ALBANIA BETWEEN EUROPEAN AND INTERNATIONAL LAW

FERUZJOLA AVXHİ

ABSTRACT

International law in Albania is relatively a new field of science, due to the countries limited international relations in the past. The change of the political system has led to the changes of juridical system as well. This as caused the increasement of the international law impact into the Albanian national law, due to the considerable increase in relations with other countries, the accession to international agreements and the membership to important international organizations. The prospect of EU membership and the multidimensional relationship existing between the three systems of justice: the international one, the European one and the internal system have been the main drivers for this topic.

In the whole of the aspects of international law, which by its nature is very broad, the paper aims to shed some light on its relationship with Community law and the role played by the European Union's Law towards the Development of Albanian domestic law, and support in it. An essential question has been raised for the construction of the paper, which helps to answer the hypothesis. How relations are constructed and how international public law and the European primary law interact with Albanian law?

For the realization of this paper, a Qualitative and Comparative Analytical Methodology has been used between three variables: International Law, European Right and National Law of the Albanian State. The literature is based on both scientific publications and official electronic sources.

This paper speaks also about the doctrine of the European Court of Justice on the autonomy of the Community legal order in relation to the domestic legal order of member countries, but also with international public law in general.

Key words: *Albania, International Law, Community Law, European Community (EC), European Community Treaty (ECT), European Union (EU), Treaty on European Union (TBE), European Court of Justice (ECJ), Stabilization Association Agreement (SAA).*

Acquis Comunitare Vs. Albanian Law



Table of Content

No. of pages

Abstract **1**

1. **International Law vs. Community Law** 64
2. **The Importance and Autonomy of the Community Legal Order** 64
3. **The History Of Albanian State And Legislation Transformation In The Formation and Strengthening Of The State Of Justice** 66
4. **Relations between Albanian Law with International Law and European Law** 74
5. **Implementation in the national legal order of a non-member country that is associated with the EU** 81
6. **Decisions of the Constitutional Court of the Republic of Albania dealing with aspects of International Law** 81

Conclusions.....**27**

Bibliography.....**28**

1. International Law vs. Community Law

European law otherwise known as the *acquis communautaire* includes EU and EC Treaties, secondary legislation approved by European institutions, general principles of European law processed by the European Court of Justice, as well as international agreements where the Community or the EU are parties. European legislation is elaborated by European institutions which maintain an independent or autonomous status in their work by the governments of member countries. So, the European legislation approved by the EU institutions is relatively non influenced by national governments, but comes out to be implemented by them, incorporating them into domestic law.

European law is implemented by national authorities, but ultimately interpreted by the European Court of Justice. The European Court of Justice has interpreted Community law as a carrier of two main qualities: the direct effect and superiority to ordinary domestic legislation. These qualities are also enjoyed by international agreements signed by the EU or the EC with non-member countries. In this context, this presentation intends to extend to the level of implementation and the effects of the Stabilization and Association Agreement between Albania and the EU, both in the Community legal order and in the National legal order of Albania.

2. The Importance and Autonomy of the Community Legal Order

The Advantage and Direct Effect

The existence of an autonomous community law by the domestic legal order of the states and characterized by the typical attributes of the most perfect legal systems - among which the independence of three classical state functions: normative, executive, judicial - are already well known from all. According to the Treaty of European Community, the division of the main functions into the EC is made between the four "constitutional" institutions: The Council of Ministers with normative and executive role, the Commission with implementing and proposing role, European Court of Justice with the role of law implementing and European Parliament Controlling and legislative role, to rely heavily on its legal order. These are not just about the self-executing norms of the Treaties[1], but also about legal instruments designed to enforce the predefined objectives (So-called right of the derivative community). These qualities, therefore,

[1] Self-implementing norms will be called those Treaty norms that are so detailed that they can be considered ready for implementation without the need of further enforcement acts.

enjoy both the self-executing norms of the Treaty[2] and also the secondary legislation decisions such as rules, directives and decisions adopted by Community institutions for applying the objectives of the Treaty.

First, they have created quasi-governmental bodies (the institutions) independent from the national public authorities and endowed with legislative, administrative and judicial sovereign rights, which were transferred to them by the Member States. Second, the Treaties lay down basic principles, which are either worked out in the Treaties themselves or implemented by acts of the institutions. Treaties and rules constitute a set of rules which directly, without interference or intervention, impose obligations upon and create rights for the Member States or natural or legal persons within the Community. The Treaties therefore present many analogies with national constitutions.[3]

Treaties (referred to as primary Community law) are constantly being expanded and implemented by new Treaties, made more specific, implemented, interpreted and applied by the various acts and measures of the institutions (known as secondary Community law).[4]

For secondary legislation, in additions to regulations, according the Court, the principle of direct effect, applies even to directives, to the extent that they express clear and precise obligations to Member States[5]. But the autonomy of Community law is also linked to the breadth of its scope of anticipation and the power of its effects within Member States.

With European Communities, we have a qualitative step: the configuration of their own autonomy order as a result of the wide range of work they do. On the other hand, Community law is deeply distinguished from international law, because the last one usually does not provide a subjective judicial case for individuals. In the community law, in the presence of directly applicable norms is verified the phenomenon of the immediate creation of rights for the "simple market citizens"[6] of the Member States, regardless of internal enforcement measures.

Whoever examines the issue from domestic law point of view, finds in front of itself the right of the person created in a different system of his own, but integrated in it: the task to be applied is to apply concretely the co-mutational norm, and not the recreate and apply the norm that has the right contemplated in it. Meanwhile, we do not have a problem arising from the need to apply international norm in the context of domestic law, as community law is self-applicable and

[2] As Article 12 or 23 of the ECT cited above.

[3] Martin Stiernstrom, Jean Monnet/Robert Schuman: "The Relationship Between Community Law and National Law", University of Miami Miami, Paper Series Vol.5 No. 33. Florida, October 2005, page 1.

[4] Martin Stiernstrom, Jean Monnet/Robert Schuman: "The Relationship Between Community Law and National Law", University of Miami Miami, Paper Series Vol.5 No. 33. Florida, October 2005, page 2.

[5] Moreover, see the case Franchovic v. The Republic of Italy cited above.

[6] It is about people whose freedom of movement in the position of employees or student citizens is one of the four pillars of the common market foundation in the ECT.

superior to domestic law. Even recognizing that a comunitary law is a special order derived from general international law[7] - such as the internal order of international organizations - it is necessary, however, to recognize the characteristics that make it a *unicum*, a unique entity only in the domestic legal order. We have also said that it has an absolutely original basis in the relationship between the will of cooperation of the Member States and the objectives of this cooperation.

