

ARAřTIRMA MAKALESİ – RESEARCH ARTICLE

**COMING TO TERMS WITH THE PAST:
CASE OF ALBANIA IN THE EUROPEAN UNION PROCESS**

Hatice YAZGAN*

ABSTRACT

Post-communist countries' processes on their way to the European Union (EU) have extensively proceeded simultaneously with their transition from communism to democracy. The regime change led to a process of "coming to terms with the past" in the sense that these countries took transitional justice measures for the crimes and practices of the former authoritarian regimes. In this regard, Albania is a case worth considering as a part of the current EU enlargement agenda. As a country that was not involved in the ethnic wars between the former Yugoslavian countries, Albania experienced a different historical pace of a communist past with its peculiarities. This article mainly aims to analyse Albania's coming to terms with its communist past and thus the transitional justice measures implemented in its EU process. The main argument of the article is twofold: First, EU impact was limited when Albania started its transitional justice period in the 1990s. This was due to the fact that progress in the EU process of Albania in terms of EU candidacy was enhanced in the 2000s and the impact of the strict EU conditionality became evident in these years as well. Secondly, the current international circumstances, in which the rivalry between Russia as well as China, and the West is at its peak in the so-called Western Balkans region, could allow Albania to be more closely aligned with the EU, which in turn may provide the necessary conditions for deeper reforms to come to terms with its past.

Keywords: Albania, European Union, Transitional Justice, Coming to Terms with the Past, Rule of Law.

* Assoc. Prof. Dr., Çankırı Karatekin University, Faculty of Economics and Administrative Sciences, Department of International Relations, Çankırı, ORCID: orcid.org/0000-0001-7906-0062, E-posta: hyazgan@karatekin.edu.tr or yazganhatice@hotmail.com



GEÇMİŞLE YÜZLEŞMEK: AVRUPA BİRLİĞİ SÜRECİNDE ARNAVUTLUK ÖRNEĞİ

ÖZ

Post-komünist ülkelerin Avrupa Birliği'ne (AB) katılma yolundaki süreçleri, büyük ölçüde komünizmden demokrasiye geçişleriyle eş zamanlı ilerlemiştir. Rejim değişikliği, bu ülkelerin eski otoriter yönetimlerin suç ve uygulamaları için geçiş dönemi adaleti önlemleri almaları anlamında bir “geçmişle yüzleşme” sürecine yol açmıştır. Bu bağlamda Arnavutluk, AB'nin mevcut genişleme gündeminin bir parçası olarak üzerinde durulmaya değer bir örnektir. Eski Yugoslavya ülkeleri arasında yaşanan etnik savaşların dışında kalan Arnavutluk, kendine özgü özellikleriyle komünist bir geçmişe sahiptir. Bu makale, Arnavutluk'un AB sürecinde komünist geçmişle yüzleşmesini ve aldığı geçiş adaleti önlemlerini incelemeyi amaçlamaktadır. Makalenin ana argümanı iki yönden ele alınabilir. İlk olarak, Arnavutluk geçiş adaleti sürecini 1990'larda başlatırken, AB etkisi bu yıllarda sınırlıdır. Bunun sebebi, Arnavutluk'un AB adaylığı yolunda ilerleyişinin ve AB'nin koşulluluk ilkesini sıkı bir şekilde uygulamasının 2000'li yıllarda gerçekleşmesidir. İkinci olarak, Batı Balkanlar olarak adlandırılan bölgede Rusya ile Çin ve Batı arasındaki rekabetin zirvede olduğu mevcut uluslararası koşulların, Arnavutluk'un AB ile daha sıkı bir şekilde uyumuna izin verebileceği ve bunun da geçmişle yüzleşmek için daha derin reformların yapılmasını sağlayabileceğidir.

Anahtar Kelimeler: Arnavutluk, Avrupa Birliği, Geçiş Adaleti, Geçmişle Yüzleşme, Hukukun Üstünlüğü.

Introduction

Western Balkan countries among which former Yugoslavia countries and Albania exist have been on the enlargement agenda of the EU for a considerable time. EU-Western Balkans Summit of Thessaloniki, held in 2003 agreed upon the declaration of these states as potential candidate countries to the EU with a clear European perspective. Since then, the EU processes of these countries have evolved and remained on the EU agenda. The Western Balkan states regained the attention of the EU after Russia's invasion of Ukraine on February 24, 2022. The President of the European Council Charles Michel visited the Western Balkan countries in May 2022 and reiterated the support for these countries' EU processes.

As the EU enlargement strategies have undergone substantial changes, Western Balkan countries have demonstrated considerable progress

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toward membership despite some deficiencies. As in the case of the Eastern enlargement countries,¹ the EU processes of most of the Western Balkan countries have simultaneously proceeded with their transition from communism to democracy. The regime change led to a process of “coming to terms with the past” in the sense that they take transitional justice measures to condemn and compensate for the crimes and practices of the former authoritarian regimes. Although there is a great deal of scholarly literature on how the Eastern Enlargement countries have dealt with their communist pasts,² Western Balkan countries need more elaboration. Among these countries, this article aims to analyse Albania for several reasons. Firstly, Albania was the only country that did not belong to the former Yugoslav Republic. As a country that was not involved in the ethnic wars between the former Yugoslavian countries in the 1990s, Albania experienced a different historical pace of a communist past with its peculiarities. Therefore, the Albanian experience regarding its coming to terms with the past as well as its complementary EU process is worth considering. Secondly, the EU welcomed the Eastern enlargement countries that became members of the EU in 2004 and 2007 with the so-called “return to Europe” motto. Considering the Western Balkans enlargement and especially the former Yugoslavian countries, the consequences of the wars in the 1990s led the EU to seriously consider these countries’ membership in the EU and stability became the main driver of this enlargement. The geographical proximity of these countries raised the EU’s concerns regarding combatting the challenges of the war in the region. Unlike the former Yugoslavian countries, Albania was not directly involved in the wars of the region, and therefore elaboration of the driver of the EU-Albanian relations is worth reconsidering regarding its “coming to terms with the past”.

In this regard, this article mainly aims to analyse Albania’s transitional justice measures and coming to terms with its communist past in its EU process. The main questions to be addressed are: To what extent do the

¹ Eastern enlargement of the EU refers to the countries that became EU members in 2004-2007 among which the countries also known as Central and Eastern European Countries (CEECs) take place, namely; Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia (2004) and Bulgaria, Romania (2007). (Malta and Cyprus became members of the EU in 2004 as well.)

² For the examples, see: John Gledhill, “Integrating the past: regional integration and historical reckoning in Central and Eastern Europe”, *Nationalities Papers: The Journal of Nationalism and Ethnicity*, Volume 39, Number 4, 2011, p. 481-506. Lavinia Stan (ed.), *Transitional Justice in Eastern Europe and the Former Soviet Union, Reckoning with the Communist Past*, Routledge London and New York 2009.

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EU reforms in Albania overlap with the process of coming to terms with its past compared to the other as well as the previous EU candidates? And did the EU process facilitate or complicate Albania's process? To provide the answers to these questions, current international circumstances will be taken into consideration. The article draws on the literature on the concept of "coming to terms with the past" and thus transitional justice policies, and the role of the EU in candidate countries' implementing enlargement conditionality including the rule of law which is a significant tool for these countries to reckon with their pasts. The main argument of this article is twofold. First, the other Western Balkan candidates' and the Eastern enlargement countries' transitional justice periods have extensively overlapped with their EU process which facilitated the EU impact. Nevertheless, Albania started its transitional justice period in the 1990s, while the EU process with strict conditionality started at the beginning of the 2000s, limiting the EU impact. Second, under these circumstances, current international developments in which rivalry between the West and Russia, as well as China, is at its peak in the Western Balkans, may pave the way for Albania to align more robustly with the EU and this in turn may provide the proper conditions for deeper reforms to come to terms with its past.

The article continues as follows: In the first part of the article, the conceptualisation of transitional justice and "coming into terms with the past" and the content of the policies that states employ in order to understand what coming to terms with the past means from the EU perspective will be explained. This part provides various examples of transitional justice mechanisms applied in Europe and also comprises a link between the transitional justice period and the EU memory. The second part focuses on the EU's impact on the enlargement countries through conditionality on their coming to terms with their communist pasts. The third part addresses Albania's transition from communism to democracy and the consequences of the implementation of transitional justice measures. The fourth part specifically focuses on Albania's EU path and EU impact on its coming to terms with the past. In this part, internal and external factors that could diminish the EU impact in the region and paradoxically, the current international circumstances that may open a venue for Albania to come to terms with its past in the EU process will be scrutinized as well.

