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ALBANIAN PUBLIC ADMINISTRATION IN THE LIGHT OF OPENING ACCESSION NEGOTIATIONS: CHALLENGES AND PERSPECTIVES

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Abstract: *This paper aims to analyze the Europeanization of Albanian public administration in light of opening negotiations. The main research question is whether and to what extent Albanian public administration can approximate domestic legislation and ensure effective implementation. The core methodology in this paper is the traditional legal doctrine, which is based on analyses and interpretations of the EU acquis and Albanian legislation with a specific focus on reforming public administration. A reference to secondary sources in the Europeanization of public administration enriches the study. The paper argues that Albania has improved the legal framework for public administration in compliance with the EU acquis. However, it fails to ensure the proper implementation due to the following challenges: i) politicized bureaucracy, ii) the lack of capacity, iii) lack of public consultation with stakeholders, and iv) the inability to put in sound planning mechanisms and to carry out a realistic assessment. The paper concludes that Albania must establish a professional public administration with sufficient knowledge of EU acquis and adequately qualified staff to harmonize the domestic legal system and ensure proper implementation.*

Keywords: *EU Integration; Europeanization; Public Administration; Effectiveness; Albania*

INTRODUCTION

After the fall of the Communist regime, Albania oriented its foreign policy toward Euro-Atlantic Structures. On 11 May 1992, Albania resumed diplomatic relations with the EU by signing an agreement on trade and commercial and economic cooperation. At this time, Albania was included in the trade preferences regime, known as the General System of Preferences, offered for third countries with which the EU had established contractual relations and received much financial aid from the EU. From 1991 to 2000, Albania received roughly €1.055 million as financial aid for economic reconstruction and structural reforms (Commission 2001). With the help of the EU, the Albanian economy improved. However, the collapse of pyramid schemes in 1997 harmed Albania-EU relations (Bogdani and Loughlin 2007). From 1997 to 2003, no perspective on EU membership was given.

After the famous declaration at the Thessaloniki Summit in 2003 that "the future of the Balkans is within the EU", 2004 was expected to be a decisive year for Albania in which it would sign the Stabilisation and Association Agreement (SAA). Nonetheless, Albania's European prospects were once again poised to be held hostage by domestic political instability. Despite the EU's belief that initiating accession negotiations would positively impact Albanian reforms, various SAP reports have indicated the Albanian government's inability or limited progress in addressing the recommendations outlined in those reports (Commission 2003; Commission 2004; Commission 2005).

From the opening of negotiations of the SAA in 2003, the Albanian government has stated its priority to conclude the SAA negotiations. The SAA entered into force on 1 April 2009 after ratification by the Albanian Parliament and EU Member States. Shortly, Albania applied to gain candidate status. On 16 November 2009, the European Council requested the European Commission to submit its opinion on the Albanian application. In its communication on Albania's candidate status, the European Commission argued that opening the negotiation process would be conditional once Albania respected the Copenhagen Criteria (Commission 2010a, 11-12).

While Albania submitted its application to open the negotiations process in 2009, it took around 12 years, starting in July 2021, to fulfill the criteria and open the negotiations process. This delay is due to EU Member States veto power and internal problems. While the Council suggested opening accession negotiations with North Macedonia and Albania by June 2019 (General Secretariat of the Council 2019), French President Macron vetoed the opening of accession negotiations with North Macedonia and Albania. Macron argued that the EU enlargement policy has to be changed, considering the long stagnation of Western Balkan countries (Bechev 2019).

In contrast to North Macedonia, where veto power was exercised by Greece due to name dispute, in the case of Albania, the veto power has been wielded as a result of the fulfillment of 5 key priorities: i) establishment of a professional and depoliticized administration; ii) strengthening the independence of justice institutions; iii) fight against corruption; iv) fight against organized crime; and v) protection of human rights (Skara 2020; Gotev 2018). Fulfilling 5 key priorities provided the green light to open the negotiations of the EU chapter *acquis*.

Additionally, the lack of a culture of dialogue between the main political parties has proved to be a determining factor in undermining prospects for European accession. Albanian political actors "remain highly divisive and confrontational" (Biberaj 2011, 369). Since 2009, Albania has experienced a deep political crisis due to the boycott of parliament by the opposition party. The second reason is that, as of July 2021, the primary responsibility of Albania's public administration is to align domestic legislation with the EU *acquis* and guarantee its effective implementation.

As Albania initiated accession negotiations in July 2020, public administration became more actively engaged in harmonizing and implementing the EU *acquis*. While previous studies have typically focused on the necessity for public administration reform in the context of European integration or the influence of EU conditionality on reforming public administration, this paper examines the Europeanization of Albanian public administration in the context of opening accession negotiations. The primary research question explores whether and to what extent Albanian public administration can harmonize domestic legislation and ensure effective implementation.