The Community Legal Order, made up of the founders of the Communities and the EU, by the secondary legislation issued by European institutions, by ECJ decisions as well as by international agreements where the EC or the EU are parties, has two fundamental qualities: it has legal effect directly to member states and their organs of power and at the same time superior to any national law that conflict or does not conflict with it. These two fundamental qualities deriving from the rigorous interpretation that the ECJ has made to the community law have had a major impact on the effectiveness of Community law enforcement throughout the common European space. The comunitary law is drafted by the European institutions in power, but is directed towards implementation by member states and their authorities. The fair and uniform way of implementation is of crucial importance for ensuring the full effect of Community law. Ultimately, the process of European integration is nothing but the simultaneous and full implementation of the same rules in the areas of joint action. The European building is held on this pillar, which is European law and its good implementation. Understanding with all the effects and obligations it carries is a task for member states or even for new countries seeking to associate with the EU.

3. The History Of Albanian State And Legislation Transformation In The Formation And Strengthening Of The State Of Justice

History tells us that old laws remember the Kanun, a kind of "constitution" respected by a good part of Albanians for centuries. ***The Kanun of Lekë Dukagjini*** is well-known, which according to the notes was codified in the XVth century by the Albanian prince of the same name, it has served the Albanians to preserve their self-government and to exercise as little a democratic power. According to the Kanun, important decisions were made by elders' assemblies.

In the wave of the National Renaissance of the XIXth century, the Albanians founded the Albanian League of Prizren (1878) and in the meantime created a temporary government for Albanian vilayets. ***The Kanun of the League, named Kararname (Act of Decisions),*** sanctioned the formation of the League as an Albanian political organization and defined its most pressing tasks. It expressed the self-governing intentions of the Albanians. The League of Prizren and its

[7] So, it is simply an international law of an international organization with special powers.

committees were generating constitutional functions, separate from those of Istanbul (Article 14), which weakened the authority of the Sublime Porte (the High Gate) in Albania.

In 1888 was established the Turkish Agrarian Bank on the basis of the ***"Provincial Arkes"*** *"**Arkave Krahinore***" (Memleket Sandıkları) and the ***"Interes Fond"*** (Menafi Sandıkları). The capital of this bank was 10 million Turkish lira[8].

Albanian State after the Announcement of Independence:

When the 1912s arrived, the Balkans had for many decades been turned into a "gunpowder barrel" and battlefield. The Great Powers saw the region as a borderline between Russia and the Western powers, between Turkey and Austria-Hungary, while Italy saw it as an essential issue for its own security. Small Balkan states like Greece, Serbia and Bulgaria were colliding with one another to capture as many territories as possible. The Ottoman Empire was weakened by internal revolutions and crumbled from the Balkan Wars.

November 28, 1912: After nearly five centuries of occupation under the Ottoman Empire's, *the Albanian people declared **their national independence***. The Great Powers guaranteed the independence and impartiality of Albania at international level. ***Vlora National Assembly*** was formed. As the first representative body of the people, it undertook the realization of the important task of declaring Albania's independence. It chooses ***the Provisional Government***, headed by Ismail Qemali. Despite the incredibly difficult situation in which it was, the Provisional Government of Ismail Qemali took a number of measures to consolidate the new Albanian state. There were about 27 residents per square kilometer. The old administrative structures of the Ottoman Empire were not inherited by the new state. Road network was in the wrong position. Central government's access to the remote areas of the country was very difficult because in the old vilayet structure, administrative centers remained outside the country. It became an initial step to building state structures, central departments and related bodies. The economic policy of the Government of Ismail Qemali aimed to assist the growing Albanian bourgeoisie. In the framework of these measures, a special role was its cooperation with the powerful western states, for the establishment of the National Bank of Albania.

The Albanian state began its independent life since 1912, just ***after the constitutional act of declaring independence*** by the National Assembly gathered in Vlora. Four important decisions of the Assembly were the first constitutional forms:

- Albania to become on its own and free,
- In a temporary government,
- A elders group to be elected for government control,
- To send a commission in Europe to defend the Albanian issue in the great kingdoms of Europe[9].

[8]Page 9. https://www.bankofalbania.org/web/pub/Historiku_2266_1.pdf

[9]Anastasi Aurela .; "The History of Constitutional Law in Albania", 1912-1939, Pegi Publishing House, 2007

In Vlora's government, even though only 14 months of longevity, constitutional legislation emerged and also some other branches of law were formed.

In 1913, the London Conference of Ambassadors also defined the form of government, where Albania was declared an ***autonomous, sovereign and hereditary princedomy***, which was placed under the guaranty of the six Great Powers.

4 October 1913: The Government Agreement of Ismail Qemali for the establishment ***of the National Bank of Albania*** was completed with Karol Pitner and Oskar Pollak, representatives of Verein Bank of Wienner, acting on behalf of the Austro-Hungarian banking group and with Pietro Fenolio and Guido Ansbaher of Banca Commerciale Italiana, acting on behalf of the Italian banking group. This agreement represented a concession for a period of 60 years from the date of the founding of the bank, with the right of extension.

Albanian state under Prince Vidi and the Organic Statute of Albania

After the Vlora National Assembly, parliamentarism as an institution was sanctioned in all the statutes that followed the consolidation of the Albanian state. For the first time, it is foreseen in the Organic Statute of Albania, drafted by the International Commission for Control in 1914, although the beginning of World War I made it impossible to establish such a body(Institution). According to the statute, the National Assembly, as a legislative body, consisted of members elected by the people, members appointed by the prince and members "ex officio" (36 members in total). After declaring independence, other difficult years would come for Albania. Although the Treaty of London had set the borders of Albania, the expansionist desires of states that wanted to gain more territories were still active and they dream again of its separations. Under these circumstances on 27 March 1920 the Congress of Lushnjë was assembled.

With recognition of Albania's independence from the great European powers, an agreement was reached on the **monarchical** form of government. According to the ***Organic Statute*** or the constitution in that time (1914), Albania was a ***constitutional kingdom*** with King Vid in head. This statute can be considered an act of constitutional, liberal, but not democratic nature. The statute was distinguised for the broad powers of the King and also for the control of the legislature by the king, smothering the principle of separation of powers[10]. However, this constitution did not last long because of internal rebellions against Vidi on the one hand, and because of the First World War on the other.

Lushnja's Congress **created the Senate (National Council of Lushnja)** as a form of the first Albanian Parliament (later National Council) as a legislative body, which consisted of 37 members elected by Congressional delegates themselves. Congress expressed politically the political will of the Albanians to take the country's fate in its own hands. In this period, the principles of parliamentarism were first affirmed: the appointment and dismissal of the Senate

[10] Ibid, page.24 -41

Government, as well as the exercise of parliamentary control over it. Although the first Albanian parliament extended its legislative activity in a short period of time (March 27, 1920 - December 20, 1920), it succeeded in aproving several important laws. The most important act was the Lushnja Statute consisting in a constitutional law. The legislative activity of the National Council ended in December 1920, when the Council was dissolved to give way to the first elections in Albania (March 1921).

In 1920, was approved the constitutional act called the ***Lushnja Statute,*** by the Congress of Lushnja, which affirmed the main constitutional principles of the Albanian state[11]. Albania begins the experiment to build a multiparty democratic election country. Women were given the right to vote much earlier than most Europeans. This statute was later supplemented with ***the Statute of the Albanian State*** (1922), recognizing the monarchical form of government and affirming the division of the three powers, executive, legislative and judicial.

