

# The Advantages of Administrative Reforms in Judicial System, Democracy Transparence and the Rule of Law (Comparative Analyze in Albanian Legal Case Study)

Prof Ass Dr. Alba Robert Dumi

*Prof As Dr, Dean of Graduated School "Ismail Qemali" Vloa University Albania,  
Management Department  
Management Department, Economy Faculty, Tirana University  
Email: [besi.alba@yahoo.com](mailto:besi.alba@yahoo.com)*

PhD Neshet Ngucaj

*Private Lawyer, Court of Vloa member  
Email: [n.ngucaj\\_av@hotmail.com](mailto:n.ngucaj_av@hotmail.com)*

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## Abstract

*The European Union has offered autonomous trade concessions to the Balkan countries. All industrial products and most agricultural products have duty and quota free access. "Autonomous" means that the European Union immediately opens the internal market, while a longer period of transition is conceded to the Balkan countries before opening up their markets to EU competition. Albanian economic performances have improved recently. But encouraging signs of economic development are being at risk by various uncertainties and deficiencies in the Albanian development system. Electricity shortage is a major handicap of the country. Many working hours are getting lost when electricity is switched of. This increases costs of production and business management. Infrastructure - traffic and transportation - is a problem, which particularly impedes economic development and investment in the more remote and rural regions. Regional development is considered a high priority objective by most experts. There has been moderate progress in judicial reform, which is a key priority of the Opinion. This article presents a summary of the influences of technical assistance and administrative capacity in development of Albanian government. In the centre of this study we are using the concepts and innovations of the E-Learning, which is gaining significant interest in distance education, including reforming political, social and economical developing in Albanian government reforms and other details.*

Key words: *Association Agreement, Stabilisation and Association Process, Judicial strategy, Policy makers, Law force.*

## 1. Introduction

### *1.1 Albania is participating in the Stabilization and Association Process.*

The Stability and Association process entails commitments on both sides. The Union offers a prospect of accession, an assistance program to support that ambition, and preferential access to the EU internal market. (Bregu M 2012) The candidates, in return, undertake to abide by the Union's conditionality and participate fully in the Stabilization and Association process. Performances are monitored in annual assessment reports. Point of reference is the so-called Copenhagen criteria. Trade preferences and the EU assistance program carts are the key instruments of SAP. Overall, Albania has been implementing its obligations under the Stabilization and Association Agreement (SAA) well. (Adellen G 2011)

Implementation of the July 2011 cross-cutting Judicial Reform Strategy and the relevant Action Plan, revised in March 2012, has started. There are concerns over reform cooperation, budget allocations, budget planning, and the level of human resources in this sector. Albania needs to further accelerate the implementation of the judicial reform strategy in order to ensure the independence, efficiency and accountability of its judicial institutions. (Codlak S 2008)

## 1.2 *The influences of technical assistance and administrative capacity in new methodology organization*

Technical assistance is provided throughout the country to increase the fiscal autonomy and administrative capacity of local governments. With regional offices in four Albanian cities, USAID and its partners can work directly with local governments through targeted training and technical assistance aimed at improving local service delivery based on priorities and budgets developed in response to local preferences. It also seeks to reduce corruption and increase opportunities for citizen participation in local governance. (E Brown, P Holmes, 2006)

### 1.2.1 The political influences and the dialogue with EU

It participated in the regular political and economic dialogue between the EU and the country through the SAA structures and contributed to the smooth functioning of the various joint institutions. Meetings of the Stabilization and Association Committee and Council were held in March and May 2012 respectively. (Saldenn A, 2009) Six subcommittee meetings were held in the reporting period. Furthermore, the SA Council agreed to set up a special group on Public Administration Reform within the SAA structures. Multilateral economic dialogue between the Commission, EU Member States and potential candidate countries in the context of pre-accession fiscal surveillance took place at an expert meeting in May 2012.

The European political opinion often refer to the fact that unlike other countries of the region, no political grouping in Albania. But, is this enough to bring to life the European dream of Albanians? (Progress report 2011, pp 8)

Of course not! The political consensus should be developed through a real cooperation between the ruling parties and the opposition on the main development and transformation challenges the country faces, these being essential challenges for the European integration.

