

Parliamentary Scrutiny of Law Reform in Albania

Bodies, Procedures and Methods

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Abstract

This article throws light on the parliamentary scrutiny of law reform in Albania, which so far has not received sufficient attention in academic literature. The article provides a review of the bodies, procedures and mechanisms for the scrutiny of legal reform, as specified in the Constitution of Albania, Parliament's Rules of Procedure and other specific statutes. Research on the activities of these bodies during the past three years, as reported by the official sources, throws light on the problematic aspects of their work and enables recommendations to be made which will lead to a more effective role of Parliament in legal reform. This is paramount considering the past few years of political instability in the country, at a time when Albanian's European Integration is at stake

Keywords: Parliament of Albania, law reform, Standing Committees, European Integration, Council on the Legislation, National Council for European Integration, Committee on European Integration.

A Introduction

Albania is a parliamentary republic. Parliamentarism in Albania has a relatively short history, of about one century, which is closely linked to the evolution of the state of Albania. From the National Council of 1920 to today's National Assembly (Parliament), the parliamentary system has continuously and significantly changed in response to the historical developments and political dynamics of each period (see Table 1). The early 1990s were a particularly significant period in terms of legal reform, as the Albanian legislation had to be radically transformed to respond to changes in the political regime from a totalitarian regime to parliamentary, pluralist democracy. Compared with other European countries undertaking similar reform, in the case of Albania it involved not only a complete revi-

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Table 1 *A Brief History of the Albanian Legislature*

Period	The Albanian Legislature
1920-1923	The National Council
1923-1928	Albanian Republic: Bicameral Parliament
1928-1939	Albanian Monarchy: Parliament
1939-1943	Italian occupation: the Supreme Fascist Corporative
1943-1944	Nazi occupation: National Assembly
1944-1945	National Anti-fascist Liberation Council
1946-1947	Constituent Assembly
1947-1990	People's Socialist Republic of Albania: National Assembly
1991-today	Republic of Albania: Parliament/National Assembly

Source: Historiku i shkurtër i parlamentit Shqipëtar, available at www.parlament.al/Kuvendi/Historiku

sion of the existing legislation but also the introduction of new legal fields and institutions that did not exist under the former totalitarian regime. A significant legislative effort was necessary to support this comprehensive rebuilding of the Albanian legal system. At that time, the majority of the legislation was adapted from the Continental models, especially Italian and German ones. Today, the most significant areas of reform are those arising from Albania's obligations for European Integration. Since 2014 Albania has held the status of candidate for membership of the European Union, which, understandably, is associated with a number of obligations that require legal and institutional reform.

Albania has a written Constitution¹ which defines the Parliament of Albania as the unicameral representative body of the citizens of the Republic of Albania. As Albania's legislature, Parliament is composed of 140 members elected to a four-year term. The electoral system is based on party-list proportional representation. There are 12 multi-seat constituencies, corresponding to the country's administrative divisions. Parliament's powers are defined by the Constitution of Albania. It is responsible to amend the borders of Albania or the Constitution, passes all laws, approves the cabinet, supervises the work of the government and civil service, elects the President of the Republic, declares war, decides on cessation of hostilities, approves the state's budgets and checks the state's accounts. Parliament calls referenda, performs elections and ensures that appointments conform to the Constitution and applicable legislation, grants amnesty for criminal offences and performs other duties defined by the Constitution.

This article is concerned with Parliament's scrutiny of the law reform, with a special focus on the bodies involved, their procedures and methods. It aims to contribute to the academic literature with an overview of the Albanian experience, which is currently underexplored both in the Albanian and in the foreign

1 Kushtetuta e Republikës së Shqipërisë (The Constitution of the Republic of Albania, as last amended by statute no 76/2016 of 22 July 2016). Available at www.parlament.al/Kuvendi/Kushtetuta.

literature. This is of importance as the Albanian model and the problems faced in practice that inhibit the effectiveness of Parliament's role and its scrutiny are not entirely unique but can be faced in other post-communist East European countries, especially in the Balkans. The research is based on primary sources, including, inter alia, the Constitution of Albania, Rules of Procedure of Albanian Parliament and a number of other specific statutes. Online research on the reported activities of the respective parliamentary bodies during the past three years inform the analysis of their work and recommendations for improvement. The legal reform in the context of European Integration is specifically addressed as a case study illustrating the role of Albanian Parliament. This comes at a time of heightened political turmoil during the past few years, which has significantly affected the role of Parliament and the fulfilment of conditions for the integration of Albania in the EU.

Understanding the role of Parliament in the scrutiny of law reform requires consideration of several aspects related to the legislative procedure, from the early stages of initiating, discussing and drafting new legislation to the subsequent stages of legislative scrutiny and decision-making. The following account is structured accordingly, tracing the role of parliamentary bodies in relation to each of these aspects, highlighting areas that require further improvement.

B Initiating Law Reform: Any Meaningful Role for the Albanian Parliament?

The need for law reform or legislative intervention can arise for many different reasons. A need to modify the existing law may become apparent when it is applied, or public debate between interest groups and political institutions may lead to a decision to make the intervention. Accordingly, the demand for legislation (at least theoretically) may come from various sources, such as: the government's legislative programme or the legislative programme of an individual minister; a request by Parliament or a Member of Parliament (MP); requests from non-governmental organizations and interest groups; requirements of an international treaty or of an international organization; court decisions; opinions expressed in legal doctrine; the obligation to approximate legislation in the context of the European Integration process.²

According to Article 68 of the Constitution of the Republic of Albania, the right to propose legislation belongs to the Council of Ministers, every MP and 20,000 electors. The government is responsible for proposing the majority of legislation in Albania, and for taking the initiative for law reform.³ It not unusual in parliamentary systems that the government initiates the majority of the legal

2 *Law Drafting Manual: A Guide to the Legislative Process in Albania* (in Albanian, available at www.drejtësia.gov.al/wp-content/uploads/2019/02/MANUAL-PER-HARTIMIN-E-LEGJISLACIONIT.pdf).

