# The Rights of Albanian Nationals under the Stabilization and Association Agreement between Albania and the European Communities

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*Abstract*

*This paper investigates the legal effects of the EU Association Agreements in the EU legal order and in the legal order of Albania with a special focus on the rights established for Albanian nationals by the Stabilization and Association Agreement (SAA). It first considers the legal effects of the EU Association Agreements in the EU legal order during the pre-accession period. Such analysis shows that agreements between the Union and non-member states countries which follow the procedure provided by Article 218 of the TFEU form part of the EU legal order. According to the ECJ, provisions of association agreements can have direct effect provided that they contain a clear and precise obligation. Therefore, nationals of non-member state countries party to an agreement with the EU can rely on the provisions of those agreements before the courts of the Member States. On the other hand, the legal effects of the SAA in the Albanian legal order during the pre-accession period depend on the interpretation of the Constitution from Constitutional Court especially of those provisions which concern the relationship of international law with national law and on the interpretation of the objectives of the SSA itself by national judges. Therefore, the second part of the paper will analyse the relationship of international and national law according to the constitution and also the possibilities for supremacy and direct effect of the European law in the Albanian legal order. We will supplement such analysis with recent Constitutional Court decisions, which address the problem of legal effects of EU law in the Albanian legal order. The overall purpose of such analysis is to shed light on the citizen's rights in regard to the so-called pre-accession effect of EU law when the aspiring member state is on the way to full membership. This analytical perspective is important to both Albania and other South East European countries which are in the same legal position and are confused about the rights that their citizens gain from the SAA.*

*Keywords: the European Union, Europe Agreements, EU law, Albania, Stabilisation and Association Agreements, pre-accession effects.*

## 1. Introduction

The European Integration of the Central and Eastern European Countries (CEECs) has been initiated with the so-called Europe Agreements (EA) and has been complemented by the pre-accession strategy. In 1993, the Copenhagen European Council, agreed on some conditions regarding the accession in the EU of the associated East European countries. The so-called "Copenhagen criteria" required the candidate countries to satisfy the political and economic criteria[1]. These criteria were followed by a pre-accession strategy developed by the European Council in Essen in December 1994 and reinforced by the Agenda 2000. The EAs, as one of the tools for structuring accession, aimed at establishing a political dialogue among the Association Council Bodies and gradually introduce a free trade area to liberalise trade and provide for co-operation in areas such as competition law, environment, education and training and contained provisions on free movement of persons, establishment and supply of services to Member States and candidate countries[2].

Regarding the Western Balkan Countries the European Commission proposed the creation of the Stabilization and Association Process (SAP) as a new framework for the relationships between the EU and Western Balkan Countries. The

*[1] The European Council stated: "Membership requires that the candidate country has achieved the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for the protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces with the Union. Membership presupposes the candidates' ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union."*

*[2] Ott. Andrea, "The rights of self-employed citizens in the Member States under the Europe Agreement" 2001 The European legal forum, at pg. 498*

purpose of this process was to assist these countries in fulfilling the EU criteria and being accepted as official candidate for membership. The Stabilization and Association Agreements were a very important element of the SAP process from the legal point of view. These agreements were concluded based on the same legal basis as EAs, Article 218 TFEU (ex Article 310 ETC). From the point of view of their content the SAAs were also based on the existing EAs even if they included new elements related to the new specific situation of the Western Balkan countries[3]. The objective of these agreements was to support the consolidation of democracy, the rule of law, the economic development and the regional cooperation[4]. In the framework of the SAP process, the Stabilization and Association Agreements between Albania and the EU was signed on 12 June 2006 and has entered into force on 1 April 2009.

Both the EAs and SAAs are EU association agreements and have legal effects in the different legal orders. Provisions of these agreements can have direct effect and can establish rights for the citizens of the candidate countries once they come into power. Therefore, this paper will analyze the legal effects of the SAA between European Communities and the Member States on one hand and Albania on the other, for Albanian nationals. After explaining briefly the sources and the features of EU law, the paper will give an overview regarding the pre-accession effects of Europe Agreements in the EU legal order, as they make a good example for the SAAs. However, as Albania is not yet a member of the EU the legal effects of the SAA in the Albanian legal order depend on the interpretation of the constitutional provisions regarding the relationship between international law and national law. Consequently, this paper will briefly analyse the relationship between international and national law, focusing on the so-called integration Articles part of the Albanian Constitution. At the end, possible legal effects of the SAA in the Albanian legal order will be investigated in the light of the case law of the Albanian Constitutional Court regarding the SAA.