## 1.3 *The mandate to promote integration at EU level*

The EU's mandate to promote integration derives from the following: 1).Treaties 2).European Council multiannual Program 3).Europe 2020 Strategy: Article 13, which enables the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 73k, requests the Council to adopt measures on immigration policy regarding, among others, "conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion". (Progress report 2011, pp 28)

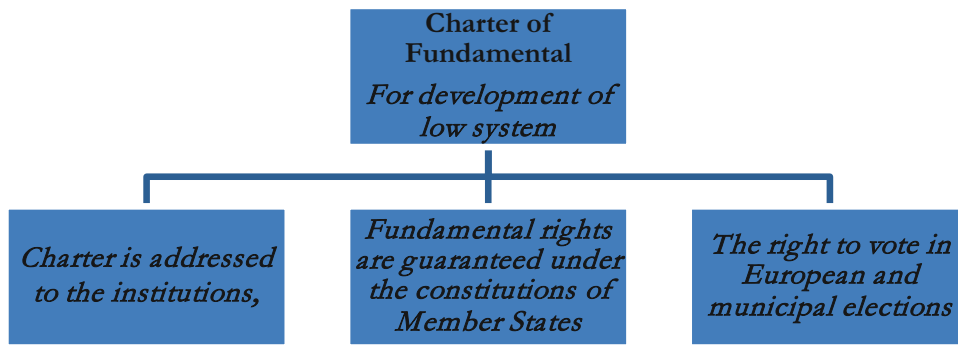
The Council is also requested to adopt "measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States."

The Treaty of Lisbon was adopted in 2007 and entered into force in 2009. For the first time, the Treaty provides a legal basis for the promotion of integration at EU level: Article 79.4 states: "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonization of the laws and regulations of the Member States."(Kottler V, 2009)

## 1.4 *Charter of Fundamental Rights*

The Charter of Fundamental Rights was solemnly proclaimed in 2000 and became legally binding in 2009 with the entry into force of the Treaty of Lisbon. The Charter is addressed to the institutions, bodies, offices and agencies of the Union. It is also addressed to Member States, but only when they are implementing EU law. For example, the Charter applies when Member States adopt or apply a national law implementing an EU directive or when their authorities apply directly an EU regulation. In those cases in which the Charter does not apply, fundamental rights are guaranteed under the constitutions of Member States. (Progress report 2010, pp 14)

Fig. 1 Four dimensions of Charter of fundamental rights and low improvements, Source: EU Progress report, 2008



1.4 Relations between the EU and Albania

The Charter contains provisions that apply to all persons, including third-country nationals (for instance, the right to property and the right to freedom of association); as well as provisions that apply to EU citizens only (for example, the right to vote in European and municipal elections). The latter therefore applies to immigrants who have acquired the nationality of an EU Member State.

2 Literature Review and Hypotheses

2.1 Research Goal

The European Union is set up with the aim of ending the frequent and bloody wars between neighbors, which culminated in the Second World War. As of 1950, the European Coal and Steel Community begin to unite European countries economically and politically in order to secure lasting peace. The six founders are Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

H1 -What pluralism brought to improve law enforcement on private property especially in the punishment of perpetrators?

We are all witnesses to the changes that our legal system is struggling. Evolution of the time in different countries has brought as a consequence even the approaches and the adoption of legislation within its separate parts with the time and life circumstances in which we live. Changes of political system after '90-s as well as improvement of economical conditions in which today's society lives resulted as a conditioned consequence an useful influence. (Progress report 2009, pp 8)

