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Master thesis:

The changing role of the triangle EU- CoE – OSCE in the field of the Rule of Law in countries preparing for EU accession. The case of Albania.

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To my Mother,
Who watches over me!

Table of Contents

Introduction

Enlargement and the rule of law: the inseparability of the two notions is very well known for the countries that are following the aspiration towards the European Union family. The rule of law has become with time and established by the European Commission a condition *sine qua non* for accession. It is a crucial part of the Copenhagen political Criteria and Conditionality.

In the countries preparing to accede, there is a number of organizations concerned in the development of the rule of law. The EU has recently and gradually developed an interest in this field through the evolvement of the acquis, the criteria of Copenhagen, and has improved their applicability through practice. When EU presence established the political criteria in the countries preparing for accession, the Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE) had already engaged their standards and instruments in the promotion and establishment of the rule of law. It is curious to see how the EU made use of the standards and experience that these organizations provided in order to enforce their applicability through its own instruments, mainly the conditionality, in favor of the pre-accession preparation process. The approach of this paper is going to follow the line of the legal instruments that EU borrowed from CoE and OSCE and the political cooperation with these two organizations in order to put into evidence the concrete results of these engagements. This is a way to observe and give a conclusion on the new dynamics of this triangle of institutions regarding the same field.

The first chapter consists of two parts. The first one deals with the evolvement of the legal corpus of the EU regarding enlargements and the Rule of Law, starting with the Treaty and continuing with the acquis, the criteria of Copenhagen and conditionality. The appropriation of norms and standards of the Council of Europe are a crucial part of this shift of the legal basis for enlargement towards the rule of law and democracy. A particular place has been reserved for the definition of the rule

of law, from an academic perspective and in the sense used by the EU and the CoE. The second part of this chapter includes the political cooperation of the EU with the CoE and OSCE, their cooperation and coordinated actions in the field.

The second chapter transfers the abovementioned changing role of the triangle from a macro-level in a more definite territory: Albania in its path towards the EU. The simultaneous action of the three organizations in order to promote the rule of law will be its focus. The elements picked up for studying from the broad and complicated rule of law are: the independence of the judiciary, the efficiency of the judiciary and the access to justice. The first two factors (independence and efficiency) come within the field of the reform of the judiciary and the third one has a double nature that makes it belong to the characteristics of the judiciary but also to human rights. These are the fields (amongst others) where the simultaneous action of the three organizations is visible and representative. The feedback of the national actors from Albania also helps in creating an idea of how flexible this system of interdependent organizations should be in implementing the rule of law because of the specifics and the characteristics of the country in question. These characteristics often impose their own dynamics between the organizations and might or might not totally correspond to their interrelations in a macro level. The process is ongoing and developing the more Albania improves in its way towards accession.

Methodology

This paper is mostly about the highlight of intersection points. These intersection points are going around three organizations, the rule of law and Albania. They are not fixed in time, since the limits of movement of each organization are constantly changing through different dynamics: the overlap that turns into cooperation, the strengthening or diminishing of their impact, in favor of the other counterpart, etc. It is through trying to extract and delimit that a certain level of clarity can be deducted

on the shifting tendencies of the triangle in the future of a country in its road to Europe.

Areas covered by the thesis (intersection points)	Enlargement law (EU +rule of law)	Enlargement policies (EU +rule of law)	Albania – preparing to EU (rule of law)	Tendencies
Council of Europe	Legal provisions referring to each-other.	Yes, joint actions and coordinated forces.	Justice legal reform and joint actions - Independence - Efficiency - Access to justice	EU/CoE
OSCE	No impact of OSCE in enlargement law	Political Cooperation/overlap	Justice legal reform and projects - Independence - Efficiency - Access to justice	EU/OSCE

Chapter I: EU enlargement in the perspective of the Rule of Law. Influences of CoE and OSCE.

Mitrany says: "International organizations are not an end in themselves, but rather the means of addressing the priorities dictated by human needs and have, therefore, to be flexible and modify their tasks (functions) according to the needs of the moment."[1] The EU has been defining the requirements for enlargement in the field of Rule of Law also due to its own enlargement processes. There was a need for self clarity and an agreement on what the common values (of the Community first and then the Union) stood for, concretely and expressively, in order to make them applicable and compliable to the 'outside' countries, the ones that shared those values, or to the ones ready to work in order to achieve them. The European Union has gained the status of a highly trustable entity of values, standards, democratization and respect for the Rule of Law, but this has been a process of self-accomplishment. The legal basis and the institutional structure of the EU has been constantly transformed, and each enlargement has contributed to the further development of the framework of the organization. If we go back in the times of its creation, the Community of Coal and Steel had a different purpose, less competences, basic conferred powers from Member States and various expectations on what its path would be. One of the most prominent scenarios was that of the 'spillover effect'. This was the vision of the founders[2]. Was the democratization of countries preparing to accede in their future perspective of the Communities? The EU is an open-ended

[1] N.Moussis, A synopsis of prominent integration theories. http://www.europedia.moussis.eu/books/Book_2/2/1/1/01/index.tkl?term=prominent&s=1&e=20&pos=1

[2] Robert Schuman's declaration of 9 May 1950 http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm

political system, say Wessel and Blockmans[3]. That's what allows other International Organizations influence the evolvement of EU. Their first argument to support this influence is that: "the adoption of policies derived from international institutions can expand the policy spheres (towards new issue areas) and/or the competences of the EU or specific EU institutions and thus might gain the support of pro-EU actors."[4] The second argument comes regarding the possibility of these influencing processes to assure the international role of leader for the EU : "… as if EU openness vis-a-vis the influence of international institutions in exchange for a role, particularly a leadership role, in international negotiations. This is especially so in the domains in which the actorness of the EU is not (perhaps not yet) established."[5]

This chapter has been divided in two main parts. The first one considers the normative 'borrowing' tendencies the EU of external standards in the field of the rule of law during enlargement processes. These standards were mainly offered by the CoE and its conventions, in primary law but mostly in the secondary law of the EU. The second part offers an overview of the political history of cooperation of EU - CoE and EU - OSCE and the ways that they dealt with the growing geographical and functional overlap.

1.1 Normative appropriation tendencies of EU's enlargement from the CoE.

The autonomy of the legal order of the European Union and the space it leaves for incoming foreign norms or influences are contradictory by definition. Wessels and Blockman make a reference to the ECJ case law, especially Van Gend En Loos, that helped in the constitutionalisation of this principle of autonomous legal order of the

[3] A. Wessel and S. Blockmans (Eds), Between Autonomy and Dependence, the EU Legal Order under the influence of International Organisations, T.M.C. Asser Press/Springer, 2013, p.5.
[4] Idem
[5] Idem

EU. They call this 'a disguised claim to sovereignty'[6], which now is an established fact. But with the quick shifts in an interdependent world, what they refer to is a "certain openness"[7] allowed from the system of norms of the EU, through the acceptance of the international obligations and international law deriving from the outside. "With the development of its external relations and the increase of external competences, the EU has revealed its 'dependence' on international law and international normative processes, as it had no choice but to accept that in order to be able to play along on the global stage."[8]

1.1.1 Primary law on enlargement and rule of law. Influences from the CoE.

The Treaty, the head of the hierarchy of the legal basis of EU has been filling with time the gaps of democratization, human rights and the Rule of Law in front of the challenges of new memberships. On the other hand the Council of Europe was since the beginning primarily concerned with these issues: the creating of standards and criteria to assess democratization and the Rule of Law in the big framework of creating and promoting unity and stability between its members, which is also reflected in its Statute. The legal texts of the same 'hierarchy' are taken into consideration for a comparison: the Treaties of the European Union and the Statute of the Council of Europe regarding the provisions of new memberships. Two issues have been chosen that are in common for the respective provisions: the question of Europeanness and the Rule of Law, as relevant to enlargement provisions of both organizations.

The first provision on enlargement in the history of the European Union is Article 78 ECSC, Treaty of Rome: *"Any European State may apply to accede to this Treaty…"*[9]

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[6] R.A. Wessel and S. Blockmans (Eds), Between Autonomy and Dependence, the EU Legal Order under the influence of International Organisations, T.M.C. Asser Press/Springer, 2013, p. 2.
[7] Idem
[8] Idem
[9] Art 98 ECSC Treaty stipulates: *"Any European state may apply to accede to this Treaty. It shall address its application to the Council, which shall act unanimously after obtaining the opinion of the High Authority. The Council shall also determine the terms of accession likewise acting unanimously.*

This same provision on Europeanness has been displaces to Article 237 of EEC Treaty and Article 205 EAEC[10] (separate Treaties for the separate communities) and turned (with several changes) into Article 49 of the Lisbon Treaty: *"Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. .....The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State.."*[11] One thing that is visible reading this same Article in the Treaty of Rome and in the Treaty of Lisbon is that in one thing it has not changed its formulation: "*Any European State*.." It has been very difficult through time to draw borders of Europe, and the issue is still questionable now as it was then. The process of defining in time what a "European Country" consists of, was certainly not exclusively in the concern of the European Union. In the pursuit of a definition of a 'European State', Kochenov[12] makes a parallel between this provision of EU Treaty and the Statute of the Council of Europe, Article 4: "*Any European State* which is deemed to be able and willing to fulfill the provisions of Article 3 may be invited to become a member of the Council of Europe by the Committee of Ministers."[13] With this parallel he argues that the Council of Europe through its practice has established the geographical criteria necessary to call a country European. There is a more important factor though that introduces the concept of the Europeanness more than any other: the common values. They made these countries European according to the practice of the EU, more than their geographical proximity to the old continent. The case of pre-accession negotiations with Turkey, Malta and Cyprus accession in the

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Accession shall take effect on the day when the instrument of accession is received by the Government acting as depositary of this Treaty."

[10] See K. Ristova-Aasterud, The legal aspects of the EU accession procedure and its implications for the EU Eastern enlargement (from the EU founding Treaties to the Treaty of Amsterdam), Iustinianus Primus Law Review, Vol.1, No.1, p. 2-12. http://www.law-review.mk/pdf/01/Karolina%20Ristova-Aasterud.pdf

[11] Consolidated version of the Treaty of Lisbon, as signed on 13 December 2007. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT

[12] D. Kochenov, *EU enlargement and the failure of conditionality*, The Hague, Kluwer Law International, 2008, p. 29.

[13] Statute of the Council of Europe http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm

EU, or the negotiations with Iceland too, have pushed European borders beyond the geographical ones, in all directions, and the expansion is an ongoing process. Many enlargements occurred since the creation of the Communities and, all of these enlargements were closely tied with the common values of EU and the democratization of the countries who wanted to join. Especially the experience of Greece, Portugal and Spain showed clearly that there was no place in the European Communities for them until they got rid of their respective authoritarian regimes. It was obvious that their adherence to the European Union was related to the strengthening of the democratization in each of these respective countries[14]. This practice of accepting states with a certain level of democratization was not reflected in the Treaties, it was only confirmed by the practice. As often happened during its history, and academics agree at this point, the dynamics of the Community preceded the provisions in documents. The legal perspective of this issue is as Kochenov would define it: "the incorporation of the elements of customary norms into written enlargement law"[15] or as Wiener names "the informal resources of the acquis".[16] This is exactly what happened in the Treaty level, as the introduction of the value based part of the provision on enlargement came with the Treaty of Amsterdam, i.e after the third round of enlargement, in 1997. It referred to Art 6 EU and announced the values in which the EU is based: *"liberty, democracy, respect for human rights and fundamental freedoms and the rule of law".*[17] It is here that we first find the introduction of the principle of the Rule of Law in primary law regarding enlargement. Its latest version in the Treaty of Lisbon makes reference to the Charter of Fundamental Rights.[18] It is striking how Art 49 TEU reached almost entirely in

[14] D.Kochenov, *EU enlargement and the failure of conditionality*, The Hague, Kluwer Law International, 2008, p. 5.
[15] D.Kochenov, *EU enlargement and the failure of conditionality*, The Hague, Kluwer Law International, 2008, p. 63.
[16] A. Wiener, *Assessing the Constructive Potential of Union Citizenship – A Socio-Historical Perspective*, 1 ElopP 17, 1997, p. 3.
[17] Ex- Article 6 TEU.
[18] Consolidated version of the Treaty of Lisbon, as signed on 13 December 2007.
"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These

formulation Article 4 of the Status of the Council of Europe on enlargement that refers to Article 3.[19] It is no wonder that most of the countries have been part of the Council of Europe before entering the EU. The Statute of the Council of Europe is looser in its formulation: it provides a place for countries that are *deeming*[20] to comply with the respect of human rights and the rule of law while the CoE assists them through the process. This means that reaching the standard can and might be a process, but it should be first of all a question of will. On the other hand, the formulation of Article 49 TEU presupposes that the countries have reached the standards and criteria laid down in its provision before joining the EU. This leads to the well-known definition of the CoE as an anti-chamber of the entrance of the states in the EU. Most of these countries have been members of the CoE first and have fulfilled the minimum standards on the Rule of Law before entering the EU.

Both provisions have their own weaknesses. The Council of Europe is often accused of putting minimum standards for countries to join, which is not the case of the EU that seeks their whole compliance. On the other hand, what is judged worth mentioning regarding Article 49 TEU is also the role of the Member States in enlargement issues. After being subordinated to the evaluation of the European Commission, the Treaty provides that it is the Council that decides by unanimity regarding the acceptance of a new member, which means if the compliance with the standards complies with their perception. "*..This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements…"*[21]. Defining the values and norms and then subordinate their assessment to the negotiating will of the States involved, that is also

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values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

[19] Art 3, Statute of the Council of Europe, 1949.
http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm
"*Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I.*"

[20] Art 4, Statute of the Council of Europe, 1949.
http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm

[21] Art 49, Lisbon Treaty http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT

in the nature of the EU. Negotiation, participation and permanent compromise is the core term of the functioning of the EU, but keeping the standards untouched is the expected duty of the primary law.

1.1.2 Secondary law: The Acquis and the Copenhagen criteria as influenced by CoE standards.

The Acquis Communautaire, the whole legal basis of the European Union, was made part of the Copenhagen Criteria in 1993, in the perspective of the entrance of the Middle and Eastern European countries in the EU, after the fall of the iron curtain. Here begins the real challenge of the European Union: to offer a model of democratization and application of the rule of law to countries with a communist legacy, which were undergoing state building and transformation processes. The legal vacuum on this issue and the challenge of democratization of these countries, field in which the EU did not have any experience was reflected in the Copenhagen criteria. The principle of acceptance of the Acquis had as a purpose to put the upcoming countries in an 'equal footing'[22] with the ones that were already members, as Kochenov would precise referring to Hoffmeister. Also, for the first time, the next round of enlargement (the big bang enlargement) would provide the whole adoption of the acquis by the candidate countries prior to the signing of the accession Treaties.

The contribution of the standards of the Council of Europe in regards to enlargement has been the recognition of its conventions as part of the acquis communautaire in the chapter of freedom, security and justice. It has been considered an indirect influence, because the EU did not ratify them as a single entity, but accepted their contribution in the acquis through their ratification from the Member States of the CoE and future member states of the EU. The term used by Cornu as regards the conventions of the CoE is that of a "broad mandate"[23]. This broad mandate consists in the broad range of

[22] D.Kochenov *EU enlargement and the failure of conditionality*, The Hague, Kluwer Law International, 2008, p. 40.
[23] E.Cornu, "The impact of Council of Europe Standards on the European Union", in R.A. Wessel and S. Blockmans (Eds), *Between Autonomy and Dependence, the EU Legal Order under the influence of International Organisations*, T.M.C. Asser Press/Springer, 2013, p. 115.

fields in which the CoE has the right to legislate. Its statute provides that the aim of the organization "shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and further realisation of human rights and fundamental freedoms"[24]. In all these spheres of competence, the CoE has been able to develop more than 200 conventions as well as standards, rules, recommendations. "…Through these conventions, as well as through other rules and standards, the Council of Europe strives to develop a European common legal area based on the principle of the rule of law and respect for human rights. This contribution of the Council of Europe to the development of international law and to the protection of human rights is widely acknowledged and constitutes its main strength."[25] Their ratification by the candidate countries has been seen as a contribution of the conventions in helping them reach the standards in the area of freedom, security and justice. This concerns the European Convention on Human Rights, the Civil Law convention on corruption, the European Convention on Extradition and its two Additional Protocols, the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol, the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration on the Custody of Children, the European Convention on the validity of Criminal Judgments and the European Convention on the Transfer of Proceedings in Criminal Matters.