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1. What is Transitional Justice? and What does “Coming to terms with the Past” mean from the EU perspective?

Post-communist states entered a period in the 1990s, in which a transition from communism to democracy and market economic structures took place. This transformation required the implementation of the so-called “transitional justice” measures which aim to ensure coming to terms with the past. Hence, the elaboration of the concept of transitional justice could shed a light on understanding the experiences of the post-communist states.

According to the commonly referred United Nations’ definition, “transitional justice covers the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past conflict, repression, violations, and abuses, to ensure accountability, serve justice and achieve reconciliation”.³ A well-recognized international NGO, “International Center for Transitional Justice” describes transitional justice as a term referring “how societies respond to the legacies of massive and serious human rights violations” from the perspective of victims.⁴ As a complementary definition, this concept is defined as to comprise “... the legal and non-legal mechanisms that ... include but are not limited, to inter alia, criminal prosecutions, truth commissions, reparations, lustration, apologies, memorials, institutional reform, etc” by Kalemaj.⁵ Additionally, these measures are defined as mechanisms to ensure “interpersonal trust” which is anticipated as low in the post-communist countries as Horne argues.⁶

These transitional justice methods are conceptualized under the headings; “retributive justice” and “restorative justice” in the academic

³ United Nations Human Rights Office of the High Commissioner, “About Transitional Justice and Human Rights”, <https://www.ohchr.org/en/transitional-justice>, (17.10.2022).

⁴ International Center for Transitional Justice, “What is transitional justice?” <https://www.ictj.org/reparations>, (1.03.2023).

⁵ Ilir Kalemaj, “Transitional justice and democratic consolidation in post-communist Eastern Europe: Romania and Albania”, *Eastern Journal of European Studies*, 12/1, June 2021, p. 86. For “art” and “culture” as a transitional justice policy see: Maja Savić-Bojanić & Ilir Kalemaj, “Art and Memory as Reconciliation Tool? Re-Thinking Reconciliation Strategies in the Western Balkans an Introduction”, *Southeastern Europe*, Volume 45, Number 3, 2021, p. 273-290.

⁶ Cynthia M. Horne, “Lustration, Transitional Justice, and Social Trust in Post-Communist Countries. Repairing or Wrestling the Ties that Bind?”, *Europe-Asia Studies*, Volume 66, Number 2, March 2014, p. 225-254.

literature. According to the highly cited article of Wenzel et. al, “Retributive justice essentially refers to the repair of justice through the unilateral imposition of punishment, whereas restorative justice means the repair of justice through reaffirming a shared value-consensus in a bilateral process”.⁷ There is not a “one size fits all” approach for the countries and as Pugh argues, the “hybrid” model could be utilised, combining both retributive and restorative justice depending on the country’s historical, political, and social peculiarities. Restorative justice mechanisms including amnesties and truth commissions are mainly about forgiveness and attempting reconciliation, whereas retributive justice systems such as trials and international tribunals focus on punishing the offenders.⁸ Among the retributive mechanisms, lustration (which basically refers to banning former officials from politics and certain positions in the post-communist period) is commonly applied in the post-communist countries.⁹

Some examples could be given to highlight how transitional justice is implemented in various European countries. As Stan argues, Eastern enlargement countries’ transitional justice measures mainly comprised trials, access to files (opening the archives), and lustration due to the dominance of communist parties, secret police, and intelligence during the communist period.¹⁰ Although this was the case, some variations existed in implementing these measures in respect of each country. For instance, lustration was implemented more comprehensively in the Czech Republic compared to Poland.¹¹ NATO and the EU impacts arose when the countries were joining these institutions as members. Both NATO and the EU supported the application of lustration mechanisms in these countries since they were worried about the risk of the ex-officials getting hold of sensitive data and

⁷ Michael Wenzel, Taylor G. Okimoto, Norman T. Feather, Michael J. Platow, “Retributive and restorative justice”, *Law and Human Behavior*, Volume 32, Number 5, 2008, p. 375-389. For a broad explanation and analysis see: Janine Natalya Clark, “The three Rs: retributive justice, restorative justice, and reconciliation”, *Contemporary Justice Review*, Volume 11, Number 4, 2008, p. 331-350.

⁸ Jeffrey D. Pugh, “Eroding the Barrier Between Peace and Justice: Transitional Justice Mechanisms and Sustainable Peace”, *International Journal of Peace Studies*, Volume 24, Number 1, Summer 2019, p. 1-23.

⁹ For a brief explanation see: Lavinia Stan, “Introduction, Post-communist transition, justice and transitional justice”, *Justice, Memory, and Redress in Romania: New Insights*, (ed.) Lavinia Stan and Lucian Turcescu, Cambridge Scholars Publishing, Newcastle Upon Tyne, UK 2017, p. 6-7.

¹⁰ *Ibid.*

¹¹ *Ibid.*, p. 8.

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taking on influential positions in NATO and the EU once they become members.¹² As Gledhill points out, the EU processes of Eastern enlargement countries had a powerful influence on coming to terms with their pasts by taking into account the remarks of leaders of Romania and Bulgaria in December 2006 (just before the entry to the EU) declaring to take some measures including opening the archives of the secret police to confront the communist past.¹³ The implementation of transitional justice mechanisms was influenced by domestic politics as well. In Bulgaria, transitional justice measures have been realized starting from 1990 and controversial aspects of the period emerged as the leftist politicians were mainly supporting reconciliation while others advocated the opposite and stated that “communism is equal to Nazism and the camps in Belene and Lovech are comparable to Gulag and Auschwitz”.¹⁴ Then the restorative measures have been applied, however, the retributive measures (courts and trials) gave rise to intense controversies among the divided political elites which didn’t lead to robust justice.¹⁵ Poland had a similar transitional justice period in which harsh divisions emerged in domestic politics on handling the issue. The lustration procedure was slow and ineffective and access to files has been enhanced to a certain degree. Stan defines the transitional period of Poland as “forgive and forget”.¹⁶ The so-called Baltic states, Estonia, Latvia, and Lithuania have implemented transitional justice mechanisms including lustration and access to files. However, they confronted a serious impediment regarding the secret files since the files were under the jurisdiction of the KGB and these states were part of the former Soviet Union before the independence. All in all, they succeeded in applying transitional justice compared to the other former Soviet republics.¹⁷ Dealing with the past could differ between the states that shared a common past as well. Czechoslovakia passed a lustration law and after the break-up of the federation in 1993, the application of this law differed between Czechs and Slovaks. While the Czech

¹² *Ibid.*

¹³ John Gledhill, “Integrating the past: regional integration and historical reckoning in Central and Eastern Europe”, *Nationalities Papers: The Journal of Nationalism and Ethnicity*, Volume 39, Number 4, 2011, p. 481-482.

¹⁴ Ana Luleva, “Transitional Justice and Memory Culture in Post-Socialist Bulgaria”, *Our Europe, Ethnography, Ethnology and Anthropology of Culture*, Volume 2, 2003, p. 119-121.

¹⁵ *Ibid.*, p. 121.

¹⁶ Lavinia Stan, “Transition, justice and transitional justice in Poland”, *Studia Politica: Romanian Political Science Review*, Volume 6, Number 2, 2006, p. 257-284.

¹⁷ Lavinia Stan, “10 the former Soviet Union”, *Transitional Justice in Eastern Europe and the Former Soviet Union, Reckoning with the Communist Past*, (ed.) Lavinia Stan, Routledge London and New York 2009, p. 230-231.

Republic consistently applied and extended the law and enhanced citizens' access to secret files, Slovakia didn't enforce and extend the law and provided the file access at a very late stage. Nedelsky cites one of the reasons for the diverging approaches as the more oppressive communist regime practices on Czechs in the past and thus unfavourable attitudes of the elite towards the legitimacy of communism.¹⁸ Among the others, Hungary applied lustration and other restorative transitional justice measures. However, these transitional justice measures have failed as Kiss argues. Accordingly, lustration laws have been used for the manipulation of the opposition by the elites during the election period.¹⁹

Furthermore, the transitional justice measures could provide a solution for coming to terms with the former regime's crimes as well as promoting the rule of law to restore the judicial system in the country.²⁰ Therefore, the relationship between transitional justice and democratic development, or what impact transition justice has on democratic development, is worth examining. Kalemaj explains this link with respect to two countries dealing with their communist pasts: Romania and Albania. Arguing that the speed of transitional justice implemented through the appropriate mechanisms has an impact on the success of democratization, Kalemaj refers to Albania's failure compared to Romania in terms of implementation of transitional justice mechanisms that led to successful democratization and establishment of rule of law in the latter.²¹ However, the argument that transitional justice measures do not "automatically" give rise to the enhancement of the rule of law can be taken into consideration as Stasa notes.²²

The process of coming to terms with the past is not unique to European countries. Various countries all over the world reckoned their pasts

¹⁸ Nadya Nedelsky, "Divergent Responses to a Common Past: Transitional Justice in the Czech Republic and Slovakia", *Theory and Society*, Volume 33, Number 1, 2004, p. 65-115.