In June 1922, the Albanian Government addressed to the League of Nations with the request to send an adviser and some technicians who would suggest possible measures to encourage the participation of foreign capitals in exploiting the natural resources of our country.

In 1924 the democratic dream ends, as a result of numerous political murders that led to uprisings and counter- uprisings.

The First World War, during which the armies of the seven foreign countries spent or stayed in Albania for a long time, created a ready market for Albanian goods, which were sold in bulk in exchange for precious metals, gold and silver. A foreign observer sent by the League of Nations observed the great presence of gold in Albanians pockets in 1921. The period between the Lushnja Congress in 1920 and the establishment of Zog's rule in January 1925 is a time of democratic chaos. Albania at this time held elections, had political groupings, and held a debate on the form of government. Many believed that Albania should become a federal state, with autonomous provinces, and with a central government limited to the powers of diplomacy and war. During these five years, Albania changed many governments and faced many uprisings, some of which were serious, and some less important. The killing of political opponents was frequent[12].

The period of the Albanian Republic (1925 - 1928)

The Statute affirmed the form of government by defining *Albania as a Parliamentary Republic "leaded by a chairman whose sovereignty was of the people*". In 1925 was proclaimed *the Basic Law of the Republic of Albania,* which constitutes *the first Albanian constitution*, where the principles of separation of powers and sovereignty were preserved. With a special decision of the Constitutional Assembly, Ahmet Zogu was elected head of state. This republic, based on the

[11] Ibid, page.48

[12] Gjergj Erebara, History of the Albanian State. http://gazeta-shqip.com/lajme/2012/11/28/historia-e-shqiperise-1912-2012/

model of the Third French Republic (1870-1940), was a parliamentarian, headed by a powerful president, who was head of state and chief of government. The legislature, meanwhile, belonged to the Parliament, where for the first and last time in Albania's parliamentary history; it is composed of two chambers: the Senate and the Chamber of Deputies. The dual system had a short parliamentary life and was the only experience in the parliamentary history of Albania. The Chamber of Deputies (Lower House) consisted of 57 deputies elected by the people while the Senate (Supreme Chamber) consisted of 18 senators, 2/3 of them were elected by the people, and 1/3 by the President of the Republic. The Statute affirmed a perfect dual system, but in certain cases gave the Senate the advantage, placing the Chamber in inferiority. Another parliamentary body was that of meeting two chambers in a joint session, called the Legislative Assembly, which appeared in the statute as a separate body. During this time the parliament approved a number of important laws among which may be mentioned: the law on the national bank, the civil pension law, and so on. It was characterized by a lack of pluralism and because of the great problems of the electoral system, it maintained a fictitious representative character. Lack of political parties characterized the entire period of Ahmet Zogu's rule as President of the Republic and then King of the Albanians.

The dissolution of the Republic Parliament came after the debates about changing the form of government, leaving room for new elections for the constitutional assembly.

The 1925 year gives new impetus to the economy as well. It was approved the international agreement "On the acceptance of ***the agreement on the establishment of the Bank and the loan operations"*** (published in the Official Journal, 18 April 1925, No.15). The agreement was signed on March 15, 1925, signed by the Minister of Finance and Grand Officer Mario Alberti. While on July 5, 1925, the Senate approved the Law for regulating ***the Albanian currency***, which provided the National Bank of Albania with the exclusive right to issue banknotes, as well the gold and silver coins[13].

The period of the Albanian Kingdom (1928 - 1939)

In 1928, Albania was declared a **"democratic, parliamentary, and hereditary kingdom"** by the Constitutional Assembly that emerged from the 17 August 1928 elections with 58 deputies, endorsing **the Charter foundation of the Albanian Kingdom**. The Constitutional Assembly sanctioned the statute as a **"monarchical"** form of Albanian government, and predicted the one-chamber parliamentary system. King of Albanians was sanctioned "His Majesty Zogu I", by the famous Albanian family Zogu. The statute regulated judicial power and formally sanctioned it as an independent branch[14]. The legislature consisted of one room, while executive power belonged to the head of state, the King, and the cabinet consisting of the prime minister and ministers.

[13]History of Central Bank in Albania, Published by Central Bank, Tirana 2003. . See it on the address: https://www.bankofalbania.org/web/pub/Historiku_2266_1.pdf

[14] Ibid, page.88

With the fascist invasion and the escaping of King Zog from Albania, de facto this constitution was ended.

It finished functioning on December 1, 1928, transforming into parliament. During this period, important acts such as ***civil code, trade code, criminal code, or civil procedure code were issued***, which marked the drastic detachment from Ottoman legislation. For this reason, parliament of this time was called by Zogu I as "constructive parliament" and ***"reformatory parliament".***

Albania during the war

After the Italian invasion of Albania in April 1937, King Ahmet Zogu I left Albania. King of Italy, Victor Emmanuel III, was offered the crown of Albania. Under the founding charter of the kingdom granted by the king, Victor Emmanuel III, the Albanian state was a constitutional monarchy. Legislative power was exercised by the King in co-operation with the Upper Fascist Corporate Council.

In 1939, Albania, under the authority of the Italian fascist, apart from the loss of independence, brings to the country comprehensive cultural and economic development, and expands the borders of the country to Kosovo and other Albanian lands. Later it was followed by the World War II which made Albania again a battlefield between greedy states that wanted to take part in Albanian lands.

Later, on 16th October, 1943, with the arrival of the Nazi invaders, was gathered the National Assembly with 247 members, who reestablished the creation of the High Council as head of state. It returned to parliament, exercising legislative power along with this body. This period is characterized by the denial of the principles of parliamentarism.

Albania in post-war times and the Communist system

By the year 1945, Communists take power with the combination of Yugoslav and British weapons and establish a terrorist regime that lasted for 45 years. Albania is experiencing international mobile alliances.

The elections for the post-war Constitutional Assembly took place on 2nd December 1945. For the first time in the vote were also women. In 1946, the Constitutional Assembly of Albania, which emerged from the 1945 elections, announced Albania the "Popular Republic", was approved the new constitution of 14th March 1946, which defined the "Republic" as a form of government. With this constitution was expressed the broad social basis of the state of popular democracy. The Constitutional Assembly that later became the Popular Assembly was the highest state body. The unity of power was sanctioned, focused on the representative bodies,

such as the Popular Assembly and the popular councils, exercising legislative and executive powers. In the absence of political pluralism in the country, the Popular Assembly was a formal body which convened in sessions only twice a year. Regarding the judiciary, it was stated that Justice in the Popular Republic of Albania was granted by the Supreme Court, the Popular Courts and the Military Courts and that the Courts were independent in the exercise of their functions. (Article 80). The Supreme Court was the highest court of justice. (Article 81).

In 1948, Albania was separated from Yugoslavia and eliminated physically its people or suspected as its supporters. There were 12 members of the Central Committee and 32 deputies have been executed.

In the year 1962, the separation with the Soviet Union was preceded by an undefined tentative by Moscow to overthrow Enver Hoxha and Mehmet Shehu from power and ended with the massacre of a part of the political bureau.

