Zeszyty Naukowe
Katolickiego Uniwersytetu Lubelskiego Jana Pawła II
67 (2024), nr 3 (267)

DOI: 10.31743/znkul.17723

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Adam Podgórecki's Concept of Totalitarian Law in the Albanian Context

Koncepcja prawa totalitarnego Adama Podgóreckiego w kontekście albańskim

Abstract

This author first met Adam Podgórecki in the mid-1990s at the International Institute for the Sociology of Law (IISL) in Oñati, Spain. Over a lunch organised by the IISL and at a cooking school in the local area, Prof. Podgórecki talked about the role these sorts of cooking schools had played under General Francisco Franco's authoritarian rule. He referred to these schools as "pockets of democracy" because of the cherished space they provided for people to live in a polity, albeit in a suspended state. The cooking schools were a safe space for people to speak freely. This author is reminded here of the case of Albania. It is in this spirit that I talk about the "pockets of democracy" that existed in Albania, through the experience of one remarkable individual, about whom I have been writing for some time now, the writer and political dissident, Musine Kokalari (1917–1983). Her own account of her 1946 trial and her ruminations on the nature of historical memory recall Podgórecki's work on totalitarian and non-totalitarian law. It is in this frame therefore that I will set out the discussion, elucidating the main points underpinning his pioneering work.

Keywords: Adam Podgórecki, totalitarian law, Musine Kokalari, Albania, pockets of democracy

Abstrakt

Autorka artykułu po raz pierwszy spotkała Adama Podgóreckiego w połowie lat 90. XX wieku w Międzynarodowym Instytucie Socjologii Prawa (IISL) w Oñati w Hiszpanii. Podczas lunchu zorganizowanego przez IISL oraz w pobliskiej szkole gotowania prof. Podgórecki opowiadał o roli, jaką tego rodzaju szkoły gotowania odegrały pod autorytarnymi rządami generała Francisco Franco. Nazwał te szkoły „przestrzeniami demokracji" ze względu na cenną przestrzeń, jaką zapewniały ludziom do życia w państwie, choć w państwie zawieszonym. Szkoły gotowania były bezpiecznym miejscem, w którym

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e-ISSN: 2543-9715

ludzie mogli swobodnie rozmawiać. Autorce przypomina się tutaj przypadek Albanii. W tym duchu pisze więc o „przestrzeniach demokracji", które istniały w Albanii, poprzez doświadczenie jednej, niezwykłej osoby – pisarza i dysydenta politycznego Musine Kokalari (1917–1983) – o którym autorka pisze od jakiegoś czasu. Jej własna relacja z procesu z 1946 roku i rozmyślania nad naturą pamięci historycznej przywodzą na myśl prace Podgóreckiego nad prawem totalitarnym i nietotalitarnym. Dlatego też w tym kontekście rozpoczęto dyskusję, wyjaśniając główne punkty leżące u podstaw jego pionierskiej pracy.

Słowa kluczowe: Adam Podgórecki, prawo totalitarne, Musine Kokalari, Albania, przestrzenie demokracji

Introduction

Adam Podgórecki was a big fan of the Czech playwright, dissident, and president of what was then Czechoslovakia, Václav Havel. Given the fact that the Polish jurist Leon Petrażycki (1867–1931) features prominently in Podgórecki's writings, this is not a surprise. Petrażycki, who had advanced new arguments in the sphere of law and morality and the notion of intuitive law, was central to Podgórecki's thinking and scholarship – pointing to a deeper reflection about the individual, their ways of being and the preserving of their subjectivity under repression and dictatorial rule.[1] Havel himself observed that

> the specific nature of post-totalitarian conditions – with their absence of a normal political life and the fact that any far-reaching political change is utterly unforeseeable – has one positive aspect: it compels us to examine our situation in terms of its deeper coherences and to consider our future in the context of global, long-range prospects of the world of which we are a part.[2]

This author first met Adam Podgórecki in the mid-1990s at the International Institute for the Sociology of Law (IISL) in Oñati, Spain. It was my first visit to this magical venue. Over a lunch organised by the IISL and at a cooking school in the local area, Prof. Podgórecki talked about the role these sorts of cooking schools had played under General Francisco Franco's authoritarian rule. He referred to these schools as "pockets of democracy" because of the cherished space they provided for people to live in a polity, albeit in a suspended state. The cooking schools were a safe space for people to speak freely. This author

[1] K. Motyka, *Leon Petrażycki and Adam Podgórecki: On the Reception of the Psychological Theory of Law in Poland*, in *Leon Petrażycki: Law, Emotions, Society*, eds. Edoardo Fittipaldi and A. Javier Treviño, Routledge, New York 2023, p. 47–70.

