Journal of Positive School Psychology
2022, Vol. 6, No. 3, 5078 – 5086 http://journalppw.com

The Constitutional and Normative Nature of the President's Decree for Setting the Date of the Elections and the Control of Constitutional Justice over this Act

Jordan Daci
[1] *Dean of the Law School, Qiriazi University and Professor of Constitutional Law, Human Rights Law and Criminal Procedure Law, Tirana, Albania.*
Correspondence concerning this article should be addressed to Dr. Arburim Iseni, Department of English Language and Literature, State University of Tetova, North Macedonia, Email: arburim.iseni@unite.edu.mk

Abstract

The decision of the Central Election Commission not to implement the decree of the President of the Republic revoking the Decree by which he had set June 30, 2019 as the date for the general local elections in the Republic of Albania, sparked a strong debate in society and among lawyers on the constitutional, normative, normative or individual administrative nature of the Decree of the President of the Republic "On setting the date of elections". This debate, though without any legal or doctrinal basis, conveyed to society a general distortion and created a dangerous social division between those who chose to respect the decree and those who considered it as an absolutely invalid administrative act. It was precisely this constitutional practice which was developed for the first time that led to clashes between political forces and unusual reactions from the institutions of a rule of law state. This issue was subject of review in the Constitutional Court of the Republic of Albania, but the court with its decisions did not give a constitutional answer to any claim of the parties regarding the nature of this decree or its effects in relation to the institutions as a whole or over the control of the legality or constitutionality of this decree. The focus of his paper is to analyze the legal nature of Presidential Decrees as sources of law, to classify Presidential Decrees as a whole and to analyze in particular the nature of the Decree on setting the Election Day, as well as the control of the constitutionality of this decree.

Keywords: Presidential Decree in Albania, legal nature of decrees, principle of legality, principle of constitutionality, control of legality and control of constitutionality, basic acts, derived acts, normative constitutional acts, normative administrative bylaws, individual administrative acts.

The nature of the decree of the President of the Republic for setting the date of the elections, as a constitutional and normative act

The decrees of the President of the Republic in Albania as well as in other countries that are classified as Parliamentary Republics are one of the formal sources of law. In fact, the origin of the word decree comes from the Latin word *'Decretum'* which means an act having binding force or a decision of a magistrate.[1] At the same time in ancient Rome there were also Emperor's Decrees representing an imperial constitution. Meanwhile, nowadays the Decree is usually identified with the act of the head of state or the President of the Republic in the case of Albania.

In itself, any legal act that arises from a constitutional body or from a body of public or state administration has the simple purpose of introducing legal norms to regulate social

[1] Black's Law Dictionary. Eighth Edition. Bryan A. Garner Editor in Chief. Thomson West. USA 2007. P.442.

relations in a country. Those relations once object of regulation of legal norms, turn into legal relations. On the whole, legal acts can be basic norms which initially define norms of conduct, or derivative norms that derive from other existing norms. Such norms, aim a further regulation of the social relationship that are regulated by existing basic norms while defining more detailed and less general norms. At the same time, we have legal acts which simply apply the legal norms into force and which personalize the application of general legal norms for a specific case, for a specific subject or for a precisely defined group of subjects. The group of social relations that are object of the norm is what the theory of law recognizes as the hypothesis of a norm. Meanwhile, in the cases of acts that personalize the application of legal norms, there is no hypothesis in its true sense, as they do not contain in themselves detailed behaviors directed to one or several precisely defined subjects, but simply recognize a right or announce an obligation to these subjects. The latter by nature, are what are known as individual acts. The individuality of an act derives essentially from the very legal relationship it regulates, which is a special legal relationship.[2] On the other hand, the basic acts "establish the rules even before the conflict arises or refer to a number of possible or hypothetical facts"[3]. In other words, the characteristic of individual or implementing acts is the fact that they do not define general norms or abstract norms of behavior and consequently have no hypotheses, and do not apply to the whole territory of a country or to a part of it, so have no basis of action related to a space and certainly, produce consequences only for a given subject or a precisely defined group of subjects. Thus, in any case these acts derive from legal acts which simply apply other norms of higher supremacy in the hierarchy of legal norms. On the other hand, according to Hans Kelsen, basic legal acts are basically what are known as the basic or primary sources of law from which the primary source is the main basic norm or "Basic Norm" and followed by other sources of law such as the norms of International Law, laws adopted by a qualified majority, ordinary laws and normative acts of the government which are equal to the ordinary laws when they are approved by the Parliament within 45 days after their approval from the government. However, as a result of the development of law and in the context of a kind of decentralization of the legislative process through the delegation of this competence from the legislator to the Government, the general acts by the nature of the relations they regulate or by having a hypothesis that is a continuation of the hypothesis the legal norm from which their issuance is authorized, the general nature of the rule of conduct of norms, as well as the circle of subjects to which they are addressed, are classified as derivative normative acts and Normative acts of the Council of Ministers. This category also includes acts issued by local government bodies that have force only within the territorial jurisdiction exercised by these bodies and normative acts of ministers and governing bodies of other central institutions which have force throughout the territory of the Republic of Albania within the sphere of their jurisdiction.[4] Thus, the law and normative acts provide rules of conduct with a general impact on society and are not limited to a particular case or circle of persons, nor to an issue of an individual character.[5]

