



**PILLAR IV
EUROPEAN UNION AND INTEGRATION**

*Albania’s Progress on Rule of Law, Democracy and Fundamental rights - A Comparison
Between the EU and Council of Europe’ Monitoring Instruments*

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I. ABSTRACT

This article will deal with the progress of Albania’s accession to the European Union. Secondly, the Copenhagen principles to be complied with by candidate countries will be addressed, as far as several requirements regarding the state of the rule of law, democracy and fundamental rights are demanded by the EU institutions in order to be accepted as a new member in the EU. The problems regarding the actual monitoring of these requirements and the control exercised by the EU will be put forward. Thirdly, it will be presented a summary of the last report elaborated by the European Commission, centered on the requirements that involve democracy, judiciary and fundamental rights protection in Albania. Fourthly, given that Albania is also part to the European Convention on Human Rights and as such it is subject to the external monitoring exercised by the Council of Europe, it will be presented the conclusions of the last report of the Council of Europe regarding the concrete issues of rule of law, democracy and protection of fundamental rights in Albania. Lastly, the differences between the standards and the elements used by both international organizations to assess the situation of rule of law, democracy and fundamental rights will be pointed out. Lastly conclusions and recommendations will be presented.

KEY WORDS: Albania-EU Enlargement Policy; Copenhagen Criteria; Council of Europe; Venice Commission.

ABBREVIATIONS

2016 Report

Commission Staff Working Document, Albania 2016
Reported Enlargement Policy

CoE Report

CoE monitoring report for Albania 2015-2017

CoE

Council of Europe

ECHR

European Convention on Human Rights

ECtHR

European Court of Human Rights

EU

European Union

GPO

General Prosecution Office

HJC

High Justice Council

HJI

High Justice Inspectorate

HPC

High Prosecutor Council

NCCC

National Council of Civil Society



PM
SAS
TEU

Parliament Member
Stabilisation and Association Agreement
Treaty on European Union

I. ALBANIA'S EU INTEGRATION PATH BETWEEN THE "COPENHAGEN CRITERIA" AND CoE

First of all it is necessary to shortly summarize Albania's path toward EU integration. It started since early 2003, when during the Thessaloniki European Council summit of June 2003 the country was identified as a potential candidate for EU membership. The formal application was submitted by Albania in 2009. The Commission's Opinion assessing Albania's application, issued in 2010, determined that "*negotiations for accession to the European Union should be opened with Albania once the country has achieved the necessary degree of compliance with the membership criteria and in particular the Copenhagen political criteria requiring the stability of institutions guaranteeing notably democracy and rule of law*"¹ and established 12 main priorities needed to be implemented by Albania. The Commission recommended that Albania be granted EU candidate status in October 2012 after the completion of key measures related to judicial reform, public administration reform and revision of parliamentary procedures. An finally in June 2014 Albania was awarded candidate status by the EU².

It is worth mentioning that the relations between the EU and Albania have witnessed, throughout the years, the following landmark moments:

- i. In 1992 Albania and the EU concluded a Trade and Cooperation Agreement;
- ii. In 1997 the EU Council of Ministers established political and economic conditionality for development of bilateral relations;
- iii. In 1999 the EU proposed to Albania and other four countries from South Eastern Europe a new Stabilization and Association Process;
- iv. In 2000 the Zagreb Summit launched the Stabilization and Association Process between the EU and Albania, as well as for other four countries from South Eastern Europe;
- v. In 2001 the Community Assistance for Reconstruction, Development and Stabilization program for the abovementioned countries started;
- vi. In 2003 during the Thessaloniki European Council, Albania was identified as a potential candidate for EU membership
- vii. In 2007 the Pre Accession Assistance starts, a Multiannual Indicative Planning Document is adopted and the visa facilitation agreement is signed;
- viii. In 2009 Albania submits its application for membership to the EU;
- ix. In 2011 an Action Plan to address the main 12 key issues with the Commission is adopted;
- x. In 2012 the European Commission issued a recommendation on Albania to be granted candidate status;

¹ European Commission, Commission Opinion on Albania's application for membership of the European Union, Brussels, 9.11. 2010, Pg.11.

<https://www.parlament.al/wp-content/uploads/2015/10/opinioni.pdf>

² http://ec.europa.eu/enlargement/countries/detailed-country-information/albania/index_en.htm

xi. In 2014, after a 22-years process, Albania is granted candidate status.

As it is the tradition for the Enlargement policy of the European Union, the EU and Albania concluded a Stabilisation and Association Agreement since April 2009. Afterwards, as mentioned above, the European Council granted Albania the status of “candidate for accession” in 2014. In addition, as part of the monitoring that the EU has been exercising on its Enlargement policy, it issues periodically reports on the state of compliance of the candidate countries’ obligations towards accession. Such reports have been issued for Albania as well since 2005, that is the first report on Albania³. As acknowledged in the report of the European Commission that will be further exposed, the SAS has implied a constant dialogue in different fields ranging from economic to political issues between the EU and Albania.

It is necessary to point out that a country intending to join the EU, as it is the case for Albania, should comply with a set of criteria. As determined in the Lisbon Treaty these criteria are the EU foundational values as enshrined in Article 2 of the Treaty on the European Union⁴ and referred to in Article 49 TEU⁵ where the procedure for accession is laid down. These criteria have been named the “*Copenhagen criteria*” given that they were established after the European Council meeting in Copenhagen in 1993. They are the principles that are taken into account by the Directorate General of Enlargement policy to carry out the assessments of the candidate countries and are the following⁶:

- i. Political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- ii. Economic criteria: a functioning market economy and the capacity to cope with competition and market forces;
- iii. Administrative and institutional capacity: to effectively implement the EU Acquis and ability to take on the obligations of membership.

³ https://ec.europa.eu/neighbourhood-enlargement/countries/package_en

⁴Article 2 TUE: 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.

⁵Article 49 TUE: 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 assent of the European Parliament, which shall act by an absolute majority of its component members. 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 conditions of eligibility agreed upon by the European Council shall be taken into account.