¹⁹ Csilla Kiss, "The misuses of manipulation: The failure of transitional justice in post-communist Hungary", *Europe-Asia Studies*, Volume 58, Number 6, 2006, p. 925-940.

²⁰ George Kasapas, "An Introduction to the Concept of Transitional Justice: Western Balkans and EU Conditionality", *UNISCI Discussion Papers*, Number 18, 2008, p. 60.

²¹ Kalemaj, *op.cit.*, p. 81-83.

²² Ines Stasa, "Chapter 12, Transitional Justice in Post-communist Societies -The Case Study of Albania", *Between Peace and Conflict in the East and the West, Studies on Transformation and Development in the OSCE Region*, (ed.) Anja Mihr, OSCE Academy in Bishkek, Springer 2021, p. 248.

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with specific circumstances.²³ The first examples of dealing with the past emerged towards the end of the 1980s, on a national level in countries like Argentina, where authoritarian regimes took place. Thereafter, the issue is taken to the international level through the examples of the transition to democracy.²⁴ The EU membership process has taken this phenomenon to a different level by imposing the relevant countries destined to join the EU conditional upon implementing the requirements of the establishment of rule of law.

Meanwhile, coming to terms with the past is closely related to the concepts of memory and identity in the EU.²⁵ The “Holocaust” was widely accepted as a common European memory through the initiatives of European institutions before the Eastern Enlargement of the EU.²⁶ Then, Eastern Enlargement countries’ demands for equal treatment of the crimes of communism and totalitarian regimes with those of Nazism were debated in political circles.²⁷ Eastern European countries that suffered both from Nazi and Communist regimes demanded the communist crimes to be a part of European memory.²⁸ This memory “clash” could hinder the formation of a common European memory²⁹ and these differing views on collective memory eventually led to some initiatives. Among these, the adoption of a declaration and resolution on the “proclamation of 23 August as “European Day of Remembrance for Victims of Stalinism and Nazism”³⁰ in 2008, and a day of

²³ For the case of Chile see: Marit de Haan and Tine Destrooper, “Using restorative justice to rethink the temporality of transition in Chile”, *The International Journal of Restorative Justice*, Volume 4, Number 2, 2021, p. 206-228. For the example of truth commissions in the case of South Africa: see, Jennifer J. Llewellyn and Robert Howse, “Institutions for Restorative Justice: The South African Truth and Reconciliation Commission”, *The University of Toronto Law Journal*, Volume 49, Number 3, Summer 1999, p. 355-388.

²⁴ Paige Arthur, “How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice”, *Human Rights Quarterly*, Volume 31, Number 2, 2009, p. 321.

²⁵ For transitional justice and memory, see: Luleva, *op.cit.*, p. 118.

²⁶ Tea Sindbæk Andersen, and Barbara Törnquist-Plewa, “Introduction: Disputed Memories in Central, Eastern and South-Eastern Europe”, *Disputed Memory: Emotions and Memory Politics in Central, Eastern and South-Eastern Europe*, (ed). Tea Sindbæk Andersen and Barbara Törnquist-Plewa, De Gruyter, Berlin-Boston 2016, p. 7-8. For these initiatives see: Carlos Closa, “Dealing with the Past: Memory and European Integration”, *Jean Monnet Working Papers*, New York: NYU School of Law 2011, p. 7.
<https://ssrn.com/abstract=1972355> or <http://dx.doi.org/10.2139/ssrn.1972355>, (09.08.2022).

²⁷ Closa, *ibid.*, p. 6-10.

²⁸ Andersen and Plewa, *op.cit.*, p. 8.

²⁹ *Ibid.*, p. 9.

³⁰ European Parliament, “Declaration of the European Parliament on the proclamation of 23 August as European Day of Remembrance for Victims of Stalinism and Nazism”, 23

“European Conscience and Totalitarianism”³¹ by the European Parliament in 2009 could be mentioned. The discourse on memory gained further ground with the Council Decisions released on June 2011 that reaffirmed the “importance of raising awareness of the crimes committed by totalitarian regimes, given that this can play a role in preventing a renewed rise of totalitarian ideologies”.³² Those EU documents among others include content on establishing a “Platform of European Memory and Conscience” for network and collaboration between the related institutions working on totalitarian memories.³³ Finally, this Platform was established in 2011 in Prague, with 23 members, including 15 EU member states. Before that, in 2005, “European Network Remembrance and Solidarity” was established in Warsaw with the declaration signed by the Culture Ministers of Hungary, Germany, Poland, and Slovakia. According to the Declaration, the network’s main aim is analysing and documenting the totalitarian pasts of the countries in the network.³⁴ Recently, some EU member states launched a common appeal after the attack by Russia on Ukraine in February 2022. With this appeal, high representatives of Estonia, Latvia, Lithuania, Poland, and Romania underlined that the EU must devote more attention to condemning the atrocities of the 20th-century totalitarian regimes, and to honor the victims of those regimes due to the Russian war in Ukraine.³⁵ In conclusion, enlargement countries’ struggle for coming to terms with their pasts and

September 2008, https://www.europarl.europa.eu/doceo/document/TA-6-2008-0439_EN.html, (06.07.2022).

³¹ European Parliament, “Resolution of 2 April 2009 on European Conscience and Totalitarianism”, https://www.europarl.europa.eu/doceo/document/TA-6-2009-0213_EN.html, (06.07.2022).

³² Council of the European Union, Press Release, 3096th Council Meeting, Luxembourg, 9-10 June 2011, p. 22.

https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/122516.pdf, (06.07.2022).

³³ Platform of European Memory and Conscience, <https://www.memoryandconscience.eu/>, (06.07.2022).

³⁴ Declaration Regarding the Creation of the European Network “Remembrance and Solidarity”, 2 February 2005. <https://enrs.eu/uploads/media/5eda379f337b3-deklaracja-2005.pdf>, (4.08.2022).

³⁵ Platform of European Memory and Conscience, “The EU’s resilience to external threats requires a broader condemnation and commemoration of the crimes of Communism, as demanded by five Member States - Platform of European Memory and Conscience”, 29 July 2022. <https://www.memoryandconscience.eu/2022/07/29/the-eus-resilience-to-external-threats-requires-a-broader-condemnation-and-commemoration-of-the-crimes-of-communism-as-demanded-by-five-member-states/>, (4.08.2022).

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international developments continue to trigger the debate on European memory.

2. EU Impact on the Enlargement Countries’ “Coming to terms with Their Pasts”

The overlap of transitional justice measures and democratic processes makes sense because these countries, while in transition, are on the way to EU membership, which requires the implementation of extensive democratic and economic reforms. This is where the role of the EU emerges.

Joining the EU is conditional upon the fulfillment of specific criteria. According to the extensive EU enlargement literature, this “conditionality” is the main instrument of the EU accession which comprises the whole process starting from the application to the EU until the country becomes a member.³⁶ As Gateva points out, the conditionality continues even after the accession taking into account the so-called “Cooperation and Verification Mechanism for Romania and Bulgaria.”³⁷ Ultimately, the EU impact on the accession countries is determined and interacted with many factors. Taking a closer look at the implementation of the conditionality principle in the EU, enlargement history let us extract some “lessons of enlargement” as Grabbe argues.³⁸ These experiences led the EU to articulate the accession criteria and therefore enlargement strategies of the EU determined the “Fundamentals First” as the core of the EU conditionality which also covers chapters 23 & 24 in the accession negotiations. The “Fundamentals First” principle mainly refers to increasing the rule of law, democracy, and human rights standards of the country in the EU process.³⁹

³⁶ These criteria mainly refer to the so-called Copenhagen Criteria which include establishing stable institutions for enhancing democratic standards as well as economic standards and implementation of EU Acquis Communautaire. For an overview of the conditionality, see: Frank Schimmelfennig & Ulrich Sedelmeier, “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe”, *Journal of European Public Policy*, Volume 11, Number 4, 2004, p. 661-679.

