



Research Article

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The challenges of the European and Albanian legislation on the procedures for the surrender of persons wanted by criminal justice

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Abstract

When we talk about the challenges of the European and Albanian legislation on the surrender of persons wanted by criminal justice, the picture of the Albanian law and the operation of the law comes to mind. But today more and more measures are being taken to develop the legislative power and its functioning. These measures have also been taken in drafting and in administrative and judicial execution.

Today, there is more and more talk about justice reforms; such are the challenges that Albania faces when it comes to cooperation with the EU in relation to the procedures for handing over persons wanted by law. It is such a challenge, because Albania's legislation must be in line with that of the EU. When we talk about compliance or *Acquis communautaire*, we mean the interoperability that the legislative, judicial and executive powers must follow.

Talking about the justice reform in Albania, we understand and analyse more closely the issue of corruption. The globalization of criminal activities has created a need to strengthen international cooperation. The investigation, prosecution and control of crime cannot be confined within national borders.

Keywords: Procedure, challenge, corruption, legislation, rule of law.

1. Introduction

During the last decade, justice reform has been one of the main areas where the OSCE Presence in Albania has focused. In addition to the continuous support of legislative initiatives, the presence has also made recommendations for the improvement of the justice system, based on systematic evaluation of trials. The work will analyse the cooperation of the Albanian state with various international organizations, which have a legal character in the field of criminal cooperation. In this meeting, the multilateral cooperation between Albania and other European countries and the role of the EU will be discussed. The globalization of criminal activities has created

a need to strengthen international cooperation. The investigation, prosecution and control of crime cannot be confined within national borders. To continue further with the agreements related to the Balkans, which we will see as Acts not only in the context of international law and cooperation, but also as agreements which allow us to clearly see the challenges that the EU faces in the context of the surrender of convicted persons. The EU sees this procedure as a responsibility to strengthening new democracies.

In recent years, criminal activity - and especially organized crime - has crossed national borders, becoming more and more a challenge at the regional and international level. In such conditions, the ability to immediately respond to the need for international cooperation is very important, given the nature and consequences of the crimes. States have intensified judicial cooperation both at the regional and international level in order to be able to effectively fight the cross-border operations of criminal groups, without forgetting the main act on the procedure for the surrender of convicts, which will be discussed specifically.

2. Methodology

Literature analysis is a very important process, which, as a rule, should precede any study. This helps the researcher to correctly orient himself in the issues that will be the objects of study and to formulate the objectives, the research questions (Kocani, 2009). The information provided by the literature serves to orientate better in the process of analysis and discussion of the results. It can be used successfully to articulate similarities and differences. Meanwhile, during the analysis of literature data, as suggested by Creswell (1994), it is necessary to keep in mind as follows:

- Correct presentation of published results;
- To highlight the connections between the issues that are analyzed in the literature and those are the object of the study;
- To analyze the differences and similarities between them and the results of the study.

During the first phase, the complete transcript was read and interpretation attempts were made, exploring them from beginning to end to find meanings. In the second stage, coding was done by finding the central ideas found through the data. According to the same authors, the organization of the data was done by creating an index or a codebook, in which the data could be found easily when they were required. Then initial codes were created which led to the construction of categories, themes and sub-themes with issues identified in the recognition process. In order to enable the use of literature in accordance with these standards, Creswell (2002) recommends that, in the process of studying the literature and its use in function of the goals and objectives of the study, the following algorithm should be followed (Kocani, 2009):

- First step: Identifying the most frequently used issues and terms in the literature;
- Second step: Literature selection;
- The third step: Consulting the literature and identifying the titles and issues that

best fit the subject of the study;

- Fourth step: Organization of selected literature;
- Step Five: Writing the literature review chapter. Referring to the goals and objectives of this study, secondary data can be considered very important information.
- Depending on the purpose, they can be classified into:
 - data of research and scientific studies;
 - data of reports, analyses, strategies, action plans, programs and/or projects, statistics, statistical surveys, etc. numerical data, statements, considerations, judgments, results on the suitability of immigrant children in Albanian schools, conclusions, recommendations, etc., are obtained from published research and scientific studies, which must be used according to known and generally applicable rules in scientific studies. Literature data will serve as the main source to understand and determine what they are:
 - The main issues that are currently the object of study in contemporary research;
 - What research methodology is used in conducting these studies;
 - What are the most effective methods and instruments used in qualitative and quantitative studies, in this field of research;

The analysis and results that will be obtained from the review of the information communicated in the literature of the time, will serve as orientation for the process of teacher-parent-student cooperation. From this information, the reference data that will be used during the data analysis and judgment of the results in our research will be obtained. It will serve to perform the comparative analysis between the findings and those published by other authors.