3 On the rapport between Parliament and the Government's legislative powers see e.g. Xh. Zaganjori, A. Anastasi & E. Cani, *Shteti i së Drejtës në Kushtetutën e Republikës së Shqipërisë*, 2011, p. 125, available at www.kas.de/c/document_library/get_file?uuid=726ef2ee-7a25-2477-3d07-a97bfeb4a8a7&groupId=252038.

reforms and legislative intervention in line with its political programme which has been voted on by the electorate, but this is particularly the case in Albania, where law reform is almost exclusively controlled by the government of the day and conditioned by the political will of the party in power, whose priorities may not consistently reflect the needs of the country. Any reform that takes place is usually in line with the political agenda and interests of the government or in response to international pressures on matters that have an impact outside of the borders of Albania, such as combating institutional corruption, illegal drug trade and organized crime.

In the Albanian constitutional system all government departments have the duty to follow closely the development of the legal system in their respective fields, initiate amendments when appropriate or repeal legal norms that have lost importance or have been effectively replaced by more recent legislation. At the same time, it is the responsibility of the ministries and other respective institutions to stay aware of developments and changes in the EU *acquis* in the field concerned.⁴

There is no equivalent of the UK's Law Commission⁵ in the Republic of Albania, that is, a statutory independent body in charge of keeping Albanian law under review and recommending reform where it is needed. While this role rests primarily with the governmental departments, part of it is to be fulfilled by parliamentary committees, in particular standing committees, which are responsible for examining, according to their field of responsibility, bills, draft decisions and other issues presented in Parliament. Standing committees have a duty to carry out studies on the efficiency of the applicable laws, control the implementation of laws and audit the activity of the ministries and other central bodies, proposing concrete measures to Parliament or the Council of Ministers. Standing committees propose to Parliament to approve bills, draft declarations or draft resolutions. At the time of writing, there is lack of information on Parliament's official website with regard to this particular aspect of the committees' work, i.e. studies carried out on the efficiency of the law and proposals for reform. The lack of publication of any annual reports on the committees' work, lack of data and the way existing information is currently presented, that is via news links and minutes of meetings which do not follow a standard model, make any analysis of the committees' activities difficult, if not impossible.

There are eight standing committees⁶ in the Parliament of Albania:

- 1 **The Committee on Legal Issues, Public Administration and Human Rights**, which deals, inter alia, with codes and organization of judiciary; the administration of judicial power and the management of its budget; the organization and functioning of local government; decentralization reform; territorial division; independent services in the system of justice and human rights.

4 *Law Drafting Manual: A Guide to the Legislative Process in Albania*, p. 14.

5 On the Law Commission for England and Wales see www.lawcom.gov.uk/.

6 See Art. 19 of the Rules of Procedure of the Parliament of Albania.

- 2 **The Committee on European Integration**, which deals with matters concerning Albania's integration in the European Union.
- 3 **The Committee on Foreign Policy**, which deals with foreign policy, international relations and international cooperation, as well as the implementation of international agreements.
- 4 **The Committee on Economy and Finances**, which deals with economic policies, the state budget and the oversight of its implementation; public finances; privatization and the bank system.
- 5 **The Committee on National Security**, which deals with public order; armed forces and organization of national defence; military cooperation; cooperation in the field of law enforcement, civil and military service and intelligence services.
- 6 **Committee on Productive Activities, Trade and Environment**, which deals with matters concerning agriculture, industry and telecommunications, tourism, territorial regulation, trade, and environment protection;
- 7 **Committee on Labour, Social Issues and Health**, which deals with work relations; protection from discrimination; matters of social issues and social insurance, family and health.
- 8 **Committee on Education, Sports, Media and Public Information**, which deals with matters concerning education, culture, youth, sports, and written and visual media.

Within the standing committees, where proposed by the Conference of Chairpersons, sub-committees may be established on special issues. All the MPs participate in standing committees, and their constitution must reflect the respective proportions of the parliamentary groups. The Speaker of Parliament and the members of the Council of Ministers cannot be members of the standing committees. As a rule, each MP may enjoy the membership of only one standing committee. For the purpose of respecting the majority-opposition ratio, certain MPs may be members of no more than two standing committees. An MP may participate in meetings of other committees but without a right to vote.⁷

According to Article 24 of Parliament's Rules of Procedure, ad hoc committees can be established to conduct the study and preparation of the legislative initiatives or issues of particular importance. The Speaker of the Assembly, standing committees or at least seven MPs may propose the establishment of an ad hoc committee. The Speaker calls the Conference of the Chairpersons to discuss any request for the establishment of an ad hoc committee no later than ten days from the submission of the request. Parliament sets the tasks, the number, the composition and the duration of the activity of the ad hoc committee no later than two weeks from the discussion in the Conference of the Chairpersons. The procedural rules set out in Articles 32-41 are applicable to the ad hoc committees, as well, unless otherwise specified in the decision of their establishment. At the time of writing, there is only one ad hoc committee established by

7 Art. 20 of the Rules of Procedure of the Parliament of Albania.

Parliament on the basis of Decision no. 102/2017 following up on ODIHR⁸ electoral recommendations. That is the Parliamentary ad hoc Committee on Electoral Reform, which is working on proposing legal amendments in five key reform areas, namely election administration, campaigning, voter registration, the use of new voting technologies and out-of-country voting.⁹

With regard to the legislative initiative, according to the Constitution, any MP does, in principle, have the right to propose legislation and amendments to legislation. However the bills directly proposed by MPs are lower in number.¹⁰ This is partly because MPs lack the technical and legal support and resources as compared with the government. In addition, the Constitution of Albania does not allow MPs to directly propose legislation that affects in any way the state budget. Any such initiatives need to be first presented to the government before being permitted to pass through Parliament.¹¹