³⁷ Eli Gateva, “Post-accession conditionality - translating benchmarks into political pressure?”, *East European Politics*, Volume 29, Number 4, 2013, p. 420-442.

³⁸ Heather Grabbe, “Six Lessons of Enlargement Ten Years On: The EU’s Transformative Power in Retrospect and Prospect”, *Journal of Common Market Studies*, Volume 52, 2014, p. 40-56.

³⁹ For the enlargement strategies that refer to these contents, see: European Commission, “Strategy and Reports”, European Neighbourhood Policy and Enlargement Negotiations, *Enlargement*, https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/strategy-and-reports_en, (17.10.2022).

Consequently, among others, the issue as to whether a precondition for the countries in the accession process to come to terms with their pasts exists or not, needs to be elaborated. As Monnet argues, coming to terms with the past is a “soft membership criterion”⁴⁰ for the countries aspiring to be a member of the EU. Taking into consideration the “cost of apologies” as a transitional justice measure, as a “common foreign policy goal” the EU enables a “context in which apologies may prove beneficial” for the Western Balkan countries.⁴¹ EU impact in coming to terms with the past could be traced in various forms in different countries. For example in Kosovo, state-building efforts could be regarded as a dimension of transitional justice and the EU contributed to the transitional justice process of Kosovo through various initiatives.⁴² As for the Central and Eastern European countries, Gledhill argues that the European institutions including the EU, didn’t impose “top-down projects” for coming to terms with their pasts, and activists in these countries were able to utilize the resources and support for various initiatives for reckoning the past.⁴³ Transitional justice is a part of the EU accession process through the condition to cooperate with the International Criminal Tribunal for the Former Yugoslavia, in the case of the Western Balkan countries which refers to “retributive justice” practices of the EU.⁴⁴ Wentholt argues that the EU’s choice in practicing “retributive justice” is due to “mirroring” its historical experiences including the Nuremberg trials in 1945-1949.⁴⁵ Before the so-called Western Balkans enlargement, Eastern Enlargement countries experienced these periods as well. However, before this enlargement wave, some older members didn’t have a transitional justice period during their EU accession like Spain. Nevertheless, currently, there is an activation of Spanish civil society to elaborate on the past.⁴⁶

⁴⁰ Annabelle Littoz-Monnet, “The EU Politics of Remembrance: Can Europeans Remember Together?”, *West European Politics*, Volume 35, Number 5, 2012, p. 1182.

⁴¹ Davide Denti, “Sorry for Srebrenica? Public Apologies and Genocide in the Western Balkans”, *Disputed Memory: Emotions and Memory Politics in Central, Eastern and South-Eastern Europe*, (ed.) Tea Sindbæk Andersen and Barbara Törnquist-Plewa, De Gruyter, Berlin-Boston 2016, p. 66.

⁴² Remzije Istrefi, “European Union Support and Transitional Justice Processes in Kosovo”, *EUROPOLITY*, Volume 11, Number 2, 2017, p. 137-168.

⁴³ Gledhill, *ibid.*, p. 481-506.

⁴⁴ Niké Wentholt, “Mirroring Transitional Justice, Construction and Impact of European Union ICTY Conditionality”, *Südosteuropa*, Volume 65, Number 1, 2017, p. 77.

⁴⁵ *Ibid.*

⁴⁶ For the example of Spain: PD Dr. Mark Arenhövel, “Democratization and Transitional Justice”, *Democratisation*, Volume 15, Number 3, 2008, p. 573-574.

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The EU can act as a “transitional justice actor” with its resources and shared values that underpin transitional justice, according to Unger.⁴⁷ Although the new member states experienced transitional justice periods relatively recently, the EU didn’t have a comprehensive policy on the concept until 2015. The so-called “EU’s Policy Framework on support to transitional justice” attributes the EU a strong role to support transitional justice with the close cooperation of international institutions.⁴⁸ The policy framework refers to transitional justice as a priority for the candidate countries and mentions that the so-called Copenhagen criteria address this priority by the fundamental rights and the rule of law.⁴⁹

In this respect, as a mechanism of tackling the past, transitional justice could be regarded as a “peacebuilding step” for “securing a stable democratic future”.⁵⁰ Therefore, the EU process can provide the necessary conditions for implementing transitional measures and handling the controversial pasts of the countries in the EU process. In other words, implementing the rule of law standards of the EU process necessitates reinforcing democratic standards, and laws, ensuring the independence of judicial order, etc. Establishment and/or rehabilitation of the system to adapt to the EU standards include coming to terms with the past of the country in question. Eventually, the principal tool for improving democratic standards in the candidate countries could be regarded as the “rule of law”. It is a major phenomenon not only for the countries in the EU process but for the member countries of the EU, notably Hungary, and Poland because of the so-called “democratic backsliding” in these countries.

However, the “rule of law” concept has some contested dimensions which arise from the critics regarding its content. Some argue that its content

⁴⁷ Thomas Unger, “The European Union and Transitional Justice”, *Working Paper*, Centre for the Law of EU External Relations (CLEER) The Hague, 2010/1.

⁴⁸ European Union External Action Service, “EU adopts its policy framework on support to transitional justice”, EU adopts its policy framework on support to transitional justice. [⁴⁹ *Ibid.*, p. 42.](https://www.eeas.europa.eu/node/2158_en#:~:text=The%20EU%20promotes%20a%20comprehensive,to%20reconciliation%20and%20non%2Drecurrence,(4.03.2023), and Council of the European Union, Foreign Affairs Council, “Council Conclusions on EU’s Support to Transitional Justice”, Brussels, 16 November 2015, p. 2-3.</p></div><div data-bbox=)

⁵⁰ Clara Sandoval Villalba, “Transitional Justice: Key Concepts, Processes, and Challenges”, *Briefing Paper* Institute for Democracy & Conflict Resolution” (University of Essex)-(IDCR-BP-07/11), 2011, p. 2.

is far from being clear since it is derived from the values that take place in Lisbon Treaty. Besides, benchmarks and control measures are not identified regarding the independence of the judiciary and media freedom.⁵¹ Despite these critics, subsequently, the rule of law concept remains the sole proper tool to enable a proper functioning system of justice and allows the transition state to properly assess and investigate past abuses and crimes.

3. Albania's Coming to terms with the Past: Explaining the Main Transitional Justice Measures

Against the background provided in the previous chapters, this part aims to evaluate Albania's efforts to deal with its communist past. In Albania, the long period of Enver Hoxha came to an end in 1985 with his death, however, the communist regime was alive until the protests of crowds and student demonstrations led to a radical regime change at the beginning of the 1990s. During this period, the domestic situation was in turmoil despite the economic reforms and the support of international actors including the EU.⁵² Currently, as representations of the past, the memory monuments and places such as Bunk Art Museums, House of Leaves, and National Museum in the capital Tirana demonstrate the impact of this period as communist-era legacies.

The legal and practical dimensions of Albania's transition period include various mechanisms which mean that both retributive and restorative justice mechanisms have been applied. In terms of these mechanisms; trials, lustration, and enactment of the related legislative arrangements, access to files, the proclamation of amnesty, and investigation of the missing people have been implemented to a certain extent. Besides, civil society initiatives have shed a light on confronting the past with various activities. Multiple aspects of the transitional justice mechanisms have been briefly evaluated below.

⁵¹ Clingendael Report, "The EU as a promoter of democracy or 'stabilitocracy' in the Western Balkans?", *A report by The Clingendael Institute and the Think for Europe Network (TEN)*, Netherlands 2022, p. 13.

⁵² Paul Kubicek, "Albania's Collapse and Reconstruction", *Perceptions Journal of International Affairs*, March-May 1998, Volume III, Number 1, p. 1-9.

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Lustration Laws, Legislation Enactment, and Trials

As a part of retributive justice mechanisms, the lustration laws have been adopted in Albania starting at the beginning of the 1990s.⁵³ In this period, political parties with certain ideologies were prohibited and some former communists were charged by the government. The law on “Genocide and Crimes against Humanity Committed in Albania during Communist Rule for Political, Ideological or Religious Motives” (the so-called “Genocide Law”) was adopted in 1995 and this law prohibited persons associated with the former regime before March 1991 to hold certain positions in government, parliament, judiciary, or mass media until 2002.⁵⁴ Implementation of the Lustration laws resulted in the charging of 70 former officials and some of them were fined and sent to prison between 1992 and 1993. 139 candidates were banned to participate in the 1996 elections and the former president was imprisoned.⁵⁵ However, these lustration practices have been interpreted as ineffective due to their defects in content and implementation.⁵⁶ Similarly, Reka notes that lustration laws were enacted without public debate and consent, their implementation was not “transparent” and “impartial”⁵⁷ and the laws were adopted without consensus and the support of the opposition. The government of the time used the lustration laws as a tool to suppress the opposition.⁵⁸ And all these resulted in a lack of trust between the institutions and the public.⁵⁹ Therefore, there is a considerable consensus regarding the deficiency of the proper implementation of the lustration laws in Albania.

