

Why is Albania not an EU candidate Member State?

by Alfred Kellermann

Albania signed a Stabilisation and Association Agreement (SAA) with the EU on June 12, 2006. The SAA provides a framework of mutual commitments on a wide range of political, trade and economic issues. It has been ratified by 27 EU Member States and entered into force in April 2009. Albania presented its application for membership of the EU on April 28, 2009 (see Communication SEC (2010) 1335, Brussels 9.11.2010). On December 11, 2012 the Council welcomed the progress made by Albania to meet the 12 key priorities laid out in the Commission's Opinion of 2010.

In order to answer the question why the EU has refused several times to grant Albania candidate status, I analysed the impact of EU accession on Albania drafted in the 2010-12 documents and institutions. An identical analysis was made in 2005 and subsequently for many other new EU Member States and (pre) candidate countries in the publication "Hopes and Fears". This analysis was carried out in relation to the expected EU impact on: the national constitution; the role of the judiciary; the executive; and the national Parliament.

The following analysis of the legal situation with regard to Albania addresses a number of questions and might make it easier to understand why some of the key priorities have yet not been implemented in the Albanian legal order.

1. NATIONAL CONSTITUTION OF ALBANIA

1.1 How does the Albanian constitution deal with the implementation of international law in the national legal order? Does it allow, and if so to what extent, the transfer of legislative powers to international organisations?

Articles 121-23 of the Albanian Constitution as approved by the Albanian Parliament on October 21, 1998 provide for ratification of international agreements, their effect in the Albanian legal order, and the transfer to international organisations of state powers for specific issues. International treaties, being part of national legal order pursuant to the Constitution of Albania, are to be applied by Albanian courts, and may at least in theory, create individual rights. During ratification of the SAA the issue of whether regulatory powers have to be transferred to the Stabilisation and Association Council will rise.

The Albanian Constitution in Article 123 makes provision for the transfer of legislative powers to supranational organisations, although there is no confirmation in the constitutional practice so far. However the question still remains whether it would be better to introduce into Article 123 of the Constitution an explicit legal basis for EU membership, which would provide for the transfer of powers to the Community institutions and at the same time make clear that the legal norms they adopt have direct effect in the Albanian legal order and are supreme to national law.

1.2 Would the constitution require amendment for the ratification of the EU Treaties of Lisbon? If so, what are the current practical problems in that respect, and which procedures would have to be followed to overcome these problems?

There are no provisions in the Albanian constitution which are openly prima facie inconsistent with EU membership. The constitution sets out a reasonable framework for a democratic government system run in accordance with the rule of law. Therefore the Treaties of Lisbon (Treaty on European Union and Treaty on the Functioning of the EU and the Charter of Fundamental Rights of the EU) may be ratified without formal amendments of the Constitution. However, certain constitutional provisions, due to their open texture, do not exclude interpretation that may create an obstacle for EU membership. It would therefore be useful to amend such constitutional provisions in order to exclude interpretation contrary to Community law. It is assumed that Albania will best express its genuine desire for full membership of the EU by meeting the constitutional requirements for membership. The suggested constitutional amendments refer to the following Constitutional provisions:

1.2.1 Provisions that provide for the legal basis for EU membership, including the definition of exercise of state sovereignty

The Albanian constitution defines sovereignty (Art 1) as belonging to the people and independence (Art 3). Such a constitutional definition of state sovereignty and independence is ill-adapted to the conditions of EU membership. In this respect the constitution should provide for a shared exercise of state sovereignty within institutions of the EU. That article

would provide for the ratification procedure of the Treaty of Lisbon, whatever its form and name by the time of Albania's accession.

1.2.2 Provisions that define in more detail the legal status of international law and European primary and secondary law within the Albanian legal order

The legal status of Community law, both primary and secondary in the Albanian legal system, is not defined. There is no differentiation of the legal rules of Community law, which at this stage is understandable, as Albania is not an EU Member State. As for international law in Article 122 of the constitution, there is a clear need to make rules of Community law an integral part of national law as well as differentiating them from international treaties and general rules of international law. Such a differentiation should recognise the specific legal nature and character of Community law, and should not necessarily have to change the position of international law in the Albanian legal order.