[2] V. Havel, *The Power of the Powerless* (1979), transl. Paul Wilson; in Václav Havel et al., *The Power of the Powerless*, ed. J. Keane, Hutchinson, London 1985, reprinted in "East European Politics and Societies and Cultures" 2018, vol. 32, no. 2, p. 403.

is reminded here of the case of Albania. It is in this spirit that I talk about the "pockets of democracy" that existed in Albania, through the experience of one remarkable individual, about whom I have been writing for some time now, the writer and political dissident, Musine Kokalari (1917–1983). Her own account of her 1946 trial and her ruminations on the nature of historical memory recall Podgórecki's work on totalitarian and non-totalitarian law. It is in this frame therefore that I will set out the discussion, elucidating the main points underpinning his pioneering work.

Theoretical Overview

In his writing about totalitarian systems, Podgórecki identified several key aspects of totalitarian legal frameworks: the ground norm and its supremacy over the constitution; the servility of totalitarian law; the perverse perfection of totalitarian bureaucracy; oppression of and by the judiciary; legitimation; the derivational appearance of legality; the use of popular appeals against harsh penalties; abuse of the citizen's point of view; law as a dark instrument of social engineering; and theoretical implications.[3] This discussion will consider some of these aspects in relation to the Albanian case study. There is an important connection between the opening observations made by the dissident Havel and the Albanian protagonist of this paper, one that serves as a testament to the significance of Podgórecki's writings and contribution to the field.

The Ground Norm

According to Podgórecki, the basic norm of a dictatorial or authoritarian political system operationalises the will of the ruler under the aegis of the will of the people.[4] This occurs incrementally and strategically. A brief overview of Albanian politics in the twentieth century will demonstrate how this occurs and why Albania serves as an illuminating case study.

At the dawn of the twentieth century, Albania's political culture was developing. There was only limited experience, however, of democracy, opposition, or debate. Yet Albania had important links with its neighbours and the wider

[3] A. Podgórecki, *Totalitarian Law: Basic Concepts and Issues*, in *Totalitarian and Post-Totalitarian Law*, eds. A. Podgórecki, V. Olgiati, The Oñati International Institute for the Sociology of Law, Aldershot, Dartmouth, UK, 1996, p. 9–10.

[4] Ibidem, p. 10–12.

world.[5] Albanian politics was driven by Bishop Fan Noli who led the Democratic or Popular Party with Luigj Gurakuqi and Ahmed Zogu.[6] Noli was a liberal and saw himself as representing Albanian national interests. He had spent many years abroad, which is where his interest in Albanian nationalism grew, his time in exile perhaps accounting for his disconnect from the wider society.[7] In 1920 Noli represented Albania on at least two occasions in Geneva, arguing for the country's admission to the League of Nations. On these occasions Noli, who entertained a pro-European vision, and Zogu, who represented the "old order", clashed.

During its nascent years Albania could not break free from these regional divisions, with state power perceived as being in Tirana, rather than elsewhere in Albania.[8] In the eyes of many, the Tirana government was trying to destroy the liberty of the people just as previous rulers, such as the Romans, Ottomans, Austrians, Italians, Serbs, or Greeks, had in turn tried to do.[9] Eventually Zogu prevailed and, after holding several key governmental posts, succeeded in eliminating most of the opposition.[10] In 1924, however, Noli assumed the post of prime minister, but his rule lasted only six months and he failed to achieve his vision of an overhaul of agriculture, law, and the general administration of the country. Zogu then returned to power and in 1925 was elected president of the newly created republic. He continued to do his utmost to eliminate any opposition. In 1928 he renamed himself Zog and proclaimed himself Zog I, King of Albania. The Italians used this opportunity to manipulate Zog for their own interests.[11] The country was heavily dependent financially on Italy and by 1930 Mussolini had established a near total hegemony over Albania.[12] In 1938 Zog allowed the country to become an Italian protectorate, and during the Second World War it was overrun by various occupying powers.

In 1944, with the end of the Second World War in sight, the National Liberation Front (*Lëvizja Nacional-Çlirimtare*), under the guidance of the future communist leader Enver Hoxha, set about consolidating its power, deploying

[5] N. Malcolm, *Rebels, Believers, Survivors: Studies in the History of the Albanians*, Oxford University Press, Oxford 2020.

[6] M. Vickers, *The Albanians: A Modern History*, I.B. Tauris, London 2008, p. 101.

[7] R. Austin, *Fan Noli, Albania and the Soviet Union*, "East European Quarterly" 1996, vol. 30, no. 2, p. 153–169; R.C. Austin, *Founding a Balkan State: Albania's Experiment with Democracy*, University of Toronto Press, Toronto 2012; E. Mëhilli, *From Stalin to Mao*: *Albania and the Socialist World*, Cornell University Press, Cornell, NY 2017.

[8] M. Vickers, *The Albanians*…, p. 102.

