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# Länderbericht

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## Light and Shadows – An Analysis of the EU's Preconditions for Albania

**Entering EU accession talks with Albania is subject to fulfilling the six preconditions – even if progress has been made, central points have not yet been fully met.**

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After the German Bundestag had established conditions for entering accession negotiations with Albania already in September 2019, the Council of the European Union (EU) followed suit in March 2020. The Ministers for Europe of the 27 EU states adopted and supplemented demands from the Bundestag so that the West Balkan state must now fulfil 15 conditions before the individual negotiations chapters or clusters can be opened. Six of which still need to be fulfilled prior to beginning the 1st intergovernmental conference. Even though great hopes were placed on these six conditions being fulfilled before the end of 2020 and, thus, on the conference taking place as part of the German EU Council Presidency, the chances of this are currently dwindling. A more detailed analysis on the status of fulfilling the six preconditions shows that Albania has made some good progress over the last half year, though some central points have not yet been fully met.

The following analysis observes the status of fulfilling the six preconditions of the German Bundestag<sup>1</sup> and the Council of the European Union<sup>2</sup> for opening EU accession talks with the Republic of Albania. The corresponding passages from the respective decisions come first.

## 1. Decision regarding an Electoral Law Reform

### German Bundestag's condition:

„[...] Adoption of an Electoral Law Reform, which is fully in line with recommendations by OSCE/ODIHR as well as ensuring transparent party and election campaign financing and is based on results of the Ad-Hoc Committee on Electoral Law Reform. The draft drawn up there should be revised in an open and inclusive dialogue including all political forces, as recommended in the ODIHR report dated 5 September 2019.“

### Council of the European Union's condition:

“Prior to the first intergovernmental conference, Albania should adopt the electoral reform fully in accordance with OSCE/ODHIR recommendations ensuring transparent financing of political parties and electoral campaigns [...]”

On 5 June 2020, parties represented in the Albanian Parliament as well as the extra-parliamentary opposition, who regularly met in the so-called “Political Council”, agreed upon draft amendments to the Electoral Law, and on 23 July the Parliament accepted the amendments to the Electoral Law. **The amendments cover most recommendations of the OSCE/ODHIR between 2017 and 2019.**

The amendments to the Electoral Law go hand in hand with changes to the Penal Law and Law on Political Parties. Amendments to the Law on Political Parties were decided on 16/11/2020. Amendments to the Law on Organising the Special Prosecutor (SPAK), Code of Criminal Procedure and Penal Code are currently undergoing parliamentary proceedings. They were approved by the parliamentary committees and are still to be adopted in a parliamentary sitting and will probably enter into force in December.

Further elements of the agreement dated 5 June, including formation of the Central Election Commission (CEC), laws on electoral administration, laws on the diaspora agreement, laws on the use of technology during elections (e.g. biometric identification), gender quotes etc., have already been decided, too.

Following heated political discussions, shortly before the summer break on 30 July, the Albanian Parliament had enacted controversial constitutional changes with the votes from the Socialist majority and parliamentary opposition. **The opposition levelled particular criticism against cancelling election coalitions.** The changes did not fundamentally violate against the OSCE/ODIHR provisions since changes are permitted nine months prior to voting. **The problem is that the OSCE and the EU have always recommended political consensus.** However, the constitutional amendments were only passed with the votes of the Socialist majority and internal parliamentary opposition. In the past, constitutional changes were made in consensus between ruling and opposition parties, as they are a source of possible conflicts and dispute.

Subsequently, on October 5, the Albanian Parliament decided to ban pre-election coalitions and to introduce a (partially open) list voting system, against the vote of the extra-parliamentary opposition. With this decision, provisions of the Electoral Law Reform (Article 19 and 36) agreed to on 5 June in the inclusive process and passed on 23 July in Parliament, were unilaterally reversed. These changes to the electoral system are tantamount to a change to the Electoral Law Reform, which, according to the condition of the German Bundestag, should have been adopted as part of an “inclusive process” in mutual agreement between the Government, the opposition and extra-parliamentary opposition in the Political Council.

