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## PILLAR I ALBANIAN LEGISLATION

### *The law of treaties and its implementation in Albania*

By Armand Skapi

Director of the Directorate of the International and European Law

Ministry for Europe and Foreign Affairs

### I. ABSTRACT

International agreements were known since the period of the Illyrian city-states, while the modern period of entering into agreements begins with the creation of the Albanian state in 1912. The norms that have regulated the process of entering into international agreements were included in the first founding acts of the Albanian state, such as the Organic Statute, the first Albanian Constitution, the Statute of Lushnja approved by the Congress of Lushnja. The Albanian legislation on the Law of Treaties was particularly developed after the 90s. The current Constitution of the Republic of Albania recognizes to the international law a priority position within the domestic legal system, sanctioning the essential principle of *pacta sunt servanda*. Albania is also a party of the Vienna Convention “*On the Law of Treaties*”, of 1969, and of the Vienna Convention “*On the Law of Treaties between states and international organisations and between international organisations*”, of 1986. Apart from the above, the process of entering into international agreements in Albania is regulated by the Law No. 8371, “*Entering into international treaties and agreements*”, which was repealed upon entering into force of the Law 43/2016 “*On the international relations in the Republic of Albania*”.

This article specifically deals with the law of treaties and its development in Albania. In particular its Paragraph II explains the concept of the law of treaties as a branch of the international public law that regulates the processes of drafting, entry into force, becoming legally binding, implementation, interpretation, rescission of the international agreements and all other elements related to their status. It covers the historic development of the law of treaties as an essential element of international relations between states, and the codification of the norms that regulate this branch of law. Paragraph III, treats the evolution of the legal adjustment of the process of entering into international agreements in Albania. Paragraph IV covers the process of entering into international relations pursuant to Law No. 43/2016 “*On the international relations in the Republic of Albania*”. It lists the state authorities competent to enter into international agreements, including the President of the Republic, the Prime Minister, members of the Council of Ministers, or persons authorised by the President or the Prime Minister. It goes on to cover all stages of entering into international agreements, starting from proposal up to negotiation, including initialling, approval in principle by the Council of Ministers, signing, procedures of entering into force, notifications on the entering into force or of the repeal of an agreement. Paragraph V of the article specifically covers the stage of the entering into force of the



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international agreements, focusing on the importance of the correct definition of this moment from which the obligations of the parties begin. This paragraph also clarifies the differences between the procedures of ratification, of becoming a party, of acceptance or approval of international agreements. It also provides information on the procedures of notifications between parties through diplomatic channels for establishing the effective date when international agreements enter into force. Paragraph VI deals with the publication of the international agreements, focusing on the importance of this process in guaranteeing the transparency of the international agreements as a component of the domestic legislation, and their legal effects on the institutions of the Albanian state and on the Albanian citizens themselves. A specific issue covered by Paragraph VII is the role undertaken by Albania in the last years as a depositary of international agreements, indicating the increase of international engagements of our country in the region, in Europe, and beyond. As a conclusion of the article, Paragraph VIII provides opinions and recommendations on the importance of the Law of Treaties and the need for its correct understanding and implementation by state institutions, academic institutions and other actors of the Albanian society.

**KEY WORDS:** *Treaties; Vienna Convention; Constitution; United Nations*

**ABBREVIATIONS:**

**Constitution**

Law No. 8417 of 21<sup>st</sup> October 1998 "The Constitution of the Republic of Albania", amended

**ECHR**

European Court of Human Rights

**Law 43/2016**

Law No. 43/2016, dated 21.04.2016 "For the international relations in the Republic of Albania"

**Vienna Convention**

Vienna Convention on the Law of Treaties, entered into in Vienna on 23<sup>rd</sup> May 1969

**II. INTRODUCTION TO THE LAW OF TREATIES**

Treaties<sup>1</sup> are the main source of international law. The Law of Treaties means the general provisions of international law that regulate the process of drafting, entry into force, becoming legally binding, implementation, interpretation, rescission of the international agreements and all other elements related to their status.<sup>2</sup>

In the history of international relations, agreements have served to fulfil the essential need of states to regulate matters of mutual interest with reciprocal approval, thus establishing stability in their relations. The domination of the agreements is closely related to the increase of bilateral and multilateral relations between states, to the creation of international regional and global

<sup>1</sup> For the purposes of this article and in accordance with the terminology of the Albanian legislation, the general term "international agreement" or "agreement" will be used.