⁶European Commission website, Accession criteria: https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en



Different is the membership path to the Council of Europe followed by its member countries, Albania being one of them. The Council of Europe is an international mechanism of supervision of the protection of fundamental rights, established in 1949 after the horrors lived during the Second World War in Europe. 47 states are its members nowadays, including all the Member States of the European Union. The main text of reference and commitment between its high contracting parties is the European Convention on Human Rights of 1950 that enshrines the human rights that constitute the minimum level of protection in Europe.

Albania joined the Council of Europe much later after its creation, in the year 1995, as the report from the CoE⁷ recalls, thus becoming its 35th member. Becoming a member of the CoE brings about a series of obligations such as being subjected to the CoE' supervision mechanisms such as the Committee for the Prevention of Torture or the European Committee of Social Rights⁸. In addition to the supervision mechanisms, as a CoE member Albania is also subject to the jurisdiction of the European Court of Human Rights that ensures the effective exercise of the rights enshrined in the ECHR through its binding court decisions. Furthermore, there is an important institution inside the CoE framework, the Venice Commission⁹, which exercises the function of CoE's advisory body on constitutional matters¹⁰. It has an important role for CoE's members to whom it provides legal advice in bringing their legal framework and institutions in line with EU standards in the fields of democracy, human rights and rule of law¹¹. It makes suggestions and recommendations on all the issues involving the state of democracy, to CoE member states, and it is entrusted with the task of preserving the common European values. Nevertheless its recommendations and guidelines are to be considered as soft-law since they are not binding for CoE's member states. As a CoE member Albania has recently been very involved with the Venice Commission, requiring its opinion and receiving its guidance, as it will be explained below.

It can be concluded that in its quality of EU Candidate Country and CoE's full member, Albania is subject to different control and supervision mechanisms which are designed to provide common EU standards for the countries participating in these international organization. Consequently, the paragraphs below are dedicated to provide a full overview of Albania's assessment under both these international mechanisms and more specifically: the EU Commission Report on Albania and the Cooperation Document issued by the CoE on the Albanian situation.

⁷ <http://www.coe.int/en/web/portal/albania>.7 p.4.

⁸ Council of Europe's monitoring instruments: <http://www.coe.int/en/web/human-rights-rule-of-law/monitoring-mechanism>

⁹ The Commission is named: The European Commission for Democracy through Law. Venice Commission is the name which better identifies the Commission within COE's members and the international community.

¹⁰ http://www.venice.coe.int/WebForms/pages/?p=01_Presentation&lang=EN

¹¹ Ibid.

II. EU COMMISSION' 2016 PROGRESS REPORT ON FUNDAMENTAL RIGHTS, JUDICIARY AND DEMOCRACY

In November 2016 the Commission presented its Progress Report on Albania, the “2016 Progress Report¹²”. Due to the fact that the main focus of this article, is to assess the evaluation of the EU Commission on issues included in the first group of the Copenhagen criteria, the “political criteria”, and specifically democracy, rule of law and human rights, this section will exclusively deal with those issues, leaving aside other issues dealt with in the 2016 Progress Report pertaining to different areas of the Copenhagen Criteria.

The 2016 Progress Report is organized in four main sections and specifically: (i) the general assessment of each of the Copenhagen criteria; (ii) the analysis of the political criteria which includes democracy, judiciary and human rights as well as the administrative and institutional capacity; (iii) the analysis of the economic criteria; and (iv) the detailed analysis of the ability of Albania to assume EU membership under each specific integration chapter¹³. As mentioned above this article will discuss the findings of the 2016 Progress Report related to the political criteria and its focus will be on the (1) Assessment elements of the 2016 Progress Report; (2) Albania's degree of compliance pursuant to the 2016 Progress Report and (3) the report's recommendations and/or proposals.

1.1. Assessment elements of the political criteria

The 2016 Progress Report analysis Albania's progress on the political aspect of the Copenhagen criteria by referring to Democracy, Rule of Law, Human Rights also including administrative and institutional capacity under the political criteria. For each of the abovementioned areas of the political criteria the 2016 Progress Report identifies specific elements of assessment as shortly summarized below:

- i. **Assessment Elements of Democracy:** the state of the Albanian democracy is assessed by reviewing the election system; the functioning of the Parliament; the governance and the conditions of the civil society within the country.
- ii. **Assessment Elements of Rule of Law:** the state of the implementation of Rule of Law in Albania is assessed by reviewing the functioning of the judiciary; the fight against corruption; and the fight against organized crime and terrorism.
- iii. **Assessment Elements of Human Rights and protection of Minorities:** the state of implementation of this criteria is assessed by reviewing freedom of expression; freedom of media and competent institutions; discrimination; protection of minorities and rights of children.

In general the 2016 Progress Report indicated some progress the country made in relation to the political criteria such as the constitutional amendments carried out regarding the reform of the judicial system; the exclusion of criminal offenders from public administration; the creation of

¹² COMMISSION STAFF WORKING DOCUMENT Albania 2016 Report. {COM(2016) 715 final}, available [here](#).

¹³ COMMISSION STAFF WORKING DOCUMENT Albania 2016 Report. {COM(2016) 715 final}, p. 2.

the National Council of Civil Society etc. Especially regarding the constitutional amendments, the 2016 Progress Report mentions the importance of having reached the necessary parliamentary unanimity which is essential to secure the participation of all political parties in the process.

The below sections will provide a summarized overview of Albania's degree of compliance for each of the assessment elements of the political criteria, as indicated above, and the specific proposals and recommendations the EU Commission addresses to Albania through the 2016 Progress Report.

1.1.1 Democracy – Compliance, Proposals and Recommendations

As explained above, assessment of Albania's state of democracy includes the review of the electoral system, functioning of the Parliament, governance and civil society.