## *2. Brief overview of European Union Law*

The sources of EU law can be divided into primary and secondary EU law. The primary EU law consists of the EU constituent treaties which were adopted directly by the Member States. Primary law includes also annexes, appendices and protocols attached to the founding treaties, later additions and amendments, concluded international agreements like the Europe Agreements, Stabilization and Association Agreements and Accession Treaties[5]. Secondary EU law consists of acts of the European institutions. The norms issued by the institutions of the Union are regulations, directives, decisions, recommendations and opinions. According to Article 288 TFEU (ex Article 249 of TEC) in order to exercise the Union's competences the institutions shall adopt regulations, directives, decisions, recommendations and opinions. The relationship between primary and secondary law is not expressly provided in the Treaties, but a hierarchy of norms can be implied by Article 263 TFEU (ex Article 230 TEC) according to which one of the reasons for the annulment of actions of EU Institutions can be infringement of the Treaties or of any rule of law related to their application[6]. Primary community law stands at the top of the hierarchy of the system of sources of EU law and all treaties concluded between the Union and third countries and acts of the institutions of the Union should be conform it. The Court of Justice of the European Union, according to Article 267 TFEU (ex Article 234 TEC), has jurisdiction to give preliminary rulings related to the interpretation of the Treaties and the validity of the acts of the institutions, bodies, offices or agencies of the Union. Thus the ECJ has no jurisdiction to rule on validity of provisions forming an integral part of accession, for example the Europe Agreements, the Stabilization and Association Agreements, Partnership and Cooperation Agreements[7].

The two main principles related to the status of EU law, the principle of supremacy and the principle of direct effect, are developed by ECJ as they had no formal basis in the EC Treaty[8]. It was ECJ, which from the early existence of the Community, touched the issue of supremacy of EU law by stating in Van Gend en Loos[9] that the Community constituted a new legal order of international law for the advantage of which the States had limited their sovereign rights[10]. This

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*[3] Steven Blockmans, "Tough love: the European Union's relation with the Western Balkans" (T.M.C. Asser Instituut 2007) at pg 155.*

*[4] Hoffmann Judith, "Integrating Albania: The role of the European Union in the Democratization Process" I (1) Albanian Journal of Politics (2005) at pg. 58*

*[5] Alfed Kellerman, "The rights of Non-Member State nationals under the EU Association Agreements", 3 European Journal of Law Reform, (2008) at pg. 341*

*[6] Article 263, TFEU para.2 provides that: "It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.*

*[7] Supra note 5 at pg. 343*

*[8] Paul Craig Grainne De Burca, " EU law text, cases and materials" (Oxford University Press 2008) at pg. 344*

*[9] Case 26/62 NV Algemene Transporten Expeditie Onderneming van Gend en Loos v. Nederlandse Amministratie der Belastigen [1963] ECR 1.*

*[10] Supra note 8 at pg. 345.*

principle was the main focus in the decision Costa v. Enel[11], where ECJ held that EC Treaty had created its own legal order which became part of the legal systems of the Member States and the Member States had transferred to the Community institutions "real powers stemming from a limitation of sovereignty". The Court went on by giving other arguments such as the spirit and the aims of the treaty which made it 'impossible" for the Member States to accord primacy to their national law[12]. Finally the Court argued that Article 249 TEC (now Article 288TFEU) would be meaningless if Member States would not respect it by approving inconsistent national law. After having created a basis in Costa v Enel in the following cases such as: Internationale Handelsgesellschaft[13] and Simmenthal[14] ECJ held that not even a fundamental rule part of the national constitution could challenge the supremacy of directly applicable Community law[15]. It is now established by the case law of the Court of Justice that Community law is supreme over the national law of the member states, including the fundamental norms of their national constitutions[16].