<sup>2</sup> International Law, Richard K. Gardiner, London 2003.



organisations, and to the increase of the number of independent states and other subjects of international law.<sup>3</sup>

International agreements apply in various areas, such as: politics, military, economics; human rights, climate, war against terrorism and organised crime etc.. Agreements can take different names, such as treaties, pacts, conventions, protocols, memorandums etc.. What all international agreements have in common is that they produce legal and political effects in international relations. For this reason, states give special importance to the implementation of norms deriving from the agreements by prioritizing them in their constitutional systems, in comparison with the domestic law.

The first codification of the norms that regulate how international agreements are entered into was achieved with the Vienna Convention on the Law of Treaties of 1969. The Convention identifies the treaty as: “*an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation.*”<sup>4</sup> The United Nations afterwards approved in 1986 the Vienna Convention on the Law of Treaties between States and international organizations and between international organizations,<sup>5</sup> which has not entered into force yet.

### III. THE LAW OF TREATIES IN ALBANIA

Entering into international agreements was known in the Albanian territories since the period of the Illyrian city-states and continued during the Middle Ages.<sup>6</sup> In order to confront the Ottoman armies during the period of the Albanian League a number of agreements were entered into, such as the Treaty of Gaeta between Gjergj Kastrioti and Alfonso V, King of Naples, Aragon and Sicily.<sup>7</sup> The modern period of the implementation of the Law of Treaties in Albania began after the creation of the independent Albanian state, and can be divided into some historic stages:

- i. Creation and consolidation of the Albanian state (1912-1939);
- ii. Concluded agreements during the period of the fascist invasion (1930-1943);
- iii. Concluded agreements during the period of the nazi invasion (1943-1944);
- iv. Concluded agreements during the communist regime (1945-1989);
- v. Concluded agreements during the democratic system (1990 -).

<sup>3</sup> Research handbook on the Law of Treaties 2014.

<sup>4</sup> Article 2(1)(a) of the Convention.

<sup>5</sup> This Convention has not entered into force yet.

<sup>6</sup> In 393 B.C. the Illyrians entered into a peace treaty with the defeated king of Macedonia who would pay the Illyrian tribes a hefty tribute, and in 1388 Gjergj Balsha II entered into an alliance agreement with the Republic of Ragusa against the Turks. The history of the state and the law in Albania, Tirana 1994.

<sup>7</sup> Skanderbeg was represented by his ambassadors, Stefan, the orthodox Bishop of Kruja, and the catholic Bishop Nikollë de Berguçi, while for Alfonso V the treaty was signed by his notary Arnaldo Fonolleda, KristoFrashëri 2002, *Gjergj Kastrioti Skanderbeg – Life and Work 1405-1468*.



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The norms that have regulated how parties enter into international agreements have been included in the first foundation acts of the Albanian state, such as the Organic Statute of Albania approved by the International Control Committee on 10<sup>th</sup> April 1914 or the first Albanian Constitution, the Statute of Lushnja approved by the Congress of Lushnja on 14<sup>th</sup> December 1922. Both Constitutions approved by the communist state in 1946 and 1976 had provisions that covered matters of the Law of Treaties.<sup>8</sup>

Democratic changes in the beginning of the 90s open an important stage in the development of the Albanian legislation and especially of the Law of Treaties. The progressive development of the relations of Albania with other states and international organisations, and its participation in numerous regional initiatives increased the number of agreements of which it is a party. The Ministry of Foreign Affairs estimates the number of agreements entered after 1990 to be over 2,000.

