

INTRODUCTION TO LAW

Lesson 6

POLITICAL ORGANIZATION OF SOCIETY AND STATE STRUCTURE



Dr. Heliona Miço

The topics

- The parts of the state structure
 - *Legislative body*
 - *The head of the state*
 - *The government*
 - *Administrative apparatus*
 - *Armed forces*
 - *The organs of justice*

The main parts of the state structure

The main parts of the state structure are:

- the legislative body,
- the head of state,
- the government,
- the administrative apparatus,
- the armed forces and
- law enforcement agencies and the judiciary organs.

The legislative body

- The Parliament is the **legislative body** of the state as well as the main **political body**.
- Its structure is not the same. There are places where the parliament consists of **a single chamber**, there are places where the parliament **consists of two chambers**.
- **The two-chamber structure has largely existed in the federal system**, the first chamber representing voters (electorate), while the second chamber is composed of representatives from various federal units.
- For example, **the House of Representatives in the US Congress** represents the people and it is elected in proportion to the population of each state.
The Senate is composed of 2 senators for each state.

The legislative body

- ➡ Even the powers of each chamber vary by country.
- ➡ In the UK and France, the second chamber is left because of **historical links** and it has very few competences. The House of Lords in the UK has very few competences compared to the House of Commons.
- ➡ While in the US it is different, the **Senate** not only enjoys the powers of the **House of Representatives** but also has some specific functions such as appointing senior judicial officials, having foreign policy responsibilities, and so on.

The role of Parliament

What about the role of parliament?

- During the 20th century, **the weakening role of the legislative power and the strengthening of the executive power was observed.**
- This system where the government's position is strong is known as **ministerialism.**

The limitation of the power of the parliament

The power of parliament is limited by **two interventions of the executive power.**

- ➔ **The first** is the right to dissolve the parliament before the end of the legislature term.
- ➔ **The second** is the right granted to the President to return a law passed by the parliament for reconsideration.

Dissolution of parliament (the vote for the President)

- The right of the executive power to dissolve the parliament is enshrined in **Article 87, paragraph 5** of the Constitution, when the candidate for the president is voted.
- *"If, even after the fifth voting none of the candidates has received the required majority of votes, or if after the unsuccessful completion of the fourth voting no new candidates are proposed, the Assembly is dissolved. The new elections take place within 45 days from its dissolution."*

Dissolution of parliament (the election of the Prime Minister)

- This is provided for in **Article 96, paragraph 4 of the Constitution**. In case the Assembly fails to elect the new Prime Minister, then the President of the Republic dissolves the Assembly.

Article 96 of the Constitution

- *The President of the Republic, at the beginning of the legislature, as well as when the post of the Prime Minister remains vacant, appoints the Prime Minister on the proposal of the party or coalition of parties that have the majority of seats in the Assembly.*
- *When the appointed Prime Minister is not approved by the Assembly, the President appoints a new Prime Minister within 10 days.*
- *When even the newly appointed Prime Minister is not approved by the Assembly, the Assembly elects another Prime Minister within 10 days. In this case, the President appoints the new Prime Minister.*
- **If the Assembly fails to elect a new Prime Minister, the President of the Republic dissolves the Assembly.**

The right to dissolve the parliament

- The dissolution of the Assembly by the President is also provided for in **Article 104, paragraph 1** of the Constitution.
- *1. The Prime Minister is entitled to present to the Assembly a motion of confidence for the Council of Ministers. If the motion of confidence is voted by less than half of all the members of the Assembly, the Prime Minister, within 48 hours from the voting of the motion, requests the President of the Republic to dissolve the Assembly.*

The suspension veto of the president

- The second executive power over the legislative one is the case of the right granted to the President to return a law passed by the parliament for reconsideration. (**suspension veto**).
- The President's decree is annulled when a majority of all members of the Assembly vote against it.

Restrictions on the electoral system

The Parliament remains a very important body at the same time extending the right to vote. However, there have been constant restrictions on the electoral system.

- 1. **Age restriction** (the right to vote is attained at a certain age). In our country, this right is gained by turning 18 years old. In some countries, **passive suffrage** is gained by reaching a greater age, while in our country this also is gained by reaching 18 years old.
- 2. **Restriction of residence**. Under this restriction, the citizen must have lived in the territory of the electoral zone for a specified period of time, in order to vote. **This prevents many citizens from voting.**

Restrictions on the electoral system

- **3. Restriction for racial reasons.** There have been cases of people being excluded from voting for racial reasons, e.g. Jews in fascist Germany, black people in some US states.
- **4. Property Restriction.** There were clauses that prevented the voting of people who did not possess a certain minimum wealth. This obstacle is gradually being removed.
- **5. Educational restriction.** In some countries, voter turnout has been limited **due to illiteracy**. While in England until 1951, a citizen could vote both in the area where he was a resident and in the area where the high school he attended was located.