The paper is structured as follows: First, it offers a detailed theoretical discussion of the EU as a (legal) normative power influencing domestic normative and institutional changes in public administration. Then, the paper analyzes the EU's impact on public administration, concentrating on whether and to what extent public administration can align with domestic legislation and ensure effective implementation. The third section discusses challenges and perspectives in light of opening negotiations. The paper concludes that Albania has developed a modern legal framework in compliance with the EU *acquis*. However, the main challenges to ensure proper implementation remain: i) politicized bureaucracy, ii) the lack of capacity, iii) lack of public consultation with stakeholders, and iv) the inability to put in sound planning mechanisms and to carry out a realistic assessment.

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LITERATURE REVIEW

The impact of the EU integration process on the EU Member States or candidate countries represents a distinct research area in European studies. This process, known in the EU studies literature as Europeanization, has been discussed in various academic books and scientific articles. The most comprehensible definition has been given by Radaelli (2003), who defines Europeanization as "Processes of (a) construction, (b) diffusion, and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things', and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures, and public policies" (p. 30).

Generally, the academic literature on the EU integration process can be divided into three stages. The first stage of academic books and scientific articles focused on the impact of Europeanization on the EU Member States' polity, politics, and policies (Bulmer and Burch 2005; Ladrech 1994). The 2004 enlargement expanded the Europeanization literature, focusing on a second flow, analyzing the impact of Europeanization research in candidate countries and newly acceded Member States, respectively. The CEECs served as an example to outline domestic changes as a result of EU conditionality (Schimmelfenning and Sedelmeier 2008; Cowles et al. 2001; Grabbe 2001; Papadimitriou and Phinnemore 2004), including in the area of public administration (Nemec 2016; Hille and Knill 2006; Sotiropoulos 2004). After the Thessaloniki Summit, where European leaders declared that "the future of the Balkans is within the EU" once they meet the accession criteria, the Western Balkan region became the third flow in the Europeanization literature (Knezović 2009; Anastasakis 2005; Anastasakis and Bechev 2003; Börzel 2011; Schimmelfenning 2008).

Several authors have analyzed the impact of Europeanization on Albanian polity, politics, and policy, including public administration. Most of the studies consulted for this study are descriptive and provide a theoretical approach to the impact of the EU integration process in reforming public administration. Kraja and Hysi identify problems associated with public administration and provide a theoretical approach to reforming public administration in the light of EU integration (Kraja 2015; Hysi 2015). Another article, written by Arolda Elbasani, assesses whether EU enlargement conditionality has played a role in reforming public administration in Albania (Elbasani 2008). This paper argues that EU conditionality has failed to reform Albanian public administration. In contrast, Cenaj and Elezi identify some challenges that Albanian public administration faces in the context of EU integration (Cenaj and Elezi 2014).

These studies serve as a valuable and supportive reference point for the present paper, arguing that the European integration process has positively affected public administration. However, with the opening of accession negotiations, this paper offers a comprehensive and updated assessment of the public administration's capacity to harmonize domestic legislation with the EU *acquis* and ensure proper implementation.

METHODOLOGY

The core methodology in this paper relies on the traditional legal doctrine, which is founded on analyses and interpretations of the primary sources—the EU *acquis* and Albanian legislation, respectively. The study examines and interprets the Stabilization and Association Agreement (SAA) harmonization clause (Article 70) and its impacts on the Albanian legal system, specifically focusing on reforming public administration. Furthermore, the paper is enriched by references to non-binding soft law documents of the European Commission and European integration literature, such as books, journals, and articles.

THE EU AS A TRANSFORMATIVE LEGAL POWER: INDUCING DOMESTIC LEGAL CHANGES TO CANDIDATE COUNTRIES

During the 1970s, scholars started to discuss the nature of the EC/EU and its role in the international scene. François Duchêne was the first author to coin the EC/EU as a civilian power. Duchêne stated that "the European Community must be a force for the international diffusion of civilian and democratic standards or it will be more or less the victim of power politics run by powers stronger and more cohesive than itself" (Duchêne 1973).

Another prominent scholar, Hedley Bull, coined the EC/EU as a military power (Bull 1982). During the 1990s, the result of the end of the Cold War and the creation of a Common Foreign Security Policy to become a global actor raised the interest of research to focus on the "stateless" of EC/EU by using the concepts of "presence" and "international identity" (Manners 1997).