Law No. 7491 dated 29.4.1991 “*On the main constitutional provisions in the Republic of Albania*” included particular provisions related to the Law of Treaties. More specifically, Article 8 of this Law sanctions: *The legislation of the Republic of Albania considers, recognises and respects the generally accepted principles and norms of the international law.*<sup>9</sup>

The Constitution of the Republic of Albania<sup>10</sup> has given the international law a priority placement within the domestic legal system. It sanctions the fundamental principle *pacta sunt servanda* of the international law by providing that: “*The Republic of Albania implements the international law which is legally binding on it*”.<sup>11</sup> In Part II that deals with the fundamental human rights and freedoms, the Constitution makes a fundamental reference to the norms of the international law when it sanctions that ‘*the limitations of the fundamental human rights and freedoms cannot supersede the limitations set by the European Convention on Human Rights*’.<sup>12</sup> Part VII of the Constitution refers specifically to the international agreements and their place in the hierarchy of the norms of the Republic of Albania. Ratified agreements are listed immediately after the Constitution in the hierarchy of the norms.<sup>13</sup> This provision means that all laws and sub-legal acts must be in compliance not only with the Constitution, but also with the agreements ratified by the Parliament. The Constitution<sup>14</sup> also foresees the cases when an international agreement or its denouncement is done through a law passed by the Parliament. This category includes agreements related to:

<sup>8</sup> Albania, party in international treaties, Thimi Çollaku, Tirana 2013.

<sup>9</sup> Article 8 of the Law “On the provisions of the main Constitutional provisions, 1991”.

<sup>10</sup> Approved by Law No. 8417 of 21<sup>st</sup> October 1998 of the Parliament, Amended.

<sup>11</sup> Article 5 of the Constitution.

<sup>12</sup> Article 17, the same place.

<sup>13</sup> Article 116, Point 1, the same place.

<sup>14</sup> Article 121, Point 1, the same place.



- i. territory, peace, alliances, political and military matters.
- ii. human rights and freedoms, and obligations of citizens as described in the Constitution;
- iii. membership of the Republic of Albania in international organisations;
- iv. assuming of financial obligations by the Republic of Albania;
- v. approval, amendment, completion or nullification of law.

This provision does not limit the list of agreements that can be ratified by the Parliament. It's the agreement itself that can define the ratification clause by the contractual parties or by the Council of ministers that defines the indispensability of the ratification of an agreement because of its effects and importance, even if it's not included in the categories mentioned above.

The Constitution of the Republic of Albania has embraced the monist concept of the relation between the domestic law and international law, implying unity between the domestic and international legal system. In fact, Article 122 (a) of the Constitution sanctions: "*any ratified international agreement constitutes parts of the domestic legal system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, apart from cases when it is not self-implementable and its implementation needs the approval of a specific law.*"<sup>15</sup> This formulation requires interpretation, because unlike domestic laws, the agreement may cause legal consequences only after fulfilment of the conditions to enter into force, in accordance with the provisions of the agreement itself, as treated below.

Apart from Constitutional provision, the Law of Treaties in Albania is regulated by other norms as well. Until 1998 the process of entering into agreements was sanctioned by the "*Regulation for entering into international treaties and agreements*".<sup>16</sup> The regulation was repealed in 1998 after the approval of Law No. 8371, "*On the procedures to enter into international treaties and agreements*", in the meantime Albania became a party to the Vienna Convention on the Law of Treaties, 1969,<sup>17</sup> and to the Vienna Convention "*On the Law of Treaties between States and International Organizations and between International Organizations*", 1986.<sup>18</sup>

In 2015, the Ministry of Foreign Affairs took the initiative to prepare a new law on the international agreements, based on some needs and musts:

First, due to the need to align the legislation on agreements to the relevant Constitutional provisions, because Law No. 8371 had been approved before the Constitution entered into force, and also to align it to both Vienna Conventions on the Law on Treaties. Second, due to the need to better define the competencies and responsibilities of the institutions included in the process of

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<sup>15</sup> Article 122, Point 1, the same place.

<sup>16</sup> Approved by the Parliament with Decree No. 243 of 27<sup>th</sup> January 1978, amended through Decree No. 292 of 21<sup>st</sup> January 1983

<sup>17</sup> Albania became a signatory on 27<sup>th</sup> June 2001.

<sup>18</sup> Albania became a signatory on 08<sup>th</sup> May 2014.



negotiating, entering into, and implementing of the agreements. Third, due to the indispensability to ease the procedures of entering into force of some categories of agreements, mainly to amending or implementing agreements, and fourth, due to the need to guarantee a transparent process for the effects of the implementation of the agreements.

