

A comparative view of the mandate of the deputy in the Albanian Constitution of 1925

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Abstract: *Un'analisi comparativa del mandato del deputato nella Costituzione albanese del 1925* – This essay analyses the evolution of the constitutional provisions on the deputy's mandate in Albania, particularly emphasising the Constitution of 1925. From a historical overview of Albanian Constitutional developments until 1925, the study examines how the 1925 Constitution conceptualised the deputy's mandate. Further, the study makes some comparative considerations with some European constitutions and a diachronic exam up to the present in Albania.

Keywords: Mandate of the deputy; Albanian constitutions; Constitution of 1925; Diachronic exam; Comparative law

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1. Introductory remarks

This essay analyses the constitutional basis of the deputy's mandate in the Albanian Constitution of 1925 in a historical comparative approach since the Organic Statute of 1913 up to the present. The methodology for the analysis of the features of the deputy's mandate in this essay uses two comparative elements: (a) the horizontal comparative approach between the Albanian Constitution of 1925 and some other constitutions of the time, such as the Constitution of Weimar (1919), the Constitution of the Third French Republic (1875) and the Albertine Statute of Italy (1861); (b) the vertical comparative approach which uses the 'time' factor in respect to the constitutional evolution in Albania up to the present.

The deputy's mandate was initially imperative; originally, in Roman law, the imperative mandate was characteristic in totalitarian regimes and is unthinkable in democratic states¹. Deputies holding imperative mandates are required to vote and act according to the orders and instructions of the voters; otherwise, their mandate may be revoked at any time.² This is

¹ For more info, consult: Venice Commission, CDL-EL(2008)031, *Report on the imperative mandate*, in Venice Commission of the Council of Europe webpage, 8-6-2025, 2-9, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-EL\(2008\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-EL(2008)031-e).

² Lots of authors treat the imperative mandate of the deputy in: L. Omari, *Sistemi Parlamentar. Lindja dhe evolucioni i parlamentarizmit. Parlamenti në Shqipëri (vështrim historiko-juridik)*, Tiranë, 2004, 96-108; L. Omari, A. Anastasi, *E drejta kushtetuese*, Tiranë, 2010, 208-211; Venice Commission, CDL-AD(2009)027, *Report on the imperative mandate and similar practices*, in Venice Commission of the Council of Europe webpage,

awkward in democracies, where the imperative mandate is prohibited, and/or the deputy represents a group of people or the entire country's people, some examples of which will be presented below in this article.

Besides the differences between imperative and representative mandates, the deputy's mandate consists of the rights and responsibilities of the deputy that are connected to his duty as a member of the Parliament, regardless of the unicameral or bicameral composition of the Parliament. The features of the deputy's mandate in the Albanian Constitution of 1925 will be the 'unit of measurement' for further comparative analysis. In this regard, the constitutional doctrine, either Albanian or European, when analysing the deputy's mandate, uses all or most of the following features:³ representative or mandatory mandate, immunities, incompatibilities, ineligibilities, loss or termination of the mandate, and indemnity.

In order for the comparative analysis to be more clear and understandable for the reader, within the framework of these introductory remarks, we are presenting in the following a summary of the main constitutional developments in Albania since 1912, when the independent Albanian state was created, until 1925.

1.1 Brief historical notes on the Albanian constitutions until 1925

The main Albanian constitutional developments since the creation of the independent Albanian State in 1912⁴ include: (a) Organic Statute of Albania (1914); (b) Fundamentals of the High Council's Canons (1920); (c) Extended Statute of Lushnja (1922).

Organic Statute of Albania (1914)⁵ is the first constitution of the Albanian state. It is a 'granted' constitution because it was drafted and given to Albania by the International Control Commission (appointed by the Great Powers in 2013)⁶, who initially wrote the first copy of this

12-6-2025, 1, 3-7, [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)027-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)027-e).

³ These integral features related to the mandate of the deputy are part of a large doctrine, among which: C. Grewe, H. Ruiz Fabri, *Droits Constitutionnels européens*, Paris, 1995, 442-446; L. Mezzetti, *Manuale breve di diritto costituzionale*, Milano, 2016, 274-280; L. Paladin, *Diritto costituzionale*, Padova, 2005, 315-320; T. Martines, *Diritto costituzionale*, Milano 2005, 239-246; L. Omari, A. Anastasi, *E drejta kushtetuese*, cit., 225-234; L. Omari, *Sistemi Parlamentar*, cit., 106-124; A. Anastasi, *E drejta kushtetuese*, Tiranë, 2003, 134-137; Xh. Zaganjori, A. Vorpsi, D. Biba, *Parime kushtetuese dhe të drejta themelore në jurisprudencën e Gjykatës Kushtetuese*, Tiranë, 2012, 32-39; K. Traja, *E drejta kushtetuese*, Tiranë, 2004, 212-214.

⁴ Albania was declared independent on 28 November 1912 by the unanimous decision of the Vlorë Assembly «Albania, as of today, will become on its own, independent and free»: A. Puto (cur.), *Çështja shqiptare në aktet ndërkombëtare të periudhës së imperializmit*, Vol. I (1867-1912), Tiranë, 1984, 384; A. Luarasi (cur.), *Akte juridike për historinë e shtetit dhe së drejtës në Shqipëri*, Vol. II, Tiranë, 1999, 9.