In 1976, the Popular Assembly approved another constitution, the "Popular Socialist Repubic Constitution of the Albania", which retained the features of a fully political ideologically program oriented with the socialist ideology of the time. The role of parliament remained fictitious, as long as no free elections were sanctioned and no pluralism could be said. With this constitution, were established the popular courts, at the head of which stayed the Supreme Court (Article 101). Certainly, the power was centralized in the extreme, there was a monoparistic state, and it could not talk of constitutional justice during this period, which in its foundations has the division of powers and fundamental human rights and freedoms.

The rebirth of parliamentarism (1991)

After five decades in Albania, appear the first signs of the revival of parliamentarism. In 1990-1991, crashes the Communist system, and Albania opens the door to European development. After a 67-year period, gathered the first pluralistic parliament came out of the March 31, 1991 elections (250 deputies).

In 1991, with admission of the multiparty system, was approved a provisional constitution, ***or the Law on the Main Constitutional Provisions*** brought about changes in the framework of the democratic organization of the state. It was gradually scompleted by a number of other constitutional laws until the approval of a new comprehensive constitution.

Democratic state orientation required the conduct of a deep institutional reform, which should pave the way for transformation, building a rule of law and respect of human rights. The basic principles that led to these democratic changes were first proclaimed by the law no.7491 dt.29.04.1991 "On the main constitutional provisions", then with the law no.7561 dt.29.04.1992, "On some amendments and additions to law no.7491 dt .29.04.1991 On Major Constitutional Provisions po data e nr ligji? ". Within these changes, was also established the Constitutional

Court, as one of the most important institutions for guaranteeing the new constitutional order. Since the beginning, this institution was considered by the lawmaker as the highest authority that guarantees respect for the Constitution and makes its final interpretation.

On 21st October, 1998, the National Assembly approved the **new Constitution**, drafted with the help of international and mainly European organizations. The new constitution created the opportunity to better understand the political system in Albania and the role of its actors. Naming the Popular Assembly changed to the Parliament of Albania (one-room, 140 deputies).

On 15th July, 1998, the Assembly approved the Law No. 8373 *"On the Organization and Functioning of the Constitutional Court of the Republic of Albania"*, which created the legal basis for the Court's activity matters. In the new constitution, the Constitutional Court restored an important institutional position and given a special jurisdiction to control the constitutionality of laws and other normative acts as well as to protect human rights and fundamental freedoms. It also, brought changes in the way of assignment of members scheduling, of the competences, and entities that set it in motion. Judges are appointed by the President of the Republic with the consent of the Parliament.

LEGAL GUARANTEE

After the entry into force of the Constitution, **the Parliament,** as the highest body of the legislative power, continued the process of drafting and adopting the laws. Over the years, the role of the Assembly has increased considerably in the creation of a constitutional and legal framework, as a premise for the establishment of the rule of law. He has returned to the most important institution of political development in the country. Legislative activity has become one of the most active instruments in the consolidation of state institutions and Euro-Atlantic integration.

Constitutional control exercised by **the Constitutional Court** (focused review) is the best form found, generally for the European system, to ensure the functional constitutionality of state organs, with the only purpose of not leaving place for arbitrariness and anarchy, with direct consequences for individuals, and the level of democracy in the country. However, in practice, the situation is more complicated. This depends on political, legal, economic, social, and other factors of a particular country. These factors explain the differences between countries with a consolidated democracy from developing democracies, although at the legal and formal level they may be parties to the same conventions and international acts. In this context, the challenge of the Constitutional Court of Albania can be understood as a promoter of the realization of constitutional justice.

The Constitutional Court guarantees respect for the Constitution and makes its final interpretation (Article 124/1). In exercising its function, it is subject only to the Constitution (Article 124/2).

Constitutional justice is the institution and the technique that guarantees the respect of the hierarchy of the sources of justice and thus the supremacy of the constitutional norm as the supreme norm in a legal system. Through the implementation of constitutional provisions, is ensured the supremacy of the Constitution, not only in a normative system, but also wider in the institution system and practices of state, political and social.

4. Relations between Albanian Law with International Law and European Law

To understand the approach that States have to international law, it is important to analyze the mechanism that each of them chooses to make this whole set of norms part of its internal law. States with international tendencies are those who choose immediate adaptation and consider international norms superior to domestic norms. On the other hand, there are states that are still hesitant to undertake a series of irreversible international commitments in relation to domestic legal systems. Despite the approach, which is a manifestation of the sovereignty of the state itself, is the fact that international law is becoming more and more present within state borders.

The Republic of Albania, although a country with a short state of history, but also with a long period of isolation, generally has an open approach to international law and has a positive tendency to respect its obligations. After the 90's, Albania experienced a full openness regarding the building of relations with international organizations and institutions, but also with most of the countries in the region and the world.

Albania has a full institutional and legal commitment to international law. It is party to approximately 100 international multilateral agreements, including membership in the UNO, NATO, OSCE, the Council of Europe, the IMF, the International Criminal Court, and so on. Albanians occupy the first place in Europe over trust in the UNO, where it turns out that 94% of the respondents have trust in this organization[15]. Albania's pro-international approach has not only remained at the political level or public perception, but has been extended to the Albanian legal system. The Constitution of the Republic of Albania attaches great importance to the international law and integration processes of Albania. This feature becomes apparent in the Preamble, which outlined the general orientations on which the Albanian state policy will be directed in the internal and external contexts: *"With a deep conviction that justice, peace, harmony and cooperation among the nations are among the highest values of mankind"*. A clear

[15] For more see the Open Society Foundation Albania Survey, SOROS - Tirana and the European Union, September 2014, Graph 83. It is noteworthy that the second country after Albania is Iceland with 79% of the respondents who have confidence in the UN. Electronic access to: www.osfa.al.

projection of Albania's foreign policy during these 25 transition years is an aspiration to join the European Union. Albania is in constant effort to meet the criteria required by this organization.

European integration is the geostrategic and political objective of Albania, which is essentially unchanged in the domestic and foreign policy of the country[16]. Since the change of the political and economic system in Albania in the early 1990s, this has been a constant for all governments and for all political forces. The pro-European integration stance has a widespread public opinion. Although in recent years there has been a slight decline in this support, Albania continues to remain the country with the pro-European stance and confidence in the EU's highest-ranking institutions in the region[17].

The Republic of Albania established diplomatic relations with the European Economic Community in 1991. However, because of the domestic economic and political situation, Albania managed to open negotiations for signing the Stabilization and Association Agreement (SAA) in 2003. SAA managed to sign in 2006 and in december of that year, the 'ad Interim' (intermediate) Agreement entered into force, which would prepare the country for the first stage of SAA entry in force. Upon ratification by all member states, the SAA entered into force on 1 April 2009 and is now part of the legal system of the Republic of Albania. But in April 2009, Albania applied for the status of candidate country for European Union membership. After completing the questionnaire submitted by the European Commission, consisting of 2285 questions, divided into 35 chapters, on key issues related to the integration process, an important step was taken in the accession process, with the decision of the European Council in June 2014, which gave Albania candidate status as an assessment of the reforms undertaken[18].