Article 81 of the Constitution of Albania recognizes the right of 20,000 citizens who have the right to vote to propose legislation. In principle, this article enables parliamentary scrutiny of bills presented by civil society. However to date the application of this article in practice has been uncommon. The citizens' initiative was exercised successfully in 2006 when Parliament scrutinized and approved an Act on Domestic Abuse proposed by 20,000 citizens. This was the first time in the history of the Parliament of Albania that a citizens-initiated bill actually resulted in approved legislation, even though there have been other occasions of the undertaking of citizens' initiative, such as in 1996 with regard to proposed changes in the legal framework regulating the return and compensation of properties to their previous owners (who were stripped of their rights over these properties during the totalitarian regime), which was not approved by Parliament.¹²

According to the "Manual on the Public participation in the decision making process of the Parliament of Albania",¹³ civil society can participate in the legislative process in two phases:

- During the phase of the writing and preparation of a bill initiated by MP(s), representatives of civil societies could be invited to present their opinions on the draft instrument. In addition, representatives of the civil society and interest groups could contact MPs to discuss their concerns relating to areas that require legal reform, given that MPs have a constitutional right to exercise legislative initiative and propose legal instruments.
- During the hearing sessions organized by standing committees inviting expertise and information on a particular topic.

Standing committees are considered bridges that connect the public with Parliament. They are forums meant to facilitate the exchange of information in specific

8 OSCE's Office for Democratic Institutions and Human Rights.

9 [Seewww.parlament.al/Strukture?kategori=5&strukture=1018](http://www.parlament.al/Strukture?kategori=5&strukture=1018).

10 See, for instance, *Law Drafting Manual: A Guide to the Legislative Process in Albania*, p. 14.

11 Constitution of Albania, Arts. 81 and 82.

12 Source needed Zaganjori *et al.*, 2011, p. 125.

13 Available at www.parlament.al/Files/Informacione/manuali_i_azhornuar_21298_1.pdf.

fields. The relatively small number of MPs in their composition, selected on the basis of their political or professional experience in particular fields related to the committee's scope, is meant to enhance and facilitate the dialogue between stakeholders, including the public and Parliament. Hearing sessions organized by standing committees provide, in principle, a communication channel with the public and enable groups of interest to express their opinions about a bill or a particular aspect related to the competence of the committee. The public and groups of interest can express their interest in participating in a hearing session via a detailed and reasoned request. The committees then select those interested groups and parties that are well known or seen as better able to give a clear contribution in discussing the relevant problems.¹⁴ With regard to hearing sessions taking place during the scrutiny of a bill, the committee's chair may decide not to invite an interested party in the hearing session but to present any recommendations made, during the article-by-article scrutiny of the legislation, which will be discussed further on.¹⁵

The recommendations and any contributions by civil society and interest groups on bills being discussed by a standing committee must be submitted within ten days from the day of publication of the bill in the official page of Parliament or from the date of the request for an opinion. This deadline could be shortened or extended in the specific circumstances prescribed in the Manual. In any case written recommendations must be submitted three days before the hearing session.¹⁶ It is questionable whether this tight deadline is sufficient to prepare relevant and significant comments or opinions. This is particularly important as once the deadline has passed, the committee closes the consultation phase for the bill in question and continues its scrutiny according to the legislative procedure, to be presented further on.

Groups of interest and representatives from the civil society, who have submitted their opinions and recommendations, must be informed about the date of the standing committee's meeting at least five days before it takes place and must be invited to participate.¹⁷ The committee's administrative personnel process the submitted recommendations, categorizing them in substantive and technical proposals. The first group of recommendations concerns the essence of the matters dealt with in the legislation; the second category relates to the wording of the legal text of the bill. A report summary of all recommendations is distributed to the members of the committee, to the chair of the committee and the rapporteur.¹⁸ During the article-by-article scrutiny, to be discussed further on, the committee takes into consideration the recommendations presented and decides whether to accept or reject them, either partially or entirely. A reasoned decision for rejection, where it occurs, must be communicated to the interested parties who have put forward the amendments/recommendations. In its final report on

14 *Ibid.*, p. 20.

15 *Ibid.*, p. 21.

16 *Ibid.*, p. 24.

17 *Ibid.*

18 *Ibid.*, p. 25.

the bill, the committee in question must include a summary of the recommendations by the civil society that have been taken into consideration.¹⁹

What can be noted in the foregoing procedures is the selective nature of the consultation process. Currently, the only form of participation is by invitation in consultative meetings or hearings. It is difficult for the public at large, or particular members of the public who are not members of non-governmental organizations, to be involved in the process in order to express their concerns and opinions in a direct manner or to secure participation in a hearing session. While hearing sessions are indeed time consuming and need to be time restricted, other forms of consultations, e.g. via written responses to public consultations published on online official websites, should be explored and facilitated. The public has a right to express its opinion on legal reform, and this needs to be further improved. Public consultation is an important step towards ensuring better quality of legislation by directly addressing citizens' concerns, greater acceptance of the legislation and, consequently, its applicability. In order to achieve an open and transparent legislative process, citizens should have free and detailed information on any proposed legal instruments.²⁰

A comparison between the data provided in the annual *Reports of the public participation in decision making 2016, 2017, 2018*²¹ (which at the time of writing are the only ones provided on the official page of the Albanian Parliament) demonstrates a gradual increase in civil society's participation in the work of Parliament, which needs to be further enhanced and improved in terms of effectiveness and quality. According to the 2018 Report, parliamentary committees have conducted 100 hearing sessions, 8 round tables, 11 meetings, 6 conferences, 12 information meetings and activities with representatives of civil society and interest groups. 395 representatives of civil society and interest groups have participated in these activities. Parliamentary committees have forwarded for scrutiny in plenary sessions 421 amendments proposed by representatives of civil society and interest groups. By comparison, in January–December 2017 parliamentary committees and sub-committees organized 24 hearing sessions with representatives of civil society and interest groups, 14 round tables and 3 visits.²²

19 *Ibid.*

20 See Act no 146/2014 *On the Communication and Public Consultation* (Për Njoftimin dhe Konsultimin Publik) Note that according to Art. 6(5) 5.2 after its publication in the electronic register, a public organ can organize direct consultations and meetings with stakeholders. These consultations are recorded. The meeting's minutes are considered an official document. According to Arts. 17-18 'public consultation' means a public open meeting; no other forms of gathering of opinions and recommendations are prescribed. Five years after this statute has come into force, public consultations remain an ineffective mechanism for the integration of the public in legal initiative and decision-making.