⁵ Consulted by: A. Puto (cur.), *Çështja shqiptare në aktet ndërkombëtare të periudhës së imperializmit – Përmbledhje dokumentesh me një vështrim historik*, Vol. II (1912-1918), Tiranë, 1987, 572-605.

⁶ The International Control Commission was appointed by the Great Powers by the London Ambassadors' Conference of 29 July 1913. A copy of the final decision of this Conference in Albanian can be found in LiCoDu webpage, 10-6-2025, <http://licodu.cois.it/?p=392&lang=en>.

statute in French⁷. Although according to Art. 1 of the Organic Statute,⁸ the form of government was a Parliamentary monarchy, the Parliament was almost totally controlled by the Princ, who could call, suspend and dissolve it⁹.

Fundamentals of the High Council's Canons (1920) is the caption for what in Albanian history and constitutional doctrine is known as 'the Statute of Lushnja' and as the first constitution of the Albanians, because it was drafted and approved by a national Congress -the Congress of Lushnja¹⁰. It was a short constitutional law made of 6 (six) articles that defined the Parliamentary monarchy with the High Council as a regency council. Because of its short content, it did not describe in detail the state organisation of the country. According to Art. 1, the name of the Parliament in this statute was 'the senate'. Since its first meeting, the senate declared itself a 'National Council'¹¹. This Parliament initially dealt with its internal organisation and approved 'The internal regulation of National Council'. Art. 45 of this internal regulation, which in the hierarchy of laws is lower than the constitutional laws, served as the basis for revising the Statute of Lushnja by a Constitutional Assembly and its evolution to the new Statute of 1922¹².

The extended Statute of Lushnja (1922) is a new statute, although its name shows its connection with the previous one. It also has the same form of government, that of Parliamentary monarchy, as determined in Art. 1, the High Council as a regency organ: «The King's place is temporarily exercised by the High Council (...).» This Statute provided for a clear separation of powers between the executive – exercised by the High Council through the government – and the legislative – exercised by the Parliament: the Parliament could not revoke the members of the High Council who were irresponsible and therefore irrevocable;¹³ the High Council had no competences in relation to the Parliament and could not dissolve it. There were heated Parliamentary debates in the Constitutional Council on the deputy's mandate and the responsibilities and privileges related to being a representative of the country. We'll present part of these debates in Section 2 in the function of the respective discussions of 1925.

⁷ We gained insights on this fact by: K. Imholz, *Kushtetutat kanë rëndësi*, I, Tiranë, 8, 9 (2011).

⁸ Organic Statute of Albania (1914), Art. 1 «Albania is formed as a constitutional, sovereign and hereditary principality under the guarantee of the six Great Powers».

⁹ A. Anastasi, *Historia e të drejtës kushtetuese në Shqipëri (1912-1939)*, Tiranë, 2018, 36; L. Omari, *Sistemi Parlamentar. Lindja dhe evolucioni i parlamentarizmit. Parlamenti në Shqipëri (vështrim historiko-juridik)*, cit., 157-159.

¹⁰ G. Hysi, *Organizimi i shtetit shqiptar dhe lufta politike rreth tij në vitet 1920-1924*, Tiranë, 1988, 25-40; A. Anastasi, *Historia e të drejtës kushtetuese në Shqipëri (1912-1939)*, cit., 40-41; E. Hoxhaj, *E drejtë kushtetuese e krahastuar (Rishikimi i Kushtetutave në Europë)*, Tiranë, 2013, 54-55.

¹¹ G. Hysi, *Organizimi i shtetit shqiptar dhe lufta politike rreth tij në vitet 1920-1924*, cit., 40-41; N. Haxhia Ljarja, *The Parliamentarism in Albania between the Two World Wars*, Beau Bassin, 2017, 19.

¹² On more info consult: E. Hoxhaj, F. Bjanaku, *Rishikimet jo-formale të kushtetutës: Praktika shqiptare*, in Vol. 5, *Revista Shqiptare për Studime Ligjore*, 1, 9-10, (2013) in Alb-Shkenca Institute webpage, 10-6-2025, <http://ajls.org/doc/1Rishikimetjoformaletekushtetutes.pdf>.

¹³ Extended Statute of Lushnja (1922), Art. 57-59.

All these statutes determined the Parliamentary monarchy as the form of government and an unicameral Parliament. However, during this period, Albanian Parliamentarism yet had a low scale of democratic and Parliamentary tradition. Here are some insights in regard: due to the outbreak of the Balkan War and the First World War, the newly created Albanian state, could not be strengthened and consolidated when state activity was almost paralysed¹⁴. the first political parties originated in the National Council of 1920 as opositary political Parliamentary groups of deputies whose leaders were Ahmet Zogu and Fan Noli¹⁵. the first democratic and multiparty elections were held between February and April 1921¹⁶. that is a time when Parliamentary debate rised, especially on discussions related to the form of government and the competencies of the High Council; a democratic revolution that happened in June 1924 – known in Albanian legal history as the period of the democratic government of Noli – brought the end of the first Parliamentary experience, because during this time there was no Parliament, the Constitutional Assembly was dissolved, 2 (two) out of 4 (four) members of the High Council fled the country while one had previously resigned since May 1924¹⁷. Published Parliamentary discussions on the rights, responsibilities and incompatibilities with the duty of a deputy on the respective provisions of the Extended Statute of Lushnja (1922) show cases where Albanian legislators referred to Italian, Greek and English legal provisions;¹⁸ these provisions are almost the same as those provided for in the Statute of 1925 and that are below in Section 2. The political Parliamentary debate on the form of government during this period remained only in the special commission on a new draft statute. It did not reach to be discussed in the Parliament or the constitutional assembly.