Changes to the electoral law were not signed by the President *Ilir Meta* and were sent back to Parliament. What is more, *Meta* has requested the Venice Commission (VC) to make a statement. The EU Commissioner for Enlargement and

European Neighbourhood Policy, *Olivér Várhelyi*, urged the Parliament to wait for a statement before making a decision. Prime Minister Edi Rama rejected this, however, and explained that if the VK proposed recommendations, these would apply to electoral reforms after 2021. It is now likely that the VC will discuss *Meta's* application on 10 December. Yet, on 29 October the Parliament had already overruled the President's veto without waiting for recommendations by the Venice Commission.

On 29 August, the Parliament initiated the process for revising the CEC. Previously there had been a committee of seven members elected by Parliament. The new CEC now comprises three governing bodies: the State Electoral Commissioner and his representative, each with a seven-year, renewable mandate, the Regulatory Commission with five members and a five-year mandate as well as the Appeals and Sanctions Committee, also consisting of five members, but with a nine-year mandate. A compromise was reached that head and deputy head of the CEC would both come from different parties (majority and opposition).

**The new structure of the CEC is now established and ready for operation. It is accepted by all political parties.** There were already several, regular sittings and the first legislative acts have been approved. The deputy commissioner is a representative of the Democratic Party (DP), whose responsibilities during the elections includes electronic identification.

In order to ensure transparent financing of the parties and electoral campaign, the following aspects were agreed upon and enshrined in the Electoral Code: As regards vote buying or informal/criminal financing, the obligation of party leaders to take a written oath that they will neither participate in vote buying practices nor accept informal funding, was included. The legal basis was also created for state, private financing, gifts, donations etc. A public portal was set up for notifications and messages regarding informal financing and expenditure declarations. The basis for the evaluation of informal financing, auditing, and notifications by third parties will be

expanded. The legal basis against the use of state resources in the framework of the electoral campaign was strengthened (however, only limited to three to four months prior to election). Criminal law measures are strengthened in case of violations in connection with campaign financing and abuse.

**These amendments were approved by mutual consent.** However, according to the Albanian Constitution (Article 9 para. 3), the financial expenses of political parties must invariably be public in any case. **The new system of declaring gifts, donations, financing etc., has some good aspects, though it does not prevent informal financing during elections or indirect financing** from Government sources. **To date, no party has published full details on financing and campaign contributions.** The legislator has not appointed **a competent authority, which could audit the finances** of political parties. In an **unwritten political compromise**, it was agreed that **law enforcement authorities** (for example the tax authority, the Office of the Supreme State Examination Office, the Anti-Corruption Office etc.), **are not entitled to monitor political parties.**

**The system of indirect control by independent auditors elected by the CEC still has no effect and is far removed from the constitutional principle of transparency.** By the same token, parties do not declare expenses for primary elections and electoral activities. Hence, there have been several dozen primary election activities and internal elections in both major parties over the last two months. Having said this, neither the SP nor DP have yet to report their costs and sources of funding to this end.

## 2. Functioning of the Constitutional Court and the High Court

German Bundestag's condition:

"Guaranteeing the workability and functioning of the Constitutional Court and the High Court by endowing with an appropriate number of certified judges and prosecutors,[...]"

Council of the European Union's condition: "[...] ensure the continued implementation of the judicial reform, including ensuring the functioning of the Constitutional Court and the High Court, taking into account relevant international expertise including applicable opinions of the Venice Commission [...]"

**Currently, four out of nine posts for judges at the Constitutional Court are occupied. Six judges need to be in office to be fully operational.** In August 2020, the Appointment Council announced that of nine candidates for a free vacancy in the Constitutional Court, six did not fulfil the statutory criteria and the other three withdrew their applications.

There were four new applications when the vacancy was published again in September. The Appointment Council has rejected three of these candidates for failing to fulfil the criteria. All three candidates lodged an appeal at the Administrative Court, which announced the decisions in early November: There need to be two candidates to run for a post. Owing to a lack of other candidates and the complicated auditing procedure for all candidates, the **Appointment Council is sceptical that a decision can be taken in December for the two remaining members of the Constitutional Court.**

**Three judges are currently occupied at the High Court.** These three judges were elected in March 2020 and there have been no further appointments since then. The appointment process in the High Court was delayed for a long time and is a more complicated process than for the Constitutional Court. One candidate from the list of so-called "non-judges" has been undergoing the review procedure for eight months, while there is a lack of potential candidates who fulfil the statutory criteria for a candidacy.

