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EU enlargement and acquis adoption burden: state of art and proposals for a correct adoption of the acquis for Albania

INTERNATIONAL SCIENTIFIC CONFERENCE

With the support of the Erasmus+ Programme of the European Union

JEAN MONNET CHAIR
EEAABAC
EU ENLARGEMENT and ACQUIS ADOPTION BURDEN:
ALBANIAN CHALLENGES

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Edited by
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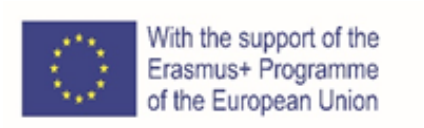

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PREFACE

The Jean Monnet Chair in *EU enlargement and acquis adoption burden: Albanian challenges*, established at the Department of Law, Faculty of Economics, University of Elbasan organized the International Scientific Conference "EU enlargement and acquis adoption burden: state of art and proposals for a correct adoption of the acquis for Albania", on January, 17,18 and 19, 2024.

The conference comes as a conclusive event for the Jean Monnet Chair. The event had a multidisciplinary approach and aimed to present high quality theoretical and empirical research papers from a broad range of disciplines, including economics, business, finance, law, tourism, engineering, development studies, political science, international relations, and other related disciplines with a focus on enlargement and integration issues in the European Union. Our aim was to bring together academics, scholars, authors and PhD students from Albania and other Balkan and European countries to share their knowledge and exchange ideas on the recent developments regarding EU enlargement and the perspective for the Western Balkans.

The conference purpose was to establish a debate among national, regional, and international scientific community members on the challenges that the European integration process brings and possibly to provide models, demonstrating the approaches to be followed.

With clear purpose of the Jean Monnet Chair EEAABAC, this event comes at a crucial moment during the integration process for Albania closing the screening process and being issued the EC screening report for the first cluster of negotiations. After the Summit of Tirana in December 2022 the EU reconfirms the importance of the strategic partnership between EU and Western Balkans as a region with a clear EU perspective. In December 2023 the European Council in its conclusions does not offer a perspective on the completion of the opening phase of the accession negotiations with Albania, due to the lack of decision within the Council, but reaffirms the EU perspective for the WB countries. The discussions during the days of the conference clearly analysed these last important events in the process of enlargement.

Drawing on these premises, the three days of the conference showed us relevant insights by each author regarding the new methodology of enlargement and the

factual development in the process. The presented papers are collected in this volume and published in order to contribute to the actual debate on enlargement issues faced by the candidate countries. Our intention is that this contribution of the Chair and published by the University of Elbasan, in implementing Jean Monnet Chair in *EU enlargement and acquis adoption burden: Albanian challenges*, will reach a vast number of policymakers, groups of interest, PA staff, stakeholders, academics, students, etc. through open source distribution by the Chair.

In the end, we want to pay aknoledgments to contributors, colleagues active in debate, participants, authorities present at the event, EU institutions and University of Elbasan for their continuous and valuable support for the research and its dissemination.

The Editor

Elbasan, February 2024

Contributions of Authors

DIRECTIVE 2003/88/EC CONCERNING CERTAIN ASPECTS OF THE ORGANIZATION OF WORKING TIME: RATIONALE OF THE DISCIPLINE, ROLE OF THE COURT OF JUSTICE AND DEROGATIONS BY COLLECTIVE AGREEMENTS.

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Abstract

The organization of working time stands as a pivotal domain within European Directives on social policy, with Directive 2003/88/EC serving as the cornerstone of current regulations. This directive, while consolidating the provisions of its predecessors, notably Directive 1993/104/EC, modified the structure without altering the core content, thus underscoring the significance of working time regulation within the European Union. Such recognition is further reinforced by its integration into the Charter of Fundamental Rights of the European Union, as articulated in Article 6(1) of the Treaty on European Union. Central to this framework is Article 31(2) of the Charter, which enshrines workers' rights to limitation of maximum working hours, daily and weekly rest periods, and annual paid leave. This paper aims to offer a comprehensive understanding of Directive 2003/88, elucidating its coverage of various aspects such as weekly working time, minimum rest periods, breaks, annual leave, and specialized work schedules like night, shift, and pattern work. Additionally, it examines the pivotal role played by the Court of Justice in interpreting the provisions of this directive, highlighting its significance in shaping the application and enforcement of working time regulations across member states. Furthermore, the paper explores derogations permitted to member states, including those facilitated through collective agreements, offering insights into the flexibility

inherent within the regulatory framework. Through this analysis, the paper seeks to contribute to a nuanced understanding of the complexities surrounding the regulation of working time within the European Union.

Keywords: Organization, Working time, Social policy, Workers' rights, Charter of Fundamental Rights, European Union.

1. Introduction

The organization of working time represents one of the most significant areas of intervention in European Directives on social policy. The current regulations are outlined in Directive 2003/88/EC, which addresses certain aspects of working time organization and consolidates the provisions of Directive 1993/104/EC, as amended by Directive 2000/34/EC. It's worth noting that Directive 2003/88 not only repeals these earlier Directives but also modifies the numbering of some Articles and paragraphs, thereby partly altering the structure without significantly changing the content. Consequently, the importance of working time regulation has been acknowledged at the highest level of Union regulation, namely within the Charter of Fundamental Rights of the European Union. As per Article 6(1) of the Treaty on European Union (TEU), "recognizing the rights, freedoms, and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

Article 31(2) of the Charter expressly provides that "2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods, and to an annual period of paid leave." The aim of this contribution is to provide essential information on issues covered by Directive 2003/88 (weekly working time, minimum rest periods, particularly daily and weekly, adequate breaks, annual leave, night, shift, and pattern work), as well as its purpose[1]. Furthermore, specific attention will be paid to the role played by the Court of Justice in interpreting the provisions of the mentioned Directive. Finally, some considerations will be provided regarding derogations that can be made by Member States, including through collective agreements.

1 More details in V. Leccese, *Directive 2003/88/EC concerning certain aspects of the organisation of working time*, in E. Ales, M. Bell, O. Deinert, S. Robin-Olivier (editors), *International and European Labour Law. Article-by-Article Commentary*, Nomos Verlagsgesellshaft, 2018, p. 1285 ff. and in V. Leccese, *Monitoring working time and Working Time Directive 2003/88/EC: A purposive approach*, in *European Labour Law Journal*, 14(1), 2023, p. 21 ff.

2. Purpose and discipline (main issues) of the European rules on working time

We can first observe that the explicit purpose of the initial Directive (Directive 1993/104) was to establish 'minimum safety and health requirements for the organization of working time' (Article 1(1)), aligned with a broader objective outlined in its preamble. This broader objective aims to foster improvements, particularly in the working environment, to ensure a higher level of protection for the safety and health of workers. This objective was underscored, as is well known, in Article 118A of the Treaty, in the text in force at the time, which served as the foundation for the adoption of the 1993 Directive. It is important to note that this objective forms the basis for the adoption of several European directives, commencing with the European Framework Directive 89/391 on the safety and health of workers, which has constituted a fundamental milestone in European regulation on the subject.

Returning to the working time directives, it is worth noting that the purpose of Directive 1993/104 and the broader objective mentioned earlier are largely reaffirmed in Directive 2003/88/EC. However, this affirmation no longer refers to Article 118A but rather to Article 137 TEC, which was in force when Directive 2003/88 was approved (now Article 153(1)(a) TFEU). Emphasizing this aspect is important because the Court of Justice, in its rulings, has meticulously examined the protective objectives pursued by European legislation since the judgment of November 12, 1996, concerning the action brought by the United Kingdom for the annulment of the first Directive 93/104[2].

Within the constraints of this brief synthesis, it is important to highlight that the overarching argument advanced by the Court unequivocally affirms that the Directive's intervention does not necessarily serve as a tool for influencing the labor market or the economic allocation of a company's resources. [3] Instead, the primary objective of the Directive, in terms of its purpose and content, is the protection of the health and safety of workers, a stance for which the European judges offer a broad interpretation. The Court explicitly confirms this stance by referencing the preamble to the Constitution of the World Health Organization, which defines health as a state of complete physical, mental, and social well-being, not merely the absence of illness or infirmity.

Primarily, the underlying principle of the initial Directive 93/104 (and also of Directive 88) has subsequently influenced the Court's approach in interpreting various provisions within the Directive. This influence is evident in the consolidation of its

2 ECJ C-84/94, 12.11.1996, *United Kingdom of Great Britain and Northern Ireland v Council of the European Union*, ECR I-5755.

3 Brian Bercusson, *Les temps communautaires*, in *Droit social*, 2000, n. 3, p. 248 ff.

protective function and in establishing an effective balance between the competing interests at stake. We will soon revisit this theme and explore the interaction between the Court and national judges. As mentioned earlier, let us briefly touch upon some key issues addressed by the Directive.

Without delving into the detailed regulations of the Directive and the extensive interpretations provided by the Court of Justice, it is worth mentioning that the Directive stipulates that Member States must take the necessary measures to ensure:

- that every worker is entitled to a minimum daily rest period of 11 consecutive hours within each 24-hour period (Art. 3);
- that every worker is entitled to a rest break if the working day exceeds six hours. The specifics of this break and the conditions under which it is granted shall be determined by collective agreements, agreements between employers and workers' representatives, or, in the absence of such agreements, by national legislation (Art. 4);
- that, within each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours, in addition to the 11 hours of daily rest stipulated in Article 3. If justified by objective, technical, or organizational reasons, a minimum rest period of 24 hours may be applied (Art. 5)[4];
- that the average working time for each seven-day period, including overtime, does not exceed 48 hours. A reference period not exceeding four months may be utilized for the application of this provision (Art. 6 and 16);
- that every worker is entitled to a minimum of four weeks of paid annual leave. This period cannot be substituted with financial compensation, except in cases of termination of the employment relationship (Art. 7);
- Other provisions pertain to night work, shift work, and work patterns (Art. 8-13);

3. The role of the Court of Justice

Turning to the analysis of the role of the Court of Justice, it is crucial to acknowledge that, as previously mentioned, the underlying principles of the Working Time Directives have consistently guided the Court's proceedings. Indeed, the Court employs a teleological approach in its interpretations, bolstered in recent judgments by referencing the content of Article 31(2) of the Charter of Fundamental Rights, as previously analyzed.

4 See also Art. 16: Member States may lay down for the application of Art. 5 a reference period not exceeding 14 days.

One of the most significant areas where the Court has applied this approach is in defining working hours and rest periods, as outlined in Article 2 of the directive:

- "working time" is defined as any period during which the worker is engaged in work, at the disposal of the employer, and performing their duties or activities, in accordance with national laws and/or practices;
- "rest period" is defined as any period that is not considered working time.

In many Member States, these definitions have been at the center of substantial disputes, leading to the submission of numerous interpretative questions before the Court. The Court's decisions in these matters have had profound effects on the regulatory frameworks of numerous states.

Therefore, while it may not be feasible to discuss every ruling here, it is imperative to at least examine some essential passages of the Jäger[5] case.

The teleological approach is most evident in the assertion that the concepts of 'working time' and 'rest periods' are integral components of Community law, which must be defined in alignment with the objectives of the Directive. These concepts should not be interpreted based on the criteria of individual national legislations.

Therefore, to guarantee the respect of the objective of the Directive (harmonising the protection of the safety and health of workers by means of minimum requirements), Member States may not unilaterally determine the scope of those concepts and may not make subject to any condition the right of employees to have working periods and corresponding rest periods duly taken into account[6]. It's important to note that, in providing its reading of these provisions the Court does not observe the literal wording of the directive, also in view of the diversity of versions found in the different official languages.

As observed by Advocate General Ruíz-Jarabo Colomer in *Jäger* case, a 'comparative exercise' on the different versions 'leads nowhere': 'for example, whereas in Spanish, French, and Italian, the worker is required to be at work, in English, German, and Dutch, the worker must be working' (so, the Advocate concludes that the teleological approach is to be preferred).

The Court, observing the time when doctors are on call, and presence in the hospital is required, concludes that it is essential to establish whether they have two obligations: to be present at the place determined by the employer and to be available to the employer in order to be able to provide their services immediately in case of need. In fact, those obligations, which make it impossible for the doctors to

5 ECJ C-151/02, 9.9.2003, *Landeshauptstadt Kiel v Norbert Jäger*, ECR I-8389, which takes up and develops the reasoning in ECJ C-303/98, 3.10.2000, *Simap*, and ECJ C-241/99, 3.7.2001, *CIG*.

6 ECJ C-151/02, cited, paras 58-59.

choose the place where they stay during waiting periods, must be regarded as falling within the ambit of the performance of their duties.

This is also the case in the intervals when the employees can rest or even sleep. In fact, on one hand the need for their interventions depends on variable circumstances and cannot be planned in advance.

On the other hand, in these periods the employees are obliged to be separated from their families and social environment, and their freedom to manage their time is impeded or severely restricted.

At the end, they cannot be regarded as being at rest, even during the periods when they are on call and 'not actually carrying on any professional activity'.

This interpretation is the only one 'which accords with the objective of the Directive, which is to secure effective protection of the safety and health of employees by allowing them to enjoy minimum periods of rest'; this cannot be called into question by objections based on negative economic and organisational consequences which might result (see recital 5 in the Preamble to Directive).

As we can see the aim to ensure a real rest is the basis of the interpretation. A rest period in which, not in the words of the directive, but in the idea of the Court, the worker must be able to carry out other activities.

In *Jäger* case, the Court says also that different conclusions can be drawn in the case of a stand-by service, in which the employee is reachable at any time (so that he may be called upon at short notice to perform his professional tasks), but is not obliged to be present in a specific place designated by the employer: in this case, the worker can, in fact, choose both where to stay and the activities during the waiting period[7].

In many subsequent decisions the court has addressed the question of definitions, with reference to various jobs and activities[8]. Here we would like to briefly recall only the decision in which the Court modified (or clarified) its interpretation with reference to periods of stand-by duty.

In the case *Ville de Nivelles*, the Court, moving again from a pragmatic and teleological approach, observes that "the obligation to […] reach his place of work within 8 minutes are such as to objectively limit the opportunities which a worker […] has to devote himself to his personal and social interests".

For this reason, the Court states that "Article 2 of Directive 2003/88 must be interpreted as meaning that stand-by time which a worker spends at home with the duty to respond to calls from his employer within 8 minutes, very significantly restricting the opportunities for other activities, must be regarded as 'working

7 ECJ C-151/02, cited, paras 60 ff.

8 Among others, see ECJ C 397/01-403/01, 5.10.2024, *Pfeiffer*; C-258/10, 4.3.2011, *Grigore*; C-437/05, 11.1.2007, *Vorel*; C-14/04, 1.12.2005.

time'"[9].

In other cases, the Court entrusts the national judge with the task of verifying if the period constitutes 'working time'".

The national judge, in fact, must verify "if it follows from an overall assessment of all the circumstances of the case, in particular the consequences of such a response time and, where appropriate, the average frequency of interventions during that period, that the constraints imposed on that worker during that period are of such a nature as to constrain objectively and very significantly the ability that he or she has to freely manage, during the same period, the time during which his or her professional services are not required and to devote that time to his or her own interests"[10].

4. The principle of primacy of EU law (in some pronounces on working time)

Naturally, the problem of the notion is only one of the problems faced by the Court in its work of interpretation. Working time European regulation, indeed, is one of the fields in which is more intensive the dialogue between national Courts and Court of Justice.

What is more important to note is that this work must be considered by any lawyers intending to interpret and apply the Directive itself.

And, given some conditions, national Court must also disapply the national legislation in the conflicts with the directive, as interpreted by the Court.

We can't here to enter in this issue, in which it is also involved the use made by the Court of the EU Charter of Fundamental rights (art. 31(2), seen above).

It is only possible remember, in general, the relevant impact that the judgements of the Court of Justice have on the national cases.

And it is sufficient to recall two statements, among the many that the Court has produced on the matter of primacy of EU law.

Interpreting the notion of breaks and, again, the definition of working time the Court states, inter alia, that "The principle of primacy of EU law must be interpreted as precluding a national court, ruling following the setting aside of its judgment by a higher court, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those assessments are not compatible with EU law"[11].

9 ECJ C-518/15, 21.2.2018, *Ville de Nivelles c. R.M.*

10 ECJ case C-580/19, 9.3.2021, RJ c. Stadt Offenbach am Main. On this topic see also ECJ case C-344/19, 9.3.2021, DJ c. Radiotelevizija Slovenija.

11 ECJ C-107/19, 9.9.2021, XR v Dopravní podnik hl. m. Prahy, akciová společnost.

In another pronunciation (regarding annual leave) the Courts states that "EU law must be interpreted as precluding national courts from protecting, on the basis of national law, the legitimate expectation of employers that the case-law of the highest national courts, which confirmed the lawfulness" of national provisions rules later revealed to be in conflict with Union law, "will continue to apply"[12].

5. Derogations and exceptions

Some final comments could be made on the derogations permitted by the Directive. Directive regulations, indeed, have been completed with the provisions of important exceptions and derogations and by an *opt-out* clause (now contained in Arts. 17-22 Dir. 2003/88), which, in the interests of the employer and in many cases in a significant way, give greater flexibility in determining minimum rest periods and maximum working time limits.

And Member State may directly introduce derogations or may allow derogations by way of collective agreements or agreements concluded between the two sides of industry at the appropriate collective level.

This has led some academic writers to question the intrinsic consistency of the overall regulation, which has seemed 'schizoid', in that it represents a 'legislative recantation', in which the regulations established in the first part (arts. 1-16) are then deprived of any imperative effect in the second[13].

Many years, we can affirm a much less pessimistic assessment. We think that, despite the derogations introduced in the second part, many provisions of the Directive certainly represent a significant instrument for the protective purposes and objectives described above: so much so that during the procedures for amending the Directive[14], many Member States have suggested reducing the protective elements, especially in view of the strict interpretations which, in the course of time, have been provided by the ECJ.

In second place, the significant volume of judgments by the Court demonstrates that working time flexibility in the interests of the employer cannot be considered to be part of the purposes of the Directive. These interests are, in fact, considered, but only as a (relative and external) commitment with respect to the content of the Directive, as can be seen, again from the Preamble: we note, in particular the part where, after clarifying that the objective of improving workers' safety, hygiene and health at

12 ECJ 13.12.2018, C-385/17, Torsten Hein v Albert Holzkamm GmbH & Co. KG.

13 In that sense, for all, Alain Supiot, *Temps de travail: pour une concordance des temps*, in *Droit Social*, 1995, n. 12, p. 947 ff.

14 We limit ourselves here to noting that on 29 April 2009 an initial procedure for amending Dir. 2003/88 was concluded without success: for the first proposal of the Commission, see COM(2004) 607 Final. The same end had a new procedure, activated by the Commission in 2010.

work should not be subordinated to purely economic considerations (recital 4), the Preamble nevertheless emphasizes the desirability, "in view of the question likely to be raised by the organisation of working time within an undertaking", of allowing a measure of flexibility in the application of certain provisions of the Directive, "whilst ensuring compliance with the principles of protecting the safety and health of workers" (recital 15). There is, therefore, a clear connection with that question when the Preamble closes with the observation that "it is necessary to provide that certain provisions may be subject to derogations implemented, according to the case, by the Member States or the two sides of industry".

As stated by the Court, indeed, as exceptions to the European Union system for the organisation of working time put in place by the Directive, derogations must be interpreted in such a way that their scope is limited to what is strictly necessary in order to safeguard the interests which they are designed to protect[15].

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COM(2004) 607 Final. The same end had a new procedure, activated by the Commission in 2010.

15 ECJ C-151/02, cited, para 89; Case C-428/09, cited, para 40.

THE TRENDS OF THE EU COMMON AGRICULTURAL POLICY: THE LEGAL TOOLS FOR STRAIGHTENING FARMERS POSITION WITHIN THE AGRIFOOD SUPPLY CHAIN

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ABSTRACT

Within the common market organization rules, establishing the legal framework for the functioning of the agrifood market, rules aimed at strengthening the position of farmers, by balancing the distribution of value among the agrifood chain are becoming relevant. In this perspective, the essay analyses the role of producers organizations, as well as the rules referred to objective criteria in fixing the delivery price of agricultural products, within the contractual rules provided by the EU regulation. It is also stressed the relevance of the directive on unfair trading practices in agricultural and food supply chain. Finally, conclusive remarks outline the relevance for Albania of the implementation of this set of rules in the perspective of the EU accession process.

Keywords: *agrifood supply chain, market regulation, producers organizations*

1. General objectives of the market regulation in the European Union

Ensuring a fair standard of living in agricultural sector is one of the main goals of the Common Agricultural Policy, as well as the basis of the special regulation of agriculture in the EU Treaties.

The topic of the fair remuneration of farmers shall be considered the basis of the special regulation of agriculture in the Treaty. Art 39 TFUE mentions the "fair standard of living of the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture" as one of the five objectives of the Common Agricultural Policy (CAP), strictly related to the first one, "increase agricultural productivity by promoting technical progress and by ensuring the

rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour".

Legal tools to join the CAP objectives changed among the years.

The first Common Agricultural Policy was based on an administrative price system, ensuring direct payments to farmers linked to the quantity of products. Unsold agricultural products were collected at national level and paid to farmers the corresponding price fixed by the Commission.

This system was gradually replaced by the decoupling payments. In general, direct payments funding has been remarkably weakened, mainly in the latest years, in the perspective to address agriculture to the market, face to the international obligation in the framework of WTO.

This trend started with the MacSharry agricultural policy reform, in the '90, that also introduces a very relevant set of rules aimed at enhance quality products, with the goal to promote the competitiveness of agricultural products and at the same time support farmers income – considering the higher prices of PDO and PGI as well as organic products on the market.

The real break with the past is represented by the Common Agricultural Policy Reform, for the period 2014-2020[1]. The Reform had to face with a significant reduction of prices of agricultural productions, arising from various factors, in particular:

- the liberalization of markets,
- the ability of processors and distributors to acquire raw materials on foreign markets at lower prices than the European ones,
- the elimination of internal quotas of production and the reduction of financial support measures.

In that period, the European Union dealt with the price crisis by a set of legal tools, firstly experimented in the dairy sector in 2012. The Common market regulation for dairy sector was based for a long period[2] (1984-2015) on a protectionist mechanism (milk quotas) that ensured guaranteed outlets for milk production and consequently an adequate remuneration of the farm-gate price. The cancellation of quota system strongly affected the situation of producers supplying raw milk to buyers, because

1 D. Gadbin, *L'OCM unique: le déclin de la régulation publique des marchés*, Revue de droit rural 2014, dossier 9; A. Iannarelli, *Profili giuridici del sistema agroalimentare e agroindustriale. Soggetti e concorrenza*, Bari, 2018. I. Canfora, *La PAC 2023-2027: un nouvel équilibre dans les relations contractuelles au sein de la filière agroalimentaire*, Revue de droit rural 2023, dossier 17.

2 See M. Cardwell, *Milk quotas. European Community and United Kingdom Law,* Clarendon Press 1986.

of the liberalization of the market.

Apart of the specific situation of the milk sector, the EU CAP reform identified general legal instruments – applicable to the whole Common Market organization - aimed at strengthening producers association to concentrate supply and obtain more competitive prices. It also established legal tools to enable interbranch relationships between business operators and enhance the transparence of contractual schemes.

The legal instruments introduced by the CAP 2014-20 (and reinforced by the new CAP 2023-27) has both the goal to strengthening farmers' position in value chains and increasing their bargaining power within the food chain by legal schemes[3], as well as to facilitate the supply of raw materials within the agrifood chain, taking into consideration the weaker position of farmers.

In particular the focus on the price formation in agricultural products supply contracts become a key aspect of the "sustainable food systems" established by the Commission in the *Farm to fork strategy*. The *Green deal* document for the agrifood sector[4] outlined the relevance of the economic and social sustainability in agricultural sector, that become a crucial topic in the legal thought about the new regulation of agrifood markets[5], related to the persistence of farms in the European territory.

In this framework, the Common market organization outlines a set of legal tools, tailored to achieve the general objectives in the functioning of the agrifood market.

The most relevant rules regulating the agrifood market are currently based on:

- instruments implementing the cooperation among farmers (Producer organizations) and enhancing synergies within value chains, by fostering quality production, research and innovation (Interbranch organizations);
- a regulatory framework of contractual relationships in terms of transparency and definition of objective criteria on which the contracts shall be based
- increasing market transparency and ensuring effective mechanisms against Unfair Trading Practices (as provided by the UTP directive n. 633/2019.

3 I. Canfora (2023) *The «fair price» in agri-food chain*, in: Agri-food market regulation and contractual relationships in the light of Directive (EU) 633/2019", AM Mancaleoni, R Torino (eds), https://romatrepress.uniroma3.it/libro/agrifood-market-regulation-and-contractual-relationships-in-the-light-of-directive-eu-633-2019/

4 Communication from the Commission to the European parliament, the Council, the European economic and social committee and the Committee of the regions, *A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system* COM/2020/381 final, Bruxelles, 20.5.2020.

5 On this topic, see L. Russo, *La sostenibilità economica delle imprese agricole tra dinamiche di mercato e rapporti contrattuali di filiera*, in *La sostenibilità in agricoltura e la riforma della PAC*, Bari 2021, p. 91 ss.

2. The role of Producer Organizations in agricultural sector

The organizations of agricultural producers (POs) are subjects operating in the market whose constitution is entrusted to the voluntary choice of aggregation by agricultural producers belonging to the same production sector, in a specific geographical area. They play an important role in regulating the agri-food market, which can affect in the sense of strengthening the bargaining power in the formation of the price with the buyer, a processing or distribution company (reg. 1308/13, art. 152 ss). These are in particular the functions related to the marketing of products and the placing of production on the market, ranging from production planning, to the optimization of production costs, to the concentration of supply up to the possibility of negotiating contracts for the offer of agricultural products. Carrying out contractual negotiations on behalf of the members is consided the key function of the POs. For POs that undertake to place the products of the members on the market, the European legislation provides for some significant advantages in terms of the applicable legal rules, related to the exemption from the application of the competition rules. This is an essential perspective for strengthen the role of POs as intermediaries in the agri-food chain. In fact, the POs recognized "by way of derogation from Article 101 par. 1 TFEU" can legitimately "plan production, optimize production costs, place on the market and negotiate contracts concerning the offer of agricultural products, on behalf of the members"[6]. The negotiation activity includes the definition of the sale price of the agricultural production of the members. The definition of contents and methods of POs activity significantly affects the application of the general competition rules, without prejudice to the rule according to which the agreements cannot have the effect of applying identical prices (art. 209, par. 2 reg. 1308/13)[7].

Moreover, depending on the sectors and types of market, and also in relation to individual national experiences, the role of groups is an important, although not decisive, tool for responding to the imbalance of power in negotiations on the formation of the sale price of products. In fact, the constitution in associative bodies is left to private autonomy, albeit encouraged by the provisions of favor that have now been referred to and from which one could expect, in the future, greater

6 Art. 152, par. 1 bis reg. (EU) 1308/13.

7 On which see the interpretative position of the Court of Justice in the judgment of 14 November 2017, case C-671/15. On this point, cfr. A. Jannarelli, *Dal caso "indivia" al regolamento omnibus*, *Dir agroalim.* 2018, 115 ss. An amendment or the declaration of nullity of agreements entered into by POs (if a violation of the competition rules is ascertained, in contrast with the objectives of agricultural policies) will produce effects only after notification to the companies, without prejudice to the effects already produced. See I. Canfora, *La cessione dei prodotti tramite le organizzazioni di produttori*, in *Trattato di diritto alimentare italiano e dell'Unione Europea*, P. Borghi, I. Canfora, A. Di Lauro, L. Russo Eds., Milano 2021, p 147; I. Canfora *Organizzazione dei produttori agricoli*, in *Digesto, priv. Civ. agg*. XI, 2018, 355.

recourse to the constitution of such subjects even in national situations in which there is a lower propensity to do so.

3. Contractual schemes for the sale of agricultural products and the introduction of criteria for price formation

Another new regulatory instrument aimed at improving the functioning of the agri-food chain, laid down by the CAP reform 2014-20, is represented by the provision of the harmonization, at European level, of rules of first sale contracts of agricultural products (art. 168 of reg. 1308/13) [8].

It is important to notice that rules affecting contractual transparency, in a situation where the imbalance between parties does not depend on the simple information gap on the conditions of the contractual structure (as happens for consumer contracts), can have limited effects in themselves. In fact, the imbalance in the agri-food chain, within B2B relationships, concerns the different power between the parties. This is related to the ability to support negotiations leading to an adequate economic result, as regards the conditions of the supply contract and the profitability of the sale price.

Therefore, in the absence of provisions that actually affect the formation of prices, an issue to which we will return shortly, provisions of a formal nature, which guarantee the transparency of the contractual content, do not appear to be decisive for the underlying issue highlighted above[9].

Furthermore, the introduction of a uniform contractual scheme for all contracts for the sale of agricultural products was originally left to the choice of Member States; the obligation to standardize the content of the national legislative framework to the provisions of the European regulation occurred in the event that the State had chosen to regulate contracts for the first sale of agricultural products within the national territory. Subsequently, as a result of the 2017 reform, the provision was corrected by introducing the possibility, for individual agricultural producers or producer organizations, to directly enforce the obligation of form and content provided for by Article 168 of the Regulation (EU) 1308/13. Currently, art 168 of regulation 1308/13 applies directly in national legislations.

A step forward, in terms of effectiveness with respect to the need to intervene on the balance of value in the agri-food chain, was recently taken with a new amendment to the provision, provided for by reg. (EU) 2021/2117. The regulation intervenes, albeit with caution, on the methods of forming the price and determining indicators

8 I. Canfora, *Raggiungere un equilibrio nella filiera agroalimentare. Strumenti di governo del mercato e regole contrattuali*, in *Cibo e diritto. Una prospettiva comparata*, V. Zeno Zencovich, L. Scaffardi Eds., vol. 1, Roma TrE-Press, 237.

9 On this topic, see L. Costantino, *La problematica dei prezzi dei prodotti agricoli: strumenti normativi tra antichi problemi e nuove crisi*, in *Riv. Dir. agrario* 2020, 783.

that make the value corresponding to what can be expected from a transfer contract that meets parameters of fair remuneration for agricultural producers.

The latest version of the rule provides that the price (resulting from the written supply contract) is alternatively: fixed and established in the contract and / or "*calculated by combining various factors established in the contract, which may include objective indicators, which can be based on prices and relevant production and market costs, as well as indices and methods of calculating the final price, which are easily accessible and understandable and which reflect changes in market conditions, quantities delivered and the quality or composition of agricultural products delivered: such indicators can be based on relevant prices and production and market costs; to this end, the Member States may establish the indicators, according to objective criteria and based on studies concerning production and the food chain; the contracting parties are free to refer to such indicators or to any other indicator they deem relevant* ".

The provision reaffirms the principle of freedom in the formation of the price, specifying that it is up to the parties to use or not such indicators in the formation of the price; the choice of which of them to use in the transaction. The same rule provides an option - and not an obligation - for the Member States to set objective indicators schemes, with the consequence that also the implementation of these objective criteria is left to a choice of Member States legislative policy.

However, the introduction of this provision may represent an opportunity to intervene in correcting imbalances in the distribution of value along the supply chain - not only in the interest of equitable remuneration of agricultural producers, but also in the perspective of intervening on critical factors, for example through the valorization of the costs linked to wages and duly declared work.

4. Regulatory action to ban unfair commercial practices

The regulatory framework for business relationships in the agri-food sector, defined by European regulations through the instruments for the functioning of the common organization of the market, finds its completion with the *Directive on unfair trading practices in the agricultural and food supply chain*, no. 2019/633.

Indeed, if we take into account the need to intervene on the balance of relations in the supply chain - especially in a regulatory framework in which private economic actors play a decisive role in the governance of the market - the simple attention given to instruments aimed at strengthening, through the establishment of groups and the contractual rules mentioned above, the first segment of relations in the agri-food chain (agricultural enterprises-first buyer) may be insufficient on its own to correct distortions of downstream economic operators, such as large-scale organized

retailers, which have a much greater economic and contractual power than even the presence of aggregations between producers.

Contractual conditions (including price fixing) are generally defined by large retailers (national and international). This is true not only regarding the price fixing to the consumer, but also regarding the price of the supply of goods. The discounts on consumer prices end up being "discharged" on economic operators who do not have the ability to impose themselves in bargaining: firstly on agricultural enterprises, as a result of organizational decisions in the relationships of the supply chain that are beyond their control, as well as small and medium-sized enterprises processing agricultural products..

Directive no. 2019/633 covers the whole context of business relations in the agri-food sector, with the aim of hitting the distortions that mainly affect agricultural producers. It is stated in recital 10 that "The protection provided by this Directive should benefit agricultural producers and natural or legal persons that supply agricultural and food products, including producer organizations, whether recognized or not, and associations of producer organizations, whether recognized or not, subject to their relative bargaining power". From the list of subjects representing the agricultural part (including the POs themselves, which up to now we have seen as the main response of European law in order to ensure a balance in the negotiations for the supply of agricultural raw materials), it therefore appears that the level of distortions that may occur in the agri-food chain, because of the presence of subjects with bargaining power such as to impose unfair conditions on economic operators upstream of agri-food production, is able to neutralize even the "ordinary" tools introduced and implemented by Regulation no. 2013/1308 over the years.

The Directive provides for a minimum list of prohibited practices to be transposed into the laws of the Member States, some of which are still prohibited (such as: payment beyond the terms of the law, abrupt cancellations of orders, unilateral changes to the terms of the agreement, request for payments for services not related to the sale, attribution of payments for loss of products, etc.), other prohibited if they have not been the subject of negotiations between the parties (see art. 3 of the Directive).

Since this is a minimal corrective action, Member States have been allowed to intervene in their national legislation and to introduce further cases to be prohibited *ex lege*.

This choice, although it may appear to be a desire not to impose excessive restrictions on competition, is undoubtedly an important element in the context we are examining. In fact, in addition to the list of expressly prohibited practices, the Directive provides for a uniform system of reaction to unfair practices, which

requires, for example, the definition of a law enforcement authority at national level, as well as the protection of the complainant's confidentiality, to avoid commercial retaliation by economic operators sanctioned for violation of the rules.

In addition, in providing for the extension to further cases by the Member States, if they are compatible with the rules relating to the functioning of the internal market, art. 9 par. 2 allows to prohibit, at national level, specific unfair commercial practices that may be more or less relevant depending on the market areas in the European Union.

Such a rule represents an important opportunity for States, which leads them to identify specific situations in national markets and to adapt their law enforcement tools to national reality, allowing stricter national rules (provided they are compatible with the functioning of the internal market) to be maintained or introduced.

If we look at the Italian experience, it is immediately evident that the choice of the national legislator has been oriented towards adopting specific and additional provisions that have an immediate impact on the economic balance in the sector, aimed at counteracting the dispersion of value to the detriment of weaker companies in the chain of contractual relations.

Legislative decree no. 2021/198 introduced the prohibition of double-down auctions, the classification of sales below production costs as an unfair commercial practice and the introduction of specific rules on sales below cost in the food sector: cases corresponding to recurrent practices which had been denounced by several parties at national level and which, not surprisingly, have a direct impact on price formation and therefore on the distribution of value in the sector[10]. In particular, the definition, among unfair commercial practices, of the sale of agricultural and food products at prices below production costs - which species of the genus of unfair practices consisting in imposing contractual conditions that are excessively burdensome for the seller - refers, together, to the need for a transparent determination of production costs, as well as identification, at national level of average production costs[11].

In this regard, it is appropriate to stress the importance of these aspects in the balance of contractual relations, that the determination of production costs in recognition of the right price is referred to both as a criterion for determining the price clause

10 For a more precise analysis of d.lgs. no. 2021/198, see I. Canfora, V. Leccese, *Pratiche sleali, equilibrio del valore e legalità dei rapporti di lavoro nella filiera agroalimentare*, in *Dir. Lav. Rel. Ind*. 2022, 135 ss.

11 I. Canfora, V. Leccese, *Pratiche sleali, equilibrio del valore e legalità dei rapporti di lavoro nella filiera agroalimentare, cit*., p. 146. Regarding the relevance of the price determination and the criteria for setting average production prices, following the first definition of average production cost, in accordance to art. 10-quater of l. no. 2019/44, A. Jannarelli, *Prezzi dei prodotti agricoli nei rapporti di filiera e rispetto dei costi medi di produzione tra illusioni ottiche ed effettiva regolazione del mercato*, in *Riv. Dir. Agr*, 2019, p. 559.

at the stage of the negotiations, in the aforementioned amendment of art. 168 of Regulation no. 2013/1308. This provision is directly applicable in our legal system, both as a limit that qualifies unfair conduct in the relationship chain.

5. Some final remarks about the accession of Albania to the EU

As described above, Common market organization rules play a pivotal role in the perspective of development of agricultural sector. Legal tools established to enhance the activity of business operators within the agrifood chain are complementary to the provision of financial measures for agriculture (laid down, for the EU member states, by reg. 2021/2115 on national strategic plans and reg. 2021/2116 on financing, management and monitoring of the common agricultural policy). It is to notice that the financial support to the CAP, in last years, has been considered in terms of "safety net" for farmers, since it has been progressively reduced; furthermore, most of the financial measures are addressed to environmental payments, articulated in several forms.

Balkan Countries involved in the pre-accession procedures, as well known, benefit from a financial support for agricultural sector, funded by the EU IPARD programs, aimed at increase the competitiveness of agricultural sector, the development of rural fabric and the employment in rural areas, improve administrative structures in rural areas, as well as to contribute to the environmental goals and mitigation of climate change. The content of individual measures is defined in accordance with States, as well as the budget distribution[12].

In the phase of pre-accession, Countries are focused on the use of financial measures aimed at enhancing the rural areas and the functioning of the agricultural market. As far as the identification of measures activated by Albania, it is to notice that most of them are addressed to infrastructure (both business and public). Investments in physical assets in agricultural holdings and investments in physical assets concerning processing and marketing of agricultural and fishery products cover the wider part of the financial support; there is also a significant part of EU contribution intended to support farm diversification and business development. These measures represent, undoubtedly the first step to enhance the position of business operators in agrifood sector.

The overall perspective adopted goes in the direction of strengthening business operators activities within the agrifood supply chain, as important driver of economic growth.

12 COMMISSION IMPLEMENTING DECISION of 9.3.2022 adopting the IPA III Rural Development programme (IPARD III) of the Republic of Albania for the years 2021-2027, Brussels, 9.3.2022 C(2022) 1539 final; Ministry of Agriculture and Rural Development Republic of Albania Rural Development Programme 2021-2027 Under Instrument for Pre-Accession Assistance (IPA), January 2022.

However, the measures activated take into consideration the business operators as themselves. It could be wondered if any financial measure has been provided for network or groups of producers. Measures related to specific objectives no. M2, *support for setting up the producers groups*, no. M8 *improvement of skill competences* and M13 *promotion of cooperation for innovation and knowledge transfer*, are not currently included by the Albanian program.

Nevertheless, the IPARD III 2021-2027 Program describes the weakness of the sector, inter alia, outlining that "*the sector is characterized with small scale and fragmented production. The typical producer has a low level of technology and equipment, low quality of buildings and storage facilities, low level of knowledge of all relevant topics in modern agriculture and processing among many farmers and processors, low-quality of plant varieties and breeds*"[13].

Without addressing the substance of the political choices concerning the IPARD measures activated in Albania, it is important to outline that the market structure in accordance with the common market regulation rules should be considered, in the next future, as the main framework that Albanian agrifood system has to deal with.

Therefore, it is important to consider, by building a strong agrifood system, the benefits arising from network and cooperation between farmers, based on the establishment of groups of producers (as the Producers organizations laid down by reg. no. 1308/13), which financial support is provided by specific measures within pre-accession programs. The groups of producers can face the weakness of the small farmers, by ensuring a functioning supply chain system. Beside a proper allocation of financial resources, the definition of a comprehensive regulatory framework of the agrifood market is an opportunity not to be missed, to strengthen the agrifood sector in the perspective of the accession to the European Union.

13 Ministry of Agriculture and Rural Development Republic of Albania, Rural Development Programme 2021-2027 Under Instrument for Pre-Accession Assistance (IPA), SWOT Summary - Agricultural forest and food industry, p. 54.

AMBIENTE, IMPRESA, RUOLO DELLE ISTITUZIONI: TEMI E QUESTIONI PRELIMINARI PER UN APPROCCI ALLA RICERCA[1]

Giovanni Luchena[2]

La c.d. costituzione economica come novellata a seguito della riforma costituzionale del 2022 riscopre la sua vitalità[3] divenendo l'anello di congiunzione, se non il presupposto, o il perno dell'azione politico-amministrativa in funzione degli obiettivi ambientali. La sua parabola ascendente ha interrotto la fase innescata dagli eccessi del neoliberismo. Solidarietà, coesione, sviluppo costituiscono il triangolo operativo di un tracciato che riecheggia i contenuti della c.d. costituzione economica originaria in un momento in cui la stessa Unione europea cerca di ritrovare sé stessa, anche attraverso le misure economiche che ha provato a fornire in termini di risposta «unitaria e solidale» alle crisi[4]. La c.d. Costituzione economica, infatti, è stata erosa, in passato, per così dire, nella parte in cui l'attività economica privata incontra i limiti della dignità umana (ad esempio da parte delle multinazionali) e della programmazione. Un terreno (parzialmente) recuperato, almeno di recente, e comunque in fase di avvio, per effetto del quale si pone un limite al potere dei mercati prevedendo il contemperamento dello svolgimento dell'attività economica con la tutela della salute e dell'ambiente, e che consente al legislatore di riguadagnare la facoltà di programmare e coordinare le attività economiche pubbliche e private ai fini della tutela ambientale per il tramite di interventi non neutrali né sporadici ma diretti e strutturati, in linea con la traiettoria tracciata dall'Unione europea quale strategia per lo sviluppo dell'economia e per contrastare azioni e politiche intraprese a livello globale. Si tratta, oltre tutto, di proteggere il «primato della libertà e della

1 * Intervento svolto in forma orale nell'ambito del convegno "*EU Enlargement and acquis adoption burden: state of art and proposals for a correct adoption of the acquis for Albania*", January 17-18-19 2024, Elbasan, Albania. Se ne mantiene la struttura, con la successiva integrazione delle note.

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3 S. Staiano, *Notazioni conclusive. Regolazione giuridica ed economia: un problema di diritto costituzionale,* in *Federalismi.it*, 25 ottobre 2019, 274.

4 S. Giubboni, *Forme di crisi e modelli di solidarietà nell'Unione europea*, in *Le Corti umbre*, n. 3, 2022, 631 ss.

società civile che richiede che lo Stato sussidiario debba rendersi funzionale ad esse» e come «elemento pervasivo e ispiratore» delle «norme fondamentali della convivenza e dell'organizzazione sociale come quelle che valorizzano la persona e l'autonomia delle formazioni sociali»[5]. Un progetto che sembra volgere oltre il *pursuit of happiness* per promuovere le *chances di vita* come garanzia del più ampio godimento dei diritti civili e di opportunità di benessere, secondo la nota teoria elaborata da Ralf Dahrendorf nella *Libertà che cambia* (1981)[6]. Tale teoria presuppone una società aperta che può consentire opportunità sempre più ampie, per un numero crescente di persone. Sul piano economico, lo Stato deve, dunque, porsi l'obiettivo di ricercare i mezzi necessari per garantire livelli di vita soddisfacenti e solidi nel tempo. Vero è che la c.d. costituzione economica statale è sempre stata considerata «aperta a diversi sviluppi, non trascurando del tutto la dimensione della libera iniziativa economica»; ed è altrettanto vero che la c.d. "costituzione economica europea", «pur affermando esplicitamente i valori dell'economia di mercato, non manca di riconoscere un notevole peso all'equità sociale e agli interventi pubblici diretti a perseguirla (richiedendo solo che tali interventi si realizzino non in spregio degli equilibri finanziari) in direzione dell'economia sociale di mercato»[7]. In questa prospettiva, si può riscontrare, almeno osservando le politiche europee dei tempi a noi più vicini, un comune punto di approdo con riferimento alla prospettiva della socialità[8] e delle richiamate finalità ambientali rintracciabili nell'art. 41, c. 3, Cost. Si tratta di una visione, definibile *conciliativa*: in una prima fase si profila come una petizione di principio, mentre in quella attuale sembra essere valorizzata dagli interventi dell'Unione europea e degli Stati. Se si osserva, poi, il combinato disposto di cui agli articoli 42 e 43 della Costituzione, gli elementi di "novità" (ri)emergono nella misura in cui la posizione dello Stato rispetto sia alla proprietà (invero nel TFUE è indifferente il regime proprietario dell'impresa) sia alle acquisizioni singolari riguadagna terreno considerando l'ampio intervento diretto oggi "necessitato" dagli eventi occorsi negli ultimi tempi: acciaio, *asset* strategici, filiere di valore assumono una configurazione giuridico-economica nella quale la presenza dello Stato è strategicamente presente e determinante. Non solo, ma proprio la prospettiva ambientale restituisce allo Stato e alla Costituzione un ruolo di promozione attiva dello sviluppo a guida centralizzata (cioè, dell'Unione europea). La Costituzione ha dentro di sé gli elementi e le potenzialità del suo stesso rinnovamento anche dinanzi alle modificazioni strutturali innescate dall'ordine giuridico europeo e

5 P. De Carli, *Sussidiarietà e governo economico*, Milano, 2002, 3-4.

6 R. Dahrendorf, *La libertà che cambia*, Roma-Bari, 1981.

7 N. Lupo*, La tutela del mercato, della concorrenza e dei consumatori nei processi legislativi: alcune considerazioni*, in G. Rivosecchi, M.L. Zuppetta (a cura di), *Governo dell'economia e diritti fondamentali nell'Unione europea*, Bari, 2010, 23.

8 Sul punto, v. F. Gabriele, *Democrazie e potere economico fra dimensione sociale, sussidiarietà e controlimiti,* in *Rivista Aic*., n. 3, 2018, 30 settembre 2018, 1019 ss.

internazionale[9]. I fondamenti dell'intervento pubblico nell'economia di cui all'art. 3, c. 2, Cost.[10] irradiano il loro potenziale applicativo all'interno di tutta la Carta: non un definito e unico modello economico possibile ma un disegno unitario. La Costituzione insiste nel «richiamare interessi sociali nell'ambito della disciplina dell'economia», così fornendo un'indicazione chiara su un punto e cioè che «la normativa in materia economica non si ispira ad una logica autonoma e differenziata da quella che caratterizza l'intera Costituzione nel suo complesso»[11]. Essa contiene orientamenti politico-sociali non confondibili affidati alle cure della legge (cioè, del legislatore). Le norme costituzionali inerenti all'economia («Rapporti economici»), cioè quelle contenute dall'art. 35 all'art. 47, oltre beninteso agli articoli 53 e 81[12] e 177, c. 2, lett. *e*) ed *m*) Cost., sono da considerarsi come un unico *progetto inerente alla disciplina costituzionale dell'economia, non soltanto, dunque, quella concernente i rapporti economici e le imprese,* hanno lo scopo di favorire la più ampia inclusione sia di quelli che ci sono, sia di quelli che verranno[13]; assegnano alla Repubblica ineludibili compiti di intervento nell'economia; si propongono cioè di contribuire al programma di trasformazione sociale contenuto nell'art. 3, c. 2. Cost.[14].

Certo è che il diritto dell'era globale ha messo in crisi la normatività della Costituzione sulla base della teorica della costituzione elastica volta a rendere il Testo costituzionale poroso e permeabile, riconsegnando alla mano invisibile – ammesso che ce ne sia una, come direbbe Stiglitz – la determinazione delle regole nel mercato. In definitiva, ciò che, in passato, almeno fino all'esplosione della pandemia, veniva demandato (quasi esclusivamente) alla regolazione indipendente, oggi sembra migrare nuovamente verso lo Stato, cioè verso il governo economico il cui ruolo ha iniziato a ritrovare il proprio spazio proprio nel mezzo della crisi globale allorquando veniva messa in questione la «capacità della scienza economica di prevedere e di governare lo sviluppo mondiale»[15]. In passato, infatti, il disegno unitario tracciato dalla Costituzione è stato compromesso dalle spinte centrifughe determinate dal processo di devoluzione ad entità sovranazionali e globali di talune politiche che, in passato, si identificavano con lo Stato. Un parziale, ma forse solo

9 F. Scuto, *La dimensione sociale della Costituzione economica nel nuovo contesto europeo. Intervento pubblico nell'economia, tutela del risparmio, reddito minimo*, Torino, 2022, 145 ss.

10 V. Ottaviano, *Il governo dell'economia. I principi giuridici*, in Aa.Vv., *La costituzione economica, Trattato di diritto commerciale e di diritto pubblico dell'economia* (diretto da F. Galgano), Vol. I, Padova, 1997, 185.

11 M. Luciani, voce *Economia (nel diritto costituzionale)*, in *Dig. Disc. Pubbl*., V, Torino, 1990, 377; Id., *Costituzione, tributi e mercato*, in *Apertacontrada.it*, 23 luglio 2012.

12 M. Luciani, voce *Economia (nel diritto costituzionale)*, cit., 374.

13 G. Bettinelli, *La Costituzione della Repubblica italiana. Un classico giuridico*, Milano, 7^ ed., 2009, 14.

14 M. Luciani, voce *Economia (nel diritto costituzionale)*, cit., 375, *passim*.

15 S. Nespor, *La scoperta dell'ambiente. Una rivoluzione culturale*, Roma-Bari, 2020,115.

apparente (perché dipenderà la costituzione economica materiale, cioè dal modo con cui il legislatore saprà "far proprie" le istanze economiche e sociali della società complessa), recupero della sua "forza" sembra essere determinato appunto dagli interventi normativi scaturiti dalle crisi che all'inizio di questo secolo hanno modificato il *modus agendi* delle istituzioni sovranazionali e statali, consentendo, in particolare a queste ultime, di (ri)collocarsi sulla scena politico-economica con un nuovo slancio programmatorio: un ruolo che, tuttavia, è condizionato dai vincoli normativi dell'economia globale che solo in parte possono contribuire alla "guarigione" dello Stato sociale[16]. Il globalismo economico ha favorito la riduzione dello spazio regolativo pubblico a favore di quello privato, facendo emergere altri valori come il profitto, suo «simbolo» e «sostanza»[17]. Molti sono gli effetti della decomposizione o scomposizione o, ancora, cessione della sovranità economica causata dai "fenomeni" sopra evocati. Sono mutati i processi della decisione politica, ora prodotta in luoghi lontani e virtuali a tutto vantaggio delle policrazie, «istituzioni sociali (…) forti, particolarmente legate alla produzione economica, ciascuna con proprie finalità e propri obiettivi»[18]. La spinta eteronoma sulle decisioni in materia economica lascia pochi dubbi sul suo contenuto politico: coordinamento europeo e *governance* economica indicano, per l'appunto, da un canto, la devoluzione agli organi delle istituzioni eurounitarie dell'indirizzo politico attraverso regole di coordinamento funzionali al conseguimento dell'obiettivo della stabilità finanziaria (che negli anni ha impedito lo svolgimento di politiche espansive per l'ambiente), dall'altro, la dilatazione del *policy-making* anche a settori non istituzionali, dando vita ad un stile di governo fatto di interconnessioni fra una pluralità di soggetti, pubblici e privati, realizzato attraverso il metodo cooperativo. Una rappresentazione palmare della trasformazione indotta dalla globalizzazione: sul piano economico, la premessa è stata la liberalizzazione dei mercati finanziari; sul piano istituzionale, l'abbandono del *government* per dar spazio a quello che è stato definito come il processo di «ammorbidimento delle tecniche di governo»[19] che, per l'appunto, coincide con il concetto di *governance*: si tratta di una *coincidenza d'intenti* riconducibile però al costrutto teorico inerente alla valorizzazione delle microstrutture e delle transazioni singolari. Il governo, così, «diventa *partner* della

16 A.M. Nico, *L'emergenza sanitaria "guarisce" lo Stato sociale dai condizionamenti economici e finanziari?*, in *Dir. Pubbl. eur. – Rassegna online,* n. 1, 2021.

17 A. Carrino, *Prefazione*, in Id., *Il problema della sovranità nell'età della globalizzazione. Da Kelsen allo Stato-mercato*, Soveria Mannelli, 2014, 9.

18 R. Manfrellotti, *L'economia è la continuazione della politica con altri mezzi*, in C. Iannello (a cura di*), Sovranità ed economia nel processo di integrazione europea, Rass. Dir. Pubbl. Eur*., n. 1, 2011, 54.

19 M.R. Ferrarese, *La crisi tra liberalizzazioni e processi di* governance, in R.Bifulco, O. Roselli (a cura di),*Crisi economica e trasformazioni della dimensione giuridica. La costituzionalizzazione del pareggio di bilancio tra internazionalizzazione economica, processo di integrazione europea e sovranità nazionale*, Torino, 2013, 45-46.

governance» non determinando una linea d'indirizzo politico ma partecipandovi «al pari di chiunque altro»[20], a volte confondendosi, altre volte giocando un ruolo di comparsa, altre ancora nascondendosi dietro l'ineluttabilità dello scenario[21].

In realtà, si tratterebbe di una *governance* solo apparentemente condivisa con gli Stati benché realizzata con gli strumenti della cooperazione interstatale[22]: *summit*, accordi intergovernativi, negoziazioni in sede di organizzazioni internazionali, in definitiva una rete di attori, nazionali e sovranazionali, i quali agiscono quasi in sostituzione degli Stati medesimi ai fini della realizzazione di obiettivi economici e finanziari transnazionali. Una trasformazione che ha inciso sui processi decisionali ma anche sui contenuti, sulle scelte, sulle priorità, sugli assetti istituzionali. E, infatti, le questioni ambientali sono state per lungo tempo subordinate a quelle economiche[23]: a livello Gatt esso è puramente e semplicemente un «contenitore da utilizzare e trasformare»[24] in ossequio al dominio della dottrina della crescita; nel preambolo Euratom l'energia nucleare viene considerata come strumento di pace[25]; è un paradosso che, in quella fase, «la protezione dell'ambiente» sia stata difesa «solo dalle norme che tutelavano il mercato»[26]. La dimensione multilaterale e sovranazionale, per lungo tempo, lascia spazio alle ragioni del mercato ed è solo con il tentativo svolto in sede UNCTAD che si contribuisce al mutamento della concezione dello sviluppo, con una visuale differente tra Paesi ricchi e Paesi poveri, che, in ogni caso innescherà un percorso positivo di (ri)considerazione delle questioni ambientali nell'ambito del «diritto allo sviluppo» cui, per l'appunto, si riconosce negli anni Ottanta e Novanta del secolo scorso la dignità di «diritto umano inalienabile»[27].

In queste poche battute si vuole segnalare, come un abbozzo, un altro aspetto oggetto di dibattito scientifico e, segnatamente, quello concernente la cosiddetta prospettiva ESG (*Environment, Sustainability, Governance*)[28] – cioè, in sintesi, i

20 A. Deneault, Governance. *Il* management *totalitario*, Vicenza, 2018, 73.

21 C. Leben, *Hans Kelsen and the Advancement on International Law,* in *European Journal of International Law,* vol. 9, n. 2, 1998, 305 ss.

22 S. Bargiacchi, *La globalizzazione tra «costituzionalizzazione» dell'ordinamento internazionale e standardizzazione giuridico-economica degli ordinamenti statali*, in S. Andò, F. Vecchio (a cura di), *Costituzione, globalizzazione e tradizione giuridica europea*, Padova, 2012, 121. L'inaccessibilità della *governance* europea è stata evidenziata, in particolare, da Joseph H.H. Weiler, il quale ha sottolineato come non esista alcuna forma di controllo dei processi regolatori che si svolgono a Bruxelles: cfr. J.H.H. Weiler, *Europa: «Nous coalisons des Etats, nous n'unissons pas des hommes»,* in M. Cartabia, A. Simoncini (a cura di), *La sostenibilità della democrazia nel XXI secolo*, Bologna, 2009, 61.

23 S. Nespor, *op. cit*., 77.

24 S. Nespor, *op. cit*., 4.

25 S. Nespor, *op. cit*., 8.

26 S. Nespor, *op. cit*., 35.

27 S. Nespor, *op. cit*., 40.

28 Tema su cui la dottrina è da tempo impegnata nell'analisi degli aspetti diretti ed indiretti dei

cosiddetti obiettivi di sostenibilità[29] – che involge l'attività dell'impresa (finanziaria, bancaria[30] e assicurativa[31], e non solo) verso un approccio volto alla eco-sostenibilità che consenta di coniugare profitto e obiettivi extraeconomici: l'elemento della eco-compatibilità dell'attività finanziata assume oggi, infatti, un ruolo significativo nell'attuazione del (supposto) progetto di riforma del capitalismo che dovrebbe portare alla quarta rivoluzione industriale il valore aggiunto di un approccio etico-giuridico quale cifra del nuovo ciclo intrapreso.

La transizione ecologica è anche transizione attraverso l'attività finanziaria per come la Commissione europea l'ha delineata nella sua comunicazione intitolata *Strategy for Financing the Transition to a Sustainable Economy*[32]che sostanzialmente considera l'economia *brown* come in via di superamento. E, infatti, nel documento sopra richiamato viene in evidenza un approccio funzionale al raggiungimento degli obiettivi della sostenibilità: il cosiddetto regolamento tassonomia[33] (art. 17) delinea il quadro giuridico di riferimento per gli investimenti ecosostenibili[34] e favorisce lo sviluppo di un'economia sicura e resiliente ai cambiamenti climatici, questi ultimi considerati come una vera propria sfida sistemica[35].

Nel contesto delineato, si profila un ulteriore passaggio verso il rafforzamento della

parametri ESG a livello economico, industriale, bancario, ecc.: sul punto, fra gli altri, v. A. Brozzetti, *Profili evolutivi della finanza sostenibile: la sfida europea dell'emergenza climatica e ambientale,* in M. Passalacqua (a cura di),), *Diritti e mercati nella transizione digitale,* Padova, 2021, 223 ss.; G. Bevivino, *L'attività ESG delle banche e la prospettiva di riforma della regolazione prudenziale delle informazioni,* in *Riv. Trim. Dir. Econ*., n. 4, 2022, 484 ss.; A. Miglionico, *Rischi climatici e supervisione finanziaria,* in M. Pellegrini (a cura di), *Diritto pubblico dell'economia*, II ed., cit., 323 ss.

29 F. Capriglione, *Clima energia finanza. Una difficile convergenza*, Torino, 2023, 167 ss.

30 Obiettivi che riguardano, fra l'altro, le attività di diritto privato in campo ambientale che, in particolare in sede di Nazioni unite, a partire dal 1993, ha visto l'evolversi degli strumenti di coinvolgimento da parte delle banche nella realizzazione dell'obiettivo della sostenibilità quale strumento di responsabilità collettiva: cfr. G. Mastrodonato, *Gli strumenti privatistici nella tutela amministrativa dell'ambiente,* in *Riv. Giur. Amb*., n. 5, 2010, 707 ss.

31 S. Landini, ESG, Green Finance *e assicurazioni e previdenza complementare*, in *Corporate governance*, n. 1, 2022, 221 ss.; Bevivino, *Il* Bank Government *dopo l'integrazione dei fattori ESG nella regolazione prudenziale europea,* in *Banca Impresa e Società*, n. 2022, 593 ss.

32 Comunicazione della Commissione al Parlamento europeo, al Consiglio, al Comitato economico e sociale europeo e al Comitato delle Regioni, *Strategy for Financing the Transition to a Sustainable Economy* Strasburgo, 6 luglio 2021, COM(2021) 390 final.

33 Regolamento (UE) 2020/852 del Parlamento europeo e del del Consiglio del 18 giugno 2020 relativo all'istituzione di un quadro che favorisce gli investimenti sostenibili e recante modifica del regolamento (UE) 2019/2088.

34 S. Landini, *Sostenibilità e "diritto dei privati". Il caso dei contratti sostenibili nel settore turistico,* in *Riv. trim. dir. econ*., Suppl. al n.4, 2022, 101.

35 A. Sciarrone Alibrandi*, L'ordinamento bancario alla ricerca di un assetto stabile: obiettivo raggiungibile o fantastica chimera?,* in A. Brozzetti (a cura di), *L'ordinamento bancario europeo alla ricerca di un assetto stabile*, Bologna, 2022, 24 ss.; F. Capriglione, *Clima energia finanza. Una difficile convergenza*, cit., 205 ss.

trasparenza nelle dichiarazioni di carattere non finanziario[36] per il tramite della modifica dell'art. 8 del suddetto *Regolamento tassonomia* con il quale si specifica il contenuto, la metodologia e la presentazione delle informazioni che devono essere divulgate dalle imprese finanziarie e non finanziarie per quanto concerne la percentuale di attività economiche ecosostenibili nello svolgimento delle attività commerciali, di investimento o di prestito.

Gli investitori sono sempre più indotti a considerare come l'impatto dell'attività produttiva sull'ambiente incontri costi crescenti e sia soggetto a penalizzazioni che si riflettono evidentemente sulle prospettive dell'impresa e dell'investimento, tanto che non è peregrino pensare come i fattori ESG potranno diventare necessari quali precondizioni per avviare un'iniziativa economica.

La prospettiva ESG, in tutti i suoi possibili risvolti regolatori, arricchisce il costrutto disciplinare di elementi di analisi con riferimento alla c.d. nuova costituzione economica nazionale ed europea[37]. L'art. 41 Cost., come novellato, si diceva, costituisce non l'approdo ma l'avvio di un nuovo ciclo regolatorio in ordine alle potenzialità interpretative della c.d. costituzione economica[38].

La conciliabilità o la convivenza[39], se non la vera e propria coincidenza o eguaglianza tra il diritto all'iniziativa economica privata e i "nuovi" limiti alla medesima è il risultato, in particolare, nella parte novellata, di istanze costituzionali di tutela che trascendono i tradizionali confini delle competenze per collocarsi nel quadro valoriale inglobante l'interesse nei confronti delle generazioni future[40].

Sotto questo angolo visuale, dunque, occorre evidenziare come, mentre il primo comma dell'art. 41 Cost. faccia riferimento allo scambio e al profitto, consistente materialmente nell'atto di investimento del capitale, in ordine al quale sussiste una garanzia che non consente l'apposizione di limiti, il secondo comma della medesima disposizione, riferito all'attività dell'impresa, che in definitiva attiene alle conseguenze prodotte dall'atto di investimento di cui al comma precedente, prevede limiti funzionali alla tutela dei valori in esso contenuti e, segnatamente, della salute e dell'ambiente.

Ora, l'ambiente assurge al rango di principio fondamentale in grado di limitare l'iniziativa economica privata convogliando l'assetto teleologico della legislazione verso una pluralità di situazioni giuridiche soggettive e collettive che trovano

36 A. Urbani, *La «trasparenza» nel diritto dell'economia,* in M. Pellegrini (a cura di), *Diritto pubblico dell'economia*, II ed., cit., 225 ss.

37 F. Capriglione, *Clima energia finanza. Una difficile convergenza*, cit., 187 ss.

38 F. Di Porto, G. Luchena, *La c.d. Costituzione economica*, in E. Bani, F. Di Porto, G. Luchena, E. Scotti, *Lezioni di diritto dell'economia,* Torino, 2023, 17 ss.

39 E. Bani, *La concorrenza e la disciplina pubblicistica del mercato*, in E. Bani, F. Di Porto, G. Luchena, E. Scotti, *op. cit.,* 135.

40 F. Capriglione, *Clima energia finanza. Una difficile convergenza*, cit., 191.

riferimento, fra l'altro, nei riferiti parametri ESG.

In altre parole, la cornice valoriale del comma 2 dell'art. 41 Cost. ricomprenderebbe il diritto alla sostenibilità quale situazione ad ampio spettro applicativo e regolatorio che include elementi anche sovranazionali, i quali ultimi, invero, hanno contribuito non poco all'impulso riformatorio della c.d. costituzione economica. Per quel che concerne l'impresa bancaria, ad esempio, l'impulso che questa può offrire alla prospettiva ESG si profila in termini di un ruolo sociale, per dir così, orientativo delle scelte compiute da parte degli operatori economici e, in effetti, la logica sottesa a tale impostazione attiene ai profili connessi alle scelte imprenditoriali in grado di coniugare la prospettiva soggettivistico/privatistica con il principio di solidarietà nella sua valenza plurifattoriale e pluridimensionale.

Occorre dare un cenno ad un altro profilo, in riferimento alla relazione intercorrente tra ambiente , imprese e ruolo delle istituzioni.

È stato recentemente rilevato che, da qualche tempo, va assumendo «specifico rilievo l'attenzione per l'equilibrio ambientale e i diritti umani, a fronte di un impegno di politiche e strumenti orientati alla mera produttività e, dunque, alla creazione di profitto. Da qui un orientamento che non è circoscritto ai soli profili economici della attività posta in essere, bensì esteso alla creazione di un valore riconducibile alla tutela delle persone, dell'ambiente e del territorio nel quale essa viene svolta»[41].

Secondo questa prospettiva, l'impegno responsabile dell'impresa al tema dei diritti umani, oggetto di particolare attenzione da parte della dottrina, in particolare giuseconomica[42], ma non solo[43], e delle istituzioni a livello sia internazionale sia europeo, dovrebbe comportare il passaggio da un'azione meramente volontaristica ad una normativa[44].

La globalizzazione e il mito della crescita hanno prodotto l'allentamento del rispetto dei diritti umani da parte di talune imprese, in particolare quelle multinazionali che hanno sacrificato i diritti umani sull'altare del profitto: lo Stato, dal canto suo, non è stato in grado di adottare soluzioni di contrasto alle dinamiche finanziarie globali avendo fatto propria la *lex mercatoria* quale suo principale movente, lasciando a quest'ultima la regolazione dell'economia, strumento per mezzo del quale sono i

41 F. Capriglione, *Fare impresa tra profitto e responsabilità sociale*, in *IlSole24Ore*, 13 luglio 2022, 24.

42 A. Antonucci, *La responsabilità sociale d'impresa*, in *Studi in onore di Vincenzo Starace*, Napoli, 2008, 1645 ss.; F. Capriglione, *Responsabilità sociale d'impresa e sviluppo sostenibile*, in *Riv. Trim. Dir. Econ.,* suppl. n. 4, 2022, 22 ss.

43 A. Ramasastry, *Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability*, in *Journal of Human Rights*, n. 14, 2015, 237 ss.; F. Vessia, *La responsabilitàsocialedelleimprese e deiconsumatori*, in *Federalismi.it,* 31 luglio 2019.

44 G. Bevivino, *Nuovi inputs euro-unitari. La sostenibilità come ponderazione normativa degli interessi di shareholders e stakeholders,* in *Analisi giuridica dell'economia,* n. 1, 2022, 118.

medesimi soggetti che effettuano transazioni commerciali a stabilire le regole[45], cioè, sostanzialmente, la legittimazione di «una situazione di fatto in cui i gruppi di potere economico impongono le proprie scelte agli operatori più deboli»[46].

Per tale ragione, l'esigenza di introdurre «nuovi attori»[47] per assecondare lo sviluppo sostenibile in chiave sociale (ed ambientale) viene sostenuta, infatti, dalle organizzazioni internazionali le quali hanno svolto il ruolo di apripista per una normativa che determini garanzie e rimedi contro la violazione dei diritti umani da parte delle imprese.

Il riferimento è rivolto ai principi guida adottati dall'Organizzazione delle Nazioni Unite nell'ambito del programma quadro denominato *"Proteggere, rispettare, rimediare",* con risoluzione n. 17/4 del 16 giugno 2011[48] secondo la prospettiva *multistakeholder*. È utile ricordare come le suddette linee guida rappresentino il tentativo da parte delle imprese di intraprendere un percorso concreto volto a considerare gli aspetti non necessariamente legati al profitto. E, infatti, il *secondo principio guida* si colloca perfettamente nell'ordito della tutela dei diritti umani nel quale diviene fondamentale l'apporto dell'impresa per quel che concerne la dimensione riduttiva delle attività a potenziale impatto sui diritti umani e sull'ambiente.

Questo principio affida alle imprese compiti di *self-governance*, nel senso che esse «dovrebbero» adoprarsi affinché si rispettino i diritti umani. Si tratta di una proposizione che, invero, implica, più che un'azione positiva delle imprese, un auspicio che esse prevengano e rimuovano le cause delle eventuali violazioni dei diritti umani. L'allusione ai diritti umani concerne quelli internazionalmente riconosciuti e contenuti nella Carta internazionale dei diritti umani, il *Covenant* sui diritti civili e politici, sempre a livello ONU, e i principi contenuti nella Dichiarazione sui Principi fondamentali previsti nell'ambito dell'Organizzazione internazionale del lavoro.

Questo implica che la responsabilità giuridica permanga all'interno della normativa interna agli Stati.

Il percorso delle imprese deve concernere l'adozione di politiche aziendali volte alla tutela dei diritti umani, di porre in essere meccanismi procedurali idonei a porre rimedio ad eventuali impatti negativi e a dare consistenza ad una *due diligence* che

45 S. Staiano, *op. cit.*, 279.

46 R. Manfrellotti, R. Dagostino, *La Bce come autorità amministrativa europea*, in A. Barone, G. Drago (a cura di), *La funzione di vigilanza della Banca Centrale Europea. Poteri pubblici e sistema bancario,* Roma, 2022, 72.

47 S. Nespor, *op. cit.,* 100.

48 UN, *Guiding principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy "framework*, 2011; M. Fasciglione, *I principi guida su imprese e diritti umani,* CNR, 2020,31 luglio 2019.

consenta di identificare e prevenire violazioni.

Quest'ultimo aspetto è di particolare interesse perché a livello dell'Unione europea – e, più in generale, anche grazie al ruolo svolto anche da parte del Consiglio d'Europa[49] – si è dato corpo ad iniziative volte a rafforzare la detta *due diligence* per il tramite della proposta di direttiva del dovere di diligenza delle imprese ai fini della sostenibilità (di modifica della direttiva n. 1937 del 2019[50]), strumento che s'inserisce in una strategia più ampia che attiene anche al piano d'azione per i diritti umani e lo sviluppo della democrazia[51].

Si tratta di uno strumento rivolto agli Stati affinché predispongano misure volte a garantire le tutela a favore dei lavoratori e delle collettività come, fra gli altri, il rispetto dell'ambiente salubre attraverso l'istituzione di organi di supervisione, l'introduzione di un sistema sanzionatorio e la previsione di una norma che regoli la responsabilità civile[52]: un'iniziativa che, sul piano istituzionale, è avviata anche in Italia[53] come dimostra, ad esempio, l'avvenuta adozione del secondo piano d'azione

49 Council of Europe, *Human Rights and Business, Recommendation CM/Rec(2016)3 of the Committee of Ministers to member states,* Council of Europe, October 2016, Printed at the Council of Europe.

50 A. Natoli, *Impresa e responsabilità nel prisma del* Green New Deal *europeo*, M. Passalacqua (a cura di), *op. cit.,* 297 ss.; G. Piepoli, *Responsabilità sociale d'impresa e* compliance *contrattuale*, in *Giust. civ.*, n. 1, 2022, 21 ss.; G. Capobianco*, E.S.G., modelli di allerta e* due diligence *per uscire dalla crisi pandemica: quali opportunità per le aziende di piccole dimensioni,* in *Il diritto dell'economia*, n. 2, 2023, 532 ss.

51 Commissione europea, Alto Rappresentante dell'Unione per gli Affari esteri e la politica di sicurezza, Comunicazione congiunta al Parlamento europeo e al Consiglio, Piano d'azione dell'UE per i diritti umani e la democrazia 2020-2024, Bruxelles, 25 marzo 2020, JOIN, (2020) 5 final. In tale piano di azione, l'Unione europea ribadisce il suo impegno nella promozione dei diritti umani; in particolare, si legge nel documento, l'UE «ha contribuito a progressi significativi in paesi e regioni in cui i diritti umani erano messi a dura prova, attraverso un impegno e un investimento innovativi in materia di diritti economici e sociali e un forte sostegno politico e finanziario volto a proteggere i difensori dei diritti umani, la società civile e gli operatori dei media e a rafforzarne il ruolo». Uno degli ambiti di operatività è, ad esempio, riguarda le «costanti violazioni del diritto del lavoro, compreso il lavoro minorile». Quanto alla dovuta diligenza v., inoltre, la Risoluzione del Parlamento europeo, 10 marzo 2021 – Raccomandazioni alla Commissione concernenti la dovuta diligenza e la responsabilità d'imprese (2020/2129(INL)).

Proposta di Direttiva del Parlamento europeo e del Consiglio relativa al dovere di diligenza delle imprese ai fini della sostenibilità e che modifica la direttiva (UE) 2019/1937, del 23 febbraio 2022, COM(2022) 71 final, 5. In dottrina, fra gli altri, v. M. Fasciglione, *Luci ed ombre della proposta di direttiva europea sull'obbligo di* due diligence *in materia di diritti umani e ambiente,* in *Sidiblog*, 26 maggio 2022, reperibile *online* al sito sidiblog.org; N. Bagnato, M. Peroni, M.P. Sacco, *Nelle filiere globali arriva l'obbligo di* due diligence *sui diritti umani,* in *Lavoce.info*, 4 maggio 2022; M. Rabitti, Due diligence *sulla sostenibilità e digitalizzazione della catena del valore. L'apporto di* blockchain *e* smart contracts, in *Riv. trim. dir econ.*, n. 2, 2023, 166 ss.; G. Piepoli, *La grande impresa quale ordinamento giuridico privato nella Proposta di Direttiva sul dovere di diligenza*, in *Giust. civ.,* n. 3, 2023, 597 ss.

52 G. Bevivino, *Nuovi inputs euro-unitari. La sostenibilità come ponderazione normativa degli interessi di shareholders e stakeholders*, cit., 120.

53 Senato della Repubblica, *Relazione sull'attività svolta dal Comitato interministeriale dei*

su impresa e diritti umani per il periodo 2021-2026 che assume fra i suoi obiettivi fondo la promozione dei diritti umani in tutti i fori internazionali competenti quale parte della più generale politica a favore della tutela dei diritti umani, dello sviluppo sostenibile (in particolare: obiettivi 4, 5, 8, 10, 12, 16 e 17), della democrazia e *del rule of law*; la tutela del lavoro dignitoso, nonché della sfida posta dall'intelligenza artificiale e dell'impatto generato dalle imprese culturali nel processo di innovazione dell'economia; il miglioramento dell'azione collettiva per la promozione di iniziative a favore dei soggetti più vulnerabili.

L'attenzione crescente nei confronti della responsabilità sociale dell'impresa assume una portata considerevole anche rispetto ai cambiamenti all'interno dell'impresa medesima: l'approccio «strategico»[54] delineato dalla Commissione testimonia la valenza della responsabilità dell'impresa in una dimensione "interna" ed "esterna". Essa può contribuire a produrre benefici in termini di gestione del rischio, di riduzione dei costi, di relazioni positive con i consumatori; può, inoltre, contribuire all'attuazione del principio dello sviluppo sostenibile che, pur se si tratta di un principio a volte evanescente, costituisce il principale motore, per dir così, culturale e politico delle strategie rivolte alla tutela della salute e dell'ambiente quale antidoto alle produzioni inquinanti e a quelle contrarie alla salvaguardia degli ecosistemi e dell'ambiente.

diritti dell'uomo nonché sulla tutela e il rispetto dei diritti umani in Italia, 2020, Doc. CXXI, n. 4.

54 Commissione europea, *Comunicazione della Commissione al Parlamento europeo, al Consiglio, al Comitato economico e sociale europeo e al Comitato delle Regioni, Strategia rinnovata dell'UE per il periodo 2011-14 in materia di responsabilità sociale delle imprese*, Bruxelles, 25 ottobre 2011, COM(2011) 681 definitivo, 4.

DELL'ALBANIA COME PATRIMONIO DELL'UNIONE EUROPEA)

Gaetano Dammacco

1- L'acquis comunitario, formalizzato negli articoli 2 e 3 del trattato di Maastricht sull'unione europea (che indica l'insieme delle determinazioni di natura normativa, politica e giurisprudenziale della Comunità adottate nelle varie fasi dell'integrazione europea che i nuovi membri devono accettare al momento della loro adesione) con riferimento all'ingresso nell'Unione europea prima ancora che un valore giuridico assume un imprescindibile valore politico e culturale[1]. Esso, sebbene il concetto si sia dilatato in ragione dell'aumento di complessità

1 L'acquis è menzionato più volte dal Trattato di Maastricht. Nelle disposizioni comuni dell'art. 2 tra gli obiettivi che l'Unione si prefigge è difatti annoverato quello di mantenere integralmente l'acquis comunitario e svilupparlo al fine di valutare in quale misura si renda necessario rivedere le politiche e le forme di cooperazione instaurate. Il richiamo all'acquis è altresì presente nell'art. 3, nel quale si afferma che l'Unione dispone di un quadro istituzionale unico che assicura la coerenza e la continuità delle azioni svolte per il perseguimento dei suoi obiettivi, rispettando e sviluppando al contempo l'acquis comunitario. La necessità di un richiamo in tal senso fu dettata dalla preoccupazione di salvaguardare la colonna comunitaria dalle nuove forme di cooperazione intergovernativa, che costituivano gli altri due pilastri dell'Unione Europea. Sviluppare l'acquis significava pertanto favorire il graduale passaggio dei settori affidati alla cooperazione intergovernativa nell'ambito comunitario. Il riferimento all'acquis comunitario era inoltre presente nel preambolo del protocollo sulla politica sociale, nel quale gli Stati membri affermavano che protocollo e accordo non pregiudicavano le disposizioni del trattato inerenti la politica sociale, le quali costituivano parte integrante *dell'acquis comunitario*.

L'*acquis* dell'Unione europea (Unione) è la raccolta dei diritti e degli obblighi comuni che costituisce il corpo del diritto dell'Unione, integrato nei sistemi giudiziari degli Stati membri dell'Unione. L'*acquis* dell'Unione si evolve costantemente nel corso del tempo e comprende:

i contenuti, i principi e gli obiettivi politici dei trattati dell'Unione;

qualunque legislazione adottata per l'applicazione dei suddetti trattati e la giurisprudenza elaborata dalla Corte di giustizia dell'Unione europea;

dichiarazioni e risoluzioni adottate dall'Unione;

misure nell'ambito della politica estera e di sicurezza comune e relative a giustizia e affari interni;

accordi internazionali conclusi dall'Unione e accordi conclusi tra gli Stati membri stessi per quanto concerne le attività dell'Unione.

I paesi candidati devono accettare l'*acquis* per poter aderire all'Unione. Le deroghe (eccezioni) all'*acquis* sono concesse solo in circostanze eccezionali e in misura limitata. L'*acquis* deve essere integrato dai paesi candidati nei rispettivi ordinamenti nazionali sin dalla data della loro adesione all'Unione e quindi applicarlo da tale data.

della stessa Unione non senza creare problemi interpretativi, definisce la imprescindibilità di un senso di appartenenza all'Europa e ai suoi valori fondativi (giuridici, storici, culturali, religiosi). Appartenere all'Europa non significa soltanto coltivare una specie di filoeuropeismo, quasi ad affermare una condizione psicologica di favore verso l'Europa in contrasto con gli euroscettici, ma significa soprattutto la percezione da parte dei vari popoli europei di appartenere a una stessa storia, di costruire e condividere un comune destino, di affermare gli stessi valori esistenziali nella loro scrittura storica, culturale, religiosa, politica (sebbene realizzati in modi differenti). L'appartenenza esprime un bisogno universale delle persone, caratterizzato da elementi affettivi e psicologici (Baumeister, R.F., Leary, M.R, *The need to belong: Desire for interpersonal attachments as a fundamental human motivation*. In «Psychological Bulletin», 117, 1995, pp. 497- 529), da opzioni culturali, da esigenze di socializzazione e di dialogo, dalla ricerca di somiglianze, di conferme, di fiducia reciproca, di sensibilità, di storie sociali e personali. L'adesione a progetti e norme condivise favorisce il benessere delle persone (Brewer, ? 1991) e consente il superamento di criticità e difficoltà (talora drammatiche) che generano disagio e conflitti angosciosi. Non dobbiamo dimenticare che il bisogno di costruire su valori umani la socializzazione all'interno dell'Europa all'indomani della seconda guerra mondiale ha favorito l' Unione europea (nelle varie fasi della sua evoluzione dalle prime comunità fino all'Unione nel 1997 con il trattato di Maastricht), nasce dal fallimento dei nazionalismi estremi (come il nazismo e il fascismo), dalle violenze subite da uomini e popoli, dal discredito delle politiche di sopraffazione. L'Europa sorge col bisogno storico di superare la "banalità" del male (Hannah Arend) e di costruire un futuro diverso e a misura d'uomo. Per questo, nonostante le difficoltà attuali l'attrazione verso l'Europa e la coltivazione di un senso di appartenenza costituiscono la premessa politica e sociale dell'acquis. Inoltre, l'idea di acquis comunitario contiene alcuni elementi ideali necessari che definiscono una sorta di condizione di reciprocità: da un lato vi sono i diritti, gli obblighi, gli obiettivi politico-giuridici vincolanti per gli Stati membri e per i candidati alla adesione e dall'altro il patrimonio (culturale, religioso, politico, sociale, giuridico) degli Stati membri, che arricchisce il patromonio comune espresso nell'acquis. Il contenuto stesso di quell'insieme di diritti, obblighi, obiettivi politici che vincolano gli Stati membri dell'Unione europea, legandoli in un comune destino, che si rende tutt'uno con il patrimonio culturale e giuridico dei

singoli membri induce a individuare una relazione esistente con la stessa Europa.

2- Nella logica di quanto premesso, in qualche modo diventa importante rispondere alla domanda se il popolo albanese si riconosca appartenente all'Europa. Sebbene l'adesione alla UE coinvolga direttamente gli Stati, i quali devono fare richiesta e concordare con le autorità dell'Unione il processo di associazione, senza dubbio costituisce elemento dirimente la percezione popolare. A tal proposito si deve sottolineare che non solo il sentimento popolare, ma anche la storia delle popolazioni d'Albania, i tratti culturali fondamentali e le logiche di geopolitica descrivono l'esistenza di un solido senso di appartenenza all'Europa. Questa caratteristica, del resto, non è mai stata negata nemmeno durante gli anni bui e più duri della dittatura di Enver Hoxha ed è stata descritta e sostenuta nei testi di storia, di diritto, di antropologia più accreditati[2]. In riferimento alle premesse precedenti circa il senso di appartenenza, occorre domandarsi se nel popolo albanese esite oggi (e se sia esistito in passato) l'autoriconoscimento di appartenere all'Europa e se esiste il desiderio di recuperare il legame che unisce l'Albania all'Europa. La risposta a questo interrogativo è certamente positiva sotto molti profili (storico, religioso, culturale,..). In modo evidente la storia dell'Albania è parte della storia dell'Europa, e la stessa "albanesità", come carattere identitario del popolo, è comprensibile in una dimensione di relazione con l'esterno, cioè con le altre comunità balcaniche, con le nazioni europee e con l'Oriente (che per secoli è stato l'impero ottomano). Certamente, il tema della dimensione europea meriterebbe più spazio, poiché vari sono gli aspetti che si incrociano dal punto di vista storico, culturale, politico, religioso; ma in questa sede basta evidenziare tre punti, che concorrono a rimarcare la convergenza europea: la questione dell'indipendenza, la coesistenza delle religioni, la tradizione del kanun.

A) Come ebbe a sottolineare Ismail Kemal Vlora in un articolo del luglio del 1917 e raccolto nelle sue "Memorie" del 1920 (traduzione in italiano del testo inglese del 1920), il senso di indipendenza è cosa diversa dall'autogoverno (più o meno grande) all'interno dell'impero ottomano. Egli evidenzia che il senso spiccato di autonomia è costituito da "due virtù che presiedono alla

2 Basti ricordare i testi di Stefanaq Pollo, Luan Omari, Arben Puto, Ksenofon Krisafi e l'impegno letterario e politico dei grandi testimoni della cultura albanese come Luigi Gurakuqi, i fratelli Frasheri, Fiqta

vita pubblica dei miei compatrioti, non solo nei loro ordinamenti interni, ma anche nella loro storia e nel loro comportamento verso popoli e sovrani con i quali hanno intrattenuto rapporti di amicizia o di ostilità" (pg. 308): sono "lealtà alla parola d'onore e religione di patriottismo che va con l'amore dell'indipendenza" (pg. 308). Il sentimento di indipendenza, coltivato attraverso tradizioni e stili di vita propri e differenti dagli altri popoli balcanici e orientali, spinse gli albanesi a confrontarsi con le potenze europee negli anni in cui si ridefinivano i confini nella immediatezza della caduta dell'impero ottomano. Quindi, la proiezione europea si manifestò anche attraverso la volontà di sedersi al tavolo internazionale in cui si ridisegnava il territorio balcanico per rivendicare il diritto a esistere nel nuovo panorama geopolitico dopo la fine della prima guerra mondiale.

B) Sotto il profilo religioso l'Albania ha sempre rappresentato storicamente un unicum, poiché le religioni esistenti storicamente nel Paese (islam, cattolicesimo, ortodossia, bektashi) sono sempre state considerate nel loro insieme e nella loro individualità il patrimonio del popolo. Quindi, la religione è sempre stata considerata un elemento di unità e non di divisione, un elemento della albanesità e un patrimonio spirituale riconosciuto solennemente nel preambolo della costituzione del 1998, nel quale tolleranza e convivenza religiosa sono considerati come elementi di base delle "genti d'Albania". Il pluralismo religioso è reso possibile dalla esistenza del dialogo tra le religioni, che ha sostenuto anche il difficile e rapido passaggio dalla dittatura alla democrazia. Questa prospettiva, che costituisce un carattere secolare nell'esperienza della popolazione albanese, è stata costruita autonomamente e in modo quasi parallelo alla costruzione difficile e faticosa della tolleranza religiosa in Europa. Pertanto, si può dire che il valore del pluralismo religioso e del dialogo tra le religioni costituisce un attuale patrimonio comune, un valore a fondamento dell'Europa moderna e della stessa Unione europea, che evidenzia la sintonia tra Albania ed Europa, arrivate allo stesso obiettivo sebbene attraverso percorsi diversi, e quello meno traumatico è stato proprio il modello albanese). In Albania le religioni hanno sempre svolto una funzione pubblica perché riconosciute come elementi di sviluppo e di promozione sociale e culturale, favorendo la cultura del dialogo specie nei momenti difficili dopo la caduta della dittatura.

C) Il Kanun non è solamente il più importante codice di diritto consuetudinario albanese, tra i numerosi codici che le famiglie albanesi crearono nel corso dei secoli nelle zone montane dell'Albania, ma è parte integrante del patrimonio culturale albanese anche perché disciplina i vari aspetti della vita personale e

comunitaria. Tra l'altro, non riconosce nessuna differenzia o discriminazione tra le quattro confessioni tradizionalmente presenti nel Paese (Cattolicesimo, Ortodossia, Sunnismo e Bektashismo), considerandole uguali rispetto alle scelte personali e come elementi basilari della vita.

Esaminato con maggior attenzione, al di là delle limitazioni attribuibili alle tipicità culturali storiche, il kanun costituisce l'espressione di quello che si può definire un percorso di costituzionalizzazione: esso può essere considerato come una carta costituzionale del popolo albanese ante litteram, poiché disciplina i comportamenti personali e sociali alla luce dei valori superiori comuni. Nella cultura del popolo albanese è fondamentale l'esistenza di un testo condiviso di valori superiori ai quali orientare la vita personale e sociale, è all'origine di una tavola di diritti e doveri, corredata da sanzioni in caso di violazioni, sui quali è fondata l'esistenza stessa delle varie famiglie, le quali assumono attraverso propri capi il compito di far osservare le norme. Il valore del kanun è così elevato che anche durante gli anni della dittatura esso era nascostamente osservato, nonostante le proibizioni severe.

D'altra parte la consapevolezza che storicamente l'Albania sia sempre stata un pezzo d'Europa fu espresso da FrançoisMitterand, ex presidente francese negli anni ottanta del secolo scorso, quando mise in evidenza che la resistenza degli albanesi all'espansionismo ottomano nel millequattrocento aveva salvato l'Europa da un diverso e peggiore destino (*Discorsi sull'Europa, 1982-1995*).

LIMITATIONS ON HUMAN RIGHTS AND FREEDOMS IN AN EU MEMBER STATE: THE CASE OF POLAND[1]

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ABSTRACT

This paper examines the complex system of fundamental rights in the European Union, which combines international standards with national laws to protect individual's basic rights and freedoms. This evolving system is designed to respond to challenges such as economic crises, the COVID-19 pandemic, and geopolitical threats. It focuses on key legal frameworks like the Charter of Fundamental Rights of the European Union (ChoFR), which lay the groundwork for protecting rights while respecting the constitutional traditions of EU member states. The article explores the limits and exceptions allowed in this system, especially considering Poland's constitutional response to the COVID-19 pandemic. It points out the shortcomings of traditional legal approaches, such as Article 31(3) of the Polish Constitution, in handling public health emergencies, and the EU's limitations in dealing with member states that overuse or misuse clauses that limit rights. The article argues for more flexible legal mechanisms that are in line with constitutional principles and a stronger EU framework to protect fundamental rights during crises, emphasizing the need for proportionality and legality in applying these restrictions.

Keywords: *EU, Poland, human rights, legal restrictions, Poland, pandemic, Covid law, proportionality, limitation, derogation, legal restrictions*

1. Introduction

In the European Union (EU), the significance of human rights and freedoms is widely recognized and upheld. However, these rights are not without bounds; they

1 Grant support under project No. reg. 2021/43/D/HS5/01094/Narodowe Centrum Nauki/International.

can be subjected to limitations under certain circumstances. This paper delves into the complex interaction between legal restrictions on human rights and public health crises, notably the COVID-19 pandemic. It examines the challenges faced by traditional legal frameworks in EU member states, including Poland, in responding effectively to such unprecedented situations. Through doctrinal, comparative, and analytical legal research methods, the article juxtaposes the perspectives of constitutional and EU law. It argues for the need for more flexible legal frameworks that allow for proportionate and lawful restriction of rights during crises, ensuring the core values of human dignity and freedom are maintained in the EU. This study also highlights the importance of a dynamic legal system that can adapt to evolving societal needs, particularly in times of crisis. It underscores the delicate balance between safeguarding public health and protecting fundamental human rights, advocating for legal strategies that respect this *equilibrium*.

