

# The constitutional and jurisprudential dimensions of the Stabilization and Association Agreement status under Albanian national law

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## Abstract

*This article analyses the status of the Stabilisation and Association Agreement in terms of its supremacy and direct implementation in the legal system of the Republic of Albania. The analysis has taken into account that the Stabilisation and Association Agreement itself is not only an international agreement but also an important source of EU law. In the view of the Albanian legal system, the articles of the Constitution of the Republic of Albania on the position of international law, the principle of supremacy, and self-execution were taken into consideration as two important principles. For this purpose, the authors used the method of desk research to identify these constitutional provisions and the literature of Albanian constitutionalists and authors of international law. Another method to achieve the purpose of the article is the case study, where the decisions of the Constitutional Court of the Republic of Albania relevant to the purpose of the article are the focus of the descriptive analysis.*

**Keywords:** SAA agreement, constitution norms, Constitutional Court, EU law.

## 1. INTRODUCTION

The Stabilization-Association Process is a new initiative that the European Union (EU) adopted in May 1999 for the Western Balkan countries, including Albania. This procedure, which was unveiled at the Zagreb Summit in November 2000, forms the overall political framework of the EU. Promoting regional stability and assisting these countries in the EU integration process were the goals of the EU's new approach toward the Western Balkans. The Stabilization and Association Agreement (hereinafter SAA), is the primary tool of the Stabilization-Association Process. It is founded on the same core values as the EU membership process.<sup>1</sup>

Formal opening of negotiations to sign the SAA with Albania took place in 2003. At the June 2003 summit in Thessaloniki, just three years after the Zagreb Summit, the European Union formally reaffirmed its intention to grant EU

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<sup>1</sup> The Parliament of the Republic of Albania, [www.parlament.al](http://www.parlament.al).

membership to every country taking part in the Stabilization Association Process. The primary component of this process, the EU-Albania SAA, was signed on June 12, 2006, and entered into force on April 1, 2009. The SAA, which is envisioned as a contractual arrangement with reciprocal rights and obligations between the parties, marks the beginning of a new and more developed phase of Albania's relations with the EU.

The Constitutional Court of the Republic of Albania (Constitutional Court) states that the SAA is a framework agreement for relations between the Republic of Albania, on the one hand, and the EU and its Member States, on the other. This Agreement was ratified by Law no. 9590 of 27.07.2006. Its objectives are to assist Albania in strengthening democracy and the rule of law, contribute to political, economic, and social stability in Albania and the region, approximate Albanian legislation to that of the Community, and assist Albania in completing the transition to a functioning market economy. Thus, the SAA is an agreement that has established a process of association between the parties to stabilise and prepare the Republic of Albania for eventual EU membership.<sup>2</sup>

The purpose of this article is to determine the status of SAA in the legal system of the Republic of Albania through the analysis of the constitutional norms and jurisprudence of the Constitutional Court.

## 2. INTERNATIONAL AGREEMENTS AS SOURCES OF EU LAW

International agreements of the EU as a source of Union Law concern the role of the EU at the international level. The EU may, within the sphere of its competence, conclude international agreements with third countries or international organisations.<sup>3</sup> These agreements are binding on the Union and the Member States and are an integral part of Union law.<sup>4</sup>

The EU's international agreements play an important role among the sources of EU law. In the entirety of the EU norms, they come immediately after the treaties and stand above the secondary EU law. These international agreements are essential tools for the Union's global engagement. As a major global player, Europe cannot confine itself to managing its internal affairs. It must also engage in social, political, and economic relations with third parties. As a result, the EU concluded agreements with other international organisations and non-member states, or "third countries" as they are referred to in international law. These agreements differ from trade agreements on specific products to treaties for increased commercial cooperation in the industrial, technical, and social fields.<sup>5</sup>

Association agreements with non-member states are among the most important in this group. These agreements are not limited to the simple regulation of trade policy. They include close political, economic, and legal cooperation as well as extensive financial assistance from the EU for the given country.<sup>6</sup> The legal basis for the adoption of these agreements by the Union is in Article 217 of the Treaty on the Functioning of the European Union which states that: *"The Union may conclude with one or more third countries or international organisations agreements establishing an*

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<sup>2</sup> Constitutional Court of the Republic of Albania, decision no. 30, date 02.11.2022, paragraph 74, pg. 24.