Albania is a country that for the most part of cases welcomes international law in all its forms. However, the anticipated membership in the European Union, as well as the entire process that accompanies this membership, have sought and will continue to seek even more in the future, a close cooperation by institutions and national law to make place in the fullest possible way for European law. The progress of the integration phases that Albania has undergone in this process has not revealed any legal problems related to the constitutionality of the respective actions. Since the Constitution of the Republic of Albania does not have direct references to European law, or how European Union norms can become part of the internal system, this may be problematic in the future. However, the Constitution regulates how international law will become part of Albanian law, including the procedure, hierarchical rank and enforceability.

[16] See more in this regard: Decision of the Council of Ministers of the Republic of Albania No.404, dated 13/05/2015 "On the adoption of the National Plan for European Integration 2015-2020".

[17] See more in this regard: Decision of the Council of Ministers of R.A, No.404, dated 13/05/2015 "On the adoption of the National Plan for European Integration 2015-2020".

[18] Albania gained candidate status on 24 June 2014, after unanimous vote by 28 foreign ministers of EU member states. Source: Official Website of the Ministry of European Integration, http://www.integrimi.gov.al/.

What has been said after the accession of different countries to the European Union is the approach that these countries have had towards international law before accession has been influential in how these countries would build up the relationship with European Union law. However most of the member states have had consolidated constitutions or constitutional traditions in this direction, in regard at the time of accession, which can hardly be said about Albania, which has established the link with the international and European system, almost in Simultaneous way[19].

At the time of drafting the Constitution of the Republic of Albania in 1998, the country had already started integrating processes towards the EU and had membership in this organization, a clear objective of its foreign policy. This has been taken into account by the drafters, trying to facilitate integration processes and avoid potential problems in this regard.

Article 5 of the Constitution provides that: *"The Republic of Albania implements its mandatory international law"*. This provision establishes the obligation to respect international law, without distinguishing between different types of resources of international law, if it derives from an international treaty, international law, is part of the general principles, or is a decision of an international organization in which the R.A. is a member. The determination is made using an internal criterion, since Albania must enforce its *mandatory international law*. It is up to the respective courts to assess case by case, what international standards are mandatory for Albania. The drafters of the Constitution wanted to leave the interior interpreters the recognition and interpretation of the general international norms, limited to sanctioning the principle that international norms are valid and enforceable within the State. That is why the Constitution of the Republic of Albania speaks only for international agreements and decisions of international organizations. It is the Constitutional Court that in its decisions it has accepted as mandatory the international custom, general principles, and international jurisprudence.

The Constitution of the Republic of Albania has embraced the monist approach regarding the relationship between domestic law and international law[20]. This is reflected in Articles 116 and 122, giving international law superiority and making it part of the internal normative pyramid, even directly applicable. Article 116 defines the place occupied by ratified international agreements in the hierarchy of the sources of law in Albania, remaining above all internal acts and subject only to the Constitution. This election is a clear proof of the pro-international approach that Albania has chosen, guaranteeing international law the supremacy of domestic law.

---

[19] This assertion does not aim to deny the legal tradition of Albania, but relates to the fact that international law has not played a role in the country. Albania has been a member of the League of Nations and has applied for membership in the UN since 1945, although it joined in 1955. However, the long period of isolation has made the country not too attentive to international law, even against the agreements that were ratified by him.

[20] For more see: Aurela Anastasi, "Constitutional Law", Pegi Publishing House, Tirana, 2003; Arben Puto, "International Public Law", Albin, Tirana 2008;

Such a principle is further enshrined in Article 122, which expressly states that: *"Any ratified international agreement shall form part of the domestic legal system as it is published in the Official Journal of the Republic of Albania. An international agreement ratified by law has precedence over the laws of the country that disagree with it. The norms issued by an international organization have superiority in case of conflict over the country's right when the agreement ratified by the Republic of Albania for participation in that organization expressly provides for the direct application of the norms derived from it".* This provision is twofold. Ensure the direct applicability of international legal norms to the Albanian legal system. Secondly, it aims to turn the definition of the hierarchy in Article 116 into a legitimate legal obligation, forcing all domestic laws to comply with international agreements ratified by law.

The principle of superiority and direct applicability, which are two of the essential pillars of the functioning of European Union law, have been sanctioned with difficulty in most member states. Their prior acceptance by the Constitution of the Republic of Albania, even extending to the entire international legal framework, proves the approach for the country's integration, but also the legal and practical facilities that will in future have the implementation of EU law. This approach will help legal actors in the country to be prepared with the top position of the law created outside the borders and its direct applicability.

The problem in this provision is the use of two different concepts: the "law" and the "right". Specifically, the provision states that: "*the ratified agreement has superiority over the laws*"; *While "organizational norms have superiority over the country's right."* It is important to analyze this provision if we consider that the right to a country is a very broad concept and refers to the entirety of all binding legal norms, including among them even the laws. It is unclear whether this use of two different terms has become intentional, or is simply a slip without direct legal consequences. It is difficult to give a final answer on this issue, as long as the Constitutional Court does not yet have a treatment of the provision in question in its decisions, which could help to give clearance on this issue.

The hierarchy of the sources of the law, as defined in the Constitution of the Republic of Albania, has been analyzed by the Constitutional Court in one of its decisions: "*The normative theory of law has in its essence the idea that the relations between legal norms are based on the ratio of subposition. The juridical order is not an equivalent order of norms, but a hierarchical system, which consists of different levels of validity, and at each of these levels, there is a norm or set of norms, thus gaining a certain legal power*."[21] This interpretation will be valid in the future to determine the position in this hierarchy of various international provisions that do not originate from treaties. At the same time, it will serve as an efficient tool to resolve the possible conflict of norm interest in the future.

[21] Decision of the Constitutional Court of Albania, No. 3, dated 20.02.2006

Article 116 of the Constitution defining the sources of law in the RA, refers only as a source to ratified international agreements. If a verbal interpretation of this provision is made, we reach two conclusions: 1. The Constitution of the Republic of Albania has left out of customary international law; 2. After the integration of the RA into the EU, this provision will need to be supplemented, as it does not include general principles and secondary law, which under the EU Treaties and ECJ jurisprudence apply directly and have supremacy over the legislation of the member states. In the Constitution of the Republic of Albania there is no reference to the *jus cogens* norms of international law, which constitute the axis upon which is established the structure of the international legal system. The constitutions of other countries such as Germany, Italy, etc., sanction such a principle, by directly formulating the obligation of the respective state to enforce *jus cogens* norms or ***customary international norms***. However, the Constitutional Court has sanctioned the obligation of the Republic of Albania to enforce *jus cogens* norms of international law in its decisions.

The international agreement must be ratified by the Albanian Parliament by law so that it become part of a mandatory norm not only for the state that is party to it, but also for individuals for which it has consequences like any another law approved by the state legislature. State internal organs are engaged, in case there is a clash between international obligations assumed by the state and domestic legislation, then change the latter to bring it in line with international norms.

