

The Process of Denationalization in the Republic of Albania from the Perspective of International Law and in the Light of the Country's Accession Process to the EU

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ABSTRACT--- *The study requires reforming and improving the legal framework, but above all the institutional framework to enable the execution of judicial decisions as part of the right to a fair trial, as well as the importance and consequences of non-enforcement. Satisfactory implementation of judicial decisions would testify for the well functioning of the rule of law and its basic principles, a fact which is very important especially in Albanian society, also in the context of integration into the European Union standards.*

Albania is reforming its society and political mentality to better-fit new needs and responsibilities toward the European Union and western values the country always dreamed. Nevertheless, the political mentality of the past, which today is part of the process of political reformation, is slowing the process of integration toward western values. Political forces somehow are resisting the upgrade of their political mentality to these newer western political concepts. Albania had made big steps reforming the economy, and the political class is committed in making the country desirable for foreign investors as well as creating comforts for domestic ones.

A successful integration is occurring, although several challenges need to be considered in order to fasten this process. Among these issues are the reform of political thought to approach standards offered by western institutions, the objective evaluation of Public Administration' role in offering a safe and stable government policy management pointing to the professionalism while depoliticizing different structures of public services, the implementation of property rights and effective economical and legal reforms against the corruption while restoring trust and confidence to the Albanian society.

Keywords: Albania reforms, Public administration, Decentralization, Management Human rights, Court, EU Criteria

1. INTRODUCTION

Reforming the justice system has been the promoter of change and adjustment sanctioned way. The aim of this paper is the study of the creation and operation of a new field of decision-making, such as the Administrative Court as a court of independent and impartial, established under the law and able to meet the requirements of the development of a fair trial. Also studying in comparative plan the models of this court that are apply to other European countries. *Dumi A, MJERSS 2013,*

The study aims to highlight the best sides that can be implemented for the model that is selected and approximation with the "acquis communautaire" in the context of integration. Contributing to the creation of theoretical conditions and more efficient ways, to achieve the adoption of European law, in general consist in administrative Europeans in particular that in the Albanian interior. A successful integration is occurring, although several challenges need to be considered in order to fasten this process. Among these issues are the reform of political thought to approach standards offered by western institutions, the objective evaluation of Public Administration' role in offering a safe and stable government policy management pointing to the professionalism while depoliticizing different structures of public services, the implementation of property rights and effective economical and legal reforms against the corruption while restoring trust and confidence to the Albanian society.

Implementation of human rights is a key element for democratization and showing the operation of society and the development of the rule of law. ¹The rule of law as one of the fundamental principles of a democratic society contains in itself the obligation of public authorities to implement commands or judicial decisions final. One of the main rights which constitute the core of this paper is "The right to a due legal process", which is enshrined in Article 42 of the Constitution of the Republic of Albania and Article 6 of the European Convention on Human Rights and Freedoms . Each individual must be familiar with his right to a fair trial which guarantees the right of individuals to fair hearing and adjudication of the case by the court, but not only. For this reason the last instance for reviewing claims for alleged violations of due process is the Constitutional Court. Regular process forms the basis of individual complaints which are reviewed by the Constitutional Court.

1.1 Albania and the process of integration

Albania is making big steps in the process of integration toward western institutions and organizations. The domestic political factor plays a leading role in Albanian society as an indicator of expressing the willingness to help the process of integration through well designed reforms. However, the resistance of political forces, especially those with direct or indirect heritages from the old political class, is preventing the transition to newer western political concepts of doing politics. The Enlargement Strategy says that a full implementation of obligations deriving from the SAA constitutes the sole guarantee for passing to other phases proceeding Albania's membership in the EU. Issued two months after the publication of the European Commission Report and of the Enlargement Strategy, this study deals with key elements of these documents, analyzing to what extent the recommendations produced therein are translated into priorities and tangible actions by the Albanian politics.

1.1.1 The steps that are followed to the functioning of the Court Administrative

The existence and functioning of the rule of law is based on an important principle which is of the supremacy of law, the principle of separation and balance of powers. Legal review of administrative decisions by independent courts is an accepted democratic principle, present in major European practices and an important contribution to ensure order, particularly to protect individual rights from the administration. The necessity of creation of a new administrative court, begat as the need of deficiencies, delays and crawling that occur for administrative disputes at the relevant sections, near the district courts.

For this reason the law No.49/2012 "On the organization and functioning of Administrative Courts and administrative disputes" sets binding rules for administrative adjudication entities, state bodies, legal entities and citizens regarding administrative disputes, enforcement of administrative judgments, as well as the organization of the administrative courts.