<sup>3</sup> Article 216 (1) of the Treaty on the Functioning of the European Union.

<sup>4</sup> Article 216 (1) of the Treaty on the Functioning of the European Union.

<sup>5</sup> Klaus-Dieter Borchard "ABC of EU Law", pg. 82.

<sup>6</sup> Pranvera Beqiraj (Mihani), "The European Union and Parliamentary Sovereignty, in the perspective of the jurisprudence of the Court of Justice of EU", Tirana 2018, pg. 165.

*association which includes rights and obligations of mutual, joint action and special procedure.”<sup>7</sup>*

These association agreements are presented as part of EU law and as international agreements at the same time. The author, Kellerman, claims that the Association Agreement has a unique normative status because it can be interpreted both as an act of Community law and as an international agreement ratified by an assembly of a state under the standard procedures for international agreements. In the latter case, the agreements signed by the Community become part of it, even though their texts do not have to be incorporated into the Community's internal law.<sup>8</sup>

### 3. THE STATUS OF SAA IN ALBANIAN NATIONAL LAW - CONSTITUTIONAL ASPECTS

Article 116 of the Constitution of the Republic of Albania (the Constitution), paragraph 1, defines the hierarchy of normative acts that have force throughout the territory of the Republic of Albania.<sup>9</sup> This provision places international agreements in the normative hierarchy and even gives them a determined place. They are placed immediately after the Constitution and before the laws and normative acts of the Council of Ministers.<sup>10</sup> They must be ratified by law and based on Articles 116 and 122, paragraph 2<sup>11</sup> they have precedence over the country's laws. Thus, in Article 122/2, the Constitution resolves any conflict between a ratified international agreement and domestic laws that conflict with it, in favour of the implementation of the former.

For the inclusion of ratified international agreements in the internal legal order, the publication of ratified international agreements in the Official Gazette of the Republic of Albania is a constitutional requirement. The Constitution recognizes the principle of direct application of ratified international agreements, except in cases where it is not self-executing and its implementation requires the adoption of a law.<sup>12</sup>

The Constitution has clearly stated regarding their implementation. Despite this, in practice, there is still a reluctance to refer domestic actions and operations to international acts. However, the judges have already broken the myth of interpreting their decisions only based on the law, also referring to the text of international conventions. In this process, they have the most important part.<sup>13</sup>

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<sup>7</sup> Article 217 of Treaty on the Functioning of the European Union.

<sup>8</sup> Alfred Kellerman, “Legal effects of Association Agreements with the EU for citizens of non-member countries”, Journal “E drejta parlamentare dhe politikat ligjore”, no. 41, 2008 cited in Xhezair Zaganjori, Aurela Anastasi, Eralda (Methasani) Çani, “The rule of law in the Constitution of the Republic of Albania”, Tirana 2011, pg. 66.

<sup>9</sup> Article 116, paragraph 1 of the Constitution: Normative acts that are effective in the entire territory of the Republic of Albania are: a) the Constitution; b) ratified international agreements; c) the laws; d) normative acts of the Council of Ministers.

<sup>10</sup> Ksenofon Krisafi, “The Albanian constitution and international law”, a special Bulletin, “5 years Constitution”, Shtëpia Botuese BOTIMEPEX, Tirana 2004, pg 101, cited in Pranvera Beqiraj, “Provisions on international law in the Constitution of the Republic of Albania: Principle of supremacy and direct application because of the accession of the Republic of Albania to the EU”, pg. 3.

<sup>11</sup> Article 122, paragraph 2 of the Constitution: “An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it.

<sup>12</sup> Article 122, paragraph 1 of the Constitution: “Any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing, and its implementation requires the issuance of a law. The amendment, supplementation and repeal of laws approved by most of all members of the Parliament, for the effect of ratifying an international agreement, is done with the same majority.”

<sup>13</sup> Aurela Anastasi, “The internationalization of constitutional law: The constitutional clauses of the integration of Albania”, POLIS 4 / NËRKOMBËTARËT DHE DEMOKRATIZIMI, pg.19, cited in Pranvera Beqiraj, “Provisions on international law in the Constitution of the Republic of Albania: Principle of supremacy and direct application in view of the accession of the Republic of Albania to the EU”, pg. 5.