[9] Ibidem, p. 102–103.

[10] Ibidem, p. 104–110.

[11] Ibidem, p. 124; see also Edith Durham, in a letter to a friend, noted in M. Vickers, *The Albanians*…, p. 124, fn. 12.

[12] Ibidem, p. 132.

execution squads to eliminate members of the opposition. It should be noted that during the 1920s Albania was the only country in the region without a communist party. The National Liberation Front was a home-grown internal party that had emerged during a tumultuous time, from 1942 onwards attempting to establish a foothold in the regions. The rapprochement with the National Front (*Balli Kombëtar*), the anti-communist national resistance movement, did not last long.[13] With the support of the Allies, the partisans liberated the country from Axis forces.[14] The British for their part had long had a strategic interest in Albania.[15] Yet while the Albanians may have been aided by the British (in terms of military equipment and finance), they were guided by the Yugoslavs ideologically and politically. In 1944 Hoxha began to set up his own government, using Yugoslav structures of governance as a blueprint for state-building, for example copying the neighbouring country's constitution. Albania had been ravaged by war and would face serious challenges to repairing its economy. The country was once again in a situation of dependence, relying this time on Yugoslav political backing. Hoxha's central preoccupation in developing the country was maintaining complete control and destroying any hint of opposition. The years 1943 to 1945 were also of critical importance in the creation of a post-Second World War Albanian identity.[16] Hoxha outlined his objectives for the country in a November 1944 interview with *The New York Times*, objectives that included the creation of an Albanian Telegraph Agency that would disseminate national news to an international audience.[17] As Podgórecki notes, the legal system that is constructed under totalitarian rule is presented as the will of the ruler. The ruler believes in free speech but as part of an "orchestrated mass media and educational system".[18] In reality, a loose legal framework is constructed to deal with opponents to the regime under a veneer of legality. Albanian communism would come to be highly centralised, with party members dominating nearly all aspects of everyday life. It was influenced by the Yugoslav and Soviet authorities,[19] who provided the tools for operationalising the system. The key instrument of power was hidden yet feared – a vast secret police network created in 1943 that would later come to be known as the *Sigurimi*.

[13] For more details about the 1943 Mukje agreement, see: M. Vickers, *The Albanians*…, p. 151–153.

[14] Ibidem, 159. The Partisan Army comprised young people, and of the 70,000 partisan fighters, 6,000 were women. M. Vickers, *The Albanians*…, p. 160.

[15] Ibidem, p. 153–159.

[16] B.J. Fischer, *Albania 1943–1945: A View Through Western Documents*, Albanian Institute of International Studies, Tirana 2014.

[17] O. Pearson, *Albania in Occupation and War: From Fascism to Communism 1940–1945*, vol. 2, The Centre for Albanian Studies in association with I.B. Tauris, London 2005, p. 415.

[18] A. Podgórecki, *Totalitarian Law*…, p. 11.

[19] O. Pearson, *Albania in Occupation and War*…, vol. 2, p. 344.

Albania's relations with the West deteriorated.[20] The country's application to join the UN was at first rejected, although it did eventually join, in December 1955. In July 1946 Albania signed a Treaty of Friendship, Cooperation, and Mutual Aid with Yugoslavia. Yugoslav influence over Albania's government and ruling political party increased considerably between 1945 and 1948, with Yugoslavia coming to dominate political, economic, military, and cultural life. However, in 1948 Yugoslavia's expulsion from the Cominform gave Hoxha the opportunity to reverse this situation, with the Albanian government being the first in communist Europe to condemn Yugoslavia. The treaty of friendship with Yugoslavia was broken off, Yugoslav advisers were expelled from Albania, and Koçi Xoxe, the Minister of Internal Affairs and head of the secret police, was tried and executed, along with hundreds of other so-called "Titoists". Albania became a full-fledged member of the Soviet sphere of influence, playing a key role in Stalin's strategy of isolating Yugoslavia. In 1949 Albania joined the Council for Mutual Economic Assistance, or Comecon, and proceeded with a programme of rapid, Soviet-style, centralised economic development. In other words, Albania ceased to be a Yugoslav satellite state, a change that also had a profound effect on legality as well.

Albanian intellectuals in exile wrote that the country

> could perhaps pardon communism many crimes, but not that of having deprived her of her sons' energy of mind and spirit, a nation's most valuable capital. And when one further considers that Albania is not a nation with an abundance of intellectuals, one can more sensibly evaluate her loss.[21]

Many in the new ruling circle were suspicious of the "older intellectuals". By contrast with its communist counterparts, such as Poland, Czechoslovakia, or Hungary, it would become difficult for dissidents to draw on support networks not just within the communist bloc but from the West as well.[22] The cultural developments of the interwar period were appropriated by the post-Second World War communist regime, which adopted the fight against fascism to identify and destroy all opposition to its power.