With regards to the electoral system, the 2016 Progress Report voices its satisfaction on the progress experienced as regards Albania's democracy due to *the establishment of the Ad Hoc Parliamentary Committee on Electoral reform*¹⁴. At the same time, it points out the shortcomings that remain in this area such as the lack of impartiality and politicization of the electoral administration, the lack of transparency of campaign finances and the need of an electoral system dispute resolution¹⁵. It stresses the importance of this Ad Hoc committee as far as it is composed by members of the ruling majority, of the main opposition party and members from all parliamentary groups. In addition, it reminds that it is assisted by party appointed experts that are tasked with drafting amendments to electoral code with an inclusive¹⁶ approach. The main recommendation of the 2016 Progress Report regarding this issue is that the Committee should start to involve other relevant institutions, extra-parliamentary parties and civil society¹⁷.

With regards to the state of affairs of the Albanian parliament, the 2016 Progress Report focuses on its functioning, on its political polarisation, the rules of procedure, the Parliament's capacity to monitor implementing and compliance with new legislation, the parliament inquiry committees and its transparency and inclusiveness. As pointed out in the report there has been some development in the functioning of the Albanian parliament given the vast parliamentary majority reached for the aforementioned constitutional amendments. Nevertheless, it is considered that political polarisation has remained high and that it has constituted a problem for the political dialogue and the technical processes. In addition, the report states that the parliamentary ethics are not in line neither with the regulatory provisions nor the expectations of the Albanian people. In this regard, it recalls that the Code of Ethics is yet to be approved, since 2015, and recalls the episodes occurred with some of the PMs involved in criminal cases. As far as the parliamentary rules of procedure are concerned, the 2016 Progress Report considers that

¹⁴ Ibid 12, p. 6

¹⁵ Ibid 12, p.6.

¹⁶ Ibid 12, p.6.

¹⁷ Ibid 12, p.6.

they remain still to reflect the role of the Albanian Parliament in the EU integration process and it recommends that the competences of the National Council for European integration's be boosted. Regarding the Parliament's capacity to monitor implementing and compliance of new legislation, it is considered that the compliance with the *EU Acquis* is still limited and that more coordination with the Government is needed. As regards the Parliament inquiry committees it points out that their performance remains problematic and that they did not achieve meaningful results. In addition, it suggests that the mechanisms' potential are not being used. Lastly, it is considered that transparency and inclusiveness, is positive as regards the parliamentary works but it recommends that the Parliament website must be improved to provide access to parliamentary documents and that transparency must increase at committee level. In addition, it considers that expert advice could be facilitated and that an increase in the budget for training is positive but will be ineffective if it does not foster research and analytical capacity.

Assessment of Governance was overall positive. The 2016 Progress Report indicated that the government continued its path on the reform agenda realizing the territorial reform on local government which has the capacity to bring about decentralization. Nevertheless it stressed out on this regard that “*substantial efforts are needed to increase the administrative capacity of local government units to carry out their expanded competencies and provide them with the necessary financial resources*”¹⁸. It also mentioned as a positive achievement the newly introduced one-stop shop electronic system under the territorial planning framework, which permits applying for building permits through a single e-portal expected to increase transparency on this area. Nevertheless it pointed out that the capacity of local government to prepare territorial development plans is still limited¹⁹.

With regards to the state of Civil Society the report points out the great importance of a spontaneous participation of the civil society in the political process, its involvement in the Parliament's activity, in order to consider that there are democratic means of public participation, as it should happen in any democratic system. Having said this, the Albanian legal and regulatory framework on freedom of association is considered to be “*generally in line with the international standards*”. However, it is regretful that the process for registration is still cumbersome and characterised by high costs, lengthy procedures and lack of expert judges dealing with civil society organisations' legal issues. The Commission remains satisfied by the fact that a law on volunteering was approved, and, as already mentioned, the NCCS was established with members from the government and representatives of the civil society organisations. However, the selection of the members of this Council according to the Commission report remains not clear. In addition, it considers that the sessions to inform the public about the NCCS did not met the expectations given that civil society representatives even if they took part, remained passive. In this regard, it considers that further improvement in the right to consultation and information is needed. In addition, referring to the legal and regulatory framework on the tax regime of the Civil Society Organisations it concludes that the role of the

¹⁸Ibid 12, p. 9.

¹⁹ Ibid 12, p.9



inspector must be reinforced and that the public funding being limited and not regulated, becomes dissuasive for individual or corporate donations.

In conclusion the report finds that “*some progress was made towards implementing the institutional framework for consultation with civil society after the approval of the law establishing the National Council for Civil Society*”²⁰. However, it recommends the revision of the Fiscal framework for the development of the established National NCCC, given that the report states that the taxation system established in the Pre-Accession Assistance (IPA) is not being effectively managed

1.1.2. Rule of Law – Compliance, Proposals and Recommendations

As it was stated above, when assessing compliance with the political criteria named rule of law, assessment elements of the Commission consist in the review of the functioning of the judiciary, the fight against corruption, and the fight against organized crime and terrorism. This section will be focused only on the review of the functioning of the Albanian judiciary and all its specific aspects, as identified and assessed by the 2016 Progress Report. Elements on which the 2016 Progress Report focuses in order to assess the functioning of the Albanian judiciary are: independence and impartiality; accountability; professionalism and competence; quality of justice; efficiency.

As the report points out, the principles of independence and impartiality of the Albanian judges and prosecutors are enshrined in the Constitution. According to the 2016 Progress Report, before the constitutional reform, these principles were undermined by the high politicisation of the High Court and the Constitutional Court; the excessive margin of discretion enjoyed by the HJC and the GPO. In addition, the 2016 Progress Report recalls that political interference on investigations and court cases have already been reported. Furthermore, other problems are highlighted, such as the non transparency of the system for allocating court cases and the non effective functioning of the system of the cases management of the judiciary and the prosecution service. Lastly, it is pointed out that the exclusion of judges (for cases such as conflict of interest and similar), is foreseen in the criminal, administrative and civil codes, but the occurrence of such cases is not registered.