In other words, legal rules of Community law, both primary and secondary, should be explicitly given legal authority and their supremacy and the possibility of direct effect should be mentioned.

1.2.3 Provisions relating to constitutional structure, more particularly in relationship of the legislative and executive branch

Although the relationship of the legislative and executive branches is not of direct concern for Albania's EU membership, proper allocation of powers may significantly influence the efficiency of fulfillment of Albania's commitments and obligations. The Zela Law of July 8, 2004 provided special rules on the role of the Assembly as the highest legislative body in the Stabilisation and Association process aimed at designing and observing the Albanian EU integration process. According to Article 3 the Council of Ministers would regularly send information to Parliament on work done at EU institutions and provide assessments, especially regarding draft agreements, and draft acts related to EU obligations. However, the need for the government to take part in decision-making at EU level calls for a change. It is desirable to provide for direct constitutional authority that would give the government the constitutional basis for making such decisions, and for implementing them in national law when required to do so by Community law. This would preferably be accompanied by a simultaneous obligation to inform Parliament regularly about such regulatory activities.

1.2.4 Provisions governing procedure and jurisdiction of the Constitutional Court

Issues of constitutional jurisdiction in cases of EU membership are not unique to the Albanian legal system, and

it would be possible to build on the experiences of comparable Legal systems, such as German and Italian. The jurisdiction of the Constitutional Court is regulated in Article 131 of the constitution. The Constitutional Court has been given a clear constitutional authority to decide *ex ante* on the compatibility of international treaties with the constitution. The consequence of a declaration of compatibility would be a presumption of the conformity of the treaty with the EU; possible *ex ante* constitutional review of the accession treaty would make future obligations as to constitutionality of Albania's EU membership more difficult. Secondly, EU membership would require amendment of procedural rules of the Constitutional Court in order to bring it in line with the Simmenthal requirements, thus availing ordinary courts of recourse to *exceptio illegalitatis* in the event of incompatibility with national laws, and implementing regulations with legal rules of Community law. Would Albanian civil and administrative courts faced with an issue of compatibility of a law with the constitution as mentioned in Article 145 have to ask the Constitutional Court to deliver a preliminary ruling on this point?

If that same law is incompatible with Community law, the court would, under the Simmenthal rule, have an obligation to disapply national law without having to wait for the law to be set aside. In other words Community law requires ordinary courts to by-pass the concrete constitutional review.

1.2.5 Which constitutional provisions seem to be contrary to the *acquis communautaire*?

Several provisions of the Albanian constitution would have to be amended in order to comply with the requirements of the *acquis*. Also there are a number of other provisions that are not contrary to the *acquis* as such, but need to be amended for other reasons, ranging from lack of clarity to doctrinal imperfection. For the purpose of this analysis different categories of constitutional provisions can be identified that are actually or potentially incompatible with requirements of EU membership.

- *Constitutional provisions directly incompatible with *acquis* - suffrage of EU citizens.* The Constitution guarantees in Article 45 the right to vote to Albanian citizens. Although the constitution is silent on this point, it does not explicitly exclude giving non-nationals the right to vote. The provisions should not explicitly exclude EU citizens from the right to vote, but as far as EU membership requirements are concerned, the right to vote on local elections, being a participatory right, has to be guaranteed to all EU citizens *expressis verbis*. The constitutional provisions should be broad enough to extend to requirements of Article 22 of the Treaty on the Functioning of the EU (TFEU) subject to which "every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote

and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State.”

Constitutional amendment of these provisions should make direct Universal suffrage of EU citizens residing in Albania at local elections in Albania possible.

- *Constitutional provisions encumbering compliance with the acquis.* One of the most serious constitutional issues forming an obstacle to EU compliance that will have to be solved is national sovereignty. Currently national sovereignty is inalienable, indivisible and untransferable.

1.2.6. Are there constitutional provisions regarding the supremacy of international law over national Albanian law? If so, do these provisions guarantee the supremacy and direct effect of European Law?

As provided by Articles 121-23 of the Constitution, ratified and published international treaties that are in force form part of the Albanian legal order and are supreme to Albanian laws. However, their hierarchy is not entirely defined bearing in mind the multitude of different legal sources that exist within the Albanian legal order. In this respect a clearer constitutional provision in Article 116 would be welcome. Additionally, as already mentioned, express reference to the effect and status of EU law in the Albanian legal order should be added to the constitution, together with the express Legal basis for EU membership.

