

PUBLIC DEMANDS IN TREATY-MAKING AN ANALYSIS OF ALBANIA'S ALIGNMENT IN THE CONTEXT OF EU INTEGRATION

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Abstract. *The paper investigates three fundamental public demands in the EU treaty law and practice - transparency, accountability and participation - that Albania, as an EU candidate country, must address in its legal and political processes. A recent illustration of the tension between public demands and treaty practices is the migrant agreement between Italy and Albania, which exposed significant concerns over transparency and public participation. The agreement raised questions about the role of civil society and public discourse in shaping the terms of bilateral treaties, demonstrating the gap between Albania's current practices and EU expectations.*

The research begins by outlining the EU's established standards regarding these principles drawing on relevant legal framework, reports and jurisprudential sources. It then assesses how these standards are addressed in Albania at the national level by analysing parliamentary debates related to treaties, reports of civil society, media coverage, political party positions and case law, particularly those of the Constitutional Court. On the international level, the paper reviews Albania's treaty practices as perceived by international organizations and media outlets. Through this comparative analysis between Albania's current situation and EU expectations, the paper identifies critical gaps and challenges in meeting these public demands, which often are underexplored aspects of the alignment process. Finally, it offers concrete recommendations for aligning Albania's treaty-making practices with EU standards, contributing to the broader discourse on democratic participation in international law.

Keywords: *Albania, EU integration, treaties, transparency, accountability, participation*

1. INTRODUCTION

During different periods of its communist history, which lasted from the end of World War II until the collapse of the regime in 1991, Albania's treaty involvement on the international stage was minimal with a foreign policy characterised by isolationism and ideological purity. Treaty participation was largely confined to trade agreements with key ideological allies such as Yugoslavia, the Soviet Union and China. By the late 1970s, after breaking relations even with China, Albania withdrew almost completely from international treaty networks, further isolating itself economically and diplomatically,

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until the regime's eventual collapse in 1991. This legacy left the country with a weak institutional tradition in terms of treaty practice.

Following the fall of communism, Albania shifted dramatically in its foreign policy orientation, characterised by active pursuit of signing of multilateral and bilateral international agreements and membership in international organizations, with European Union (EU) accession standing as its most significant foreign policy objective. Despite the intensity of engagement, studies on the general practice of treaty law in Albania remain scarce, mostly stemming from the country's relatively recent engagement with international legal frameworks. As Albania continues its EU accession journey, aligning its legal framework with European standards, including those concerning public demands for information, transparency, accountability and public participation in treaty-making becomes increasingly essential. Therefore, this study aims to address this critical and underexplored aspect of the alignment process, often characterised by a lack of transparency which has been felt to the core, as there is severe lack of any information regarding treaty practice of Albania. Treaty models or attitude to interpretation are not made publicly available, harming transparency efforts. A more recent illustration of the tension between public demands and treaty practices is the migrant agreement between Italy and Albania, which exposed significant concerns over transparency and public participation. The agreement raised questions about the role of civil society and public discourse in shaping the terms of bilateral treaties, demonstrating the gap between Albania's current practices and EU expectations.

Notably, this is not a shortcoming exclusive to Albania as there appears to be a lack of research focusing directly on transparency, accountability and participation in process of making EU international agreements or other comparable treaties. The field seems to be more developed by civil society means of proposals or communication but that too does not offer a complete panorama. Given this situation, there is a clear need for further research on how treaty processes can be more democratically inclusive.

This paper combines secondary and primary research to address this gap. Due to the fact that this field of study has not been developed much before, the secondary research has been limited to the reporting of civil society, scholarly articles, news articles and journals. To make do for the lack of studies in this specific domain, the origin of the broader right to information and its implications and principle of democracy have been used to draw parallels to the issue of treaties. Firstly, the paper establishes the current standards of the aforementioned public demands in the European Union by making use of reports of non-governmental actors dealing with the broader question of right to information. The paper also analyses the measures taken by the EU to fulfil this right via its web infrastructure. Having thus established the set of standards that are to be reached by candidate countries of the Western Balkans, the paper discusses the treatment of the matter in Albania firstly in the national plane by analysing reports of non-governmental organizations/civil society, media articles, political party stances and statements, keynote legal cases on matters pertaining to treaties. Then, the article will analyse the international plane of Albania's involvement in treaties. The paper then compares the Albanian current state to the European Union standards established within the paper, to compare Albania and the European Union. From this comparative analysis, conclusions will be drawn to determine the gaps Albania as a candidate country, has to fulfil to be on par with the European Union expectations in this matter. This article will focus on Albania's treaty making process and treaty practice seen through the lens of the right to information. In this aspect, Albania will be compared with its own destination point: the