The EU’s reaction to the implementation of another version of the lustration law emerged in 2009. The EU raised concern over the content of the law and urged the government to reconsider the law and protect the

⁵³ Valbona Ndrepepaj, “Lustration Laws Dealing with State Administration in Albania”, *Transitional Justice in Albania- A Compilation of Papers by Young Albanian Researchers*, OSCE Presence in Albania & Konrad Adenauer Stiftung, 2020, p. 77.

⁵⁴ Mark S. Ellis, “Purging the Past: The Current State of Lustration Laws in the Former Communist Bloc”, *Law and Contemporary Problems*, Volume 59, Number 4, 1997, p. 185-187.

⁵⁵ *Ibid.*, p. 186-187.

⁵⁶ Ndrepepaj, *op.cit.*, p. 77.

⁵⁷ Eglantina Reka, “Lustration and Vetting in Post-Communist Albania Inter-Linked with Civic Trust in Governmental Institutions”, *Transitional Justice in Albania- A Compilation of Papers by Young Albanian Researchers*, OSCE Presence in Albania & Konrad Adenauer Stiftung, 2020, p. 121.

⁵⁸ Robert C. Austin and Jonathan Ellison, “Post-Communist Transitional Justice in Albania”, *East European Politics and Societies*, Volume 22, Number 2, 2008, p. 373-401.

⁵⁹ Reka, *op.cit.*, p. 122.

independence of the constitutional court. The EU reiterated the importance of rule of law as an EU condition,⁶⁰ and afterward, this law is annulled. The timing of the EU reaction to the lustration law is significant since 2009 was the beginning of the period when the EU process of Albania gained a remarkable impetus and the EU conditionality applied more rigorously.

Regarding the other transitional justice measures, Albania implemented trials, and truth commissions as retributive justice mechanisms as well as commemorations and apologies as restorative justice measures, but to a limited extent.⁶¹ As a part of restorative measures, some precautions have been envisaged regarding the “reparation of the political prisoners” of the communist period in post-communist Albania. Financial reparation measures in this context were applied inconsistently to an extent, starting from 1991 and in 1993, and the law on “the status of former political prisoners and those prosecuted by Communist regime” is enacted. However, various obstacles, such as the lack of “political will”, led to a lack of a direct outcome. Political prisoners’ access to files of the secret police so-called “Sigurimi” was enhanced in 2015.⁶² Although the law on “Innocence, amnesty, and rehabilitation of former political and prosecuted” was adopted in 1991, the lack of an official apology to the so-called political prisoners has still revealed a deficiency among others.⁶³

Missing persons, property rights, health services

In its coming to terms with the past, the debate on missing persons during the communist period was another issue to be dealt with in Albania. As an international organization, “The International Commission on Missing Persons” which is established to support governments and societies estimates that 6000 persons were missing under the communist regime.⁶⁴ The transition period allowed Albania to have the right conditions for the implementation of the relevant actions for these people as a part of restorative justice. Albania

⁶⁰ Council of the European Union, “Declaration by the Presidency on behalf of the EU on the Albanian Lustration Law”, 6481/09 (Presse 40), Brussels, 13 February 2009.

⁶¹ Kalemaj, *op.cit.*, p. 96.

⁶² Mandrit Kamolli, “The Unfinished Business of Transitional Justice: Reparation of Former Political Prisoners in Post-Communist Albania”, *Transitional Justice in Albania- A Compilation of Papers by Young Albanian Researchers*, OSCE Presence in Albania & Konrad Adenauer Stiftung, 2020, p. 44.

⁶³ *Ibid.*, p. 45.

⁶⁴ The International Commission on Missing Persons, “Albania, Missing Persons from the Communist Era: A Needs Assessment”, Sarajevo 2021, p. 4-5.

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and the International Commission on Missing Persons signed a cooperation agreement to transfer technical support from the institution in the efforts for the missing persons. Moreover, various legislation has been enacted namely the “Law on Innocence, Amnesty and Rehabilitation of Former Politically Persecuted Persons” in 1991, and “Law on the Status of Formerly Sentenced and Prosecuted by the Communist Regime” in 1993 to restore their situation. The “Criminal Code” and the “Criminal Procedure Code” in 1995, “Law on Compensation of the Formerly Politically Persecuted Persons” in 2004, and the Resolution on “Condemning the Crimes of Communism in Albania” in 2006 and their amendments contained measures on compensation, rehabilitation, and punishment.⁶⁵ Besides, various institutions and agencies have been established to deal with the issue of missing persons during the communist period.⁶⁶

As one of the most abused, property right was one of those rights that had to be reinstated and protected during the transitional phase. Initial property laws, namely the law on “land” (7501) and the law on “restitution and compensation of properties to former owners” (7698), enacted respectively in 1991 and 1993 were the main legislative acts to restore the property arrangements of the communist period. Consequently, these laws gave rise to debate in public, and their amended versions focusing mainly on “restitution” and “compensation” of property rights have not yet brought lasting solutions to this issue of the transition period.⁶⁷

Since the mental health service in Albania was used against the opposition during communism, it is anticipated that the right to mental health is a fundamental human right, which should be part of transitional justice, as Fusha notes.⁶⁸ Therefore, having access to international health standards and reform of the health services in Albania could be interpreted as a transitional justice measure.⁶⁹ With the collapse of communism, the restoration of the

⁶⁵ *Ibid.*, p. 6.

⁶⁶ For the relevant institutions see: *ibid.*, p. 7-12.

⁶⁷ Romina Kali, “The effect of property laws on the process of the restitution and compensation in post-communist Albania, under the framework of Transitional Justice”, *Transitional Justice in Albania- A Compilation of Papers by Young Albanian Researchers*, OSCE Presence in Albania & Konrad Adenauer Stiftung, 2020, pp. 6-29.

⁶⁸ Rikela Fusha, “The mental health system as a target of transitional justice: Mental Health reform in post-communist Albania”, *Transitional Justice in Albania- A Compilation of Papers by Young Albanian Researchers*, OSCE Presence in Albania & Konrad Adenauer Stiftung, 2020, p. 99.

⁶⁹ *Ibid.*, p. 99-118.

health system in Albania came to the agenda which led to the privatization of the system with the support of international institutions.⁷⁰

Public Opinion

During the transition period in Albania, the education system including the system itself and the curriculums was another area that was subject to reform and democratization⁷¹ as a part of restorative justice. According to a recent survey carried out by the Institute for Media and Culture Democracy (IDMC) with 350 teachers from 13 cities in Albania, awareness about the communist past is low. Therefore, according to an evaluation, not only the students but also the teachers need to know more about this part of the history of the country.⁷² As such, the public perceptions of communism remain a significant dimension to consider. According to a public survey conducted in 2015 in Albania about the perception of the communist regime and the expectations of the past, diverse conclusions have been drawn. Although the respondents support some measures such as lustration and opening the secret files, dealing with the communist past is not seen as an utmost priority taking into account the other economic and political problems. Young generations do not have much information on the communist period and the respondents' perceptions of the communist era do not display a uniform character. Some have positive perceptions while others think the opposite.⁷³ These perceptions indicate the domestic environment in which reconciliation with the past will be addressed.

Institutional Reforms and Initiatives

Since the military and the judiciary were the principal pillars of Albania's communist administration, the transition to democracy comprised reforms in these areas as well. Yet, the military's progress in terms of institutional reforms was enhanced while the judiciary was still a long way

⁷⁰ *Ibid.*, p. 103.

⁷¹ Jani Sota, "Educational phenomena in Albania in the years of communist dictatorship and the reformation efforts after the nineties", *European Scientific Journal*, Volume 11, Special Edition, 2011, p. 31-46.

⁷² Exit, "Albania's Communist Past Not Taught Adequately in Schools", *Exit News*, 14 Feb. 2020. <https://exit.al/en/2020/02/14/albanias-communist-past-not-taught-adequately-in-schools/>, (18.09.2022).