So as a rule, the individual legal act must be derived from a law and cannot be a basic act, but exceptionally there are cases when acts that derive directly from the Constitution, but have an individual character even though they are not derived from a law. Examples of it are some decrees of the President of the Republic as decrees of various appointments or dismissals he makes, decrees for awarding decorations, for granting pardon, for granting citizenship, etc.

In fact, the nature of the decrees of the President of the Republic is determined first by the source, which are directly the constitutional

[2] Esat Stavileci. *Vepra XIX. "Të menduarit dhe të shkruarit juridik"*. Shtypshkronja Prograf. Prishtina 2013, p. 257.
[3] Ibid. P. 276.

[4] *See* Article 116 of the Constitution of the Republic of Albania.
[5] *For more see.* Jordan Daci. "Law in Post-Communist countries: Case of Albania". Published as part of the proceedings of the XXV. World Congress of Philosophy of Law and Social Philosophy, at the University of Frankfurt Germany, "Goethe Frankfurt am Main", Paper series No. 024 / 2012 Series B "Human Rights, Democracy; Internet/intellectual property, Globalization". URN: urn:nbn:de:hebis:30:3-248826.
http://d-nb.info/1054043272.http://nbn-resolving.de/urn:nbn:de:hebis:30:3-248826. Dewey Decimal Classification: 340 Recht. Institutes: Rechtswissenschaft.

norms, having or not a hypothesis and in cases when there is, it is a derived or basic hypothesis, the circle of subjects addressed to, having or not a rule of conduct and the nature of the rule of conduct, the consequences they produce and the existence or not of the spatial element of their effects. Indeed, the nature of an act of the President, just like for of any other act is determined by the very nature of the norm which authorizes the issuance of the act. Based on these parameters, the President of the Republic always issues acts of a purely constitutional nature as soon as he exercises his Constitutional powers. Meanwhile, in cases when it exercises powers deriving from various laws, the acts of the President have a sub-legal character.

In the multitude of normative acts of the President of the Republic are: 1. Concluding international agreements; 2. Decrees on setting the date of elections for the Assembly, local government and referendums. 3. Other decrees that may derive from any special law (currently there are none). These acts are normative or general acts because:

1) They have an original hypothesis of their own and not derived from other higher legal norms.

2) Their hypothesis regulates a set of general non-specific relationships.

3) Set rules before a conflict arises or refers to a number of hypothetical facts.

4) They are not derived norms, but basic norms. That's mean that they are issued not having as a scope the application of other legal norms, but only the application of primary norms or basic constitutional norms. Thus, they are not bylaws.

5) Define general behavioral norms that apply to all subjects of law and not to a certain group of individuals.

6) They apply to the entire territory of the country or to a certain territory related to a certain constituency in the case of local elections or referendums.