European Union. The paper takes a look at the mechanisms in place, or lacking, that make possible for the treaty making process to be transparent, subject to accountability and with the participation of the public and interested parties. It then aims to compare the EU and Albania in a way that would be conducive and telling of Albania's performance indicators in this domain and reforms still required.

2. TRANSPARENCY, ACCOUNTABILITY AND PARTICIPATION IN CONTEXT OF EU TREATY-MAKING

The issue of treaty law in the EU is unique, as the very existence of the Union is based upon treaties between its members and thus is a product of international law. In addition, the Union can enter into international agreements on behalf of all EU member states, albeit in areas where the treaties between the members have authorised the EU to legislate (Cremona, 2012: 93-124). It is in this way that the EU drives integration and advances its foreign policy goals. These types of international agreements are the focus of this research when discussing EU treaty practice. The EU has concluded a sizable amount of such treaties with states or other international organizations (European Council, 2025). It is interesting to note that the very Stabilization Association Agreement between Albania and the EU, which made Albania's intent to join the EU recognized, is such a treaty between the EU and a third country (Stabilization and Association Agreement, 2021). While these treaties primarily serve a political and strategic aim, they also provide with guiding principles on EU's treaty making process. Core values such as transparency, accountability and participation are fundamental to the functioning of the Union and stipulated in several articles of the TEU and TFEU (Articles 10(3) and 11(1) TEU and Articles 15(1) and 15(2) TFEU). Article 10 is regarded as the article that espouses the principle of democracy as per a recent ECJ decision (Case C-808/21). Though previous literature might suggest that the transparency and participation in treaty making of the EU depended on the area of law in which it was fledged, the latest statistical insight into the matter maintains that the level of transparency, accountability and participation is the same regardless of the area of law in which the treaty is made (Reis, 2024: 21-58). The same stands even in areas in which the member states that are "polarized", in that there is no "dimming" of transparency in international law making but that, again, the transparency, accountability and participation maintain the same levels (Reis, 2024: 21-58). These facts grouped together can paint the picture of a very transparent decision-making process in treaty making, yet it is important to have in mind the nature and context of the EU.

First, it might be hard to measure the level of transparency of 27 states that act as a *sui generis* international organization. Additionally, the trio of transparency, accountability and participation, where sometimes democracy is used as a word instead, makes up what is known as the right to information or the right to know (Diamandouros, 2006). The primary concern with the right to information being quantified, is the fact that the rankings usually assess the freedoms recognized in the legal frameworks of each country or the public perception on freedoms rather than provide a quantifiable amount of transparency in reality (UNESCO, n.d.). This methodology has resulted in peculiar results in which Taliban-governed Afghanistan ranks first in the world in the Right to Information ranking (RTI Rating, n.d.). Due to this type of results and to err on the side of caution, as Albania focus of this research is ranked 7th overall, this paper will not refer to this ranking in determining the degree of transparency. Moreover, the transparency of

a particular issue that the paper covers: that of treaty making and not transparency in the legal framework as a whole (like the RTI ranking) is what is being studied.