Before the constitutional reform, and up to its implementation, accountability of magistrates is exercised by inspections of both the Ministry of Justice and the High Council of Justice. This system of inspection causes overlapping of competences of both bodies. Under the constitutional reform, inspection powers are exclusively granted to the new body, the High Justice Inspectorate which will have the possibility to check and investigate complaints against judges and prosecutors, which is seen by the report as an opportunity to increase accountability. Another element of accountability is the Code of Ethics. The 2016 Progress Report points out that the Code of Ethics that was approved in 2000 has had no impact on accountability of magistrates. It

²⁰ Ibid 12, p.9



argues that despite the fact that the Code of Ethics is included in the training of magistrates, there are not enough monitoring mechanisms in place to ensure its implementation and effective application. With regards to financial accountability of magistrates, the 2016 Progress Report reminds that even if there is already a legal obligation for judges and prosecutors to declare their assets every year, in the majority of cases it is not happening in practice and no coercive measures have been taken to enforce that obligation. Lastly, it recalls that the social perception of the judiciary is that it is “highly corrupt”²¹.

Professionalism and integrity of judges is not sufficiently reflected in the existing criteria for appointing judges. Judges evaluation system is weak and the careers of judges are not always assessed on their merits or objective criteria. In addition, the rules in place for the evaluation of judges are weak, because they do not assess effectively the candidates’ aptitudes and judge’s careers are not fully transparent and not always based on merits or objective criteria. Before the constitutional reform, the members of High Court, Constitutional Court and of the General Prosecutor, were appointed by the President of the Republic with a simple majority of the Parliament. After the constitutional reform the members of the High Court will be appointed by the President upon proposal of the HJC. In the case of the Constitutional Court there will be a “Justice Appointments Council” which will be in charge of the verification of the legal requirements, professional and moral criteria of candidates for Constitutional Court and for the position of the new High Justice Inspectorate. The HJI is the organ that will be in charge of the evaluation, appointment, promotion, transfer of judges and the discipline proceedings against judges. Lastly, the appointment of the General Prosecutor will be made after the proposal of HPC and approved by the 3/5 majority of Parliament. There has been a reduction of its mandate from 9 to 7 years and there will be no possibility to be reappointed. These amendments are considered by the 2016 Progress Report as beneficial effects of the judiciary reform. They are assessed as positive since it is expected that they should increase the independence of the judicial power from the political pressure and contribute to a self-governed judiciary.

Quality of justice²² faces several problems. Training of judges and prosecutors is implemented by the School of Magistrates, it is partly donor supported, but training on *EU acquis* is limited. A step forward is that since June 2016 Albania has joined in the status of observer in the European Judicial Training Network. Courts transparency is not sufficient. Courts have to prepare annual reports and issue them, nevertheless not all of them are available and some courts have no website. Administrative and financial resources for the judiciary need to be strengthened and judiciary infrastructures are considered to be still inadequate. More courtrooms are needed because there are still hearings taking place in judge’s offices, which leads to a lack of transparency and to an increased risk of corrupt practices. Referring to the archive justice system established in April 2015, that will store and process information of court cases, the 2016 Progress Report considers that the case-law publications are inconsistent and that there are not effective research tools. Lastly, the 2016 Progress Report points out that the system of

²¹ Ibid 12, p.15.

²² Ibid 12, p. 16.

notification to parties and witnesses is not appropriate and proposes the mediation to be prioritised.

The 2016 Progress Report expresses great concerns regarding efficiency²³ of the Albanian judiciary, especially due to the lack of financial and human resources, inadequate planning and the lack of sound legal provisions on the internal organisation of courts. This leads to increased backlogs. It stresses that there is a general lack of capacity to produce reliable statistical data, and it points out that only few first instance courts comply with 6 ECHR standards, clearance rates and length of the proceedings. In addition, it considers that there is no effective unified internal monitoring mechanism. Lastly, the enforcement of decisions is a concerning issue, especially in property related cases, due to the inexistence of regulatory provisions on this regard.

Despite of the above analysis, the 2016 Progress Report voices its satisfaction for the good progress of the functioning of the judiciary made the past year and concludes that “*it has some level of preparation*”²⁴. It refers to the constitutional amendments as having operated “*a comprehensive and thorough justice reform*”²⁵. It considers that “*Some progress was achieved with the constitutional amendments (...) that launched the justice reform process*” due to the fact that the reform is aimed at dealing with “*the existing shortcomings in the sector, including weaknesses linked to independence and accountability of judges and prosecutors, lack of efficiency and professionalism*”. It also stresses the intense process of public consultation carried out and welcomes the involvement of the Venice Commission. In addition, it refers to a number of laws adopted that should deal with the main problems of the Albanian judiciary as indicated above. Most important of which the law on the re-evaluation of judges, prosecutors and legal advisors and the measures to fight corruption and to re-establish public trust. The report explains that that re-evaluation (vetting) of judges is based on 3 criteria: (i) integrity through assets assessment; (ii) background assessment (inappropriate links with organised crime; (iii) professional competence.

Furthermore, the 2016 Progress Report shows its satisfaction with the legislative priorities that the Albanian Parliament has identified, a compound of norms that should address the following elements: (i) the overall organisation of the judiciary; (ii) the prosecution office; (iii) the status of judges and prosecutors; (iv) the Constitutional Court; (v) the creation of specialised institutions for the fight against organised crime and anti-corruption. Additionally, it welcomes the preparatory works already in place for other laws that are essential for the justice reform. However, the 2016 Progress Report regrets that there was “*no progress on meeting other recommendations of last year*”²⁶, namely: (i) filling the vacancies at the High Court and the administrative courts; (ii) the effective use of the unified case management; (iii) publication in due time of all court decisions together with their grounds.

²³ Ibid 12, p. 16.

²⁴ Ibid 12, p.13.

²⁵ Ibid 12, p.13.

²⁶ Ibid 12, p.14.

Lastly, the 2016 Progress Report identifies and lists the following recommendations for the next year:

- i. Continue with the progress on the implementation of the new constitutional provisions also through the adoption of implementing measures of related legislation.
- ii. Carry out a reform of the judiciary securing that there will be enough financial resources to achieve the goals of the reform.
- iii. Set a body for the re-evaluation of judges and report the results in the ongoing process of re-evaluation of judges and prosecutors.
- iv. Tackle the deficiencies of the case management system by setting up a “one stop shop” system which guarantees the transparent and equal designation of cases to judges.
- v. Continue the development of a track record of investigations, prosecutions and convictions in the fight against corruption at all levels, including asset recovery.