[20] Ibidem, p. 167–168.

[21] A. Pipa, *Albanian Stalinism: Ideo-Political Aspects*, Boulder: East European Monographs; New York: Distributed by Columbia University Press, 1990, p. 25.

[22] R.C. Austin, J. Ellison, *Albania*, in *Transitional Justice in Eastern Europe and the Former Soviet Union*, ed. Lavinia Stan, Routledge, New York 2008, p. 179.

The Servility of the Law and Law's Shadow Counterparts

In Podgórecki's writings about totalitarian law, this latter is characterised by law losing its normative force. In totalitarian systems the legal framework does in fact have a shadow counterpart.[23] One victim of Stalinist justice observes the following, with respect to the relevance of a trial:

> The whole indicates the part. The bar of history throws light on the trial in court. The court that testifies to the state of the world gives meaning to the testimony of the individual. And vice versa. The individual testimony enhances the picture of the court's procedure which prepares a certain *settling of accounts* with society. The legal trial allows the concealed mechanism of the historical trial to appear. The part reveals the inner structure of the whole.[24]

The nature of Stalinist justice would become apparent in Albania with the close involvement there of Soviet officials in legal education, judicial training, and the drafting of laws. As a result the application of key decrees in Albania would bear the mark of these officials' involvement. Narratives about the Stalinist period in Albania are not dissimilar to other communist accounts in that the Albanian context – as with all the case studies under scrutiny here – reveals political motives, legal manoeuvrings, and broader considerations surrounding specific cases and trials. The political strategy was characterised by the settling of accounts with those individuals who did not conform to the new political system, and this through the perversion of the law.

Oppression of and by the Judiciary

In the Albanian experience, specific trials laid the groundwork for law to be weaponised against any form of opposition. These key trials were held at a grand movie theatre and performance venue, Tirana's Rex Cinema. The first trial of political elites was that of the "Great Albanian Leaders", which took place in March and April 1945. Sixty defendants, former members of the government, were charged with treason. At the same time quasi-judicial measures were taken against so-called war criminals. Eighteen Albanians were executed following a death sentence imposed by a tribunal on 17 November 1944, among them

[23] A. Podgórecki, *Totalitarian Law*…, p. 12–14.

[24] E. Loebl, *Sentenced and Tried: Stalinist Purges in Czechoslovakia*, transl. M. Michael, Elek Books, London 1969, p. 259. Emphasis in the original.

Bahri Omari, Hoxha's own brother-in-law, one of the leaders of *Balli Kombëtar*.[25] Arrests of war criminals continued at a rapid pace, and the definition of the enemy was expanding quickly.[26] On 23 December 1944, Law Nr. 21 On saboteurs against the people's power and war, on those who harbour war criminals and any of those pursued by the law, on those who know the whereabouts of such individuals and do not report them, came into force. This was followed by the promulgation of Law 41 On the organisation and functioning of military courts, on 23 January 1945.[27]

The second trial, that of the "Albanian Opposition", held from June to August 1946, was the first involving political dissidents.[28] The political and ideological character of the criminal law provisions were on show. The proceedings were before a carefully hand-picked audience and media, where the prosecutor's speech expressed contempt for and revulsion at the defendants' actions. Reports of the proceedings were transmitted throughout the city. Each judicial official's role was critical to the enactment of the trial: "So the shocking truth about a judicial hearing … is that the judge has the freedom to be fully present in all his or her human aspects."[29] Outside reports state that "[e]yewitnesses at the trial attributed to torture the behaviour of the accused in their easy submission to all of the charges."[30] This trial is discussed further below.

The third trial, against the so-called "Saboteurs of the Maliq Marshes", was held in November 1946. The draining of the Maliq swamp was meant to be an outstanding example of the *Rindërtim* (Reconstruction) period.[31] The trial concerned the purported actions of several scientists who were accused of conspiring to sabotage the Maliq swamp drainage project north of Korça. The project employed some 8,000 people, who were described as voluntary workers, were unpaid, and lived in conditions of squalor.[32] The Albanian authorities invented facts connected to Harry Fulz of the US Mission. Fulz allegedly advised the scientists to sabotage their work. Unsurprisingly, these connections were

[25] See: D. Kaloçi, *The Official Letter of Enver's Sister*, Memorie.al, https://memorie.al/en/the-official-letter-of-envers-sister-please-with-the-broken-heart-of-a-woman-for-the-forgiveness-of-her-husband-bahri-have-mercy-on-her-in-exchange-for-the-capital-punishment/ (accessed: 30.09.2024); see also: O. Pearson, *Albania in Occupation and War*…, vol. 2, p. 435; R. Elsie, *1945: The Albanian Treason Trial, Texts and Documents of Albanian History*, http://www.albanianhistory.net/1945_Albanian-Treason-Trial/index.html (accessed: 30.09.2024).