2. Human Rights and Freedoms in Europe

The European human rights law represents a complex and multilayered system where international standards and national laws converge to safeguard the fundamental rights and freedoms of individuals[2]. This system, rooted in the concept of inherent and inalienable human dignity, is founded upon institutional and legal mechanisms and is continually evolving to meet new challenges and adapt to changing socio-political conditions, such as economic crises, the COVID-19 pandemic, and geopolitical threats in Europe[3]. The human rights framework in Europe is shaped by key organisations, each playing a distinct role. The Council of Europe, through instruments like the European Convention on Human Rights, sets a broad framework for human rights protection, overseen by the European Court of Human Rights[4]. The EU complements this by integrating human rights principles into its legislation and policies, thereby influencing its member states. Collectively, these organisations create a robust human rights system in the region. The second organisation is EU, which tries to integrate human rights principles into its legislation and policies,

2 R. Tabaszewski, 'Health as a Value in the Integration Policies of European and East Asian Countries. A Historical and Legal Perspective', Journal of European Integration History/Revue d\'histoire de l\'intégration européenne/Zeitschrift für Geschichte der Europäischen Integration, No. 25, 2019, pp. 99-110.

3 K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *International Human Rights Law*, Warsaw, C.H. Beck 2023, p. 10.

4 V.L. Fedorenko, T. Fedorenko, 'Restrictions on exercise of constitutional human rights and freedoms and the regime of counteractions to the COVID-19 coronavirus pandemic', in J. Jaskiernia, K. Spryszak, (eds.), *Powszechny system praw człowieka w czasie wyzwań pandemiacznych*, Adam Marszałek, Toruń 2022, p. 257; R. Tabaszewski, 'Health as a Legal Term and its Evolution in the Council of Europe's Human Rights Protection System', Studia Ełckie, No. 4, 2019, pp. 583–594.

affecting its member states. Each organization complements the others, collectively creating a robust human rights system in the region[5].

In all European international organisations committed to the values of the rule of law, democracy, and human rights, concepts such as "human rights and freedoms" and "fundamental rights" emerge. Human rights are understood as norms with the most general formulation in the legal order, yet with the highest impact and influence. Human rights encompass both the freedoms and rights of individuals[6]. According to Isaiah Berlin's concept, freedoms can be understood in both positive and negative terms. Negative freedom is the freedom from limitations imposed by external actions, particularly commands, prohibitions, terror, and the necessities of power[7]. The essence of this freedom is the absence of any coercion that limits action contrary to one's will or forces action against one's will. On the other hand, positive freedom is the right of everyone to act according to their own will, aiming to fulfill their desires and aspirations[8]. According to John Locke's concept, freedom means being free from coercion and violence from others, which is impossible where there is no law[9]. The law, therefore, is understood as the realm in which an individual can exercise their freedoms, with the expectation that the state has an active duty to ensure the realization of specific spheres of possibilities, rights, or competencies of individuals[10].

All these rights and freedoms are encapsulated in the key instruments of human rights protection, including those in the operational system of the EU, collectively referred to as "fundamental rights"[11]. Within the EU context, these rights represent a direct system of human rights protection, having evolved over time and firmly entrenched in the EU's legal and institutional framework. Fundamental rights, also known as basic or essential rights, acquired normative status in the 1990s, and are defined and interpreted in line with European doctrine and the jurisprudence of the Court of Justice of the European Union in Luxembourg[12]. The distinctive

5 Additionally, the Organization for Security and Co-operation in Europe (OSCE) contributes by focusing on the intersection of human rights with security and cooperation in Europe. K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *op. cit*., pp. 132-135.

6 K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *op. cit*., pp. 13-14; R. Stone, *Textbook on civil liberties,* London 1994, Blackstone Press, p. 3-4; M. Jabłoński, S. Jarosz-Żukowska, *Prawa człowieka i systemy ich ochrony*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 2004, p. 45.

7 I. Berlin, 'Two Concepts of Liberty', in I. Berlin, Four Essays on Liberty, London: Oxford University Press 1969, 118–72.

8 R. Tabaszewski, 'Human rights and freedoms in systems of human rights protection', in K. Kozioł (eds.), *Wolność człowieka i jej granice*, Regis, Lublin 2017, pp. 13-14.

9 J. Locke, *Dwa traktaty o rządzie*, PWN, Warszawa 1992, p. 166.

10 K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *op. cit*., pp. 13-14.

11 D. Anderson, C.C. Murphy, 'The Charter of Fundamental Rights: History and Prospects in Post-Lisbon Europe', EUI Working Papers Law, No. 8, 2011, p. 5.

12 K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *op. cit*., pp. 120-121, 205-208.

feature of these rights is their foundation upon the inherent dignity of the human person and their alignment with both the EU's international legal obligations and the constitutional traditions of the Member States.

The EU, an international regional intergovernmental organisation, is founded not only on the respect for these fundamental rights but also places significant emphasis on the principles of rule of law and social security. The EU in its treaties thus recognises rights, freedoms, and principles established in its Treaties[13], as well as in the Charter of Fundamental Rights of the European Union (ChoFR) [14]. The ChoFR, granted the same legal force as the EU Treaties, presents a comprehensive catalogue of human rights and freedoms[15]. The ChoFR, established following discussions initiated at the Cologne European Council in June 1999, presents a comprehensive catalogue of human rights and freedoms[16]. Adopted on 26 September 2000, it binds EU institutions, bodies, and Member States and also has an influential role in their external relations, including with candidate countries. The Charter, encompassing personal, civil, social, economic, and cultural rights, does not extend the competences of the Union beyond the treaties. It highlights non-discrimination (Article 21) and applies to EU entities and Member States to the extent they implement EU law. The scope of the ChoFR, detailed in Article 51, encompasses EU institutions and Member States under EU law, thus establishing a framework for fundamental rights in the EU, incorporating principles like human dignity, liberty, equality, and solidarity. As mentioned, the ChoFR is legally binding and includes various rights: dignity, freedoms, equality, solidarity, citizens' rights, and justice, supported by general provisions for interpretation and application.

The obligation of the Member States to respect fundamental rights also arises from other binding provisions of EU law. It is pertinent to mention Article 2 of the Treaty on European Union (TEU), which binds all Member States to the principle of the rule of law, listed alongside values such as respect for human dignity, freedom, democracy, equality, and the rule of law, as well as the respect for the rights of persons belonging to minorities[17]. These values have been further affirmed in numerous documents, including The Rome Declaration, which states that the EU is an organisation "with common institutions and strong values, a community of peace, freedom, democracy, human rights and the rule of law, a major economic

13 Treaty on the Functioning of the European Union, 9 May, 2008 (O.J.E.U. C 115/47); Treaty on European Union, 9 May, 2008 (O.J.E.U. C 115/13).

14 Charter of Fundamental Rights of the European Union, Paris, 7 December, 2000 (O.J.E.U. C 326/02, 26 October, 2012).

15 See: Article 6 of the TEU.

16 J. Kokkot, Ch. Sobotta, 'The Charter of Fundamental Rights of the European Union after Lisbon', EUI AEL. Distinguished Lectures of the Academy, No. 6, 2010, pp. 1-2.

17 K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *op. cit*., p. 120.

power with unparalleled levels of social protection and welfare"[18]. However, clear and unambiguous normative definitions of concepts such as the rule of law, human rights, and democracy have not been expressly explained in the Treaties and the ChoFR, leading to certain interpretative doubts when Member States attempt to limit fundamental rights[19].

Despite the belief in the universality and inalienability of fundamental rights, European human rights doctrine acknowledges that, in a democratic state governed by the rule of law, certain rights may be subject to necessary limitations[20]. The French Declaration of 1789 already allowed for limitations on human freedom[21]. Within the context of human rights in Europe, the legal framework permits both limitation and derogation of human rights. Limitation clauses found in various human rights legislations across Europe are legal provisions that define circumstances under which certain human rights may be restricted. These clauses form an integral part of the legislation, applying under standard societal and state operations, and are designed to balance individual rights with broader societal interests, such as public safety or the rights of others, adhering to principles of legality, necessity, and proportionality. For example, Article 31(3) of the Polish Constitution represents a limitation clause, allowing for the restriction of certain freedoms and rights for reasons of national security, public order, or the protection of the natural environment, among others[22]. Similar general limitation clauses are included in the constitutions of other EU Member States: Article 16 of the Croatian Constitution[23], Article 11 of the Estonian Constitution[24], Article 21(1) of the Portuguese Constitution[25], and Article 15 of the Slovenian Constitution[26]. The Albanian Constitution also contains a limitation clause[27].

18 EU, Council of the European Union. The Rome Declaration. Declaration of the leaders of 27 member states and of the European Council, the European Parliament and the European Commission. Press EN Statements and Remarks 149/17. Brussels: 25 March, 2017.

19 See: R. Tabaszewski, 'Dopuszczalność egzekwowania klauzuli homogeniczności Unii Europejskiej w świetle zasady suwerenności państwa członkowskiego', Journal of Modern Science, No. 41, vol. 2, 2019, pp. 141-156.

20 V.F. Fedorenko, T. Fedorenko, *op. cit*., p. 257; M. Cranston, *Prava cheloveka: dokumenty o pravakh cheloveka*, Editions de la Seine, Paris 1975, p. 257; M. Cranston, What are Human Rights?, New York, Bodley Head 1962, p. 11, 36.

21 V.F. Fedorenko, T. Fedorenko, *op. cit*., p. 253; Déclaration des droits de l'homme et du citoyen de 1789, https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789, visited 14 January 2023.

22 The Constitution of the Republic of Poland, April 2, 1997, Journal of Laws 1997, No. 78, item 483, as amended.

23 The Constitution of the Republic of Croatia, December 22, 1990, Narodne Novine.

24 The Constitution of the Republic of Estonia, June 28, 1992, State Gazette (Riigi Teataja).

25 The Constitution of the Portuguese Republic, April 2, 1976, Diário da República.

26 The Constitution of the Republic of Slovenia, December 23, 1991, Official Gazette of the Republic of Slovenia.

27 The limitation clause in the Albanian Constitution, as found in Article 17, stipulates that limi-

Another mechanism in international human rights law is derogation, applicable in extraordinary situations like war or severe public emergencies threatening the life of a nation. In such exceptional circumstances, derogation permits states to temporarily suspend certain obligations under international treaties, such as the European Convention on Human Rights (ECHR), to effectively address the crisis. This suspension must adhere to stringent conditions, including the necessity of an official proclamation of the emergency and the requirement that any suspension of rights is strictly limited to the exigencies of the situation, as outlined in Article 4(1) and (2) of the International Covenant on Civil and Political Rights (ICCPR)[28]. While limitation clauses are regular legal mechanisms that balance individual rights with societal needs under normal conditions, derogations are special measures used in response to crises, subjected to strict international standards to prevent abuse. Both are integral to the effective and proportionate regulation of human rights in the face of varying societal and national exigencies. However, the concept of derogation, typically associated with emergency situations where states temporarily suspend certain human rights obligations, does not appear to be a specific feature of the ChoFR or other human rights instruments.

3. Restrictions on Human Rights and Freedoms in the European Union

In the EU, most fundamental rights are not absolute and can be subject to limitations. Such limitations can alter or modify the existing shapes of human rights, thus affecting the essence of a particular right[29]. Significantly, the ChoFR respects the principle of proportionality and allows for limitations on rights if necessary for general interest or to protect others' rights. It acknowledges the relative nature of fundamental rights, allowing for context-sensitive interpretations and applications, including in situations of national or state emergencies[30]. Within the EU system, many rights and freedoms, as well as principles, are not subject to any factual or legal limitations. This includes dignity, which by its very nature cannot be limited or derogated, nor can its nature be interfered with[31]. This also applies to other existential fundamental rights such as the right to life or bodily integrity. Similarly, the prohibition of torture

tations of rights and freedoms set out in the Constitution may only be established by law, and only in the interest of the public or for the protection of others' rights. These limitations must be proportional to the circumstances that necessitate them. They must not violate the essence of the rights and freedoms, and cannot exceed the limits set by the European Convention on Human Rights. See: The Constitution of the Republic of Albania, October 21, 1998, Official Journal of the Republic of Albania.

28 International Covenant on Civil and Political Rights December 16, 1966, U.N.Doc. A/6316(1966).

29 W. Brzozowski, A. Krzywoń, M. Wiącek, *Prawa człowieka*, Wolters Kluwer, Warszawa 2021, p. 42.

30 K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *op. cit*., p. 131.

31 Art. 2 of the FRCh; A. Wróbel, 'Article 52', in A. Wróbel (eds.), *Karta Praw Podstawowych*, C.H. Beck, Warszawa 2013, p. 1348.

and inhuman or degrading treatment or punishment has an absolute character[32]. The Charter, while guaranteeing individual fundamental freedoms, introduces limitations on the exercise of these rights in some of its provisions, especially when necessary for the general interest. For example, Article 17 of the ChoFR stipulates that "the use of property may be regulated by law to the extent necessary for the general interest"[33]. Część praw i wolności zawartych w ChoFR może podlegać ograniczeń faktycznym z uwagi na wspólne tradycje konstytucyjne państw członkowskich, które należy interpretować z takimi tradycjami. Some rights and freedoms included in the ChoFR may be subject to factual limitations due to the common constitutional traditions of the Member States, which should be interpreted in light of these traditions. Examples of rights subject to such interpretation are included in Title V of the ChoFR, particularly concerning "common constitutional traditions of the Member States", especially relevant to electoral rights: the right to vote and to stand as a candidate in elections to the European Parliament and in local elections. These rights are not absolute, and their exercise is based on national electoral law, recognising in the national system former limitations especially arising from age census and citizenship[34].

Unlike the regulation adopted in the ECHR, the ChoFR contains a general limitation clause regarding the possibility of limiting the exercise of rights and freedoms, as well as the grounds for such limitations[35]. These detailed issues related to the admissibility of limitations on fundamental rights and freedoms are specified in Article 52 of the ChoFR[36]. The Charter adopts the principle that any limitation on the exercise of the rights and freedoms recognised by the ChoFR must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, any limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others. These prerequisites must be cumulatively met. Therefore, limitations of the provisions contained in the Charter are permissible based on Article 52 only when they concern the rights and freedoms included in the Charter. These limitations do not apply to the principles recognised in the Charter, as well as to the general principles of law on which the entire EU as an international organisation is based[37]. Examples of such limitations may include situations of

32 Art. 4 of the FRCh.

33 A. Wróbel, *op. cit*., p. 1346.

34 See: R. Tabaszewski, 'Dopuszczalność ograniczania czynnego i biernego prawa wyborczego ze względu na potrzebę ochrony zdrowia', in W. Hermeliński, B. Tokaj (eds.), *25 lat demokratycznego prawa wyborczego i organów wyborczych w Polsce (1991-2016)*, Księga jubileuszowa, t. II, Państwowa Komisja Wyborcza, Krajowe Biuro Wyborcze, Warszawa 2016. pp. 75-84.

35 A. Wróbel, *op. cit*., p. 1348.

36 D. Anderson, C.C. Murphy, *op. cit*., p. 7.

37 A. Wróbel, *op. cit*., p. 1348; B. Ziemblicki, 'Rola Karty Praw Podstawowych Unii Europejskiej

public health threats, as occurred during the COVID-19 pandemic, when various measures were introduced to protect public health, such as movement restrictions or assembly bans. Among the various objectives that may justify such limitations of human rights and freedoms, public health protection is a notable example[38]. The possibility of limiting rights and freedoms due to the premise of "public health and morality" envisages norms of *ius cogens* nature in the Member States.

In national law, it is not sufficient to formally establish a limitation by statute; such limitation must concurrently comply with EU law. A measure restricting a human right should adhere to defined principles of fair legislation. This includes being clearly and precisely formulated to enable the addressee to ascertain their rights and obligations and to take possible actions accordingly. In line with the principle of legal certainty, any limitations should be justified and predictable, particularly when they might adversely affect individuals[39]. This is crucial as there is a deep diversity in the legislative frameworks of EU Member States, influencing the admissibility of limiting human rights and freedoms by law. In the legal systems of some Member States, such as Malta or the United Kingdom until 31 January 2020 (Brexit), limitations of human rights and freedoms can be enacted solely through specific legislative acts. Conversely, in legislations of other Member States, like Germany or the Netherlands, limitations can be imposed not only by law but also by acts subordinate to law. In Poland, due to the inclusion of most human and citizen rights and freedoms, specifying the rights and obligations of individuals requires exclusively the form of a statute.

Certain limitations in exercising rights and freedoms may arise from opt-out clauses adopted by a state. Regarding Poland's commitments, it is noteworthy that Protocol No. 30 attached to the Treaty of Lisbon, known as the British-Polish Protocol, is a classic opt-out clause. It specifies that the ChoFR does not infringe the right of Member States to legislate in areas of public morality, family law, as well as the protection of human dignity and respect for the physical and moral integrity of the individual[40]. During the negotiations for the Treaty of Lisbon, Poland initially supported the Charter of Fundamental Rights but limited its application to its citizens

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w kontekście pandemii COVID-19', in J. Jaskiernia, K. Spryszak, (eds.), *System ochrony praw człowieka w Europie w czasie wyzwań pandemicznych*, Adam Marszałek, Toruń 2022, p. 170.

38 R. Tabaszewski, 'The Permissibility Of Limiting Rights And Freedoms In The European And National Legal System Due To Health Protection', Review of European and Comparative Law, 2020, No. 3, pp. 51-89.

39 A. Wróbel, *op. cit*., pp. 1349-1353.

40 See: 61. Declaration by the Republic of Poland on the Charter of Fundamental Rights of the European Union; 62. Declaration by the Republic of Poland concerning the Protocol on the application of the Charter of Fundamental Rights of the European Union in relation to Poland and the United Kingdom, O.J. C 83/355.

following the Treaty's adoption[41]. Over time, the Charter's significance in the Polish legal system gradually diminished. However, in recent years, the Court of Justice of the European Union (CJEU) has made several key decisions directly referring to the Charter, which could significantly influence its significance and application in the legal systems of the Member States in the future.

One of the fundamental conditions for permissible limitations on human rights is their legality, which is manifested in establishing exceptions "provided for by law". This legality must be understood strictly as compound legality, meeting both the criteria set by EU law and national law. This requirement should be linked with the general principle of respecting the rule of law, expressed in Article 2 TEU[42]. This means that in certain situations, limitations on human rights and freedoms can be foreseen in both the Treaties and the ChoFR, as well as in some derived legal acts, including regulations and directives. However, the application of any limitations to fundamental rights based solely on an extensive interpretation of previous CJEU rulings, and even more so on enabling legislation, is excluded[43]. It should also be noted that rights recognised by the ChoFR, for which provision is made in the Treaties, shall be exercised under the conditions and within the limits defined by those Treaties[44].

4. Permissible Limitations of Constitutional Rights and Freedoms in Poland

The Republic of Poland became a full member of the EU on 1st May 2004, marking the culmination of a process of European integration and the adaptation of its internal legal structures to EU standards[45]. Poland's preparations for EU membership included a comprehensive harmonisation of its human rights system in line with European norms and directives. The Polish Constitution, enacted in 1997, is a fundamental legal document that provides for the protection of human rights and citizens, consistent with international standards, including those established within

41 M. Zrno, 'Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom: A Polish Perspective', Croatian Yearbook of European Law and Policy, No. 6, 2010, pp. 295-298.

42 A. Wróbel, *op. cit*., p. 1359; J. Barcik *Ochrona praworządności w Radzie Europy i Unii Europejskiej ze szczególnym uwzględnieniem niezależności sądów i niezawisłości sędziów,* Warszawa 2019, pp. 106-110; B. Paw, 'Poszanowanie zasad praworządności a odpowiedzialność za naruszenie praw człowieka w czasie pandemii, in J. Jaskiernia, K. Spryszak, (eds.), *Powszechny system praw człowieka w czasie wyzwań pandemicznych*, Adam Marszałek, Toruń 2022, p. 515.

43 A. Wróbel, *op. cit*., pp. 1359-1362.

44 Article 52(3) of the FRCh.

45 J. Sułkowski, 'Polska w Unii Europejskiej' in D. Górecki (eds.), *Polskie prawo konstytucyjne*, Wolters Kluwer, Warszawa 2019, p. 361.

the EU[46]. The Constitution, as the supreme legal act, guarantees a range of civil rights and freedoms, reflecting Poland's commitments derived from both its legal and constitutional traditions and its membership in European structures, including EU law provisions[47]. Key chapters relevant to the guarantee and protection of human rights include: Chapter I: "The Republic", Chapter II: "Freedoms, Rights and Obligations of Persons and Citizens", Chapter VIII: "Courts and Tribunals", Chapter IX: "State Control Organs and Legal Protection", and Chapter XI: "Extraordinary Measures"[48]. Human rights in the Polish Constitution are detailed and comprehensively regulated in Chapter II, dedicated to "Freedoms, Rights and Obligations of Persons and Citizens". The 1997 Constitution, forming the foundation of the legal system of the Republic of Poland, emphasises the inviolability of human dignity as the source of civil liberties and rights, in accordance with the fundamental values and principles of the EU. Poland also adheres to the binding international law, including the law of the international organisation that is the EU, comprising primary and secondary law: regulations, directives, decisions, opinions, and recommendations.

The provisions in the Polish Constitution ensuring human rights and freedoms not only define the scope and substance of rights but also indicate possibilities for their limitations. Thus, the Polish Constitution aligns with the common constitutional law principle of democratic states within the EU, stating that a statute is the sole source for limiting human rights and freedoms[49]. Any such limitations must be introduced in a manner consistent with the statute, fulfilling the specified conditions and not violating the essence of freedoms and rights[50]. According to Article 31(3) of the Polish, any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons[51]. It's worth noting that this enumeration is exhaustive and pertains only to situations where the limitation of human rights and freedoms is necessary to achieve at least one of the six aforementioned values.

Similar to the provision in Article 52 of the ChoFR, both the Polish Constitution and the jurisprudence of the Polish Constitutional Tribunal specify that limitations in the mentioned scope can only be established by statute[52]. This means that it is not

46 Article 8 of the Polish Constitution.

47 Article 9 of the Polish Constitution.

48 K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *op. cit*., pp. 136-137.

49 B. Banaszak, Konstytucja RP, C.H. Beck, Warszawa 2012, p. 219.

50 K. Wojtyczek, *Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP*, Zakamycze, Kraków 1998, p. 80.

51 Article 31(3) of the Polish Constitution.

52 W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Zakamycze, Kraków 1999, p. 34-35; A. Parkitna, 'Konstytucyjne możliwości ograniczania praw i wolności człowieka i oby-

permissible for the legislator to establish general, blanket limitations in the form of regulations that can then be filled by executive authorities or local governments. Limitations can therefore only be established by representative bodies derived from general elections. According to the Polish Constitution, only the Sejm and Senate are authorised to introduce any limitations on human rights and freedoms. Such limitations can thus only be introduced through a legal act of the parliament, which, according to the Polish Constitution, is enacted in a special procedure and holds a high place in the Polish legal system, right after international agreements, accession treaties, and supra-statutory laws, such as codes[53]. It is not possible for executive authorities or the judiciary to issue acts limiting rights and obligations, nor is it permissible to limit human rights and freedoms in the form of an act lower than a statute, especially in the form of a regulation[54]. The establishment of a limitation by statute, followed by the issuance of appropriate executive acts to the statute, is a different matter. However, it is contentious whether in a Member State of the EU, customary law can define boundaries that are insufficiently regulated or entirely unregulated.

Following the example of other legal systems of EU Member States, the Polish system recognises that limitations on the use of rights and freedoms can only be introduced when necessary to ensure a specific objective. It has been enumerated that such objectives include: ensuring safety; protecting the environment; safeguarding public health; upholding public morality; as well as possible limitations for the protection of the freedoms and rights of others[55]. In certain situations, the exclusive use of Article 31(3), such as a global epidemic threat, may prove insufficient. This is because the catalogue of permissible limitations is closed and cannot be interpreted expansively[56].*Conditio sine qua non* for establishing such limitations is the absence of interference with the essence of constitutionally defined freedoms and rights[57]. It is also worth noting that the *onus probandi* to demonstrate that due to the aforementioned reasons, there is a necessity to introduce limitations rests on the legislator[58]. Under the Polish Constitution, it is not possible to establish other limitations in the use of constitutional human rights and freedoms envisaged by Article 31(3).

watela w stanach nadzwyczajnych a rozwiązania przyjęte w Polsce w trakcie trwania pandemii COVID-19', Horyzonty Polityki, No. 36, Vol. 11, 2020, p. 46.

53 W. Skrzydło, *op. cit.*, Commentary on Article 32, p. 34.

54 M. Szydło, Artykuł 31, Konstytucja RP. Tom I, 'Article 52', in M.. Safjan, L.Bosek (eds.), Konstytucja Rzeczypospolitej Polskie. Komentarz, C.H. Beck, Warszawa 2019, p. 774.

55 W. Skrzydło, *op. cit.*, Commentary on Article 32, p. 35.

56 Polish Constitutional Tribunal, Judgment, February 25, 1999, Ref. No. K 23/98, OTK, No. 2.

57 P. Tuleja, 'Pandemia COVID-19 a konstytucyjne stany nadzwyczajne', Palestra, No. 9, 2020, p. 8.

58 Polish Constitutional Tribunal, Decision, October 22, 2003, Ref. No. P 21/02, OTK-A 2003, No. 8, pos. 90.

A crucial principle expressed in the doctrine of constitutional law, which is helpful in assessing whether a limitation is justified or not, is the principle of proportionality. In most countries, a so-called proportionality test is applied, which involves checking the relationship of a given measure to the intended goal based on corresponding criteria: suitability, necessity, and strict proportionality[59]. The Polish Constitution states that 'such limitations shall not violate the essence of freedoms and rights'[60]. In practice, this directive to the legislator involves selecting the least burdensome possible measures among available options in relation to the entities to which they are to be applied or painful to a degree no greater than is necessary to achieve the intended goal, as stated by the Constitutional Tribunal in its judgment[61]. A separate issue is the impossibility of limiting certain rights, which the Polish Constitution considers absolute and non-derogable, such as the prohibition of torture and inhuman or degrading treatment or punishment[62]. This category of rights also includes human dignity protected by Article 30 of the Polish Constitution. This provision states that human dignity is inviolable[63]. From the essence of this category of rights, should emerge the boundaries of the possible admissibility of their limitation. Even if EU law would allow it, these categories of rights cannot be limited.

5. Restrictions in Law Due to the Pandemic

Health is now recognized as a fundamental human value safeguarded within the European framework[64]. Within both the EU and national legal systems, public health is a key ground for justifying limitations on human rights and freedoms. This concept encompasses issues related to the health of populations, the overall state of public health, healthcare services, and the health of individuals as a personal right[65]. Notably, health policy is an independent area within the EU, forming part of Title XIV 'Public Health' in the TFEU. Thus, any EU action complementing national policies must focus on enhancing public health, including disease prevention and the

59 A. Mudrecki, *Zasada proporcjonalności w prawie podatkowym*, Wolters Kluwer, Warszawa 2020, p. 35.

60 Polish Constitutional Tribunal, Judgment, February 25, 1999, Ref. No. K 23/98, OTK No. 2. Article 31(3) *in fine* of the Polish Constitution.

61 B. Banaszk, *op. cit*., p. 224.

62 Article 40 of the Polish Constitution.

63 Polish Constitutional Tribunal, Judgment, February 25, 1999, Ref. No. K 23/98, OTK, No. 2.

64 H.R. Abbing, 'Health Law & the European Union,' European Journal of Health Law No. 1, 1994, p. 123–126; M. Krennerich Michael, 'The Human Right to Health Fundamentals of a Complex Right', in S. Klotz, H. Bifeldt, M. Schmidhuber, A. Frewer (eds.), *Healthcare as a Human Rights Issue. Normative Profile, Conflicts and Implementation*, Bielefeld, Verlag, 2017, pp. 29-47.

65 R. Tabaszewski, *Prawo do zdrowia w systemach ochrony praw człowieka*, Wydawnictwo KUL, Lublin 2016, pp. 32-33, 147.

elimination of health hazards[66]. In Polish constitutional law, a public health clause is recognized, which acknowledges the need for collaborative efforts from society and public authorities to maintain high standards of public health. Key components of public health include hygiene, disease prevention, early diagnosis and prevention, infection control, disease management, and promoting physical and mental well-being[67].

The public health premise in the constitutions and laws of EU Member States allowed for mitigating the spread of the COVID-19 pandemic, which emerged in Europe in early 2020. The pandemic posed significant challenges globally, including for EU Member States[68]. The early cases in Europe necessitated swift and strategic responses from governments to handle the health crisis and its socio-economic impacts. The EU's approach to the COVID-19 pandemic involved a series of definitive measures, including legal acts directly addressing the pandemic: recommendations from the European Commission [69], and the Council of the EU,[70], communications from the Commission[71], and a directive from the Council[72]. Since 2020, the European Ombudsman has taken numerous actions to protect fundamental rights, addressing complaints and initiating investigations against institutions and bodies for misadministration during the pandemic[73]. The EU's actions were somewhat limited, as under Article 168(2) TFEU, Member States are primarily responsible for their citizens' health[74]. During the pandemic, the EU's role was

66 Commentary on the Charter of Fundamental Rights of the European Union, Vienna, 2006, pp. 306-311.

67 B. Banaszk, *op. cit*., p. 220.

68 E. Brooks, R. Geyer, 'The development of EU health policy and the Covid-19 pandemic: Trends and implications', Journal of European Integration, No. 8, Vol. 42, 2020, pp. 1057-1076.

69 European Commission, 2021. Commission Recommendation (EU) 2021/472 of 17 March 2021 on a common approach to establish a systematic surveillance of SARS-CoV-2 and its variants in wastewaters in the EU. Official Journal of the European Union (O.J.E.U. L 98/3, of 19 March, 2021), pp. 3–8.

70 Council Recommendation (EU) 2021/119 of 1 February 2021 amending Recommendation (EU) 2020/1475. Official Journal of the European Union, pp. 1–6 (O.J.E.U. L 36I, of 2 February, 2021).

71 European Commission (2021). A common path to safe and sustained re-opening. COM/2021/129 final, Brussels, 17 March, 2021; European Commission (2021) HERA Incubator: Anticipating together the threat of COVID-19 variants. COM/2021/78 final, Brussels, 17 February, 2021.

72 Council Directive (EU) 2020/2020 of 7 December 2020 amending Directive 2006/112/EC. Official Journal of the European Union. L 419, 11 December, pp. 1–4 (O.J.E.U. L 88/1, of 9 March, 2022).

73 K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *op. cit*., pp. 208-209; Statute of the European Ombudsman – Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom (O.J.E.U. L 253 of 16 July 2021, pp. 1–10).

74 R. Tabaszewski, Access to health care by migrating citizens in a host state of the European Union, in E. Krzysztofik (eds.), *Personal Freedoms of the Internal Market of the European*

mostly supportive, coordinating, or supplementary, as defined in Articles 4(2)(k) TUE and 6(a) TFEU[75].

Many EU Member States' constitutions do not envisage a state of emergency, so governments relied on existing legislative solutions to protect citizens' health. An extraordinary state can be declared in situations where ordinary constitutional measures are insufficient to address significant threats[76]. In Poland, unlike some other EU Member States, no state of emergency was declared between 2020 and 2022 in response to the pandemic. This was despite the Polish Constitution, in its Chapter XI, offering provisions for such a state[77]. The traditional derogation mechanism was not enacted, notwithstanding that the conditions for instituting one of the extraordinary states, specifically a state of natural disaster, were met as per Article 228(2) of the Constitution of Poland. This state may be proclaimed with the objective of averting or alleviating the repercussions of a natural calamity or a technological mishap manifesting attributes akin to a natural disaster. Under such circumstances, the government is empowered to institute, for a determinate period not exceeding thirty days, a state of natural disaster in either a segment or the entirety of the national territory. The prolongation of this state of natural disaster is contingent upon the assent of the Sejm[78]. Instead of declaring a state of emergency as envisioned in the constitution for situations posing a threat to the functioning of the state, Poland implemented a state of epidemic threat on 13th March 2020. This was later replaced by a state of epidemic on 20th March 2020. These measures, not explicitly mentioned in the Polish Constitution, were introduced through legislation and extended beyond the limitations outlined in Article 31(3) of the Constitution. Notably, the state of epidemic was only lifted after more than two years, on 16th May 2022, followed by a re-introduction of the state of epidemic threat, which was eventually lifted on 1st July 2023. The implementation of these restrictions, based solely on legislative measures rather than constitutional provisions, raised controversies in legal discussions[79]. In practice, limitations were imposed on various constitutional freedoms, such as the freedom of movement, lockdowns, preventive quarantine, bans on gatherings, and restrictions on religious practices, relying solely

Union in the Light of the Changing Political and Economic Situation in Europe, Verlag, Berlin 2018, p. 168.

75 B. Ziemblicki, *op. cit*., p. 173-175.

76 K. Machowicz, 'Stany nadzwyczajne jako przesłanka legalnej ingerencji w prawa człowieka w Polsce', Zeszyty Naukowe Szkoły Głównej Straży Pożarnej, No. 38, 2009, p. 69; T. Bryk, 'Przegląd regulacji stanów nadzwyczajnych w przepisach Konstytucji RP', Przegląd Prawa Konstytucyjnego, No. 1, Vol. 5, 2011, p. 223.

77 Articles 228-234 of the Polish Constitution.

78 See: K. Eckhardt, *Stan nadzwyczajny jako instytucja polskiego prawa konstytucyjnego*, Wyższa Szkoła Prawa i Administracji, Przemyśl-Rzeszów, 2012, p. 37-56; A. Parkitna, *op. cit.,* p. 47.

79 P. Tuleja, *op. cit*., p. 14; R. Rybski, 'Stan epidemii a stany nadzwyczajne', Przegląd Konstytucyjny, No. 1, 2022, pp. 160-161.

on the limitation clause described in Article 31(3). This approach was largely deemed by legal scholars as an overreach of the provision and a breach of constitutional boundaries. It highlights that authorities should not impose limitations on human rights and freedoms in situations of special threats that warrant the declaration of states of emergency.

6. Conclusions

In the EU, human rights are fundamentally guaranteed to strike a balance between individual freedoms and the necessary limitations for ensuring public safety, order, and the protection of the rights of others. This encompasses all individuals residing within the territories of the EU member states. Irrespective of their legal status, nationality, or origin, all residents of the EU benefit from the protection of human rights, which form an integral part of the Union's legal system and values. These rights significantly impact the daily lives of citizens, ensuring their fundamental freedoms and dignified, fair treatment. In this context, as elucidated in previous sections, it becomes apparent that the constitutional limitation clause, pivotal in upholding human rights, faces considerable practical challenges in unforeseen situations such as epidemics. The response of Poland to the COVID-19 pandemic exemplifies this, where the conventional legal framework, specifically Article 31(3) of the Polish Constitution, was inadequate in managing a public health crisis of such scale. This predicament underscores the pressing necessity for adaptive legal mechanisms that are in harmony with constitutional tenets. Moreover, the existing framework of the EU, deficient in clear protocols to efficiently address scenarios where member states excessively or improperly utilise limitation clauses, necessitates a critical appraisal and enhancement to ensure the preservation of fundamental rights, especially in periods of crisis.

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NEW METHODOLOGY OF ENLARGEMENT IN EU: THE WAY AHEAD FOR THE BALKAN COUNTRIES[1]

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ABSTRACT

The process of enlargement of EU for the countries of Western Balkans is an ongoing process, which is the most important from the adhesions of 2004. Through this paper we aim to offer a descriptive analysis of the EU institutions position regarding enlargement from the issuing the new methodology of enlargement up to the new perspective for the WB countries opened by the 2023 package on enlargement, which is a clear and comprehensive policy document presenting the path toward future.

Regarding enlargement, after the adhesion of Croatia, the process in WB countries is the most advanced situation and we will analyses the new EU approach with findings from Albanian case on implementing reforms and acquis according to the new enlargement methodology.

In our opinion, the key and most relevant condition to fulfill, within the process of integration, is the correct adoption of the acquis and we will analyze this component in the light of the screening report for Cluster 1 for Albania.

Keywords: *EU Enlargement – New methodologies – Albania – Western Balkans – Acquis adoption.*

1. EU enlargement as a dynamic process from 1958 to present days

The foundation of the European Community (EC) with the Treaty of Rome was considered a new beginning after the WWII in Europe regarding economic and

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social progress as well as peace and liberty. The following years several attempts were made to consolidate this Union, especially in the field of security and defense.

The first enlargement took place on 1973 with the adhesion of Denmark, Ireland and United Kingdom. In 1981 Greece joined the EC, then in 1986 was the turn of Spain and Portugal. The Treaty of Maastricht in 1992 definitively changed the EC structure, objectives and functioning with an impact on enlargement as well. Thus, in 1995 took place the accession of Austria, Finland and Sweden. The largest enlargement of the EU was in 2004 with the Central and East European countries[2] after the Treaties of Amsterdam and Nice. The 2004 process was a conclusive process started from the fall of communism and the criteria of adhesion remained those established in Copenhagen in 1993. On the same patterns, three years after this enlargement there was the adhesion of Bulgaria and Romania.

The last successful enlargement in that of Croatia in 2013 on basically the same criteria of accession and carried along within the ongoing process of enlargement of EU in the Western Balkans countries under the agreements of association and stabilization.

Actually, there are 9 candidate countries. As we can see from above the process of enlargement is set on criteria but still remains very political and its periodical assessment from the EU institutions takes broader considerations.

1.1. Legal basis and criteria for adhesion in the EU

The Treaty on European Union states in its article 49 that "Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be considered. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements".

The above article constitutes the legal basis for any adhesion in the EU with a procedure that follows a specific pattern: application of a State; opinion of the European Commission; receiving the status of candidate country; opening of

2 Namely Czech Republic, Lithuania, Slovenia, Estonia, Hungary, Slovakia, Cyprus, Malta, Latvia, Poland.

negotiations; transitional agreements (eventually)[3]; adhesion.

Nonetheless, each candidate country, despite the procedure undertaken, shall show to respect the founding values of the EU laid in Article 2 TEU such as "respect of human dignity, freedom, democracy equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail".

The specific criteria are set by the European Council in Copenhagen in 1993[4], as essential conditions to satisfy in the integration path: political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; economic criteria: a functioning market economy and the capacity to cope with competition and market forces; administrative and institutional capacity to effectively implement the acquis and ability to take on the obligations of membership. On the other hand, there is an EU internal criterion, which lately has become to vital importance, which is the capacity of the Union to absorb new members. Furthermore, it is important to mention, as integral part of EU membership requirements that are measurable in the path of adhesion, the criteria established in the European Council of Madrid of 15 and 16 December 1995.

2. New enlargement methodology launched from the European Commission in 2020 and the EU institutions

The process of enlargement, as shaped in the Copenhagen criteria, suffers the need of a credible enlargement process toward Western Balkans countries. Nonetheless, for the EU institutions, and more for the Member States, there is the need to bear in mind also the lessons learned by the enlargement process of 2004[5]. The new methodology of enlargement was proposed by the Commission after the threats within the ongoing processes of integration of Turkey, Albania and North Macedonia, in order to offer a more predictable way of enlargement process and linked to measurable criteria of assessment.

Firstly, in 2018, after several problems in opening the negotiations for Albania and North Macedonia, the Commission with a communication to the EU Parliament, Council and other institutions addresses the need of a "credible enlargement

3 Gradual adoption of some provisions of the EU legislation within the candidate state. Offering a certain time for adoption without causing internal problematics to the candidate state. I.e. Croatia benefited to some transitional provisions regarding fisheries and maritime sector.

4 DOC/93/3

5 See D. Adamski, *The social contract of democratic backsliding in the "New EU" countries* in *Common Market Law Review* 56: 623-666, 2019. Also, for the ongoing process for the enlargement of 2004, see G. Burghart, F. Cameron, *The next enlargement of the European Union* in *European Foreign Affairs Review* 2: 7-21, 1997

perspective for and enhanced EU engagement with the Western Balkans"[6]. The statements on this document lays the basis for evaluation of each country in its integration path as well as the commitments of the EU institutions in the process of enlargement.

In 2020, finally, after the "internal readiness of the EU and Member States" the Commission proposes an enhancement to the accession process offering a credible EU perspective for the Western Balkans[7]. On the other hand, when proposing this new and enhanced methodology, the Commission is aware that it needs a stronger political steer, with the involvement more active of the Member States[8] in the process and by creating a political momentum through EU-Western Balkans summits[9] and contacts at ministerial levels. Regarding each candidate states there is stressed the importance of the Inter-Governmental Conferences (IGCs) between parties, and of the Stabilisation and Association Councils for better discussing the meeting of interim benchmarks and proposing for closure to the Council.

Yet, the key actor in the whole evaluation process remains the European Commission, which has the duty to prepare the progress reports for each country every year. It proposes the framework of negotiations for each case and is the leader institution which maintain contact with candidate countries.

There is the need to shape the negotiations process as more dynamic. In this renewed proposed methodology, the Commission proposes that "in order to inject further dynamism into the negotiating process and to foster cross-fertilisation of efforts beyond individual chapters, the negotiating chapters will be organised in thematic clusters"[10] and the clusters with cover different chapters of negotiations with broader thematic[11].

As for the process itself, negotiations on each cluster will be opened as a whole, after

6 COM(2018) 65 final

7 COM(2020) 57 final of 5.2.2020

8 Member States are now invited to contribute during the accession process and have the possibility to overview more closely the process.

9 One of the most important for enlargement the summit held in Tirana, the first-ever summit held in a Western Balkan country on 6 December 2022. In the Tirana Declaration the EU affirms that "its full and unequivocal commitment to the European Union membership perspective of the Western Balkans and calls for the acceleration of the accession process, based upon credible reforms by Partners, fair and rigorous conditionality and the principle of own merits, which is in our mutual interest. It welcomes the progress made by the Western Balkans Partners on their respective EU paths since the EU-Western Balkans Summit at Brdo in October 2021. In particular, the EU welcomes the holding of the first Intergovernmental Conferences with Albania and North Macedonia" Available at https://www.consilium.europa.eu/media/60568/tirana-declaration-en.pdf (last accessed on 10.01.2023). The last WB-EU summit was held in Brussel on 13 December 2023.

10 COM(2020) 57 final, p. 4

11 Ibid. Despite Montenegro and Serbia has already a approved framework of negotiations in chapters, due to the progress made, even for them there will be a reorganization in clusters.

fulfilling the opening benchmarks, rather than on an individual chapter basis like before. More important, the screening process at the beginning of the negotiations will be made by clusters in order to have a more realistic evaluation of macro areas and to better agree between EU institutions and candidate country on realistic and important reforms to be carried by the candidate. This makes the process reversible and, satisfying the fear of Member States, controlled from the EU and Member States until the signature of the accession treaty. The process itself is very technical, to be explained on a case by case basis, and offers many changes from the other enlargement processes in the past. The case of Albania is taken as an example to see fully implemented the new methodology of enlargement.

2.1. Albanian integration process as a WB country and relationship with the EU institutions under the new methodology of enlargement

In June 2014 Albania was awarded the status of candidate country for membership[12]. The first unconditional recommendation for opening the negotiations was granted from the Commission in 2018, then with the Enlargement Package in May 2019, while the Council only recognize the progress made from Albania without opening negotiations[13].

Thus, the Council in 24 March 2020, after the adoption of a new enlargement methodology, decides to open negotiations with Albania[14] presenting, then, in July 2022 a draft negotiations framework was approved[15], fixing the first Intergovernmental conference on 19 July 2022. The 2023 was very intensive with the procedure of screening and, actually, the Commission has issued its screening report on cluster 1 (Fundamentals) but, in its conclusions of 12 December 2023 on enlargement the Council "welcomes the first intergovernmental conference held with Albania in July 2022. The Council welcomes the reform progress made in the past year, including the successful completion of the screening meetings. The Council looks forward to taking the next steps in Albania's accession process, and to opening the first negotiating cluster as soon as possible"[16].

12 https://www.consilium.europa.eu/media/21900/143354.pdf (last access 10.01.2024) endorsed by the European Council with EUCO 79/14.

13 Council Conclusions of 26 June 2018 (ELARG 41 – 10555/18) p. 17. https://data.consilium.europa.eu/doc/document/ST-10555-2018-INIT/en/pdf (last access 10.01.2024) The Council meeting of 2018 is the key point in shaping the path of Albania, having regard of a new enlargement methodology and a new perspective for Western Balkan countries, toward the opening of the negotiations.

14 Council Conclusions of 25 March 2020 (ELARG 20 – 7002/20), p. 4. https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf (last access 10.01.2024)

15 Council Conclusions of 18 July 2022 (ELARG 65 – 11440/22), p. 3. https://data.consilium.europa.eu/doc/document/ST-11440-2022-INIT/en/pdf

16 Council conclusions on Enlargement of 12 December 2023 (ELARG 94 – 16707/23).

The process remains between the candidate country and the EU institutions, namely the Commission, the Council of EU and the European Council, as well as the singular Member States. The process of integration becomes so a hybrid process, between politics and socio-economic factors. Yet, in the center, as explained *supra*, remains the most important and instrumental criteria, acquis adoption.

Despite the conclusions of the Council of 12 December 2023 does not open negotiations for singular chapters for Albania, enormous progress was made in the process being complete the screening phase for all the clusters of negotiations and having in hand the first report from the Commission on Fundamentals. The process of screening is important in assessing the readiness of Albania in opening and closing a negotiation chapter in the light of the new methodology of enlargement, especially regarding the acquis adoption.

2.2. **The first screening report for Albania as an important instrument for assessing acquis adoption and undertaken reforms.**

The process of screening is important in assessing the readiness of Albania in opening and closing a negotiation chapter in the light of the new methodology of enlargement, especially regarding the acquis adoption.

The process of screening is the first procedure within the negotiation framework for accession. It consists in an assessment of readiness in the EU acquis from the candidate country and European Commission covering 33 chapters of the negotiations as divided in 6 clusters[17]. The process is divided in two moments when the first are the explanatory meetings from the EU and the second are the bilateral meetings on each cluster with their chapters, where the candidate country presents its position on acquis adoption and implementation of EU legislation. At the end of the procedure a final report is drafted by the EC which evaluate the preparation of the candidate country and assess its intention toward reforms that might help the country during negotiations in order to successfully close each chapter that is included in the specific cluster. The result of the screening with consist in fixing the opening benchmarks for the cluster of negotiations as a whole.

The importance of the screening reports is for the candidate country the self-evaluation of its readiness and preparation for the negotiations to come, and on the other hand, for EU Member States and institutions, to have credible and reliable preparatory documents during the negotiations phase.

The draft screening report for cluster 1 – Fundamentals - was presented to the Council from the Commission in July 2023[18]. The Council has not taken a position

17 Clusters: Fundamentals; Internal market; Competitiveness and inclusive growth; Green agenda and sustainable connectivity; Resources, agriculture and cohesion; external relations.

18 See COM(2023) 690 final, p. 19-20 The Commission remarks that the screening process of EU

yet on Albania whether to open the chapters of the clusters for negotiation due to lack of a unanimous decision in December 2023.

The main areas included, as defined in the new methodology of enlargement[19], are rule of law, judicial reform and the fight against corruption and organised crime, fundamental rights, the strengthening of democratic institutions and public administration reform, as well as the overall economic criteria. Basically, it refers to the political criteria and put the rule of law criteria in the center of the negotiations, being this cluster the first to be opened and, after continuous monitoring during the process, the last to be closed[20]. The report is divided by areas that respect chapters involved within cluster, offering firstly an overview on the standards to be reached by the candidate country (EU acquis), a description of the country presentations and expert discussions during meetings, then an assessment by the Commission. Its assessment, findings and recommendation are a comprehensive analysis from several sources (i.e. civil society organizations) and does not rely only on Albanian institutions statements during the process.

The EC finds, in summary, that Albania is moderately prepared in these first chapters which are important for the other clusters because their impact is considerable with its track record. In our opinion, in the other chapters shall be addressed only the acquis and institutions because the track record for other clusters will be hugely impacted from Cluster 1.

In last analyses we had a positive first screening report from the EC with an foresee addressing shortages within 5 years.

3. Albanian institutional framework in the integration process

The institutional efforts of Albanian Government were not always maintaining a good pace in the process of integration still, from 2006, the EU acquis adoption was in the institutional agenda of Albania, especially after the status of candidate country was granted. Thus, important legislative documents were produced in 2015 and after.

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acquis has proceeded smoothly and that Albania has showed seriousness during the process.

19 COM(2020) 57 final

20 As stated in the draft-screening report "The fundamentals cannot be seen in isolation, but interact with each other and can be mutually reinforcing. A country grounded in democracy and the rule of law will be attractive for foreign investments and international trade, and allow businesses to flourish, thus strengthening economic performance and prosperity of citizens. In turn, thriving economic and social conditions will bolster the social consensus around democracy and the rule of law, and bring resources for the good functioning of public institutions." Screening Report Albania – Cluster 1 Fundamentals, p. 3.

Available at https://neighbourhood-enlargement.ec.europa.eu/screening-report-albania_en (last access 10/01/2024)

Firstly, there were identified the needs to create the EU integration units in each part of public administration. There were created the units in each ministry and the network of EU integration units[21] in accordance with article 70 of the SAA. The main goal of these units is to draft legislation in accordance with the acquis adoption in order to fulfill SAA obligations. According to point 4 of the Decision the EU integration unit are functionally responsible for addressing all issues regarding EU integration, from legal drafting and acquis adoption to general coordination of the specific needs to implement EU acquis. On the other hand, according to point 5 of the Decision the legal drafting unit is responsible for legal drafting according to standards of drafting and cooperation with the EU integration unit[22].

In 2019, there were made due preparations to respond to imminent opening of negotiations in order to better address specific needs that arises from new enlargement methodology. The base is the decision of Council of Ministers no. 749 of 19.12.2018 "On creation, organization and functioning of the state structure responsible for the negotiations and signing of the adhesion treaty of the Republic of Albania in the European Union"[23], as amended[24].

The decision constitutes the State Committee for European Integration, State Delegation, negotiator group, Albanian Mission in EU, EU Integration Secretariat[25], interinstitutional working groups[26], Platform of the Partnership for European Integration[27].

Firstly, was adopted the framework of the interinstitutional working groups on EU integration in May[28], creating a group with a leader institution for each chapter of EU integration for individualizing the responsible institution for harmonization and implementation of the acquis, tracking records on implementation, to prepare the Albanian presentation of the screening process, to address the negotiation presentation of Albania, etc.[29] Secondly, in order to address conditions of transparency, public awareness, accountability and inclusivity in the process, the Partnership Platform for EU integration[30].

21 With Decision of Council of Ministers no. 577 date 24.06.2015 "On the constitution of the network of EU integration units and the network of legal drafting in the ministries".

22 In order to be unified the external experts and coordination is under the supervision of the General Secretary of the Council of Ministers (Point 8and ff. of the Decision).

23 As published in the Official Gazette of the Republic of Albania no. 194 on 9.1.2019

24 Decision of Council of Ministers no. 17 of 11.1.2024

25 Regulated in point VII Decision of Council of Ministers no. 749 of 19.12.2018

26 Regulated in point VIII Decision of Council of Ministers no. 749 of 19.12.2018.

27 Regulated in point IX Decision of Council of Ministers no. 749 of 19.12.2018

28 Order of the Prime Minister no. 94 of 20.05.2019 "On constitution, composition and functioning of the interinstitutional groups on EU integration" repealing Order no. 107 date 28.2.2014 "On constitution, composition and functioning of the interinstitutional groups on EU integration"

29 Point 2 of Order of the Prime Minister no. 94 of 20.05.2019

30 Order of the Prime Minister no. 113 date 30.08.2019 "On forms for participating, functioning

After the opening of negotiations in March 2020, Albania created its institutional framework for dealing with integration. Thus, it was established the Negotiation Group and the competences of the Head Negotiator during negotiations[31], which is responsible for the technical process of negotiations[32]. The status of the head negotiator is that of a Minster of State within the structure of the Prime Minister office and the competences are wide within the process of negotiations. Part of the group is each vice minister or responsible of independent authorities which has special delegation regarding EU integration. The Negotiator Group is supported from the Secretariat of EU integration.

The above structure has successfully concluded the screening process within 2022-2023. Despite a lack of decision of the Council of EU in December 2023, Albania has started to address the findings of the Commission in the Screening Report on Fundamentals cluster issued in July 2022.

4. National Plan for European Integration

On the functioning of this institutional structure the principal expression is the National Plan for European Integration, adjourned every year[33] according to the obligations taken by Albania within the SAA in article 70 and negotiation process. The cycle and methodology of the NPEI is explained in the document and it foresee from drafting to the monitoring of application of the plan in cycle[34]. As in regard of methodology it is based on the prior experience for the preparation and foreign assistance and it was approved from the Negotiator Group[35]. The main structure is divided in: introduction, narrative part, planning part.

From the beginning of the process in 2014, where candidate country status was granted, there were several plans adopted by Albania. Their antecessor was the National Plan for Application of the Stabilisation and Association Agreement 2007-

and institutional structure of the Partnership Platform of EU Integration"

31 Decision of Council of Ministers no. 422 of 6.5.2020 "On the composition, rules of functioning and financial treatment of the negotiations group and the competencies of the head negotiator during negotiations of adhesion of the Republic of Albania in European Union"

32 The members of the group cochair subcommittees of stabilization and association EU-Albania and identify needs of Albania, after each Intergovernmental Conference the negotiation group draft a report on the ongoing negotiations for the State Committee for the EU integration and the Council of Ministers, etc.

33 The National Plan for European Integration 2021-2023 (approved by the Decision of Council of Ministers No 90 of 17.02.20121 "On the approval of the National Plan for European Integration 2021 – 2023") was monitored from the Government and was realized in 2021 76 percent. The monitor of the precedent NPEI 2020-2022 for the year 2020 was at 87 percent.

34 The cycle passes through: Preparatory work; Gap analysis; Planning; Drafting and quality control; Consultation and approval; Monitoring, reporting, and evaluation

35 Approved in October 2022. As cited in NPEI 2023-2025, p. 12 (available at https://www.drejtesia.gov.al/wp-content/uploads/2023/03/PLANI-KOMB%C3%8BTAR-P%C3%8BR-INTEGRIMIN-EVROPIAN-2023-2025.pdf last access 20.01.2024)

2012. Due to the dynamism of the negotiations process the planning period, even updating every year, in the latest year has considerably reduced the planning time from 5 year to 2 years. Actually, in March 2023, it was released the NPEI 2023-2025.

Once approved the NPEI is detailed in planning tables in order to be readied from the responsible institutions for each measure to be addressed during the planning period. Three tables are made available: the table of legislative measures, the table of implementation measures and the financial allocation for each.

5. Conclusions

The new methodology offers a renewed process and, what it is more important, an accepted one for both Member States and Counsel of EU also as a credible, more flexible, topic related organization of work for candidate countries.

In our opinion, despite the importance of other parameters, the ability to adopt EU legislation is of vital importance not only during screening but also as in the whole process of negotiations due to the nature of the enlargement process after the new methodology as reversible and the possibility of reopening chapters once they are provisionally closed

The Albanian institutional framework, as well as the National Plan for European Integration, maintain a good pace in the process of acquis adoption and translation. In the process some concerns arise from the capacity of Municipalities to address EU integration issues.

NPEI planification is well detailed and exhaustive for institutions but it does not assure successful timely implementation and strong commitment for other branches of public administration. Sometimes, the EU negotiation process seems non understandable and far from their everyday tasks for many of the PA. On the other hand, the problem from human resources of municipalities remains. It will be likeable an intervention of the legislator to make a Regional plan for European integration due to cross border collaboration to address issues that need regional cooperation. Albania is planning for instituting districts that better will respond to needs in accordance to the principle of subsidiarity.

This exhausting process passes through capacity building and, maybe, Albania is timely correct to launch a massive campaign of brain gain for national human resources that live abroad to take key positions within the EU integration process. Another important step maybe a serious and well-designed campaign of rising awareness and better understanding the process of integration and the role that can play in it not only specialized units but all the PA and citizens, with a special focus on the professionals of the future, the students.

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Screening Report Albania – Cluster 1 Fundamentals

THE SUPPORT OF SOCIO-ECONOMIC DEVELOPMENT AND REFORMS IN ALBANIA THROUGH IPA

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ABSTRACT

Albania, situated in the heart of the Western Balkans, has witnessed remarkable progress in its socio-economic development and institutional restructuring since the year 1991. Despite these advancements, Albania continues to grapple with a spectrum of challenges, spanning from economic inequalities to systemic inefficiencies within its administrative frameworks. The Instrument for Pre-accession Assistance (IPA), a pivotal financial mechanism devised by the European Union (EU), has emerged as a cornerstone in facilitating Albania's transformative journey towards sustainable growth and comprehensive reforms. Over the years, Albania has endeavored to address these challenges through ambitious reforms, yet the scale and complexity of the task necessitate significant external support, and herein lies the pivotal role of the IPA. This financial instrument, specifically tailored for candidate states to the EU, has become an indispensable tool for Albania's socio-economic advancement and institutional revitalization. By channeling financial resources, technical assistance, and expertise, IPA funding has bolstered Albania's capacity to implement crucial reforms and foster sustainable development across various sectors. This paper aims to thoroughly examine and elucidate the indispensable role played by IPA funding in fortifying Albania's trajectory towards socio-economic enhancement and institutional restructuring. This paper delves into the multifaceted impact of IPA funding on Albania's socio-economic landscape, examining how it has facilitated infrastructure development, private sector growth, education and healthcare

improvements, governance enhancements, and alignment with EU standards. Through an in-depth analysis, we aim to highlight the transformative power of IPA funding in catalyzing Albania's progress towards EU accession while addressing the persistent challenges that hinder its development trajectory.

Keywords: *IPA, Impact, Development, Economic growth, Sustainability, Albania, EU standards.*

1. Introduction

Albania, nestled in the Western Balkans, has undergone a profound transformation in its socio-economic landscape and institutional architecture since the year 1991. Emerging from a tumultuous period of political transition and economic upheaval, the country has embarked on a journey of reforms aimed at fostering prosperity and modernization. Despite commendable progress, Albania remains beset by a myriad of challenges, ranging from persistent economic disparities to entrenched institutional inefficiencies. In this context, the Instrument for Pre-accession Assistance (IPA), a financial instrument established by the EU, has emerged as a crucial lifeline for Albania's development trajectory. Designed specifically to support candidate countries on their path towards EU accession, IPA funding has played a pivotal role in catalyzing Albania's pursuit of sustainable development and comprehensive reforms.

This paper seeks to delve deeply into the indispensable role that IPA funding has played in shaping Albania's socio-economic advancement and institutional revitalization. By analyzing the multifaceted impact of IPA-funded initiatives, ranging from infrastructure development to governance reforms, we aim to elucidate the transformative power of this financial instrument in addressing the persistent challenges facing Albania. Through a comprehensive examination of IPA-funded projects and their outcomes, we endeavor to provide insights into how these investments have contributed to enhancing Albania's infrastructure, promoting private sector growth, improving access to education and healthcare, strengthening governance structures, and aligning with EU norms and standards. Moreover, this paper will assess the effectiveness and efficiency of IPA-funded interventions, examining key socio-economic indicators to gauge the impact on Albania's development trajectory. By considering stakeholder perspectives and incorporating empirical evidence, we aim to provide a nuanced understanding of the opportunities and challenges associated with IPA funding in Albania. Ultimately, this paper aims to contribute to the broader discourse on the role of external assistance in supporting socio-economic development and institutional reforms in transitioning economies like Albania. By highlighting the successes, shortcomings, and lessons learned from

IPA-funded initiatives, we hope to inform future strategies and policies aimed at advancing Albania's integration into the EU and fostering sustainable development for its citizens.

2. Historical context of IPA in Albania

Albania's aspiration to become a member of the EU has been a longstanding objective, reflecting the country's commitment to embracing European values and principles. The journey towards EU accession has been marked by a series of significant developments, reforms, and challenges. Central to Albania's EU accession process is the Stabilisation and Association Agreement (SAA), which serves as a framework for Albania's gradual integration into the EU. Signed in 2006 and entered into force in 2009, the SAA outlines a roadmap for Albania's political, economic, and social convergence with EU norms and standards. It underscores Albania's commitment to implementing comprehensive reforms in areas such as democracy, rule of law, human rights, and market economy principles. Since the initiation of the EU accession process, Albania has made notable progress in various areas. The country has undertaken significant legislative and institutional reforms to align with EU standards, particularly in the areas of judiciary reform, anti-corruption measures, and public administration. Albania has also implemented reforms aimed at strengthening democratic institutions, enhancing media freedom, and promoting civil society engagement. However, the EU accession journey has not been without challenges. Albania faces persistent issues related to the rule of law, judicial independence, corruption, organized crime, and socio-economic disparities. These challenges have posed obstacles to Albania's progress towards EU membership and have necessitated sustained efforts to address them effectively. Furthermore, Albania's EU accession process is influenced by external factors, including geopolitical dynamics, regional stability, and EU enlargement policy considerations. The pace and trajectory of Albania's integration into the EU are shaped by the broader context of EU-Albania relations and the EU's enlargement strategy.

The practical steps taken to strengthen Albania's integration efforts highlight the importance of the financial support provided by the EU through the introduction of the Instrument for Pre-accession Assistance (IPA) funding, facilitating its path towards European membership. The IPA stands as a pivotal financial mechanism established by the EU to facilitate the integration process of candidate countries. Since its inception, IPA funding has played a crucial role in supporting the socio-economic development and institutional reforms necessary for alignment with EU standards and values. IPA funding represents a tangible expression of the EU's commitment to assisting countries on their path towards EU membership. It

provides financial resources, technical assistance, and capacity-building support to candidate and potential candidate countries, enabling them to implement reforms and modernize their economies and institutions in accordance with EU requirements. The introduction of IPA funding heralded a new era of cooperation between the EU and aspiring states to membership, offering a structured framework for assistance and engagement. Through IPA funding, candidate and potential candidate countries gain access to financial resources aimed at addressing key challenges such as governance, rule of law, human rights, economic development, and regional cooperation. Moreover, IPA funding is characterized by its flexibility and adaptability to the specific needs and priorities of each beneficiary country. It allows for targeted interventions tailored to address the unique challenges and opportunities facing candidate countries on their path towards EU accession. Over the years, IPA funding has evolved to encompass a comprehensive range of programming areas, including democracy and governance, rule of law and fundamental rights, economic development, and human resources development. This holistic approach reflects the EU's commitment to supporting multifaceted reforms that are essential for sustainable development and EU integration.

The evolution of IPA funding in Albania represents a significant chapter in the country's journey towards European integration. Since its inception, IPA funding has played a crucial role in supporting Albania's socio-economic development, institutional reforms, and alignment with EU standards and values. In its early years, IPA funding in Albania primarily focused on laying the groundwork for institutional capacity building and administrative reforms. This included support for strengthening public administration, enhancing the rule of law, promoting democratic governance, and improving the functioning of institutions. Through targeted investments and technical assistance, IPA funding aimed to address the systemic challenges hindering Albania's progress towards EU accession. As Albania made strides in implementing reforms and meeting EU criteria, the scope and scale of IPA funding expanded to encompass a broader range of sectors and priorities. Infrastructure development emerged as a key area of focus, with IPA funds allocated towards upgrading transportation networks, energy systems, water supply, and sanitation facilities. These investments not only improved Albania's physical infrastructure but also enhanced connectivity, economic competitiveness, and quality of life for its citizen. Furthermore, IPA funding in Albania has been instrumental in promoting private sector development and entrepreneurship. Initiatives aimed at supporting small and medium-sized enterprises (SMEs), fostering innovation, and attracting foreign investments have contributed to job creation, economic diversification, and sustainable growth. By providing financial assistance, technical support, and access to markets, IPA funding has helped unlock the potential of Albania's vibrant

entrepreneurial ecosystem. In recent years, IPA funding has increasingly focused on enhancing education, healthcare, and social inclusion in Albania. Investments in education have aimed to improve access to quality schooling, enhance vocational training opportunities, and promote lifelong learning. Similarly, IPA-supported initiatives in healthcare have sought to strengthen primary care services, upgrade medical infrastructure, and enhance healthcare delivery systems. Moreover, IPA funding has played a crucial role in promoting regional development and cross-border cooperation in Albania. Through initiatives aimed at enhancing connectivity, fostering cultural exchange, and promoting sustainable tourism, IPA funding has contributed to fostering closer ties between Albania and its neighboring countries. These efforts have not only promoted economic development but also fostered greater social cohesion and mutual understanding in the region. Looking ahead, the evolution of IPA funding in Albania is expected to continue, with a focus on addressing remaining challenges and consolidating progress towards EU accession. As Albania continues its reform efforts and alignment with EU standards, IPA funding will remain a vital tool for supporting the country's transformative agenda and realizing its aspirations for a prosperous, democratic, and European future.

3. The support of socio-economic development in Albania through IPA

IPA funding has played a pivotal role in transforming Albania's infrastructure landscape, driving significant upgrades across transportation networks, energy systems, and telecommunications. This comprehensive overhaul, made possible through strategic investments and targeted interventions, has reshaped the country's physical connectivity, energy reliability, and communication capabilities. Transportation networks have witnessed substantial improvements thanks to IPA funding. Roads and highways have been modernized and expanded, facilitating smoother traffic flow and enhancing connectivity between urban centers and remote regions. Additionally, investments in rail and maritime infrastructure have bolstered Albania's transportation capabilities, supporting both domestic mobility and international trade. Furthermore, IPA funding has been instrumental in modernizing Albania's energy systems, addressing long-standing challenges such as reliability, efficiency, and sustainability. Initiatives supported by IPA have facilitated the development of renewable energy sources, such as hydropower and solar, diversifying Albania's energy mix and reducing its dependence on fossil fuels. Moreover, investments in energy infrastructure, including transmission and distribution networks, have enhanced the stability and resilience of Albania's power supply, mitigating the risk of outages and improving access to electricity for all citizens. In the realm of telecommunications, IPA funding has played a crucial role in expanding access to modern communication technologies and bridging the

digital divide. Investments in broadband infrastructure have extended high-speed internet connectivity to underserved areas, empowering businesses, educational institutions, and individuals with access to information and digital services. Additionally, IPA-supported initiatives have facilitated the deployment of advanced telecommunications networks, including 5G technology, laying the groundwork for Albania's participation in the digital economy and society. Overall, IPA funding has been a catalyst for Albania's infrastructure development, driving progress across transportation, energy, and telecommunications sectors. By investing in critical infrastructure projects, IPA has not only improved the quality of life for Albanian citizens but has also enhanced the country's competitiveness, resilience, and connectivity within the global landscape. Sustained investment in infrastructure, supported by IPA funding, will remain essential for fostering sustainable growth and prosperity in Albania.

IPA initiatives have played a pivotal role in catalyzing entrepreneurship, stimulating the growth of small and medium-sized enterprises (SMEs), and attracting foreign direct investment (FDI) in Albania. These efforts have not only fostered job creation but have also contributed to economic diversification, driving sustainable growth and resilience in the Albanian economy. One of the primary ways IPA funding has supported entrepreneurship in Albania is through the provision of financial assistance and technical support to aspiring entrepreneurs. Grants, loans, and capacity-building programs have enabled individuals to start and expand their businesses, unleashing a wave of innovation and creativity across various sectors. Moreover, IPA initiatives have facilitated access to entrepreneurship training, mentorship programs, and networking opportunities, equipping entrepreneurs with the skills and resources needed to thrive in competitive markets. In parallel, IPA funding has been instrumental in nurturing the growth of SMEs, which form the backbone of Albania's economy. By providing financial support for SME development projects, IPA has enabled these enterprises to scale up their operations, enhance their competitiveness, and access new markets. Furthermore, IPA initiatives focused on improving access to finance, promoting technology adoption, and facilitating business development services have empowered SMEs to overcome common barriers to growth and expansion. Through targeted investment promotion activities, IPA has showcased Albania's potential as an attractive destination for foreign investors, highlighting its strategic location, skilled workforce, and business-friendly environment. Moreover, IPA-supported initiatives aimed at improving the investment climate, enhancing regulatory frameworks, and reducing bureaucratic hurdles have further incentivized foreign companies to invest in Albania, driving job creation, technology transfer, and knowledge exchange. Collectively, these IPA initiatives have contributed to job creation and economic diversification in Albania, fostering a dynamic and resilient

business ecosystem. By empowering entrepreneurs, supporting SME growth, and attracting foreign investment, IPA funding has not only stimulated economic activity but has also laid the groundwork for long-term prosperity and sustainable development. Sustained investment in entrepreneurship and SME development, supported by IPA funding, will remain essential for building a vibrant and inclusive economy in Albania.

4. The support of reforms in Albania through IPA

IPA support has been instrumental in driving reforms in Albania's public administration, judiciary, and anti-corruption measures, fostering transparency, accountability, and the rule of law. Through targeted interventions and capacity-building initiatives, IPA funding has catalyzed transformative changes, strengthening governance structures and institutions to better serve the needs of citizens and uphold democratic principles. In the realm of public administration, IPA funding has supported initiatives aimed at improving efficiency, professionalism, and responsiveness within government agencies. Investments in administrative capacity-building, organizational development, and e-government systems have modernized public services, streamlined bureaucratic processes, and enhanced the delivery of services to citizens and businesses. Furthermore, IPA-supported programs have focused on promoting transparency and citizen engagement in decision-making processes, fostering a culture of openness and accountability within the public sector. Moreover, IPA support has played a crucial role in reforming Albania's judiciary, addressing longstanding challenges related to judicial independence, efficiency, and integrity. Investments in judicial capacity-building, training, and infrastructure have strengthened the institutional framework for delivering justice, ensuring equal access to justice for all citizens. Additionally, IPA-funded initiatives have supported judicial reforms aimed at enhancing the professionalism, impartiality, and effectiveness of the judiciary, including the adoption of new legislation, the establishment of specialized courts, and the implementation of alternative dispute resolution mechanisms. Furthermore, IPA funding has supported Albania's efforts to combat corruption and enhance integrity in public institutions through targeted anti-corruption measures and initiatives. Investments in anti-corruption legislation, enforcement mechanisms, and institutional capacity-building have bolstered Albania's anti-corruption framework, promoting greater transparency, accountability, and integrity in public affairs. Additionally, IPA-supported programs have facilitated the establishment of anti-corruption bodies, such as the High Inspectorate for Declaration and Audit of Assets and Conflict of Interest, tasked with preventing and combating corruption at all levels of government. By facilitating reforms in public administration, judiciary, and anti-corruption measures, IPA support has contributed

to enhancing governance effectiveness, strengthening the rule of law, and fostering a culture of integrity and accountability in Albania. These reforms are essential for building trust in public institutions, promoting sustainable development, and advancing Albania's integration into the European Union. Sustained investment in governance reforms, supported by IPA funding, will remain crucial for achieving long-term stability, prosperity, and democratic governance in Albania.

IPA funding has played a pivotal role in facilitating Albania's alignment with *acquis communautaire* and European standards, paving the way for eventual EU accession. Through targeted interventions and capacity-building initiatives, IPA support has aided Albania in harmonizing its legal framework, policies, and practices with EU requirements, thereby strengthening the country's institutional capacities and fostering sustainable development. One of the primary ways IPA funding has supported Albania's alignment with *acquis communautaire* is through legal and regulatory reforms. IPA-supported initiatives have focused on reviewing and amending existing legislation to ensure compatibility with EU standards and requirements. This includes the adoption of new laws, regulations, and directives across various sectors, ranging from trade and competition to environmental protection and consumer rights. By aligning its legal framework with *acquis communautaire*, Albania has demonstrated its commitment to meeting the requirements for EU accession and enhancing its competitiveness in the global market. Moreover, IPA funding has supported Albania in implementing policies and practices that reflect EU standards in key areas such as governance, human rights, and the rule of law. IPA-supported initiatives have focused on strengthening democratic institutions, promoting respect for fundamental rights, and enhancing transparency and accountability in governance. Additionally, IPA funding has facilitated the adoption of best practices and standards in areas such as public procurement, financial management, and administrative procedures, bringing Albania closer to EU legislation and standards. Furthermore, IPA support has played a crucial role in building institutional capacities and administrative structures to support Albania's integration into the EU. Through training, technical assistance, and exchange programs, IPA funding has helped strengthen the skills and expertise of public officials, legal professionals, and civil society organizations in understanding and implementing EU requirements. Additionally, IPA-funded projects have supported the establishment of institutions and mechanisms for monitoring and enforcing compliance with EU standards, ensuring effective implementation of reforms and policies. By aiding Albania in harmonizing its legal framework, policies, and practices with EU legislation and standards, IPA funding has laid the groundwork for eventual EU accession. These efforts not only enhance Albania's prospects for EU membership but also contribute to strengthening democratic governance,

promoting economic development, and fostering regional stability. The support of IPA funding is essential for realizing Albania's aspirations for a prosperous and democratic future within the EU.

IPA programs have been instrumental in enhancing institutional capacity, training civil servants, and promoting good governance practices in Albania, thereby fostering sustainability and driving progress towards European integration. One of the primary objectives of IPA programs has been to strengthen institutional capacity across various sectors of the Albanian government. Through targeted investments and technical assistance, IPA funding has supported the modernization and professionalization of public institutions, enabling them to better respond to the needs of citizens and effectively implement policies and reforms. Investments in infrastructure, technology, and human resources have equipped institutions with the tools and resources necessary to perform their functions efficiently and transparently. In addition to enhancing institutional capacity, IPA programs have placed a strong emphasis on training civil servants and public officials. Training initiatives, workshops, and exchange programs supported by IPA funding have provided civil servants with opportunities to develop their skills, knowledge, and expertise in areas such as public administration, finance, law, and project management. By investing in the professional development of civil servants, IPA programs have empowered them to better serve the public, improve service delivery, and uphold the principles of good governance. Furthermore, IPA programs have played a crucial role in promoting good governance practices in Albania. By supporting initiatives aimed at enhancing transparency, accountability, and citizen participation, IPA funding has helped build a culture of integrity and trust within public institutions. Investments in anti-corruption measures, open data initiatives, and public awareness campaigns have contributed to greater transparency and accountability in government operations, fostering public confidence and promoting the rule of law. Overall, IPA programs have been instrumental in fostering sustainability and driving progress towards European integration in Albania.

5. Conclusions

In conclusion, IPA has emerged as a crucial tool in supporting Albania's journey towards sustainable development and comprehensive reforms. Throughout this paper, we have explored the pivotal role of IPA funding in bolstering socio-economic advancement, institutional reforms, and EU integration efforts in Albania. From enhancing administrative capacity to promoting good governance practices, IPA funding has been instrumental in addressing key challenges and driving progress across various sectors. By investing in infrastructure, entrepreneurship, education, healthcare, and governance, IPA initiatives have contributed to tangible

improvements in Albania's socio-economic landscape, fostering inclusive growth, and laying the groundwork for long-term prosperity. Furthermore, the evaluation of IPA-funded projects has provided valuable insights into their effectiveness, efficiency, and impact on Albania's development trajectory.

However, challenges remain, particularly in addressing administrative capacity, project management, and the absorption of EU funds. Addressing these challenges requires sustained efforts and collaboration among government institutions, civil society organizations, and international partners. By strengthening administrative capacity, improving project management practices, and enhancing transparency and accountability in fund management processes, Albania can maximize the impact of IPA investments and accelerate its progress towards EU accession.

In conclusion, IPA funding has played a transformative role in Albania's development journey, driving socio-economic progress, fostering institutional reforms, and advancing EU integration objectives. As Albania continues its path towards EU accession, sustained investment in IPA initiatives, coupled with effective governance and strategic reforms, will be essential for realizing the country's aspirations for a prosperous, democratic, and European future.

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EU'S IMPACT ON THE ALBANIAN PROPERTY LAW

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ABSTRACT

According to Article 345 of the Treaty on the Functioning of the European Union (TFEU), the EU does not have legislative competence in property law. However, Articles 81 (2), 114, and 115 TFEU allow the EU to regulate those elements of private law that create obstacles to trade in the internal market. Indeed, based on these norms, the EU has legislated in fields that are part of the area of private law. In December 2023, the EU announced that it looks forward to opening the first negotiation cluster with Albania. In other words, Albania has successfully completed the screening meetings, which started in July 2022. Although Albania is not part of the EU, Albanian jurisprudence has considered the importance of the EU legislation. This paper examines the EU's impact on Albanian property law by identifying similarities and differences among them. This is fundamental since the EU law is based on primacy and direct effect principles.

Keywords: *Acquis Communautaire,* Albania, Case-law, EU's Impact, Property Law

Introduction

After the collapse of the communist regime, Albania started its own path of democratizing its legal institutes. Among others, private property was one of the most essential institutes, where several reforms were taken.

Albanian property law has also been of interest to the European Court of Human Rights (ECtHR), which has developed a pilot judgment procedure.[1] As it is well-known, the pilot-judgment procedure has two goals. First, it intends to facilitate effective implementation by respondent States of individual and general measures necessary to comply with the Court's judgments. Second, the pilot-judgment

1 *Case of Manushaqe Puto and Others v. Albania* Apps Nos. 604/07, 43628/07, 46684/07 and 34770/09 (ECHR, 4 November 2014)

procedure induces the respondent State to resolve large numbers of individual cases arising from the same structural problem at a domestic level. As a result, the principle of subsidiarity, which underpins the Convention system, is enforced.

This contribution is divided into four parts: while Section II underlines the transformation of private property, Section III considers some cases of the EU's impact on Albanian property law. In conclusion, this short paper aims to highlight the EU's impact on Albanian property by discussing the possibility of the EU's competence in private property and the Albanian alignment with the EU law.

II: Transformation of the Albanian Property Law

This Section briefly overviews the transformation of Albanian property law by underlying the difference between the current and previous regimes.

In the 1950s, nationalization and collectivization started. It should be noted that nationalization and expropriation are two different concepts. First, unlike expropriation, where there is a straightforward project for a defined activity or good, in nationalization, the government takes all properties of a particular nature and does not just target a single economic activity or good.[2] Second, in nationalization, a State takes private property as part of a general program by enacting new laws prioritizing public ownership over private ownership.[3] At the beginning, members of the cooperatives had small plots of land, but its size was gradually narrowed. By 1983, only around 0.5% of the land was left for the personal use of members of cooperatives in the form of private gardens.[4]

The communist regime declared null all the previous legislation. In 1982, a new and simple Civil Code was established by introducing also the concept of *negotium*. In the XX century, Albania had three different civil codes: Zogu I in 1929, the Communist Code in 1982, and the current democratic code. This does not mean that other laws did not rule property issues, but these are the main three documents called Codes. This is fundamental because, in Albania, while laws are approved with a simple majority, codes are approved by three-fifths of all members of the Assembly (Article 81(2)(d) Constitution).

The Zogu I applied the French approach for the following reasons: France is a unitary State, like Albania, while the German legal system was applied in federal States, such as Germany and Switzerland. Second, the *Code Civil* of 1804 was easier to understand and less abstract than the German *Bürgerliches Gesetzbuch* of 1990.

2 M. Erkan, International energy investment law: Stability through contractual clauses, in Kluwer Law International (2011, p.15)

3 I. Brownlie, *Principles of public international law* (Oxford, Oxford University Press, 1990)

4 F. Pryor, *The Red and the Green - The Rise and Fall of Collectivized Agriculture in Marxist Regimes* (Princeton University Press:, Princeton, 1992)

For instance, the *Code Civil* of 1804 divides between a contract, two parties, and a unilateral act, one party. On the contrary, the *Bürgerliches Gesetzbuch* identifies every legal action that produces legal effects in the general concept of negotium, a legal transaction. Third, Albania had close political and economic relations with the Kingdom of Italy, where the Napoleonian *Code Civil* was also implemented in 1865.[5]

On the contrary, the Communist Code of 1982 applied a German approach. This can be seen in the case of property law,[6] inheritance law,[7] and law of obligations. In the case of property law, for instance, article 10 of the 1936 USSR Constitution confirms the right to 'personal property,' although the RSFSR civil code of 1922 recognized private property.[8] In Albania, article 23 of the Constitution of 1976 recognized the right to 'personal property,' although the Civil Code of 1929 recognized private property. In the case of succession law, in the case of legal reserve, it further included as a *legitime* in the second order, the category of a "person unable to work" (Article 105 Civil Code of 1982). This concept was also included in the Russian Edict of 1945. These are individuals who are unable to work, either citizens under the working age, or retirees. Its origin might be humanity reasons since it was also used for people living under the same roof without being legally married.[9] In the case of legal transactions, while the *Code Civil* of 1804 and the Zogu I do not recognize the concept of *negotium*, the *Bürgerliches Gesetzbuch* of 1990 and the Civil Code of 1982 included that.

During the communist regime, State property was an inalienable and indivisible fund, immune from attachment of debts.[10] Furthermore, within the different types of properties, State property was superior to all, followed by cooperative, personal,

5 C. Boglia, *The New Albanian Act on Business Associations: Ongoing Legal Reforms in Commercial and Private Law, in Review of Central and East European Law* (20, 1994, pp. 657)

6 Carlo Venditti, Denard Veshi, and Enkelejda Koka "The Transformation of Right to Property in the Post-Communist Period in Albania. The Impact of the Italian Civil Code in the Ways of Acquisition of Ownership in the Albanian Civil Code of 1994." *Osservatorio del diritto civile e commerciale* (9.1 2020: 329-352)

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9 Z. Szirmai, M. Hendrikus Van der Valk. *The law of inheritance in Eastern Europe and in the People's Republic of China* (No. 5. AW Sythoff, 1961)

10 A.V.Venediktov, (1948) *Gosurdarstvennaia sotsialisticheskaia sobstvennost* (State Socialist

Property). Moskva: Academija Nauk, (1948) *For the description of the Venediktov idea see*: A.A, Baev, (1993) *Civil Law and the Transformation of State Property in Post-Socialist Economies: Alternatives to Privatization* (UCLA Pac. Basin LJ, 12, p. 131)

and private property.[11] So, while the concept of private property was left only for international trade, the concept of personal property was established as the main rule within the national legal system. It is quite interesting to notice that this concept was codified as a constitutional norm. Indeed, Article 23(2) of the Albanian Constitution of 1976 stated *personal property is income from work and other lawful sources, dwelling houses, and other objects that serve to meet personal and family material and cultural needs.* As it seems, the Constitution defined personal property as an exception to the general rule of property rights. On the contrary, currently, while the Constitution equally recognizes private and public property, Article 152(2) Civil Code underlines that the types of public property are defined by law.

Again, a dissimilar approach has been taken regarding the possibility of citizens introducing new contracts: while the Communist Code applied a *numerus clausus* contract,[12] the current code leaves the opportunity for citizens to introduce new contracts.[13] Furthermore, with the new civil code of 1994, one of the most critical features of the property law is the codification for the first time in Albanian legal history of the consensual principles in the first sentence of Article 164 of the Civil Code.[14] Based on that, ownership passes at the moment of parties' consent without the need to release the good. Moreover, while the communist code did not recognize the case of *usucapio*, the current civil code codifies it.[15] Furthermore, while for *occupatio* and *invetio* a new approach was taken, for *accessio*, *specificatio*, and expropriation were codified for the first time in Albanian legal history.[16]

This Section briefly underlined the different approaches taken in property law between the two civil codes: the Communist Civil Code of 1982 and the current democratic civil code of 1994.

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11 K. Malfliet, (1993) *Withering Away of the State in Economic Life: A Legal Analysis* (The. Rev. Cent. & E. Eur. L., 19, p. 121)

12 Article 142(3) Civil Code 1982 stated *Citizens conclude contracts for the fulfillment of their material and cultural needs, as well as for the use, enjoyment and disposition of their personal properties* [authors' translations].

13 Article 660 Civil Code states *Parties in contract freely determine the content, within the limits determined by law* [authors' translations].

14 C.Venditti, R. Picaro, & D.Veshi , "Introduction of Albanian Property Law". Edizioni Scientifiche Italiane, (2021. Article 164) first sentence, states: Property is acquired by contract, without being necessary to hand the object [authors' translations].

15 Article 168 Civil Code states: *The person who acquires a good in good faith, based on a legal transaction for the passing of ownership not prohibited by law, becomes the owner of this good, after continuous possession of five years when the object is movable and of 10 years when it is immovable.*

When the possession is not in good faith, the terms of uninterrupted possession are doubled.

The possession is considered continuous even when the acquirer of the object has given the possession to another person.

An object in inalienable public property cannot be acquired by gaining prescription.

16 C.Venditti, R. Picaro, & D.Veshi, note 14.

III: Albania and the EU Property Law

This Section aims to give a brief outline of the similarities and differences between Albanian property law and the *acquis communautaire*.

Article 345 TFEU has codified the principle of neutrality. In other words, *the Treaties shall in no way prejudice the rules in Member States governing the system of property ownership.* However, Article 81 (2),[17] 114 (1),[18] and 115 (1)[19] have been used by the EU to include within the EU's competence also topics that are related to property law.

Albania is not a member of the EU. However, Albania was granted EU candidate status in June 2014, and in July 2022, the EU held its first intergovernmental conference with Albania. In the latest EU annual report, the EU confirmed that Albania passed the successful screening process. Now, the Council looks forward to the next steps and opening the first negotiating cluster.[20]

From the Albanian side, Article 70(1) Stabilization and Association Agreement (SAA) between Albania and the EU states that Albania agrees to ensure that its existing laws and future legislation will gradually be made compatible with the EU *acquis*. According to the Albanian legal hierarchy, national laws shall be

17 *For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:*
(a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;
(b) the cross-border service of judicial and extrajudicial documents;
(c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
(d) cooperation in the taking of evidence;
(e) effective access to justice;
(f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
(g) the development of alternative methods of dispute settlement;
(h) support for the training of the judiciary and judicial staff.

18 *Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.*

19 *Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.*

20 Council of the European Union, Outcome of Proceedings, (12 December 2023), available online: https://data.consilium.europa.eu/doc/document/ST-16707-2023-INIT/en/pdf accessed 21 January 2024

aligned not only with the constitution but also with ratified international treaties (Article 116(1) Albanian Constitution), as is considered the SAA. This has also been confirmed by the Albanian jurisprudence that has stated, "based on Article 116 of the Constitution, the Stabilization and Association Agreement, as an international agreement ratified by law, has precedence over the laws of the country that are not aligned with it" [authors' translations].[21] Therefore, "national courts may refer to EU Law, only in cases of legal omissions or collision (*praeter legem*), but in no case should this interpretation be contrary to the provisions of national internal legislation (*contra legem*)" [authors' translations].[22]

Two short examples could be given: ownership of the treasures and time-sharing contract. According to Article 187 of the Albanian Civil Code, the State owns the treasures, defined as moveable goods with objects, with cultural, historical, archeological, and ethnographic value.[23] The same is established also in the Directive 2014/60/EU. This directive is applied not only to treasure found but also to have been unlawfully removed from the territory of that Member State. However, this directive is applied only for goods found on or after 1 January 1993 because the current Directive 2014/60/EU substituted Directive 93/7/EEC. The Directive establishes a proceeding for the request, and the good shall be given to the country that requested it within three years from the request, after paying fair compensation. Although the Albanian civil code uses the concept of reward, that shall be considered as compensation.

A second example is the case of a timesharing contract (Directive 2008/122/EC), which is different from co-ownership.[24] Co-ownership is where an object or rights *in rem* belongs jointly to one person and two or more persons (Article 199(1)

21 Albanian High Court, Decision (No. 636 of *25.11.2015)* par. 13

22 Albanian High Court, Decision (No. 411 of 25.01.2018) par. 17

23 *The movable good, with cultural, historical, archeological, ethnographic value, as well as rare natural objects with scientific importance which are discovered, taken away or extracted from the ground or from water, will pass under the ownership of the state.*

The owner, in whose lands such things are discovered, is obliged to allow the digging, compensating the damage caused.

The person who has discovered or found such goods, has the right to get a reasonable reward from the state [authors' translations]

24 Kokic Belma, "Timesharing Contract." *Annals Fac. LU Zenica* 31 (2022): 225; Chen, Zhen. "The Tango between the Brussels Ia Regulation and Rome I Regulation under the beat of directive 2008/122/EC on timeshare contracts towards consumer protection." *Journal of Private International Law* 18.3 (2022): 493-521; Abed, Ahmed Hashim, and Mothana Abdulkadem Mashaf. "Legal Nature of a Timeshare Contract." *Review of International Geographical Education Online* 11.7 (2021); Graziuso, Emilio. "*I nuovi contratti del turismo"*. (Giuffrè Editore, 2011; Di Ciommo, Francesco) "Multiproprietà: l'attuazione italiana della direttiva a tutela dell'acquirente." *Il Foro Italiano* 122.2 (1999): 37-38; Graziuso, Emilio. "I nuovi contratti del turismo" (Giuffrè Editore, 2011)

Civil Code).[25] Thus, co-ownership is not a different type of ownership but a different form of expressing ownership rights. This legal institute has been inherited from the Roman times. Its earliest form was the *consortium ercto non cito* comprised of a community of *sui heredes*[26] who, after the death of their *paterfamilias*, became the co-owners of their estate when such estate remained undivided.

Articles 42 and 43 of the Albanian Law on Consumer Protection, also known as the Consumer Code, regulate timesharing contracts by giving a definition, article 42, and notices, article 43. While Article 42[27] defines only the timesharing contract, the bylaw No. 652 of 8 October 2014, which abrogated the bylaw No. 833 of 8 July 2009, includes in its title also the long-term holiday product contract, resale contract, and exchange contract. However, these contracts are not clearly defined neither in the civil code nor in the bylaw. In other words, Article 2 Directive 2008/122/EC defines all these and ancillary contracts. In the Albanian legal system, Article 42 of the Consumer Code explains the timesharing contract by mixing the timesharing and exchange contracts. Additionally, while the title of the bylaw No. 833 of 8 July 2009 was only focused on the timesharing contract, the bylaw No. 652 of 8 October 2014 included all these contracts used in the tourism field. Nevertheless, article 2 bylaw No. 652 of 8 October 2014 defines only the ancillary contracts. Moreover, while the EU Law requires a period of not less than one year and one period of occupation without specifying it, the Albanian law requires not less than 3 years, and the period of occupation is established at least one week a year.

To sum up, although Albania is not part of the EU, *acquis communautaire* has a vital role in Albanian legislation.

Conclusion

This brief contribution studied the EU's impact on Albanian property law by highlighting the similarities and differences between the Albanian communist regime and the current democratic regime that aims to align the national legislation with the supranational law.

Albanian property law has been the object of a pilot case by the ECtHR. In the 1950s, nationalization and collectivization started. Private property was

25 *There is co-ownership when one or several objects and other real rights belong jointly by two or more persons.*

26 George Mousourakis, "Fundamentals of Roman private law". (Springer Science & Business Media, 2012)

27 *Timesharing contract is any contract or set of contracts, concluded between a trader and a consumer, for a period of not less than 3 years, according to which, against a specific payment directly or indirectly, is created or is the object of an exchange, or is undertaken to be exchanged, a right on immovable good or any other right, related to the use of one or more immovable goods, for a specific or specifiable term of the year, which cannot be less than one week.* [authors' translations]

a concept left only for international trade. Instead of private property, as it is understood today, the concept of personal property was used. This concept was more restricted, and parties could not create new contracts. On the contrary, with democratization, private property was recognized and became the rule. In other words, public property should have been defined by law. In addition, parties could create new contracts not previously codified in the civil code, and consensual legal transactions have been established.