In the context of EU enlargement, the EU's normative power has been associated with the Europeanization process, which denotes the impact that the EU induces on the domestic polity, politics, and policy of candidate countries (Sedelmeier 2014). In the legal context, the EU normative power has influenced the domestic legal system of third countries to comply with the EU *acquis* (Petrov 2006; Petrov 2008; Magen 2007). According to Magen and Petrov, through establishing contractual relationships with third countries, the EU is pushing these countries toward greater legal convergence to approximate their domestic legislation in compliance with the EU *acquis*. Through the harmonization clause, this paper analyses how the EU induces direct adjustment pressure on Albania's public administration to comply with the EU *acquis*.

APPROXIMATION OF THE LEGAL SYSTEM TO THE EU *ACQUIS* AND ENSURING PROPER IMPLEMENTATION: THE ROLE OF BUREAUCRACY

In the Copenhagen Summit held in 1993, the European Council decided that any European country wishing to join the EU has to demonstrate the fulfillment of what has been referred to as the Copenhagen Criteria:

> The candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union. Membership

> presupposes the candidate's ability to take on the obligations of membership, including adherence to the aims of the political, economic, and monetary Union.
>
> The Union's capacity to absorb new members while maintaining the momentum of European integration is also an important consideration in the general interest of both the Union and the candidate countries (European Council 1993).

As can be seen, the harmonization of domestic legislation with the EU *acquis* is one of the conditions for the accession of candidate states to the EU. In 1995, the European Council argued that harmonizing legislation entails institutional administrative changes to implement the harmonized legislation effectively (European Council 1995). Two years later, the Agenda 2000 (Commission 1997) emphasized the importance of the candidate countries' administrative capacity to adopt, implement, and enforce the EU *acquis*. Since then, harmonizing legislation in compliance with the EU *acquis* and having a capable public administration to ensure effective implementation have been seen as indispensable in the EU integration process.

Albania signed the SAA in 2006 and entered into force in April 2009. The SAA is seen as a tool to impose conditionality for the Western Balkan countries. Like the European Agreement, SAA has encouraged domestic reforms in various areas. The approximation of laws and proper implementation are among the key goals of the Stabilisation and Association Agreement (Hajdini and Skara 2017).

According to article 70 (1) SAA, both parties "recognize the importance of the approximation of Albania's existing legislation to that of the Community and its effective implementation" and "Albania shall endeavor to ensure that its existing laws and future legislation shall be gradually made compatible with the Community *acquis*". The approximation process is carried out in two stages. In the first stage, harmonization focuses on the internal market's fundamental elements (Article 70 para. 3). In the second stage, the remaining parts of the *acquis* will be harmonized. Thus, Albania must harmonize its domestic legislation with the EU *acquis*.

Furthermore, Albania has to ensure proper implementation of the approximated legislation. As noted in the Madrid European Council Summit and later emphasized in the White Paper (1995), the adjustment of administrative structure to ensure effective implementation of EU *acquis* is considered an accession criterion (Commission 1995). Candidate countries like Albania must establish an adequate administrative structure to ensure the effective implementation of the harmonized legislation. Otherwise, a lack of human resource capacities results in mismanagement of the implementation process.

CHALLENGES AND PERSPECTIVES IN LIGHT OF OPENING NEGOTIATIONS

As Albania initiated negotiations to sign the SAA in 2003, the country encountered heightened pressure to establish an institutional structure to oversee the accession process. The public administration plays a crucial role in the European integration process by harmonizing domestic legislation with the EU *acquis* and ensuring proper implementation—a challenge faced by candidate countries. This issue was underscored by the warning in the White Paper in 1995:

> The main challenge for the associated countries in taking over internal market legislation lies not in the approximation of their legal texts, but in adapting their administrative machinery and their societies to the conditions necessary to make the legislation work (Commission 1995, 23).

In the framework of the EU enlargement, implementation has been defined as a process "through which European norms are transposed, adhered to, and enforced at the domestic level" (Sverdrup 2008, 197). Christoph Knill defines implementation as "the degree to which the formal transposition and the practical application of supranational measures at the national level correspond to the objectives defined in European legislation" (Knill 1998, 2).

Since 2009, the SAA entered into force, reforming public administration has been a priority. The 2012 and 2013 EC Progress Reports have emphasized the need to establish a professional and depoliticized administration. Adopting Law 152/2013, "On Civil Servant" strengthened the status of civil servants. According to Article 5 of Law 152/2013, the management of civil servants is guided by the principles of equal chances, non-discrimination, merits, transparency, professionalism, and political impartiality.