2. ROLE OF THE JUDICIARY (NATIONAL COURTS)

2.1 Introduction

The judiciary seems to be the weakest link in Albania’s fragile system of separation of powers. The principle of judicial independence is provided for in the constitution and relevant legislation. However the effective independence is hampered by political nominations and other forms of political interventions.

The judicial culture of Albanian courts can be best described as a positivist formalistic approach to the law, a situation that is not uncommon in other former communist countries, some of which are new members of the EU. The procedures remain lengthy and poorly organised. Interpretation of the law is mostly textual and dependent on legal dogmas, not necessarily matching reality. The social context is rarely taken into context in court judgments, and even more rarely mentioned. Although expressly empowered to do so by the constitution, judges rarely apply the constitution directly when deciding cases. Even the Constitutional Court gives a very narrow and formalistic interpretation.

The biggest shortcoming of the Albanian judicial and wider

legal system is the missing tradition of publication of case law. Based on the belief that judges have nothing to do with law creation, the law is written in statutes, and that case law is therefore irrelevant, court decisions are not regularly published. Occasionally some judgments have been published, but only excerpts from them which whoever prepared the material deemed to be relevant. Albanian judicial organisation consists of three levels: general courts, courts of appeal, and the High Court as the final national voice in civil and criminal cases. The Constitutional Court decides on the conformity of laws and other regulations with the constitution. Appointments of judges to the courts and courts of appeal are less affected by political interference, to the extent that they are appointed by the President upon proposal by the High Council of Justice, a largely professional entity. Members of the High Court and Constitutional Court, as well as the State Prosecutor, are more exposed to political pressure.

This fragile separation of the powers of the state, coupled with political intimidation of the judiciary, has largely undermined any effective legal prosecution for abuse of office. Most allegations of high-level corruption disclosed in media investigations have not been translated into cases before the courts. In cases that have been officially investigated few have led to convictions, and when there were it was only of low-level officials. As judgments were rarely published, not only was the current law not known outside the judiciary, but the judges themselves did not know what the other judges’ positions were on different aspects of law. Uniformity of law had therefore to be ensured in some other way. Constitutional and the High Court judges conduct sessions at which joint positions on the “correct interpretation” of law are accepted.

Some legal questions for the judiciary follow:

2.2 Can the Albanian courts apply the Stabilisation and Association Agreement (SAA) and Interim Agreement directly and/or indirectly?

The SAA entered into force in 2009 as mentioned above, and the Interim Agreement (IA) had already taken effect from December 1, 2006. This Agreement allows the trade provisions of the SAA to come already into force. Under the IA, Albania also commits to aligning with EU standards in several trade-related fields. The EU expects that Albania will consequently profit from unlimited free access to the EU market. The courts could apply the IA and the joint decisions taken by the Joint Committee in implementing the IA, since it has now been in force for over six years. However, there is no information available about the direct effect of and references to the IA. It is possible that a case concerning the standstill provisions of the IA could emerge. For example, in Albania the excise duty on raki is lower than the duty on grappa, and this conflicts with Article 21 SAA on the prohibition of fiscal discrimination. One could imagine that an importer of grappa could make a

case out of it, referring to both Albanian constitutional law (Art 122) and to Community law. In other words, the Albanian courts could apply the IA directly or indirectly.

The Albanian Parliament adopted the Law on the implementation of the SAA and Interim Agreement on the initiative of the Albanian Government. The Law accepted a dualist approach, which is probably unconstitutional, but its constitutionality has not been questioned yet. The Law envisages that decisions of the Stabilisation and Association Council have to be either ratified by the Parliament or enacted in the form of an internal law, or transformed into an Act of the Government in order to have effect in the Albanian Legal order. The same can be said about the Joint Committee Decisions of the IA. In other words they are not directly applicable, although on the basis of the SAA itself, Acts of the Association Council, as such, are published in the Albanian *Official Journal* and therefore, according to the Constitution, the Albanian courts have authority to apply the SAA and IA.