Another important principle related to the EU law is the principle of direct effect. According to the broader definition of this principle, provisions of EU law which are clear and precise and unconditional enough to considered justiciable can be invoked and relied by individuals before national courts[17]. According to the "narrower" or classical concept of the direct effect it can be defined as the capacity of a provision of EU law to confer rights on individuals[18].This principle was initially established by ECJ in its case Van Gend en Loos and after it is was extended and now applies to EU primary law, secondary legislation and international agreements.

## 3. Legal effects of the Association Agreements in the EU legal order – Stabilization and Association Agreement between EU and Albania

International agreements are binding upon the institutions of the Union and its Member States, according to Article 216 (2) TFEU. ECJ has consistently held since Haegeman ruling that once an agreement enters into force, its provisions form an "integral part" of Community law[19]. This reflects the monist approach regarding the relationship between international law and domestic law according to which agreements concluded by the Union form part of the Union legal order without the necessity of transposing those provisions in the Union legal order. According to the ECJ's case law international agreements can have direct effect. In its reasoning in Demirel's case ECJ reasoned that a provision of an international agreement concluded by the Community with non-member countries can be directly applicable when the provision contains a clear and precise obligation which is not subject, in its implementation or effect to the adoption of any subsequent measure[20].

Article 217 TFEU (ex Article 310 TEC) provides the power of the Union to conclude Association Agreements. The Association Agreements concluded with the CEECs are the so-called "Europe Agreements". Although there is no suggestion in the Treaty about the content of the Association Agreements, they establish the frameworks which would enable the applicant country to integrate gradually into the union[21]. Association Agreements include also the Stabilization and Association Agreements with the countries of the Western Balkans, whose objective is to support the consolidation of democracy, the rule of law, the economic development and the regional cooperation. The Association Agreements have been invoked before ECJ which continuously reasoned that they form an integral part of the EU legal order and that it had a broad jurisdiction on them[22].

In order to understand the possibilities for direct effect of the SAAs, it is necessary to analyze the preliminary rulings of the ECJ on the direct effect of the Europe Agreements as they form a good example. There are several cases regarding the direct effect of the provisions on the right of establishment and free movement of workers provided in the Europe Agreements. In cases such as Gloszczuk, Kondova, Barkoci and Malik, Jany[23] nationals of Central and Eastern

[11] *Case 6/64 Faminio Costa v. Enel [1964] ECR 585, 593*
[12] *Supra note 8 at pg. 346.*
[13] *Case 11/70 Internationale Hnadelsgesellschaft mbH v. Einfuhr und Vorratsstelle fur Getreide und Futtermittel [1970] ECR 1125.*
[14] *Case 106/77 Amministrazione delle Finanze dello Stato v. Simmenthal SpA [1978] ECR 629.*
[15] *Supra note 8 at pg 347.*
[16] *Anneli Albi, "Supremacy of EC Law in the New Member States" 3 European Constitutional Law Review, (2007) at pg. 25.*
[17] *Supra note 8 at pg. 268*
[18] *Ibid at pg. 268*
[19] *Supra note 8 at pg. 202*
[20] *Case C-12/86 ECR 1987, 3719*
[21] *Neill Nugent, "The Government and the politics of the European Union" (Duke University Press 2006) at pg. 71*
[22] *Supra note 8 at pg 186*
[23] *Case C-63/99 Gloszczuk; Case C-235/99 Kondova; Case C-257/99 Barkoci and Malik [2001] ECR I-6557; Case C-268/99 Jany [2001] ECR I-8615*

European Countries asked entry into and residence in the territory of the EU member states as they wanted to work there as self-employed persons. Given that they did not have such rights of entry and residence under their national law they invoked provisions on the right of establishment provided in the respective Europe Agreements[24]. ECJ in answering the question of direct effect of the provisions on the right of establishment provided in the Europe Agreements considered their wording and the purpose and the nature of the Europe Agreements. The court concluded that the provisions on the right of establishment in the Association Agreements, is to be construed as establishing within the scope of application of those Agreements a precise and unconditional principle which is sufficiently operational to be applied by national court and which is therefore capable of governing the legal position of individuals[25]. Therefore, nationals of Europe Agreement countries have the right to invoke the provisions on equal treatment before the courts of the host Member State, even though the authorities of this state remain competent to apply to those nationals their own national laws and regulations regarding entry, stay and establishment. Regarding the right of the free movement of workers for nationals of the Europe Agreement countries, the Europe Agreements grant a right to equal treatment to those nationals who are legally residing and working in one of the Member States, however they do not establish a freedom of movement of workers for them. There is a line of cases of the ECJ concerning provisions on the free movement of workers contained in different Europe Agreements, which according to the Court can have direct effect, but those provisions grant to the nationals of EA countries only a right on equal treatment if they are legally employed in the territory of a Member State.