Furthermore, in light of opening negotiations with the EU, establishing an adequate negotiation structure and addressing the challenges coming from the approximation and implementation of legislation are the primary concerns. Regarding the institutional structure, the Council of Ministers, by Decision 749/2019, established the negotiation structure to achieve the following objectives: i) carrying out the screening process and assessment of Albanian domestic legislation with the EU *acquis*, ii) defining and drafting the negotiating positions of the Republic of Albania for each chapter of the EU *acquis*, and iii) the negotiation and adoption of the Accession Treaty (VKM 749/2019). The critical institutions engaged in the negotiations include: i) The State Committee for European Integration, ii) State Delegation, iii) Negotiation Group, iv) Albanian Delegation to the EU, v) Secretariat of European Integration; vi) Inter-institutional working groups; vii) Partnership Platform for European Integration. The tasks and competencies of each of these institutions are foreseen in the Council of Ministers' decisions.

On the other hand, Albania has developed a modern legal framework in compliance with the EU's *acquis* (Commission 2021; Commission 2022). However, the main challenges to ensure proper implementation remain i) politicized bureaucracy, ii) the lack of capacity, iii) lack of public consultation with stakeholders, and iv) the inability to put in sound planning mechanisms and to carry out a realistic assessment (Hajdini and Skara 2017; Cenaj and Elezi 2014).

Firstly, since the fall of the communist regime, governmental changes in public administration have been associated with politicized nominations (Commission 2006; Commission 2007; Feilcke-Tiemann 2006). This politicization of bureaucracy has led to "the absence of sound accountability mechanisms in public administration [which] increases the opportunities for bypassing established procedures" (Commission 2008, 8). According to the European Commission Report 2012, bureaucracies "suffer from shortcomings related to politicization and a lack of meritocracy in recruitment, promotion, and dismissal of civil servants" (Commission 2012, 10). In 2013, the Law on Civil Servants was adopted in line with the principles of public administration (Law 152/2013). The law provides merit-based recruitment, promotion, and dismissal in public service.

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Secondly, Albanian public administration suffers from a general lack of capacity and inadequate training concerning adopting and implementing the EU *acquis*. Such a lack of capacity and resources impacts the ability to plan, implement, and monitor the process of public policies. The 2020 EC Progress Report notes that more human and financial resources must be allocated to the EU negotiations process (Commission 2020, 12).

Thirdly, there is a lack of broad consultation with interested stakeholders. The 2013 Progress Report states that the approximation of legislation is associated with ineffective implementation of legislation. Specifically, the report notes that "weak analytical capacity and high staff turnover in line ministries, together with insufficient transparency and consultation with relevant stakeholders, continue to hamper the legislative drafting process" (Commission 2013, 8). In 2014, the Law on Public Consultation was adopted (Law 119/2014), establishing procedural norms for transparency and public participation in decision-making, aligning with EU standards (Commission 2018). Similarly, the 2016 Progress Report states, "the quality of the consultation process still needs improvement. Public scrutiny of government work is still limited" (Commission 2016).

The fourth problem relates to the sound planning mechanisms of the draft legislation. Lack of consultation with interested stakeholders brings ineffective implementation of legislation. According to the European Commission Report 2010:

> Proper implementation of and respect for legislation have been affected by its poor quality. Furthermore, implementation is hampered at times by the lack of full understanding of the social and political role of laws by relevant public sector institutions; these disregard certain legal provisions as a result. There have been cases in which respect for legislation and the rule of law have been put into question by the government, with Constitutional court decisions and rulings being challenged or even disregarded (Commission 2010b, 13).

CONCLUSION

Since the famous declaration in the Thessaloniki Summit in 2003 that "the future of the Balkans is within the EU", fulfilling accession criteria has been a prominent topic in the Western Balkans, a region characterized by inter-ethnic conflicts, high level of corruption, lack of the rule of law and high level of informalities.

One of the accession criteria is harmonizing domestic legislation in line with the EU *acquis* and ensuring proper implementation. Furthermore, adjusting institutional administration to implement domestically harmonized legislation has been among the accession criteria. Since 2009, when the Stabilization and Association Agreement (SAA) entered into force, public administration reform has been a critical priority, as Albanian public administrations remain weak, politicized, and lack transparency. The adoption of Law 152/2013, "On Civil Servants," strengthened the status of civil servants and increased their professionalism and political impartiality.

This paper concludes that Albania, as a candidate country, should have a bureaucracy capable of transposing and implementing the EU *acquis*. While Albania has improved the legal framework for public administration in compliance with the EU *acquis*, it lacks to ensure proper implementation. The paper argues that the main challenges to ensure proper implementation remain: i) politicized bureaucracy, ii) the lack of capacity, iii) lack of public consultation with stakeholders, and

iv) the inability to put in sound planning mechanisms and to carry out a realistic assessment. Albania must establish a professional public administration with sufficient knowledge of EU *acquis* and adequately qualified staff to harmonize the domestic legal system and ensure proper implementation.

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