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Corruption and the functioning of public administration as challenges for European integration of Albania

Abstract

This article describes and analyses the phenomenon of corruption and the functioning of public administration in Albania, which are considered among the key challenges in the process of European integration. Albania has made significant progress to adapt its legislation to EU standards in the field of anti-corruption but the enforcement of this legislation and the strengthening of rule of law still remain big challenges.

There are some noteworthy positive steps taken by the Albanian government during the last two years, such as the reform in the procedures of admissions to the public universities, the new procedure on e-procurement, the decentralised procedure for the registration of new business entities and efforts to reduce fiscal evasion.

However, all the Albanian governments, including the current one, have failed to implement civil service law. The established Department of Public Administration and the Civil Service Commission have been constantly under the pressure and influence of the executive.

Keywords: Albania, corruption, public administration, European integration

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I. Preconditions for European Integration and the Rule of Law

Transparency International defines corruption as "the abuse of entrusted power for private gain". All the citizens of the countries affected by high corruption are very well aware of the consequences of this social plague and its negative impact in their

lives. Whether the above definition is accurate or not, we will get far more involved in establishing mechanisms against corruption than in finding a more accurate definition.

Combating corruption and strengthening public administration in Albania are challenges and preconditions for European integration and the rule of law. Albania signed the Stabilisation and Association Agreement (SAA) with the EU on 12 June 2006 and became member of NATO on 4 April 2009 at the Strasbourg-Kohl Summit. The articles of the SAA which are directly related to corruption and public administration are the following ones:

- i. Article 78 on reinforcement of institutions and rule of law.
- ii. Article 85 on fighting corruption both in the private and public sector in particular linked to non-transparent administrative procedures and against fiscal fraud.
- iii. Article 111 on efficient and accountable public administration, the implementation of transparent and impartial recruitment procedures and human resources management at the central and local levels.

The combating of corruption and improving the capacities of public administration have been among the main recommendations made by EU institutions and other international actors. These issues are considered short-term priorities under the chapter of political requirements for democracy and the rule of law, as defined by the European Partnership with Albania¹.

According to all surveys conducted so far with Albanian citizens, corruption is very high. Allegedly, the officials who come to power through politically motivated appointments justify corruption practises and abuse of power with the fact that after the next power rotation they will not be in these positions anymore, regardless of their work performance. The experience after 90's has indicated that the most severe punitive measure against state employees accused of corruption has been their job dismissal. Then they undisturbed run their private businesses, to resume again official positions when their political party comes to power again. As Bogdani and Loughlin note in their book on European integration "In Albania, corruption has become so systemic and routine that is almost impossible to get anything done without it. What is worse, corruption has become an accepted fact, a moral norm as something you do not have to be ashamed of"².

The public sectors most affected by corruption are the health sector, the judiciary, police, property agencies, licensing and registration services and utilities.

¹ Council Decision 2008/210/EC of 18 February 2008 on the principles and conditions contained in the European Partnership with Albania and repealing Decision 2006/54/EC, 4.

² Mirela Bogdani and John Loughlin, Albania and the European Union, European Integration and the Prospect of Accession, Dajti 2000, Tirana 2004, 58-59.

A 2009 Survey of the Institute for Development Research and Alternatives (IDRA) provides a grey panorama of the public perception of corruption in Albania. "The general public perception that corruption among public officials is a widespread phenomenon has not changed over the years. It remains solidly high. However, there is a decrease in the number of respondents who said that corruption among public officials is "widespread" from 57% in 2008 to 50.5% in 2009"³.

A Report of Transparency International published in September 2008 assesses that Albania has made significant improvement with regard to the fight against corruption compared to 2007. "In Albania, where the CPI [Corruption Perceptions Index] score rose from 2.9 in 2007 to 3.4 in 2008, the current government has been vocal about anti-corruption reforms ... which appear to be showing initial results. An official task force created to fight corruption and economic crime has increased the number of officials prosecuted and sentenced for corruption, also building confidence among the public that corruption can be punished in Albania."⁴ However, it seems that corruption is still high, though it is more camouflaged among the public officials.

