democratic parliamentary group, Arben Imami on behalf of the parliamentarians of the Democratic Alliance and Thoma Miço on behalf of the PBDNJ. The PD described the boycott as irresponsible, anti-national and anti-democratic, a desire to plunge the country into a parliamentary crisis, obstruct the adoption of the constitution, attempt to seize power and impede further reforms in the country. These actions of Social Democratic Party's leadership, which was part of the ruling coalition were described by Democrats as “*an adventure to the extreme left*”, “*a happy slide*”.<sup>14</sup> This created the first major rift in the ruling coalition.

In the summer of that year, relations between the socialists and the democrats became tougher because of Nano affair\*. On July 30, the Prosecutor's Office of Tirana district issued a

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\* The State Audit Commission had exercised control over the documentation for February 24 - June 4, 1991, when Fatos Nano was the country's prime minister. The final act of control accused Nano of embezzling an

warrant for Fatos Nano (chairman of the Socialist Party), a decision which was described by the socialists as “*a political-police action and an unconstitutional act aimed at extinguishing the political activity of the entire opposition and installing a new monist, totalitarian and new-dictatorial state*”.<sup>15</sup> Nano's arrest came after a series of arrests and trials conducted during that year described by the opposition as political, such as: the trial for corruption of the former socialist prime minister Vilson Ahmeti, the house arrest of Idajet Beqiri, chairman of the National Unity Party, the arrest of Thoma Gëllçi, editor-in-chief of the newspaper "Zeri i Popullit" etc. These events were used by the PS to organize meetings and protests against the government during July-August 1993. 1993 ended with another crisis in the PD, the radical right-wing became a critical of Berisha. Petrit Kalakula, chairman of the PD branch in Tirana and Abdi Baleta, a member of parliament with strong nationalist views, were expelled from the party on the grounds of “*extremist statements*”.

At the beginning of 1994, Prime Minister Meksi and President Berisha promised that 1994 would be the year of the adoption of the Albanian democratic constitution. Even the pressure from international institutions over the approval of the constitution was great, the Council of Europe conditioned the membership of Albania in it, with the approval of the constitution. The political debate continued fiercely throughout 1994, with the Socialists accusing Berisha and the government of authoritarianism, corruption, political crimes, inability to solve the country's problems, lack of desire for political dialogue, and disruption of the population<sup>16</sup>. All these developments had their impact on the work of the Constitutional Commission.

During the first half of 1994, the commission continued to work on drafting the constitution in cooperation with specialists in constitutional law and in consultation with the Venice Commission. In its work, the Commission was based on the Constitutional Provisions, and took care to preserve the institutions established during 1992-1994. There was a lack of consensus in drafting the new constitution between the representatives of the Democratic Party and the Socialist Party in the constitutional commission on many aspects especially the competencies of the President of the Republic and the judiciary system. Although all parties agreed on a parliamentary system, there was much discussion on the issue of separation of powers between the Parliament and the President. “*...democrats argued that the new president should have broad powers to deal with the country's difficult problems.*”<sup>17</sup> whereas the socialists wanted limited power for the president. The Social Democratic Party and the Democratic Alliance Party held the same position. The Socialist Party posed its demand that Albania should be a parliamentary republic: “*It needed a president - man of state, with limited powers which would guarantee him/her to be above the parties and fulfilling the country best interests*”.<sup>18</sup>

Both parties accused each other on delays in drafting the constitution. The opposition accused the president, the chairman of the Parliament, the PD and Aleksander Meksi for deliberately delaying the work of the commission and leave the country longer without a constitution because “*constitution ties the hands*”<sup>19</sup>, without a constitution “*one might rule easier, is might be simple to treat the opposition as “an enemy”, “it could be easier to speculate with the human rights*”.<sup>20</sup> The PD accused the opposition that it gave very few constructive suggestions, because their purpose was to make the Parliament look incapable of drafting the constitution and thus could insist on their demand for early elections.

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amount exceeding \$ 8 million. Based on this act, the General Prosecutor submitted to the Parliament the request for lifting the immunity of the parliamentarian Fatos Nano, at the same time in the position of the chairman of the Socialist Party. By majority votes, the Parliament approved the lifting of Fatos Nano's immunity on July 27th. A year later, by decision of Tirana District Court of Justice, he was sentenced to 12 years in prison.

### *2.3 Referendum on the Constitution*

During July, the commission was nearly completing the work on drafting the constitution. The completion of the work and the submission of the draft constitution to the Parliament required reaching a consensus among the parliamentary political parties for its approval. Lack of consensus made it difficult to adopt the constitution, which required 2/3 of the votes of all parliamentarians. The Democratic Party won 92 seats in the 1992 election, but by 1994 it had lost eight seats, therefore securing the necessary votes became difficult given the country's political polarization.