21 Available at www.parlament.al/Files/Informacione/Raportishoqerisecivile2018.pdf.

22 *Report of the public participation in decision making 2018*, p. 3. Parliament was shut down between May and September 2017. See the information available at www.parlament.al/Files/Informacione/Raport%20mbi%20pjesemarrjen%20e%20publikut%20ne%20procesin%20e%20vendimmarrjes%202017.pdf. It is difficult to draw any comparisons from the 2015 and 2016 reports owing to the way the statistics have been presented. The 2019 report has not been made available at the time of writing.

As will be argued further on, Parliament, and especially its committees, has an important role to play in initiating law reform and in ensuring that it adequately reflects the interests of all stakeholders and not simply the government's political agenda. This can be achieved by further enhancing the cooperation and participation mechanisms for citizens and groups of interest, so that they are not merely a 'tick box exercise' promoting the government's plans and initiatives but an effective mechanism in the legislative process that ensures that non-political opinions are heard, stakeholders' interests are addressed and that the forthcoming legislation will be respected. Most importantly, Parliament should play a key role in ensuring that the legislative measures proposed meet the required quality standards from a technical and legal content perspective. The following part considers the bodies, procedures and mechanisms for such legislative scrutiny.

C Parliamentary Scrutiny of Legislation: Bodies and Procedures

Albania belongs to the Continental Europe tradition of legislative drafting and scrutiny. As noted earlier, all government bills are drafted by lawyers within the specific department concerned.²³ As Albanesi (2020) observes, this is in line with the parliamentary system of governance and the constitutional role of Parliament, whereby the contents of proposed legislation are scrutinized in depth and continuously negotiated in Parliament undergoing relevant change.²⁴ As will be presented here, the legislative scrutiny in the Parliament of Albania is conducted in two stages: initially within the committee concerned and then in the plenary sitting. Each stage involves the discussion and voting of the bill in principle and then article by article, before a final voting on the bill in its entirety takes place. Every MP has the right to propose amendments at the committee stage and/or in plenary sitting.

Many of the bills introduced in Parliament every year are amendments of legislation already in force. Frequent amendment of a law should be carefully examined owing to its possible effect of reducing certainty in the application of the law, creating doubt over its stability and undermining confidence in it. However, the enactment of legislation is a continuing activity that must keep pace with social developments, the development of international law and, in the case of Albania (that is in the EU pre-accession phase), developments in the relevant aspects of the EU's acquis. It is therefore inevitable that laws will have to be amended from time to time, but the process should be exercised with some care, considering whether the better approach would be to draft an amendment or instead draft an entirely new statute.²⁵ In order to allow for the scrutiny to take

23 Unlike, for example, the UK, where bills are drafted by a centralized and specialized body of professional drafters such as the Office of Parliamentary Counsel (OPC). On the role of OPC, processes and methods [seewww.gov.uk/government/organisations/office-of-the-parliamentary-counsel](http://www.gov.uk/government/organisations/office-of-the-parliamentary-counsel).

24 E. Albanesi, 'Parliamentary Scrutiny of the Quality of Legislation Within Europe', *Statute Law Review*, 2020, doi:10.1093/srl/hmaa001.

25 *Law Drafting Manual: A Guide to the Legislative Process in Albania*.

place, all bills are drafted as normative acts and accompanied by a report that contains its aims and objectives, arguments as to why these objectives cannot be fulfilled by the existing legal instruments,²⁶ its compatibility with the Constitution, with the domestic legislation in force and the EU legislation, and its socio-economic effects.²⁷

According to Article 69 of the Rules of Procedure, all bills are registered in a special register according to the date of their submission and are made known to the Speaker of Parliament. The Speaker orders their immediate distribution to the MPs, and copies of the bills are made available to the representatives of the media or other interested persons, at their request. The bills cannot be included in the agenda of the proceedings of Parliament for at least two weeks from their submission, except in the cases where the Rules of Procedure provide differently. These timelines are aimed at giving an opportunity to MPs to read the bill, identify any issues and prepare any discussion, questions or amendments. The bills initiated by MPs must be included at their request in the order of business of the plenary sitting no later than 8 weeks from the submission of the bill.

I The Scrutiny by the Standing Committee

The most significant aspect of the legislative scrutiny takes place at the committee level. According to Article 70 of the Rules of the Procedure, in accordance with the programme and order of business of Parliament, the Speaker of Parliament refers the bills to the responsible committee(s) that, according to the Rules of the Procedure of Parliament, must scrutinize the bill and give their opinion. The committee considers the bill according to the procedures provided in Articles 32-38 of the Rules of Procedure of the Parliament of Albania. According to Article 38, the responsible committee, in compliance with Article 29(2) of these Rules, appoints a rapporteur(s)²⁸ for the discussion of issues arising from the bill. The rapporteur must submit his or her written opinion at least three days before the date set for the discussion of the issue in the committee. In preparing the report, the rapporteur may seek the assistance of the government's specialists related to the issue, legal services of Parliament²⁹ as well as the assistance of other external experts.

Initially, the responsible committee holds the discussion of the issue or the bill in principle. The rapporteur introduces the overall evaluation on the bill or the issue that is being discussed and, if he or she considers it necessary, proposes that the committee seek the opinion of the Council on Legislation according to

26 Every law-drafting project should be preceded by evaluating and ascertaining the reasons why the law should be adopted, in particular its political and legal justification. A drafter "should try to determine whether this evaluation has been done and to obtain the relevant information. It is the task of the drafter to determine what should be regulated by the law, who is the addressee of the law and how and in what conditions the given law will function. The necessity for, and the effectiveness and comprehensibility of, the contemplated draft act should be established". *Law Drafting Manual: A Guide to the Legislative Process in Albania*, p. 17.

27 See *Law Drafting Manual: A Guide to the Legislative Process in Albania* and the Rules of Procedure of the Parliament of Albania.