**The legislation provides for** the High Court to have three chambers (criminal, civil and administrative law) with 19 members. Judges are assigned to one of the chambers based on their experience and specialism. For specific cases, in other words **cases of national importance, which create precedents or harmonise a court**

**proceeding** (the central task of the High Court according to Article 141 of the Albanian Constitution), all three chambers must be assembled in one common chamber, which requires the presence of 2/3 of the 19 members. No decision in such highly important cases can be taken without the **presence of at least 13 judges. At the moment, the High Court cannot perform this task.**

The High Court also plays a key role in **nominating three of the nine new members of the Constitutional Court.** The entire selection and nomination procedure for candidates requires the assembly of all judges from the High Court. A sitting for this purpose would only be valid if a **quorum of 3/4 of members of the court of justice (15) is present and 12 of them approve.** At present, the High Court **cannot perform this task either.**

In routine cases, depending on the type of case (criminal, civil or administrative procedure), the High Court assembles in its advisory chambers to decide whether the case should be registered or not. **Three judges are required for simple appeal decisions. This task can be performed by the High Court.** For several months, the High Court has been taking decisions on the registration of cases accordingly.

Five judges are required for difficult case constellations. **This task cannot currently be performed by the High Court,** even though the two remaining positions are expected to be filled in the near future.

Although, owing to the statutory requirements, each of the three new judges at the High Court was appointed with a specific professional background (one administrative, one criminal and one civil judge), they currently decide across the chambers on every type of case, which ignores the separation of the court into three chambers.

As far as **vetting instances** are concerned, a few months ago a member of the Appeal Chamber (second vetting instance) was found guilty of falsifying documents and suspended by the office. According to the Public Commissioner

(2018), this is the second member of the vetting institutions to have lost their mandate over the last two years. The Appeal Chamber consists of seven judges in total. **Despite the suspension, it is still able to make decisions and work with currently six judges.** By October 2020, ten lawsuits had been filed against both vetting instances at Strasbourg Court. A total of around 305 persons have been vetted. Most of them were dismissed or resigned.

**The Venice Commission has made three statements on Albania since October 2019.**

These concerned the rights of the President regarding the determination of election dates, the appointment of judges to the Constitutional Court, as well as the Media Law.

- On the role of the President when designating the election date:

Although the Venice Commission determined that cancelling or postponing the election date for local elections on 30 June 2019 was beyond the scope of President *Meta*, there were not considered to be any sufficient reasons for his removal from office, as sought by the socialist majority in Parliament.

The statement that recommended not removing the President of the Republic from office, was approved by a parliamentary majority on 29 July 2020. This was done by waiving the continuation of the parliamentary initiative for his dismissal.

- On the appointment of judges to the Constitutional Court:

Matters of contention were the President's authority in appointing the constitutional judges (particularly taking the oath) as well as the sequence in which the three bodies (President, Parliament and High Court) appoint the constitutional judges.

The statement on repealing the law amending the President's constitutional authority for swearing-in the new constitutional judges and the High Court, was voted on in July in Parliament and approved by the majority. The statement on selecting candidates for the Constitutional Court only after they have passed both levels of the vetting process, was accepted by the

Appointment Council and in August changes were made to the Appointment Council's rules of procedure including this additional criterion.

- On the Media Law:  
See point "Media Law"

### 3. Special Structures for Fighting Corruption

German Bundestag's condition:

"Establishing the special structure for fighting corruption and organised crime and its ability to perform, [...]"

Council of the European Union's condition:

"[...] finalise the establishment of the anti-corruption and organised crime specialised structures [...]"

**The Special Prosecutor for Fighting Corruption (SPAK) has been operational for several months.**

There are currently twelve of 15 SPAK special prosecutors in operation, and several investigative decisions have been taken. Overall, however, SPAK has not yet undertaken any significant legal steps against "VIPs", who occupy or had political offices, not even regarding the accusation of vote buying.

The National Bureau of Investigation (NBI), known as the "Albanian FBI", is an independent structure provided for in the Albanian Constitution, which together with the SPAK, is responsible for investigating and prosecuting corruption offences and other offences associated with it.