In analysing the public demands in treaty-making with regard to European Union's external action, this paper will refer to the democracy rankings and freedom rankings, as the right to ask for accountability of the governance and to participate in decision making that are the crux of the right to information. These rankings serve as proxies for assessing the extent to which individuals are empowered to demand accountability and to participate meaningfully in decision-making processes. These two dimensions are at the core of the right to information and form the foundation for evaluating the openness of governance structures. Building on this framework, the outline of EU standards of transparency, accountability and participation in treaty making and treaty practice will be based on a matter-of-fact approach, only those procedures and practices that are consistently made public or involve the public will be considered reflective of EU standards. If the EU bodies do not, as a matter of course, make known to and include the public in a part of the process then that excluded part will not be considered as "EU standard" and as a result fall outside the scope of such standards. Lastly, it is important to underline that the treaty making and practice in which the EU as an entity can act as a party is limited to a number of fields of law where the EU enjoys the competence. Accordingly, this analysis will focus exclusively on treaty-making in areas where the EU holds exclusive competence under the Treaties (European Commission, 2025a).

Beginning with the area of trade, the European Commission has an entire website dedicated to transparency on trade policy (European Commission, 2025b), that is fairly easy to come across in search engines. The website provides public access to the text of negotiations, a news section with the latest developments, a calendar section that has set out the next important meetings on matters of trade that are in the process of being negotiated (including the livestream information as well as the possibility to register yourself/organization as a participant in meetings that may directly affect you). Lastly, the website provides links to a podcast dedicated to EU trade policy and a newsletter on the same issue and specific subsections dedicated to the relation to Ukraine and the WTO.

In terms of participation of the public in the treaty making processes in trade, that is made quite transparent through this website, options are more limited. Apart from the possibility to sign up as a participant in the meetings as a member of interest groups, there is also the possibility to comment, in written on the draft texts or proposals of upcoming international agreements. It is fair to say that the interface of the page under which public consultation via writing is hosted, is considerably more crowded than the main website interface. It is hard to locate the button that sends one to the list of open public consultations and it being placed at the very bottom of the webpage make it even less visible. Trying to leave a comment is confusing as well and sends the visitor to different pages of the website. Moreover, at the time of writing, the only open public consultation was on "hiatus" due to technical issues. What was a positive feature was that the page contained information on the target group of the consultation "invitation", background information on the issue being consulted and the reasoning behind the consultation (and by extent, of the proposal of changing legislation that gave rise to the consultation itself).

Moving on to the area of customs, the dedicated webpage (European Commission, 2025c) was very informative of what customs are, how they work and contained detailed information on the customs regime of the EU, but it too, like the trade

website, had consultations placed at the very bottom of the page (European Commission, 2025c). Moreover, the highly minimalistic interface of the website made it less approachable, as it was difficult to locate where consultations were placed and their status of being open or closed.

Regarding any other needs for consultation, the EU has a general consultation website, in which EU citizens and non-EU citizens can share their opinion on current or upcoming pieces of legislation. Unlike the Trade and Customs websites, here there is no legal text provided, and people are invited to pinpoint their proposal themselves. The platform is very liberal and transparent, however, as people's proposals are frequent, published and their liberty in expression is the same as that in the comment sections of social media outlets (European Commission, 2025d).

As for treaty practice, the EU has not made public any guideline or outline that it has followed in conceptualizing its international agreements. Yet, there remains the well documented manner in which the EU engages in international agreements of certain established types with third parties (European Commission, 2025e). Treaty practice is well established and well-documented for certain, but not very well organized in the sense of approachability for the general public. Certainly, the database made available present an amazing tool for the law person to learn more about the international agreements concluded by the EU, but the lay person will face difficulties trying to locate the needed information and will also have a hard time finding patterns of similarity that the EU follows as a matter of practice in its international agreements. Nevertheless, the website is transparent enough to list the types of acts that are subject to treaty practice such as international agreements, memorandum of understanding, declaration, agreement, communication, amendment to an agreement, arrangement, protocol, protocol to the agreement, corrigendum and exchange of letters, amongst others (European Commission, 2025e). Although the database makes treaty practice more transparent, there is no identifiable measure that seeks to make it interactive in any sort of measure that would include the participation of people in the process.

In both treaty-making and treaty practice in the EU, there were efforts to make the process more transparent with treaty making being a par excellence example of transparency. In treaty making there was an effort to achieve participation in the process, albeit this effort was rather modest in scope and lacks the depth needed for meaningful engagement, when compared to the work done to increase transparency. As for treaty practice, there was no effort at all to involve public or promote participatory mechanism. Moreover, neither in treaty-making nor treaty practice were there any discernible efforts to enhance accountability. For instance, for each explanation given on how or why something exists in the context of the EU, there could have been a line of information directing citizens to channels where malpractice and maladministration could be denounced. This mechanism could have reinforced democratic oversight and ensured citizens empowerment in external policy.