The Civil Service Law and Labour Code regulate the status of the public administration employees. The majority of the state employees still remain subject of the Labour Code. Starting from 2003 the Albanian government has applied some formal recruitment procedures based on the civil service law, but it is obvious that this is just to legitimate the employed staff on a politically motivated basis and informal relations as openly accepted by high state officials. Moreover, the performance appraisal system is quite sporadic, promotion or demotion on duty and disciplinary measures do not respect in many cases the laws and sub-legal acts. "Personnel are not competent and properly trained and are subject to high turnover. The "political bureaucrats" prevail over the model of Weberian rational administration"⁵.

The strengthening of state institutions and the rule of law is still in a critical stage in Albania. Apparently, there is political will to make reforms, but in practice the law is not fully enforced and informal relations are still highly influential.

³ Institute for Development Research and Alternatives (IDRA), Corruption in Albania: Perceptions and Experience, Survey 2009, Feb 2009, 11.

⁴ Transparency International, the global coalition against corruption. Persistently high corruption in low-income countries amounts to an "ongoing humanitarian disaster", Berlin, 23 September 2008, 23.

⁵ Mirela Bogdani and John Loughlin, Albania and the European Union, European Integration and the Prospect of Accession, Dajti 2000, Tirana 2004, 51

li. Combating Corruption

It seems that Albania has made good progress with regard to the harmonising of its legislation in the field of anti-corruption with EU and international standards. So far, Albania has ratified:

- i. the Criminal Law Convention on Corruption with the additional Protocol⁶,
- ii. the Civil Law Convention on Corruption⁷,
- iii. the United Nations Convention against Corruption⁸,
- iv. the European Convention on the Transfer of Proceedings in Criminal Matters and its additional Protocol⁹,
- v. the European Convention on Mutual Assistance in Criminal Matters and its second additional Protocol¹⁰,
- vi. the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences¹¹,
- vii. the European Convention on the International Validity of Criminal Judgements¹²,
- viii. the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime¹³.

Starting from 2000, Albania has established a series of state institutions responsible to fight corruption and strengthen the public administration. Such institutions include the High Inspectorate of Declaration and Audit of Assets, the People's Advocate, the Civil Service Commission, the General Directorate on the Prevention of Money Laundering and the Competition Authority. There were consolidated other institutions which used to exist before 2000, like Department of Public

⁶ Albania ratified Criminal Law Convention on Corruption with the law no 8778, date 26.04.2001. and its Additional Protocol with the law no 9245, date 24.06.2004.

⁷ Albania ratified Civil Law Convention on Corruption with the law no 8635, date 07.06.2000.

⁸ Albania ratified UN Convention against Corruption with the law no 9492, date 13.03.2006.

⁹ Albania ratified European Convention on the Transfer of Proceedings in Criminal Matters and its additional protocol on 04.04.2000 which entered into force on 07.05.2000

¹⁰ Albania ratified European Convention on Mutual Legal Assistance in Criminal Matters and its additional protocol with the law no 8498, date 06.10.1999 and ratified its second protocol with the law no 8863, date 18.04.2002.

¹¹ Albania ratified International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences on 26.03.2001

¹² Albania ratified European Convention on the International Validity of Criminal Judgements on 31.10.2001

¹³ Albania ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime with the law no 8646, date 20.07.2000

Administration, State Supreme Audit and Internal Audit Units. However, the institutional capabilities are still limited and the performance of these institutions needs significant improvement. The Progress Report of the European Commission on Albania for 2008 appraised the further efforts of the Albanian government against corruption as compared to 2007: "Perception of corruption has improved; nonetheless, corruption remains a particularly serious problem in Albania ...The government has had some success in the fight against petty corruption and bribery. A number of low to middle-level officials were dismissed for bribery ... However, a more systematic approach is needed to tackle corruption overall, particularly widespread bribery in the judiciary, police, health and customs sectors"¹⁴.