7) They are the result and expression of political leadership.[6]

Academician Luan OMARI also holds this position when he says: "We think that the acts for concluding an international agreement, as well as the decrees for setting the date of the elections are normative acts, as long as they define rights and duties for various state bodies. However, these acts are not subject of the approval from the Assembly (Parliament)".[7]

Control of legality and constitutionality of acts

According to Hans Kelsen, law meant rules and not facts and appeared in the form of a system with a clear hierarchical structure. According to him, "a norm is part of a system which is based simply on the fact that the validity of this norm can be defined since from the basic norm, based on which the system is built."[8] So, according to Kelsen, this meant that the norm in question is valid only if it is created in accordance with the highest norm or the constitution which determines the validity of all norms. Thus, if the constitution is valid, it means that all other norms created on the basis and in accordance with it, are also valid.[9] According to Kelsen, the whole law is a hierarchical structure at the top of which was the basic norm or the constitution which was the basis for the creation of other norms and, then from that, all the other norms were extended. On the other hand, the lowest norm has a purely implementing character and everything between the highest and the lowest rate has a dual character of both creating and implementing the highest norms.[10] It is these justifications that form the basis of the principle of legality which expresses nothing but the hierarchical relationship that is created between the different categories of legal acts and the norms[11] and that make possible the avoidance of conflict of legal norms and thus ensure the unity of norms, as well as the very functioning of the legal system. According to this principle, any norm that conflicts with a higher norm is considered invalid and precisely because

[6] *See* Decision No. 25, dated 13.02.2002 of the Constitutional Court. Vendime të Gjykatës Kushtetuese të RSH. Botimi i vitit 2003, page 41. As cited by Sokol Sadushi. "E Drejta Administrative 2". Botimi i tretë i ripunuar. Shtëpia botuese ORA. Tirana 2005, page 26.

[7] Luan Omari. *"Parime dhe institucione të së Drejtës Publike". Botimi 6*. Botimet "Elena Gjika". Tirana 2004, p. 304.

[8] Hanno Kaiser. "Notes on Hans Kelsen's Pure Theory of Law (1st Ed.). 2004". Professor's Hanno Kaiser webpage. Marrë nga www.hfkdocs.com/files/Kelsen_Pure_ Theory.pdf. As cited inJordan DACI. *"Të Drejtat e Njeriut"*, Botimi IV, Mirgeeralb, Tirana, Mars 2017. ISBN: 978-9928-07-492-8 1. P.67.

[9] Ibid, page 4.

[10] Ibid.

[11] Jordan DACI. *"Të Drejtat e Njeriut".* Botimi IV, Mirgeeralb, Tirana, Mars 2017. ISBN: 978-9928-07-492-8-1. P.67.

of this relationship that is created between the norms of the different hierarchical levels of the same system they belong. Thus, no discrepancy between the two is allowed. According to this logic, an act is either invalid or valid and an invalid act is 'null' and an act 'null' does not constitute a norm, but only a manifestation in its external form.[12]

The legal system could not exist without the principle of legality which essentially embodies the rule that ensures harmony between legal norms through the rule of excluding the application of a norm based on the hierarchy of norms. This principle determines the content and validity of all norms derivative or of implementing nature that are also known as bylaws through the general rules defined by law. On the other hand, when this principle is based on the evaluation of the constitutional norms become what is known as the principle of constitutionality or the principle that assures the compatibility of the content and validity of the lower norms with the constitutional norms. Meanwhile, the basis of the rule that determines the hierarchy of legal norms is the importance of the social relationship that the norm regulates.[13] This means that the more important the relationship the more important becomes the norm and the more important is the norm, the higher will be its position in the hierarchy of legal norms.[14] From another point of view, the importance of the relationship and the legal norm is also a reflection of the importance of the public interest. In fact, the latter is the basic rule that sets the boundaries and the basis of the legitimacy of any action or inaction and the exercise of state power as a whole.[15]

Thus, the ultimate goal of legal or constitutional control is to ensure the implementation of the principle of legality and the principle of constitutionality, in order to avoid conflict between legal norms and thus the very existence of the legal system as a set of norms that work for the same purpose and in harmony with each other. All of this is done in order to protect the general interest of society or the very reason for the creation of the state, as the only way to ensure social peace and the forced living of the people in what is called the state.