In these conditions, the President of the Republic proposed the approval of the constitution by a Constitutional Assembly, which in addition to members of parliament would include representatives from the local government, leaders of important public institutions, lawyers and prominent Albanian personalities. The president's proposal added to the clashes between the political parties. The PS, PSD, PAD, PDD and PBDNJ opposed the president's proposal as unconstitutional. It was contrary to the Constitutional Dispositions, which recognized the Parliaments as the only entity having the right to adopt the constitution. A heated debate over the legality of this proposal took place in Parliament and press. Its opponents argued that: (i) was the Parliament the only institution that had the right to approve the constitution, or delegate this right to another body, or amend the Constitutional Dispositions; (ii) The Constitutional Assembly could be accepted as an institution for the approval of the constitution only if it was elected by the people. An Assembly with appointed members by whomever, was anti-constitutional, "*a coup d'etat*" according to Neritan Ceka (PAD parliamentarian).<sup>21</sup>

The Democratic Party through the appointed Assembly, with a preferential configuration aimed to fill it with its militants to secure the absolute majority, i.e the missing numbers in the Parliament and if it was accomplished, as Preç Zogaj stated on behalf of the PAD, they would boycott it the Assembly;<sup>22</sup> (iii) the President had the right to propose laws and issue decrees, but according to the Constitutional Dispositions (article 28, item 19) they had to be submitted to the Parliament for approval. The president could have decreed his proposal for the Constitutional Assembly, but he had to get approval in the Parliament as well only then would the Assembly be legitimate.

According to Tritan Shehu, General Secretary of the Democratic Party, this "*rampant attack*" of the Socialist Party against the Constitutional Assembly, in fact had nothing to do with the Constitutional Assembly, as the Socialists would react in the same way to any proposal that would be made for adoption of the constitution in order to leave the country without a constitution, outside European bodies, to hinder the consolidation of democracy and to create instability in Albania.<sup>23</sup> Supporters of the president's proposal responded to the socialists' accusations, that the president was simply exercising his constitutional right to propose laws. The Democratic Party and the Republican Party, which supported the president's proposal for the adoption of the constitution by a Constitutional Assembly, defended the proposal with arguments: (i) the establishment of the Constitutional Assembly did not conflict with the Constitutional Dispositions, according to which the right to approve the constitution was vested in the parliament, as this assembly would include in it the Parliament, "*with all its mental and physical potential*";<sup>24</sup> (ii) the creation of the Constitutional Assembly removed the legal paradox "*of transferring the [legislative] powers from power itself*";<sup>25</sup> so the parliament would approve its own competencies, which could weigh on the other 2 powers; (iii) the adoption of the constitution by a Constitutional Assembly was followed by many democratic countries and by countries of Eastern and Central Europe and was not an Albanian invention; (iv) representatives of political parties that were not represented in the Parliament were given the opportunity to express their opinions and give approvals through the Constitutional Assembly; (v) it was

important that specialists of various fields gave their opinions in the adoption of the first democratic constitution of Albania, “*who without hesitation, put national interests above those of party, religion or province*”;<sup>26</sup> (vi) the adoption of the constitution by the Parliament alone was considered insufficient because there was no broad people’s representation. “*The wider the approving representation of the people today, the more accomplished and stable the constitution tomorrow.*”<sup>27</sup>

On September 29, the Constitutional Commission approved the draft constitution. According to Fehmi Abdiu, the approval was made hastily and without taking into account the remarks and suggestions of the opposition’s representatives in the commission.<sup>28</sup> Skënder Gjinushi also was of the same opinion. He went further by calling the constitutional commission as “*commanded from outside ... totally under dictate*”.<sup>29</sup> On October 3, the Prime minister Meksi submitted the draft constitution to the Chairman of the Parliament and the President of the Republic. In a message to the people, President Berisha, not hiding his joy for keeping the promise of a constitution for Albania, made a brief description of the content of the draft constitution, spoke about the historical importance of its adoption and proposed that the constitution was approved by referendum, “*convinced that the most legitimate right, duty and great honor of the adoption of the first democratic constitution in the millennial history of the Albanian nation belongs directly to the sovereign people with their free vote*”.<sup>30</sup> The President supported his proposal in Article 3 of the Constitutional Dispositions according to which “*People exercise power through their representative bodies and referendum as well*”.

Calling the referendum “*a deserved institution for the Albanian civilization*”<sup>31</sup> the right wing press made an extensive propaganda and in-depth legal analyses to show that adoption of a constitution by referendum was the most democratic method. Again, the opposition parties described the president's proposal as unconstitutional, as the only institution that had the constitutional right to approve the constitution was the Parliament. The opposition agreed to hold a referendum on the constitution only after it had been approved article by article in the Parliament. Vasil Milo, chairman of PBDNJ said that the referendum “*is not the most appropriate and logical way*”.<sup>32</sup> According to him, the referendum was unconstitutional, because basic articles of the constitutional package were violated, there was no law on referendums and because the citizen had to decide a priori for or against constitutional articles on which there could be different or opposite views.<sup>33</sup> According to Preç Zogaj, the referendum was a very democratic tool, but it was used for major issues on which the people were divided in different opinions and for which people could be called to say “yes” or “no”.<sup>34</sup> The same opinion shared Paskal Milo (PSD), stating that “*the referendum could not be held for 100 constitution’s articles.... it is impossible to make all the people aware.... there are organizational difficulties to discuss this draft constitution with the people*”.<sup>35</sup>