⁷³ Institute for Development Research and Alternatives (IDRA), OSCE, "Results of the Survey, Citizens Understanding and Perceptions of the Communist Past in Albania and Expectations for the Future", 2016, p. 4.

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behind as Gjevori defines.⁷⁴ Among the institutional initiatives for reckoning with the past, the establishment of the “Institute for the Studies of Communist Crimes and Consequences” could be mentioned. Its establishment was approved by the Parliament in 2010 and its mission is defined as to evaluate and document the crimes during the communist era.⁷⁵ Besides, a research centre was established at the University of Tirana called “Centre for Justice and Transformation” in 2020 in cooperation with OSCE’s presence in Albania to implement research on human rights violations in the communist period.⁷⁶ The other initiative is the establishment of a foundation “for the memory of the victims of communism” called KUJTO, in Tirana. This foundation holds an online archive of the crimes of the communist period.⁷⁷ Foundation has prepared an interactive “memory map” which shows the prisons and labour camps of the period.⁷⁸ Despite the above-mentioned civil actions and efforts, some obstacles remain for Albania to come to terms with its communist past.⁷⁹ However, the EU impact combined with the current international circumstances may provide the appropriate conditions for an acceleration of the process.

4. EU Impact on Albania’s Coming to terms with its Past

After the collapse of communism in Albania, the main objective was to establish close relations with the EU, both on the elite level and in the public.⁸⁰ The official relations between the EU and Albania started at the beginning of the 1990s with the conclusion of a “Trade and Cooperation”

⁷⁴ Elvin Gjevori, “Collective Memory and Institutional Reform in Albania”, *Disputed Memory: Emotions and Memory Politics in Central, Eastern and South-Eastern Europe*, (ed) Tea Sindbæk Andersen and Barbara Törnquist-Plewa, De Gruyter, Berlin-Boston 2016, p. 319.

⁷⁵ Institute for the Studies of Communist Crimes and Consequences. <https://www.iskk.gov.al/en/about-us/>, (16.06.2022).

⁷⁶ OSCE, “OSCE Presence, Tirana University establish research Centre on Transitional Justice in Albania”, *News*, 27 November 2020. <https://www.osce.org/presence-in-albania/472056>, (18.07.2022).

⁷⁷ “Online Archive of Victims of Communism”, *kujto.al.*, <https://kujto.al/>, (01.07.2022).

⁷⁸ Memory Map, “Interactive map of prisons and internment camps in Albania”, *Harta e Kujteses*, <https://hartaekujteses.al/en/>, (01.07.2022).

⁷⁹ According to Gjeta, the transitional justice laws have not been implemented and there is no political will to confront the past crimes which led to a distortion of the communist era memories. See: Altin Gjeta, “Albania Remains Hostage to its Communist Past”, *Opinion, Balkan Transitional Justice*, May 21, 2021. <https://balkaninsight.com/2021/05/21/albania-remains-hostage-to-its-communist-past/>, (04.06.2022).

⁸⁰ Jeton Xhaferi, “Albania’s Challenges to European Aspiration, Bringing the Justice System to Justice”, *European Journal of Social Sciences*, Volume 1, Number 1, January-April 2018, p. 71.

Agreement. Albania was included in the “Stabilization and Association Process” which was a successor of the Stability Pact for South Eastern Europe established in 1999 along with the other Western Balkan countries.

During the first decade of the relationship between the EU and Albania, they encountered some challenges both emanating from external and domestic sources. The Yugoslav crisis and war of 1995, not only revealed the failure of the EU with its incapable policies and response⁸¹ but also led the EU to pay more efforts to Western Balkans due to the security implications the region posed that led to the creation of the European Stability Pact in which Albania took place.⁸² The Kosovo conflict and NATO intervention in 1999 reminded the significance of the region’s stability for the EU once again and this conflict had an impact on Albania’s orientation as well. As Gjevori notes, NATO’s positive role in the Kosovo conflict in 1999 and the Albanian military’s weakness were widely covered in the Albanian media and this perception led the way for NATO membership.⁸³ Eventually, the ethnic wars in the Balkans and the Kosovo conflict paved the way for Albania to approach the West, particularly the EU initiatives. In these years, a domestic challenge in Albania was the eruption of an economic crisis in 1997. In a nearby region that carries importance for the stability of Europe as well, the EU supported Albania in terms of financial and humanitarian assistance by establishing an Advisory Mission in coordination with other international organizations.⁸⁴

Albania was proclaimed as a potential candidate for the EU in 2003 and an EU candidate in 2014. When Albania applied for EU membership in 2009, European Commission’s opinion was determinant in the forthcoming policies of Albania in its EU path, and in the Commission’s opinion, some key priorities have been specified to be implemented by Albania. In 2018 and 2019, European Commission recommended opening accession negotiations with Albania conditional upon the implementation of the EU criteria on some key areas such as reform in the judiciary, prevention of corruption, and

⁸¹ Harun Arikan, “The European Union Policy towards the Balkan States in the Post-Cold War Era”, *SDU Faculty of Arts and Sciences Journal of Social Sciences*, Special Issue on Balkans, December 2012, p. 15-22.

⁸² Institute For Security Studies, Western European Union, “The Implications of the Yugoslav Crisis for Western Europe’s Foreign Relations”, *Chaillot Paper* 17, 1994, p. 7-8.

⁸³ Gjevori, *op.cit.*, p. 341-345.

⁸⁴ European Parliament, *Parliamentary Question*, “Joint answer to written questions P-1037/97 E-1043/97 and E-1062/97”, 14 July 1997. https://www.europarl.europa.eu/doceo/document/E-4-1997-1062-ASW_EN.html, (11.07.2022).

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organized crime. After a period when some EU members, including France, blocked the opening of the accession negotiations both for Albania and North Macedonia, the negotiations opened in July 2022 eventually with the consent of the Council.⁸⁵ According to Bechev, the opening of EU negotiations with North Macedonia and Albania is “symbolic” in the sense that negotiations will not provide any quick improvements in these countries’ situation including the rule of law issues⁸⁶ that refer to the long-lasting problems of these countries in these areas.

Against this background, the relations between Albania and the EU could be elaborated in two periods; the 1990s and 2000s according to the EU impact. During the first period, there is a reference to respect for democratic principles and human rights in the first article of the trade and cooperation agreement dated 1992 which is no longer in force,⁸⁷ and there is no direct reference to the transitional justice mechanisms in this document. When the transitional justice mechanisms started to be applied in Albania in the 1990s, there was not an evident EU impact. In other words, the implementation of transitional justice didn’t find a way to overlap with the EU process of Albania in these years. However, the relations between Albania and the EU intensified in the 2000s. In the comprehensive Stabilization and Association Agreement signed between the EU and Albania in 2009, there are various references to establishing and strengthening rule of law in Albania.⁸⁸ According to the Council Conclusions in 2014,⁸⁹ candidacy status was granted to Albania and the Council emphasized that Albania must increase its efforts in order to ensure the application of key priorities in certain areas such as the judiciary and public administration as well as the fight against corruption and organized crime. These statements are also the reflection of the period when the

⁸⁵ For an overview of the process, see: European Commission, “Albania”, *European Neighbourhood Policy and Enlargement Negotiations*. https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/albania_en, (14.05.2022).

⁸⁶ Dimitar Bechev, “What Has Stopped EU Enlargement in the Western Balkans?”, *Carnegie Europe*, June 20, 2022.

⁸⁷ Official Journal of the European Communities, “Agreement between the European Economic Community and the Republic of Albania, on trade and commercial and economic cooperation”, L 342/2, 25.11.92, p. 2.

⁸⁸ Official Journal of the European Union, “Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Albania”, L 107/166, 28.4.2009.

⁸⁹ Council of the European Union, “Council Conclusions on Albania”, *General Affairs Council Meeting*, Luxembourg 2014. <https://www.consilium.europa.eu/media/21900/143354.pdf>, (3.3.2023).

enlargement strategies of the EU became more detailed and stricter. EU candidacy process provided a proper venue for the progress of Albania. Therefore, the EU impact, albeit controversial, could be traced to these reinforcing tendencies. Consequently, in the 2000s transitional justice measures and the EU process overlapped to an extent in the case of Albania.