2. How is the deputy's mandate provided for in the Statute of the Republic of Albania of 1925?

Briefly about the political context of 1924 and its influence on the role of the deputy: in December 1923, the elections for the Parliament took place, in which the opposition took only 1/3 of the seats and accused the government of Zog of manipulating the elections. The political situation became even more heated when the old government did not resign after the new Parliament began its sessions in January 1924. The government of Zog used repressive measures against the opposition; the 'boiling point' was the murder in Paris of a member of the opposition, A. Rustemi, in April 1924. The day of his funeral turned into a popular uprising against the conservative government, which was led by the opposition, the success of

¹⁴ I. Elezi, E. Elezi, *Zhvillimi historic I mendimit teoriko-juridik shqiptar*, Tiranë, 2010, 29.

¹⁵ A. Anastasi, *Historia e të drejtës kushtetuese në Shqipëri (1912-1939)*, cit., 45.

¹⁶ N. Haxhia Ljarja, *The Parliamentarism in Albania between the Two World Wars*, cit., 28.

¹⁷ Cited by: L. Omari, A. Luarasi (Eds.), *Historia e Shtetit dhe e së drejtës në Shqipëri*, Tiranë, 2007, 345.

¹⁸ F. Rrumbullaku (cur.), *Debat parlamentar para një shekulli ... (Shqipëria – Monarki apo Republikë? Shtet mysliman apo pa fe zyrtare? Pushtetet dhe raporti mes tyre, drejtësia dhe pavarësia e saj, përgjegjësia para ligjit – në debatin kushtetues të vitit 1922 të baballarëve të kombit.)*, Tiranë, 2008, 104-115.

which in Albanian history is known as the Democratic Revolution of 1924.¹⁹ During the democratic governance of Noli from June to December 1924, there was no Parliament because the Constitutional Assembly as High Council was dissolved, and new elections could not be held. Also, the High Council was inactive, with only one member remaining out of its four members.²⁰ Although the democratic government of Noli was supported by the people and the country's most prominent intellectuals and resisted a big crisis, it remains the fact that it came into force through revolution and not through democratic elections.

As the previous government of Zogu came back into force, it was normal to present this new situation as the continuance of the last constitutional regime, unlawfully abruptly by the revolution. Further measures by this government were the restoration of the state organisation overthrown by the revolution and the removal of the mandate of 23 deputies (out of 83 members of the Parliament) who had supported the Noli government. A summary of the decisions of the remaining 60 deputies of the Parliament: on 21 January 1925, Albania was declared a republic; a few days later elected Zog as President; on 2 March 1925 approved the Founding Statute of the Republic of Albania after which decided to dissolve itself.

The Statute of 1925 provided for a two-chamber Parliament – the only bicameral one in Albanian Parliamentary history – composed of the Chamber of the Deputies (the lower chamber) and the Senate (the Higher Chamber)²¹ and for a Legislative Assembly as a joint session of the two chambers in cases provided by Art 84 (to elect the President of the Republic in case of early termination of the mandate by the one in charge) and Art. 141 (the revision of the Statute).

The analysis of the constitutional provisions related to the mandate of the deputy in this Section takes into account the systematic interpretation of the provisions about the following features of the mandate (that will further serve as elements of comparison in the following Sections of this essay):

- i. representative or mandatory mandate;
- ii. incompatibilities and early termination of the mandate;
- iii. immunities;
- iv. indemnity.

Considering that the Parliament in the Albanian Constitution of 1925 is bicameral, our analysis will also reflect the shared and different constitutional provisions for the deputy of each chamber. In order to stay faithful to the terminology used within the Founding Statute of the Albanian

¹⁹ Among others, see: A. Anastasi, *Historia e të drejtës kushtetuese në Shqipëri (1912-1939)*, cit., 47; G. Hysi, *Organizimi i shtetit shqiptar dhe lufta politike rreth tij në vitet 1920-1924*, cit., 203-207; L. Omari, A. Luarasi (eds.), *Historia e Shtetit dhe e së drejtës në Shqipëri*, cit., 343-344; L. Omari, *Sistemi Parlamentar. Lindja dhe evolucioni i parlamentarizmit. Parlamenti në Shqipëri (vështrim historiko-juridik)*, cit., 175-177.

²⁰ See *supra*, at the end of Subsection 1.1.

²¹ According to Parliamentary discussions for this decision were taken the models of USA, Switzerland, France and Australia, as consulted in: Kuvendi i Shqipërisë, "Bisedime Parlamentare 1925", No. 1, Tiranë, 2015, in Albanian Parliament webpage, 13-06-2025, 63 ss., <https://bisedimet.parlament.al>.

Republic²², our analysis below will also use the same one: deputy for the members of the Chamber of Deputies and senator for the members of the Senate.