Albania signed a Stabilization and Association Agreement with the EU on 12 June 2006, which entered into force on 1 April 2009 after having been ratified by all EU Member States. Although, there hasn't been a court case in any of the EU Member States involving an Albanian national, which asked for a preliminary ruling of the ECJ on the interpretation of the SAA with Albania, it can have direct effect and Albanian nationals can enforce their rights in the EU legal order. Read in the light of the above mentioned case law of the ECJ regarding direct effect of certain provisions of the EAs, also provisions of the SAA with Albania can have direct effect. The SAA contains the provisions related to the movement of workers, Article 46 SAA[26], in Title V, Chapter I on "Movement of workers" can have direct effect. According to this Article Albanian nationals, legally employed in one of the EU Member States, may enforce their rights and rights of their spouse and children on the equal treatment coming from Article 46, before one of the courts of the EU Member States. The SAA accords rights to the self-employed Albanian citizens, thus according to Article 50[27] of the SAA Albanian nationals have the right to invoke the equal treatment provision before the courts of the host Member State, however the authorities of that Member State remain competent to apply their own national laws and regulations regarding entry, stay and establishment.

ECJ ruled in Van Gend & Loos that provisions containing negative obligations or the so-called standstill provisions can have direct effect. Identical standstill provisions are also set out in the SAA with Albania. For example, Article 33 of the SAA, which provides that no new customs duties or new equivalent restrictions on imports or exports or charges or measures having equivalent effect shall be introduced, nor shall those already applied be increased in trade between the Community and Albania[28], is similar to Articles 30 and 34 of TFEU (ex Article 25 & 28 TEC), which prohibit customs

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*[24] In the Glozczuk case the Europe Agreement between EC and Poland was invoked (OJ 1993, L 348/1); the Kondova case concerned EC/Bulgaria Agreement (OJ 1994, L 358/1); in the Barkoci & Malik case the EC/Czech Republic Agreement was invoked (OJ 1994 L 360/1); in Jany case the Europe Agreements with Poland and the Czech Republic were relied upon.*

*[25] Supra note 23*

*[26] Article 46 SAA para. 1 provides that: "1. Subject to the conditions and modalities applicable in each Member State:– treatment accorded to workers who are Albanian nationals and who are legally employed in the territory of a Member State shall be free of any discrimination based on nationality, as regards working conditions, remuneration or dismissal, compared to its own nationals;– the legally resident spouse and children of a worker legally employed in the territory of a Member State, with the exception of seasonal workers and of workers coming under bilateral Agreements within the meaning of Article 47, unless otherwise provided by such Agreements, shall have access to the labour market of that Member State, during the period of that worker's authorized stay of employment."*

*[27] Article 50 SAA para.1 provides that:" Albania shall facilitate the setting-up of operations on its territory by Community companies and nationals. To that end, it shall grant, upon the date of entry into force of this Agreement:*
*(i) as regards the establishment of Community companies treatment no less favourable than that accorded to its own companies or to any third country company, whichever is the better, and;*
*(ii) as regards the operation of subsidiaries and branches of Community companies in Albania, once established, treatment no less favourable than that accorded to its own companies and branches or to any subsidiary and branch of any third country company, whichever is the better.*

*[28] Article 33 para. 1&2 of the SAA provide that: "1. From the date of entry into force of this Agreement no new customs duties on imports or exports or charges having equivalent effect shall be introduced, nor shall those already applied be increased, in trade between the Community and Albania.2. From the date of entry into force of this Agreement no new quantitative restriction on imports or exports or measure having equivalent effect shall be introduced, nor shall those existing be made more restrictive, in trade between the Community and Albania."*

duties and quantitative restrictions between Member States. According to the case law of the ECJ Articles 30 and 34 of the TFEU can have direct effect, thus also Article 33 of the SAA with Albania, as a standstill provision, can have direct effect. Every person and company established in the EU Member States could bring a case before a national court in one of the EU Member States based on Article 33 of the SAA[29].