The EU does not have a direct full competence in private law. Nevertheless, by using some norms of TFEU, in order to harmonize the internal market, the EU has established several rules dealing, indirectly, with property law. Simply put, the EU economic policies are concluded following the principle of an open market economy with free competition (Article 119(1) TFEU). This goal can be achieved by protecting private property, which has also been established in European jurisprudence.[28] Moreover, Article 1 Protocol 1 of the European Convention of Human Rights (ECHR) protects private property. As it is well-known, the EU is part of the ECHR (Protocol 14 ECHR), although Opinion 2/13,[29] the CJEU found that the draft agreement, Protocol no. 14 ECHR, would make it difficult to ensure the primacy of EU law, as required by the EU treaties.

This short contribution gave two examples of Albanian legislation that were similar, though not identical, to the *acquis communautaire*. It showed that the Albanian legislation is aware of the EU's legislation on private property, and the Albanian national legislator has applied a similar approach to the EU law. For instance, in order to align its legislation with EU law, the new bylaw includes several types of tourism contracts in its title.

To conclude, the EU, although it does not have a direct and explicit full competence in property law, has an essential impact on transforming Albanian property law.

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28 ECJ Case 44/79 – *Hauer* [1979] ECR 3727 paras17 ff; ECJ Case 4/73 – *Nold* [1974] ECR 491 para 14

29 EurLex, Opinion of the Court (Full Court) of 18 December 2014, available online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62013CV0002 accessed 21 January 2024. It shall be mentioned that in 2020, the EU and the Council of Europe adopted a new agreement on the EU's accession to the ECHR, which is currently being reviewed by the EUMSs European Parliament, Completion of EU accession to the European Convention on Human Rights, available online: https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-completion-of-eu-accession-to-the-echr accessed 21 January 2024.

Division of Work:

Denard Veshi, II: Transformation of the Albanian Property Law and III: Albania and the EU Property Law.

Kristel Haxhia, Introduction and Conclusion

CHAPTER 8 OF ACQUIS COMMUNAUTAIRE, NORMATIVE PROVISIONS AND APPLICATION CHALLENGES IN ALBANIA.

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ABSTRACT

As we know European integration is the greatest challenge of Albanian. The adoption of the Acquis Communautaire[1] is the obligation Albania needs to fulfill to access the EU. Chapter 8 is one of the most important and challenging parts of the acquis. The first contacts between Albania and the European Union took place already in 1991-92 with the signing of the Trade and Economic Cooperation Agreement. In the following years, relations intensified to the point of laying the foundations for a Stabilization and Association Agreement (SAA). After 2002, contacts between Albania and the European institutions increased with the aim of helping the Albanian authorities in the judicial, institutional, and economic fields, preparing the ground for the signing of the SAA, which was signed on June 12, 2006 and competition rules where important part. The first competition law in Albania was approved by the parliament in 1995, it is an important step in creating the premises for competition law and culture in Albania, but it was never fully applied. This law, in general, was not in harmony with the provisions of the EU competition law[2]. The strengthening of the bilateral relations, and the increasing role of EU in Albania resulted in the total abrogation of the law nr.8044 of 1995 and the adoption of a new law in total harmony with the EU competition law provisions, primary and secondary. This law

1 **Eurofound (2007), Acquis Communautaire, European Industrial Relations Dictionary Dublin**.

"*Acquis Communautaire is a French term referring to the cumulative body of European Community laws, comprising the EC's objectives, substantive rules, policies and the primary and secondary legislation and case law – all of which form part of the legal order of the European Union (EU). This includes all the treaties, regulations and directives passed by the European institutions, as well as judgements laid down by the European Court of Justice. Acquisition is dynamic, constantly developing as the Community evolves, and fundamental. All Member States are bound to comply with the acquis Communautaire. The term is most often used in connection with preparations by candidate countries to join the Union. They must adopt, implement, and enforce all the acquis to be allowed to join the EU.*"

2 Non independent authority to apply the law, criminal sanctions etc.

created for the first time in Albania the conditions for the development of a wide-ranging competition law, by creating an independent Institution and including more elements like prohibited agreement, abuse of dominant position, concentrations, state aid was left out and will be regulated by law nr 9374 in 2005. The goal of this paper is to investigate the adoption of chapter 8 of the acquis and the challenges it faces especially regarding the application capabilities. An important role will be given to the adoption of secondary legislation and decisions of ECJ.

Keywords: *Chapter 8 of Acquis Communautaire, competition law, European integration, legal harmonization.*

1. Introduction.

Competition policy in Europe is an essential part of the functioning of the internal market. Its aim is to provide everyone in Europe with better quality goods and services at lower prices, aiming to promote and protect competition. Competition policy is about applying rules to ensure that businesses compete freely and effectively with each other. The acquis in this chapter includes both anti-trust policies and state aid control policies. The legal framework includes rules and procedures to combat anti-competitive behavior, prohibited agreements between undertakings and abuse of dominant position, to examine concentrations between undertakings and to prevent governments from granting state aid that distorts competition in the internal market.

The adoption of the acquis is not an easy process, it needs to be divided into two pillars, the normative harmonization, and the effective implementation of the legal provisions. A very important step in this direction was made with the adoption of law 9121 of 2003, and the signing of the SAA. SAA is the first legally binding act that aims to harmonize the Albanian legislation in particular competition law which was approved in 2003 and had no previous consolidated experience. The sign of SAA meant that the EU institutions had the right to pretend from Albania the harmonization of its internal legislation and in our case of competition law to that of the EU[3].

The law on State Aid was another step in the fulfillment of the SAA obligations. The State Aid law 9374, dated 2005, even though not totally in line with the EU was an important step for a country that not long ago had a state planned economy. The further harmonization to chapter 8 of the acquis had to do with the adoption of the secondary legislation of the EU institutions and mostly the interpretation and application of competition law according to the jurisprudence of the ECJ. The goal of this paper is to delineate the state of the art of the adoption of chapter 8 of the

3 Article 71 comma 2 of AAS "*Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition. rules applicable in the Community, in particular from Articles 81, 82, 86 and 87 of the Treaty establishing the European Community and interpretative instruments adopted by the Community institutions*."

acquis.

2. Prohibited agreements.

The regulation of prohibited agreements is one of the most important and challenging objectives of competition law. The articles 4 and 5 of law 9121 of 2003 are totally in line with the provisions of article 101 of the TFEU[4]. This is an important step and brings the Albanian competition law totally in line with that of the EU. As we know the previous law had some significant differences regarding this issue.

Secondary legislation is fundamental in guaranteeing the effective application of the law, especially the orientations of the EU Commission. An important step in this direction was made in the law of 2003 which included a definition that had been formulated by the ECJ, for example the definition of the undertaking art. 3 (1) "*Undertaking" means any legal or natural person, private or public, which performs economic activity. Public and local administration bodies, as well as public authorities and entities, are considered as undertaking if they engage in economic activity*", or the definition of economic activity[5].

An important criterion required by the EU was the formation of an independent Albanian Competition Authority (ACA). ACA has a central role in the adoption of the acquis and is the leading institution in this chapter. The secondary legislation that ACA enacted plays an important role in the effective application of the law. The definition of the relevant market given in regulation *no. 76, date 04.07.2008* was in line with the Commission Notice[6], the enactment of ACA regulation on vertical and horizontal agreements delineates with the acquis[7] a very important issue in competition law, and the demonstration of the willingness of ACA to further harmonize the legislation. The adoption by the ACA[8] of the second regulation on best practice, is mostly in harmony with the "Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU"[9] is very important because it strengthen the best practices individuated as such by the EU Commission which need to be followed by ACA. Just to give an example "*legal*

4 COMMISSION STAFF WORKING PAPER ALBANIA Stabilization and Association Report 2004 {COM(2004) 203 final}

5 art. 3 (3) law 9121 "*Economic Activity means the type of manufacturing, commercial, financial or professional activity, associated with purchase or sale of goods, as well as with offering of service."*

6 COMMISSION NOTICE on the definition of relevant market for the purposes of Community competition law (97/C 372 /03)

7 COMMISSION NOTICE Guidelines on Vertical Restraints (2000/C 291/01), COMMISSION NOTICE Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements (2001/C 3/02)

8 Udhëzim nr. 4, datë 13.02.2020 "Për praktikat më të mira për kryerjen e procedurave në lidhje me zbatimin e nenit 4 dhe 9 të ligjit nr.9121, "Për mbrojtjen e konkurrencës", I ndryshuar"

9 Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (Text with EEA relevance) (2011/C 308/06)

privilege" is included in ACA regulation no. 4 but I think it needs to be more specific and include all the details of the EC notice[10]. This helps to further strengthen another important goal in competition law, certainty, and predictability. Another important step in the harmonization was the enactment of leniency program[11] and fine calculation. AS we know leniency program has been an important tool in the hands of Competition Authorities and has been used to strengthen the application of competition law[12]. According to the EC annual reports Albania harmonized the internal law and regulations in prohibited agreements in accordance with its obligations but an important effort needs steel to be performed to strengthen the ACA capability to apply the law.

3. Abuse of dominant position and concentrations.

The definition of abuse of dominant position given by law no. 9121 article 9 "*any abuse by one or more undertakings of a dominant position in the market shall be prohibited*", is the same as the one given by article 102 of the Lisbon treaty *"Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States"*. It is interesting to mention a provision of law no. 8044 of 1995 which obliges the undertakings in a dominant position to divide into parts if they exceeded 40 % of the market share. This was not part of the EU competition philosophy and needed to be addressed in a discrete way by the Albanian legislator. The Albanian law no. 9121 das not forbit the dominant position but only the abuse of dominant position and there is no mention in the law of monopolies. The only difference if we consider the law is that in the Albanian law no. 9121 article 3 (5) the legislator gives the definition of what constitutes a dominant position. There is no such definition in the EU law, as we know it was the ECJ in *United Brands v Commission*[13] to put in place the following test of what is meant by a dominant position.

The prohibition of the abuses of market power by the Albanian law is based totally on the EU competition law, the dominant undertakings bear special responsibility not to operate in the market in a distortionary way that could affect the competitive process and harm its suppliers, competitors, and customers[14]. The adoption by ACA of the EC communication on the priorities of applying the abuse of the dominant position is fundamental to harmonize not only the primary law but also the secondary law. In this case we can state that we are in front of unification not harmonization

10 In the EC notice there are 9 paragraphs 51-58 regulating legal privilege meanwhile in the ACA instructions there are only two.

11 Programi i Lehtësimit nga Gjobat. Autoriteti i Konkurrences 5 shkurt 2016

12 N Levi, R O'Donoghue, Leniency program comes of age, Worl Competition 27 (1): 75-99 2004

13 Case 27/76 [1978] ECR 207, [1978] 1 CMLR 429

14 Raporti Vjetor 2009 dhe Synimet Kryesore të Punës Për Vitin 2010 pg 16

because the document was totally transposed in the ACA regulation[15].

Meanwhile the regulation of concentration is a more complicated issue. Like the EU regulation the law no.9121 in article 10 states that the control within the meaning of provisions on mergers and acquisition may be created by rights, contracts or any other means, which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by ownership or the right to use all or part of the assets of an undertaking and rights or contracts that confer decisive influence on the composition, voting or decisions of the management organs of an undertaking.

ACA enacted numerous regulations to harmonize the application of the law on concentrations to that of the EU. Some of the most important ACA regulation are, on horizontal mergers[16], on restrictions directly related and necessary to concentrations[17], on simplified procedures for controlling several concentrations[18], for conditions and obligations in cases of concentrations. According to the EC annual reports its results that Albania has a significant grade of harmonization regarding this issue.

4. **State aid.**

State aid is the third important area of competition law. It is the most challenging area to regulate, specifically in countries with a weak market economy. The legislative framework in Albania is generally in line with the *acquis* and with the provisions of the SAA. The law 9374 of 2005 on State Aid largely reflects articles 107 and 108 of the TFEU as regards the definition of compatible and incompatible of State Aid, as well as procedures. The law no. 9374 was amended and was further aligned with the acquis[19], particularly on aid to services of general economic interest, *de minimis* aid and other categories of horizontal aid. Further alignment with the secondary EU legislation on State aid control is still needed, this phrase is commonly found in the annual reports of the EC. Normative harmonization is a first and key step, the

15 Udhëzim "Mbi zbatueshmërinë e nenit 8 dhe 9 të Ligjit 9121 datë 23.07.2003 "Për Mbrojtjen e Konkurrencës"

16 UDHËZIMI PËR VLERËSIMIN E PËRQENDRIMEVE HORIZONTALE,

EC Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03)

17 Udhëzim Nr. 1, datë 25.06.2018 "Për kufizimet drejtpërdrejt të lidhura dhe të nevojshme me përqendrimet,

EU Commission Notice on restrictions directly related and necessary to concentrations (2005/C 56/03)

18 Udhëzim "Mbi procedurat e thjeshtuara për trajtimin e disa përqendrimeve.

EU Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (2013/C 366/04)

19 Except as otherwise provided in this law, any aid granted by State resources is prohibited in any form whatsoever which, directly or indirectly, distorts or threatens to distort competition by giving priority to one or more undertakings or for the production of certain products to the extent that it may have an impact on the fulfillment of the obligations undertaken by the Republic of Albania in international agreements containing provisions of state aid

enforcement of this legislation is even more important for the EU. The State Aid in Albania is administrated by a structure belonging to the executive branch of the government.

The enforcement of the Albanian State aid law is poor, mainly due to the lack of independence and adequate administrative capacity of the competent bodies, which are reportedly unable to fully enforce the State aid rules[20]. Regarding the harmonization of the secondary legislation Albania needs to do more[21] only some of these rules are harmonized. Regulation of the State Aid Commission, "On drafting the basic rules that apply to special types of state aid. The regulation will harmonize the Commission's notice on the application of articles 87 and 88 of the EU Treaty on State Aid in the form of grants Commission Notice on elements of state aid for the sale of land and buildings by public authorities. Regulation of the State Aid Commission, "On the rules that apply to certain categories of sectoral state aid" were the last ones to be approved and brig the State Aid law closer to the acquis[22].

I think that State aid regulation in Albania should be reformed and incorporated to the ACA competences; this would give more independence to the authorities to apply vigorously the law. The lack of independence is underlined systematically by the EC. State aid is a complex issue which needs to be treated carefully. If it is used wisely, it can be a crucial element in increasing consumer welfare, while it can distort the market and threaten competition if used without taking into consideration a larger set of factors.

5. Conclusions.

Albanian competition law was formed under the influence of EU competition law, the reason which influenced is the willing of Albanian to be part of the EU at this regard it has a formal obligation to harmonies the internal legislation with that of the EU. The normative regulation of the three mail pillars of competition law, prohibited agreement, abuse of dominant position and concentrations are totally in line with the law of the EU. Regarding the harmonization of the secondary legislations a lot has been done but this is a process that needs constant update. The ACA needs to be more aggressive in enforcing the law, but this can be achieved only if the administrative capabilities are strengthened. The State Aid regulation should be more harmonized to EU law and organized in a different way, with the objective of guarantying the impartiality and independence of its application.

20 European Commission, 2013, Albania 2013 Progress Report, Enlargement Strategy and Main Challenges 2013–2014, Brussels. pg 24

21 EC Annual Report 2022

22 PLANI KOMBËTAR PËR INTEGRIMIN EVROPIAN 2022 – 2024

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Udhëzues mbi Konfidencialitetin dhe Aksesin në Dosje.

Udhëzim tregu perkates.

Udhëzim per njoftimin e marreveshjeve.

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THE NECESSITY OF STRENGTHENING THE ALBANIAN INSTITUTIONAL CAPACITIES TO ADDRESS THE CHALLENGE OF LEGAL APPROXIMATION WITHIN THE YEAR 2030

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ABSTRACT

This study is an analysis of the necessity to strengthen Albanian institutional capacities to address the challenges of legal approximation by 2030. In the context of Albania's efforts to meet international standards in the field of the rule of law, this study aims to focus on identifying the main challenges and opportunities to strengthen institutional capacities to achieve legal approximation objectives within a short time frame and implement all the commitments based on the Rule of Law roadmap approved by Decision of Government No. 736/2023.

To understand the current situation, this study aims to analyze the legal and institutional context in Albania, identifying the main challenges that hinder legal approximation at the national level. Furthermore, international and European best practices will be examined, and specific strategies and recommendations will be proposed to strengthen institutional capacities and address specific challenges on the path towards legal approximation. Ultimately, this analysis aims to provide a valuable contribution to policy-making and the development of strategies to strengthen institutional capacities in Albania, thus improving the implementation of law and justice in the country and contributing to the fulfillment of legal approximation objectives by 2030.

Based on the negotiation framework and on the new methodology applied to the periodic monitoring of the Rule of Law roadmap as an opening benchmark is required, bearing in mind that the Republic of Albania accepts the acquis of the European Union (EU) covered by Chapter 23 "Judiciary and fundamental rights" as it is in force and will evolve and is ready to achieve full harmonization of its national legal order with the EU acquis by the date of accession to the EU.

Keywords: legal approximation, EU Integration, Rule of Law roadmap, opening benchmarks

Introduction

Albania's relations with the European Union, based on the national objective of EU integration, are strategic and a priority of the foreign policy. The primary interest of Albania in relation to the EU is the future EU accession. Albanian path toward the European Union began in 1991 establishing diplomatic relations with the European Community and it took a decade till Albania was formally recognized by the European Union as a potential candidate country. In 2003 the Thessaloniki Summit of EU leaders adopted the Stabilization and Association process, thus confirming the prospect of EU membership of the Western Balkan countries, including Albania. The Albanian path toward the European Union has been slow and in many moments it needed a decade to pass from one step to another, so only on 27 June 2014 Albania was granted the candidate status and the first Intergovernmental Conference was held 8 years later, on 19 July 2022. The Intergovernmental Conference as a milestone in the evolution of the relations between Albania and the European Union marked the opening of accession negotiations of Albania, a demonstration of the EU's unequivocal support to the European perspective of the Western Balkans. The negotiations between Albania and European Union are based on Article 49 of the Treaty of the European Union and take account of all relevant Council conclusions, in particular those of March 2020 endorsing the enhanced enlargement methodology, the renewed consensus on enlargement agreed by the December 2006 European Council and the conclusions of the 1993 European Council in Copenhagen.

In September 2022, the screening process recommenced for Albania and North Macedonia. The Commission, taking into account that the explanatory meetings were held more than two years prior, decided to hold "updating" explanatory meetings for almost all negotiating chapters. These explanatory meetings were then followed by bilateral meetings. To carry out the process of review, analysis, and then approximation of legislation, Albania requires the necessary institutional capacities, where the main role in this process will be performed by human resources. The amendment of legislation requires the commitment of almost all public administration institutions, including the legislative branch or independent institutions. Human resources and individuals working for the integration process in Albania require the necessary capacities and training and to draft legal and strategic measures in line with the EU acquis.[1]

1 N.Strati, Cluster 1 negotiations of EU Integration – The need for a strengthened accountability agenda,Fridrich Ebert Stiftung,page 5 link: https://library.fes.de/pdf-files/bueros/albanien/20704.pdf

In November and December 2022, the first bilateral meetings dedicated to Chapter 23 "Judiciary and Fundamental Rights" and Chapter 24 "Justice, Freedom and Security" were held in Brussels. At present, all bilateral meetings on Cluster 1 – Fundamentals have been completed. Bilateral meetings for Cluster 2 - Internal market were initiated in mid-January 2023. It is planned that all bilateral meetings will be completed by November 2023. Bilateral meetings are of extreme importance, as they will pave the way for the European Commission to draft screening reports and present it to the European Council. The Council will then decide on the start of negotiations for each of the clusters based upon the recommendations of the Commission.

EU acquis - Substance of the negotiations

The EU acquis includes inter alia, the objectives and principles on which the Union is founded, as set out in the Treaty on European Union. As a future Member State, is expected by Albania to adhere to the values, listed in Article 2 in the Treaty on European Union, namely the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Furthermore, EU accession implies the timely and effective implementation of the entire body of EU law or EU *acquis*, as it stands at the time of accession. Under the enhanced enlargement methodology, the development of sufficient administrative and judicial capacity, as part of the fundamentals' cluster, is key in fulfilling all obligations stemming from membership.

In the period up to accession, Albania will be required to progressively align its policies towards third countries and its positions within international organizations with the policies and positions adopted by the Union and its Member States. Common Foreign and Security Policy (CFSP) alignment will be regularly monitored throughout the negotiation process and promoted through regular CFSP dialogue.

Accession implies the acceptance of the rights and obligations attached to the Union and its institutional framework, known as the "*acquis*" of the Union. Albania will have to apply this as it stands at the time of accession. In addition to legislative alignment, accession implies, in particular the timely and effective implementation of the *acquis*. The *acquis* is constantly evolving and includes in particular:

- the content, principles, values and political objectives of the Treaties on which the Union is founded;
- the acts adopted by the institutions under the Treaties, as well as the case law of the Court of Justice of the European Union;
- any other acts, legally binding or not, adopted within the Union framework, such as inter-institutional agreements, resolutions, statements, recommendations,

and guidelines;

- international agreements concluded by the Union, by the Union jointly with its Member States, and those concluded by the Member States among themselves with regard to Union activities.

Albania will need to produce translations of the *acquis* into Albanian in good time before accession and will need to train a sufficient number of translators and interpreters required for the proper functioning of the EU institutions upon its accession. Based on the Croatian experience till 2007 it has been more than 250.000 pages of acquis to be translated in Croatian, without counting here the translation in one of the European Union languages of the national legislation and the enriched legislation that is added from 2007 till today.

Is observed that Albania's acceptance of the rights and obligations arising from the *acquis* in some clusters and chapters necessitate specific adaptations to the *acquis* and, exceptionally, is being analyzed the option of requiring transitional measures, which first of all were presented at the bilateral meetings for each chapter and cluster, which were held from November 2022 till November 2023.

As an example, related to the subchapter of judiciary, part of chapter 23 "Judiciary and fundamental rights" specific adaptations to the *acquis* are agreed on the basis of the principles, criteria and parameters inherent in that *acquis* as applied by the Member States when adopting that *acquis*, and taking into consideration the specificities of Albania, bearing in mind here the best practice and the principles settled by the vetting process as an Albanian *sui generis* case.

Detailed technical adaptations to the *acquis* will not need to be fixed during the accession negotiations. They will be prepared in cooperation with Albania and adopted by the Union institutions in good time with a view to their entry into force on the date of accession.

With regard to the area of justice, freedom, and security, membership of the European Union implies that Albania accepts in full accession the entire *acquis* in this area, including the Schengen *acquis*. However, part of this *acquis* will only apply in Albania following a Council decision to lift controls on persons at internal borders taken based on the applicable Schengen evaluation of Albania's readiness, taking into account a Commission report confirming that Albania continues to fulfil the commitments undertaken in the accession negotiations that are relevant for the Schengen *acquis*.

For proposes of screening, based on the new methodology, the acquis is divided into 36 chapters, each covering a specific policy area and all the chapters are grouped into six thematic clusters:

1. fundamentals,
2. internal market,
3. competitiveness and inclusive growth,
4. green agenda and sustainable connectivity,
5. resources, agriculture and cohesion
6. external relations.

After closing the screening process for the cluster of fundamentals, and sending the screening report to Albania[2], the European Commission required Albania to approve three roadmaps: the roadmap for the rule of law, including the thematic of chapters 23 - Judiciary and fundamental Rights and 24 - Justice, Freedom and Security, the roadmap for public administration reform which serve as opening benchmarks and the roadmap for the functioning of democratic institutions, which is not an opening benchmark but develops meaningful processes such as free and fair elections, democratic function of parliament and enabling environment for civil society.

The rule of law roadmap

The rule of law roadmap was approved by the Albanian Council of Ministers No. 736 dated 13.12.2023 "For the approval of the rule of law roadmap"[3] and only for chapter 23 "Judiciary and fundamental rights" foresees 73 strategic and legislative measures for acquis approximation, 133 institutional measures resulting in 105 performance indicators. The roadmap is a product of the Inter-institutional working group for European Integration for chapter 23 which includes more than 53 institutions and 142 members.

The roadmap of Rule of Law for chapter 23 is mainly divided based on 3 subchapters: judiciary, anticorruption, and fundamental rights. The judiciary as a pivotal element in justice reform is structured based on the main principles: independence and impartiality, accountability, quality of justice, and efficiency. The anticorruption section deals with the prevention and repressive measures for anticorruption aiming to consolidate the track record in this area. The section on fundamental rights is mainly based on: the general framework of human rights and the penitentiary system, data protection, freedom of expression and media, children's rights, nondiscrimination, property rights, minority rights, and EU citizen's rights.

The main measures foreseen in this roadmap that are related to this paper are

2 Screening report –Albania, published on 24 July 2023 https://neighbourhood-enlargement.ec.europa.eu/screening-report-albania_en

3 https://drejtesia.gov.al/wp-content/uploads/2023/12/VKM-nr.-736-date-13.12.2023-P%C3%ABr-miratimin-e-udh%C3%ABrr%C3%ABfyesit-p%C3%ABr-shtetin-e-s%C3%ABdrejt%C3%ABs.pdf

focused on: related *to judiciary*: regular legal fitness checks and the adoption of legal changes necessary for the consolidation, independence, integrity, efficiency, and increased public trust, are undertaken in alignment with EU acquis and European standards and further strengthen the principles of the 2016 justice reform; *related to anticorruption*: Ensuring further alignment with the EU acquis and EU Standards on anticorruption as well as reduce the complexity of legislation in the anticorruption area, by undertaking legislative measures to adopt: a) Law on Conflict of Interests adopted by 2025 b) Law on lobbying adopted by 2027. c) Law on political party financing adopted by 2027; d) Ratification of the Convention on Combatting Bribe of Foreign Public Officials in International Business Transactions by 2027; e) Amendments of the Law on whistle-blowing and whistle-blowers protection by 2025. Also, the roadmap foresees explicitly that any planned legal changes of criminal legislation will be in line with the EU acquis and international standards conducive to the country's plan to consistently reduce corruption and regular fitness checks for ensuring the consolidation, harmonization of legislation in the area of anticorruption in compliance with EU standards as of 2025 onwards, including the revision of the legal framework on the enforcement competence of SPAK.

Even though in general the legal framework related to fundamental rights is aligned with most of international conventions and treaties there are still pieces of legislation that should be aligned and in compliance with the EU *acquis,* such as the law on data protection that should be in compliance with GDPR; legal changes to be conducted in line with the Council of Europe standards and EU *acquis* related to freedom of expression and media and media pluralism; revision of Criminal Code on hate speech and hate crime. The legal framework on gender equality should also be brought in line with EU *acquis* by revising and amending different laws such as: the low on Gender and Equality, Law on Domestic Violence that should be aligned with the Istanbul Convention together with a new definition of rape to be introduced in the criminal code by including the lack of consent as a constitutive element.

The actual processes

Albania has improved the quality of processes at the different steps of inclusive and evidence-based policy and legislative development in general, and specifically for policy development in line of EU accession/harmonization. Under the current process, each legal act goes through four preliminary checks before approval. These checks are conducted firstly by the Ministry of Justice related to the legal compliance and cohesion of the act, secondly by the European Union Secretariat in the Prime Minister Office related to the verification of concordance between the draft act and the EU acquis and evaluation of the level of approximation, thirdly by the Ministry of Finance related to the verification of financial affordability and lastly

by the regulatory department in the Prime Minister Office for the general regulatory impact assessment. Also, each legislative and sub-legal act is submitted for public consultation.

The Prime Minister's Office coordinates the policy content of proposals for government decisions, including defining the policy preparation process and ensuring coherence with government priorities. Within the Prime Minister's Office, the main body dealing with quality control and monitoring of key policy development processes is the State Agency for Strategic Programming and Aid Coordination (SASPAC). Its mission is to coordinate foreign aid for development programs and projects, to draft NSDEI, and to monitor its implementation, providing methodological support in the design of cross-sectoral and sectoral strategies, to harmonize them with the National Strategy for Development and European Integration. This way the processes for policy planning are improved ensuring the coherence between policy development and mid-term budget planning. This includes a higher integration in the budget planning process between the Prime Minister's Office and the Ministry of Finance. In January 2024 the Council of Ministers approved the National Plan for European Integration (NPEI) for the 2024 – 2026 period. The implementation of the NPEI is monitored on a weekly basis. Information is provided to the Parliament in the quarterly reports submitted to the Parliament.

During the period September 2022- January 2023, Albania upgraded the institutional setup in the context of the EU integration process. Albania enforced the EU secretariat transferring it from the Ministry for Europe to the Prime Minister's Office and creating a State Minister and Chief Negotiator. Also is fostered the coordination with European Commission services, and the development of the capacities and actions to improve political and technical skills related to the negotiation process, setting up a network of knowledge transfer, including former chief negotiators and negotiators, as well as the development of 26 an awareness and communication plan related to EU integration focused on citizens and businesses.

Conclusions

In conclusion, the journey of Albania towards European Union accession is a multifaceted endeavor, with the alignment of Albanian legislation with EU norms and international treaties standing as a crucial pillar. This necessitates the presence of well-equipped and knowledgeable personnel within Albanian public administration and independent institutions of judiciary, who are not only familiar with European institutions and regulations but also capable of drafting laws in accordance with updated tables of concordance derived from comprehensive Legal Gap Analyses for each legal instrument, ensuring harmonization with EU acquis.

An ongoing challenge lies in enhancing inter-institutional coordination to facilitate effective legal analysis and improve the legal framework concerning all stakeholders involved in the harmonization process.

Drawing from successful policy-making practices, it is evident that the harmonization process requires active involvement from civil society and the public in the consultation process prior to the approval of legal acts.

In summary, it is imperative to underscore that this undertaking is a holistic one, demanding collaboration, interoperability, and the exchange of expertise.

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STATE AID TO ENVIRONMENT AS A PREVENTIVE AND PROMOTIONAL MEANS TO SUPPORT ENTERPRISES: SHORT NOTES

Alessandra Poliseno[1]

The European State aid regulatory framework responds, as it is known, to the need to control State intervention in the economy and to promote, under the conditions established by the treaty and secondary legislation, free competition.

The recent regulatory changes, due to the pandemic, try to move the pertinent regulation from the phase characterized by a rigid scrutiny to a more flexible one, consisting, inter alia, in planning economic development initiatives, in particular in some economic sectors affected by emergencies such as, for example, climate and environmental ones. The scrutiny of measures considers, among other things, both the non-negative presumption of aid and the effects produced in terms of development.

Regulation (EU) No. 651 of 2014 (and subsequent amendments[2]) establishes the

1 * PhD candidate, University of Bari Aldo Moro.

2 Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty; Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs; Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments: Commission Regulation (EU) 2021/452 of 15 March 2021 correcting the Romanian language version of Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty; Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty; Commission Regulation (EU) 2023/917 of 4 May 2023 correcting the Polish language version of Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty; Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty.

guidelines concerning the potential compatibility of measures for the support of economic activities in the environmental field[3] and in other economic fields considered to be weak and, at the same time, strategic for the the future of the internal market facing the protectionist adventure inaugurated by the United States through the adoption of the Inflation Reduction Act.

The European strategy is, one may say, running fast, at least in both legal and political terms, through the green transition process started with the approval of the Green Deal strategy[4], and subsequently detailed in the Climate, Environment and Energy State Aid Guidelines as well as in the so-called "Fit for 55" regulatory package[5], an ambitious programme dealing with the carbon neutrality to be achieved within 2050. The regulatory framework is very complex and shows elements that can also be considered as part of the same common thread: it is the acceleration imparted to the achievement of a plurality of some economic objectives through the lever of environmental economic policies which take on a unitary effect to the extent that, today, they appear to be the authentic strategic element of the European *agere*.

One of the most significant tools used is, precisely, that of providing for a series of derogations to the rules on state aid in order to encourage the development of environmental policies which also concerns, above all, the dimension of energy and industrial policies. Ultimately, it is a policy of concentric circles in which the regulation of state aid probably takes on the driving role from the point of view of intervention to restore the European economy. The distinctive feature therefore seems to be a unitary approach to the topic of incentives/environment in a dimension of structural and operational, a complementary approach typical of economic planning.

The green package follows the Green New Deal and aims to accelerate the process started a few years before the Von Der Leyen Commission took office. The "package" of regulations that should lead to the realization of the "European green revolution" includes a series of measures containing multiple objectives, to be achieved through certain technical standards and regulatory measures for the harmonization of

3 Scotti, *Pandemia, aiuti di stato e transizione ambientale*, in Malvagna, Sciarrone Alibrandi (eds.), *Sistema Produttivo e finanziario post covid-19 dall'efficienza alla sostenibilità. Voci dal diritto dell'economia*, 2021, Pisa, p. 439 ss.; Maruccia *I principali incentivi per gli investimenti ambientali in Italia*, in Bonomi , Tafaro, Uricchio (eds), *Le nuove frontiere dell'eco-diritto,* 2021, Bari, p. 367 ss.

4 Cavaliere, *Il green deal e il tempo delle crisi*, in *Riv. Trim .dir. pubbl.,* n. 4, 2022, p. 526 ss.; Communication from the Commission to the European Parliament, the European Council, the Council, the European economic and social committee and the Committee of the Regions, *The European green deal* Brussels, 11.12.2019 com(2019) 640 final.

5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, Fit for 55': delivering the EU's 2030 climate target on the way to climate neutrality*, Brussels, 14.7.2021,com(2021) 550 final.

specific disciplines relating to environmental protection, which dictates to the states an operational direction in particular regarding the use of energy.

A further group of measures regarding aids to the environment can be found in the Next Generation EU, as well as in the REPowerEU plan[6] to cope with the consequences of Russia's war against Ukraine[7].

The regulatory tools available to the European authorities to achieve these objectives relating to State aid also can be found in the implementation of exemptions from prior notification for certain categories of horizontal aid among which, as it is known, there are aid for the protection of the environment.

A continuation of the regulation on exemptions from prior notification is found in Regulation No. 1315 of 23 June 2023, which extends the period of application of the Regulation No. 651 of 2014 by 3 years, until 31 December 2026[8].

The complexity of the transformation that is referred to by the term "ecological transition" shows a variable and gradual process of implementation that concerns and affects territorial, environmental and energy policies that move towards a profound change from a state of "backwardness" to a virtuous state.

The ecological transition focuses on basic aspects such as the circular economy, responsible agriculture, the transition to renewable sources of energy, energy efficiency of the buildings, and the management of water resources, to eliminate all forms of waste and inefficiency and to modernize water infrastructures; all aimed at protecting animal and plant biodiversity[9].

The result is the intertwining of regulation in reference to a plurality of sectors, i.e., between innovation, understood as the reconversion or introduction of eco-innovative and eco-friendly technologies aimed at producing fewer pollutants, and business incentive policies.

Under this viewpoint, the Regulation 1315[10] defines the «protection of the

6 Brussels, com(2022) 230 final Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions*, REPowerEU Plan*, 18.5.2022.

7 Communication from the Commission, Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (2022/C 131 I/01); see Lypalo, *Competition Law in Times of War: Response to the Russian Invasion of Ukraine*, in *Kluwer Competition Law Blog*, 4th April 2022; Previatello, *Crisi ucraina e nuovo Quadro temporaneo in materia di aiuti di Stato*, in *Eurojus.it*, n. 2, 2022, p. 87-100.

8 Regulation (EU) No. 1315/2013 of The European Parliament and the Council of 11 December 2013, cit., point n.2.

9 Niola, *Gli effetti del lockdown sull'ambiente: adottiamo una nuova prospettiva?*, in Dirittifondamentali.it, 2020; Pepe, *Il diritto dell'energia fondato su principi. La transizione ecologica come giustizia energetica*, in *AmbienteDiritto.it - Anno XXI*, Issue 4, 2021.

10 Regulation (EU) No. 1315/2023, cit., nr. 101: «environmental protection' means any action or activity designed to reduce or prevent pollution, negative environmental impacts or other damage to physical surroundings (including to air, water and soil), ecosystems or natural resources

environment» as «any action or activity aimed at reducing or preventing pollution, negative environmental impacts or other damage to the physical environment (including air, water and soil), ecosystems or natural resources caused by human activities» in order to promote «a transition towards circular economy models to reduce the use of primary materials and increase efficiency».

This is, indeed, more than a definition: it can be considered as a political manifesto in which prevention and promotion are taken into consideration as two faces of the same coin: they contribute to the more general objective of promoting economic initiatives from an environmental perspective as a tool for economic development.

The incentive measures represent an impulse to induce companies to undertake investments that would not otherwise be made and which, indeed, the entrepreneur himself would probably not have thought of.

The flexibilization of State aid discipline confirms how a new physiognomy of aid is emerging (not a modification of the notion of State aid, of course), no longer considered as a negative element of intervention in the economy, but as an instrument of development and economic revival.

The provisions of Article 107 TFEU do not provide for a specific exemption for State aid for environmental purposes, neither within the scope of the legally compatible measures set out in §2, nor among the categories of aid that may be declared compatible by the Commission (§3).

In the lack of a specific provision, therefore, the Commission, with reference to aid to undertakings for environmental protection, assessed the compatibility of the measures under Article 107(3)(c), which allows the cases provided for therein to be extended to those economic activities which supplement the measures for economic development.

In the context of an aid project, the environmental purpose was coupled with other objectives, such as, for example, regional development or aid for research, development, or innovation or to promote the realization of important joint projects of European interest as provided for in Article 107(3)(b).

The new framework identifies specific reference points for the eligibility of environmental aid. As often happens in state aid law, material regulation and living law represent the main normative sources of aid governance.

They favor interventions that help the ecological transition as a driving force for

by human activities, including to mitigate climate change, to reduce the risk of such damage, to protect and restore biodiversity or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions and other pollutants, as well as to shift to circular economy models to reduce the use of primary materials and increase efficiencies. It also covers actions that reinforce adaptive capacity and minimize vulnerability to climate impacts».

European multiannual programming, which is to be considered free from a short-term vision, but as long-term sustainable development[11].

More specific criteria for the evaluation of incentive measures may avoid harmful aid to the environment (together with the preventive criterion of «do no significant harm»).

This is a new approach that inspires public authorities towards the environment with a view to expanding intervention in the economy which, although temporary, could contribute to resilience.

The transition requires a planning strategy that highlights the need for an active role of the state also in terms of public-private collaboration, always in the awareness that its "return"[12] should not follow the same negative trajectories that characterized state action in the implementation phase of the so-called "old economic constitution"[13].

It can be said that environmental protection has become a requirement but also an opportunity for technological innovation, within the framework of European competition law applicable to the member States.

The environmental transition[14], and thus the transition from a linear to a circular economy, should not disregard public intervention in the economy in financial, structural and Euro-state planning terms; a dimension that ploughs through broader conceptual territories of a general nature such as, for example, solidarity, determined in its declination of social, economic and territorial cohesion: this can be considered a universal, transversal and interdisciplinary value and legal principle, given, moreover, the multiple forms of relation with the environment and the ecosystem.

It follows that public aid for environmental protection is characterized by a systemic approach with multiple conditional clauses: the global and widespread value of the Euro-state programming intervention, therefore, outlines its systemic complexity as the motive of a far-reaching process, consisting of an attempt to change the economic system or, at least, to mitigate the criticalities that have emerged to date with reference to the consequences produced on the environment by economic activities. Of course, gradualness is inherent in this process, considering that systemic changes require a plurality of interventions on several operational fronts.

Positive conditional clauses such as, for example, the DNSH criterion or the targeting

11 Moliterni, *Transizione ecologica, ordine economico e sistema amministrativo*, in *Riv. Dir. comparati*, n. 2, 2022, p. 395; Bonomo, *Il potere del clima. Funzioni pubbliche e legalità della transizione ambientale*, Bari, 2023, p. 74.

12 Amato, *Bentornato Stato, ma*, Milano, 2022, p. 67 ss.

13 Cassese, *La nuova costituzione economica*, Roma-Bari, 2022, p. 7 ss.; Scuto, *La dimensione sociale della Costituzione economica nel nuovo contesto europeo. Intervento pubblico nell'economia, tutela del risparmio, reddito minimo*, Torino, 2022, pp. 1-14.

14 Severini, *La "transizione" come ordinamento giuridico*, 24 november 2022, available at www.giustiziainsieme.it.

of interventions not only restorative but also propulsive of a renewed entrepreneurial culture constitute the guiding compass of the new legal-economic course.

The favorable context determined by the huge public resources available favors the concentration towards the protection of the environment from the viewpoint of the protection of future generations and pursuant to the principle of sustainability: two aims that ultimately combine intervention in the economy in the perspective of economic humanism, the ethical and legal frontier that will probably characterize public action in the new millennium.

HUMAN RIGHTS IN DIFFERENT FORMS OF STATES ORGANS THAT ENSURE THE IMPLEMENTATION OF HUMAN RIGHTS

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ABSTRACT

"Human rights in different forms of states" is based on the historical treatment of human rights in different periods of time. The forms of states during different time developments, the way human rights were treated and the importance attached to their implementation and respect have been reviewed. Different forms of states also dictate different ways of guaranteeing human rights whose recognition plays a key role in the creation and development of a state.

This paper analyzes the implementation and importance of the human rights in different periods of time, based on the form of states. The functioning and effectiveness of rights are important because otherwise rights would not have the importance they have today.

The creation of legal provisions, of national and international institutions enables more and more protection for the respect, implementation and effectiveness of human rights.

Social rights, as constitutional rights, brought a new spirit to the development of the state. More attention was paid to welfare and the implementation of rights.

Some rights can be suspended, but they can never disappear and cease to exist. This is because some rights are directly related to the fact of being human beings and we enjoy them precisely for this purpose.

Human rights have been and continue to be part of international laws, enabling the creation of conventions or declarations, the establishment of organs that ensure their implementation. Some of them are treated in this paper. We mention here the European Court of Human Rights, which is the basic mechanism for the effectiveness of compliance with the provisions made by the European Convention

on Human Rights.

Apart from the judicial organs, a number of legal instruments have been created to enable the protection of human rights.

Keywords: human rights, European Court of Human Rights, forms of states, legal provisions.

1. The development of human rights

The Organic Statute of Albania was created on April 10, 1914, but unfortunately we must say that it does not contain a catalog of human rights. Something like this happens due to the circumstances of the time and the existence of a not very good period in Albania in terms of the existence of a full government.[1]

Human rights are internationally recognized and all the states have the same obligations in respecting them. These rights constitute a very important part of the whole legal aspect of almost every state. This is especially what is happening nowadays even though a lot of difficulties have been passed in the international aspect to ensure the protection and respect of fundamental human rights and freedoms. Legal codification ensures the validity of human rights, so if we do not have a legal provision we can not claim their observance and implementation.

Respect for human rights should be seen as a way of enjoying and living a dignified life. Despite the historical development of some countries and specifically Albania, we can say that some rights can be suspended, but they can never disappear and cease to exist. This is because some rights are directly related to the fact of being human beings and we enjoy them precisely for this purpose. Being constitutionalized does not show the validity of human rights.[2]

On the other hand, the profound transformations of the democratic constitutionalism of the twentieth century, which took place in Europe starting from the first postwar period, broke the link between the guarantee of rights and the state of legislation. First of all, since the divisions and conflicts of pluralistic societies have fully invested the legislative process, "the legislator has become a problematic unity magnitude", and the law mostly reflects the compromise between heterogeneous party coalitions.[3] This led to significant constitutional changes in many states. Based on these changes, the rights were configured from the beginning and already served as the basis and foundation of the various governments. Also, this enabled the expansion of the area

1 Biba. D. "Të drejtat e njeriut dhe konstitucionalizmi-një përspektivë shqiptare". Tiranë, Shkurt 2017.

2 Biba. D. "Të drejtat e njeriut dhe konstitucionalizmi-një përspektivë shqiptare". Tiranë, Shkurt 2017, pg.171.

3 Ridola, Paolo: "Garanzie, diritti e trasformazioni del costituzionalismo". Articolo in rivista: (Rome Italy: Carocci Editore Roma: Donzelli) pp. 33-52 – 1999, pg. 5.

of guarantee of rights, further increasing the number of fundamental rights, which are also offered constitutional protection.

The expansion of the range of action of fundamental rights from the field of relations between the individual and the state to that of relations between individuals has also determined an expansion of the external configuration of the guarantee of rights.[4]

There has been a development of a number of rights over the years, but to assert the full existence of a right it is necessary to be guaranteed. For this reason, when establishing a right, one must look at the guarantees that are imposed for its observance and the punitive measures that are applied in case we have a violation of it, otherwise this right would be considered invalid. The non-functioning of the mechanism of respecting these rights would simply turn them into some rules of positive international right. The existence and application of procedural law aims to prevent or create human rights protections, which may be denied or violated by the judge. The protection of citizens in the face of public administration has in fact the foundation and provision of its direct guarantee in law, from which all rights derive in an immediately manner.[5]

The role of constitutions is closely linked to the complexity and social development of society, to which they provide a frame of reference and a table of values.[6]

The base of freedom, justice and peace in the world is precisely the recognition of the dignity of the equal and inalienable rights of all members of the human race. The development of friendly relations between nations is very important. It is also necessary to establish legal provisions and national and international institutions in the framework of the protection of human rights. Something like this will enable the respect and implementation of fundamental human rights and freedoms.[7]

The evolution of human rights is depended on the political, social, cultural, economic developments of each state.

Rightly conceived freedom does not require any form of total independence from the state, on the contrary, an intervening government ensures the necessary preconditions for individual freedom. The category of social rights originates precisely from the need to guarantee everyone benefits such as to rebalance the positions of individuals within society through the intervention of the public authorities. Since these are "rights to performance", which need a positive intervention by the State, they

4 Ridola, Paolo: "Garanzie, diritti e trasformazioni del costituzionalismo". Articolo in rivista: (Rome Italy: Carocci Editore Roma: Donzelli) pp. 33-52 – 1999, pg. 16.

5 Ridola, Paolo: "Garanzie, diritti e trasformazioni del costituzionalismo". Articolo in rivista: (Rome Italy: Carocci Editore Roma: Donzelli) pp. 33-52 – 1999, pg. 2.

6 Ridola, Paolo: "Garanzie, diritti e trasformazioni del costituzionalismo". Articolo in rivista: (Rome Italy: Carocci Editore Roma: Donzelli) pp. 33-52 – 1999, pg. 6.

7 Universal Declaration of Human Rights, Preamble.
https://www.un.org/en/universal-declaration-human-rights/index.html

clearly have a strong dependence on the availability of financial resources that serve to guarantee them, as well as on the political choices on how to use the available funds.[8]

There are some concepts about what we mean by rights. We are dealing with negative and positive terms of rights. When we talk about negative terms we mean "freedom from" and when we talk about positive terms we mean "right for".[9]

2. Forms of states and human rights

Over time, years and centuries, individuals have undergone numerous developments regarding the respect of their fundamental rights. Such changes or developments are quite closely related to the forms and developments that states have undergone over the years. As long as they have existed and as we are dealing with different forms of states, normally the respect or guarantee of human rights has been, is and will be in different forms.

Before we make a detailed analysis we can say that even in the most absolute state there are no rights, but we only have the provision of some privileges. On the other hand, in the liberal state we have the promotion of rights and freedoms only in their negative aspect. While in the provisions of the democratic state, the social rights are promoted.

The form of the state is based on the basic principles and rules that characterize the state order. They enable the definition of a relationship that exists between the state, on the one hand, which is presented as a coercive apparatus and the citizens of the state, on the other hand. From the period of antiquity, on the basis of philosophical and political thought, it was proposed that the classification of forms of the political rule was to be made without making any distinction between the forms of state and the forms of governments. The most accepted opinion regarding the division or the classification of government is according to the number of the sovereignty holders or subjects to whom it belongs or who enjoys the sovereignty of a given state.[10] It is because of different forms of the state that we are dealing with different ways of guaranteeing or respecting human rights.

Specifically we can mention democracy and autocracy. These complex forms take several different meanings. We can talk about democracy in its essential meaning,

8 Francesca Minni e Andrea Morrone: "IL DIRITTO ALLA SALUTE NELLA GIURISPRUDENZA DELLA CORTE COSTITUZIONALE ITALIANA". Associazione Italiana dei Costituzionalisti, Rivista N. 3/2013, pg. 8.

9 Biba. D. "Të drejtat e njeriut dhe konstitucionalizmi-një përspektivë shqiptare". Tiranë, Shkurt 2017, pg. 66.

10 Mauro Volpi, "Le forme di Stato", Manuale di Diritto Pubblico Comparato, Capitolo IV, G. Giappichelli Editore- Torino, pg. 256.

that it enables the guarantee of socio-economic rights and that it aims at the achieving of equality. We also have formal democracy, which is based on the personal freedom and the equality in front of the law.

As we see we are dealing with two almost opposite meanings of democracy and we must accept that democracy in its essential meaning can be considered unacceptable and quite overestimated. On the other hand, if we speak of an autocratic state, what comes to mind is a negative state, which contains all the experiences that can never be considered democratic.

The Analysis of different forms of the state, following their historical development, is based on some very important criteria:

1. The relationship that exists between the state and civil society. In other words, it is the relationship that exists between the public and the private sphere.
2. The individualization by the chief of public power. It must be determined how he exercises this power, in a distributed or centralized manner.
3. It must be determined whether we are dealing with a communist or a pluralistic state.
4. A very important matter is the recognition or not of rights and freedoms, guaranteeing their effectiveness.
5. Whether there is or there isn't a constitution and what is its role in regulating the relationship between the state and society, as well as the public authorities. [11]

From such an analysis we come to the conclusion that for the creation and evolution of a state a very important role is played by the recognition and implementation of the human rights. Moreover, we can say that such a thing can determine, to some extent, even the form of the state, the relationship that exists between the state organs and the civil society. For this reason, the recognition or not of the rights and freedoms is considered as one of the main criteria in terms of analyzing the forms of the state, in different time periods.

Historical development of the feudal order

Feudalism is a socio-political structure that is characterized by the presence of two social classes:

1. Feudal lords.
2. Peasants who were economically dependent on them.
3. The relationship between the king and the feudal lords was characterized by a rather special relationship between them. The feudal lords tied by a particular kind of legal obligation, pact or alliance.[12]

11 Mauro Volpi, "Le forme di Stato", Manuale di Diritto Pubblico Comparato, Capitolo IV, G. Giappichelli Editore- Torino, pg. 260.

12 Mauro Volpi, "Le forme di Stato", Manuale di Diritto Pubblico Comparato, Capitolo IV, G.

In the feudal society we cannot speak of genuine or true rights and freedoms. The majority of the population consists of the peasantry. These live in a kind of slavery situation and they can not make any request to be able to claim respect and implementation of rights.

Only a few people, some free men, can enjoy a small number of privileges. Something like this becomes possible based on the fact that they can be part of the nobility. One of the most important privileges is that they can be judged only by people of the same class, thus being based on the pact that exists between them.

The absolute and the authoritarian state

In the absolute state, power is concentrated in the hands of the Monarch, even though it is not as strong as the power that is presented in the autocratic regimes.

At a central level, the King or the Monarch has his own influence and he directs not only the executive but also the legislative power. But here we should also mention that in almost the same form as in the feudal system, we can not talk about rights or the guarantee of rights. The only right that can be claimed is that of the private property. For this reason those who have a property can claim for a title or a privilege.

The creation of an authoritarian state came as a result of the weakening of the liberal democratic institutions. Italy was considered an authoritarian state and the only right that was preserved and respected in that period, during the existence of such a power, was the freedom of religious belief.

The authoritarian state is characterized by the existence of a single party. This form of state is considered as not liberal and oppressive. Therefore in this form of state it is denied not only the political right, but also the rights and freedoms of the individuals.

The development of the liberal state

The transition from one state form to another happens in different ways, in different states. Something like this happened to the states that had an absolute form of government and turned into states with a liberal form of government. In a liberal state, the nation enjoys sovereignty. The nation itself is considered a community, an inseparable entity that surmounts the will of the individuals. One of the most important principles of the liberal state is the separation of powers. Specifically we are dealing with legislative, executive and judicial power. [13]

In terms of fundamental human rights and freedoms, a very important feature of the

Giappichelli Editore- Torino.

13 Mauro Volpi: Libertà e autorità, La classificazione delle forme di Stato e delle forme di governo. G. Giappichelli Editore- Torino, 2018. Pg. 37.

liberal state is the recognition of its constitution. These rights are identified as civil rights, or in other words as human rights. In the liberal state the negative rights are also recognized. These rights have to do with the recognition that every citizen has a private sphere, which should not be violated by any interference, even by state organs.

Despite being a liberal state, it is still not considered as being an entirely liberal entity. This state form prevents the recognition of civil and political rights for the subordinate classes.

These classes are not subject of law or rights but they simply have to obey to these laws. Yet in the liberal state, the constitution is a major achievement. It is considered a fundamental act that guarantees rights, ensures and stabilizes the separation of powers. The Constitution is considered a superior law compared to ordinary laws. The liberal state can be seen or considered as a legislative state, for as long as the law is the main act that enables the guarantee of a balance between the authority of the state and the rights or freedoms of the individual. Finally, in the liberal state we confirm the concept of the state of law, considered to be as a state founded on certain principles and providing legal guarantees of the rights and freedoms of the individual.[14]

The development of the democratic state

Beyond the etymological meaning of democracy as government of the people, two very different models emerge in concrete historical events.

1. The democracy of the ancients. In this model, it is treated a direct democracy based on the immediate participation of citizens in the decision-making process without any intermediary, political or bureaucratic.
2. The democracy of the moderns. This model of democracy presents characteristics in some ways opposed to that of the ancients, being a representative, pluralistic democracy based on the maximum possible extension of the concept of citizenship.[15]

A democratic state is characterized by the division that exists between the state and society, as well as between politics and the economy. The ideology of a democratic state puts the emphasis first on the dignity of individuals, regardless of their social affiliation.[16]

14 Mauro Volpi: Libertà e autorità, La classificazione delle forme di Stato e delle forme di governo. G. Giappichelli Editore- Torino, 2018. Pg. 40.

15 Mauro Volpi: Libertà e autorità, La classificazione delle forme di Stato e delle forme di governo. G. Giappichelli Editore- Torino, 2018. Pg. 19.

16 Mauro Volpi, "Le forme di Stato", Manuale di Diritto Pubblico Comparato, Capitolo IV, G.

The democratic state can be considered as the state of welfare and sovereignty now belongs entirely to the people.

For the first time in the development of a democratic state, we have the division of human rights into positive freedoms and social rights.

In other words, we can say that the existence of positive freedoms requires the intervention of the state organs in order to realize and guarantee them therefore they are considered as political or state rights. [17]

Despite being mentioned above, in order to further clarify it, positive freedoms are considered as a consequence of a series of interventions by the state, which enable the direct guarantee of the principle of equality.

On the other hand, negative freedoms are recognized and guaranteed by the Constitution as inviolable and require a non-interference behavior by the state.

There are also rights which, in addition to freedom from the state, require non-interference from various social formations. We can mention among these rights: freedom of religion, etc. As for social rights, I will be talking about them in details below.

3. Social rights

Social rights were first defined in the Weimar Constitution, in 1919.[18] This was considered as a key moment of the transition from a liberal state to the welfare state. These rights are considered as constitutional rights, which have become part of the charters and basic documentation since the second post-war period, thus characterizing a new form of state, that of welfare and law.[19] Such a definition is made because they are assigned in the Constitution and are considered as rights enjoyed by every individual. The evolution of the social state has represented the historical dividing line between the old and the modern conception of the right to health, especially with regard to the methods of protection reserved for it and the forms of public intervention in the field of health and hospital care.[20] Providing assistance to citizens or any individual is not only considered a social right, but also an enjoyment of rights. The recognition as a constitutional right of social rights has made it possible to identify and define the rights that each individual enjoys.

Giappichelli Editore- Torino, pg. 284.

17 Mauro Volpi, "Le forme di Stato", Manuale di Diritto Pubblico Comparato, Capitolo IV, G. Giappichelli Editore- Torino, pg. 288.

18 Ervin SULKO: "Të drejtat sociale dhe raporti i tyre me objektivat socialë në Kushtetutën e Shqipërisë". Avokatia 28, pg. 2.

19 Capitolo 1, "I diritti sociali alla salute e all'assistenza", pg. 1. www.giappichelli.it/media/catalog/product/excerpt/9788834879412.pdf

20 Eugenio Benevento: "Il diritto alla salute e le evoluzioni delle politiche sanitarie". Istituzioni di Diritto Pubblico. Estratto dal n. 2/2019, pg. 2.

The inclusion and provision of social rights by international charters or conventions places these in parallel with the fundamental rights and freedoms of the individual provided for in the constitutions of states, thus creating a balance point between these two types of rights.[21]

In a democratic state it is the people who exercise sovereignty, always according to the restrictions and definitions set in the Constitution. The right to exist is guaranteed by many European constitutions and it is directly linked to the constitutional principles of human dignity, equality and solidarity. For this reason the state is obliged to guarantee some basic and vital goods for its citizens. As much as we have mentioned so far, surely the right to health care is one of the most important benefits that every citizen of every state should enjoy. This is even more important for those individuals who do not have the financial means to provide such a service. We must emphasize that equality between individuals can only be achieved through the recognition of social rights. Social rights necessarily require the intervention of the state and public administration organs, to enable their realization and guarantee.[22]

In the category of social rights we are dealing with a double division. We have objective social rights and subjective social rights. Such a division is made based on the intervention or non-intervention of the state and its organs.

More specifically, we can define:

1. Subjective social rights do not require the financial intervention of the state to make their realization or guarantee possible.
2. On the other hand, the objective social rights have the necessity of financial intervention from the state and its bodies, as the only possibility for their realization or guarantee.[23]

The main difference between fundamental rights and freedoms and social rights lies in the fact of different political and historical affiliations, namely the liberal state and the socialist state. Different lawyers have given different definitions regarding the idea of what will be considered fundamental rights and what social rights. The main difference they have pointed out is related to the intervention of states in guaranteeing and respecting social rights as effectively as possible, with the fact that fundamental rights belong to all individuals and not to a certain category of society.[24]

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21 Capitolo 1, "I diritti sociali alla salute e all'assistenza", pg. 1. www.giappichelli.it/media/catalog/product/excerpt/9788834879412.pdf

22 Ervin SULKO: "Të drejtat sociale dhe raporti i tyre me objektivat socialë në Kushtetutën e Shqipërisë". Avokatia 28, pg. 4.

23 Ervin SULKO: "Të drejtat sociale dhe raporti i tyre me objektivat socialë në Kushtetutën e Shqipërisë". Avokatia 28, pg. 4.

24 Enrico Diciotti, Stato di diritto e diritti sociali. "D&Q", n.4, 2004, pg. 50.

4. Human rights in international law

Human rights are manifested in a number of international conventions, treaties and agreements. It is precisely these ratified international acts, which Albanian Constitution gives the status of domestic right.[25] Moreover, the ratified international agreements have a direct effect immediately after the implementation of the Constitution.

1. *Every ratified international agreement forms part of the domestic legal system after it is published in the Official Paper of the Republic of Albania. It is directly applicable, except when it is not self-enforceable and its implementation requires the enactment of a law. The changing, fulfillment and the abrogation of the laws ratified by a majority of all members of the Assembly for the purpose of the ratification of international agreements is done by the same majority.*
2. *An international agreement ratified by law prevails over the laws of the country that do not comply with it.*
3. *The norms issued by an international organization prevail, in case of conflict, over the laws of the country, when the agreement ratified by the Republic of Albania for its participation in that organization, explicitly predicts the direct implementation of the norms issued by it.*[26]

A number of conventions were created to protect fundamental human rights and freedoms. We must emphasize that their role is quite important, not only in the national arena of each country, but also in the international arena. It is worth mentioning some declarations and conventions which have had and still have a crucial role in respecting and enforcing fundamental human rights and freedoms. Of course, in addition to the general aspect, these international acts also include specific aspects of the rights of different groups in society, such as patients or members of the medical staff.

Various international committees, committees of various conventions and associations for the protection of social rights, have played a very important role in affirming the right to health in the international arena, in accordance with the principle of non-discrimination, indivisibility, interdependence and interconnection of human rights, laying the foundations for a uniform protection of the right to health. [27] International law offers the possibility of restricting human rights, in those

25 Constitution of the Republic of Albania, Article 116:
1. Normative acts that have force in the entire territory of the Republic of Albania are:
a) The Constitution;
b) Ratified international agreements;
c) Laws;
d) Normative acts of the Council of Ministers.

26 Constitution of the Republic of Albania, Article 122.

27 Ciro Maria Ruocco: "La tutela della salute: una lettura costituzionalmente orientata". Diritto &

situations explicitly set out in conventions, which legitimize states to restrict certain rights in the interest of safeguarding public health and other general interests, such as public order, national security, public morality, the economic well-being of the state and respect for the rights and freedoms of others.[28] These restrictions imposed by the conventions have to complete the requirements of legality. In this way, the limited right will be guaranteed, so that it is not completely annulled. In any case of the restriction of a right, states must argue the reasons for the restriction. These restrictions must have a certain legal basis and have to respect the principles of necessity, non-discrimination and proportionality. State bodies have a duty to guarantee this and if an individual alleges an unjustified violation of his rights, he can complain to them.

Universalization of the human rights

There has always been a debate about the universalization of rights. There are supporters of the idea that human rights are universal for all states. On the other hand, there are supporters of the idea that the creation of rights comes as a result of the affiliations and cultural developments of different states.[29]

Radical cultural relativism estimates that culture is the only source of the validity of a right, morality or order. Radical universalism would consider that culture is not important for the validity of moral rights and rules, which are valid worldwide.[30]

Despite quite large international changes in ideologies, levels and styles of economic development, the models of political evolution, practically in all states today have embraced, at least in a formal way and perhaps not in practice, the human rights which are standartly pronounce in Albanian language in the Universal Declaration of Human Rights and in the International Conventions for the Human Rights. This consensus poses a strong issue for a relatively strong universalism, in other words a weak cultural relativism.[31] In the conditions of a modern society, human rights are considered as the universal essence of nature and human dignity.

The European Convention for the Protection of Human Rights is the first European treaty that offers protection for the human rights. Certainly this Convention needed a body that would offer its observance and implementation. That is why the European

Diritti ISSN 1127-8579, pg. 6.

28 Ciro Maria Ruocco: "La tutela della salute: una lettura costituzionalmente orientata". Diritto & Diritti ISSN 1127-8579, pg. 7.

29 Biba. D. "Të drejtat e njeriut dhe konstitucionalizmi-një përspektivë shqiptare". Tiranë, Shkurt 2017, pg. 79.

30 Jack Donnelly, (Nov., 1984) "Cultural Relativism and Universal Human Rights", Human Rights Quarterly, Vol. 6, No. 4.

31 Jack Donnelly, (Nov., 1984) "Cultural Relativism and Universal Human Rights", Human Rights Quarterly, Vol. 6, No. 4.

Court of Human Rights was set up. This Convention also has also its own protocols which further fulfill its purpose and ensure a greater protection of the human rights. The protection mechanisms established in Strasbourg, regarding the conduction of investigations in order to enable the compliance with the obligations contained in the Convention, are its uniqueness.

The Convention is under constant deliberation, which enables the improvement or the addition of rights which ensures even the improvement of the protection structures. Issues regulated by the Convention have also enabled the creation of an extraordinary jurisprudence, which is applied and respected by all member states of the Convention.[32]

The United Nations is the first international organization to issue a document on human rights, namely the Universal Declaration of Human Rights.

The General Assembly proclaims this Universal Declaration of Human Rights as a general ideal which must be attained by all peoples and all nations, so that every human being and every social organism, always bearing in mind this Declaration, shall endeavor that: through teaching and education, they should assist in the observance of these rights and freedoms and, through progressive national and international measures, they should ensure their general and genuine recognition and implementation, both among the peoples of the Member States themselves, as well as among the peoples of those territories which are under their administration.[33]

5. The organs that ensure the implementation of human rights

The existence of human rights would not be effective if there weren't any bodies to enable their implementation and observance. State institutions, even the state itself, have the primary duty to ensure the protection, respect and guarantee of every right of the individual, namely the rights, which are considered as social rights. For this reason, these institutions must enable the elimination of any obstacles of an economic or social nature, which would prevent the better development of these rights.[34] The

32 Albania ratified the European Convention for the Protection of Human Rights (ECHR) on 02.12.1996.

33 Universal Declaration of Human Rights, Preamble.

34 Constitution of the Italian Republic, Article 2, Article 3.

Article 2

The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social formations where his personality develops and demands the performance of the necessary tasks of political, economic and social solidarity.

Article 3

All citizens have the same social dignity and are equal before the law, regardless of sex, race, language, religion, political opinion, personal or social conditions.

It is the duty of the Republic to remove obstacles of economic and social character, which by restricting in practice, freedom and equality of citizens, prevent the full development of human personality

institutions and the state, must guarantee the rights within the competencies and means at their disposal, as well as for the fulfillment of the initiative and private responsibility.[35]

European Court of Human Rights

The European Court of Human Rights plays the role of a very special mechanism, which enables the implementation and observance of the provisions made by the Convention. The Convention, by not having merely a declarative function, had to establish a mechanism that ensures its implementation. The ECHR examines the complaints of every individual, non-governmental organization or group of individuals for the violations of the Convention or its protocols, committed by a member state of the Convention, or complaints from states in a conflict.

Any high contractor Party may refer to the Court any alleged violation of the provisions of the Convention and its protocols by another high contractor Party.[36]

The court may receive requests from every person, non-governmental organization or group of individuals claiming to be victims of a violation by one of the high contractor Parties of the rights set forth in the Convention or in its protocols. The high Contractor Parties vow not to obstruct in any way the effective exercise of this right.[37]

Appeals to this Court should be taken against the public authorities of a Member State which has ratified the Convention and the Additional Protocol of the right which has been allegedly violated. Prior to filing a complaint to the ECHR, the complainant must have exhausted any other means of national appeal. An appeal may be made in any language of the Member States and its use may be continued with the approval of the President of the Chamber or of the Big Chamber. The decisions of this Court are binding and the burden of control for the supervision of the execution of decisions rests with the Committee of Ministers of the Council of Europe. According to Article 46 of the Convention, it is the Member States that must vow to respect the final decision given by the ECHR in any matter which they are parties' to.[38]

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and effective participation of all employees in the political and social organization of the country.

35 Constitution of the Republic of Albania, Article 59/1/c.

36 European Convention on Human Rights, Article 33.

37 European Convention on Human Rights, Article 34.

38 European Convention on Human Rights, Article 46.

Enforcement and execution of decisionsThe High Contracting Parties undertake to respect the final decision of the Court in any matter to which they are parties.

1. The final decision of the Court shall be forwarded to the Committee of Ministers, which shall supervise its execution.
2. If the Committee of Ministers is of the opinion that oversight of the execution of a final de-

This commitment is assessed in two ways:

1. The appellant regains the violated right or at least measures are taken in its favor.
2. States Parties shall make it possible to take measures to prevent further violations of that nature.
3. The jurisdiction of this Court includes all the problems belonging to the interpretation and implementation of the Convention. It can even provide advisory opinions, by making its role in the implementation of the Convention even more important. Its decision is binding on the state to which it is addressed.

International Court of Justice

The International Court of Justice is established by the Charter of the United Nations as the main judicial organ of this organization. Only the states have the right to appear in front of this court and a process can only begin when both parties have an interest on this.

Decisions of this court are binding on the parties, are final and cannot be appealed. By filing a claim and meeting the criteria, the court can only interpret its decisions.[39]

Judicial organs of states

Action for the respect and protection of fundamental human rights and freedoms is one of the most important interests of any state. For this reason, each of them aims to ensure their implementation by pushing to take punitive measures in case of non-implementation.

Given the fact that human rights have a continuous and rapid development, it is necessary that their protection system should also be characterized by a rapid development and expansion. Apart from the judicial organs, a number of legal instruments have been created to enable the protection of human rights. Among the most important instruments we can mention: the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and the European Social Charter. Both of these instruments have their own complementary protocols,

cision is hampered by a problem of interpretation of the decision, it may refer the matter to the Court for a decision on the matter of interpretation. Such a decision requires a two-thirds majority of the representatives entitled to participate in the Committee of Ministers.

3. If the Committee of Ministers is of the opinion that a High Contracting Party refuses to comply with a final decision of the Court in a case to which it is a party, after having sent a formal notice to that Party and by a decision taken by a two-thirds majority of the representatives present, may refer to the Court the question whether the Party has fulfilled its obligation under paragraph 1.

39 http://www.pp.gov.al/web/statuti_i_gjnd_772.pdf

which ensure their better functioning and compliance.

CONCLUSIONS AND RECOMMENDATIONS

The form of the state is based on the basic principles and rules that characterize the state order. They enable the definition of an existing relationship between the state, which is presented as a coercive apparatus, on the one hand, and the citizens on the other. The recognition and implementation of human rights plays a very important role in the creation and evolution of a state.

We can say that there is no feudal constitution, which would enable the regulation of public authorities or even the recognition and respect of the human rights. We can only speak of a simple constitution in the ancient meaning of the centuries-old traditions and of the various relationships which have been established over time.

Social rights are considered constitutional or fundamental rights. Such a determination is made because they are provided in the Constitution and are considered as rights that every individual has.

Human rights have a very high protection in certain areas or relationships of the life of each individual, such as family, work, etc.

The existence of human rights would not be effective if there weren't any bodies to enable their implementation and observance.

It is very necessary for state bodies to be more committed to the implementation and respect of human rights

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L'INTERVENTO NELL'ECONOMIA PER LA TRANSIZIONE DIGITALE: SPUNTI DI RIFLESSIONE

Giovanna Papa[1*]

Le crisi che si sono susseguite negli ultimi anni hanno prodotto instabilità nel tessuto socio-economico del Paese: tale circostanza ha reso necessario ripensare il ruolo dello Stato nell'economia al fine di sostenere le famiglie e le imprese, oltre che dare impulso all'economia nel suo complesso alla luce di un'impostazione disciplinare che tende a riqualificare l'azione statale in chiave neoimprenditoriale. Questa fase, conseguentemente, potrebbe produrre effetti che rivalutino il ruolo degli aiuti pubblici alle imprese nell'ambito delle politiche economiche statali.

Si tratta di predisporre interventi coerenti con il corso programmatorio impostato da parte della Commissione attraverso i fondi a sostegno di rilevanti settori, fra i quali la digitalizzazione[2], l'innovazione tecnologica, il *green*[3] e così via: un *trend* che indica, fra l'altro, la prospettiva di uno spazio d'iniziativa pubblica che, tuttavia, non sradica il principio concorrenziale ma lo adegua alle esigenze sopravvenute.

Invero, l'intervento pubblico nell'economia ha conosciuto una fase regressiva almeno a partire dagli anni Novanta, coincidente con l'approvazione del complesso disciplinare adottato a seguito dell'approvazione del trattato di Maastricht e del conseguente avvio del processo delle privatizzazioni, minando, inoltre, la sovranità finanziaria degli Stati, incidendo, quindi, non soltanto sugli assetti economici ma anche su quelli istituzionali.

L'U.E. infatti, ha promosso un modello economico lontano dalle tradizioni costituzionali di molti dei Paesi membri: un modello nel quale la finanza pubblica è stata per lungo tempo soggetta a parametri numerici rigorosi, salvo la parentesi della crisi pandemica che ha indotto, per così dire, la Commissione a sospendere l'applicazione del Patto di stabilità e crescita.

L'ordinamento dell'U.E. sembra conoscere, dunque, un inedito impulso per quanto

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2 L. Rodio Nico, *Il futuro della Pubblica Amministrazione ad un anno dal Piano Nazionale di Ripresa e Resilienza,* in *Riv. trim. dir. econ*., suppl. al n. 4/2022, 411 ss.

3 S. Cavaliere, *Il green deal e il tempo delle crisi*, in *Riv. trim. dir. econ*., suppl. al n. 4/2022, 526 ss.

concerne la sua stessa azione in campo economico, aggiornando e integrando i suoi obiettivi in base agli eventi di volta in volta susseguitisi nel corso degli ultimi anni: cicli economici dovuti dagli eventi quali guerre, cambiamenti geopolitici, crisi sociali, emergenza pandemia. In particolare, quest'ultima, ha contribuito in modo decisivo alla "riedizione" del ruolo dello Stato nell'economia considerato che solo grazie all'intervento di quest'ultimo è stato possibile sostenere le imprese. Tale intervento è stato reso possibile da una serie di deroghe[4] alle norme del diritto UE come, ad esempio, quelle sugli aiuti di Stato e, come si diceva poc'anzi, quelle relative al Parto di stabilità e crescita la cui sospensione ha consentito agli Stati di intervenire in maniera massiccia senza doversi "confrontare" con i vincoli finanziari che limitano al 3% il rapporto fra debito e PIL e individuano nel 60% il rapporto fra debito e PIL quale parametro di rifermento nel campo finanziario pubblico.

L'intervento dello Stato, così, nella fase attuale, si è sviluppato in termini di programmazione e sviluppo di iniziative a favore di taluni settori dell'economia, peraltro previamente indicati o suggeriti dalla stessa Commissione sin dal varo della prima comunicazione sugli aiuti in deroga[5], duramente colpiti dalla pandemia, e, in una fase successiva anche dagli effetti della guerra russo-ucraina[6], in modo da poter avviare una vera e propria azione di ripresa fondata su nuove misure.

La nuova legislazione economica, pur evidenziando il mutato ruolo dello Stato come finanziatore e imprenditore, declina pur sempre le sue forme e i suoi contenuti rispetto all'*agere* dell'UE e dai suoi organi di governo come dimostrano i numerosi interventi regolatori europei negli svariati campi della sua azione. Ciò che, invero, sembra assumere un portato innovativo è l'azione congiunta Stati-UE in un rapporto collaborativo forse mai registrato in passato, che delinea, peraltro, la concretizzazione di un'azione congiunta per il conseguimento di obiettivi comuni.

La programmazione euro-statale assume, infatti, carattere collaborativo e attuativo degli indirizzi economico-politici tracciati dalla Commissione: il Piano Nazionale di Ripresa e resilienza (PNRR) è, per l'appunto, lo strumento attraverso il quale lo Stato realizza gli indirizzi programmatici europei la cui disciplina è contenuta nel regolamento U.E. 2021/241[7] che, pur presentando i noti elementi condizionali, è dotato «di una forte funzione proattiva ed esce dalla prospettiva rimediale»[8] o di

4 G. Luchena, *Il "nuovo" intervento pubblico nell'economia: come sistema di deroghe e come coprogrammazione a impulso europeo*, in *Riv. trim. dir. econ*., suppl. al n. 4/2022, 57 ss.

5 G. Luchena, *Una nuova politica degli aiuti di Stato? Gli aiuti istantanei nel contesto dell'emergenza Covid-19 tra coerenza d'insieme e profili inediti*, in *Concorrenza e mercato*, vol. 26/27, 2019/2020, 17 ss

6 A. Poliseno, *Transizione energetica transnazionale*, in *Economia pubblica*, n. 1, 2023, 97 ss.

7 Regolamento (UE) 2021/241 del Parlamento europeo e del Consiglio del 12 febbraio 2021 che istituisce il dispositivo per la ripresa e la resilienza.

8 M. Passalacqua, *Green deal e transizione digitale: verso un diritto eventuale*, in Ead. (a cura di), *Diritti e mercati nella transizione ecologica e digitale. Studi dedicati a Mauro Giusti*, Pado-

mero sostegno consustanziata nelle misure ripristinatorie tipiche della disciplina derogatoria in materia di aiuti di Stato (in particolare, l'art. 107, §2, TFUE).

Il PNRR è come un documento strategico che il governo Italiano ha predisposto per accedere ai fondi del *Next Generation EU* per risollevare l'Italia dalla situazione di crisi e poter fornire un contributo economico concreto all'economia italiana anche, com'è stato sostenuto, in chiave di «attuazione accelerata delle transizioni verde e digitale»[9]. Il *Next generation EU*, il Quadro finanziario pluriennale, gli interventi della Banca Centrale Europea, i finanziamenti della Banca Europea per gli investimenti completano il quadro degli interventi, in una prospettiva di lungo periodo benché, come si è accennato, le norme dell'UE inerenti alla tutela della concorrenza applicabili agli Stati restino pur sempre il quadro regolatorio di riferimento[10].

Dal punto di vista "interno", il PNRR considera la transizione digitale fra i suoi elementi più significativi, programma che, del resto, la stessa Unione europea ha fatto proprio attraverso la predisposizione del programma DIGITAL con il quale si prevede l'assegnazione di ulteriori finanziamenti per favorire l'introduzione delle tecnologie per le imprese, le pubbliche amministrazioni e le famiglie: può evidenziarsi come il nostro Paese sia sempre stato caratterizzato da una bassa penetrazione digitale nei principali settori dell'economia, e, infatti, secondo l'indice DESI 2020 l'Italia ci colloca in 25esima posizione su 28 Stati U.E.[11].

La digitalizzazione è una missione trasversale, invero avviata prima della pandemia (si pensi, solo a titolo di esempio, alle alla strategia per il mercato digitale adottata nel 2015[12] e alle iniziative, sempre della Commissione, per il futuro digitale europeo[13]), ha subito un'accelerazione notevole a partire dal 2020, apportando numerosi cambiamenti, alcuni dei quali di carattere strutturale.

Tutto questo ha portato ad un notevole incremento della domanda di servizi digitali quali: *smartworking, e-commerce, streaming*; oltre alle nuove piattaforme di comunicazione, facendo, quindi emergere i limiti dell'attuale infrastruttura del paese.

va, 2022, 7.

9 L. Ammannati, A. Canepa, *Intervento pubblico e finanza sostenibile per la transizione ecologica*, in *Riv. trim. dir. econ.*, suppl. al n. 4/2022, 140.

10 G. Luchena, *Il "nuovo" intervento pubblico nell'economia: come sistema di deroghe e come coprogrammazione a impulso europeo,* cit., 60.

11 V. i risultati contenuti nel Report della Commissione, 2030 Digital Decade – Report on the state of the Digital decade 2023, reperibile online al sito Relazione 2023 sullo stato del decennio digitale | Plasmare il futuro digitale dell'Europa.

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A questo si aggiunga come, ad esempio, nell'ambito della disciplina sugli aiuti di Stato, gli investimenti per la banda larga[14] siano considerati, ai sensi del regolamento n. 651 del 2014 e succ. mod. e integr.[15], esentatati dalla notifica preventiva, contribuendo così allo sviluppo delle tecnologie per le imprese e i territori: un percorso volto a rendere sempre più attivo il ruolo degli Stati per far fronte alle sfide della transizione digitale. Recentemente, peraltro, in questo settore, la Commissione ha approvato una comunicazione concernente le modalità con le quali valuterà gli aiuti alla banda larga notificati sia con riferimento a quelli previsti in applicazione dell'art. 106, §2, TFUE sia rispetto agli aiuti discrezionali di cui all'art. 107, §2, TFUE[16]. Se ne coglie la rilevanza nell'ambito della politica di concorrenza, considerando come gli aiuti di Stato possano svolgere un ruolo significativo proprio nel conseguimento dell'obiettivo della strategia digitale europea e nello sviluppo di una strategia di investimento coordinata per la connettività: «lo scopo del controllo degli aiuti di Stato nel settore della banda larga è garantire che gli aiuti di Stato si traducano in un livello di copertura e di utilizzo della banda larga più elevato di quello che si verificherebbe senza l'intervento statale, sostenendo nel contempo servizi di qualità superiore e a prezzi più accessibili e investimenti favorevoli alla concorrenza. Qualsiasi intervento statale dovrebbe limitare il più possibile il rischio di escludere gli investimenti privati, alterare gli incentivi agli investimenti commerciali e, in ultima analisi, distorcere la concorrenza in contrasto con l'interesse comune»[17].

Ed è proprio in questo scenario che il PNRR ha previsto un significativo contributo pari a circa 48 miliardi di euro, fondamentale per favorire il processo di innovazione e di digitalizzazione del paese, con una ricaduta importante sulle imprese Italiane.

L'intervento pubblico nell'economia per il tramite dei finanziamenti alla digitalizzazione della pubblica amministrazione rappresenta un elemento significativo del nuovo corso della programmazione economica (non certamente a carattere di conformazione del privato[18]), cioè, in definitiva, un tratto distintivo della trasformazione sociale in corso. La transizione al digitale risulta essere un obiettivo fondamentale, così come è altrettanto importante l'investimento sulla PA, che ai fini della costruzione di percorsi di efficienza della pubblica amministrazione

14 Comunicazione della Commissione — Orientamenti dell'Unione europea per l'applicazione delle norme in materia di aiuti di Stato in relazione allo sviluppo rapido di reti a banda larga.

15 Regolamento (UE) n. 651/2014 della Commissione del 17 giugno 2014 che dichiara alcune categorie di aiuti compatibili con il mercato interno in applicazione degli articoli 107 e 108 del trattato.

16 Comunicazione della Commissione Orientamenti in materia di aiuti di Stato a favore delle reti a banda larga 2023/C 36/01, C/2022/9343.

17 Cfr. Comunicazione della Commissione Orientamenti in materia di aiuti di Stato a favore delle reti a banda larga, punto 10.

18 S. Amorosino, *"Neoprogrammazioni" pubbliche o provate e mercati in trasformazione,* in *Riv. trim. dir. econ.,* suppl. al n. 4/2022, 55.

costituisce la piattaforma abilitante per la gran parte delle *policy* del nostro Paese. Si riscontra, invero, ancora uno iato tra il privato e il pubblico: mentre nel primo caso, le tecnologie digitali sono utilizzate dalla gran parte delle imprese italiane, il che consente un posizionamento di rilievo nelle speciali classifiche sull'argomento, non può dirsi che la medesima posizione possa essere assegnata al pubblico nel senso che i servizi pubblici digitali non sempre sono al passo con i tempi. Non a caso, la Strategia per l'innovazione tecnologica e la digitalizzazione del Paese per il 2025 prevede un programma organico per favorire lo sviluppo della società digitale che pone al centro il cittadino e le imprese ai fini dello sviluppo dell'economia in un quadro di riferimento volto alla implementazione dello sviluppo sostenibile ed inclusivo grazie, per l'appunto, alla digitalizzazione posata al servizio delle persone, delle comunità e dei territori.

LABOR LAW DYNAMICS IN THE REPUBLIC OF ALBANIA. (AN APPROACH TO THE EUROPEAN UNION LEGISLATION)

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ABSTRACT

What appears today in the world and undoubtedly in Europe and the Balkans is the constant fluctuation of the labor market. Previous studies conclude that this instability comes as a result of eventual changes in socio-economic and legal factors as well as human efforts to follow the global trend. Finding themselves in the middle of labor, capital and services movements the governments, but especially those of countries that are not part of the European Union, are engaged in drafting economic policies and legal platforms to create attractive conditions for foreign investments. Investments are envisaged as expanders of the labor market, as well as the development of positive dynamics in the sustainability of workspaces, where in the center is the worker (the employee).

However, the labor market, under periodic pressure from global competition, focuses on the socio-legal contract between the employer and the employee in terms of safety at work. This paper aims to bring attention to the situation of labor legislation in the Republic of Albania, the improvement and the expectations conform the EU law.

Keywords: socio-legal contract; employee; labor legislation; EU law

1. The well-functioning of EU institutions and traties

We should undoubtedly mention that the history of the European Union has gone through a long chain of stages and experiences, which in themselves have contributed to the consolidation of institutions. Despite the ups and downs and failures, the European project is still unfinished. The legal framework created by the EU chancelleries has now become a consolidated component in the political-legal life, as well as in the societies of the member states. On a continuous basis, many decisions are made based on the Union treaties, which fundamentally affect the organization of the activities of the member states and which directly affect the

daily life and activities of every citizen. Thus, the citizens of member countries are not only citizens of their own country, they are also citizens of the EU.

The concept of European citizenship is the basis of the well-functioning of institutions. The free movement concept in this case has two dimensions, the economic and the social one. The economic dimension, in a sense, aims to present the worker as a mobile person who contributes to the creation of a single market and to the economic prosperity of the European Union. The social dimension, on the other hand, presents the worker as a human being who exercises a personal right to live and work in a country without facing any kind of discrimination. The legal basis for the free movement of people, defined in the Maastricht Treaty (1992)[1] foresees as follows:

1. Free movement will be ensured by the Community.
2. This freedom of movement will lead to the removal of any kind of discrimination between workers of the member states, regarding employment, remuneration and other work requirements as well as any other benefits derived from it.
3. It would be right for them to submit to the laws based on the public policy or the public health of the country they have gone to.
4. To move freely within the territory of the member states for employment.
5. To stay in a member state due to employment in accordance with the provisions that regulate the employment of citizens of this state determined by law, based on the regulation, or administrative activities.
6. To stay in the territory of a member state after having been employed in that state, depending on the conditions that will be set in the implementation of the regulations drawn up by the commission.
7. The provisions of this article will not apply to employment in the public service.

2. The treaty of Amsterdam

The treaty of Amsterdam defined four main objectives[2] The treaty emphasized the improvement of working conditions, a freedom and security system and non-discrimination at work, regardless of the fact that the member countries had improved their labor legislations. It was the obligation to ratify the conventions of the International Labor Organization (ILO), which countries had previously ratified in their parliaments and made part of their internal legislation. The treaty

1 Milo.P (2002) Bashkimi Europian. Tirane Albpaper
2 Laker.V (2003) Europa ne kohen tone. Tirane Dituria

also underlines the equality in remuneration for the work performed between men and women. The objective that the Treaty defines for the European Union is "a high level of employment", which will be achieved with a good coordination between the national policies of the member countries for the fight against unemployment, such as: the creation of comparison and evaluation mechanisms or common action plans. In this way, the new Treaty reaffirms the responsibility of the member states themselves in the field of employment, putting in the foreground the need for cooperation between them. Thus, pilot employment projects and job creation measures will be financed by European funds. The social policy (improvement of labor legislation, fight against discrimination) was placed in the range of Community policy and all member countries must implement it, including the United Kingdom. The treaty foresees measures for the strengthening of fundamental rights, prohibits any kind of discrimination, recognizes the right to information as well as consumer protection. It authorizes the drafting of a European regulatory framework for the protection of consumer's health, in the field of animal products or substances of human origin.

3. Interpreting key provisions highlighted by directives

Article 80 of the Labor Code of the Republic of Albania in point 1 defines that: By night work is meant the work carried out from 22 o'clock until 6 o'clock in the morning. Point 2 defines that the duration of night work and of the work carried out one day before or after it must not be longer than 8 hours without interruption. They must be preceded or followed by an immediate daily break.

If we analyze it, this provision considers the employee as a human being who needs to be treated with dignity as a social being with a certain energy capacity for work. The daily break defined in point 2, which precedes or follows the night work, clearly shows this. The word "immediate" makes the provision mandatory, completely regulating the employer-employee relationship and leaves no room for equivocation.

In the following, we analyze the provisions of the Labor Code, where annual vacations, other vacations, vacations under special conditions, etc. are defined. In these provisions we will observe the spirit of international law, as we have analyzed in the issues above related to the conventions of the International Labor Organization ratified as well as the confirmation with the directive of the European Union.

Labor Code article 96

Other vacations, determines the cases of 5 days paid vacation in case of misfortunes. They are defined as other vacations, since the code provides annual vacations of 28 calendar days for the employee, if he⁄she has completed 1 year of work. Regarding

the prohibition of gender discrimination in labor relations and the exercise of the profession, in 2015, the legislator changed article 105 of the Labor Code, which we quote below: "Prohibited are pregnancy tests before starting employment, if they are demanded by the employer, except for the cases where the workplace requires to work under conditions that may negatively influence on pregnancy, or that may harm the mother's or child's life or health".

In 2015, the legislator also made a change in Article 98 to protect children from abuse related to their possible work under the age set by law. Employment of children under 16 is prohibited. We analyze that this provision is a prohibitive norm addressed to the employer. Other similar laws or by-laws also determine the sanction for any employer that violates this provision. We note that the legal norms operating in the Republic of Albania have been consolidated, or harmonized in the spirit of international law and EU law, mandatory for candidate countries for EU integration.

The International Labor Organization is a specialized organization with prominent legal personality. Due to its great influence in the legislation framework of the member states, it is also subject to international law. Starting from all this influence, which in the world and European level has done extraordinary work in narrowing the inequality that has stripped the subjects of the legal relationship of work from any influence of positive law. On the one hand, the employer who is equipped with all the tools: the capital, the order, the initiative to draft the employment contract (obligatory in accordance with the hierarchy of legal acts). On the other hand, the employee, who only offers his work, intellectual or physical, in exchange for remuneration.

These conventions, have first influenced for a safe legislation in the member countries of the European Union, and as for the non-member countries of the EU, it remains an obligation and a daily challenge, starting from all governing bodies, up to each individual, in the quality of employers, or employees. Under this influence, the Republic of Albania has ratified a considerable number of conventions and has followed and fulfilled several EU directives, one of which we dealt with in this paper, with the aim of analyzing the conformity of internal labor legislation. Starting from Article 9 of the Constitution "Prohibition of discrimination up to the freedom of trade unions, additional working hours, salary regime, etc.

4. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time

Council Directive 93/104/EC of 23 November 1993, concerning certain aspects of the organisation of working time (3), which lays down minimum safety and health

requirements for the organisation of working time, in respect of periods of daily rest, breaks, weekly rest, maximum weekly working time, annual leave and aspects of night work, shift work and patterns of work, has been significantly amended. In order to clarify matters, a codification of the provisions in question should be drawn up.

Article 137 of the Treaty provides that the Community is to support and complement the activities of the Member States with a view to improving the working environment to protect workers' health and safety. Directives adopted on the basis of that Article are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The provisions of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work(4) remain fully applicable to the areas covered by this Directive without prejudice to more stringent and/or specific provisions contained herein.

The improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations.

All workers should have adequate rest periods. The concept of "rest" must be expressed in units of time, i.e. in days, hours and/or fractions thereof. Community workers must be granted minimum daily, weekly and annual periods of rest and adequate breaks. It is also necessary in this context to place a maximum limit on weekly working hours.

Account should be taken of the principles of the International Labour Organisation with regard to the organisation of working time, including those relating to night work.

Research has shown that the human body is more sensitive at night to environmental disturbances and also to certain burdensome forms of work organisation and that long periods of night work can be detrimental to the health of workers and can endanger safety at the workplace.

There is a need to limit the duration of periods of night work, including overtime, and to provide for employers who regularly use night workers to bring this information to the attention of the competent authorities if they so request.

5.The impact of ILO (International Labor Organization) on the content of labor legislation, with a focus on the employer-employee legal relationship

The Republic of Albania has done a long-term, careful and quite intensive work to align the internal legislation with the international one (it has ratified 54 conventions

of the International Labor Organization) and especially that of the European Union. Legislators and all links of the government chain are focused on following the EU directives and have harmonized the internal legislation, as a key factor in the steps for EU integration. One of the directives is about labor law. It should be emphasized that labor law as a delicate (human-centered), dynamic, statutory, democratic discipline (the role of conventions and directives has been dominant) has always changed positively. This change or improvement of the provisions has come as a necessity, not only for the harmonization of the internal legislation with the international and European one, but also as the necessity of the change of the socio-economic circumstances, as well as the changes of the global market.