Compared to Law No. 8731, Law 43/2016 brings a variety of novelties of several aspects of the matter, most important of which are summarised below:

- i. It regulates more clearly the responsibilities of the institutions with the authority to cover the whole process of entering into agreements, thus significantly improving the process of inter-institution consultation in the stage of negotiation;
- ii. It eases the procedure of granting full powers for the negotiation and signing of the agreements;
- iii. It clarifies the procedures and forms in which the agreements enter into force;
- iv. It foresees the situation of temporary implementation of the agreements;
- v. It enhances the engagement of state institutions in the implementation of agreements and increases the degree of the monitoring of the implementation;
- vi. It foresees the preparation of national reports on the implementation of the human rights conventions of which Albania is a party;
- vii. It regulates the process of approving, acceptance and withdrawal of reserves, suspensions, declarations, denouncements of agreements;
- viii. It reflects the authority of the President and of the Prime Minister to authorise the initiation of the negotiations of respectively state or government agreements;<sup>19</sup>
- ix. It increases transparency and availability of complete information related to the agreements which have been entered into, and their status.

#### IV. THE PROCESS OF ENTERING INTO INTERNATIONAL AGREEMENTS

Before we discuss the process of entering into an agreement, the following question can be rightly asked: Which are the state institutions that can enter into an agreement and which are the institutions that become parties in it?

Law No. 43/2016 sanctions that “*international agreements can be entered on behalf of the Republic of Albania or on behalf of the Council of Ministers*”.<sup>20</sup> The state institutions that have the authority to enter into international agreements are the President of the Republic, the Prime

<sup>19</sup> Article 6 of Law No. 43/2016 - Such a provision was based on the Decree of the Constitutional Court No. 15 of 15<sup>th</sup> April 2010 with object: “*Analysis of the compatibility with the Constitution of Albania of the agreement signed between the Republic of Albania and the Republic of Greece "On the delimitation of their respective zones, of the continental shelf, and of other zones belonging to them based on the International Law.*”. The President had not granted full powers to the delegation that negotiated the agreement, and the Constitutional Court found this fact in violation of article 92 of the Constitution which sets the role and authority of the President in the process of entering into international agreements, and in violation of Articles 4 and 7 of the Constitution.

<sup>20</sup> Article 5, point 1.



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Minister, members of the Council of Ministers, or persons authorised by the President or the Prime Minister.

It is difficult to draw a clear line between agreements in which the party is the Republic of Albania and those in which the party is the Council of Ministers. However, how agreements have been entered into until now has shown that multilateral agreements, important political agreements whose implementation is related to the activity of the constitutional institutions, and in general all agreements that refer to Letters a-ç of Point 1 of Article 121 of the Constitution, are entered into on behalf of the Republic of Albania. In agreements whose implementation is related to a more limited number of institutions, the party is the Council of Ministers. From the legal point of view, agreements between states are subject to ratification, while agreements between governments enter into force after they are ratified by the Parliament, approval of the Council of Ministers after they've been signed, or at the moment they are signed. An important element to be considered when defining the subjects of a treaty is the reciprocity of the parties. For example, it is not appropriate and reciprocal if in an agreement one party is the government of a state and the other party is the state itself. Reciprocity has not been applied in some agreements entered into by the Albanian party.<sup>21</sup>

The authority of the President or of the Prime Minister to enter into international agreements is a constitutional authority. Point (ë) of Article 92 of the Constitution sanctions that the President enters into international agreements in compliance with the law. On the other hand, the Constitution does not have specific provisions for the authority of the Prime Minister to enter into international agreements, but this is implied by the provisions of its Article 102. Point (a) of this Article of the Constitution provides that the Prime Minister represents the Council of Ministers, implying international agreements as well, while point (d) of the same article refers this authority to the special law.

Although the President or the Prime Minister have the main authority to enter into international agreements, this authority has been applied in a few cases and is practically delegated to ministers or other authorised persons, mainly representatives of the Republic of Albania in other states or international organisations. Authority can be delegated through granting of full powers<sup>22</sup> by the Minister of Foreign Affairs upon authorisation by the President of the Republic for agreements between states and upon authorisation by the Prime Minister for agreements between governments.

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<sup>21</sup> E.g. The Agreement for Scientific and Technological Cooperation of 16<sup>th</sup> December 2008 between the Republic of Albania and the Government of Montenegro.