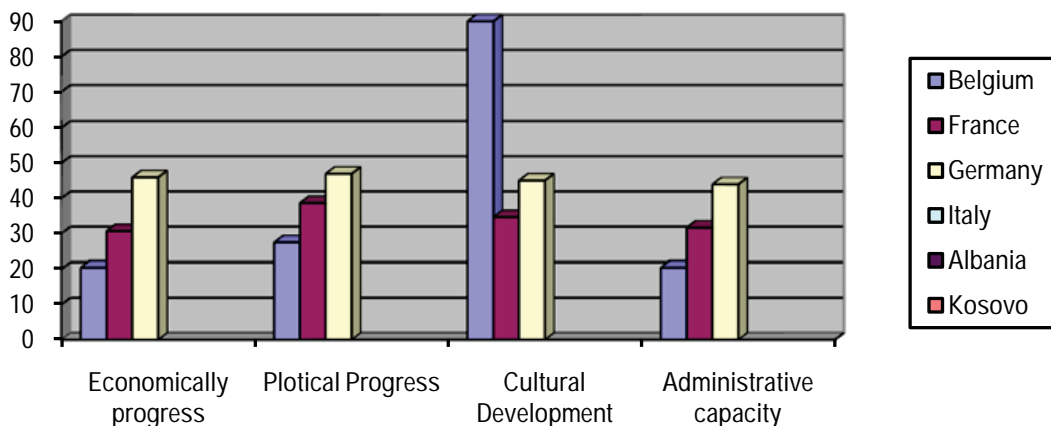


Fig. 2: The indicators of EU and implementing of progress reforms. Source: EU Progress report 2012

Drafting and implementing these documents is rendered more difficult if we refer to a shocking finding of the Report, according to which the process of restructuring the public administration has led to diminishing and interruption in strengthening the administrative capacities. In fact it is difficult to strike a fair balance between the European integration

process requirements for a stronger and more efficient administration and the Government on a diet. Also, it is even more difficult to measure the political willingness of a Government to carry on with reforms for Europeanizing the country where the governance willingness is not focused on strengthening the public administration, while observing the constitutional principles and the law on the basis of which, like the ADN of a modern society, the public administration should function.

## *2.2 Democracy and the rule of law, an important key of political reform*

The ruling majority and opposition reached a political agreement in November 2011 which marked the end of the political stalemate stemming from the 2009 parliamentary elections. This agreement established a plan and timetable for carrying out electoral reform, for improving the parliament's rules of procedure and for adopting all pending laws requiring reinforced majority. The ruling majority and opposition remained generally committed to the key political reforms stemming from this agreement and political dialogue has improved considerably ever since. The process of working on the implementation of the 12 key priorities has, overall, been an inclusive one.

### *2.2.1 The High Council investigation*

Yet there were short periods of confrontational rhetoric between government, opposition and other state institutions, notably in relation to investigations into the events of 21 January 2011 and to the nomination by parliament of a member of the High Council of Justice. Since November 2011, significant progress has been made by adopting pending reinforced majority laws, appointing an Ombudsman, adopting amendments to the electoral code, and towards revising parliamentary rules of procedure. (Adenn E 2011, pp 13)

## *2.3 The climate of cooperation and needs of forced the LAC (Low Administrative Courts)*

This created a climate of cross party cooperation, which enabled reform progress also in other areas under the political criteria. Adoption of these laws requires a reinforced majority vote in parliament. The Law on Administrative Courts was adopted in May for implementation next year, and the Laws on the National Judicial Conference and the Profession of Lawyer were adopted in July and September respectively. The Law on Administrative Courts provides for first instance administrative courts to be set up at central and regional level, and for a court of appeal and a dedicated chamber in the High Court. This should ease the case burden of other courts and allow specialized judges to deal with administrative cases.

H2: The EU, which is based on a corpus of values, laws, standards and democratic institutions inspired by the constitutional traditions of the Member States, identifies in its legal documents and strategy the unique role of the justice system in general and that of the judicial power in particular in terms of safeguarding and enriching these values

## *3 Methodology of this paper research*

### *3.1 Research Goal*

In this survey we aim to identify the mediating effect of strategic developing of economical system in Albania. Nowadays people enjoy a greater sphere of rights referred to the right enjoyed by the individuals before '90-s, even though some rights recognized by law of that time could not find application in everyday life. Another remarkable difference is that today people enjoy several collateral rights that were not recognized by the law of that time. The factors that have brought the evolution of the law-right & justice are different regarding to economic ones, political as well as demographic etc. Another question that evidently comes out is: "Have these changes been effective for today's society?" (Garrett, N., Abbott, M. Cheung, V and De Souza, R. (2007)

### *3.2 An integration of Eastern Europe countries in E U without frontiers*

With the collapse of communism across central, Eastern Europe, Europeans become closer neighbors. In 1993 the Single Market is completed with the 'four freedoms' of: movement of goods, services, people and money. The 1990s is also the decade of two treaties, the 'Maastricht' Treaty on European Union in 1993 and the Treaty of Amsterdam in 1999. People are concerned about how to protect the environment and also how Europeans can act together when it comes to security and defense matters. Good progress has been made in combating corruption within the judiciary through the adoption of constitutional amendments limiting the immunity of judges.