2.1 Representative or mandatory mandate?

This issue in the Founding Statute of the Republic of Albania of 1925 is determined in Art. 14, 15 and 58; the mandate of deputies and senators is representative.

Art. 14²³ sets the representative mandate of the deputy when stating that the deputy represents the whole country, and Art. 15 explicitly prohibits the imperative mandate when saying «A deputy may not be given any mandatory instructions from his voters.»

All of the above comprise senators because, according to Art. 58²⁴, they enjoy the same constitutional rights as the deputies.

When the articles of the statute on the representative mandate of the deputy were discussed for adoption, there was no Parliamentary debate, and the articles were approved with the same provision as in the draft version.²⁵

These articles create a 'prima facie' impression that the mandate of the deputy is representative because of the prohibition of mandatory instructions by voters. However, the statute does not guarantee a free mandate of the deputy, by systematic interpretation with Art. 56(1) on the early termination of the deputy mandate through the possibility of dissolution of the Chamber of Deputies by the President of the Republic due to disagreements with the Senate on any decision or law.

2.2 Incompatibilities with the duty of a deputy and the early termination of the mandate

The concept of incompatibilities lies mainly in the principle of the separation of powers, especially as regards the separation between private interests of an economic nature and state functions²⁶. For the incompatibility as a prohibitive concept, it is not essential whether the official falls into the conditions of benefit due to the duty or in a conflict of interest; it is sufficient only the mere fact of the existence of two responsibilities simultaneously.

The incompatibilities with the duty of a deputy in Art. 13 of the Statute²⁷ are the same as those for senators in Art. 65. There was no Parliamentary debate when these articles were discussed in the Parliament and were approved immediately with the content as it stands now in Art. 13

²² A French version (non-official translation) of the Founding Statute of the Albanian Republic of 1925 can be found in LiCoDu webpage, 13-6-2025, <http://licodu.cois.it/?p=379&lang=en>.

²³ Founding Statute of the Republic of Albania, Art. 14 «The deputy is the representative not only of his constituency, but of the entire people of the country».

²⁴ Founding Statute of the Republic of Albania, Art. 58 «Senators enjoy all the rights specified for the deputies mentioned in this Statute».

²⁵ Kuvendi i Shqipërisë, "Bisedime Parlamentare 1925", cit., in Albanian Parliament webpage, 13-06-2025, 68, <https://bisedimet.parlament.al>.

²⁶ Xh. Zaganjori, A. Vorpsi, D. Biba, *Parime kushtetuese dhe të drejta themelore në jurisprudencën e Gjykatës Kushtetuese*, Tiranë 2012, 33-34.

²⁷ Meaning: Founding Statute of the Republic of Albania.

and 65 of the Founding Statute of the Republic of Albania of 1925, according to which the duty of a deputy or senator is not compatible with the following duties:

- any state salaried employee,
- any municipal employee or
- any active religious service.

The termination of the deputy mandate in the Albanian Statute of 1925 is provided for in the following occasions.

i. The newly elected deputy does not appear before the Chamber of Deputies to take the mandatory oath within 2 months without presenting reasonable grounds; it is up to the Chamber of Deputies to decide the admissibility or the justifiable grounds (Art. 21).

Art. 63 provides the same grounds for early termination of the senator's mandate, but with the difference that, in the case of senators, the Senate evaluates the admissibility of grounds. There was no Parliamentary debate when discussing the content of Art. 21 and 83, and they were approved with the same provision as in the draft version.²⁸ The Parliamentary practice of the time shows an example of such a case when a deputy of Gjirokastra, Banifra, did not show up in two months for the obligatory oath and did not present justifiable reasons.²⁹

ii. The deputy/senator who has been absent from meetings for two consecutive months without the authorization of the Chamber of Deputies/Senate, according to explicit provision in respective Art. 22 and 26, «is called as self-dismissed» by his duty as deputy/senator.

iii. The early termination of the deputy mandate is provided for in Art. 56(1) when the Chamber of the Deputy is dissolved due to disagreements with the Senate. This provision shows a weak deputy as part of a weak Chamber of Deputies: «If the Chamber of Deputies encounters disagreements with the Senate over any decision or law and the Chamber insists on its decision, the President of the Republic has the right, with the consent of the Senate, to dissolve the Chamber of Deputies»³⁰.

2.3 Deputy immunities

The deputy's immunity is guaranteed for the independent exercise and functioning of his duties as a deputy. The immunities provided for the deputies in the Albanian Statute 1925 concern: (i) irresponsibility for the expressed opinions and votes; (ii) intermediate immunity on the prohibition of arrest during plenary sessions.

i. Irresponsibility for the expressed opinions and votes: this is explicitly provided for in Art. 25.³¹ During the Parliamentary debate on Art. 25, there was also discussed the possibility of the irresponsibility of the

²⁸ Kuvendi i Shqipërisë, “Bisedime Parlamentare 1925”, No. 1, Tiranë, 2015, in Albanian Parliament webpage, 13-06-2025, 82, <https://bisedimet.parlament.al>.

²⁹ We gained insight on this regard in: A. Anastasi, *Historia e të drejtës kushtetuese në Shqipëri (1912-1939)*, cit., 107.