Violation of the equality of vote

- Another violation of the equality of the vote is through **electoral geography** and **electoral arithmetic**.
- Electoral geography is about the designation of electoral zones. But in order to ensure equality of votes, the electoral zones must have **an approximately equal number of voters**, which is not the case.
- **Electoral arithmetic** is used to favor the party that wins the election, in case this party gets **50% + 1 vote** in the election according to the electoral legislation can win **65-70% of the seats in parliament**.

Violation of the equality of vote

- **Majority and proportional systems** also affect equality of vote. The proportional system ensures a greater equality of votes as the deputies of each party are elected on the basis of the percentage that this party has secured in the voting process.
- The majority system stipulates that in each electoral zone, it is elected the candidate **who wins the absolute majority of votes**.

The head of the state

The head of the state and his functions vary depending on the form of government (*monarchy, republic, parliamentary or presidential republic*). In the parliamentary republic, the head of state has three main functions.

- 1. The symbolic function justifies its formal powers. According to the Constitution, the President represents **the unity of the people**.
- 2. The head of state is **the guarantor of the institutions of the country**, he ensures the respect of the Constitution and other laws.
- 3. The head of state has the mission **to act as an arbitrator between the political forces**.

The head of the state (connection with other bodies)

- The connection that the Head of the State has with other bodies is felt in the **legislative process**, by promulgating the laws and by returning the law to the Parliament for reconsideration before its promulgation.
- In the **executive power** by being Commander-in-Chief of the Armed Forces (Article 168 of the Constitution).

The head of state (connection with other bodies)

- Another case relates to his involvement **in the judiciary system**, under Article 147 of the Constitution.

Between December 1 and December 5 of each year, the President of the Republic shall select by lot two judges of the Constitutional Court, one judge of the High Court, one prosecutor of the General Prosecution Office, two judges and two prosecutors from the Courts of Appeal and one judge from the Administrative Courts.

- He also exercises **the right of pardon**, by which he can change a final criminal decision.

The government

- The existence of government as a separate body is found in the parliamentary republics and the constitutional monarchies, while in the presidential republics there is no Council of Ministers.
- The Council of Ministers is the highest state body which deals with the administration and direction of general politics.
- The government depends on the parliament which **gives or denies the vote of confidence.**

The government

- The government is a body that operates **on the basis of a political line that is worked out by the Head of the Government/Prime Minister** and approved by all members.

What does the government do?

➤ *What does the government do?*

➤ The government:

- directs the activity of all administrative institutions,
- assigns concrete tasks,
- appoints and dismisses officials,
- distributes material resources for the administrative apparatus, etc.

➤ **It directs and unifies the work of the ministries**, takes measures to draft and implement the state budget, to ensure public order, and so on.

The government: the right to issue laws

- During the 20th century, parliamentarianism faded in favor of ministerialism **as the government has the right to issue laws**, with the authority of the parliament.
- **Article 101** of the Constitution also provides for the legislative activity of the government.
- The Council of Ministers, in case of need and urgency, may **issue normative acts** that have the force of law and must be approved by the Assembly within 45 days.

Administrative apparatus

- ✓ In each country the administrative apparatus is identified with bureaucracy (government/office power) including the largest number of civil servants of any rank.
- ✓ The bureaucracy consists of numerous administrative bodies, which regulate different sectors of life.
- ✓ Despite the expansion of various sectors of social life, the expansion of the apparatus has been followed by the increase of **centralization** from an administrative point of view.

Administrative apparatus

➤ The characteristics of bureaucracy are:

- a. It is a **system of principles of governance** that is separated from the everyday problems of the people.
- b. It is a **system of institutions** specially built to make up the state apparatus.
- c. The existence of bureaucracy consists on a **number of civil servants** specialized in administration affairs.

Different points of views on bureaucracy

The negative elements of bureaucracy have long been discussed.

- From **Hegel's point of view** "administration is the soul of the state", from **Marx's point of view** "bureaucracy is not the soul but the absence of the soul".
- In the socialist system, the bureaucracy not only has existed, but it has also been greatly strengthened and developed.
- This is seen in the state intervention to regulate every social relations, with the concentration of political rule in the hands of the state, and so on.
- In Weber's view, capitalism is one of the main causes for the development of bureaucracy, while socialism has reinforced this phenomenon.