On October 6, by proposal of the president, with accelerated procedures, the parliament discussed the Draft “On Referendum”. The parliamentary debate on this bill was fierce. The main debate focused on Article 2 of the draft law which stated that a referendum could be decided upon to approve the constitution and its amendments (Article 2 of the Law “On Referendum”: “*A referendum may be decided upon to approve the constitution and its amendments as well as other important national issues related to independence and the integrity of the Albanian Republic. The referendum could be decided upon other important issues related to administrative-territorial units of the country, provided that it does not affect the unique national character of the Albanian country*”) and on Article 5 of the draft law which recognized the initiative to call a referendum to the president. (Article 5: “*The initiative to request the calling of a referendum belongs to the President of the Republic who sends the proposal to the Parliament to decide. The decision is made by majority of votes*”). The

opposition opposed Article 2 of the draft law, because it contradicted Article 16/2 of the Constitutional Dispositions (competencies of the Parliament - *the Parliament approves and amends the constitution and laws*). The parliamentary majority argued that Article 2 of the draft law was not obligatory, but gave a modality, expressing itself with "may", as well as Article 16/2 of the Provisions was not obligatory, it did not say that only the Parliament could approve the constitution, and Article 16 / 7 (competencies of the Parliament - *the parliament decides on the popular referendums*) gave the possibility to the Parliament to make the decision on the referendum and to pass the right, for the approval of the constitution, to the people. During the debates in the parliament, the socialist parliamentarians described the president's proposal "*very democratic in form, but very anti-democratic in content*".<sup>36</sup> According to them, the president, by a simple law, demanded to invalidate the existing constitutional dispositions. The socialists proposed that Article 2 of the draft law was added: "*the referendum is held: for approving the constitution and its amendments after they are first approved by the Parliament*".<sup>37</sup>

Despite the opposition's rejection, the draft law "On the referendum" was approved only by majority's votes. On October 10, the Parliament voted the President's draft decision on the approval of the constitution by referendum. The socialists insisted that only through discussion in Parliament could the draft constitution be improved. The referendum in this case was inapplicable because it did not give the people the opportunity to change, remove or add any of the 124 articles of the constitution, as the people in the referendum were given a one-dimensional space to say No or Yes. The socialist parliamentary group stated that it was predisposed to reach a consensus in the Parliament for the approval of the draft constitution.

According to Namik Dokle (chairman of the socialist parliamentary group) the decision was anti-constitutional, because as he stated "*no president in the world has the right to present a decision, a decree asking to flagrantly violate the constitutional law of the country*",<sup>38</sup> whereas the parliamentarian Abdi Baleta described the president's decision as a "*silky coup d'etat*".<sup>39</sup> The socialist, social-democrat, Democratic Alliance and Abdi Baleta left the parliamentary session, refusing to vote on the draft decision. With 75 votes in favor, the parliament made the decision "*On the approval of the Draft Constitution by referendum*." A day later the President announced the popular Referendum for the adoption of the constitution and set November 6 as the day when the referendum would be held.

The Socialist parliamentary group addressed the Constitutional Court with a request to review the constitutionality of Article 2 of the Law "On Referendum" and the decision of the Parliament "On the approval of the Constitution of Albania by referendum", declaring them unconstitutional and suspending their implementation. The Democratic Alliance Party proposed the "Alignment for the Constitution" - a joint commitment of all opposition parties in defense of the legitimacy of the constitution, as a fundamental issue of democracy.<sup>40</sup> The opposition parties welcomed the proposal. There were 16 parliamentary and non-parliamentary parties that became part of the campaign.

At the meeting of the General Steering Committee of the Socialist Party, held on October 10, the socialists declared that they were not against the adoption of the constitution nor the referendum for its adoption, but they opposed the unconstitutional procedures, special articles of the draft constitution, which made it anti-democratic, as well as the lack of desire for consensus on the PD's part.<sup>41</sup> On procedural terms, according to them, it was unconstitutional to approve the constitution by referendum without first obtaining approval in the Parliament, announcing the date of the referendum November 6, while the law stipulated that the referendum should be announced at least 45 days in advance, not waiting for the decision of the Constitutional Court regarding the constitutionality of the referendum, following the legitimate appeal of the PS.