These very important elements aimed at improving the working conditions of the employee, which is protected by conventions, pacts, but also by our Labor Code. The dignity of the employee, the equality in remuneration and exercise of the profession (man, woman), ever tighter restriction of child labor, payment of overtime hours, night work hours, days off, starting from annual holidays to other holidays are all protected (Article 96 of the Labor Code). Below we will refer to the Labor Code and the hierarchy of labor law norms, starting from the constitution and similar laws to comply with some directives....it defines as well as some conventions of the International Labor Organization, which refer to the same purpose for the signatory and then ratifying states, of which Albania is a part.

Conclusion

The European Union has come a long way, from its creation with the first states to today, where it is a union of states with common policies, aligned legislation, and stabilized economies. During this journey, a series of institutions were created, which are responsible for the proper functioning, but also for the expansion of this organism, based on the criteria that the states meet.

The current challenge is the integration of several countries in the Balkans, including Albania. The Republic of Albania has harmonized its internal legislation with that of the European Union in almost every discipline of law. We mention the establishment a few years ago of the Administrative Court, the fulfillment of the Stabilization and Association Agreement, as well as the rigorous alignment of labor legislation with the acquis Communautaire. In our paper, we focused on the EU directive, as well as in several conventions of the International Labor Organization. The challenges for countries such as Albania, North Macedonia, etc. will be present, until full membership in the EU. The free movement of people, one of the four basic freedoms, started as a movement of women workers, who were given more rights, guaranteeing stability in a common market. The free movement of people, one of

the four basic freedoms, started as a movement of workers, who were provided with more rights, guaranteeing their stability in a common market. The relocation from the workers' movement to the people's movement and becoming European citizens, made the people of all member countries, but also those of the candidate countries, to be sure that: "It is the citizens of Europe who own Europe and it is not Europe that owns them"[3]

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EU ENLARGEMENT THROUGH ECONOMIC INTEGRATION: AN ANALYSIS OF THE "GROWTH PLAN FOR THE WESTERN BALKANS"

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ABSTRACT

The paper explores the challenges and strategies in achieving economic convergence between the European Union (EU) and the Western Balkans, particularly considering the socio-economic impacts of the 2022 Russia-Ukraine war. The conflict significantly slowed the Western Balkans' GDP growth, necessitating new fiscal measures and emphasizing the need for economic alignment with the EU.Economic convergence, crucial for EU membership, requires alignment with EU economic systems and structures, for its achievement functioning market economies and the ability to cope with competitive pressures are required. The EU's "Growth Plan for the Western Balkans," with a 6 billion budget for 2024-2027, aims to bridge economic gaps through economic integration. This includes investments in transportation and renewable energy. Despite challenges like political complexities and resistance to reforms, the plan is a crucial step towards regional development and EU integration.

Keywords: *European Union; enlargement; economic integration; Western Balkan.*

1. Economic aspect of EU's enlargement politics

One of the most relevant issues that characterized the relationship between the European Union and the Western Balkans has been the socio-economic convergence and the economic integration. This problem was exacerbated by the start of the war between Russia and Ukraine at the beginning of 2022, that caused a significant slow in the Western Balkan region's GDP growth (from 7.7 to 3.2%)[1].

1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee And The Committee Of The Regions, *2023 Communication on EU Enlargement Policy*, COM(2023) 690 final,Brussels, 8.11.2023, 10.

This difference during 2022 was due to new fiscal measures adopted to mitigate the economic impact of the war. But, from the end of the same year the inflation in the Western Balkans started to slow again.

Also, other problems can be found in the level of the economic convergence in terms of GDP per capita in purchasing power standards that "is at between 30% and 50% of the EU average […] and is not progressing fast enough"[2].

Following the EU's requirements, the achieving of a higher level of convergence is pivotal in facilitating the inclusion of external countries. In this context, "convergence" signifies the process of these countries aligning their economic systems and structures with those of the EU member states. This means that a stronger level of convergence, which entails making the Western Balkan countries more like the EU in terms of their economies and market frameworks will streamline their path to EU membership.

For example, the fifth round of EU enlargement showed the impact that economic integration and market opening arising from membership of the Single Market combined with Cohesion Policy has on economic convergence: newly admitted member states reached income levels that in some cases exceeded 90% of the average income levels in the EU[3]. This was the outcome of policies meant to lessen economic disparities (Cohesion Policy), as well as economic integration and market liberalization brought about by their membership in the EU. Apart from that, structural reforms are vital to ensuring sustainable economic growth in the medium term. They involve modifying several economic factors, including as institutions, laws, and corporate practices, to improve their effectiveness and competitiveness.

Aspiring EU members need to fulfill two essential economic requirements, which are:

a) Functioning Market Economies that currently none of the Western Balkan countries possess and this implies that their economic systems are not yet operating optimally, and there are barriers to fair market competition.

b) The "capacity to cope with competitive pressure"[4] that indicates the capacity of the countries to withstand competition and market forces within the EU.

These requirements plus the implementation of the policy guidance are fundamental for the alignment of the economies to the EU's standards. It is crucial to boost fiscal sustainability, foster the development of human capital, and construct resilience against potential shocks. To draw in investment and spur economic growth, efforts

2 Ibidem, 11.

3 Proposal for a Regulation of the European Parliament and of the Council on establishing the Reform and Growth Facility for the Western Balkans, COM(2023) 692 final 2023/0397 (COD), Brussels, 8.11.2023, 1.

4 2023 Communication on EU Enlargement Policy, cit., 41.

should be made to further the digital and green transitions, enhance the business climate, and strengthen regional economic integration based on EU norms.

2. The "Growth Plan for the Western Balkans"

An example of the EU's enlargement politic are the progresses made by the Western Balkan countries. These countries are having a progress but "the level and speed of convergence between the Western Balkan partners and the EU is not satisfactory"[5]. The EU underlined the importance of a "jump-start" for the Western Balkans to accelerate reforms and investments to speed up the enlargement process and consequently the economies' growth.

The "Growth Plan for the Western Balkans"[6] is the most significant proposal put forth by the European Commission. It is a large-scale endeavor designed to promote EU expansion via economic integration. The strategy, which has a budget of 6 billion euro set up for 2024–2027, aims to reduce the economic gaps between the EU and the Western Balkans. The European Commission recently announced a fresh €680 million investment package to assist five flagship projects in rail transportation and renewable energy in the Western Balkans, demonstrating the significance of these goals. The EU's Economic and Investment Plan for the Western Balkans includes this as its sixth financing package.

The four pillars that support the new growth plan are designed to:

1) Increasing economic integration with the single market regulations and simultaneously open relevant sectors and areas to all their neighbors in accordance with the Common Regional Market. For all the countries that have joined the EU, their economic development has been primarily powered by integration with the single market. This calls for growing financial integration with the single market of the EU. Enhancing ties with the EU's single market is going to assist countries on their path to being part of it and immediately benefit their people. Providing the Western Balkans more opportunities to forge closer links with the single market is the primary focus of the growth plan. As soon as the necessary goals have been fulfilled, the purpose is to transition economies toward the single market.

2) The action plan for the Common Regional Market[7] sets the four freedoms of movement of products, some services, capital, and labor within the Western Balkans.

5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee Of The Regions, *New growth plan for the Western Balkan, Brussels*, 8.11.2023 COM(2023) 691 final, 1.

6 European Commission, New growth plan for the Western Balkan, cit.

7 Western Balkans Leaders, *Declaration on Common Regional Market.A catalyst for deeper regional economic integration and a stepping stone towards EU Single Market*, Sofia, 10.12.2020 and Western Balkans Leaders, *Common Regional Market.A catalyst for deeper regional economic integration and a stepping stone towards EU Single Market*, Sofia, 10.12.2020).

It is based on EU regulations and standards. strengthening the level of economic integration throughout the Western Balkans via the Common Regional Market, in tandem with EU regulations and recommendations, has the potential to bolster their economies by 10%[8]. This aligns with the region's Green Agenda and Digital and Innovation Agenda, also to increase Western Balkans' appeal to European investors.

3) Promoting the *Western Balkans' road* to EU membership through the acceleration of reforms also on the fundamentals cluster[9] and enhancing sustainable economic growth;

4) The last pillar is the increase of financial support for the reforms with loan and non-repayable support.

One important advantage of being a member of the EU is economic convergence. It has already been shown that integration with the EU single market and the Cohesion Policy have beneficial impacts on a country's gross domestic product and income levels. This demands expenditures in infrastructure and economic modernization, both of which need additional funding.

Nevertheless, to attract in private capital and establish a sustainable, low-carbon economy, basic reforms (such as bolstering the rule of law and fundamental rights) are essential. This new growth plan raises the potential value of every stage through establishing a package of measures that reinforce each other and build upon the current enlargement methodology[10]. Additionally, it aims to speed up negotiations for membership by offering additional incentives and outlining the advantages of integration prior to EU accession.

3. Conclusions

Is a matter of fact that speed is crucial now more than ever and the goal is for the growth strategy to begin having a significant impact by the next year.

Regarding the basics, the growth strategy isn't impacted by the current accession processes or specific requirements specified in this area. On the other hand, it will facilitate this process by encouraging nations to adopt and execute the acquis more quickly. Furthermore, a strong emphasis on economic integration within the Western Balkan region should assist the nations in concentrating on their shared future as EU members and in overcoming bilateral obstacles that, regrettably, impede and waste

8 M. Gomez Ortiz; V. Zarate, D. Roman; D. Taglioni, *The Economic Effects of Market Integration in the Western Balkans*,in *Policy Research working paper*,no. WPS 10491 Washington, D.C., World Bank Group, available at http://documents.worldbank.org/curated/en/099544006202322289/IDU062c50b5106fe8046d1080530898bbe45d6fa, last time visited 20.01.2024.

9 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Enhancing the accession process - A credible EU perspective for the Western Balkans*, COM(2020) 57 final, Brussels, 5.2.2020.

10 Enhancing the accession process – A credible EU perspective for the Western Balkans, cit.

too much energy in the region.

In conclusion the "Growth Plan for the Western Balkans" is one of the most significant economic initiatives that European Commission is using to promote the economic integration to boost enlargement process. The plan is not exempted from challenges that include political complexities, resistance to reforms, and historical legacies.

In this kind of striking a balance between the benefits and obstacles of economic convergence is fundamental, especially given the current economic disparities. The role of single market integration as a driver of growth cannot be overstated. Ultimately, the Growth Plan represents a pivotal step towards regional development and EU integration, contingent upon the commitment and adaptability of all stakeholders involved.

AND INVESTMENT PLAN FOR THE WESTERN BALKANS

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ABSTRACT

Since 2006, Albania has undertaken a series of mandatory reforms, among others, to implement the relevant EU legislation on Renewable Energy Sources (RES), Energy Efficiency (EE), electricity power, etc. Lately, the EU accession process has created financial opportunities and a strong imperative for the Albanian government to accelerate the green transition further.

The Green Agenda for the Western Balkans provides nowadays a roadmap for Albania's transition in line with the European Green Deal. Among its practical interests are the plans that identify vital investment objectives, including Objective 6, which aims to expand the wave of EU renewal on renovating blocks of buildings, solar panels, etc., in the Western Balkans. In this direction, the Economic and Investment Plan for the Western Balkans 2021-2027 offers a substantial package for supporting flagship investments.

The advances in solar photovoltaic applications in Albania demonstrate the viability of solar energy production. However, domestic consumers find it challenging to take advantage of this novelty. Then, this research paper aims to understand what elements contribute to their deployment.

This applies to legal framework analysis to identify barriers and opportunities for a comprehensive legal infrastructure to enable the self-producers of renewable energy in Albania. Both regulatory measures, horizontal measures and incentives seem to be needed to increase this indicator. Our recommendations are summarized in three main pillars: legal, regulatory, macro, and policy, aiming to enable stakeholders to invest in this fundamental element of the energy transition.

Keywords: *EU, Green Agenda, Photovoltaics (PV Solar), Renewable Energy Sources (RES), Green Transition*

1. Introduction to the EU Green Agenda for the Western Balkans

The EU has long been a front-runner in the spread of solar energy. The European Green Deal and, lately, even the REPowerEU plan have turned solar power into a building block of the EU's transition towards clean energy. Its accelerated deployment contributes to reducing the EU's dependence on imported fossil fuels. In addition, solar energy is the most accessible renewable energy for households and contributes to protecting consumers from volatile energy prices.[1]

Related to the above, participation in the Vienna Energy Treaty Community has a decisive role in the energy sector reforms in the Western Balkans countries. In this context, Albania, as one of the founding countries, has undertaken a series of mandatory reforms since 2006, including implementing relevant EU legislation on electricity, Renewable Energy (RES), Energy Efficiency (EE), etc.[2]

The country's historic progress, most recently through the Berlin Process, enables moving forward with integrated policies related to and putting people in the centre of the energy sector, such as the EU's Green Deal. Framework that has been translated into the Green Agenda for the Western Balkans, approved by the leaders of the Western Balkans at the Sofia Summit, Bulgaria, in November 2020. Approval accompanied by the presentation of the Economic Investment Plan of 9 billion euros for the Western Balkans, approved by the European Commission.[3]

In addition, within the framework of the approval of the Multi-Year Financial Framework, 14.5 billion euros of IPA III funds will be mobilized for the six countries of the Western Balkans for the period 2021-2027 to support economic convergence with the EU. Also, the investment capacity of the region should be increased by mobilizing a new Western Balkan guarantee structure, with the ambition to raise investments to 20 billion euros potentially.[4]

Then, among others, the EU's Green Deal plan identifies key investment objectives, including specific objectives: e.g. Objective 6 "Renovation wave".[5] In

1 European Commission (n.d.). *Renewable energy. Solar energy.* Retrieved January 9, 2024, from https://energy.ec.europa.eu/topics/renewable-energy/solar-energy_en

2 Energy Community (2023, December 11). *Annual Implementation Report 2023: Serbia emerges as the top performer, Ukraine and Moldova make strides in reforms.* https://www.energy-community.org/news/Energy-Community-News/2023/12/11.html

3 European Commission (2023, December 13). *European Commission announces additional €680 million investment package for the Western Balkans under the Economic and Investment Plan* [Press release]. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6364

4 Western Balkans 6 Chamber Investment Forum - WB6 CIF (2020, October 7). *Economic and Investment Plan for the Western Balkans*. https://www.wb6cif.eu/2020/10/07/economic-and-investment-plan-for-the-western-balkans/#:~:text=The%20investment%20capacity%20of%20the,the%20EU%20–%20is%20a%20priority

5 EurActiv (2020, October 15). *EU launches 'renovation wave' for greener, more stylish buildings.* https://www.eceee.org/all-news/news/eu-launches-renovation-wave-for-greener-more-styli-

this framework, the Commission proposes expanding the wave of EU renewal by renovating building blocks and installing solar panels in the Western Balkans.[6]

Furthermore, the so-called Clean Energy for all Europeans Package CEP should be considered.[7] In this direction, on 31st December 2023, the Renewable Energy Directive 2018/2001 provisions became mandatory for the Western Balkans region. This directive and the Directive 2019/944 provide the framework for a "bottom-up" approach to deploying photovoltaic resources for self-production.[8]

2. Presentation of the state of art and market needs in Albania

Base to the detailed research, it could said that the energy market in Albania is at a moment of significant transformation. Like the entire region and Europe, the country has gone through a critical crisis (related to COVID-19, post-Covid inflation, and the war in Ukraine).[9] In this framework, the essential issue is how to achieve the security of the energy supply and successfully implement the energy transition with a low cost for the public budget and optimal benefit for the consumer.

In this context, while Albania is entering a new historical phase, there are many essential and high-interest aspects, such as the acceleration of market liberalization, the removal of subsidies, the strengthening of the network, etc., which belong to mostly the public sphere or market regulations. However, the successful implementation of the energy transition following the Green Agenda of the EU and the Economic and Investment Plan for the Western Balkans 2021-2027 is not a simple formal process related to a public authority but constitutes a multifaceted process that requires the broad involvement of stakeholders.

In this direction, this analysis identified and treated the topic related to the development of energy resources for self-production from PV, based on the specific

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6 Bartlett, W., Bonomi, M., & Uvalic M. (2022, May). *The Economic and Investment Plan for the Western Balkans: assessing the possible economic, social and environmental impact of the proposed Flagship projects*. European Parliament. Policy Department for External Relations Directorate General for External Policies of the Union. https://www.europarl.europa.eu/RegData/etudes/STUD/2022/702561/EXPO_STU(2022)702561_EN.pdf

7 For more, find European Commission (n.d.). *Clean energy for all Europeans package*. Topics. Energy strategy. Clean energy for all Europeans package. Retrieved January 13, 2024, from https://energy.ec.europa.eu/topics/energy-strategy/clean-energy-all-europeans-package_en

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9 European Parliament (2022, October). *The impact of the COVID-19 pandemic and the war in Ukraine on EU cohesion Part II: Overview and outlook*. Policy Department for Structural and Cohesion Policies Directorate-General for Internal Policies. https://www.europarl.europa.eu/RegData/etudes/STUD/2022/733095/IPOL_STU(2022)733095_EN.pdf

features of the country (as one with the most favourable geographical position),[10] simultaneously constituting one of the most prominent developments to get involved and give a contribution that is in the capacity of the academia and my specific profile as an energy lawyer.

In this context, distributed photovoltaic energy for self-consumption (DER) is considered a strategic instrument. Its use increases supply security, reduces network losses, and aligns with the energy and environmental targets undertaken by the Albanian government. Thus, it can be considered one of the most suitable profiles of the energy sector where cooperation and partnership between actors in Albania and beyond can be essential and have a distinct impact.[11]

3. Presentation of the specific issues and problems of distributed photovoltaic

Entering in the specific analysis of renewable energies for self-production, since 2017, the legal road to the construction of photovoltaic parks has been paved.[12] In the last year, based on developments related to rising energy prices and the emergency related to the conflict in Ukraine, the government's priorities have included the development of other alternative renewable sources, such as solar energy. The latest data show dozens of solar energy projects, from 10 MW to 275 MW, reaching over 1900 MW in different stages of development.[13] Some are being implemented and are expected to enter production closely.

On the other hand, this trend was complemented by the possibility of the self-production of energy when MIE approved the most favourable option of the net metering scheme in June 2019.[14] The scheme is open to renewable energy projects up to 500 kWp for households, enterprises, and small, medium, and public institutions. In recent years, the country has achieved significant results in the self-production of electricity. More than 1300 self-producing energy subjects from solar panels, with a

10 Lluri, L., Gërmenji, B., Vyshka, E., & Myshketa, A. (2023). The Use of Photovoltaic Technology in Albania: A Good Opportunity to Face the Energy Crisis. *Interdisciplinary Journal of Research and Development, 10*(2), 16. https://doi.org/10.56345/ijrdv10n203

11 Pachano, J. E., Iglesias, M. F.-V., Peppas, A., & Bandera, C. F. (2023, September). Enhancing self-consumption for decarbonization: An optimization strategy based on a calibrated building energy model. Energy and Buildings, Volume 298, 1 November 2023, 113576. https://doi.org/10.1016/j.enbuild.2023.113576

12 Law No. 24/2023 "On Encouraging the Use of Energy from Renewable Sources" and DCM No. 369, dated 26.4.2017 "On the approval of the methodology for determining the purchase price of electricity produced by small renewable sources from the sun and wind".

13 Our estimation is based on empirical calculation.

14 Instruction No. 3, dated 20.6.2019 "For the Approval of the Facilitated Authorization Procedure for Connection to the Distribution System of Small Renewable Projects for Self-Producers of Solar Electricity".

capacity of 127 MWp, are connected to OSSH.[15]

The issue is that 59% of these consumers are located in the Tirana-Durrës region. Therefore, there is a concentration related to the area (not finding the same resonance everywhere in the country). As well as the concentration that is more on business, since from this category, 71% are business entities, 27% family and 2% budget. Then, the problem is that the attention is mainly focused on the investments for the business: this is not something negative, but in parallel, it must reach the citizens, even considering they make up the most significant number with about 1 million consumers.

All investments still face problems such as obtaining permits, finding financing for their projects, implementing them in practice, and similar, where family members especially need a particular treatment.[16]

Changing this situation would be optimal for all parties: both for the government regarding the positive effects that this massification accompanies, as well as for businesses regarding the opportunities to operate in the market that will be created and, of course, for the citizens as the primary beneficiaries. Our goal in these research papers is to determine how to reach a prominent approach to the problem.

4. Results of the analysis of problems and the necessity of their solution

The focus of this paper is to support the increase in production for self-consumption (prosumers) of energy from photovoltaic panels (PV) in Albania, which has been analyzed, firstly, in the identification of the problems and challenges of this sector. To further understand what can be improved in this market, compare it with the practices of neighbouring countries. All to reach the proposal of the necessary changes in the legal framework to enable wide access to the family consumer, so that they can benefit from the open opportunity to produce their energy.

During this analytical process, a group of improvement proposals have been identified by implementing the legal provisions in force and new legal interventions in the primary legislation, by-laws and regulatory acts considered essential in the sector's development, which we will discuss hereafter.

Firstly, to create a favourable climate for the development of this new ecosystem, it is recommended to implement the legal provisions in force (in addition to raising the capacities of all parties and expressing the will to cooperate) as follows:

- The compensation scheme of the self-producer of renewable energy based on the net billing methodology;[17]

15 Official data of Ministry of Infrastructure and Energy until November 2023.

16 As it happens, e.g. Serbia, North Macedonia, Kosovo, etc.

17 For small consumers, it is proposed that this scheme be of the net metering type (with a 1 to 1 coefficient), referring to the operator's practice in Serbia.

- The simplified as possible (diversifying their treatment) for handling the procedure applications for self-producers;[18]

- Approves rules for the sale of self-produced energy;

- Increase the regulation in the transparency;[19]

- Free of charge (or reduced to the maximum) for the increase of the additional required power;

- The payment of the administrative fee for existing small customers (e.g. for connection 17,000 ALL) is removed (or reduced to the maximum);

Secondly, among the main proposals on new legal interventions of the primary legislation, by-laws and regulatory acts that are considered essential, sees:

- Create a fund to support solar energy (PV);[20]

- The VAT exemption of all applies regardless of the value of the investment;[21]

- Make available mapping areas with network capacity to absorb the distributed sources;

- Develop a platform, application, website, or similar to an information hub point;[22]

- Improve the consultation process with interested parties.

5. Conclusion and recommendation

The country is entering an emergency market for developing alternative energy production and supply sources. The analyses revealed that the concept of the active customer, in particular the prosumer concept, became alive with the second generation of legislation[23] while still evolving. Numerous elements of Albania's current framework governing prosumers should be implemented and developed further.

A framework that allows thinking about the exponential increase of the projects that promote the possibility of sharing among domestic consumers to self-production.

18 For small consumers, e.g. 7, 10, 20 and 50 kWp, these procedures should be as simplified as possible, referring to the practice followed by the operator of Kosovo, Serbia).

19 In this direction, the provision of point 7 of Instruction No. 3, dated 20.6.2019, according to which "Within 6 months from the issue of this instruction, the online portal of PV plant applications for self-production according to the net metering scheme must be established".

20 This fund can be an independent entity or be charged to the Renewable Energy Operator (OER) provided for in Article 16 of Law No. 24/2023. The construction of the support scheme can be included in the provisions of point 7, article 20 of Law No. 24/2023.

21 More specifically, amendment of the decision of the Council of Ministers no. 212, dated 20.04.2018, "For some additions and changes related to the Law no. 92/2014 "On Value Added Tax in the Republic of Albania", amended".

22 To here, as a reference model can be used a similar scheme built by the Agency for Energy Efficiency (AEE) regarding solar panels for heating water for family consumers.

23 Law No 7/2017 on "Promotion of the Use of Energy from Renewable Sources".

But to this, constant and tireless communication and advocacy are required to mobilise interest, increase understanding and knowledge, and facilitate the use of the innovative concepts introduced by the implementation of the legal provisions in force (see part 1) and emerging legislation (referring to part 2) of the proposal for improvement comes out by analysing.

The legislation transposes some of the concepts but is at a very early stage of development. This seems like a challenging issue, but as seen by analyses, to make investments in distributed energy possible and practical does not need only new investments and financial support but also better use of the existing ones. The capacity of the private sector to embrace the new concepts enabling citizen-centred growth of distributed energy is necessary.

For that, we need adequate regulation, policy documents, and the building of human capacities to help with the bottom-up integration of renewable energy. To achieve sufficient process quality once it starts, the stockholders must ensure transparency and participation with adequate abilities. Civil society organisations can significantly increase the transparency of processes and raise communication on all sides. CSOs across the country may initiate the establishment of the "Forum for Citizens Energy" to foster this partnership.

Likewise, developing new funding sources and support mechanisms beyond those offered by donors and commercial banks is also a priority. These financing mechanisms help save energy, increase productivity, and achieve the objective of energy sustainability and better protection of the environment by meeting European standards for candidate countries like Albania.

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Pachano, J. E., Iglesias, M. F.-V., Peppas, A., & Bandera, C. F. (2023, September). Enhancing self-consumption for decarbonization: An optimization strategy based on a calibrated building energy model. Energy and Buildings, Volume 298, 1 November 2023, 113576. https://doi.org/10.1016/j.enbuild.2023.113576

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OVERCOMING THE ADOPTION BURDEN: NAVIGATING EU ENLARGEMENT AND ACQUIS ADOPTION FOR ALBANIA

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ABSTRACT

Albania struggles under the heavy burden of adopting the 35 twisted chapters. Slowly and weary, it treks along the jagged path towards integration. Simply flipping a switch generates no solution to twisting traditions into continental compatibles. Genuine effort bears fruit, yet progress stays imperfect like an unfinished puzzle. Inadequate power and tremendous task size block full alignment, like clouds obscure the sun[1]. Unless shortcuts simplify and quicken the arduous ascent, embracing Europe wholly within a life seems farther than distant stars. The quest examines ongoing struggles and proposals to smooth the rough road. Boulders and fast-flowing floods pose problems as Albania paddles towards safer shores. An revealing perspective shines light on twists and detours of this enduring odyssey. Academic precision provides thorough analysis, deep as an endless abyss, to quench readers' thirst for wisdom. Clarification aims to spark meaningful exchange powerful enough to stir still waters. Facilitating deliberations as broad as the very cosmos on this pivotal crossroad intends to guide the nation, situated at Europe's edge yet longing for its luminous heart. While agreement stays elusive as finding a four-leaf clover, spreading awareness through such enlightening forms a step towards cooperative comprehension novel enough to energize discussion.[2]

Albania, perched on southeast Europe's edge, tentatively picks at the dense thicket of the EU's sprawling body of laws and practices known as the acquis communautaire. This heritage shapes not just enacting but also molding the entire view and approval

1 Archick, Kristin, and Sarah E. Garding. "European Union Enlargement." *Current Politics and Economics of Europe* 33.2/3 (2022): 73-119.

2 Bushati, Ditmir. "European Union and the Western Balkans, an Endless Story. The Case of Albania." *Integrating the Western Balkans into the EU: Overcoming Mutual Misperceptions*. Cham: Springer Nature Switzerland, 2023. 293-312.

of these guidelines within Albania. To successfully absorb EU enlargement and acquis, possessing a thorough understanding of prevalent orders is pivotal. As stated by Gjeta in 2023, "adequate comprehension of prevalent orders" is pivotal for prosperous adoption. This necessitates meticulous inquiry and examination to decide how directives can sail through Albania's cultural and political stream. In summary, thoughtful discernment and factor of Albania's cultural and political waters are fundamental for prosperous adoption. The difficulties presented by this lineage must be carefully addressed to assure smooth execution of EU enlargement and acquis guidelines within the country's borders. As Albania embarks on an odyssey across stormy seas toward the harmonious harbor of EU membership, careful navigation remains integral to weathering choppy waters and steering clear of treacherous shoals that lurk below the surface of adopting new rules[3].

Keyword: *EU Enlargement,Western Balkans,Accession Negotiations,EU Acquis Compliance,*

Albania is facing challenges in a number of significant domains, one of which is the protection of the environment, which is yet another essential domain. Albania is facing challenges in a number of other domains as well. A wide range of environmental domains are subject to stringent standards, and member states of the European Union are required to adhere to these standards. This is a requirement that is a part of the extensive environmental acquis that the European Union has acquired. There are many different fields that are included in this category, such as the management of water and air quality, the disposal of waste, and the management of water. In order for Albania to conform to these standards, it is necessary for the country to make substantial investments in the improvement of its infrastructure and to implement new environmental management practices. In addition, concerns regarding employment and social policy are important areas of concentration that ought to be taken into consideration during this process. Therefore, in order for Albania to be able to bring its social welfare, labour laws, and employment policies into conformity with those of the European Union, it is necessary for the country to make an effort. The goals of ensuring adequate social protection, promoting equal opportunities, and improving working conditions must be accomplished in order to accomplish this goal[4]. In order to accomplish these goals, it is necessary

3 Milenković, Marko. "Trajectories of differentiated EU integration for the Western Balkans." *The Routledge Handbook of Differentiation in the European Union*. Routledge, 2022. 551-564.

4 Russo, Teresa. "The Security Implications of Enlargement on EU Fundamentals." *Solidarity and Rule of Law: The New Dimension of EU Security*. Cham: Springer International Publishing, 2023. 49-71.

to implement significant policy reform and make substantial investments. To add insult to injury, it is essential to make significant financial investments[5].

The path that Albania will take to become a member of the European Union (EU) is inextricably linked to the country's capacity to fulfill the comprehensive and stringent environmental and social standards that have been established by the Union. These standards have been established by the EU. These standards are the result of the European Union's establishment. The establishment of the European Union led to the development of these standards to be implemented. This set of standards was developed as a result of the establishment of the European Union, which led to their subsequent implementation. In the year 2000, the European Union (EU) was established as an organization with the purpose of promoting social cohesion, environmental protection, and sustainable development among its member states. This is one of the overarching goals of the EU. In addition to being a reflection of the larger goal that the European Union is working toward achieving, these are significant challenges that Albania needs to address. It is imperative that these difficulties be addressed, as Albania requires.[6]

Investing in Concerns Regarding the Facilities and Infrastructure With regard to the subject of the environment and the many different courses of action that could be taken An Investment in the Existing Physical Infrastructure To fulfill its obligation to comply with the environmental standards that are imposed by the European Union, it is essential for Albania to make substantial investments in its national environmental infrastructure. It is only through this method that the nation will be able to fulfill its obligation. Consequently, as a consequence of this obligation, Albania is obligated to comply with the environmental standards that have been established by the European Union. This obligation is a consequence of other obligations. Some of these advancements include the modernization of water treatment facilities, the enhancement of waste management systems, and the improvement of networks for monitoring air quality. Additionally, these advancements include the improvement of waste management systems. As examples of developments that have taken place, both of these innovations are examples of innovations. These two innovations are examples of developments that have taken place, and they are both examples of innovations. Not only are the investments that are made in this manner necessary for the incorporation of Albania into the European Union, but they are also necessary for the protection of public health and the preservation of the natural beauty of

5 Russo, Teresa. "The Security Implications of Enlargement on EU Fundamentals." *Solidarity and Rule of Law: The New Dimension of EU Security*. Cham: Springer International Publishing, 2023. 49-71.

6 Bazerkoska, Julija Brsakoska. "EU Enlargement and Anti-corruption Standards: From Candidacy to Accession." *Cooperation and Enlargement: Two Challenges to be Addressed in the European Projects—2022*. Cham: Springer Nature Switzerland, 2023. 139-158.

Albania for the benefit of future generations. These investments are necessary for the incorporation of Albania into the European Union. It is imperative that these investments be made in order for Albania to become a member of the European Union[7].

The administration of environmental affairs can be approached from a variety of perspectives, and the manner in which these approaches are put into practice can also vary. In addition to the infrastructure that is already in place, Albania is obligated to adopt and put into practice methods of environmental management that are considered to be contemporary. It is essential to carry out this action in order to satisfy this requirement. To accomplish this goal, it is necessary to develop comprehensive policies that will guarantee the protection of biodiversity, the transition to a circular economy, and the utilization of resources in a manner that is environmentally responsible. These policies must be developed in order to achieve this objective. The formulation of these policies is necessary in order to achieve this objective. Furthermore, it encompasses the effective enforcement of environmental legislation, which necessitates the enhancement of institutional capabilities as well as the raising of public awareness. This is a requirement that must be met. To fulfill this requirement, it is necessary to do so. It is essential to carry out this action in order to satisfy this requirement. It is absolutely necessary to carry out this action in order to fulfill this requirement[8].

One of the most difficult aspects for countries that are in the process of applying for membership in the European Union is the environmental acquis. As a consequence of the fact that complying with the acquis is not only technically challenging but also financially significant, this is the position that has been taken. To put that into perspective, this particular sector of the economy also offers a variety of opportunities to individuals who are interested in pursuing them. This would provide Albania with the opportunity to improve its environmental governance, promote sustainable economic growth, and attract investments that are environmentally friendly. If Albania were to align itself with the environmental standards of the European Union (EU), it would be able to do all of these things. If Albania were to conform to the environmental standards of the European Union, then all of these things would be feasible with regard to the environment. In the event that Albania were to conform to the environmental standards of the European Union, then each and every one of

7 Anderlini, Michel Vincent. "A reaction to the French "non"? Or a case of institutional bricolage? A discursive institutionalist approach to the revised EU enlargement methodology." *Politique europeenne* 77.3 (2022): 142-169.

8 Anderlini, Michel Vincent. "A reaction to the French "non"? Or a case of institutional bricolage? A discursive institutionalist approach to the revised EU enlargement methodology." *Politique europeenne* 77.3 (2022): 142-169.

these things would be feasible with regard to the environment[9].

Modifications may be made to the organizations that are accountable for implementing changes in employment and social policy.[10]

The process of adjusting oneself to the social conditions that are present within the European Union In order for Albania to meet the challenge of bringing its social welfare, labour laws, and employment policies into alignment with those of the European Union, the country must face this challenge. In order for the nation to address this problem, it is absolutely necessary for the nation to come up with a solution about it. In the course of this process of harmonization, it is of the utmost importance to guarantee that social protection systems are robust and inclusive, that labour rights are safeguarded, and that workplaces are in accordance with the health and safety standards of the European Union. This is a list of everything that needs to be done in order to guarantee that it will be successful. In order to fulfill this requirement, it is imperative that each and every one of these tasks be finished.[11]

In the European Union (EU), there is a social policy that is in place, and one of the most important aspects of that policy is the promotion of equal opportunities for all of the citizens of the EU. This policy works to ensure that all employees within the organization have equal opportunities for advancement. In order to achieve the objective of ensuring that vulnerable populations have access to employment and social services, Albania must work toward the goal of eliminating discrimination in the workplace, promoting gender equality, and guaranteeing support for gender equality. The elimination of discrimination in the workplace is one way to achieve this goal. In light of these circumstances, Albania will be able to accomplish its goal of ensuring that vulnerable populations have access to employment opportunities and social services without any difficulty[12].

Not only is it necessary to make substantial investments in social services in order to accomplish these social goals, but it is also necessary to reform the regulatory framework within which these services are provided. This is because these social goals depend on the provision of social services.[13] For the purpose of achieving

9 Bonomi, Matteo. "From EU enlargement fatigue to ambiguity." *Foundation for European Progressive Studies (FEPS), the Friedrich Ebert-Stiftung(FES), and the Fondation Jean Jaurès (FJJ)* (2020).

10 Bartlett, Will. "The Drivers of EU Financial Assistance to the Western Balkans: Economic, Altruistic or Democracy Promotion Motives?." *Integrating the Western Balkans into the EU: Overcoming Mutual Misperceptions*. Cham: Springer Nature Switzerland, 2023. 25-54.

11 Války, Oliver. «Member State›s positions towards Western Balkans Enlargement.» (2020).

12 Džankić, Jelena. «Perceptions and Misperceptions of EU Conditionality in the Western Balkans: A Case of a "Capability-Expectations Gap"?.» *Integrating the Western Balkans into the EU: Overcoming Mutual Misperceptions*. Cham: Springer Nature Switzerland, 2023. 199-222.

13 Xhindi, Teuta, Ermela Kripa, and Mauro Gianfranco Bisceglia. "Digital Innovation in Small and Medium-sized Enterprises: A comparative analysis between Albania and EU countries." *Acade-*

these social objectives, it is essential to not only make financial investments but also conduct a thorough analysis of the policies that are currently in effect. In addition, it is of the utmost importance to take a strategic approach to the process of workforce development. It is recommended that this strategy incorporate the implementation of education and vocational training programs that are modified to conform to the requirements of the labour market. It is essential to carry out this action in order to satisfy this requirement. The actions that are being taken are being taken for a variety of reasons, including the provision of support for economic growth and the optimization of employability. The rise in employability is one of the contributors to this phenomenon[14].

When it comes to achieving its goal of becoming a member of the European Union (EU) and aligning itself with the acquis in the areas of environmental and social policy, Albania is confronted with a challenging obstacle that requires strategic planning, substantial investment, and comprehensive reform. In order to overcome this obstacle, Albania must do all of these things. In order for Albania to advance toward this objective, it is necessary for the country to overcome this challenge. In order for Albania to move closer to achieving its objective of becoming a member of the European Union, this is something that it is absolutely necessary for to take place. Additionally, it is of the utmost importance to put into action a collaborative strategy that encourages the participation of government authorities, members of civil society, representatives from the private sector, and international partners. This is absolutely necessary. It is essential to carry out this action in order to satisfy this requirement. It is possible that significant benefits will be made available as a consequence of this successful resolution in the event that these challenges are successfully addressed. This possibility exists in the event that the resolution is successful. In addition, there is a possibility that these advantages will be made accessible to the public[15]. As a result of the implementation of this plan, a number of benefits have been realized, some of which include an enhancement in the quality of life, an increase in the environmental sustainability, and a strengthening of social cohesion. Just a few of the many advantages are listed here. In the European Union, taking advantage of these benefits, which will contribute to the establishment of a strong foundation, will make it easier to lay a solid foundation for a prosperous future. This will be particularly beneficial for the establishment of a solid foundation. In order for a country to be considered for membership in the European Union,

mic Journal of Business, Administration, Law and Social Sciences 9.3 (2023): 1-19.

14 Reka, Blerim. "EU Enlargement and Regional Geopolitics of the Western Balkans." *Geopolitical Turmoil in the Balkans and Eastern Mediterranean*. Cham: Springer International Publishing, 2023. 51-87.

15 Karjalainen, Tyyne. "EU enlargement in wartime Europe: three dimensions and scenarios." *Contemporary Social Science* (2023): 1-20.

it is necessary for that country to fulfill a number of stringent requirements and established benchmarks. Albania's Struggles to Join the European Union: Some of the Obstacles to Overcome In order for a country to be considered for membership in the European Union, it is necessary for that country to fulfill these requirements. The term "acquis communautaire" refers to a vast collection of laws and practices that have been adopted by the European Union (EU). These laws and practices have been used by the EU. We anticipate that candidate nations will adopt and incorporate these laws and practices into their own national legislation. This is something that we are looking forward to. Not only should this process bring about significant changes in the laws, but it should also bring about changes in the protocols of institutions and the standards with which society operates. The occurrence of these changes is essential for the process that is being described[16].

While Albania has a complicated history and a sociopolitical landscape that is completely unique to any other country, the process of aligning Albania's national policies with the acquis presents a multitude of challenges for the country. Despite these challenges, Albania is taking steps to align its policies with the acquis. An excellent illustration of this would be the reform of its judicial system in order to ensure that it is both independent and effective. In addition, this would be demonstrated by the modernization of its environmental policies in order to bring them into conformity with the standards set forth by the European Union. The necessity of combating organized crime and corruption, both of which have been deeply ingrained in Albanian society for a very long time, adds an additional layer of complexity to the task that is currently being performed[17].

The process of adopting the acquis of the European Union is not merely a legal or administrative procedure; rather, it involves a significant shift in both culture and society. This shift is necessary in order to successfully adopt the acquis[18]. To successfully adopt the acquisition, this shift would be required in order to achieve success. Albania must navigate its own cultural and political waters, which includes addressing deeply rooted traditions and practices that may be in conflict with the norms and standards of the European Union (EU). This is a challenge that Albania must face. This is a hurdle that Albania is going to have to overcome. In order to successfully complete the process, it is necessary to strike a delicate balance between

16 Kokthi, Elena, et al. "Social Capital and Digitalisation: A Necessary Interplay for Achieving Circular Economy: What Possibilities and Challenges for Albania?." *THE CHALLENGE OF DIGITAL TRANSFORMATION*: 83.

17 Kokthi, Elena, et al. "Social Capital and Digitalisation: A Necessary Interplay for Achieving Circular Economy: What Possibilities and Challenges for Albania?." *THE CHALLENGE OF DIGITAL TRANSFORMATION*: 83.

18 Meka, Elvin, and Petraq Papajorgji. "Financial Literacy on EU Financial Infrastructure and Institutions: Points of view from students of an EU candidate country." *Calitatea* 23.189 (2022): 340-347.

respecting Albania's distinctive cultural identity and simultaneously making the necessary adjustments to bring it in line with European values and principles of democracy, rule of law, and human rights. The process requires that you fulfill this requirement.[19]

Additional reforms are required in order to achieve the goal of successful EU integration. Reforms that are imposed from the top down by legislative and governmental bodies are not sufficient for this purpose. For the situation to be successful, it is necessary for all aspects of Albanian society to be involved and to have a comprehensive understanding of the situation. Only then can the situation be successful.[20] This includes not only the general public but also organizations that are a part of civil society and the business community. In addition, this includes the general public. In order to construct a consensus and garner support for the necessary reforms, it is essential to raise awareness about the benefits and challenges of EU integration, as well as to foster a culture of participation and dialogue. This is necessary in order to achieve the desired results. The implementation of the necessary reforms will be made possible as a result of this[21].

Furthermore, the process of becoming a member of the European Union (EU) involves a number of significant economic and social aspects that must be taken into consideration simultaneously. [22]There is a need for Albania to make efforts to improve its competitiveness, modernize its economy, and address the social disparities that are present in the country. The implementation of these measures is essential for Albania to do. Reforms that aim to improve the environment for business and attract foreign investment are included in this category. Additionally, investments in infrastructure, education, and healthcare are included in this category. In addition, investments in infrastructure are included in this category. The goal is to make certain that the process of integration will result in observable improvements to the lives of the people who are citizens of Albania. This is in addition to the fact that the goal is to conform to the standards that are established by the European Union[23].

19 Džananović, Nedžma, Jasmin Hasić, and Margareta Rončević. «The Role of Mis-coordinated European Integration Mechanisms in Decelerating Progress in Bosnia and Herzegovina's EU Accession.» *Integrating the Western Balkans into the EU: Overcoming Mutual Misperceptions*. Cham: Springer Nature Switzerland, 2023. 313-334.

20 Störbrock, Rebecca. *The Vjosa Wild River National Park as a Legal Innovation: Creating Transformative Change in Albanian River Governance*. MS thesis. 2023.

21 Ballieu, Coralie A., and René Schwok. "European integration in Belarus, Moldova and Ukraine: assessing the role and strategies of the European Union in the Eastern Neighbours compared with the Western Balkans."

22 Meka, Elvin, and Petraq Papajorgji. "Financial Literacy on EU Financial Infrastructure and Institutions: Points of view from students of an EU candidate country." *Calitatea* 23.189 (2022): 340-347.

23 Stojić, Marko. "Anchoring or Undermining Democracy: The European People's Party and De-

Where do we go from here? What should we do?

Albania's journey toward EU integration is a demonstration of the country's dedication to European values and its hopes for a brighter future, despite the obstacles that it has encountered along the way. This is despite the fact that Albania has encountered certain challenges along the way. This is accomplished in spite of the fact that Albania has been confronted with a variety of challenges along the way. It is a slow and difficult process, but it is also an opportunity for Albania to go through a comprehensive transformation that has the potential to lead to sustainable development and a society that is more prosperous. This transformation has the potential to lead to Albania becoming a more prosperous nation. Albania ought to make the most of this opportunity that has presented itself.[24]

In order for Albania to achieve its objective of joining the European Union (EU), it is absolutely necessary for the country to adopt a strategic approach that takes into account political will, the participation of society, and the assistance of the international community. [25]This includes making use of the assistance provided by the European Union (EU) and other international partners, both in terms of financial assistance and technical assistance, in order to construct capacities and put into effect reforms that are required. It is essential to cultivate a culture of transparency, accountability, and inclusiveness in order to win the trust and support of the Albanian people and to ensure that the journey towards EU integration is a national endeavour that is shared by all Albanians. In addition, it is essential to ensure that the journey towards EU integration is a national endeavour. Obtaining the confidence and backing of the Albanian people is critically important, which is why this is of great significance[26].

Albania's journey toward becoming a member of the European Union is more than just a search for political integration; rather, it is a journey of transformation that holds the promise of a more prosperous and exciting future[27]. This journey is not just about political integration. According to what will be demonstrated in the conclusion, this journey is about more than just looking for political integration. When Albania is able to successfully navigate through the turbulent waters and

mocratic Backsliding in Serbia." *JCMS: Journal of Common Market Studies* (2023).

24 Lijanovic, Josip Ivankovic. "Strategic Integration and Geopolitical Repositioning: Bosnia and Herzegovina's Path Towards the European Union." *MAP Social Sciences* 4 (2024): 98-107.

25 Rykaczewski, Maria, Maya A. Thevenot, and Maria Vulcheva. "International Accounting and Auditing Standards Adoption in Non-EU Eastern European Countries: Review of Regulations and Literature." *Journal of International Accounting Research* 21.1 (2022): 77-100.

26 Nezha, Kelmend, Nertil Berdufi, and Aranit Qinami. "Implementing Islamic Marriage Rules in National Family Laws: A Case Study of Albania's Legal Framework." *European Journal of Social Science Education and Research* 10.2 (2023): 123-139.

27 Santander, Sébastian. "International Relations of the European Union: Reading Portfolio." (2021).

arrive at the peaceful harbour of membership in the European Union, it will be able to do so after confronting the challenges head-on, engaging all sectors of society, and embracing the opportunities that come with EU integration. Albania will be able to successfully navigate through the turbulent waters and arrive at the tranquil harbour as a result of this.[28]

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28 Vollmer, Ruth. "Reintegration trajectories in contexts of high mobility: insights from Albania and Kosovo." (2023): 53.

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ABSTRAKT

Krimi i organizuar gjithnjë e më tepër është duke përqafuar teknologjitë e reja, teknologji të cilat e ndihmojnë për të qenë sa më efektiv, nga njëra anë, dhe sa më i fshehtë në veprimtaritë që kryen. Në këtë kuadër, teknologjia e komunikimit përbën një nga fushat me më tepër interes për të. Nga ana e tyre, organet ligjzbatuese përpiqen të jenë gjithnjë në të njëjtën gjatësi vale në lidhje me ndjekjen dhe përshtatjen me këto teknologji. Shkëmbi i eksperiencave dhe skuadrat e përbashkëta hetimore janë vënë në qendër të bashkëpunimit ndërkombëtar dhe atij rajonal ndërmjet autoriteteve gjyqësore. Vështirësisë së zbulimit të veprimtarisë së zhvilluar nga krimi i organizuar, i cili prej kohësh ka kapërcyer kufijtë kombëtare, duke u kthyer në një dukuri transnacionale, shpesh herë i shtohet edhe mosazhornimi i legjislacionit të fushës në raport me zhvillimet dhe dinamikën e fenomenit dhe mjeteve që ai përdor. Platformat e komunikimit të përdorura nga krimi i organizuar sot e meritojnë plotësisht të quhen një sfidë e vështirë për organet e hetimit dhe ndjekjes penale. Disa syresh janë krijuar ekskluzivisht për t'i shërbyer këtij lloj kriminaliteti, sikurse platformat "SkyEcc" apo "EncroChat". Gjithsesi, edhe organet e ngarkuara me luftën kundër kriminalitetit në fjalë përpiqen në maksimumin e kapaciteteve të tyre për të shfrytëzuar të gjitha hapësirat e ofruara nga legjislacioni ekzistues për të forcuar ndërveprimin mes tyre me qëllim që të jenë të suksesshëm në misionin e ngarkuar. Korniza ligjore evropiane, në këtë drejtim, ka bërë një hap përpara, duke e bërë më fleksibël bashkëpunimin gjyqësor ndërmjet vendeve të Bashkimit Evropian.

Fjalët kyçe: *Krim i organizuar; platforma komunikimi; bashkëpunim gjyqësor ndërkombëtar; kornizë ligjore evropiane.*

1. Hyrje.

Komunikimet e koduara, si pjesë e debatit gjyqësor të lindur rishtazi dhe më së shumti në vitin 2023, rezulton se janë bërë objekt diskutimi dhe objekt i zhvillimit të jetës institucionale edhe në organet e Bashkimit Evropian apo të Këshillit të Evropës. Vetëm komunikimet e koduara në platformën "*EcroChat*" të sekuestruara dhe këqyrura nga autoritet proceduese të shteteve në Evropë rezulton se kanë mundësuar arrestimin e 6558 personave.[1] Në këtë mënyrë, në agjendën e Komisionit të Bashkimit Evropian ka marrë përparësi organizimi dhe rritja e kapaciteteve të organeve proceduese të shteteve anëtare mbi kryerjen e hetimeve digjitale.[2]

Duke pasur parasysh rolin thelbësor ndihmës që komunikimet e koduara në platformat "*EcroChat*" dhe "*SkyEcc*" kanë pasur dhe mjetin kryesor të zhvillimit të këtyre komunikimeve, të grupeve të organizuara kriminale në Evropë, autoritetet e Bashkimit Evropian në vitet e fundit po marrin masat e duhura të rritjes së kapaciteteve normative, logjistike dhe të burimeve njerëzore për të zbuluar këto rrjete komunikimesh të inkriptuara apo të koduara përgjatë hetimeve të nisura kundër veprimtarisë kriminale të realizuar nga këto grupe. Për këtë qëllim, në Dhjetor të vitit 2020 u prezantua mekanizmi i ri i Europolit për dekriptimin apo dekodifikimin e bisedave të koduara nëpër platformat e komunikimit elektronik që shfrytëzohen nga krimi i organizuar. Duke dashur që të sigurojë respektimin e të drejtave themelore të njeriut dhe paralelisht të ketë mundësinë e hetimit në kohë reale të mekanizmave të veprimit të krimit të organizuar, këto mjete ligjore mbikombëtare janë vendosur tashmë në dispozicion të autoriteteve të shteteve anëtare të Bashkimit Evropian.[3]

Në këtë kuptim, mbetet të konkludohet se e vetmja mënyrë se si këto mekanizma të reja të hetimit dixhital të bëhen të vlefshme dhe efektive në hapësirën e Bashkimit Evropian dhe shteteve joanëtare të kësaj organizate, por që aspirojnë t'i bashkohen asaj, është thellimi i bashkëpunimit ndërkombëtar përmes mekanizmave ligjor që jep zhvillimi i marrëdhënieve juridiksionale me jashtë. Këto zhvillime të reja, të diktuara nga përparimi i teknologjisë digjitale, sigurisht që sjellin sfida të përshtatjes dhe zhvillimit të legjislacionit dhe jurisprudencës apo praktikës gjyqësore.

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1 Shih në web: https://www.europol.europa.eu/media-press/newsroom/news/dismantling-encrypted-criminal-encrochat-communications-leads-to-over-6-500-arrests-and-close-to-eur-900-million-seized. Vizituar më datë 29.01.2024.

2 Shih në web: https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52023DC0641&qid=1706518542089, faqe 15. Vizituar më datë 29.01.2024.

3 Shih dokumentin "*Communication from the Commission to the European Parliament and the Council on the second progress report on the implementation of the EU security union strategy*", në web: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0440R%2801%29&qid=1706522271388. Vizituar më datë 29.01.2024.

2. Natyra e komunikimeve të koduara si provë në procesin penal shqiptar.

Çështja e përdorshmërisë si provë në procesin penal të komunikimeve të koduara në platformat "*SkyEcc*" apo "*EncroChat*" nuk do të kalonte shumë kohë dhe do të bëhej pjesë e debatit edhe në gjykatat shqiptare, më konkretisht në gjykatat kundër korrupsionit dhe krimit të organizuar, si gjykatat kompetente për të gjykuar veprat penale të kryera nga krimi i organizuar, i cili deri më sot ka ekskluzivitetin e përdorimit të këtyre platformave të komunikimit telefonik. Në gjykimet e realizuara nga këto gjykata pothuaj në mënyrë standarde është ngritur si pretendim fakti se komunikimet e realizuara në këto platforma nga të pandehurit/personat nën hetim janë të papërdorshme si prova pasi janë marrë në shkelje të ndalimeve të legjislacionit shqiptar dhe se këto komunikime duhet t'i nënshtrohen regjimit juridik të përgjimeve e duhet të mbrohen nga garancitë e këtij mjeti kërkimi prove.[4]

Lidhur me natyrën e bisedave të zhvilluara ndërmjet të pandehurve/personave nën hetim si dhe ndërmjet tyre dhe personave të tjerë, rezulton se në çështjet në shqyrtim këto biseda janë dekriptuar nga ana e autoriteteve franceze të drejtësisë në kuadër të disa operacioneve të zhvilluara në vazhdën e luftës kundër krimit të organizuar. Për këtë shkak, ato janë konsideruar nga gjykatat shqiptare se nuk përbëjnë flukse komunikimi të interceptuara në kohë reale por të dhëna të cilat gjenden të ngurtësuara në një dokument. Një qëndrim i tillë është mbajtur edhe nga jurisprudenca e Gjykatës Supreme të Kasacionit të Republikës së Italisë, e cila është shprehur se: "***Është po aq e sigurt, pra, siç theksohet në mënyrë efektive në dispozitën e kontestuar, se autoriteti ndaj të cilit është drejtuar kërkesa nuk i ka marrë këto të dhëna në bazë të një autorizimi për të realizuar përgjimin e flukseve të komunikimeve. Prandaj, bëhet fjalë për marrjen e provave statike, tashmë të pranishme, që nuk i nënshtrohen një procedure dinamike të përftimit të tyre.***".[5]

Për sa më sipër, nuk bëhet fjalë për të dhëna të marra nëpërmjet përgjimit si mjet kërkimi prove, por përmes mjetit tjetër të kërkimit të provës, këqyrjes. Në këtë rast, këqyrja është bërë mbi një dokument me natyrë elektronike, serverat të cilat ruanin të gjitha komunikimet e kryera nëpërmjet platformave "*SkyEcc*" apo "*EncroChat*". Për më tepër, të dhënat e kërkuara përmes letërporosive ishin tashmë të administruara nga ana e autoriteteve franceze të drejtësisë, në kuadër të operacioneve të zhvilluar nga ana e tyre dhe nga autoritetet gjyqësore shqiptare nuk është kërkuar kryerja e veprimeve hetimore për llogari të tyre nga autoriteti i huaj, në këtë rast autoriteti francez i drejtësisë.

4 Shih vendimet nr. 1 (87-2024-4), datë 04.01.2024, dhe nr. 5 (87-2024-21), datë 25.01.2024, të Gjykatës së Posaçme të Apelit për Korrupsionin dhe Krimin e Organizuar.

5 Shih vendimin nr. 16347, datë 25.04.2023, të Kolegjit të Katërt Penal, të Gjykatës Supreme të Kasacionit të Republikës së Italisë.

Në këtë kuptim, duhet të theksohet se përdorimi i akteve të transmetuara në vijim të një veprimtarie të bashkëpunimit ndërkombëtar nuk është i kushtëzuar nga vlerësimi prej gjyqtarit vendas të rregullshmërisë së mënyrës së marrjes së provës nga autoriteti i huaj, për aq kohë sa vlen prezumimi i legjitimitetit të veprimtarisë së zhvilluar dhe i takon gjyqtarit të huaj verifikimi i korrektesës së procedurës dhe eventualisht zgjidhja e çdo pretendimi që ka të bëjë me parregullsitë e pretenduara në fazën e hetimeve paraprake.[6]

Në mënyrë të veçantë, në fushën e vlerësimit të ekzistencës së një dyshimi të arsyeshëm të bazuar në prova, me qëllim zbatimin e masave të sigurimit në fazën e hetimeve paraprake, është afirmuar përdorshmëria e dokumentimit të akteve të kryera në mënyrë autonome nga autoritetet e huaja në një procedim penal të ndryshëm jashtë shtetit, edhe jashtë sferës së përcaktuar për përdorshmërinë e tyre, me të vetmin kufizim që një aktivitet i tillë nuk vjen në kundërshtim me normat e paderogueshme dhe parimet themelore, të cilat, megjithatë, nuk identifikohen detyrimisht në tërësinë e rregullave të diktuara nga Kodi ynë i Procedurës Penale, dhe për më tepër që barrën e provës për të vërtetuar këtë papajtueshmëri e ka ai që e pretendon.[7]

Ky kufizim duket vështirë të gjendet në aktivitetin gjyqësor të një vendi anëtar të Bashkimit Evropian, të cilit i kërkohet të respektojë parimet themelore të rendit juridik evropian, sikurse është Franca, në rendin juridik të së cilës garancitë e lirisë individuale dhe të privatësisë së komunikimeve përfaqësojnë një mburojë kushtetuese, ku Kodi i saj i Procedurës Penale normon tipologji të ndryshme të përgjimeve që i janë besuar kontrollit të autoritetit gjyqësor[8] dhe ku aktivitetet hetimore të së cilës lidhur me këto platforma janë konsideruar si të zhvilluara në mënyrë korrekte nga Gjykata e Kasacionit.[9] Gjyqtari vendas, në këtë mënyrë, nuk mund dhe nuk duhet të vlerësojë rregullshmërinë e akteve me të cilët është realizuar aktiviteti hetimor i kryer nga autoritetet gjyqësore të huaja, për aq kohë sa një aktivitet i tillë hetimor është zhvilluar sipas legjislacionit të shtetit të huaj. Akoma më tepër kjo vlen atëherë kur aktiviteti fillestar hetimor nuk është bërë mbi kërkesën e autoritetit gjyqësor vendës, por është kryer përgjatë një procedimi tjetër të filluar

6 Shih vendimet nr. 1405, datë 16.11.2016, të Kolegjit të Pestë Penal, nr. 24776, datë 18.05.2010, të Kolegjit të Dytë Penal, dhe nr. 21673, datë 22.01.2009, të Kolegjit të Parë Penal, të Gjykatës Supreme të Kasacionit të Republikës së Italisë.

7 Shih vendimin nr. 45002, datë 13.07.2016, të Kolegjit të Pestë Penal, të Gjykatës Supreme të Kasacionit të Republikës së Italisë.

8 Shih nenet 100 dhe 706 – 102 – 21 të Kodit të Procedurës Penale të Republikës së Francës, në web: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038311624. Vizituar më datë 01.02.2024.

9 Shih vendimin e datës 02.04.2022 të Kolegjit Penal të Gjykatës së Kasacionit të Republikës së Francës dhe vendimin nr. 2022-987 QPC, datë 08.04.2022, të Këshillit Kushtetues të Republikës së Francës.

në shtetin e huaj, mbi iniciativën e atij autoriteti gjyqësor, përfundimet e të cilit janë transmetuar në formën e të dhënave të ashtuquajtura të ngrira. Për më tepër, garancitë juridiksionale që kanë të bëjnë me akte të tilla, nuk mund veç se të gjejnë zbatim në atë rend juridik.[10]

3. Qëndrimi i Gjykatës Evropiane të Drejtësisë.

Mbi komunikimet e koduara në platformën "*EcroChat*" rezulton se më datë 26.10.2023 është publikuar Opinioni i Avokatit të Përgjithshëm të Bashkimit Evropian,[11] opinion që i përket çështjes "*Case C670/22, Staatsanwaltschaft Berlin vs. M.N*",[12] **në një procedurë paragjykimore të nisur nga Gjykata Rajonale e Berlinit. Më parë, Gjykata Federale e Drejtësisë e Republikës Federale të Gjermanisë kishte konkluduar në një vendim se interceptimi i komunikimeve në aplikacionin "***EcroChat***"** ishte në përputhje me ligjin gjerman.[13] **Kërkesa që inicioi këtë çështje paragjykimore në Gjykatën e Drejtësisë së Bashkimit Evropian (GJED) u paraqit nga një gjykatë gjermane dhe u bë me qëllim që të kërkohej opinioni nëse komunikimet e koduara dhe të realizuara në anonimitet të plotë në aplikacionin "***EcroChat***"** përbënin apo jo shkelje të normativës së Direktivës së Urdhrit të Hetimit Evropian[14] dhe nëse mundeshin këto komunikime të përdoreshin si prova në procesin penal, duke mos u pajtuar sakaq me konkluzionet e arritura më parë mbi këtë çështje nga autoriteti më i lartë gjyqësor në Gjermani. Në këtë çështje provat ishin administruar dhe marrë nga autoritetet franceze të drejtësisë, me autorizimin e gjyqtarit hetues në Lilë, në kuadër të një procedimi penal të zhvilluar të përbashkët ndërmjet autoriteteve franceze dhe holandeze të drejtësisë.

Avokati i Përgjithshëm i Bashkimit Evropian, në Opinionin e paraqitur në GJED, solli në vëmendje se çështja që shtrohet për zgjidhje në këtë gjykim nuk është ligjshmëria e formësimit të provës në autoritetet franceze të hetimit por legaliteti i urdhrit të prokurorisë gjermane që ka kërkuar nga autoritetet franceze, sipas Direktivës mbi Urdhrin Evropian të Hetimit, për të marrë provat tashmë të administruara në Francë, si dokumente elektronike, të komunikimeve të koduara, që grupet kriminale kishin përdorur në realizimin e aktivitetit të tyre kriminal dhe se në këtë rast urdhri i autoriteteve gjermane nuk kishte kërkuar marrjen e një prove rishtazi por një prove

10 Shih vendimin nr. 06364, datë 15.02.2023, të Kolegjit të Parë Penal, të Gjykatës Supreme të Kasacionit të Republikës së Italisë.

11 Shih në web: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX-:62022CC0670. Vizituar më datë 25.01.2024.

12 Shih në web: https://eucrim.eu/documentation/ecj-eu-criminal-law-cases-overview/case-c-67022/. Vizituar më datë 25.01.2024.

13 Shih Vendimin 5 StR 457/21, datë 22.03.2022, të Gjykatës Federale të Drejtësisë të Republikës Federale të Gjermanisë.

14 Shih Direktivën 2014/41/EU, datë 03 Prill 2014, të Parlamentit Evropian dhe Këshillit, lidhur me Urdhrin e Hetimit Evropian në çështjet penale.

që tashmë ishte marrë nga autoritetet franceze. Në opinion argumentohet se mbledhja e provave nga komunikimet e koduara në një territor të një shteti tjetër nga shteti që po zhvillon hetimet, nuk mund të konsiderohet se përbën cenim të sovranitetit, pasi hetimi dhe urdhërimi i sekuestrimit të serverit të platformës së komunikimeve të koduara është bërë në territorin e shtetit ku po zhvilloheshin hetimet dhe se Franca në këtë rast nuk ka urdhëruar marrjen e komunikimeve të realizuara në Gjermani por marrja e këtyre të fundit ka ardhur si pasojë e dinamikës së komunikimeve të rrjetit kriminal që e zhvillonte aktivitetin në Francë.

Në Opinion u konkludua se, nëse autoriteti që ka urdhëruar marrjen dhe sekuestrimin e provave elektronike është organ gjyqësor nuk ka rëndësi dhe relevancë më tej çështja nëse është apo jo organ gjyqësor autoriteti që ka urdhëruar më vonë marrjen e këtyre provave nga shteti i kërkuar për t'i përdorur tek procedimi penal i shtetit kërkues, duke qenë se e drejta e Bashkimit Evropian nuk kërkon detyrimisht që autoriteti urdhërues i transferimit të provave të jetë detyrimisht gjykatë, duke e lënë këtë çështje në zgjedhjen e ligjit të brendshëm të çdo shteti. Gjithashtu aty u konkludua se fakti që interceptimi i bisedave me mesazhe në platformën elektronike "*EncroChat*" është zhvilluar si pasojë edhe në territorin e një shteti tjetër nuk ka asnjë relevancë për të përcaktuar kompetencën apo zbatimin e ligjit nga autoriteti i shtetit ku është zhvilluar më së pari hetimi. Megjithatë ky Opinion solli në vëmendje se shteti i cili po zhvillon hetimet, nëse konstaton se po interceptohen biseda të shtetasve që ndodhen në territorin e një shteti tjetër, duhet të njoftojë autoritetet e këtij shteti për këtë fakt, në mënyrë që të mbrohet njëkohësisht individi përdorues i asaj mënyre komunikimi dhe sovraniteti i shtetit ku biseda po interceptohet.

Opinioni parashtroi se nuk është çështje e rregullimit të së drejtës së Bashkimit Evropian pranueshmëria dhe përdorshmëria e provave në procesin penal, se ky domen i rregullimit normativ i përket legjislacionit të brendshëm të çdo shteti dhe se në çdo rast nuk mund të mos merret dhe nuk mund të mos përdoret një provë vetëm me argumentin se ajo është formësuar në një shtet dhe juridiksion tjetër. Megjithatë Opinioni pranoi se, edhe pse e drejta e Bashkimit Evropian nuk ka rregullime parësore për pranueshmërinë e provave në procesin penal, sërish duhen mbajtur në konsideratë dispozitat e neneve 47 dhe 48 të Kartës së të Drejtave Themelore të Bashkimit Evropian, të cilat sanksionojnë standardet e së drejtës për proces të rregullt ligjor.

Deri në momentin në të cilin ky artikull është shkruar dhe është dërguar për botim nuk ka pasur ende një vendimmarrje përfundimtare nga ana e Gjykatës së Drejtësisë të Bashkimit Evropian.

4. Qasja e Gjykatës Evropiane të të Drejtave të Njeriut.

Çështja e përdorshmërisë së provave të përftuara nga administrimi i komunikimeve të koduara elektronike ka shkuar për gjykim edhe në Gjykatën Evropiane të të Drejtave të Njeriut (GJEDNJ). Rezulton se një kërkesë i është drejtuar GJEDNJ-së nga dy shtetas britanikë në datë 5 Tetor 2020. Konkretisht bëhet fjalë për aplikimin nr. 44715/20 dhe nr. 47930/21, në të cilët është pretenduar se të dhënat elektronike të përfituara nga autoritetet e drejtësisë në platformën "*EncroChat*" në procesin penal përbëjnë cenim të nenit 8 të Konventës Evropiane të të Drejtave të Njeriut dhe Lirive Themelore, e drejta për jetë private të qetë, cenim të së drejtës së tyre për proces të rregullt ligjor në procesin penal, e parashikuar nga neni 6 i kësaj Konvente, dhe gjithashtu edhe cenim të së drejtës për të pasur mjete efektive ankimi ndaj këtyre veprimeve të organeve të ndjekjes penale, i sanksionuar në nenin 13 të saj.[15] Akoma nuk rezulton që GJEDNJ-ja të ketë konkluduar me vendim përfundimtar lidhur me këto aplikime, megjithëse ajo ka dërguar pyetjet respektive mbi çështjen drejtuar Republikës së Francës.[16]

Rrethanat faktike të kësaj çështje lidhen me kontestin për shkeljen e pretenduar të të drejtave themelore nga një vendimmarrje e gjyqtarit hetues në Lilë të Francës, e cila ka autorizuar vendosjen e një pajisje teknike në një server të ndodhur në këtë shtet që shërben për të interceptuar të dhënat, duke u bazuar në nenin 706-102-1 të Kodit të Procedurës Penale të Republikës së Francës,[17] me qëllim kapjen dhe marrjen e të dhënave elektronike nga distanca. Në Prill të vitit 2020 hetues të specializuar në fushën kibernetike, në Francë, ndërhynë në platformën elektronike "*EncroChat*", duke përvetësuar dhjetëra mijëra të dhëna që vinin nga telefona të lidhur me këtë rrjet dhe të ndodhur në shumë shtete e në kontinente të ndryshëm. Gjithashtu, përmes kësaj ndërhyrje kibernetike u arrit të përftoheshin edhe të dhënat stok të gjetura në serverin e kësaj platforme elektronike. Këto të dhëna u morën deri në datën 2 Korrik 2020.

15 Shih njoftimin e bërë zyrtar në faqen e GJEDNJ këtu: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-214862%22]}. Vizituar më datë 25.01.2024.

16 Çështja po gjykohet nga Seksioni V i GJEDNJ-së dhe ka këto ekstremitete identifikimi "*Requêtes nos 44715/20* et *47930/21*, *"A.L. contre la France et E.J. contre la France*". Ato janë paraqitur me datë 5 Tetor 2020 dhe 20 Shtator 2021 si dhe i janë komunikuar Francës me datë 8 Dhjetor 2021.

17 Shih Kodin e Procedurës Penale të Republikës së Francës në web: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038311624. Vizituar me datë 01.02.2024. Kjo dispozitë parashikon ndër të tjera rregullime mbi garancitë e kujtdo se në procesin penal nuk do të mund të jetë subjekt i vendosjeve të pajisjeve teknike pa pëlqim me qëllim për të përftuar të dhëna nga sisteme elektronike, për t'i regjistruar ato, për t'i transferuar ato apo edhe për t'i marrë. Ndër të tjera aty parashikohet se prokurori i Republikës apo gjyqtari i hetimit mund të përcaktojë një person fizik apo juridik të regjistruar për të kryer operacionet teknike që mundësojnë realizimin e pajisjeve teknike sikurse përshkruhen më lart. Gjithashtu këto autoritete mund të përdorin mjetet e shtetit të vendosura në funksion të sekretit të mbrojtjes kombëtare sipas parashikimeve ligjore.

Autoritetet britanike i kërkuan autoriteteve homologe franceze që të transferonin aktet procedurale ku ishin pasqyruar përmbajtja e këtyre të dhënave dhe se, ndër të tjera, kishte informacion për përfshirje në veprimtari kriminale të organizuar edhe për dy subjektet kërkues që kanë inicuar këtë gjykim në GJEDNJ. Mbi bazën e këtyre të dhënave rezulton se subjektet kërkues janë proceduar penalisht në Mbretërinë e Bashkuar, arrestuar dhe vendosur në paraburgim respektivisht në datat 18 Qershor 2020 dhe 16 Qershor 2020.

Ata kanë kontestuar në GJEDNJ cenimin e nenit 8 të KEDNJ-së, duke pretenduar se aksesi dhe administrimi i këtyre të dhënave si dhe transferimi i tyre në Mbretërinë e Bashkuar ka cenuar ligjshmërinë e ndërhyrjes në jetën private, domosdoshmërinë dhe nevojshmërinë e kufizimit të së drejtës së privatësisë dhe proporcionalitetin e ndërhyrjes në këtë të drejtë themelore. Ato gjithashtu kanë parashtruar se nuk ka mjete efektive në dispozicion të legjislacionit vendas për t'u mbrojtur ndaj këtyre ndërhyrjeve të paligjshme në të drejtën për privatësi, duke evokuar shkeljen e nenit 13 të KEDNJ-së nga autoritetet franceze të drejtësisë.

GJEDNJ-ja ka drejtuar disa pyetje ndaj Republikës së Francës dhe palëve kërkuese në këtë procedurë. Fillimisht pyetet nëse mund të aktivizohet juridiksioni i Republikës së Francës kundrejt subjekteve kërkues në këtë procedurë. Më tej pyetet nëse mund të kenë legjitimitet aktiv si viktima të nenit 8 të KEDNJ-së subjektet kërkues për sa kohë ato nuk prezantohen si përdorues të platformës elektronike "*EncroChat*" dhe nëse e kanë plotësuar kushtin e nenit 35/1 të KEDNJ-së për ezaurimin e mjeteve të brendshme të ankimit në Republikën e Francës, para se të ushtronin kërkesën në GJEDNJ. GJEDNJ-ja pyet nëse kapja e komunikimeve të koduara sipas kësaj forme të veprimit nga autoritetet franceze dhe transferimi i tyre në Mbretërinë e Bashkuar a kanë cenuar të drejtën e kërkuesve për jetë private, sipas nenit 8 të KEDNJ-së, dhe, nëse konsiderohen shkelje, a janë ato të parashikuara në ligj dhe të nevojshme, sipas pikës 2, të nenit 8, të KEDNJ-së, duke kërkuar njëkohësisht opinion edhe si trajtohet kjo çështje në të drejtën e Bashkimit Evropian. GJEDNJ-ja pyet gjithashtu shtetin e paditur nëse është garantuar nga Republika e Francës në këtë rast e drejta e aksesit në gjykatë, sipas nenit 6 të KEDNJ-së dhe nëse kërkuesit kanë pasur apo jo në rendin juridik të brendshëm në dispozicion mjete juridike kundërshtimi, sipas nenit 13 të KEDNJ-së. GJEDNJ më tej pyet shtetin e paditur se sa telefona janë përfshirë në këtë procedurë interceptimi, çfarë natyre kanë të dhënat e mbledhura përmes kësaj procedure hetimi, çfarë garancish ndaj arbitraritetet dhe riskut të abuzimit janë parashikuar e vendosur në veprim deri në këtë fazë, mbi përdorimin, përzgjedhjen dhe shqyrtimin e bisedave të interceptuara apo të gjetura, mbi transferimin e këtyre të dhënave palëve të treta apo mbi asgjësimin e tyre në kohë të përshtatshme. GJEDNJ-ja, së fundi, pyet shtetin e paditur nëse kanë mundësi dhe çfarë detyrimesh

konkrete parashikohen për të informuar në kohë të përshtatshme përdoruesit apo subjektet e përfshirë në procedurat e interceptimit për të njoftuar ekzistencën e të dhënave, aksesin mbi to dhe për të individualizuar nëse ka mjete konkrete ankimi në dispozicion të këtyre subjekteve për të kontestuar abuzimet e organeve respektive të përfshira në këto procedura.[18]

Deri në momentin në të cilin ky artikull është shkruar dhe është dërguar për botim nuk ka pasur ende një vendimmarrje përfundimtare nga ana e GJEDNJ-së mbi këtë procedurë gjykimi. Afërmendsh kjo vendimmarrje e shumëpritur në këtë drejtim do të zgjidhë një çështje shumë të diskutuar në hapësirën evropiane por jo vetëm.

5. Konkluzione.

Në përmbyllje të këtij shkrimi, mund të theksohet se përdorshmëria e të dhënave të përftuara nëpërmjet dekriptimit të platformave të koduara të komunikimit "*SkyEcc*" dhe "*EncroChat*", tashmë është duke fituar gjithëpranueshmëri edhe pse vulën e qytetarisë evropiane asaj do t'ia japin dy gjykatat që qëndrojnë në majën e piramidës së drejtësisë evropiane, Gjykata Evropiane e Drejtësisë dhe Gjykata Evropiane e të Drejtave të Njeriut, si organet gjyqësore, përkatësisht të Bashkimit Evropian dhe Këshillit të Evropës.

Ajo që përbën tashmë një qasje kolektive të autoriteteve gjyqësore evropiane është fakti se këto platforma komunikimi përfaqësojnë karakteristikat (konfidencialiteti, inkriptimi, mungesa e bashkëpunimit me autoritetet policore dhe gjyqësore) e një mjeti të përdorur kryesisht në fushën e aktiviteteve që kanë të bëjnë me krimin e organizuar, në mënyrë të veçantë në veprimtaritë e pastrimit të produkteve të veprës penale ose veprimtarisë kriminale.[19] Gjithashtu, si një fakt i gjithëpranuar është edhe qëndrimi lidhur me marrjen e komunikimeve që i përkasin platformave në fjalë nga një autoritet gjyqësor i huaj, kur këto komunikime tashmë janë administruar nga ky autoritet gjyqësor në kuadër të një procedimi penal të tijin. Në këto raste, komunikimet e ekstraktuara janë konsideruar si dokument dhe marrja e tyre është barazuar me marrjen e dokumentit si provë në procesin penale. Së fundi, në këtë drejtim, ekziston një konsensus i përgjithshëm deri në këto momente se për marrjen e këtyre komunikimeve nuk zbatohet regjimi juridik i përgjimit, si mjet kërkimi prove.

Gjithsesi, diskutimi komplikohet kur bëhet fjalë për marrjen për herë të parë të të dhënave në fjalë, të cilat nuk janë administruar më parë nga autoriteti gjyqësor i huaj pranë të cilit ato kërkohen. Në këtë situatë shtrohet për diskutim zbatueshmëria e

18 Shih në web: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-214862%22]}. Vizituar me datë 01.02.204.

19 Shih vendimin nr. 00116, datë 15.02.2023, të Kolegjit Penal të Gjykatës së Kasacionit të Republikës së Francës.

dispozitave që kanë të bëjnë me kontrollin dhe sekuestrimin si mjete të kërkimit të provës. Për këtë shkak, në një çështje të hetuar nga autoritetet italiane të drejtësisë dilema e mësipërme është shtruar për njësim përpara Kolegjeve të Bashkuara Penale të Gjykatës Supreme të Kasacionit të Republikës së Italisë.[20]

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CORRUPTION IN NORTH MACEDONIA AND THE NEED FOR INDEPENDENT JUDICIARY: LEGAL PATHWAYS TO JOINING THE EUROPEAN UNION

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ABSTRACT

This paper examines the critical need for judicial reforms in North Macedonia, focusing on solving the corruption phenomenon. The Republic of North Macedonia has been preparing for membership in the European Union for a long time, having the status of candidate for membership since 2005. Since then, it has taken significant steps towards EU membership. But there were several challenges, for which a great deal of effort has been invested to overcome and comply with European norms. Concrete examples from recent years that I will mention are: the resolution of the name dispute and the good neighbor agreement with Greece and Bulgaria, but also presidential elections that were peaceful, free, democratic and very well organized. So, the position of the state has been visibly and significantly improved. Membership in NATO was also a big step forward. North Macedonia is part of the NATO family, a family of security; where together we are all stronger and safer. Still, the country faces different challenges. Despite efforts to curb corruption, the nation faces systemic challenges that impede the EU integration process. The paper analyzes the current state of the judiciary in the country, highlighting barriers to joining the EU such as corruption, political interference, and limited procedural transparency. Improvements are essential for fostering trust among citizens and the international community. The paper proposes strategies for reform, prevention of corruption and conflict of interest, what can contribute on enhancing the capacity and independence of judicial bodies. By addressing these core issues, North Macedonia can make significant steps towards fulfilling EU accession criteria and establishing independent and non-partisan courts i.e. independent judicial system.

Keywords: *corruption in North Macedonia, judiciary, law, legal cases, political interference.*

1. Corruption as a societal phenomenon

Corruption represents a negative phenomenon in society. Corruption is the misuse of office, public authorization, official duty or position for the purpose of gaining benefit, directly or through an intermediary, for oneself or for another. It has been around for thousands of years, but in recent years it has attracted increasing attention.

In the Law on Prevention of Corruption and Conflict of Interest, corruption implies the abuse of function, public authority, official duty, or position for personal gain, directly or through an intermediary, whether for oneself or for another.[1] According to Transparency International's Global Corruption Barometer on 2022, North Macedonia ranked 85th among the 180 countries in the index, where the country ranked first is perceived to have the most honest public sector. This underlines the urgency for comprehensive anti-corruption measures. Corruption in the judiciary, regardless of the extent of its prevalence, always causes great concern in the public. Corrupt judges, disregarding the principle of impartiality, disregard the most important feature of the rule of law – equality before the law.

Article 83(1) of the Treaty on the Functioning of the European Union, identifies corruption as one of the crimes with a particular cross-border dimension.

The European Union is one of the least corrupt regions in the world. However, none of the EU countries is fully free from corruption. Corruption is estimated to cost the European Union between EUR 179 billion and EUR 990 billion per year, amounting to up to 6% of its GDP. Also, 70% of Europeans believe that corruption is widespread in their countries - an increase of 2 points compared to 2022.

Despite the country's aspiration to join the EU, challenges persist in the form of a low level of rule of law, judiciary concerns, and systemic obstacles to EU integration. Corruption poses a significant challenge in North Macedonia, impacting trust in institutions, weakening accountability and transparency and hindering economic growth and contributing to political instability and impeding the country's path toward EU integration. This research paper delves into strategies for combating corruption, with a focus on the judiciary, to meet EU accession criteria.

1.1. *The amendments to the Criminal Code*

The changes made in the Criminal Code, created a significant disturbance in our country. Specifically, article 353 of the Criminal Code, regarding the abuse of official duty. It involves the reduction of the punishment and offers the possibility for numerous individuals involved in corruption, who have held official positions and misused their official positions or duties in North Macedonia, to be exempted

1 The Law on Prevention of Corruption and Conflict of Interest (Official Gazette of the Republic of North Macedonia No. 12/2019), article 2, paragraph (1).

from criminal prosecution. There are some activities related to corrupt behavior, which are named "Light and dark".[2] Top of Form

The amendments to the Criminal Code from September 6 foresee the expiration of a significant number of cases involving officials and public servants accused of corrupt activities. Which have resulted in many cases becoming statute-barred for all the accused.

1.2. *Light and dark occurrences*

This dichotomy gained significant attention, both in public sphere and among domestic and foreign institutions; high-level corruption cases. Recent legislative changes to Criminal Code, have raised concerns by potentially allowing corrupt individuals to evade criminal prosecution. By this explanation, unfortunately, in the Republic of North Macedonia, there is a low level of rule of law.

According to the World Justice Project, North Macedonia is ranked 67th out of 142 countries in the latest Rule of Law Index.

Dark events often involve instances of high-level corruption, including manipulations of academic records, allowing individuals to graduate from the Academy for Judges and Public Prosecutors without meeting the necessary criteria. Furthermore, there are cases where individuals manage to pass the Bar exam without obtaining sufficient internship and work experience as practicing lawyers, only to later enroll and complete the Academy for Judges and Prosecutors through questionable means. Unfortunately, there are several similar cases that highlight similar patterns of misconduct and ethical lapses within the legal profession.

The Commission for Prevention of Corruption and Confiscation launched an inquiry into the procurement of fuel oil for a company valued at 212 million euros. The investigation brought to light circumstances that raised suspicions of "Dishonest conduct" and "Misuse of official position" involving officials from the Ministry of Economy, the former director of the company, and other company officials who also served as commission members overseeing the fuel oil procurement. These individuals were found to have misused their official positions for personal business interests.

Complicating matters, due to changes in the Criminal Code, numerous cases related to "Skopje 2014" have expired. Unfortunately, this means that one more case will not find resolution. Additionally, a case has been in limbo for over a decade awaiting a judge's decision, and during this prolonged period, changes were made to the Criminal Code, further complicating the judicial process and potentially impacting the correctness of the verdict.Top of Form

2 Transparency International Macedonia, 2023

Light events; in a regrettable turn of events, a valuable authentic object, declared as cultural heritage, was destroyed for the sake of profits totaling approximately three million euros. In summary, the reduction of penalties for criminal offenses has worsened the situation in the country, undermining the principle of the rule of law. Subsequently, this has led to significant damage to the Health Insurance Fund of the Republic of North Macedonia, amounting to 35,551,472 denars. Additionally, an individual faced criminal charges for accepting bribes, having received a total of 21,000 denars and 150 euros from six people on six occasions.

Furthermore, numerous individuals are accused of committing criminal offenses, including "abuse of official position and authority" under Article 353, "falsifying documents" under Article 378, Paragraph 1, and "use of a document with false content" under Article 380, Paragraph 1 of the Criminal Code. These actions collectively highlight a concerning trend of legal violations and corruption within the system. Each case is assigned a specific codename. I mentioned only a few cases, but there are additional instances listed that have inflicted significant harm on North Macedonia's economy and justice.

A court may render a biased verdict in two primary ways. Firstly, it may happen when a judge explicitly and intentionally favors an individual who has violated a specific law. Alternatively, bias may surface when the judge's influence throughout the trial and verdict-making process creates an impression of fairness while an underlying partiality exists. Moreover, the judge might choose to indefinitely postpone the trial, possibly with the objective of letting the case expire due to the statute of limitations.

1. Establishment of an independent and efficient judiciary

Establishing an independent and efficient judiciary is of immense importance. Impartiality of the judiciary, professionalism and accountability in the judiciary, integrity and high standards of court judgment are essential to safeguard the rule of law, what requires a strong commitment. As it is mentioned, corruption threatens the stability of democratic institutions and the rule of law. By that, a strong legal framework and credible institutions are needed to support a coherent policy of prevention and deterrence corruption. Member States must ensure respect for the fundamental rights and rights of EU citizens, as guaranteed by the EU acquis, as well as the Chapter 23 – Judiciary and Fundamental Rights, which is one of the most challenging and complex chapters. It is divided into four main and interrelated areas: judiciary, fight against corruption, fundamental rights and the rights of EU citizens. According to the values EU offers, it is known that within the EU institutions there is a zero tolerance towards corruption. As that, it should be given importance to ethical, integrity and transparency rules in order to prevent corruption within the EU

institutions and outside the EU institutions. In order to successfully implement the reforms, candidate country must not only have full alignment of the legal acts, but also measurable results achieved in their implementation.

By addressing these core issues, North Macedonia can make significant steps towards fulfilling EU accession criteria and establishing independent and stable non-partisan courts i.e. independent judicial system.

2. A review of the State Commission for Prevention of Corruption's initiatives

The fight against corruption is not a simple process; it involves engagement from the entire society and initiative at all levels. Every citizen has a legal and moral obligation to combat corruption. This means not only recognizing corruption and refraining from corrupt actions but also reporting cases of corruption. The competent institution in North Macedonia is the State Commission for Prevention of Corruption (SCPC) - an independent body whose goal is the implementation of measures and activities to prevent corruption.

As per the annual report detailing the activities of the State Commission for Prevention of Corruption, judiciary is the most corrupt institution.

Given that North Macedonia is a signatory to key international, European, and regional agreements in the fight against corruption, a strategy has been formulated. This strategy aligns with the principles and obligations outlined in these documents, reflecting a vision for a society grounded in the highest ethical values and integrity. The overarching goal is to ensure all citizens have equitable access to accountable and transparent institutions, while upholding human rights and freedoms. The anticipated outcomes of implementing this strategy include fostering increased trust in the system's institutions, fortifying democracy, societal values, and the realization of human rights. These values are essential for comprehensive progress toward EU accession. The Anti-Corruption Commission bears a legal responsibility to both prevent corruption and execute the prepared strategy, actively working towards the eradication of corruption.

Annual report for the year 2020; the increased awareness and courage of citizens to report illegalities and irregularities in the work of public officials contributed to the Anti-Corruption Commission receiving 550 reports from citizens with suspicions of corrupt behavior, abuse of public office, existence of conflicts of interest. During 2020, the SCPC initiated 102 cases independently. In the field of corruption, decisions were made on 378 cases, 157 cases on conflicts of interest. For violations of prohibitions during the election process, decisions were made on all 33 reports. In the area of verifying data from survey forms, decisions were made on 38 reports.

In 2021, the State Commission for Prevention of Corruption successfully addressed the longstanding issues associated with insufficient spatial and technical conditions. The Government of the Republic of North Macedonia allocated new premises, providing a solution to the challenges. This development not only improved the working environment but also facilitated the installation of computer equipment supplied by the European Commission, which had previously remained unused for an extended period.

Throughout the year, reports from citizens concerning unlawful practices and irregularities in the conduct of public officials persisted. Consequently, the State Commission received 720 reports from citizens, alleging suspected corrupt behavior, abuse of public office, and conflicts of interest. The Commission, in response, initiated 84 cases independently and commenced 710 misdemeanor proceedings related to the untimely submission of declarations of assets and interests. The SCPC took 675 decisions with regard to: corruption, 390; conflict of interest, 152. Conducted campaigns for awareness-raising and building a system of integrity;

During 2022, the SCPC worked on the sectoral, institutional and personal integrity with both the central and local authorities. The SCPC received 698 reports and formed 127 legal cases at its own initiative in various areas, and launched the verification of assets status of 55 public office holders. 21 sessions were held where 1,056 decisions were reached. On account of their disrespecting the obligation to submit declaration of assets and interests, 403 misdemeanor payment orders were issued in 2022, of which, 375 concerned the failure to submit an asset declaration, interest declaration, or the changed assets status report form. In 243 cases, fines have been charged, collecting the denar equivalent of 39,200 euro into the Budget of the North Macedonia. The SCPC conducted numerous risk assessments and crafted an Analysis of Vulnerability to Corruption for public enterprises, municipalities, the City of Skopje, and joint-stock companies with predominant state capital.

Concurrently, a corruption risk assessment process was initiated within the judiciary with the goal of enhancing the integrity of both the judiciary and public prosecution. To enhance the anti-corruption legislative review, the SCPC implemented a software solution for analyzing proposed laws. This technology facilitates the identification of provisions carrying corruption risks and potential conflicts of interest.

As an integral component of the "Bilateral Screening" process initiated by the Republic of North Macedonia with the European Union, the SCPC actively engaged, primarily due to its preventive anticorruption role within the system. Throughout the year 2022, the SCPC played an active role in Cluster 1 bilateral meetings, specifically focusing on Chapters: 05 – Public procurement, democratic institutions, economic criteria; 23 – Judiciary and fundamental rights; 24 – Justice, freedom, and

security; 32 – Financial control.

Judging the work of the SCPC by the outcomes mentioned earlier, it has performed admirably.

3. METHODOLOGY

The methodology was qualitative method with case study analysis, working on specific legal cases in detail for a better understanding and analyzing legal documents, court decisions with content analysis. References include reports from the State Commission for Prevention of Corruption, Transparency International, and relevant national legal codes and EU documents on anti-corruption measures. Additionally, legal texts and case specific documents were analyzed for a well-rounded understanding.

4. CONCLUSION

In my opinion, the amendments to the Criminal Code, reducing charges for those abusing official positions, may lead to a disregard for the rule of law. To counteract this, it is essential to consider increasing levels of criminal sanctions, as this measure can contribute significantly to decreasing corruption. Additionally, raising awareness of corruption remains crucial.

Developing effective strategies and reforms to prevent political interference in the functioning of independent judicial bodies involves a multifaceted approach. One crucial aspect is enhancing the level of political responsibility. As previously stated, strengthening integrity, accountability, and transparency in employment—ensuring merit-based selections—plays a crucial role. Simultaneously, fostering public awareness is paramount. Improvements are essential not only for aligning with the EU's Chapter 23 on Judiciary and Fundamental Rights but also for fostering trust among citizens and the international community.

It's important to recognize that high-level corruption is intricately connected to political instability, weakened institutions, and a diminished rule of law. Addressing these challenges comprehensively through strategic reforms will not only fortify the independence of judicial bodies but also contribute to fostering a robust and accountable political environment.

In the absence of cooperation, tackling the issue of corruption becomes challenging. As it is well-known, in judicial bodies, cases without concrete evidence are disregarded and dismissed. To effectively address corruption, whether it involves receiving or giving bribes, it is crucial to catch the perpetrators in the act. And there should be no political influence, to prevent events from corrupting prosecutors or

judges, or being blackmailed, but rather, they should handle the cases according to the rule of law.