Another case might concern fiscal discrimination provided in Article 34 of the SAA. This Article prohibits fiscal discrimination by providing that the parties should refrain from and abolish any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products of one Party and like products originating in the territory of another party. This Article is similar to Article 110 of TFEU (ex Article 90 TEC). The first paragraph of Article 110, which can be compared to Article 34 (1) of the SAA, prohibits discriminatory taxation in respect of goods which are similar, such as one type of beer and another. There is a line of cases of the ECJ concerning the taxation of alcoholic drinks, where the court suspected that internal taxation schemes favored national products to the disadvantage of similar or potentially equivalent products produced elsewhere, and so applied Article 90 TEC (now Article 110 TFEU)[30]. The test used by the ECJ to determine whether the goods are similar, was laid down in Commission v Denmark[31]. The scope of Article 90 (1) is decided not only on the basis of strictly identical nature of the products but also on their similar and comparable use[32]. Thus, a producer of one of the Member States of the EU can sue the Albanian Tax Administration before its national court, in case of discriminatory taxation in respect of goods which are similar and that court would ask for a preliminary ruling from the ECJ.

## 4. International law in the Albanian legal order

Article 5 of the Constitution, provides that Albania should apply international law binding upon it.[33]The way in which the Albanian Constitution has solved the issue of the relationship between international law and national law is closer to the monistic approach. As it will be explained, ratified international agreements are part of the Albanian legal order after being published in the Official Journal, they have supremacy over the national law in case of conflict and they can be directly applied. Article 116 of the Constitution creates a hierarchy between normative acts which are effective in the territory of the Republic of Albania, by placing the ratified international agreements before the national laws. According to Article 122/1[34] every ratified international agreement constitutes part of the Albanian legal order and can be directly applied except for the cases when it is not self-executing and its implementation needs issuance of a law. Paragraph 2 of Article 122 recognizes the supremacy of the ratified international agreements over national laws and such agreements prevail over national laws which contradict them[35]. Thus, the Albanian Constitution provides for the supremacy of international law over the national laws and automatically solves problems of conflicts between them in favor of international law. This confirmed supremacy of international law towards national law separates Albania from the solution given by the dualistic countries regarding the relationship between international and national law[36]. Many Constitutions of other countries have only provided that their legislation is in conformity with rules and norms of international law, but they leave unsolved the problem of conflict between national norms and international norms. This is a partial solution given by the Constitutions of these countries[37]. The Albanian Constitution is similar to the Constitutions of Poland, Croatia, which provide for the supremacy of ratified international agreements over the laws of the land, in case of conflict between them[38].

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*[29] Supra note 5 at pg. 353*

*[30] Cathrine Barnard, "The substantive law of the EU the four freedoms" (Oxford University Press 2007) at pg. 48*

*[31] Case 106/84 Commission v. Denmark (1986) ECR 833 para.12*

*[32] Supra note 31 at pg. 50.*

*[33] Article 5 of the Albanian Constitution provides that: "The republic of Albania applies international law that is binding upon it"*

*[34] Article 122/1 of the Albanian Constitution provides that: "Any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law. The amendment, supplementing and repeal of laws approved by the majority of all members of the Assembly, for the effect of ratifying an international agreement, is done with the same majority.*

*[35] Article 122/2 of the Albanian Constitution provides that: "An international agreement that has been duly ratified by law has superiority over laws of the country that are not compatible with it"*

*[36] Sokol Sadushi, "Jurisprudenca e Gjykates Kushtetuese ne frymen e Koneventes Europiane per te Drejtat e Njeriut", XI, E drejta Parlamentare dhe Politiokat Ligjore (2003).*

*[37] Ksenofon Kristafi, "Kushtetuta Shqiptare dhe e Drejta Nderkombetare ", 47 (2) Tribuna Juridike (2004).*

*[38] Aurela Anastasi, "Internacionalizimi i se Drejtes Kushtetuese Klauzolat Kushtetuese te Integrimit te Shqiperise" 4 Polis, (2008) at pg.19.*

The Albanian Constitution creates two systems regarding the relationship between international law and national law[39]. The first system as it was explained above is based on two basic principles: first on the principle of direct applicability of the ratified international agreements (except for the cases when they are not self-executing and their implementation requires issuance of a law) second on the principle of the superiority of the ratified international agreements over the laws of the country, that are not compatible with them[40].