28 The rapporteur is an MP, who is a member of the respective committee.

29 On the services offered by Parliament see www.parlament.al/Administrata/Sherbime.

Article 14 of the Procedural Rules.³⁰ After the rapporteur's report, the chairperson of the committee invites the committee members to submit any questions to the initiators of the bill and to the rapporteur. After this, he or she declares open the debate in principle on the bill. The discussion is, in principle, always done in the presence of the representative of the Council of Ministers. Every MP has the right to express his opinion on any aspects of the bill under consideration in the committee meeting.

At the end of the discussion, the committee decides on the approval or rejection of the bill in principle. If the responsible committee approves the bill in principle, it starts the article-by-article consideration and voting. Where it has been proposed that the opinion of the Council on Legislation (see further on) or other committees should be required on any aspect of the bill, it decides with an open voting whether the opinion will be required or not. The examination of these aspects of the bill is done after the Council on Legislation or the other standing committee has expressed its opinion.

When the responsible committee decides on rejection of the bill in principle, or when the opinion of the Council on Legislation is for the rejection of the bill in principle, the issue is set for discussion in the plenary sitting. When Parliament in plenary sitting approves the bill in principle, the respective committee starts the article-by-article consideration of the bill in the very next meeting. As will be noted further on, this part of the parliamentary procedure begs the question as to whether a more sound approach would be for Parliament to take a plenary sitting vote in principle on the bill, before the scrutiny at the committee level takes place.³¹ If the bill is not approved in principle in the plenary sitting, then the committee would not have wasted a considerable amount of time dealing with it initially. If rejected in principle at the committee stage but subsequently approved in plenary sitting, as can currently happen, an initial vote on the bill in principle in plenary sitting would avoid delays caused by the passing of the bill back and forth and arguably superfluous procedures.

After the consideration article by article of the bill, the committee prepares a report making a proposal for its approval in the form in which it is submitted, its approval with amendments, or for its rejection. According to Article 71, every MP or the Council of Ministers has the right to present substantiated written amendments during the consideration of the bill by the respective committee. The conclusions of the committee related to these amendments are made known to the plenary sitting in the final report drawn by the committee. The report of the committee that has considered the bill, or of the other committees that have given their opinion on it or the report provided by the Council on Legislation, is made available to the MPs and the Council of Ministers at least two days before the date set for the consideration of the bill in plenary sitting.

30 See below on the role of the Council on Legislation.

31 Similar to the parliamentary procedure in the UK.

II *The Role of the Council on Legislation*

Before considering the procedures taking place in plenary sitting, it is important to consider the role of the Council on Legislation in legislative scrutiny. The Council on Legislation³² is one of the two advisory bodies³³ of the Parliament of Albania. The Council expresses its opinion on the bills at the request of the committee that is considering the bill or the Speaker of Parliament. As noted earlier, the responsible committee, with the majority of votes of all its members, or the Speaker of Parliament, *may* seek the opinion of the Council on Legislation on any constitutional or legal issues arising in the text of the bill, its compatibility with the existing legislation and international obligations of the Republic of Albania, and any other issues raised by the committee. The rapporteur of the responsible committee and the representative of the Council of Ministers participate in the meetings of the council and have the opportunity to discuss. The report of the Council on Legislation is submitted to the committee concerned for its consideration of the bill. In case the committee refuses to take into consideration the opinion of the Council, it must express its reasoning for the same in the report presented in the plenary sitting.

It may be noted that the involvement of the Council on Legislation in the legislative process is not compulsory and that its reports are not mandatory. The Council on Legislation was introduced following the Italian model of *Comitato per la legislazione* (whose involvement is compulsory only when it comes to some kinds of pieces of legislation, such as the *decreti-legge*, viz. the Italian emergency decrees, which are primary legislation to be converted into Statute by the Parliament).³⁴ The similarities with the Italian model are obvious with regard to the composition and structure of the Council, which is composed of 10 MPs, appointed by the Speaker, in a manner that guarantees the equal representation between the majority and the parliamentary opposition. The appointed MPs must be lawyers or must have legislative experience (as for the Italian *Comitato*, these two conditions are not required). Its members chair the Council on Legislation on rotation, for a five-month period (six for the Italian *Comitato*, under the rules of the *Camera dei deputati*, but then extended to ten on an experimental basis), based on the alphabetic order of their family names (in Italy, based on an alternation between the majority and the opposition).

There are, however, key differences in the scope of the work of the Council on Legislation as compared with the Italian *Comitato per la legislazione*. Such differences have become more significant after the latest amendment of the Rules of Procedure of the Parliament of Albania in 2019. In the Italian model, the role of the *Comitato* is significantly (albeit not only) directed on assessing the quality of the legislative drafting: the homogeneity, simplicity, clarity and compliance of the bills with legislative drafting techniques, as well as simplifying and codifying

32 Art. 14 Rules of Procedure of the Parliament of Albania.

33 The other is the *Council on Regulation, mandates and immunity*. Its activity is beyond the scope of this article.

34 See www.camera.it/leg17/736.

existing legislation.³⁵ While previously Article 14 of the Rules of Procedure of the Parliament of Albania defined the role of the Council as one of scrutinizing “the quality of the drafting of a bill, its explicitness and simplicity, the constitutional or legal issues in its text and other issues, considered reasonable by the Committee”,³⁶ the current amended version defines the role of the Council as assessing and advising on constitutional or legal aspects arising from the text of a particular bill.³⁷ The Council, when requested by the respective committee, reviews and advises whether the proposed legislation is in line with other pieces of domestic legislation, the jurisprudence of the Constitutional Court and international agreements of which the Republic of Albania is part.³⁸

The role of the Council of Legislation in Albania is *not* therefore focused on the scrutiny of the quality of the legislation from a technical drafting perspective, as in the Italian model, but on the scrutiny of its legal content, the constitutionality and compatibility of bills with existing domestic and international legislation. In exercising its role, according to Article 87 of the Rules, the Council must take into consideration and assess the effects of any decisions of the Constitutional Court of the Republic of Albania concerning the constitutionality of a bill proposed by MPs; the final interpretation of the Constitution; the resolution of any conflicts of competence where Parliament is involved; and the dismissal of any constitutional functionaries elected by Parliament. The Council on the Legislation must consider any decisions of the Constitutional Court that have an impact on legislation, 30 days after their publication in the Official Journal. The Council must submit a report of the effects of these decisions on legislation to the President of the Republic, the Government and Parliament. Where amending or new legislation is needed following a decision of the Constitutional Court, the Council initiates legislation or presents its recommendations to the initiator of the legislation or the respective parliamentary committee.