An important moment in the debate over transparency, accountability and participation was the negotiating period of Transatlantic Trade and Investment Partnership (TTIP), which highlighted further the limitation of EU in this context. The deal would have been the biggest Free Trade deal of the EU ever. It was being negotiated with the US and would have affected trade completely in all the EU. Although the texts of the negotiations are publicly available today (European Commission, 2025b), at the period of negotiating before being pronounced "no longer relevant" in 2019 (Council of the European Union, 2019), there were protests and activism against the agreement

(Johnston, 2015). The activists accused EU institutions of holding silent talks and that the process was not open enough to the public to involve all stakeholders. These concerns highlighted a perceived lack of openness and inclusiveness in the negotiation process.

Following the negotiations for the TTIP (Transatlantic Trade and Investment Partnership) and its “death”, there was a need for change in the handling of transparency in treaty making. Yet, until very recently, some issues have persisted. Civil society finds that simply publishing negotiation texts is not up to par with what is meaningful transparency, *i.e.* transparency that truly exerts its function of making things known to the public and making the public aware (EPHA, 2021). The information is highly technical and very dense and this in effect makes it harder for smaller-scale stakeholders to be able to participate in negotiations. Effectively, participating in the negotiations of the EU would require a considerable network scale. Another issue is the manner in which stakeholders participate. The holding of separate meetings based on the “category” of stakeholders presents an issue as there is no interaction between the categories of competing interests, which can lead to many important objections not being made.

These concerns were echoed in findings by the European Ombudsman, who, in a detailed report, pointed out significant shortcomings in the EU’s approach to both stakeholder interaction and transparency. The report underscored that while steps had been taken to improve access to documents and to formalize consultation procedures, deeper reforms are needed to ensure that treaty-making is not only transparent in form but also participatory and inclusive in substance (European Ombudsman, 2014).

In conclusion for this part, while the EU has made tangible progress in improving transparency in treaty-making and, to a lesser extent, treaty practice, significant gaps remain—particularly in the areas of participation and accountability. The standards in place are evolving, but they still fall short of fully supporting an inclusive and democratically accountable external policymaking.

3. TREATY-MAKING FRAMEWORK IN ALBANIA IN POST COMMUNISM PERIOD

Albania emerged from communism fully only in 1992; thus the treaty-making and treaty practice of Albania that will be discussed in this paper will be in this period onwards. Reasons on why the communist period will not be considered are first and foremost the complete opacity in which the Albanian State of the time interacted with other countries unbeknownst to Albanian citizens, as well as the fact that in a dictatorship accountability and participation are not possible.

At the beginning of the 1990s, Albania had just started to emerge from decades of isolation under the communist dictatorship. Being a hermit kingdom for the past twenty years or so it did not have diplomatic relations with many states. Yet on 2nd July 1990, on a day now commemorated as the Day of Embassies, Albanians *en masse* sought refuge inside the territory of the present Embassies in Tirana. This moment marked the beginning of the end of the communist regime.

Within the year a treaty was signed with the US to reestablish diplomatic relations, constituting a turning point in its reintegration in the international community (Department of State, 1991). From that moment forwards Albania tried to “catch up” by entering numerous multilateral treaties in which it was not a party prior due to its ideological stance (UN Treaty Collection search, 2025). According to an estimate by the Ministry of Foreign Affairs, the number of agreements concluded after 1990 exceeds 2,000 (Skapi, 2017). In this realm, Albania is generally characterized by its openness to

accession and the lack of reservations made (Skapi, 2017). The Albanian public opinion at large is in favour of accession in “Western” treaties, seeing these as steps closer to a more liberal country and to eventual EU accession. Yet, when it comes to transparency or accountability and participation towards the public, the context in which the brunt of multilateral treaty negotiations and treaty making happened post-1990s, it is important to note that there were no requirements of transparency, accountability and participation. Judging from the time period and complete lack of infrastructure in Albania at the time, it is also understandable that even if requirements were in place, their implementation would severely lack. The private press was just emerging, with the first private newspaper founded in January 1991, and thus the state still had a monopoly on information. Moreover, the energetic network in Albania during those years was too weak to support the rapid expansion of household appliances and television viewing too, was limited by being or not during black out hours.