Taking a closer look at the yearly reports of the European Commission prepared for the candidate countries to the EU provides an opinion concerning the progress on the way to the EU. According to the latest (2022) Report, Albania has a “moderate level of preparation” regarding the judicial system. Appointments to the constitutional court and high court have been mentioned, however “long proceedings, a low clearance rate, and a large case backlog continue to negatively impact the efficiency of the judicial system” are underlined as well. According to the report, the lustration process has continued and is not finalised yet.⁹⁰ Regarding the fight against corruption and organized crime, Albania is evaluated as having “some preparation”.⁹¹ The report underlines that efforts to fight against corruption should continue. Regarding tackling organized crime, the report points out that Albania has effectively cooperated with the EU member states and the relevant institutions and the efforts should continue.⁹² European Court of Auditors’ special report evaluating whether the EU support to the Western Balkans regarding the rule of law, which is a priority sector for funding is effective, concludes that the overall impact of the EU is not visible. The main reason for the ineffectiveness of the EU initiative on the rule of law reforms is pointed out as the lack of domestic will.⁹³ However, reform in the judiciary which is a significant part of the rule of law requires reciprocal interaction due to the cost of the reforms. Therefore, as Memeti points out, the role of EU assistance in implementing these reforms due to the lack of enough resources in Western Balkan countries carries utmost importance.⁹⁴ This evaluation resonated with the interpretation that the EU impact on Albania’s EU process is limited to a “tick-box exercise”.⁹⁵ According to Hoxhaj’s analysis of the rule of law initiative of the

⁹⁰ European Commission, “Key Findings of the 2022 Report on Albania”, *Countries Insights*, Brussels, 12 October 2022, *Countries Insights*, Brussels, 12 October 2022. https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_22_6091, (17.10.2022).

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ European Court of Auditors, “EU Support for the Rule of Law in the Western Balkans: Despite Efforts Fundamental Problems Persist”, *Special Report*, Luxembourg 2022, p. 4.

⁹⁴ Ardit Memeti, “Rule of Law through Judicial Reform: A Key to the EU Accession of the Western Balkans”, *Contemporary Southeastern Europe*, 2014, Volume 1, Number 1, p. 58-67.

⁹⁵ Clingendael Report, *op.cit.*, p. 44.

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EU which aims to reform the judicial system, just included the lustration of the judiciary and this was evaluated as a top-down approach without any reform in capacity building in infrastructure and budget allocations. The inclusion of civil society in the reforms to promote the rule of law in the country could be considered a necessity as well.⁹⁶

Against this background, “to what extent do the reforms for democratic transition and coming to terms with the past, align with the EU process of Albania?” is a question worth reconsidering. As mentioned above, the related lustration laws and the other transitional justice measures have come into force at the beginning of the 1990s. Therefore, Albania initiated the transition process and the efforts to come to terms with its past before beginning its EU process. The EU process which intensified in the 2000s may have facilitated and paved the proper conditions for the implementation of transitional justice measures. The rule of law, which is a concept that overlaps with both the transition period and the EU path, may have set the proper conditions for the subsequent processes.

However, some main impediments have prevailed and although the EU process which stimulated economic and political reforms could be referred to as the Europeanization of Albania, there are some other critics of the EU policy. As Kostovicova and Bojicic argue, the EU process ignores the globalization challenges and “transnational dimension” which includes actors such as diasporas as well as criminal networks in the post-communism transition of the Balkans which weakens the process.⁹⁷ As Hoffman notes, the EU conditionality is not compatible with the necessities of a “less-developed transition country” like Albania. Nevertheless, as the enlargement literature points out, EU conditionality became the main driver of democratization reforms in the transition of more advanced Central and Eastern European Countries⁹⁸ and this may be the case for the Western Balkan countries as well. According to the “Nations in Transit, 2022” evaluation of Freedom House, Albania is defined as a “transitional or hybrid regime”. Nevertheless, as

⁹⁶ Andi Hoxhaj, “The EU Rule of Law Initiative Towards the Western Balkans”, *Hague Journal on the Rule of Law*, 13, 2021, p. 143-172. For the impact of the EU on the Western Balkans, see: Clingendael Report, *op.cit.*, p. 10-17.

⁹⁷ Denisa Kostovicova & Vesna Bojicic-Dzelilovic, “Europeanizing the Balkans: rethinking the post-communist and post-conflict transition”, *Ethnopolitics*, Volume 5, Number 3, 2006, p. 223-241.

⁹⁸ Judith Hoffmann, “Integrating Albania: The Role of the European Union in the Democratization Process”, *Albanian Journal of Politics*, Volume I, Number 1, 2005, p. 55-56.

Beshku and Mullisi argue, the EU stands as a “reforming power” for Albania, and democratic reforms would not be implemented without EU support.⁹⁹

From a broader perspective, the EU’s Western Balkans enlargement agenda is subject to some criticisms¹⁰⁰ which may limit its impact in the region. These criticisms mainly arise from three sources. Firstly, the EU policy on Western Balkans gives rise to unfavourable conditions combined with the political and economic situations of these countries, secondly, the EU’s domestic crises that make it difficult to prioritise enlargement, and last but not least, the impact of the rivals namely Russia and China that disrupt the EU impact in the region. Despite the EU efforts to promote the rule of law, with the decline in the democratic standards, the Western Balkans region is defined by the concept of “stabilitocracy”, where “weak democracies with autocratically minded leaders, who govern through informal, patronage networks and claim to provide pro-Western stability”¹⁰¹ take place. In other words, structural problems of the countries in the region such as the prevalence of corruption and clientelism as well as the controversies of the EU policies prevent the EU impact from being more effective to an extent.¹⁰² The prevalence of national interests of the EU members regarding the EU enlargement¹⁰³ has been indicated by their vetoes to prevent the opening of negotiations with North Macedonia and Albania for a considerable time. Furthermore, the EU focused on its domestic problems including the refugee crisis and Brexit, and did not anticipate the shift in geopolitics on time, but

⁹⁹ Klodiana Beshku & Orjana Mullisi, “The European Union as a Reforming Power in the Western Balkans: The Case of Albania”, *Journal of Liberty and International Affairs*, Volume 4, Number 2, 2018, p. 40-53.

¹⁰⁰ For a comprehensive impact and also critic of the EU policy in the Western Balkans see: Clingendael Report, *op.cit.*, p. 10-17.

¹⁰¹ Marko Kmezić and Florian Bieber, “The Crisis of Democracy in the Western Balkans. An Anatomy of Stabilitocracy and the Limits of EU Democracy Promotion”, *Policy Study, Balkans in Europe Policy Advisory Group*, March 2017, p. 95. Another part of the debate refers to the “stability-democracy dilemma” of the EU. For an analysis, see: Nicholas Ross Smith, Nina Markovic Khaze & Maja Kovacevic, “The EU’s stability-democracy dilemma in the context of the problematic accession of the Western Balkan states”, *Journal of Contemporary European Studies*, Volume 29, Number 2, 2021, p. 169-171.

¹⁰² Solveig Richter & Natasha Wunsch, “Money, power, glory: the linkages between EU conditionality and state capture in the Western Balkans”, *Journal of European Public Policy*, Volume 27, Number 1, 2020, p. 41-62.

¹⁰³ Milenko Petrovic & Nikolaos Tzifakis, “A geopolitical turn to EU enlargement, or another postponement? An introduction”, *Journal of Contemporary European Studies*, Volume 29, Number 2, 2021, p. 157.

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later started to take steps.¹⁰⁴ Despite all these deficiencies and the frustration that occurred in the Western Balkans after urgent candidacy status was granted to Ukraine and Moldova,¹⁰⁵ the EU engagement in the Western Balkans region seems to accelerate as expected after the Russian invasion of Ukraine¹⁰⁶ due to the EU concerns about the possible Russian impact on the region's fragile stability.¹⁰⁷

Together with the EU policy implications and the domestic situation of the countries in question, it is also worth considering the external dimension that could limit the EU impact in the region. The current circumstances in which Russia invaded Ukraine and the EU and Russia have an open controversy should be taken into account when considering the EU policy. The Western Balkans is one of the regions in which the rivalry between Russia and the EU and NATO has intensified after the invasion of Ukraine by Russia. Even before Russia invaded Ukraine in February 2022, the Russian impact on Western Balkans and their implications on the EU policies were intensely debated both politically and academically.¹⁰⁸ Russian interest in the region comes from the historical ties which create a "soft power attraction" for the countries in the region, especially Serbia.¹⁰⁹ Despite its declining economic impact,¹¹⁰ Russian influence on Western Balkans is manifested in the region in various ways. Russia is alleged for backing the coup attempt in the parliamentary elections of Montenegro in 2016,

¹⁰⁴ Ritsa Panagiotou, "The Western Balkans between Russia and the European Union: perceptions, reality, and impact on enlargement", *Journal of Contemporary European Studies*, Volume 29, Number 2, 2021, p. 219-233.