³⁰ Founding Statute of the Republic of Albania, Art. 56, para. 1.

³¹ Founding Statute of the Republic of Albania, Art. 25 «Deputies cannot be held responsible for the opinions and votes expressed in the Chamber of the Deputies».

deputies for the opinions expressed outside the Parliament, but it got objections and did not get approval.³²

ii. intermediate immunity on the prohibition of arrest during plenary sessions: Art. 6 provided that deputies can not be arrested for debt, can not be prosecuted nor arrested except for flagrant cases; for political offences/crimes, deputies could be prosecuted and sentenced at any time by the High Court, after approval by the Chamber of Deputies.

The above immunities apply to senators, too, because according to Art. 58³³, they enjoy the same constitutional rights as the deputies.

2.4 Parliamentary indemnity

Indemnity or payment for exercising the duty as a deputy or senator in the Albanian Statute of 1925 is provided in Art. 16 for the deputies and Art. 60 for the Senators. These articles set a certain amount as payment and an additional explicit provision: «This amount may be changed from time to time by law». The later Parliamentary practice shows examples of ordinary laws providing for the payment of deputies and senators, such as Law No. 25 of 1 April 1926 “On the annual indemnity of Senators and Deputies”³⁴.

2.5 The Albanian deputy of 1925 – a representative without power

In Subsection 2.2 above, when treating the early termination of the deputy, we noted a weak Chamber of the Deputy that could be dissolved due to disagreements with the Senate. Omari³⁵ and Anastasi³⁶ speak about the fictive Parliament of 1925. Omari drew his conclusion when comparing the competencies of the Parliament of 1925 with the previous one, which had more competencies and did not need to share them with the President or the Senate and could not be easily dissolved as the Parliament of 1925 in case of conflicts with the Senate or the Government. Anastasi, on the other side, drew her conclusions based on the analysis of the election system, which had a control mechanism through which the winners could only be those favoured by the Government, and the independent candidates could not win seats; this was further translated in the political spectrum of the Parliament that didn't even reach to have political opposition parties but only opposition groups. These groups could not be consequent and were called differently

³² A. Anastasi, *Historia e të drejtës kushtetuese në Shqipëri (1912-1939)*, cit., 106; Kuvendi i Shqipërisë, “Bisedime Parlamentare 1925”, cit., in Albanian Parliament webpage, 13-06-2025, 87 ss., <https://bisedimet.parlament.al>.

³³ Founding Statute of the Republic of Albania, Art. 58 «Senators enjoy all the rights specified for the deputies mentioned in this Statute».

³⁴ Published in Official Journal No. 58 of 3 April 1926, consulted in “Ligje, dekretligje e rregullore të vjetit 1926”, Vol. 3, in the Albanian National Library webpage, 14-06-2025, 68, <https://bibliotekadigjitale.bksh.al/iiif/?c=collections%21libra1&view=ThumbnailsView&manifest=https%3A%2F%2Fbibliotekadigjitale.bksh.al%2Fiiif%2FManifester%2FIIIF%2Flibra1%21HASHfb7d.dir&canvas=https%3A%2F%2Fbibliotekadigjitale.bksh.al%2Fiiif%2FManifester%2FIIIF%2Flibra1%21HASHfb7d.dir%2Fcanvas%2Fp1>.

³⁵ L. Omari, *Sistemi Parlamentar. Lindja dhe evolucioni i parlamentarizmit. Parlamenti në Shqipëri (vështrim historiko-juridik)*, cit., 178-184.

³⁶ A. Anastasi, *Historia e të drejtës kushtetuese në Shqipëri (1912-1939)*, cit., 119-120.

according to their casual attitude: 'the younger's' or 'the elder's' groups, 'the republicans' or 'monarchists.'

The deputies of 1925, despite constitutional rights and immunities, were subordinate and not sovereign, deputies with no powers because of the structural organisation of the Statute who created a powerful president who could dissolve the Chamber of Deputies before the end of the mandate (Art. 56 and 77) and has excessive executive powers that he exercises through appointing and dismissing ministers without the approval of the Chamber of Deputies (Art. 8 and 75).

No article in the Statute of 1925 allows the Chamber to issue a vote of no confidence or to remove ministers independently. Thus, deputies were not empowered to hold the executive accountable.

3. A horizontal comparative approach of the deputy's mandate in the Albanian Statute of 1925 and some other European constitutions of the time

The constitutions used for the horizontal comparative approach with the Albanian Statute of 1925, in this part of the article, are those of Germany, France and Italy that were in force in 1925 and that share the same formal constitutional model, a *prima facie* democratic constitutional organization, and the provision of the principle of separation of powers. These constitutions are:

a. Germany – Constitution of Weimar (1919) establishes a republic form of government and a bicameral Parliament composed of the Reichstag and the Reichsrat; it constitutes the prototype of the constitutions of its generation, and, at the same time, represents the outcome of a sort of laboratory of constitutionalism which is oriented towards a transition from the liberal model to the democratic one³⁷;

b. France – Constitution of the Third French Republic (1875) is composed of 3 (three) constitutional laws that established the Parliamentary republic in France with a bicameral Parliament and a powerful president of the republic;

c. Italy – Albertine Statute (1861), as the Constitution of the Unified Kingdom of Italy, established a constitutional monarchy as form of the government and remained into force until 1948.