Both Albania and the European Union operate under a monist legal system with respect to international agreements (Ciongaru, n.d.). However, Albania did not adopt a formal legal framework governing treaty-making until 1998 (Law No.8371). The law of 1998, in article 28, abrogated the Regulation of the Popular Presidium of 1978. In all of 1998's articles that dealt with treaty-making (Articles 9 to 15), there was no mention of the inclusion of the citizens in the process. All negotiations were to be held by the ministries and bodies of the two states. Although the law included in its scope multilateral treaties, the language used is that which describes negotiations between two states only. The same goes for international organizations which are mentioned in the law but not adequately accounted for in the situations of negotiation described in the law. Another issue is that the definition of a treaty (Article 2, point “a”) is “an international agreement that mainly has a political character/nature”. Meanwhile there is no definition of international agreement (Law No.8371). From these very issues in the law, it is deduced that the Albanian standards of treaty-making did not only lack transparency to Albanians but also were poorly understood by the lawmakers of the time, who have essentially equated a treaty with a memorandum of understanding. This begs a whole other research question over the nature of agreements Albania has concluded under this law and whether there is a need for a Chapeau agreement of sorts to correct any possible implications on the legal nature of the agreements. Nonetheless, this discussion falls out of the scope of this paper.

Yet, this is the context in which Albanian treaty making operated up until 2016, when the 1998 law was repealed and a new law was passed. Although Law No.43/2016 “On international agreements in the Republic of Albania” (Law No. 43/2016) is considerably better in all the areas of criticism the previous law suffered (such as the vague definitions and the lack of proper negotiating procedure rules that fit different contexts), it too does not include the public at all in treaty making.

The competent bodies that draft the treaties are chiefly the ministries. In fact, Law No.43/2016 exists in the context of the laws on the right to information which were passed in 2014, respectively Law No.119/2014 “On the right to information”, which includes in its scope only transparency considerations and makes no mention at all of international agreements (Law No. 119/2014), and Law No. 146/2014 “On announcement/notification and public consultation”, which under Article 4, point (b), expressly excludes international agreements, bilateral and multilateral agreements from the scope of the law (Law No. 146/2014).

Thus Albania, from the legal perspective, is completely opaque to the national public in the process of treaty making. Albanian access to these agreements is then only exercised by the Parliament after the negotiation process is already over to begin with and the treaty is fully concluded. Duly, as per the law provides, the confusing website of public consultation (Konsultimi Publik, n.d.) does not have a single document of transparency admitted to public consultation or even public viewing with regards to international agreements. Moreover, the website requires a login via biometric identification (through the governmental programme e-Albania) in order to leave commentary, making it much less free and liberal than any parallels found in the EU websites.

In 2016, based on the needs identified by the structures of the Ministry of Foreign Affairs (MFA), ALTRI a local organization, started a project on digitalization of the international agreements with funds from Canada Fund for Local Initiatives (CFLI) and Australian Direct Aid Program (ALTRI Center, 2018). The declared goal was to strengthen the Albanian governance accountability and transparency by raising the awareness for the obligations of Albania originating from international treaties by setting up a free accessible comprehensive electronic database of international treaties www.treaties.al This web page cannot be reached as of 2025.

Treaty practice is equally as opaque. As mentioned above, Albania does not, by default, negotiate much in international multilateral treaties, taking instead the “acceptance” back seat. The only measure of treaty practice that exists is that in bilateral agreements, which are sporadically published in governmental websites (Taxation Office, 2025). It is more or less apparent that Albania follows the same type of structure when concluding such agreements, yet they are not easily accessible by people. BIT (Bilateral Investment Treaties) also serves to understand treaty practice in Albania, but no Albanian official governmental website has them published. They can, however, be found in the website of UN Trade and Development (UNCTAD, n.d.) (not all the BITs have the content published), in which it is evidently clear that all the negotiations for all these treaties were carried out under the older law (that of 1998) or prior to the adoption of that law. The structure and provisions seem to follow a uniform model, but it is hard to know for certain in the light of the fact that not all these treaties are available.