[26] O. Pearson, *Albania in Occupation and War*…, vol. 2, entry 16 July 1945, p. 456.

[27] These laws were reported in the Official Gazette, *Gazeta Zyrtare i Dhejtor 1944* and in the *Gazeta Zyrtare i Dhejtor 1945*. Collection at the Central State Archive, Tirana, Albania.

[28] O. Pearson, *Albania in Occupation and War*…, vol. 3, p. 42, 51.

[29] Ibidem, p. 51.

[30] Ibidem.

[31] E. Mëhilli, *From Stalin to Mao*…, p. 34.

[32] Ibidem, p. 52–53.

described as treason. Secret telegrams sent by the US representative to Albania to the US Secretary of State describe in some detail the defendants' plight and the horrific torture they underwent, along with the charges, which included throwing soil from one side of the ditch to the other or putting wet earth on dry beds of soil.[33] It was further alleged that Fultz had given gold sovereigns as bribes.[34] The US mission withdrew from Tirana. The concept of "the enemy" was expanding and served the useful purpose of weaponising the law against so-called saboteurs, though still with a veneer of legality. Certain events of 1947 were linked to the circumstances of the Maliq Marshes trial. Lake Maliq served as a labour camp for priests charged with treason.[35]

The trial against the Technical School in Tirana, in which treason was alleged on the part of the American and British missions, was held from 18 to 20 September.[36] Again, the connection with Harry Fulz was at the heart of the charges; Fulz had allegedly planned an armed uprising against the Hoxha regime. Links were posited with convicted war criminals to support the case of treason, a case based on fabricated charges and in which certain individuals accused of the crimes allegedly "asked to be interrogated a second time because in [their] previous interrogation [they] did not tell the whole truth, being ashamed to admit [their] treachery in front of the people."[37]

The fourth trial, or the "Second Opposition Trial", of 24 individuals, 10 of whom were government officials, began in September 1947 and ran until October. Links between the deputies, *Balli Kombëtar* and *Legaliteti* (right-wing, pro-monarchist parties) were posited by the prosecutor, Josif Pashko, who argued that in "the course of this trial it has been exposed that every organisation and every criminal activity against our People's Power were conducted and financed directly by the Anglo-American imperialists, chiefly by the Americans."[38] The trial was followed by further arrests of persons suspected of having links with individuals abroad. Disappearances and quasi-judicial executions characterised this period.[39]

In 1951 the tension rose still further. On 19 February a bomb exploded outside the Soviet embassy in Tirana. Celebrations were taking place at that time to mark the country's 34th anniversary. On 26 February, an emergency decree was issued, setting out broad parameters for a capital crime: "On the prosecution and trial of activities of terrorist organisations and terrorist acts

[33] O. Pearson, *Albania in Occupation and War*…, vol. 3, p. 112–113.
[34] Ibidem, p. 113.
[35] Ibidem, p. 188.
[36] Ibidem, p. 220–226.
[37] Ibidem, p. 226.
[38] Ibidem, p. 227–228.
[39] Ibidem, p. 230.

against representatives of the people's authorities, and of political and other organisations of the Albanian People's Republic."[40] Twenty-two individuals were executed without trial for the attack on the Soviet embassy. The charges comprised conspiracy with international foreign spies, making the accused members of a terrorist organisation.

On 10 October 1951 a sixth trial of Western-trained espionage and sabotage agents charged 14 defendants with having links to international organisations, now deemed to be part of a wider international espionage network. The authorities actively publicised the trial that took place in the Cinema on 17 November in Tirana.[41] The accused were charged with an attempt to overthrow the state. The prosecutor, Sotir Qirjqi, referred to a network of international organisations.[42] Those captured were alleged to have been trained in parachute jumping, topography, subversive warfare, and techniques of sabotage by American, British, and former Nazi officers in West German camps. Qirjqi's aggressive and at times violent speeches hit the headlines outside Albania, capturing the attention of an unsuspecting American and British public.[43]

In 1954 several other show trials took place. For example, on 6 April the trial of the last group of Albanian parachutists was seen as the "great show trial".[44] Radio Tirana provided detailed accounts of their activities, all of which were deemed subversive.[45]

Particular aspects of these trials are important for understanding the wider implications of Podgórecki's arguments and their relevance to this case study. First of all, these trials relied on a compliant judiciary, which was itself oppressed. Secondly, there were many victims of Stalinist justice who suffered at the hands of those who worked behind the scenes, operating as shadow counterparts to the law. These collaborators worked for the secret police, and supported the Albanian version of communism. Thirdly, these miscarriages of justice were committed alongside the preparation for and commencement of the Nuremberg proceedings in 1945–1949, when the nature of justice was under the international spotlight.[46] In fact, one of the most compelling narratives to dominate Albanian legal discourse in the post-1989 period concerns accountability, something destined never to be fully realised.