As a sign of protest against the non-consideration of the request by the Court before the referendum, thus showing serious negligence, three members of the Constitutional Court, Thimjo Kondi, Natasha Sheshi and Ylvi Myrtja resigned on November 3, explaining to the people that before the referendum, the draft constitution had to pass through the Parliament. In the letter of resignation, addressed to the President and the Chairman of the Parliament, they stated that the reason for their resignation was the irregularities and contradictions in the Albanian legislation on the judiciary.<sup>42</sup>

The majority defended its pro-referendum stance, legally, morally and practically. In legal terms there were two articles of the Constitutional Dispositions; Article 3, which stated that people exercised their sovereignty through a referendum, Article 16, item 7, which gave Parliament the right to decide on popular referendums, and the Law on Referendum, which justified holding a referendum on the adoption of the constitution. So every procedure was in accordance with the law. In moral terms, the Albanian people have historically shown that they were capable of making important and smart decisions, as they did in 1990 or March 22, 1992. In addition, the Albanian people have a valuable legal tradition, the canons, which express their own legal culture. In practical terms, the referendum was the only form that could approve the constitution, because the lack of consensus among political parties and the opposition by the socialists to any proposals and alternatives made by the democrats made the adoption of the constitution impossible. In this context, according to Mendim Veizaj, *“the political parties have a lot to learn from people: the simplicity of realistic judgment and the great tolerance that characterizes ordinary people with different political views”*.<sup>43</sup>

Written and visual press helped a lot with the campaign on the referendum. People got to know about the draft constitution through television, written press and brochures. Every issue of the newspaper “Rilindja Demokratike” wrote the declarations made by small non-parliamentary parties, institutions, associations and other organizations that supported the constitution and the referendum as the most democratic method for its approval. Specialists from different areas made comments on the constitution and its articles, giving their “professional and independent” opinions. Intellectuals, students and distinguished personalities called for voting in favor of the constitution identifying the importance of its approval and democratic principles. According to them, the draft constitution conveyed consolidation, enlargement and protection of democracy. It confirmed the democratic principles in Albania, the principle of protecting and respecting the human rights and freedom, principle of democratic coordination of powers and their independence, ensured people’s active participation in social, economic and political life of the country. In an interview for “Rilindja Demokratike”, Tritan Shehu stated that *“the draft constitution is of a high European level and whatever country would be proud with a constitution like that”*.<sup>44</sup>

Meanwhile, the left wing press wrote long analyses of political leaders, lawyers, specialists of the constitutional right related to deficiencies and problems of the draft constitution, which contained *“dictatorship microbes”*<sup>45</sup> as stated Servet Pëllumbi in the meeting of the SP’s General Committee. The remarks addressed to the draft constitution were related to the balancing of powers, the independence of the judiciary, the powers of the president and the form of government: (i) the non-determination of the status of the parliamentary republic of the Albanian state was criticized. Article 1 of the draft constitution defined Albania as a *“sovereign, democratic and unitary state”*, using political and sociological terms instead of legal ones. According to Moikom Zeqo, the constitution is a legal code and does not accept political terms. The status of Albania as a “parliamentary republic” must be clearly defined in the draft constitution, as this determines the other relations between the parliament, the government and the president.<sup>46</sup> (ii) Presence of many clauses affecting the freedom of speech

and thought was criticized.<sup>47</sup> (iii) Defining in the tasks of the armed forces, protection and security of the “*constitutional order*” as an indeterminate concept that could be misused was criticized as well.<sup>48</sup> (iv) The draft constitution did not keep parliamentarians from operating privately<sup>49</sup>.

The opposition's biggest allegations were about the president's 40 direct and indirect powers and the independence of the judiciary. The opposition accused the president of having vast powers, relinquishing legislative, executive and judicial power and fictitious separation of powers. Based on the powers of the President, according to the draft constitution, Albania is a presidential republic (the president was also the Commander-in-Chief of the Armed Forces, Chairman of the High Council of Justice, Chairman of the National Security Council, he/she can chair the meetings of the Council of Ministers, dissolve the Parliament, participate in party democratic forums). The President had the right to be a member of a party and be elected to its governing bodies, which was contrary to the role of the President as “*a representative of people's unity*”<sup>50</sup>. The President was not held responsible on constitutional violations, according to Article 12 “*the President is not held responsible of the activities committed while exercising the duty, except for treason against the country or intentional serious violations of the constitution*”. The term “*intentionally*” excused the President of his unconstitutional actions.<sup>51</sup>

There was also a debate on Part IV of the draft constitution, the Organization of Justice and the Constitutional Court - Judicial System. According to the opposition, the judiciary system was weak and politically dependent. The president's power over the judiciary undermined their independence because: he was the Chairman of the High Council of Justice, the only authority that appointed and dismissed judges and prosecutors. The President proposed the election of the Attorney General and his dismissal. The President appointed and dismissed the Head of the Supreme Court and its members, appointed the members of the Constitutional Court, which was the only body that had the right to try the President of the Republic. The draft constitution did not provide many important constitutional principles that sanction the independence of the judiciary power such as: (i) Justice must be administered on the basis of and for the implementation of the law, (ii) Judgment is made orally and publicly and in people's language, (iii) No one has the right to influence the issuance of court decisions. (iv) All state bodies, public and private authorities must respect the decisions and judicial acts during their activity. The judiciary lacked the means to exercise its independence: the judiciary had to have its own budget, the judicial police to administer justice. There were really no guarantees to make the judiciary independent<sup>52</sup>.