Albania does not have an easily accessible database that would make it possible for ethnic Albanians holding foreign citizenship, foreign individuals or entities to get information about treaties that give rise to rights to them in case of a link to Albania. The most comprehensive place where treaty text can be found is the official website of the Centre of Official Publications (QBZ, 2025), yet the issue stands that the material there is very hard to locate for lawyers, let alone lay persons.

As for individuals or entities that are unfamiliar with Albanian as a language the issue is even less transparent and even more complicated, as there is no translation in English of the treaties in this official government website. Judging from these state of affairs, the transparency, accountability and participation in treaties in the international plane is, somehow, even more opaque and non-existent than it is in the national plane.

4. RECURRING FAILURES TO MEET PUBLIC DEMANDS FOR TRANSPARENCY, PARTICIPATION AND ACCOUNTABILITY IN ALBANIAN TREATY-PRACTICE

Albania, despite its small size and limited regional influence, has repeatedly served as a logistical, humanitarian, or diplomatic platform for addressing international

crises rooted in the Middle East. It could be said that Albania appears as quite the treaty maker when it comes to agreements to house emigrants from conflicts or to support in other ways. The Albanian public becomes aware through the news about these agreements, and it is not coincidental that it is bilateral agreements that the public is more aware (and also wary) of. From the mujahideens, to the attempt of demounting the Assad regime chemical weapons, to the housing of the Afghan refugees from the Taliban, Albania has repeatedly found itself involved—directly or indirectly—in complex issues originating in the Middle East. To properly assess the Albanian desire to have a right to transparency, accountability and participation it serves to have a general overview of the past decade's international agreements.

Perhaps the most tumultuous, was the agreement of the Republic of Albania with the Republic of Greece with regards to the delimitation of the sea waters (Constitutional Court of the Republic of Albania Decision no.15, 2010). With its negotiations beginning in 2004 and the agreement itself being signed in 2009 (Stoukas, 2020), the text of the agreement (later annulled by the Albanian Constitutional Court (Constitutional Court of the Republic of Albania Decision no.15, 2010)) is not public to this day. Its alluded content ignited a lot of discussion that continues even in recent years in Albania (Ora News, 2018), whenever that topic arises. Although it concerns Albanian territoriality, the Albanian people were not aware of the text of the agreement or any subsequent negotiations in more recent times and the discussion is reliant on what the political parties wish to reveal. In 2010, it was the left-wing opposition parties that took the agreement to the Constitutional Court (in whose decision, a semblance of what the agreement entails can be found, yet, as said the full text is not public), while in more recent discussions, the current opposition denounces new negotiations on the matter (Saracini, 2023). Albanians, however, are not allowed the right to view these negotiations closely in a transparent manner, thus everything is up to speculation.

Much discontent, too, followed the news of the arrival of the Iranian opposition as refugees in Albania. The agreement was initially agreed between the then-leaving Prime Minister, Berisha and the Secretary of State of the US, Hillary Clinton (Cubolli & Susuri, 2023). The terms were not made public and even the exact number of people on which the agreement was reached is unclear (some sources state 210 people, others 270) (Cubolli & Susuri, 2023; Newsbomb, 2023; Politiko, 2021). That agreement was later extended, and more people came to Albania, yet Albanians are unaware of the terms of the agreement to this day and whether or not there is a timeline by which these refugees will leave the country (Cubolli & Susuri, 2023; Newsbomb, 2023; Politiko, 2021). The public opinion on the matter, although not expressed through a massive protest, was negative then and continues to be negative today (Balkanweb, 2016; Tela, 2023; Top Channel Albania, 2020).