[40] Ibidem, p. 420–421.

[41] Ibidem, p. 435–436.

[42] Ibidem, p. 435.

[43] A Lord Bethell recounts, in his *The Great Betrayal* (1984). Quoted in O. Pearson, *Albania in Occupation and War*…, vol. 3, p. 436.

[44] Ibidem, p. 477.

[45] Ibidem.

[46] See discussion in A. Fijalkowski, *Politics, Law and Justice in People's Poland: The Fieldorf File*, "Slavic Review" 2014, vol. 73, no. 1, p. 85–107.

The Appearance of Legality

The venue noted above, Tirana's Rex Cinema, served as the courtroom. Loudspeakers transmitted the proceedings of the trials across the city; the audience comprised the national and international press, as well as spectators purportedly having been randomly selected from the streets, colleges and schools. These were events the public at large would be loath to miss. They formed an important part of the propaganda that supported the nascent regime in its quest to root out the enemy within. Podgórecki's stance on the meaning of these appearances is profound. The show trials did not end there, but this series of six major trials ensured that an already exhausted post-Second World War society was made subservient to the state's ever-changing concept of "the enemy". Any independence exercised by individuals would be crushed the moment it was detected. The witnesses to and survivors of these trials describe them as the genocide of the intellectuals.[47] The defendants at these trials represented the groups that came under suspicion, corresponding to wider events and political forces that influenced the Albanian authorities' choice of enemy and its depiction in a wider social message.[48]

The main protagonist of this article, Musine Kokalari, whose experience and testimony bears out Podgórecki's analysis of totalitarian systems, was born in 1917 in Adana, Turkey. Her father had served as a High Court judge there. Her family decided however to return to their southern Albanian roots in 1920, settling in Gjirokastër. Musine's childhood in Gjirokastër was filled with the fairy tales and folklore of the region. She attended school in Tirana, the capital, where her brother Vesim owned the Venus bookstore and worked closely with the main publishing houses; the *Mesagjeritë shqiptare* (a publishing house) was owned by another brother, Mumtaz. The Kokalari family was a family of intellectuals. At least two of Kokalari's brothers were active in politics, and both of them participated in literary life, as did Musine herself. At this time, as discussed in the previous sections, Albania was undergoing a transformation from being under Ottoman Rule to becoming an independent nation. The Kokalari siblings envisaged a progressive path for their country, and moved in circles that read and discussed the ideas of thinkers like Sami Frasheri, who represented the National Renaissance Movement. Musine would herself go on to complete her studies in Literature at La Sapienza, University of Rome, in 1941. The subject of her thesis was Naim Frasheri, whom she took to be the pioneer of modern Albanian literature. Widely published by the age of 24, Kokalari's

[47] T. Aliko, *Genocide of the Intellectual Elite of the Albanian Nation*, Shtypur ne Shyptshkronjen 'Maluka', Tirana 2007; see also: A. Fijalkowski, *Law, Visual Culture, and the Show Trial*, London, Routledge 2023, p. 59.

[48] Ibidem, p. 65.

literary achievements earned her an invitation to join the prestigious Albanian League of Writers and Artists. Anti-fascist and anti-nationalist by conviction, the use of the local vernacular and reference to the prevailing customs of the region rendered her writings unique. According to her great-niece, "Musine was ahead of her time and the place she lived in. To this day in Albania I cannot think of anyone to be compared to her."[49] To a great extent, Kokalari knew well the value of "pockets of democracy"; she lived in literary circles that could rightly be described as such during times of peace, war, and political oppression.[50] Kokalari herself absorbed the world around her like an anthropologist; it is this gaze that shaped her views about the world and Albania's place in it during her university studies in Rome, captured in her diaries at that time, when she experienced firsthand Italy's transformation into a colonial power, its embrace of fascist rule and of war.[51]

In 1944 Musine Kokalari was arrested. She was released after the execution of her two brothers, Mumtaz and Vesim. Kokalari decided to set literature to one side and devote herself to politics. She founded the Social Democratic Party (*Partia Socialdemokrate e Shqipërisë*) and wrote for its paper *Zëri i lirisë* (The Voice of Freedom). Kokalari was open about her wish to obtain justice for the murder of her brothers. Towards the end of the Second World War Kokalari opened a bookstore. She was arrested on 17 January 1946. Before her arrest she sent a letter to the Allied Forces and in it called for free elections, knowing that she would likely be rearrested as a consequence. In that letter she called for moral support for free elections, emphasised their importance, and the importance more generally of freedom of expression, values championed in the thinking of *Rilindja Kombëtare*, or Albanian National Awakening, a movement that had flourished from the 1870s until 1912.