The second system is related to the third paragraph of Article 122 [41], which introduces some special characteristics different from the general system of the relationship between ratified international treaties and national law. This Article provides that norms issued by an international organization can have supremacy over the laws of the country in case of conflict, but with one condition that the ratified agreement for the participation of the Republic of Albania in that organization should provide for the direct effect of the norms issued by that organization. The norms issued by this international organization will have supremacy not only over the national laws, as it was for the international norms of public international law, but they will have supremacy over the laws of the country. From a literal interpretation of Article 122/3, the laws of the country include all internal norms including the constitution itself, so it is understandable supremacy over the Constitution itself and not only over the national laws[42].

Article 122/3, is not clear as long as it is not implemented in practice and for as long as there is no interpretation by the Constitutional Court. It does not distinguish between international law and EU law. This separation should recognize the specific nature of the EU law. Under these conditions foreign experts, who consider the specific nature of EU law, supported also by Albanian experts, recommend that it would be better to add in the Albanian Constitution appropriate provisions giving EU law legal authority, supremacy and direct effect when possible[43]. This Article would not change the position held by the Albanian Constitution towards international law in general as it would only provide for the special status of the Community law within the Albanian legal order[44].

## 5. Legal effects of the Stabilization and Association Agreement between Albania and EU – Constitutional case law

According to Article 122 of the Albanian Constitution, international agreements ratified by law by the Republic of Albania, are part of the internal legal order, they can have direct effect and they can be applied by the national courts. The supremacy of international law over national laws sanctioned in the Constitution has also been applied in practice. The Albanian Constitutional Court abrogated provisions of the Criminal Code and provisions of the Criminal Military Code which predicted death penalty, in order to comply with Protocol No. 6 of the European Convention on Human Rights. Regarding the European Convention on Human Rights the Constitutional Court has developed a practice according to which it has invalidated Albanian laws contrary to the provisions of the Convention and it has also used decisions of the European Court on Human Rights as an interpretative tool. The Constitutional Court has developed a practice according to which non-conformity of Albanian laws with an international treaty construes a breach of the principle of the rule of law and is contrary to the Constitution.

The definition of the relationship between international law and national law in the framework of Albanian's Euro – Atlantic integration was one of the tasks of the drafters of the constitution. By carefully analyzing the constitutional status of international acts, besides the general standing explained above, there are also so-called specific articles which provide for the participation of Albania in supranational organizations[45]. One of this is Article 122/3, mentioned above, according to which norms issued by an international organization can have supremacy over the laws of the country in case of conflict thus, over the Constitution itself and also direct effect. There are authors[46] which think, that regarding the SAA with Albania, Article 122/3 might serve as a constitutional base for the Albanian courts, when giving their decisions about cases for non-compliance by the Government of the standstill provisions provided in the SAA. For example, the

[39] *Xhezair Zaganjori, Aurela Anastasi, Eralda Cani, "Shteti i se drejtes ne Kushtetuten e Republikes se Shqiperise" (Adelprint 2011) at pg. 60*

[40] *Ibid pg. 60*

[41] *Article 122/3 of the Albanian Constitution provides that: "The norms issued by an international organization have superiority, in case of conflict, over the laws of the country if the agreement ratified by the Republic of Albania for its participation in the organization expressly contemplates their direct applicability".*

[42] *Luan Omari, Aurela Anastasi, "E drejta kushtetuese" (Shtepia Botuese Adelprint 2010) at pg 40*

[43] *Alfred Kellermann, "Impakti i Anetaresimit ne BE ne Rendin e Brendshem Ligjor te Republikes se Shqiperise", XXXV E Drejta Parlamentare dhe Politikat Ligjore, (2007). at pg. 372*

[44] *Ibid at 372*

[45] *Supra note 43 at pg. 42.*

[46] *Supra note 5 at pg. 353*

Albanian courts can refer directly to the SAA, when Albanian and European companies established in Albania, dispute the correctness of implementation of obligations under SAA regarding custom duties, quantitative restrictions etc. However, during the pre-accession period the Constitutional Court has to interpret the national constitutional provisions regarding the priority of the provisions of the SAA in the Albanian legal order.