2.3 What is the pre-accession effect of the EU Stabilisation and Association Agreement (SAA)?

Although there has not yet been initiated a case before a court in an EU Member State in which an Albanian national was involved and where a preliminary ruling is requested on the interpretation of the SAA or Interim Agreement, we could imagine that such a case could soon or later be decided since the SAA has entered in 2009 into force. For example, Article 46 SAA, holds the following:

1. Subject “to the conditions and modalities applicable in each Member State: -treatment according to workers who are Albanian national and who are legally employed in the territory of a Member State shall be free of any discrimination based on nationality as regards working conditions, remuneration or dismissal to its own nationals;”

The article does not give a right to legal employment. However, once the worker is legally employed he has the right of equal treatment with EU nationals regarding working conditions, remuneration and dismissal. Many Albanian nationals legally employed in EU Member States may enforce their rights before national courts in EU Member States.

Another example is Article 49 SAA on establishment, which guarantees equal conditions of establishment for Albanian and Community companies in the Community and Albania. These rights are more or less identical to the rights which Polish and Slovak nationals used to enforce their rights on equal treatment in relation to establishment. However, no case has yet been found where an Albanian national appealed before a national EU court on these articles of the SAA, or where a national EU court asked for a preliminary ruling on the interpretation of these SAA articles.

2.4 Has the judiciary already embraced the principle of supremacy and direct effect of European law? Do courts accept a different attitude for primary and secondary Community law?

As Albania is not yet an EU Member State, European law as such does not apply (except for the SAA and Interim Agreement). In the pre-accession stage, it is possible to ask whether courts apply these principles in relation to the SAA/IA Agreements, and whether they distinguish between the SAA itself, and the decisions of the Stabilisation and Association Council, as secondary association law. However as already stated above, no cases were found of either direct or indirect judicial application of the SAA or IA.

An indication of the possible attitude towards supremacy and direct effect of primary EU law in the Albanian legal order may be the judicial application of the European Convention on Human Rights and Fundamental Freedoms (European Convention), to which Albania is party. The Albanian Constitutional Court has developed a practice of applying the European Convention as a basis for invalidating Albanian Laws which were contrary to the European Convention provisions. The court also used the European Convention as an interpretative tool, and quoted the case law of the European Court of Human Rights. The supremacy of the European Convention in relation to Albanian laws did not prove problematic, as the Albanian Constitution expressly envisages supremacy of international treaties in relation to ordinary laws. The Constitutional Court has developed a well-established practice that non-conformity of Albanian laws with an international treaty represents a breach of the principle of the rule of law and is contrary to the constitution.

Integration with the EU, and potentially EU membership, authorises Albanian courts to directly apply secondary association law that is capable of creating direct effect subject to the criteria developed by the European Court of Justice (ECJ). Even if courts will interpret SAA as allowing direct application of secondary association law, they may not disapply Albanian legislation (in this case the Law on the implementation of SAA) by themselves. According to the Albanian Constitutional Law on the Constitutional Court and the Law on the Courts, they must stay the procedure, refer such question to the Constitutional Court, and await its decision. Non-recognition of the direct effect of secondary association law is contrary to the monistic constitutional choice of Albania, and is also not in line with the case law of the ECJ.

2.5 Does the judiciary recognise a rule of interpretation whereby national law must be interpreted in conformity with international obligations (principle of indirect effect)?

Both the SAA and the conditions for joining the EU require Albania to adopt the *acquis communautaire*. This implementation is not just accomplished by mere adoption of

compatible legal norms, but by conforming to the application of legal norms in practice. Thus, interpretation of Albanian Laws and other acts in the light of Community law to which Albanian law would have been adjusted could be interpreted as one of the obligations undertaken under the SAA. This obligation binds all state institutions, and therefore also the courts. Non-adherence to the principle of indirect effect in such a case represents a breach of the SAA by courts.

2.6 What is the impact of EU accession expected to be on the structure, procedures and practice (including workload) of the national courts?