<sup>22</sup> "Full Powers" is the document issued by the competent authority of the Republic of Albania that authorises an official or officials to represent the state or the government in negotiating, initialing, and signing of an international agreement. Article 3 of Law 43/2016. The Full Powers authorisation can be formulated as below: *I.....President/Prime Minister/Minister of Foreign Affairs of ..... grant full powers to Mr.Ms....., to sign in the name of the Republic of ....., the Agreement.....for this purpose I sign this Full Powers document in ....., capital of the Republic of..... on.....*



It has to be mentioned that apart from agreements between states and governments, Law No. 43/2016<sup>23</sup> creates the necessary opportunities for various ministries and central and local institutions to enter into cooperation agreements with homologous institutions of other states or international organisations. These types of agreements are of a totally technical character, and their implementation is exclusively related only to the competence of the institutions entering into these agreements. Such agreements are for example memorandums of cooperation between law enforcement authorities, education and culture institutions, etc..<sup>24</sup> Regardless of their technical character and the limited scope, these agreements are a concretization of the foreign policy of the Albanian state toward an international counterpart, and as such, competent institutions that are parties in these agreements must consult, from a political and legal point of view, with the Ministry of the Foreign Affairs. Also, it can be difficult in some cases to tell whether an agreement must be considered as an agreement between states or governments, because of its effects which are mainly of a financial character. For this reason it is necessary for these agreements to have consultations with other ministries such as Ministry of Finances or other institutions that can be affected by the implementation of the agreement.

Based on the Vienna Convention of 1969, Law No. 43/2016 foresees the following stages in the process of entering into an agreement: (i)proposal/idea; (ii)negotiation; (iii)initialling<sup>25</sup>, (iv)approval in principal by the Council of Ministers; (v)signing; (vi) procedures of entering into force; (vii) notifications on entering into force or on the repeal of an agreement.

Negotiation is undoubtedly the most important and complex component of the process of entering into an agreement. Before they begin the negotiations, parties must be clear about the area of the international relations they want to regulate and the result they want to achieve through the agreement. The method of negotiating defines the degree of realisation of the interests of the parties through an agreement, and the ideal result would be a *win/win* situation in every aspect. The negotiation process is performed in two classic forms: direct negotiation and negotiation through diplomatic channels. The development of the means of communication has prioritised the negotiation of agreements through diplomatic channels. However, it is indispensable that some categories of agreements are negotiated directly between delegations of experts of the parties, such as important agreements of a political character, border agreements, etc..

Law 43/2016 demands that the Albanian party negotiates the agreements in a professional way and with the engagement of every related institution. Negotiations must consider the

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<sup>23</sup> Article 13 of Law 43/2016.

<sup>24</sup> E.g. Memorandum of Cooperation between the Ministry of Urban Development and Tourism of Albania and the Federal Ministry of Science, Research and Economy of the Republic of Austria in the area of Tourism, which was signed and entered into force in 2014.

<sup>25</sup> "Initialing" is the act through which the authorised persons put their initials to indicate that they agree with the final text of the agreement. Point (ë) of Article 3 of Law No. 43/2016.





compatibility of the agreement being negotiated with the Constitutional norms, international legislation obligatory for Albania, *acquis* of the European Union, the domestic legislation, and the maximum protection of the interests of our party. The process of negotiations requires the engagement of all competent institutions in the implementation of the agreement, of the Ministry of Foreign Affairs, Ministry of Finances, Ministry of Justice, and if necessary, of other experts so that the product of negotiations achieves a maximum result.<sup>26</sup>

Upon conclusion of the negotiations, the final text of the agreement is initialed by the chairmen of the negotiating delegations, or, through diplomatic channels parties agree on the text that will be signed. This is an important moment because the initialed text of the agreement is approved in principle with a decree of the Council of Ministers and then is ready to be signed. There have been and there will be cases in the practice of entering into agreements when parties with understanding amend the initialed text, whether it is for fundamental or technical-linguistic reasons. Law 43/2016 foresees such a case by sanctioning: “*When the amendments affect the essence of the agreement, the rights and obligations that derive from it, the competent ministry proposes to the Council of Ministers the repeal of the previous decree of approval in principal, and the new approval in principal of the agreement*”.<sup>27</sup> Such a situation requires professionalism and inter-institutional coordination because in some cases it is not easy to distinguish between fundamental and just technical amendments.