After the entrance into force of the SAA, the Albanian Constitutional Court has referred to the provisions of the SAA directly and it has recognized supremacy of its provisions over the national legislation. Case No. 24/2009 47 the Hydrocarbon Companies Association challenged the constitutionality of a Council Ministers Decision concerning the quality standards of gasoil, as a byproduct of crude oil, drilled in the territory of the Republic of Albania and traded for vehicles and generators. The association claimed among others that the above-mentioned decision could not be reconciled with the SAA because it allowed dominant position of a private company in the market regarding products that independently of their origin have the same usage and create the same effects related to the air pollution. The Constitutional Court referred to Article 33 point 248 of the SAA which, according to it, limited the right of the Albanian State to regulate the execution of the freedom of economic activity. The Court furthermore stated that the above-mentioned decision through the exclusion it provided changed the Albanian legislation, by creating a situation which banned imports for a certain product and favored the internal products compared to other products. The Court decided that the decision of Council of the Ministers was not in compliance with the SAA and it was abolished.

An important obligation for Albania during the pre-accession period is to adjust to the acquis communautaire. This adjustment is achieved not only by adaptation of compatible legal norms but also by assuring the same application of legal norms in practice. Thus, interpretation of Albanian laws and other acts in the light of EU law can be interpreted as one of the obligations according to the SAA. The Albanian Constitutional Court seems to be willing to interpret national law as far as possible in compliance with EU law. Case No. 3/201049, concerned the constitutionality of the law "On statutory audit, the organization of the profession of the statutory auditors and chartered accountants" Among others the Professional Organization of the Economist claimed that the abovementioned law created a monopoly position of the statutory audit in the market because there was only one professional association, which grouped the statutory auditors and membership in that professional association was a condition in order to become a statutory auditor. The Constitutional Court ruled based on the Directive 2006/43/EC of the European Parliament and of the Council, of 17 May 2006, "On statutory audits of annual accounts and consolidated accounts", which obliged the Member States to harmonize their legislation on auditing and auditors with this directive. The Court did a comparative interpretation, pointing out that almost in all Member States of the European Union, and also candidate countries there was one professional association for auditors, which was based on national laws or other national regulatory acts, independently of the fact that, these associations in some countries, based on their tradition, included also chartered accountants. Under this point of view the Court pointed out that there was no monopoly situation, as the law didn't prevent anybody to take the expert license, it only provided the way this license was approved and its continuous control.

## 6. Conclusions

The EU Association Agreements form an integral part of the EU legal order and their provisions can have direct effect when they contain a clear and precise obligation which is not subject in its implementation or in its effects, to the adaptation of any subsequent measure. Thus, nationals of countries which have signed an Association Agreement with the EU and that agreement has come into power can enforce their rights derived by those agreements before the courts of the EU Member States. The ECJ in many cases related to the EU Association Agreements has had the opportunity to interpret the legal effects of EU Association Agreements. It ruled that provisions on freedom of establishment and free movement of workers create rights for the nationals of the EU Association Agreements countries. Thus, based on the case law regarding the Europe Agreements it can be inferred that also Albanian nationals can enforce their rights derived by the SAA with the EU. Legally employed Albanian workers in one of the EU Member-States shall be free from any form of discrimination based on nationality, regarding working conditions, remuneration, and dismissal compared to the nationals of that Member States. Also self-employed Albanian nationals who legally reside in the territory of the Member States must be treated equally and they cannot be discriminated against because of their nationality.