Fighting corruption is not easy, especially in countries that the level of corruption is high. Even though there are set up specialized anti-corruption bodies for preventing and fighting corruption, the level of corruption is high. There is insufficient fight against corruption.Top of Form

To contribute to the reduction of corruption levels and to increase public trust in the work of the legislative, judicial, and executive authorities, is necessary. Not to say it should fade away completely but to initiate a decrease.

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EUROPEAN INTEGRATION, CIRCULAR ECONOMY AND ENVIRONMENTAL TAXATION: THE CASE OF THE "PLASTIC TAX"

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ABSTRACT

To promote European integration, with a view to environmental sustainability and climate neutrality, over time, the attention of the EU legislator has focused on economic models of production, supporting the transition from a "linear economy" system to a paradigm of "circular economy", also through the use of fiscal leverage. As part of the "European Green Deal", aimed at achieving sustainable growth to contribute to full climate neutrality, in March 2020, an important action plan on the circular economy was prepared, through the development of a program aimed to growth and aimed at building a cleaner and more competitive Europe, promoting sustainable consumption and aiming to ensure that the resources used remain in the economic system for as long as possible. In more recent times, with the program called "Fit for 55", the European Commission has presented a series of proposals designed to achieve the objectives expressed by the European Green Deal: the reduction of net carbon dioxide emissions by 55% by 2030; the pursuit of energy neutrality by 2050. To encourage plastic recycling and reduce environmental pollution, with the EU/Euratom Decision 2020/2053, the "European plastic tax" was introduced, applied on the weight of non-recycled plastic packaging waste generated in each Member State. From this perspective, with the preparation of a virtuous model and the elaboration of an agenda for future European growth focused on radical changes in production and consumption processes, the "circular economy" model could be fully implemented to encourage the sustainable development and the efficient allocation of resources.

Keywords: *European integration; circular economy; Plastic tax*

1. The transition from a "linear economy" model to a "circular economy" system with a view to environmental sustainability

To promote European integration[1], with a view to environmental sustainability[2] and climate neutrality[3], under the auspices of the 2015 Paris Climate Agreement, over time, the attentions of the EU legislator has focused on the economic models of production, marking the transition from a system of "linear economy" (characterized by the scheme of "taking, produce, use and throw away") to a paradigm of "circular economy"[4] (based on the configuration of "take, produce, use and recycle"), also through the use of taxation.

In the past, the implementation of a production based on the linear economy model, in addition to causing high levels of pollution, a source of environmental degradation, had contributed to the depletion of many natural resources.

From this perspective, by emphasizing the promotional dimension of taxation[5], within a virtuous model aimed at subjecting waste to taxation and encouraging reuse and recycling, the modern circular economy has been fully implemented, promoting sustainable development and efficient allocation of resources through the elaboration of an agenda for future European growth centered on radical changes in

1 See M. Patrono, *Diritto dell'integrazione europea*, vol. I, *Initium europae. Storia delle origini e fondamenti del processo integrativo. Lezioni*, Padova, Cedam, 2013; L. Rapone, *Storia dell'integrazione europea*, Roma, Carocci, 2015; D. Pasquinucci, L. Verzichelli (eds.), *Contro l'Europa? I diversi scetticismi verso l'integrazione europea*, Bologna, il Mulino, 2016; G. Laschi, *Storia dell'integrazione europea*, Firenze, Le Monnier Università, 2021; V. Cannizzaro, *Il diritto dell'integrazione europea. L'ordinamento dell'Unione*, Torino, Giappichelli, 2022.

2 See A. F. Uricchio, G. Chironi, F. Scialpi, *Sostenibilità e misure fiscali e finanziarie del D.L. Clima* in *Ambiente Diritto*, (3), 2020, p. 1 e ss.

3 See A. Gratani, *L'UE e gli obiettivi energetici 2020* in *Rivista giuridica dell'ambiente*, (5), 2014, p. 535B e ss.; M. Carducci, *Cambiamento climatico (diritto costituzionale)* in *Digesto delle discipline pubblicistiche*, *Aggiornamento*, vol. VIII, Milano, Utet Giuridica, 2021, p. 51 e ss.; G. Amanatidis, *Lotta contro i cambiamenti climatici* in *https://www.europarl.europa.eu/factsheets/it/sheet/72/lotta-contro-i-cambiamenti-climatici* (accessed 18.01.2024).

4 See C. Soncini, *Reduction of emissions and non-discrimination principle: how to combine tax exemptions and circular economy to offset climate crisis* in *Diritto e processo tributario*, 2019, p. 325 e ss.; M. Cocconi, *Circular Economy and Environmental Sustainability* in *Ambiente Diritto*, (3), 2020, p. 1 e ss.; M. Greggi, *L'ambiente e l'economia circolare nel diritto tributario* in A. F. Uricchio, G. Selicato (eds.), *Circular Economy and Environmental Taxation*, Bari, Cacucci, 2020, p. 25 e ss.; C. Trenta, *Tax measures in support of the circular economy and sustainable development: the experience of the nordic countries* in A. F. Uricchio, G. Selicato (eds.), *Circular Economy and Environmental Taxation*, Bari, Cacucci, 2020, p. 91 e ss.; A. F. Uricchio, *Sostenibilità e politiche fiscali incentivanti* in D. Caterino, I. Ingravallo (eds.), *L'impresa sostenibile. Alla prova del dialogo dei saperi*, Lecce, Euriconv, 2020, p. 409 e ss.; F. De Leonardis, *Economia circolare (diritto pubblico)* in *Digesto delle discipline pubblicistiche*, *Aggiornamento*, vol. VIII, Milano, Utet Giuridica, p. 161 e ss.

5 See A. Uricchio, *Introduzione* in A. F. Uricchio, M. Aulenta, G. Selicato (eds.), *La dimensione promozionale del fisco*, Bari, Cacucci, 2015, p. 19 e ss.

the processes of production and consumption[6].

It is an approach based on the entire life cycle, which, in addition to being preordained to improve the use of secondary materials, aims to provide economic incentives, including tax incentives, to limit the production of waste and encourage its reuse[7].

A first objective, in this direction, was set with Directive 2000/53/EC of 18 September 2000, relating to the reduction of waste produced by end-of-life vehicles and their components, implemented with the forecast of a reuse and recovery rate of 95% by 2015, in order to encourage manufacturers and importers to use recycled materials.

Directive 2006/66/EC of 6 September 2006 on waste batteries and accumulators aimed to improve waste management and the environmental performance of these products by setting standards for collection, recycling, treatment and disposal.

A similar objective was also pursued with Regulation 1257/2013/EU of 30 December 2013, concerning the recycling of ships, in order to encourage, as far as possible, reuse and ensure that hazardous waste was subjected to environmentally sound management[8].

With the Communication of 25 September 2014, COM (2014) 398 final/2, entitled "*Towards a circular economy: program for a zero waste Europe*", the European Commission made some proposals in this direction, developing the principle of prevention and the precautionary one, through the modification of waste treatment and disposal processes.

Subsequently, an ambitious circular economy package was prepared within the EU on 2 December 2015, through an action plan containing measures relating to the entire life cycle of products: from design, to procurement, production and consumption up to waste management and the secondary raw materials market[9].

In implementation of the circular economy package, the European Commission adopted the Regulation of 17 March 2016, COM (2016) 157 final, with the primary aim of encouraging the use of organic and waste-derived fertilizers, establishing equal conditions of competition with traditional inorganic fertilizers of the conventional type, in order to favor the conversion of organic waste into raw materials that can be used to manufacture fertilising products, reducing at the same time energy consumption and environmental damage[10].

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6 See A. Uricchio, *I tributi ambientali e la fiscalità circolare* in *Diritto e pratica tributaria*, (5), 2017, p. 1861.

7 See G. Amanatidis, *Efficienza delle risorse ed economia circolare* in *https://www.europarl.europa.eu/factsheets/it/sheet/76/efficienza-delle-risorse-ed-economia-circolare*, p. 6 (accessed 18.01.2024).

8 See G. Amanatidis, *Efficienza delle risorse ed economia circolare*, cit., pp. 2-3.

9 See A. Uricchio, *I tributi ambientali e la fiscalità circolare*, cit., p. 1862.

10 See A. Uricchio, *I tributi ambientali e la fiscalità circolare*, cit., pp. 1863-1864.

In order to review the waste management objectives, together with the 2015 action plan on the circular economy, the European Commission has prepared four legislative proposals aimed at amending a series of EU regulatory acts[11].

These proposals were followed by the adoption in 2018 of the four Directives on the "circular economy" (Directive 2018/849/EU of 30 May 2018; Directive 2018/850/EU of 30 May 2018; Directive 2018/851/EU of 30 May 2018; Directive 2018/852/EU of 30 May 2018), then implemented by Italian law in 2020, with which a new waste management model was prepared, based on a logic of prevention, reuse and recycling.

2. The objectives pursued by the EU directives contained in the "circular economy package" and by the legislation aimed at restricting the use of plasticized products. The transition from linear taxation to circular taxation

The objectives pursued within the EU with the Directives contained in the "circular economy package" of 2018 are multiple: to bring the recycling of urban waste to a threshold of 55% by 2025, 60% by 2030 and 65% by 2035; set 70% packaging waste recycling standards to be achieved by 2030; reduce landfilling of municipal waste to a maximum of 10% by 2035[12].

Almost simultaneously with the adoption of the "circular economy package", with the Communication of 16 January 2018 COM (2018) 28 final, entitled "*European strategy for plastics in the circular economy*", the European Commission proposed that all packaging of plastics are redesigned in order to allow their recycling and reuse by 2030, proposing multiple measures aimed at improving the economic aspects and quality of recycling and reducing plastic waste, so as to also limit its abandonment in the environment.

Therefore, following the increase in plastic production and, with it, the environmental problems attributable to an economic model centered on the logic of profit and waste and, therefore, indifferent to the costs of the negative externalities it is able to generate, the need to prepare suitable measures to remedy the harmful effects generated by the dispersion of disposable plastic packaging and containers in the environment was felt, also by the EU institutions, products that have revolutionized our way of life due to its flexibility[13].

The goal is to achieve a real ecological transition, through the preparation of a circular

11 See G. Amanatidi, *Efficienza delle risorse ed economia circolare*, cit., p. 4.

12 See G. Amanatidis, *Efficienza delle risorse ed economia circolare*, cit., pp. 4-5.

13 See F. Scialpi, *La plastic tax e la sugar tax nella legge di bilancio 2020: limiti e prospettive* in D. Garofalo, P. Pardolesi, A. Rinaldi (eds.), *I simposio dei dottorandi sul tema dello sviluppo sostenibile*, Taranto, DJSGE, pp. 301-302.

economy model which, in smoothing out the diseconomies, improves production upstream, reducing waste, orienting consumption and remedying distortions: this recipe can only embrace the dimension of a promotional tax system, characterized by the metamorphosis from a linear taxation system to a circular taxation paradigm[14].

In this view, "linear taxation", dominated by the principle of fiscal neutrality, as it is unsuitable for influencing the decisions, preferences and behavior of taxpayers, loses sight of non-tax purposes to attribute relevance only to those of revenue, offering the State resources to allocate to spending, without having regard to the worthiness of the methods of use, thus ending up too often to finance spending for spending and therefore even waste[15]. On the contrary, "circular taxation", enhancing the promotional dimension of taxation, limits unproductive and patronage public spending, restarting development without destroying wealth: this model, through the subjection to taxation of the gap and the use of tax eco-incentives, favors reuse and recycling, fully implementing the circular economy paradigm[16].

3. The "European plastic tax" and the "Italian plastic tax": forms of levy preordained to guide behavior and development models

In order to promote the recycling of plastics, reduce environmental pollution and discourage the use of disposable plastic products, the EU/Euratom Decision 2020/2053 of 14 December 2020 introduced the "European plastic tax", establishing a uniform rate of 0.80 euros per kilogram, applied, on the weight of waste of non-recycled plastic packaging waste generated in each Member State, as the difference between the weight of plastic packaging waste generated in a given year and the weight of plastic packaging waste recycled over the same period[17].

The measure differs from the "Italian plastic tax"[18], a tax on the consumption of

14 See F. Scialpi, *La plastic tax e la sugar tax nella legge di bilancio 2020: limiti e prospettive*, cit., p. 302.

15 See A. Uricchio, *I tributi ambientali e la fiscalità circolare*, cit., pp. 1860-1861.

16 See A. Uricchio, *I tributi ambientali e la fiscalità circolare*, cit., p. 1861; L. Strianese, *La fiscalità circolare quale strumento di salvaguardia dell'ambiente e di rafforzamento della resilienza dei sistemi tributari* in *Rivista di diritto tributario internazionale* (3), 2021, p. 81 e ss.

17 See C. Sciancalepore, *Le risorse proprie nella finanza pubblica europea*, Bari, Cacucci, 2021, p. 241; R. Alfano, M. Bisogno, *I tributi sulla plastica: evoluzione interna, sollecitazioni europee e possibili prospettive nell'ambito della strategia di Circular Economy* in A. F. Uricchio, G. Selicato (eds.), *Green Deal e prospettive di riforma della tassazione ambientale*, Bari, Cacucci, 2022, p. 289 e ss.

18 See E. Sbandi, B. Santacroce, *Plastic tax: riflessioni tecniche e questioni aperte in attesa delle disposizioni attuative* in *Il fisco*, (13), 2020, p. 1239 e ss.; F. Scialpi, *La plastic tax e la sugar tax nella legge di bilancio 2020: limiti e prospettive* cit., p. 299 e ss.; A. F. Uricchio, *Fiscalità alimentare e circolare: problemi e opportunità a seguito dell'introduzione di "sugar tax" e "plastic tax"* in *Diritto agroalimentare*, (1), 2020, p. 185 e ss.; A. F. Uricchio, *Manuale di diritto tributario*, Bari, Cacucci, 2020, p. 371 e ss.; A. Di Salvo, F. T. Coaloa, *Plastic tax in via di definizione* in *Il fisco*, (12), 2021, p. 1133 e ss.; E. Sbandi, B. Santacroce, *Rinvio per plastic e sugar tax* in *Il*

single-use plastic products, whose entry into force has been deferred several times. The tax will be applied, starting from 1 July 2024, in an amount equal to 0.45 euros per kilogram of plastic material contained in the asset subject to taxation, to stem the growing production of packaging and containers.

It is a form of withdrawal which, in affecting the production and consumption of plastic products, pursues transversal objectives which, disregarding the typical purposes of revenue, aim to direct development behaviors and models towards more responsible and aware forms[19].

The harmful effects that plastic generates to the detriment of the ecosystem allow the domestic tax to be ascribed to the category of "green taxes"; more specifically, since the tax obligation arises in relation to the consumption of plastic materials, it seems possible to bring the institute in question under the *genus* of environmental excise duties, whose prerequisite is not the manufacture or consumption considered in itself, but the manufacture or consumption if and as they produce environmental damage[20].

Domestic tax is levied on plastic materials not suitable for reuse or subsequent transfer with the function of containment, protection, manipulation or delivery of goods or food products, including semi-finished products, preforms and objects which allow the closure, marketing or presentation of the same.

The plastic composition, even partial, of these products and their destination for a single use rise to essential requirements for tax purposes[21].

By express regulatory provision, medical devices, compostable plastic materials and those used to contain and protect medicinal preparations are excluded from taxation[22].

The taxable person is identified in the manufacturer, where the plastic materials are made in the national territory, or in the purchaser carrying out an economic activity or in the transferor for the plastic materials (purchased by a private national consumer) coming from other EU countries or still in the importer for plastic materials imported from non-EU countries[23].

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fisco, (2), 2021, p. 261 e ss.; G. Salanitro, *Sugar tax e plastic tax. Quando il tributo litiga con la capacità contributiva* in *Rivista di diritto tributario*, (4), 2023, p. 339 e ss.

19 See F. Scialpi, *La plastic tax e la sugar tax nella legge di bilancio 2020: limiti e prospettive*, cit., p. 300.

20 See S. Scarascia Mugnozza, *Riflessioni su effettività e utilità della tassazione della plastica* in *Ambiente Diritto*, (3), 2022, p. 6.

21 See S. Scarascia Mugnozza, *Riflessioni su effettività e utilità della tassazione della plastica*, cit., p. 6.

22 See F. Scialpi, *La plastic tax e la sugar tax nella legge di bilancio 2020: limiti e prospettive*, cit., p. 303.

23 See F. Scialpi, *La plastic tax e la sugar tax nella legge di bilancio 2020: limiti e prospettive*, cit., p. 303.

Depending on the hypotheses declined, the tax obligation arises at the time of production of the plastic materials or their introduction into the national territory from other EU countries or definitive importation into the national territory from non-EU countries[24]. The act of release for consumption, which makes the tax payable, coincides with the transfer to other national subjects, with the purchase or transfer in the national territory or with the definitive importation[25].

A bonus is also envisaged, in the form of a tax credit, recognized to companies operating in the plastics sector and producers of plastic materials: this is a facilitation measure consistent with the market based approach strategy, which, on the one hand, prescribes the use of the tax to dissuade consumers from observing ecologically unsustainable conduct and, on the other hand, mitigates the tax burden on environmentally virtuous products and behaviour, to encourage their diffusion[26].

Considering that compostable products are expressly excluded from the application of the tax, the intention pursued is to encourage the production of biodegradable plastics, in the wake of the strategy endorsed by EU legislation[27].

On an abstract level, it seems that national and European legislation are destined to find joint application, in order to subject the entire life cycle of plastic to taxation and maximize the deterrent effect of the tax[28].

In reality, the tax perimeter of the domestic tax differs from that of the EU tax: the "plastic tax" developed by the Italian legislator affects the mere production of disposable plastic products, insisting on manufacturing and consumption; the European own resource, on the other hand, pertains to the broader sphere of non-recycled plastic packaging, affecting the relative disposal[29].

Therefore, while, with the fiscal measure prepared by the domestic legislator, the taxation on the plastic materials should occur during the production process, i.e. as long as the plastic product is on the market, the application of the European tax would take place on the assumption of the disposal of the product, which can legally be qualified as "waste" once it is released from the market[30]. Furthermore, the European levy is not aimed at the final consumer, but at the Member State and is not applicable in the stage of production or consumption of the plastic: for this reason,

24 See F. Scialpi, *La plastic tax e la sugar tax nella legge di bilancio 2020: limiti e prospettive*, cit., p. 303.

25 See F. Scialpi, *La plastic tax e la sugar tax nella legge di bilancio 2020: limiti e prospettive*, cit., p. 304.

26 See S. Scarascia Mugnozza, *Riflessioni su effettività e utilità della tassazione della plastica*, cit., pp. 7-11.

27 See S. Scarascia Mugnozza, *Riflessioni su effettività e utilità della tassazione della plastica*, cit., p. 7.

28 See S. Scarascia Mugnozza, *Riflessioni su effettività e utilità della tassazione della plastica*, cit., p. 8.

29 See C. Sciancalepore, *Le risorse proprie nella finanza pubblica europea*, cit., pp. 243-244.

30 See C. Sciancalepore, *Le risorse proprie nella finanza pubblica europea*, cit., pp. 243-244.

the disincentive effect of the measure, which becomes a characteristic feature of the environmental levy in proper sense, it is of little importance[31].

However, on a concrete level, the demarcation line between "artifacts having the function of containment, protection, manipulation or delivery of goods or food products" and "packaging waste" is rather blurred: in fact, both regulations limit the application of the fiscal measure to non-recycled or non-recyclable products; moreover, the European provision does not make distinctions regarding the composition of the product[32].

4. The opportunities of the transition from a linear economy to a circular economy and future prospects: the "European Green Deal" and the "Fit for 55"

The transition from a linear economy to a circular economy heralds great opportunities for two reasons: on the one hand, because, by acting as a stimulus for the modernization and transformation of economic models, it can favor the ecological transition[33] and direct production in the direction of sustainability, respect for the environment, nature and people; on the other, because, by offering economic operators the possibility of becoming more competitive and achieving considerable advantages, it can create jobs and facilitate integration and innovation at a social and industrial level[34].

Recently, as part of the European Green Deal[35], a program aimed at achieving sustainable growth, to contribute to full climate neutrality[36], in March 2020, an important action plan on the circular economy was prepared, through the development of a growth-oriented program aimed at building a cleaner and more competitive Europe, promoting sustainable consumption and aiming to ensure that

31 See S. Scarascia Mugnozza, *Riflessioni su effettività e utilità della tassazione della plastica*, cit., p. 9.

32 See C. Sciancalepore, *Le risorse proprie nella finanza pubblica europea*, cit., pp. 243-244.

33 See A. F. Uricchio, *Presentazione* in A. F. Uricchio, G. Selicato (eds.), *Circular Economy and Environmental Taxation*, Bari, Cacucci, 2020, p. 1.

34 See A. Uricchio, *I tributi ambientali e la fiscalità circolare*, cit., p. 1862.

35 See G. Claeys, S. Tagliapietra, G. Zachmann, *How to Make the European Green Deal Work*, Brussels, Breugel, 2019; T. Rosembuj, *Climate Change and the New Green Deal* in *Ambiente Diritto*, (4), 2019, p. 1 e ss.; A. Padoa-Schioppa, A. Iozzo, *Globalizzazione e Unione Europea: sfide e strategie. Profili istituzionali del Green Deal*, Policy Paper, Torino, Centro Studi sul Federalismo, 2020, p. 3 e ss.; F. Gallo, *Verso un prossimo sistema fiscale europeo* in *Il Sole 24 Ore*, 21.08.2020; A. Comelli, *Riflessioni sulla tassazione ambientale, all'epoca della pandemia innescata dal COVID-19, nella prospettiva di un'ampia riforma tributaria* in *Diritto e pratica tributaria*, (1), 2021, p. 44 e ss.; A. F. Uricchio, *La costruzione della società ecologica: il "Green New Deal" e la fiscalità circolare* in *Diritto agroalimentare*, (1), 2021, p. 149 e ss.

36 See S. Moratti, *Green Deal Europeo: nuove prospettive per la fiscalità dell'energia nelle politiche di gestione dei rischi climatici* in *Rivista di diritto finanziario e scienza delle finanze*, (4), 2020, p. 439 e ss.; N. Chomsky, R. Pollin, *Minuti contati. Crisi climatica e Green New Deal globale*, Milano, Ponte alle Grazie, 2020.

the resources used remain in the economic system for as long as possible, so as to reduce the overall footprint (in terms of environment and resources) of production and consumption and provide incentives for technological innovation, sustainable businesses and zero climate impact products, in consideration of the strong synergies existing between the circular economy and climate protection actions.

Lastly, with the program called "Fit for 55"[37], the European Commission has presented a series of proposals designed to achieve the objectives set by the European Green Deal, consisting of a 55% reduction in net carbon dioxide emissions by 2030 and in energy neutrality to be achieved by 2050.

In conclusion, the hope is that the tax matter, in its evolution, will not lose sight of the objective of the effectiveness of the institutions declined, which cannot be separated from a simple and easy application both for the interpreter and for the taxpayer, monitoring, also, the interventions developed at the EU level, so that the mere revenue contingencies do not affect their legitimacy[38].

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N. Chomsky, R. Pollin, *Minuti contati. Crisi climatica e Green New Deal globale*, Milano, Ponte alle Grazie, 2020.

37 See M.T. Monteduro, *Cambiamenti climatici e politiche fiscali: impatti sociali ed effetti economici del pacchetto europeo "Fit for 55"* in *Rivista di diritto finanziario e scienza delle finanze*, (4), 2021, p. 447 e ss.; M.C. Fregni, *Politiche fiscali ambientali, osservazioni tra pandemia e crisi geopolitiche* in *Rassegna tributaria*, (1), 2022, p. 161 e ss.

38 See S. Scarascia Mugnozza, *Riflessioni su effettività e utilità della tassazione della plastica*, cit., p. 18.

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PUBLIC FINANCIAL MANAGEMENT REFORM: A CONTINUOUS JOURNEY TOWARD EU STANDARDS

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ABSTRACT

Sound public financial management is a key component in negotiation process between Albania and Europe Union (EU). There are many tools used to assess periodically the progress achieved for a country in this key area such as Public Expenditure and Financial Accountability, SIGMA assessment, TADAT and PIMA, which have become commonplace tools for assessing public financial management performance.

Global governments are implementing Public Financial Management (PFM) reforms at different phases. These reforms aim to enhance the following areas: fiscal discipline (to increase budget credibility), operational efficiency (to minimize waste and align spending with revenues), strategic resource allocation (to promote growth and reduce poverty), and service delivery. During these ten years of implementation of PFM reforms in Albania, some achievements are noticed in capacity building, legal amendments, and improvement in technology for the development of effective Financial Management Information Systems (FMIS). After successful negotiation for the PFM reforms in the end of 2022, Albania adopted the position for the public finance management within the Public Administration Reform Roadmap. This will bring Albania closer to the European dream.

Given the stage at which PFM reforms are being implemented, the research indicates that many projects may be unsuitable and unattainable targets for governments and development partners. This paper offers a deeper understanding of the impact of PFM reforms on Albania's path of European integration from the legal context. We will investigate which are the main improvements in the legal framework and which are the urgent subareas in PFM that need interventions as quick as feasible.

Keywords: *Albania, Europe integration, public finance management, reforms, negotiation process*

1. Introduction

One of the main concerns of governments and development professionals is public financial management. The institutions that oversee public finances exert a decisive influence over the financial and societal advantages and disadvantages associated with tax collection and expenditure. Some have recently gone so far as to claim that 'successful "societal evolution" hinges on the systems and procedures societies develop to manage public finance and procurement' (Porter et al. 2010)[1]. Together with a nation's constitution, tax laws, budget system laws, and local government finance laws form the legal foundation of the public finance system. The legal basis for public finance management varies enormously across countries – a reflection not only of differences in the budget system but also of the differences in political, administrative, legal and cultural arrangements. At one extreme, a few countries do not have a PFM legal base apart from the constitution. At the other extreme, there are countries that have many laws relating to the public finance system. Most countries lie between these two extremes; typically, a country has only a few laws that specify national budgeting arrangements (Lienert and Jung 2004)[2].

When analyzing the legal base of PFM in Albania, The EU regulations hold great significance. Public financial management is the component under Cluster 1, the fundamentals of the accession process. Many key PFM areas are covered in other Chapters such as Chapter 5 – Public procurement, Chapter 16 – Taxation, Chapter 17 – Economic and monetary policy, Chapter 32 – Public financial internal control etc. Hence, in this paper the author will present the main legal developments in the field of the PFM which prepared the background for further negotiation in the accession negotiation process. Reforms should start by analyzing problems by looking into those basics first, not solutions (Dorbayani, 2020). This article presents the big picture on the state of PFM legal initiatives and reform efforts. It will analyse how the legal changes in the PFM system supports the key objectives of macro-fiscal sustainability, allocative efficiency – in terms of allocating resources to policy priorities and in terms of resources translating into effective service delivery.

As it is stated in Albania Progress Report 2023, an important document from the European Commission[3], Albania should put in place a legislative framework that

1 Porter D, Andrews M, Turkewitz J, Wescott C (2010) Managing Public Finance and Procurement in Fragile and Conflicted Settings. WDR Background Paper, World Bank, Washington DC.

2 Lienert, Ian and Moo-Kyung Jung, 2004, "The Legal Framework for Budget Systems—An International Comparison," OECD Journal on Budgeting, Vol. 4, No. 3 (Paris: OECD).

3 European Commission, Progress Report 2023 for Albania, dated 8.11.2023.

properly regulates the typology and criteria for establishing subordinated bodies and clarifies lines of accountability and should adopt and start implementing the new public financial management strategy.

Even though facing the effects from the triple consecutive shocks that hit Albania in the last 4 years, the country is still implementing its Public Financial Management Reforms to comply with the EU practices. After the first generation of reforms implemented through the first and the second PFM strategy respectively 2014-2020[4] and then 2019-2022[5], now the focus is on drafting on projecting the next generation of reforms for the period 2023-2030[6]. At the central government level, several public finance instruments have been adopted such as: legislation initiatives, culture changes and process reengineering, capacity building and IT developments. This article will be focused on the main legal initiatives considering every phase of the Public Finance Management reform implemented in the last ten years.

2. Methodology

Numerous research has been done to investigate public finance management in the context of the Europe Union, but there are not too many which examine how the legal base impacts the overall system of public finance of a country. The paper is based on a case study approach as a research methodology. It draws on archival data as well as search review of legal framework, international reports, and academic papers.

The author reviewed the international and nation reports related to the topic to gain more in depth understanding in the legal requirements for Albania in the area of Public Finance Management. The author also reviewed the reports of PFM implementation in Albania and international development partners to identify all the progress done so far in the approximation of the acquis communitas in the related area. To achieve this, the author collected qualitative data by analyzing the different adopted laws in PFM in the recent years.

The research holds significance not only for Albania but also for other Western Balkan

4 Decision of Council of Ministers no. 908, dated 17.12.2014 "For the adoption of Public Finance Management Strategy 2014-2020"; Order of the Prime Minister no. 202, dated 25.08.2014 "On the establishment of the inter-institutional working group, responsible for the coordination, drafting, and follow-up of the implementation of the cross-sectoral strategy of Public Finance Management 2014-2020" and the Order of the Minister of Finance no. 41, dated 02.04.2014 "On establishing the working group for preparing the Public Finance Management Strategy 2014-2020".

5 Decision of Council of Ministers no. 824, dated 18.12.2019 "For the adoption of Public Finance Management Strategy 2019-2022".

6 Order of Prime Minister no. 195, dated 08.11.2023, "On the establishment of the inter-institutional working group for the drafting of the Sectoral Strategy for the Public Finance Management 2023-2030 and the action plan'.

nations that are attempting to approach Europe Union. The study's conclusions can be applied to Kosovo and Bosnia-Hercegovina, two countries that are currently one step behind in the accession process; however, some of the recommendations can also be applied to Montenegro and the Republic of Serbia, two nations that are currently one step ahead in this process.

Yet, in general, any recommendation should consider the local context and the country's specific conditions.

3. How much is Albania Public Financial Legislation aligned with EU Acquis Communautaire during the last year of PFM reforms implementation?

During the implementation of the Public Finance Management strategies 2014-2020 and 2019-2022, progress has been made against the legal framework in this field. A deep analysis of legal initiatives (laws, DCM, guidelines), as well as their purpose or contribution to the improvement of the field of public finance of the country is given below.

Regarding the first phase of PFM system, *ensuring a sustainable and prudent fiscal framework*, the amendments to the Organic Budget Law[7] (OBL) as adopted by the Parliament in June, 2, 2016 are considered a very important milestone, to address many objectives aiming: (i) to provide some aspects of the fiscal rules in order to reduce the debt/GDP ratio creating in this manner conditions for long-term sustainability of public finances; (ii) restrict spending during election years; (iii) control over multi-year commitments; (iv) better harmonization of public investments with budget preparation; and (v) ensure that proceeds from privatization can only be used for retiring public debt and/or capital. The introduced provisions by the OBL, first removed one of the main policy biases observed in the past: overoptimistic forecasts and second put the public debt on a deterministic declining path. Finally, the amendments to the OBL requires the Ministry of Finance to report among others to the Council of Ministers and to the Parliament within 6 months after the closure of each year on the consolidated budget execution and on public debt to ensure that fiscal consolidation is on track and the debt is reduced following the path envisaged in the same Law. Amendments to the Organic Budget Law (OBL), adding new fiscal rules, planned for 2022 were made in July 2020. The newly introduced rule concerned the primary balance, which starting from 2023 cannot be negative (i.e. it must at least be balanced or a positive surplus). The new rule is seen as a crucial indicator of the long-term sustainability of public finances and is also in line with the EC recommendations and the main principles of the

7 Law no. 57 dated 02.06.2016 "For some adding and amendments on the Law no. 9936 dated 26.06.2008 "On Management of Budgetary System in the Republic of Albania (amended)"

Acquis Communautaire of the EU. In relation to *Fiscal Risk Management,* pursuant to the Law no. 50 dated 05.02.2014 "On approval of the Strategy for the prevention and payment of arrears and of the action plan", on the official Ministry of Finance website are published periodically the arrears created in quarterly basis. Also, in the framework of preventing the creation of new arrears, several measures have been taken that are also sanctioned in the budget guideline[8]. The fiscal risks analysis, in terms of the FRS was finalized in a single report, which was consequently included as a separate chapter[9] in the Law for 2019's Annual Budget. Also, starting from 2019, monitoring and reporting process for concession/Public Private Partnership (PPP) was institutionalized through the inclusion of the calendar and standards for their reporting in supplementary instruction[10]. During 2020, was issued the Instruction of the Minister[11], which obliges all budget institutions and their dependent institutions to record the arrears into AGFIS. There were also two join orders[12] for the reduction of the arrears on electricity sector.

About the second PFM stage, *"Well integrated and efficient planning",* the Government of Albania adopted the Integrated Planning System (IPS)[13], a set of operating principles to ensure that government policy planning and monitoring as a whole takes place in as efficient and harmonized way as possible. In this context was adopted the DCM no. 290, dated 11.04.2020 "On the establishment of the state database of the integrated planning information system, to help with the IPSIS enforcement. The main scope of the decision was to create an IPSIS database that will serve as the main system for planning, analysis, and preparation of all typologies of strategic documents, as well as for monitoring their performance achieved towards planned objectives. Through the abovementioned amendments in Organic Budget Law (OBL) changes in 2016, Parliament was empowered to vote on and approve the Medium-Term Budget Programme ceilings at programme level and make them binding for the three years period. Also, a thoroughly revised Standard Budget Preparation Guidelines (SBPG) to reflect improvement with the

8 Point 37 of Supplementary Guideline No. 8, dated 13.01.2017 "On the Implementation of the 2017 Budget."

9 Ch.8: "Fiscal Risks and Prevention Measures"

10 Supplementary Instruction No.1, dated 17.01.2019 "On the implementation of the 2019 Budget."

11 Instruction of the Minister of Finance and Economy No. 37. dated 06.10.2020; Guideline "On the Implementation of Budget 2021 no.4 dated 25.01.2021.

12 Co-signing of the joint order of MoIE and MoFE No. 304 date 17.12.2020 "For the approval of the action plan for the reduction of arrears in the electricity sector" and joint order of MoIE and MoFE no. 379 dated 30.09.2021 "On the implementation of the plan of measures for the reduction of arrears in the electricity sector."

13 Decision of Council of Ministers "Integrated Planning System (IPS)" no 692, dated 10.11.2015; Order of Prime Minister no. 157, dated 22.10.2018 "On implementing the sector wide approach for the (cross) sectors and establishing and functioning of the integrated (cross) sectorial mechanism".

distinction and identification between existing and new policies and the respective source of financing. *Public Investment Planning and Oversight*[14] remains one of the most important areas within PFM. Initially, it was proposed and approved and the DCM in 2018 and then it was revised in 2022, aiming at establishing new criteria for prioritizing and appraising large capital investment projects, impeding budget institutions to create "artificial fiscal space" for new investment projects, pushing the duration of current investment projects. In order to further strengthen the capacity of government to appraise public investment projects, the responsible ministry for public finances worked on a new legal initiative and the CMs has approved the decision no. 887 dated 27.12.2022 "On procedures for public investment management", which replaces the previous DCM no. 185, dated 29.3.2018 "On public investment management procedures". To ensure sound local finances, in this framework it was approved Law no. 68, dated 27.04.2017 "On the finances of the local self-government" which lays the basis for better management of local finances. After years of implementation, it seems that further amendments are needed. For this reason, in the new General Analytical Programm of Project Act [15] approved in the end of 2023, it is planned for a new law on local public finances.

In concern to the third PFM stage *"Revenue mobilization",* Albanian authorities embarked in 2016 a reform effort to address a broad-based revenue shortfall by amending the Tax Procedures Code to provide tougher penalties for non-compliance during 2016 and 2017. The fight against informality was intensified after the Order of the Minister of Finance no.103 of 4.10.2017 "On the monitoring of performance indicators in the fight against Informality". An important milestone was the adoption of a new law no. 33 dated 30.03.2017 "On Payment and Deletion/ Suppression of Tax Liabilities, Payable Liabilities in Customs, as well as the Removal Procedure from circulation of the Transport Vehicles, after Deletion/Suppression of Tax Liabilities". During 2022, changes in Article 10 "Determination of the category of exporters for the purpose of VAT refund" of DCM no. 953 dated 29.12.2014 "On the provisions in implementation of the law no. 92/2014 "On value added tax in the Republic of Albania", were made to increase the number of claims that are reimbursed without an audit. The two most important development in the direct taxation are: Law no. 4, approved on 30.1.2020 "On the Automatic Exchange of Information for Financial Accounts" is in conformity with the CRS standard (Common Reporting Standard) and partially compliant with Council Directive 2014/107/EU of 9 December 2014

14 Decision of the Council of Ministers "For Approval in principle of the financing agreement, between the Council of Ministers of the Republic of Albania and the European Commission, for the IPA Action Program, for the year 2014, for Albania" no. 987, dated 9.12.2015.

15 Decision of the Council of Ministers "On the approval of the General Analytical Program of the Draft Acts that will be presented for consideration by the Council of Ministers during the year 2024" no 790, dated 28.12.2023.

amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation. The second is the new law no 29/2023 "On income tax", which has been adopted by the Albanian Parliament and entered into force from 1 January 2024. This law has partially transposed the EU Council Directive 2016/1164 of 12 July 2016 "Laying down rules against tax avoidance practices that directly affect the functioning of the internal market" and the EU Council Directive 2009/133 of 19 October 2009 "On the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different member states and to the transfer of the registered office of an SE or SCE between Member States", amended. About *Customs Management,* many changes to the Customs Code came into force in February 2015, together with implementing instructions, aligning further to the *acquis* on a broad range of issues. The new Customs Code introduced simplification of customs rules, a risk-based approach to custom controls, computer-based generation of clearance procedures and other changes. Also, the customs tariff list was updated with the 2015 version of the EU's combined nomenclature. General Directorate of Customs worked to further align the regulatory framework with the EU acquis by updating the instructions on Binding Tariff Information (BTI) during 2020.

With regards to *"Efficient execution of the budget",* as the fourth stage of PFM, legal basis of Human Resources Management Information System (HRMIS) was reviewed, and a DCM no. 833 dated 28.10.2020 "On the detailed rules for the content, procedure, and administration of personnel files and the central personnel register" was approved. This is one of the most important PFM reforms, considering the past misuse of the payroll expenses and one of the recommendations of EU. As the Maastricht Treaty [16]specifies reference values of 60% of GDP for government debt. Currently Albania is above the Maastricht criteria, and the focus in PFM reforms is also in managing *Public Debt.* The amendments with Law no. 181 dated 24.12.2014, aiming to standardizing/aligning the procedures for the issuance of the Government instruments in the domestic and international markets. Sublegal act[17] was introduced to avoid the need to keep substantial idle balances in the Single Treasury Account and to effectively manage the volume of payments a "buffer" limit concept. The PFM circle cannot be fully managed without the function of *Public Procurement.* The objective was to establish a modern, sound, and effective system for public procurement and concessions harmonized with the legal and institutional framework of the Acquis and EU standards and good practices. Law no. 182, dated 24.12.2014 "On Public Procurement" was adopted. The main changes were concerned with the necessity to further align the legislation with the newly adopted EU directives,

16 Treaty 1992

17 Instruction no 1, dated 15.01.2016 "On Budget Execution."

namely Directive 2014/24/EC and 2014/25/EC. After the Law amendments entered in force, during 2015, DCMs[18] were issued aiming to further clarify and encourage the use of modern procurement techniques, such as framework agreements for central purchasing and joint procurement. During 2017, amendments to Law no. 47, dated 13.04.2017 "On Public Procurement" were adopted regarding the guarantee of independence of the Public Procurement Commission. Furthermore, a series of changes[19] to further align with the acquis communitarians. Then, the Law no. 162, dated 24.12.2020 "On Public Procurement Law" was adopted with the purpose to further align the law with the EU Acquis; improve the current regulatory framework in the field of public procurement; facilitate the participation of economic operators in procurement procedures; avoid procrastination in the procurement process due to the prolongation of the administrative appeal process; create a sustainable procurement compliant with the principles of social and environmental protection; facilitate the procurement of social services and other specific services; and increase performance in contract implementation by strengthening monitoring of this process. This law is partially aligned with Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defense and security and amending Directives 2004/17/EC and 2004/18/EC', as amended. Pursuant to Law 162/2020 "On Public Procurement", the secondary legislation[20] has been adopted during 2021. In the PAR Roadmap[21] recently approved, it is stated that the new legislation to replace the Law no. 125/2013 "On Concessions and Private Public Partnership PPP", as amended, will be prepared and approved by the end of 2024. The revision of the law will be done in accordance with Directive 2014/23/EU of the European Parliament and of the Council, "On the award of concession contracts", and directives 89/665/EEC, 92/12/EEC and 2007/66/EC.

In respect of *"Transparency of Public Finances",* the objective is to publish financial reports contain accessible financial and non-financial performance information. In

18 DCM no. 914 dated 29.12.2014 "On the approval of the public procurement regulation" and the DCM no. 918 dated 29.12.2014 "On the electronic conduction of the procurement procedures."

19 DCM no. 521, dated 20.09.2017 "On the approval of the selection procedure for the selection of the candidates for chair and members of the PPC"; DCM 797, dated 29.12.2017 amending DCM 914/2014 on the public procurement rules.

20 DCM no.285, dated 19.05.2021 "On public procurement rules"; DCM no.384, dated 30.06.2021 "On the communication method in public procurement"; DCM no. 457, dated 30.07.2021 "On the common procurement vocabulary"; DCM no. 768, dated 15.12.2021 "On determining the social services and other specific services and the adoption of the rules for their procurement"; Guideline no. 03 dated 18.06.2021 'On the approval of the dynamic system for buying the international air transport ticket and their conduct in electronic means".

21 DCM no. 737, dated 13.12.2023 "For the approval of the Public Administration Reform Guideline 2023-2030"- PAR Roadmap 2023-2030

this context, Decision of Minister of Finance "On the 2015 Budget Execution" no. 2 dated 09/01/2015 aimed to improve the quarterly and annual budget execution reports. During 2016, following the amendments of the Organic Budget Law No. 57/2016, it was prepared the guideline "On the standard procedures for monitoring the budget of the central government units" which was approved by the Minister of Finance on 17.11.2016. The main scope of the guideline was to determine the procedures and reporting timeline that all the general government units need to follow during the budget performance monitoring process. Also, the new guideline defined: (1) the role of the MF during the monitoring of budget execution and financial performance objectives of relevant programs and products; (2) the timing of reports preparation and publication; and (3) form and content of the monitoring report. Strengthening systems and capacities to prepare government financial statistics in line with international standards was the main focus since the Public Finance Management Strategy started. Excessive Deficit Procedure (EDP) notification tables have been sent regularly to EUROSTAT since 2014. During 2017, for the first time INSTAT compiled and transmitted Government Financial Statistic (GFS) for non-financial accounts for General Government sector following the ESA 2010. Submitting GFS and EDP tables to Eurostat is important for several reasons. Firstly, it increases transparency and accountability in fiscal matters, enabling stakeholders to assess the financial health and stability of a country. Secondly, the data becomes a basis for regional comparisons, facilitating a comprehensive understanding of economic performance. This, in turn, supports evidence-based policymaking and cooperation among nations and fosters a more cohesive and informed decision-making process.

Concerning the *Financial Management and Control (FMC)* at public institutions, the legal and operational framework for Public Internal Financial Control (PIFC) and Internal audit has become stronger, and the implementation of the FMC instruments is improved during the PFM implementation. Changes to the Law "On Financial Management and Control" no. 10296, dated 08.07.2010 were approved in Parliament with Law no. 110, on 15.10.2015 aiming to provide an adequate legal framework for the implementation of the FMC, and for developing methodologies and standards for FMC. The revised FMC Law was prepared during 2022 and it was adopted by Parliament in February 2023. The amended Law "On Accounting and Financial Statements" is in part related to Directive no. 10 Council Regulation (EC) No 26/34/EU of the European Parliament and of the Council of 26 June 2013 relating to annual financial statements, consolidated financial statements and reports relating to certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EC and 83/349/EC. Amendments and additions to the Law no. 10091, dated 05.03.2009, "On legal audit, arrangements of the profession of registered accounting expert and approved

accountant", are aligned with the Directive 2006/43/EC as amended by Directive 2014/56/EU and with the EU Regulation no. 537/2014 of the European Parliament and of the Council of 16 April 2014. With regards to strengthening *internal audit function in the public sector*, MF has an important coordinating, harmonizing, and monitoring role of internal auditing activity. In this context, efforts are made to align internal audit framework with International Standards on Internal Audit. The changes in Law No. 114 *"On Internal Audit"* were approved on 22.10.2015 aiming to strengthen the processes of hiring, certification and continuous professional development of internal auditors. Furthermore, IA Law was revised during 2021 and approved by the Council of Ministers on 27.12.2022. The changes aim to create an appropriate environment for IA to carry out audits in fully compliance with IIA Standards. There is no requirement for alignment with EU directives, but these are EU recommendations to align with the best international practices. *Concerning the Public Financial Inspection***,** the legal and the sub-legal framework was reviewed during 2015. A new Law no 112 "On Public Financial Inspection"18, dated 15/10/2015 replaced the Law no 10294, dated 01.07.2010 "On Public Financial Inspection". The main change of the law is related with definition of the Anti-Fraud Coordination Service (AFCOS) role in reporting fraud on the EU use of funds and separation of internal audit role from the one of the Financial Inspection. There is no alignment with EU directives, but it is EU recommendation.

Related to the *External Audit* as the final stage of PFM circle, a new Law no. 154, dated 21.11.2014 "On the Organization and functioning of the High State Control" was approved with the main purpose to regulate the functional, operational, and financial independence, mandate, and organization of the Organization and to align to some requirements of International Standards for Supreme Audit Institutions (ISSAI) such as the use of financial and/or performance audit.

4. Conclusion

The execution of national development and good governance policies depends heavily on efficient public finance management organizations and mechanisms. The attainment of government policy objectives, the provision of services, and the availability of resources are all dependent on effective PFM. PFM guarantees effective income collection, suitable and sustainable utilization, and implementation. By analyzing how closely the Albanian legal framework in the field of PFM complies with EU law, this study has closed a gap in the existing literature. The article goes further by stocktaking the important legal acts in the PFM area and also by investigating the changes required for a further alignment with EU directives. All this mosaic is an essential component of the national context that should be considered in the design of PFM systems and reforms. In practical terms, this

research indicates a greater focus on strict priority when harmonizing Albanian legislation with EU requirements. From the analysis, the following legal public finance management reform will be the key challenges for Albania in its journey toward Europe Union: the establishment of a Fiscal Council; elaborating the law on Public Procurement and Public Private Partnership; creating a gatekeeper position in the selection, evaluation and monitoring of the projects; oversight of the fiscal risks through a dedicated structure; delegation of authority in the public sector etc

Programs for PFM reform must be adapted to the capabilities of the nation. For many countries, it would be significantly more beneficial to concentrate on a smaller number of initiatives rather than to draft extremely ambitious improvement plans that serve the aspirations of development partners rather than the urgent requirements of the nation. Therefore, the guidelines encourage officials and development partners to set more reasonable goals for PFM reform. The support that the EU has provided for this sector is continuous and include areas as increasing capacities, strengthening the responsible structures and investing strategically in order to ensure a smooth integration into the EU community.

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INSTITUTIONAL CAPITAL IN EU EXPANSION: ANALYZING ITS ROLE AND IMPACT ON ASPIRING MEMBER COUNTRIES

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ABSTRACT

This study explores the profound influence of institutional capital in the context of sustainable economic development and the European Union's (EU) enlargement, focusing primarily on EU candidate countries. Institutional capital, encompassing both formal and informal societal rules, plays a crucial role in shaping interactions and economic activities. This concept extends beyond physical or financial assets, underlining the effectiveness of governance, legal frameworks, and stability of political and financial institutions. It sets the foundational rules for resource allocation, business operations, and conflict resolution, fostering a trust-based, cooperative society.

The paper highlights a paradigm shift in economic theories, where traditional growth factors have given way to the growing recognition of institutional capital's significance, guided by the insights of economists like Douglass North and Daron Acemoglu. It examines the specific requirements set by the EU for candidate countries in developing their institutional capital, investigating into the diverse challenges and strategies these nations employ to align with EU standards.

Concluding, the study brings together these aspects, emphasizing the indispensable role of institutional capital in economic growth and EU integration. It suggests future research directions and policy considerations, highlighting the need for continued exploration of institutional capital's interaction with economics and society.

Keywords: *Institutional Capital, EU Enlargement, Sustainable Development, Economic Theories, Governance Systems*

1. Introduction

Institutional capital, crucial in both economic and social life, encompasses a range of elements. These include both the formal and informal rules, institutions, and structures that shape how people interact and conduct economic activities. This broad concept covers not only formal laws and regulations governing societal and business conduct but also unwritten social norms, cultural practices, and common beliefs guiding everyday actions. Institutional capital extends beyond mere physical or financial assets; it involves the effectiveness of governance systems, the fairness of legal frameworks, and the stability and efficiency of political and financial institutions. It plays a role akin to setting the ground rules for how resources are shared, businesses are run, and conflicts are resolved, contributing to a trusting, cooperative, and progressive society.

Countries with strong institutional capital typically experience solid economic growth, better handle economic fluctuations, and maintain effective governance. This illustrates the critical importance of well-established institutional frameworks for economic stability and growth. Institutional capital is a key driver in the broader economic landscape, influencing everything from attracting foreign investment to fostering innovation and global competitiveness.

This paper will show how economic theories and policies have evolved, influenced by economists like Douglass North and Daron Acemoglu, to emphasize the shaping role of institutional frameworks in the trajectories of economic growth and sustainable development. It will then focus on EU candidate countries, examining the European Union's requirements for these countries in developing their institutional capital. The paper will discuss the various approaches and challenges these countries face in striving to meet EU standards, including improvements in their legal and government systems and meeting economic criteria for EU membership.

The conclusion will synthesize these ideas, presenting a comprehensive view of the vital role of institutional capital in economic development and European integration. It will suggest directions for future research and policy, underscoring the need for ongoing exploration and understanding of how institutional capital interacts with economics and society. Additionally, the paper will discuss the diverse aids and support provided by the EU to candidate countries, demonstrating the significance of developing and transforming institutional structures within the context of EU accession and its broader implications.

2. The Importance of Institutional Capital as a Factor for Sustainable Development

The field of economic development has witnessed a significant shift, particularly in recognizing institutional capital as an essential factor in sustainable development. Earlier economic theories, such as those by Solow (1956) and Romer (1990), focused on human skills, physical investment, and technological progress as the main drivers of economic growth. However, these theories, while foundational, did not fully account for the dynamics of development.

The seminal work of North (1994) initiated a shift in thinking, underscoring how institutional capital significantly affects a country's economic growth. This perspective has reshaped the policies of major entities like the World Bank and the International Monetary Fund (IMF). This shift in focus is not merely theoretical but a response to observable trends in the global economy. Insights from Acemoglu, Johnson, and Robinson (2001) further reinforced this idea, demonstrating that the efficacy of traditional growth factors is closely linked to the strength of institutional frameworks. These frameworks include the organization of productive sectors, equitable rights distribution, robust legal systems, and effective governance. Williamson (2000) also emphasized the critical role of economic institutions in decision-making processes concerning investment and innovation. This contrasts with Sachs' (2003) focus on cultural and geographical factors, arguing that differences in institutional structures are a primary reason for the varying levels of growth among countries.

Institutional capital is central to determining the direction and quality of a nation's economic development. North (1994) highlighted how institutions significantly influence areas such as human skill development and technological advancement. According to Rodrik (2003), the evolution of institutions depends on societal choices and economic expectations. Acemoglu and Robinson (2012) delved deeper, illustrating how institutional development is shaped not only by economic efficiency but also by complex power struggles and political negotiations among different groups.

Institutions facilitate economic transactions by establishing legal frameworks, thereby reducing business costs and building market trust. Shirley (2003) argued that while cultural norms can enforce contracts, they are insufficient for optimal trade, particularly across diverse social and economic groups. This underscores the importance of institutional structures in creating environments conducive to economic interactions. Furthermore, institutional capital plays a crucial role in sustainable development by regulating and limiting the powers of groups that might otherwise exploit resources for narrow interests. Institutions ensure that resource

usage aligns with sustainable development goals.

The necessity of institutional capital in sustainable development is evident. Institutions are instrumental in preventing resource overexploitation, vital for setting resource usage limits to benefit the broader population. This need becomes starkly apparent in countries with uneven institutional structures, often facing development challenges due to limited resource access, hindering production and income growth. In contrast, countries with equitable institutional frameworks typically demonstrate significant development progress.

The impact of institutions on sustainable development is further amplified considering their influence on democratic values. Institutions supporting democratic principles, such as freedom of speech and information dissemination, are crucial in fostering development-friendly environments. They promote the growth of social groups and networks, contributing to the stabilization of income levels and unemployment rates. This stabilizing effect is often manifested through mechanisms like the welfare state, vital for ensuring social security and equity. The development of such institutions reflects not just economic efficiency but also societal values and political choices, making the growth of institutional capital a process that is as much social and political as it is economic.

The shift from focusing on traditional growth factors to a deeper understanding of the role of institutions marks a significant advancement in economic theory and practice. Institutions, with their capacity to shape economic interactions, enforce legal rules, and uphold democratic values, are fundamental to achieving sustainable development goals. This paradigm shift has profound implications for policymakers and the global community.

Looking forward, the study of institutional capital and its impact on sustainable development is poised to remain a crucial and evolving field. Future research should aim to further elucidate the complex interplay between institutional structures and various aspects of economic development. Additionally, there is a need for an enhanced understanding of how these dynamics vary across different cultural and geographical contexts. As the world confronts challenges like climate change, inequality, and technological advancements, the role of institutions in navigating these issues will undoubtedly remain central to economic discourse and policymaking.

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3. Relevance of studying institutional capital in EU candidate countries – a country approach

The European Union (EU) has set specific requirements for candidate countries regarding their institutional capital as part of the accession process. These rules are meant to make sure these countries have the right institutional setup and ability to take on, apply, and enforce EU laws and decisions. Some key requirements are:

- **Development of Administrative and Judicial Capacity**: The EU stresses the need for strong government and legal systems in these countries. They should build the necessary institutions for adopting and using EU laws, and reform their legal systems to be independent, efficient, and capable of upholding EU laws.
- **Political Criteria**: These countries must have stable institutions that ensure democracy, rule of law, human rights, and respect for and protection of minorities. These are part of the EU's conditions set in 1993 for starting talks about joining.
- **Economic Criteria**: The EU expects these countries to have a functioning market economy and the ability to handle economic competition within the Union. This involves the development of a suitable economic framework and institutions to support economic activities and integration into the EU's internal market (Nilsson, 2000).
- **Alignment with EU Policies and Standards**: Candidate countries are expected to align their policies and standards with those of the EU, especially in areas like environmental protection, transportation, energy, and others. This requires significant institutional development to ensure compliance with EU directives and regulations.
- **Institutional and Governance Reforms**: Reforms in governance and public administration are crucial to meet EU standards. This includes enhancing transparency, accountability, and efficiency in public institutions and governance processes.

Studying institutional capital in EU candidate countries is a complex task involving political, economic, and administrative aspects. It gives insight into how countries change their institutions to meet EU standards, shedding light on the broader topics of institutional development, governance, and international cooperation. Each candidate country has its unique way of meeting these requirements, reflecting their different strategies and challenges in aligning with EU standards:

In EU candidate countries, developing government and legal systems is a detailed process, greatly influenced by each country's history, politics, and social-

economic conditions. For example, Albania has made major improvements in its justice system, including general reforms to make judges and prosecutors more independent and professional. This aligns with EU integration needs and shows Albania's commitment to transparent, efficient justice and better access to legal services for its citizens. Bosnia and Herzegovina are working on strengthening their rule of law through legal reforms, fighting corruption, and making their legal system more efficient. This is crucial for creating a unified and effective governance system. Georgia is focusing on administrative changes, like modernizing public service and starting e-governance initiatives. They continue to face challenges with political influence on the judiciary, indicating a need for ongoing reforms and strengthening of institutions. Moldova is concentrating on anti-corruption in its government and legal systems, aiming to increase transparency and public trust. This involves making their laws more in line with EU standards, especially in areas crucial to human rights and business. Montenegro's reforms are aimed at making their judicial system more independent, fair, and efficient, along with improving public administration efficiency and accountability. North Macedonia is modernizing its legal system to better align with EU standards, focusing on making their judiciary more independent and efficient, and addressing corruption in the legal system. Serbia is working on making its judiciary more independent and efficient, including significant changes to their constitution. They're also reforming public administration, aiming to improve efficiency, accountability, and service delivery. Turkey has made extensive legal reforms, but there are still concerns about judicial independence and following EU standards. They're also working on modernizing their administrative systems and processes, including improving public service delivery and transparency. Each country's approach to developing government and legal systems highlights the need to consider their specific history, politics, and social-economic conditions in the reform process. This progress is crucial for their EU membership and for strengthening governance and rule of law within these countries.

For the candidate countries, developing institutions that support democracy, rule of law, human rights, and minority rights is a shared goal but a unique journey for each country. Albania, for example, is focusing on improving its democratic setup, working on election reforms and legal changes to ensure fair elections and support the rule of law. Bosnia and Herzegovina face challenges from their complex political system, transmitted from the Dayton Agreement, which often slows down their efforts to strengthen democratic institutions and protect human rights. Georgia has made significant progress in democratic reforms, especially in election processes, but continues to face challenges in judicial independence and minority rights. Moldova's efforts are affected by political instability, which has somewhat slowed down their reforms aimed at strengthening human rights and minority protections.

Montenegro has made progress in developing democratic institutions but struggles with issues like media freedom and political influence. North Macedonia has shown notable progress in democratic governance, particularly in resolving disputes with neighboring countries, which has positively impacted its EU accession. However, they still need further improvements, especially in their judiciary and minority rights protections. Serbia's progress in certain areas of democratic development is countered by challenges in media freedom and limited government. Turkey's path towards meeting EU political criteria is complex, with significant concerns over democratic setbacks and issues related to human rights and minority treatment.

The pursuit of economic reforms necessary for EU integration is both varied and interconnected. Albania is making progress in market liberalization and improving the business environment but faces challenges similar to Bosnia and Herzegovina, particularly in infrastructure and property rights. Bosnia and Herzegovina's unique political structure creates difficulties in economic governance, affecting their regulatory alignment and market liberalization efforts. Georgia's commitment to liberal economic policies is part of a broader regional trend but emphasizes the need for deeper regulatory and financial sector reforms. Moldova has made advances in trade and regulation but continues to face challenges in financial stability and fighting corruption. Montenegro, despite progress in developing a market economy, contends with challenges in public sector governance and state-owned enterprise reforms. North Macedonia has made significant economic reforms leading to macroeconomic stability but faces similar challenges as Serbia in continuing reforms, particularly in areas like state aid control and financial regulation. Serbia, showing progress in fiscal consolidation and business environment, still requires further alignment in trade, competition policies, and regulatory frameworks to fully meet EU standards. Turkey, with a relatively advanced economy, faces its own unique challenges, such as inflation, currency stability, and dependence on external financing. Despite its longstanding customs union with the EU, Turkey's full market integration necessitates more comprehensive reforms in economic governance and regulatory alignment.

The task of aligning national policies with EU directives and regulations among EU candidate countries is complex and varied. Each nation, while progressing on its own path, faces common and unique challenges. For instance, Albania's progress in legislative harmonization, notably in environmental and judicial areas, mirror challenges faced across the region, including battling administrative inefficiencies and corruption. These issues are also seen in Bosnia and Herzegovina, where its complex political system further complicates the alignment process, delaying policy transfer and integration with the EU. Similarly, Georgia's advancement, particularly

in trade policies under the Deep and Comprehensive Free Trade Area agreement, is countered by challenges in judicial independence, a difficulty that many of its counterparts also face. Moldova's efforts, under its Association Agreement, are blocked by internal issues like political instability and corruption, highlighting the broader theme of internal political dynamics influencing EU alignment. Montenegro, in its quest to harmonize legislation, particularly in environmental and energy sectors, faces similar challenges in regulatory independence and corruption, a narrative shared by others in the region. North Macedonia's commitment to aligning with EU directives, especially in judiciary reform and public administration, is occasionally slowed by political tensions, reflecting a common struggle between domestic political dynamics and EU integration goals. Serbia's ongoing alignment process, focusing on judiciary, fundamental rights, and energy, is marked by challenges in ensuring media independence and public administration reform. Turkey, with its long-standing customs union agreement with the EU, faces its unique set of challenges, highlighting the diverse political and economic landscapes of these candidate countries. The commitment of political leaders, alongside active engagement with civil society, is crucial in navigating the complex process of aligning with EU directives and regulations. This interconnected journey underscores the diverse challenges and strategic approaches needed for successful integration into the EU.

In the context of EU candidate countries, the reforms in governance and public administration are a crucial step towards enhancing transparency, accountability, and efficiency, with each country embarking on tailored initiatives to align with EU standards. Albania's approach has been multifaceted, focusing on modernizing public administration, implementing merit-based recruitment, and enhancing the legal framework for whistleblower protection, reflecting a broader effort to digitalize public services and increase government transparency. Bosnia and Herzegovina, grappling with its complex governance structure, has emphasized reforms aimed at improving inter-governmental coordination and streamlining administrative procedures. However, progress has been uneven, reflecting the intricate challenges posed by its political system. Georgia's reform efforts have been significant, marked by the adoption of e-governance platforms and robust anti-corruption measures, including the establishment of independent anti-corruption agencies. These reforms are designed to improve service delivery and ensure greater government transparency. Moldova, in its pursuit of EU integration, has been working diligently on reforming its public administration, particularly focusing on improving service delivery and simplifying administrative procedures. These efforts are part of a larger initiative to increase government transparency and combat corruption. Montenegro's initiatives include modernizing the public sector with an emphasis on the professionalization and depoliticization of public service, while

also strengthening the anti-corruption framework, indicating a comprehensive approach to governance reform. North Macedonia has concentrated on building the administrative capacity of public institutions and enhancing public service delivery. In addition, efforts to improve judicial independence and transparency in governance are underway, aligning with EU standards. Serbia's reform strategy targets increasing the efficiency and effectiveness of public administration with a focus on regulatory reform and e-governance, complemented by efforts to enhance transparency in public procurement and strengthen anti-corruption agencies. Turkey, meanwhile, has implemented various institutional reforms, though recent years have raised concerns about their effectiveness and direction, particularly regarding media freedom, judicial independence, and government transparency. A common theme across these countries is the adoption of e-governance initiatives as a means to increase transparency and efficiency. There is a concerted effort to strengthen legal frameworks for accountability and transparency. Moreover, the professionalization of the civil service, ensuring that public sector employees are hired and promoted based on merit, is a key focus area. However, challenges in implementation and enforcement persist, influenced by political will and institutional capacity.

Conclusion and recommendation

The study of institutional capital in EU candidate countries is thus a multi-dimensional initiative that includes political, economic, and social dimensions. It offers a window into understanding how countries transform their institutions to align with EU standards, providing insights not only relevant to the accession process but also contributing to the broader discourse on institutional development, governance, and international cooperation. This area of study is pivotal in understanding the dynamic and complex nature of institutional change in the context of European integration, offering lessons that extend beyond the borders of Europe.

The EU provides various forms of assistance and support to candidate countries to help them meet these requirements, including pre-accession funds and institutional twinning programs to facilitate the transfer of knowledge and best practices from EU member states.

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AMENDMENTS TO LAW "ON PRIVATE PENSION FUNDS IN ALBANIA" AND ALIGNMENT TO EUROPEAN INTEGRATION

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ABSTRACT

In an effort to work out the current pension crisis, policy makers in many developed countries are proposing reforms to drastically change the funding structure and benefits of the current pension system. They aim to move from a DB defined benefit system to a defined contribution system (funded system)[1].At the foundation of a funded pension scheme is the creation of contribution accounts for every working person. This means that the contributions paid by each individual as a proportion of the salary they receive[2], which were previously used by the government to fund the PAYG system, will flow into a personal retirement account. On the other hand, all additional mandatory or voluntary contributions, will be put into this account by the individuals themselves during the period they work. These contributions will accumulate over the years and each person shall also benefit from investing in the financial market.

Such an approach leads very quickly to the conclusion that where they can, many countries are trying to replace or at least modify the old "PAY AS YOU GO" system on pensions and social insurance, with other schemes built on the principles of financing of individual accounts. This paper, will address the changes brought resulted law no. 76/2023 regarding private pension funds in Albania and the approach in this regard to European directives.

1 See Blinder, Alan S., *Private Pensions and Pensions: Theory and Fact* (June 1982), page 3, See for more, Guxho Aida "*Skema e pensioneve në Shqipëri dhe parashikimet aktuariale*", dissertation for the defense of the scientific grade "Doktor i shkencave",Tiranë, 2014, page 20

2 Article 9, "*Contributions".* Types of contributions to be paid (the last paragraph changed according to the Law nr. 8776, date 26.04.2001, article 3; the third paragraph changed according to the Law nr. 104/2014, date 31.07.2014, article 5; paragraph 4 added according to the Law nr. 104/2014, date 31.07.2014, article 5, a paragraph was added after paragraph 4 according to the Law nr. 144/2015, date 17.12.2015, article 2.

***Keywords**:* professional pension fund, financial market, contributions, long-term investment

1. Introduction

Albania has inherited from the communist system an insurance scheme, which did not adapt to the new political and social changes of the country. The new changes brought the need to remodel the social scheme. With the approval of the 1993 law, the public pension scheme in Albania is based on the "PAY AS YOU GO"[3] scheme on the principle of generational solidarity, which means that the contributions paid by those people who are currently working go to pay the income for individuals who receive a pension (old age, disability, family)[4]. This scheme works well when the rate of increase in labor force participation is the same, as the rate of natural population growth.[5] The social insurance scheme is a defined benefit scheme. This scheme was based on a single-column system (mono-pillar) in which the insurance is paid by both the employer and the employee and the amount of the contribution is determined by law.[6]

There are a number of problems in the pension scheme in Albania, of which we emphasize: Low level of pension benefits, the slow rate of growth of the real size of pensions over time, low rural pension, etc.

Amendments to the 2014 law on social insurance brought a number of changes to improve the public scheme[7]. People who retired after the year 2015, for a medium-term period, benefit a more moderate increase in the amount of pension, compared to pensioners who retired before this year, due to the change of principle, from jointly liable pensions to pensions based on contributions. Among the positive effects of the reformed contribution-based scheme, we emphasize: the enhancement of the scheme's financial stability; reducing informality in the labor market through a stronger link between contributions made during working years and pensions received, a more appropriate level of pensions, since they will be based on

3 Based on the fact of how the pension scheme is financed, we have two types of systems: i) with defined benefits DB and ii) with defined contributions, or funded schemes DC. Pension systems of the first type are the first types of pension schemes. They are based on the fact that the contributions paid by those currently working go to pay current pensioners. This system is also called a monopillar system - with one pillar. Based on the method and principle of creating the pension fund, these schemes are known as the PAYG (pay as you go) system.

4 Peto Zhaklina, "*E Drejta e Mbrojtjes shoqerore*", Tiranë, 2011

5 Guxho Aida"*Skema e pensioneve në Shqipëri dhe parashikimet aktuariale*", dissertation fot the defence of the scientific grade "Doktor i shkencave",Tiranë, 2014, page 40

6 Article 9, article 10 of the Law Nr. 7703, date 11.05.1993 "*For the social insurance of the Republic of Albania*", changed.

7 Gushi, Landi "*Reformimi i sistemit të pensioneve, problemet dhe sfidat*", dissertation for the defense of the scientific grade "Doktor i shkencave", Tiranë, October, 2018, page 89,

contributions. On the other hand, it is worth noting that a contribution-based scheme favors more people with above-average or high salaries.

The level of economic and social development of our country has not favored the development of private pension schemes, despite the legal framework already regulated in terms of private pension schemes with the 2009 law "On private pension funds"[8]

At the beginning of the 90s, most developed countries faced the phenomenon of population aging. The birth rate decreased as the average human life expectancy increased, and as a result, although the population increased, the rates of growth in labor force participation were lower than the rates of population growth. Therefore, the contributor/beneficiary ratio decreased, and as a result most of these countries faced the problem of financial sustainability of the PAYG scheme[9]. This has also occurred in Albania during the last decade. According to the latest official statistics, there is an increase in the number of pensioners, where their number has reached about 668,890 thousand pensioners[10]. The demographic transition is rapidly changing the structure of the population in favor of the elderly. Very soon, the elderly will be the future generation, but the economic environment and society are not creating the conditions to face the consequences of aging with dignity at the same speed. The third age that will soon make up 30 percent of the population currently in Albania lives in poverty and with a lack of perspective for improving financial conditions in the future.

2. The need to reform the pension scheme

The development of an increasing private scheme is on the agenda of many countries, particularly in those countries where these schemes have had little importance to date. This development forms part of a wider trend towards privatization and is at the same time linked to the financial difficulties faced by most public pension schemes. Their costs are constantly increasing due to various factors.

First of all, the number of beneficiaries entitled to full pension has increased over the years. Secondly, the aging of population increases pension expenses and, in industrialized countries the beginning of this century will witness a demographic imbalance as a result of reaching at the same time the working age of the generation

8 Article 5/2 of the Law Nr. 7703, date 11.05.1993: "*For the social insurance in the Republic of Albania*", changed determines that according to the professional and voluntary funds of pensions (article added to the Law nr. 104/2014, date 31.07.2014, article 4) to the creation, activity and supervision of professional and voluntary funds of pensions to be done according to the special law.

9 See for more Peto Zhaklina, "*E drejta e mbrojtjes shoqërorë",* Tiranë, 2011

10 In conformity with ISSH the number of pensioners in the Republic of Albania has been growing up every year. During the first 6 months of the year 2023 there were numbered 668 890 pensioners in Albania, for more see the official page of ISS and Open data Albania

with low birth rates, and the retirement age of the boom generation birth[11].The employment situation, on the one hand, has recently transferred the pension schemes part of the load resulting from unemployment, and on the other hand, produces a decrease in available funds through the reduction of the number of active contributors and of income from contributions to social insurance schemes.

Rigorous measures have been taken in many countries to preserve public pension schemes *combined with financial reforms when necessary.* However, there are various theories that consider as very important the redistribution of responsibilities for maintaining the income level, and for guaranteeing an income in particular to the elderly, between the public sector and actuarial forecasts [12] in the private sector.[13]

A recent World Bank report goes further in this direction and recommends that the role of public schemes be limited to payment of modest pensions, and if possible, only to the poorest elderly, and entrusting pensions to mandatory commercial funds of private pensions**.** According to this report, such an approach, since it is based on funded schemes, could respond to the aging crisis and stimulate economic growth. The approach derives from the so-called "Chilean model"[14]. The security of benefits lies in the fact how much protected is the individual in old age from economic risks. Since the PAYG scheme has been applied in Albania, where the state is responsible for the payment of the pension as well as for its indexation in accordance with price inflation, we can say that this risk is low (the pension fund does not go bankrupt), but the economic situation is not very good and causes the pension measure to be low.

The multi-pillar system is a system strongly supported and technically assisted by the World Bank in the early 90s in all the countries of Central and Eastern Europe, which had just emerged from the socialist systems, and had inherited pension systems, where the state had the main role in providing pension income, systems designed to redistribute income, with a weak link between contributions and benefits, and therefore in a system characterized by low profitability.

In this perspective, almost all countries have pondered these Word Bank recommendations in different ways according to their internal characteristics, by

11 the generation with a birth boom "babyboom" generation, meaning those born around 1960-1970

12 According to the European Directive 2016/2341/KE "For the activity and supervision of the institutions of the professional pensions" (IORP II)….the actuarial function must be carried out by those persons who have knowledge on actuarial mathematics propotionally with size, nature, scale and complexity of risks present in the activities of PNOR-s, who are able to demonstrate their relevant experience closely linked with proper professionists, qualifications or other standards.

13 Guxho,Aida "*Skema e pensioneve në Shqipëri dhe parashikimet aktuariale*", dissertation fot the defence of the scientific grade "Doktor i shkencave",Tiranë, 2014, page 40

14 *Ibid.*,

reforming their pension systems. Whereasm, Albania has continued the reforms for the consolidation of the public scheme (Pay as you go), which is based on the principle of generational solidarity, considering the transition to a system financed by private management as premature based on the political-economic situation of those years. In 2005, the first three companies that administered voluntary pension funds were licensed in Albania, thus paving the way for the development of individual and professional voluntary schemes.

The introduction and impact of column II in the Albanian pension system has been studied and evaluated for several years, and its gradual introduction is finally being concretized. We say, gradual, since the first steps have been taken with the approval of law no. 29/2019 "On the financial, supplementary treatment of employees who have worked in underground mines, employees of the oil and gas industry and employees who have worked in metallurgy"[15], providing for the operation of professional schemes under the administration of private companies, for the above categories of difficult professions (only employees under the age of 48)[16] and continuing with other categories of certain professions.

Column II shows the features of a personal savings account, with mandatory contributions, administered by licensed private companies that today administer voluntary retirement funds. This scheme gives a clear connection of contributions-performance, investment-benefits.

Pillar II will therefore operate alongside the compulsory public scheme (PAYG), and future beneficiaries will therefore obtain benefits from two sources, i.e. the public scheme and the privately managed compulsory scheme.

This would make risk diversification possible, making the system even more financially stable against demographic, political, and labor market risks, it would increase the sufficiency of income during the retirement period, and also the investment of assets in the domestic market will support economic development, employment, as well as influence the further development of the capital market in Albania.

15 The aim of this Law is at the financial treatment of the employees who have worked in underground mines, of the employees of the oil and gas industries and others working in metallurgy, *except for the treatment determined in the Law* nr. 4171 Date 13.9.1966 "*On Social insurance in the Peoples Republic of Albania"* changed by the Law nr. 7703 Date 11.5.1993 " *On social insurance in the Republic of Albania*", changed

16 According to Article 8, paragraph 3 of this Law with regard to the employed under the age of 48, the contributions will be paid in the scheme of the professional pensions according to the article 5/2 of the Law 7703, date 11.5.1993, "*On Social insurance in the Republic of Albania"*, changed according to the article 5/2 "Creation, activity and supervision of the professional funds and those of voluntary pensions will be done in conformity with the special Law referring to the Law no. 76/2023 "*On Private Pension Funds"*

3. The importance of informing the public opinion about the pension reform

The third pillar, which consists of the private pension scheme, shows that the individual decides where to invest the pension account fund. People generally have limited financial knowledge and in particular know very little about the characteristics of a pension scheme including an estimate of how much a good pension would be when they reach the age of 65. This is because it is very difficult to understand how a pension scheme works. The complexity of the issue means that individuals do not realize the real benefit they can get from knowing how a pension plan works.

In addition, individuals do not value the information received because they always think that the state will play its "social protection" *role.* In addition, in Albania, the public opinion has little or no knowledge about pension schemes. This is because the public pension scheme has always worked in our country, that is, there has only been one compulsory and public pension plan. Over the years, all the reforms undertaken have had to do with raising the retirement age, changing the amount of the contribution as a percentage of the salary, changing the pension benefit formula and indexing pensions. Moving from an unfunded single-pillar scheme to a multi-pillar scheme means that the risk is shifted from the state to the individual. It is the individual who decides what pension plan they want to have. Given the fact that the greatest profit is when the investment risk is great, the individual must be well-informed about the various pension plans and the risks that accompany them. For this reason, it is important to organize awareness campaigns for public opinion, in order to improve the financial level of knowledge, in order for the individual to be able to make decisions.

4. Legal changes in the pension scheme according to law 76/2023

The need to draft a new law "On private pension funds" in accordance with EU directives, in order to improve the legal basis in the market of private pension funds with defined contributions[17], as well as alignment with Directive 2016/2341 /EC "On the activity and supervision of Professional Pension Institutions" (IORP II) has been emphasized by the EC since 2020.

The earlier Directive 2003/41/EC represented a first legislative step on the way to an internal market for occupational pension insurance organized at European Union level. This Directive, dating from 2003, has not been substantially amended to introduce a modern risk-based governance system for IORPs. Adequate regulation

17 For more see Selita Mirela: "*E drejta kushtetuese e sigurimeve shoqërore nga vështrimi i standardeve ndërkombëtar*", dissertation for the defense of the scientific grade "Doktor i shkencave" Tiranë, 2013, page 89-90,

and supervision at Union and national level remain important for the development of occupational pension provision in all Member States. In the approach of recent demographic developments in the EU, but also in Albania and the situation regarding national budgets, occupational pension insurance is a valuable addition to social insurance pension systems. A genuine, internal market for occupational pensions remains essential for economic growth and job creation and for tackling the challenge of an aging society.

Directive 2016/2341/EC "On the activity and supervision of Occupational Pension Institutions" (IORP II) complies with the fundamental rights and principles recognized by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data, the freedom to conduct a business, the right to property, the right to collective bargaining. and the right to a high level of consumer protection, in particular by ensuring a higher level of transparency for pension insurance, informed personal and retirement financial planning, as well as facilitating the cross-border activity of Pension Institutions Occupational and cross-border transfer of pension schemes.

Given that the law is a legal act, which extends its effects at the national level, to implement thereof it is required to involve individuals in the process, which in their daily activities have the administration and good governance of private pension funds[18], such as management companies of pension funds and collective investment enterprises, second level banks that act as depositories of the fund, etc.

Law 76/2023 "On Private Pension Funds"[19], completes and further improves the legal framework for non-banking financial markets in Albania, which also includes private pension funds that are already broadly aligned with European Directives and at the same time addresses a number of problems and shortcomings of the existing law, approved in 2009 and unchanged or improved during all these years. Law 76/2023 partially aligns with Directive 2016/2341/EC "On the Activity and Supervision of Occupational Pension Institutions" (IORP II). The complete alignment of the legislation that governs this field with the corresponding European legislation will be realized at the moment of Albania's full membership in the European Union.

What are the effects that are intended to be achieved by changing the law and how efficient will they be? *First*, in order to further develop these schemes, there is a

18 Peter Skinner 1997 "Approaching of a good practice in administering of pensions is not a mystery. This is a result of a good governing of responsible managers, the accurate determination of responsibilities, systems of supportive information as well as a proper assessment and reward of the system."

19 The definition according to the Law "the fund of the private pensions is a group of assets without a judicial personality, created with the purpose of gathering cash contributions in the personal accounts of the members of the fund and the investments of these funds aiming at the increase of the value of the fund assets.

need to encourage participation[20] in private pension funds, through an arrangement that increases investor confidence, as well as through the creation of fiscal facilities, or other necessary elements that encourage saving for pension.

Secondly, the further alignment and harmonization of legislation with European directives has also included the implementation of a new form of pension fund, specifically the fund with closed participation. According to the definition of the IORP II directive, this type of fund is created by an employer, some employer, or an entity organized as a union of employers, trade union or union of trade unions or association on the basis of an agreed agreement and is offered only to employees of the above entities. The closed participation fund is created with a minimum of 100 members for a single employer and a contract is entered into between the management company and the sponsor for the administration of the fund's assets. The advantage of the fund with closed participation is the right of the sponsor to negotiate the terms of the fund and the management contract with the management company.

The law also provides for the possibility to employers who have a small number of employees but want to create a pension fund to contribute for their employees in the open participation fund, created and offered by the management company, without creating a closed special fund. Such a legal provision was made to adapt to the conditions of the pension market in Albania, which currently occupies a small weight in relation to the size of the economy.

The division of the pension fund into two forms, into the individual pension fund and the professional pension fund, as well as forcing the management company to keep the assets of each fund separate, provides a solution to the problems encountered so far with the management companies where the assets of the professional funds and the assets of individual funds were held together in one fund.

*Thirdly***,** the prudential rules set out in this directive aim to guarantee a high degree of security to all future pensioners by establishing strict supervisory standards[21], and pave the way for sound, prudent and efficient management of pension professional schemes. Strengthening the supervisory and regulatory framework through requirements for licensing, supervision of pension fund management companies, including the regulation of cross-border activity, as well as requirements related to

20 According to the official data from The Authority of Supervision of Funds for the period /06/2023, the total of assets of the funds of private pensions reached approximately 6,2 milliard ALL whereas the number of the members resulted in approximately 37,600, hence a growth of approximately 3% compared with the last part of 2022.

21 See for more The Manual of Supervision with Risks of the Funds of Voluntary Pensions 2016, page 6, as well as the Documents of Laboure of IOPS for the effective supervision of pensions Nr.16, "Structure of Authorities of Supervision of Pensions and their approach towards the Supervision based on risks", July 2012.

the applicability of legal obligations.

By establishing prudential rules as the fundamental principle for capital investments and making it possible for IORPs to operate across borders, the redirection of savings to the occupational pension insurance sector is encouraged, thus contributing to economic and social progress.

Fourthly, the obligation of the company is foreseen within the framework of increased transparency: to provide members with access to their account to check at any time the number of quotas, the price of the quota of that day, the value of assets in the personal account, the dates, the amounts of payments made by the member, employer or sponsor, the return on investment, make available to members the fund's prospectus and the most recent annual reports, as well as the audited financial statements, upon request and free of charge for each fund in membership; inform members 3 months prior to retirement on individual account valuation and pension payment options. This is an important innovation of the law.

Fifth, considering the nature of the pension scheme established and the administrative burden, IORPs should provide clear and relevant information to members and potential beneficiaries, in order to support their decision-making about the retirement and ensure a high level of transparency throughout the various stages of a scheme comprising pre-registration, membership (including retirement) and post-retirement. The information should be particularly provided about accrued pension rights, anticipated levels of pension benefits, risks and guarantees and costs. When projected levels of pension benefits are based on economic scenarios, that information must also include an adverse scenario, which must be extreme but plausible. Where members bear an investment risk, additional information on the investment profile, any options available and past performance is also crucial.

Sixth, the fund's assets must be invested in the best long-term interest of members and beneficiaries while abiding by the principles of security, portfolio diversification, and maintaining adequate liquidity. In accordance with the requirements of the IORP II directive, it is provided that if the management company, when making investment decisions, considers the potential long-term impact of the decision on environmental, social and governance factors, then it must declare this in the prospectus. Furthermore, pursuant to the requirements of the European Directive (MIFID II directive), on the basis of which our law on capital markets has been drafted, it has undergone changes including ESG factors[22], as an innovation in the

22 Recently according to the directive MIFID II, on the basis of which our Law on markets of capital was amended including ESG elements. These amendments envisage new demands for the banks which offer services of investments and commission societies which during the assessment of the client's suitability for a product or a financial service must take into consideration the ESG factors, getting more information from the client even for his or her preferences linked with these factors. See for more Monthly Publication of AMF, no. 162,22 November 2022.

private pension market, which means, the management company in drafting the investment policy for private pension funds can and should take into consideration the environmental, social and governance factors of the society, ESG factors, as well as, give a positive impact on changing the financial behavior of Albanian investors to consider environmental factors when creating their investment portfolio.

The law lists the financial instruments in which pension fund assets are allowed to be invested. In addition to investing in cash and deposits in banks licensed in the Republic of Albania and/or OECD countries, debt securities issued or guaranteed by the Government of the Republic of Albania, the assets of the private pension fund may also be invested in securities transferable or money market instruments issued in the Republic of Albania and accepted for trading in a regulated market. The investment policy of a pension institution is a decisive factor for both the safety and the long-term economic viability of occupational pension schemes. Therefore, IORPs must draw up and, at least every three years, review a statement of investment principles. Such a statement must be made available to the competent authorities and, upon request, to the members and beneficiaries of each pension scheme.

Seventh, the law provides the promotional activity of pension funds and the publication of the performance of the pension fund, significantly increasing the requirements for transparency in order to better orientate and inform investors. The lack of these provisions in the 2009 law, that is, those that regulated the information, marketing and promotional activity of the fund, made this market less known to individuals and employers who want to contribute to their employees. The provisions of a separate chapter regarding the promotional activity of the pension fund therefore constitutes another advantage of the law.

Eighth, it provides fiscal relief to members of private pension funds. More specifically, the law provides that the contribution made by each member of a pension fund, for tax purposes, is deducted from his personal income[23] and the contributions made by the employer/sponsor and any other contributor, in the name and on behalf of the member of a fund pension, for tax purposes, is not considered as personal income of the member. Investment returns, including capital gains from investments made with pension fund assets are not subject to tax, neither for the pension fund itself nor for the society. A flexible pension system will include a diverse range of products, a variety of institutions as well as effective and efficient supervisory practices.

Ninth, in accordance with the requirements of the IORP II directive, it is foreseen the obligation of the company to carry out and document, in a manner appropriate

23 Another Newness envisaged by the Law is the decline of the annual commission for the administration of actives of the fund. The annual commission for the administration of the fund of pensions could not overpass not in any case 2.5% of the value of net actives of the fund of pensions (from 3% which was sanctioned by the Law of (2009)

to the size, the internal organizational structure, as well as the nature and complexity of its activities, the self-assessment of the risk at least every three years (Own Risk Assessment). The authority implements risk-based supervision, the main objective of which is to verify the legality of the activity of the supervised entity and to assess its security and stability, in order to protect the interests of the fund members.

Tenth, in particular, facilitating the cross-border activity of IRPs and the cross-border transfer of pension schemes, by clarifying the relevant procedures and removing unnecessary obstacles, can have a positive impact on the enterprises concerned and their employees, in any Member State that they work, through the centralization of the management of the provided pension services.

Finally, the law provides for the *right of segregation* of assets according to which the assets of the pension fund cannot be the subject of claims or executions, carried out in the name and on behalf of the creditors of the management company of the pension fund, also the assets of the fund of pensions are separated from the assets of the management company and cannot be part of the bankruptcy procedure of the management company.

Conclusions

Due to the numerous problems of the current pension scheme in Albania, related to its financial sustainability, its reform has already been an issue for solution. The reform of the pension scheme, among other things, assumes the establishment of a fairer ratio between contributions and benefits in accordance with the principle "*who pays more, should benefit more*". It is important to ensure that elderly and disabled people are not put at risk of poverty and can enjoy a good standard of living.

In accordance with the principle of subsidiaries, Member States must bear full responsibility for the organization of their pension systems as well as for the decision on the role of each of the three pillars of the pension system in individual Member States. In the context of the second pillar, States should also take full responsibility for the role and functions of the various institutions providing occupational retirement benefits, such as industry-wide pension funds, company pension funds and insurance undertakings of life. This directive is not intended to put into question this prerogative of the Member States, but rather to encourage them to create an adequate, safe and sustainable occupational pension offer and to facilitate cross-border activity.

Directive 2016/2341/EC "On the Activity and Supervision of Institutions of Occupational Pensions" (IORP II) aims at providing minimum harmonization and therefore should not prevent member states from maintaining or introducing further provisions to protect members and beneficiaries of the schemes of occupational

pensions, provided that such provisions are consistent with the obligations of Member States under Union law. In order to further facilitate the mobility of workers between Member States, this Directive aims at ensuring good governance, provision of information to scheme members, transparency and security of occupational pension provision.

A private pension market would provide a Pension Scheme in Albania and actuarial forecasts would represent a better coverage rate and on the other hand private pension funds would provide a higher rate of return on investment.

Despite the changes in the pension system, this reform would again require the support and role of the state in several directions: in strengthening the financial sustainability of the scheme, transitioning to a multi-pillar scheme, reducing informality in the labor market, increasing employment, monitoring financial management of pension funds (expenses and profits), monitoring of private funds related to the application of actuarial rules, informing the public opinion, guaranteeing the transparency of the "pension account" investment.

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EUROPEAN INTEGRATION AND LABOR MARKET DEVELOPMENT IN ALBANIA. THE IMPORTANCE AND ROLE OF AKPA (NATIONAL EMPLOYMENT AND SKILLS AGENCY) IN REDUCING UNEMPLOYMENT (A CASE STUDY IN ELBASAN MUNICIPALITY)

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ABSTRACT

Unemployment, as a worldwide phenomenon or as a social scourge, remains a challenge for governments to reduce and mitigate its impact on daily life. Governments have taken several steps to mitigate this phenomenon, starting with several different programs that began to be implemented with the release of several VKM (The Council of Ministers decision) which set the first milestones and were then followed among years with other programs that were adapted to market requirements and based on analysis till the foundation of NESA. These programs were changed to include certain groups of job seekers or other vulnerable parts of society in order to integrate them into work.

Given that these types of initiatives have large financial costs and for a small budget like Albania's are difficult to cope with and implement successfully, our country has been assisted during this period by the European Union, which has given a great financial support for Albania in many directions, including the implementation of various programs aimed at improving the lives of citizens, developing the country and reducing unemployment. Every year, the European Union, as one of Albania's strategic partners, assists the Albanian government with various financings that focus on social-economic and developmental programs. These financings are done in several ways, by financing the state budget, which through the Ministry of Finance and Economy, which finances programs approved by the Albanian government,

or by directly financing its programs, which are implemented in cooperation with Albanian government structures.

In this study we will study the impact of NESA in the unemployment rates in the municipality of Elbasan and the effects that the policies of this institution have on reducing unemployment in this municipality in relation to the unemployment rate in Albania in general. An important topic will also be the analysis regarding the approach of unemployment rates and policies with the criteria set by the European Union.

Key words: *EU integration, unemployment rate, AKPA*

The development of the labor market and the management of unemployment in Albania through the IPA funds of the European Union

Reducing unemployment and developing the labor market is one of the most important objectives for all government economic programs. It is important to understand that these initiatives have their own challenges for their successful implementation. One of these challenges is the establishment of the institutional infrastructure as well as the financial bill that is associated with the successful implementation of these initiatives.

Our country has been continuously assisted during this period by the European Union, which has provided a great deal of financial assistance to Albania, in many directions, including the implementation of various programs aimed at improving financial and economic parameters as well as reducing unemployment. The European Union spends on average about 13% of its budget according to Article 313 and 316 of the European Commission for the financial support of the economic sectors in order to create new jobs. This budget is about 18 billion Euros per year that goes as financial support which is distributed as budget support to other non-member countries. Currently the average unemployment rate in the EU is between 6% and 7%. As an objective, the European Union has determined the level of unemployment at the level of 3%. The level of unemployment but also other economic factors such as economic growth, inflation, etc. are some of the important factors that countries with candidate status, like Albania, follow with special care in order to adapt to the norms and criteria set by the European Union.

Since the beginning of the first years of pluralism, the EU has assisted the government with various funds, which was further concretized through the IPA (Instrument before accession) funds, where this program was spread over 2 phases, IPA 1 in the years 2007- 2013 and was followed by IPA 2 during the years 2014-2020. The purpose of this program was to bring our country closer to the EU countries by focusing on the financing of various projects in the economic and social fields, as well as

reducing unemployment and strengthening various sectors of the economy. These funds have been continuously increased and it is thought that the IPA 3 funds will reach the value of 63 million Euros and will affect several sectors of the country.[1] The IPA funds are channeled through the Ministry of Finance and Economy, which transfers a part of them to the National Employment and Skills Agency (AKPA) for financing its programs. The program for "Employment and Social Invocation" is a program which is fully implemented by the EU with a total fund of 920 million Euros spread over several years, which finances various projects that aim to support the initiatives of the Albanian government by developing the labor market and increasing employment especially among young people. It is intended that these objectives will be achieved by promoting the qualified workforce, the creation of jobs and various innovations that will be in line with the "Europe 2020" strategy.[2] Through this program, employment is encouraged and small and medium-sized enterprises are also supported too.