The control of the constitutional justice over the normative decrees of the President of the Republic

Based on the above, it is clear that there can be no administrative acts, normative acts of the President of the Republic, such as decrees on: 1. Concluding international agreements; 2. Decrees on setting the date of elections for the Assembly, local government and referendums. 3. Other decrees that may derive from any special law (currently there are none). The nature of these acts derives, among other things, from the fact that these decrees are *"within (leading) the work of the government or governance or the basic decisions which determine the basic policies and not within the administrative work or administrative activity"*[16], as well as the functions of the President of the Republic as Head of State such as: *"The symbolic function which justifies his intervention in areas in which, in principle, his competencies are formal; function as a guarantor of the country's institutions by ensuring respect for the Constitution, other laws and fundamental human rights and freedoms and the function as an arbitrator."*[17] The President of the Republic is a balancing factor in the life of the country.[18] This position is also held by the President of the Republic in Italy, Germany, Croatia, Northern Macedonia, Romania, etc. In Italy as well as in Albania, the President, standing on the parties, is the guarantor of the Constitutional Order as a whole and the Constitution and the Constitution recognizes efficient powers to exercise this delicate function by being able to intervene in order to ensure the functioning of the system in

[12] Hanno Kaiser. "Notes on Hans Kelsen's Pure Theory of Law (1st Ed.). 2004". Professor's Hanno Kaiser webpage. Marrë nga www.hfkdocs.com/files/Kelsen_Pure_ Theory.pdf. *As cited in* Jordan DACI. *"Të Drejtat e Njeriut", Botimi IV*. Mirgeeralb, Tiranë, Mars 2017. ISBN: 978-9928-07-492-8-1. P.67.

[13] Jordan DACI. *"Të Drejtat e Njeriut". Botimi IV*, Mirgeeralb, Tirana, Mars 2017. ISBN: 978-9928-07-492-8-1. p.67.

[14] Ibid.

[15] Ibid.

[16] Esat Stavileci. *Vepra XVIII. "Të menduarit dhe të shkruarit juridik"*. Shtypshkronja Prograf. Prishtina 2013. P.73.

[17] Luan Omari. *"Parime dhe institucione të së Drejtës Publike*". Botimi 6. Shtëpia Botuese "Elena Gjika". Tirana 2004, Pp. 140-141.

[18] Luan Omari. *"Shteti i së Drejtës"*. Botim i Akademisë së Shkencave. Shtëpia Botuese "Elena Gjika". Tirana 2004. P. 101

cases of crisis or risk.[19] It is certainly not a *'Commissaire aux crises'* like the French one, but it is neither a notarial body charged with the task of registration, or to express the will of the governing majority, beyond any autonomous possibility of evaluation and of choice.[20]However, differently from the recent interpretation, the functions of the President of the Republic are never of a notary nature, but are essential powers or powers that have the right to assess the merits of a decision.

Hence it is clear that these decrees for setting the date of the elections are not administrative acts, as they are not bylaws. On the other hand, the validity of administrative or sub-legal acts presupposes their compliance with the content of the law itself and any administrative act issued by any administrative body in the form of a decision, order, etc ... must find support in law.[21] The administrative act itself specifies, details and adjusts in detail by unraveling or regulating in practice this legal relationship, which is impossible to be regulate entirely by law.[22] On the other hand, bylaws are issued on the basis and with the scope to implement the laws by the bodies provided in the Constitution.[23] These acts must be authorized to be issued by the law itself which determines the competent body, the issues to be regulated, as well as the principles on the basis of which these acts are issued.[24] Of course, the decree for setting the date of elections or referendums derives directly from the Constitution and has neither administrative nor sub-legal character, but a purely constitutional character. The idea that this decree is sub-legal in nature due to the provisions of the Electoral Code, is wrong as the Electoral Code in this case sets only rules of a procedural nature and these rules are by no means norms from which derives the substantive right to issue the decree.

Meanwhile, in Decision no. 38, dated 23.12.2003 of the Constitutional Court, again, where it is explicitly stated as follows:

"The legal nature of the act is determined in the first place by the relationship it regulates and by the type of activity exercised by the body that issues it. From the content and spirit of the Constitution of the Republic of Albania, it is clear that the activity of the President of the Republic as head of state, has elements of three powers; legislative, executive and judicial. For this reason, He has the authority to issue both acts that are expressions of political leadership, as well as individual acts (decrees) that by their nature are closer to the mandating executive activity of the state administration. The acts of administrative character also include the decrees for the appointment and dismissal of prosecutors, which may violate the legal-civil rights of the prosecutor."