The Albanian government should work hard to build the administrative capacities in compliance with the Madrid criteria-through lawful and transparent recruitments of specialized staff in universities and prestigious institutes, providing for continuous training schemes, implementing the civil service legislation, and more specifically implementing the Civil Service Commission and the Appeals Court decisions. It should also take measures to judge the persons that have caused damages to the state budget due to violation of the civil service legislation

² Reforms to improve democracy requires leadership from within the country as a prerequisite in building the political will for reform as very important for consolidating democracy and strengthen ties with European Union and distancing the society from its troubled past.

Turbulent historical path and authoritarian monarchy regime

¹ Vendim i GJEDNJ *Hasan dhe Chaus kundër Bulgaria*, Nr. 30985/96, pg 87

² Any country seeking membership of the European Union (EU) must conform to the conditions set out by Article 49 and principles laid down in Article 6(1) of the Treaty on European Union. Relevant criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Union in 1995. To join the EU, a new member state must meet three criteria: political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights, and Respect for the protection of minorities; economic criteria: existence of a functioning market economy and the capacity to cope with pressure and market forces within the Union; acceptance of a Community acquires: ability to take on the obligations of the membership, including adherence to the aims of political, economic and monetary union.

Albania, located in South East Europe, has traveled a turbulent historical path. For 500 years, it was part of the Ottoman Empire, and only in the beginning of 20th century started to design the frame of an independent country. It has been argued that Albania knew little of liberal democracy before the communists took power after World War II (Elbasani 2004), but the authoritarian monarchy established in the mid 1920s, brought an important contribution in shaping the Albanian Constitution and enriching the legislative body with western concepts and standards. The former King Zog I (1928-1939), engaged a group of French, German, and Italian lawyers and constitutionalists not only to help the Albanian institutions to improve their institutional culture, but also to build the fundamentals of the Albanian Constitution.

“Zog's monarchy brought stability to Albania and the king organized an educational system. He also attempted to modernize the Albanian military, though the costs involved in this project were high. As King he was, honored by the governments of Italy, Luxembourg, Egypt, Yugoslavia, France, Rumania, Greece, Belgium, Bulgaria, Hungary, Poland, Czechoslovakia and Austria (*Ahmet Zogu Zog I-King of the Albanians 1856-1961*. UK online website 2009)

There will be sufficient existence of a legal framework, which simply affirms what is most important are the mechanisms and instruments necessary to ensure the implementation of these norms. If legal norms do not apply then their existence would have no value.³ The right to access to court would be illusory if the legal system or its implementation in practice would allow that a final court judgment remain ineffective and unenforceable for a very long time. As noted in internationally recognized documents, full implementation of effective and efficient judicial decisions is essential for states in order to create, strengthen and develop a justice system respectful by all. In addition, when individuals don't trust in the enforceability of decisions, they are likely to rely less on the court for the resolution of disputes and as a result can be returned to other private means to seek justice.

Western European values have always been welcomed by Albanian traditions and culture and, the revival of those traditional values in the new Albanian society is the right approach to integration. The communist regime that took power right after WW II tried to impose artificially the proletarian way of management. Those new ideas were embraced quite successfully by the poorest class of the society with the promise of equality and fraternity in sharing the goods of the society and, fulfilling their dreams of becoming land owners.

In imposing those communist theories, exported from the Soviets and after their example, the political class initiated a reign of terror against rich class and people who did not share the same communist vision in governing the country. The Communist Party adopted a dictatorship that resembled a rigid Stalinist version of communist regimes (Elbasani 2004, 33). Thousands were killed, and thousands of others were imprisoned. Most of these were intellectuals who had studied in European Universities and who opposed the communists by explaining to the society that the form of the government should be established by free elections of a pluralistic democratic society.

After silencing the political opposition, the communist leadership imposed a total obedience to its rule in Albanian society, and extended control over all aspects of social, political, economical and cultural life (Goldman 1997). In mid 80s, the total isolation of the country from the foreign international relations and the policy of self-reliance reached paranoiac levels (Elbasani 2004, 33). The fall of the Berlin Wall found the Albanian communist regime struggling to deal with changes, even though the student movement against the communism has reached its peak.

2. LITERATURE REVIEW

The first free elections were held in Albania in March 1991, but the Democratic Party, even though it won a respectable amount of votes confirming the irreversibility of the democratization process (Goldman 1997), could not get enough to form the majority, leaving in power the old Communist Party. In 1992, after one year of continuous street protests and populist movements, the country went through early elections, and the Democratic Party won, giving the country its first pluralist parliament after 48 years of communism.