On 1 September 2020, the Director of the National Bureau of Investigation (NBI), *Aida Hajnaj*, was elected. She was previously Deputy General Director of the state police (2018 to 20).

**Only her position has been occupied to date.**

On 10 September, the NBI published a call for 60 investigators. Of more than 600 candidates – following several rounds of selection – on 20 November 39 persons were selected, who are to be vetted in early December. The number of 60 investigators under statutory law will therefore not be achieved any time soon. Hence, the necessary finalisation of this special structure for fighting corruption is still outstanding.

#### 4. Fight Against Corruption and Organised Crime as well as Implementation of FATF

##### German Bundestag's condition:

This was not an explicit condition of the German Bundestag.

##### Council of the European Union's condition:

"Albania should also further strengthen the fight against corruption and organised crime, including through cooperation with EU Member States and through the action plan to address the Financial Action Task Force (FATF) recommendations. [...]"

**Parliament has adopted several laws to fulfil this criterion.** Hence, on 29 July it adopted the law 112/2020 "on the register of beneficial owners" according to EU Guideline 2015/849. The Government introduced the consultation process for the law "on intangible assets". On 11 September, the Ministry of Justice conducted a consultation on the legal initiative. The Government also carries out public consultations on the draft legislation "on the central register of bank accounts". The Government has taken a few additional measures. Thus, for example, in May 2020 the Financial Supervisory Authority signed a cooperation agreement with the Albanian General Director on the prevention of money laundering. The law on financing NGOs as part of a commitment to and measures against money laundering is also on the Parliament's agenda.

On the other hand, in June the Government initiated the law "on tax and criminal amnesty for companies that declare their assets voluntarily". This initiative has triggered criticism and debates across the country since many consider this to be an amnesty for owners of illegal assets. Parliamentary consideration of this tax amnesty initiative was postponed until December.

According to the assessment of several national<sup>3</sup> and international<sup>4</sup> actors, corruption and money laundering in Albania have continued to increase, however. **According to the EU progress report dated 6 October 2020, Albania has incorporated the implementation of**

**recommendations regarding FATF, but must continue to do so throughout the course of next year.**

#### 5. Unfounded Requests for Asylum

##### German Bundestag's condition:

This was not an explicit condition of the German Bundestag.

##### Council of the European Union's condition:

"Tackling the phenomenon of unfounded asylum applications and ensuring repatriations [...] remain[s] important [priority]."

This point is difficult to assess due to its "vague formulation" and the absence of firm criteria. It is a political decision taken by the EU Member States. What is more, owing to Covid-19, there are currently no reliable statistics, and due to the lack of state commitment and willingness of institutions regarding this.

Since June, Parliament has placed changes to asylum legislation in the Republic of Albania on the agenda so as to adapt legislation in line with EU guidelines. The legal initiative is currently undergoing approval.

During the last few months, there have been no new waves of emigration, mainly due to the COVID-19 situation and travel restrictions from various countries, while the repatriation of asylum seekers to Albania has continued.

#### 6. Revision of the Media Law

##### German Bundestag's condition:

This was not an explicit condition of the German Bundestag.

##### Council of the European Union's condition:

"[...] amending the media law in line with the recommendations of the Venice Commission remain[s] important [priority]."

**Changes to the Media Law adopted in December 2019 were subject to national and international criticism (including by the OSCE and EU),** since they are linked to various risks for

freedom of the press. For example, there is no specific classification about which statements are punishable as defamation. That provides a wide margin of interpretation. The law aims at exercising closer scrutiny over online media. Courts could circumvent sanctions imposed by the media supervisory authority AMA by assuming the role of an Administrative Court. Fines are disproportionately high; they can drive some online media into ruin. The law could also result in self-censorship on the part of journalists, who would then only report according to protocol and would no longer be investigative.

**The Venice Commission has addressed the law and proposed recommendations for correction.** It emphasised that the Albanian authorities ought to tackle the real problem of irresponsible actions by some online media that spread harmful rumours and launch defamatory attacks on public figures. Regardless of this, the draft amendments, as they are now formulated, raise important questions and problems and are not ready for adoption. Thus, owing to this criticism and legal shortcomings, the President returned the law to Parliament so that the **previous law continues to apply**. The Socialist majority in **Parliament and the Government have declared that they consent to a revision of the law, without indicating specific details, however. It is therefore unclear which points of the Venice Commission's recommendations they will and will not agree to.**

On 10 September 2020, a large number of civil society organisations published a declaration in which they levelled criticism against the Government and Parliament, since only a few proposals made by the Venice Commission had been reflected upon. They called on the Parliament to start the legal assessment process from scratch. Civil society is concerned about the fact that Parliament and the Government are acting without public consultation and transparency and attempting to politically scrutinise the appointment of members to the AMA.