These programs implemented and financed by the European Union have given a great help to our country, influencing the reduction of unemployment as well as the socio-economic development. Over the years, these programs are adapted depending on changes and market demands. The implementation of these programs as well as their performance are very important since unemployment has a wide impact on daily life. Every year, the European Union, as one of Albania's strategic partners, assists the Albanian government with various financings, which mainly focus on socio-economic programs. Only for 2020, the European Union has financed 22 million Euros for sustainable employment policies through the opening of new jobs in Albania. These financings are realized by financing the state budget, which through the Ministry of Finance and Economy finances programs approved by the Albanian government or by directly financing its programs, which are implemented in cooperation with Albanian government structures. Funding is realized through grants, donations as well as through other financial instruments. The support of the European Union is not only defined by financial aspects but also by training and supervision of Albanian institutions in order to increase the efficiency of the use of these funds.[3]

1 *European Commission-Lenka Filipkova* European Commission Directorate-General for the Budget Explanatory meeting on the Acquis with Albania and North Macedonia

2 *European Commission*- Coordination of economic policies. Markita Kamerta Karl Scerri Policy and economic surveillance Directorate General for Economic and Financial Affairs (DG ECFIN) European Commission 9 January 2019

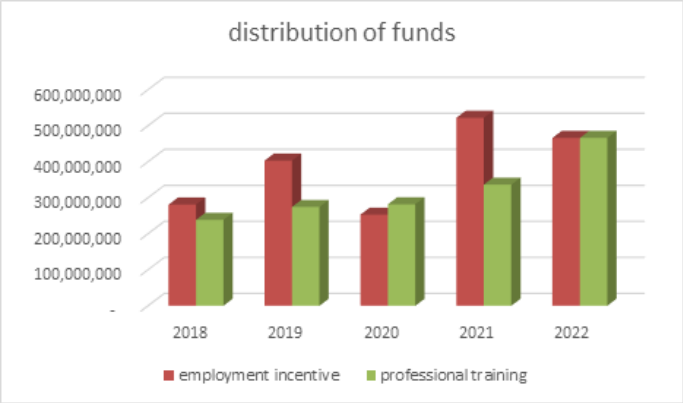
3 EUforAlbania-https://www.euforalbania.info/programet-e-unionit

The National Agency for Work and Skills (AKPA) and its programs aimed at reducing unemployment

The National Employment and Skills Agency (AKPA) is an agency under the Ministry of Finance and Economy. Its mission is to provide services in the framework of employment, professional training and skills development in order to find a suitable workplace for all Albanian and foreign citizens with a residence permit both in Albania and abroad. It supports a wide range of job seekers and mainly focuses on providing services to the vulnerable groups of society.

The primary objective of this agency is to provide jobs with the aim of reducing and maintaining unemployment at reasonable levels, as well as providing professional training courses for those people who do not have a specific training in order to adapt them to the labor market. AKPA supports the provision of these services in several employment promotion programs. On average, AKPA Elbasan offers professional courses to over 1,500 people per year.

Table 1 Graph of distribution of AKPA funds



source: Ministry of Finance and Economy, AKPA, statistical bulletin 2018-2022

The National Employment and Skills Agency is a subordinate institution of the Ministry of Finance and Economy which was created in 2019. It is organized in a general directorate and in 12 regional directorates which have local offices under them divided in order that every job seeker has his own office to receive services as well as in 10 professional training centers. There is a consultative council which is made up of 11 members from different institutions such as representatives from the Ministry of Finance, that of education, from the institution of social security, representatives of the tax department as well as representatives from employers. This agency was created to provide employment and self-employment services

as well as professional training services. The legal basis on which its creation is based is Vkm number 172 dated 24/12/2019 "On the approval of the organizational structure of the National Agency for Work and Skills" as well as articles 12.7 of law number 15/2017 "On education and professional training in the Republic of Albania". The legal basis on which it offers its services within the framework of employment promotion programs are several Vkm, more specifically Vkm number 17 is divided into 3 programs which include the employment program and the training program through work and work practice. Vkm number 608 which includes the financing of 4, 8 and 12 month programs. The innovation is also two other Vkms with number 535 which consists of employment with community work and the one with number 348 which supports unemployed people by becoming self-employed.[4] The employment promotion program was approved by law number 15/2019 "On the promotion of employment". The budget of AKPA varies around 1.8 billion ALL per year, a budget which covers all the voices that this agency has.

The employment promotion program was created by law number 15/2019 "On the promotion of employment". These programs have a wide range of offering opportunities for many categories of unemployed jobseekers who are registered with employment agencies. The focus is on programs that mostly affect the most vulnerable parts of society. We can mention some categories that are included in these programs such as unemployed and trafficked women, students who have not worked before, people with disabilities, unemployed job seekers who have been looking for a job, etc. Employment promotion programs focus on the opening of new jobs as well as the training of people who are looking for a job but are not professionally trained for the demand that the subjects have for employees. The employment promotion program changes from year to year including new categories.

AKPA programs for promoting employment and the beneficiary parties

An entity that wants to benefit from these programs must do the application procedure to benefit through the e-Albania government portal. To benefit, a subject must meet certain criteria which are:

- Have more than 6 months of active activity,

- To have paid the obligations to the tax authorities

While employees who can benefit from employment through AKPA must be registered as unemployed jobseekers at least one month before the application.

After applying on the e-Albania government portal, the request is reviewed by the Regional Agency for Work and Skills, within a period of 7 days the applicant is notified of the status of his application. Upon receiving the notification, the subject

4 *AKPA,-https://AKPA.gov.al/wp-content/uploads/2021/05/ligj-nr-15-dt-13.3.2019_nxitja-e-punesimit.pdf*

appears at the regional labor and skills agency where he has applied to sign the contract with this agency for a maximum period of 1 year. The duration of the programs is different depending on the typology of the program itself or the request of the subject, where it varies between 4,8 and 12 months.

For the 4-month program, the compensation of the company that has benefited from this program is the financing of the monthly payment in the amount of 100% of the minimum wage that is in force for a period of 2 months. The benefit of the salary is made in the first and fourth month as well as the compensation of the payment of the mandatory social and health insurance contributions based on the minimum wage.

For the 8-month program, compensation is made in the amount of 100% of the monthly salary based on the minimum salary in the country for 4 months. Specifically, in the first and second months and the seventh and eighth months, as well as 100% compensation for the payment of social and health insurance contributions based on the minimum wage.

For the 12-month program, compensation is made at the rate of 100% of the payment of social and health insurance contributions for the entire period in each month.

For the benefit of these funds, two contracts are drawn up between the parties, one is the contract between the company declared the winner and AKPA, and then there are the contracts between AKPA and each beneficiary employee.

AKPA employees do a verification every month in the premises of the company to see the attendance list of the persons whom the company has hired based on these employment promotion programs in order to see if they are at work or not. They verify the presence at work of the persons who are on the list of beneficiaries. For its part, the beneficiary company prepares and submits within the 20th of each month a list of supporting documents, such as form esig025 extracted from the e-filling tax system, which contains the names of the company's employees, bank confirmation for the payment of social and health insurance contributions, monthly attendance lists of the beneficiary persons as well as the voucher certifying the transfer of salaries to the bank. All the above documentation is physically submitted every month for as long as the duration of the program at the AKPA offices.[5] With the completion of this procedure, the AKPA, through the treasury branch, transfers the funds to the company's account, and in this way, the compensation for the company is completed. In cases where an employee who is on the list of beneficiaries for various reasons leaves his job, the company makes a written notification to AKPA. In this case, companies cannot replace these employees with other employees in the current scheme. Compensation is made only for the list of persons who are

5 *Audit Agency for the EU Accredited Assistance Programme* http://www.aapaa.gov.al/index.php/ipa-2/?lang=al

subject to the contract concluded and signed at the beginning. It should be noted that this procedure is followed every month depending on the program in which the beneficiary company was announced until the end of the contract signed between the parties. In order to avoid bureaucracies and waste of time, as well as to facilitate the work of the company, which must prepare documentation every month and appear physically at the AKPA offices, it has been thought and started that everything should be done through the government portal. -Albania.

The role of AKPA in reducing unemployment in Elbasan Municipality

The analysis and study of the impact that these programs have brought as well as their progress over the years to reduce unemployment in Elbasan Municipality is the main objective of this paper. This objective will be achieved by making a descriptive analysis of certain parameters over the years and by comparing these parameters with indicators at the national level. As a period of time, the statistics of the last 5 years will be analyzed, taking into consideration that AKPA as an institution was established in 2019. Unemployment indicators in Albania have been at relatively acceptable levels but still far from the objectives of the European Union that have been determined remain at levels between 6% and 7%. At the national level, the unemployment rate ranges from 9% to 12%. The objective of the Albanian Government, regarding the level of unemployment, is for this indicator to be below 10%.[6] This target is still far from the European Union rate of 3%. In the Municipality of Elbasan, about 9,000 people per year are registered as unemployed jobseekers at the AKPA offices, respectively as follows:

Table 2 Beneficiaries of AKPA's employment programs, Elbasan Municipality

	Applications	Beneficiaries	In percentage
job seeker 2018	8840	159	1.80%
job seeker 2019	9087	137	1.51%
job seeker 2020	11571	113	0.98%
job seeker 2021	9903	143	1.44%
job seeker 2022	9096	113	1.24%

source: Ministry of Finance and Economy, AKPA, statistical bulletin 2018-2022

In terms of gender, the highest level of unemployed jobseekers is occupied by women with around 57% on average, while men with around 43%. Analyzing the register of unemployed jobseekers according to age and education, it is observed that about 47% of the total unemployed jobseekers are over 45 years old and 56% have up to 9 years

6 Revista Monitor-https://www.monitor.al/papunesia-pritet-ne-trend-renes- ne-vitin-2022/

of education, which makes it difficult for these unemployed jobseekers to integrate into the labor market. work. This tendency is more pronounced in the special groups of unemployed jobseekers categorized as vulnerable strata. According to AKPA statistics, about 59% of the number of participants in its programs are presented in the regions of Tirana, Durrës, Fier and Shkodër.

In the last 5 years, the trajectory of the level of unemployed job seekers has been decreasing, touching the figure of 9.4% in 2022, the lowest historical level in our country.

In the Municipality of Elbasan, the latest statistics have shown that the level of unemployment has resulted in low levels compared to the data of the last 10 years, thus reaching the figure between 7% and 9%.[7] The level of unemployment in Elbasan Municipality has been up and down, this is also due to the fact that during 2020 the world was faced with the Covid-2019 pandemic, which caused the indicators of the level of unemployment to go beyond the forecasts. The largest part in the group of unemployed jobseekers is occupied by women with around 52%, followed by men with around 48%.[8] Regarding the age group, the one with the highest level of jobseekers is that of those over 50 years old, consisting of the most vulnerable layers and who are less attractive to potential employers. Specifically, from the job seekers at AKPA, Elbasan, in total over 60% of them belong to the age group over 45 years old and 50% of the job seekers have basic education

Basic education constitutes the category with the largest and most active unemployed jobseekers in Elbasan Municipality. The National Employment and Skills Agency has the main role in reducing unemployment as well as training different people to prepare for the labor market. Being an agency with a special budget, precisely for this purpose in recent years this agency has played a key role in alleviating unemployment in Elbasan Municipality. Through the expansion of the range of services it offers and their diversification, many categories of unemployed jobseekers have been added who can now benefit from the employment programs that this agency offers.[9] Cooperation with other institutions to coordinate the work between them has been another positive factor in addressing the various problems encountered during its activity. In the Municipality of Elbasan, this agency, through pilot programs to promote employment, has managed to be a key factor in reducing unemployment, but it also serves many employers by providing them with a qualified workforce. Through employment promotion programs, this agency has managed to

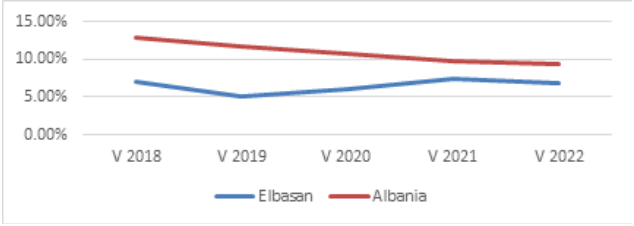
7 *instat.gov.al*

8 *Ministry of Finance and Economy, -https://financa.gov.al/denaj-programet-e-nxitjes-se-punesimit-ne-ndihme-te-biznesit-dhe-te-papuneve/*

9 Regional Directorate of the National Agency for Work and Skills, Elbasan*AKPA- https://www.puna.gov.al/misioniDheObjektivat*

create a bridge between job seekers and employers.[10] These programs have proven to be efficient, including many categories of jobseekers such as young people, the vulnerable layers of society, returned immigrants, trafficked farms, etc.

Table 3 Unemployment rate in Albania and Elbasan Municipality 2018-2021

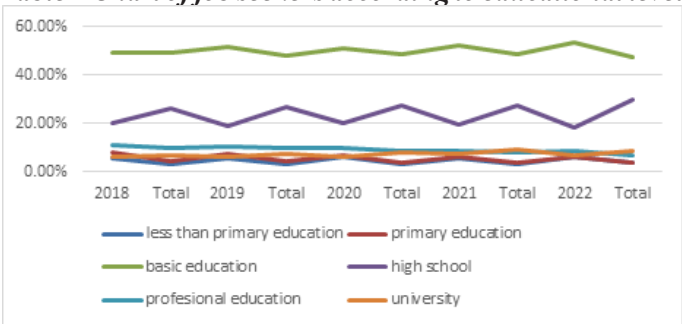


source: Ministry of Finance and Economy, AKPA, statistical bulletin 2018-2022

It is noted that the level of unemployment in Elbasan Municipality in 2019 has been decreasing to suffer a small increase in the years 2020-2021, for this we can say that the Covid-19 pandemic also played a role, and in 2022 it followed a downward trajectory. From the analysis of the unemployment markets in Albania and in the Elbasan Municipality, it is noted that in Albania, the trend of the unemployment level has followed a downward trajectory from 2018 to 2022, while in the Elbasan Municipality, the trajectory is constantly fluctuating.[11]

The municipality of Elbasan has a significant number of job seekers who come from the vulnerable strata as well as from the Roma and Egyptian communities, as well as the difficulty faced since the majority of job seekers are women and are not trained for the labor market as they are at an age over 50 years. According to the data of AKPA, about 80% of jobseekers are employed in the fashion sector, public services and service activities.

Table 4 Chart of job seekers according to educational level in Elbasan Municipality



source: Ministry of Finance and Economy, AKPA, statistical bulletin 2018-2022

10 *AKPA,-https://AKPA.gov.al/wp-content/uploads/2021/05/ligj-nr-15-dt-13.3.2019_nxitja-e-punesimit.pdf*

11 *Bashkia Elbasan-https://elbasani.gov.al/wp-content/uploads/2023/12/Statistika-vendore-2022-Elbasan-2.pdf*

It is also worth emphasizing the role that this agency has in the professional training of job seekers through the professional training center, making them capable of meeting the demands of the labor market. Also its role in mediating between job seekers and employers has been very important and very fruitful.

Conclusions

The IPA waves, through AKPA, have had a special importance in reducing the unemployment rate as well as training jobseekers with skills required for the labor market.

The impact of AKPA has been considerable in reducing unemployment in the Municipality of Elbasan, starting from the statistics where in the last 5 years this institution has employed an average of 2% of unemployed jobseekers. But on the other hand, the impact on the reduction of unemployment in Elbasan Municipality has been even greater considering that this agency through its professional training programs has made it possible to promote their employment.

In this framework, it is worth emphasizing that more efforts should be made to diversify and increase professional training programs to meet the demands of the dynamic market. In this framework, the role of AKPA is not only in reducing unemployment directly by offering employment opportunities, but also in preparing the workforce with new experiences and skills to adapt to the needs of the labor market in a dynamic economy.

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WILL ENTERPRISE EUROPE NETWORK (EEN) HELPS SME-S ON GROWING INTERNATIONALLY? (ALBANIA CASE)

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ABSTRACT

"Think Small First" A "Small Business Act" for Europe. Managing the transition towards a knowledge-based economy is the key challenge for the EU today. Success will ensure a competitive and dynamic economy with more and better jobs and a higher level of social cohesion. Dynamic entrepreneurs are particularly well placed to reap opportunities from globalisation and from the acceleration of technological change. Our capacity to build on the growth and innovation potential of small and medium-sized enterprises (SMEs) will therefore be decisive for the future prosperity of the EU. In a globally changing landscape characterised by continuous structural changes and enhanced competitive pressures, the role of SMEs in our society has become even more important as providers of employment opportunities and key players for the wellbeing of local and regional communities. Vibrant SMEs will make Europe more robust to stand against the uncertainty thrown up in the globalised world of today. Small and medium-sized enterprises (SMEs) represent 99% of all businesses in the EU. Over 10 years, 2,6 million SMEs benefitted from key Network service. The definition of an SME is important for access to finance and EU support programmes targeted specifically at these enterprises.

The main factors determining whether an enterprise is an SME are : - staff headcount, -either turnover or balance sheet total. High-growth firms create many more new

jobs compared to other firms. They increase EU innovation and competitiveness, strengthening the economy. Such "scale-ups" can also provide social benefits, including offering more flexible and modern working arrangements. So the aim of this paper is to show how will indicate for SME-s in Albania, being part of EU in the future.

Key words*: SME, Small Business Act, Start-up.*

JEL Classification : *F00, F01, F02*

Introduction

In a globally changing landscape characterised by continuous structural changes and enhanced competitive pressures, the role of SMEs in our society has become even more important as providers of employment opportunities and key players for the wellbeing of local and regional communities. Vibrant SMEs will make Europe more robust to stand against the uncertainty thrown up in the globalised world of today. The national and local environments in which SMEs operate are very different and so is the nature of SMEs themselves (including crafts, micro-enterprises, family owned or social economy enterprises). The role of SMEs in the European economy has been repeatedly acknowledged at the highest political level. The March 2008 European Council expressed strong support for an initiative to further strengthen SMEs' sustainable growth and competitiveness, named the "Small Business Act" (SBA) for Europe and requested its swift adoption. The Single Market Review also set out the need for further initiatives to better tailor the Single Market to the needs of today's SMEs, in order to bring better results and more benefits. Last but not least, the public hearing and the online consultation conducted to prepare the SBA confirmed the need for a major political initiative to fully unlock the potential of European SMEs. High-growth firms create many more new jobs compared to other firms. 1 Start-ups scaling up into bigger firms form a large share of these businesses. They increase EU innovation and competitiveness, strengthening the economy. Such «scale-ups» can also provide social benefits, including offering more flexible and modern working arrangements. In the Single Market Strategy, the Commission announced that it will look at how to make the Single Market more efficient for start-ups and scale-ups. Ultimately, improving the ecosystem for start-ups and scale-ups in Europe will have a direct beneficial effect on jobs and growth in the EU.Start-ups, often tech-enabled , in general combine fast growth, high reliance on innovation of product, processes and financing, utmost attention to new technological developments and extensive use of innovative business models, and, often, collaborative platforms.

2. Methodology

This is a research paper in which secondary and non-primary data were used, which together with all other data were used to reach a conclusion related to the main purpose of the paper, how will indicate for SME-s in Albania, being part of EU in the future. The study was conducted data since the year 2005, where the data were further analyzed in exploratory explanations.

3. Results and Discussion

The Network helps SMEs in the following fields: 1)Access to finance or lack thereof - is often the first and the most important stumbling block for SMEs considering to innovate, diversify or internationalise. What is, however, beyond any doubt whatsoever, is that SMEs have a strong information deficit when it comes to possible sources of funds. 2)Access to markets, - within the EU Single Market -, beyond the borders of the EU 3)Access to innovation -, Horizon 2020 – SME Instrument -, international research cooperation. Over 10 years, 2,6 million SMEs benefitted from key Network services. 2 million SMEs benefitted from the information services and training sessions of EEN. More than 410,000 SMEs got advice from EEN experts to help them innovate and grow internationally. Over 230,000 SMEs participated in EEN brokerage events where they held 700,282 business meetings. More than 9,000 SMEs benefitted from EEN tailored innovation support packages. The average of client satisfaction rate is 86%

4. SME-s in Albania

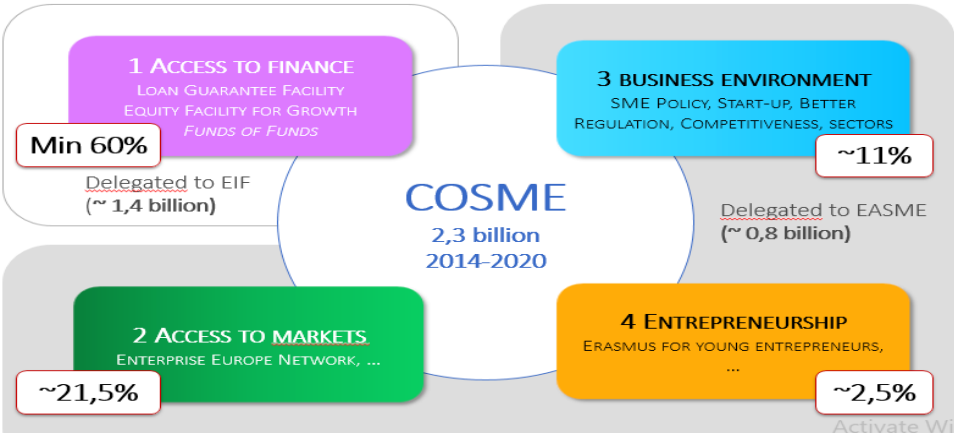
Albania is a small upper-middle-income economy with a population of 2.84 million in 2020 (World Bank, 2022). In light of the challenges posed by the pandemic, Albania's per capita gross domestic product (GDP) by purchasing power parity stood below 2018 levels in 2020 at USD 13 192 (in constant 2017 international dollars), leaving the economy the second-lowest ranking in the WBT region, above Kosovo (World Bank, 2022). The distribution of GDP across economic sectors has not changed significantly in the past years, with services representing 48.4% of GDP in 2020. Industry, including construction, represented 20.2% of GDP, albeit a 7% decrease in real terms since 2019. Despite a significant decline over the past decade, agriculture remains a very important sector in Albania compared to neighbouring economies, representing 19.1% of GDP (INSTAT, 2021). The agricultural and services sectors have the highest share of total employment in the economy, representing together almost 80% of the working population in 2020 (INSTAT, 2021). In 2020, SMEs represented 99.8% of all enterprises and employed 81.9% of the working population in Albania. Although many businesses were able to generate profit during the first

part of 2020, there were significant contractions in the volume of sales in most sectors in 2020, which have affected the profit margins of SMEs. The drop in sales led to an increased reliance on external financing through loans, which have been used mostly for covering expenses. For about 80% of registered companies, the debt level rose to approximately 50% of their capital (CM Albania, 2021). The ability of the central bank and the government to react quickly and appropriately reduced the impact on the labour market and preserved macroeconomic and financial-sector stability. The potential of the Albanian business environment remains hindered by several structural weaknesses, in particular the lack of know-how, low financial literacy and a high degree of informality, all of which are obstructing the access to financing in the private sector (European Commission, 2021).

5.SME-s in Enterprise Europe Network (EEN)

Vision of the EEN is on achieving high impact for the client SMEs & for the regions in which they operate. Becoming the indispensable 'European arm' of the regional/ national business and innovation support ecosystem. Creating connections to : -lead markets , -lead customers ,- finance and innovation partners. Being acknowledged as the global business and innovation support network of excellence. Adopting a client-centric approach .Providing integrated support services (business and innovation services). Joing forces with actors of regional SME support eco-systems in order to avoid duplication of efforts. Best use of resources, skills and knowledge at consortium level and Network level. Upscale services, skills, tools and processes. Developing a constant dialogue with clients. Focus on services with measurable impact (growth potential SMEs). Staing tuned with policy priorities.

Figure 1. The programme of EEN



4.Conclusions

Many innovative young firms in Albania fear that if they grow too big they will be penalised by more burdensome rules, even without cross-border expansion. Most of SME-s in Albania fail in the first years due to the lack of financing, the market to operate and the lack of partners. Therefore the EEN program is exactly to solve these problems. Being in EEN gives us the opportunity to reduce the administrative burden , the access to finance, to the markets and entrepreneurship. It creates a common framework for SME initiatives. The EEn helps on Cooperation and partnership with the Member States (exchange of good practices), Gives a 2nd chance for (failure). Benefits from Single Market opportunities. It gives access to skills and innovation. Helping ambitious businesses innovate and grow internationally. Helping companies optimise their international potential though personalised business development advice. Helping your business grow faster through new commercial partnerships. Combining international expertise with local knowledge to help take your innovation into new markets. Over 10 years, 2,6 million SMEs benefitted from key Network services. 2 million SMEs benefitted from the information services and training sessions of EEN. More than 410,000 SMEs got advice from EEN experts to help them innovate and grow internationally. Over 230,000 SMEs participated in EEN brokerage events where they held 700,282 business meetings. More than 9,000 SMEs benefitted from EEN tailored innovation support packages. The average of client satisfaction rate is 86%.

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THE NEW GROWTH PLAN FOR THE WESTERN BALKANS

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ABSTRACT

Under the mirror of globalization and the current international situation, it must be accepted that regional cooperation is the only option that can address real solutions to problems of an international nature.

International relations seem to be always in constant changes but remaining in the same sphere and political problem. Thus the aggression of the Russian state in Ukraine was an alarm bell to address the need for a geostrategic plan for a more secure Europe. As a result of globalization in all areas of life such as political, social and economic, the war situation between these states brought a direct impact on the countries of the Western Balkans.

To address these problems, it is difficult to find an ideal political solution, so the European Commission presented a new plan with a focus on the economies of the Western Balkan countries, but with the aim of influencing direct political issues such as the accession of these countries to the European Union. The European Commission's new plan will be built on four main pillars, bringing an improvement in economic convergence. But how ready is Albania to adapt to these economic changes? What influence does the role of the economies of each Western Balkan state have on the progress of this plan?

This paper aims to deal with the new plan of the European Commission for the growth of the Western Balkans and the four main pillars on which this plan is built. An analysis of the legal and economic situation of Albania in relation to other countries of the Western Balkans and the impact of the legal and economic aspect of each country in the realization of this common plan.

Key words: *The New Growth Plan for the Western Balkans; European Commission;economic integration; Common Regional Market*

In the current decade, relations between European states have shown that it is easy to undergo structural and sometimes irreversible changes. In order to stabilize relations and sometimes to break them, different actors have set new political, economic and diplomatic priorities.

The relations of the states have been read on the table and written under the table through the lens of diplomacy where economic strategies and priorities have aimed to prevent the impact of the economy of the powerful states and keeping the economy of the smaller states under control.

With the continuous political developments, large organizations have been strengthened and offer stability to member states, so integration into the European Union is a matter of great importance for many countries. To join the EU, one of the main pillars is the country's economy. Under the international lens, economic development is seen as a main element of the power of a state. To serve this purpose, economic convergence with countries with developed economies is a main measure of the achievement of the economic development of a country.

Economic convergence exists when two or more economies tend to reach a similar level of development and wealth.[1]

Efforts have been made to achieve economic convergence between the countries of the Western Balkans. The first attempts were made in 2003 when the European Union and the Western Balkan countries Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia convened at the Thessaloniki Summit. As a result, they come out with a Declaration "*the future of the Balkans is within the EU, and solidifying the EU's unwavering support for WB6 integration".*[2]

From year 2003 to year 2023, a series of changes have occurred in the GDP of these countries. The GDP of the countries of the European Union has increased by 27%, while the GDP of the countries of the Western Balkans has increased by 79%.[3] A profound change considered at different times.

The economic convergence of the Western Balkan countries with the countries of the European Union is an important step in the integration of WB in the EU. So this economic change has a political purpose in itself, and it is undoubtedly the long-awaited integration of these countries into the EU.

For all these issues, it was deemed necessary to take a further step at the international level.The European Commission presented the *"New growth plan for the Western Balkans"* on November 8, 2023.[4]

1 Cambridge Dictionary https://dictionary.cambridge.org/dictionary/english/economic-convergence

2 OECD- Economic Convergence Scoreboard for the Western Balkans 2023 https://www.oecd.org/south-east-europe/ECS-Policy-Paper-2%20web-1.pdf

3 World Bank (2023), World Development Indicators

4 European Comission- New growth plan for the Western Balkans https://neighbourhoodenlar-

We must be realistic when we say that currently the speed with which the countries of the Western Balkans are moving is very slow in the realization of economic convergence with the EU countries.[5]

Thus, the main objective should be focused on taking measures and steps that will bring sustainable, continuous and long-term economic development with the aim of achieving an economic stability close to the countries of the European Union that brings an economic convergence between the countries of the Western Balkans and those of the EU. Precisely this purpose, the European Commission translated into measures by predicting this *"New growth plan for the Western Balkans".*

This new growth plan for the Western Balkans is based on four pillars, aimed at:

1. ***Enhancing economic integration with the European Union's single market***, subject to the Western Balkans aligning with single market rules and opening the relevant sectors and areas to all their neighbours at the same time, in line with the Common Regional Market;
2. ***Boosting economic integration within the Western Balkans through the Common Regional Market*** , based on EU rules and standards, which could potentially add 10% to theireconomies;
3. ***Accelerating fundamental reforms***, including on the fundamentals cluster , supporting the Western Balkans' path towards EU membership, improving sustainable economic growth including through attracting foreign investments and strengthening regional stability;
4. ***Increasing financial assistance to support the reforms through a Reform and Growth Facility for the Western Balkans*****,** a new instrument worth EUR 6 billion in non-repayable support and loan support, with payment conditioned on the Western Balkans' partners fulfilling fundamental reforms, and in particular specific socio-economic reforms. [6]

For the purposes of this paper, we have focused only on the first pillar, which consists on seven priority actions for the integration of the countries of the Western Balkans in the EU.

Free movement of goods:

1. Agreements on conformity assessment to unlock the single market for goods manufactured in the Western Balkans following alignment with the relevant horizontal EU product acquis.

gement.ec.europa.eu/system/files/202311/COM_2023_691_New%20Growth%20Plan%20Western%20Balkans.pdf

5 Eurostat and World Bank

6 European Comission- New growth plan for the Western Balkans https://neighbourhoodenlargement.ec.europa.eu/system/files/202311/COM_2023_691_New%20Growth%20Plan%20Western%20Balkans.pdf

2. Improved Customs and Tax co-operation agreement to streamline customs procedures and reduce waiting times at borders, through measures including prior exchange of information, mutual recognition of authorised economic operators, based on merit, and closer cooperation in the development of their national single windows and speedier implementation of the indirect tax acquis.
3. Participation of all Western Balkans partners in the Convention on Common Transit. (i) requires agreements based on existing provisions in the SAAs, (ii) would be agreements complementing the SAAs and would build on existing work in the Common Regional Market where the Western Balkan partners are integrating among themselves on the basis of EU rules, (iii) requires joining an existing convention. Western Balkans partners will be expected to support all applications from within the region.

If we have to make an analysis of the situation in Albania in relation to the conditions that this new plan requires to be implemented regarding the free movement of goods, we will have to take in consideration the report of the European Commission for Albania in 2023.

In the area of free movement of goods Albania is working on legal alignment with *the acquis* in specific product sectors. The Commission has urged Albania to accelerate progress to complete legal alignment and capacity on market surveillance, conformity assessment, and accreditation, and on priority product sectors, and to complete its efforts to join the European standards bodies, in order to be able to seize the potential offered by the Growth Plan for the Western Balkans in regard to the free movement of goods.

1. Albania has a progress on industrial policy and investments under the Business and Investment Development Strategy. Albania has put efforts at burden reduction, and should further strengthen its support to research-based start-ups, and anticipated positively the adoption of Albania's upcoming Law on Investments.
2. On trade policy,- 27% annual increase of the bilateral trade in 2022 with a total of traded goods reaching EUR 7.4 billion. Increasing trade within CEFTA and underlined the importance of the Common Regional Market to unlock the economic potential of the region.
3. On taxation Albania has made a successful implementation of fiscalisation, but the Medium Term Revenue Strategy has still not been formally adopted.
4. In the area of customs, Albania has made progress of actions to facilitate tradeAlbania has not still access Common Transit Convention.[7]

7 Albania 2023 Report- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions

As for the free movement of services and workers, this plan is stopped as follows:

1. ***For e-commerce related services*** including parcel delivery services , tourism services and other activities where agreement has been reached within the Common Regional Market.
2. ***Recognition of skills and qualifications between the EU and the Western Balkans, including professional qualifications***. Building on the four ground-breaking "mobility agreements agreed in context of the Common Regional Market through enhanced co-operation, information exchange and use of transparency tools - such as the European Qualifications Framework (EQF) - to facilitate faster and more effective recognition of skills and qualifications. In particular, through promoting an effective implementation by Member States with regard to Western Balkan countries of the upcoming Commission Recommendation on the recognition of qualifications of third-country nationals.[8]

Based on the report of the European Commission for Albania in 2023 Albania has some level of preparation in freedom of movement for workers.

1. Some progress was made on the implementation of the 2022 report's recommendations on free movement of familymembers of EU citizens, strengthening of social security bilateral agreements and furtherdevelopment of the IT system for mapping job seeker vacancies .
2. Regarding access to the labour market, Albania has in place a Law on foreigners, enabling simplified procedures for EU citizens settling in Albania, in line with the EU acquis in this area.[9]

In conclusion, it seems that Albania still needs to take measures in various fields for which the commission also gave its recommendations at the end of last year. However, the fact that measures have been taken in recent years that have brought the Albanian legislation closer to the legislation of the EU countries remains to be congratulated.

https://neighbourhoodenlargement.ec.europa.eu/system/files/202311/SWD_2023_690%20Albania%20report.pdf

8 European Comission- New growth plan for the Western Balkans https://neighbourhoodenlargement.ec.europa.eu/system/files/202311/COM_2023_691_New%20Growth%20Plan%20Western%20Balkans.pdf

9 Albania 2023 Report- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions
https://neighbourhoodenlargement.ec.europa.eu/system/files/202311/SWD_2023_690%20Albania%20report.pdf

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2. Albania 2023 Report- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions https://neighbourhoodenlargement.ec.europa.eu/system/files/202311/SWD_2023_690%20Albania%20report.pdf
3. Eurostat and World Bank
4. World Bank (2023), World Development Indicators
5. OECD- Economic Convergence Scoreboard for the Western Balkans 2023 https://www.oecd.org/south-east-europe/ECS-Policy-Paper-2%20web-1.pdf
6. Cambridge Dictionary https://dictionary.cambridge.org/dictionary/english/economic-convergence

LOCAL GOVERNANCE AND EU INTEGRATION: THE IMPACT OF LOCAL GOVERNMENT UNITS ON ALBANIA'S PATH TO EU MEMBERSHIP

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ABSTRACT:

"This paper explores the pivotal role of local government units in Albania's journey towards European Union (EU) membership. The study begins by examining the current state of local governance in Albania, highlighting the challenges and opportunities that these units face in the context of EU integration. It argues that local governments are crucial actors in implementing EU standards at the grassroots level, particularly in areas such as administrative capacity, rule of law, human rights, and economic development.

The research focuses on how local government units can effectively contribute to meeting the EU's stringent accession criteria, known as the Copenhagen Criteria. It assesses the extent to which these units are equipped to adopt and enforce EU laws and policies, and explores the need for increased capacity building and resource allocation[1].

Moreover, the paper investigates the role of local governments in promoting public awareness and support for EU integration. It analyzes how local initiatives and community engagement can foster a more EU-aligned public perspective, which is essential for a successful accession process.

In addition, the study proposes a framework for enhancing the involvement of local government units in the EU integration process. This includes recommendations for stronger intergovernmental cooperation, more effective utilization of EU funds and resources, and the development of partnerships between local governments in Albania and those in EU member states[2].

Concluding, the paper underscores the importance of recognizing and harnessing the potential of local government units in Albania's EU accession journey. It provides

1 Pickering, Paula M. "Assessing international aid for local governance in the Western Balkans." *Democratization* 17.5 (2010): 1024-1049.

2 Pickering, Paula May. *Evaluating the EU state-building model in the Western Balkans*. National Council for Eurasian and East European Research, 2011.

insights into how empowering local governance can lead to more comprehensive and sustainable integration into the EU, ultimately contributing to the political, economic, and social transformation of Albania.[3]"

This abstract outlines the significance of local governance in Albania's EU accession process, emphasizing the need for empowering local units and their potential impact on meeting EU standards.

Summary of the EU Accession Process: Nine nations have formally expressed their aspiration to join the European Union. Ukraine, North Macedonia, Moldova, Bosnia and Herzegovina, Georgia, and North Macedonia are listed in a consecutive arrangement. The user's input is void of any content. Kosovo seeks to attain membership in the European Union, yet its statehood is not recognized by five EU member nations. Thus, it effectively conveyed its argument in the previous year. The EU is currently evaluating it as a prospective candidate.

Serbia and Montenegro are the most probable candidates for early membership, given their high level of intellectual prowess. The cessation of negotiations with Turkey has been influenced by various factors.

Both Part 49 of the Treaty of Maastricht and the Copenhagen criteria from 1993 include these regulations. Modifications have been implemented to Section 49 of the Maastricht Treaty. Any European nation that adheres to the principles of freedom, democracy, human rights, fundamental freedoms, and the rule of law is eligible to join the European Union. The European Union has the authority to determine whether a country is officially classified as part of Europe.The user's input is "[5]". The European Union was originally founded in 1958 by a consortium of nations. Their official title was the European Economic Community. The European Union has grown from a membership of 27 countries to its current tally of 28. Nevertheless, following the UK's withdrawal, the total count of EU member states has diminished to 27.

There are only four prominent Western European countries that are not part of the European Union. Britain is included in that group. Norway, Switzerland, and Iceland have previously sought to join the European Union (EU), but their ambitions have been subsequently delayed or modified. Norway, Switzerland, Iceland, and Liechtenstein are members of both the EU Single Market and the Schengen Area. As a result, they maintain a close geographical relationship with the EU, despite not being part of the EU Customs Union.

The significance of local governance in the process of European Union integration: The significance of local self-governance in implementing policies and the Acquis

3 Khan Mohmand, Shandana, and Snezana Misic Mihajlovic. "Connecting citizens to the State: Informal local governance institutions in the Western Balkans." *IDS bulletin* 45.5 (2014): 81-91.

Communitaire, as well as in the European integration agenda, is of paramount importance. The 2019 Communication on EU Enlargement Policy by the European Commission emphasizes this role in the following manner: Considering the participation of regional and local authorities is crucial when aligning EU policies and executing EU regulations. Efficient implementation of reforms and provision of public services require an optimal equilibrium between central, regional, and local authorities.

The European Integration Units in each municipality have overseen the internal data collection process for their institution, while the Agency for Support to the Local Self-Governance has managed the data collection from 61 municipalities. The process of European Union integration is arduous and necessitates significant exertion from both central and local administration. The Albanian government is implementing an open government strategy to enhance national policies, promote transparency, and enhance the quality of public services. This goal will be achieved by implementing Information and Communication Technology systems and establishing centralized service centers. Establishing a connection between governments and their citizens and advancing more inclusive and sustainable economic development requires improving public administration, promoting open and participatory policy-making processes, and enhancing the government's capacity to choose the most appropriate policies from various alternatives.

Present Status of Local Governance in Albania

Capacity and Challenges in Administration.

The local governance system in Albania encounters numerous structural, administrative, and financial obstacles that hinder its ability to operate with efficiency and effectiveness. Comprehending and tackling these obstacles is of utmost importance as Albania progresses in its endeavors to assimilate into the European Union (EU).

Structural challenges arise as Local Government Units (LGUs) in Albania frequently function within a system that curtails their autonomy and efficiency. Historically, the concentration of power and decision-making in Albania has marginalized local authorities, thereby restricting their capacity to adequately address local needs. The centralization process has resulted in a lack of clarity regarding the specific roles and responsibilities of local governments, which has led to the duplication and inefficiency in the delivery of services.

Administrative Challenges: The ability of local government units (LGUs) in Albania to effectively carry out administrative tasks is frequently hindered by a lack of competent and knowledgeable personnel. Numerous local governments encounter challenges in retaining proficient personnel primarily due to their lower

salary offerings in comparison to the private sector or central government positions. This problem is worsened by a shortage of professional development opportunities, leading to a decline in the overall standard of public services at the local level.

The limited financial resources of local governments in Albania significantly hinder their capacity to address the needs of their communities, primarily due to financial constraints. Local Government Units (LGUs) frequently depend significantly on financial aid from the central government, which can be both unpredictable and inadequate. This dependence is worsened by the constrained ability of local authorities to generate revenue, as a result of limited tax sources and ineffective systems for collecting local taxes and fees. As a result, numerous local governments face difficulties in funding crucial services, let alone allocating resources for long-term development initiatives.

Potential trajectories for growth and progress

Notwithstanding these obstacles, there exist substantial prospects for advancement in local governance in Albania, specifically with regard to the European Union integration process. Local governance reforms can potentially promote efficiency and improve service provision.

In order to enhance local governance in Albania, it is imperative to advocate for decentralization and autonomy. Empowering local authorities with increased autonomy in decision-making and financial management would allow them to more effectively address the unique needs of their communities, thus strengthening their ability to govern themselves. This entails the delegation of power and responsibilities from the national to regional levels, along with sufficient financial resources and capabilities to effectively carry out these newly assigned duties.

Capacity building is crucial for guaranteeing sustainable development and facilitating the incorporation of countries into the European Union. It involves strategically investing in the administrative capacities of local governments. Specialized training programs can be implemented to enhance the proficiency of local government officials and staff, specifically in regards to EU standards and practices. These programs can receive support from the European Union, international organizations, and collaborations with EU member states. Their primary emphasis lies in the domains of public administration, financial management, and project management.

In order to address financial difficulties, local governments in Albania must expand their sources of income and enhance their abilities in financial management. In order to accomplish this, it may be imperative to restructure local tax systems to optimize the gathering of income and investigate alternative methods of financing, such as public-private partnerships and municipal bonds. Moreover, by effectively utilizing current resources and adopting a transparent and straightforward approach,

along with the strategic allocation of funds from the European Union, the financial stability of local governments can be greatly enhanced.[4]

The adoption and utilization of innovation and technology can greatly enhance service delivery at the local level, leading to improved efficiency and effectiveness of outcomes. Implementing e-governance solutions can optimize transparency, reduce administrative burdens, and improve citizen engagement. Additionally, the creation of collaborative platforms to facilitate the exchange of exemplary practices among local governments can promote innovation and enhance efficiency.[5]

To summarize, tackling the existing structural, administrative, and financial difficulties faced by local governance in Albania offers a significant chance to improve the effectiveness and efficiency of public services. Through the implementation of local governance reforms, Albania has the potential to enhance the well-being of its citizens and achieve substantial progress in fulfilling the EU's accession criteria.

Promoting engagement and comprehension among members of the community Albanian local government units (LGUs) have a unique chance to directly engage with citizens and foster public support for European Union (EU) integration through various initiatives.

Community-led initiatives include the organization of public forums and workshops by LGUs to educate citizens about the benefits of European Union (EU) integration and its impact on local development. For instance, a municipality could arrange workshops to clarify the prospects of European Union funding for local businesses or agricultural producers, thereby establishing a link between EU integration and tangible benefits for the community.

European Union information centers: Establishing local information centers that provide resources and guidance on EU affairs can improve the clarity and understanding of the EU for the general public. These centers can serve as central hubs for disseminating information regarding EU standards, rights, and obligations, while also showcasing successful projects financed by the EU.

Cultural and educational initiatives, such as cultural exchanges, competitions centered around the European Union in schools, and educational programs, have the potential to significantly augment citizens' involvement, consciousness, and passion for the European Union. Participating in a variety of activities that highlight European culture and values on Europe Day can strengthen the connection between

4 Bartlett, William, Sanja Kmezić, and Katarina Đulić. "The Political Economy of Decentralisation and Local Government Finance in the Western Balkans: An Overview." *Fiscal Decentralisation, Local Government and Policy Reversals in Southeastern Europe* (2018): 1-18.

5 Keane, Rory. "The Partnership–Conditionality Binary in the Western Balkans: Promoting Local Ownership for Sustainable Democratic Transition." *Cambridge Review of International Affairs* 18.2 (2005): 247-257.

citizens and the European Union.

Challenges in Expanding Viewpoints In accordance with the regulations established by the European Union

Municipal authorities possess the capacity to facilitate the promotion of EU aid, yet they also encounter diverse impediments[6]:

Tackling misinformation and skepticism surrounding the EU presents a significant challenge. Occasionally, local media and social platforms spread inaccurate information about EU policies and their outcomes, leading to public opposition.

Economic considerations: Some individuals may have concerns about how EU integration could negatively affect domestic industries, such as increased competition and unemployment. In order to address these economic concerns, it is crucial to efficiently convey the long-lasting benefits of integration and the available support for the industries affected to adjust[7].

Concerns related to culture and identity, such as the apprehension of relinquishing national sovereignty or cultural identity, can hinder the support for the integration of the European Union. Local authorities should give priority to promoting shared European values, emphasizing the fact that EU membership strengthens national identity.

Improved Framework for Engaging Local Government

Interstate cooperation refers to the collaboration and coordination between different states or countries[8].

Efficient collaboration among local, regional, and national entities is crucial for a cohesive strategy towards EU integration.

Establishing coordination bodies comprising delegates from local, regional, and national administrations can bolster cooperation among various tiers of government. These entities have the authority to supervise the execution of projects related to the European Union, ensuring compliance with national strategies for EU integration. Establishing regular consultations and reporting mechanisms between various government levels can guarantee the integration of local needs and perspectives into national policies concerning EU integration.

Local governments can enhance the utilization of EU funds through a range of

6 Milutinovic, Slobodan, and Snezana Zivkovic. "Planning local sustainable development in Western Balkans." *Management of Environmental Quality: An International Journal* 25.1 (2014): 19-29.

7 Cotella, Giancarlo, and Erblin Berisha. "Territorial governance and spatial planning in the Western Balkans between transition, European integration and path-dependency." *Journal of European Social Research* 1.2 (2017).

8 Pere, Engjell. "Impact of good governance in the economic development of Western Balkan countries." *European Journal of Government and Economics* 4.1 (2015): 25-45.

strategies:

Grant Application Capacity Enhancement: Numerous local governments do not possess the requisite proficiency to effectively submit applications for European Union funds. Offering instruction in grant proposal composition and European Union project administration can enhance their capacity to obtain financial support.

Establishing regional offices to facilitate European Union projects: Creating specialized divisions or units within Local Government Units (LGUs) solely responsible for overseeing European Union (EU) projects can enhance project management and optimize the strategic allocation of EU funds for local development.

It is crucial to engage in collaborations with member states of the European Union, such as partnerships and twinning projects, in order to enhance capacity building.

Twinning projects involve collaborating with municipalities in EU countries to facilitate the exchange of best practices, knowledge, and experiences regarding EU integration procedures[9].

Programs specifically developed to facilitate professional exchanges. Implementing exchange programs for local officials and staff to visit and learn from their counterparts in EU member states can augment their comprehension of EU administrative procedures, governance models, and project management techniques[10].

The local authorities in Albania possess the capacity to significantly influence the promotion of public backing for EU integration, surmounting obstacles to EU-aligned viewpoints, and augmenting their participation in the EU integration process. This can be accomplished by giving priority to strategic collaboration, efficient allocation of resources, and establishing international alliances.[11]

Conclusion

Granting local government units (LGUs) in Albania with authority and autonomy is crucial for the country's progress towards European Union (EU) integration. Adopting this approach is essential not just for harmonizing local governance with EU norms, but also for guaranteeing that the integration process is thorough, enduring, and responsive to the requirements and ambitions of local communities. The primary findings and recommendations for leveraging the potential of local governance to facilitate Albania's integration into the European Union highlight the

9 Xheka, Anna. "Decentralization through the Lens of the Legacy of Power and Ethnic Conflicts: Western Balkan Case." *Journal of Academic Opinion* 1.2 (2021): 36-42.

10 Kamberi, Ferdi. "Cooperation between Community and Local Governance-A Comparative Study of Municipalities of Pristina Region." *Balkan Social Science Review* 18.18 (2021): 263-283.

11 Cotella, Giancarlo, and Rudina Toto. "Foreword: Territorial governance in the Western Balkans: Multi-Scalar approaches and perspectives." *European Spatial Research and Policy* 28.2 (2021): 5-20.

diverse role of Local Government Units (LGUs) in this endeavor.

LGUs in Albania encounter substantial administrative, structural, and financial obstacles that impede their effectiveness and efficiency. These factors, namely limited autonomy, inadequate funding, and a shortage of skilled personnel, have a direct influence on their capacity to effectively enforce EU standards at the local level.

Potential for Development: Despite the obstacles, there is a significant capacity for growth within local governance structures. The implementation of decentralization, capacity building, and financial reform can greatly enhance the efficiency of Local Government Units (LGUs), enabling them to be more receptive to the demands of their constituents and better prepared to fulfill the criteria for EU accession.

Community Engagement: Local Government Units (LGUs) possess a distinct advantage in promoting public endorsement for European Union (EU) integration by actively involving the community. Efforts focused on enhancing EU consciousness, advocating cultural and educational initiatives, and countering misinformation have the potential to foster a favorable attitude towards the EU among the general population.

The significance of intergovernmental cooperation lies in its ability to facilitate a synchronized approach to EU integration by fostering collaboration among local, regional, and national government levels. This collaboration guarantees that the viewpoints of local communities are included in national strategies, making the process of joining more cohesive and efficient[12].

Optimizing the utilization of EU funds: Enhancing the ability of Local Government Units (LGUs) to access and utilize EU funds is vital for promoting local development and facilitating EU integration endeavors. This entails providing instruction to local officials in the areas of grant writing and project management, while also creating specialized teams to supervise European Union projects[13].

International Partnerships: Collaborations and twinning initiatives with municipalities in EU member states provide valuable prospects for enhancing capabilities, exchanging knowledge, and implementing exemplary approaches in local governance.

12 Pankovski, Marko. "Governance versus Authoritarian Influence in the Western Balkans." *Governance* (2021).

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CONCESSION CONTRACTS IN ALBANIA. A COMPARATIVE STUDY WITH THE EU. CASE OF MINING SECTOR

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ABSTRACT

Concession contracts serve as legal instruments for the executing projects of public interests in key strategic sectors by involving private companies, especially when public authorities seek to mobilize private capital and expertise to supplement limited public resources. In developing countries, concessions can also be instrumental in fostering economic development and attracting foreign investments, enhancing accessibility for the country. In the case of Albania, numerous sectors, particularly natural resources, have experienced the benefits of concession contracts, rendering them more appealing to strategic investors. Nevertheless, without proper regulation within the legal framework, there is a risk of compromising public interest and fair competition, potentially transforming concessions into significant barriers to the country's development. The aim of this paper is to shed some light on the evolution and current status of concession contracts in Albania, drawing comparison with EU legal framework, while also pinpointing key challenges associated with these contracts and the importance of aligning with the EU legal framework. The article does not intend to provide an exhaustive description of all provisions, differences, and challenges but rather focuses on closely analyzing specific aspects and challenges.

Key words: *Concessions contract, EU Harmonization, Minig sector, Public Interest, Economic Development, Albania.*

1. Concession Contract: Definition, Advantages, Disadvantages

Concessions are contractual arrangements wherein the public contracting authority delegates the execution of works, or the provision and the management of services, to private companies, for a given period of time. In return, the private party pays either a fixed sum, a percentage of revenue from the utility or a combination of the

two to the public contracting authority for exclusive rights over the concession.

Despite variations in legal definitions across different countries, a common characteristic of concession contracts is that the private party derives revenue from user fees charged to facility users.[1]

Concessions has become very attractive, particularly in developing countries where governments lack the economic capacity to undertake public works or provide essential services. This is especially true for key strategic sectors like infrastructure, natural resources, or the provision of services considered of general economic interest, such as energy or waste disposal.

The application of concession contracts offers numerous advantages for both the state and the public. Through concessions, the state can provide public services without increasing public expenditures, and the public benefits from these services without paying heavy taxes, even in situations where the state budget is insufficient. Furthermore, states can boost public revenues through taxes paid by the concessionaire, and they can profit from other advantages such as reduced unemployment, increased competition, and improved efficiency in managing public assets. Concession contracts empower governments to develop specific sectors of the economy.

Nevertheless, the application of concession contracts also brings negative impacts, as it requires inter alia complex design and monitoring systems, making them challenging to implement. To enhance the efficiency of public assets, it is not merely sufficient to apply concession contracts; there is an immediate need for a contemporary legal framework. This framework should not only establish the necessary legal conditions for a well-designed contract but also create conditions for the full performance of the contract by the concessionaire. This involves providing stringent legal rules on contract renegotiation and establishing a well-functioning monitoring system. Failure to observe these factors properly may transform concessions, initially intended as a development tool, into barriers for the economic development of a country, as further analyzed below.

2. EU Legal Framework on Concession

EU treaties do not explicitly define concessions, but they encompass articles relevant to concession contracts. These contracts are subject to fundamental EU legal principles, including equality of treatment, transparency, proportionality, reciprocity, the right to establishment, free movement of goods, freedom to provide services, as outlined in the consolidated versions of the Treaty on European Union

1 Ramrao Mundhe. "Infrastructure Concession Contacts: An Introduction". *Viewpoint Paper* CUTS Centre for Competition, Investment & Economic Regulation No.2 July 08, pp.1.

and the Treaty on the Functioning of the European Union[2], and various articles of the Treaty Establishing the European Community[3].

Proportionality is a crucial EU legal principle applicable to concession contracts, preventing Member States from defining selecting criteria that would be disproportionate. Practice shows that in cases when this principle is disregarded, the concession leads to monopolies that violate the free trade and fair competition.

Along with the provisions of the EU treaties, the EU legal framework comprises both hard and soft law acts dealing with concession contract. Early acts covering concessions included: 1. Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02)[4]; 2. Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts[5]; 3. Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, [6] Green Paper on public-private partnerships and Community law on public contracts and concessions, [COM(2004) 327][7] and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 12 May 2004 - White Paper on services of general interest [COM(2004) 374].[8]

Following a legislative process and consultation, a new concession directive, Directive 2014/23/EU[9], came into force in April 2014[10]. It replaced the existing public Sector Directive (2004/18/EC) and aimed to create a comprehensive EU-level framework for concessions, aligned with evolving economic, social, and political contexts.

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2 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon - Tables of equivalences, as Published in the *Official Journal C 115 , 09/05/2008 P. 0001 – 0388.*

3 *See among others* Articles 28 to 30 and 43 to 55.

4 *See* C 179/2 EN Official Journal of the European Union 1.8.2006.

5 *Official Journal L 199 , 09/08/1993 P. 0054 - 0083*

6 *Official Journal L 134 , 30/04/2004 P. 0114 - 0240*

7 Not published in the Official Journal.

8 Not published in the Official Journal.

9 Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.3.2014, p. 1–64.

10 Along with (i) the Directive on public procurement (2014/24) (the "2014 Classic Directive"), which repeals the 2004 Public Sector Directive; and (ii) the Directive on procurement by entities operating in the water, energy, transport and postal services sectors (2014/25) (the "2014 Utilities Directive"), which repeals the 2004 Utilities Directive.

The Directive pursues two primary objectives: (1) providing certainty on the legal framework by defining certain concepts and codifying certain principles relating to the award of concessions, in line with the case law of the European Court of Justice, and (2) improving access to the concessions markets by increasing transparency and fairness in award procedures.

The new legislation puts a strong emphasis on simplification as well as on innovation and sustainability. Key changes brought by the Directive include:

1. Legal Certainty: To ensure the correct transposition and implementation, the Directive provides (i) a clear definition of concession at EU level; (ii) the definition of 'Operating Risk'; (iii) specific provisions on concession contract modification developed through case law and practical solutions for dealing with unforeseen circumstances requiring a concession to be modified during its term; (iv) specifications on how public private partnerships relate to the rules on concessions.[11] [12]

What differentiates concession contracts from other types of public contracts is the transfer to the concessionaire of an operating risk in the exploitation of works or services encompassing demand or supply risk or both. To this end a presumption is established: the concessionaire shall be deemed to assume this risk where "under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession" (Recital 18 and Art.5 of the Directive). Therefore, the concession contract is characterized not only by the risk of not obtaining a return, but also the risk of incurring operating losses (known as "operating deficit").[13]

2. Thresholds: The directive introduced specific financial thresholds to determine whether the rules apply. Concession contracts with an estimated value equal to or exceeding these thresholds are subject to the provisions of the directive.

3. Award Procedures: The directive established different award procedures for

11 Explanatory Memorandum to COM(2023)460 - Functioning of Directive 2014/23/EU on the award of concession contracts and on the impact on the internal market of the exclusions set out in Article 12.

12 However, not all Member States have transposed the concepts as set out in the Directive. For example, if we take in consideration the concept of the 'operating risk', only four Member States have transposed the concept exactly as set out in the Directive. Over twenty Member States transposed the concept through a slightly different wording than the one provided in the Directive, and two Member States did not address the operating risk at all in their national legislation. At this stage it is not possible to say whether those discrepancies have practical economic impact. Different interpretations of operating risk could mean that public procurement for the same type of work or service provisions will be treated differently across Member States, or could not even be subject to the provisions transposing the Directive.

13 R. Craven, "The EU's 2014 Concessions Directive" (2014), 4 Public Procurement Law Review, 193.

concession contracts. It includes competitive procedures with or without negotiation and the competitive dialogue procedure, among others.

4. Duration: There are provisions in the directive that set the maximum duration of concession contracts, promoting a balanced approach and preventing excessively long concession periods.

5. Transparency and Competition: The directive emphasizes the principles of transparency and competition, aiming to ensure fair and open competition for concession contracts. This includes requirements for advertising and providing information about the concession opportunity.

6. Technical Specifications: The directive introduced provisions related to technical specifications, ensuring that they are defined in a way that does not unduly restrict competition and allows for the participation of various economic operators.

7. Remedies and Enforcement: The directive established procedures for remedies and enforcement to ensure effective review mechanisms in case of alleged violations of the rules, promoting a more efficient and fair procurement process.

8. Innovation: The directive encourages the use of innovation and environmental considerations in the award of concession contracts, promoting sustainable practices and technological advancements.

All these changes were aimed at creating a more coherent and modern legal framework for concessions within the European Union, promoting competition, transparency, and efficiency. However, the Directive does not provide a complete public procurement/concession law or code covering all elements of concession. It falls to national legislators to provide further detailed provisions and develop guidance, following the principles of the Directive.[14] The national legislators must respect the EU law principles (transparency, equal treatment, open competition, and sound procedural management). Also the Court of Justice of the EU ("CJEU") regularly issues judgments in concession cases, guiding EU Member States in compliance[15]. Actually, the Directive serves as a legislative embodiment of the accumulated jurisprudence, providing a unified and standardized approach to concession contracts within the European Union.

1.1 *Functioning of the EU Concession Market*

According to the data given from the report of the Commission on the functioning of the Directive, the total value of concessions covered by the Directive and awarded between 2016 and 2021 is estimated at EUR 377.5 billion, representing 12 % of the

14 It also falls to the national legislators to define, inter alia, the parameters needed to assess the existence of operating risk, investments to be taken into account when establishing the duration of the concessions, and measures to ensure the economic and financial balance of the concession.

15 ICLG – Public Procurement Laws and Regulations: https://iclg.com/practice-areas/public-procurement-laws-and-regulations/01-eu-public-procurement-rules.

yearly overall public procurement market covered by the three public procurement Directives combined. Since the transposition deadline on 18 April 2016, the total number of concessions awarded in the EU has roughly doubled and continues to experience growth[16].

This upwards trend in the use of the concessions can be observed in most Member States. France and Italy account for more than two thirds of the EU concessions market. Together with Spain and Germany, these Member States make up for 85 % of the total increase of concession awards in the same period. The sectors with the largest number of concession awards since 2016 being: (1) hotel, restaurant and retail trade services; (2) recreational, cultural and sporting services; and (3) construction work.

3. Concession Contracts in Albania: A Comparative Study with the EU

3.1 Albanian Legal Framework on Concessions

During the communist era in Albania, the private sector was extremely limited, resulting in the absence of concession contracts. It was only after the collapse of communist that the private sector in Albania began to emerge.

The concept of concessions was introduced into Albanian legislation for the first time by Law No. 7973, dated 26. 7. 1995 "*On the Concessions and the Private Sector Participation in Public Services and Infrastructure*" ('Law No.7973/1995'). The initial definition of a concession was provided in Article 2, paragraph 4 of this law, establishing 'a contractual agreement allowing a non-state legal or physical person to receive, authorized by the state, the right to perform specified services for an extended period, with the entity granting the concession responsible for financing new investments during the specified concession period'.

Law No. 7973/1995 was later replaced by Law No. 9663, dated on 18. 12. 2006 "On the concessions" ('Law No. 9663/2006'), which, in turn, was superseded by the current Law No. 125/2013 "*On Concessions and the Public Private Partnership*", as amended by Laws No.88/2014, No. 77/2015, and No. 50, dated 18.08.2019 ('Law No. 125/2013').

The legal framework in the field of concessions and public-private partnership is supplemented by the following bylaws:

• DCM no. 280, dated 7.4.2020 "*On the adoption of the regulation on the functioning of the selection committee of the concession/ PPP projects and the criteria for the*

16 REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the functioning of Directive 2014/23/EU on the award of concession contracts and on the impact on the internal market of the exclusions set out in Article 12, SWD (2023) 267 final.

evaluation of the requests of the contracting authorities for support with specialized expertise".

• DCM no. 285, dated 10.4.2020 "*On the organisation, operation as well as procedures and level of services fees to be provided by Concessions Treatment Agency (ATRAKO)*".

• DCM no. 420, dated 27.05.2020 "On some changes and additions to Decision of the Council of Ministers no. 575, dated 10.7.2013, "*On the adoption of the rules for the evaluation and award of concessions/public-private partnership", as amended*".

DCM no. 571, dated 27.06.2013, '*On the adoption of the rules for the determination of the mining allowed areas for mining rights approved by concession agreement*'.

Application to Previous Concessions

Article 50 of the Law No 125/2013 provides that the law does not apply to concession contracts signed before its entry into force, except for provisions related to the register of concessions/public-private partnerships, which must be regulated within six months of the law's enforcement. Similar provisions were outlined in Article 35 of Law No. 9663/2006. Consequently, contracts signed before the entry into force of Law No. 125/2013 are subject to the regulation of the previous laws.

As a general rule, the current Concession Law does not apply to concessions granted before its enactment. However, exceptions arise concerning renewals and extensions of concessions granted under previous laws, which are subject to the provisions of the current Concession Law.

Principles Guiding the Concession/PPP

The concession and/or public private partnership ('PPP') adjudication procedure is based on the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment, mutual recognition and legal certainty (Art. 9).

Scope of the concession

Law No. 125/2013 disciplines the necessary regulatory framework in order to better stimulate, absorb and facilitate investments in concessions and public-private partnership projects.

Concessions/PPP can be granted for the realization of works and/or provision of services for the following sectors and purposes: (1) Transportation, including highways and roads, engineering structures, railways and railway transportation, canals, ports, airports, bridges and tunnels; (2) Production, transmission and distribution of electrical energy and heat; (3) Water supply, including production, administration, cleaning and distribution, waste water treatment, accumulation and distribution, irrigation, drainage, cleansing of water channels and dams; (4) Administration, collection, transportation, elaboration and elimination of solid waste;

(5) Telecommunications; (6) Science and education; (7) Tourism, entertainment and hospitality; (8) Culture and sport; (9) Health and Social services; (10) Prisons and judicial infrastructure; (11) Land and forest rehabilitation; (12) Industrial parks, mines and similar infrastructure for business support; (13) Accommodation; (14) Public administration buildings, information technology and database infrastructure; (15) Distribution of natural gas; (16) Urban and suburban rehabilitation and development. (17) Public lighting in the territory of local administrative units; and (18) Agriculture.

The Council of Ministers, upon proposal of the Minister of Economy and of the local government Authority, may authorize the implementation of concessions also in other sectors. In any case, a special purpose vehicle (SPV) should be established for the implementation of the concession project. The transfer of quotas of shares in the SPV requires the approval of the contracting authority. The procurement and concession documentation is published online on the government website (www.app.gov.al) and the submission of tenders takes place online.

In special cases, the Council of Ministers may offer concessions at the symbolic price of Euro 1 to local or foreign investors for the enhancement of investments in the above-mentioned sectors or in other sectors of primary importance for the economic development of the country, based on strategic objectives. The Minister of Economy may propose to the Council of Ministers the list of assets to be granted in concession at the symbolic price of Euro 1 and after its approval the pertinent concessions may be implemented.

Interested parties may also submit unsolicited projects for concession. If such projects are approved, the party that has submitted the unsolicited project is awarded a bonus credit for the preparatory work in assembling the unsolicited project. Such bonus gives the bidder an advantage over other bidders during the process of selection of the concessionary for the realization of the project. Companies may create a joint venture in order to submit a bid for a concession project.

Monitoring Authorities and Structures

The monitoring authorities and structures in charge for the correct and efficient application of the concession rules, as provided by the Law No. 125/2023, are:

1. ***The Ministry Responsible for the Economy***, - in charge for the orientation and harmonization of the activities for development of concessions / PPP.

2. ***The Ministry Responsible for Finances***, - in charge for the evaluation and approval in advance of all concession projects/ (PPP), as well as any change or transfer thereof, from the point of view of fiscal implications, individual or group for budget expenditures, budget deficit, sustainability of public debt and eventual contingent liabilities.

3. ***The Public Procurement Agency***, - in charge for (i) monitoring the compliance with the competitive procedures of concessions/public private partnerships, according to the legislation on public procurement, after signing the contract and, (ii) in case of violations of this law and by-laws, issued in its implementation, sets fines or proposes taking administrative measures, as well as (iii) publishes standard tender documents.

4. ***The unit for dealing with concessions/PPP (Concessions Agency)***, - is subordinate to the minister responsible for the economy, to encourage and assist contracting authorities in the preparation, evaluation and negotiation of concessions/ PPP, as well as the monitoring of concession contracts. The way of organization and operation, as well as the procedures and the level of service fees to be offered by the Concessions Agency are determined by the decision of the Council of Ministers No. 285, dated 10.4.2020.

5. ***Project Selection Committee of Concession/PPP***, - in charge for the selection of concession/PPP projects, which will be supported by specialized expertise in designing the feasibility study and/or in conducting their opposition. This is an inter-ministerial collegial body, which invites, on a case-by-case basis, without the right to vote, representatives from the academic world, as well as contracting authority holders, whose field of activity is the object of the concession/PPP project, to argue the request Theirs.

6. ***Contracting authorities***, - are the bodies (line Ministries and/or local government units), to which this law gives the powers to undertake a procedure for granting concessions/PPP.

7. ***Concession/PPP Commission***, - appointed by the Contracting Authority in coordination with the Concession Agency, in charge for the consideration and granting of the concession/PPP.

Concessions Register

The law provides for the creation of a Register of concession/public private partnership with an electronic database of all concession and public private partnership contracts, given in the Republic of Albania. This Register must be created by the Concession Agency according to the rules governing the register's content and form approved by the Council of Ministers.

Administrative Review, Applicable Law and Disputes

The legal framework provides for an administrative review and investigation procedure conducted by the Agency of Concessions for decisions made by the contracting authority. As a last resort, interested parties may present their claims before of the District Court of Tirana. Notably, matters not covered by Law No.

125/2013 are subject to the provisions of the Civil Code of Albania, ensuring equality between public and private sector parties.

Disputes between the contracting authority and the concessionaire/private partner are resolved through dispute resolution mechanisms agreed upon in the concession/public-private partnership contract, including international arbitration procedures. The applicable law in such cases is the Albanian law.

Detailed rules for the evaluation and granting of concessions/PPP

The law allows the Council of Ministers to approve detailed rules for the evaluation and granting of concessions/PPP. These rules, which are approved by Decision No. 575, dated 10.7.2013[17], determine the preparatory actions for awarding a contract with concession/public private partnership, assessment of acceptability, content and treatment of unsolicited proposals, as well as the procedure and criteria for evaluating and approving projects of the concession/public private partnership that require financial support in accordance with the law on concessions and public private partnership.

Stabilization Clause

Law 25/2013 includes a stabilization clause, allowing the Contracting Authority to make binding commitments on behalf of the State to provide guarantees protecting the concessionaire/private partner from adverse financial consequences of legislation enacted after the start of the concession contract/public-private partnership.

Article 41 outlines the conditions for such commitments, emphasizing clear descriptions of financial consequences, termination of engagement with the concession agreement, and accurate identification of the legislation's nature. The Council of Ministers approves these commitments upon the contracting authority's request.

3.2 Levels of Harmonization with EU Concession framework

Albania, in pursuit of European integration as its geostrategic and political objective, has been aligning its domestic normative framework with EU legislation. The National Plan for European Integration reflects the increasing commitment of Albania to approximate EU standards, facilitating the adoption of obligations required for accession.

Despite this commitment, the alignment of Law No. 125/2013 with the new concession directive introduced in March 2014, Directive 2014/23/EU, is only partial. However, significant progress has been made in aligning with Directive 2004/18/EC of the European Parliament and the Council of March 31, 2004, which concerns the coordination of procedures for awarding public works contracts, public

17 Decision No. 575, dated 10.7.2013 'For the approval of the rules for evaluation and awarding of the concession/public private partnership'.

supply contracts, and public service.

Although there have been three new laws amending Law no. 125/2013, the level of alignment with Directive 2014/23/EU remains incomplete. As a country aspiring to EU accession, Albania must consider these discrepancies when developing or revising its existing concession legal framework. The Concessions Agency, with foreign technical assistance, is conducting an assessment of the legal gaps in relation to Directive 2014/23/EU, as outlined in the Report of the National Plan for European Integration. This process aims to address and rectify any misalignments, ensuring a more comprehensive adherence to EU standards in the field of concessions[18].

4. Concession Contracts in Albania: Main Challenges. Case of Mining Sector.

The legal framework for concessions in Albania faces various challenges, particularly in the mining sector, due to reasons such as partial alignment with EU directives and shortcomings in previous laws. These challenges impact legal certainty, ex-post rules, monitoring institutions, and consistency with EU principles.

4.1 Main Challenges

Many concession contracts covering strategic sectors in Albania have been entered before 2013 law and are hereby regulated by the previous laws, respectively Law No. 7973/1995 and Law No. 9663/2006. Both of these laws are vague and incomplete in the legal framework, leaving much to interpretation and ambiguities, and far from EU rules and principles. Some of the main challenges these concessions are facing are analyzed below.

1. **Lack of Legal certainty**

The absence of clear legal framework governing the award of concession contracts gives rise to legal uncertainty and poses obstacles to the free provisions of services. This situation causes various distortions in the functioning of the concessions and the market, directly impacting both public and private interest.

Legal certainty stands out as a primary objective of the new EU Concession Directive, as underscored in the initial points of the Recitals. It is explicitly stated that the legislative framework's rules applicable to the award of concessions should be clear, simple, and should not result in an excessive amount of bureaucracy. Additionally, referring to the Green Paper on Public–Private Partnerships and Community Law on Public Contracts and Concessions (paragraph 45), it is emphasized that the success of a Public–Private Partnership (PPP) largely depends on a comprehensive contractual framework for the project and the optimal definition of the elements governing its implementation.

18 The National Plan for European Integration 2022 – 2024 (https://integrimi-ne-be.punetejashtme.gov.al/wp-content/uploads/2022/02/NPEI_2022-2024_EN-.pdf)

The lack of legal certainty is a major issue characterizing the concession framework in Albania, particularly affecting concession contracts in force, especially those entered into before 2013. This issue permeates various sections of the legal framework, leading to uncertainties and challenges in implementation, such as:

a) *Different Definitions*: The absence of a clear legal framework has led to different definitions across legislation and concession contracts, causing interpretation divergences and legal uncertainties.

b) *Contract Modification Challenges:* Previous laws lack regulations for modifying concession contracts, especially those entered before 2013, leading to uncertainties when adapting to changing circumstances during the concession period.

Concession contracts usually involve long-term duration and complex technical and financial arrangements, making them subject to unforeseen changes in circumstances that the parties could not have anticipated during the concession award. In such cases, a certain level of flexibility and a well-defined regulatory procedure are necessary to adjust the concession to the evolving circumstances.

Therefore, it is imperative to articulate the conditions under which modifications to concessions can be made, even beyond the initial signing period of the concession. This ensures that the contractual framework allows for necessary adjustments, providing a mechanism to adapt to changing situations without compromising the integrity of the concession arrangement.

c) *Ownership Transfer Ambiguities:* The lack of regulations and legal uncertainty regarding the transfer of ownership of concession assets at the end of the concession period requires detailed and clear procedures.

The legal framework anticipates that the right of ownership of the facilities subject to the concession/private-public partnership, including additions and improvements, belongs to the contracting authority. However, there are no provisions detailing the procedure for the transfer once the concession period concludes. The transfer procedure after the concession period is a crucial legal aspect that requires comprehensive regulation, extending beyond the initial signing period of the concession.

To address this, a detailed regulation can be implemented through a Council of Ministers Decision. This decision would provide specific details on how the transfer of assets should be executed, ensuring a transparent and well-defined process for the transfer of ownership at the conclusion of the concession period or at earlier stages.

2. Issues related to *ex-post* rules/legislation

When parties define the rules in a contract during the stage of contract negotiation and design, their contractual end is expressed through so called *ex-ante* rules, since

parties have limited knowledge and uncertainty about the future, the so-called ex-post rules. Despite the provision that the new law doesn't apply to concessions signed before its entry into force, ex-post rules/legislation have negatively affected existing concession contracts, as seen in the mining sector, further analyzed below.

3. Monitoring Institutions' Effectiveness

Decision No. 150/2007 has endowed the Concession Agency with a crucial role in identifying potential public-private partnerships (PPPs) and concessions, as well as negotiating concession contracts and monitoring their implementation. However, despite this important mandate, there is a notable absence of reports detailing the monitoring practices of the Concession Agency.

Moreover, even after nine years since the establishment of the Concession Agency, there is a conspicuous lack of a concession register. The absence of a publicly accessible concession register is evident when referring to the official webpage of the Concession Agency. This raises concerns about transparency and accountability in the functioning of the agency, as the public and stakeholders are deprived of essential information related to concession contracts and their implementation.

4. Inconsistencies with EU Principles

The experience of awarding concessions in Albania has revealed instances of inconsistencies with EU principles, including equality of treatment, transparency, and proportionality. A notable example is the concession contract for Rinas International Airport[19], which, for an extended period, granted the concessionaire the exclusive right for international flights throughout the contract's duration. This exclusivity clause resulted in a monopoly, detrimentally impacting public interest and contributing to the devaluation of Kukes Airport, which could not operate without terminating the Rinas International Airport concession contract.

However, in 2016, the involved parties renegotiated and reached a new agreement that eliminated the exclusivity clause. This change alleviated the deadlock that hindered the establishment of other airports in Albania. The resolution demonstrated that, with goodwill, agreements can be modified for the better, aligning with the new rules and fostering fair competition in the airport sector.

Impact on Foreign Investment: The identified challenges have collectively contributed to creating an unattractive environment for foreign investors, particularly in strategic sectors. The lack of legal clarity and alignment with international standards poses barriers to foreign investment.

19 Concession Contract dated October 15, 2004, ratified by law no. 9312, dated November 11, 2004, "*On the approval of the concession agreement for the construction, operation and maintenance of Tirana International Airport "Mother Teresa", between the government of the Republic of Albania and Tirana Airport Partners sh.p.k., as well as granting some special incentives to the company according to the initial concession agreement*".

As a conclusion, the challenges faced by concession contracts regulated by previous laws in Albania emphasize the critical need for legal reforms. Addressing issues related to legal certainty, contract modification, ownership transfer, and alignment with EU principles is essential for creating a robust and attractive concession framework conducive to sustainable development and foreign investment.

4.2 Case of Mining Sector

The first and only two concession contracts in the mining sector were awarded in the early years of 2000 and 2001 to the Italian company 'Darfo' S.p.a. (now 'Albchrome Holding').[20] These concessions aimed at the rehabilitation and revitalization of the chrome industry in the country, and they were structured as follows:

1. The first concession, of type BOT (i.e. build, operation and transfer) was granted for a term of 30 years for the following objects: (i) Chrome Mine of Prrenjas; (ii) Chrome Mine of Pojske; (iii) Ferrochrome Plant in Elbasan, all located in the southeast region ('Concession 1'). This contract was entered on 21 March 2000 and approved (ratified) by the Albanian Parliament by the law No. 8590 dated 23 March 2000, and later amended by Law No.80/2016.[21]
2. The second concession, of type ROT (i.e. rehabilitation, operation and transfer) was granted for a term of 30 years for the following objects: (i) the chrome-mine of Bulqiza; (ii) the chrome enrichment plant of Bulqize; (iii) the chrome enrichment plant of Klos; and (iv) Ferro-chrome plant of Burrel, all located in the northeast region of the country, known for having the largest chromium reserves in Albania. This contract was entered on 12.04.2001 and approved (ratified) by the Albanian Parliament by law No. 8791 dated 10 May 2001, and amended by Law No. 79/2016.

Despite the strategic significance of this sector for Albania[22], the implementation of these two concessions encountered numerous challenges from the outset. Initial issues included delays in project commencement related to the employees due to the restructuring of the state company, which, in turn, affected the initiation of work. Subsequent delays in the concessionaire's investment realization further complicated matters over the years.

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21 Under the Former Concession Law No.7973/1995, concession contracts entered into by the contracting parties in the mining sector, which for the purpose of the Former Concessions Law was considered *inter alia* to be a sector of strategic importance, became effective upon approval/ratification by the Albanian Parliament.

22 Albania is recognized as one of the biggest producers of this ore and until 1990 was the third in the world in terms of its production levels. Actually, even thou Albania has a small geographical area, it is one of the most rich chromite deposit countries and with a vast chromium extraction potential.

Additional problems arose due to the non-compliance of the contracting authority/ Ministry with its obligations. Despite having granted exclusive exploitation rights over the mining areas covered by the concession, the Ministry issued multiple Mining Permits for third parties, some of which even overlapped with the concession coordinates. This fragmentation of the mining sector caused significant difficulties for the concessionaire. This situation was rectified only after the approval of Decision No. 571, dated 27.6.2013, "for the approval of the criteria for determining allowed mining areas for mining rights approved by concession agreement." This decision halted the violation and established rules, especially to ensure the right of exclusivity for the mining areas granted by the concession.

Moreover, challenges were encountered in fulfilling the conditions of the concession contract, particularly those related to the contracting authority's obligations regarding VAT exemption for machinery and equipment subject to the concessionaire's investment. Guarantees for timely VAT reimbursement, though promised, were not properly implemented. These non-compliance with the contract terms created a vicious circle, making it challenging for the concessionaire to execute the concession plan.

Throughout the concession period, difficulties persisted in addressing the concessionaire's requests for the partial transfer of concession assets to the contracting authority, a problem that continues despite changes to the Concession Agreements in 2016. While amendments to the agreements in 2016 focused on altering and expanding the investment plan, introducing innovations related to changes and transfers, the problem persists due to the lack of clarity and insufficient regulation in the current concession law (Law No. 125/2013).

These problems highlight the weaknesses in the current legislation on concessions, particularly the lack of legal certainty and its effective implementation, as discussed earlier.

5. Conclusions

Albanian legal framework on concessions has undergone many revisions and amendments over the last twenty years, gradually improving the legal framework. However, several challenging situations persist, requiring immediate attention and consideration to better stimulate, absorb, and facilitate investments in concessions and public-private partnership projects.

Given Albania's aspirations for EU accession, there is a crucial need to identify and address all gaps, aligning fully with the EU's new Concession Directive.

Same as with EU Directive, legal certainty should be one of the main purposes of the upcoming revisions. Similar to the EU Directive, future revisions should prioritize

legal certainty as one of their main objectives. A comprehensive understanding of the legal provisions is essential for the successful implementation of any concession, ensuring the highest profitability for all parties involved, including the public entity and the private investor. Ultimately, these efforts should contribute to the best interests of the country.

Therefore, the current legal framework for concessions in Albania requires revision, with a primary focus on alignment with the EU Directive. This revision aims to better safeguard public interest, enhance the country's attractiveness to strategic investors, and ensure overall compliance with international standards.

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THE EFFECTIVENESS OF CONSUMER PROTECTION MEASURES IN THE EU INTERNAL MARKET

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ABSTRACT:

Consumer directed law has been in the recent years one of the main areas of focus of the European Union, with its directives, regulations and other legislation focusing strongly on consumer protection measures such as the right of information, right of withdrawal etc. There has been a raised interest by the European Union in the field of anti-competitive agreements such as cartels and vertical agreements where legislation has been strengthened and enforced with fines reaching billions of euros with its main focus and ultimate goal being the protection of the European consumer. However, this research will evaluate the claims that EU consumer protection measures are not that effective as in some cases they might also limit the free movement of goods which under Art 28 of the Treaty of Functioning of the European Union (TFEU) is one of the main goals of the single market.

This article will discuss these protective measures and provide an in-depth analysis of this measures being them legislative and also supported by case law and de facto cases where consumers have been protected. However, it will also focus on examining whether these measures have been effective enough or there is still more progress needed to be made to protect legal EU "bystander's". We will discuss in depth the anti-competitive agreements and cases of vertical agreements and see whether the measures undertaken have been effective in achieving the Commission and Parliament goal of protecting the EU consumers.

The approach to this topic will be made through the analysis of the EU jurisdiction by examining legislation both primary and secondary, literature and case law.

Keywords: *Consumer Protection; Cartels; General Consumer Rights; Vertical Agreements; Price Fixing.*

Introduction

Consumerism as one of the main pillars of capitalism[1], in a European Union where Globalization is the norm and free trade is an entrenched right under Article 28 (1) of the Treaty of the Functioning of the European Union (TFEU), gives way to the need to protect the consumers and there have been several measures undertaken by the EU institutions to ensure their consumers are protected.[2] Firstly, the right of information, right of withdrawal stand as one of the main rights that EU Consumers have and so far they have proved to be effective as the consumer should always have the right to know more about the product that they have purchased. Secondly, competition law even though is a mixture of company law and governance it must be stated that still consumer law is at the heart and base of the creation of the concept of competition law and all of their directives and regulation in particular measures against the vertical agreements and also measures against cartels. These measures have proved to be successful so far because from 1990 – 2023 the fines totaled 32.1 billion euros[3] thus seemingly that EU consumers have been protected as anti-competitive agreements have been stopped and fined. Thus prima facie it seems that the entrenched legislation has protected the EU consumers, even though a case can be made that this protection has come with some costs such as hindering of the free movement of goods. Furthermore, has it been done enough to stop anti-competitive agreements as we will see that the EU is not always successful in calling cartels or find it difficult in finding tacit collusion cases where price fixing is seen to be the norm. These arguments will be discussed below:

Part 1: General consumer protection measures and their effectiveness in protecting EU consumers

Consumer protection is considered as one of the main rights[4] of an EU consumer, and also is one of the main goals of the internal market.[5] In fact consumer protection has been specifically entrenched in Article 169 of the TFEU which states that:

"To ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to

1 Marie – Anne Dujarier, 'The Activitiy of the consumer: Strengthening, Transforming, or Contesting Capitalism?' [2015] The Sociological Quarterly, Vol.56, No. 3.

2 Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C326/94; Article 114(3)

3 Cartel Statistics, Fines imposed (not adjusted for court judgements) period 1990-2023 < https://competition-policy.ec.europa.eu/system/files/2023-12/cartels_cases_statistics.pdf > accessed 05 January 2023

4 Charter of Fundamental Rights of the European Union [2012] OJ C326/408 Article 38.

5 Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C326/94; Article 114(3)

promoting their right to information… in order to safeguard their interests."

In the early days of the establishment of the European Union as a single internal market, the consumers where pressured into entering contracts without knowing enough information about the product or the service that they were buying which turned into a problem once there was an issue with the product and thus they were coerced into an undesirable contract. The right of information is one of the main rights that is granted to the EU consumer according to Article 34 of the TFEU. The articles of the TFEU have been seen to come to light with the implementation of several directives such as the Unfair Commercial Practices Directive (UCP)[6] which in general prohibits companies from providing misleading information to consumers and stops them from undertaking aggressive practices such as door to door selling where consumers are usually forced into buying a product such as a life insurance without having much information. The UCP is seen by many as an effective tool in protecting EU consumers because it "introduces a positive duty on traders to provide material information".[7] The UCP directive is seen to be straightforward and also provides a "black list"[8] of practices which are considered as misleading or aggressive in nature. For instance, a misleading practice is when a company provides false information that the consumer is entitled to win something from buying a product where in fact nothing stands to be won as has been decided by the European Court of Justice in the case of Purely Creative.[9] The UCP directive and other directives that do tend to provide information to the consumer can only be of good nature and be of help to the decision making process of the EU Consumer. Therefore it can be seen that the European Union has been to a certain extent effective in protecting the consumer in the internal market as it ensures that they are informed of their decisions.

Secondly, the right of withdrawal has been promoted by the European Union as an effective consumer protection measure.[10] This right for instance provides the right to the consumer to use a product before purchasing such as test-driving a vehicle before purchasing the vehicle. Therefore it acts as a safety valve for consumers not making a decision without being secure about a purchase that they are about to make. The right of withdrawal has also been seen in action in cases of return of goods that are purchased from the internet which is a widely used method by consumers in the 21st century. Therefore it can be seen that in general the right of withdrawal is quite an

6 Directive 2005/29/EC, concerning unfair business-to-consumer commercial practices in the internal market [2005] OJ L149/22

7 Catherine Barnard, Steve Peers *"European Union Law"* (2dn OUP 2017) 692.

8 Willem H.Van Boom. Unfair Commercial Practices, in: Christian Twigg-Flesner (ed) Research Handbook on EU Consumer and Contract Law (Research Handbooks in European Law Series), (Cheltenham: Edward Elgar 2016), 388-405.

9 Case C-428/11 Purely Creative ltd and ors v Office of Fair Trading [2014] ECJ

10 Barnard & Peers (n7) 693.

effective measure in protecting consumers in the internal market.

However, even though straightforward the rights abovementioned are sometimes seen as ineffective in reaching their goal of protecting EU consumers in the internal market as they do not take into their scope the science of behavioral economics. Therefore not taking into account the actual behavior of the consumer. For instance, this is seen with tobacco selling even though advertising and information is provided in the tobacco packages still the consumers do use them even though it is detrimental to their health.[11] Moreover, it can also be seen that the right of withdrawal although seems perfect, in a world where globalization and e-commerce is the norm, we can see that consumer are less likely to admit that they have made a poor choice and return the product.[12] In fact in cases where the product has been purchased from another member state they are less likely to return because the traders can require consumers to pay the cost of returning the goods, which disincentivizes consumers to use their right. Furthermore, in some cases the creation of these many directives could be seen as creating an unjustified barrier to entry into the European market by many companies who do not have the right resources to comply with this products requirements which in turn leads to a distortion of the right to free movement of goods. Therefore the European Union law makers have underestimated the behavior of consumers when drafting and entrenching legislation but also might create an unjustified case that infringes the free movement of goods.

It can be thus stated that even though de jure it seems that the measures undertaken by the European Union to protect its consumers are effective, de facto they have failed to reach their goals of protecting EU consumers in the internal market.

Part 2: Measures against Vertical Agreements and their effectiveness in protecting EU consumers

Vertical agreements, according to Article 1(1)(a) Regulation 330/2010 exists where an agreement "is entered between two or more undertakings each of which operates for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services".[13] As it will be the case below with cartels, vertical agreements particularly when companies benefit by gaining market power do fall under Article 101 (1) of the TFEU as hindering competition and negatively affecting the consumer as was affirmed in the case of Consten and Grundig v Commission.[14]

11 Barndar & Peers (n7) 693.

12 Richard Whish, David Baliey, *Competition Law* (9th edn OUP 2015) 520.

13 Commission regulation No 330/2010 on the Application of Article 101 (3) of the TFEU to categories of vertical agreements and concerted practices OJ 102/1.

14 Case 56/58/64 EU:C:1966:41

In fact, the Commission[15] in its guidelines provides several negative effects that might exist in cases where vertical agreements do provide to the company a certain degree of market power. One of the main distortions of competition is the fact that might create high barriers to entry into the market which in turn might lead to higher prices for consumers and lower choice which in turn leads to a decrease in the need for innovation for companies that are involved in the process of vertical integration. The European Union through DG Comp and the Commission have taken a hard approach towards cases of vertical agreements as can be seen below with several cases reaching into multi-billion dollar fines which are in turn send to the EU Budget and positively affect the EU consumer.

For instance, in Volkswagen AG v Commission[16], the EU Commission imposed a 90 million euro fine on Volkswagen as it judged that it had entered into agreements with its Italian dealers to prohibit or restrict sales to consumer from another member state. Moreover, in 2002 the Commission fined Nintendo[17] and seven of its European distributors 120 million euros as they had participated in a vertical agreement as all of the distributors of Nintendo were obliged to prevent parallel trade from its territory. These cases clearly show that the European Union through its institutions is fighting against cases of vertical agreements that breach Article 101 of the TFEU and therefore protecting the EU consumer in the internal market.

However, it can be seen that in some cases vertical agreements can provide possible benefits to competition. One of the main benefits can be the fact that through vertical agreements companies can achieve economies of scale[18] as for instance acquiring distribution may lead to lower retail prices as the manufacturer can charge lower prices as the cost of distribution will decrease. Therefore this means that in some cases the EU consumer can benefit from cases of vertical integration.

Furthermore, it can be stated that to reach in a conclusion that a vertical agreement falls under Article 101 and therefore distorts competition is a very difficult task because the market in which the companies operate is a very complex market.[19] In fact it would be very difficult for the Commission to prove that the agreements such as mergers would influence supply chains, pricing and consumer choices. Therefore this would make it very difficult for the Commission with limited funds available to go against Multinational corporations and find the existence of a vertical agreement that distorts competition, making the Commission approach ineffective in protecting

15 Commission's Guidelines on the application of Article 101(3) of the Treaty OJ 2004, C 101/97 paras 24-27.

16 Case T-62/98 EU:T:2000:180

17 Case T-13/03 *Nintendo Co Ltd and Nintendo of Europe GMBH v Commission* [2009] II-00975

18 William W. Sharkey, *The Theory of Natural Monopoly* (first published 1982, Cambridge University Press 2009).

19 Whish & Baliey (n 12) 520.

the EU consumer in the internal market.