This means that in Albania, adaptation to the treaty norms is carried out through a special automatic procedure, i.e. through the adoption of special laws aimed at enforcing obligations assumed by the country in the conventional plan. For the international agreements contemplated by articles 116 and 122 of the Constitution, the execution order, that is, the act that gives legal effect to the national legal system is in fact the law of the parliament which implements the ratification. As long as this law does not enter into force, the execution order is dysfunctional.

The jurisprudence doctrine in Albania, but also the jurisprudence itself, has not had any strong discussions or frequent cases of handling the applicability of the norms of international law. Membership in the Council of Europe, in a large number of international organizations and EU integration processes, have increased the use of international norms in the domestic legal system, enhancing the ability to serve as a legal basis for judicial decisions.

Article 27 of the Vienna Convention "On the Law of Treaties"[22] expressly states that: "A party may not use the provisions of domestic law as an excuse for its inability to enforce a treaty." Any interpretation of Domestic law, including the Constitution, which would avoid the application of international law in the domestic system, as long as the state has accepted international law as part of domestic law, would be unacceptable and would constituted a violation of this Convention.

[22] The Republic of Albania has adhered to this agreement and has ratified it with Law No. 8696, dated 23.11.2000, "On the Accession of the Republic of Albania to the Vienna Convention" On the Right of Treaties ".

However, this rule has two limitations: First, it extends its applicability, mainly in the international arena, so it is not clear from the provision itself, if the obligation to enforce the international treaty can be used as a legal basis to challenge State, just outside the territory, facing other states, or extending its effect on subjects within the state. The Republic of Albania has overcome this stalemate by guaranteeing international agreements superior to domestic law. The second limitation comes from the fact that international law in no case does not overturn the inherent right that is inconsistent with it. The only consequence, from the standpoint of international law, is the non-implementation of the domestic provision as long as this contradicts or hinders the application of an international provision.

On the other hand, if an international norm is changed or abrogated by an internal norm, the state must assume international responsibility. It is the internal law that has the task of avoiding the consequences that might come from this collision. The task of the Constitutional Court, as defined in Article 131, is exactly that. Avoidance of the entry into force of domestic legal provisions which are in contravention of international norms binding on the Republic of Albania.

The enforceability of acts or decisions taken by international organizations is a topic that is even more problematic. In the creative treaty of international organizations, it is possible to foresee the obligatory legal acts issued by the organization, as is the case of the European Union, but in most cases, the treaty does not provide for such a provision. In these cases, are the states themselves which, through internal mechanisms, make these decisions enforceable. Thus, the practice of the Republic of Albania, as well as that of most states, is such that it leads to the ratification of any decision or act to make it mandatory in Albanian territory. Mainly for this purpose serve the decisions of the Council of Ministers, but in many cases, they are also formalized through the approved laws in the Parliament. In detail, this is regulated by law no.8371, dated 09.07.1998 "On the conclusion of treaties and international agreements", namely Article 17 thereof, which expressly provides that:

"The ratification, aderation, approval and denunciation of treaties shall be:

1. By law from the Parliament;

2. By decree of the President of the Republic;

3. By a decision of the Council of Ministers in accordance with the constitutional law. "

The President of the Republic ratifies, sets the integration and denounces treaties that are not examined by the parliament as defined by the constitutional law. The Council of Ministers approves and denounces agreements that are not subject to ratification, but contain the approval clause. The Council of Ministers approves the denunciation by the ministries and other institutions of the agreements signed on its behalf. The President of the Republic signs instruments of ratification, integration, or denunciation and the Minister of Foreign Affairs affirms them.

Article 123/1 of the Constitution is designed intentionally to facilitate the integration processes of the Republic of Albania into the EU, but also to other regional or global organizations. Concretely, in this provision is provided the possibility of delegating state competences to international organizations on determined issues under international agreements:

"1. The Republic of Albania, on the basis of international agreements, delegates to international organizations, state competencies for certain issues.

2. The law ratifying an international agreement as provided in paragraph 1 of this article shall be approved by a majority of all members of the Parliament.

3. The Assembly may decide that ratification of such agreement shall be made by referendum. "

Another important issue that will be felt at the moment of EU membership is the law on ratification of an international agreement and is approved by a simple majority in the Assembly. This reflects once again the unchanging attitude of the Albanian policy regarding international agreements. However, from a formal legal point of view, it is possible that a law adopted by a simple majority, such as the international agreement, has prevalence over an internal law, which has been approved by a *qualified majority* of the parliament members vote, such as codes.

Since the number of international agreements in the framework of the EU, but not just within the Union, is expected to be growing, increasing the economic, political and social impact that will have these agreements. Referring to these expectations, the Constitution should make a differentiation of international agreements on the objectives to be achieved, the impact on the country, by determining the parliamentary majority needed for the approval of each of them.

The only international agreement which has a special regulation and which is invoked directly by the Constitution in its Article 17, is the European Convention on Human Rights. Concretely: *"2. These restrictions cannot affect the essence of freedoms and rights and in no case, may exceed the limits provided in the European Convention of Human Rights.*"This principle is further interpreted by the Constitutional Court:*" The European Convention on Human Rights sets out some of the fundamental human rights, but it does not prevent states parties from anticipating more rights and freedoms for individuals, whereas the Constitution of the Republic of Albania, in its article 17, has accepted the content of the European Convention as the minimum of these limitations, without hindering the domestic legislation giving more rights and freedoms and a greater dimension to the realization of the individual's protection. "*[234]

[14]Decision of the Constitutional Court of Albania, No.24, dated 13.06.2007

5. Implementation in the national legal order of a non-member country that is associated with the EU

The legal effects of the Association Agreements with the EU in the national legal order of countries that are not EU member states are direct, however primarily depend on the interpretation that national judges make to the relevant constitutions, giving Priority for the implementation of the Articles of Association Agreement in relation to domestic legislation. Secondly, the legal effects are dependent on the interpretation that courts make to the objectives of the provisions of the Association Agreements with the EU. As far as Albania is concerned, our constitutional framework has a direct legal effect on international agreements signed by the government of Albania and ratified by the national parliament as well as a superior rate of international agreements compared to ordinary domestic law[24]. At the present stage, the SAA for Albania is a common international agreement. An applicant country tries to ensure that current and future national legislation will gradually be harmonized with the *acquis communautaire*. National courts should interpret the current legislation as much as possible in accordance with Community legislation, so they must act in the spirit of Community law even before the country's full membership in the EU. In the transitional phase towards membership, the best response to the way of implementing community law in the country needs first to be provided by the national constitutional law and not by Community law.

6. Decisions of the Constitutional Court of the Republic of Albania dealing with aspects of International Law

In order to give a full picture of how is constructed the relationship between Albanian law with international law at the constitutional level, we have analyzed all Constitutional Court decisions since 1992[25]. Direct object of reviewing international affairs has had only two decisions 186/2002 and 15/2010. Regarding the treatment by the European Court of Justice, after the entry into force of the SAA, the Constitutional Court referred to Community legislation directly in Decisions no. 24 dated 24.07.2009, which refers to the Stabilization and Association Agreement, as well as the decision no. 3 dated 05.02.2010, which refers to a Directive of the European Union. The Constitutional Court of the Republic of Albania has rarely referred to the practice of the European Court of Justice. In its jurisprudence, it has been referred to in the decision no.10, dated 19.03.2008, regarding the principle of free economic activity. Meanwhile, in a number of

[24] Article 122 and 123 of the Albanian Constitution.