The same position was held by the Constitutional Court in its decision no. 25, dated 13.02.2002. Therefore, in our case, we are dealing an act that is an expression of political leadership, which regulates some general relations for the entire territory of the Republic of Albania and that the President of the Republic in this case exercises constitutional activity and this right itself derives directly from the Constitutional Norm or the basic norm and is not a derived or sub-legal act.

This is a fair conclusion if we consider the other fact that the judicial system of the Republic of Albania from the courts of first instance to the Supreme Court, including the Electoral College and even less the Central Election Commission, are not charged by the constitution for assessing the constitutionality of acts, but only their legality. This is because the assessment of the constitutionality of acts is an exclusive power granted only to the Constitutional Court.[25] This conclusion is also a logical consequence of the very understanding of the principle of legality that is related with the definition of the body that issues the bylaw, the principles on which it is issued, its content and its validity and all of this is based on the assessment of the delegating legal norm of the authority for issuance of the act etc. In the case of these decrees, the ordering norm is the constitutional norm. Consequently, these decrees can be assessed only in terms of constitutionality and not legality. Thus, any possibility for assessing their legality in the ordinary judicial jurisdiction is excluded, as the principle of legality in this case gives way to the principle of Constitutionality. This conclusion

[19] Fausto Cuocolo. *"Lezioni di diritto pubblico". Seconda edizione*. Giueffre Editore. Milano 2002. P. 239.
[20] Ibid.
[21] Sokol Sadushi. *"E Drejta Administrative 2".* Botimi i tretë i ripunuar. Shtëpia botuese ORA. Tirana 2005, P.30.
[22] Ibid.
[23] Article 118 of the Constitution of the Republic of Albania.
[24] Ibid.
[25] *See also* Kristaq Traja. *"Drejtësia Kushtetuese"*. Shtëpia botuese "Luarasi". Tirana 2000. P.91.

also comes from the systematic and logical interpretation of Article 90 of the Constitution which provides for his dismissal only for Serious Violation of the Constitution and for committing a serious crime. This means that in conditions when the President of the Republic acts according to Article 93 of the Constitution only by decree, the President can violate the constitution only through the decree as the only act he issues. Thus, the decree in this case shall be evaluated only on the basis of constitutional norms. Consequently, any logical possibility is excluded for this decree to be subject to ordinary judicial review.

In this line, there is also article 2 of law no. 49/2012 "On administrative courts and adjudication of administrative disputes", as amended, which provides as follows:

"Normative sub-legal act" is any will be expressed by a public body, in the exercise of its public function, that regulates relations defined by law, establishing general rules of conduct and that doesn't provide exhaustive implementation rules."

Meanwhile, Article 10 of the same law, specifies the scope of the normative act specifically, it is stated that "*the Administrative Court of Appeals reviews in the first instance, disputes having as subject normative bylaws, as well as other cases provided by law."* Thus, we are talking about normative acts that have been issued as bylaws, meaning the acts of the Council of Ministers, etc. In no case the presidential decree setting the date of the elections is a sub-legal act, but it is a pure constitutional act. Thus, administrative courts have no subjective jurisdiction at all.

Meanwhile, decision no. 150, of 2017, of the Constitutional Court, first of all has no *'erga omnes'* value as it is not a decision of the Plenary Session that is judged by all members and this is determined by the organic law of the Constitutional Court and the doctrine itself. On the other hand, in a completely contradictory way and without any reasoning based on the doctrine, the Court says that the party has not raised grounds for constitutionality and therefore this case cannot be tried by this court. At the same time, in this case, the compliance of the Decree with the Electoral Code was being assessed. However, this decision is completely wrong based on the above analysis and has no legal value nor scientific. On the whole, it is a completely not reasoned decision without any proper legal-constitutional analysis which contradicts the philosophical constitutional opinion and the constitutional practice of developed countries, including the legal opinion in Albania, and which also contradicts the very criteria set by the Constitutional Court for determining the nature of an act of the President in its decisions no.25, dated 13.02.2002 and no.38, dated 23.12.2003.