The rising complexity of the acquis was also taken into consideration by both organizations in order to face its proper adoption by the candidate countries. In 1998, a Joint Action was adopted by the Council of European Union in the field of justice and home affairs, which would evaluate the implementation of the standards in these countries through the "implementation of the Council of Europe Conventions and

[24] Article 1/b of the Statute of the Council of Europe.
http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm
[25] E.Cornu, "The impact of Council of Europe Standards on the European Union", in R.A. Wessel and S. Blockmans (Eds), *Between Autonomy and Dependence, the EU Legal Order under the influence of International Organisations*, T.M.C. Asser Press/Springer, 2013, p. 115.

recommendations which are deemed to be relevant with regard to the content of the acquis."[26]. The acquis has been in continuous evolvement since then too. The countries that were negotiating the fourth and fifth round of accession at the time had 31 chapters of the Acquis to comply with (till the accession of Romania and Bulgaria), while for the negotiations with Turkey and the Western Balkans, the number of the chapters has become 35. The field of Rule of Law has been placed under the new chapter of Judiciary and Fundamental Rights, (previously under the justice, freedom and security chapter), enhancing a tighter cooperation of EU and CoE in common projects in the countries concerned. Very relevant to the assessment of the independence, efficiency and fairness of justice in pre-acceding countries by the European Commission were: Recommendation No R (94)12 on the independence, efficiency and the role of judges), the European Charter on the statute for judges, the Opinions of the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE), the case law of the European Court of Human Rights and the conclusions of the Conferences of European Ministers of Justice.[27]

The contribution of the conventions by their broad mandate of competencies in the just-set criteria of Copenhagen, happened in a time of lack of competence of the Union itself in those spheres, since they are not deriving from any provision in the treaties. "Created to strive to achieve the objectives set out in the Treaties, the Community does not therefore have general legislative competence. As a consequence the majority of elements included into the Copenhagen political criteria of democracy, the rule of law and the protection of human rights, lie in fields where

[26] Joint action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on the European Union, establishing a mechanism for collective evaluation of the enactement, application and effective implementation by the applicant countries of the acquis of the European Union in the field of Justice and Home Affairs OJC n° L 191 of 07/07/1998, p. 0008-0009)(98/429/JHA) http://www.europarl.europa.eu/enlargement/cu/agreements/290698a_en.htm

[27] The Council of Europe and the Rule of Law, Working Session 4- Rule of Law I, Review Conference Warsaw, 30 September-8 October 2010, p.2. http://www.osce.org/odihr/33685?download=true

the Community is powerless"[28]. As it is said above, the first reference to the values of the Union with regards to democracy and the rule of law have been presented in the Treaty of Amsterdam. In 1997 a sort of non-formal "hierarchy" was introduced among the principles of the Copenhagen Criteria itself. The Luxembourg European Council launched the next round of enlargement and concluded that "compliance with the Copenhagen political criteria was a prerequisite for opening of any accession negotiations"[29]. The "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities"[30] had to become the set of rules which would first open negotiations and the last ones to close them with. It would put them in the forefront of the enlargement processes. This would as well transform the nature and competences of the European Commission, turning it from the watch-dog of the treaties in the safeguard of the Rule of Law, although not institutionally or formally in the Treaties.[31] Still, it has been very difficult for the Commission and the countries concerned to cope with the broad nature of the political criteria of Copenhagen. It is here that the role of the standard setting of other organizations is necessary again: "Copenhagen-related documents belonging to both groups made references to the documents lying outside the field of EU law, allowing international organizations such as the OSCE and the Council of Europe to play a role, albeit indirectly, in the assessment of the candidate countries' compliance with the Copenhagen Criteria and especially, with the political criteria of democracy and the Rule of Law."[32] To finish it with the total compatibility of the aims and purposes in the normative acts of both organizations, it would be accurate to take a look at the premise that we put in the starting point: "the more the EU extends its competences

[28] D.Kochenov, *EU enlargement and the failure of conditionality*, The Hague, Kluwer Law International, 2008, p. 81.
[29] Luxembourg European Council 12 and 13 December 1997, Presidency conclusions, Art 25. http://www.europarl.europa.eu/summits/lux1_en.htm
[30] Copenhagen political criteria of accession http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhague_en.htm
[31] M.Smids, Europa, charming Zeus..and numerous others, Peeters Publishers, 2007, p. 38.

beyond the economic sphere, the more interaction with the activities of the Council of Europe is likely to occur."[33]

1.2 Political cooperation of the EU with CoE and OSCE regarding the field of the rule of law. Impacts on enlargement processes.

The researchers argue about various degrees and reasons of international organizations influence over the EU. The first argument comes from a bottom-up approach. The need of the organizations to cooperate or coordinate comes from the overlapping membership and the same applies for the future perspective of overlapping memberships. Countries being members of various IO-s should not be penalized in changing their domestic legislation continuously because of the membership. This would also be true in the field of enlargements. A coordination between organizations regarding specific common fields and common countries is in order to make candidate countries comply easily and only once with the standards in the same field. The second argument is that the influence of international organizations on the EU frequently empowers networks of mid-level policy-makers, bureaucrats and experts.[34] Schumacher has defended the idea that the influence of the Council of Europe on the European Commission travels via networks based on bureaucratic cultures and the similar character of the actors involved, i.e the international staff of both institutions, as well as their long-term relations with each-other.

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[32] D.Kochenov, *EU enlargement and the failure of conditionality*, Kluwer Law International, 2008, p. 81.

[33] E.Cornu, "The impact of Council of Europe Standards on the European Union", in R.A. Wessel and S. Blockmans (Eds), Between Autonomy and Dependence, the EU Legal Order under the influence of International Organisations, T.M.C. Asser Press/Springer, 2013, p. 120.

[34] O.Costa and K.E.Jørgensen, The Influence of International Organisations on the European Union: A Political Science Perspective, in R.A. Wessel and S. Blockmans (Eds), Between Autonomy and Dependence, the EU Legal Order under the influence of International Organisations, T.M.C. Asser Press/Springer, 2013, p. 76.

1.2.1 Political cooperation between EU and CoE

While the normative 'borrowing' of the EU from the CoE has had an impact in its competences, fields of policy and its role in the world as a promoter of values, the same thing can be said about the institutional and political cooperation between the two organizations. The 'natural-born twins", European Union and the Council of Europe, although both highly value-based projects, have followed different paths and scopes for a long time, the first one opting for economic common interests of participating states through an integration process and the second one focusing on human rights, democratization and the rule of law through an intergovernmental approach. The tendencies of the past two decades have shown that both organizations have more interest to develop common strategies in the field of the rule of law, democratization and human rights the more member countries of the CoE have become and are about to become part of the EU. A political coordination between both organizations regarding specific common field as well as agreements on common standards helps candidate countries to better comply with the standards. If some researchers like to stress on the overlap of the fields of interest since the EU became more and more interested in Human Rights, Democratization and the Rule of Law[35], some other politicians, remind us of the common and shared values of both. In 2006, Jean-Claude Juncker, the Prime Minister of Luxembourg, in his report to the Member States of the Council of Europe: "The Council of Europe and the European Union were products of the same idea, the same spirit, and the same ambition. They mobilised the energy and commitment of the same founding fathers of Europe. Both the Council of Europe and the Union adopted as their watchword the maxim coined by Count Richard Coudenhove-Kalergi between the wars: "A divided Europe leads to war, oppression and hardship; a united Europe leads to peace and prosperity""[36]

[35] M.Kolb The European Union and the Council of Europe, Palgrave Macmillan, 2013, p. 3.
[36] E.Cornu, "The impact of Council of Europe Standards on the European Union", in R.A. Wessel and S. Blockmans (Eds), Between Autonomy and Dependence, the EU Legal Order under the influence of International Organisations, T.M.C. Asser Press/Springer, 2013, p.116.

A short blink in the history of their relations would better help understand how did the two organizations deal with the ever growing common areas of competence, through political dialogue and institutionalized relations, first *internally* and then *externally*.

Internally, this is how the two IO-s reached a coordinated level of standard setting together as the necessity for this coordination was always growing, with the overlap of memberships and fields of competence. **The exchange of letters,** (the individual level) between representatives of both organizations started in 1959 with the establishment of the communities in the Treaty of Paris. This exchange of letters was further developed in 1987 with Jacques Delors willing to discuss for each new convention adopted by the CoE the possibility of the EU to become a contracting party.[37] The adoption of the Single European Act for the first time contained a reference to the most important conventions of the CoE: the European Convention on Human Rights and the European Social charter.[38] The regular **political dialogue** between the two IO-s went on since 1989, with high level meetings, named quadripartite ones. It was further developed with another letter exchange in 1996, and since then the Commission has been permanently invited in the meetings of the Ministers' Deputies, although with no voting rights.[39] Today these meetings are held twice a year, as with regards to the discussions of the most strategic areas in common. *A Joint Declaration on Cooperation and partnership was signed in 2001* with the aims of deepening the cooperation in the fields of democracy, rule of law and respect for human rights, as well as extending them in other areas.[40] The parties committed themselves in intensifying the dialogue with a view to identifying those countries and objectives where joint action would add value to their respective activities.[41] In *2005*,

[37] Idem, p. 36.
[38] E.Cornu, "The impact of Council of Europe Standards on the European Union", in R.A. Wessel and S. Blockmans (Eds), Between Autonomy and Dependence, the EU Legal Order under the influence of International Organisations, T.M.C. Asser Press/Springer, 2013, p. 118.
[39] M.Kolb, The European Union and the Council of Europe, Palgrave Macmillan, 2013, p. 38.
[40] M.Kolb, The European Union and the Council of Europe, Palgrave Macmillan, 2013, p. 38.
[41] Joint declaration on cooperation and partnership between the Council of Europe and the European Commission. https://wcd.coe.int/ViewDoc.jsp?id=194395&Site=COE

the Warsaw Summit of the CoE constitutes the recognition of the overlap of the spheres of competence of both organizations and the need for increased cooperation with the EU. The future standard setting of both are taken into account in each-others activities.[42] The signature in *May 2007 of Memorandum of Understanding* between CoE and the EU has reaffirmed the choice of the two partners to reinforce ongoing co-operation in the framework of joint programmes[43]. The common areas of interest are précised and identified, such as human rights and fundamental freedoms; rule of law, legal co-operation; democracy and good governance, and social cohesion. The parties designate these priorities in order to establish common standards, and while referring to the Warsaw Summit, promote a Europe without dividing lines. The other non-mentioned areas of interests are left to mutual consultations.[44] Since the entry into force of the *Treaty of Lisbon*, the relations between the EU and the CoE have been intensified.[45] The impact of the Treaty of Lisbon has been acknowledged by the Parliamentary Assembly of the Council of Europe through resolution 1836(2011). It recognizes the legal personality obtained by the EU with and the strengthen of the fields of policy within the concern of the Council of Europe. Still "duplication with other evaluation mechanisms should be avoided, but synergies and co-operation should be sought, in particular with the work of the Council of Europe".[46] On the other hand *The Stockholm Programme adopted by the European Council in December 2009* acknowledges the contribution of the Council of Europe in the area of freedom, security and justice: "The work of the European Council is of particular importance. It is the hub of the European values of democracy, human rights and the rule of law. The Union must continue to work together with the Council of Europe

[42] Warsaw declaration, 2005 http://www.coe.int/t/dcr/summit/20050517_decl_varsovie_en.asp
[43] External Action webpage of the European Union http://eeas.europa.eu/organisations/coe/index_en.htm
[44] Memorandum of Understanding between the Council of Europe and the European Union http://ec.europa.eu/justice/international-relations/files/mou_2007_en.pdf
[45] E.Cornu, "The impact of Council of Europe Standards on the European Union", in R.A. Wessel and S. Blockmans (Eds), Between Autonomy and Dependence, the EU Legal Order under the influence of International Organisations, T.M.C. Asser Press/Springer, 2013, p. 128.
[46] Resolution 1836 (2011) Final version, The impact of the Lisbon Treaty on the Council of Europe, Art 2, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18031&lang=en

based on the Memorandum of Understanding between the Council of Europe and the EU signed in 2007 and support its important conventions".[47]

The external cooperation between the two IO-s shows its acute representation in 1993, in the field, outside the border of the EU. This year signs the establishment of the **joint actions** between the Commission and CoE, the most visible part of their cooperation. They consist in the strengthening of democracy, the rule of law and respect for human rights in countries bordering the EU (the Western Balkans and Turkey, the EU's Eastern Partners, countries in the Southern Mediterranean and Central Asia).[48] Since then, 180 joint programs have been led in these countries. Most of them are candidate countries, in phases of negotiations or not. This coordinated assistance constituted another phase of their relation, from political dialogue to a new form of practical cooperation[49] between the IO-s. The joint programmes have been perceived as a tool for enhancing cooperation with countries that had been part of the Council of Europe since 1989.[50] This turned with time into a facilitating program for them to apply for membership in the European Union. This specific form of partnership remains relevant in order to evidence the role of antechamber of the CoE for countries involved in pre-accession changes. Recently the European Commission delegations in the countries that benefit from the programmes have been progrssively implied in the Joint Programmes.[51] According to the procedure, the joint programs should have been co-financed equally by both IO-s, but in most of the cases it's the EU that finances the funds (around 80 percent)[52], while the CoE is in charge of providing the staff and implementing the action in the concerned country. Still the division of roles reveals the complementarity of the actors: the EU disposes the

[47] European Council, The Stockholm Programme- An open and secure Europe serving and protecting citizens, OJ 2010 C 115, p. 37.
[48] External Action webpage of the European Union http://eeas.europa.eu/organisations/coe/index_en.htm
[49] M.Kolb, The European Union and the Council of Europe, Palgrave Macmillan, 2013, p. 38.
[50] Joint actions webpage of the Council of Europe http://www.jp.coe.int/Default.asp
[51] Joint actions webpage of the Council of Europe http://www.jp.coe.int/Default.asp
[52] Idem

financial means and the CoE is the standard-setter and the provider of the necessary experience in transformations.

The joint acions are carried on through a multitude of actors. They have been fulfilled through the Directorate General for External Relations of the European Commission and the Council of Europe's Directorate of strategic planning. They decide together on the priorities to be set and the activities to be performed. The two institutions operate through the close participation of the national actors of the countries concerned, such as the Ministries of Justice, Ministries of Integration, Courts and Judges (including training centers for Judges), Public Prosecutors office, Human Rights Commissioners, as well as non-governmental actors and media involved in the processes of transformation. In the field of the rule of law, CoE agencies and bodies like GRECO- Group of States against Corruption, the CoE Human Rights Commissioner (HRC), the Venice Commission, the CEPEJ-European Commission for Efficiency and Justice aim to support the judicial reforms, capacity building for the judiciary, the delivery of support for independent institutions, the training for legal professionals, etc.[53] The cooperation with national actors consists in: the Conference of European Ministers of Justice, the European network for the exchange of information between individuals and entities responsible for the training of judges and prosecutors (Lisbon network), the Conference of the Prosecutors General of Europe, the regular meetings of the Presidents of European Supreme Courts or the Council of European Judges (CCJE), that delivers opinions on how to proceed with legal instruments to push forward the reforms.[54] These organs and their contribution in the joint actions in the field of the rule of law will be further developed in the second chapter with the case of Albania.

[53] The Council of Europe and the Rule of Law, Working Session 4- Rule of Law I, OSCE Review Conference Warsaw, 30 September-8 October 2010, p. 4.
http://www.osce.org/odihr/33685?download=true
[54] The Council of Europe and the Rule of Law, Working Session 4- Rule of Law I, OSCE Review Conference Warsaw, 30 September-8 October 2010, p. 2.
http://www.osce.org/odihr/33685?download=true

1.2.2 Political cooperation between the EU and OSCE in the field of the rule of law.

Rule of law as a dimension of the OSCE. The very existence of the OSCE is the proof of how an international organization has to reinvent itself while fitting with the environment and the changing circumstances. Its predecessor - the CSCE was not considered as an institution from researchers. "The CSCE originated as a process, not a formal institution."[55] Larivé says that it had just been an informal platform[56], before turning into an Intergovernmental Organization in 1994. Its unique way to perceive security beyond the power and military strategic meaning of the concept[57] , its human dimension rooted in the Helsinki Final Act allowed the organization to develop in areas other than security, or better said, act within a broader definition of security, as provided since its conception. The three dimensions of security of OSCE are the politico-military, the economic and environmental and the human one. "All OSCE participating States have agreed that lasting security cannot be achieved without respect for human rights and functioning democratic institutions."[58] The era of the Post-Cold war imposed some new changes and challenges in order to fit the transformations happening in the East of Europe. The structural changes were only one part of that, together with the substantial ones in policy fields. "From a norm-setting institution with definitional qualities for Europe's security order, since the 1990s its role shifted more towards supporting democratization of Eastern Europe and the post-Soviet space through election observation and field presence".[59] The institutional framework of the organization represented the changes in its substance: In 1991 there was the opening of the Office for Democratic Institutions and Human

[55] B.Stefanova, Institutionalist Theories: The OSCE in the Western Balkans, in R.Dominguez (ed) The OSCE: *Soft security for a hard world,* P.I.E Peter Lang, 2014, p. 60.
[56] M.Larivé, The European Architecture. OSCE, NATO and the EU, in R.Dominguez (ed) The OSCE: *Soft security for a hard world,* P.I.E Peter Lang, 2014, p.161.
[57] B.Stefanova, Institutionalist Theories: The OSCE in the Western Balkans, in R.Dominguez (ed) The OSCE: *Soft security for a hard world,* P.I.E Peter Lang, 2014, p. 61. (reference to Hopmann)
[58] Definition of the human dimension of OSCE by the OSCE http://www.osce.org/odihr/109087
[59] B.Stefanova, Institutionalist Theories: The OSCE in the Western Balkans, in R.Dominguez (ed) The OSCE: *Soft security for a hard world,* P.I.E Peter Lang, 2014, p. 55.

Rights (ODIHR) which operates in the fields of election observation, democratic development, human rights, tolerance, non-discrimination and the rule of law. The Bonn and Copenhagen conferences (April-June 1990) determined that European order would be based on democratic values, such as free elections, the rule of law and market liberalism[60]. Stefanova argues that it was in the post-conflict situations in the Western Balkans that the OSCE turned 'from the broadest norm-setting organization of European security to a specialized politico-security actor"[61] She argues that its function during the conflict was not achieved enough or according to the expectations, while after the conflicts its tasks were narrowly defined in providing security through its human dimension. Under the UN mandates, the tasks were divided in such a way that security would be provided by NATO, while OSCE had to focus on elections, democratization and human rights, while in close cooperation with the Council of Europe that would aim at the legal institutions. Cockwell and Jacobsen maintain that in Kosovo, as well as in Bosnia, OSCE was assigned with democratization and institution building, as human rights issues were integral to the judicial system and law enforcement pillars.[62] The OSCE field operations in the Western Balkans from the mid 90's and on consisted mostly in democratization, rule of law, legal reforms and institution building. The table below illustrates it:

OSCE Field operations (1992-2012)		
Field Operation	**Duration**	**Priorities**
Albania, Presence	Since 1997	Democratization, rule of law, human rights
Bosnia and Herzegovina, Mission	Since 1995	Community engagement, human rights; equality promotion, security, legal reform

[60] B.Stefanova, Institutionalist Theories: The OSCE in the Western Balkans, in R.Dominguez (ed) The OSCE: *Soft security for a hard world,* P.I.E Peter Lang, 2014, p. 61. (reference to Hopmann)
[61] Idem, p. 67.
[62] Idem, p. 68.