Yet, the single most memorable and impactful reaction of the Albanian public towards international agreements and the opacity that characterizes their negotiations, is the protesting, and subsequent “victory”, against an agreement between Albania and the USA for the destruction and demounting of the chemical weapons that were seized from the Assad regime in Syria (Bengali, 2013). In the Albanian public conscience, the moment is regarded succinctly as “The Chemical Weapons” and is regarded to this day as the most massive civil protest (being distinguished from protests called by political parties or movements). When news broke out about such an agreement being brokered, protests erupted all over the country (in some 14 cities (Xhafa, 2013)). The text of the agreement being negotiated and the contents of the agreement, which weapons, under

which conditions, with what benefits for Albania, were not publicly available. The Prime Minister himself addressed the protesters in an attempt to calm the protest down or bring its end, yet he too, did not make the content of the agreement or its specificities public (Rama, 2013). So strong was the reaction to this opacity towards the Albanian people, that the demonstrations and protests succeeded in making Albania “back off” from that agreement (Xhafa, 2013).

From that point in time onwards, many more international agreements have been negotiated but the lack of bringing into attention to the public or their irrelevance to Albanians, another example being the agreement with Ukraine in the fields of Arms (President of Ukraine, 2025) but to illustrate the general sentiment towards the lack of transparency, to not mention the complete lack of accountability and participation, this paper will now discuss the agreement on housing the Afghan refugees fleeing the Taliban after the US withdrawal, as well as the Protocol on refugee camp with Italy. Both cases were badly received by the public but the pushback has been more considerable in the case of the Protocol.

When the Taliban took control of Kabul, the eyes of the world watched as people risked all to flee the country. News of the flights that were able to leave the Kabul airport were all over the world media. But where would these people that were escaping Afghanistan be located? Most of them were people that had worked with the until-then US backed government or US-backed NGOs of Afghanistan, making them at risk for being targets of political prosecution by the Taliban. The US promised to take them as refugees (Refugee Congress, n.d.), but their visa applications would be processed while they would physically be in third countries. One such country would be revealed to be Albania, but once again, the number of Afghans that would arrive, the benefits/earnings that Albania would make (if any) and the duration of time they would spend here, all of which should have been specified in the treaty, were not made public. The Albanian government, however, proclaimed that the Afghans would stay for 1 year (BoldNews.al, 2021; Telegrafi, 2021), after which they would move to the USA, and that their number would be approximately 3000. Today, 3 years later, the number of Afghans that have been located in total to Albania is approximated to have been 4000 and there still remain 400 Afghans in Albanian territory (Top Channel, 2025). Once again, the lack of transparency on what the agreement contains and the amendments that it could have sustained, have led to an effective deception of the Albanian public, which was not necessarily “thrilled” to house the Afghans, whose expenses, supposedly are covered by the American government.

The last impactful international agreement much discussed was the Protocol (for strengthening cooperation in the field of migration) signed by Albania and Italy on November 6, 2023 in Rome. The peculiarity of this agreement is unparalleled. It is noteworthy that, unlike the previous examples mentioned above, the text of this agreement was made publicly available one day after the signature (Kryeministria, 2023), yet we are not in front of an example of transparency, accountability and participation, as this right has no effect in accountability and participation when the negotiation stage is over. With the agreement being already signed, there is no place to discuss accountability or participation. This agreement was denounced by the Albanian opposition, and invested to the Albanian Constitutional Court (Shqiptarja, 2023), as being unconstitutional and illegal not only because it waived Albanian jurisdiction on legal matters in the Albanian territory of Gjadër to Italian jurisdiction, but also because it was, reportedly not, compiled by the Albanian Ministries, which is the provision of the

Albanian law on the matter. The Albanian Constitutional Court did not agree with these arguments and proclaimed the agreement constitutional (Constitutional Court of the Republic of Albania Decision No.2, 2024). The Court did not address concerns over the lack of transparency.

The Agreement has not been received badly only by the Albanian opposition and general public but by the Italian opposition and Italian general public as well (Euronews, 2024). As is evident from the numerous protests in both Albania and Italy (Syri TV, 2024), the people of the countries concerned, do not want and do not agree with the contents of this agreement. Even the number of legal challenges this agreement has faced (Euronews, 2024) is evidence of the degree of non-acceptable nature of this agreement to the citizens of both countries. Concern for the human rights of the subjects of the agreement, as well as concerns about its costs are the two prevailing themes.