In addition, the Electoral College does not have subjective competence either, as the latter deals with electoral issues, while the Decree is the act that marks the moment of the beginning of the elections, from which indirectly derives the subjective and temporal competence of the college to evaluate the acts following the decree, but never the decree itself as it derives from the basic constitutional norm. Moreover, in the case of the Electoral College it is quite simple as a situation, as the College does not exist and has no power to act, as long as there are no elections and for issues that are not related to the elections. This means that without a decree there are no elections and also, there are no electoral issues covered by this college, because elections and electoral issues originate exactly from the moment when the election date is announced or from the moment when there are elections and there are electoral issues.

This means that the assessment of the Central Election Commission is clearly wrong and constitutes a serious violation of their duty with serious legal, social and financial consequences for the state. This becomes even clearer when this legal and non-Constitutional institution (not like the President of the Republic), evaluates the legality of a normative constitutional act on the basis of the Code of Administrative Procedure, finding it as an absolutely invalid administrative act, although this code in its article 3, excludes it from its scope.

By analogy, the Italian Constitutional Court when analyzing the nature of the act of countersigning of the Minister of Justice on the Pardon Decree of the President of the Republic, although we are dealing with a more evident situation, since both institutions are Constitutional institutions (not like the case of the Central Election Commission and the President in Albania) and the minister has counter signing powers and not merely the implementing powers such the case of the Central Election Commission in relation to the President of the Republic of Albania, in its decision no. 200, of 2006,

expressly states the following[26]:

"If it is true, in fact, that in relation to formally official presidential acts, but essentially governing acts, the countersignature "has the meaning of proving the paternity of the implementing act and consequently the assumption of political responsibility" by the Minister (since his the control over the Head of State "is limited to a simple check of the legitimacy as well as the origin" of the act), the positions of the two constitutional bodies (the Minister of Justice and the President), on the contrary, "clash over formally acts and in essentially presidential acts", which also includes the pardon. For these reasons, in fact, "the ministerial countersignature appears sole as an act with a notarial function", which simply confirms the origin of the act by the Head of State and does not check its formal regularity".[27]

Meanwhile, in the case of the Decree setting the date of the elections, we are facing a formally and essentially presidential act, over which no control can be exercised by the Central Election Commission.

Moreover, even if this decree would be administrative act, it would not be invalid in the sense of Article 108 of the Code of Administrative Procedures. This is because the lack of power to issue such decree must be obvious and serious. "*These preconditions must be interpreted in the narrowest possible sense, not only because of its exclusive character and serious legal consequences ... but also because of the contrast with the cases of illegality provided in Article 109 which criteria overlap with those of article 108".*[28] Such possible examples should be easily distinguishable. *For example, the customs administration issues a construction permit or the Municipality administration issues a prison sentence*.[29] So, the administrative act absolutely invalid due to lack of power would be such when it goes beyond the discretionary power of the body that issues it. Discretionary power, on the other hand, is the implied power of a body to issue an act that is consistent with its general powers and is a logical consequence of those powers and has not been delegated by law to another body. For example, in no law or sub-legal act does it make sense to say that the grass of the city gardens is harvested only by the municipality or with its authorization, but this is part of its discretionary power for the general administration of its territory and public spaces. In the case of the President of the Republic, although it was specified that we are not dealing with an administrative act, even if we were dealing, again the issuance of a decree which revokes a previous decree like the one for the decree of June 30, 2019 as the date of local elections, is the logical continuation of the discretionary power for scheduling elections. This is because; in no case this competence has been given to any other body. Thus, only the President can change the date of the elections even in cases when such a thing is approved by other constitutional bodies. Thus, from no point of view would be accepted the possibility of assessment of the constitutionality of this decree by anybody other than the Constitutional Court. This makes it a binding act to be enforced by anyone, until the Constitutional Court or the President himself terminates its legal power, or this power is automatically lost as a result of the fulfillment of his scope.

Finally, we can say that the call made by the Parliament through the Resolution adopted on June 13, 2019, in addition to violating the constitutional order, clearly contradicts the principle of separation of powers embodied in Article 7 of the Constitution and Articles 3 and 4 etc., of the Constitution of the Republic of Albania.