Montenegro mission	Since 2006	Democratization, institution building, legislative, police, and media reform
Serbia, Mission	Since 2001	Institution-building, democracy-building, human rights, rule of law
Kosovo Mission	Since 1999	Institution-building, democracy-building, human rights, rule of law.
Skopje, Mission	Since 1992	Conflict prevention
Kosovo, Sandjak and Vojvodina, Mission	1992-1993	Promote communication between these areas; conflict resolution; human rights
Kosovo, Verification Mission	1998-1999	Establish liaisons, oversee elections
Croatia, Mission	1996-2007	Human rights, rule of law, promotion of democracy
Zagreb, Office	2007-2012	Reconciliation, assist government, reintegrate former Serb-controlled areas.

Source: Based on information from each one of the OSCE Field Operations, <http://www.osce.org/item/43692>[63]

EU-OSCE and the overlap management . The process of transformation of the OSCE was not the only one happening in Europe in the 90's. EU was undergoing structural and substantial changes as well, with regards to expansion towards new countries and new policy areas, such as foreign policy, defense and normative issues: the rule of law, democracy and human rights. The iron curtain had fallen and the EU was on the very same line with the soft power and comprehensive and cooperative perception of the OSCE of security, which in the end of the day, is EU's method as well. But especially, the operational field of the OSCE, building bridges between the West and the East was another instrument out of which EU could make use of. Lynch argues that the OSCE and its predecessor "have always been testing ground for EU

[63] R.Dominguez, Conclusion, Interpreting the OSCE in R.Dominguez (ed) The OSCE: *Soft security for a hard world*, P.I.E Peter Lang, 2014, p. 185-186.

foreign policy."[64] Their relation in the beginning was on *ad hoc*[65] basis, but it became more and more institutionalized as the EU developed its CSDP structures and introduced the position of High Representative of CFSP, with Solana as the first one in charge. He was firm in the "determination of the European Union to contribute more actively to peace and security in Europe".[66] He called upon the common past, shared values and common goals[67] and an increased presence in the same regions. Since then the cooperation of the two IO-s took a new impetus with the development of the EU's Stabilization and Association Process (SAP), the European Neighbourhood Policy (ENP), and later the Eastern Partnership.[68] Since then many security strategies were built by the EU (ESS)[69], with 'the permission' of the OSCE, going at the same line with those of the OSCE. Amongst many other points that belong to security issues, like the aiming of a "ring of well governed countries" on the borders of the EU; ensuring that the enlargement would not create "new dividing lines in Europe", the ESS is committed with offering a recipe of a rule-based in international order[70]: "spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights"[71]. It is in the big umbrella of security provision through soft power that the institutionalized relations of OSCE and the EU have been based, but according to the definition of both, this includes a various range of fields within. The European Union works through and with the OSCE on a range of issues, such as

[64] D.Lynch, "ESDP and the OSCE" in G.Grevi, D.Helli and D.Keohane (eds), *European Security and Defense Policy: the first 10 years (1999-2009*), EUISS, Paris, 2009, p.139.
[65] E.Stewart, "Restoring EU-OSCE Cooperation for Pan-European Conflict Prevention" in *Contemporary Security Policy*, 2008, VOL.29, No.2, p. 273.
[66] J.Solana, Statement before the OSCE Permanent Council 18 January 2001, in [66] D.Paunov, Assessing the success of EU-OSCE cooperation: a case of mutualism? In Security and Human Rights, 24, 2013, p. 375.
[67] Idem. The common past referred to by Mr. Solana was that the EC had made war impossible through integrating its members, while the OSCE had facilitated the cooperation between the West and the Soviet block.
[68] D.Paunov, Assessing the success of EU-OSCE cooperation: a case of mutualism? In Security and Human Rights, 24, 2013, p. 375.
[69] European Security Strategy, 2003. https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf
[70] D.Paunov, Assessing the success of EU-OSCE cooperation: a case of mutualism? In Security and Human Rights, 24, 2013, p. 380.
[71] European Security Strategy, 2003, p. 10.

conflict prevention and resolution, arms control, human rights, minority protection, election observation and the rule of law.[72] The Council of Europe also has expressed the will to contribute in the EU-OSCE relationship, through a draft report in November 2003 by means of which it was recognizing the shared values of democracy, human rights and institution-building of both; by stressing cooperation and the comparative advantages of both entities, avoiding the duplications and ensuring the added value of the relationship.[73] Another report followed with the aim to consolidate the commitment of the EU within the OSCE.[74]

There have been though some shortcomings in the relation EU-OSCE. The first one, argues Stewart, had to do with the geographical and functional overlap.[75] Paunov holds that this is exaggerated but not untrue, since there is a tendency showing that the accession to the EU results in the termination of the OSCE Missions, as it has been the case of Estonia, Latvia and Croatia.[76] The application of the criteria of Copenhagen, claiming from the countries the establishment of "democracy, the rule of law, human rights and respect for and protection of minorities"[77], and the highly asymmetric process that they use to perform this is seen as a threat for the OSCE mission in the area. The lack of legally binding decisions from OSCE seems shadowed from the conditionality applied by the European Commission. On the other hand, the lack of the legal personality of the OSCE and the structural deficiencies are claimed to not help strengthen enough the relations

[72] European Union External Action webpage
http://www.eeas.europa.eu/organisations/osce/index_en.htm
[73] Draft Council Conclusions on EU-OSCE co-operation in conflict prevention, crisis management and post-conflict rehabilitation, 2003, p. 2.
[74] Council of the European Union, Draft Assessment Report on the EU's role vis-avis the OSCE, Brussels, 10 December 2004, 15387/1/04 REV 1, p. 4.
[75] D.Paunov, Assessing the success of EU-OSCE cooperation: a case of mutualism? In Security and Human Rights, 24, 2013, p. 386.
[76] D.Paunov, Assessing the success of EU-OSCE cooperation: a case of mutualism? In Security and Human Rights, 24, 2013, p. 386.
[77] Copenhagen political criteria
http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhague_en.htm

between the IO-s through a permanent liaison structure with the EU.[78] The European Parliament has addressed this issue to be resolved through a resolution.[79] The two IO-s are working to find a solution also on the problem of competition for human resources.[80]

It was argued above that between EU and OSCE there is a duplication of the activities, as well as a geographical and functional overlap. The budget of the OSCE is constituted in two thirds of it from the European Union.[81] This is part of the commitment of the EU to strengthen the role of the OSCE as a key international actor and security provider, while enhancing relations between them both. To the fear of the diminishment of the OSCE in the countries where the EU 'took over' Paunov responds that such a thing is unjustified. "The general trend is that the EU has been gaining more and more ground in the Balkans, but not without the OSCE's consent"[82]. He claims that both had to make compromises and be attentive to each-others demands, but without jeopardizing their core values and principles. The case of the countries aspiring to join the EU, especially those of the Western Balkans underlines the necessity of the OSCE in the field. He agrees with Solana when saying that EU-OSCE relationship is that of natural-born partners, but not only. He sees a case of mutualism, where the OSCE has been a pioneer in many policy fields and still has a lot to teach to the EU.[83] On the other hand the EU has the financial capabilities to hold to the promise of strengthening the OSCE, and through this to enhance its influence as a global player.[84]

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[78] D.Paunov, Assessing the success of EU-OSCE cooperation: a case of mutualism? In Security and Human Rights, 24, 2013, p. 386.
[79] European Parliament resolution of 11 November 2010 on strengthening the OSCE – a role of the EU, 2010, p. 8.
[80] A.Bailes, J.Y Haine and Z. Lachowski, Reflections on the OSCE-EU Relationship, in OSCE *Yearbook 2007*, 2008, p. 72.
[81] European Union External Action webpage http://www.eeas.europa.eu/organisations/osce/index_en.htm
[82] D.Paunov, Assessing the success of EU-OSCE cooperation: a case of mutualism? In Security and Human Rights, 24, 2013, p. 389.
[83] Idem
[84] Idem

1.3 Definitions of the Rule of Law. Further elements of applicability in this paper.

Definitions. In what sense, scope and definition has the term Rule of Law been used by the abovementioned actors? The implications that the term "Rule of Law" brings are similarly perceived by all the institutions, states and entities dealing with this issue. Comparable, but not equal. Surprisingly or not, an institutionalized clear definition of it has been avoided so far. There is no harmonization in a European level of what it brings, and every member country uses the term internally in its own terms and interpretation. The European Commission, in presenting the framework of safeguarding the Rule of Law, has mentioned that: "*..the rule of law is the foundation of all values upon which the Union is based… The Commission has taken a broad definition of the rule of law, drawing on principles set out in the case law of the European Court of Justice and the European Court of Human Rights, essentially meaning a system where laws are applied and enforced*"[85].

It is the doctrine that is mostly concerned in exactly designating this notion. The attempts to define it vary from the vastest to the most specific ones. Kochenov brings a very synthetic definition given by Carl Popper: "At the core of the Rule of Law is the idea that any exercise of power should be subject to the law"..He goes on: "..the concept does not leave room for any absolute arbitrary power"[86]. Following these definitions, still broad, there are several further attempts to be clearer, more precise and exhausting in these regards. According to Meyer, "Rule of law" is a shorthand term for a legal system in which justice is administered openly and fairly according to prescribed statutes and regulations; individuals and organizations are held accountable; judges are impartial; minority rights are protected; access to the

[85] European Commission press release, Strasbourg 2014 file:///C:/Users/User/Downloads/IP-14-237_EN.pdf

[86] D.Kochenov, *EU enlargement and the failure of conditionality*, Kluwer Law International, 2008, p. 100.
It contains references to Hart, H.L.A The concept of law, Oxford: Clarendon Press, 1961; Kelsen, Hans, General Theory of Law and State, Cambridge, MA: Harvard University Press, 1945.

courts are available to all; and legitimate court rulings are enforced."[87] To our opinion Fallon[88] established a significant and comprehensive work in these regards. He picks up five constituent elements of legal rules present in any case in the Rule of Law, which paraphrased are as follows: the capacity to be understandable, the efficacy, the stability, the supremacy of the legal authority and the enforcement of the law[89]. He developed several ideal types of the Rule of Law in his studies (historicist, formalist, Legal Process, and substantive[90]), taking into account that picking one of them and use it in a certain background is a result of many factors, of contextualization most of all. And I would agree with him on the fact that there are several elements of the Rule of Law that can not be overlooked, like the ones that we will mention during this work. On the other hand, a one and only ideal type is practically impossible to be applied everywhere. The multifaceted and compound character of the Rule of Law, its many dimensions and its complexity require a sizable flexibility, but also a considerable number of criteria and standards to measure and assess it. This is why the institutions like EU and CoE are more interested in its applicability in practice, where the prevail of a certain principle or another one depends on the context. Especially regarding the hard work of implementation of the Rule of Law in transition countries, I would agree with Carothers[91], who suggests to opt for a more dynamic model to be implemented, instead of a static one. The economic level, the political history, the institutional legacies, the ethnic make-up, the socio-cultural traditions and other features play a relevant role in the challenge of framing new electoral institutions, parliamentary and judiciary reform.

In an institutional level, applied in the international context, the cooperation of all the actors and instruments possible is indispensable. The reference that the European

[87] T. Mavrikos-Adamou, Rule of law and the democratization process: the case of Albania, Democratization, 2014, p 1157.
[88] J. Fallon, "The rule of law as a concept in constitutional discourse", Columbia Law review, Vol 97, no.1, 1997. http://weblaw.haifa.ac.il/en/JudgesAcademy/workshop3/Documents/A/A/97ColumLRev1-Fallon.pdf
[89] Idem
[90] Idem, p.5.
[91] T.Carothers, "The end of the Transition Paradigm" Journal of Democracy vol.13, no.1, John Hopkins University Press, 2002, p. 8.

Commission makes to the principles, the case law of the European Court of Justice and the European Court of Human Rights goes in the same logic of complementarity of its application.

The elements of applicability in this paper from the very complex and broad rule of law concept have been chosen amongst the ones that are representatives of the functional overlap of the organizations concerned, in the countries concerned. My interests stands in the reform of the judiciary and amongst them: *the independence of the judiciary*, the *efficiency of the judiciary* and *the access to justice.* They actually go hand to hand with each other and their improvement is a contribution to the quality of justice. There are no clear-cut definitions on them, argues Kochenov, but the CoE has produced a number of documents in these regards, which coupled with the case law of ECt.HR can help to clarify the concept. But there is a massive consensus, from the CoE, its members, and the case law of ECt.HR to interpret these notions broadly.[92]

[92] D.Kochenov, *EU enlargement and the failure of conditionality*, Kluwer Law International, 2008, p. 100.

Chapter II: The triangle EU-CoE-OSCE in the implementation of the Rule of Law in Albania. Path to accession.

Albania is a good case to represent the intersection points that I wanted to deal with in this paper: *First*, it is a country with a communist legacy and no democratic tradition; *Second*, it is involved in the pre-accession preparations towards the EU, where the establishment of the rule of law is a priority amongst the conditions; *Third,* it watches the simultaneous action of the EU, CoE and OSCE to evolve the rule of law in order to fulfill the aspiration of accession in the EU. This simultaneous action of the three organizations will be visible in this paper following the same logics as in the first chapter: in the creation and improvement of *the legal framework* for the justice reform in Albania and through the *projects* in the field in order to implement the justice reform, especially the judicial reform, its independence, efficiency and the access to justice.

Albania carries a very special kind of communist legacy. For the last two decades of the dictatorship regime, it has been totally isolated from any contact with the outside world. When the changes were first introduced in 1991, there was no point of reference for the people on what exactly had to be done, no clear expectation on the steps to be followed, no clear idea of what democracy presupposes. The first steps towards a market economy and institution building were very important to define its path, perspective and the will towards western models, but the change did not only go in one direction, as it often happens with transition societies. Bogdani and Loughlin suggest that for most Albanians the rule of law is something negotiable and contingent rather than accepted and internalized as obligatory.[93] While the rule of law is of major importance the more Albania proceeds towards Europe, the judicial

[93] J. O'Brennan and E. Gassie, From stabilization to consolidation: Albanian state capacity and adaptation to European Union rules in Journal of Balkan and Near Eastern Studies, vol. 11, no. 1, 2009, p. 23. http://www.tandfonline.com/doi/abs/10.1080/19448950902724448

system within it is an important and crucial ingredient. "As the most important vehicles for encouraging the rule of law the judicial structures will influence everything from tax avoidance to the nature of the business environment, from policing behaviour to administrative graft. Albania's journey toward EU membership is therefore closely associated with if not dependent on the nature of changes to emerge within the judicial system."[94] An enduring perspective of these two decades of transition in the atmosphere of the rule of law in Albania is the perception of the low legal certainty among citizens. There is a common belief that there is a double standard in the judgment of the citizens conduct and the judgment of the conduct of the politicians. They believe that their rights are not guaranteed by the state or by the judicial system and hesitate to address their problems to the administrative or judiciary institutions. The low separation between the three powers, the politicization of court decisions, the high level of corruption that has not been decreasing has led to this internal perception on the system. Scholars use this argument to explain the fact that Albanians generally have more trust in international organizations, like NATO or EU, more than their institutions and judiciary system[95] In the 2010 Gallup Balkan Monitor Survey held in Albania, 40% of those polled responded that they had "a lot" of confidence in the NATO, 36 % "a lot" of confidence in the EU institutions, while only 6 % of them said that they had "a lot" of confidence in the judicial system.[96] This perception must hold to be true because it has been confirmed also by the international presence in Albania. In a communication that the OSCE Head of Presence in Albania makes to the OSCE Permanent Council in 2012, states that: "On the rule of law, progress has been relatively scarce. Often only warnings and *pressure from international actors, rather than the action of national institutions*, have prevented backward steps in this sector. The continued weakness of State institutions,

[94] J. O'Brennan and E. Gassie, From stabilization to consolidation: Albanian state capacity and adaptation to European Union rules in Journal of Balkan and Near Eastern Studies, vol. 11, no. 1, 2009, p. 23. http://www.tandfonline.com/doi/abs/10.1080/19448950902724448

[95] T.Mavrikos-Adamou, Rule of Law and the democratization process: the case of Albania, Democratization, vol. 21, no.6, 2014, p. 1158.

[96] Gallup Balkan Monitor- Insights and perceptions: Voices of the Balkans. Summary of the findings, 2010 http://www.balkan-monitor.eu/ in T. Mavrikos-Adamou, Rule of Law and the democratization process: the case of Albania, Democratization, vol. 21, no. 6, 2014, p. 1158.

as witnessed in their hesitancy to act in accordance with the law, poses a serious threat to the fragile achievements in the area of the rule of law. While this weakness has mostly long-standing causes, such as the prevailing clientelism, undue pressure on the institutions to achieve compliant behaviour as a result of the ongoing political power struggle, has not improved the situation."[97] Apparently, the presence of international organizations is perceived internally and externally as of an extreme importance in order to foster the improvement of the rule of law in Albania.