Democrats responded to the allegations by arguing that the draft constitution made courts more powerful than ever before. The powers of the president in the draft constitution were less than in the Constitutional Provisions. According to Tritan Shehu, “*the competencies of the Albanian president are below the average of the competencies of the European presidents and are indeed truncated in many ways*”.<sup>53</sup> The president did not exercise most of his powers alone, but for many aspects of the president's power, the Parliament had the right of the “*final say*” in being the “*judge*” of many of the president's proposals.<sup>54</sup> The decrees issued by the president had to be approved by parliament. The president issued acts, but only with the counter-signature of the prime minister or minister he proposed to, and if they violated the human rights and freedoms, they could be reviewed in court.

Regarding to this debate, in the analysis that Elez Biberaj makes of the draft constitution, it is stated that it resembled the post-communist constitutions of Eastern European countries; it adhered to international norms and standards; provided the separation of powers; protection of human rights; established a mixed system between the president and the parliament and in the powers between the parliament and the president neither party would impose itself on the other.

But the project had ambiguities about the judiciary.<sup>55</sup> In her analysis, Miranda Vickers argues that “*the draft constitution was intended to give the president more influence over appointing all important officials, such as ministers, ambassadors and judges, without prior approval of parliament*”.<sup>56</sup>

The Venice Commission, in its official document “*Comments on the Albanian draft constitution sent for popular approval on November 6, 1994*”, dated January 16, 1995, considered the work done for drafting the constitution “*a serious attempt to adopt a constitution in accordance with the European criteria to support democracy*,”<sup>57</sup> but there were several remarks related to the contents of the draft constitution. The list of human rights was not complete. The Commission suggested full application of the European Charter of the Human Rights. Some articles were unclear, leaving room for misinterpretations / abuses or gave the impression that they contradicted each other. The place of international treaties in the Albanian legal hierarchy was not clearly defined and the division of power between the president and parliament in the ratification of international relations was not clarified. The president was given higher powers than a head of state should have in a parliamentary republic. For example: the president had the right to set the date of the parliamentary and local elections without the proposal of the government; had the right to propose to the Parliament a referendum on a particular issue; had the right to chair government meetings and set their own agenda; had the right to establish direct links with heads of state bodies, without going through the respective ministry; had the authority to extend the mandate of the legislative in exceptional cases. With regard to the judiciary, there was uncertainty about its powers and the way how judges were elected and dismissed, placing them under the control of the legislative and the executive, violating the principle of independence and balance of powers. The draft did not provide for the establishment of an administrative court to review administrative violations. Chapter V, related to the local government, was suggested to be given more in details. The draft constitution did not specify which authority had the right of initiative to revise the constitution. The procedures for the referendum initiative were not clearly defined.<sup>58</sup>

Eduard Selami (chairman of the Democratic Party) started the campaign for the referendum, on October 13 from Korça, however the main role in this campaign was played by President Berisha. He held rallies and meetings with people, family visits to every city in the country from south to north. There, in front of the participants who filled the city squares, President Berisha, more than the concrete presentation of the draft constitution, which was being presented for voting, increased the civic enthusiasm with speeches that emphasized the historical importance of the constitution, denials and violations from the dictatorial past that should not be repeated in Albania, the appreciation to people by giving them the referendum right to adopt the constitution, the glorious historical moments when people had shown their wisdom and courage in defending national interests. In front of the citizens of Kavaja, President Berisha said: *When you vote for the constitution you vote for democracy, for a democracy of the years and centuries to come, you vote for Albania, because the constitution is the basic law of Albania and Albanians, which will lead them towards new spaces of freedom. Therefore, we must turn the referendum into a nationwide table where understanding and tolerance will dominate and the first Constitution of Albanians in history is the constitution of the great consensus of Albanians around freedom, the flag, around Albania.*<sup>59</sup> This was the spirit of the president's speeches at all rallies and meetings.

The campaign of the PS and other opposition parties focused on presenting the defects of the draft constitution during meetings held throughout the country. Their direct attack went to Sali Berisha, who, according to them, was “*dictating to the people a draft constitution for personal purposes*”,<sup>60</sup> a constitution that concentrated the power in the hands of the president

and did not guarantee the full independence of the judiciary. The socialists called on people for a strong NO in the referendum. The “NO”, according to them, should be against dictatorial arbitrariness, violation of laws, social injustices, state corruption, violation of human rights, political imprisonment and lack of hope. In estimating that this constitution “*can give birth to new dictators*”<sup>61</sup>, the Democratic Alliance Party called all democrats to vote “NO” on November 6, because “*this was not the draft constitution of December’s ideals .... it the draft constitution of political conjectures in favor of personal power which leaves the state without solid foundations... this draft constitution will be a constant threat to pluralist democracy in Albania*”.<sup>62</sup>