The SAA establishes that the parties shall cooperate on fighting and preventing criminal and illegal activities, such as corruption, both in private and public sectors, in particular linked to non-transparent practices and fiscal fraud (Art 85)¹⁵. The double invoicing in the private sector is a phenomenon in Albania that has resulted in high fiscal evasion. Despite the measures taken by the Albanian government during the recent years which consist in imposing referential prices for specific commercial goods, adopting a fiscal package which includes laws on tax procedures¹⁶ and laws on national taxes¹⁷ and the support provided by USAID on the enforcement of the amended legislation, this has not fully prevented this phenomenon.

a) Strategies

The National Plan for the Implementation of the Stabilisation and Association Agreement (NPISAA) 2007-2012 gives in detail the measures to be taken by the Albanian government to fulfil the conditions of the SAA. The Ministry of Integration is the main institution coordinating and monitoring the National Plan. The other ministries and central state institutions are to report at the beginning of every month on the implementation of this Plan to this ministry. The NPISAA dedicates a special chapter to the fight against corruption and defines the legal and institutional framework, addressing priorities and the responsible state organs.

¹⁴Commission of the European Communities, Albania 2008 Progress Report, Brussels 05.11.2008, COM (2008) 674, 10-11.

¹⁵Council of the European Union, 8164/06, COWEB 76, Stabilisation and Association Agreement between the European Communities and their member states of the one part and the Republic of Albania of the other part, Brussels 22.05.2006, 80

¹⁶ Law no 9920, date 19.05.2008 ' On the tax procedures in the Republic of Albania'

¹⁷ Law no 9975, date 28.07.2008 " On the national taxes"

The National Strategy for Development and Integration 2007-2013 (NSDI) identifies challenges, vision and strategic priorities and policies in the anti-corruption field and public administration. "In the medium term (2007-2010)

- i. the recommendations made in the 2005 evaluation report by the Council of Europe Group of States Against Corruption will be followed up;
- ii. legislation will be approximated with all the standards enshrined in the conventions against corruption of the Council of Europe and the United Nations;
- iii. administrative barriers will be gradually reduced;
- iv. and the power to discover and punish corruption cases will be strengthened"¹⁸.

The Anti-Corruption Strategy 2008-2013 provides its focal points in the sector reforms such as: strengthening of the internal audit in the public sector; consolidation of standards in the business sector; consolidation of the civil service; reformation of the public procurement system; reform in the health and education sectors as well as the tax and customs administration; decentralization of the public services and fight against corruption at the local level"¹⁹.

b) Institutions

There are several state institution in Albania responsible to fight corruption, which cover different areas of responsibility.

The Anti-Corruption Task Force²⁰ is led by the Prime Minister and is composed of members of the Council of Ministers and representatives of the dependent institutions that cover mainly the management of public finances, control and audit. The main functions of the Anti-Corruption Task Force are: to determine strategic priorities and concrete measures to fight and prevent corruption; to ensure inter-institutional cooperation for the fight against corruption and the

¹⁸ Republic of Albania, Council of Ministers, National Strategy for Development and Integration 2007-2013, March 2008, 13

¹⁹ Republic of Albania, Council of Ministers, Cross-Cutting Strategy for prevention, fight on corruption and transparent governance 2008-2013, October 2008, 6, "The Strategy, with its priorities and reforms, shall be based on the general platform of a comprehensive and integrated approach on the fight against corruption, with a balanced combination of prevention, investigation, penalization and public participation".

²⁰The decision no 794, date 19.12.2005 of the Council of Ministers "On the establishing of Anti-Corruption Task Force.

implementation of good governance programmes. According to a decision²¹ of the Council of Ministers, the Anti-Corruption Task Force should be convened every two months. The Internal Administrative Control and Anti-Corruption Department²² is an internal control mechanism for the Council of Ministers and its subordinated institutions. The Department verifies and exercises audits on all the ministries, central institutions subordinated to the Prime Minister office and Ministries, the Prefect, and business companies with full or partial state capital. The General Secretary of Council of Ministers approves the audit plans and its consequent changes. The respective minister or the head of the institution under the Prime Minister's office has to inform the Prime Minister on the enforcement of the recommended measures within 10 days of receipt of the Department's report.

In fact, the Department has kept a low profile and, as has been mentioned above, it is responsible only for the auditing of the central state institutions. There does not exist a special website of this Department, only a short description and the relevant staff of it are included in the Council of Minister's website and no statistical information or reports are made public. Some toll free numbers for the citizens to denounce corruption made available by the Council of Ministers by the end of 2005 and onwards (0800 0808 and 0800 0909) were initially attractive to the public, but there is no statistical information on the results of these operations.