2.1 International Organisations Presence and the rule of law in Albania

The presence of international organizations in Albania has shaped its path towards the establishment of the rule of law. Because of the accession perspective of Albania, the more the EU has put in place conditionality towards this field, the more the CoE and OSCE have been expressing their will to help Albania achieve the standards put by EU and these organizations. The more the rule of law has posed problems in order to be established in Albania, the stronger was the need of the actions of these organizations, sometimes coordinated and sometimes simultaneous. The EU and the CoE have coordinated their actions since the beginning regarding this field (joint actions since 1993, then 1995, 1998), with a period of diminishing cooperation for a decade and the return of the joint projects in 2014 in the field of the judiciary. While the OSCE has followed its own 'way' in the monitoring missions and recommendations to the institutions in the field of the rule of law and afterwards with the applied projects in the field of the judiciary. In this case the action of the OSCE as related to EU can be called simultaneous, even though the organizations have been referring to each-other and their role in their respective reports. Sander Simoni, the head of the Court of Serious Crimes in Albania offers this explication: "*OSCE is very*

[97] Report of the Head of the OSCE in Albania to the OSCE Permanent Council, 20 September 2012, p.3.

active in Albania and competes in every case the EU and US Presence in Albania. This presence has a good name, because it has implemented with dexterity many important projects for the justice system in Albania. The Council of Europe has been diminishing in recent years but is now active with several co-financed projects with EU and the disclosure of the International Conventions on the Independence of the judiciary as well as with several instruments as f.ex the SATURN Guide for cutting the duration of the proceedings."[98]

2.1.1 The EU in Albania prior to Albania in the EU: the pre-accession process and the rule of law.

99

PHASE	**I**	**II**	**III**
Period	**1990-97**	**1998-2005**	**2005-present**
Political Orientation	DP led centre-right	SP led centre-left	DP led centre-right
Domestic Politics	-Extreme partisanship and Contestation -Armed uprising -External Intervention (Operation Alba)	-Extreme contestation and frequent changes of government	-Economic and Political Consolidation
Relations with the EU	-Strong selective Bilateralism	-Crisis Period followed by	-Strong institutional ties developed

[98] Interview with Sander Simoni, head of the Court of Serious Crimes in Tirana, Albania, April 4t[th] 2015.

[5] J. O'Brennan and E. Gassie, From stabilization to consolidation: Albanian state capacity and adaptation to European Union rules in Journal of Balkan and Near Eastern Studies, vol. 11, no. 1, 2009, p. 3. http://www.tandfonline.com/doi/abs/10.1080/19448950902724448

I would allow myself to add a fourth phase, starting from 2013 on, with a political majority centre-left, following in 2014 with the further consolidation of Albania's path towards EU: the granting of the candidate status.

	(Italy/Greece) -Weak ties with the EU	Gradualist approach by EU	through SAA and European Partnership

The EU's presence in Albania is marked with the system change in 1991. The need for structural reforms and financial assistance was acute and the EU offered it. O'Brennan and Gassie divide the relations Albania-EU in three stages. From 1991-1997 they consider the ties weak.[100] During this period relations between EU and Albania were focused on trade and foster of market economy. The PHARE assistance program, initiated earlier as an instrument of support for Central Eastern European Countries, was applied in Albania to foster its opening market and economy. The Trade and Cooperation Agreement signed in 1992, left also space for further arrangements that would lead to a political cooperation or institution-building.[101] It is in 1997 that the "institutional weakness" of Albania was recognized by the European Commission, stating that "although Albania's macro-economic and structural achievements were impressive, Albania lacked judicial implementation capacity, as well as an efficient public administration, and that it suffered from an unreformed financial sector."[102] It is here that we can spot the Commission's interest on the development of the rule of law in Albania and a turn in the relations Albania and EU (the second phase). That year, the EU developed a Regional Approach towards five southeast countries, including Albania. Its aim was to develop bilateral relations between these countries and the EU, also between the countries themselves. Except for the economical dimension, it included the political one. In May 1999, the European Union launched the SAP (Stabilization and Association Process). The perspective of membership was for the first time at stake. Albania was overcoming a

[100] J. O'Brennan and E. Gassie, From stabilization to consolidation: Albanian state capacity and adaptation to European Union rules in Journal of Balkan and Near Eastern Studies, vol. 11, no. 1, 2009, p. 3. http://www.tandfonline.com/doi/abs/10.1080/19448950902724448

[101] EU-Albanian history, Ministry of Integration of Albania webpage http://www.integrimi.gov.al/en/program/eu-albania-history

[102] J. Hoffman, Integrating Albania: the Role of the European Union in the Democratization Process, *Albanian Journal of Politics*, vol. 1, no. 1, 2005, p.61.

severe crisis coming from 1997, both financial and institutional. The transformation of the EU's intentions from a 'neighborhood policy' towards a "cooperation policy" required a major impetus. The main thing that the SAP brought, was the introduction of upcoming SAA (Stabilization and Association Agreements), contractual relationships between the EU and the non candidate-countries at the moment and the introduction increasing presence of conditionality. But the application of a SAA in Albania by the end of the 90's was not considered reasonable by the Commission. First of all there was the need for the "existence of a proper regulatory and legal framework and the capacity of the government to enforce it"[103]. In order to comply with the perspective of an upcoming SAA, Albania became eligible for funding from CARDS project, which was approved in 2000 and started implementing in 2001, in order to be able to finance the perspective laid down in 1999-2000 to include Albania in the accession process. According to Blitz, the EU and its partners have been since then remarkably generous to Albania, this one being the first non-member state to receive significant funding for the specific purpose of upgrading penal institutions.[104] The funding was provided in the form of technical assistance and infrastructure development. The 2001 Country Paper, which laid out the indicative assistance program for the period 2002-2004, placed much more emphasis on sectors such as justice, democratization, and public administration (European Commission 2001).[105]

The European Council in Thesssaloniki in 2003 opened an important agenda for the inclusion of the Western Balkans in the European Union's sphere.[106] It is then that Albania initiated its negotiations for the Stabilisation and Association Agreement.

The appearance of the SAA represents the third phase of a closer cooperation between Albania and EU. The signing of the SAA became a fact in 2006 and it took

[103] J. Hoffman, Integrating Albania: the Role of the European Union in the Democratization Process, *Albanian Journal of Politics*, vol. 1, no. 1, 2005, p. 62.
[104] B.K.Blitz, Post-socialist transformation, penal reform and justice sector transition in Albania, *Southeast European and Black Sea Studies*, Vol.8, No4, 2008, p. 347.
[105] J. Hoffman, Integrating Albania: the Role of the European Union in the Democratization Process, *Albanian Journal of Politics*, vol. 1, no. 1, 2005, p.62.
[106] Thessaloniki European Council, 19- June 2003, p. 12.
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/76279.pdf

three years for its entry into force until all the member states of the EU signed it. The regulation referring to Western Balkans countries accession states that: "The SAA leads the accession process when it enters into force and only lapses when a candidate country obtains EU membership."[107] It is a legal and an institutional framework for the accession process.[108] Conditionality policies are clearly dominating from this time on the relations between Albania and the EU . Hoffman refers to Smith when saying that it is "EU's most powerful instrument to encourage them to undertake major economic and political reforms".[109] The wish of the Albanian citizens to reach the EU and the use that the politicians make of this "Europeanization" or "European standards" in order to justify their actions, gives a big power to the conditionality policy of the Commission. The carrots and sticks, referring respectively to the positive or negative standings of the European Commission towards the country have made its every actor more involved in the process of reformation towards the EU. Since then the European Commission has been delivering its opinions regarding the implementation of the SAA agreement and the compliance with the Copenhagen Criteria.

A new European Partnership was taken up by the EU in 2008, addressing the new priorities that Albania had to follow. Albania applied for EU membership in 2009, the year of the entry into force of the SAA. In 2010, its opinion addressed the priorities for the accession process. The liberalization of the visa came right afterwards, in 2010, as a "carrot" for Albania's improvement in certain fields. In 2012, The Commission recommended that Albania should be granted the EU candidate status, with the fulfillment of some enumerated reforms in the legislative, the judiciary, and public administration, but it was overruled by the vetoes of UK, France, Denmark and Netherlands in the Council. After three rounds of negative standings of the member countries, the status candidate for Albania was granted in

[107] Council Regulation 533/2004 on the Establishment of European Partnerships in the Framework of the Stabilisation and Association Process, 2004, O.J.L 86.
[108] G. Stafaj, From Rags to Riches: Croatia and Albania's EU accession process through the Copenhagen Criteria and Conditionality, Fordham International Law Journal, 2014, p. 1697.
[109] J. Hoffman, Integrating Albania: the Role of the European Union in the Democratization Process, *Albanian Journal of Politics*, vol. 1, no. 1, 2005, p. 56.

June 2014. The five key priorities in order to open the negotiations include the reforms in the justice system, especially regarding the independence of the judiciary and the corruption. "The rule of law will remain at the heart of the enlargement process. The full and timely implementation of the relevant strategies and the action plans in the area of rule of law and fundamental rights will be essential in this regard."[110] The justice reform strategy mentioned above, especially starting from 2014 and on, is the direct effect of the use of conditionality by the Commission in order to open the accession negotiations.

2.1.2 Further International presence and the rule of law in Albania: CoE and OSCE

CoE has been present in Albania since 1992. Albania had applied for a membership in 1993, but it took two years until it was decided that its application was in conformity with Article 4 of the Statute of the Council of Europe, referring to the fulfillment of the principle of the rule of law and human rights, under the jurisdiction of the Council.[111] In July 1995 Albania became a member state. Following the membership, it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1996, which has been incorporated into the Constitution in 1998. There is a permanent seat of the CoE in Albania only starting from 2003.

In the field of the rule of law, the CoE has always been present since the start of the transformation process of Albania, but its role has been growing recently. The classical impact in Albania is through *the standards and their implementation*. Besides the ones mentioned in the first chapter, influencing the acquis communautaire, there are many documents with particular relevance to the Albanian situation, as mentioned through the report of the Commissioner for Human Rights in

[110] IPA II, European Commission http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140919-csp-albania.pdf
[111] Albania and the Council of Europe http://www.punetejashtme.gov.al/en/mission/international-organizations/council-of-europe

2014.[112] But it is in this implementation and through the enforcement of the bodies of the CoE that its role has been visible and productive. The cooperation activities of the CoE with the national actors and bodies have produced good results in strengthening the judicial professions, in supporting judicial training, in reinforcing the independence and impartiality of judges, in coo-operating with prosecutorial systems.[113] Some of the issues are so recent that they can clearly show the 'weakening up' of the CoE as a standard-implementer in Albania and later it will be shown how these standards have become possible to implement through the financial assistance of the EU. The main bodies of CoE with relevance to this issue, especially with the focus in the independence and efficiency of the judiciary and the access to justice are:

The Consultative Council of European Judges (CCJE) is unique in its kind in Europe, the first one composed solely of judges, representatives of the judiciaries from all

[112] Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities; 2011 Guidelines of the Council of Europe Committee of Ministers on eradicating impunity for serious human rights violations; Recommendation CM/Rec(2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings; Recommendation Rec(2006)13 on the excessive resort to and length of remand in custody; Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights**,** "Report on the effectiveness of national remedies in respect of excessive length of proceedings" of 2006 of Venice Commission; Judicial Appointments - Report adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007); Resolution (78) 8 On legal aid and advice on the free legal advice; Recommendation (93) on effective access to the law and to justice for the very poor; Recommendation No. (81) 7 of the Committee of Ministers to Member States on Measures Facilitating Access to Justice; Rec(2000)19E 06 October 2000 on the role of public prosecution in the criminal justice system and on the corruption in the judiciary Resolution (97) 24 On the Twenty Guiding Principles for the Fight Against Corruption.

[113] The Council of Europe and the Rule of Law, Working Session 4- Rule of Law I, OSCE Review Conference Warsaw, 30 September-8 October 2010, p. 9.
http://www.osce.org/odihr/33685?download=true

member states.[114] It supports the Committee of Ministers in carrying out the priorities identified in the Framework Global Action Plan for the strengthening of the role of judges in Europe and advises on whether it is necessary to update the legal instruments.[115] It has given opinions that have been taken account by the Albanian government among others, to strengthen the independence and efficiency of the judiciary. *The Consultative Council of European Prosecutors (CCPE)* holds the same relevance in its field of applicability. They both represent the cooperation aspect of the CoE through these bodies of judicial professionals in order to assess the necessities of the judicial needs of domestic systems and afterwards the needs for harmonized standards in a European level.

The CEPEJ (European Commission for the Efficiency of Justice) is a body set up by the Committee of Ministers of the Council of Europe in September 2002 with Resolution Res(2002)12 [116], composed by 47 experts from all the Member States. It aims the efficiency of the justice systems of the member states of the CoE.[117] It analyzes the judicial systems in member states, it extracts their deficiencies, helps them improve the functioning of the system and provides assistance at their request. It is entrusted primarily with proposing concrete solutions, tailored for the needs of member states. Its assessments are helping Albania identify the need to increase the budget of the courts, in order to ensure conditions of work and trial and provisions of services to the public in compliance with the standards of the European Union.[118] These assessments aim first to reduce of the number of cases that go in front of the ECt.HR by tending to solve them in Courts before taking this step, but not only. The CEPEJ has become a strong actor in Albania through the

[114] The Council of Europe and the Rule of Law, Working Session 4- Rule of Law I, OSCE Review Conference Warsaw, 30 September-8 October 2010, p. 4. http://www.osce.org/odihr/33685?download=true
[115] The Council of Europe and the Rule of Law, Working Session 4- Rule of Law I, OSCE Review Conference Warsaw, 30 September-8 October 2010, p. 4. http://www.osce.org/odihr/33685?download=true
[116] About the CEPEJ http://www.coe.int/t/dghl/cooperation/cepej/presentation/cepej_en.asp
[117] Annual progress report, Albanian contribution – input I, September 2014- May 2015, Ministry of Integration of Albania, p. 301.
[118] Annual progress report, Albanian contribution – input I, September 2014- May 2015, Ministry of Integration of Albania, p. 301.

introduction of the guidelines of SATURN, on the cut of the length of the judicial proceedings.

SATURN Centre – (Study and Analysis of judicial Time Use Research Network) is a 'creation' of CEPEJ in 2007 and was born by the long time experience of this body in contributing in issues of efficiency of the judiciary in Europe, in the framework of Article 6 of the ECHR that provides for a fair trial within a reasonable time.[119] "The Centre is aimed to become progressively a genuine European observatory of judicial timeframes, by analysing the situation of existing timeframes in the member States"[120] It is made to collect and assess information on judicial timeframes through common denominators in Europe, identify the reasons for the extensive length of the proceedings and then help the countries implement its guidelines. There are 15 general guidelines and other 48 ones provided by this center regarding the measurement of the length proceedings, on the collection of the data and the practical and flexible solutions on how to solve the identified issues. Albania is currently benefiting from this program (since 2014) and the results are still to be seen.

GRECO. According to the 2012 Transparency International Corruption Perception Index, Albania ranks among the ten most corrupt countries in Europe.[121] Although Albania has become part of Group of States against Corruption (GRECO) in 2001, corruption prevention within the judiciary has been subject to assessment by this body only starting from March 2014, with the Fourth Round Evaluation Report on Albania[122] . The judiciary came under the attention of GRECO following the changes of the Criminal Procedure Code in 2014, the priorities put by the EU regarding the

[119] See Right to a fair trial, Article 6 ECHR http://www.echr.coe.int/Documents/Convention_ENG.pdf
[120] Saturn Centre for Judicial time management by CEPEJ http://www.coe.int/t/dghl/cooperation/cepej/Delais/default_en.asp
[121] REPORT on Albania by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, January 2014, p. 5.
[122] Press release: GRECO urges Albania to step up corruption prevention in respect of members of parliament, judges and prosecutors, Strasbourg, June 2014 https://www.coe.int/t/dghl/monitoring/greco/news/News(20140627)Eval4Albania_en.asp

reform of the judiciary and the fight against corruption, also with Action Plan put by the Albanian Government touching this field. The fourth round evaluation focuses on the judiciary and the parliamentarians. It admits that the fight against corruption would be pointless without the fight against corruption in the judiciary. It evidences the weak power of the third power, the lack of judicial control over the High Court and the lack of trust of the citizens towards the judiciary. "Needless to state that without a professional, committed and clean judicial system, fight against corruption will be never materialized."[123] The ten recommendations given by GRECO in this report will be assessed by the body itself in 2016 through its compliance procedure.[124]

Venice Commission (European Commission for Democracy through Law) is an advisory body of the Council of Europe on constitutional matters. It has consistently maintained relations with Albania for over 20 years by giving opinions and argued recommendations.[125] This has helped in the shaping of the constitutional framework for the judicial system. The first opinion was given in 1995 regarding the law of judicial organization.[126] Until now there have been 28 specific legal opinions for the country and a large number of documents that affect the country.[127] The Venice Commission is committed to assist the Albanian government with concrete advice on legislative proposals. In the 2014 progress report of the European Commission, many references have been made to the expected contribution of the Venice Commission in shaping the judicial reform, for the expected period 2014-2020.[128] This contribution has been foreseen by the government as part of its plan to tackle the deficiencies of the judiciary. This was preceded by meetings of the Venice Commission delegation

[123] Press release: GRECO urges Albania to step up corruption prevention in respect of members of parliament, judges and prosecutors, Strasbourg, June 2014 https://www.coe.int/t/dghl/monitoring/greco/news/News(20140627)Eval4Albania_en.asp
[124] Idem
[125] Albania, a common future in Europe, by the European Union in Albania, http://ec.europa.eu/enlargement/archives/seerecon/albania/documents/albania_future_with_europe.pdf
[126] Idem
[127] See Adopted opinions for Albania by the Venice Commission, Council of Europe webpage. http://www.venice.coe.int/webforms/documents/?country=34&year=all#topOfPage
[128] Albania Progress-Report delivered by the European Commission, October 2014, p. 11.

with the major actors of the judiciary (Head of the Constitutional Court, Head of the High Council of Justice, Head of the Union of Judges, etc) in order to discuss judicial reform.[129] In January 2014 , following the proposal from the Ministry of Justice in Albania, there has been a formal request from Albania to receive support on: "checks and balances between the three powers and within the judiciary; Redefinition of the constitutional position of the Supreme Court; -reformation of the High Council of Justice and the National Judicial Conference ; improve of the court administration; improving the procedure of appointment of the Prosecutor General and defining the role of the Council of Prosecutors; improving the constitutional position of the Judges of the Constitutional Court.[130] So far, the Venice Commission has delivered an opinion (Opinion no. 754/2014) in June 2014 on the amendments of the Criminal Procedure and Civil Procedure codes, expressing that they are in conformity with the European standards and very contributive in the efficiency of the judiciary through provisions of fines for lawyers who delay proceedings, as long as principles of fair trial are respected.[131] This opinion has been perceived as part of a major and comprehensive approach of the Venice Commission in different fields of the justice system. In January 2015, the president of the Venice Commission, Gianni Buquicchio, has come to Tirana, in order to approve, along with the parliament, the agenda of the further assistance of this body in Albania.[132]