In an ontological comparison between the four selected constitutions, we used the following criteria:

i. free mandate: this criterion assesses whether the constitution guarantees a free mandate or not, whether the deputy is legally and politically independent in how he acts and votes;

ii. party pluralism: this criterion assesses whether the constitution creates the possibility of party pluralism;

iii. Parliamentary sovereignty: this criterion assesses whether the deputy participates in a sovereign deliberate body, whether the deputies hold

³⁷ P. Carrozza, A. Di Giovine, G.F. Ferrari (cur.), *Diritto costituzionale comparato*, II, Bari, 2025, 1172.

the power to dismiss the executive, initiate and freely approve legislation with no constraints;

iv. executive dominance: this criterion assesses whether the deputy serves under or stands beside the executive, if the president has powers to dissolve the Parliament, issue law decrees or appoint without legislative oversight.

3.1 Free mandate

Does the constitution guarantee a free mandate? The answer to this question is 'Yes' if the deputy is legally and politically independent in how he votes and acts. On the contrary, the answer is 'No' if the deputy is a functionary executing someone else's will.

In the case of Albania (1925), we argued that there is no structural or practical independence from the executive branch. Regarding the other selected countries, the Constitution of Weimar (1919) explicitly protects free mandate in Art. 21; the Constitution of France (1875) provides for a classical model where deputies act in conscience, they act freely and are not under mandate; the Albertine Statute has no explicit provisions, but deputies are expected to align with the royal executive.

Table 1 - Results of the comparative analysis on free mandate

	Albania (1925)	Germany (1919)	France (1875)	Italy (1861)
Free mandate	X	√	√	X

3.2 Party pluralism

Has the constitution created the possibility of party pluralism? Is the deputy carrier of an ideological plurality or just a member of a unified regime framework? Except for the constitutional provisions, we used an indicator for the analysis: the presence of opposition parties.

In the case of Albania in 1925, we argued that there was no real opposition and that Zog's regime controlled candidates. As regards the other selected countries: Germany (1919) – multiparty system with SPD, Zentrum, DNVP, etc.; France (1875) – longstanding multiparty pluralism; Italy (1861) – Fascist Party dominated after 1922³⁸ and opposition was outlawed by 1925.

Table 2 - Results of the comparative analysis on party pluralism

	Albania (1925)	Germany (1919)	France (1875)	Italy (1861)
Party Pluralism	X	√	√	X

³⁸ Note to the reader: please take into account that we are doing horizontal comparison in the year 1925.

3.3 Parliamentary sovereignty

Parliamentary sovereignty deals with the fact whether the Parliament can legislate freely and/or can hold the executive accountable. Does the deputy participate in a sovereign deliberate body? Our analysis considered a Parliament sovereign if the constitution provides him with the power to dismiss the executive, initiate and freely approve legislation with no constraints and has a mechanism for budget control.

In the case of Albania (1925), we argued that the Parliament has no real counterbalance to the executive. As regards the other selected countries: Germany (1919) – Reichstag had extensive powers (Art. 68-73); France (1875) – the Chamber of Deputies can dismiss the government; Italy (1861) – after 1922³⁹ real legislative initiative shifted to Mussolini.

Table 3 - Results of the comparative analysis on Parliamentary sovereignty

	Albania (1925)	Germany (1919)	France (1875)	Italy (1861)
Parliamentary sovereignty	X	√	√	X

3.4 Executive dominance

Does the constitution create executive dominance? Here, we analyse whether the deputy serves under or stands beside the executive, if the president has powers to dissolve the Parliament, issue law decrees or appoint without legislative oversight.

In the case of Albania (1925), we argued that the president was a powerful one who could dismiss the Chamber of Deputies and appoint and dismiss ministers without the approval of the Chamber of Deputies. As regards the other selected countries: Germany (1919) – the Weimar Constitution was initially balanced but later weakened by emergency powers; thus, proved the executive dominance powers of the president after the abuses with Article 48⁴⁰; France (1875) – Executive relatively weak; Italy (1861) – after fascist laws of 1925, Mussolini controlled state organs and Parliament.

Table 4 - Results of the comparative analysis on executive dominance

	Albania (1925)	Germany (1919)	France (1875)	Italy (1861)
Executive dominance	√	X	X	√

³⁹ Note to the reader: please take into account that we are doing horizontal comparison in the year 1925.

⁴⁰ P. Carrozza, A. Di Giovine, G. F. Ferrari (cur.), *Diritto costituzionale comparato*, I, cit., 151; E. Hoxhaj, *E drejtë kushtetuese e krahastuar (Rishikimi i Kushtetutave në Europë)*, cit., 18-19.

4. On some features of the deputy's mandate in the Albanian constitutions of the communist period 1945-1990

From 1945-1990, Albania suffered a dictatorial communist regime known as a monist regimen for the lack of party pluralism and Parliamentary sovereignty. Two constitutions were approved during this period: 1) the Constitution of the People's Republic of Albania (1946) and 2) the Constitution of the Socialist People's Republic of Albania (1976). The Constitution of 1946 does not mention the special role of the Communist Party within the state organisation and society. However, as in all communist countries, it was clear enough its dominant role in every cell of life, state and social activity.⁴¹

The communist regime and regulations in both constitutions were almost the same as in all communist countries. These constitutions are known for the provision of the mandatory deputy's mandate. The following presents the deputy's mandate in the Albanian Constitutions of 1946 and 1976.