The campaign for the referendum was pompous, with magnificent rallies, numerous financial expenses, wide popular participation. All political forces held meetings throughout the country. Political leaders turned the campaign for the constitution into a fierce political struggle. The constitution was politicized and the confrontation between the opposition and the position was not simply for the pro (YES) and against (NO) attitude to the constitution, but a confrontation for the policies, attitudes, achievements, failures, mistakes made by each party. The Socialist Party accused the government and state institutions of preventing it from holding meetings with people, creating constant tensions at meetings of its leaders and parliamentarians, threatening to fire opposition supporters, and using state television to propagate pro-constitution. The socialists accused the PD of taking over the authorship of the draft constitution. There were accusations against the president's involvement in the campaign on behalf of the PD, when his own position should have been above the parties, a symbol of national unity. Berisha was criticized for the demagoguery used during the campaign. In this regard, Skënder Gjinushi, stated in his interview that “*you can not balance the systems with folklore*”.<sup>63</sup> The PD accused the opposition for calling on destabilization and violence during the campaign, for misinterpreting the constitution and distorting the purpose of the campaign.

The referendum was held on November 6, 1994. The entire voting process was led and monitored by the Central Voting Commission, established by decision of the President. It consisted of 17 members nominated by political parties and was headed by Vladimir Kristo, Deputy Minister of Justice. Election commissions of communes, municipalities and districts were appointed by district councils. The chairman of the commission was from that political force that made up the majority in the respective council of the commune, municipality or district, the secretary from the second political force and each political force represented in the local council would send representatives to the commission under the member status. Parties that did not have members on local election commissions could send their own observers. The referendum was held, legally based on the Law on Referendum, and from a procedural point of view the elections were held based on the same rules as the local government elections. Voting day was generally calm, however 2 acts of violence were reported near polling stations resulting in one dead person and one injured. Despite some procedural irregularities observed in the voting process, the Central Voting Commission, in the official statement for the referendum, stated that the referendum took place normally, the turnout was 84.43% of the voters; 41.7% voted in favor of the constitution; 53.9% voted against it. The constitution which the Albanians voted for was considered unacceptable.<sup>64</sup>

#### *2.4 Post referendum period, deepening of the political crisis*

In its National Council, the PD made an analysis of the referendum results and the reasons why Albanians voted against the constitution. According to party leaders, the factors for having 53% of Albanians against the constitution were the insufficient time for people to form an opinion of their own on the presented draft constitution; there were some articles in the

content of the draft constitution that were not in “*today's parameters*” and for which the Council of Europe had given suggestions for revision; excessive politicization by both sides of the constitutional issue and “*negative, deceptive, savage propaganda*” of the opposition; shortcomings and corruption in local and central government; organizational weaknesses of the PD in the campaign and the day of the referendum.<sup>65</sup> The same spirit and the same arguments were given by President Berisha at the press conference stating that “*the sovereign is not judged*”<sup>66</sup>.

According to the left-wing press, the people said NO to the draft constitution because they were against arbitrary and new-dictatorial rule, did not agree with the constitutional violations and the governance of Berisha and the PD, did not agree with the alarming government corruption.<sup>67</sup> The draft constitution was considered as a “*party code*” to keep PD longer in power. It concentrated the power on the hands of the President, giving him competencies and putting the juridical and executive power under president’s dependence. In estimating the people’s NO as a vote for the democracy, Servet Pëllumbi stated: “*The Albanian people did not accept a bad constitution simply to be admitted to CE, because it requires a dignified integration of Albania in European and international institutions*”<sup>68</sup>. Regarding the above, Skënder Gjinushi, stated that “*people cannot accept a forced project served by a single party, in illegal ways, through a propaganda that aimed to impose dictate*”.<sup>69</sup> Neritan Ceka evaluated the results of the referendum “*a popular verdict against personal power and arbitrariness*”<sup>70</sup>.

Members and senior leaders of the Democratic Party in 1994, in interviews given in later years, blamed Berisha for the referendum and its results. Dashamir Shehi, then deputy prime minister, stated: “*During the campaign, there was not even an attempt to explain it technically [the constitution]... The constitution became a political instrument, a clash between that majority and the opposition*”<sup>71</sup>. Mitro Çela, founder, member of the presidency and parliamentarian of the Democratic Party stated: “*Berisha was wrong to remove the parliament from the vote. He could have left the country without a Constitution for some time as there was no vacuum. But he was convinced of the victory of the draft constitution, he was not realistic at that time and the collaborators made him happy and moreover he was authoritarian and without much experience.*”<sup>72</sup>