At her trial, Kokalari did not deny her political activities. She rejected the official position that her values and love for her country should be viewed as criminal. In addition to live broadcasts of the trial, her photograph appeared twice on the covers of the main Albanian broadsheets. While Kokalari was defending her view of the development of democracy in Albania, someone hysterically shouted from the trial venue: "String her up!", after which the presiding judge asked: "Did you hear what people want for you, the accused?!". Kokalari responded immediately: "One day they will say the same for you, your

[49] Ibidem, p. 75.

[50] Bavjola Gami Shatro provides a meaningful analysis of Kokalari's diaries, published as *La mia vita universitaria* (My University Life, Rome, Viella 2016), see: B. Gami Shatro, *Essays on the Awareness of Loss in Contemporary Albanian Literature: Voices that Come From the Abyss*, Lexington Books, Lanham, MD 2024, p. 13–55.

[51] Ibidem.

honour!".[52] Schoolchildren were forced to attend the show trials in between lessons. In Kokalari's case, people tried to rip her hair out as she left the building. Kokalari was given the floor after the prosecution rested its case. She read out her defence but was interrupted by the court because it was felt that what she was saying did not relate to the charges. As what she was saying was beside the point, she was ordered to be silent; her written defence would be attached to the file. Her final words at the trial referred to Sami Frasheri: "I am a disciple of the renowned Sami Frasheri and in condemning me you seek to condemn renaissance."

Kokalari would not remain silent. She took her experiences, from childhood, her family memories, university studies, and literary life with her to prison. There, and until the day she died, she created a space for herself in which lived freely, despite attempts by the state to take away her powerful voice and prescient thinking.

Harsh Penalties

The use of harsh penalties in a totalitarian system is of a perverse nature.[53] Not only are severe penalties supported widely across society but the arbitrary nature of the law and a broad definition of who is an enemy can involve the harshest punishment for seemingly innocuous behaviour. The court sentenced Kokalari to 20 years imprisonment in one of the most brutal labour camps, located in northern Albania. Kokalari asked for pardon in 1957, but her request was turned down by the Ministry of the Interior, which instructed the Supreme Court not to grant pardon on the grounds that Kokalari was not yet fit to re-enter society (this was after 11 years behind bars). After 16 years of incarceration, Kokalari was released and exiled for a period to Rrëshen, a city in the district of Mirdita, where she was forced to work as a manual labourer and forbidden to write. Kokalari joked that she was a "mortar specialist". She was kept under surveillance for the rest of her life. "During work, she was what they [the *Sigurimi*] wanted her to be. But after work, she was what she wanted to be: well-dressed, beautiful, and with a book in her hands."[54] She was committed to the existence of the "pocket of democracy", no matter how small, that sustained her life and values. Kokalari succeeded in finishing a book about her political experience in 1972. It was written in secret and concerned the political vision she and her co-founders had, entitled *Si lindi Partia Social Demokrate* (*How*

[52] A. Fijalkowski, *Law, Visual Culture, and the Show Trial*…, p. 76.

[53] A. Podgórecki, *Totalitarian Law*…, p. 25.

[54] Interview with Kokalari's great-niece, see: A. Fijalkowski, *Law, Visual Culture, and the Show Trial*…, p. 77–78.

the Social Democratic Party was Born).[55] She died from cancer in August 1983. In 1993 the then Albanian president Sali Berisha declared Kokalari, together with several other Albanians, a "Martyr for Democracy". In Saimir Kumbaro's 2012 documentary *The Martyrs*, the Albanian writer Ismail Kadare remarks that "[she] was a distinguished martyr of freedom. She is the first to have formulated in a lapidary manner the idea of pluralism in Albania. She defended herself at the trial, where among other things she said: 'It is not necessary to be a communist to love Albania.'"[56] Her resistance to totalitarianism was exemplified in her protecting and maintaining the space to think, read, and write. It was a small space, but vital to her existence, and it was not destroyed by the state.

Legitimation

As discussed above, the other notable trials were conducted in the same vein as Kokalari's, although they may have stressed other themes, namely, Western espionage, themes that tallied with other show trials being staged contemporaneously, such as those held in Central and East Europe.[57] They were all public events, with law as the key performance and participants playing a key role in its enactment.

Abuse of the Citizen's Point of View

Kokalari knew that the abuse of the citizen's point of view was what motivated Hoxha's system. She recognised how her call for free elections was interpreted as a betrayal of the goals of the regime. This was demonstrated in her court statement.

Jiří Přibáň's work on dissidents is instructive and relevant here.[58] Přibáň describes how in authoritarian and totalitarian regimes, dissent is controlled from outside the political system. In other words, any expression that is free is considered dangerous and results in the authorities attempting to shut it down immediately. Přibáň recalls how the role of dissidents in the immediate aftermath of the Second World War was based on Marxism-Leninism and then Stalinism. New legal doctrines were created to explain the nature of the new political system in legal terms. The mainstream legal theory bolstered an unpredictably

[55] Ibidem, p. 75.