Therefore, it can be seen that vertical agreements, in different from horizontal agreements such as cartels are not that negative for the consumer as in some cases they could lead to positive results. Even though there is an increase activity by the Commission and the DG Comp it can be stated that not enough has been done to protect the EU Consumer particularly because it is very difficult to satisfy the criteria's of Article 101 by finding a distortion of competition through a vertical agreement.

Part 3: Measures against Cartels and their effectiveness in protecting EU Consumers

As a definition cartels are an anticompetitive agreement made usually by competitors in the same market to fix prices, make rigged bids, establish output restrictions or divide markets by allocating customers, suppliers or territories. Cartels have always been seen as one of the most "harmful anti-competitive practices known to competition law"[20] that target consumers and has been one of the oldest anti-competitive practices in history as stated by Adam Smith in 1776 that "people of the same trade seldom meet together … but the conversation always ends in a conspiracy against the public".[21] In fact, Mario Monti, former Commissioner of the EU, has described cartels as "cancers of the open market economy and the internal market" thus suggesting that they certainly do tend to destroy the rights of the EU consumers in the market.[22] The European Union and its institutions as seen have taken a hard approach towards prosecuting cartel cases, in fact there have been several measures undertaken to protect the EU consumer from being exploited by paying higher prices or having less choice. The legislation against cartels has been entrenched in Article 101(1) – (3) of the TFEU which clearly prohibits :

"agreements and concerted practices between two or more undertakings which may affect trade between EU Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market".[23]

The European Union is seen to be committed to a tougher policy against cartels and in fact rather than just focusing on Article 101 has taken specific action by creating the Cartel Directorate within the DG Comp, which is the responsible body

20 Whish & Bailey (n 12) 520.

21 Adam Smith, An inquiry into the nature and causes of The Wealth of Nations (first published 1776, University of Chicago Press 1977)

22 Speech by Mario Monti "Fighting Cartels Why and How? Why should we be concerned with cartels and collusive behaviour, 11 September 2000 available at www.ec.europa.eu.

23 Consolidated Version of the Treaty on the functioning of the European Union [2008] OJ C326/96; Article 101.

for prosecuting cartel cases under Article 101 – 106 of the TFEU. Furthermore, it has created also a whistleblowing scheme which encourages participants in cartels to come forward with evidence to the Commission which in turn can lead to a immunity from prosecution or a reduction in fines. The Leniency Notice[24] first introduced in 1996 and updated in 2006 has been quite successful in tackling cartel cases as it can provide a reduction in fines from 20-50%. It has been the use of the Leniency Notice that has led to nearly 32.1 billion dollars in fines as it has provided an incentive for companies and multi-national corporations to come forward with information in order to have a lenient treatment. Lastly the European Commission has also created a settlement mechanism in 2008[25] in order to reach a speedier decision than those that have been achieved previously. In fact up until 2017 nearly 25 cases where decided by a settlement agreement. This means faster justice for the European Union consumer which means that the money will be available quicker for use by the EU institutions where the beneficiary in the end will definitely be the EU Consumer.

The tougher policy by the European Union has been seen also by the increase in the number of cases brought forward by the Commission in which fines have been of a significant amount. For instance in 2010 nearly 800 million euros were imposed on fines against 11 air cargo carriers for fixing fuel prices.[26] Furthermore in 2016, through using the settlement mechanism the European Commission fined several truck companies such as Man, Renault etc 2.93 billion euros and imposed a harsher fine on Scania of 880 million euros who refused to settle the case.[27] Therefore we can certainly see that the European Union and its institutions have clearly been strong in imposing its rules against cartels. The fines[28] and decisions against Multinational corporations in turn directly and indirectly do protect the EU Consumer because the fines are paid into the EU budget and therefore they benefit the treasures of the member states who turn them into investments such as roads, public infrastructure, grants etc. Furthermore, the Commission has stated that in an estimate it has saved the EU consumer in nearly 6,8-10.2 billions euros[29] in 2016 alone as a result of its anti-cartel enforcement showing its effectiveness in protecting the consumer in the internal market. This means that the dissolving of cartels has lead to lower prices, an increase in consumer choice and most importantly an increase in consumer satisfaction. In fact, in the majority of the cases in a market dominated by cartels

24 Notice on Immunity from fines and reduction of fines in cartel cases OJ (2006) C289/17 < www.ec.europa.eu/competition/ecn/documents.html.> accessed 06 January 2023.

25 Commission Regulation No 622/2008 as regards the conduct of settlement procedures in cartel cases [2008] L171/3.

26 Case T – 67 Martinair v Commission EU : T : 2015 ; 984 ; Case T – 48/11 British Airways v Commission EU :T : 2015 :988

27 C-39824 Trucks [2016] C108/6

28 See appendix 1

29 Whish & Baliey (n 12) 520.

there is an increase in the barriers to entry into the market, which in turn reduces the opportunity for innovation and thus turning that market into an x inefficiency market with a mediocre innovation and increase in production costs. Thus combating cartels as the EU has done will reduce the risk of these inefficient markets and in turn reach a close to perfect competition market where the consumer is "king".

However, even though reaching a perfect competition market is seemed to be possible, in the eyes of several economists is an "impossible utopia".[30] In fact, cartels even though there is an increase in fines, cartels take years and in fact even decades to be spotted particularly in the cases where there is tacit collusion. Tacit collusion is a market, usually oligopolistic, where it is possible for firms to coordinate their behavior without entering into an agreement. Therefore in these cases it is very difficult for the Commission to reach a decision whether a cartel has been created or not. In the European Union the markets, and as a matter of fact the entire world due to the effects of globalization, are an oligopoly in nature such as the markets of car producers, or pharma producers where barriers to entry are significantly high. Therefore in reality these oligopolist markets act in a certain way which even though they do not form a cartel de jure under article 101 (1)-(3) of the TFEU, de facto they are a cartel market. This theory is known as oligopoly problem[31] or interdependence of an oligopolistic market. In such markets companies through tacit collusion set prices at a high fixed rate, increase the barriers to entry, limit consumer choice and are very aggressive in marketing campaigns therefore negatively affecting the EU consumer. Thus showing that the EU legislation is not that effective in doing its tasks of protecting the EU consumers in the internal market.

Moreover, in order to satisfy the criteria's of article 101(1) and therefore have a single overall agreement is a great amount of work for the Commission because the parties to a cartel usually in a criminal manner destroy all incriminating evidence such as emails, phone calls and thus make it very difficult for DG Comp to find evidence to prosecute a case where the burden of proof lies with DG Comp and is very high.[32] Thus it becomes even more difficult to satisfy the single overall agreement required by articles 101 (1) and therefore in turn making it more difficult for the Commission to take measures to protect the EU consumer and showing the ineffectiveness of the measures in the "war" against cartels.

It could be stated that even though in recent years there has been an increase number and attempt to fight cartels in a multi trillion markets they have been unsuccessful and ineffective in preventing these cartels from hurting the EU consumer. The fact that from 2020 to 2023 only 2,3 billion euros in fines were imposed by the EU Commission shows the ineffectiveness of these measures because the EU market

30 Karine Nyborg, 'Humans in the perfectly competitive market' [2019] University of Oslo, Dept. of Economics.

31 Whish & Bailey (n 12) 572.

32 Whish & Bailey (n 12) 572.

is valued at nearly 14,5 trillion[33] euros. Therefore, the fines amount to only 1% of the GDP of the EU, which as a figure is actually insignificant and proves that the Commission has not done enough to protect the EU consumer and the measures have been largely ineffective in a largely oligopolistic market.

Conclusion

To conclude, even though it could be seen that tangible steps have been taken by the European Commission and the European Union institutions towards protecting the interests of the EU consumers in the internal market, it could be stated that more should be done as the measures so far undertaken in these three specifics fields that our research has undertaken to study show that so far the measures undertaken to protect the EU consumer have largely been ineffective in reaching their goals. In fact, in some cases as can be seen above the fines set on anti-competitive agreements amount only to a fraction of the EU GDP which basically proves the ineffectiveness of the measures and shows that the EU consumers are still in high risk of anti-competitive practices as price fixing and less choice as they would have been if the European Union and its institutions did reach to have a harder approach on the fight of anti-competitive practices. Moreover, the European Union has not done enough to inform its consumers about the rights that they have, even though they are entrenched into the legislation. This omission has lead the consumer to make choices without being aware of their rights. Therefore the arguments that are set at the body of this research show that the measures so far taken have not been very effective in protecting the EU consumer in the internal market.

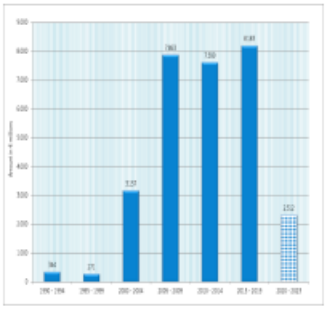
Appendixes

Appendix 1

1.4. Fines imposed (adjusted for Court judgments) - period 1990 – 2023

Last change: ++20 December 2023++

Period	Amount in €*)
1990 - 1994	344 282 550,00
1995 - 1999	270 963 500,00
2000 - 2004	3 157 348 710,00
2005 – 2009	7 863 307 786,50
2010 – 2014	7 598 728 479,00
++2015 – 2019++	8 182 726 159,00
2020-2023	2 311 879 000,00
Total	**29 729 236 184,50**



*) Amounts corrected for changes (incl. corrections following amendment decisions) and judgments of the Courts (General Court and Court of Justice) and only considering cartel infringements under Article 101 TFEU.

33 Facts and figures on the European Union economy,2021 < https://european-union.europa.eu/principles-countries-history/key-facts-and-figures/economy_en > accessed 8 January 2023

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ALBANIAN LEGAL STANDARDS IN GUARANTEEING THE FREEDOM OF MOVEMENT OF WORKERS IN ALIGNMENT WITH THE REGULATION (EU) NO 492/2011

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ABSTRACT

The free movement of workers together with the free movement of goods, services and capital is guaranteed by European Union law as one of the pillars of the common market and fundamental freedoms. Article 45 TFEU (Article 39 TCE), guarantees that "every EU citizen has the right to move freely, stay and work, with some exceptions in the public sector, in another member state without being discriminated on the basis of nationality, regarding working conditions, social assistance and taxation".

This chapter guarantees equal treatment in terms of conditions of employment, remuneration and dismissal, but also the benefit of social advantages as a result of a work contract, or unemployment benefits, which are generally given to local workers within the framework of the status of them as workers or because of their residence in the national territory.

The Stabilization and Association Agreement ratified by Law No. 9590, dated 27.07.2006 "On the ratification of the 'Stabilization-Association Agreement between the Republic of Albania and the European Communities of their member states", defines in its article 70 the obligation of the Republic of Albania to align the national legislation with the legislation of the Union European in accordance with the terms set by this Agreement.

The process of joining the European Union has been defined by the Albanian government as a national objective and this paper will be focused on the Albanian legal standards on the access of foreigners in labor market.

Keywords: *the right of movement, workers and family, immigrants, legal framework, EU integration, social support.*

1. The situation of foreigners in Albania

More and more, Albania is experiencing an increase in the number of foreign citizens, jobseekers, students, asylum seekers and refugees, a situation which has required the adoption of legal measures to systematize their status, this request for the alignment of the legal framework with the EU one. Of the 13,609 foreign residents with a permit of stay in Albania in 2020[1], 64.0% are men and 36.0% are women. Compared to 2019, we have an increase of 0.8%. During 2020, 7,661 applications for permits of stay were registered in Albania, with a decrease of 7%, compared to 2019, of which 47.5% for work reasons, 24.5% for family reunification, 19.7% for humanitarian purposes, 2% for study and 6.3% other reasons. In 2020, 18,835 irregular foreigners were recorded in the territory of the country, where most of them, 55.9%, are foreigners originating from Iraq and Syria. In the category of foreigners with a permit of stay in Albania, according to the country of origin, foreigners from European countries are 56.8% of the total resident foreigners (7,724 inhabitants), from Asia are 4,048, from America, Africa and Oceania are 1,837.

Alignment of immigration legislation with the *EU Acquis* and international conventions ratified by Albania is an ongoing process. As a requirement of the Stabilization and Association Agreement, the standardization of laws focusing on freedom of movement for workers aims not only to guarantee their rights but also the free movement of family members of EU citizens. The EC report (2020) assesses Albania's progress in this field, but the implementation and guarantee of their rights in practice still requires special attention and monitoring.

Law no. 9861/2008 "*On the control and supervision of the state border*" and law no. 108/2013 "*For foreigners*" are the two main laws that regulate the migration of foreign citizens in Albania.

2. Access to the labor market

1. *The Constitution of the Republic of Albania* in its Chapter I, Article 15 sanctions the basic human rights and freedoms as indivisible, inalienable and inviolable and which are the foundation of the entire legal order. In the following, it determines the obligation of the public power bodies, in their respect and realization (art.15/1). In Article 16, the Constitution declares equal protection and guarantees for fundamental rights and freedoms for both Albanian and foreign citizens and stateless persons in the territory of the Republic of Albania. An exception is made only in the case when the Constitution specifically links Albanian citizenship with the exercise of certain rights and freedoms (art.16). In this spirit is also the determination made in its article 17/1 on the limitation of the rights and freedoms provided for in the Constitution

1 Instat 2021, http://www.instat.gov.al/

only by law for a public interest or for the protection of the rights of others and in proportion to the situation dictated it. Only in this case, the Albanian and foreign citizen will be subject to legal restriction or "conditionality/violation" of his right (art.17/1). Economic, social and cultural freedoms and rights are sanctioned by the Constitution of the Republic of Albania, starting with the right to work. In its article 49, it is determined that: "1. *Everyone has the right to earn his means of living through legal work, which he has chosen and accepted by himself. He is free to choose his profession, workplace, as well as his professional qualification system. 3. Employees have the right to social protection of work*".

2. Law no. 79/2021 "*For Foreigners*" aims to align the Albanian legal order with the *EU Acquis*. Subject to the law are all foreign citizens who enter or intend to enter the Republic of Albania, for the purpose of residence, transit, employment, study, as well as in cases where they leave the Republic of Albania (Article 1). Article 5 of this law sanctions the rights and obligations of foreigners, stating that their rights derive from the Constitution of the Republic of Albania and ratified International Conventions.

According to this law, a certain category of foreign citizens are exempt from the obligation to be registered by the local responsible authorities for the border and migration where they have settled. The law defines several categories of employment permits which have different characteristics related to the activity and the foreign person, but nevertheless the law adheres to the standards established by Law no. 108/2013 "*For foreigners*", amended, as well as law no. 13/2020 "*On some changes and additions to Law 108/2013 "For foreigners", as amended".* The employment of EU citizens and their family members with the citizenship of a member country or not, offer the possibility of employment in the labor market in Albania, without being limited by annual employment quotas, the obligation to have a work permit or registration certificate for work.

While the new law (law 79/2021 "*For foreigners*"), aims to create facilities in the field of free movement of workers and immigration for employment reasons, by combining the two permits and their procedures for stay and employment of foreigners in the country in a unique pass. Even with the new law, EU citizens and their family members who do not have the citizenship of an EU Member State or the Schengen Area, enjoy the right of free access to the labor market in the country just like Albanian citizens, without restrictions from the quotas for the employment of foreigners or the obligation to be provided with a unique employment permit or any other authorization similar to it (Art. 80/a). This right is clearly stated in Article 58, where "*Unique Seasonal Employment Permits*" are not required for foreigners

if they are citizens of an EU Member State or the Schengen country and have a legal stay in Albania[2]. The improvements to the law aimed at a more complete alignment with articles 23 and 24 of Directive 2004/38/EC of the European Parliament and of the Council, on the right of EU citizens and their family members to move and to stay freely within the territory of the Member States by amending Regulation (EEC) No. 1612/68/360/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC, and 93/96/EEC.

3. Law No. 15/2019 "*On the promotion of employment*" defines the rules and operation mode of the public system of employment services, active and passive programs of the labor market and the responsible bodies for their management. In Article 3, point 13, the law defines with the term "*job seeker*" "*any person residing in the Republic of Albania, on working age, who is registered as a job seeker in the regional/local structure and is ready for work*", offering a wide interpretation of the notion of the beneficiaries in this law.

Article 4 point 2 defines as beneficiaries of the law EU citizens who regularly enter and stay in the territory of the Republic of Albania for employment purposes, who have the right to benefit from the services offered in the regional/local structure.

Article. 4/2. *All foreign citizens and those without citizenship, who enter and stay legally in the territory of the Republic of Albania, for employment purposes, have the right to benefit from the services offered in the regional/local structure, in accordance with the legislation in power to foreigners.*

Article 4, Point 3 does not leave out of its definition the legal benefits that foreigners with the status of refugees or asylum seekers in Republic of Albania, and the responsible institutions for providing this service.

Article 4/3. 3. Foreigners who have obtained refugee status, as well as asylum seekers in the Republic of Albania, have the right to benefit from these services, in accordance with the legislation in force on asylum. 4. Employment services offer foreigners the opportunity to obtain a work permit, in accordance with the legislation in force for foreigners.

4. Law no. 7961/1995 "*Labor Code of the Republic of Albania*", as amended, extends its effects to foreign citizens in general, including EU citizens and members of their families, as well as to Albanian citizens for issues related to their employment and

2 Article 58/6. This article does not apply to citizens of the countries of the European Union and the Schengen area, as well as to cases where a special regime is applied, provided for by international agreement.

labor relations, which are not covered by the legal framework in force on foreigners[3]. The Code guarantees standards and opportunities for equal and non-discriminatory access (direct or indirect) to the labor market, professional training, movement of EU workers (regardless of nationality), as well as working conditions, the same as Albanian citizens. According to Article 9 of this Code, *is prohibited any form of discrimination.*

In compliance with the standards established by the Labor Code, the law on foreigners emphasizes the principle of equality between Albanian citizens and foreigners in their access to employment/the labor market, except in cases where specific conditions are connected to the Albanian citizenship possession or the use of the Albanian language. Article 80/a "*...citizens of the United States of America, family members of US citizens, citizens of the member countries of the European Union and the Schengen area and members of their families, who are not citizens of these countries and who are legally resident in the Republic of Albania, citizens of one of the countries of the Western Balkans, Bosnia-Herzegovina, Montenegro, Kosovo, Serbia and North Macedonia, who are legally resident in the territory of the Republic of Albania, who enjoy the right to employment as well as Albanian citizens, except for cases where employment is specifically related to having Albanian citizenship according to Albanian legislation."*

5. The best functioning of the law 15/2019 "*On the promotion of employment*" required the approval of 5 (five) decisions of the Council of Ministers and 8 (eight) programs, including programs to promote the employment of unemployed persons due to COVID-19. The changes in the structure of the State Inspectorate of Labor and Social Services, as a body that controls the implementation of labor legislation in entities operating in the Republic of Albania, by order of the Prime Minister on November 24, 2020, aimed to improve the working conditions of employees and created facilities in fulfilling its activity.

6. Law no. 18/2017 "*On the rights and protection of the child*", extends its effects on children with Albanian citizenship, but also those without citizenship or with foreign citizenship, who are located within the territory of the Republic of Albania. In the case of migration, the law provides for the protection of children through an effective system, ensuring the implementation of the principles for intersectoral cooperation and strengthening the system's responsiveness to prevent and protect children from all forms of violence. This law defines the rights, access to rights, the protection enjoyed by every child, the responsible mechanisms that guarantee the effective implementation

3 Law 108/2013 "For foreigners" (Art. 4).

of supervision, the promotion and protection of these rights, as well as the special care for children, the provision of efficient mechanisms and the proper functioning of responsible institutions charged with taking concrete measures for the promotion, respect and protection of child rights. It also provides the right to life, name and nationality, to be with accompanied by parents and family, safe returning, freedom of expression, education, free time activities, adequate living conditions and health care, protection from violence, exploitation, drug use, trafficking and armed conflict, torture and arrest, and the right to alternative care. In compliance with the Convention "*On Civil Aspects of International Child Abduction*" (Article 11), the state institutions at the central and local level are charged with the responsibility for coordination and effective cooperation between them, in order to solve the faced problems and situations in the case of children, in the shortest time possible.

7. Law No. 9668, dated 18.12.2006 "*On the emigration of Albanian citizens for employment reasons*", amended by Law 10 389, dated 03.03.2011, as well as the Strategy for the Reintegration of Returned Albanian Citizens 2010-2015 and its Action Plan are part important in meeting the legal standards for the protection of the rights of Albanian citizens who seek to emigrate for employment reasons, based on the agreements concluded with the governments of the host countries. The purpose of these legal instruments is to ensure a sustainable return for immigrants by supporting the reintegration process regardless of the form of return. The establishment and operation of the network of Migration counters is an important part of the support mechanism for reintegration, within which Order No. 84, dated 06.06.2011 "*On the form and content of the "Register for Emigrants*" is implemented.

2.1 National Strategy

Following the promotion of employment and the increase of skills for work, the Albanian government has drawn up relevant strategies and action plan. The "*Employment and Skills Strategy*" implemented in 2014-2018 progressed positively, but specific indicators called for an intervention through a more detailed action plan.

For this reason, the National Strategy for Employment and Skills 2019-2022 (DCM No. 659/2019) and the Plan asked to address all the objectives and reforms initiated with the aim of finalizing them as well as reviewing unrealized policies during 4 years of implementation.

Its goal: "*Higher skills and better work for all women and men*", which seeks to be achieved through four strategic priorities such as:

A. Promoting opportunities for decent work through effective labor market policies.

B. Providing quality vocational education and training for youth and adults.

C. Promotion of social inclusion and territorial cohesion.

D. Strengthening labor market governance and qualification systems

The engagement of all actors and institutional mechanisms aims to identify and outline appropriate policies promoting employment in the country and professional training of the workforce, for the opening of quality jobs and opportunities for skills throughout the life cycle. Based on coordination and cooperation with line institutions, the strategy defines the measures that must be taken by these institutions, details the budget for each measure and the specific contribution of donors, the projects that have received approval for implementation.

3. Access of foreign citizens to the public sector

Law no. 108/2013 "*For foreigners*", amended, as well as law no. 13/2020 "*On some amendments and additions to Law 108/2013 "For foreigners", as amended*", has defined the right to employ foreign citizens in the Republic of Albania and their provision with relevant documentation.

The law emphasizes the categories that are exempted from the obligation to provide a work permit or work registration certificate, adding the categories of foreigners who enjoy equal rights with Albanian citizens in the field of employment and self-employment, as follows:

• Citizens of the countries of the European Union and the Schengen area and family members of citizens of one of the member countries of the European Union and the Schengen area who are not citizens of these countries and who have legal residence in the Republic of Albania;

• Citizens of one of the countries of the Western Balkans, Bosnia-Herzegovina, Montenegro, Kosovo, Serbia and North Macedonia;

• Foreigners who are employed in different sectors, in order to adjust the consequences and recover from natural disasters. In this case, the declaration for their employment is made at the relevant employment office by the employer or the self-employed foreigner or investor, near the employment office in the place where the activity is carried out.

• The term for the stay of ship crew members has been changed, up to 2 months within a year, during which they are not provided with a work permit or work registration certificate.

In the definition of the law, the field of action/employment of foreigners is quite wide, implying that the *public sector*, which means public governance, includes public administration or public governance divided into local government (with all the articulations its, Prefecture, District, Municipality) and central administration

(ministries of line, agencies or central institutions).

The working relationships of Public Administration employees are regulated by special laws and by-laws approved on the basis of and in their implementation. The status of the civil servant in RA is regulated by Law No. 152/2013 *For the Civil Servant* (Amended by law no. 178/2014, dated 18.12.2014, published in the Official Gazette no. 211). In addition, labor relations in the Public Administration are also regulated by the provisions of Law No. 7961/1995, "*Labor Code*", amended. These provisions define essential procedures for recruitment, disciplinary measures, and the effects of the implementation of these measures. The Labor Code defines the right to work as a contractual relationship and at the moment of stipulation of the individual or collective contract, it creates equal decision-making positions, even though in practice the positions of the employee and the employer are not the same.

In the case of employment in the public administration, the "*Civil Servant*" law has defined as a general requirement for admission to the civil service, that a candidate must meet general requirements, the first of which is: a) *to be an Albanian citizen*; (Article 21). This article is invoked by the "*Foreigners law*" itself, when it defines as a condition of exemption from the obligation to have a work permit and work registration certificate for all foreigners, citizens of one of the member countries of the European Union and the Schengen area, with a legal stay in the territory of the Republic of Albania, who cannot benefit from this right in cases where *employment is specifically related to having Albanian citizenship, according to Albanian legislation* (Article 72, point a). In the logic of the Civil Servant Law and the Labor Code, the possibility of employment of foreign nationals is not excluded, both in the self-employment and contract employment sectors, but for the state administration, employment relationships are subject to specific conditions defined by separate laws which link this employment with maintaining Albanian citizenship.

3.1. Movement of employees within the EU (Regulation (EEC) 1612/68)

Regarding the movement of foreign citizens in the Republic of Albania, a number of laws are focused on regulating the status of foreigners. Respect for basic human rights and freedoms, the international legal framework and its alignment with European norms conveys its entire content:

1. Law no. 79/2021 "*For Foreigners*" affects all foreign citizens who enter or intend to enter the Republic of Albania, for the purpose of residence, transit, employment, study, as well as in cases where they leave the Republic of Albania (Article 1). Their rights are guaranteed by the Constitution of RA and ratified International Conventions (Article 5).

2. Law no. 121/2014 "*On Asylum in the Republic of Albania*", in summary, defines the conditions and procedures for granting and refusing asylum, the rights and duties of asylum seekers, refugees and persons under temporary and supplementary protection, right for family reunification, access to services and integration of refugees in Albania. The law attaches great importance to the protection of the rights of unaccompanied children, who enter Albania as asylum seekers, by assigning them a legal guardian and priority consideration of their request. In conclusion, the immigration law provides that migrant children must be returned safely (art.16).

3. In addition, Decision no. 111, dated 6.3.2019 of the Council of Ministers "*On procedures and rules for the return and repatriation of unaccompanied children*" has provided in detail the procedures for children returned from migration, addressing the situation based on the principle of the best interest of the child.

The National Agenda for the Protection of Children's Rights 2016-2020, provided for the elimination of violence against children, the establishment of suitable services for them and the governance of their rights.

4. Law no. 8389/1998 "*On Albanian Citizenship*", as amended (Articles 6 & 9) expressly provided for the rules for obtaining Albanian citizenship, through birth, naturalization, after 5 years of continuous residence in Albania and adoption from Albanian citizens.

5. Law no. 9861/2008 "*On the control and supervision of the state border*", provides for the procedures for crossing the border, the roles and duties of the Border Police, the procedures to be followed for immigrants and migrants who enter or stay irregularly, including asylum seekers, victims of trafficking and unaccompanied children. The legislation in force for the border provides for the procedure for identifying and providing assistance to unaccompanied children from Albania, in a border situation. This law provides for several protective and security measures for this special group of children, such as: use of detention as a last resort, family tracing, identification and referral to the responsible authorities (art.36).

Conclusion

The paper highlighted the entire legal and institutional framework aimed at alignment with the Acquis of the European Union about the access to the labor market of foreigners in Albania.

Although steps have been taken to improve the legal framework, this harmonization is

still not complete.

The adoption of Law 79/2021 "*On Foreigners*", inevitably brings the need for adaptation of by-laws to the new law, as well as training of AKPA employees and the drafting of manuals for the proper implementation of the legislation in force.

Legal and institutional deficiencies for the legal acts of Chapter No. 2 in the local legislation, training of the employees of the institutions involved in the approximation of the legislation to this chapter should be the focus of an updated analysis.

Access to the labor market should be evaluated as an equal opportunity for all beneficiaries, Albanian or foreign citizens, and a detailed analysis of the sectors will highlight the real opportunities for EU citizens to access them and the barriers that exist. To make this possible, human capacity and infrastructure are required to make it happen.

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INTEGRATION PROCESS, APPROXIMATION OF THE NATIONAL LEGISLATION WITH THE INTERNATIONAL ONE

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ABSTRACT

European integration is the process of industrial, economic, political, legal, social, and cultural integration of states wholly or partially in Europe or nearby. European integration has primarily come about through the European Union and its policies.

Albania is on the current agenda for future enlargement of the European Union (EU). It applied for EU membership on 28 April 2009, and has since June 2014 been an official candidate for accession.

This paper analyzes the fundamental changes in the Albanian political and economic systems that have been accompanied by a thorough legal reform aiming at creating a legal system in conformity With the requirements of democratic pluralism, the rule of law and human rights.

The process of making the relevant provisions of different legal systems coherent with one another is based on a concept that is easy to understand. It has to take place in order for a community such as the European Union whose members have different legal systems to function effectively and efficiently. Compared to other European countries undertaking similar reform, the Albanian legal reform has required not only a complete revision of the existing legislation but also the introduction of a whole series of new legal fields and institutions that did not even exist under the former totalitarian regime. A significant legislative effort was necessary to support this comprehensive rebuilding of the Albanian legal system.

An analysis of the legislation enacted to achieve this reform would show that many of its provisions did not fully achieve their objectives. This ineffectiveness of this legislation, including subordinate or secondary legislation, has been attributed, in part, to deficiencies in its preparation and drafting.

Keywords: *integration, process, legislation, national, international, membership*

Introduction

Compared to other European countries undertaking similar reform, the Albanian legal reform has required not only a complete revision of the existing legislation but also the introduction of a whole series of new legal fields and institutions that did not even exist under the former totalitarian regime. A significant legislative effort was necessary to support this comprehensive rebuilding of the Albanian legal system.

An analysis of the legislation enacted to achieve this reform would show that many of its provisions did not fully achieve their objectives. This ineffectiveness of this legislation,

including subordinate or secondary legislation, has been attributed, in part, to deficiencies in its preparation and drafting. Because of financial constraints, the priority of the Albanian public administration in terms of human resources and finances has mostly been the implementation and enforcement activity, whereas the part of its work related to law making receives, in practice, far less attention than would be necessary to ensure a higher quality of legislation.

Literature

Considering Integration Procces as a concept and the situation that this concept creates as a field, which affects all the society in our country, the literature focused on it is definitely quite wide and complete. In our paper we will focus on its treatment in the legal and institutional framework. Therefore most of our basis in literature will be legislation basis.

Methodology

The method used in our study is comparative analysis and content analysis. The way in which the legislation has always been improved or changed in implementation of the legal obligations that the Albanian state has in relation to Integration Process.

Content analysis has helped us to analyze the existing documentation related to time-limited ability.

Legislative procedure

Laws result from a complex process of interaction and coordination of the various players Involved in the legislative process. The quality of laws therefore greatly depends on the organisation of the legislative process and the co-operation among these players.

The process of preparing draft legislation may take a variety of forms and methods. Draft laws may be developed by the administration, by individual ministries, by the research centres of the political parties or sometimes by organisations outside government, such as civil society organisations, universities or law offices.

When a government authority prepares a draft law, it usually consults other relevant state authorities on the text. A draft law together with its explanatory memorandum must be sent to ministries and other institutions with an interest in it (Law on the Council of Ministers,), and to the Ministry of Justice, which is required to give an opinion on the legality of its form and content. Failure to comply with these provisions may result in the Secretary General of the Council of Ministers returning the draft law to the proposing ministry for the required procedural action to be taken.

Often, consultations extend – or should extend – to a wider circle of external interested parties. Interested parties sometimes have the opportunity to be represented in commissions, inter-ministerial committees or expert working groups when they are set up to draft legislation. (Articles 11 and 12 of the Law on the Council of Ministers).

Such bodies can also invite relevant organisations or individual experts to present their views directly to them.

The legislative process itself generally involves the following stages:

1. Preliminary drafting;
2. Internal consultation among governmental authorities;
3. External consultation;
4. Discussion and approval by the Council of Ministers;
5. Parliamentary process;
6. Promulgation by the President and publication;
7. Follow-up to the implementation of the law.

The total preparatory work on legislation often takes place over quite a lengthy period. It is therefore expedient, as early as possible in the process of preparing legislation, to establish a timetable covering each phase of the task, up to the introduction of the draft law in the Assembly.

The timetable serves to ensure that adequate time is allotted to the individual phases within the total period of time available. This has important implications for the quality of laws. Without a timetable, it is the common experience that the time made available

in the preparation of legislation for the actual drafting of the legislation often proves to be insufficient

International and european union law; implications for Law drafting.

International law is as essential element of the Albanian legal order. There are two theories of international law regarding the relationship between a domestic and international law. According to the dualist theory, these are two separate systems of law.

This theory holds that domestic law and international law are two independent systems with different scopes of application and that, in order to be binding on the state authorities and individuals, the international law should be incorporated in the domestic law through the approval of a national law. According to this theory, in cases of conflict, domestic law prevails. On the other hand, the monist theory maintains that there is only one system and that international law prevails over inconsistent national law. Albania follows the monist system, as provided in Article 122 of the Constitution; point 4.2. International agreements or treaties have extensive effects on all activities of the state.

They decisively influence the elaboration of the domestic legislation. International law has thus become as indispensable an instrument as domestic legislation for the realization of the rule of law.

Albania is a party to numerous bilateral and multilateral treaties that are of importance in law making. Additionally, there are numerous non-binding international instruments that contain recommendations of potential relevance to the drafting of legislation.

Legally binding nature of treaties

The term "treaty" denotes any sovereign act by which two or more subjects of the international legal order demonstrate their mutual willingness to assume certain commitments. The status of a treaty does not depend on the nomenclature of its title.

Treaties may also be variously designated as, for example, "Agreements," "Accords," "Charters" or "Conventions". The Albanian Constitution generally uses the phrase "international agreements".

A treaty may also be contained in one or more separate instruments. In order to determine whether an agreement is a treaty binding in international law, it is necessary to consider the intention of the parties to it as well as its form and nomenclature.

Other international law

Many other different types of instruments of international cooperation have been developed, such as "Joint Declarations of Intent," "Memoranda of Understanding,"

"Agreed Minutes," and "Codes of Conduct". They are usually political agreements without binding legal effect, unless the contrary is established by their terms or the declarations or practice of the parties to them. These instruments are often characterized as "soft law". The recommendations of the Committee of Ministers of the Council of Europe are another example of "soft law".

Status of international law in the domestic legal order

According to article 5 of the Constitution "the Republic of Albania applies the international law binding on it". In the meaning of this article, which is written according to the general principles of the Constitution, international law (ius gentium, the law of nations), in its broadest sense, means the system of law regulating the interrelationship of sovereign states and their rights and duties with regard to one another. In addition, certain international organisations (such as the United Nations), companies, and sometimes individuals may have rights or duties under international law.

The usual sources of international law are (1) treaties; (2) international custom, in so far as this is evidence of a general practice of behaviour accepted as legally binding; and (3) the general principles of law recognized by civilized nations. Conventions and treaties, or otherwise expressed, international agreements, are the most common and classic forms of the manifestation of international law.

Article 116 of the Constitution, which determines the hierarchy of normative acts in force in the territory of the Republic of Albania, places ratified international agreements immediately below the Constitution and higher than national laws. Thus, in case of conflict between a national law and an international agreement, the latter always prevails.

Every potential collision between the international agreements and the Constitution can be avoided with the competence given to the Constitutional Court by article 131b) to examine the compatibility between the two acts before the ratification of the international agreements. Although article 116 of the Constitution does not explicitly mention the other two sources of the international law, they enjoy the same status in domestic law as ratified international agreements.

Article 122 of the Constitution provides: "1. Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania.

It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. The amendment and repeal of laws approved by a majority of all members of the Assembly is done by the same majority for the purposes of the ratification of an international agreement.

2. An international agreement ratified by law has priority over the laws of the country that are incompatible with it.

3. The norms issued by an international organisation have priority, in case of conflict, over the law of the country when the direct application of the norms issued by the organisation is expressly contemplated in the agreement ratified by the Republic of Albania for participation therein."

The monist approach to the relationship between domestic and international law followed by Albania allows for the unity of all legal norms, both international and domestic.

Accordingly, the ratification by Albania of an international treaty results in the treaty becoming automatically an integral part of the Albanian legal order, from the moment of its entry into force.

In addition, Article 122 provides for the supremacy of international agreements over domestic law. It also follows from Article 27 of the Vienna Convention on the Law of Treaties, 1969, that States Parties to the Convention may not invoke the provisions of their domestic law to justify a non-fulfilment of the provisions of an international treaty.

Because of this general principle of the supremacy of international laws, declaratory provisions in individual domestic laws stating the priority of international law should be avoided. As the general principle of the supremacy of the international law has constitutional authority, such legislative provisions are superfluous. Article 122 of the Constitution also declares the principal rules concerning applicability of international agreements. A treaty norm is self-executing, and can be directly applied by the state authorities and the courts, if it is sufficiently clear and precise to provide the basis for a decision in a particular case. If the international treaty norm is merely declaratory, in that it provides a mandate for the national legislator, it does not have the necessary clarity and precision on which a decision may be based and, accordingly, is not self-executing and cannot be directly applied by the state administration and the courts.

The self-execution of a treaty's articles is determined case by case by the organ that will interpret the article, and in the majority of cases this is done by the courts.

One of the most important acts of the international law that merits special attention is the European Convention of Human Rights (ECHR). This international act enjoys a special status in our legal order compared to other international acts. The constitution has granted the ECHR equal legal value with the Constitution as it concerns human rights. According to article 17 paragraph 2 of the Constitution, limitations of rights and liberties provided by the Constitution in any case should not exceed the limitations of the European Convention of Human Rights. This

means that the ECHR constitutes the minimum level of protection of human rights and the maximum level of limitation. Every state party to the ECHR can offer higher protection and guaranties than those offered by the convention but for no reason a lower protection. Nor may a state party to the ECHR limit fundamental human rights and liberties more than the convention itself.

Conclusions

- In the territory of the Republic of Albania, ratified international agreements are places immediately below the Constitution and higher than national laws.
- The monist approach to the relationship between domestic and international law followed by Albania allows for the unity of all legal norms, both international and domestic.
- An international agreement ratified by law has priority over the laws of the country that are incompatible with it.
- International agreements or treaties have extensive effects on all activities of the state.
- International agreements influence the elaboration of the domestic legislation.
- International law has become as indispensable an instrument as domestic legislation for the realization of the rule of law.

Recommendations

- A significant legislative effort is necessary to support this comprehensive rebuilding of the Albanian legal system
- The approximation of Albanian legislation with the EU's acquis is demanding and complex. It requires not only that Albania build a regulatory framework in line with the requirements of the acquis but also that the administrative structures and other conditions necessary for implementation of the acquis be assured. Thus, the approximation process goes beyond merely legislative drafting tasks and, most importantly, calls for special attention to the policy development stage and cost analysis so that informed decisions can be taken and qualitative legal texts can be produced.
- The methods for implementing these acts in EU Member States differ from the methods used in countries that are in the pre-accession phase, such as Albania. Prior to accession, the acts need to be transposed in all cases, that is, through national legislation.
- It should be noted that, through their general acceptance and recognition,

instruments of "soft law" may eventually enter into the domain of the international customary law and become legally binding. In any event, the drafter should not draft in conflict with such instruments of "soft law" without good cause, even if at present they merely represent a political commitment undertaken by the state.

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PROCESSI DI TRANSIZIONE DEMOCRATICA E PROSPETTIVE DI INTEGRAZIONE EUROPEA - IL CASO DELL'ALBANIA

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ABSTRACT

L'adesione all'UE è l'obiettivo principale delle politiche albanesi. Nell'ambito di questo obiettivo le analisi condotte dalla Commissione sul continuo progresso del paese il 24 giugno 2014 hanno portato i 28 Paesi dell'Unione europea di riconoscere all'Albania lo status di paese candidato. Ma la strada verso l'integrazione nell'UE non è così facile per l'Albania, non solo a causa delle riforme politiche, sociali ed economiche della democratizzazione e dello stato di diritto verso le quali l'Albania sta camminando, ma anche della particolarità albanese sia storico – culturale che politica. L'Albania, come gli altri paesi dei Balcani occidentali, sta facendo degli sforzi enormi per smaltire l'eredità di quasi mezzo secolo di comunismo attraverso un gran numero di riforme che costituiscono le più grandi sfide per la politica albanese. Essendo una regione "problematica" quella dei Balcani occidentali e caratterizzati dai conflitti etnici, da istituzioni democratiche molto fragili, per una gran parte a prevalenza rurale e da un'economia meno sviluppata, l'UE aveva messo a punto una nuova strategia specifica di dimensioni regionali, chiamata "Processo di Stabilizzazione e Associazione". In questo articolo si presenta un'analisi del processo di transizione democratica esaminando le prospettive di integrazione europea dell'Albania e le sfide che potrebbero emergere. Attraverso questa analisi si mira ad evidenziare una panoramica storica della relazione dell'Albania con l'Unione Europea (UE) e i progressi compiuti nell'attuazione delle riforme. Il presente articolo offre uno studio sull'Accordo di Stabilizzazione e Associazione firmato il 12 giugno 2006 con Bruxelles, che entrò in vigore il 1° aprile 2009 ed

ha creato una cornice all'interno della quale si pongono importanti traguardi di modernizzazione del sistema istituzionale e socio-economico. L'articolo si conclude sottolineando i potenziali benefici per l'Albania derivanti dall'adesione all'UE, tra cui la stabilità politica, la crescita economica e una maggiore cooperazione regionale.

Parole chiavi: *Transizione democratica, Integrazione Europea, Riforme, Balcani occidentali, Classe politica, Prospettiva europea, Istituzioni democratici, Unione Europea*

1. Metodologia

La ricerca ha lo scopo di scandire e sviscerare con una lettura socio-politica ed eretta su parametri giuridici la realtà socio-culturale, giuridico-istituzionale dell'Albania. La parte iniziale della ricerca sarà finalizzata alla definizione teorica e analitica della transizione democratica. Momento particolarmente delicato è quello di individuare in maniera scientifica tutti i passaggi socio-giuridici che hanno coinvolto il paese, successivamente alla caduta del regime totalitario, formalmente avvenuto con l'elezione del 1992. La ricerca si svilupperà su più piani, sia su quello dell'interpretazione teorica dei fenomeni sociali, analisi dei concetti base quali èlite, classe politica, classe dirigente, fasi della democratizzazione e suoi corollari nonché proseguirà con interpretazione metodologica del perché alcune funzioni relativi alla Costituzione ed alle leggi successive ha prodotto quel tipo di crisi sociale, politica ed economica. Analizzando la situazione economica, politica e sociale, apparirà evidente come l'influenza dell'integrazione europea abbia svolto un ruolo di stabilizzatore delle politiche interne e un'importante funzione nel processo di stabilizzazione democratica del paese. Sguardo prospettico ai negoziati fra L`Unione Europea e i paesi dei Balcani occidentali. Con la concessione della candidatura all'UE nel 2014, sotto la guida delle istituzioni europee, si aprì per il Paese un intenso periodo di riforme.

2. Albania, l'apertura con l'Occidente e le difficoltà della transizione

La caduta dei regimi comunisti dell'Europa si concluse in Albania. Le difficoltà del paese nella transizione verso uno Stato democratico sono state, e sono tutt'ora, maggiori rispetto a quelle degli altri Stati ex-comunisti per due fattori principali: il primo, è il fatto che l'Albania ha intrapreso questo nuovo camino da un punto di partenza economico molto debole. Il secondo, è che il sistema dittatoriale comunista albanese si è distinto dagli altri regimi per la sua ferocia ed il suo carattere di totale isolamento. Il paese non aveva avuto nessun tipo di relazione economica, politica o culturale con il mondo esterno, soprattutto dagli anni settanta in poi dopo la rottura delle relazioni diplomatiche con l'ultimo alleato rimasto, la Cina. Inoltre nel

paese non c'è mai stato il consolidamento di una cultura o tradizione capitalistica e democratica[1], visti i 500 anni passati sotto l'impero ottomano ed il susseguirsi di diverse guerre durante la prima metà del Novecento. Tutto questo complica il processo di consolidamento della democrazia nel paese. Durante gli anni '90 ci sono stati altri eventi negativi che hanno rallentato notevolmente il processo di modernizzazione e di democratizzazione dell'Albania: il crollo finanziario nel 1997 e la guerra del vicino Kosovo. Sicuramente, il primo fatto è stato più distruttivo sotto tutti i punti di vista. La crisi che ne scaturì bloccò completamente l'andamento delle riforme dello Stato verso il modello occidentale. Detto questo, gli esperti e gli osservatori internazionali, in primis l'UE, non attribuiscono le colpe maggiori del forte rallentamento del processo di sviluppo e di democratizzazione ai fattori ed agli eventi che ho sopraelencato. Secondo queste fonti, il maggior freno nel raggiungimento di risultati positivi nelle riforme e nello sviluppo è stata la direzione politica debole, incapace e irresponsabile[2]. I primi contatti internazionali dell'Albania sono stati con le Istituzioni dell'Unione Europea. All'inizio del 1991 si sono instaurati i primi rapporti diplomatici e di collaborazione. Da allora, nell'agenda di tutta la classe politica albanese, sia di destra che di sinistra, compare come punto fondamentale e prioritario l'integrazione europea dell'Albania. L'UE ha sviluppato un rapporto di collaborazione molto attivo con l'Albania per sostenere il suo processo di riforma istituzionale, politica ed economica. Ci sono stati anche numerosi contatti e collaborazioni con diverse istituzioni internazionali, come ad esempio con la Banca Mondiale, con il Fondo Monetario Internazionale (FMI), con la NATO e con l'ONU. Dall'aprile 1994 l'Albania ha iniziato a fare parte di un programma di collaborazione militare Nato (Partnership for Peace)[3], e nell'ottobre del 1995 ha chiesto di entrare nel Patto Atlantico. Fu il primo paese ex-membro del Patto di Varsavia a fare questo passo.

3. L'emergere della prospettiva d'integrazione europea per l'Albania

Le prime relazioni diplomatiche tra l'Unione europea[4] e l'Albania risalgono al 1991, all'indomani della fine del regime comunista nel paese delle aquile. Fino ad allora, infatti, a causa della forzata divisione dell'Europa imposta dalla Guerra fredda e della reciproca incompatibilità ideologica e di modelli di sviluppo economici e sociali, i rapporti dell'allora Comunità economica europea con l'Albania – come quelli con gli altri paesi dell'Europa centrale ed orientale, con l'eccezione della

1 John Loughlin, Mirela Bogdani (2004), Albania and the European Union, Tirana, Dajti 2000.

2 Dichiarazione della Presidenza europea sull'Albania del 14.10.2004. Bollettino europeo del 25.10.04.

3 George Katsirdakis (1998) A case of study in the practical implementation of Partnership for Peace, NATO review, vol. 46, No 2, pag. 22-26.

4 Per maggiore precisione, ci si dovrebbe riferire all'allora Comunità economica europea (CEE), in quanto l'Unione europea fu creata solamente con il Trattato di Maastricht, entrato in vigore il 1 novembre 1999.

Jugoslavia – erano stati nel complesso trascurabili. Le relazioni commerciali tra la Comunità e questi paesi erano determinate in larga misura attraverso autonomi regolamenti di politica commerciale ed un rigoroso sistema di quote era la caratteristica principale del regime delle importazioni. Questa lunga situazione di stagnazione nei rapporti politici e commerciali con i paesi che stavano al di là della cortina di ferro cominciò a mutare già con l'avvento al potere di Mikhail Gorbaciov in URSS nel 1985[5]. A seguito della caduta del muro di Berlino e della fine dei regimi comunisti nell'Europa centro-orientale, l'Unione europea cominciò a stringere relazioni politico-diplomatiche e commerciali con questi paesi, che trovarono tra l'altro espressione nella conclusione di Accordi di partenariato e cooperazione commerciale. Anche l'Albania, al pari degli altri paesi usciti dalle dittature comuniste, stipulò un accordo commerciale con la Comunità europea, che venne firmato l'11 maggio ed entrò in vigore nel dicembre 1992. Si tratta dell'inizio delle relazioni convezionali tra Bruxelles e Tirana, che venne inclusa nel Sistema generale di preferenze della Comunità economica a un gran numero di paesi con i quali intratteneva rapporti fondati su un accordo internazionale. L'accordo del maggio 1992 permisse all'Albania di beneficiare dei fondi del programma PHARE[6], che vennero distribuiti su un insieme di settori interessati dalle riforme. Nell'ambito di questo programma, nel periodo 1992-2000 l'assistenza comunitaria fornita all'Albania raggiungeva la cifra di 700 milioni di euro[7]. In questo periodo le relazioni tra Bruxelles e Tirana erano improntate alla logica delle relazioni paese donatore-paese ricevente l'assistenza. Nel 1996, a qualche anno dalla firma dell'Accordo commerciale e di cooperazione, le due parti erano giunte sul punto di firmare un Accordo di associazione, che andasse oltre l'ambito sostanzialmente commerciale dell'accordo allora in vigore ed approfondisse il dialogo politico e la cooperazione in una pluralità di materie, quali, ad esempio giustizia e affari interni, ambiente, trasporti, energia, ecc. Tuttavia, le complesse dinamiche della vita politica albanese del periodo, cioè le contestate elezioni parlamentari del maggio 1996 e la profonda crisi finanziaria e sociale dell'inizio del 1997, seguita al crollo delle piramidi finanziarie, si ripercossero negativamente a livello internazionale, determinando il fallimento dei negoziati.

5 Armillotta, 1997; Presidenza del Consiglio dei Ministri, 1997.

6 Il programma Phare fu uno degli strumenti di preadesione finanziati dall'Unione Europea per assistere i paesi dell'Europa centrale ed orientale nella fase di preparazione all'ingresso nell'UE. Tale programma fu creato il 23 Dicembre del 1989 da una proposta della Commissione Europea. Inizialmente aveva lo scopo di sostenere il processo delle riforme e di finanziare i progetti di ristrutturazione economica in Polonia ed in Ungheria. In seguito fu esteso a Bulgaria, Cecoslovacchia, Romania ed infine all'Albania, Estonia, Lettonia, Lituania, Slovenia, Bosnia-Erzegovina e Macedonia. Dopo il Consiglio di Copenhagen del 1993, il Phare introdusse come obiettivo finale quello di avvicinare gradualmente questi paesi all'Europa, con la prospettiva della membership.

7 Kuko V. [2003], Stabilization and Association Process Albania and Institutional Framework, Tirana, Albanian Centre for International Trade.

L'Ue lanciò nel 1996 l'approccio regionale ai paesi dei "Balcani occidentali[8]", i cui obiettivi erano il sostegno all'attuazione degli accordi di Dayton/Parigi e di Erdut e la creazione di una zona di prosperità economica e di stabilità politica. L'approccio regionale si andò precisando negli anni seguenti, e fu influenzato dagli eventi del Kosovo, che avevano riproposto ancora una volta la fragilità della sicurezza nella regione. Proprio mentre era ancora in corso l'intervento della Nato nel Kossovo, il 10 giugno 1999 l'Unione Europea lanciò il Patto di stabilità per l'Europa sud-orientale, un'iniziativa volta alla realizzazione di una strategia di pacificazione e sviluppo, che vedeva la partecipazione di tutti gli attori internazionali interessati alla stabilizzazione dell'area balcanica[9]. L'idea centrale alla base del Patto di stabilità è che sia necessario adottare un approccio regionale e ad "ampio spettro"[10] per stabilire le fondamenta per una pace durevole e uno sviluppo sostenibile nell'area balcanica. Per l'Unione Europea l'obiettivo "interno" da perseguire tramite il Patto di stabilità era quello di fornire all'opinione pubblica e alle forze politiche nazionali una strategia alternativa all'uso della forza rappresentato dall'impegno militare della Nato contro la Serbia, che fosse in grado di affrontare le cause strutturali della crisi balcanica. Benchè il Patto di stabilità fosse stato lanciato dall'UE, non si trattava di uno strumento dell'Unione in senso stretto, in quanto coinvolgeva una pluralità di attori internazionali. Nello stesso periodo, comunque, l'UE delineava il proprio approccio (con i relativi strumenti) alla regione balcanica, lanciando nel 1999 il Processo di stabilizzazione ed associazione (PSA), un'iniziativa volta a creare nei Balcani un contesto politico coerente, onnicomprensivo, tramite la prospettiva di integrazione dei paesi dell'area nell'Unione Europea e la promozione della stabilizzazione, della transizione all'economia di mercato e della cooperazione regionale.

La logica sottostante al Processo di stabilizzazione e associazione si basava sui tre seguenti elementi:

► il riconoscimento che una credibile prospettiva di adesione all'Unione Europea, insieme con la determinazione di una serie di condizioni collegate all'adesione, rappresenta un incentivo chiave per le riforme nella regione;

8 Albania, Bosnia-Erzegovina, Croazia, ex Repubblica jugoslava di Macedonia (FYROM) e Jugoslavia (dopo gli accordi di Parigi e Dayton cambiò la denominazione per assumere quella di Repubblica di Serbia eMontenegro).

9 Il Patto include l'Unione Europea, tutti gli altri i membri del G-8 (Stati Uniti, Giappone, Canada e Russia), tutti i paesi del sud-est europeo e vari altri paesi sostenitori e osservatori.

10 L'approccio ad un ampio spettro significa che il Patto deve perseguire contemporaneamente diversi obiettivi: la costruzione di società basate sulla democrazia e lo Stato di diritto; la costituzione di sistemi economici competitivi, orientati al mercato e dotati di strutture moderne ed efficienti; l'adozione di regole e istituzioni che difendano la sicurezza interna ed esterna dei singoli cittadini e degli stati. Saccomanni, 2000, pp. 10-11.

► la necessità di incoraggiare le relazioni bilaterali;

► la necessità di un approccio più flessibile adattato alle condizioni dei Balcani occidentali.

Il Processo di stabilizzazione e di associazione si basa sui seguenti tre strumenti:

► concessioni commerciali;

► assistenza economica e finanziaria;

► relazioni bilaterali convenzionali con ciascuno dei paesi dell'area.

Il processo di stabilizzazione e associazione venne formalizzato in occasione del vertice tra UE e paesi dei Balcani occidentali, tenutosi a Zagabria nel novembre 2000, nel quale l'Unione confermò il desiderio "a fornire il proprio deciso sostegno al Processo di riconciliazione e cooperazione tra le parti coinvolte e di contribuire al consolidamento della democrazia"[11]. Nello stesso vertice, venne lanciato un nuovo programma europeo specificamente designato per i paesi dei Balcani occidentali: il Programma di assistenza comunitaria per la ricostruzione, la democratizzazione e la stabilizzazione (CARDS) che prevedeva una dotazione di 4,65 miliardi di euro per il periodo 2000-2006, oltre all'attuazione di preferenze commerciali asimmetriche. Il focus dell'assistenza europea si spostava in questo modo dalla ricostruzione e riabilitazione al sostegno per l'Institution – building e per le riforme economiche[12]. Soprattutto a partire dal 2000, l'UE ha cercato di collegare in maniera più stretta l'assistenza finanziaria alla realizzazione delle riforme in vista dell'adesione. Lo strumento attraverso cui venivano inserite in un unico quadro giuridico sia le priorità che ciascun paese candidato doveva rispettare in vista dell'adesione, sia le varie forme di assistenza che riceveva dall'UE, erano i Partenariati europei, modellati sui Partenariati d'adesione dei paesi Peco[13].

La scelta della prospettiva d'integrazione europea per i Balcani nasceva da una serie di riflessioni strategiche che erano andate maturando nel corso degli anni Novanta:

► l'unificazione dell'Europa sarebbe stata considerata completa solo in seguito all'ingresso dei paesi balcanici[14];

► l'ingresso di questi paesi nell'UE era l'unica soluzione strutturale di lungo

11 Zagreb Summit, 2000

12 Greco E. [2004], South-Eastern Europe. The Expanding EU Role, in European Union Foreign and Security Policy. Towards a Neighbourhood Strategy, Dannreuther R, London and New York, Routledge p. 62-79

13 Paesi dell'Europa Centrale e Orientale. Essi sono: Polonia, Repubblica ceca, Repubblica slovacca, Ungheria, Romania, Bulgaria, Estonia, Lituania, Lettonia, Slovenia, Albania, ex Repubblica iugoslava della Macedonia, Croazia, e Bosnia-Erzegovina.

14 Greco E, 2004

periodo per la stabilizzazione dell'area;

► la stabilizzazione stessa dell'area costituiva, dopo il fallimento degli anni Novanta, il banco di prova su cui si sarebbe giocato il futuro della Politica estera e di sicurezza europea.

In sintesi, il progetto dell'integrazione europea come soluzione politica e di sicurezza a lungo termine doveva realizzarsi anche nei Balcani per essere completo. La logica di integrazione doveva quindi superare lo scoglio, materiale e simbolico, dei Balcani, che rimanevano come una sorta di enclave situata tra paesi appartenenti all'UE, operando nell'area quella che potrebbe essere definita come "europeizzazione" e "debalcanizzazione", intendendo i due termini come antitetici.

4. Le tappe fondamentali del processo di avvicinamento all'Unione Europea

L'adesione all'UE è l'obiettivo principale delle politiche albanesi. Nell'ambito di questo obiettivo le analisi condotte dalla Commissione sul continuo progresso del paese il 24 giugno 2014 hanno portato i 28 Paesi dell'Unione europea di riconoscere all'Albania lo status di paese candidato. Ma la strada verso l'integrazione nell'UE non è così facile per l'Albania, non solo a causa delle riforme politiche, sociali ed economiche della democratizzazione e dello stato di diritto verso le quali l'Albania sta camminando, ma anche della particolarità albanese sia storico – culturale che politica. Questa decisione, ha detto il commissario UE per l'Allargamento, Stefan Fule, è "un riconoscimento degli sforzi fatti per le riforme" e un "incoraggiamento per realizzarne di più". L`UE dovrà dare il via libera all'avvio dei negoziati con l'Albania per l'adesione di Tirana. L'Albania, come gli altri paesi dei Balcani occidentali, sta facendo degli sforzi enormi per smaltire l'eredità di quasi mezzo secolo di comunismo attraverso un gran numero di riforme che costituiscono le sfide più grandi per la classe politica. L'UE aveva messo a punto una nuova strategia specifica di dimensioni regionali, chiamata "Processo di Stabilizzazione e Associazione" firmato il 12 giugno 2006 con Bruxelles, l'accordo entrò in vigore il 1° aprile 2009 ed ha creato una cornice all'interno della quale si pongono importanti traguardi di modernizzazione del sistema istituzionale e socio-economico. Dalla fine della seconda guerra mondiale fino agli anni Novanta, l'Albania e gli albanesi, furono soggetti ad un regime comunista tra i meno conosciuti, ma tra i più radicali della panoramica storico mondiale. *Alcuni pensano che sarebbe un lusso essere europei. Ma per l'Albania entrare in Europa è questione di vita o di morte. Per l'Albania e per tutti i Paesi balcanici. Si salverà il primo che riuscirà a capirlo*[15].

15 G. Cedrone, L. Maksuti, Kadarè racconta l'Albania tra passato e futuro, «Repubblica», 19 novembre 2014 https://www.repubblica.it/cultura/2014/11/19/news/kadare_la_dittatura_temeva_dante-100935603/, consultato il 7 Gennaio 2024.

L'Albania ha presentato la sua richiesta di adesione all'Unione Europea nell'aprile 2009. Nel 1992 venne stipulato l'accordo sugli scambi e la cooperazione e l'Albania venne ammessa a beneficiare dei finanziamenti nell'ambito del programma "PHARE". Nel 1997, poi, il Consiglio dei Ministri dell'Unione Europea fissò le condizioni politiche ed economiche per lo sviluppo delle relazioni bilaterali. Nel 1998 la Riforma Costituzionale, Albania Reppublica Parlamentare (primo articolo). Nel 1999 l'Unione Europea propose un nuovo Processo di Stabilizzazione e Associazione (PSA) per cinque Paesi dell'Europa sud-orientale, compresa l'Albania. Il PSA costituì lo strumento dell'UE per sviluppare le relazioni con i Balcani occidentali e consentì di assistere i cinque Paesi (Albania, Bosnia-Erzegovina, Croazia, ex Repubblica Jugoslava di Macedonia, Serbia e Montenegro) nell'attuazione delle riforme necessarie per raggiungere gli standard europei. Nel 2001 iniziò il programma di Assistenza Comunitaria per la Ricostruzione, lo Sviluppo e la Stabilizzazione (CARDS) destinato specificatamente ai Paesi partecipanti al PSA; inoltre la Commissione, nello stesso anno, raccomandò l'avvio dei negoziati per l'Accordo di Stabilizzazione e Associazione (ASA). Nel ottobre del 2002 vennero adottate le direttive di negoziato per l'ASA con l'Albania e a gennaio 2003 il presidente della Commissione Prodi ha aperto ufficialmente i negoziati per una ASA tra Unione Europea e Albania. Nel giugno del 2003 al Consiglio Europeo di Salonicco, il PSA venne confermato come politica dell'Unione Europea per i Balcani occidentali, rinsaldando la prospettiva di adesione all'Unione Europea per i Paesi che parteciparono a tale programma. Il primo maggio del 2006 entrò in vigore l'accordo di riammissione dell'Albania nella Comunità Europea (in vista della facilitazione del rilascio dei visti)[16] e un mese dopo venne firmato l'ASA in occasione del Consiglio "Affari generali e Relazioni esterne" a Lussemburgo. Nel gennaio 2007 entrò il vigore il nuovo Strumento di Assistenza Preadesione (IPA) e a maggio dello stesso anno venne adottato un documento di programmazione indicativa pluriennale per l'Albania nell'ambito dell'IPA, che si concluse poi il 18 ottobre 2008, quando l'Albania firmò il relativo accordo quadro. Nel 2009 divenne ufficialmente membro dell'Alleanza Atlantica (NATO), e nel 2010 il Consiglio decise la liberalizzazione dei visti per i cittadini albanesi nell'area Schengen. Negli ultimi anni l'Albania ha attuato numerose riforme legislative e istituzionali nel campo della giustizia e della lotta contro la corruzione e la criminalità organizzata. In risposta alle ambiguità dell'UE, nel 2016 è stato avviato il Processo di Berlino, di iniziativa tedesca, con l'obiettivo di rilanciare l'integrazione europea della regione. L'UE ha tenuto la prima conferenza intergovernativa con l'Albania, nel 2022. Esponenti comunitari sostengono che l'eventuale ingresso del paese potrebbe

16 Proposta di decisione del Consiglio relativa alla firma dell'accordo di facilitazione del rilascio dei visti per soggiorni di breve durata tra la Comunità Europea e la Repubblica d'Albania, Bruxelles, 17 luglio 2007.

avvenire intorno al 2035, a seguito dei capitoli sull'acquis comunitario e di un processo di ratifica che dura di solito due anni.

Conclusioni

Giunti alle conclusioni si evince che l'esperienza albanese si aggiunge a quella degli altri paesi dell'Est e ci riconferma che il passaggio dal sistema totalitario a quello democratico e pluralista fu fatto in totale assenza di una teoria, di un modello o esperienza del passato a cui fare riferimento. Problemi di natura politica, economica e sociale ereditati dal sistema totalitario e non solo (pensiamo a tutti i nuovi problemi dovuti all'installazione di un'economia di libero mercato ecc.) hanno reso la democratizzazione un processo complesso. Se l'idea iniziale era quella di dimostrare che il cambiamento può avvenire solo tramite una società civile attiva, man mano è diventato sempre più chiaro che essa stessa, insieme alla società politica e la classe intellettuale del paese, deve attraversare un processo di democratizzazione. Attualmente in Albania la prima si sta formando e la seconda sta assumendo le sembianze di quello che si intende par excellence con "spazio democratico" e la classe intellettuale è ancora troppo poca per avere un ruolo significativo. La società civile o i gruppi d'interesse devono fare lobbying direttamente sul leader del partito o l'esecutivo perché il parlamento albanese, è troppo debole come istituzione rappresentativa e inesistente come istituzione di policy making. Per questo la società civile in Albania non riesce a fare da ponte tra cittadini ne potere politico, come il suo ruolo prevedrebbe. La crisi migratoria e dell'eurozona, la diffusione di movimenti euroscettici e sovranisti in Europa e la Brexit hanno messo in discussione gli stessi valori dell'UE, mentre ha assunto un rilievo sempre maggiore il criterio della capacità di assorbimento nella decisione legata all'ingresso di nuovi membri. L'invasione russa dell'Ucraina sembra aver riportato l'attenzione su quest'area, ricordando ai Paesi membri dell'UE, dimentichi delle terribili conseguenze della dissoluzione Jugoslava, i costi politici, economici e umani della guerra e l'instabilità ai confini europei e rilanciando la prospettiva di allargamento verso est. Il conflitto tra Kiev e Mosca ha riproposto il tema dell'integrazione europea come progetto di pace per il Vecchio continente e spinto Bruxelles ad avviare, il 19 luglio scorso, i negoziati di adesione con Albania (2 capitoli, riforma giudiziaria e diritti fondamentali) e Macedonia del Nord. Lavorare sulla realtà dei fatti e limitare il proliferare delle percezioni è dunque il duro dovere cui è chiamata la politica albanese, l'impegno che un'intera generazione politica ha assunto di fronte agli albanesi e di fronte all'Europa.

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LOCAL GOVERNMENT IN THE PROCESS OF EUROPEAN INTEGRATION PUBLIC ADMINISTRATION TO ACHIEVE EUROPEAN STANDARDS AND TO BETTER SERVE THE LOCAL COMMUNITY

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ABSTRACT

The process of EU integration is very complex and dynamic with developments and a variety of actors and factors involved. Albania is actively engaged in the process of pursuing European Union membership, implementing necessary policies and reforms to fulfil the required criteria, which are essential for Albania and its European integration aspirations. In all these years, undoubtedly there has been progress, but there are a lot of difficulties and challenges to face in all levels of governance.

This paper enhances an authentic governance context focusing on local administration and community in the common effort to build an effective communication and cooperation to impact a positive change and build a practise of good governance and increasing the quality and effectiveness of services through building capacities and human development. It attempts to provide a common understanding of the role of local government in this stage of European integration process, its responsibilities,

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challenges and opportunities. It is important to understand correctly the process of European integration, approximation of legislation, chapters, procedures, where local government is involved, how it affects everyday work of administration and everyday life of local community. They whole process applies to all levels of government – global, European, national, regional and local, but this paper will focus on the latter making some conclusions and recommendations which can be useful in everyday work of local administration.

Key words: *Local Government, Decentralization, Territorial Reform, European integration*

"If we are to address the complex challenges facing us, all the players in society – the European institutions, national, regional and local authorities, the social partners and civil society – must act together in order to move forward in the same direction. It is only in partnership that we can make Europe progress"

Jose Manuel Barroso

I. Introduction

European Union is the most interesting social, political, economic experiment ever occurred. Since its beginnings, it has faced crises, challenges, problems, difficulties, it has been obliged to reinvent itself when new and complex challenges have come across, like it is happening in the current times. More than half a century of integration has had an impact on the history of Europe and the mentality of Europeans. The governments of the member countries, regardless of political colour, are aware that the age of absolute national sovereignty is over and only by joining forces and following "a destiny henceforward shared" (quoted from the ECSC Treaty) can their nations continue to make economic and social progress and maintain their influence in the world. Balkan region and its European membership is one of the challenges that European Union has to face. On the other side, the European Commission (2018) acknowledged the fact that all Western Balkan countries must now urgently redouble their efforts, address vital reforms and complete their democratic political, economic and social transformation, bringing all stakeholders together, from the political spectrum to civil society. EU membership is much more than a technical process: it is a choice of generations, based on fundamental values that each country should embrace more actively, from their foreign and regional policies to what they teach children at school.

In this paper, I will bring into evidence another perspective, the one that goes beyond national and European level, but that comes closer to the citizens and communities,

i.e., to the local level of governance. Goldsmith and Klausen (1997: 106) addressed the need for an overall theoretical perspective of the change of local governments role and responsibility in the light of European integration; there is still a lack in such attempts and literature. This paper tries to explore potential dynamic and relationship between the local, regional and European level in the light of European integration processes. In essence, this process means a shift of authority and competence from European level to nation states and to local level. Since local government actors are for obvious reasons not the major actors in shaping the evolution of the EU, they provide an example of how integration is modified through and within compound policy arenas in which various stakeholders from different levels engage and interact. (Guderjan, 2012: 108)

Five principles underpin good governance at the local level: openness, participation, accountability, effectiveness and coherence. Each principle is important for establishing more democratic governance. They apply to all levels of government – global, European, national, regional and local. They are particularly important in order to respond to the current challenges of development of Albania and countries that are on the way to European Union membership.

II. Local governance at the European level

The involvement of local government at European policies traces back with the Maastricht Treaty, being the first European treaty that explicitly referred to the local level, which indicates the growing significance of local government in the integration process. It was the time that EU had to legitimize the fact and reality according to which all levels of governance affect each other in the context of EU integration. As such, the Treaty acknowledged explicitly – for the first time – the principle of regional and local self-government within the EU Member States. In the Article 4.2 of TEU, it provides that 'The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government' (1992). It also attributed further importance to the local and regional levels in the subsidiarity principle. The Treaty ensured that authorities at all levels throughout Europe will have to work together to a much greater extent than previously.

According to Schakel (2020), Hooghe and Marks (1996, 2001) have been at the forefront of exploring the involvement of regions in EU decision-making, meaning a shifted political authority from the national level down to subnational levels of government that has increased the involvement of regions in EU affairs and that regional governments and actors are increasingly involved in EU-affairs beyond

and within member-states even in cases where the formal right to make a decision lies with national governments or the EU legislator. This multi-level governance was part of European integration processes, that were going deeper at the same time with enlargement of European Union. In other words, deepening and widening. The concept of multilevel governance (MLG) can be traced back to the 1990s (Schakel, 2020), when regions started to become prominently present and active in Brussels because of a revision of Cohesion Policy in 1988 which required national governments to co-develop plans to implement the funds with subnational governments.

In 1994, it was established The European Committee of the Regions (CoR), as an EU advisory body, composed of locally and regionally elected representatives coming from all 27 Member States. Through the CoR they are able to share their opinion on EU legislation that directly impacts regions and cities. The aspects of relations between European integration processes and the increased role of the local government in these dynamics, must be seen in practical and technical rather than political perspective. In order to have a clear understanding of this whole 'picture', Guderjan (2012) states that 'While most studies of local-supranational relations have highlighted the Europeanisation of local government, hardly any efforts have been made to explore how municipal actors and institutions relate to the overall system of governance. Europeanisation may be a means through which multilevel governance is accomplished (Pollack, 2005: 348), but does the Europeanisation of local government go in hand with a 'municipalisation' of European governance?' This challenging question of Guderjan brings into evidence another aspect of multi-level governance, the municipal level, which is getting more and more importance with stages of European integration processes.

At the core of this new dimension and level of governance, there is the principles of subsidiarity. Article 10 (3) of the TEU provides that 'In areas in which the EU does not have exclusive competence, the principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions and actions and authorized intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, 'by reason of the scale and effects of the proposed action'. This principle is very important and has been incorporated in the EU treaties to ensure that decisions are taken as closely as possible to the citizens. It is no coincidence that both advances occurred at the same time. The two must be viewed together. The introduction of subsidiarity reflected the concerns of the German states (the *Länder*) about centralisation (Follesdal 1998), whereas the creation of the CoR brought the EU closer to its citizens and gave regions and cities, albeit in a consultative role, a direct voice in EU decision-

making (Schneider, 2019).

Although there is still a debatable argument, mostly referring to it as a complex and not that clear to be understood and applied, the Subsidiarity principle stands at the core of European Union. As President Junker in 2017 stated "I want our Union to have a stronger focus on things that matter to our citizens. This is why this Commission has sought to be big on the big issues and small on the small ones. And it is why I set up a Task Force on Subsidiarity and Proportionality and 'Doing Less More Efficiently', to make sure we are only acting where the EU adds value (EC, 2018). Some scholars and experts argue that is is necessary to revise and strengthen the role of Committee of the Regions. While there is no obligation for the EP, Council, or EC to abide by any of the CoR's opinions, the Committee can institute proceedings before the European Court of Justice (ECJ) if it regards its own prerogatives as neglected or considers that a legislative act breaches the principles of subsidiarity and proportionality. (Altun, Schulz-Ruhtenberg, 2022). In more concrete terms, they refer to the case of 2018, when the CoR considered challenging a legislative proposal of the EC before the ECJ for a regulation concerning the EU regional funds for the period 2014-2020 if the proposal was formally adopted. The Committee noted that the legislative proposal did not comply with the principle of subsidiarity. Consequently, 3/6 the EC later decided to take the Committee's arguments into account and adjust the text of the proposal accordingly.

III. The case of Albania

The European integration process has been and still remains the key word for our country, since 1992, time when Albania, like other countries in the region and beyond, started the process of transition to democracy. Albania was the first country of the region to sign an agreement with the European Union and since then, we are on the path to European membership, with all the difficulties and challenges on the ground.

All Albanian governments have included the request for EU membership as part of their political platforms. In this respect, all strategies that Albania has adopted for integration in the global arena have been oriented towards the EU. European membership has a direct impact over local communities and local governments, which means it affects the quality of services offered to local community by local authorities. This includes the legal framework, policies, services and everyday life in the local level. In this stage of negotiations for Albania, "70 % of EU legislation will be directly related to local governments and citizens". [2]

2 In 2018, Orlando Fusco, Representative of EU Delegation, participated in a presentation of the

a. **Why an increasing role for the local government (LG)? Decentralization**

Albania has made progress in the years since the beginning of the transition to democracy. But it has always faced great challenges and still has many challenges to face in its road to consolidation of democracy and European membership. European integration of the country is a major problem for which none of the political factors and governments, whether in power or in the opposition, have any opposition. Since 2000 Albania has started decentralisation process with the adoption of the 'Decentralisation Strategy'. The reason to start this process relates to local communities and to the need to be as close as possible to them and offer them the better services possible. One of the most remarkable quotes from Calvin Coolidge, the 30th President of Unites States was this: "What we need more is not more Federal government, but better local government." For sure, better local government without forgetting the different contexts these governments work and function, in other words, the legacy. Albania has come out from a previously highly centralised system of governance. This legacy for sure makes the whole process of decentralization not easy to succeed. For a better understanding of the process, some experts make another overview of the process of decentralisation focusing on patterns of change in decentralisation reforms undertaken over three periods (1990-1997, 1998-2008 and 2009-2015) aimed to improve the effectiveness and efficiency of public administration and the quality of public services through various reforms to the administrative and territorial system as well as the financing of local government budgets (Bartlett, Kmezić & Đulić, 2018). Same authors refer to the Oates theorem (1993, 1999)., now also known as the first-generation theory of decentralisation, suggests that decentralisation has the property that it brings decisions closer to the population that votes on them, and so different jurisdictions can choose the mix of services that most reflects the preferences of the local populations. The decentralisation process was further developed between 2000 and 2007, with the legal frame set in good ground but with implementation and performance of public administration still challenging. In a theoretical aspect, decentralization is a governance system in which political, economic, and legal organization is based on the allocation of competencies from central to local government organizations. Decentralization as a process can be political, financial and administrative. As a rule, these three types go as a whole, because for decentralization to be ideal, it must exist in these three components, because power itself consists of these three components (Veliu, Gjika, 2021: 35). It is considered to be an important instrument to produce local development and local democratic governance. According to some experts

Evaluation Report during an event at the Municipality of Vau i Dejës as part of the Bashkite për në Europë Project

of the field, although decentralization in Albania has been viewed as a solution for issues related to the democratisation of governance and/ or lack of efficiency and effectiveness in public services provision, there is a problem regarding how much to decentralize (Toska, Bejko: 2019). As such, the effects of this process on the economy will largely depend on the way this process is designed and implemented, the adequacy of human resources in governance, and the quality of governance at many levels (which should be adapted based on country-specific characteristics). The administration in the local level must be equipped and qualified accordingly to respond to the standards and to produce the proper services to the local community.

Albania's move towards a decentralised democratic form of governance has been a long and difficult process. While progress has been made on advancing the decentralization reform, several challenges were faced. These challenges consisted on lack of a national policy development framework, lack of clear legal and regulatory framework, and extreme fragmentation of local authorities causing lack of capacities of the local government. Lack of consensus among the local elected officials, their partisan behaviour and lack consensus inside local government associations have weakened the local governance position vis-à-vis the central government and caused delays in several important reforms. The shared functions and competencies are vague, stemming mainly from the deficient and unclear legal framework regulating the structure, roles and competences of the central and local authorities at regional and local level. This has created uncertainty and ambiguity on the role of local governance and deconcentrated institutions with regard to shared functions.[3]

The process is not finished yet, although laws are set on the ground, but it is still to be implemented. As part of the process, in order to strengthen local government by initiating other reforms that have restructured municipalities' territory, functions, administrative competences and finances, with aim to deliver quality and equitable services to citizens, there comes a new momentum for decentralization process, referring to the territorial reform.

b. Territorial administrative reform (TAR)

Territorial reform is part of the process of decentralization in a broader scale and sense. It strives to combine local government units in order to improve the delivery of local public services; economies of scale result in lower unit costs, with diseconomies of scale happening in jurisdictions above. (Tavares, 2018). In 2014, in a debatable and uneasy political situation, the Albanian Parliament approved

3 These comments are detached from National Crosscutting Strategy for Decentralization and Local Governance, of Ministry of State and Local Issues, 2015-2020, Final Version, February 2020

the Territorial and Administrative Reform (TAR), which amalgamated 373 local government units (municipalities and communes) into 61 municipalities (merging in average six LGUs into one larger municipality). Cost efficiency, better access and higher quality of local public services, and development of a democratic local government were among the fundamentals of the new reforms, which marked a second momentum for decentralisation in Albania. (Toska, Ciro, Gjiknuri, 2021:299). Following the implementation of TAR, local governance is organised at two levels: 61 municipalities, the first-tier local government and 12 qarks, the second-tier local government. The territorial reorganisation paved the way for other decentralisation actions, which materialised in the approval of National Crosscutting Strategy for Decentralization and Local Governance 2015-2020; approval of law no. 139/2015 "On Local Self-Governance"; approval of the first law no. 68/2017 "On local self-government finances" and other amendments to the regulatory framework. The new law no. 139/2015 "On local self-government" entirely replaced the existing law on the organisation and functioning of local governance and provided for the devolution of new functions to municipalities. (ibid). Rated as one of the main government reforms, the organization of local government in 61 municipalities created the premises for local government reform and deepening decentralization in the country. (Veliu, Gjika, 2021:37)

c. Problems related to Territorial administrative reform

When asked about the results of the reform, one expert of the field stated that "More than 50% of the municipalities in Albania have hilly and mountainous surface and territory, which means that access to infrastructure, access to communication for the very nature that Albania has is very limited. All these create a vacuum or a low level of local democracy in the country" (Haxhimali, 2021).

This reform is considered as the second wave of decentralized process and it must go in line with fulfilment of the criteria for European membership of Albania. Its expected results are monitored and put clearly in the Progress Report of European Commission: 'The territorial administrative reform remains to be further consolidated as part of the wider decentralisation agenda. The annual monitoring report for 2022 on the implementation of the decentralisation and local governance strategy was published in June 2023. A systematic and timely monitoring of this process, and of the mechanisms to carry it out, needs to be ensured." (EC2023,11). The same Report refers to "Despite some efforts to address legal and institutional gaps, conflicting and overlapping legal provisions and policies - which regulate the various sectors involving the exercise of functions by the local government units (LGUs) - and the division of responsibilities between local, regional and central

government remain areas of concern. There is still a need to streamline the legal framework on the functions of LGUs and further consolidate the implementation of new functions."

Albania has made progress in its road to European membership, trying to pass and adopt European acquis. In this process, one of the problems evidenced relates to the implementation of the laws, considering that Albania has not a democratic culture and democratic structures are still fragile. This logic can be transferred to the local level, meaning that the problem does not relate only to the laws Albania passes to fulfil the criteria of membership, including territorial reform; the problem for Albania remains the implementation of the them. This is the general rule of thumb but also specifically when it comes to real decentralization and increasing the local autonomy. For some academics since the new territorial and administrative reform of 2016, there is very little headway and general progress when it comes to bringing the services closer to the citizens and inhabitants of the rural areas (Kalemaj, 2021).

It is very important to take into consideration all aspects of the reform before undertaking it, especially the ones affected by it, mainly the interests of the institutions involved, of the territories and communities, in order to address the economic and connectivity issues that would make the newly created districts and municipalities more efficient, more autonomous of central power and more self-sustainable. Otherwise, the problems related to the newly created territory bring us (Kalemaj, 2021) to the main puzzle that this paper seeks to answer: why then we needed a new territorial and administrative reforms that did not bring services closer to its citizens and did not downsize the administration?

Whereas there are arguments in favour of results coming out from Territorial Reform, the picture is more complete if we bring here some results from High State Control, according to which "In most municipalities, there is a low level of effectiveness in collecting their own income and in the use of available funds. Despite the fact that the Administrative-Territorial Reform was necessary, it has not fully reflected the principles of the European Charter of Local Autonomy. As a result, there are inconsistencies between the objectives of the reform and the fiscal and budget policies of the central government, which have violated local autonomy, thus undermining the strengthening of decentralization and the autonomy of municipalities. The central budget allocates for Local Government Units about 1% of GDP, which is the lowest regional level, not helping municipalities in fully exercising their powers and increasing the level of services to citizens. There is a financial disparity between the municipalities at the national level, and interventions of the central government in the local government are found, with a negative effect on the budget of the municipalities and the stability of the financial autonomy", (Monitor, 2018). These are some of the facts that bring us to the logic of revising the

reform, an opinion that needs to be considered.

IV. Some considerations and conclusions about local authorities and their role in the European Union

The recent challenges Europe is facing differ from previous ones in its nature and call for far-reaching actions. As acted in the past, the approach Europe has taken in those trying times refers to deeper integration. If political will can once again be summoned, deeper integration coupled with steps to boost growth can create a more durable foundation for prosperity in the region.

Local governments have become legitimate players at the European scene, they are gaining more power and autonomy in comparison to national governments. They can be strong promoters of the processes of integration by having an increased role and more authority at European level.

V. Some considerations and conclusions about local authorities and their role in Albania

There is more than 70 percent of *acquis Communautaire* to be adopted and implemented by LGs in Albania. For municipalities to succeed and harvest the benefits of decentralization, more and more autonomy and spending financial resources is crucial. They are still weak in institutional and organizational aspect when it comes to responding the criteria of EU membership. They miss human resources and proper funding. There is a lack of understanding of the direct financial, regulatory and organizational impact of membership into European Union and its responsibilities. This needs to be addressed as soon as possible with trainings of administration and capacity building. Public administration is weak and still subject to political and financial influence.

EU membership is much more than a technical process, it is a choice, it is a culture, a mentality, based on fundamental values, which Albania should more actively embrace, from central to local level. This process is challenging and requires a lot of effort on the part of central and local administration, which must be accordingly equipped with financial and human capacities in order to implement the policy and acquis of EU. Central government must consider LGs not simply as a 'pair' in the process, but as real 'partners'.

Abbreviations

CoR Committee of the Regions
EU European Union
EC European Commission
ECJ European Court of Justice
TAR Territorial and Administrative Reform

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DEMOCRATIZATION VIS-À-VIS EUROPEANIZATION IN THE BALKAN REGION TWO DIFFERENT, OR TWO COMPLEMENTARY PROCESSES?

Fleino Mozali

ABSTRACT

The European perspective of the Western Balkan countries, including Albania, is fundamental for the stability and prosperity of the countries of the region, as well as for European Union itself. The connection has become more stable and predictable. The countries of the region have the duty and responsibility of adapting to the criteria set by the European Union as an indisputable process, making it the keyword for the programs of all parties, whether being in power or in opposition. It seems that these criteria of approximation with the requirements and standards set by the European Union are the motivation for reforms and achievements of all the developments so far. Meanwhile, despite the fact that the main criteria for membership is democratization, in many cases and realities there is noticed lack of democratic standards, lack of consolidation of fragile democracies, or in some cases even worse: the 'run' to fulfil the tasks of European membership while neglecting or shifting away from democratic standards. Considering that European future of the countries of the region is an irreversible path, it is very important that the two processes happen simultaneously: meeting European criteria while keeping and consolidating democratic standards.[1]This paper makes some theoretical analyses of both standards and gives some conclusions and considerations.

Key words: *Democratization, Europeanization, European integration*

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Introduction

For the Balkan region, having emerged from dictatorships and having experienced non-democratic regimes, with political, economic and social consequences of those regimes, it was logical that the West represented the only hope for change and open up. In other words, the West represented democracy, which signified mainly freedom and prosperity. For the region, the west was equalized with European Union, mainly referring to European values and identity, very different ones from its own legacy, where nationalism had produced insecurity and constant source of conflict. The Balkans have always 'aspired' for this European perspective. As such, it could be considered moral obligation for EU to respond to this pro-Europeanism of the region, in concrete terms and considerations.

The pieces of puzzle called Balkans were/are very different from each other, although in some sense, there were/are also commonalities. The fact that democracy had to be installed and work out, was a first and foremost objective for the whole region after 1990, while some countries started to make the first institutional contracts with European Union. Albania was the first country of the region to start this formal, contractual 'relationship' with EU. Still, at that time, democracy was simply 'a kind of preferred legal regime', as classified by Guillermo O'Donnell (Mayer, 2015, p. 30) and not really understood for its complexities and challenges to work out properly on the ground. Despite all, no one at the beginning of the 90th would have thought that after 30 years, meaning nowadays, democratic transition of the region would not finish yet, or would be on half-way, even in those countries where there was some democratic culture and tradition. Even in those countries where democratic standards and criteria requested from EU for membership were/are considered acceptable, there is still room for arguments for non-finished or non-consolidated democracies. Some might argue this with the legacy from the past, some others with authoritarian or totalitarian forms of leadership that can easily emerge in fragile democracies to constrain the real consolidation of them, which in some cases comes to be called 'democratura', meaning democracy+dictatura.

In all cases, the problematic part stands to democratic aspects of life or politics, to the missing or deterioration of them, not to call it 'erosion', because it cannot erode something which is not yet consolidated. While the leaders of the region 'run' to fulfil the criteria of European membership, used as a necessary tool for legitimacy of their way of governing, in appearance it seems that democratic regimes and norms are simply implied and unquestioned. But, when taking into consideration the realities in the region, starting from contested elections, aspects of totalitarian or authoritarian forms of leadership, censorship of media, lack of rule of law or lack of culture in executing it, corruption and crime, non-participatory civil society, to mention only

some aspects of democracy, it comes clear that European conditionality has not really helped with consolidation of democracy. It seems like a pressure to undertake superficially reforms, adopting European laws and regulations, which in reality are very difficult to be implemented from weak institutions. In other words, most of the 'work' is being done to cosmetic and not to the change of substance. Setting the standards of European membership, means incorporating them, not overpassing, or worse, deteriorating.

Short theoretical framework, European integration

Theory is important and theorizing intellectualizes perceptions. Because of this, it seems necessary some theoretical analysis and understanding of the process. The study of European integration emerged by 1950, time when European Cool and Steel Community (ECSC) and later on European Economic Community (ECC) were set in place with the Treaty of Paris in 1951, becoming thus a site for debates in the discipline of International Relations, as argued by Ben Rosamond (2000). Despite all challenges to face and to go through, the process of integration had started to produce its first successes, along with developments for the first six states, who had 'given away' some from their national sovereignty for the sake of a European collective security and prosperity. It was not easy at all to understand the theory and the practice of this project and process, while the difficulties of definition were 'memorably summed up by Donald Puchala who compared the quest for a definition of integration to blind men being confronted with the task of defining an elephant. (Rosamond 2000 referring to Puchala, 1972).

For some writers, European project is posed as a process, for some others it is considered an end. For some, it is political phenomenon, for some others it is economic. While a very detailed examination of all kinds of theories and schools of integration could be rather beyond the scope of this study, a general definition could be the prerequisite for any other kind of theoretical understanding. European integration is a political, economic and social process with a legal dimension as well, which refers to the transfer of some competences and allegiances to the EU level from the member states.

A clear understanding of the process is necessary, despite its complexity and the need to change or modify from one stage to another, from one institution to another, from one enlargement to another, in other words the need to adapt the whole organism of EU to the new-coming states, trying to keep, as Mrs. Merkel calls it, 'flexurity', meaning flexibility and security of all these developments (Mozali, 2000). For European project it was very important also to keep equilibria, in scope and function, despite the times and changes. In scope, it had to keep the peaceful and

free exchange of ideas, products and persons across national boundaries. Referring to Art 8/A of the Single European Act provides the common market as "…a space without internal frontiers in which the free movement of goods, persons, services and capital…"Also, a common market economy had to keep a good economic performance, making European Union an attractive 'club' for other countries that were joining from time to time.

The context of European integration has changed. In the course of the years, there have been provided different procedures and approaches to western countries, in comparison to the other ones. Also, different criteria to fulfil for membership. This might be a normal logic, considering the starting point of different countries, some coming with some democratic tradition, some coming back to the west from the east, some from a union (Soviet) to another (European)union, some coming from a federation (RFY) to a quasi-federation (as European Union might be called from some analysts). In all cases, it is important to keep in mind the historical and traditional affinities between the already member states with the aspiring ones. This logic of specificities of the historical experience comes from William Wallace, who states that 'The experience of deep integration within Western Europe does not… provide a model for others to follow. Its historical development was rooted in a stage of economic development and a security framework that have now both disappeared.' (Rosamond 2000, 17).

While it seems that the rules of conditionality from EU were more relaxed to the first coming countries, also to the other first waves of members, when it comes to the Balkans, the 'loupe' of screening has become bigger and more sophisticated in the course of the years, which makes it a not-easy-at all process of reaching European standards and criteria. From a theoretical and practical perspective, it means that European integration is a long and complex process and not an end in itself.

Integration has started as an economic project, and now it encompasses all dimensions of cooperation like political, social, fiscal, legal. European institutions were set up around the end of 1950 and since then they have been changing, to adapt to other changes within European organism. For all its existence, integration European Union project had to pass tests that sometimes have even failed, something that can be measured by political and economic indicators. Sometimes it seems that the legitimacy of the European project itself has been questioned.

Furthermore, besides difficult moments or setbacks in the experience of European integration, only a few historians have begun to consider the implications of what an 'entangled' history of the contemporary European nation-state might look like. Palmovski (2011) observes a significant aspect of the project, in considering twentieth-century European history, when Jim Sheehan pointed to the relative

absence of war after 1945 as a distinctively European phenomenon, while also arguing that the postwar period gave rise to a new kind of European state, one made up of model democracies and linked through transnational governance.

In a meeting with students of University of Tirana, Ambassador of Sweden in Albania, Mrs. Elsa Hastaad asked a question: 'What is Europe? A continent fragmented through the centuries by wars, borders, conflicts and cultural diversity. As Europeans, we don't have common language or a common history, but we do have common roots, needs and ambitions. These similarities led us to fulfil what at the end of the second world war could have been called 'a reasonable utopia'- the European Union.'