## V. ENTERING INTO FORCE OF THE INTERNATIONAL AGREEMENTS

In ancient times international agreements were entered into by the head of the state or his authorised representative, and were binding for the states after they were signed. During Centuries XVII and XVIII the practice of expression of the State’s consent to be bound by an agreement through its ratification by the authority representing the sovereignty of the states, began to develop. The procedure of the ratification of the agreements was broadly developed in Century XIX when parliaments of several states assumed important authorities in exercising the state sovereignty.

The procedure of ratification was codified by the Vienna Convention, 1969.<sup>28</sup> It provides for several ways in which states express their consent to be bound by an agreement. Article 11 of the Vienna Convention sanctions that “*The consent of a state to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed*”. This article gives the states the necessary flexibility to use more appropriate means compatible to their domestic legislation and practices in order to express their consent to be bound by an agreement.

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<sup>26</sup> Article 9 of Law 43/2016.

<sup>27</sup> Article 11, point 2.

<sup>28</sup> Vienna Convention on the Law of Treaties, A commentary, Oliver Dorr, Kirsten Schmalenbach, Springer-Verlag Berlin Heidelberg 2012



Each of these forms is foreseen in the text of the agreement and has the same equal effect on each party. E.g. The United Nations Convention against Organised Transnational Crime 2000, states: *“This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations”*.<sup>29</sup> No agreement can be implemented unilaterally by any party if the preconditions for it to enter into force as established in the agreement itself have not been fulfilled.

Agreements may require other formulations on the ways parties express their consent in compliance with the relevant adaptations of their domestic legislation, such as: *“This agreement is approved in compliance with the relevant legislation of each contractual party and enters into force on the day when the last instrument that confirms the approval is deposited with the Government of the Republic of Albania, which acts as the Depositary”*.<sup>30</sup> Other agreements may require that the consent of the parties is given through one of the above mentioned forms.<sup>31</sup>

The fact that the Constitution of the Republic of Albania refers only to the ratification procedure requires attention.<sup>32</sup> Lacking thorough interpretation of the Constitution and the Vienna Convention of 1969 on the differences of the above mentioned concepts, it is helpful to refer to the doctrine and the practice of entering into agreements and to the domestic legislation of the states.

The procedure of "ratification" is closely related to the procedure of signing of the international agreement by the State party.<sup>33</sup> Bilateral and multilateral agreements can be both subjects of the ratification process. Multilateral agreements require different provisions with respect to the procedures of signing. For example, Council of Europe Conventions have to be signed by the states wishing to become parties and then have to be ratified<sup>34</sup> while in general the United Nations Conventions require a certain period of time for signing, following the elapsing of which they are open for accession.<sup>35</sup>

The "accession" procedure implies joining as a party to a multilateral agreement of a subject of the international law (state or international organisation) after conclusion of the signing phase,

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<sup>29</sup> Article 36, point 3.

<sup>30</sup> Article 4 of the Agreement on the Establishment of the Western Balkans Fund, 2015.

<sup>31</sup> Article 13 of the Agreement between the Republic of Albania and the Federal Republic of Germany for the Protection and Encouragement of Investments, 1991, sanctions that this agreement must be ratified by the parties.

<sup>32</sup> Articles 116, 117, 121, 122, 123, 131 of the Constitution.

<sup>33</sup> The ratification procedure is exercised only by the legislative body of a state, but it is not applied by international organisations that become parties in international agreements.

<sup>34</sup> Point 1 of Article 59 of the European Convention on Human Rights says: *This Convention is open for signature by members of the Council of Europe. This Convention requires ratification.*

<sup>35</sup> Article 21 of the 2013 United Nations Arms Trade Treaty says: ...2. *This Treaty is subject to ratification, acceptance or approval by each signatory State.* 3. *Following its entry into force, this Treaty shall be open for accession by any State that has not signed the Treaty.*



when this procedure is foreseen by the agreement itself. As in the case of ratification, accession is also approved by law.<sup>36</sup>

"Acceptance" or "Approval" are procedures which are applied more rarely than the other two procedures mentioned above, but they are by all means present in the practice of entering into multilateral agreements. This procedure is applied for international agreements that are not open for signature but are adopted by voting in the conference of the State parties. An example is the procedure of the acceptance of the founding and amending acts of the World Trade Organisation (WTO).<sup>37</sup>

Based on the above interpretations, Law No. 43/2016 sanctions: "*ratification is the act through which the Republic of Albania gives its consent to be bound by an international agreement it has previously signed*"<sup>38</sup> and *accession/acceptance/approval is the act through which the Republic of Albania expresses its consent to be bound by an international agreement it has not previously signed, in accordance with the provisions of the agreement itself*<sup>39</sup>.