3. Literature references

Today, there is more and more talk about justice reform in Albania, such is the challenge that our country faces when it comes to cooperation with the EU in relation to the procedures for handing over persons required by justice. When we talk about compliance or *Acquis communautaire*, we mean the interoperability that the legislative, judicial and executive powers must follow. So, we can call it the harmonization of internal laws with the *Acquis communautaire*. Starting from the very word "reforms" in law, we see that its meaning and prescription is not only legislative-administrative, but also it includes the general public, who are always interested in state interactions in terms of reforms, including the challenges of European legislation and the Albanian one on the procedures for the surrender of persons wanted by criminal justice. There is a wide public perception that the justice system is affected by the phenomenon of corruption and external influence in the delivery of justice. Corruption, the lack of transparent practices, the prolongation of processes and the non-implementation of court decisions have influenced the public's negative perception of the transparency of the judiciary (Fondacioni Shqipëria e Hapur për Shqipërinë-Soros, 2014). The overall goal of the reform process is to create a reliable, fair, independent,

professional and service-oriented, open, accountable and efficient justice system that enjoys public confidence supports sustainable development socio-economic of the country and enable its integration into the European family (Komisioni i Posaçëm Parlamentar për Reformën në Sistemin e Drejtësisë, 2015). From the analysis, justice reforms are implemented with the aim of creating a state of law with equality, functional laws, functional society as well as a functional and well-governing administration. This reform brings to the history of the Albanian state a turning point in its politics and legislation in the framework to get closer and adapt as much as possible the rule of law and for a transparent society and for the public.

All this brings an evolution in the justice system. Starting from the above-mentioned points of the rule of law and its functioning, we can analyze that the example of the rule of law in Albania has not functioned in a transparent manner, therefore the justice reform would enable its functioning. Corruption in the administration means that workers have not only used their position to benefit but have also used it by making decisions that are contrary to the law (this has come as a result of accepting money for various affairs). Also, corruption is not only in the justice system, but also in the whole administration. Respect for Human Rights does not mean only their respect and the assimilation of the laws of this convention in Albania's legislation, but also their implementation taking into account the Judicial practice of Human Rights.

Against these major problems and challenges, the need for a fundamental change in the justice system is natural (Albanian Parliamentary Commission for Justice reforms, 2015). This need dictates a deep and sustainable constitutional and legal reform, to effectively respond to today's challenges and guarantee the country's European future. Efforts for transparency and justice have recently been the focus of Albanian politics, thanks to the interest of the international community, the EU and the United States of America, and now the state institutions and politics is involved in the chaos of lack of law and transparency. The political pact for the initiation and finalization of the decriminalization law that has already taken place and the legal deadlines have been determined until the end of March 2015. Politicians, officials, parliamentary and local elected officials, must resign if they are affected by the decriminalization law. Justice reform, i.e. the decriminalization law, will pave the way for legal initiatives to change the constitution.

4. The nature of the EU and the promotion of democracy

The EU operates on the basis of treaties signed by member states. These treaties also serve as the legal basis for the establishment of EU institutions. The EU can act only on the basis of the powers given to it by the treaties, while the changes that can be made to the treaties require acceptance and ratification by each signatory state, based on their national procedures. Every social organization has a constitution. The constitution is the instrument that defines the structure of a political system. It defines the relations of different parts with each other, the common objectives as well as the rules for the

formulation of binding decisions. The EU constitution has the obligation to respond to the same issues as the constitution of a state, but it is specific, as the EU is a union of states, which has also been assigned specific tasks and functions. In a member state, politics is shaped by two essential principles, the rule of law and democracy. EU activities must have legal and democratic legitimacy. They are based on the elements on which the Union was founded, its structure, the way it operates, the position of the member states and their institutions as well as the position of the citizens. Any discussion of legal nature of the EU will have to begin with its characteristic features. The legal nature of the EU has been determined by two court decisions since the time of the European Community. They are still valid today.

The question arises, what does democracy include as a notion? According to the rationale, but also according to different literature, democracy includes the rule of law, the electoral system, well-functioning governance, the sovereignty of the people, the conditions for free elections. Therefore, the nature of democracy is diverse. We will analyse each of the above-mentioned concepts to understand more clearly the diversity of democracy. First of all, we must clarify the rule of law terms which are widely used today in the political and legal literature. Both terms have the same meaning, express the same concept, that of the close and reciprocal connection between the state and law. This connection is expressed very clearly in article 4, point 1 of the Constitution of the Republic of Albania: *"the law constitutes the basis and limits of the activity of the state"*. Perhaps due to the constitutional reference, in Albania it seems that the expression "state of law" has gained citizenship. The definition of the State of law varies according to authors and eras. The rule of law is first of all a theoretical model of the organization of political systems. It has become a fundamental topic of politics since it is considered one of the main characteristics of a democratic regime, but it is not necessarily a democratic regime (Rezler, 2013). In general, a State of law is not necessarily democratic, but every democratic State is a State of law. The rule of law thus appears as a first stage in the formation of a democratic State (Andersen, Sven, Eliassen and Kjell, 2013).