The SAA has a unique normative status in that it can be considered both as an act of Community law and as an international agreement ratified by the Assembly by the traditional procedures for international agreements. In the latter case, the agreements signed by the Community become part of the Community, even though their texts do not have to be incorporated into the Community's internal legislation. In terms of hierarchy, the rules laid down in these agreements take precedence over secondary Community legislation.

Different perspectives on this issue have been discussed and expressed in the European legal and constitutional literature. However, we must also consider the historical context of these statements. Comparatively speaking, we found that international agreements had no legal precedence or direct effect in other Central and Eastern European countries where the constitutional framework was absent.<sup>14</sup> For example, before the constitutional amendments that allowed Bulgaria to join the EU, this law served only as a manual for interpreting and applying the harmonised articles. It was not implemented directly but through decisions of the Stabilisation and Association Council. The national courts also made interpretations, referring to local legislation for guidance. Before their respective constitutional amendments, Romania, Slovenia, and Slovakia had also pursued similar cases.<sup>15</sup>

Qualifying as an international agreement, the SAA will be subject to the constitutional provisions on the procedure for incorporating classic international norms into the domestic legal system, as well as those that determine the position of these norms in our domestic law, specifically Article 116, 121, 122/1,2 and 131/a of the Constitution. The content of these constitutional provisions has been discussed above. Regarding the procedural constitutional criteria, the SAA has been ratified by law of the Parliament and is part of our legal system after its publication in the Official Gazette of the Republic of Albania. Concerning the principle of direct application, it is an act that will be applied directly after ratification.

According to the principle of supremacy, according to the Constitution, any law that is adopted since the entry into force of the SAA must be under this agreement. The existing laws should either be repealed or those articles that conflict with the SAA should be amended. This clause of the supremacy of Community law, in this case, the SAA over national laws, is under the jurisprudence of the Court of the EU. In this case, the judge of the ordinary courts must apply the SAA instead of the national law.

#### **4. THE STATUS OF SAA IN ALBANIAN NATIONAL LAW – THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT**

As mentioned above, the SAA is an act of Community law in addition to an international agreement, according to author Kellerman, whose view is also supported by Albanian constitutionalists. Community norms cannot have a direct impact on society unless the jurisprudence of the Court of Justice is taken into account. Although Albania is not currently obliged to follow this practice, Albanian courts can rely on it as a basis. The decisions listed below represent some of how the Constitutional Court has acted. As a result, when European or Albanian companies challenge the legality of the

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<sup>14</sup> Alfred Kellerman, "Legal effects of Association Agreements with the EU for citizens of non-member countries", Journal "E drejta parlamentare dhe politikat ligjore", no. 41, 2008.

<sup>15</sup> Alfred Kellerman, "Legal effects of Association Agreements with the EU for citizens of non-member countries", Journal "E drejta parlamentare dhe politikat ligjore", no. 41, viti 2008 cited in Xhezair Zaganjori, Aurela Anastasi, Eralda (Methasani) Çani, "The rule of law in the Constitution of the Republic of Albania", Tiranë 2011, pg. 66.

application of quantitative restrictions, competition issues, customs duties, etc., Albanian courts directly invoke the SAA and even EU law.<sup>16</sup>

Although the Constitutional Court dismissed the case in its ruling. 24, published on 07.04.2009, this court cited the SAA. The decision, in this case, was based on Article 131/c, which deals with "the compatibility of normative acts of central and local authorities with the Constitution and international agreements". The Council of Ministers' Decision no. 52 of 14.01.2009 "On the quality of fuel for road vehicles and generators sold as gas oil (diesel) produced from refined crude oil extracted within the borders of the Republic of Albania" was the specific act that was challenged. The private party in this case claimed before the Constitutional Court that it was entitled to relief under Article 131 of the Constitution and Article 134, point f of the first paragraph:

*"The decision of the Council of Ministers is contrary to the GATT (General Agreement on Trade and Tariffs) of the World Trade Organisation and to the SAA because it favors a private company with a dominant market position for goods which, regardless of where they are produced, are used for the same purposes and cause the same environmental problems. ".<sup>17</sup>*