[56] Ibidem, p. 78.

[57] G. Hodos, *Show Trials: Stalinist Trials in Europe, 1948–1954*, Praeger, New York 1987.

[58] J. Přibáň, *Political Dissent, Human Rights, and Legal Transformations: Communist and Post-Communist Experiences*, "East European Politics and Societies" 2005, vol. 19, no. 4, p. 553–572.

repressive policy with the concept of socialist legality, which used education alongside the throttling of dissent to realise the working-class struggle during the period of proletarian dictatorship. The state was not to wither away but rather intensify its repressive policy against political opponents. The early years of Albanian Communism laid the foundations of a state system that worked towards achieving Hoxha's vision. The regime could rely on its legal institutions to educate and throttle while preserving energy and applying terror in an arbitrary manner. On the surface state institutions appeared to be working in a legitimate fashion. Even its own institutions were not immune from repression and terror, however, rendering them intrinsically fragile.

The very manner in which Kokalari took the stand was itself an important critique of the totalitarian regime. The dissident writer knew what democracy meant, and she valued, thanks to her education, her experiences in the "pockets of democracy" and her connections with individuals who placed great importance on speech, protest, and elections. This was at the heart of the political party of which she was a member, where political dissent, its use of the concept of human rights, and its attempts to challenge the existing political system, were part of a more general endeavour to preserve and re-build political identity. This group understood its vision to be prescient. Towards the end of Communist rule, the notion of civil society would come to represent values and virtues such as individual freedom, cooperation, spontaneity, solidarity, public initiative, protest, intellectual critique, recognised political dissent, and many other aspects of communal life destroyed by communists. This explains why dissidents would mostly support pro-European politics, and the first post-communist presidents, such as Václav Havel, would rally to the European project of unity.[59] Kokalari could already see in 1946 how the removal of these basic human rights, under the guise of a legitimate state, would deny her country the chance to create a polity.

Dark Social Engineering

Control over our knowledge of Kokalari's fate continues on the part of the Albanian political elite, including in respect of exhibitions at the national museum and historical institutes dedicated to the memory of communism and political crimes, such as the Institute for the Study of Communist Crimes and Consequences in Albania. Consequently accountability for the maladministration of justice has not been realised, and Kokalari's life story continues to be

[59] Ibidem, p. 566.

manipulated, consumed, and appropriated, as if in a vicious circle.[60] This process is driven by her own image because the space between the individual and social imagination has permitted the state to control the legal historical narrative rather than tolerate a mediated discourse.[61] Despite the exhibitions about the repression that Kokalari and her peers experienced during communist rule, there is no meaningful reckoning with the past nor deeper engagement with who Kokalari really was and, as a result, a missed opportunity to acknowledge the discourse about the sort of polity Kokalari and her colleagues envisioned for the wider Albanian polity.[62] The Albanian political elite's initiatives noted here are presented as ones that are shared by the wider society. The reality is that these initiatives hide behind public spirited goals that are in fact rejected, nor do they reflect any interest in seeing individuals held accountable for the maladministration of justice.[63]

Concluding Remarks

This discussion demonstrates the significance of Podgórecki's work for the Albanian cultural and historical context. The Polish sociologist had looked at several key aspects of totalitarian legal frameworks: the ground norm and its supremacy over the constitution; the servility of totalitarian law; the perverse perfection of totalitarian bureaucracy; oppression of and by the judiciary; legitimation; the derivational appearance of legality; use of the popular appeal of harsh penalties; abuse of the citizen's point of view; law as a dark instrument of social engineering. These aspects are all in evidence in the Albanian case. When considering a life such as Musine Kokalari's, Podgórecki's observations about totalitarian law are brought to the fore, given how law in Albania was remoulded to accommodate dictatorial rule, in form and application. Kokalari herself represents a vision of a polity that never went away despite the severe repression she suffered. Her experience is reflected in that of many others, and the wider Albanian case study provides an invaluable insight into the social forces that a totalitarian system generates.

[60] A. Fijalkowski, *Musine Kokalari and the Power of Images: Law, Aesthetics and Memory Regimes in the Albanian Experience*, "International Journal for the Semiotics of Law" 2015, vol. 28, no. 3, p. 594–595.

[61] C. Bottici, *Imaginal Politics*, Columbia University Press, Columbia, NY 2019, p. 1–11.

[62] A. Fijalkowski, *Law, Visual Culture, and the Show Trial*…, p. 80, 89–92.

[63] A. Podgórecki, *Totalitarian Law*…, p. 28–29.

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