The European Court of Human Rights (ECtHR). With the signing of the Convention, Albania has become subject of the jurisdiction of the European Court of Human Rights (ECt.HR) in Strasbourg, so the complaints regarding violations of the Convention can be made to this Court after all domestic remedies have been exhausted. This has brought the ECt.HR to influence both the internal legal system and its interpretation in the field of the judiciary. Although there is no law on the

[129] Opinion no 754 / 2014 on the draft amendments to the Criminal procedure and Civil procedure Codes of Albania adopted by the Venice Commission at its 99th Plenary Session, Strasbourg, June 2014, p. 2.
[130] Idem.
[131] Idem, p. 6.
[132] President of Venice Commission to assist on Justice Reform, January 2015. http://news.albanianscreen.tv/pages/news_detail/86836/ENG

enforcement of the judgments of the ECt.HR in Albania, the judgments have brought changes regarding the domestic provisions on legal effective means of Albanian citizens in Courts, meaning that it has contributed in their better access to justice. The right for a fair trial, of Article 6 of the ECHR has been partly transposed in Article 42 of the Albanian Constitution. The ECt.HR has influenced the fair trial in Albania through the interpretations of the legal instruments to be used by the citizens in front of a national court. Usually the cases against Albania have been under Art 6 or Art 13 of the ECHR providing respectively the right to a free trial or the right to effective remedies in front of the domestic courts. The main cases against Albania that are considered a turning point regarding the free trial are many, here only some are going to be mentioned for the effect that they had in the judiciary. Qufaj vs Albania (2004) and Gjyli vs Albania (2007) had to do with the right to effective remedies. This last one was especially regarding the role of the Constitutional Court (CC), role that changed after this judgment. Usually the Constitutional Court in Albania is not considered an effective remedy for the citizens, but ECtHR argued that the right to a free trial should be interpreted in such a way that the CC should be considered as such. Since then, the CC has changed its practice regarding this issue and accepts the complaints of the citizens following the interpretation of the Court and is intending to include this practice in the new organic law that provides the organization of this court. In the case Gjonbocari vs Albania (2007), where the ECtHR found that the Albanian legal system did not provide a specific legal instrument, which the applicant could have used to repair the excessive length of the proceedings;[133] issue Marini vs Albania (2008) where the ECHR recalled that the domestic legal system had no effective remedy concerning the length of the process. Most of the rest of the cases had to with the non-enforcement of judgments, especially regarding property acts, a

[133] Xh. Zaganjori, Gykata Kushtetuese - Mjet ankimi efektiv sipas KEDNJ, *(En:The Constitutional Court – effective remedy according to ECHR)* Workshop on certain aspects of the implementation of the ECHR at national level; Tirana -5 October 2012, p. 1.

highly complicated and delicate issue in the post-communist Albania.[134] In the cases of Beshiri v Albania (2003), Driza v Albania (2002) and Ramadhi v Albania(2002), the ECt.HR found violations of Article 6§1 and Article 1 of Protocol No. 1 of the ECHR because of the non-enforcement of judgments of the domestic courts awarding compensation for property.[135] This deficiency of the Albanian system was given a solution by the European Commission project EURALIUS II, that introduced a private bailiff service approved by Law No. 10031 of 11/12/2008, that would operate parallel with the public one. The Code of Civil Procedure has been further amended by Law No. 10052 of 29/12/2008, in order to accommodate the new system and improve the execution of decisions.[136]

Since the Albanian Constitution has transposed many of the provisions on the fundamental rights of the ECHR, the CC has declared as unconstitutional many provisions that according to this body hindered the right to fair trial and effective remedy, based on Article 6 and 13 of the ECHR. Some examples are: Decision to declare unconstitutional paragraph 2 of Article 34 of the Law nr.8737 dated 12.02.2001 "On the organization and Prosecutor functioning in the Republic of Albania ", according to which," the decree for the removal of the President of Republic can not be appealed ".[137] CC has argued that "... the right of appeal has been

[134] Note: Albania is facing sharp issues regarding the return and compensation of the private property by court decision, under the jurisdiction of Article 1, Protocol 1, of the ECHR (the right to property). Since 2010, Albanian government declared the inability to enforce the ECt.HR judgments regarding this issue, because of financial insufficiency.

[135] General measures to comply with the European Court's judgments, Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights, May 2010. https://wcd.coe.int/ViewDoc.jsp?id=1624803&Site=CM

[136] General measures to comply with the European Court's judgments, Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights, May 2010. https://wcd.coe.int/ViewDoc.jsp?id=1624803&Site=CM

[137] V. Kristo, Kontrolli kushtetues i pajtueshmërisë së legjislacionit shqiptar me standardet e KEDNJ, ne Konferencen: Përmirësimi i cilësisë së zbatimit të KEDNJ nëpërmjet zgjerimit të bashkëpunimit ndërmjet institucioneve vendase, 26-27 Shtator 2007, fq. 3.
English: V. Kristo, constitutional control of the compatibility of the Albanian legislation with ECHR standards, in the Conference: Improving the quality of implementation of the ECHR through the expansion of cooperation between local institutions, 26- 27 September, 2007, p. 3.
http://www.gjk.gov.al/web/tema_e_kryetarit_71.pdf

recognized as a fundamental right by the ECHR and that the exercise of this right is unlimited "[138]. Another case is that by way of interpretation the CC has extended the right to an effective remedy beyond the judicial process, towards the administrative process. Furthermore, in its decision No. 15 dated 17.04.2003, the CC states that amendment made in the provisions of the Code of Criminal Procedure is contrary to Article 17 of Constitution and the limitations set forth in the ECt.HR[139]. These are some of the examples of the influence of the ECHR and the ECt.HR in the domestic system.

The OSCE Presence has operated in the field in Albania since 1997, with the aim of fostering several fields of democratization, the rule of law and human rights, as well as the consolidation of the democratic institutions. Its mandate consists in: "legislative and judicial reform; property reform; regional administrative reform; electoral reform; parliamentary capacity-building; anti-trafficking and anticorruption; development of effective laws and regulations on the independent media; promotion of good governance and management of targeted projects to strengthen civil society; and police assistance in co-operation with international partners."[140] The OSCE works in close cooperation on one hand with the government and the institutions and on the other one with the civil society to bring forward the trust in the institutions. It operates through: 1- monitoring and reports; 2- projects in the field; 3 – trainings; 4- recommendations to the government; 5-recommendations for draft legislation.

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[138] V. Kristo, Kontrolli kushtetues i pajtueshmërisë së legjislacionit shqiptar me standardet e KEDNJ, in the Conference: Përmirësimi i cilësisë së zbatimit të KEDNJ nëpërmjet zgjerimit të bashkëpunimit ndërmjet institucioneve vendase 26-27 shtator 2007, p. 3.
English: V. Kristo, constitutional control of the compatibility of the Albanian legislation with ECHR standards, in the Conference: Improving the quality of implementation of the ECHR through the expansion of cooperation between local institutions, 26 – 27 September, 2007, p.3.
http://www.gjk.gov.al/web/tema_e_kryetarit_71.pdf

[139] V. Kristo, Kontrolli kushtetues i pajtueshmërisë së legjislacionit shqiptar me standardet e KEDNJ, in the Conference: Përmirësimi i cilësisë së zbatimit të KEDNJ nëpërmjet zgjerimit të bashkëpunimit ndërmjet institucioneve vendase 26-27 shtator 2007, p.4.
English: V. Kristo, constitutional control of the compatibility of the Albanian legislation with ECHR standards, in the Conference: Improving the quality of implementation of the ECHR through the expansion of cooperation between local institutions, 26 – 27 September, 2007, p.3.
http://www.gjk.gov.al/web/tema_e_kryetarit_71.pdf

[140] Organization for Security and Co-operation in Europe | Presence in Albania Factsheet, p. 1.
http://www.osce.org/albania/102095?download=true

In the field of the judiciary and judicial reform OSCE gave a meaningful contribution, starting in 2003 with the process of observation and monitoring of the criminal court sessions of the two first instances (First instance and appellation courts). The Fair Trial Development Project (FTDP) was launched in 2003 through the monitoring of the first instance criminal proceedings in the courts of serious crimes. Based on observations on the functioning of the legal system, the FTDP has achieved a comprehensive analysis the legislation forming the justice system in Albania.[141] This is further taken into account by the government and the parliament during the justice legal reform in the drafting of laws. In 2005 the first comprehensive report on the criminal court system of the republic of Albania was published, where the stress was put in the high level of corruption and the length of the proceedings. It was followed by two other reports, in 2006 and 2007, regarding the first and second instances of the criminal courts. Again the main problems evidenced were: the length of proceedings, the transparency of proceedings and the access to justice.[142] The focus of the OSCE was further expanded in 2008 in the civil trials and in 2012 also in the field of administrative dispute resolution. Activities to increase the independence of the judiciary, specifically the criteria and procedures for appointing, transferring and disciplining judges, have been undertaken and the Presence intends to increase its focus in this area in the future.[143] The report "Towards Justice" in 2013 has produced relevant effects first regarding the improvement of the efficiency of the judiciary and also its transparency.

[141] Analysis of the criminal justice system of Albania, Report by the fair trial development project, OSCE, 2006 http://www.osce.org/albania/22211?download=true
[142] Towards justice, summary of the Analysis of civil proceedings in the district courts, 2011, p.8. http://ec.europa.eu/enlargement/pdf/key_documents/2009/al_rapport_2009_en.pdf
[143] Organization for Security and Co-operation in Europe | Presence in Albania Factsheet http://www.osce.org/albania/102095?download=true

2.2 Justice legal reform in Albania. Influences of EU-CoE-OSCE.

The international presence, the government, the legislative apparatus, the courts and the civil society, all of them are actors involved in the phenomena of the 'reform in justice' as one of the 5 priorities put by the European Commission in order to open the accession negotiations for Albania: "Reformation of public administration, independence of the judiciary, fight against corruption and organised crime, and protection of human rights"[144]. Since it has many dimensions: legislative, political, internal, external, and since it includes the many actors mentioned above, it is very difficult to define in what does this reform in justice consist of. When asked about this, Sander Simoni, the head of the Court of Serious Crimes in Albania, answered: "*I would define it as an ensemble of measures aiming the strengthening of efficiency, professionalism and the transparency of the system as a whole, safeguarding the independence and with the aim of the growth of the trust from the public and from the international factor."*[145]

It is reasonable for the justice reform to start from the legal basis, it is a necessary condition, followed by the right implementation. The major legal basis where the reform in justice has been based so far is to be mentioned here, with a focus in the judicial reform. This reform has passed through the Constitutional changes, and through the Parliament with its role in adopting the acquis on the rule of law and drafting and implementing legislation.

The first constitutional changes after communism came with the transitional "Law on the Major Constitutional Provisions", that has foreseen the basic institutions and principles to lead towards democratic models. The judicial provisions though changed only with the amendments made to these constitutional provisions with Law

[144] Press release of Stephan Fühle, Commissioner on Enlargement in the Committee on Foreign Affairs (AFET), European Parliament/ Brussels, 16 October 2013. http://europa.eu/rapid/press-release_SPEECH-13-816_en.htm

[145] Interview with Sander Simoni, head of the Court of Serious Crimes in Tirana, Albania, April 4tth 2015.

No. 7561, 29 April 1992, "On some Amendments and Additions to Law No. 7491, dated 29 April 1991 'On the Major Constitutional Provisions'". This law established the creation of the Constitutional Court and the High Council of Justice, which would be responsible for the monitoring of the lower level courts.[146] Based in these amendments other laws were adopted.

In 1993, the first joint project between EU and CoE was established,[147] in the field of rule of law and human rights, aimed at helping the draft of the civil and criminal codes as well as of their respective code of procedures. The first post-communist Civil Code of the Republic of Albania came into force in November 1994. The new Criminal Code and Criminal Procedure Code entered into force respectively, on June 1, and on August 1, 1995. On 23 March 1995 an agreement was reached on a new joint Committee between the European Commission and the Council of Europe concerning another joint program on the reform in the legal system,[148] through assistance in drafting and implementing laws, to make them more compatible to the European standards, as well as legislative counseling regarding the drafting of the Constitution. Following this project, in 1997 the School of Magistrates was created. In 1998 the Constitution of the Republic of Albania passed in the parliament and was approved by referendum. It stresses the separation of powers, political pluralism; guarantees fundamental human rights and provides for the rule of law and a fair and public trial. Immediately according to this Constitution a series of laws were adopted regarding the judiciary.[149] The Constitution confirms the three-tiered organization of

[146] Fair Trial Development Project Interim Report, OSCE, October 2003- July 2004 p. 6. http://www.osce.org/albania/41450?download=true

[147] Albania, a common future in Europe, by the European Union in Albania, p. 7. http://ec.europa.eu/enlargement/archives/seerecon/albania/documents/albania_future_with_europe.pdf

[148] Idem

[149] Taken from Judicial reform Index for Albania, American Bar Association, December 2008, p. 5: LAW ON THE ORGANIZATION AND FUNCTIONING OF THE JUDICIAL POWER (Law No. 8436, adopted Dec. 28, 1998, repealed by LAW ON THE ORGANIZATION OF THE JUDICIAL POWER IN THE REPUBLIC OF ALBANIA (Law No. 9877, adopted Feb 18, 2008); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE CONSTITUTIONAL COURT (Law No. 8577, adopted Feb. 10, 2000); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COURT (Law No. 8588, adopted Mar. 15, 2000); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE MINISTRY OF JUSTICE (Law No. 8678, adopted May 14, 2001); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COUNCIL OF JUSTICE (Law

courts: the courts of first instance, the courts of appeal, and the High Court with special prerogatives and special ways of appointing the judges.[150] The Constitutional Court has separate provisions and is considered a constitutional body rather than part of the judiciary. From 2005 and on, the Constitutional Court has gained more and more independence. The judicial institutions are further strengthened under the provisions of this constitution. The High Council of Justice is charged on the appointment, promotion, transfer, and disciplinary responsibility of judges, and the National Judicial Conference charged with selection of the HCJ members from the judiciary.[151] Furthermore, the role of the NCJ was broadened in 2005 in order to effectively influence the independence of the judiciary, by becoming the representative body of judges. The Constitution has undergone three changes since its adoption, in 2007, 2008 and 2012 regarding the local elections, the appointment of the President of the Republic, the vote of confidence of the government the term of office of the Prosecutor General, the regime of immunities for senior public officials.[152] Although the constitution is considered by the Commission as suitable for the development of the rule of law, big debate is actually in Albania for a deep constitutional reform to host all the changes taking place in the path towards the EU.

From 2005 and on, the SAA shaped the reform in justice by the implementation and monitoring of the criteria and the use of conditionality. The Stabilisation and Association Parliamentary Committee (SAPC) was the organ

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No. 8811, adopted May 17, 2001); LAW ON DECLARATION AND AUDIT OF ASSETS, FINANCIAL OBLIGATIONS OF ELECTED PERSONS AND CERTAIN PUBLIC OFFICIALS (Law No. 9049, adopted Apr. 10, 2003); LAW ON THE ORGANIZATION AND FUNCTIONING OF THE SERIOUS CRIMES COURTS (Law No. 9110, adopted Jun. 24, 2003); and LAW ON THE ORGANIZATION AND FUNCTIONING OF THE NATIONAL JUDICIAL CONFERENCE (Law No. 9399, adopted May 12, 2005). These laws, together with the 1996 Law on the Magistrates' School, the 1998 Law on the Creation of the Office for the Administration of the Judicial Budget, the 1995 Code of Criminal Procedure, and the 1996 Code of Civil Procedure constitute the main legal provisions pursuant to which the judicial system functions in Albania.

[150] The issue of the High Court of Justice being out of the influence of the High Council of Justice, with regards to the appointment of judges is still questionable today in the framework of the judicial reform.

[151] Judicial reform Index for Albania, American Bar Association, December 2008, p. 7.

[152] A. Vorpsi, Is there a need of a deep constitutional change in Albania? http://constitutional-change.com/is-there-a-need-of-a-deep-constitutional-reform-in-albania/

created by the SAA in order to adopt laws in compliance with the acquis. In the reports of 2007, 2008 and 2009 the Commission appreciates the progress made by the Parliament in order to comply with the acquis, although it is very slow and lacks of proper implementation. In February 2008, the Assembly introduced further reforms to the judiciary with passage of the new Law No. 9877: "Law on the organization of the judicial power in the Republic of Albania".[153] The Law sets forth criteria for judicial appointments and promotion of the judges. The military courts were abolished with this law because of their non-compliance with EU criteria."

The conclusion of the 2009 report is that the role of the Parliament had to be strengthened to monitor the obligations deriving from the SAA. The administrative capacities were lacking and the technical expertise as well, regarding European issues. This weakened its performance and integration project. According to these reports, the legal reform on the judiciary was still lacking a complete framework.