Upon completion of the domestic legal procedures for entering into force of the agreement, parties will make the reciprocal notifications through diplomatic channels. In cases of bilateral or multilateral agreements (mainly in regional initiatives), they enter into force after the last notification by the signatory states to the depositary. Agreements that enter into force after they are signed are an exception from this rule. As for the conventions, they enter into force after a certain number of ratifications or accessions has been achieved, but in this case they only affect the states that have completed the above procedures and have submitted the relevant notifications to the depositary of the conventions.<sup>40</sup>

The procedure of notifications also establishes the date of entry into force of the agreement. The moment when the agreement becomes enforceable is important not only to the institutions that will implement it, but also to other state and private institutions and individuals that will directly or indirectly be affected by its implementation. In general bilateral agreements enter into force after confirmation of the receipt of the second notification, and some other types of agreements enter into force on a later date after the above mentioned confirmation. For example, agreements

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<sup>36</sup> Albania acceded with Law No. 9055 of 24<sup>th</sup> April 2003 to the United Nations Convention on the Law of Sea, 1982.

<sup>37</sup> With Law No. 7/2016 of 04<sup>th</sup> February 2016, the Republic of Albania accepted the protocol for the amendment of the Marrakesh Agreement which established the WTO.

<sup>38</sup> Point 1 of Article 17 of Law No. 43/2016.

<sup>39</sup> Article 18, point 1.

<sup>40</sup> The Greek Republic signed on 22<sup>nd</sup> September 1997 the Council of Europe Framework Convention for the Protection of National Minorities, but has not ratified it.



on the double taxation avoidance enter into force on 1<sup>st</sup> January of the successive year, because their implementation relates to the start of the fiscal year.<sup>41</sup>

## VI. PUBLICATION OF INTERNATIONAL AGREEMENTS

As components of the domestic legislation, international agreements have to be published.<sup>42</sup> Publication of the international agreements in the Official Journal shall necessarily include the publication of the notification of the date of their entry into force and all other notifications related to denouncement, repeal, objections, reserves or declarations. Apart from being familiar with the content of an agreement, subjects interested in the implementation of an agreement need to know the moment when it starts or ceases to produce legal effects.

Before the approval of Law No. 43/2016 the Ministry of Foreign Affairs informed the institutions with the authority to implement the agreements on the date of entry into force, repeal or denouncements. But such a procedure minimised the information of subjects interested in the implementation of the agreement and did not provide transparency for the general public. For this purpose, Law No. 43/2016 obligates the Ministry of Foreign Affairs to send for publication to the Centre of Official Publications all notifications of entry into force, suspension, denouncement and repeal of the international agreements.<sup>43</sup>

For a greater transparency to the public and to increase the efficiency of the implementation of norms of international law, the Ministry of Foreign Affairs in cooperation with the Albanian Institute for Legal and Territorial Matters (ALTRI) and with the support of the Canada Fund for Local Initiatives and the Australian Embassy, accomplished the project for the digitalisation of the international agreements that can be found at [www.treaties.gov.al](http://www.treaties.gov.al). In this website interested subjects can find complete information on the status of the agreements of which the Republic of Albania is a party and their original text archived at the Ministry of Foreign Affairs.

## VII. ALBANIA AS DEPOSITARY OF INTERNATIONAL AGREEMENTS

The Depositary plays a very important role in the implementation of a multilateral international agreement. In agreements in which a small number of states are parties, one of these states takes the role of the depositary, while in the case of international conventions approved by international organisations the role of the depositary is given to the secretariat of these organisations,

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<sup>41</sup> The agreement between the Republic of Albania and the Czech Republic to eliminate the double taxation and tax evasion was signed on 22<sup>nd</sup> June 1995, entered into force on 22<sup>nd</sup> June 1996, and sets as its effective date the 01<sup>st</sup> January 1997.