### 3.3 Methodology and Research Goal in focus of Criminal Procedure of Development Countries

The reform allows for the investigation and criminal prosecution of judges without prior authorization. The implementation of these provisions should be carefully monitored and relevant amendments introduced in the Code of Criminal Procedure. Poor working conditions, a lack of adequate safety arrangements for courts and judges and generally low remuneration, plus the absence of adequate controls and the opaque system of appointments, promotions and transfers, continue to be key risk factors for corruption in the judiciary. In 1995 the EU gains three more new members, Austria, Finland and Sweden. A small village in Luxembourg gives its name to the 'Schengen' agreements that gradually allow people to travel without having their passports checked at the borders. Millions of young people study in other countries with EU support.

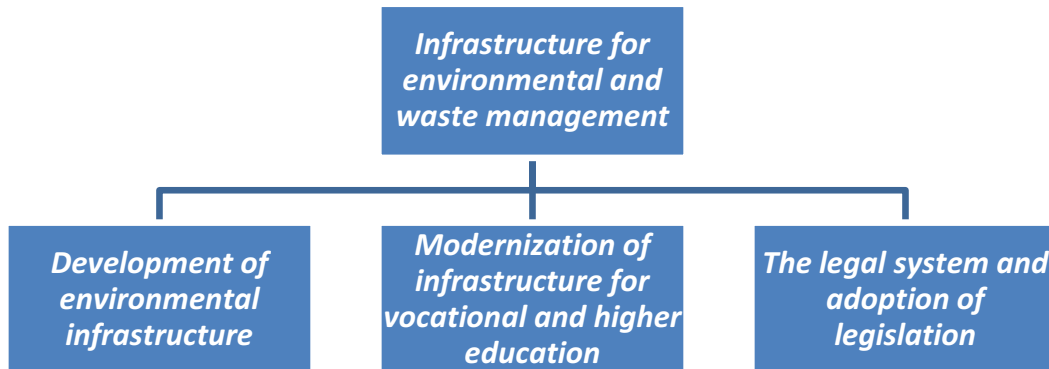


Fig 3 The needs of legislation, Source Albanian progress report 2010

Communication is made easier as more and more people start using mobile phones and the internet. Albanian European Integration has to be understood as a process, evolving step by step. Each step has to be implemented properly. Progress achieved on the first step will enable the country to better perform with the requirements of the second step and so on. In the course of the process, Albania will have to implement fundamental, far reaching reforms. This would finally enable the country to fully participate in European integration, including rights and obligations.

The Code of Civil Procedure and the Code of Criminal Procedure need to be amended to increase the efficiency of court proceedings. Both codes are currently under review. The new law on the profession of lawyer provides for enhanced procedures against lawyers in cases of professional misconduct.

Further changes are needed to effectively address the problem of unreasonable delays in court cases, caused by postponement of court proceedings. These are often due to the absence of lawyers and/or prosecutors, in criminal cases, or by the absence of lawyers and/or witnesses, in civil ones. Court backlogs and the excessive length of proceedings undermine the efficiency of the judicial system. The Chamber of Lawyers lacks effective supervisory and training capacities. Enforcement of court decisions remains weak, particularly in cases where state institutions are the defendants. Albania has yet to provide the Council of Europe with clear data on enforcement of decisions relating to restitution/compensation for property nationalized under the communist regime. (Bernd H, 1994)

## 4. Analyses and Results

### 4.1 Data Gather

The research was conducted in two stages. In the first stage the questionnaire was sent to all 14 Albanian region of municipalities that, based on the data derived from the Structural government had received the EU Structural Funds' support for municipality administration from European Regional Development Fund, 57 responses (34%) were received. In the second stage of the research a separate shorter questionnaire was sent to the rest 8 heads of the municipalities in order to find out whether they had benefited from the EU projects; 24 responses (41%) were received. Taking into account that Albania has 26 municipalities, answered to the questionnaire that represents 36% of municipalities. 10 cities out of (30%) and 71 parishes out of (37%) answered to the questions.