[25] The source is the official website of the Constitutional Court http://www.gjk.gov.al/

other decisions, which follow in a synthesis way below, the Court has dealt with important aspects of domestic and international relations[26].

1. Decision No.16, dated 11.11.2004

The jurisprudence of the Constitutional Court helps us to understand the approach that Albanian law has towards those international legal norms that have not been ratified by states, but according to practice, jurisprudence and doctrine of international law, are mandatory for it. Concretely, referring to one of its decisions, freedom of expression, as one of the fundamental stones of the democratic state, the CC (Constitutional Court) express: *"According to Article 10 of the ECHR, freedom of expression includes in itself the right to information such as a fundamental right to receive and provide information, without the intervention of public authorities. A similar statement is also made in Article 19 of the Universal Declaration of Human Rights, adopted by the General Assembly of UNO/OKB, with Resolution 217 A (III) dated 10.12.2948."*

The Universal Declaration of Human Rights is the first comprehensive human rights instrument that has been issued by a universal international organization, such as the UNO. The Universal Declaration of UNO, was adopted in the form of a resolution and not as a treaty, and consequently it did not enforce the norms and did not link UNO member states with its mandatory enforcement. This also explains the term Declaration, that was decided to be used for this document. Most of the international acts for protection of human rights adopted approved after the Declaration have had the latter as a referring point and have been based on its goals and principles. The principles determined by the Universal Declaration of Human Rights now are considered as part of customary international law. It is with this status that it brings to its argumentation in the above decision of the Constitutional Court.

2. Decision No. 186, dated 23.09.2002

In this decision, one of the most important in terms of treating elements of international law, by the Constitutional Court, the object of which the referral has been addressed to the Court is the review of compliance with the Constitution of the *"Statute of the International Criminal Court"*. This Court, one of the most important Institutions established under international law, was approved by the Treaty of Rome on 18 July 1998. The Republic of Albania has been one of the states that have signed since in the beginning this international agreement. Prior to ratification by the Albanian Parliament, the Statute is forwarded to the Constitutional Court by the Prime Minister of the country, with the objective of examining the compatibility of this international

[26] For more information regarding the analysis of the Constitutional Court decisions of the Republic of Albania, see: Kristaq Traja, Constitutional Justice, Luarasi, 2000

act with the Constitution of the country. In its analysis, the Constitutional Court refers to the compliance of the Statute of Rome with important international acts[27]. The analysis made by the Court in this decision is complete and extending to many dimensions of international and domestic law.

* In today's international relations, where one of the fundamental goals **remains the integration, transferring to some of the world's or regional special organizations of certain powers, which are normally exercised by the states themselves, is already a reality**. In this aspect, do not make any exception the competences on the judicial field. Conceived as a contemporary act that open the way for integration, our Constitution in both spirit and content creates space for the transfer of powers when it is done for the benefit of peace, democracy, prosperity and always, through bilateral or multilateral agreements, where our country appears as a sovereign country with all the attributes that give such a status.

 In its preamble, the Constitution of the Republic of Albania recognizes as the highest values of humanity justice, peace, harmony and cooperation between nations. In its Article 2, sanctioning sovereignty as a fundamental principle of the existence of the state, the Constitution, in function of the spirit of the preamble and all its content, sanctions: "For the preservation of national peace and national interests, the Republic of Albania may participate in a collective security system, based on a law approved by the majority of all members of the Parliament." This provision is followed in the function of delegation of state powers as a form of delegation of sovereignty rights to Article 123, which sanctions in the first paragraph that: "The Republic of Albania, on the basis of international agreements, delegates to international organizations state competences on certain issues".

 Referring to the reports of sovereignty with the acceptance of the jurisdiction of the ICC (International Criminal Court) , the Constitutional Court appreciates that the problem of the volume of transferred competencies is of particular importance. More specifically, the question is how far this transfer of powers can be extended (specifically permitted by Article 123 of the Constitution). The answer to this question comes first from the very spirit of the Constitution, but we find it more concretized in the international constitutional jurisprudence according to which, "... the transfer of sovereign rights has borders there, where the constitutional state identity begins to be imposed in question ... [28]"or that" ... the limit of the right transfer is up to where this

[18] The court during the main trial analyzes the compatibility of the Statute of the International Court of Justice with other international legal acts, namely: "Convention on the Non-Prescription of War Crimes and Crimes against Humanity", adopted by the General Assembly of UNO on 26.11.1961; Resolution of the General Assembly dated 03.12.1973 "Principles of international cooperation in the detection, arrest, extradition and punishment of individuals guilty of war crimes and crimes against humanity".

[28] Decision of 12 October 1993 of the German Federal Constitutional Court on the Maastricht Treaty

transfer leads to a violation of the fundamental conditions for the exercise of national sovereignty "[29].

 As outlined, the Constitutional Court of Albania, does not see as exceeding of these boundaries, the transfer a certain of judicial power competences to a certain area of international interest, such as the persecution of perpetrators of genocide crimes, crimes against humanity, war crimes and aggression. In this case, the Constitutional Court sees it necessary to state that while under the Constitution, the generally accepted rules of international law are part of the domestic law, then the lack of immunity in international criminal proceedings for certain crimes of high risk, becomes part of the Albanian legal system. For its part, international jurisprudence has elaborated a number of **lasting habits** based on the main purpose of removing the possibility of the perpetrators of these offenses being considered as acts committed in the exercise of power (*acta iure imperii).*

 Based on the preamble to the Statute, the ICC is presented as a complementary court of national jurisdiction. In cases when it is established that the domestic judicial authority has not developed a real proceeding and this process is considered null and void, the ICC is put into motion as a higher court.

3. Decision No.3, dated 11.02.2004

In this decision, the Constitutional Court had to examine the compatibility with the Constitution of articles 86 and 87 of the Criminal Code, which provide for the criminal offense of torture. In the decision in question, the entire analysis of the compliance of the provisions of the Criminal Code is done based on international norms. The court, in the reasoning of the decision, accepts, among other things, the customary norms of international law as fully binding. The Constitutional Court recognizes the same juridical power, international treaties and international custom, without identifying in any case differences between them in terms of binding force and enforceability. There is also a court's approach to international jurisprudence, not just that of the European Court of Justice, but generally referring to international jurisprudence.

- The Constitutional Court considers that the issue under consideration requires a broader interpretation in terms of the meaning given to the term "torture" under international acts and in particular the **jurisprudence** noted in this regard.
- The obligation not to be subjected to torture or maltreatment is a **rule of customary international law** and the prohibition of torture constitutes an irrefutable norm.[30]
- In addition to this doctrinal and evolutionary approach found in **international jurisprudence**, very important arguments to conclude on solving the concrete case are

[20] Decision of the French Constitutional Council, 1985.