Membership of EU itself will not cause any changes in the organisation of the judiciary in Albania. It is clear from the case law of the ECJ that EU law does not interfere with the organisation of justice in the Member States, provided that there is always a competent court that can hear actions based on Community law and that the judicial protection is empowered to offer effective protection according to European standards. Although an organisational change will not be necessary, the requirement for effectiveness of legal protection will provoke changes in the procedural sphere. Some new procedures and practices will also have to be accepted for the purposes of judicial cooperation with the EU, ie for use of the preliminary rulings procedure and possibly for participation in the field of judicial co-operation. The application of this ECJ case law demands two things from the national judges; firstly they need to be familiar with that case law and keep themselves informed, and secondly and equally importantly they have to be prepared to adopt the creative role demanded from them by Community law.

As to the first point, in order to become “European judges” the national judges need to be familiar with Community law, understanding and interpreting its legislative provisions and case law. For this to be achieved it is necessary to educate the entire Albanian judiciary in Community law. The current number of Albanian judges with sufficient training in EU law is insufficient.

EU membership requires human and civil rights to be respected. Respect for civil rights is enshrined in the Albanian Constitution and in the conventions that Albania has ratified. The Office of the Ombudsman is Albania’s main institution for civil rights, which has played an active role in monitoring the human rights situation.

3. ROLE OF THE EXECUTIVE (GOVERNMENT AND ADMINISTRATION)

3.1 Introduction

The government and ruling coalition consisting of the Democratic Party and the Socialist Movement for Integration remained in place and stable during 2012. In March and June

2012, a government reshuffle took place.

3.2 To what extent do central government and the administration implement and/or apply the SAA/IA Agreements?

The Albanian Government has adopted a national plan to implement the partnership priorities and the SAA. The plan has formed part of the new National Strategy for Development and Integration (NSDI). The NSDI will feed into the Integrated Planning System (IPS) through which national and donor resources will be allocated. Fulfilment of all the obligations stemming from the SAA represents the start of serious reforms to public administration and society as a whole in order to facilitate adjustment to the political, economic and legal standards of the EU.

The Ministry of European Integration (MEI), in cooperation with the Parliamentary Committee for European Integration, played the key role in the revision of the action plan to address the key priorities of the European Commission’s Opinion. The action plan has been improved by clarifying the content of the measures and specifying deliverables. A monthly monitoring mechanism was smoothly implemented. There has been progress in updating the National Plan for the Implementation of the SAA (NPISAA), and the plan has been approved by a Council of Ministers decision. There has been some progress in coordinating processes for aligning legislation with the acquis. The MEI has continued working on legislative gap analysis. An IT system for legal approximation (IMS) has been introduced.

3.3 What coordination mechanisms (between and/or within Ministries) have been envisaged for the preparation and implementation of EC/EU law?

In order to ensure the coordinated and timely implementation of the SAA, many mechanisms for coordination, monitoring and reporting have been set up. State administration bodies preparing legislative documents which harmonise the legislation of Albania with the *acquis communautaire* pursuant to Article 70 SAA are obliged to submit with the legislative Act a completed statement on the harmonisation and a parallel review of the conformity of the provisions with those of the relevant legal Community acts. This so-called compatibility statement gathers essential information in respect of the compatibility of a draft legislative proposal with the relevant SAA provisions, as well as with the relevant EU legislation. In order to achieve effective harmonisation, in addition to the compatibility statement administrative authorities fill out a table of concordance which is a parallel review of the conformity of the provisions of the (draft) proposal with provisions of the relevant EU legal acts. In April 2007 the Prime Minister of Albania passed a Decision on the Establishment of Working Groups for the Harmonization of the Albanian Legislation with the Acquis.

There has been only moderate progress regarding the

coordination of the EU integration process. Comprehensive and sustainable capacity development of the 35 inter-institutional working groups and further improvement of policy coordination among institutions is necessary. Policy-making and legislative drafting processes within ministries have suffered from a lack of analytical work, and there is not enough transparency or consultation with relevant stakeholders. Staff turnover and weaknesses in analytical capacity have impacted on the quality of legislation drafted. More attention should be paid to the implementation and enforcement of legislation.

4. ROLE OF THE NATIONAL PARLIAMENT

4.1 Introduction

Since the country's first pluralist elections in 1991, Albania has maintained a parliamentary democracy. The Albanian constitution provides the main institutional infrastructure for democratic governance. The country's 2009 elections, however, represented a major drawback in Albania's march toward more democratic norms, as the results produced a dangerous radicalisation between opposition parties asking for an investigation into alleged election fraud, and the governing majority refusing their requests. The failure to investigate existing allegations of corruption involving current ministers highlighted the continued collapse of an already weak rule of law. According to the Albanian Constitution the Assembly, the national parliament, is the highest body of state power and exercises oversight over the executive and institutions it establishes. The contested elections of 2009 and the subsequent boycott of the opposition have hampered the functioning of the parliament.