At the time of writing there is no information on the official sites about the work of the Council on Legislation via, e.g., annual reports or any reports on its legislative involvement. Therefore, it is not possible to assess the work of the Council and how it could become more effective or improved in the future. While transparency is certainly an aspect that should be improved, the rationale of introducing the Council and its role, which initially was following the Italian model, begs further consideration, given the clear departure from that model in recent years. It leaves open the question as to whether the quality of the legislation from a legislative drafting perspective is adequately assessed at the committee stage and in plenary sitting and whether the role of the Council on Legislation should shift towards this aspect.

An analysis of the legislation enacted to achieve reform in Albania over the past three decades shows that many of the legal provisions did not fully achieve

35 Section 16 – bis, subsection 4, Regulation of the Camera da deputati. *See ibid.* *See also* Albanesi, 2020.

36 *See* the previous version of the Rules, available at: www.legislationline.org/download/id/8100/file/Albania_Rules_of_procedure_assembly_as_of_2011_en.pdf.

37 *See* the Rules of Procedure (in Albanian), available at: www.parlament.al/Kuvendi/Rregullorja.

38 Art. 14 Rules of Procedure of the Parliament of Albania.

their objectives.³⁹ The ineffectiveness of the legislation, including subordinate or secondary legislation, has been partly attributed to deficiencies in its preparation and drafting. Mainly on account of financial constraints, the priority of the Albanian public administration in terms of human resources and finances has mostly been the implementation and enforcement activity, whereas the part of its work related to law-making receives, in practice, far less attention than would be necessary to ensure a higher quality of legislation.⁴⁰ It is therefore so much more important that Parliament exercises due scrutiny as to the quality of any proposed legislation from a legislative drafting perspective as well as its constitutional and legal content aspects.

III The Legislative Scrutiny in Plenary Sitting

The legislative scrutiny in plenary sitting is done in two phases, mirroring those at the committee level, consisting of the discussion in principle of the bill and the line-by-line discussion of its articles.⁴¹ Prior to the discussion in principle, the MPs are invited by the Speaker to submit questions regarding the bill to its initiators or the government. The bill is reviewed in the plenary sitting in the presence of the signatory minister and the officials authorized in writing by the Secretary General of the Council of Ministers. The discussion in principle of the bill in plenary sitting is made both where the responsible committee or the Council on Legislation have voted in favour of the bill in principle *and* when they have voted against its approval during the committee phase. In the case when the responsible committee or the Council is against its approval in principle and the plenary sitting decides in favour of its approval, the bill is sent back to the responsible committee for the continuation of its consideration article by article. If the bill is not approved in principle in the plenary sitting, it cannot be presented again before 6 months have elapsed from the date of its rejection.⁴²

The discussion in principle of the bill⁴³ begins with the initiator's introduction of the reasons that led to the proposal of this bill, which is followed by the presentation of the report of the responsible committee and, as the case may be, a report from the Council on Legislation. The chairperson of the committee reads the report, and the rapporteur of the respective committee may be given the floor for no more than ten minutes, at his request. For the discussion in principle, the Speaker gives the floor to the MPs who have asked to discuss, ensuring that all parliamentary groups have a chance to participate. Before the end of the discussion session, the rapporteur of the respective committee and the chairpersons of the parliamentary groups shall be invited to discuss for no longer than five minutes, beginning with the group with the smallest number of MPs. No amendments can be presented during the time of discussion in principle. After the MPs' questions and the discussion in principle, the Speaker announces the time when

39 *Law Drafting Manual: A Guide to the Legislative Process in Albania*.

40 *Ibid.*

41 Art. 73 Rules of Procedure of the Parliament of Albania.

42 *Ibid.*

43 *Ibid.* Art. 74.

Parliament will decide by voting. The proceedings of Parliament continue with the answering of the questions and the discussion in principle on other bills of the agenda.⁴⁴

After its approval in principle, the bill is scrutinized article by article.⁴⁵ During the consideration article by article, every MP has the right to discuss for no more than five minutes. This time is doubled in the cases of the discussion of the bills that need a qualified majority for their approval. During the debate article by article, written amendments can be presented. The amendments must refer to the content of only one article. As a rule, the amendments must be presented and discussed first in the responsible committee. The author has the right to present the amendments in the plenary sitting for not more than seven minutes.

Every MP or Council of Ministers has the right to present in the plenary sitting their amendments to the bill or the amendments proposed by the responsible committee, provided that they are registered with the secretary at least 24 hours prior to the start of the plenary sitting and have been distributed to the other MPs. The Speaker of Parliament, the chairperson of a parliamentary group or a group of ten MPs may request that the amendments be presented for discussion in the responsible committee, cancelling, if necessary, the plenary session. In this case, the author of the amendment and the representative of the Council of Ministers has the right to be heard in the meeting of the committee.⁴⁶

In plenary sitting amendments are voted on prior to the text of the bill. Before proceeding with the voting of each amendment, the Speaker reminds the MPs of the opinion of the Committee concerned. The voting on the amendments starts with those seeking the total or partial removal of the article or its replacement or amended wording. In case there have been two or more amendments submitted for the same article or part of it, the first amendment to be voted on shall be the one less similar to the actual wording.⁴⁷ When the responsible committee submits several amendments to one article of the bill, the Speaker shall forward them to be voted on jointly, unless seven MPs or the head of a parliamentary group requests separate voting. Parliament shall decide on separate voting for each amendment, except where the approval of one amendment excludes the other ones.⁴⁸ At the end of the discussion article by article, the bill is voted on in its entirety. If the text of the bill has undergone important changes during the consideration in the plenary sitting, the Speaker, *ex-officio* or at the request of the chair of a parliamentary group of seven MPs, shall postpone voting in general for the next sitting, submitting the full revised text to Parliament.⁴⁹

The foregoing is standard procedure for legislative scrutiny and decision-making in the Parliament of Albania. There are, however, certain specific procedures that are worth addressing with regard to Constitutional reform and the legal reform associated with the European Integration.