During the pre-accession period, the effects of the SAA in the Albanian legal order will depend on the interpretation by the Constitutional Court of the constitution regarding the priority of the provisions of the SAA within the Albanian legal order

[47] *Decisions of the Constitutional Court of the Republic of Albania 2009 published 2010.*

[48] *From the date of entry into force of this Agreement no new quantitative restriction on imports or exports or measure having equivalent effect shall be introduced, nor shall those existing be made more restrictive, in trade between the Community and Albania*

[49] *Decisions of the Albanian Constitutional Court 2010 at pg. 34*

and on the interpretation given to the objectives of the SAA. It can be inferred from the above-mentioned case law of the Albanian Constitutional Court that it is very willing to refer to the provisions of the SAA directly, after it's entering into force, and to acknowledge it's supremacy over national laws. The Albanian Constitutional Court is also willing to interpret Albanian laws in the light of the relevant EU law provisions. Thus, it takes into account one of the obligations under the SAA regarding the approximation of laws. Article 70 of the SAA provides that Albania is under obligation to ensure that existing laws and future legislation should be gradually made compatible with Community acquis. In principle, the Albanian Constitutional Court has used in its reasoning Articles of the SAA and its objectives in order to interpret Albanian law in the light of EU law.

## Bibliography

### Books:

*Kristaq Traja, "Drejtesia Kushtetuese" Tirane (2000).*
*A. Cassese, "International Law" (2004).*
*Neill Nugent, "The Government and the politics of the European Union" (Duke University Press 2006).*
*Cathrine Barnard, "The substantive law of the EU the four freedoms" (Oxford University Press 2007).*
*Steven Blockmans, "Tough love: the European Union's relation with the Western Balkans" (T.M.C. Asser Instituut 2007).*
*Aurela Anastasi "E dreja kushtetuese" (Tirane 2008).*
*Luan Omari, "Shteti i se Drejtes", (Tirane 2008).*
*Paul Craig Grainne De Burca, "EU law text, cases and materials" (Oxford University Press 2008).*
*Luan Omari, Aurela Anastasi, "E drejta kushtetuese" (Shtepia Botuese Adelprint 2010).*
*Xhezair Zaganjori, Aurela Anastasi, Eralda Cani, "Shteti i se drejtes ne Kushtetuten e Republikes se Shqiperise" (Adelprint 2011).*

### Articles:

*Sokol Sadushi, "Nje Veshtrim i Shkurter per Kontrollin Kushtetues", II E Drejta Parlamentare dhe Politikat Ligjore, (2001).*
*Ott, Andrea, "The rights of self-employed CEEC citizens in the Member States under the Europe Agreements", the European Legal Forum (2001).*
*Kujtim Puto, "Raporti i Gjykates Kushtetuese me gjykatat e juridiksionit te zakoshem", 12, E drejta Parlamentare dhe Politikat Ligjore (2002).*
*Ronald Van Ooik, "Freedom of movement of self-employed persons and the Europe Agreements"4, European Journal of Migration and Law (2002).*
*Sokol Sadushi, "Jurisprudenca e Gjykates Kushtetuese ne frymen e Koneventes Europiane per te Drejtat e Njeriut", XI, E drejta Parlamentare dhe Politiokat Ligjore (2003).*
*Xhezair Zaganjori, "Vendi i se Drejtes Nderkombetare ne Kushtetuten e Republikes se Shqiperise", 2 Jeta Juridike, (2004).*
*Ksenofon Kristafi, "Kushtetuta Shqiptare dhe e Drejta Nderkombetare", 47 (2) Tribuna Juridike (2004).*
*Hoffmann Judith, "Integrating Albania: The role of the European Union in the Democratization Process" I Albanian Journal of Politics (2005).*
*Anneli Albi, "Supremacy of EC Law in the New Member States" 3 European Constitutional Law Review, (2007).*
*Alfred Kellermann, "Impakti i Anetaresimit ne BE ne Rendin e Brendshem Ligjor te Republikes se Shqiperise", XXXV E Drejta Parlamentare dhe Politikat Ligjore, (2007).*
*Aurela Anastasi, "Internacionalizimi i se Drejtes Kushtetuese Klauzolat Kushtetuese te Integrimit te Shqiperise" 4 Polis, (2008).*
*Alfred Kellermann, "The rights of Non-Member States Nationals under the EU Association Agreements" 3, European Journal of Law Reform (2008).*