H. 1 - Problems and delays in the execution of court decisions, are dedicated to bureaucracy and indifference of state institutions and supervisory bodies, including to the private sector, pressure of vertical and horizontal interference of political power in the execution of court decisions, incompetence, lack of professionalism, nepotism and personal

³ *Rezoluta e Konferencave të Ministrave Europiane të Drejtësisë, 4-5 tetor 2001. Marrë nga rekomandimi i Komitetit Europian për Bashkëpunim Ligjor lidhur me zbatimin e vendimeve gjyqësore të vendeve anëtare të Këshillit të Europës.*

interests of the bailiff staff, state and international bodies, lack of cooperation and coordination of institutions with bailiff offices, whose omission is a serious obstacle to unjustified even to non-execution of court decision.

Albania presented its application for membership of the European Union on 28 April 2009. Following a request by the Council, the Commission submitted its Opinion on Albania's application in November 2010. In December 2010, the Council endorsed the Commission Opinion's recommendations. In its conclusions, the Council noted that the opening of accession negotiations will be considered by the European Council, in line with established practice, once the Commission has assessed that the country has achieved the necessary degree of compliance with the membership criteria and, in particular, has met the key priorities³ set out in the Commission's Opinion. The Commission's 2012 progress report, like that of 2011, focuses on implementation of these key priorities. (Source: *Albanian Progress Report 2011*)

H 2 Need for reform of political thought.

While the establishment of a pluralist democratic political system was an historical moment after five decades of imposed-value society, the NATO membership in 2009 was a major indicator of political change. With its NATO membership and the willingness to be part of the European Union, Albania is reforming its society and political mentality to better fit the new needs and responsibilities. "Most important is that the elites, as well as the people, have shown a striking consensus on the issues of democratization and Euro-Atlantic integration." (Nation in Transit, *Freedom House report*. 2008)

Being unique in all Europe, while installing a very unique way of communist management, Albania built a steady mono-party mentality of leadership, also shaping authoritarian leaders and managers in all the society levels including a large politicized public administration. Albania and its complex history are facing challenges of political thought and political class reformation. Certain parts of society that support or should support the main lines of political leadership in overcoming the old political school obstacle are those who continue to feed political class with a resistance mentality.

Although the abandoning of the old policy is clear indicator of secession from the Communist leadership concepts, the current domestic political factor is inhibiting the country's political integration. The update of the political class new elite, manning away from the old traditional model, is more than a necessity. The old model that is still dominating in the political leadership style has been totalitarian one, as Dr. Barjaba stated in his report;

"..the Albanian political elite has been characterized by despotic and authoritarian mentality, which has always needed a father figure, sought, found and betrayed him to go look for another one as soon as the first no longer suited their interests. This archetype of government has prevailed every time the Albanians have had the chance to create democratic state." (Barjaba, K. June, 1998. Albania in transition; Elite's role and perspectives. 14-17-20)

The mentality of the old political class still influences the creation of new elite by selecting new politicians based on traditional political connections, and not on individual intellectual values and institutional experience. This makes difficult the efforts of young generations to find space to fit into the decision-making process of the policy makers, with the attempt to reform the political mentality to better fit their needs. Even though the very intense participation of students and young intellectuals was one of the main features of the democratic movement in Albania (Barjaba, 1998), the resistance to fresh blood in politics, is an attempt to conserve the power, resulting in implementation of old ways of authoritarian management, seriously jeopardizing the integration process.

Even in recent electoral process resulted and valued as a good one with a quiet transition in shifting powers from Democratic Party to the Socialist Party, the new Prime Minister elected, Edi Rama, much younger than his former opponent Berisha, still reflects the old traditional model in managing his political party. Edi Rama's newly appointed very young Ministers and Head of Important Public Services and Institutions in Albania has been percept not as an attempt to change the way of doing politics by reforming radically the political class, but as a continuous attempt to have total control over his government and public administration.

3. METHODOLOGY

The authoritarian model in politics continues to be part of the political management. The polarization of Albanian politics between two major political domestic actors, the Democratic Party and the Socialist Party, is main indicator of this authoritarianism. Verbal violence while addressing each other, intolerance in conception of building relations with opposition in order to give the image of cooperation in solving countries' main issues, and the

monopolization of party leadership positions are elements of this old fashion model of doing politics. European institutions are offering assistance and models to be followed, but the process of upgrading requires time.