44 *Ibid.*

45 *Ibid.* Art. 75.

46 *Ibid.*

47 *Ibid.* Art. 76.

48 *Ibid.*

49 *Ibid.* Art. 77.

IV Parliamentary Scrutiny of Constitutional Reform

According to Article 77/a of the Rules of Procedure, the initiative for reviewing the Constitution may be taken by no less than one-fifth of MPs. The Speaker of the Parliament notifies the Parliament in the very next plenary sitting and distributes to the MPs the text of the bill. The bill is immediately introduced onto the agenda of Parliament and is reviewed in the joint meeting held between the Committee on Legal Issues, Public Administration and Human Rights and the Council on Legislation, not earlier than two weeks from the date it was filed. The meeting is chaired by the Speaker of the Parliament. In the first meeting, at least two rapporteurs are appointed, and a decision is made on the way that the bill shall be made known to the electors and on summoning constitutional law experts.

The meetings on the review of the Constitution and the hearing sessions are open to the media and the public. At the end of the review, the joint meeting between the Committee on Legal Issues, Public Administration and Human Rights and the Council on Legislation prepare a report which is presented to Parliament in a plenary sitting by the rapporteurs. This report shall also contain any dissenting opinion.

According to Article 77/b of the Rules of Procedure, the plenary sitting on the approval of the amendments to the Constitution is called not earlier than two weeks and no later than three weeks from the submission of the foregoing report. The review in a plenary sitting starts with the discussion in principle and the article-by-article review and vote and is finalized with the general vote. Amendments proposed during the plenary sitting may not be discussed during the sitting. They will have to be preliminarily reviewed pursuant to Article 77/a of the Rules of Procedure of the Parliament of Albania. The voting on the approval of the amendments to the Constitution is then open. The amendments are considered approved if voted on in favour by at least two-thirds of all the MPs.

D The Role of Parliament in the Legal Reform Consequent upon European Integration

Albania, as all the other countries aspiring to join the EU, must approximate their domestic legislation to the EU *acquis* and, where necessary, fully amend it to make it compatible with EU law. The main responsibility in planning and proposing the related legal reform rests with the government. However the Albanian Parliament is in a position to play just as important a role by exercising its political and legal oversight over this process. The procedure for the scrutiny of the legislative reform aiming to achieve the approximation of the domestic legislation to the EU *acquis* is detailed generally in the Procedural Rules of the Parliament of Albania and in a specific statute, *Act No.15/2015, aiming at the strengthening of the Parliament's role and contribution to the European integration process*. The provisions of this Act provide, *inter alia*, for a better regulation of the relations between Parliament and the Government, as well as with the EU institutions in general over the accession process. The Act includes specific provisions for the establishment

of a new cooperation mechanism dedicated entirely to the integration process, namely the National Council for European Integration (NCEI).

NCEI is the highest national advisory body on EU integration matters, established in 2015 at the premises of Parliament. It aims to provide strategic orientation and enhance the broad national consensus on integration matters. It is a consultative mechanism that seeks to bring together representatives from political parties, public institutions, civil society organizations, business community and media. Its overall goal is to guarantee an all-inclusive cooperation, transparency and consensus on EU integration matters. NCEI operates on the basis of its own Rules of Procedure,⁵⁰ which were adopted via Decision no. 67 of the Parliamentary Bureau, on 4 May 2016. These provisions regulate the overall functioning of NCEI, providing the necessary instruments in achieving its objectives as a mechanism that facilitates the establishment of a constructive and sustainable dialogue at cross-party level and beyond.

NCEI has many important competences and responsibilities, including:

- Promoting the cooperation between political parties and other interested stakeholders;
- Enhancing the debate on EU integration policies and monitoring the progress of the accession negotiations;
- Assessing existing normative framework and practices relating to the European Integration process;
- Facilitating the exchange of information on EU affairs with the highest state institutions;
- Advising, issuing opinions and adopting recommendations on the negotiation process.

As per these Rules of Procedure, NCEI is expected to hold its meetings at least once every two months, in the presence of more than half of its permanent members. However, in practice this provision has not been respected in recent years. During 2017-2019 the performance of NCEI, as well as of the other structures of Parliament, has been affected by severe political turmoil, reflecting continuing tensions between parties and the opposition's boycott of parliamentary activities. The meetings of NCEI are procedurally called by the chair, who is a member of the opposition. The chair of NCEI was changed in May 2019 after the members of the opposition gave up their parliamentary mandates. In 2017-2018 only three NCEI meetings took place. According to the 2019 annual report, NCEI has organized four periodic meetings and one round table with the Faculty of Law, University of Tirana. At the time of writing, in early 2020, two meetings have taken place as the procedures were interrupted by the COVID-19 pandemic.

The NCEI meetings have primarily consisted of hearing sessions with the ministers/deputy ministers in charge of the European Integration portfolio on the implementation of five key priorities and steps forward to the establishment of the national negotiation structure. In 2019 one particular focus has been on

50 NCEI Rules of Procedure (in Albanian). Available at: www.parlament.al/DokumentaIntegrimi?integrimId=7.

the judicial reform taking place in Albania. Greater emphasis needs to be given to the important issue of the engagement of civil society and non-political structures in the process of European Integration through their participation in the NCEI. NCEI is an example of the potential to increase the role of Parliament in law reform, yet its overall performance during the past three years indicates that it has not succeeded in achieving its objectives because its activities have been closely linked to, and ultimately undermined by, the political parties' own agendas. In this context significant improvements are required to overcome the risks of its becoming a superfluous consultative mechanism.