4.2 *Is the national parliament prepared for the legal approximation of national legislation with the EC/EU law? Are there any special instructions concerning committees for implementation of EU law?*

For purposes of the process of integration with the EU changes in internal structure and parliamentary procedure were introduced since 2004. These changes are reflected in the Law of 8 July 2004 named the Zela law (see 1.2.3 above). This law describes the responsibilities of the Council of Ministers in the EU decision-making procedures and the Law approximation process (Art 3). The Albanian Parliament has set up the *European Integration Committee* (CEI), which consists of a chairman, vice-chairman and members composed according to the proportional representation in Parliament. The European Integration Committee of the Albanian Parliament has a key role in the legislative process.

Progress was further made in the functioning of parliamentary procedures, with the adoption of a considerable number of Acts, including Laws, decisions, resolutions and declarations. In a significant number of cases these were

approved by consensus. Progress was also noted in terms of improving public consultation in the legislative process. Under its new chairman, the Committee on European Integration was actively involved with the Ministry of Integration in developing and monitoring relevant parts of the action plan.

However, further work needs to be done in order to improve the functioning of the Albanian Parliament. The working calendar of the Parliament does not always allow enough time for standing committees to review and conduct public hearings on draft Laws, which as a result are often adopted quickly to the detriment of their quality. Draft laws are often not accessible to the public. Further efforts are required to strengthen the parliament's oversight function, including through improved liaison with members of the government and written questions and answers. Some progress has been made in strengthening the administrative capacity of the Parliamentary Secretariat through training of staff and expert advice, including international experts.

4.3 *To what extent will the Albanian Parliament keep control over decisions taken by Ministers in the Council of the EU? What views are taken on this?*

There is political will to give the Albanian Parliament considerable powers in EU affairs, especially after the entry into force of the Treaty of Lisbon, which has strengthened the role of national Parliaments in EU decision-making. The Albanian Parliament will have at least an advisory influence over the government's position in the Council. The issue of a Parliamentary role in EU affairs is of huge importance not only for the democracy in the country, but also for effective EU membership.

Thus, as already mentioned, the public debate on the role of the Parliament and the government in EU affairs has been opened. It could be made part of the debate on the possible constitutional changes necessitated by EU membership.

5. EVALUATION OF ALBANIA'S APPLICATION FOR EU CANDIDATE STATUS

Attempts have been made to analyse and explain why the EU has refused several times to grant Albania EU candidate status. Firstly, an analysis and assessment of the Impact of EU Accession for Albania has been made for the constitution, judiciary, government and Parliament. Secondly, the main agreements and recent documents regarding Albania's application for EU membership have been reviewed.* The recommendations are based on the author's experiences, during the years 2006-08 when he was EU team leader of an EU project to Strengthen the capacity of the Albanian Ministry of European Integration.

5.1 *Introduction to the new accession approach of EU and its Member States*

Enlargement remains a key policy of the European Union. However, after the last accessions in 2007 the EU has strengthened its criteria for accession. This is the so-called new approach for accession which is now applicable to Albania. At a time when the EU faces major challenges, the enlargement process continues to reinforce peace, democracy and stability in Europe and allows the EU to be better positioned to address global challenges and pursue its strategic interests. The prospect of accession stimulates Albania to develop political and economic reforms, transforming societies, consolidating the rule of law and creating new opportunities for citizens and business. These reforms are necessary in order to receive the candidate status.