Regarding our main paper issue, the Venice Commission has also expressed in its opinion no. 959/2019 and in this context, it is worth emphasizing the following arguments:

[26] Se è vero, difatti, che in relazione agli atti formalmente presidenziali ma sostanzialmente governativi la controfirma «ha il significato di attestare la effettiva paternità dell'atto e la conseguente assunzione di responsabilità politica» da parte del Ministro (giacché qui il Capo dello Stato «si limita ad un mero controllo di legittimità, oltre che di provenienza» dell'atto), le posizioni dei due organi costituzionali app.aiono, invece, «invertite con riguardo agli atti formalmente e sostanzialmente presidenziali», tra i quali rientra la concessione della grazia. Ricorrendo tale evenienza, invero, «la controfirma ministeriale si presenta come atto dovuto, in quanto ha funzione, per così dire, notarile», e cioè «di mera attestazione di provenienza dell'atto da parte del Capo dello Stato, oltre che di controllo della sua regolarità formale».

[27] Note. From this is made clear also the constitutional issue of the law on pardon in the Republic of Albania regarding the unconstitutional powers of the Minister of Justice.

[28] Komentari i Kodit të Procedurave Administrative të RSH nga SIGMA. SIGMA, Tirana 2018. P. 520.

[29] Ibid. P.524.

In this opinion, the issue is not addressed whether the decree[30] for scheduling elections is a normative act or an individual administrative act and thus neither who has the power to assess and ascertain its absolute or complete invalidity, to repeal it as illegal or as partially invalid etc. Also, in this opinion, the democratic criteria for the conduct of elections as of Article 45 of the Constitution and the criteria of Article 3 of Additional Protocol no. 1, of the ECHR, in conjunction with Articles 1 and 10 of the same Convention have never been analyzed by the commission. However, the very meaning of absolute or complete invalidity provided for in Article 108 of the Code of Administrative Procedures, requires that the 'defects of the act be obvious and grave and serious'.[31] In essence, the criteria of this article must be interpreted very narrowly and are related with the elements of authority that issues the act, the conducted procedure by it, the form and other obligatory elements of the act, not been issuing under the effect of fraud, intimidation, bribery, conflict of interest, forgery or another action that constitutes a criminal offense, and execution of which can cause an action punishable by criminal legislation and any other case expressly provided by law. In our case, Decree no. 11 199, dated 10.06.2019 “On the abrogation of the decree no. 10928, dated 05.11.2018 of the President of the Republic "On setting the date of elections for local government bodies", repeals the date 30 June 2019, as the date for the conduct of elections for local government bodies. This decree is not absolutely invalid even if it were to be considered as an individual act for the following reasons:

1) The only authority to issue this act is the President of the Republic and he is the one who issued it.

2) There is no violation of the procedure for issuing this decree and it contains all the necessary elements.

3) Has not been issued under the effect of fraud, intimidation, bribery, conflict of interest, forgery or any other act that constitutes a criminal offense.

4) Its execution cannot cause an action punishable by criminal legislation, referring to the content of the Criminal Code and other laws into force in the country.

5) No other law provides for any other cause that would cause its absolute invalidity.

The ascertainment of the absolute invalidity of this decree in accordance with article 110 of the Administrative Code could not be done by the Central Election Commission even if we were before an individual administrative act as the Central Election Commission is neither the body that issued it, nor the superior body of the President of the Republic and it does not have power to review the administrative legal remedies, including any complaint or claim of another type related to this act. Also, Article 111 of the same code cannot be understood in separation from Article 110 thereof. Thus, the public body defined in article 111 of this Code is only the one that meets the criteria provided in point 2 of its article 110 and this means that the Central Election Commission was not and cannot be a body that ascertains the absolute invalidity of this decree[32].

Meanwhile, the Constitutional Court must assess this issue in 4 planes:

1) In the plan that evaluates the decree as a normative act. In this plan, despite the fact that the Decree can be considered as exceeding the powers of the President (although we are convinced that there is no exceeding), it still remains formally in force and therefore elections could not take place without a decree.

2) In the plan that evaluates the decree as an individual act, but that its absolute invalidity could not be ascertained by the CEC. Again, in this case we could not have elections without a decision of the body charged by law to ascertain it.

3) In the plan of constitutional merits of issuing the decree. In this plan, the competence of the president to postpone the elections and the only means is the decree and whether there were constitutional conditions to postpone it or not.