Even though the upgrade of political mentality is facing its challenges, Albanian society is successfully transforming during this endless transition period. The progress and integration to democracy is irreversible, even though some elements in the Albanian society, media, and politics, continue to spread the message of continuity in support of old concepts of management expressing nostalgia for that dark and violent historic stain.

While recording the colossal damage that was caused by implementing five decades of communist mentality in political level, economy and society, in early 90's, new laws were designed in order to overcome denial remaining from the actions of the old political management. In contrast, Czech Republic, Slovakia, Slovenia, Bulgaria, and Romania geographically farther West than Albania, with their quick achieved success after integration policies were implemented prioritized a political mentality upgrade as more important than a formal physical integration. They cleverly understood that they were geographically part of Europe and the integration process needed to be focused on changing the old mentality, realizing also the importance of a reform-minded process to facilitate the integration. The result was that all the above countries joined NATO before Albania, and are members of the European Union (*Albania is still not part of the EU.*)

Public Administration's role in offering a safe and stable government policy management

An important aspect of Albanian integration process is the objective evaluation of Public Administration's role in offering a safe and stable government policy management pointing to the professionalism while depoliticizing different structures of public services.

One of the political frictions between two major parties in Albania today is the Law on Civil Service. Prior to 23 June Elections with the consultant of western and European players in Albania two major political forces reached an agreement to approve and implement the Law on Civil Service that will serve as legal framework in consolidating and directing Public Administration toward professionalism and protect public servants from political changes in government. Even though the law was to be implemented in October 2013 some difficulties raised due to the fact that "the new law abrogate the existing legislation without providing the necessary transitory provisions until its implementing legislation enters into force..."

It is very important to create a merit-based public administration as part of reforms in consolidating democracy in Albania. It is also very important to understand that quality public administration develops stronger, more professionals and capable public servants that are better able to manage their institutions and respond to rising societal demand for better governance.

4. RESULTS

This article was made created by respecting all the methodological rules. The methodology of this article was based in two parts: Studying the foreign and Albanian literature, bibliographic studies, collecting data from official sources as Albanian Finance Institutions, Business and legal department of university in Albania, MOF, and University of Vlore. Resources, indicators and performance data are gathering from different publications such as magazines. And practicing, which is related with the interviews with leaders and employees of the Public Administration.

To collect the data for this article we made interviews, questionnaires and other researches. In Tirana, Albania no new supply was added to the retail inventory during 2012 as latent demand was previously absorbed by the opening of TEG (Tirana East Gate) at the end of 2011. Demand comprised renewals and sporadic requests from tenants needing new retail space. *Source: Colliers International 2009)*

We created also a questionnaire, which was composed by 100 questions and 4.8% of the employees in the central level of the public administration answered. There are two perspectives on the importance of maintaining relationships, especially about populating Vlore students.

The fact that such a high percentage of dismissals has been found in breach of the law by the Commission indicates that the restructuring process has been grounded on illegal considerations that have nothing to do with the career and professionalism system and that the Department of Public Administration was incompetent in managing the civil service in compliance with the merit and career principles and in some instances has acted in contravention with the legislation in force. Such disregard for legislation by the institutions mentioned above and the Department of Public Administration have financial consequences that will have to be borne by the Albanian taxpayers, as two, or, sometimes

even three individuals are paid for the same position.

Need for economical and legal reforms.

Albania differing from other countries of former socialist camp in its unique way of management established during the communist regime is still missing the clear political vision in taking the country out of the endless transition period. Sometimes the lack of vision is associated with the willingness in carrying reforms to avoid political costs associated with them, but these costs are paid by the society that still suffering a very low economic income. Albania is one of the poorest countries in Europe, with its GDP ranked number 119 in the world - below war-torn Congo and just five places above North Korea. According to the World Bank study on growing out of poverty 2012 the situation has been describe as below:

“With the exception of Tirana where poverty is apparently quite shallow, much of the urban and rural poverty may be deep - where incomes fall far short of a minimally acceptable standard. People are struggling to meet basic needs (food, clothing and heating). Many others are vulnerable to poverty, if not in an immediate income insufficiency context; they are threatened by poor public services and out-of-reach social services.” (World Bank Report. Albania. Growing out of Poverty, 2012)

Designing a stabilization program and furthermore a deep transformation of the Albanian economy requires taking important additional specific features into consideration. (Muço M 1997)

While noting Albania’s progress, Ambassador Osmo Lipponen of Finland, head of the OSCE (Organization for Security and Co-operation in Europe) presence in Albania, emphasized the country’s poorly functioning economy as the basis for much of its instability. Liponen also noted that the level of polarization in politics has led to political conflict rather than a discussion of important issues concerning the country and the reform process (October 2004). This confliction policy produces a lack of the public’s trust in national authorities. Effective reforms against corruption are to be considered as the first step in bringing the confidence and trust to Albanians. The U.S. Commission on Security and Cooperation in Europe carefully considered hearings form different actors in Albania and, concluding that:

“Albania must move toward having a normally functioning parliamentary system, beginning with undisputed elections conducted according to international standards, and a transparent, functioning administration in order to be able to manage its significant socioeconomic and rule of law problems. This needs to be supported by broadening civic participation in the governing process as corruption and lack of accountability have severely damaged the public’s trust in national authorities.”