[21] See in detail General Comment 24 of the Committee on Human Rights of P.D.C.

also found in the practice of the European Court of Human Rights. In Case A vs. The United Kingdom, it concludes that "the obligation of Member States under Article 1 of the Convention to secure to anyone under its jurisdiction the rights and freedoms set forth in the combined Convention, in conjunction with Article 3 thereof, Requires Member States to take measures to ensure that individuals under their jurisdiction are not subject to torture or inhuman degrading treatment, including abuses committed by private individuals". Exactly based on such a conclusion, the failure that can be observed in the domestic laws of different states to provide adequate protection constitutes a violation of Article 3 of the European Convention on Human Rights.[31]

4. Decision No. 6, dated 31.03.2006

In this provision, the Court analyzes the ***obligation for a due legal process***, considering as an integral part of the whole of this process, and the obligation of the responsible institutions to execute final court decisions. What matters to the effect of the study is the analysis made by the Court, the Convention and its position in the hierarchy of the sources of law in the Republic of Albania. The Court also includes the jurisprudence of ECHR at the same level. The practice followed mainly by the Constitutional Court, but also by the domestic courts regarding the handling of ECHR judgments, is a good guide, on how to act in the case of ECHR decisions as well.

- According to Article 116 of the Constitution, the Convention as an international agreement ratified by law in the hierarchy of legal norms ranks immediately after the Constitution. Consequently, it occupies an important place in domestic law and **becomes mandatory** for each state, for all state institution, including here even the courts of each level, as well as the institutions that enforce their decisions.

- The Constitutional Court appreciates that the text of the Convention and the jurisprudence of the Strasbourg Court **serve to make constitutional interpretation** and to determine, on a case-by-case basis, the boundaries of fundamental constitutional rights. This position of the Convention comes as a result of the commitment of the Albanian State to give a guaranteed protection of human rights and fundamental freedoms.

Another important aspect relates to the obligations deriving from the jurisprudence of the Strasbourg Court for the parties to the proceedings, according to Article 41 of the Convention, the Contracting Parties, by ratification of the Convention, **are obliged to ensure the compatibility of Internal legislation with the Convention**. In addition, the practice of this Court places importance on the guiding values of its jurisprudence also for the Albanian courts.

[22] Decision of the Constitutional Court of Albania, No.3, dated 11.02.2004.

CONCLUSIONS

The relationship between international law and EU law on the one side and in the other side the relationship between both of them with domestic law are well linked. This is not only due to the status of EU law, but above all as solution to problems with the structure of public law in general and how to handle competitive claims for legal authority are hot points that need to be considered. International law is recently being implemented largely by national actors, because increasingly the agreements between states aim to regulate problems originating within state borders. On the other hand, European law has also taken on a specific international importance. International law, at least until the end of World War II, was a European law, in the sense that it was created by European states, implemented by them, studied by European scholars and supported on institutes, theories and the philosophy of European law.

In the relationship between Community law and national law, the most important features are the supremacy of Community law over national law, the direct effectiveness of Community law in the national courts and the procedures by which Community law can be enforced in the Member States.

Treaties (referred to as primary Community law) have created quasi-governmental bodies (the institutions) independent from the national public authorities and endowed with legislative, administrative and judicial sovereign rights, which were transferred to them by the Member States. Second, the Treaties lay down basic principles, which are either worked out in the Treaties themselves or implemented by acts of the institutions. Treaties and rules constitute a set of rules which directly, without interference or intervention, impose obligations upon and create rights for the Member States or natural or legal persons within the Community. The Treaties therefore present many analogies with national constitutions.[32]

[32] Martin Stiernstrom, Jean Monnet/Robert Schuman: "The Relationship Between Community Law and National Law", University of Miami Miami, Paper Series Vol.5 No. 33. Florida, October 2005, page 1.

Treatis are constantly being expanded and implemented by new Treaties, made more specific, implemented, interpreted and applied by the various acts and measures of the institutions (known as secondary Community law).[33]

European law must be our way of acting in common areas from the pre-accession phase and then in the process of harmonization of Albanian and EU laws. To date, Albania has shown a very positive approach in this process, reflecting on the acceptance and immediate adoption of international and European law in domestic law. Knowing and understanding the European law as well as the action of the European institutions are an important part of the preparation for membership that we have to follow, and we can say that so far, we have made a significant step forward. Albania has all the intellectual and legal opportunities to be successful in implementing its tasks towards the EU legal integration process as well as the enforcement of the right to its citizens.

BIBLIOGRAPHY

Treaties, Conventions, Laws:

- The Treaty of European Council

- The European Union treaty

-Statute of the International Court of Justice (ICJ)

-The Constitution of the Republic of Albania

- Stabilization and Association Agreement (SAA) between Albania and EU countries

- Convention "On the Non-Prescription of War Crimes and Crimes against Humanity", approved by the UN General Assembly on 26.11.1961.

- Law No. 8696, dated 23.11.2000, "On the accession of the Republic of Albania to the Vienna Convention on the Treaties Rights".

[33] Martin Stiernstrom, Jean Monnet/Robert Schuman: "The Relationship Between Community Law and National Law", University of Miami Miami, Paper Series Vol.5 No. 33. Florida, October 2005, page 2.

Books, Scientific Articles:

-Aurela Anastasi, "Constitutional Law", Pegi Publishing House, Tirana, 2003.

-Arben Puto, "International Public Law", Albin, Tirana 2008.

-Kristaq Traja, Constitutional Justice, Luarasi, 2000.

-Zajmi, I., "Autonomy of Implementation of Community Law", Albanian Magazine for Legal Studies, Volume 1, Tirana, 2011

Decisions:

Decision of the Council of Ministers of RA, no.404, dated 13/05/2015 "On the adoption of the National Plan for European Integration 2015-2020".

Decision of the Constitutional Court of Albania No.186, dated 23.09. 2002

Decision of the Constitutional Court of Albania No. 3, dated 11.02.2004

Decision of the Constitutional Court of Albania No.16, dated 11.11.2004

Decision of the Constitutional Court of Albania, No. 3, dated 20.02.2006

Decision of the Constitutional Court of Albania No.6, dated 31.03.2006

Decision of the Constitutional Court of Albania, No.24, dated 13.06.2007

Decision of 12 October 1993 of the German Federal Constitutional Court on the Maastricht Treaty

Decision of the French Constitutional Council, 1985.

Others:

EU Survey and SOROS (Open Society Foundation for Albania) - Tirana, September 2014. Electronic access to: www.osfa.al.

Status of candidate country, 24 June 2014. See: Official site of the Ministry of European Integration, http://www.integrimi.gov.al/.

Official online sources:

The official EU website: www.europa.eu

Official website of the Constitutional Court: See: http://www.gjk.gov.al/

Albanian Ministry of Integration website: www.mie.gov.al

Article 122 and 123 of the Albanian Constitution.

The source is the official website of the Constitutional Court http://www.gjk.gov.al/