1.1.3. Human Rights – Compliance, Proposals and Recommendations

With regard to the protection of human rights in Albania, the 2016 Progress Report states that the “*legal framework of protection of human rights is broadly in line with EU standards*”²⁷. This statement is justified because Albania has ratified most international human rights conventions. However, it also considers that “*enforcement mechanisms remain to be strengthened*”²⁸. It proceeds with the analysis by referring to different indicators of the degree of protection of human rights in Albania and specifically:

- i. Freedom of expression: the overall environment is favourable and there is “*some level of preparation/moderately prepared*”²⁹. Nevertheless the 2016 Progress Report stresses that a better legislation and its implementation is needed. In addition, the regulatory activity and public broadcaster need to be improved in order to increase its independency and transparency.
- ii. Protection of minorities³⁰/the living conditions of Roma and Egyptian: need to be improved. According to the 2016 Progress Report, Albania has made some efforts to improve its legal framework, however it criticises the fact that Albania has still not adopted the European Charter for regional and minority languages³¹ and that the potentials and the tasks of the State Committee on Minorities have remained limited and must be strengthened. Nevertheless it is considered that the inter-ethnic relations remained good. The 2016 Progress Report recalls that the Roma and Egyptian still deal with very difficult conditions and frequent discrimination, particularly on access to education, employment, housing, health and civil registration, with a substantial part of Roma households lacking access to piped water. The main source of concern found in this regards is that child marriage involves around 2, 9 % of Roma children in the 15-18 age group. Lastly, it is

²⁷ Ibid 12, p.5

²⁸ Ibid 12, p.5

²⁹ Ibid 12, p.5

³⁰ Ibid.12, p.68.

³¹ European Charter for regional and minority languages to be found [here](#).

concluded that even if the integration of Roma children in the education system has improved the segregation in schools remains worrying.

- iii. Equality between women and men and gender based violence³²: the 2016 Progress Report detected that there are still gender discriminatory provisions in the legal system and it pointed out that the legislation remains inadequate to foster equality between women and men. Especially in the access to justice of women it is considered that more efforts are needed. The 2016 Progress Report suggests that social awareness, regarding the discriminatory legal system and the essential execution of court orders to protect women, should be raised. Domestic violence remained a serious concern. 74% of the victims were women, which gives an idea of the magnitude of the problem of gender-based violence. In order to fight it, it is recommended the full functionality of the system of denouncing domestic violence along the whole territory and ensure that victims are granted all the appropriate services and support.
- iv. Rights of the children³³: the 2016 Progress Report expresses concern and suggests that the institutional mechanisms to protect rights of the children remain poor. It recommends the improvement of the collection of data and monitoring mechanisms in child protection, as well as the cross-sector and inter-institutional coordination and cooperation. As indicated, the main source of concern in this regard is the high numbers of unaccompanied minors arriving to EU member states. Lastly, the 2016 Progress Report declares that the *legislation on juvenile justice* remains to be brought in line with international standards.
- v. Rights of person with disabilities³⁴: current legislation in place is partially compliant with the UN convention on the rights of persons with disabilities. The 2016 Progress Report has pointed out that disabled people in Albania have still to deal with difficulties in the access to education, employment, healthcare, social services and decision-making, including free exercise of the right to vote. It stresses that it is not possible for Albanian authorities to detect the problems faced by disable people, due to the inexistence of available data. It concludes that the assistance to children with disabilities, except for some efforts of teachers in schools, is insufficient.
- vi. Rights of lesbian, gay, bisexual transgender and intersex (hereinafter “LGTBI”) persons³⁵: the 2016 Progress Report recalls that an Action Plan for years 2016-2020, on rights of LGBTI persons, was adopted in May. Thanks to that, sexual orientation and gender identity are now protected grounds from discrimination in the labour code. However, it is stressed that the protection for LGBTI people is almost entirely donor-supported and is the only way to help the community in need. Lastly, it is pointed out that a public awareness campaigns to increase the social acceptance is needed, especially in rural areas, and it is suggested that amendments to the family code should be introduced in order to include the concept of cohabitation of same-sex couples.

³²Ibid.12, p. 66

³³ Ibid.12, p. 66.

³⁴ Ibid.12, p.67.

³⁵ Ibid.12, p. 66.

- vii. Fight against discrimination: additional efforts are needed. The 2016 Progress Report considers it advisable to develop a track record on antidiscrimination cases. There is a reduction in the number of discrimination cases that the Commissioner for Protection against Discrimination had to deal with. However, it is pointed out the positive increase of the number of cases started in its own motion and also its double involvement in judicial processes compared to 2014. Nevertheless, the 2016 Progress Report stresses the lack of record of the data on hate crimes. Lastly, it welcomes the awareness-raising campaigns and workshops organised by the Commissioner for Protection against Discrimination.
- viii. Freedom of thought, conscience and religion: the 2016 Progress Report states that it is “generally upheld³⁶”. It recalls an initiative of the Albanian government in order to insert religious education and history in the education plan compulsorily in an attempt to address the radicalization and foster the inter religious dialogue. However, the 2016 Progress Report specifies that it has been not welcomed in the Albanian society, especially by the academia and civil society, which have been critical with this measure even if no implementation of that initiative has taken place.
- ix. Property rights:³⁷ the 2016 Progress Report makes reference to a new law on compensation for property confiscated during the communist era adopted in December. This law contains a mechanism for compensation, together with a compensation formula and financial means to enforce the process. It welcomes that the Venice Commission has issued an *amicus curiae*³⁸ brief, examining the new law in light of EU law. The brief of the Venice Commission pointed out that the compatibility with EU law would depend on the effective implementation of the law and its execution by the authorities.
- x. Prison system:³⁹ The 2016 Progress Report welcomes the liberation of 968 prisoners due to the amnesty law approved in January 2016, given that it contributed to a decrease in the number of inmates. However, the overcrowding of the Albanian prisons is a source of great concern and it is warned that the living conditions in the prisons could amount to a violation of the prohibition of torture and degrading or inhuman treatment. Not only the privacy of the inmates is not guaranteed but also the health and basic hygienic conditions of the prisons must be ensured. In addition, the fact that there are no medical infrastructures or services in the prisons, especially for those inmates suffering from mental illnesses, is another heavy criticism made by the 2016 Progress Report. As a result it is advocated for the adoption of means other than the custody as well as the possibility of imposing electronic monitoring devices. Lastly, it concludes that the law on the prison system is still to be adapted to the European standards and prison system remains to be reputed as corrupted, this, once again being a cause of great concern of the 2016 Progress Report.
- xi. Procedural rights⁴⁰: The 2016 Progress Report considers that more efforts should be done to guarantee the exercise of the right to information and access to legal aid and advice,

³⁶Ibid 12, p.64.