In 2010, the report stressed that the key laws on judicial independence were still pending, that Albania lacks a tradition of judicial independence: "It will need to address the lack of independence, transparency and accountability in the appointment, transfer and evaluation of judges as well as necessary improvements to the system for inspecting the judiciary. It needs and a long term strategy in the judicial reform. The fact that the parliament votes on the appointment of judges to the High Court and Constitutional Court entails strong risks of politicisation and hence of a weakening in the independence of the institutions."[154] The Albanian Parliament adopted in May 2012 the law on the establishment of the Administrative Courts in all the three levels of the judiciary, including the Administrative College of Supreme Court, as strongly suggested by the European Union and as it was in the agenda since 2008. It has already started to contribute in the efficiency of the judiciary, by the number of the cases that were completed. The law on the High Council of Justice remains fragmented. The laws on Constitutional Court, the High Court and the High Court of justice need to be adopted and pressure is put by the Commission to speed up with the

[153] Judicial reform Index for Albania, American Bar Association, December 2008, p. 6.
[154] Progress report of the European Commission for Albania, 2014, p. 21.

process. The progress made is relevant, but it needs further improvement, especially in close cooperation with EU bodies, like TAIEX (Technical Assistance and Information Exchange instrument of the European Commission), the EU missions like EURALIUS, the OSCE Presence or the CoE bodies like the Venice Commission in order to designate a long term judicial strategy. Amendments were made in July 2014 to the Law on the High Council of Justice, the Law on Administrative Courts and the Law on the School of Magistrates. The Commission mentioned in the progress-report that they were adopted "in an expeditious manner, outside a comprehensive and inclusive reform process based on wide consultations and under the guidance of the Venice Commission." [155] the need for strengthening the role of the parliament was again evidenced in the progress report.

Indeed, with the need to have a comprehensive and inclusive justice reform, two round tables were initiated in October 2014, the first by the President of Albania, Bujar Nishani and the second one (consequence of the first), by the Minister of Justice, Nasip Naço. The first one (6 October 2014) layed down the need for a comprehensive reform including all the actors and beneficiaries of a reform.[156] It was agreed to initiate an inclusive and consensual process attended by the government, the opposition, the judicial authorities, academics, civil society, and the international partners: EURALIUS, the Venice Commission, the European Commission, OSCE, OPDAT, etc. The second round table was put in the agenda. A working group would be established to develop action plans. The needed regulations and legislation needed for the strategy, besides the Ministry of Justice work, the work of the Parliamentary committees and other players would obtain the certification of the Venice Commission, EURALIUS, OSCE, OPDAT, etc.[157] The second round table (31 October 2014) organized by the Minister of Justice defined a "Cross-cutting strategy for the period 2014-2020. It bypasses the reform of the Constitutional Court, the High

[155] Progress report of the European Commission for Albania, 2014, p. 40.
[156] Qendra per ceshtjet e informimit public webpage (*Center for issues of public information webpage*) http://www.infocip.org/al/?p=11362
[157] Idem

Court, Judicial System Organization, Magistrates School, High Council of Justice and the National Judicial Conference, the Prosecutor's Office and Council of Prosecutors.[158] Some of the conclusions were that this justice reform should include the constitution, that it should reach for high legal quality, and that the next discussions will be preceded by prepared documents.[159]

Following the national round tables for the judiciary reform, the Parliament of Albania, on 27 November 2014 has adopted the decision no. 96/2014 "On the establishment of the Ad Hoc Parliamentary Committee on the Reform to the Justice System". Further, on 5 March 2015, following the recommendations given in the monitoring report of 2014 of the European Commission on the strengthening of the role of the Parliament, the Law no. 15/2015 "*On the role of Parliament in the process of integration of the Republic of Albania in the European Union"* was adopted.[160] This law is intended to strengthen the role of the Parliament in the reform. The legal reform has started tackling all the objectives set in the roundtables through adopting the respective laws.[161] Among them, of relevance is the Law No. 177/2014 "*For some*

[158] EURALIUS IV webpage on the round table http://www.euralius.eu/sq/aktivitete/aktivitete/81-roundtable-of-21th-of-october-2014
[159] Idem
[160] Annual progress report, Albanian contribution – input I, September 2014- May 2015, Ministry of Integration of Albania, p. 6.

[161] Report by the European Union – Albania Stabilisation and Association Committee, 11 March 2015, p. 5.
Law no. 101/2014 "*On some addenda and amendments to law no. 8811, date on 17.5.2001, "On the organisation and functioning of the High Council of Justice*", *as amended*"; Law no. 100/2014 "*On some amendments and addenda to law no. 49/2012 "On the organisation and functioning of the Administrative Courts and judgement of administrative disputes*"; Law no. 99/2014 "*On some addenda and amendments to law no. 7905, date on 21.3.1995,"Criminal Procedure Code of the Republic of Albania", as amended*"; Law no. 98/2014 "*On some additions to law no. 7895, dated on 27.1.1995 "Criminal Code of the Republic of Albania" as amended*"; Law no. 180/2014 "*On an amendament to law no. 115/2014;* "*On some addenda and amendments to law no. 8588, dated on 15.03.2000 "On the organisation and functioning of the Supreme Court" as amended*""; Law no. 176/2014 "*On some amendments to law no. 7895, dated on 27.1.1995 "Criminal Code of the Republic of Albania" as amended*"; Law no. 155/2014 "*On some additions and amendments to law no. 8454, dated on 4.2.1999, "On the Ombudsman" as amended*"

amendments to Law no. 8588, dated 15.03.2000 "On the organization and functioning of the Supreme Court" as amended". The reason for undertaking this legal initiative was the stalemate between the President and the Parliament in appointment of judges to the Supreme Court.[162] This law was consulted with Euralius IV, OPDAT and the OSCE Presence, which have supported the contents of this legal initiative arguing that increasing the transparency of the selection process and empowerment of additional objective criteria in the appointment of members of the Supreme Court is a step forward.[163]

Regarding the designing of the ongoing justice reform, Sander Simoni, head of the Court of Serious crimes in Albania argues that in its initiation as a process the reform "*has created the impression of a broad process as a constitutional and legal reform, widespread and extended in time and that would focus not only in reforming the judiciary but also in other sectors of justice as prosecution, advocacy and other legal professions, legal formation etc."*[164] But, he argues that given the fact that the process is concentrated in the Parliament, and especially by the so-called Parliamentary Committee he fears "*that will guide it towards a constitutional reform affecting mainly some of the constitutional institutions, bypassing other elements of legal and technical - professional that affect the efficiency of the judiciary and the justice system as a whole."*[165]

In fact, the legal justice reform is a necessary condition, but not a sufficient one. The implementation of the legislation is of the same importance, especially in the field of the judiciary. Albania lacks the right experience in both aspects, and it needs outside help and it needs time in order to establish a new system according to the definition put in the beginning: transparent, impartial and efficient. "*I have also*

[162] Idem

[163] Annual progress report, Albanian contribution – input I, September 2014- May 2015, Ministry of Integration of Albania, p. 7.

[164] Interview with Sander Simoni, head of the Court of Serious Crimes in Tirana, Albania, April 4tth 2015.

[165] Interview with Sander Simoni, head of the Court of Serious Crimes in Tirana, Albania, April 4tth 2015.

become convinced that if rushing to the need of having visible results we will also compromise the standards. It must be a mature process, time extended, and closely monitored by the EU."[166] The undisputable need for the experience of international organizations, as seen during the processes of legal reform, is further needed in their implementation. The adopting of the acquis leads more and more towards the EU, the designing of the constitutional framework of the justice reform trusted from now on to the Venice Commission is a guaranty of a better perspective, and the inclusion of the long time monitoring OSCE in the field of the rule of law can tackle the deficiencies of the legal system where it better fits and where it needs the most. But their contribution in the legal reform is just one side of the work. Without the fight against corruption, without the removal of the influence of the politics in the judiciary, without the assurance of the integrity and professionalism of those who deliver justice, the legal framework would be void and meaningless.

2.3 The international organizations projects in the fields of judiciary: independence and efficiency of the judiciary.

Article 6(1) of the ECHR provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."[167] The right of an individual to access the justice, linked inextricably with the independence and the efficiency of the judiciary, reveals the two-folded nature of this provision: on the one hand there is the need for legal and institutional measures in order to guarantee the independence and self-governing of the third power- the judiciary; on the other hand there is the human rights dimension, the fundamental right to be heard in front of an impartial court. The case-law of ECt.HR has established that "the right to a fair trial holds so prominent a place in a democratic

[166] Interview with Sander Simoni, head of the Court of Serious Crimes in Tirana, Albania, April 4tth 2015.
[167] ECHR http://www.echr.coe.int/Documents/Convention_ENG.pdf

society that there can be no justification for interpreting Article 6 § 1 of the Convention restrictively"[168]

As said above, this need for legal and institutional measures to guarantee the independence and efficiency (along with the reduction of corruption and lack of transparency) of the judiciary is exceptionally acute in countries like Albania, that has many difficulties with its non-democratic past and a will to change based on external pressure. It was also argued above that the legal reform has achieved a change although still incomplete, while its implementation is the hardest part, with few visible results. "Nations in Transit 2013**,** evaluates judicial independence in Albania at 4.75 on a scale from 1 to 7, with 1 presenting the highest level of progress, and 7 the lowest. Not only is this score lower than Western Balkans' regional average of 4.50, and much lower than EU average of 2.35, but it has also deteriorated since 2004."[169] Kochenov argues that during the preparations for the big-bang enlargement the Commission has declared that a clearly-structured and responsible approach to the organization of the judiciary reform was more likely to bring badly results than any *ad hoc* moves aimed at the improvement of the functioning of the candidate countries' judiciaries. But he concluded that the Commission, while requiring a level of clarity from the countries concerned, lacked itself a structured approach to the reform promotion in the candidate countries.[170] And while the strategy of the Commission has worked (apparently) in the problematic countries of the Balkans that are now part of the EU, it is not yet the case for Albania. When asked about the lessons learned from these countries to be applied in the case of Albania, Sander Simoni answered: "*In this aspect I believe that this experience is not sufficiently aired. I am referring here to the Romanian, Croatian, considered successful experiences in the fight against corruption. No country has more to do. Mission*

[168] "Perez v France", 2010.
[169] A. Elbasani, EU scrutiny and rule of law priorities in Albania, Center for Southeast European Studies, 2014. http://www.suedosteuropa.uni-graz.at/biepag/node/48
[170] D.Kochenov, *EU enlargement and the failure of conditionality*, The Hague, Kluwer Law International, 2008, p. 251.

EURALIUS 4 appears to be trying in this regard."[171] In fact, except for EURALIUS missions (already the fourth one in Albania), mentioned below, the two other organizations are putting in place concrete strategies in order to develop the independence and efficiency of the system. The role of the Venice commission has been evidenced in the legislate reform. Here it will be seen that the CoE has invested its efforts along with EU through its bodies (CEPEJ, CCJE, CCPE) in joint actions or not, to fight corruption, raise the independence and the efficiency of the judiciary. OSCE has applied its method of projects and it is succeeding in this path. Since all these bodies and institutions, their aim and scope have been mentioned above, this space of the paper has been left only to their missions with regards to independence and efficiency of the judiciary; or better said, how these components of the judiciary gather the efforts of these institutions in concrete projects. The judicial reform has become the battlefield of international organizations with continuous and rising efforts to foster this crucial component of the rule of law.

2.3.1 The independence of the judiciary

Kochenov argues that there is no clear-cut European standard of judicial independence, not a specific one from EU or CoE.[172] On the other hand, there are many key documents of the CoE and the case-law of the ECtHR that have been used by the Commission during pre-accession procedures in order to promote and assess the judicial independence in the countries involved . The principle of independence of the judicial power is provided in the Constitution of the Republic of Albania, respectively in the articles 138, 143, 144, 145 and also in the law "On organisation and functioning of the Judicial Power", in articles 20, 22, 23, 28. The constitution provides that: "Judges are independent and subject only to the Constitution and the laws."[173] The ECt.HR has established some criteria in naming a tribunal independent

[171] Interview with Sander Simoni, head of the Court of Serious Crimes in Tirana, Albania, April 4tth 2015.
[172] D.Kochenov, *EU enlargement and the failure of conditionality*, The Hague, Kluwer Law International, 2008, p.255.
[173] Article 135 of the Albanian Constitution.

or not: the manner of appointment of its members; the duration of their office; the existence of guarantees against outside pressures, and the question whether the body presents an appearance of independence (Campbell and Fell v. the United Kingdom, 28 June 1984, para. 78) .[174]

In fact, according to its experience and the documents related to the Copenhagen criteria, the Commission has chosen an individual and institutional independence strategy:

- Institutional independence of the judiciaries;
- Independence of individual judges;
- Budgetary independence of the judiciary.[175]

EURALIUS. Up to date the four main projects of EU with regards to the judicial reforms in Albania, especially regarding the independence of the judiciary, are the EURALIUS projects. Starting as a CARD-funded project of 2002, the projects represent the work of the European Assistance Mission to the Albanian justice system. EURALIUS Mission was designed to tackle the deficiencies of the judicial system in a comprehensive manner. It was supposed to be the first project which should address the main problems of all central areas of the judicial system in Albania through the provision of long-term expertise on site and thereby ensure the achievement of sustainable results. "It seeked building capacity in the development of a more independent, impartial, efficient, professional, transparent and modern justice system."[176] EURALIUS I (2005-2007) covered: "Justice Organization, Judicial Budgetary Planning and Management; Law Drafting and Legal Approximation; Penitentiary Issues; Enforcement of Rulings; Case Management and

[174] Summary of CoE standards relevant to the project, in particular as regards judicial independence, transparency, accountability and efficiency. http://www.coe.org.rs/REPOSITORY/1938_appendix_i_-_summary_of_coe_standards_relevant_to_the_project_in_particular_as_regards_judicial_independence_transparency_accountability_and_efficiency.pdf
[175] D.Kochenov, *EU enlargement and the failure of conditionality*, The Hague, Kluwer Law International, 2008, p. 257.
[176] Idem.

Court Administration."[177] EURALIUS II (2007-2009) followed immediately, with no time gap in between, to further complement what was started in EURALIUS I especially in criminal justice. Subsequently EURALIUS III and IV have been financed by IPA. EURALIUS III, IPA 2009 (September 2010- March 2013) was focused on consolidation of the legislative and judicial system.[178] EURALIUS IV project, financed by IPA 2013, has just started in September 2014 and seems very promising and organized along with the priorities set by the European Commission and the national actors. "Consolidation of the Justice System in Albania", with its five areas of intervention, will support the Albanian Ministry of Justice, the Office for the Administration of the Judiciary Budget, the High Council of Justice, the High Court, the General Prosecutor Office, the Courts, the National Judicial Conference, the Parliamentary Law Committee, the School of Magistrates, the National Chamber of Advocacy and the National Chamber of Notaries as its main beneficiaries.[179]

The joint projects of EU and CoE in the field of the judiciary in the form of the assistance in Albania start immediately with the presence of the organizations there. The EU had started providing assistance for the Albanian economy and institution-building in 1991, while Albania had applied for a membership in the CoE in 1992, being accepted in 1995. The first project started as a help for the legal reform in 1993 (drafting of the Codes in Albania, see above), but not only. It included intensive training for magistrates and other judicial staff.[180] The second one started in 1995, following the need to complete the first project, especially with the aim of making the Albanian legislation compatible with European standards. It has been followed by joint projects Albania III (1999 – 2001) and Albania III bis (2001 – 2003), that helped

[177] D.Kochenov, *"EU enlargement and the failure of conditionality"*, The Hague, Kluwer Law International, 2008, p. 361.
[178] Project Fiche – IPA National programmes / Component Ihttp://ec.europa.eu/enlargement/pdf/albania/ipa/2014/ipa-2012023036.02-al-construction-of-the-tirana-court-building-phase-1.pdf
[179] EURALIUS IV webpage http://www.euralius.eu/en/about-us/what-we-do
[180] Albania, a common future in Europe, by the European Union in Albania, p.7 http://ec.europa.eu/enlargement/archives/seerecon/albania/documents/albania_future_with_europe.pdf

consolidating the Magistrates School with trainings and activities (workshops, trainings, visits), assisted the drafting of the laws through law expertise, through assistance near the Ministry of Justice, the Prosecutors Union, the People's advocate, other legal professions etc. Albania 4 (2003-2005) is the fourth consecutive joint project of the EU and CoE.[181] It represents also the continuity of the abovementioned projects with its support to the school of Magistrates, the training for the legal professions, the enabling of the government to efficiently implement laws according to the rule of law.[182] It was further complemented by another specific joint project: Albania-Magistrates - Support to the sustainability of the Albanian School of Magistrates (2007- 2009), financed by CARDS.[183] Helping it become a self-sustainable institution and raising the quality of the future judges has always been in the focus of the organizations as a precondition for the independence and quality of the judiciary.

2.3.2 Efficiency of the judiciary.

In Albanian, there is an expression used with regards to the timing of judicial proceedings: "*nje drejtesi e vonuar eshte nje drejtesi e munguar*", meaning "*a delayed justice is a missing justice".* Both the Constitution of the Republic of Albania and the ECHR express that everyone has the right to a trial within a reasonable time.[184] According to the European Court of Human Rights: "the courts have a duty to ensure that all those who play a role in the proceedings do their utmost to avoid unnecessary delays"[185]. This means that any periods of inactivity during the proceedings must be objectively justifiable. The inefficiency of a trial has an impact on the judiciary and its performance, on human rights and on the budget of the court and the parties. Besides the length of the proceedings observed by the international

[181] Albania 4 JP, http://www.jp.coe.int/CEAD/JP/Default.asp?TransID=53
[182] Idem
[183] Albania-Magistrates - Support to the sustainability of the Albanian School of Magistrates JP http://www.jp.coe.int/CEAD/JP/Default.asp?TransID=136
[184] ECHR Article 6 and Albanian Constitution art. 42, para. 2.
[185] Vernillo v. France, 1991, para. 38.

triangle, the capacity building of the courts in Albania from the external will be mentioned as an impact in the efficiency of the judiciary.