All the above examples illustrate that the Albanian public and citizenry is in want of a transparent, accountable and participatory negotiation process in treaty making, as Albanian citizens are rarely, if ever, pleased with the outcomes of such negotiations. The judicial control of the Constitutional Court has come prior to ratification but even this control does not make the process any more transparent, as it comes after the terms are already set. Moreover, the treaties under review are often neither published nor included in the Court's decisions, leaving the public unaware of their actual content—even when a Constitutional Court ruling exists.

It is essential to emphasize that constitutional review cannot substitute for the citizen's right to information. Judicial and parliamentary ratification processes, while institutionally important, do not fulfill the democratic standard of public access and participation. The right to information, as a core element of democratic governance, requires direct and meaningful engagement of the citizenry, not merely the involvement of representative bodies or judicial institutions.

5. CONCLUSION

Both Albania and the European Union operate under a monist legal system with respect to international agreements. In practical terms this means that once ratified international agreements automatically become part of domestic law without the need for further implementing legislation. In this regard, Albania is closer to the EU's way of functioning when it comes to treaty applicability and can be considered to have fulfilled that standard or requirement. Yet, the most crucial issues that impact the transparency, accountability and public participation are not necessarily those moments when the treaty enters into force, but in earlier moments when it is being first formulated or negotiated.

In the European Union these principles are not mere procedural norms, they are understood as fundamental expressions of democracy in the Union. As such, it is not legal formality alone, but the overall level of democratic practice, that determines the extent to which a country like Albania can align with EU standards in treaty-making. While Albania may meet the structural requirement of treaty incorporation through monism, it falls substantially short in terms of democratic engagement. In fact, under the Albanian law, transparency, accountability and participation in treaty-making are not just absent, they are actively excluded. The law fails to include international agreements within the scope of public consultations, impeding citizen involvement. In contrast, the EU has developed institutional mechanisms that enable public oversight. For instance, draft treaties and related materials are publicly accessible online, often open to comments from EU citizens and non-citizens alike. These tools allow for broader democratic input, both

through institutionalized interest group meetings and open online platforms for individual commentary - even anonymous contributions. In Albania, by contrast, not only is there no similar infrastructure, but even basic engagement mechanisms are restricted by requirements such as digital identification to participate in public discussions, which further limits public input. In Albania, there seems to be a complete lack of transparency considerations for foreign individuals that might interest themselves on the rights that arise to them in Albania due to treaties Albania is part of.

Although Albania has made notable progress on paper concerning the broader “right to know,” its implementation in the domain of treaty-making is effectively nonexistent. Moreover, while the EU’s approach is far from perfect - civil society actors frequently critique the Union for its limited participatory mechanisms - the gap between Albania and the EU remains substantial. In terms of transparency, the EU operates a comprehensive and accessible digital infrastructure, while Albania has systematically excluded international agreements from public view. In terms of accountability, both the EU and Albania lack strong, direct mechanisms for citizens to hold negotiators accountable for the content of treaties; however, in Albania, the absence of transparency compounds this deficiency.

When it comes to participation, Albania again lags significantly. Public consultation on international agreements is excluded by law, and no substitute channels exist for public involvement in the negotiation phase. By contrast, the EU allows participation through structured consultations, stakeholder forums, and digital platforms, even if these mechanisms remain underdeveloped compared to its transparency initiatives.

Although the Albanian Constitutional Court conducts a judicial review prior to treaty ratification, it is essential to emphasize that it cannot substitute for the citizen’s right to information. Judicial and parliamentary ratification processes, while institutionally important, do not fulfill the democratic standard of public access and participation.

As a candidate country for EU membership, Albania must make significant reforms to close this democratic gap. A crucial first step would be to amend the Law on Public Consultation to explicitly include international agreements within its scope. Equally important is the need to revise the Law on International Agreements to reflect the fundamental right to information and to introduce procedures that ensure this right is upheld throughout the treaty-making process.

It must also be acknowledged that the EU itself is not uniform in its democratic standards. Transparency, participation, and accountability vary significantly among member states, and the Union’s institutional mechanisms.

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