#### 4.2 The introduction of an effective remedy for the non-execution of final decisions is needed

The government deficit increased from 3.1% of GDP in 2010 to 3.5% in 2011, as planned, although only after a mid-year budget re-balance. Total revenue growth decelerated to 1.8% and stood at 25.1% of GDP, reflecting a lower tax yield amid weak consumer expenditure and a sharp fall in non-tax receipts. Following a contraction in 2010, total expenditure increased by 3.7% to 28.6% of GDP in 2011 as a result of higher capital outlays and social transfers. The 2012 budget envisages a fiscal deficit of 3% of GDP, based on an assumed real GDP growth of 4.3%. In the period January-July 2012, total government revenue increased by 4%, compared with the same period of the previous year, but was 5.4% lower than planned, partly reflecting optimistic projections. Expenditure was broadly in line with plans, although payment arrears are a cause for concern. (*Enlargement Strategy and Main Challenges 2012-2013*)

In this context it is important to mention that the draft-law approved by the Council of Ministers should address three main aspects during parliamentary debates, namely mentioned by the European Commission Report:

- Enhancing the independence and constitutional protection of judges;
- Increasing the salaries and defining status of the judicial administrative staff;
- Overcoming the duplication of the judiciary inspectorates of the High Council of Justice and the Ministry of Justice. Little progress was made regarding access to justice. The implementation of the Law on Free Legal Aid has been slow and neither the bylaws regarding the recruitment of free legal aid lawyers nor the procedures to request free legal aid are implemented effectively. (Chulloch K 1999) The State Commission for Legal Aid has only handled a limited number of cases. Access to justice for vulnerable groups is impeded, especially by high judicial administration fees. (Paul J 1994)

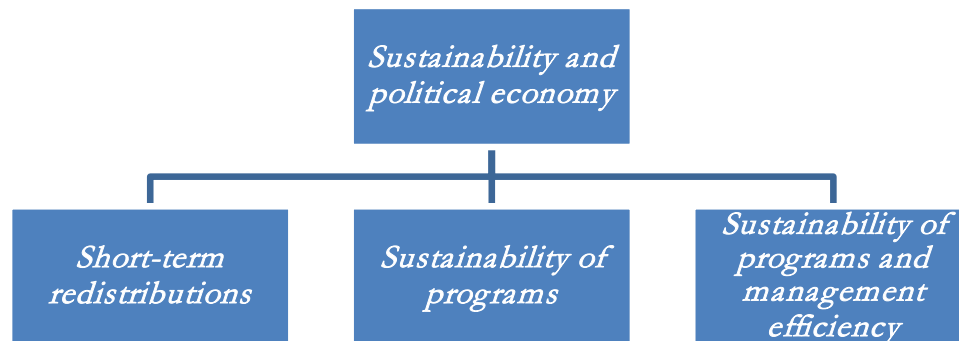


Fig 4: Management in contexts in modern economies, Source: Bass, B.M and Stogodill' V, 1990

#### 4.3. Analyze Data of Paper Research

Standard operating procedures for managing serious crime scenes have been introduced. Threat assessment and proactive investigations should be further promoted. Preparations in order to build a solid track record of investigations, prosecutions and convictions at all levels are moderately advanced. (Peter M 1994) Progress was reported in the fight against trafficking in human beings, even though Albania is still a source country for trafficking in human beings and internal trafficking remains a concern. Progress was made in the engagement of the Office of the National Anti-Trafficking Coordinator (ONATC). A joint working group was established in order to improve the investigation and trial proceedings. Standard operating procedures for identification and referral of victims/potential victims are in place and are being implemented effectively. A new national referral mechanism has been established. (Wredde M 1995)