4.1 Imperative deputy mandate

Both Constitutions provide for an imperative mandate of the deputy, which is connected to the possibility of voters to dismiss the deputy or revoke his mandate.

Art. 15(3) of the Constitution of Albania of 1946 provided that: «Voters have the right to revoke their representatives at any time. Special laws enforce the norms for exercising this right.» In regard, Albanian history recognises cases when, since 1947, began the expulsion of groups of deputies from the people's assembly, a prelude to the criminal punishment and physical liquidation of a good part of them.⁴²

The imperative deputy mandate in the Constitution of 1976 was provided in Art. 8(2), according to which voters have the right to revoke their representatives at any time when he:

- has lost the political confidence of his voters,
- does not fulfil the given duties or
- acts contrary to the laws.

The principle of deputy's revocation, present in both Constitutions of 1946 and 1976, has been used as a tool of repression against members of the Parliament who, for various reasons, have been politically and physically eliminated⁴³.

4.2 Lack of incompatibilities with the mandate of the deputy

The Albanian Constitutions of 1946 and 1976 do not provide for any incompatibility of the deputy's mandate with any other functions.

⁴¹ Xh. Zaganjori, *Demokracia dhe shteti i së drejtës*, Tiranë, 2002, 155.

⁴² Cited by: L. Omari, *Sistemi Parlamentar. Lindja dhe evolucioni i parlamentarizmit. Parlamenti në Shqipëri (vështrim historiko-juridik)*, cit., 105.

⁴³ L. Omari, *Shteti i së drejtës*, Tiranë, 2004, 47.

Thus, in the Albanian socialist state, deputies were civil servants, military officials, sometimes clericals (until the prohibition of religious cults), judges, and prosecutors.⁴⁴

5. Instead of the conclusions: A step into the present – the deputy's mandate in the Albanian Constitutional provisions and jurisprudence

Brief historical overview of Albania's constitutional developments of 1990-2025: Since the democratic changes of 1990, Albanian constitutional history has had a series of developments, the central part of which include:

1) the Law on the Main Constitutional Provisions of 1991 – that is a package of laws that has been amended 10 (ten) times⁴⁵ and

2) the Constitution of 1998 has been amended 7 (seven) times⁴⁶ so far. Among these amendments relevant for our analysis are the amendments of 2012 and 2016 that revised Art. 73 regarding the status and immunities of the deputies.

5.1 Early termination of the deputy's mandate

The beginning and termination of a deputy's mandate are provided for in Art. 71 of the Constitution.

The beginning of the mandate, according to Art. 71(1) is the day when they are declared elected by the respective electoral commission. The day of the beginning of the mandate is related to the obligation of the deputy to avoid incompatibilities. In this regard, there was a case at the Albanian Constitutional Court (hereinafter ACC), V-44/11,⁴⁷ in which the court found the deputy in conditions of incompatibilities by beginning the mandate since the declaration of election by the respective commission, since when the deputy was obliged to avoid the conflict of interest.

Art. 71(2) of the Constitution determines the following cases of invalidity or early termination of the mandate(except for the case when the mandate of the Parliament ends):

a) the deputy does not take the oath;

⁴⁴ L. Omari, *Sistemi Parlamentar. Lindja dhe evolucioni i parlamentarizmit. Parlamenti në Shqipëri (vështrim historiko-juridik)*, cit., 108.

⁴⁵ Adopted by Law No. 7491, dated 29.4.1991 «On the Main Constitutional Provisions», as amended with the following laws: No. 7555, dated 4.2.1992; No. 7558, 9.4.1992; No. 7561, dated 29.4.1992; No. 7570, dated 3.6.1992; No. 7596, dated 31.8.1992; No. 7692, dated 31.3.1993; No. 8234, dated 27.8.1997; No. 8255, dated 19.11.1997; No. 8257, dated 19.11.1997; No. 8266, dated. 19.12.1997.

⁴⁶ Adopted by Law No. 8417, dated 21.10.1998 «Constitution of the Republic of Albania», as amended with the following laws: No. 9675, dated 13.01.2007; No. 9904, dated 21.04.2008; No. 88/2012, dated 18.09.2012; No. 137/2015 dated 17.12.2015; No. 76/2016, dated 22.07.2016; No. 115/2020, dated 30.07.2020; No. 16/2022, dated 10.2.2022. An English version (updated up to the amendment of 2020) can be found in Euralius project webpage, 14-06-2025, in <https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&id=178&catid=9&m=0>. The Albanian version available in Qendra e Botimeve Zyrtare webpage of official publications, 14-06-2025, in <https://www.qbz.gov.al/preview/635d44bd-96ee-4bc5-8d93-d928cf6f2abd>.

⁴⁷ Albanian Constitutional Court, Decision No. 44, dated 7.10.2011.

b) resigns;
c) when is absent for more than six consecutive months in the Assembly without justifiable reason;
d) is convicted by a final court decision for commitment of a crime;
e) is ascertained one of the conditions of ineligibility provided for in Art. 69⁴⁸ or incompatibility provided for in Art. 70(2,3).