Following the approval of the new law on the state police²³, the Economic Crime Units were transformed in Economic and Financial Crime Units established at the regional level. The new law provides for special investigative methods on criminal and financial investigations to be carried out by police officers. The Economic Crime Units had poor results in fighting criminal activities in this sector and suffer lack of capabilities as well. One of the reasons for their poor performance is the lack of proper qualifications and practical skills of the staff to detect economic and financial crimes. The police officers working in the economic and financial crimes unit need more specialised training. Many of them especially in the regional police directorates of the rural districts do not have economical or financial education backgrounds.

²¹The decision no 794, date 19.12.2005 of the Council of Ministers "On the establishing of Anti-Corruption Task Force.

²²The Decision no 94, date 15.02.2006 on the approval of regulations for the functions and procedures of the Internal Administrative Control and Anti-corruption Department, The mission of this Department is to make the administrative investigation of the law enforcement and denunciations on abusive, corruptive and arbitrary practises, to identify the staff of the public administration which, with their action or inaction have committed violation of laws and sub-legal acts, to make recommendations on certain issues, including the disciplinary measures against the persons responsible of these violations.

²³Law no 9749, date 04.06.2007 "On the State Police"

A Special Anti-Corruption and Economic Crime Unit (Joint Investigation Unit) reporting to the General Prosecutor's Office became operational in September 2007 with the assistance of the European Commission and the United States. This Unit was established following a Cooperation Agreement among the General Prosecutor's Office, the Ministry of Interior, the Ministry of Finance and the National Intelligence Service. Currently, the office facilities of the Unit are located in the Tirana Prosecution Office. It has a staff of over 30 employees, including prosecutors, judicial police officers, tax and customs officers and investigators. The duties and responsibilities of the Unit include the prevention, investigation and prosecution of about 50 penal offences related to corruption, abuse of power, falsification of documents, money laundering, fiscal evasion, etc. On 17th October 2008, the Government of the United States and the Government of Albania signed a second bilateral agreement to implement the "Stage II" Millennium Challenge Corporation Threshold Programme, which among others foresees the creation of Joint Investigation Units in six cities to investigate corruption cases²⁴.

The public opinion has not been happy with the fight against corruption and organised crime from the Prosecution Office. Taking advantage of this situation, the right wing majority immediately after coming into power in 2005 sought the dismissal of the General Prosecutor, but it did not find the consensus of the opposition, which claimed that the majority wanted to change the head of this independent institution to appoint their affiliated person. After the dismissal of the General Prosecutor by the Albanian Parliament in December 2007, which was made without the consensus of the opposition, there has been some discussion as to whether the head of this institution should be appointed by the legislative or the executive power²⁵. Currently, the right wing government majority is not happy with the performance of the General Prosecutor in charge, claiming that it did not start criminal prosecution against any Socialist Party official accused of corruption in the previous government, but it is targeting only the officials of this government.

The functioning of the Courts for Serious Crimes in the first and second instance, including Prosecution Office for Serious Crimes established in 2004 in Tirana, is a step in the right direction that has produced some results, but needs to be further consolidated.

During the recent years, the reformation of the judiciary system has been considered an imperative, given that this is perceived as one of the most corrupt

²⁴USAID in Albania, Millennium Challenge Corporation Albania Threshold Agreement, 2008, at http://albania.usaid.gov/gj2/41/category/MCC_Albania_Threshold_Agreement.htm.

²⁵According to the Constitution of Albania, the President of the Republic with the consent of the Assembly appoints the General Prosecutor.