EU: Capacity building. The most important part of the contribution of the European Union so far in Albania regarding the judiciary, and in this way the efficiency of the judiciary, has been the building, renovation, and improvement of the infrastructure of courts and prisons all over Albania. The assistance programs, CARDS and IPA, have contributed more than in any non-European country to improve the capacity of the courts and the change is considerable.[186] Sander Simoni says that the EU projects in the framework of CARDS and IPA have been of extreme relevance to the infrastructure and by that to the judicial activity too*: "They have contributed in building another image of the judiciary and increase the efficiency within it"*[187]. Seven new courts have been built so far by the financial assistance programs (in Vlora, Durres, Korça, Elbasan, Gjirokaster the Appeal Court of Tirana, etc)[188] and twelve more have been fully reconstructed.[189] This investment included also furniture and IT facilities to the Minitry of Justice, the General Prosecutor's Office and the Supreme Court.[190] In the 19 courts where these investments have been made, the working conditions have improved drastically. The case of the Court of Serious Crimes is one of the most important ones to testify the relevance of the capacity building of the EU in the work of the courts. The Court of the Serious Crimes was established by law in 2003[191] with the aim to foster the efficiency of the judiciary by handling the most serious crimes like the ones linked with organized crimes, gangs, etc. Immediately, under CARDS program in 2003, the new building to

[186] See B.K.Blitz, Post-socialist transformation, penal reform and justice sector transition in Albania, *Southeast European and Black Sea Studies*, Vol.8, No4, 2008, p. 347.
[187] Interview with Sander Simoni, head of the Court of Serious Crimes in Tirana, Albania, April 4tth 2015.
[188] Albania, a common future in Europe, by the European Union in Albania, p. 7. http://ec.europa.eu/enlargement/archives/seerecon/albania/documents/albania_future_with_europe.pdf
[189] Annual progress report, Albanian contribution – input I, September 2014- May 2015, Ministry of Integration of Albania, p. 300.
[190] Albania, a common future in Europe, by the European Union in Albania, p.7. http://ec.europa.eu/enlargement/archives/seerecon/albania/documents/albania_future_with_europe.pdf
[191] See Law Nr. 9110, dated 24 July 2003 'On the organization and functioning of the courts for serious crimes" http://www.osce.org/albania/41896?download=true

host this Court was approved. In 2004 the building became functional and the Court started its activity. Sander Simoni, the head of this Court while stressing the relevance of CARDS 2003-2004 in this project says that it *"made possible the construction of a modern contemporary building, accommodating four main institutions in the fight against organized crime, enabling the development of important judicial processes against criminal organizations and armed gangs, processes that previously were not developed in Albania."*[192] It is curious to see that the OSCE has as well contributed in the capacity and infrastructure of this court in 2004, by donating computer equipments for the judicial staff.[193]

Further on, the building of the Court of Appeal of Shkodra has started in 2014 and it is ongoing. Under IPA 2014 a reconstruction of the Administrative Appeal Court of Tirana is planned for 2015-2016 and a new building for the Judicial District Court of Elbasan (2015-2017) as well.[194]

The length of the proceedings in Albania is evidenced first in the reports of the CoE and OSCE and then in the monitoring reports of the European Commission. In the reports of the CoE the length of the proceedings was judged in the framework of CEPEJ legal evaluations and the conclusions and also through interpretations set by the judgments of the ECt.HR in breach of Article 6 of the ECHR. Earlier in the reports of the OSCE (2006) it is mentioned that "main hearings in Albania frequently continue for extended periods of time and occasionally take years to complete."[195] Amongst the causes, the report identifies the failures of the police to bring people to the court, the failure of the prosecutors to fulfill their duties, the length of

[192] Interview with Sander Simoni, head of the Court of Serious Crimes in Tirana, Albania, April 4tth 2015.

[193] OSCE Presence donates computer equipment to Albanian Court for Serious Crimes, July 2004. http://www.osce.org/albania/56528

[194] Annual progress report, Albanian contribution – input I, September 2014- May 2015, Ministry of Integration of Albania, p. 300.

[195] Analysis of the criminal justice system of Albania, Report by the fair trial development project, OSCE, 2006, p.179. http://www.osce.org/albania/22211?download=true

investigations and the lack of planning/preparation and most of all (according to me), a developing tradition of long trials. It also gives recommendations on how to solve the main issues, like, f.ex, the simplification of the notification procedures, the improvement of the police actions, etc.[196] Years later, the problematic situation had not visibly changed yet. It was tackled by the attempts of EURALIUS I and II but not sufficiently to be relevant. In the monitoring report of 2013, the European Commission expresses that "Court decisions are generally delivered without their reasoning, which in most cases is only issued after a significant delay"[197] While in the report of the OSCE "Towards Justice", in 2013 as well, it was deducted from 143 hearings monitored that 47,7% of the sessions were completely unproductive[198] – no argument was put forward, no documents circulated, no evidence taken and no requests made.[199] This was the incentive for the pilot projects that OSCE is practicing in the field starting from 2014.

The joint projects EU- CoE: *Albania-JU - Training for court administrators* (2005-2008)[200], financed by CARDS that aimed to enable the administration of courts to function effectively through a better management of cases, is the predecessor of another joint project in the field of the efficiency of the judiciary: ***SEJ*** *(Support to Efficiency of Justice)*. In the view of the second priority put by the European Commission in order to open the accession negotiations, a joint project of the EC and CoE initiated in January 2014, for 24 months, in order to improve the efficiency and quality of justice in the Albanian Courts. It aims to "strengthen the capacity of the Albanian judicial authorities in different aspects of judicial management and bring their practices in line and in full compliance with the standards and guidelines set by

[196] Analysis of the criminal justice system of Albania, Report by the fair trial development project, OSCE, 2006. http://www.osce.org/albania/22211?download=true
[197] Progress- Report of the Commission for Albania, 2013, p. 38.
[198] "Towards Justice" Report, OSCE, 2013, p.15 http://www.osce.org/albania/100388?download=true
[199] Justice without delays in Kruja court, OSCE, 16 June 2014 http://www.osce.org/albania/120023
[200] Albania-JU CARDS - Training for court administrators
http://www.jp.coe.int/CEAD/JP/Default.asp?TransID=79

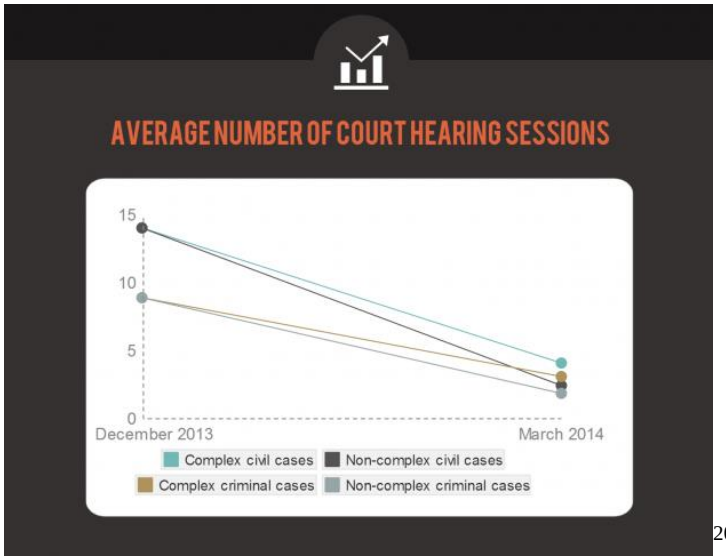
the European Commission for the Efficiency of Justice (CEPEJ)."[201] After being identified the needs of the judicial system by the CEPEJ, the assistance will be addressed by means of distribution of human and financial resources put at the disposal of each court or body. This kind of assistance is a need-based one, tackling the weakest point through the guidelines offered by SATURN, which is expected to affect the daily work of the judges and court administration. The project is to be implemented by the Ministry of Justice, the Judicial Inspectorates of the Ministry of Justice, the High Council of Justice, and High Council of Justice, School of Magistrates and Office for the Administration of the Judicial Budget, Office of the Prosecutor General, Constitutional Court and Bar Association.[202]

The relevant experience of CEPEJ, the introduction by it of the SATURN guidelines in cutting the judicial length, and the financial approach of the EU in implementing it, constitute the strength of this project. Sander Simoni expresses his opinions regarding the joint projects EU – EC saying that they are very efficient because they are more well-funded by the EU and more applicable because of the experience of the CoE. "I am optimist regarding the results especially for the last project within the frame of CEPEJ on improving the efficiency in the judiciary."[203]

Pilot Project, OSCE. In 2014, OSCE Presence in Albania in collaboration with USAID's Albanian Justice Sector Strengthening Project (Just) launched a pilot project "Justice without delays"[204], in the court of the first instance in the town of Kruja. It was based in the monitoring report of 2013 (Towards Justice) of the OSCE regarding civil proceedings. Taking into consideration the situation described in the

[201] Joint Project "EU / CoE Support to Efficiency of Justice – SEJ" launched by the European Union and the Council of Europe http://eeas.europa.eu/delegations/albania/press_corner/all_news/news/2014/20140523_en.htm
[202] Joint Project "EU / CoE Support to Efficiency of Justice – SEJ" launched by the European Union and the Council of Europe http://eeas.europa.eu/delegations/albania/press_corner/all_news/news/2014/20140523_en.htm
[203] Interview with Sander Simoni, head of the Court of Serious Crimes in Tirana, Albania, April 4tth 2015.
[204] Justice without delays in Kruja court, OSCE, 16 June 2014 http://www.osce.org/albania/120023

report, the pilot project's first aim was to reduce the time of the proceedings, to increase the efficiency and accessibility of trials, by fostering active trial management.[205] This project found the immediate support of the High Council of Justice and the Ministry of Justice. It operated from December 2013 till March 2014. The number of hearings in criminal cases has been reduced from an average of 8.8 to 1.8 by the end of March 2014, while non-complex civil cases are now finished in 2.4 sessions.[206] The number of cases handled by the four judges in Kruja during the application of the project increased by 40 cases, compared to the same period in 2013, when six judges worked in that court."[207] Given the successful results, the first instance court in a bigger city, Korça (composed of 18 judges), is implementing the same project.



[208]

[205] Justice without delays in Kruja court, OSCE, 16 June 2014 http://www.osce.org/albania/120023
[206] Idem
[207] Idem
[208] Idem

Conclusions

1. EU enlargement, the triangle, and the rule of law

During enlargement processes of European Union (EU) there has been a *functional overlap* and a *geographical overlap* between this organization and the other two organizations, Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE). The *functional overlap* consists in the fact that the organizations have reached a point where they share common interests in the field of the rule of law: - EU has developed with time a growing interest in the democratization, human rights and the rule of law, and this has also been due to the fact that in the past two decades it needed a model to offer to countries with no democratic tradition; - CoE has been since its creation a standard setter in this field and has offered the most comprehensive approach towards the rule of law and human rights through conventions, expertise and case-law; - OSCE with its human dimension approach towards security has included more and more (especially after the 90's) the rule of law and institution- building within its mandate. The *geographical overlap* has to do with the fact that the EU has become a democratization provider in countries where previously the CoE and OSCE used to handle this issue.

The EU has had so far the most successful method to offer democratization and rule of law models to the upcoming countries: the conditionality. The desire and necessity of these countries to join EU is the key to that success, it makes them want to speed transformation towards the compliance of the criteria set by this organization. Taking into account this premise, the role of the CoE and OSCE seems to be shadowed, because these organizations can not impose such asymmetric relations with the countries, and therefore their cooperative ways seem to be ineffective compared to the 'EU method'. But there it is never as easy as this.

The will and the interest. The organizations have managed their way through the overlap by means of political dialogue and further strengthening of the relations because of their will to do so, but also because of their interest. The CoE and OSCE have benefited from the financial resources of the EU, the first one through the joint projects and the second one having most of the budget from the members of the EU as contributors.

While the benefit of a European Union that was turning from a model of democratization to a democratization provider, is that the CoE standards and experience and the OSCE experience have been of use during enlargements. The many conventions of CoE have influenced the acquis and the Copenhagen criteria in the field of justice, freedom and security and later on in the field of the judiciary and fundamental rights. These chapters were later to be adopted by the aspiring countries to join. 180 joint actions have been led between EU and CoE in countries bordering the EU that were members of the CoE, willing to foster democratization and the rule of law, by joining the staff and experience of the CoE with the financial means of the EU to become more effective. These actions served later to some of the countries as accession tools. On the other hand, OSCE has been the 'testing ground' of the EU's foreign policy, by sharing its experience to help the accession path of the countries involved.

And since ***there is not one only model of the rule of law applicable to all countries***, a tailored size or a needs-based model for each country can only be achieved with the best combination of financial means, standards and experience.

2. Albania, the triangle and the rule of law

Albania is a very good model to observe the changing role of these organizations, because it is a country in pre-accession process, where the big challenges in the field of the rule of law are believed to be resolved only with the interference of the international organizations. It is curious to see how this country is affected by the changing role of the triangle but also how the specifics of the country are imposed

towards the dynamics of these organizations. The reform of judiciary as a milestone in the rule of law, is the host of all them three.

The EU has been, especially during the last decade, since the launch of the SAP (Stabilization and Association Process) the major international player in Albania, the imposer of the rules, the leader towards the justice reform and the major financial contributor. In the field of the judiciary this is visible through the adoption of the acquis (legal reform); building of infrastructure: construction and reconstruction of courts (CARDS and IPA); and the EURALIUS projects to strengthen the judiciary: its independence, efficiency and the raise of the access to justice.

The CoE has given a very crucial contribution in the field of the rule of law, especially the judiciary, through its standards and through its operating bodies: CCJE in the strengthening of the independence, CEPEJ in the efficiency, GRECO in fighting corruption, Venice Commission in constitutional and legal reforms; and the case-law of ECt.HR in the access to justice.

The action of EU and CoE in this field has been very cooperative and coordinated. Together, the EU and CoE have led around 10 joint projects in Albania, all of them having to do with the strengthening of the judiciary. In the framework of these projects the prerogatives of the CoE have been the training of judges, prosecutors and magistrates; the standards provision on independence and impartiality of the judiciary and the standards on the efficiency of the judiciary as well. The financial means of the EU have guaranteed the complementary part of the projects.

The OSCE has been a long-time monitoring actor of the court sessions. This has made of this organization a very good knower of the reality of everyday courts proceedings. Besides the recommendations and reports, OSCE operates through projects in the field, especially the ones aiming to make proceedings more efficient.

Strengthening of the role of CoE and OSCE. The very recent tendencies that make Albania more special regarding the changing role of the triangle is that, in contrast

with the general tendencies mentioned in the first chapter, the CoE and OSCE have intensified their contribution in the judiciary and therefore in the rule of law. There is a major reason why the role of the two organizations in the field of the rule of law has been strengthened with regards to the EU:

There has been no major improvement in the field of the rule of law in Albania in the past decade. This poses new challenges in front of these organizations. The judicial system is one of the weakest points of the rule of law, because of lack of independence and efficiency, because of corruption and unprofessionalism. And when the judiciary is weak, there is no place for the rule of law. The elites camouflage with pro-Europe slogans their intentions to be legitimized by the people, but no real will for change has ever been reflected during these processes, till now. The pressure put by the EU in order to foster the transformation has not been enough yet to overcome these challenges in Albania, unlike the experience of other Balkan countries that joined, like Romania or Croatia. The judiciary reform has longtime been in stagnation until the rush to open the negotiation processes came at stake after the granting of the status candidate to Albania in June 2014. In order to open them, five key priorities have been put by the Commission, the judiciary reform being a crucial one among them. It is here that the role of all the organizations is important, because all their experience and capacity is needed to overcome this situation. The round tables meetings in October-November 2014 are an illustration of this inclusion of the most actors possible linked to the justice reform, in order to have the most effective solutions possible. The inclusion of the IO-s is visible *in the legal reform* and *in the projects* that they led near the courts. The legal reform: It is totally oriented towards the adoption of the acquis (EU oriented), The Venice Commission (body of the CoE) has been charged with the constitutional and legal designing of the reform, and the OSCE reports will offer a comprehensive approach towards the possible draft laws through the long experience in monitoring. While the projects include the ones of the EU (EURALIUS), the joint projects (EU-CoE) and the pilot project of the OSCE.

A relevant part of this paper has been filled with *very recent events*, starting in 2014. There has not been yet the needed distance in time to judge on their impact, but in my belief, the signs that they transmit and the tendencies are clear:

1. The perspective of the opening of negotiations with EU has triggered an inclusive and extensive mechanism in reforming the judiciary.

2. The CoE has known how to develop further the standards and adapt to the needs of time. The SATURN project on cutting the length of the proceedings, even though it has been created by CEPEJ to restrict the cases in front of the ECt.HR, has been used recently by the joint project of the EU and CoE (SEJ) as a pre-accession tool.

3. The OSCE has jumped in projects that regard the efficiency of the judiciary, because it has the capacity to change them and because of its relevant experience in the field. But in order to do so it needs the will of the courts to cooperate. And the will of the courts to cooperate seems to have risen by the pressure of the conditionality to reform the system.

It is true, the method of the conditionality has generally gained superiority over the other methods of the CoE or the OSCE, but these two organizations have exclusive areas of expertise in the field of the rule of law. And as long as the rule of law is so problematic in cases like Albania, the role of all these organizations is indisputably relevant. The EU is making the best use of it and the other two points of the triangle watch their positions strengthen and have their financial benefits. Albania is the case that illustrates how difficult it is to overcome the challenges of the establishment of the rule of law, even within a pre-accession process led by the EU, and how important is the contribution of the CoE and OSCE to reach this aim. They have still so many duties to carry on and there is still so much ahead to be done.

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List of abbreviations:

CARDS - Community Assistance for Reconstruction, Development and Stabilisation

CC – Constitutional Court

CCJE - Consultative Council of European Judges

CCPE - Consultative Council of European Prosecutors

CEPEJ - European Commission for the Efficiency of Justice

CoE - Council of Europe

EC – European Commission

ECHR – European Convention of Human Rights

ECt.HR – European Court of Human Rights

ESS – European Security Strategy

EU - European Union

EURALIUS - the European Assistance Mission to the Albanian Justice System

FTDP - Fair Trial Development Project

HCJ – High Council of Justice

NCJ – National Council of Justice

IO – International Organization/s

IPA – Instrument for Pre-Accession Assistance

OSCE - Organization for Security and Cooperation in Europe

PACA – Project against corruption in Albania

SAA - Stabilization and Association Agreement

SAP - Stabilization and Association Process

SATURN - Study and Analysis of Judicial Time Use Research Network

Annex:
Interview with Sander Simoni, Head of the Court of Serious Crimes in Albania, 4th April 2015

1. Ekzistojnë shumë perceptime e interpretime të ndryshme për të shumëpërfolurën « reformë të drejtësisë» në Shqipëri. Si do ta përkufizonit ju këtë proces që po kalojme?
   There are many controversial perceptions and interpretations on the term 'justice reform" in Albania. How would you define this process that we are undergoing?