The recently approved budget needs to be harmonized with these priorities, which are essential for the economic development and utilization of the opportunities offered by the SAA. The improvement of physical infrastructure, as witnessed in the amount of the state budget allocated to the Ministry of Public Works, Transports and Telecommunication (20.57%) should go hand in hand with the improvement of market infrastructure. More specifically, there is a need for increase of budget and strengthen of administrative capacities for the Ministry of Economy Trade and Energy, Ministry of Agriculture, Food and Consumer Protection, Ministry of Environment, Forests and Water Management.

⁴Reforms for fast integration toward western institutions are part of Albanian society challenges. A greater civic participation, as stated in the OSCE report, will improve the monitoring process on how the reforms are implemented and, how they impact the government efforts against specific element’s unwillingness to reform the economy because of the illegal benefits they and officials involved, receive from monopolized sectors of the economy. As shown to data, Albania’s Gross Domestic Product, despite the continuous increase, is still low compared to the average per capita GDP in the EU (19%), or compared to the GDP of the states that became EU members in 2004 (29%). Albania’s GDP is lower than the GDP of Bulgaria and Rumania that became part of the EU family on 1 January 2007 (47%), or the GDP of Croatia or Turkey that are negotiating the EU membership process (47%). Albania’s GDP is also lower that the average GDP of other Western Balkans countries (74%). In 1999 the EU offered Albania a General System of Preferences, in accordance with which a unilateral trade liberalization regime was established by the EU, while Albania was required to fulfill some standards²¹ in order to be able to benefit from this regime. On the basis of Regulation 2007/2000, the EU offered to Albania a preferential autonomous regime through the completion of the concept of rules of origin and the establishment of a free trade area for the countries included in the Stabilization and Association Process

⁴ Report of the Commission of the European Communities, COM (2006) 694 final, Brussels, 8.11.2006. Enlargement Strategy and Main Challenges 2006-2007, COM (2006) 649, Brussels, 8.11.2006. Conclusions of the European Council, 14-15 December 2006. Judgment of the Constitutional Court of Albania , no. 29, 21.12.2006

5. DISCUSSION

One of the biggest challenges in reforming the economy and making Albania attractive to foreign investments is the implementation of the property rights. This still remains one of the biggest challenges due to the lack of transparency of the process of legalization and lack of state guidance in development of urban and rural areas. Different attempts have been made to offer big foreign companies to operate in Albania but the process has been undermined by the impossibility to create a direct relation between investors and landowners. Judicial branch has contributed to this chaos by offering a very complicated process in claiming rights to the properties also offering corrupted judge and prosecutors that are bribed to make ambiguous decisions very difficult to be interpreted and further processed.

6. CONCLUSIONS

EU candidacy is very welcomed by Albanian society as well considered as a challenge due to the numerous problems citizens are facing every day. This challenge will be entitled to the objective interpretation of historical facts defoliated from the communist indoctrinations that unfortunately we still see present in Albania even 23 years after the fall of the Berlin Wall. The upgrade of the political mentality in accepting the important role of involvement of new elite in political class, and the implementation of a new political management away from authoritarian model, are main issues that domestic political factor should take in consideration for a fast integration. Looking in a different perspective, a broader participation of young generation in politics imposing new ideas and, a modern way of management will facilitate the acceptance process.

Reforms to improve democracy requires leadership from within the country as a prerequisite in building the political will for reform as very important for consolidating democracy and strengthen ties with European Union

True efforts are to be made also in cleaning the public administration and institutions from political contributors and party militants. This requires a strong political will and overall consensus from major political actors in eradicating their mentality of management and, a wide cooperation with non government organization in reducing the social costs that may be associated with this initiative. Efficient steps also should be made in implementation of Civil Service legislative package in order to create a merit-based public administration. Albania is part of Europe and the process of integration will allow the Albanian society to be fully integrated in European Union, not because of the geographical position, but because of the level of successful reforms.

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