As Miranda Vickers states in her book, “*Albanians*”, the reason for not approving the draft constitution is that it threatened the parliamentary republic. She writes: “*The Albanian people, aware that the protection of parliamentary democracy was already in danger, could not accept a draft constitution forcibly introduced by a single party without the approval of parliament.*”<sup>73</sup> The albanologist Robert Elsie considers the draft constitution as very democratic, a work of contemporary European standards and according to him, the reason for its popular rejection was not the content of the draft constitution, but the dissatisfaction and disappointment towards the Democratic Party and Sali Berisha. In his analysis, the main reason for the popular rejection was the referendum campaign itself, which was politicized and described by all political parties as a vote of confidence or no confidence to the government.<sup>74</sup> The same opinion was expressed by Fred Abrahams in his book “*New Albania*”, when he quotes a report of the American Embassy in Tirana, “*some of the voters became hostile when they saw a future that was very similar to the past*”<sup>75</sup> Elez Biberaj supports the opinion that voters did not vote against the draft constitution because of its content. The “*against*” vote happened for other factors such as: (i) Economic dissatisfaction and anger of voters with official corruption. (ii) The Democratic Party remained the only one in support of the draft constitution. All other parties from the far left to the far right opposed it. (iii) Berisha's personal commitment seems to have removed him

from the electorate. (iv) Conflict with Greece\* was an important factor in the “against” vote from the southern population, who feared that approval of the draft constitution would lead to a breakdown of the relations with Greece.<sup>76</sup>

The result of the referendum affected the political life of the country by increasing the clashes and political intolerance between the parties. The Socialist Party described the referendum results as a condemnation of the Democratic Party's policies, so it insisted on its demand for early elections. Early elections, according to the socialists, were a logical consequence of political developments in the country. The Parliament had lost the authority in people, the trust of the voters, so its renewal through new parliamentary elections was the fairest alternative. At the meeting of the SP General Steering Committee, held on November 14, assessing that the country was in economic crisis, constitutional, political, institutional and crisis of confidence was proposed:

- review and annulment of all violations of the Constitutional Provisions that took place on the occasion of the referendum of November 6;
- approval of the constitution legally, the Parliament to be recognized the right to deal with the preparation and approval of the constitution;
- if the Parliament was not able to give the people a constitution, then the president would decree new early elections.<sup>77</sup>

The socialists' request for new elections, Eduard Selami, on behalf of the Democratic Party, responded that the referendum was held for a very concrete problem such as the draft constitution. The “NO” was addressed directly to the constitution and this does not have to be a reason for early elections; the PD had received a 4-year governing term ending in 1996.<sup>78</sup> President Berisha responded harshly to the socialists' request for early elections. Such a request would be considered only if the Parliament lost the majority and could not work. The request for early elections, according to him was “*an operative obsession of some individuals that want the power as soon as possible by any cost*”.<sup>79</sup>

Considering the referendum results as a message from the citizens, the PD assigned itself the following tasks:

- Government restructuring and improvement of its job;
- Solution to most urgent problems;
- Fight against corruption, by force on every level;
- Creation of a constitutional parliamentary commission and approval of the constitution as soon as possible.<sup>80</sup>

After the referendum, as the loss was blamed on the government, the improvements started from there. Meksi government was renewed, 14 ministers and deputy ministers were replaced. The new government had no representatives from the PSD and PR. Conflicts escalated within the coalition and disruption became inevitable. The Republican Party, after standing by the PD in every action and decision, declared that it had withdrawn from the coalition. The PR Deputy Chairman, Fatmir Mediu, when asked about this decision, explained that the position was principled and had nothing to do with specific names. According to him, “*not discussing solutions to problems and not taking into account our remarks made us announce to the Prime*

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\* The conflict with Greece started with the trial Omonia members. After the publication of the draft constitution and the introduction of Article 7, which stipulated that the leaders of large religious communities must be Albanian citizens born and permanently residing in Albania during the past 20 years, these relations became more tense. If the draft constitution was approved, the Greek-born archbishop Anastasios Janullatos, who headed the Albanian Orthodox Church, would have to leave Albania. Southern Albanians living on the income sent by their emigrant family members in Greece would be hit hard by the breakdown of relations with Greece.

Minister on December 4 that we do not see the possibility of further participation in the governing coalition.”<sup>81</sup> While the relations between the PD and PSD had cooled since 1993, the coalition was officially broken after the referendum. According to the statement of Paskal Milo, the PSD had helped and supported the transformational policies of PD, convinced that the alliance between them was necessary for the eradication of communism, but reciprocity was not respected by the PD in this alliance, it had not taken into account the views of the Social Democrats, nor had it agreed to correct legally wrong issues. It was even more pronounced at the governing level, so the alliance for the PD was only for the “*bad days*”. The break-up of such coalition, which had never been real, was inevitable and could not cause regret.<sup>82</sup>