   Pergjigje : Une do ta përkufizoja si një tërësi masash me qëllim forcimin e eficensës, profesionalizmit e transparencës së sistemit në tërësi duke ruajtur pavarësinë e me qëllim rritjen e besimit tek publiku dhe faktori ndërkombëtar.

   Answer: I would define it as an ensemble of measures aiming the strengthening of efficiency, professionalism and the transparency of the system as a whole, safeguarding the independence and with the aim of the growth of the trust from the public and from the international factor.

2. Cili eshte opinioni juaj mbi dizenjimin e kesaj reforme? A eshte ajo deri tani ne perputhje me standartet Europiane, apo merr drejtime të tjera? Ku eshtë me i dukshem ushtrimi i kushtezimit si mjet presioni nga BE per te nxitur proceset ne sistemin e drejtesise?
   What is your opinion on the designing of this reform? Is it in conformity with the standards put by the EU, or is it going in a different direction? Where is more visible the application of conditionality as a tool of EU regarding the justice system?

Përgjigje : Në fillimet e inicimit të saj si process krijonte përshtypjen e një procesi të gjerë, si një reforme kushtetuese dhe ligjore, gjithpërfshirëse dhe e shtrire në kohë dhe që do të fokusohej jo vetëm tek reforma në gjyqsorit por dhe në sektorët e tjerë të drejtësisë si prokuroria, avokatia e profesionet e tjera ligjore, formimi juridik etj. Këtë e treguan dy tryezat. Fakti që si proces është përqendruar në Parlament, dhe drejtohet nga i ashtuquajturi Komision Parlamentar, kam frikë se do ta orientojë atë drejt një reforme kryesisht kushtetuese duke prekur e ndryshuar disa nga instutucionet kushtetuese e duke anashkaluar elementet e tjere ligjore e teknike – profesionale që ndikojne tek eficensa në gjyqesor e në sistemin e drejtësisë në tërësi.

Për sa i përket standarteve europiane mendoj se ajo është e orientuar drejt tyre pasi si terma referimi ka kryesisht ato që kërkojnë Progres Raportet e BE për Shqipërinë, kryesisht ai i qershorit 2014 dhe i dhjetorit 2014. Edhe dokumenti kryesor i saj Udherrefuesi për zbatimin e rekomandimeve te Progres raportit , kryesisht Rekomandimi nr. 5 bazohet në këto kërkesa e standarde.

Answer: In the beginnings of its initiation as a process, it has created the impression of a broad process as a constitutional and legal reform, widespread and extended in time and that would focus not only in reforming the judiciary but also in other sectors of justice as prosecution, advocacy and other legal professions, legal formation etc. This was clearly shown by the 'two tables' meetings. *The fact that that the process is concentrated in the Parliament, and directed by the so-called Parliamentary Committee, I fear that will guide it towards a constitutional reform affecting mainly some of the constitutional institutions, bypassing other elements of legal and technical - professional that affect the efficiency of the judiciary and the justice system as a whole.*

In terms of European standards I think it is oriented towards them because the terms of reference are mainly those required by the EU Progress Reports on Albania, mainly that of June 2014 and December 2014. Also the main document

for the implementation of the recommendations is The Guide for the progress report, mainly Recommendation no. 5 based on these requirements and standards.

3. Reforma e sistemit penal të së drejtës është thelbësore për rrugën e Shqipërise drejt BE. Ka pasur shume fonde për Shqipërinë, më tepër se për shumë vende të tjera jashtë BE, nga IPA apo nga projekte si CARD apo EURALIUS për të përmirësuar infrastrukturën gjyqësore, sidomos në institucionet penale. Në çfarë mase kanë kontribuar ato në efiçencën dhe transparencën e sistemit? A janë arritjet proporcionale me grantet e marra dhe me rezultatet e pritura?
   The penal reform is a crucial milestone in Albania's path of accession the EU. There have been many funds for Albania, more than for many countries outside the EU, by CARD project (2002) and EURALIUS project in order to improve judiciary infrastructure, especially in penal institutions. To what extend did this contribute in the efficiency and transparency of the system? Is it proportional with the received grants and the expectations of the results?

   Projektet e BE në kuadrin e CARDS e IPA kanë ndikuar jashtëzakonisht shume në përmirësimin e kushteve infrastrukturore te gjykatave e të rregjimit penitenciar te burgimit me të cilin është e lidhur dhe veprimtaria gjyqsore. Ato kane ndikuar në një imazh tjetër të gjyqsorit dhe në rritjen e eficensës brenda tij. Kam këtu parasysh Gjykatën e Krimve te Rënda e finacuar nga CARDS 2003 – 2004 që bëri të mundur ndërtimin e një godine bashkekohore e moderne duke akomoduar katër institucionet kryesore në luftën kundër krimit të organozuar e duke bere te mundur zhvillimin e proceseve të rëndësishme gjyqsore në kuadër të organizatave kriminale e bandave të armatosura , procese që nuk ishin zhvilluar më parë në Shqipëri.
   Misioni EURALIUS ka dhënë një kontribut të jashtëzakonshëm në reformën ligjore e rritjen e eficensën e gjykatave në përputhje me standardet europiane. Misisoni PAMECA i BE gjithashtu ka përmirësuar veprimtarine procedurale të policisë gjyqsore .

Answer: EU projects in the framework of CARDS and IPA have hugely influenced the improving the infrastructure of the courts and the penitentiary regime of imprisonment, with which it is associated also the judicial activity. They have contributed in building another image of the judiciary and increase the efficiency within it. I am referring here to the Serious Crimes Court funded by CARDS 2003 - 2004 which made possible the construction of a modern contemporary building, accommodating four main institutions in the fight against organized crime, enabling the development of important judicial processes against criminal organizations and armed gangs, processes that previously were not developed in Albania.

Euralius Mission has provided an extraordinary contribution to the legal reform and in increasing the efficiency of the courts in accordance with European standards. Mission PAMECA of EU has also improved the judicial police procedural activity.

4. Në fushën e asistencës, a ofron BE manual të qarta për zhvillimin e reformës? A ka rregulla të parapërcaktuara për implementimin e standarteve, apo është një process vendimmarjeje mes BE dhe përfqësuesve të gjyqësorit, në përputhje me rrethanat specifike? Parashikueshmëri apo fleksibilitet? A ekziston mjaftueshëm dialog mes prezencës së BE ne Shqipëri dhe gjyqtarëve?
   In the field of the assistance, does the EU offer clear guidelines on how to develop the reform? Are there pre-set rules for the implementation of standards or is it a process of decision-making along with the judges, according to specific circumstances? Predictability or flexibility? Is there enough dialogue between the presence of EU and the judges?

Prezenca e Komisionit Europian ne Shqiperi dhe misionet e tjera te BE nëpërmjet projekteve te tyre kane ofruar ekspertizë me rregulla të qarta në implementimin e standardeve. Sigurisht që kjo kërkon dhe procesin vendimmarrës në mes të BE e gjyqsorit që është transmetuar nëpërmjet marrëveshjeve të Këshillit të lartë të drejtësisë, Gjykatës së Larte , Gjykatave , Konferencës Gjyqsore , Shkollës së Magjistraturës, e shoqatave të gjyqtareve. Sigurisht që aktori kryesor mbetet Ministria e Drejtësisë e cila i përfshin gjithmone aktorët e gjyqsorit. Ka një dialog dhe një bashkëpunim të mjaftueshëm në mes të prezencës së BE dhe gjyqtarëve të cilin e favorizon mentaliteti shqiptar i bashkëpunimit dhe përkrahjes së cdo gjëje europiane.

The presence of the European Commission in Albania and other EU missions through their projects have provided expertise with clear rules on the implementation of standards. Of course this requires decision-making process between the EU and the judiciary that is transmitted through agreements of the Supreme Judicial Council, Supreme Court, Courts, judicial conference, the Magistrates' School , the associations of judges. Of course the main actor remains the Ministry of Justice which always includes judiciary actors. There is a dialogue and sufficient cooperation between the presence of EU and of the judges which favors Albanian mentality of cooperation and support of everything European.

5. A janë nxjerrë mësime nga eksperiencat e ndryshimeve në gjyqësor të vendeve të Europës Qendrore dhe Lindore që kanë pasur sfidën e kapërcimit të një trashëgimie totalitare? A është e krahasueshme rruga e tyre drejt hyrjes ne BE me tonën?

   Are there lessons drawn by the experience of other Central and Eastern Countries' judiciaries which had the challenge of a totalitarian legacy? Is their path towards accession and ours comparable?

   Në këtë aspekt mendoj se kjo përvoje nuk është transmetuar mjaftueshëm. Kam parasysh atë rumune, kroate që konsiderohen përvoja të suksesshme në luftën

kundër korrupsionit. Ka vend për të bërë me shume. Misioni 4 EURALIUS duket se po përpiqet në këtë drejtim.

In this aspect I believe that this experience is not sufficiently aired. I am referring here to the Romanian, Croatian, considered successful experiences in the fight against corruption. There is more to be done in our country. Mission EURALIS 4 appears to be trying in this regard.

6. Ku qëndrojnë problemet më të mëdha: në aspektin normativ apo në implementimin e tij në strukturat gjyqësore? Në nxitimin e një "reforme sa më të dukshme", a ka një rrezik të thyerjes së disa normave apo të një kompromisi me standartet?

Where do the main deficiencies lye: in the normative approach or its implementation within the judicial structure? In the rush of a 'visible reform", is there a risk of norm-breaking and standard bargaining?

Në të dyja : edhe atë normativ por edhe në implimentimin e tij. Në të dyja aspektet përvoja jonë akoma nuk është konsoliduar. Ka nevojë të vazhdueshme për reforme ligjore e njëkohësisht për implementimin efikas të saj. Edhe une kam krijuar bindjen se nëse nxitohet për nevojën e të pasurit të rezultateve të dukshme, do të cenojmë edhe standardet. Duhet të jete nje proces i matur, i shtrirë në kohë e i monitorueshem ngushte nga BE.

In both: the normative but also in its implementation. In both aspects our experience is not consolidated yet. There is a continuing need for legal reform and at the same time for its effective implementation. I have also become convinced that if rushing to

the need of having visible results we will also compromise the standards. It must be a mature process, time extended, and closely monitored by the EU.

7. Si e shihni kontributin e organizatave të tjera në pajisjen me standarte për përmirësimin e gjyqësorit, si psh Këshilli I Europës (konventat mbi gjyqtarët) apo OSCE, me eksperiencën dhe monitorimin?

How do you perceive the role of other organizations in providing standards in improving the judiciary, like the CoE (the conventions on the rule of law and judges), or OSCE, with its experience and monitoring?

OSBE është shume aktive në Shqipëri dhe konkurron në cdo rast Prezencën e BE e atë të SHBA në Shqipëri. Kjo prezencë ka një emer të mirë , për shkak se ka zbatuar me shumë zhdërvjelltesi disa projekte të rëndësishme për sistemin e drejtësisë në Shqipëri. Këshilli i Europes ka patur zbehje ne vitet e fundit por tashme është aktivizuar me disa projekte te bashkefinanacuara me BE si dhe me bërjen të ditur të Konventave Ndërkombëtare mbi pavarësine e gjyqsorit ashtu dhe me disa instrumente te Ke si p.sh Udhezimet e SATURN per shkurtimin e kohezgjatjes se proceseve gjyqësore.

OSCE is very active in Albania and competes in every case the EU and US Presence in Albania. This presence has a good name, because it has implemented with dexterity many important projects for the justice system in Albania. The Council of Europe has been diminishing in recent years but is now active with several co-financed projects with EU and the disclosure of the Internaational Conventions on the Independence of the judiciary as well as with several instruments as f.ex the SATURN Guide for cutting the duration of the proceedings.

8. Cfarë mendimi keni mbi projektet e përbashkëta të BE dhe KE në këtë fushë? A janë të koordinuara mjaftueshëm apo I nevojitet më shumë kooperim? A jeni optimist për rezultatet?

What do you think on the joint projects of EU and CoE on this? Are they enough coordinated, or should they cooperate more? Are you optimist on the potential results?

Projektet e perbashketa BE - KE jane mjaft eficente per shkak se jane me te mirëfinancuar nga BE e me te zbatueshme per shkak te pervojes se KE. Jam optimist per rezultatet sidomos per projektin e fundit në kuadër të CEPEJ mbi përmirësimin e eficenses ne gjyqsor.

Joint projects EU - EC are very efficient because they are more well-funded by the EU and more applicable because of the experience of the CoE. I am optimist regarding the results especially for the last project within the frame of CEPEJ on improving the efficiency in the judiciary.

9. Nëse I referohemi pavarësisë së gjyqësorit, cilat janë prioritetet sipas jush në lidhje me reformat e ardhshme? (rregullat në zgjedhjen e magjistrateve, trajnimi I tyre, rishikimi I buxhetit, infrastruktura gjyqësore…?) A e influencon hierarkia e gjyqtarëve vendimmarrjen në shkallët më të ulëta?

If we refer to the independence of the judiciary, which would be the priorities in your agenda regarding the upcoming reforms? (the rules on choosing the magistrates, their training, their review of the budget, the judicial infrastructure,…?) Does the hierarchy of judges influence the decision-making in lower levels?

Të gjitha sa janë shenuar në pyetje me siper por sidomos reforma ligjore . Është shume e rendësishme sepse shume ceshtje te eficenses në gjyqësor varen nga sistemi yne ligjor e nevoja për përmirësimin e tij.

Everything marked above in the question but especially the legal reform. It is very important because many judicial efficiency issues depend on our legal system and the need for its improvement.

10. Gjithmonë në lidhje me pavarësinë e gjyqësorit, si e shihni ju rolin e qeverisë në miratimin e ligjeve në sistemin gjyqësor, ndihmë apo ndërhyrje? Ku është kufiri, a është i qartë? A mund t'i referoheni ligjit për Shkollën e Magjistraturës?

Always regarding independence, how do you see the role of the government in adopting laws on the judicial system? Do you see it as helping to implement the reform or as too much interference? How can we define a clear line? Could you refer to the Magistrate's school law?

Në këtë proces duhet të përfshihen detyrimisht gjyqtarët e duhet marre mendimi i tyre nëpërmjet Konferences Gjyqsore, Shoqatave të Gjyqtareve, Konferenca Gjyqesore, si mbledhja e te gjithe gjyqtareve duhet te jete me aktive dhe iniciativat legjislative te qeverise duhet domosdoshmerisht te kene mendimin e Konferences dhe te gjyqtareve e te marrin parasysh sygjerimet e tyre. Ndryshe nuk garantohet pavaresia e gjyqsorit.

In this process must necessarily be included the judges and their opinion must be taken into consideration through the judicial conference, the Association of Judges, the Judicial Conference, as the assembly of all judges must be active and legislative initiatives of the government must necessarily have the opinion of the Judges

Conference and take into account their suggestions. Otherwise the independence of the judiciary is not guaranteed.

11. A mendoni se perceptimi I Shqiptarëve ka ndryshuar ndaj gjyqësorit? A janë po aq skeptikë për t'iu drejtuar gjykatave?

Do you believe that the perception of Albanians has changed with time towards the justice system? Are they still too skeptic or more confident to address the courts?

Pavaresisht ndryshimeve dhe reformave ne tere keto vite mendoj se perceptimi nuk ka ndryshuar. Ketu ndikojne nderhyrjet e shumta te politikes dhe fakti se ne proceset gjyqsore te rendesishme te viteve te fundit ka patur ndikim politika. Ka rritje te perceptimit per korrupsion nga ana tjeter që korrespondon me humbjen e besimit ne teresi te shoqerise shqiptare tek rendi juridik e shoqeror. Kjo ben qe dhe besimi tek drejtesia te jete i ulet.

Despite the changes and reforms in all these years I think that the perception has not changed. Here contribute the many interventions of the politics and the fact that important judicial processes in the recent years have had an influence from the politics. There is an increasing perception of corruption from the other side that corresponds to the loss of trust of the whole Albanian society towards the legal and social order. This leads the trust in justice to be low.

12. A besoni se sistemi kështu siç është tani ofron një qasje adekuate në drejtësi për njerëzit?

A kanë individët instrumente të mjaftueshme ligjore në dispozicion për të mbrojtur të drejtat e tyre? A ka ndihmuar jurisprudenca e GJEDNJ kundër Shqipërisë në përmirësimin e aksesit në drejtësi? Në cilat mënyra?

Do you believe that the system as it is now offers an adequate access to justice for people?

Do they have enough legal instruments at disposal to protect their rights? Did the case-law of ECHR against Albania help improve the access to justice? In which ways?

Sistemi është efektiv pavarësisht të metave. Numri i qytetareve që i drejtohet gjykatave për të marre nje zgjidhje rritet cdo dite. Instrumentet ligjore që qytetarët të mbrojnë të drejtat e tyre janë dhe mendoj se gjyqsori përpiqet ti garantoje. Cështja është sa qytetarët i shfrytëzojne ato. Jurispudenca e GJEDNJ ka një ndikim gjithnjë e më të madh për sa i përket aksesit në drejtësi e në tërësi të drejtës për një proces të rregullt gjyqsor.

The system is effective despite the imperfections. The number of citizens addressing the courts to get a solution grows every day. Legal instruments for citizens to protect their rights are there and I think that the judiciary seeks to guarantee them. The question is how much people use them. The jurisprudence of the ECHR has an increasingly large impact in terms of access to justice and generally of the right to a fair trial.