<sup>42</sup> Point 1 of Article 12 of the Constitution.

<sup>43</sup> Article 33 (3) of Law No. 43/2016.



The Vienna Convention of 1969<sup>44</sup> defines the functions of the depositary of an international agreement that can be summarised as: keeping custody of the original text of the agreement and of the originals of communication between State parties; preparing certified copies of the original text of the agreements and transmitting them to the state parties and to the States that may become parties to the agreement; notifying the State parties of any signing or depositing of the instrument of ratification of the agreement and the date of its entry into force; registering the agreement with the Secretariat of the United Nations; and other functions foreseen by this Convention.

In the last years Albania has taken the role of the Depositary of some international agreements, such as: “*Police Cooperation Convention for South-East Europe*” of 2009; “*Agreement on the Establishment of the Western Balkans Fund*” of 2015; “*Agreement on the establishment of the Regional Youth Cooperation Office*” of 2016. In accordance with Law No. 43/2016, it is the Ministry of Foreign Affairs who acts in the capacity of the depositary of the above mentioned agreements.<sup>45</sup> It is worth mentioning the fact that the two latter agreements mentioned above are of a special importance because they make for the first time the capital of Albania the seat of two regional initiatives. In accordance with Article 102 of the Charter of the United Nations, these agreements have been registered with the Secretariat of this organisation.

### VIII. CONCLUSIONS AND RECOMMENDATIONS

The Law of Treaties constitutes one of the most important branches of public international law and can be considered as its foundation. It has and will continue to develop progressively as a result of the intertwining of interests of the states with the challenges faced by the international community. Regardless of the debates between researchers on the lack of effectiveness of international norms, due to the exercise of the state sovereignty and the avoidance of their obligations by the states, these norms are and will be the main regulators of the international relations. For this reason the norms of the international law are given a privileged place in the legal systems of the states. The interest for the global development of the international law was clearly expressed by the United Nations that declared the period 1990-1999 the decade of the international law.<sup>46</sup>

Albania is a party to a considerable number of bilateral and multilateral agreements, universal and regional, which are components of the Albanian legislation and stand in the highest position in the hierarchy of norms after the Constitution.<sup>47</sup> Knowing and implementing the applicable

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<sup>44</sup> Article 77.

<sup>45</sup> Article 24.

<sup>46</sup> Resolution 44/23 of the Assembly of the United Nations, 17<sup>th</sup> November 1989.

<sup>47</sup> The Directorate of International Treaties and International Law in the Ministry of Foreign Affairs estimates that over 2,000 international bilateral and multilateral agreements have been entered into after the year 1990, and many agreements in which the Albanian state has entered into in the first decades of its existence are still in force, such as: The extradition treaty between the Kingdom of Albania and the United States of America, signed on 01<sup>st</sup> March 1933 which entered into force on 14<sup>th</sup> November 1935.



norms of the international law, apart from being a constitutional obligation for all institutions of the Albanian state, is also a necessity for the civil society, academic institutions, private institutions and individuals.

However, notwithstanding the importance of the norms of the international law, a lot remains to be done in order to know and implement them. For example, during the process of preparation of international reports pursuant to United Nations conventions on human rights, it has been noted that the decisions of the Albanian First Instance or Appeal Courts do not refer to the norms of international law which are obligatory to the Republic of Albania. The only exceptions are the decisions of the Albanian Constitutional Court and of the High Court which mainly refer to the norms of the European Convention on Human Rights.

Public institutions need to strengthen human capacities with experts in international law, able to negotiate agreements that serve best our interests, and to make use of all mechanisms created by the international norms for the peaceful resolution of disputes between states. Academic institutions must expand their curricula with courses on branches of the public international law, such as Maritime Law, the Humanitarian Law, the Law of Treaties, the peaceful resolution of international disputes etc., and they need to increase the number of publications in this field. The civil society meanwhile must strengthen its efforts to promote and monitor the implementation of the international norms obligatory to our country to raise awareness among the public opinion.

Taking into consideration the strategic objective of accession to the European Union, the Albanian state and society must be aware that the careful and professional implementation of the Law of Treaties is beneficial to the national interests of our country and the strengthening of its image as a worthy partner in the stage of international relations.