The limitation of power of bureaucracy

- The bureaucracy power may be limited by:
 1. the establishment of rules in respect of **real democracy**,
 2. the **decentralization of powers**,
 3. the establishment of **supervisory norms over the work of the administration**, etc.
- An element of support for the well-functioning of the bureaucracy is **the autonomy of powers.**

The limitation of power of bureaucracy

- This is also supported by the **Council of Europe**, which has set up a special body, the **Congress of Local and Regional Autonomies**, which promotes and monitors the implementation of autonomy in the Council member countries.
- Albania has also signed the **European Charter of Local Self-Government** and it is continuously implementing the decentralization process.

Armed forces

- These include **forces serving to protect the country**, as well as **forces in charge to maintain public order**.
- **The military/the army** is the main voice in the armed forces and also the key element in the functioning of the state.
- Its crucial duty is to protect the country from an external potential attack.
- However, history has shown that the military has been tasked with various attacks to the detriment of other states.

Armed forces

- **The army** has also the duty of maintaining order within the country, especially in cases of riots, turbulences, etc., when other forces and means in the state are impossible to be used.
- But we emphasize that the military **is used as a last resort** to maintain order within the country.

Armed forces (historical roots)

Historically, there have been two types of armies.

- Since the slavery era, the process of recruiting people to join the army was among free people, and **slaves were excluded**. People who joined the army were rewarded by giving the right of ownership of land.
- During the period of feudalism, the **mercenary army** was widely spread.
- The creation of a massive army was felt during the period of the French Revolution, where people voluntarily enlisted to defend their homeland. **But the first state to create an organized army was Prussia.**
- In addition to the military in different countries, there have been **military formations with a strong political and ideological motivation**.
- Such formations were **the SS and SA formations in Nazi Germany**.

The police

- **The police** can be part of the armed forces but unlike the military it has a different organization and purpose.
- The Constitution in **Article 168, paragraph 1**, does not include the police in the armed forces.

Article 168/1

"The Armed Forces of the Republic of Albania are composed of the army, navy, and air force."

The Commanders of the armed forces are proposed by the Minister of Defense and are decreed by the President of the Republic.

The police responsibilities

There are several responsibilities of the police.

- a) To **protect people's life**, their security and personal property;
- b) To **prevent, detect and investigate the criminal offences** and their perpetrators;
- c) To **protect public order and security**;
- ç) To supervise and direct **road traffic**;
- d) To supervise and **control state borders** of the Republic of Albania;
- dh) To **protect specific individuals, premises and objects from potential risks**;
- e) To administer **and protect classified information**, with the exception of cases when it is otherwise envisaged by the legislation;

The organs of justice

- As a general principle, it is accepted that justice is given only by **the courts**, which constitute the judiciary system. This power is independent from the other two powers.
- The judicial power shall be assumed by the **High Court** as well as by the **appeal courts**, and the **first instance courts**, which shall be established by law.
- There are even **specialized courts** which will be competent to adjudicate corruption and organized crime, as well as criminal charges against senior government officials and state leaders.

The organs of justice

- **The prosecution** is a body of justice.
- **The Prosecutor General** is appointed by three-fifths of the members of Assembly (84 deputies) among three candidates proposed by the High Prosecutorial Council, for a seven-year mandate, without the right of re-appointment.

(Article 148/a of the Constitution)

The organs of justice

- The Prosecutor General reports to the Assembly on the state of criminality.
- The organization of the prosecution is centralized.
- The Prosecutor is appointed by the **High Prosecutorial Council** after being graduated from the School of Magistrates and after the conduction of a preliminary process of verification of their assets and their background checks.



Political parties and social organizations

- The political parties are at the center to the country's life.
- There are countries where there is **a domination of one party**, there are other countries that have **political pluralism**.
- Elections determine the participation of political parties in governing the country.
- Today the role of political parties is increasing.

Political parties and social organizations

- One of the characteristics of parties is the fact that **they are ideological organizations.**
- Another key element of the parties *is the purpose to ensure and exercise the state power.*

The role of the political party in the life of a country

- There is a strong connection between **the role of a political party in the life of the country and the weight that this party occupies in parliament.**
- In pluralistic countries, the parliamentary group of a political party represents the political power of that party in the life of the country.
- While in countries that have only one party, the parliamentary group does not have this weight as it is subject to party discipline.

Political parties and social organizations

- According to the **German political scientist Hazbahr**:
- *"The party is the union of people with the same political convictions and goals, whose task is to take power as a means to achieve its goals."*
- Ways of gaining power vary according to the groups of authors.