³⁷ Ibid 12, p. 65.

³⁸ Amicus curiae makes reference to the collaboration that takes place when a tribunal that as a external provides voluntarily for advice or recommendation to another court in a certain subject.

³⁹ Ibid 12, p.63.

⁴⁰ Ibid.12, p. 67.

together with specific safeguards for suspects, accused persons and victims of crime. With regard to basic procedural safeguards for children it is stressed that much more has to be done to improve the protection of children. In addition, as regards the rights of the victims and their families, their procedural rights protection remains poor and free legal aid should be granted in the cases where it is necessary. Furthermore, it is pointed out that there is no legal framework that guarantees victims the right to access to the necessary support services, including procedural, emotional and psychological support, in accordance with victims and family member's needs.

In conclusion the 2016 Progress Report, with reference to enforcement of human rights, considers that “*additional efforts are needed in relation to gender equality, protection of children and other vulnerable groups and property rights*”⁴¹. Afterwards, it points out as future recommendations, to reinforce the institutional safeguards for child protection, protection of victims of domestic violence and gender equality; to adequate the legislation on juvenile justice according to the international standards, set up a proper anti-discrimination case-law and make efforts to find a solution for the living conditions of Roma and Egyptians. With regard to access to Justice, the 2016 Progress Report demands the development of effective guarantees to ensure access. The lack of access becomes visible, given that the great majority of cases involving vulnerable groups are still carried out by civil society organizations, with donor support.

III. CoE MONITORING REPORT FOR ALBANIA 2015-2017

The CoE Report⁴² is issued under the framework of the Council of Europe, due to the fact that Albania is a full member since 1995. As such, similarly to all other CoE members, Albania, has specific obligations which are: compliance with the principles of pluralist democracy; compliance with the rule of law as well as respect for human rights and fundamental freedoms⁴³. Under this framework the CoE has established a Programmatic Co-operation Document for Albania, which has the aim to “*support Albania in meeting its remaining statutory and specific obligations as a CoE member State and to help bring Albania's legislation, institutions and practice further into line with European standards in the areas of human rights, the rule of law and democracy*”⁴⁴. The CoE Report identifies its priority areas based on a number of indicators such as the political priorities of the country, where EU accession criteria are included; CoE's own standards; recommendations of various CoE monitoring bodies on Albania; the own experience of the CoE of previous and/or ongoing co-operation programs in Albania⁴⁵.

It is worth mentioning that the CoE Report is not a mere monitoring instrument, but it's a proactive co-operation instrument, meaning that it directly tackles issues of the Albanian system, in the CoE' areas of interest or otherwise referred to as “specific objectives”. It provides concrete recommendations for reform for each of the objectives and proposes concrete programs which

⁴² Council of Europe Report, available here: <https://rm.coe.int/16802f95e4>

⁴³ Ibid 46. p. 4.

⁴⁴ Ibid 46, p.4.

⁴⁵ Ibid 46. Pg 4.

will help Albania overcome the identified issues. As a result, as it will be also demonstrated in the descriptive sections below, the CoE' Report is framed in a complete different manner from the 2016 Progress Report of the EU Commission.

The 2015-2017 CoE Report for Albania, has identified, in cooperation with Albanian authorities, some pressing issues of the country and specifically: the completion of the justice sector reform; media freedom and information society; good governance and democratic participation; overcoming divisions in education and cybercrime⁴⁶. In addition the CoE engages to support Albania's efforts in enhancing the implementation of the ECHR and the case-law of the ECtHR; enhancing local and regional democracy; promoting the human rights through country-specific actions⁴⁷.

The following sections will provide an overview of the assessment of the CoE Report related to what has been identified as pressing issues for Albania. For the purpose of this article, and in order to be in line with what was treated in the 2016 Progress Report, the overview will be restricted to the sections that deal with the justice system; democratic governance and participation; antidiscrimination, respect for human rights and social inclusion and freedom of expression.

1.1. Justice System

The first section of the CoE's Report is devoted to the Albanian justice system in, and focuses its attention on the independence and accountability of judges. It refers to the judicial reform carried out, as a step in the right direction but considers that additional measures must be taken in the field of governance of the judiciary especially through the strengthening of the High Council of Justice and the clarification of the scope of its competences. In addition, through the guidance of the Venice Commission and with the help of the ECtHR, Albania should be able to carry out a reform of the process of appointment of judges and of the developing of the disciplinary proceedings, without political influences that hinder their effectiveness. In this regard the CoE Report also refers to the importance of the proper execution of the ECtHR judgements, especially the ones that deal with violations of Article 6 ECHR, that are the main source of violation declarations in the case of Albania. Similarly to the 2016 Progress Report, it also states the transcendence of strengthening the powers of the Ad Hoc Parliamentary Committee on the Judicial Reform⁴⁸.

Beside pointing out specific issues of the Albanian Justice System, the CoE Report identifies concrete support which will be provided to Albania in order to overcome these issues. For instance it is mentioned that the Venice Commission will support Albania during the justice reform (as it already did); that the ECHR will provide additional assistance to Albania by translating relevant ECtHR publications, including case-law guides and joint publications of the

⁴⁶ Ibid 46. Pg 4-5.

⁴⁷ Ibid 46. Pg 4-5.

⁴⁸ Ibid 46, p. 7.