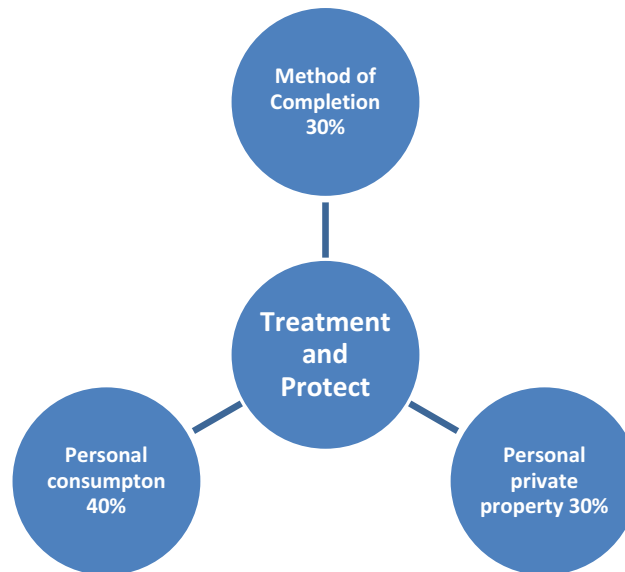


Fig. 5 The indicators of TP system (Fiedler, F. E. 1996)

Regions of the world with a history of large-scale political integration and civilization generally have done better than regions in which no large-scale political and cultural infrastructure existed, even if the old civilizations had decayed or been suppressed by colonizers. (Mitnneel A 2009) has become painfully clear that development cannot be pressure-cooked; it presumes a cultural infrastructure that takes time to grow. (Adler M 1985) Local management is part of this infrastructure; it cannot be imported in package form. Assuming that with so-called modern management techniques and theories outsiders can develop a country has proven a deplorable arrogance. (Goss D 2004) At best, one can hope for a dialogue between equals with the locals, in which the Western partner acts as the expert in Western technology and the local partner as the expert in local culture, habits and feelings. (Bernd H, 1999)

In the Article 68 is sanctioned that "The People's Socialist Republic of Albania the property is owned by state, agricultural cooperative and special people" And if we go further in Article 77 states the citation "Personal property are income are incomes from labor source and other lawful source, residential house and other items that serve to meet personal material and cultural needs of the family. Personal properties are also items and facilities belonging to the family based on the statute of the agricultural cooperative" ( Barry J. 2008)

Albania has a principle option for EU membership, but this will not follow automatically from association. Albania would have formally to apply for membership negotiations. In this case, the European Commission would prepare a feasibility study. The report would evaluate progress achieved in the association process and would draw a conclusion on whether entrance negotiation could be expected to be successful. If the recommendation is positive, negotiations will be opened. At the time of accession, Albania would have to take on all membership obligations. (Ruli G 2007) European integration is often considered hardship, but can also be used as an anchor for Albanian reforms. (Bernard H 1994) Assistance comes from the European Union and several other institutions. (Donald A, 1999) Progress in Albanian European integration will enhance motivation and trust in the country. Monitoring may help identifying problems and deficiencies. However, reforms will have to be implemented by Albania itself, and it should be understood, that this is not done for the European Union but, above all, for the Albanians. (Bregu M 2012)

## 5. Discussion

While leadership researchers have emphasized that managers need to vary the performance of their leadership functions depending on characteristics of their followers, the task, the organizational culture, their position power, and other factors, they have commonly equated followers with subordinates. The research presented in this paper has taken a distinctly different approach and examined the leadership behaviors of two groups of managers in their interactions with the members of their superiors and peers, in addition to their subordinates. (Mediss A 2009)

The argument was made that in order for managers to be effective leaders in their interactions with their subordinates, peers, and superiors, they need to have a broad repertoire of leadership functions at their disposal as well the ability to vary the performance of these leadership functions depending on the organizations role of the person with whom they interact.

The results of this study show that behavioral repertoire has strong positive effects on subordinate, peer, and superior perceptions of effectiveness. These results indicate that to be effective it is important for managers to not only perform their leadership functions frequently in interactions with their subordinates, but also in their interactions with their peers and superiors. Having a broad portfolio of leadership functions at one's disposal will increase the likelihood that one can effectively meet the demands of the member of one's organizational role-set. (Bernard H 1994)

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