Europeanization means more than European integration

As the delegation of power and authority to supranational entities means the process of European integration, it seems that another definition comes to be used and understood. For aspiring countries, when referring in simple terms to the process, it is commonly used the term 'Europeanization', which refers mainly to mentality, identity, civilization, opening up to the west and like the west. It also refers to values, standards and ideals. 'When we say European Union, we do not refer only to institutions, rules or procedures, European Union means values', commented Prof. Dr. Norbert Lammert in an open auditorium with students of Tirana University.

In a first meaning, it seems to refer to values and principles. The very process of achieving such norms also means Europeanization, a whole and a long process that brings European culture and civilization, European identity and mindset. In academic and political circles, the term 'Europeanization' is used to refer to the 'process of structural change, [which is] variously affecting actors and institutions, ideas and interests', and it describes dynamic processes related to the EU that are 'typically incremental, irregular, and uneven over time and between locations, national and subnational', as clearly explained by Palmowski (2011, 634). This clearly explains that this term is mostly used to refer to processes, mindsets, institutions, and it can be distinguished from the process of European integration. As such, these are two different concepts, something which is not correctly understood and used correctly even in academic circles and writings. The difference between 'Europeanization' and 'Integration' stands in that 'it asks not only how national actors affect EU policy-making, but also how the EU affects national policy-makers and how national policies converge among member states', according to Palmowski (2011, 635).

When using two terms or concepts referring to the road of change, adoption and transformation to achieve membership into EU, one must be clear that the term 'Europeanization' encompasses a whole range of thinking and doing, of approaching

to united Europe. It means, as Radaelli (2000) clearly defines it, a whole and systematic process of transformation of national systems according to the criteria of EU. Furthermore, it refers to a 'a process of (a) construction (b) diffusion and (c) implementation of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things", and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic discourse, identities, political structures and public policies.'

Vink and Graziano provided a broad and detailed definition of Europeanization as a process, to put here in short as 'domestic adaptation to European regional integration.' These authors of a detailed and explanatory book only about Europeanization, enriching as such the existing literature about European arguments. make clear the difference between two concepts, explaining that 'European integration' in itself covers a wider range of processes and institutions than just the EU, while Europeanization is more than and different from EU-ization (Vink and Graziano 2007, 7).

Whereas the aim of this paper is not to make a detailed analysis or to debate the definitions of the term, it is important to make it clear the difference between European integration and Europeanization, using the later to relate to principles, values, civilization, institutions, processes among EU member states and between the EU and individual member states, through which the actors, policies and institutions influence each other structurally, ideologically, economically and procedurally and not simply with reference to Europe or European Union.

Democracy, democratization

Democracy is the political pillar of European Union and its member states. For Almond, Dalton & Powell (1999, 28) 'In its practice, democracy is a German voter at the polls wondering if she should vote for the governing parties or the opposition, a French farmer driving his tractor to Paris to protest government agricultural policy, a Hungarian writing a letter to the Budapest People's Freedom to criticize government policy… Democracy is the process of citizen participation and representation in the political process'. In theoretical perspective, when it comes to definition, we might well make an analogy with idea of Puchala about definition of integration. There are also numerous definitions of this form of regime. To generalize, there is an agreement that democracy is a system of government, where decisions are made and approved by elected leaders and serve the needs and demands of citizens, usually expressed by voting. Liberal democracy adds to this content even more. (L. Mayer 1996, 69-70) This means strong protection of individual rights, especially political rights. Most European regimes are liberal democracies, either in ideal, in practice

and aspiration.

For sure, democracy and democratic process differ from nation to nation, from culture to culture, from history to history. There are countries, already members of European Union that have come from non-democratic legacy and EU had to make huge efforts to democratize them, while EU had to keep democratizing itself. Arguably the EU's greatest political success has been its contribution to the democratic stabilization of post-authoritarian societies, concretely to Greece in 1981, Spain and Portugal, 1988, to the Central and Eastern European Countries (CEEC), which joined the EU in 2004 and 2007 respectively. Although these applicant states turned to be member states, democratization continued (continues) to be a process accompanying all aspects of life, which needed to change and consolidate along with all aspects of Europeanization. Although taken as a whole EU represents a democratic structure, still there is comparison across countries in the practice of democracy and politics. Historical experience is a key factor to make these differences in democratic developments of each country, depending on how we identify democracy: in economic terms, public participation, or as the noted political theorist Robert Dahl defines it 'a set of institutions and procedures, such as regularized elections, protections of minority rights and the rule of law' (Almond et al. 1999, 29).

In order to understand the dynamics of democracy and democratization, as Laurence Mayer (1996) points out, one should know the 'three waves' of them. But if Huntington explains them through his theory of 'Clash of civilization' (Huntington, 1996), Mayer goes further in explaining the subsequent waves of reversal of democratic developments. 'Liberal democracy, which was in some ways partial to the first wave, provided a precedent for the second wave, that of the post-Second World War, defining it as "two steps forward and one step back," where a significant number of states survived to the first two waves of democratization, ensuing the next wave of setbacks. It all explains that democratization is a very complex and not straightforward process. This shows once again that liberal democracy has gone through a very difficult path to develop and consolidate. Without going into details about the concept and composition of the process of consolidating democracy, we can say that even in those countries where it is claimed that democracy is consolidated, there are still fragile elements, or aspects of governance that leave room for improvement. It has its own dynamics, successes and failures. Not to go further and mention the avoidance of 'democratic triumphalism' as Linz and Stepan (1996) put in a very realistic way in their book about democratic transition.

Our central problem must be put in concrete terms: is democracy, requested by European Union as the main criteria for membership, really respected

and implemented by aspiring countries or it needs the proper time to build and consolidate and not to be imposed and accelerated artificially, only for the sake of being member of EU. One should never forget that both democratization and democracy raise difficult questions of prioritization and timing. If by definition we refer to democracy as government by the people for the people, the value of democracy is measured by the extend of real power of the people. At the very end, this must be the objective of democratic institutions. On the practical level, there are many cases, even in European countries that show some slowing and even erosion of democratic processes.

Conclusions and considerations

In a situation of changes in some governments of the region, where it is not that clear how the present might be and where it is unclear how the future might be, considering the implications of these new governments with neighboring relations and involvement of outside factors, there 'must' be an immediate increase of the presence of EU with all 'its arsenal'. It is a must, because our region must be democratic and must be European. European Union must be very much aware that in the eventual absence of its procedures, norms, regulations, rules, financial support, in other words, of a concrete European perspective, there are other factors ready to fill this absence.

These eventual factors, not to mention each one of them, are ready to fill out the 'blackhole-s' of democracy with support to autocracy, democratic leadership with autocratic one, from which there come other repercussions in everyday life of citizens. These outside actors are very much interested to find all ways to replace democratic norms with other forms of regime, to make it clear that democracy is not the only 'game in town'. As such, EU must be highly alert in two directions regarding our region and its European perspective: -while being very strict with membership criteria, where democracy is number one of Copenhagen criteria, -it has to be careful about all dimensions composing it. This must not be imposed from outside, although strongly supported. Democracy and its norms and parameters should be integral part of our lives, not a facade, they have to get deeply in every aspect of life. Democratic norms must be clear and very well understood in Western Balkan countries, especially considering

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COLLECTIVE REDUNDANCIES IN ALBANIA, IN A COMPERATIVE PERSPECTIVE WITH THE EUROPEAN UNION INSTRUMENTS

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ABSTRACT

This paper deals with the topic of collective work redundancies, to which the law has dedicated a procedure with well-defined legal obligations. Collective redundancies are nothing but a set of individual redundancies, which form the minimum number defined by law within the term provided for by law.

The Albanian legislator, and in general that of all European countries, has intended to consider the repetition of individual redundancies by the same employer, carried out with high numerical intensity within a period of no more than 90 days, as a situation that deserves the attention of its special, because of the effect that this phenomenon has on a society. The procedure that is applied in this case is the one that includes informing and consulting the employer's organization and, in its absence, the employees themselves as a collective, but also as a set of independent individuals, as well as trusting the mediation of the central public authority.

In this paper, the Albanian Legislation, a comparative view with international instruments, the jurisprudential contribution of the European Court of Justice will be treated.

Keywords*: collective redundancies ,individual redundancies , directives, regulations of the European Union, judicial decisions, etc.*

1. Albanian Legislation

The employment contract is called that bilateral legal action that creates mutual rights and obligations between the employer and the employee and that are related to the employment relationship. The employment contract is considered concluded when the employer owns the performance of the work for a certain or indefinite time, within the framework of the organization and under his orders and based on

the will of one party unilaterally and obligatory for notification to the other party, respecting the form and deadlines set for notification.[1]

Collective redundancy is one of the forms of termination of the employment relationship, which is carried out by the employer unilaterally and not for reasons related to the employee. It represents a special case of termination of the employment relationship. There are two important criteria to apply for collective redundancy, the number of employees whose employment relationship will be terminated and the duration of the layoff period.

Albanian law has devoted a procedure with well-defined legal obligations to the subject of collective work redundancy. Albanian law is permissive as far as the mechanisms of adaptation of enterprises to economic difficulties are concerned, allowing redundancy that become "collective" only after passing a relatively low redundancy threshold of 10 employees.

The procedural steps analyzed later in this paper define as an element that should not be violated, especially the stipulated legal deadlines. In article 148 of the Labor Code, the detailed procedure and criteria that are fulfilled in the case of collective redundancy are presented. The numerical presentation in the first paragraph is divided into three categories, with a minimum number of 10 employees, to take place before the collective redundancy, performed within 90 days.

First step. When the employer plans to take collective redundancies from work, he must notify in advance in writing form the trade union organization, known as the representative of the employees. In its absence, the employer notifies his employees through a visible display in the workplace. This marks the beginning of the legal procedure in case of collective redundancies. The notification should not be superficial, but should specifically address four aspects required by the second paragraph of the provision of Article 148/1.

• Reasons for redundancy

• The number of employees who will be laid off;

• Tahe number of employees normally employed; and

• The time during which these redundancies are planned to be carried

The second step. When the employer envisages taking collective redundancies from work, he must notify in writingform the organization of employees, known as representative of employees. For a period of not less than 30 days from the above-mentioned notification. The consultations are held between the employer and the employees' organization, and in its absence, the direct employees. Their aim is to reach an agreement, taking measures to avoid or reduce collective redundancies

1 Law Nr.7961,datë 12.07.1995 "The Labour Code of Republic of Albania",amendment,neni 148

from work. A regular procedure requires that the consultations not only begin, but also develop intensively within the 30-day period. Their end is not said to happen when this deadline is met, as the employer can accept a longer duration.

The third step. The conclusion of the consultations is notified to the Ministry of the Line, as well as to the party with whom the consultation was carried out (employee organization, and in its absence, it is announced or notified to the affected employees). If the parties have not agreed, the ministry of labour and social affairs helps them to reach an agreement, within 30 days, starting from the date of the notification mentioned above. In this case, the mediation period is regulated in the same way as the counseling period within the enterprise, shown in the second step mentioned above. Despite its useful activation, it is not up to the Line Ministry to ban collective redundancies.

Step four-If mediation does not cause the avoidance of collective redundancies, the employer notifies the employees to be fired, the termination of the contract. In this case, the legal provisions that forsee the criteria and deadlines (including the deadline of notification) for the individual termination of the employment contract remain applicable, with the exception of Article 144, which deals with the procedure for termination of the employment contract by the employer.

Article 148 of the Labor Code, on the conditions and criteria it sets, makes an additional guarantee for employees to protect themselves from collective dismissals. From the content of this provision it turns out that the totality of the procedures for resolving employment between the employer and employees have been exhaustively disciplined in cases where the employer makes collective leaves.

The procedure set in Article 148 of The Labour Code is mandatory to be implemented by the employer who plans to take collective redundancies from work. On the contrary, if the employer does not respect the collective dismissal procedure according to the provisions of points 1,2,3 and 4 of this provision, he is charged with civil liability, being obliged to compensate the employee according to proivisions of point 6. So, the demages in in the point 6 of the Article 148 of The Labour Code are civil sancions against the employer who did not comply with the collective dismissal procedure.[2] The procedural sanction for the employer who does not comply to a minimum extent determined by the court and the procedure indicated in the four steps mentioned above, is compensation for the employee up to sic months salary, which is added to the salary during the notice period, or the compensation received in case of non-compliance with this deadline according to Article 143.

Further more, the legislator has also provided priority in re-employment for former employees. In the implementation of collective redundancies, in case that the

2 Case no.50 date 05.02.2015 of High Court, Paragraph 18.3

employer intend to hire new perssonel, he is obliged by law to give preference in employement to former employees previously collectively redundant, provided that for the new positions the job requires a comparable qualification and that the leaving has been of a collective nature(so they have not been carried out for reasons related to the employees).

Regarding to the non-aplication of priority in re-employment, the court has no jurisdiction for judicial review, so it can neither determine any compensation, nor it can force the conlusion of contracts, which is contradictory with the nature of contractual relations as a whole. The obligation for priority in employment is not a soft obligation, which is left to the discretion of the employer: on the basis of article 202, paragraph 2, we are dealing with a violation that is punished by the state labour inspectoriate, with a fine up to thirty times of the minimum monthly salary.

Nowadays we have many cases of collectively redundancies the classic case is the one when the termination of individual contracts are performed at the same time, in the context of the same collective redundany procedure.

Another case is that when the employer dismises in small groups, eg. 4-3-3, these dismisses become collective only for the sake of the fact that they all reach the number of 10 employees within a period not longer than 90 days (separate, non-simultaneous; In this case there is a lack of establishment of a joint collective break procedure.

The case where an employer commits individual, non -simultaneous, 10 employees within the 90 -day period; in this case there is also a lack of a joint collective leave procedure; 90 day deadline, each of 10 or more individually dismissed employees, may oppose not only the unjustified or reasonable reasons of their individual work quotes, but also require the reimbursement of up to 6 months of salary ; This last reward will be automatically awarded, as in fact the employer, in bad faith or not, was benefiting from individual dismisses that hid behind a truly collective redundancy.

2. Comparative view with international instruments.

2.1. International Labor Organization

The international instruments have sanctioned that the internal legislation of each country that ratifies Convention 158 must provide for all the steps that a collective layoff must follow in any internal legislation for the protection of employment.

- Quantitative determination of collective redundancies
- Consultation procedure with employee representatives;
- Notification made to the relevant public authority;
- The intervention of third parties in the process of collective leave;

• Obliging the employer to consider other measures before redundancy;
• Criteria for the selection of employees to be dismissed;
• Advantage in re-employment.

These seven themes are dealt with in detail in Convention No. 158 and Recommendation No. 166 on dismissal, which constitute the main sources of international labor law, regarding the termination of employment relations at the initiative of the employer.

The Committee considers that the principles contained in the Convention constitute a carefully constructed balance between the interests of the employer and the interests of the worker as evidenced by its provisions regarding termination due to the operational requirements of the enterprise. This is of particular importance considering the current financial crisis. Because the Convention supports productive and sustainable enterprises, it recognizes that economic downturns can constitute a valid reason for termination of employment. The Committee emphasizes that social dialogue is the essential procedural response to collective dismissals – consultations with workers or their representatives to seek means to avoid or minimize the social and economic impact of employment terminations on workers.[3]

1.3 Directives and Regulations of the European Union

The drafting of a directive for the approximation of the legislation of the member states on collective layoffs came as a result of improving the development of some aspects of the employment regulations, and as a result of the many divergences that the states had in their legal provisions. The directive states that information, consultation and participation for employees must be developed through appropriate lines, taking into consideration the practices in force in different member states.

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

Directive 2001/23/EC, was created to consolidate and improve the previous framework of Directive 77/187/EEC, February 14, 1977, which provided on the approximation of the laws of the member states relating to the protection of the rights of employees in the event of transfer of undertakings, emphasizing

3 Note on Convention No.158 and Recommendation No.166 concerning termination of employment page 44.

the need to ensure and protect employees in the event of a change of employer in relation to the protection of their rights. The context of the Directive 77/187/EEC is unchanged, only that with the creation of the new Directive 2001/23/EC the boundary of the protection of the rights of employees has been improved in which it is provided that "This directive shall apply to any transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.[4]This Directive shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain. An administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of this Directive.[5]Also this Directive shall apply where and in so far as the undertaking, business or part of the undertaking or business to be transferred is situated within the territorial scope of the Treaty.[6]

Starting from its predictive provisions in accordance with regulatory interpretations, it is necessary to analyze the process of carrying out the transfer, who are the contact persons or negotiating parties in case of transfer? Article 7 of the Directive provides the obligation of information and consukt before the transfer process, emphasizing that "The transferor or transferors shall seek to inform the representatives of their employees affected by the transfer regarding the proposed date of transfer, the reasons for the transfer, the legal , economic and social consequences of the transfer for employees". In addition to the legal rules for the transferring parties, Article 7 provides reconciliation duties by the member states in cases of transfer in order to protect the basic rights of employees, leaving as an enforceable guarantee for them, the avoidance of state intervention between the consultative parties, the representatives of employees and employers, in not restricting freedom of consultation as well as exercising the right to Arbitration.

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies

European Union countries have the obligation to transpose Directive 98/59/CE of 1998 " on the approximation of the laws of the Member States relating to collective redundancies.

For the purposes of this Directive:

(a)'collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

4 Directive 2001/23/CE, Chapter I, ArtI, Paragraph 1/b.
5 Directive 2001/23/CE, Chapter I, ArtI, Paragraph 1/c.
6 Directive 2001/23/CE, Chapter I, ArtI, Paragraph 2.

either, over a period of 30 days:
-at least 10 in establishments normally employing more than 20 and less than 100 workers,
-at least 10 % of the number of workers in establishments normally employing at least 100 but less than 300 workers,
-at least 30 in establishments normally employing 300 workers or more,
or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;
(b)'workers' representatives' means the workers' representatives provided for by the laws or practices of the Member States[7]

When an employer is contemplating collective redundancies, he shall begin consultations with the workers representatives in good time with a view to reach an agreement. This consultation shall at least cover ways and meas of avoiding collective redundancies or reducing the number of the workers affected, and of mitigating the consequences by recourse of accompanying social measures aimed for redeploying or retraining workers made redundant. To enable workers`representatives to make constructive proposals, the employee shall in good time during the course of concultations supply them with revelant information and in any event notify them in writing of:[8]

- The reasons for the projected redundancies
- The number and categories of workers to be made redundant
- The number and categories of workers normally employed
- The period over which the projected redundancies are to be effected
- The criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer
- The method for calculating any redundancy payments other than those arising out of national legislation and/or practice

As for the alleged vioalatins of the requirements for information, concultation and information provided by this directive, any justification of the employer, based on the fact that that enterprise, which made the decision did not convey the necessary information, will not be taken into concideration. However, Member States may provide that in the case of planned collective redundancies arising from the termination of the establishment`s activities as a result of a judicial decision, the employer shall be obliged to notify the competent public authority in writing only if the latter so requests. This information shall content all revelant information concerning the

7 Directive 98/59/EC, Art1, Paragraph 1
8 Article 2, Parag 3, Directive 98/59/EC.

projected collective redundancies such as: the reasons for redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected. Also, the employers shall forward to the workers`representatives a copy of the notification providing all the informations mentioned above.[9]

Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale

In accordance with the agreement on social policies annexed to protocol 14 of the Treaty on the Functioning of the European Union, as well as in relation to the legal guarantees provided for in the European Social Charter, on the protection of the fundamental rights of employees, the member states authorize the Council to approve the requests provided for in the Treaty. The importance of the implementation of the Treaty will ensure the democratic representation of employees, which is basically the protection of their legitimate interests through consultation and information in every objective variable of the labor relationship. The field of activity of the Directive is within the framework of the improvement of the Right to Information and Consultation, where the latter will be envisaged as the exchange of different views of the parties and the establishment of dialogue between them (employers, representatives of employees).

The Directive provides in the Provision of Article 10 the protection of employee representatives, as a negotiating and consultative party by adhering to full enjoyment of protective guarantees on the exercise of their freedom of participation in information and consultation as a right not only community but a basic national right. The predictive, sanctioning and binding power of Directive 94/45 EC shows a regulatory framework, leaving the main task to the member state in the management of issues subject to review and regulation by it. In cases of adoption of the measures sanctioned in the Directive, the member states send a reference to the Council accompanying it with an official national publication.

Regulation No.1612/68 of the Council of 15 October 1968 on freedon of movement for workers within the community

The freedom of movement of workers provided for in Regulation 1612/68 has dealt in detail with what is included in its scope and how the transfer of employment contracts is procedurally carried out within community spaces. A non-citizen worker in the place of employment shall enjoy all the rights accorded to workers of that country equally, without distinction of nationality, including the right to housing". In the Provisions on Employment and Equality in Treatment, it is determined that any

9 Article 3/1-2, Directive 98/59/EC.

clause of a collective or individual agreement regarding employment, remuneration, working conditions and dismissal is invalid as long as discriminatory criteria can be provided for non-citizen employees. Regulation No. 1612/68 EEC aims to coordinate the contributions of the member states in the creation of specialized methods related to the processes of qualification and participation in work.[10]

The European Court of Justice's jurisprudence contribution to the regulation of collective labor relations.

The European Court of Justice is the competent judicial body of arbitration for the effective implementation of European Union legislation in avoiding the disputes of national courts in cases of conflicts between European law relation. The role of the court is procedurally predetermined, is the main reference to a preliminary decision, as well as the supervisory body of reviewing the validity of the European legislative framework. Important in the interpretive analysis of the European Court of Justice's active power is the judicial hierarchy, which prevails its decisions, which in their enacting clause do not merely an implementing decision but a reasoned order for national courts. ECJ The reference function is not only in the ordering mechanism but also attributing the right to participate in the trial, as procedural party Member States, or as an interpretative adviser EU institutions with the aim of adapting and creating a comprehensive regulatory framework. Through the court practice of the court, its mission on legality and implementation in accordance with European legislation appears. How is this jurisprudence mission performed? The responsibility of the Member States over the respect of the European legislative framework creates the bridge of interaction between the reference decisions of the ECJ and the national internal practices by creating a consolidation in the protection of individuals' rights.[11] Its judicial practice illustrates a legal environment for citizens in accordance with the fundamental rights that the European Union has sanctioned in their protection and inviolability. At the core of judicial decisions is the respect of the legal space, conventions and directives, on rigorous enforceability and counseling on the reports of individuals' rights in confrontation with the state. If the interpretive aspect of the European Court of Justice is considered, it is noted that its decisions are first relying on the economic and social benefits of individuals in improving national legislation, leaving the state the utmost commitment to the protection of human rights , especially in labor relations, both individual and collective. In the entire field of jurisprudence of labor relations, in particular collective relationships, the court relies on community legislation stressing in its enacting clause, the importance of protecting employees as a fundamental right to the acquis. In a employment system,

10 Elona Hoxha: `Collective Contracts in Albania, in a comperative view with EU, Albanian University, Tirane 2020.

11 Statute of the Court of Justice of The European Union (Consolidated Version).

the minimum standards of respect for the right to work should be maintained in relation to state social policies. If a collective agreement, despite the national regulatory provision, is not in proportion to the EU legislation on the fundamental rights of employees then this provision is invalid.[12]

Conclusions and suggestions

Establishing the implementation of the rules does not intented to limit the employer's freedom to dismiss the employees nor to hinder his freedom in the better management of his undertaking in relation to employees. It does not undermine its freedom to judge where a collective leave should be planned, legal provisions aim only to protect employees in cases of collective redundancies.

The key aspects, which constitute the basic focus of the judicial review of collective redundancies disputes, are the verification of the regularity and fullness of the union notification act, employees or public authority, as well as the deadlines for the development of information, consultation and mediation.

The 90 -day deadline for determining collective leave, pursuant to Article 148, paragraph 1, of the Code, constitutes a collective redundancie, not a legal request to be followed by the employer. The 90 -day deadline includes termination of individual contracts, set by the final act of the employer for at least 10 employees. The employer may at the same time rest with the same acts of the procedure, let's say 10 employees. The procedure (information, consultation, mediation) that the employer follows in the event of collective redundancies may be expressed by legal time limit (less than 90 days, without being linked to this deadline). Despite the adoption of the European Union directive, there are still differences between the provisions in force in the Member States on modalities and practical procedures for these collective redundancies and measures designed to facilitate the consequences of these employees' work. Albanian legislation must be able to match in full with the European law as a state that aspires to become part of the large European family. These changes can have a direct impact on the functioning of the internal market and our inadequacy with the common employment market.

On the basis of Article 148, point 6 of the Code, the courts can determine the compensation for violation by the employer of the collective leave procedure, up to six months' salary. The amount of compensation depends on the importance of the violation and the courts cannot take compensation for granted in the maximum period of 6 months. At first glance, it seems that there is a numerical discrepancy between the Albanian law and Directive 98/59/CE, as regards the minimum number of employees dismissed within the 90-day period (10 Albanian law — 20 Directive).

12 Case C-476/12 Oberster Gerichtshof kunder Verband Osterreichischer Banken and Bankiers.

It is clear that a smaller number is a guarantee for employees, but it increases the difficulties of businesses to adapt to the tightening circumstances of the economic crisis. But what at first glance is inconsistency, is actually an expression of a choice that the Directive (in Article 5) expressly allows to the Member States to adopt legal provisions more favorable to employees than those of the Directive itself. More attention should be paid by the labor control authorities (I.Sh.P.), to the realization in practice of the priority in the reinstatement of employees dismissed under conditions of collective redundancies.

Albania has not ratified the Convention no. 158 and Recommendation no. 166 On termination of employement which constitute key sources of international labor law, regarding the termination of employement relations with the initiative of the employer, which could have a positive impact, even though our legislator has a good adoption of EU instruments in general.

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ORGANIZATION AND FUNCTIONING OF LABOR RELATIONS ACCORDING TO ALBANIAN AND INTERNATIONAL LEGISLATION

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ABSTRACT

To analyze the democratic legal relations of work in the current conditions of the economic and social development of our country means, first of all, to highlight their essence and main features as well as the trends of development and improvement of these relations in the future.

Our labor legislation (the Labor Code with relevant amendments, etc.) have already given these relations a new modern European profile. As a result, the dimensions of the freedom and rights of employees have been expanded and enriched, thus ensuring the alignment of the birth, change and termination of these relations with the acts of international law (such as the Charter of the United Nations, conventions and recommendations of the O.N.P , the European Convention of Human Rights, international treaties, the European Social Charter, labor legislation of Western countries, etc.)

It is natural and completely understandable that in the conditions of our democratic society, broad and diverse labor relations arise, but not all of these are regulated by the norms of labor law, not all of them take the special character of a legal contract of work. Only those social labor relations that are most important for our social life, which are necessary for the strengthening of our social and democratic state order, find legal regulation. Thus, the social relationship of work, being regulated by the norms of labor law, takes a new form, the form of legal agreement.

This paper will deal with: The meaning of the legal employment relationship, The organization and operation of the legal employment relationship according to Albanian legislation and foreign legislation, Persons and their legal capacity and work as well and Types of employment contracts.

***Keywords**: labor relations, labor legislation, employee rights, social labor relations, legal labor relations, etc.*

Introduction

The legal labor relationship is a special aspect of social labor relations. The rest of the social labor relations, as it was underlined above, is developed not subject to legal regulation by the state, but only on the basis of the norms of our democratic morality.

In fact, the concept of labor relations takes a wider scope than that of legal labor relations. So social labor relations are not limited only within the framework of legal labor relations. Therefore, in order to have a complete understanding of the legal position of the subjects of legal labor relations, we should not limit ourselves only to the set of rights and legal obligations that the legal relationship imposes on the participating parties. Here, those rights and obligations that do not find legal manifestation, but that have a simple moral character, should also be taken into account. This happens because our democratic state did not intend and does not intend to give the form of legal relations to as many social relations as possible. So, for example, the detailed measures to improve production, to strengthen discipline at work, to improve work organization, etc., remain outside the framework of the legal rule, outside the goals of the legal labor relationship. In the conditions of our democratic society, it is necessary to regulate labor relations with the help of legal norms. But, the forms of legal labor relations.

In the conditions of our democratic society, it is necessary to regulate labor relations with the help of legal norms, but the forms of legal labor relations are not created by the democratic state arbitrarily, but always on the basis of the objective criteria of our democratic society. . By regulating social labor relations with legal norms, the state assigns legal rights and obligations to labor participants. Both employees and employers have legal rights and obligations arising from these relationships. With these norms, the state determines the parties (subjects) of the legal employment relationship, the content of the relationship (the subjective rights and legal obligations of the subjects), the facts that cause the birth, change and extinction of the rights and obligations of the subjects of the legal employment relationship.

The organization and operation of labor relations according to Albanian legislation

Historically, the division of wage labor relations into a separate set of relations began with capitalist production. With the transition from manufacture to factory, at the time of the industrial revolution[1], this process was developed even further.

Roman law recognized a type of contract that was rarely applied in the slave-owning society of that time, which was called “locatio conduction operarum”. With this

1 The end of the 18th century and the beginning of the 19th century

contract, a free man in Rome could sell his labor capacity to another person for a reward. But in the conditions when slave labor was abundant in slave-owning Rome, it is understood that the above contract could not be widely applied. Renting of slaves was done with the contract "locatio conduction/rei"[2] or "locatio conduction operis"[3], agreement[4].

So, most of the rental of works was almost done with "locato operis"[5]. Thus, as it was underlined above, "locatio operarum" was a contract with not very important social weight. In this context of historical reference, the main characteristic of "locatium operarum" was the temporality, (the limited duration of the use of the work by the tenant). As you know, it is not a simple modality or external circumstance in the work relationship. As can be seen, contractual relations (and as a consequence, like every event of human life, every legal fact) have a temporary dimension, but which is included within the same one, whose duration will interact with the cause of the contract itself. This also happens for other contracts for certain durations due to their very nature in the fulfillment of an interest that lasts or that at least one of the parties has, where the time provided by the contractors for the fulfillment of the obligation a moment later (either for continuous implementation as well as periodic implementation), so it enters into the content of the contract. Thus it constitutes an important element (or requirement) of the object (that is, of the service). In "location operarum", the temporary element, of duration, is specified in the continuity of works given in use (uti frui) by the lessor, to the lessee. The employer, in addition to representing a material, necessary requirement of long-term service, such continuity is materialized in the availability of labor energies offered by the employee.[6]

In contrast, the characteristic of "locatio operas" is not the granting of use (or exploitation) of the working activity of the debtor-employee, or the granting of "aliquid faciendum" to the employee who, as a manufacturer or craftsman, is forced to perform the work for which he has fallen agreed. It can be about a material thing (object of use, car, building), as well as a service (guarding or transport of goods or passengers, as well as especially, "operae liberales" free professions, performed by professionals).

The risk of the utility of work. The risk of the utility of the work is specifically related to the economic diversity of the yield and energies of the work performed and, therefore, to the uncertainty of the productive result of the energies themselves. This risk of service or work organization difficulty is shared between contractors differently with labor hire and works hire.

2 Work capacity reconciliation contract
3 Renting
4 Contract on the work
5 Including here the undertaking, regulating the obligations and responsibilities of the parties
6 GHERA, Eduardo, " DIRITTO DEL LAVORO ", Bari, 1993.

The risk of the impossibility of work, which is the second risk in these relationships, is the risk of the impossibility (or lack) of work that comes suddenly due to random causes or due to force majeure, eventually contrary to the realization of the service (opericulum obligations). This can be an accident with total or partial loss of ability on the part of the employee. A few examples may clarify the distinction. The risk of the impossibility of work can be understood in all the hypotheses of the occasional stoppage of the employee to give his energy, both for subjective reasons (pregnancy, illness, accident at work, disability), and for objective reasons, meaning the classic cases of interruption of production activity due to artificial or natural events that may be caused by the lack of a driving force or raw material in industrial works, up to the risk of flooding, even if only from rain, which prevents the realization of works in construction, in agriculture etc.

The newest views on the nature of legal labor relations can be summarized in the following main directions[7]:

1) Labor relations are simple contractual relations, regulated by the law of obligations.
2) Labor relations are, first of all, contractual (obligation), but they also contain personal legal elements (characteristics) (such as "loyalty and submission" to the employer).

3) Labor relations are primarily contractual, personal legal relations and, secondly, obligation relations.

4) Labor relations are purely legal personal, not based on any contract, that is, they are relations of actual commitment to work.

In the analysis of labor relations, their classification into dependent and independent labor relations takes on theoretical and practical importance. This case represents a special aspect of labor relations that are regulated by positive Albanian law as well as foreign law (for example Italian, French, American, etc.). Our Labor Code, in Article 12, second sentence, also gives the general meaning of dependency in labor relations. According to this provision "In the employment contract, the employee undertakes to offer his work or service for a specified or indefinite period of time, within the organization and orders of another person, called the employer, who undertakes to pay a reward".[8]

This understanding of dependence in labor relations is in full agreement with the Civil Code of the Kingdom of Albania of 1928, as well as with current western labor legislation, such as in Italy, France, Germany, etc. The employment relationship is established (Article 12 of the Labor Code) through a contract. Precisely, from such

7 Renat Scognamiglio "Diritto del lavoro", Napoli, 1992; Edoardo Ghera "Diritto del Lavoro", Bari 1990; Jean-Maurice Verdier "Droit du travail", Paris 1990.

8 Labor Code, in article 12

a contract, the importance of continuity of work is reached as a basic element of co-operation and dependence. Western European Jurisprudence has also expressed the importance of the difference between dependent work and independent work.[9]

It is true that dependence is characteristic not only of the agreement, but also of the contract. First of all, its importance can be taken in practice mainly at the level of the legal labor relationship. Dependence results as an assumed indicator of the continuity of cooperation. Thus, it emerges as an assumed indicator at the practical level of continuity, characteristic of cooperation, offered by the employee to the employer.

The legal labor relationship occupies the main place in the system of legal relations that enter the sphere of our labor law. It is precisely this dependent work relationship that expresses the essence of the social work relationship, which is created between the employee and the employer. It is also known that our labor law regulates several other relationships that are closely related to dependent labor relationships such as:

a) Relations of the Professional Union with the employees
and with the administration of the enterprise, institution;
b) State control relations for protection at work;
c) Relations for the examination and selection of labor disputes;

Social security relations are derived from legal labor relations, but are regulated to be studied separately. Legal labor relations in our country have deep democratic content. They are presented as the legal form of the realization in practice of the important principles of labor law, protection at work, etc., these principles sanctioned in our constitutional provisions.

The issue of re-dimensioning the legal relations of work remains more and more an important issue with a current sound in the Western world, so also in our country. This phenomenon, caused by the strong pressure of the rapid change of socio-economic factors, basically expresses the re-dimensioning of some of the main elements of these relations, that is, of the elements of labor contracts without modifying their nature. In this new approach, such contractual elements as the time and place of work, the parties of the legal relationship, are among the strongest points of this re-dimensioning, thus offering, therefore, also new legal forms of the respective relationships.[10]

The legal employment relationship brings subjective rights and legal obligations to its participants. The subjective right is called the possibility that the state has recognized and guaranteed to a subject to perform the actions indicated in legal norms

9 Alket hyseni, "Human rights in the Albanian constitution", "day 2000", Tirana 2008

10 "SUMMARY OF LABOR LAW", Translation of the German Foundation in Albania "Hans Seidel".

and to demand from the other subject. The subjective right is called the possibility that the state has recognized and guaranteed to a subject to perform the actions indicated in legal norms and to demand from the other subject, the performance or non-performance of certain actions.

Legal obligation is the opposite of subjective right. It expresses the measure of behavior that, according to the request of the state, defined in the norm of law, the obliged person must maintain, fulfilling the obligations of the bearer of the subjective right. Thus, for example, the right to work of our citizens, sanctioned in the Constitution and the Labor Code, is their subjective right in the field of labor relations, as are for them the right to remuneration according to work, the right to vacation, for protection at work, etc. Whereas, the employer's obligation to accept citizens to work, according to the law, constitutes other obligations to give the employees their wages, to ensure their employment, etc. Likewise, employees have legal obligations, just as employers have subjective rights. Thus, subjective right and legal obligation always express two opposite aspects of the legal relationship in which they live.

The legal labor relationship has an individual or collective character (Articles 12, 13, 159, 188 of the Labor Code)[11]. In these relationships, the employee is forced to personally perform the work or task according to his profession.[12]

In the legal employment relationship, the employee is obliged to perform a specific, specific job, therefore, the legal employment relationship does not end with the achievement of a certain result. On the contrary, it has a continuous character, because the employee, entering into this relationship, applies his capacity for work throughout the defined working time. In this view, the legal work relationship is clearly distinguished from the civil legal relationship, which does not have a continuing character. It lives as long as the civil legal obligation has not been executed. With the fulfillment of the obligation, the civil legal relationship also ends. Thus, for example, the civil legal relationship, which arises on the basis of the publishing contract, is temporary, because it is extinguished with the delivery of the work by the author.

Whereas, when this author is in a working relationship with a scientific institute, the working relationships in this case do not end with the completion of a scientific work by him, rather they are continuous. Usually, the employment relationship in the Republic of Albania is concluded without a fixed term and, only in special cases, legal employment relationships can be established for a certain period of time. So, in the legal employment relationship, the employee enters work, being included in the labor force or in the organic one (at a private or public employer), being obliged

11 Articles 12, 13, 159, 188 of the Labor Code

12 Article 22 Labor Code

to apply his capacity for work throughout the working time.

Another feature of the legal labor relationship is that it is related to the respect of discipline at work. The employee, entering into a legal employment relationship, has the duty to respect the work schedule, the requirements of discipline at work, complete the tasks, produce products or perform constructions and services of high quality, save raw materials and materials. others, to respect the rules for protection at work, etc. He is obliged to strictly implement the labor legislation[13].

The legal employment relationship is a relationship with compensation, because the employee who enters into this relationship is paid for the work performed. Work remuneration constitutes another distinguishing feature of the legal work relationship. In the labor remuneration policy, the state is obliged to take care of building a pyramid of labor wages as fair and scientific as possible.

The democratic legal labor relationship is called that dependent labor relationship, regulated by labor law norms, in which one party, the employee, undertakes to offer his services for a certain or defined duration, within the framework of organization and the orders of another person, called the employer, while the latter undertakes to pay a reward (work salary).

The legal employment relationship, like any legal relationship, has three elements ingredients:

a) Subjects, b) content (ie, rights and obligations of the parties) and c) object

Organization and operation of labor relations according to foreign legislation

Historically, the division of wage labor relations into a separate set of relations began with capitalist production. With the transition from manufacture to factory, at the time of the industrial revolution, this process was developed even further. Roman law recognized a type of contract that was rarely implemented in the slave-owning society of that time, which was called "location conduction operarum". With this contract, a free man in Rome could sell his labor capacity to another person for a reward. But in the conditions when slave labor was abundant in Slave-owning Rome, it is understood that the above contract could be widely applied. Renting of slaves was done with the contract "locatio conduction/rei" or "locatio conduction operis", agreement.

Dependent work. Historically, dependent work found a special and organic regulation, for example in the Commercial Code of 1882 in Italy, even though it found an organic discipline of the labor contract[14], until the institutional connection

13 International Covenant on Civil and Political Rights

14 Article 521 et seq. of the Commercial Code of 1882 in Italy

through interaction and work was not recognized, nor in the Civil Code of 1965, which generally disciplined the "hire of works", which covered both dependent work (locazio operarum) and independent work (locatio operis). Western European legislation defined "work hire" as a contract through which one of the parties was obliged to do something for the other party for a reward, for which they had agreed. In Western European legislation, three main types of labor and industrial leases were recognized:

a) That for which people perform their work in the service of others;
b) That of carriers both on land and in water, who undertake the transportation of people or things;

c) That of employers of business or contract jobs.

European jurisprudence has elaborated some criteria for identifying dependent and independent work. The normative determination of the dependent labor contract is required in the concrete plan, included by the individualization of the practical criteria for this distinction. In fact, the elaborated criteria to distinguish hired work from independent work in cases where it is not specified in detail by the legislator, are derived from foreign jurisprudence. According to this practice, four requirements must be met: difficulty, cooperation, continuity and dependence (constituent elements of the typical type of dependent labor relationship).

Thus, in Italy, the work of electric clock readers was considered independent when the person was in charge of carrying out that activity and collecting invoices, operating in full autonomy in terms of kohl and the amount of work. On the other hand, the drug propagandist's pub is defined as addicted, connected to a number and to a defined schedule of periodic visits over a period of time. On the contrary, the same activity was considered autonomous in the case when propaganda had the opportunity to determine both the route and the specific content of periodic visits[15]. Foreign authors, in their studies, present contemporary concepts of contract law in an attempt to identify a European social model based on precise contract rules. A great legal debate has already been opened for the European contract law, both in terms of theory and its efficiency.

In this analysis, the author aims to make an exposition of the essence of this new development against the classic model of legal labor relations in respect of traditional principles and political and legal philosophy of market organization and contract law. The new development from the classic model in this case is represented in the new economic and social relations related to the duration of the work and the contractual relationship. The work may be shorter in duration, i.e. less than eight hours, but the employee is still dependent on the employer. In these new models, the reduction of

15 https://www.osfa.al/sites/default/files/studimi__mbrojtja_e_jetes_dhe_shendetit_ne_pune.pdf

working hours does not modify the nature of the contract, but the deviation from the classic model is done in function of flexibility needs. The employee is inclined to accept a reduction in his usual working time.

Part-time work. The quality of technology undoubtedly exerts a direct influence on this form of non-typical work, which is indicative of a work performed on a voluntary basis for a daily or weekly period, with a shorter duration than normal or than the legal working hours. . It is a form of work that, according to statistics, has seen a significant increase recently. Thus, while in the early 80s there were more than 9 million employees with part-time contracts in the countries of the European Union, most of whom were married women with minor children, and in general, part-time workers, today this number has quadrupled. In Canada, between 1973 and 1983, the number of employees with part-time contracts reached 52% in the service sector. It is understandable, for example, why working at video terminals physiologically requires a part-time job. In fact, the special psychophysical stress of this type of work has provoked laws and collective contracts, keeping in mind the number of hours of work of the employee. Thus, these collective contract laws become indirect instruments of encouraging part-time work.

In these circumstances, labor contracts are not used as legal instruments for a policy (labor cost saving), but are intended to guarantee, on the one hand, the protection of the employee's personality and, on the other hand, not to stiffen the work organization even give him the best possible flexibility. In countries like Belgium, Spain, France, Italy, Norway, Holland, Portugal and Switzerland, "part-time" work is not only not prohibited, but is even widely encouraged. There are countries like Greece, where this phenomenon, although present, has historically been sufficiently regulated. However, this job fulfills a very important function, as it is also presented as a second employment.

Telework. The phenomenon of teleworking, as a form of work, uses telecommunications and tries a new method to organize a free stage of productive activity. This phenomenon is rich and complex, and the social typology is wider than that provided by the legislation that has provided for the contract of work at home, for manual work, for the production of goods and material services. Thus, at least as it appears from the examples, home work is qualified as a commercial activity according to Article 21 of German law or, according to Belgian law, it is called home work that processes raw materials or material goods from one or more traders, or as the Italian law states[16], who works using raw materials and accessories.

Legislative reform in this area is necessary especially for those countries where the law limits work at home only to manual work, thus unfairly excluding intellectual

16 Article 2 of the Law of December 16, 1980

work.[17] There are countries that do not clearly define what is meant by dependent work at home.[18] However, the main problem of the legislation is precisely distinguishing the special types of work in the complex social market.

Telework, as an organizational choice, is based on a form of work relationship that is carried out remotely from the organizational base of the enterprise. The complex of the phenomenon requires the evdientation of the ways in which this form is presented, because the implementation of the labor law and, usually, its requirement with the presence of the labor contract depends a lot on it. ***Job-Sharing Contract.*** One of the forms of flexible workforce management is undoubtedly the "job sharing" contract. In this contract, the parties voluntarily agree to share a single "full-time" job between two or more people, and therefore, to share equally the salary of the work as well as other benefits arising from labor relations. An interesting picture of labor relations is thus outlined.

Born as an instrument to improve the quality of work, this tool requested in particular by employers rather than promoted by trade unions, seems to have spread mostly to female employees as well as to those employees who are close to working age. . This is how we are talking about a new employment norm present in many countries of the European Union and which has been successful in the USA and Great Britain, and then in Germany, Ireland, and the Netherlands. In other realities, such as in Italy, the legislation does not regulate this phenomenon, which is entrusted to the will of the parties.

Persons and their legal capacity to work

The person participates as an employee or employer in legal labor relations, because he is equipped with legal labor skills. But if we limit ourselves here only to the analysis of the legal capacity and that for work of the person as an employee. In this sense, the legal ability to work is called the opportunity that the state has really guaranteed to every person to exercise his right to work for the employer, against a salary that is given according to the work done.

According to Article 20 of the Labor Code, persons may be subjects of the legal employment relationship, i.e. they may have the right to conclude employment contracts: a) when they enjoy full ability to act according to the provisions of the Civil Code[19], b) persons with limited capacity, but expressly or tacitly authorized to perform work by their legal representatives[20].

In the field of legal labor relations, the legal capacity and the capacity to act must

17 As it happens in the Netherlands
18 Like Portugal and Greece
19 Article 6 of the Civil Code
20 Article 7 of the Civil Code

be realized in full compliance with the legislation in force, which more specifically means respecting the following requirements for the employee:

a) Carrying out the work personally[21].
b) Obligation of obedience[22].
c) Duty of care at work[23].
d) Accountability and return form[24].
e) Obligation of loyalty[25].

The creation of legal labor relations means:

a) The employee can perform more than one type of work for one or more employers[26], part-time work[27], work in the state[28], commercial agent work contract[29], vocational training contract[30]. b) Accepting and keeping the person at work must be carried out in accordance with the rules for protection at work and the hygienic-sanitary rules for the protection of the health of employees. c) The person who has command duties for the entry and exit of monetary and material values, cannot be charged in the state sector with the duties of cashier, storekeeper, seller or collector. It is not allowed for an employee to perform the duties of storekeeper and cashier at the same time[31].

Also, normal legal employment relationships imply the following general obligations for the employer:

a) Protection of personality.
b) Prohibition of collecting information about the employee, except in cases related to professional skills as well as those necessary for the implementation of the contract.
c) Prohibition of checking the employee's personal belongings.
d) Work certificate.
e) Disciplinary measures are foreseen only in the collective labor agreement.

Types of employment contracts

Our labor legislation distinguishes the following types of employment contracts:

21 Article 22 of the Labor Code
22 Article 23 of the Labor Code
23 Article 24 of the Labor Code
24 Article 25 of the Labor Code
25 Article 26 of the Labor Code
26 Article 14 of the Labor Code
27 Article 15 of the Labor Code
28 Article 16 of the Labor Code
29 Article 17 of the Labor Code
30 Article 23 of the Labor Code
31 Article 33 of the Labor Code

a) Employment contract for an indefinite duration,

b) Employment contract for a certain duration,

If the duration is precisely determined by the parties during the conclusion of the contract, it is treated as a contract of indefinite duration. The above two types of employment contracts are provided for by Article 140 of the Labor Code.

c) The probationary employment contract, provided for in article 142 and 150 of the Labor Code, is usually up to three months.

d) Part-time work contract, which is provided for by Article 14 of the Labor Code. With a part-time employment contract, the employee agrees to work by the hour, half-day, or day, for a normal weekly or monthly duration less than that of full-time employees under the same conditions. The part-time employee enjoys the same rights, proportionally, as the full-time employee.

e) Group contract (Article 13 of the Labor Code). When the employer concludes a contract with a group of employees as a whole, he is contractually bound to each member of the group. Any agreement according to which the employee undertakes to use the services of a third party as an employer is invalid.

f) Vocational training contract (Article 17). In contrast to the teaching of the profession, the master teacher is obliged to qualify the student in the exercise of the profession according to the rules of the trade, and the student must work in the service of the master teacher to qualify. The provisions of the Labor Code also apply to the vocational training contract.

g) Home work contract (Article 15 of the Labor Code). With the work-at-home contract, the employee is obliged to perform his work alone or with the help of family members in his home or in another locale of his choice, based on the options provided by the employer.

Conclusions

The legal labor relationship is a special aspect of social labor relations. In fact, the concept of labor relations takes a wider scope than that of legal labor relations. So social labor relations are not limited only within the framework of legal labor relations. In the conditions of our democratic society, it is necessary to regulate labor relations with the help of legal norms. By regulating social labor relations with legal norms, the state assigns legal rights and obligations to labor participants.

In the analysis of labor relations, their classification into dependent and independent labor relations takes on theoretical and practical importance. This case represents a special aspect of labor relations that are regulated by positive Albanian law as well as foreign law (for example Italian, French, American, etc.).

The legal labor relationship has an individual or collective character (Articles 12, 13, 159, 188 of the Labor Code). In these relationships, the employee is obliged to personally perform the work or task according to his profession (Article 22 of the Labor Code).

Usually the work relationship in the Republic of Albania is concluded without a fixed term and, only in special cases, legal work relationships can be created for a certain time. Another feature of the legal labor relationship is that it is related to the respect of discipline at work.

The legal employment relationship is a relationship with compensation, because the employee who enters into this relationship is paid for the work performed.

The quality of technology undoubtedly exerts a direct influence on this form of non-typical work, which is indicative of a work performed on a voluntary basis for a daily or weekly period, with a shorter duration than normal or than the legal working hours ".

The phenomenon of telework, as a form of work, uses telecommunications and tries a new method to organize a free stage of productive activity.

One of the forms of flexible workforce management is undoubtedly the "job sharing" contract.

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THE CODIFICATION OF THE TRANSPORT LEGISLATION IN ALBANIA UNDER EU INTEGRATION PROCESS: AN ITALIAN MODEL OR EU REQUESTS? [1]

Prof. Assoc. Dr. Arber Gjeta

ABSTRACT

The process of EU integration has driven the Albanian legislation development. The adoption of legislation in line with the acquis often was made not through real legislative process but as a need of implementation of EU regulations and directives, with the assistance of EU experts. This process has offered best models of legislation but, at the same time, has considered less the specifics of the Albanian legal system.

Through this paper we aim to offer a panorama of the implementation of the acquis in the field of transport law also as an insight on how Albania has regulated the sector between international conventions, EU legislation and foreign models, like in example Italy. Albania has adopted Codes for regulation rail, air and maritime transport and, on the other hand, there are laws that regulate road transport. There are evidences that these Codes are far away from being considered as autonomous legislation. On the other hand, yet there is a lack of adoption of secondary legislation foreseen in these Codes.

For the purposes of this paper we will take in consideration the approval and the entry into force of the Maritime and Air Codes and their alignment with the EU legislation and international conventions.

Keywords: Transport, EU acquis, codification, EU negotiations.

1. The process of codification in the transport law in Albania: reasons for the process

In the Albanian legislation there are to be noticed two breaking point within the legal system. The first one is the changes made after the fall of communist regime in the ’90. There was a first attempt, under the supervision of the CMI, to draft a first

1 This article is part of the research conducted within Jean Monnet Chair University of Elbasan in EU Enlargement and Acquis Adoption Burden: Albanian Challenges (620689-EPP-1-2020-1-AL-EPPJMO-CHAIR) with the support of the European Union.

Albanian Maritime Code but unsuccessful. On the other hand, regarding air law, there was adopted a first law regulating the sector, the law no. 7877 date 30.11.1994 "On Albanian Civil Aviation". Thus, it wasn't opted for a codification in the air sector. Road transport was also regulated by state law with the law no. 8308 date 18.03.1998 "On road transport", amended several times and still in force. In the rail sector the legislator didn't intervene in the first years of transition maintaining in force the law no. 7224 date 22.06.1988 "Rail Transport Code of the Socialist Republic of Albania" until the adoption of the in force law no. 9317 date 18.11.2004 "Rail transport code of the Republic of Albania".

The regulation offered by these laws was a first set of rules to regulate the sector of transport, after the falling of the communist regime, according to the principles of e free market economy. Yet, the regulation offered was in line with the Albanian international obligations but, on the other hand, this regulation didn't reflect the best models of legislation or the recent trends and changes in the EU transport legislation[2].

The second relevant moment, that affects the process of codification, was the signature of the Stabilization and Association Agreement with the EU, ratified with law no. 9590 date 27.07.2006 and its provisions on achieving the rule of law through the adoption of the acquis communautaire, as a main duty of the Albanian part in order to fulfill its duties prior to the affiliation with the EU. In this agreement, the art. 70 "recognise the importance of the approximation of Albania's existing legislation to that of the Community and of its effective implementation. Albania shall endeavor to ensure that its existing laws and future legislation shall be gradually made compatible with the Community acquis. Albania shall ensure that existing and future legislation shall be properly implemented and enforced". Regarding the transport services supply the article 59 of this agreement lay out the duties of each party in order to guarantee the free movement of transport services. Yet, there are other provisions of the agreement that Albanian must fulfill in its path toward the EU integration[3] and the provision on transport sector are deemed as crucial due to the nature of the sector as an international industry and as crucial for

2 The EU is the most important economic partner of Albania and it is reflected even in the transport sector.

3 See Title VIII of the Stabilisation and Association Agreement signed on 12 June 2006, rubricated «Cooperation policies», in specific in its article 106 on transports that states that "Cooperation between the Parties shall focus on priority areas related to the Community acquis in the field of transport" that aims principally to "restructuring and modernising the Albanian transport modes, improving the free movement of passengers and goods, enhancing the access to the transport market and facilities, including ports and airports, supporting the development of multimodal infrastructures in connection with the main trans-European networks, notably to reinforce regional links, achieving operating standards comparable to those in the Community, developing a transport system in Albania compatible and aligned with the Community system and improving the protection of environment in transport." in OJEU L 107/166 of 28 April 2009.

the establishment of a common market[4].

We must mention here the fundamental importance of the principle of subsidiarity in the transport sector, although it is a principle of which it is difficult to measure and establish the extent. Through subsidiarity, the Community pursues its objectives by removing obstacles to the free provision of services and the implementation of free competition. In this way it affects the sphere of competence of the individual States (descending vertical subsidiarity), in matters traditionally reserved for state competence such as ownership, security, public services that are particularly relevant in the port or airport sector "where the most marked reveals the conflict between public interest and liberalization"[5].

Thus, the process of integration in the EU constitutes the main path for Albanian and the adoption of the acquis is one of the most important tasks to perform. This is reflected in the sector of transport as well.

2. The Albanian legislative acts in transport sectors

The legislative framework that regulates transport in Albanian is now shaped according to the EU legislation and the adoption of each singular act shall be seen in correlation with the fulfillment of the tasks under SAA with the EU and the adoption of the acquis, as well as with the negotiation process and autonomous international conventions like European Common Aviation Area or the creation of the Transport Community Treaty.

2.1. *The regulation in maritime sector*

The maritime legislation in Albania lays on Maritime Code[6], adopted in 2004, and in several secondary acts and specific laws that regulates in detail several issues like security and maritime infrastructures. The Maritime Code, with its 403 articles is to be considered as complete and exhaustive in regulation maritime navigation. It was drawn based on bests models and under the guidance of foreign experts.

Other acts that are important, besides the laws that ratifies the international convention of the sector, are: Law no. 168 date 30.10.2013 "On security in ships

4 P.J. Slot, *Sectorial policies (Transport)* in *The law of the European Union and the European Communities*, (eds.) A. McDonnell, P.J.G. Kapteyn, K. Mortelmans, C.W.A. Timmermans, Kluwer Law International, IV ed., 2008, p. 1172. The Author emphasizes the nature of transport as an international sector.

5 A. Xerri, *Il principio di sussidiarietà nel diritto dei trasporti* in *Trasporti: Diritto, Economia, Politica*, n. 109, 2009, p. 43-44. *Amplius* on the subsidiariety principle regarding infrastructures see S.M. Carbone, F. Munari, *Principio di sussidiarietà e disciplina comunitaria di porti, aeroporti ed infrastrutture del trasporto* in *Diritto dell'Unione Europea*, n. 3, 2002, p. 431 e ss.

6 Law no. 9251 date 08.07.2004 "Maritime Code of the Republic of Albania", amended.

and ports", law no. 10109 date 02.04.2009, "On Maritime Administration of the Republic of Albania", law no. 9130 date 08.09.2003 "On Port Authority". The latest represents the most important innovation in the whole maritime sector.

The Law no. 9130 of 2003 disposes on Port Authorities and regulates their functioning. Approved one year before the entry into force of the Maritime Code we must assume that it was totally in line with the new coming code. The scope of this law is to implement a strategy for developing infrastructure, superstructure, finance and human resources of Albanian ports. Furthermore, it has the scope to foster competition, economic development through direct private investments in order to reduce public investments. In order to reach this scope the main objective was shifting ports from service ports in landlord ports[7] and this law determine the form of organization, rules for functioning and for administering the assets, relation with operators, State organs and port authority representative.

Thus, regarding maritime transport the set of legislation is up to date despite many ports are not yet functioning as landlord ports but as state owned companies. Regarding special legislation there are several other pieces of special legislation that shall be harmonized with EU acquis as in example the competition issues or state aid legislation. Still the Maritime Code represents a comprehensive piece of legislation that regulates maritime affair in their totality.

2.2. *The process of codification regarding rail transport*

In the rail sector the process of codification had a different path due to the fact that the rail transport in Albania was underestimated and, after communism, was degraded into a residual way of transport. In the first era of codification, which corresponds with years 2002-2005 the Albanian legislator adopted a Code of Rail transport which repeal the old Law no. 7224 of 1988 "Rail transport code of the Socialist Republic of Albania"[8]. The Code of 2004 aims to set an up to date piece of legislation in order to renew the interest of investors within the railway sector and to revitalize the transport by rail[9] through the adoption of a first market opening and introduction of the notion of unbundling between infrastructure management and rail transport operators. Yet, the rail sector remained underestimated and railways were managed directly through state companies.

7 It is frequent in the legislative text the reference to this main objective of this law. In example, article 18, rubricated "Responsibility of the members of Managing Council and employees", remarks that: "any member of the MC and employee of the PA, during the exercise of its power and tasks, should: … c) pursue the objective of the shift of the port into a landlord port"

8 Law no. 9317 date 18.11.2004 "Rail transport Code of the Republic of Albania"

9 The scope of application set in article 1 provides that "The Railway Code of the Republic of Albania has as its object the determination and establishment of general rules and principles in the field of rail transport and of activities related to it"

In 2016, due to the aforementioned obligations within the process of integration in the EU and the will to enhance and improve railway sector in Albania, the legislator adopted a new Code of Rail Transport that repeals the Code of 2004.

The new Railway Code aims to partially harmonize the Albanian legislation to the EU acquis and in particular with Directive 2012/34/EU "On the creation of a singular railway European zone", Directive 2016/798 "On railway safety", Directive 2016/797/EU "On interoperability of the railway system within European Union", Directive 2007/59/EC, Regulation 2016/976/EU, Regulation 1370/2007/EU, Regulation 1371/2007/EU. Furthermore, in its aims fixed in article 2 the Code foresee to "a) establishment of a favorable and sustainable legal framework for the promotion and development of modern rail transport in the territory of the Republic of Albania; b) the development of efficient and competitive rail transport with other modes of transport, thereby creating the conditions for railway undertakings to have the status of independent operators and to adapt to market needs in accordance with good commercial practices; (c) the organization and functioning of the railway sector on the basis of the principles of separation of management and accounting separation between railway infrastructure and railway transport activities; ç) development and improvement of railway safety and market access for railway transport services through: i) the establishment of a Railway Regulatory Authority, a Railway Safety Authority, a Railway Licensing Authority and a National Rail Accident and Incident Investigation Authority, clearly defining the way in which they interact; (ii) developing and implementing common security objectives and common security methods, with a view to harmonizing national rules". At the same time, this article fixes the principle that drive the EU rail sector as interoperability, unbundling or safety operations and aim to be a programmatic rule for the development of the rail sector in Albania when aims to "establish a favorable and sustainable legal framework for the promotion and development of modern rail transport" in the Albanian territory (art. 2 lett.a).

In article 4 the legislator clearly states its aim to harmonize Albanian legislation to the EU acquis when provides that "1. Rail transport in the Republic of Albania shall be regulated by the provisions of this Code and the laws and regulations adopted pursuant thereto, in accordance with European Union and international law in this field. 2. The norms and regulations of this Code shall be governed by the principle of railway safety in motion, the freedom to provide railway services, the interoperability of movement on the railway, by the principle of open and competitive, transparent and non-discriminatory market". In the second term of 2019 the Government has launched for public consultation different legal drafts regarding the creation of the Authority of Regulation of Railways, for the creation

of the Authority of Railway Security, etc. Thus, in 2021, which was deemed as "the railroad year" were adopted the laws that actualizes the Code. In the same day, 1 July 2021, there were adopted Law no. 88/2021 "On constitution of Railroad Security Authority", Law no. 89/2021 "On constitution of the Railroad Regulatory Authority", Law no. 90/2021 "On unbundling of HSH (Albanian Railroad)", Law no. 91/2021 "On constitution of the National Authority of Railroad and Maritime Accident and Incident Investigation".

2.3. *Regulation of the air transport sector*

The air sector in Albania was governed by the Air Code of the Republic of Albania, adopted with Law no. 10040 date 22.12.2008. This Air Code, differently than Maritime Code or the first Rail Code of 2004, was adopted after the signature of the Stabilisation and Association Agreement. Thus, this piece of legislation offers a better harmonization with the EU legislation of the sector and, indeed, can be considered one of the best codes within Albanian legal system.

The Government proposed a draft of a new Air Code that brings few substantive changes in regulating air transport sector according to the EU acquis. Thus, according to the Government in the relation that follows the proposed draft this new Code has adopted the mandatory regulation of Reg. 2018/1139 of the EU Parliament and Council and is in line with the acquis. Furthermore, the new Code has made progress in adopting the acts that are needed under the ECAA agreement[10]. The latest is a multilateral agreement adopted in order to include Albania and the Western Balkans as a whole in a Single European Space there was initiated a project of a multilateral agreement between EU and border States, mostly Western Balkans States[11]. The new Air Code was adopted with the Law no. 96/2020 "Air Code of the Republic of Albania", repealing the Code of 2010, bringing further alignment with EU relevant acquis.

10 As in the regard to the ECAA agreement the comprehensive assessment of the EU Commission in the 2012 Communication is the sequent: "Neighbouring countries have done a great deal to align their regulatory framework with EU legislation in key areas such as aviation safety, security, air traffic management, environment, passenger rights, economic regulation and social aspects. This is in the interest of the consumers and aviation industry both of the EU and the neighbouring countries. The EU gives significant assistance to neighbouring countries in supporting them to align their legislation with EU rules. Both sides have agreed to grant additional traffic rights to apply once the process of regulatory harmonisation has been completed. In the case of the Western Balkans, the early implementation of EU aviation rules under the ECAA Agreement will also contribute to their efforts in the context of the EU accession process" COM(2012) 556 final, p. 17

11 See on the topic A. Gjeta, *EU external aviation policy and the Western Balkans: what a future for the European Common Aviation Area?* in *Proceedings of Conference in Durres*, 2014.

Furthermore, it was instituted the Civil Aviation Authority[12], the National Agency for Accident Investigation[13] and the reform of the National Agency of Air Navigation Traffic as a public company.

2.4. *Road transport*

Law 8308 dated 18.3.1998 "On Road Transport", as amended, regulates the activity of road transport in the Republic of Albania. This law has been amended several times shifting competencies between local and national governmet bodies, especially in the area of licensing for public transport[14]. Thus, the road transportation is regulated by state law and several times amended and there is not foreseen the adoption of a Code in this sector. The reasons are to be searched in the passivity of the legislator and its will to regulate the sector despite it was several times risen in doctrine the need for a new piece of legislation that had to consolidate the legislation of rod transport in Albania[15].

Finally, especially for public transport, Law 10/2016 has introduced substantial changes. The accompanying reports in parliament state that the aim is to "improve the activity of inland passenger transport, align legislation with EU legislation and update legislation with new acts that have entered into force.

The main objective of the additions and changes proposed in Law No. 8308, dated 18.3.1998 "On Road Transport", as amended, is the reorganization of the market for the carriage of passengers by bus on regular routes within the country, as well as the approximation of the legislation of the country with that of the EU" [16]. The Government also states that it seeks to cope with the needs brought by law 115/2014 "On the administrative-territorial division of local government units in the Republic of Albania".

3. The process of codification in the transport sector

The process of codification always involves difficulties starting from the assumption that it must culminate with an organic, complete and, in principle, tendentially

12 L. n. 10233/2010

13 Decision of Council of Ministers n. 686/2010

14 Amendments were made through Law no. 8908 of 2002; Law no. 9096 of 2003; Law no. 9373 of 2005; Law no. 9760 of 2007; Law no. 10137 of 2009; Law no. 10302 of 2010; Law no. 21 of 2013; Law no. 37 of 2014; Law no. 118 of 2012 and lately Law no. 10 of 2016, related the latest to the public transport and its licencing.

15 A. Gjeta, *Transporti publik urban në Shqipëri: rruga drejt një rregullimi ligjor përfundimtar?* in Proceedings of Conference Elbasan, 2017

16 Relation *on* Draft-Proposal "PËR DISA NDRYSHIME DHE SHTESA NË LIGJIN NR.8308, DATË 18.3.1998, "PËR TRANSPORTET RRUGORE", TË NDRYSHUAR". Last seen in www.parliament.al (last access on 15/11/2019). *Raporti i Komisionit të veprimtarive prodhuese. Raporti i Komisionit për Integrimin Europian*

autonomous corpus within the legal system[17]. Usually Codes are complete and exhaustively regulates a certain area of law.

Transport law, due to its nature as a legislative corpus destined to regulate a predominantly international economic activity such as navigation and transport, for the most part is regulated by legislation drawn up, precisely, at international level[18]. Albanian legislative acts are tendentially autonomous and special making the process of interpretation very fragmented and missing the opportunity to a find a common lecture to the notion of transport.

Singular is the example of Italian Navigation Code that includes both parties, maritime and air navigation, under the same piece of legislation[19]. In the specific Italian case, the codification carried out in the past weighs heavily and decodification constantly was auspicated for a long time by navigation law scholars[20], who have always hoped for a process of profound and organic reform[21]. Unlike other countries with a unitary codified system in this area, Albania has opted for a complete division of the discipline of navigation, keeping distinct air and maritime legislation[22], as in

17 The autonomy enjoyed by the Italian navigation code in respect to the common law is well known. P. P. C. Haanappel, *The law and policy of air space and outer space: A comparative approach*, The Hague, 2003, XIII

18 It must be emphasized that the "international" nature of transport is a necessary condition for the uniform law conventions to be applied. In this regard, a division must be made between international instruments that only govern cases that have the character of "internationality" and the other instruments that also apply to situations that are internal to a given national order. See on the case of conventions as sources of law S. Zunarelli, M.M. Comenale Pinto, *Manuale di diritto della navigazione e dei trasporti*, I, Padova, 2009, 50 ff.

19 In this regard, reference is made to the provisions of the Italian navigation code, the result of the work of the Neapolitan School and its founder, Antonio Scialoja, who advocated autonomy, specialty and the unity of navigation, maritime and air law. The latter was in truth an elite transport and accessory to maritime navigation, and for this reason there was only a single code. For a reconstruction of the doctrinal debate, in Italy and abroad, see: S. Zunarelli, M.M. Comenale Pinto, *Manuale di diritto della navigazione e dei trasporti*, vol. I, Cedam, Padova, 2009, pp. 28-30; M. Casanova, M. Brignardello, *Diritto dei trasporti, Infrastrutture e accesso al mercato,* Vol. I, Giuffrè, Milano, 2011, pp. 5-12.

20 M. Grigoli, *Il diritto della navigazione fra codificazione e decodificazione*, tomo I, ESI, Napoli, 1993, p. 6-7.

21 M. Grigoli, *Il diritto della navigazione fra codificazione e decodificazione,* Tomo II, ESI, Napoli, 1994, pp. 405-413. The author emphasis the "macroscopic delays and striking inadequacies in the structure of matter" and that only in recent times "has been made a conspicuous, but inorganic, emanation of legislative and regulatory provisions, in the laborious, and often clumsy, attempt to recover the many lost opportunities in starting an incisive reforming work of the by now anachronistic regulatory framework, crystallized in the ancient codified regime". The Author criticizes the position taken by Italy in the renewal process to which the uniform and supranational legislation has been subjected and puts the emphasis on the limits of the internal legislation to regulate the nautical phenomenon.

22 The Albanian maritime navigation code precedes the aerial one by 5 years (Law no. 9251/2004) It should be noted that even in that case the legislative technique was similar, trying to introduce international legislation within the maritime navigation code and, at the same time, expressly stating (Article 5) the supremacy of the transposed international law.

many other legal systems, especially European Member states.

Lastly, it can be argued that legislative developments, both in aeronautical and maritime law, lead to the embrace of setting up a transport law that includes all forms of the implementation of the transport phenomenon, departing from the mere phenomenon of the nautical operations as a characterizing element of the discipline.

4. Conclusions

Normally the codification process culminates in a unitary system of rules that claim to be autonomous. Yet, as far as we saw in Albanian legal system we are still in an ongoing process in order to fully implement Codes regarding transport and adopting secondary legislation.

We opted in the field of transport for the creation of separate codes that have the character of a specialty rather than an autonomy. The legislation cannot be reduced to uniform principles and concepts, albeit many principles, especially regarding navigation notion, are similar.

The choice of Albanian legislator to adopt codes in the sector of transport mainly responds to the requests of the EU authorities in order to have a certainty in legislation, being needed a majority of 3/5 in Parliament in order to change a Code. Furthermore, it will be likeable to adopt a new Law regarding Road transport due to the changes that were lately made to the sector and because substantial changes are made from its original provisions.

We can find a reason for codification in transport sector in the commitments taken from Albanian in the process of Stabilisation and Association in the EU, where the transport sector, due to its nature of internationality, has a significant relevance of being harmonised with priority, differently like other pieces of national legislation. The adoption of a Code offers more legal certainty and better regulation bringing out the regulation of the sector of transport out of the normal political debate and programs of various majorities within the Parliament.

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ECONOMIC AND SOCIAL AFFAIRS PLATFORM IN THE WESTERN BALKANS

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ABSTRACT

The resurgence of armed conflicts in neighbouring countries has prompted the European Union to reshape the concept of "super-enlargement", a project previously on hold since Croatia's accession in 2013. Since its origin in 1957 with six founding members, the EU has undergone transformational waves of enlargement, reshaping its cognitive and political landscape. In this paper we will discuss the various measures that affect not only the EU, but also third countries that wish to join the Union. The uncertainty foreseen in the labour market and the decrease it generates in the national economy, the various states that make up the Western Balkans have decided to implement various initiatives to promote European values, as set out in the Treaties of the European Union. Given the importance of the labour market in society, I will discuss one of the initiatives achieved and developed during the years 2016 to 2022. Economic and Social Affairs Platform Project in Western Balkans (ESAP), which emerged between the European institutions and the geopolitical enlargement initiatives of the European institutions, whose main objective is to implement a sustainable and effective labour market and social policy reforms.

Key words: *Superenlargement, ESAP, Western Balkans, Effective labour market, Social Policy Reforms.*

1. INTRODUCTION

The rise of armed conflicts in neighbouring countries has awakened in the Union the need to revive a project that, after Croatia's accession in 2013, seemed frozen. The "super-enlargement".

Since its origins in 1957 of the six founding members, the Union has undergone successive waves of enlargement, transforming not only the cognitive and political

map, but the way it functions and its identity.

Following the Informal European Council Summit in Granada on 6 October 2023, a new wave of enlargement in the "super-enlargement" process has taken place, in which a consensus has been expressed on the will to undertake a major enlargement to the East and Western Balkans.

The geopolitical urgency created in Europe as a result of the Russian invasion and the war in

Ukraine has placed the project of a "super-enlargement" to the Western Balkans (Albania, Bosnia-Herzegovina, Kosovo, North Macedonia, Montenegro, and Serbia) at the center of the European political agenda. This new enlargement could transform the EU in a fundamental way.

"If the history of enlargements has always been dictated by geopolitical imperatives, it has also been the fulcrum of a logic of fiscal and social dumping which continues to undermine the prospect of a democratic and social Europe. The last super-enlargement was thus concomitant with a desire to accelerate the neoliberal shift" (Paudal, European Union is a political challenge)

As we know, despite the "urgency" that revives the Union with its neighbouring countries, any State that decides to join the Union must show its clear adoption of European values as set out in Art. 2 TEU. *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail".* As well as show its initiative to European reforms. State's accession to the European Union is of great importance, which is why every State interested in joining the Union must show that it conforms to the values and adheres to them in its legislation. "*Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union" (Art.49 TEU).*

However, what kind of uncertainties are the Western Balkans facing? Are they potential candidates to accede to the European Union?

2. WESTERN BALKANS´S UNCERTAINTIES

As mentioned above, the accession process is a rigorous process which requires

a visible and positive approximation of fundamental European values in the legislature of the candidate countries. This rigorousness is merely the object of protecting the values that created the Union. Therefore its comprehensive protection, the Enlargement Policy has been considered the most successful tool of European foreign policy insofar as it promotes an ambitious transformation in those countries that aspire to join this unique project.

The main standards that are to guide the normative transformation of the participating states in the framework of enlargement are defined in the so-called Copenhagen criteria. These were agreed by the European Council in 1993 and reinforced in 1995 in order to support the future accession of Eastern European countries, which were finally incorporated in 2004 and 2007. The Copenhagen criteria are of great relevance as they are the roadmap defining the steps on the path of reforms towards future membership.

In 2022, the six countries of the Western Balkans—Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia— saw the resilience of their economies tested by multiple shocks. To promote more inclusive, resilient, and sustainable growth in this time of elevated uncertainty, the region will need to rebuild fiscal buffers and undertake reforms. Despite employment growth, job creation also lost strength across all Western Balkan countries in the second half of 2022. Youth unemployment rate fell to 27% in 2022, but the labor market remains characterized by high inactivity, persistent high levels of unemployment, a high share of informality, significant skills mismatches, and continued emigration. Inflation also surged to a two-decade high in 2022. While central banks in Albania, North Macedonia, and Serbia have taken steps to tighten their monetary policy stance, conditions remain nevertheless accommodative, and real policy rates negative due to rising inflation and price expectations.

In addition, one of the biggest uncertainties facing the Balkans is the corruption rate, which is getting further and further away from achieving a democratic state based on the rule of law. Waves of informal, non-direct corruption such as the privileging of contracts, monopolies and low-skilled contracted public services undo the progress of creating a democratic and developed region.

3. THE BEGINNING OF ESAP

In the times where the geopolitical and economic uncertainty, states must build resilience regions, flexible in adapting to change, For this reason, along with the goal of the region's accession to the European Union, the Western Balkans is obliged to strengthen its social and economic policies in order to make possible the economic growth expected in the coming years.

In the light of recent reforms carried out by third states, we highlight one of the possible implicit measures. Economic and Social Affairs Platform Project in Western Balkans (ESAP), a recent initiative launched in 2016 that aimed to implement an effective labor market and social policy reforms. Moreover, we could say that ESAP emerged between the European institutions and the geopolitical enlargement initiatives of the European institutions, in which the institutions decide to address regional initiatives with the purpose of fostering horizontal links, as well as implementing the values agreed in Article 2 TEU for their future EU membership proposal.

This project aims to bring European values closer to a social and working environment, in which the uncertainty of an uncertain future of work and opportunity can be diminished. Achieve effective Development of databases on labor market policies and market reforms in the Western Balkans and harmonization with EU databases, promote mutual learning on priority employment policies, including vulnerable groups and facilitate Western Balkans´ alignment with the EU acquis are few examples of objectives.

- Rethinking social assistance design, designing effective policies to protect the most vulnerable households and avoid further erosion of social assistance programs.
- protecting human capital, needs to be a focus on addressing youth unemployment to prevent outmigration, as well as employability and activation of social assistance beneficiaries to protect them from long-term unemployment and skills erosion
- transitioning to greener energy sources, accelerate the move toward carbon pricing and to increase the use of environmental fiscal measures that incentivize households and firms to shift toward lower carbon intensity with respect to economic activity.
- Boosting productivity, accelerating regional integration, increasing level of market competition, and addressing barriers that limit labor force participation, especially for women, will also help boost productivity.

Given the progress made in implementing the programme, ESAP 2, a three-year regional project (2019-2002), also funded by the EU and jointly implemented by the RCC and the ILO, aims to build on its achievements. Therefore, ESAP 2 will support the national roadmaps for the formalization of undeclared work; continue to support social dialogue in the region; promote collective bargaining and strengthen

networking, and focus on the implementation of the reinforced social agenda. *" A credible enlargement perspective for and enhanced EU engagement with the Western Balkans" (European Commission Communication).*

4. HINDERED FUTURE

Despite the achievements that have been made, the percentages to be reached by the West Balkans are still far from the target. The difference between being a potential candidate and a potential candidate about to join the Union is marked by the difference in the quantitative and qualitative scope of the values of the democratic state and the rule of law.

The percentages collected by Freedom House show that despite incorporating European values into their legislation, the opposite is observed in practice. The reforms established have not been effective and therefore the percentages are not achieved.

Today, the youngest Balkan society is faced with a weaker state, unable to meet the demands of society, and therefore many of them turn to migration in order to find better opportunities.

One of the clear demonstrations related to equity in the world of work, between men and women, is the observation that there is still a gender gap of at least 14%, taking into consideration that the desired EU member states is 10.6%.

An uncertain future lies ahead for the Balkan population, but even if the transition is slower, the signs indicate a desire for change.

5. "NUDGE" TO CHANGE

The evidence that a large part of the active population in developing countries does so outside the frameworks established by labor standards, has placed the informal economy at the center of economic and labor policy. In the context of the International Labour Organization, whose mission is to improve the situation of human beings in the world of work, the treatment of informality is done with the aim of promoting decent work opportunities for all. "*Everyone who works has rights at work and that the ILO was interested in all workers, including those who work outside the formal labor market*" (*The Director-General of the ILO, in ILC, 1999*).

In the Director-General's Report to the 1991 Conference, it was stressed that "the ILO cannot help to 'promote' or 'develop' the informal sector in this or that country as a convenient and inexpensive means of creating jobs if the parties concerned are not, at the same time, determined to gradually eradicate the worst forms of exploitation and subhuman labor found in that sector".

"attacking the roots of the evil and not just the symptoms" through "a comprehensive and diversified strategy".

In the conference discussion it was emphasized that to solve the dilemma it was necessary to find the root of the problem in order to deal with the consequent symptoms. Therefore, if the labor economy is based on an informal, informal sector, it would not be possible to protect citizens and create a protective and egalitarian system for all citizens.

Focusing on one of the relevant aspects of change: the gender gap, we propose that, despite having legislation that directly protects everyone, we develop an effective separation of powers, in which the body created for the protection of the most vulnerable is given sufficient power in decision-making. Giving the Gender Committee autonomous power will create uniformity in legislation. A committee that is rigid with democratic and updated value will provide confidence in citizens, accepting only those proposed laws in which citizen equity is favored, instead of an informal and non-egalitarian separation.

6. CONCLUSION

The population currently suffers from uncertainty about the possibilities and uncertain future.

The given reforms have not been effective and for this reason, a super-expansion is carried out in which the context of each region will be taken into account in order to update and adapt the new reforms to the geopolitical, economic and cultural environment, given that these aspects emphasize the final resolution.

As Freedom House's annual report rightly stated, the adaptation of the rule of law not only benefits politically, but also the growth of the national economy, positioning it as a potential candidate for EU membership, as well as potential partners for new projects.

The uncertainty of the future lies in the effective use of resources and the promotion of a more democratic state, in which the main values of a democratic state are covered. Separation of powers, Transparent and democratic legislative procedures, effective judicial review, legal certainty, independent and impartial courts and equality before the law.

We therefore conclude that it is necessary not only to prevent the general features of informality, but also to focus on investigating the reasons for the demotivation of citizens and to actively listen to them in order to create an egalitarian state before the law, and to position ourselves as a developed country in future EU accessions, if this is our main objective.

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THE PRINCIPLE OF SUPREMACY OF THE EU LAW

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ABSTRACT

Analyzing the "European Union" means studying a Community made up of States with special characteristics, but when they come together, they are required to be unified into a single one. "Unification in one" is not only a necessary element, but a necessary process, an obligation for the Member States, which, it seems, has not been very simple and has sometimes required the intervention of one of the instruments the most important of the European Union. The exclusive jurisdiction of the ECJ, over the scope of EU law, is necessary to ensure the unity of EU law and enable the ECJ to remain the final arbiter" (Cuyvers, 2017:162). Although it seems like an easy principle to perceive, this principle constitutes one of the biggest challenges for states today and is also the basis of legal harmonization and approximation. As long as this principle is not achieved, it is difficult to perceive the idea of a union, as the European union itself envisages.

Introduction.

From the moment of joining the EU and ratifying the special treaties, the member states express their agreement on respecting the principles and provisions derived from them. member states, as they have to give up their national powers to delegate them to the Community (Article 1/1 TBE). Relinquishing some important powers such as: foreign policy or the security system, is considered a violation of sovereignty, for some states, being justified by internal law (Germany, Italy, for example). It is widely accepted that the Constitution it is the fundamental law of a state, so many philosophers have considered it as the basic norm of a state (Maher, 1981).

The influence of the "European Court of Justice", in strengthening the principle of supremacy of the EU.

Germany has always been one of the countries with the strongest constitution and the biggest disputes.. A special moment is the overthrow of the law in the Bundestag

of Germany, which violated gender equality (Limbach, 2001). In 1957, in the Bundestag, in fact, a law was passed on the basis of which the guardianship institute was regulated. . The problem lies in the way the law decided the solution in cases where the spouses did not agree to finally decide who would have custody. In this case, according to the law, the father would have the last word. His continuity lasted until the moment when four women brought the case to the Constitutional Court, as the law clearly contradicted Article 3 of the Constitution at the time, which stated: "Men and women are equal". The Constitutional Court, assessing the incompatibility of norms, decided the supremacy of the constitution. However, in international law, Germany is obliged to refer to the European court, and no longer to the domestic one, for incompatibility of norms with those of the EU.

What the EU actually requires is not the weakening of the value of the Constitution of the member state, but the alignment of national legislations with those of the Community. The Constitution is considered as a storehouse of society's values, as a storehouse of specific values that distinguish electoral supermajorities. (Schapiro ,1998). delegated through the ratification of treaties.

The European Court of Justice, in its basic duty on the interpretation and implementation of European law, exercises its functions only for matters under its competence. We are talking here about the cases when: the law in question is the object of an EU directive, and on the other hand when states avoid any rule of the Union (Cuyvers, 2017). The first moment can it is conceived in cases, for example, when an individual enjoys a right or performs an action which is foreseen by the EU law, therefore, the support of the individual to the EU law is also guaranteed. The second moment where I would like to stop, is precisely one of the most important moments, where the states avoid the rules of the Union. Article 4/3 of the "Treaty of the European Union" provides that in the framework of sincere cooperation, states must ensure the fulfillment of the obligations arising from the treaties they have signed, as well as guarantee the achievement of common objectives. The fundamental rights of the Community, the legal order of the unit are also mandatory for the member states when they apply the community rules. (Rostas, 2007:1042). Therefore, the states cannot avoid the obligations arising from any type of union rule, whether it is part of any treaty. , convention, pact or agreement. A party state cannot evade its obligations arising from the convention, citing its domestic law as an argument". (Puto, 2010).

When a case is presented to the ECJ, as a result of clashes between this report, member state-community, the court, in evaluating the facts, must determine in a fair way whether the European law has been violated or not. But how would it act at the moment of ascertaining the problem by the member state.? In this case, article

260 of the TFBE (former article 228 of the TKE) provides that the Court takes the appropriate measures by issuing a decision, to which the states must "reflect", let's say, because if the member state does not do this it can also be sanctioned with a monetary fine.. It is interesting that in the event of finding an act by the member state that contradicts EU law, the court cannot declare it invalid, but orders the member state to change the law (Wagner, 1996). The principle of the supremacy of European law does not seek to violate the rights of member states, on the contrary, it respects their integrity and interests, as long as this does not conflict with EU law.

European law definitely has a direct effect on the law of member states. This is clearly defined by article 288 of the TFBE, which defines the binding power of the court. To make this concrete, I would definitely turn my attention to one of the most important decisions of the ECJ, named "Van Gend enn Loss "(Sousa, 2016).

"Van Gend enn Loss" was actually the name of a company that aimed to import a chemical substance to the state of the Netherlands, from Germany, but the Netherlands had imposed an import tax of 8%, which exceeded the amount determined by the EU. The company submitted before the court that this violation contradicted Article 12 of the EC Treaty (presented today with Article 30 of the TFEU), in which it was determined that the states would adhere to the customs obligations established by the treaty. The Court finds that individuals are provided with rights by community law, which are directly guaranteed to them. Also, at the moment of membership in the European Union, national judges receive the status of a European judge (Bushati & Lazowski, 2014). Bushati and Lazowski add that judges have the obligation to offer the same protection as in domestic law, for lawsuits that are established on the basis of European legislation.

One of the most famous decisions that have been taken within the framework of the principle of supremacy in the European Union, is "Simmenthal". Based on this decision, it is foreseen that in the framework of the competence he enjoys, the national judge has the obligation to fully guarantee the effect of the EU law (Jacqué, 2010). The task of the national judge, in this case Italian, but not only, is precisely the direct non-application of the national norm when it conflicts with EU law. The peculiarity of this case is based on the fact that the Italian judge thought that the non-application of the domestic law could not be done without the approval and review by the Constitutional Court to request a declaration of independence. Undoubtedly, for national judges this is something that requires responsibility as on the one hand they are obliged to respect the Constitution and their internal law, while on the other hand they must obey the implementation of EU law.

Despite the fact that the Court, with the "Simmenthal" decision, requires the direct application of EU law, the states present reservations, since they do not allow that as

long as their Constitution is in force, European law is directly based, and such a case today is Poland. The integration of Poland into the EU has significantly served in the transition from a nation with communist principles to an EU member state with democratic principles (Brown, 2016). Despite the positive impact of EU Integration, national judges have decided to maintain the primacy of the constitution, based on their claim that the principle of integrity provides them with the right to maintain national sovereignty, considering the efforts of the ECJ as a violation of their domestic law. The clashes have gone so far that the Polish state is divided into "fronts", where one part wants to leave the European Union, while the other part wants to stay.

Undoubtedly, the departure from the EU is in the interest of the people, the moment they gain the opportunity to claim their rights in those institutions, which they could not have available without their country being a member of them. a Community, right? Some objectives, to be placed in joint institutions, to establish these institutions in the framework of action, consultation of joint action, states have entered into the multilateral treaty (Stein, 1965). Regardless of the positive elements of joining the EU, there were still opinions against it. The ECJ has faced many cases, where there is a solution where to base, at the moment the law is of their country, falls into a solution with that of the EU. One of the most important cases is the recent one, well known as Costa v. Enel (ibid., page 492). Flaminio Costa, an Italian lawyegovernment which, on the basis of the nationalization law of 1962, took over the electricity system of Milan. What is of interest is the fact that Costa claims that the international law of the Community has been violated, by raising the fact that Italy has agreed to limit its sovereignty and has delegated it to international bodies, such as the Community in this case. The Italian Court has referred this case to the ECJ, which emphasizes once again that as long as the law does not comply with the legislation defined by the reasons or objectives of the request for interpretation (International Legal Materials, 1964), refused to pay the electric success bill ($3.08), for E.N.E.L., which was an organ government which, on the basis of the nationalization law of 1962, took over the electricity system of Milan. What is of interest is the fact that Costa claims that the international law of the Community has been violated, by raising the fact that Italy has agreed to limit its sovereignty and has delegated it to international bodies, such as the Community in this case. The Italian Court has referred this case to the ECJ, which emphasizes once again that as long as the law does not comply with the legislation defined by the reasons or objectives of the request for interpretation (International Legal Materials, 1964).

The creation of such precedents is important, as it does not serve as a model of

behavior only for member states, but is built as a reference for other states as well. So, in itself, the resolution of this disagreement does not refer only to the relevant state that raises the issue, but also to any other state, to have it before it. Regardless of the above-mentioned elements, there are authors who doubt the superiority of European law over that of the member states. The counter-argument claims the idea that the principles of the EU, defined in Article 6 of the treaty, are not properly defined, so this has led to the incompatibility of the orders between each other (Williams, 2009). This is not true because there are articles clear that foresee the direct effect of the EU on the states (Article 288 of the TFEU), and also the precedents are a good basis to base national practices.

Despite the legal conflicts, at the time of its establishment in 1952, in its initial form, named as "European Coal and Steel Community", and followed by the European Union, have served as a model for other regional organizations. (Lenz, 2018). The organization of states in one, to achieve common objectives and to be properly represented in one of the most popular international organizations, such as the EU itself, is truly a democratic ideal.

A democratic state is always that state which knows how to balance and favor the interests of its citizens, as Aristotle said. Therefore, the states today, within the framework of progressivity, are placing international law, with their own consent, in the center of attention. However, this attention must necessarily be translated into compliance with Union law

European.. But this part needs to be clarified. When we talk about compliance with Union law, do we only refer to Treaties approved by member states? Are they the only form of representation of an EU law? Definitely not! And because the EU does not enjoy a main law-making body, or a Constitution, the EU recognizes two types of sources of law-making: law produced by the consent and ratification of treaties by the parties, and law constituted by legislative acts. and executive bodies such as the European Parliament, the Council of Ministers and the European Commission (Luitwieler, 2015). This means that the member states are not only obliged to respect the treaties, but also other acts issued by the bodies of the Union. Violating these norms would be like a local citizen violating the legal system of his country, a norm issued by a legislative body or an executive body. Certainly, someone would argue that in domestic law, individuals have legitimized the coercive force of their state, and as it is not difficult to understand, this is exactly how it works with the European Union.

"Community" does not mean a single people, but a community of peoples (ibid., page 130,... which must definitely find the common language, the progressive European language. I believe that a state "begins to learn the European language",

from the genesis of its membership, right before the moment of membership. From this moment on, the country pretending to be a member is familiar with the Union's policies, aspirations, development, the relationship with the legal systems of the member states. (De Burca, 2018) . The state begins to improve its problems, curing them based on the framework required by the EU (it is enough to mention the Stabilization and Association Agreement here). Such an agreement requires that the member states be economically and politically empowered, following policies or reforms, which improve state structures and the relationship between individuals and states.This is where the state has accepted the supremacy of the European Union, and why it is not preferred to talk about this superiority.

Conclusions and recommendations

Membership in the European Union is also in the interest of our country, which, like any other country that has met the criteria that the EU has set for membership, at the moment it will conclude agreements and ratify EU treaties, as any other state would face the principle of the supremacy of European law. The supremacy of the European Union is inevitable at the moment we want to build a healthy and beneficial legal system for the states. Seen from this point of view, the superiority of the international norm should not be considered as a limitation for the member states, but as a pillar to build a more effective legislation, where the epicenter, the individual, can fully enjoy the "European legal shield" ", regardless of which country of the Community he comes from. For developing countries, membership in the European Union is a responsibility and a privilege at the same time, for the member states, they must respect this structure, not only in the first place, they themselves have expressed their consent to join, but above all for the aspirations that the Union, as one of the most well-built international structures, represents!

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