The petitioner argues that the decision of the Council of Ministers under review violates the principles of a free market economy and the free movement of goods, which are guaranteed by the SAA itself. The Constitutional Court reasoned as follows, referring to Articles 33/2 and 42 of the SAA:

*"Based on this Agreement, the right of the State to intervene in the regulation of the exercise of economic freedom recognizes a new limitation set out in Article 33, paragraph 2, which provides: From the date of entry into force of this Agreement, in trade between shall not impose any new quantitative restrictions on imports or exports or new measures having an equivalent effect or further restrictions on existing restrictions on the Community and Albania..<sup>18</sup>*

According to the above provision, the State may restrict the exercise of economic freedom to the extent that no further restrictions are placed on existing trade between the European Community and Albania. However, even this limitation of state competence finds an exception in Article 42 of this Agreement, which states that "This Agreement does not preclude prohibitions or restrictions on imports or exports of goods in transit which are justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures of artistic, historic or archaeological value, or the protection of intellectual, industrial and commercial property, or rules relating to gold and silver. Such prohibitions or restrictions shall not constitute arbitrary discrimination or indirect restrictions on trade between the Parties."<sup>19</sup>

The Constitutional Court also notes that national legislation prohibits the marketing of diesel D2 fuel and sets uniform quality standards for all diesel D1 operators. Contrary to the legal prohibition, VKM allows the marketing of Diesel D2 fuel, which is obtained by refining crude oil extracted from sources in the Republic of Albania, as well as the marketing of Diesel D1 fuel, which is produced in the Republic

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<sup>16</sup> Alfred Kellerman, "EU Enlargement and the Constitution of Central and Eastern Europe", Cambridge University Press, 2005, cited in Xhezair Zaganjori, Aurela Anastasi, Eralda (Methasani) Çani, "The rule of law in the Constitution of the Republic of Albania", Shtëpia Botuese Adelprint, Tirana 2011, pg. 67.

<sup>17</sup> Decision of the Constitutional Court of the Republic of Albania, no. 24/2009, pg. 3.

<sup>18</sup> Decision of the Constitutional Court of the Republic of Albania, no. 24/2009, pg. 9.

<sup>19</sup> *Ibidem*, pg. 9.

of Albania under more favorable quality conditions than imported fuel. As a result, the Constitutional Court came to this conclusion.:

*"The contested decision amends Albanian law by introducing an exception prohibiting the import of one product and promoting the domestic production of another. The Court finds that the contested decision, which amends the legislation governing the import of diesel fuel D2 and the trade in diesel fuel D1, imposes a total ban on the import of diesel fuel D2 and makes it more difficult to trade in diesel fuel D1, even if those materials are imported from countries which are members of the European Community. As a result, trade between Albania and the European Community is restricted."*<sup>20</sup>.

In summary, the Constitutional Court found that the Council of Ministers' decision in question violated Article 33(2) of the SAA with the European Community based on the aforementioned reasoning.

## 5. CONCLUSIONS

For this article, some conclusions drawn from its analysis are important. First, the SAA is part of the legal system of the Republic of Albania. Its status is regulated by constitutional norms on international agreements, from its incorporation into Albanian legislation to its supremacy over national laws and normative acts, and its direct implementation. Such conclusions are important and should also be taken into account by the ordinary courts when resolving disputes that come before them, when and if they can refer a case to the Constitutional Court based on Article 145/2 of the Constitution, etc.

Second, concerning the jurisprudence of the Constitutional Court, we can conclude that it has been consistent in its decisions on the status of the SAA in the Albanian legal system. As above, the Constitutional Court in its case law has determined whether a law or a normative act conformed with an international agreement, specifically with the SAA. Even in subsequent decisions, the Constitutional Court has consistently adhered to this body of precedent to uphold the status of the SAA under Albanian law; we refer to Decision No. 29 of 02.07. 2021; Decision no. 2022; Decision no. 21, 18. 2023.

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<sup>20</sup> *Ibidem*, pg. 9.

11. Decision of the Constitutional Court of the Republic of Albania, no. 24, date 2009.
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