¹⁰⁵ Engjellushe Morina, "Enlarged and in charge, Why the EU needs a new approach to accession", *Commentary*, European Council on Foreign Relations (ECFR), 29 June 2022. <https://ecfr.eu/article/enlarged-and-in-charge-why-the-eu-needs-a-new-approach-to-accession/>, (10.07.2022).

¹⁰⁶ Bechev, *op.cit.*, p. 4.

¹⁰⁷ Margit Wunsch Gaarmann, "How the EU can counteract Russian influence in the region?", *LSE Europblog*, 21 April 2022. <https://blogs.lse.ac.uk/europpblog/2022/04/21/how-the-eu-can-counteract-russian-influence-in-the-balkans/>, (05.08.2022).

¹⁰⁸ Fatma Aslı Kelkitli, "Russia in the Western Balkans: A Receding Power", *Balkan Araştırma Enstitüsü Dergisi / Journal of Balkan Research Institute*, Volume 10, Number 1, Temmuz/July 2021, p. 145-178. Panagiotou, *op.cit.*, p. 219-233. For an example of Russian impact on Bosnia see: Majda Ruge, "The past and the furious: How Russia's revisionism threatens Bosnia", *Policy Brief*, European Council on Foreign Relations (ECFR), 13 September 2022. https://ecfr.eu/publication/do_the_western_balkans_face_a_coming_russian_storm/#_ftn5, (18.10.2022).

¹⁰⁹ Branislav Stanicek, "Russia's Influence in the Western Balkans", *European Parliamentary Research Service*, June 2022.

¹¹⁰ *Ibid.*

maintaining very close economic and political ties with Serbia, and establishing centres, associations, and news services in the region to destabilize these countries.¹¹¹ Among them, Albania and Kosovo are considered to be the countries in which Russia is less interested and limited in its influence.¹¹²

China is yet another international player that diminishes the EU impact, with its extensive financial coverageⁱⁿ the region. China aims to build a capacity to extend its economic and diplomatic leverage in different geographies including the Western Balkans with its “Belt and Road Initiative”. The so-called “17+1 format” (2012) is a platform through which China demanded to extend its impact on Europe which is based on economic and financial cooperation between China and 12 EU members and five Western Balkan countries that are in their EU process. The position of the EU towards this format was to follow the EU strategy towards China formulated in 2016, through a single voice of the EU members. Moreover, the EU intensified its support to the Western Balkans region both through pre-accession funds and accelerated the process with the so-called “Berlin Process”.¹¹³ However, the EU- China rivalry could have reverse effects. As Soyaltin-Colella argues, “While the EU’s stability-oriented strategy helped to consolidate these authoritarian regimes, Chinese funding policies have further strengthened patronage networks, fuelling corruption in the EU’s stabilitocracies”.¹¹⁴ Specifically for Albania, with a long track record of cooperation in the past, Albania and China opened a venue for financial cooperation in the 2000s. However, with the designation of Albania’s direction to the Western institutions namely the EU process and NATO membership, this cooperation is mainly continued on economic investments

¹¹¹ Marc Galeotti, “Do the Western Balkans face a coming Russian storm?”, *Policy Brief*, European Council on Foreign Relations (ECFR), 4 April 2018. https://ecfr.eu/publication/do_the_western_balkans_face_a_coming_russian_storm/, (07.08.2022).

¹¹² *Ibid.*

¹¹³ For the details of the EU response: Gisela Grieger, “China, the 16+1 format and the EU”, *European Parliament Briefing*, September 2018, p. 8. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625173/EPRS_BRI\(2018\)625173_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625173/EPRS_BRI(2018)625173_EN.pdf), (17.07.2022).

¹¹⁴ Digdem Soyaltin-Colella, “The EU Accession Process, Chinese Finance and Rising Corruption in Western Balkan Stabilitocracies: Serbia and Montenegro”, *Europe-Asia Studies*, 2022, p.1-25. For the economic impact of China see: Ana Krstinovska, “China’s Development Assistance to the Western Balkans and Its Impact on Democratic Governance and Decision-Making”, *Journal of Liberty and International Affairs*, Volume 8, Number 1, 2022, p.229-242.

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of China and its diplomatic presence.¹¹⁵ All in all, Albania seems to be one of the countries that are more aligned with the EU policies among others.¹¹⁶

With the rising geopolitical rivalry, cooperation between China and Russia can rise with the war between Russia and Ukraine, which in response accelerates the NATO and EU efforts in the region according to Shopov.¹¹⁷ Russia has both historical and cultural links and financial interests, while China is primarily seeking economic leverage in the region. Despite this massive impact of Russia and China on the Western Balkans, the EU remains the sole actor that provides the intensive democratic reforms that Albania needs in its transition process.

Conclusion

Post-communist countries' transition to democracy comprised the process of coming to terms with their pasts, in which the crimes of the authoritarian pasts should be dealt with through retributive and restorative transitional justice measures including lustration laws, truth commissions, trials, amnesties, and access to secret files among others. For the so-called Eastern enlargement countries, the EU membership process provided an opportunity to "come to terms with their pasts" with a just and equitable approach since the EU conditionality required the implementation of substantial reforms through the rule of law measures. Albeit some mixed results emerged, this democratic climate enhanced the proper circumstances for reckoning the past extensively for these countries. In other words, the overlap between transitional justice and democratic processes makes sense because these countries, while in transition, were on the way to EU membership, which required the implementation of extensive democratic and economic reforms. When the evident EU impact was the case for the Eastern Enlargement countries, the so-called Western Balkans enlargement posed various challenges for the EU.

¹¹⁵ Vladimir Shopov, "Albania- Mapping China's rise in the Western Balkans", *European Council on Foreign Relations (ECFR)*, March 2022. <https://ecfr.eu/special/china-balkans/albania/>, (17.07.2022).

¹¹⁶ Grieger, *op.cit.*, p. 4.

¹¹⁷ Vladimir Shopov, "Southern discomfort: The West's competition with China in the Balkans", *Commentary*, European Council on Foreign Relations (ECFR), 16 March 2022. <https://ecfr.eu/article/southern-discomfort-the-wests-competition-with-china-in-the-balkans/>, (15.07.2022).

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Among the Western Balkan countries, Albania initiated the transition measures to adapt to democracy at the beginning of the 1990s after a long period under the communist regime. Both retributive and restorative transitional measures have been applied. Nevertheless, there is a consensus in the academic literature that the measures including the lustration process have not been implemented properly in Albania. Regarding the other transitional measures applied, civil initiatives took the lead, related legislation has been enacted, access to files has been enhanced and various progress has been achieved on some policy dimensions peculiar to the communist period. However, the EU impact was not evident in this period. As a part of the Western Balkans enlargement agenda of the EU, the relations accelerated in the 2000s. Albania was declared as potential candidate and candidate country respectively in 2003 and 2014, which enabled it to continue its transition period with the overlapping EU process. EU reactions to some transitional measures occurred in this period as well. These were also the years when the EU conditionality became more sophisticated. Ultimately, the rule of law concept that lies at the heart of the EU conditionality required extensive measures and could provide an opportunity for Albania to deal with its past thoroughly.

However, challenges remain not only for Albania but also for the whole region. Some controversies of the EU enlargement policy and the peculiarities of the Western Balkan countries led these countries' to be defined with the term "stabilitocracy" in the academic literature. Moreover, the impact of the external powers namely Russia and China on the Western Balkans is another factor to be taken into consideration that carries the potential to diminish the EU leverage. All these factors may negatively impact these countries' transition process to democracy and in turn deal with their pasts including Albania.

Despite the deficiencies, current international developments in which rivalry between the West and Russia as well as China is at its peak may pave the way for Albania to align more robustly with the EU and this, in turn, may provide the proper conditions for reform to come to terms with its past. Unlike the other Western Balkan countries, the driver of the relations between the EU and Albania, as a country that didn't involve directly in the ethnic wars of the region, can be the current rivalry between the EU and these external powers. Consequently, the EU could have a facilitating role in Albania to come to terms with its communist past by motivating the country to

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implement more substantial reforms on the rule of law. Besides the enlargement toolbox including the rule of law and the conditionality mechanism, the EU initiated a policy formulation on transitional justice which will increase its capacity in supporting Albania and the other candidates in their transition periods. Implementation of transitional justice measures effectively may be a way for Albania in order to improve relations with the EU as well. Moreover, by coming to terms with its past in a just and equitable way, Albania can carry its peculiar memory to the EU level as a part of the European narrative in construction.

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