4) Constitutional merits of the development of the electoral process and the election of bodies within the meaning of Articles 1, 2, 3, 4, 5, 6, 7, 13, 15, 17, 18, 22, 45 65, 92, 93, 109, 116 and 122 of the Constitution of the Republic of Albania and necessarily of Article 3 of the Additional Protocol no. 1, of the ECHR, in conjunction with Articles 1 and 10 of the same convention, regardless of the

[30] Decree No. 11 199, dated 10.06.2019 “For the cancelation of the Decree No. 10928, dated 05.11.2018 of the President of the Republic “On setting the election day for the local governing body””.

[31] See. Komentarin e Kodit te Procedurave Administrative te RSH. Botim i SIGMA, OECD, France. 2018, P. 519.

[32] Ibid.

validity or invalidity and/or illegality of the Presidential decree annulling the elections, in the context of assessing compliance with basic constitutional principles, constitutional norms and norms mandatory under international law regarding the organization of local elections and the exercise of the right to vote and to be elected by every citizen in the Republic of Albania.

Conclusions

It is clear that the President's decree setting the date for elections or referendums is a solely normative constitutional act and formally and essentially Presidential. Therefore, the decree to revoke such decree, or to change an election date or referendum are purely normative constitutional act and formally and essentially Presidential. Consequently, this act cannot be evaluated on the basis of the principle of legality, but only on the basis of the principle of constitutionality and the only body that can make this assessment and terminate its legal force is only the Constitutional Court. As a result, its implementation is mandatory by anyone and the refusal to implement it by the Central Election Commission is a serious violation with serious social, political and financial consequences for the state.

References

Black's Law Dictionary. Eight Edition. Bryan A. Garner Editor in Chief. Thomson West. USA 2007.

Commentary of the Administrative Procedures Code of the Republic of Albania by SIGMA. SIGMA, Tirana 2018.

Constitution of the Republic of Albania.

Decision No. 150, of the year 2017 of a panel of the Constitutional Court of Albania.

Decision No. 200, of the year 2006 of the Constitutional Court of Italy.

Decision No. 25, dated 13.02.2002 of the Constitutional Court of Albania.

Decision No. 38, dated 23.12.2003 of the Constitutional Court of Albania.

Stavileci, E. (2013). Vepra XVIII. "Të menduarit dhe të shkruarit juridik". Shtypshkronja Prograf. Prishtina.

Cuocolo, F. (2002). *Lezioni di diritto pubblico*. Seconda edizione. Giueffre Editore. Milano.

Kaiser, H. (2oo4). Notes on Hans Kelsen's Pure Theory of Law. *Professor's Hanno Kaiser webpage. Available at: www. hfkdocs. com/files/Kelsen_Pure_Theory. pdf. Sikurse cituar në* Jordan DACI. "Të Drejtat e Njeriut", Botimi IV, Mirgeeralb, Tirana, Mars 2017. ISBN: 978-9928-07-492-8-1.

Daci, J.(2017). "Të Drejtat e Njeriut", Botimi IV. Mirgeeralb. Tirana. ISBN: 978-9928-07-492-8 1.

Daci, J. (2012). "Law in Post-Communist countries: Case of Albania". Published as part of the proceedings of the XXV. World Congress of Philosophy of Law and Social Philosophy, at the University of Frankfurt Germany, "Goethe Frankfurt am Main", Paper series No. 024/2012 Series B "Human Rights, Democracy; Internet/intellectual property, Globalization". URN: urn:nbn:de:hebis:30:3-248826. http://d-nb.info/1054043272.http://nbn-resolving.de/urn:nbn:de:hebis:30:3-248826.

Dewey Decimal Classification: 340 Recht. Institutes: Rechtswissenschaft.

Traja, K. (2000). "Drejtësia Kushtetuese". *Publishing Luarasi*. Tirana.

Omari, L. (2004). Parime dhe institucione te se drejtes publike (Principles and institutions of public law). *Publishing Elena Gjika, 6th Publish Tirana*.

Omari, L. (2004). "Shteti i së Drejtës". Botim i Akademisë së Shkencave. *Publishing Elena Gjika*, Tirana.

Sadushi, S. (2005). "E Drejta Administrative 2". Botimi i tretë i ripunuar. *Publishing ORA*. Tirana 2005.

Unifying Judgment of the Joint Panels of the Supreme Court with Nr. Regj. Them. 97/12 and No. of Judgment 3, dated 30.01.2003.