5. Albania's legal framework and multilateral conventions with EU countries

Albania belongs to the countries that have a civil law system where the main legal principles are codified, however the legal framework is also supported by judicial precedent. The principle of cooperation between states is emphasized in the preamble of the Constitution of Albania where it is stated that *"justice, peace, harmony and cooperation between nations are among the highest values of humanity"*. The constitution also guarantees the essential principles of applicable and important criminal law in judicial cooperation. The Constitution sets out minimum rights and guarantees for persons under criminal investigation including extradition, extrajudicial punishment, the right to be heard, the presumption of innocence, *ne bis in idem* (punishment twice for the same crime), and confidentiality (Kamolli, Kadribašić, Marković and Avdi, 2019).

Before moving on to multilateral extradition conventions, we must describe and take a closer look at Albania's legal framework. The conduct of civil society is regulated on the basis of numerous codes of the Albanian state, such as:

- Criminal Code;
- Criminal Procedure Code;
- Law on Jurisdictional Relations with Foreign Authorities in Criminal Cases;¹
- As well as the main legal acts for extradition;
- The Republic of Albania has ratified the European Convention "On Extradition" and its first two additional protocols, with the following reservations and declarations:

§ pursuant to point 1, article 2 of the Convention, Albania does not recognize the minimum limits of the measure of imprisonment for the effect of extradition. This declaration is valid only under conditions of reciprocity;

§ pursuant to letter «a», point 1, article 6 of the Convention, Albania refuses the extradition of its citizens, except for cases where it is provided otherwise in the international agreements to which Albania is a party;

§ pursuant to letter «b», point 1, article 6 of the Convention, Albania with the term "citizen" also understands "persons with dual citizenship", when Albanian citizenship is also included;

§ pursuant to point 1, article 7 of the Convention, Albania does not allow the extradition of persons who have committed criminal offenses in the Albanian territory or outside it, when the offense was committed to the detriment of the interests of the Albanian state or Albanian citizens, unless various agreements with the interested party. This declaration is valid only under conditions of reciprocity;

§ pursuant to point 2 of article 12 of the Convention, the request for extradition must be accompanied by the original or certified text of the law that will be applied to the extradited person;

- § pursuant to point 2 of Article 19 of the Convention, when the person who is requested to be extradited is serving a sentence for another crime, in the case of extradition, he is allowed to serve the sentence in full in the requesting country. This declaration is valid only under conditions of reciprocity;

- § pursuant to letter «a», point 4, article 21 of the Convention, in the case of air transit that does not foresee a landing in the Albanian territory, prior notification is not necessary. As far as internal acts are concerned, the main laws related to extradition in Albania are: The Constitution of the Republic of Albania, which provides for the basic norms for extradition and the application of international law;

The Criminal Code and the Code of Criminal Procedure, which provide for the main material and procedural norms related to extradition; as well as law no. 10193, dated 3.12.2009 "On jurisdictional relations with foreign authorities in criminal cases", amended by law no. 100/2013, dated 18.3.2013. The globalization of criminal activities has created a need to strengthen international cooperation. The investigation, prosecution and control of crime cannot be confined within national borders (Adams,

2003). International judicial cooperation in criminal matters has a strong basis in multilateral agreements, which define legal aid provisions for the judicial authorities of countries to facilitate cooperation especially in the fight against organized crime. These multilateral agreements provide the necessary legal and practical information for the judicial authorities of their country, as well as for the relations and judicial authorities of other countries. All international conventions and agreements, after ratification by law, become part of the domestic legal system and prevail over domestic law in case of conflict or incompatibility. Albania has signed several important UN Conventions and Resolutions as well as Council of Europe (EC) Conventions and Agreements.

As we see Albania has already ratified various conventions and laws on the procedure of handing over wanted persons. Analyzed from this point of view, we can say that for the Albanian state, one of the challenges to cooperate with EU countries is the adaptation of EU to the local ones and this starts not only with the *Acquis communautaire* but also with the reforms that Albania is executing in the field of law. The reforms with this procedure are directly related to the good functioning of the law and the non-corruption of the persons who directly execute the procedure of handing over the persons who are wanted. The question that arises at this point is do we have enough qualified personnel to manage time and implement this procedure correctly and without corruption?

Regarding the challenges of European legislation, we can say that the main point is the trust that the institutions of the Albanian state have given so far. This is one of the main points in terms of challenges, since trust in the institutions of Albania is very low. The EU has increasingly focused on the reforms that Albania has undertaken and is undertaking for transparency, striving to increase Institutional trust. Also, the EU is more and more present in these situations by sending various commissioners to monitor the progress of the extradition procedures of persons convicted of criminal offenses.

6. Conclusions

Albania is increasingly seeking to adapt its legislation with the EU criteria's. The nature of the EU is such that it requires transparency, cooperation and fairness. The Albanian state has ratified laws, acts and various regulations within the framework of procedures with the EU, but not only that of the regional one. More and more important and transparent steps are being taken to create and increase the trust of the Albanian institutions not only among the public but also that of the EU.

As we analyzed above "the procedures for the surrender of persons wanted by criminal justice" require time not only from the Albanian state but also from the EU. It takes time to achieve professionalism by training the legislative administration not only with daily training but also with different specializations within the framework of criminal procedures.

Cooperation between parties is also required. This is done by having transparent and

non-corrupt institutions with the aim of a better rule of law and democratic state.

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