CoE and of the EU Fundamental Rights Agency; and that CoE will provide legal expertise and suggestions for the improvement of the judges appointment system etc⁴⁹.

1.2. Democratic governance and participation

The CoE Report points out that the CoE has been and is always committed to support Albania to carry out the reforms necessary to make the system of participation much more inclusive, equal and accessible. Especially, it emphasizes the necessity of reforms in the field of electoral system, the local level and the fostering of cultural heritage. Decentralisation and public consultation seem to be essential in this process that will be followed up by the CoE very closely and which remains at the availability of the Albanian authorities for getting support.

The first issue dealt with under this section is the necessity of strengthening local democracy and having a much more democratic governance at that level, allowing the implementation of national instruments already designed for achieving that objective such as the Inter Municipal Cooperation initiatives between the Albanian Local Government Units. In addition, the CoE Report considers highly relevant the role of the CoE to train the new elected mayors and municipal councillors in leadership skills on good governance, public ethics and dialogue, in order to enhance the democratic culture at local level and become in that way an example of confidence and trust. Secondly, it expresses its support to the Albanian Parliament, especially when dealing with the parliamentarian's conflict of interests. Thirdly, when focusing on the Albanian electoral system the CoE Report considers that it must still be brought in line with the European standards. Consequently, the CoE is ready to provide assistance for the electoral processes, not only during the organisation of the elections but also as regards the awareness raising on this topic, for voters (particularly first time voters), electoral administration civil servants but also for media professionals. This assistance may be provided for example, through voter education programmes and training of the elections commissioners.

1.3. Antidiscrimination,⁵⁰ Respect for Human Rights and Social inclusion;

The CoE Report starts dealing with these issues by mentioning that the Albanian Government is already preparing strategies and action plans to address the needs in the field of antidiscrimination, respect for human rights and social inclusion. In addition, it also reminds that the CoE is committed with Albania, especially as regards the empowerment of local communities in the awareness-raising of the culture for respect for human rights. In this regard, the report stresses the importance of the education and training for social inclusion and tolerance that foster inclusiveness. The CoE Report identifies the following, as major concerning issues for Albania:

- i. Antidiscrimination: The objective put forward by the COE concerning antidiscrimination is to further strengthen the legal framework and the public policies. It is pointed out the importance of awareness raising among the authorities, human rights defenders, media and

⁴⁹ Ibid 46, p.7.

⁵⁰ Ibid 46, p. 17.

the general public, especially through training of legal professionals, judges and prosecutors, with the European standards. To do so, Albanian authorities will be able to count on the relevant institutions of the Council of Europe such as the European Committee of Social Rights to design the measures aimed at fighting against discrimination.

- ii. Rights of Minorities: The objective is to ameliorate the exercise of the rights of the minorities⁵¹ according to the European standards of protection. Particularly referring to the Framework Convention for the Protection of National Minorities that is the national programme in place. Once again the stress made by the CoE Report is on the necessity of raising awareness among the public institutions, as well as the appropriate legislative and policy instrument to improve the situation of minorities. Especially it focuses on the importance of establishing proper monitoring mechanisms to detect discrimination and develop a report system. In addition, it reminds that Albania should proceed with the ratification of the European Charter for Regional or Minority Languages by conforming its standards to the European ones.
- iii. Roma and Egyptian people⁵²: as a result of the assessment of the situation of Roma and Egyptian people in Albania, the country is demanded to rapidly implement the following instruments: Strasbourg Declaration, Committee of Ministers' and ECRI's Roma related recommendations and European Court of Human Rights' case law. In addition, the importance of the collection of statistical data on the situation of these vulnerable groups in order to count on figures that help to design an appropriate public policy, is stressed. The main concern on the situation of these groups is related to housing and access to public services. In this field the Cooperation document offers also the support and guidance of the COE.
- iv. Children: the CoE Report assesses the situation of children and their protection in Albania. In this regard, the document stresses the necessity to still reform the Albanian legal framework in order to adjust it to the European standards and it recommends the fostering of a national strategy in order to protect children's rights and reduce the cases of violence against children. Particularly the issue of children living in the street is of great concern for the document and it voices the need to properly apply the national plans already put in place. The raise of public awareness is considered by the document as key in order to secure a culture of zero violence but also in order to make children aware of the risks of human trafficking to provide them with the appropriate information in order to defend themselves or to have recourse to the competent authorities. In the framework of an already ongoing reform of the social care system in Albania the document recommends to set up a comprehensive system to protect children rights, and not only in the field of social care but also in other areas such as justice and education, that play an important role for their protection. Lastly, it refers to the situation of juveniles in detention and other vulnerable groups such as children from minorities, street children, unaccompanied minors or children with disabilities.

⁵¹ Ibid.46, p.18.

⁵² Ibid.46, p.19.

- v. Education⁵³: pursuant to the CoE Report there is the need for an inclusive education system that promotes the observance of human rights and a democratic citizenship. This because education is considered as key in order to achieve a culture of respect for human rights, that must start from very early in children education. For this to be real, access to education must be ensured to every child notwithstanding their background.
- vi. Social Rights⁵⁴: It is reminded the necessity of adapting the Albanian legal framework to the European Social Charter, especially as regards labour rights, employment, working conditions, health and legal protection. The importance of the awareness rising for this field is also repeated. Albania's obligations with regard to the European Social Charter are recalled and it is required Albania's acceptance of the provisions that are still not accepted. In addition it is required to put in place the collective compliance procedure that should help to enforce social rights in Albania with the help of the European Social Committee. As the CoE Report recalls, Albania has ratified the European Social Charter in 2002 but has accepted only 64 out of 98 paragraphs of the Charter.
- vii. LGBTI people: the conditions of LGBTI persons⁵⁵ in Albania are assessed, and it is stressed that the main concern is the fight against discrimination and the need to properly implement the national plan that precisely deals with the discrimination on the basis of sexual orientation or gender identity. Once again the CoE's Report emphasizes the necessity of generating an atmosphere of tolerance among the public opinion and acceptance, given that it is crucial to have the public support. The importance of implementing the case law of the Strasbourg court in this field is once again stressed and expert assistance of the CoE is offered.
- viii. Violence against women⁵⁶: with regards to violence against women the CoE declares its absolute availability to provide assistance for the proper implementation of the Istanbul Convention through the national plan that should be elaborated, as well as the necessity to put into place the appropriate support services for victims of violence.
- ix. People with disabilities⁵⁷: With regards to this vulnerable group it is emphasized the importance of an approach based on human rights and a social model of disability, as well as public campaigns trying to appeal the attention of the public opinion in order to raise awareness over the problems and difficulties faced by it.
- x. Property Rights⁵⁸: are an issue that have already been tackled because of declarations of violations by the European Court of Human Rights. The document focuses in the reinforcement of their protection through the assistance of the CoE.
- xi. Freedom of expression⁵⁹: in this regard the standards in Albania must be brought in line with the CoE standards. Some areas of concern are especially as regards the freedom of media, the quality journalism, a more pluralistic media atmosphere, and the internet