The post-referendum situation created divisions within the PD itself. The failure of the referendum was more of a loss for Berisha, who was strongly equated with the referendum, and for the Prime Minister Meksi, who headed the constitutional commission. President Berisha came out of the referendum with a faded figure and reduced support. Eduard Selami, chairman of the Democratic Party, used the new political situation within the Party to strengthen his position. Following the changes in the government, he demanded a review of the Party's status to determine that the party chairman should also hold the post of prime minister. This was not accepted by the members of the Party leadership, nor by Berisha, who did not want Alexander Meksi gone. Selami then came out openly against Berisha, stating that the approval of the new draft constitution should have been done by the parliament and not by referendum, as Berisha had expressed. Selami's stances were not tolerated by Berisha's supporters who prepared a strong blow against him. At the extraordinary meeting of the Democratic Party, on March 5, 1995, by open ballot, Selami was dismissed from the position of party chairman and replaced by Tritan Shehu. The open conflict within the Party shook the political life of the country.<sup>83</sup>

The Socialist Party continued to insist on condemning the procedures used for the adoption of the Constitution and its approval by the Parliament by consensus, after which the Parliament decided whether the constitution should go in a referendum.

### **Conclusions**

The constitutional reform is one of the most controversial reforms of the Albanian transition. In the late 1990s, constitutional changes were a necessity. Political and socioeconomic changes required the drafting of a democratic constitution that would respond to new developments in the country and pave the way for democratization processes. Constitutional reform began in October 1990, when the Parliament decided to set up a Special Commission to revise the 1976 constitution, to adapt it to the new stage of development, and finally was crowned with the adoption of the constitution, after 8 years of numerous political debates, on November 22<sup>nd</sup>, 1998. One of the most critical moments of this process was the referendum on the constitution, dated 6 November 1994.

Based on the Main Constitutional Dispositions, by a decision of the Parliament, a special parliamentary commission was created in April 1992 with the representation of all parliamentary parties, for the approval of the draft constitution which, according to Main Constitutional Dispositions, had to be approved by the parliament with 2 / 3 of the votes of all parliamentarians (140 parliamentarians). The work of the Constitutional Commission took place in a polarized political atmosphere. The PS and PD had established a hostile relationship with each other, which also affected the work of the Commission. Both sides blamed each other for delays in the constitution-drafting process. The debate in the Commission took place especially on the powers of the president of the republic and on the judiciary. There were debates even within the ruling coalition and within the PD itself. Lack of consensus made it difficult to adopt the constitution, which required 2/3 of the votes of all parliamentarians. The

Democratic Party had won 92 seats in the 1992 election, but by 1994 it had lost eight seats. Therefore, securing the necessary votes became difficult given the political polarization in the country.

To avoid the disapproval of the draft constitution in parliament, President Berisha stated that the approval of the constitution would be done by popular referendum bypassing the parliament. According to him, this was the highest form of democracy and expression of popular will, while according to the opposition, approval of the constitution by referendum, without first being approved by parliament, was unconstitutional. Through a process, contrary to the Main Constitutional Dispositions, laws were passed in the Parliament, by a majority vote, to implement the president's proposal. The Law on Referendums and the Decision on the adoption of the Constitution by referendum were adopted by expedited procedure and the day of the referendum was declared, without respecting the legal deadlines. All these actions were called unconstitutional by the opposition and it addressed the request to the Constitutional Court for review of their constitutionality. The court did not consider the request before the date of the referendum. This action, clearly influenced politically, made 3 of its members to resign.

In the referendum campaign, opposition parties joined forces to say NO to the constitution. The campaign of the PS and other opposition parties focused on presenting the defects of the draft constitution. The remarks made to the draft constitution related to the balance of power, the independence of the judiciary, the powers of the president and the form of government. Political leaders turned the campaign for the constitution into a fierce political struggle. The constitution was politicized and the confrontation between the opposition and the position was not simply for the pro (YES) and against (NO) attitude to the constitution, but a confrontation for the policies, attitudes, achievements, failures, mistakes made by the opposing party.

41.7% of voting participants voted in favor of the constitution; 53.9% voted against it. According to the PD, the reasons why Albanians said NO to the draft constitution were: insufficient time for people to know the draft, excessive politicization by both sides of the constitutional issue, the PD's organizational weaknesses in the campaign and on referendum day. According to the opposition, the people said NO to the draft constitution because they were against arbitrary rule, did not agree with the constitutional violations and the governance of Berisha and the PD, did not agree with the alarming government corruption and because the draft constitution concentrated power in the hands of the president giving him broad powers and placing the judiciary and executive power under the authority of the president.

The lack of political consensus and the willingness of political forces to come to terms with each other led to the failure of the attempt to give the country a constitution. In absence of "numbers" in the Parliament, the majority chose the unconstitutional path for the adoption of the constitution and not the path of negotiations with the opposition. The opposition, for its part, although involved in the entire constitutional process, took advantage of the lack of 2/3 of the votes in the Parliament by the majority and maintained a blocking stance on any proposal. The result of the referendum affected the political life of the country by increasing the clashes and political intolerance between the parties. There were problems in the ruling coalition and within the PD itself.

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