The Council of the European Union's condition does not explicitly provide for adopting a new law

or certain amendments, but merely that the amendment to the Media Law based on corresponding recommendations by the Venice Commission must be afforded utmost priority. **However, we need to realise that Government and Parliament have not yet announced any details for amendments to the Electoral Law according to recommendations by the VC, despite eight months ago the European Council having declared this task to be priority, and the Venice Commission's recommendations having been in place for some time.**

## Summary

Albania has already achieved progress since conditions were established for opening EU accession talks with Albania by the German Bundestag in September 2019 and the Council of the European Union in March 2020. For instance, the special structure SPAK for fighting corruption is now operational and ready for use. In the fight against corruption, a few important legislative proposals have been initiated and the action plan of the FATF recommendations was addressed. What is more, the number of Albanians seeking asylum in the EU has declined over the past year. The Media Law is currently undergoing revision.

**Where there is light, shadows lurk.** The Constitutional Court, with only four judges, is clearly not operational at the moment. The High Court provides further evidence that three judges cannot fulfil the court's constitutional role. The Electoral Law Reform, too, continues to be an open topic as confirmed by both the German Minister of State in the Foreign Office, Michael Roth,<sup>5</sup> and the EU Ambassador to Albania, Luigi Soreca.<sup>6</sup> On the one hand, this concerns the Venice Commission's statement on a political dispute between the Parliament and extra-parliamentary opposition regarding amendments made on 5 October to the Electoral Law Reform in the non-inclusive process. While also concerning the specific implementation of the electoral law regarding elections that will take place on 25 April. Of utmost importance here is the implementation of technical requirements (biometric identification).

**Ultimately, the date at which the 1st intergovernmental conference with Albania can take place is to be decided politically by the EU Member States' governments.** One thing is already clear, however: Even after this 1st

accession conference, Albania has a long road ahead before actual accession negotiations can commence. Since at first, the other nine conditions from the Bundestag and EU package of measures still need to be fulfilled.

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<sup>1</sup> Cf. German Bundestag, document 19/13509, mutual agreement between the Bundestag and Federal Government on the Republic of Albania's application for membership to the European Union and on the recommendation from the European Commission and High Representative dated 29 May 2019 for entering into accession negotiations, 24/09/2019.

<sup>2</sup> Cf. Council of the European Union, Document 6954/20, ENLARGEMENT AND STABILISATION AND ASSOCIATION PROCESS for the Republic of North Macedonia and the Republic of Albania, Draft Council conclusions, 23/03/2020.

<sup>3</sup> For example the Albanian General Prosecutor Olsian Çela, <https://balkaninsight.com/2020/10/20/central-albanias-crime-capital-feels-resigned-to-its-fate/>)

<sup>4</sup> Over the past few years Albania has continually fallen in Transparency International's Corruption Perceptions Index, <https://www.transparency.de/cpi/cpi-2019/cpi-2019-tabellarische-rangliste/?L=0>

<sup>5</sup> During a press conference following the meeting of EU ministers on 17/11/2020, <https://video.consilium.europa.eu/event/en/24212>

<sup>6</sup> In an interview with Deutsche Welle on 19/11/2020, [https://eeas.europa.eu/delegations/albania/88947/interview-ambassador-luigi-soreca-deutsche-welle\\_en?fbclid=IwAR3RCRuDHac8zy3Oruf\\_CCGNWyxr7A2L3UhuN\\_bQDpHLZsWgc2pz3R1Bvg](https://eeas.europa.eu/delegations/albania/88947/interview-ambassador-luigi-soreca-deutsche-welle_en?fbclid=IwAR3RCRuDHac8zy3Oruf_CCGNWyxr7A2L3UhuN_bQDpHLZsWgc2pz3R1Bvg)

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