Strengthening the rule of law and democratic governance remains crucial if Albania is to come closer to the EU and subsequently assume the obligations of EU membership. The new approach to negotiations on judiciary and fundamental rights, and on justice, freedom and security, which results from the experience of previous accession negotiations, has put rule of law issues (including the fight against organised crime and corruption) at the centre of the EU's enlargement policy. The new approach provides for the above-mentioned issues to be tackled early in the enlargement process, and reaffirms the need for solid track records of reform implementation to be developed throughout the negotiation process, with the aim of ensuring sustainable and lasting reforms. The new approach envisages incentives and support to the candidate countries, as well as corrective measures, as appropriate. In the EU's new approach for accession the rule of law is now firmly anchored at the heart of the accession process. The Council also welcomes co-operation with Europol in this area, as well as closer interaction with Member States, and the Commission's intention to reinforce its assessments and reporting to the Council on organised crime for each Western Balkans country, on the basis of specific contributions prepared by Europol.

The importance of protecting, and ensuring enjoyment of, the full range of human rights is now underlined, including the rights of persons in Albania belonging to minorities, and without distinction as to sexual orientation or gender identity. The right to freedom of assembly, expression and association, and the importance of promoting a culture of tolerance, are also of key importance. Furthermore, the work on improving social and economic inclusion of vulnerable groups, including the Roma, should continue, in particular through the EU Framework for National Roma Integration Strategies.

On December 11, 2012 the Council welcomed the progress made by Albania to meet the 12 key priorities laid out in the Commission's 2010 Opinion. The 12 key priorities concern the following areas:

1. the proper functioning of Parliament;
2. adopting reinforced majority laws;
3. appointment procedures and appointments for key institutions;
4. electoral reform;
5. the conduct of elections;
6. public administration reform;
7. rule of law and judicial reform;
8. fighting corruption;
9. fighting organised crime;
10. addressing property issues;
11. reinforcing human rights and implementing anti-discrimination policies;
12. improving the treatment of detainees and applying recommendations of the Ombudsman.

The improved dialogue between the government and the opposition after the November 2011 agreement has allowed Albania to make good progress towards fulfilling the political criteria for EU membership. Albania has delivered on a set of reforms against the 12 key priorities, particularly those addressing the proper functioning of the Parliament, electoral reform and appointments of key officials. The European Commission assessed that Albania has met four of the key priorities and is well on its way towards meeting two others. Albania's continued constructive role in the region is welcomed.

However, good progress is not enough! The Council underlines the need further to intensify efforts, particularly in the areas of reform of the judiciary in order to strengthen its independence, efficiency and accountability; the fight against corruption and organised crime; and the protection of all minorities, as well as the implementation of reforms. The successful conduct of Parliamentary elections in 2013 will be a crucial test for the smooth functioning of the country's democratic institutions. Sustainable political dialogue and continued efforts in all the areas covered by the key priorities will remain essential to implement reforms necessary for Albania's EU future.

The opening of accession negotiations will be considered by the European Council, in line with established practice, once the Commission has assessed that Albania has achieved the necessary degree of compliance with the membership criteria and has met in particular the 12 key priorities set out in the 2010 Commission's Opinion. Sustained implementation of reforms and fulfilment of all the key priorities will be required for Albania to open accession negotiations with the EU and to receive candidate status. According to the Council the necessary degree of compliance with accession criteria includes the following requirements: conducting elections in line with European and international standards; strengthening

the independence, efficiency and accountability of judicial institutions; determined efforts in the fight against corruption and organised crime; effective measures to reinforce the protection of human rights and anti-discrimination policies, including in the area of minorities, and their equal treatment; and implementation of property rights.

5.2 What is the necessary degree of compliance with the accession criteria?

From the analysis of the Commission Progress Report 2012 it is apparent that Albania has not met all key 12 priorities. According to the new approach the EU Council is not yet satisfied with good progress and partial implementation of accession criteria. Taking into account the disappointing experiences with the accession of Bulgaria and Romania, the degree of compliance with the accession criteria has increased after 2007. The new approach, the EU Council and Member States require EU candidate countries to meet all the requirements in full. In the author's opinion that is the reason why Albania has not received EU candidate status.

The failure to receive candidate status is just a formality and not a tragedy. More important is the full implementation of the accession requirements by Albania which result in political and economic reforms, transformation of the society, consolidation of the rule of law, and the creation of new opportunities for Albanian citizens and business. 

Alfred Kellermann

The author was Team Leader in Tirana of an EU Project on the Strengthening of the Ministry of European Integration of Albania during 2006-08

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The Commission Opinion on Albania's application for Membership to the EU of 9 November 2010.

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