The incompatibilities with the deputy's mandate, as provided for in Art. 70(2,3) are: «2. Deputies may not simultaneously exercise any other public duty except that of a member of the Council of Ministers. Other instances of incompatibility are specified by law. 3. Deputies may not carry out any profit-making activity that stems from the property of the state or local government, nor may they profit from this property.»

The ACC has treated the issue of the incompatibility of mandates several times. In its Decision V-37/00⁴⁹, the Court argued that the deputies are given powers that are essentially powers of control and that these powers cannot be exercised if the deputy simultaneously exercises executive powers in the local government body. In Decisions V-44/11⁵⁰ and V-7/16⁵¹, the Court argued that the prohibitions are clearly and unequivocally expressed by the constitution-maker, who aimed to eliminate the reasons for considering the function of the deputy as a good opportunity to increase the source of private income through the favourable position he has as a member of the highest representative body.

The ACC Decision V-44/11⁵² and Decision V-7/16⁵³ are cases in which it decided the early termination of the deputy's mandate because of incompatibilities. A similar case on the incompatibility of the mandate of a deputy of the governing party has been grounds for several conflicts of competencies between the Parliament and the ACC. The case of the incompatibility of the deputy's mandate, presented to the Parliament by the opposition, was rejected; the ACC issued Decision V-55/24⁵⁴, which imposes the obligation to the Parliament to send to the ACC without delay the motion for this deputy's incompatibility. It continued a series of ricocheting decision-making moves between the Parliament and the constitutional court; even the Venice Commission was set in motion for European best practices in similar cases, but the case ended through the termination of the mandate of Parliament because of regular general elections of May 2025. The conclusion of this case lies in the duality between the lesser power or incompetence of the constitutional court.

5.2 Criminal irresponsibility and immunity of the deputy

⁴⁸ Art. 69 of the Constitution concerns the ban on running for deputy (otherwise the mandate becomes invalid) without resigning for some officials such as: judges, prosecutors, military servicemen on active duty, police and national security employees, and others as explicitly defined in this Article.

⁴⁹ Albanian Constitutional Court, Decision No. 37, dated 23.6.2000.

⁵⁰ Albanian Constitutional Court, Decision No. 44, dated 7.10.2011.

⁵¹ Albanian Constitutional Court, Decision No. 7, dated 24.2.2016.

⁵² Albanian Constitutional Court, Decision No. 44, dated 7.10.2011.

⁵³ Albanian Constitutional Court, Decision No. 7, dated 24.2.2016.

⁵⁴ Albanian Constitutional Court, Decision No. 55, dated 10.7.2024.

Functional immunity of the deputy is provided for in Art. 73(1) of the Albanian Constitution; he is not held responsible – therefore can not be prosecuted – for opinions expressed and votes cast in the Assembly. Defamation cases are an exception to this rule.

Art. 73(2) provides for the procedural immunity according to which the criminal prosecution or arrest of the deputy is prevented: «A deputy may not be arrested or have his liberty deprived in any form or have a personal search of his house carried out, without the authorisation of the Assembly.» Cases of flagrance make an exception to this rule.

The analysis of Art. 73, as amended with the constitutional reforms of 2012 and 2016, shows that:⁵⁵

- i. deputy's immunity is not absolute, but it can be violated only by given consent from the Parliament;
- ii. an exception to the above rule is made only in cases of flagrance;
- iii. the immunity extends throughout the legislature as there is no explicit provision extending it only during the Parliamentary sessions.

In its Decision V-39/2000⁵⁶ to interpret Art. 37(2) before the amendments, the ACC argued that the purpose of the immunity is the protection of the Parliamentary duty, not the protection of the individual. The Court⁵⁷ helped to limit and critically review cases where the Parliament did not grant permission for criminal prosecution when it decided that: «For matters provided for in Article 59 of the Code of Criminal Procedure, the request for authorisation to prosecute persons enjoying immunity is addressed to the Assembly of the Republic of Albania, by the court itself with which the request of the injured party-accuser was filed.»⁵⁸

The ACC later addressed the role of the injured party-accuser in the criminal process and the position of the prosecutor in Decision V-3/08:⁵⁹ «In the cases provided for by Article 59/1, the prosecutor's participation is not completely excluded. He has the right to participate during the trial of these cases, requesting, as the case may be, the guilt or innocence of the defendant. The exclusion of the preliminary investigation from these cases and allowing the injured party to file charges is not a usurpation of the prosecutor's powers, but simply allowing the injured party to be active in a process in which he is directly interested.»

As conclusive remarks, the constitutional amendments of 2012 and 2016 in Article 73 of the Constitution and the ACC jurisprudence contributed to reducing abuse with immunity.

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⁵⁵ For more detailed analysis in regard, consult also: L. Omari, *Çështje juridike e shoqërore*, Tiranë, 2017, 384.

⁵⁶ Albanian Constitutional Court, Decision No. 39, dated 23.6.2000.

⁵⁷ Meaning: the Constitutional Court.

⁵⁸ Albanian Constitutional Court, Decision No. 39, dated 23.6.2000.

⁵⁹ Albanian Constitutional Court, Decision No. 3, dated 6.2.2008.