In addition to NCEI, Act no. 15/2015 reiterates that in exercising its role in the country's EU integration process, Parliament should participate and proactively contribute to the regional and European inter-parliamentary cooperation forums. In this regard, a clear reference is made to the EU-Albania Stabilisation and Association Parliamentary Committee (SAPC), which was established in 2010 under the framework of the Stabilisation and Association Agreement. SAPC seeks to enhance inter-parliamentary and inter-party cooperation as well as to strengthen political dialogue for a comprehensive and sustainable EU reform agenda in the enlargement countries. SAPC is a consultative body that brings together representatives from the Parliament of Albania and the European Parliament. During the past three years, its activity has been affected by the political instability, affecting every other parliamentary activity.

With regard to the legislative procedure, The Committee on European Integration is the body responsible for scrutinizing any piece of legislation concerning the approximation with the EU acquis. It was initially created as an ad hoc committee in 2002 (via Parliament's Decision no.37 of 16 May 2002). In 2004 it gained the status of standing committee (following Parliament's Decision no.117 of 26 January 2004). The Committee on European Integration exercises three main functions: legislative, control and electoral. It also exercises other functions that derive from these, such as the informative function on the issues concerning European Integration as well as enhancing parliamentary cooperation with the parliaments of EU Member States and other states that are in the process of EU integration.

The aforementioned legal framework (Act no. 15/2015) specifies that all bills related to the approximation of the domestic legislation with the EU acquis should be accompanied by a detailed report and the respective approximation/compatibility tables. During their scrutiny, the Committee on European Integration analyses the accompanying documents, especially the approximation tables/instruments by comparing the proposed bill with the respective EU measure with which the former seeks to comply. If there is missing information in the accompanying documents, the Integration Committee returns the bill to its initiator. After the scrutiny, the committee compiles a report which includes the approximation scale of the proposed bill with the EU acquis and any proposed amendments to the bill. The report is then presented in the plenary session for scrutiny and discussion. According to the Rules of Procedure of Parliament, the committee's report must be presented before the bill is scrutinized and voted on in its entirety. In the plenary session, the scrutiny of the compatibility of the bill with

the EU legislation is undertaken according to the normal legislative procedure presented above.

E Final Discussion and Conclusions

The fundamental changes in the Albanian political and economic systems during the past decades have been accompanied by a thorough legal reform aiming at creating a legal system in conformity with the requirements of democratic pluralism, rule of law and human rights. As a country holding the status of candidate to join the EU, Albania is currently undergoing significant institutional and legislative reform to ensure the approximation with the EU *acquis* and the fulfilment of the accession requirements. Even though the primary role of initiating law and institutional reform rests with the government, Parliament has an important role to play in initiating law reform and in ensuring that it adequately reflects the interests of citizens and of all stakeholders, and not merely the government's political agenda. This can be achieved by further enhancing the cooperation with and participation of citizens and groups of interest during the consultative phase, which need to become more open and efficient to ensure that even non-political opinions are heard, that stakeholders' interests are addressed and that the forthcoming legislation is understood and will be respected.

Most importantly, Parliament should play a key role in ensuring that the legislative measures proposed meet the required quality standards from a technical as well as a legal content perspective. An analysis of the legislation enacted to achieve reform in the past decades would show that many of its provisions did not fully achieve their objectives. The ineffectiveness of the legislation has been attributed, in part, to deficiencies in its preparation and drafting. This indicates that greater attention and resources need be invested in law-making practices by the Albanian public administration and its adequate scrutiny via Parliamentary practices in order to ensure a higher quality of legislation. Inadequately prepared legislation reduces its legal certainty and stability, which are essential preconditions for advancing reform in every aspect. Inadequately drafted legislation may not achieve its objective, may lead to expensive litigation to resolve textual ambiguities, and is more difficult to implement and enforce. Further, unsatisfactory implementation of legislation may also reduce its acceptance by citizens. Inadequate enactment of new legal norms may disorient the people, the courts and the public administration and thus undermine the rule of law.

Albania belongs to the Continental Europe tradition of legislative drafting and scrutiny whereby the contents of proposed legislation are scrutinized in depth and continuously negotiated in Parliament, thereby undergoing relevant change. As presented earlier, the legislative scrutiny in the Parliament of Albania is conducted in the committee and plenary sitting levels. Each stage involves the discussion and voting on the bill in principle and then article by article, before a final voting on the bill in its entirety takes place. The role of the Council on Legislation in Albania is focused *not* on the scrutiny of the quality of the legislation from a technical drafting perspective, but on the scrutiny of its legal content, the

constitutionality and compatibility of bills with the Constitution and existing domestic and international legislation. The rationale for introducing the Council and its role, which was initially following the Italian model, begs further consideration, given the clear departure from that model in recent years. It leaves open the question as to whether the quality of the legislation from a legislative drafting perspective is adequately assessed at the committee stage and in plenary sitting and whether the role of the Council on Legislation should shift towards this aspect. The transparency of the work of parliamentary committees and councils is a particular aspect that should be improved. Annual reports, statistical data and analysis should be made compulsory and be published; the reports should follow specified comparable formats to facilitate research to be conducted on these bodies' current activities and to recommend improvements.

In the past decades, generally, and in the past few years, specifically, the work of the Albanian Parliament has been characterized by a lack of political dialogue and deeply contrasting positions between the governing coalition/party and the opposition. The extended boycotts of the opposition parties, caused by deeper problems beyond the scope of this article, have hampered the overall capacity of Parliament to pass new legislation and to properly monitor the implementation of the adopted legislation as well as the performance of the executive. Over the past few years, the performance of parliamentary mechanisms has fluctuated as a result of the influence exerted by the political parties' own agendas, a highly polarized climate and continuous lack of dialogue among the Albanian political parties. Overall, the cross-party dialogue and cooperation in Parliament have followed a worsening trend in recent years which has obstructed the efforts to meet the political criteria and the timely implementation of key reforms required for Albania's European Integration. Constructive work within the democratic institutions in Albania, starting with Parliament, is imperative to bring forward the EU accession agenda and to meet the expected deadlines for the opening of the negotiations.