⁵³ Ibid 46, p. 21.

⁵⁴ Ibid 46, p.21.

⁵⁵ Ibid.46, p.22.

⁵⁶ Ibid.46, p.23.

⁵⁷ Ibid.46, p.23.

⁵⁸ Ibid.46, p.23.

⁵⁹ Ibid. 46, p.14.

governance. In these fields the CoE offers its support especially as regards the protection of children on the internet, raising awareness of the data protection policy and the improvements to be carried out in the state public broadcaster and the situation of journalists for which they claim support from institutions to strengthen the right to information in Albania.

IV. CONCLUSIONS AND RECOMMENDATIONS

After having presented the 2016 Progress Report and the CoE Report, we can state that there are many common elements of both, taking in to account that the assessment carried out by the CoE includes the criteria used by the EU Commission in order to examine the status of compliance of Albania as a candidate state. Nevertheless, both instruments also present a lot of differences in the way they are framed and especially regarding their methodology and impact on the country.

Firstly, it should be noted that the CoE foresees a close cooperation and offers assistance by its organs when demanding further steps in reforms and improvements. The recommendations of the CoE are in many cases much more centred on creating a suitable atmosphere by raising public awareness and fostering a culture for respect for human rights through institutions, training and education, differently from recommendations of the European Commission provided in its progress report. Furthermore, it has to be highlighted that especially the case law of the ECtHR forms an integral part of that assessment, whereas in the EU Commission 2016 Progress Report only non better identified “*European standards*” are mentioned as reference. Therefore it should be preferable for the EU Commission to refer to specific primary and secondary norms that can inspire the candidate state to make the reforms. Especially legislative drafting techniques on the protection of human rights, used within the EU, could be a useful guidance for candidate countries on the legislative drafting, as far as human rights considerations must be borne in mind when making legislation.

However, even the CoE itself, which has in its hands the very effective instrument of precise principles derived from ECtHR case-law, does not use them fully, for instance by pointing out the case law that would be applicable in each of the interest areas dealt with by the CoE Reports. As an example, when dealing with the need to reform the governance bodies of the Albanian judiciary, important judgments which provide specific criteria such as the recent case RAMOS NUNES DE CARVALHO E SÁ v. PORTUGAL⁶⁰, has not been mentioned. In fact it is stressed in this judgment the necessity of ensuring that governance bodies of the judiciary are **independent and impartial**, and it is identified as the only possible way to achieve such an objective to ensure that members of the Council be appointed by their peers instead of being appointed by the political parties, which is as a way to reduce the possibilities of political influence.

⁶⁰ RAMOS NUNES DE CARVALHO E SÁ v. PORTUGAL 21 June 2016, 70-99§. Although it has to be noted that it has been appealed by Portugal and referred to the Grand Chamber. It is available [here](#).



Secondly, the collaboration at the EU level could be increased, as it is the case for the cooperation between the different CoE organs. It would be valuable, if other agencies that pertain to the EU system, could participate actively with monitoring tasks of EU candidate countries, given the high level expertise and institutional support that agencies such as the European Data Supervisor or the Fundamental Rights Agency can offer. Thirdly, the recommendations suggested by both are provided in general terms. Anyhow, in the case of the CoE recommendations are focused on resolving concrete and inherent problems of the Albanian system, that probably derive from its deeper knowledge of the situation, not only because of that close cooperation but also due to the cases dealt with by the ECtHR addressing concrete violations occurring as a result of specific own problems of the country. The control exercised by the ECtHR guarantees a much effective control of the degree of compliance of Albania with the proposed reforms, amendments and improvements. This because real cases are contrasted with the abstract references made in the EU Commission' 2016 Progress Report, which refers to amendments and reforms to be carried out but without providing any concrete monitoring mechanism, except from the issuing of reports such as the one presented here.

Fourthly, the main challenges posed by the difficulties to develop a proper monitoring mechanism have been pointed out in literature when assessing the European Union Enlargement Policy, especially as regards human rights concerns in candidate countries. They have suggested that the mere fact of checking that candidate countries have passed laws that implement or transpose European legislation is not enough to guarantee that they have indeed integrated the *EU Acquis* in their legal frameworks and in their daily practice⁶¹. They have also pointed out that the inherent problems and challenges of each country depending on their degree of development in democratic governance have implied that there have been very different speeds in the process towards accession⁶².

Fifthly, it is pointed out that the monitoring mechanism currently being applied seem not be sufficient as regards the measuring of compliance and the effective application of the Copenhagen criteria for accession. It seems that a closer cooperation system, that achieves a greater knowledge of the situation of the candidate state, will enable to frame more suitable policies, that end up leading to a substantial change in the legal system making it, at the end of the day, more in line with the *EU Acquis*.

⁶¹ R. BURCHIL, "Assessing EU's position on human rights, is it a desirable one?" 2011, SSRN papers. G. NOUTCHEVA "Fake, partial and imposed compliance: the limits of the EU's normative power in the Western Balkans", *Journal of European Public Policy*, 16, 2009, pp. 1056.1084. E. FOUÉRE "The EU's Enlargement Strategy, is it working?" CEPS Commentary, 2016.

⁶² Ibid. 23, E. FOUÉRE.