sectors. The opposition has offered consensus for the approval of some laws, such as the law for the organization of the judiciary power²⁶, the law on the organization and functioning of High Council of Justice²⁷ (HJC). After 2006, HJC came up with high profile measures and decisions aiming at the increase of transparency of the judicial system and the fight against corruption. Worth mentioning the ongoing recruitment procedures for 22 chief judges of the first instance and appellate courts²⁸ in compliance with the new law on judicial power which provides the limitation of their mandate, approval of the decision on the professional and ethics appraisal system of the judges²⁹, taking operational measures to make more transparent the recruitment procedures of judges under its jurisdiction and disciplinary measures as well. "For the first time in the history of judicial power, the HCJ will start to apply debate, transparency and justification of its deliberations through reasoned and written decisions for the appointment of chief judges. HCJ assess that only voting procedure is not sufficient for a transparent process"³⁰. The executive has been active in this process through the Ministry of Justice. However, HCJ has drawn the attention of the public for some legislative initiatives of the government in the judicial sector without sufficient consultation by the HCJ. The article of the new law on the judicial power which grant extra competencies to the chancellors on the appointment and dismissal of the judicial secretary and administrative personnel was appealed by the national association of judges to the Constitutional Court which abrogated it as unconstitutional³¹. The co-existence and operating of the Inspectorate of the HCJ and the inspection teams of the Ministry of Justice has been deemed as overlapping of competencies and sometimes encroachment of the executive in the independent judicial system.

The High Inspectorate for Declaration and Audit of Assets (HIDAA) established in 2003 is the main responsible authority for the implementation of the law on the

²⁶Law no 9877, date 18.02.2008 for the organization of the judiciary power in the Republic of Albania

²⁷Law no 8811, date 17.05.2001 amended with the law no 9448, date 05.12.2005 on the organization and functioning of High Council of Justice.

²⁸High Council of Justice, "Vacant positions for 22 chief judges, reasoned and motivated decisions for the appointment of chief judges, Supreme Court accept the request of HCJ for the 'suspension' of GABA case", press release, date 28.03.2008, www.kld.al.

²⁹Decision 193/2, date 11.05.2006 amended with the decision 207/2, date 07.02.2007 of the High Council of Justice.

³⁰High Council of Justice, press release, date 28.03.2008, www.kld.al.

³¹Constitutional Court, decision no 20, date 09.07.2009 on the civil lawsuit of the national association of judges on abrogation of the articles 37/2 and 38/a and b of the law no 9877, date 18.02.2008 on the organization of judicial power.

declaration and audit of assets of elected persons and certain public officials³² and the law on prevention of conflict of interests in the exercise of public functions³³. According to statistical information provided by HIDAA, the overall number of subjects (elected persons, public officials on duty and former public officials) that have declared their private interests is increased constantly. "On 18 June 2009, HIDAA filed criminal charges against 6 officials for refusal to submit the declaration of private interests which is half of the number of the subjects charged last year (11). This action was taken following the administrative measure of fine imposed on 27 subjects who did not fulfil their legal obligation in May 2009"³⁴. However, the refusal to make declaration form is not a serious problem in Albania rather than the tendency to conceal the real properties in the submitted declaration forms. The fact that a considerable part of business properties are not registered makes more difficult to detect the assets owned by the public officials. The law on declaration and audit of assets does not foresee the further steps to be taken by HIDAA in case the relevant institutions do not take the required measures against the staff that has refused to make the declaration of private interests. The 2009 Corruption in Albania IDRA Survey ranks HIDAA among the least helpful institutions on the contribution to fight corruption together with the religious leaders and central government³⁵.

Regarding the state institutions mandatory to fight corruption in Albania, could be considered two options; either to establish a new special state institution against corruption or to grant more competencies to the Department of Internal Administrative Control and Anti-Corruption. The latter has not produced the expected results in the way that is functioning currently. Also, the further strengthening of the Special Corruption and Economic Crime Unit under the Prosecution Office is an indispensable factor for the investigation and prosecution of financial and corruption-related crimes.

³²Law no 9049, date 10.04.2003 " On the declaration and audit of assets, financial obligations of elected persons and certain public officials" amended with the law no 9367, date 07.04.2005, law no 9475, date 09.02.2006 and with law no 9529, date 11.05.2006.

³³Law no 9367, date 07.04.2005 on the prevention of conflicts of interests in the exercise of public functions amended with law no 9475, date 09.02.2006 and law no 9529, date 11.05.2006.

³⁴High Inspectorate for Declaration and Audit of Assets, press release, 18 June 2009, at www.hidaa.gov.al.

³⁵ Institute for Development Research and Alternatives (IDRA), Corruption in Albania, Perceptions and Experience, Survey 2009, Feb 2009, 13.

III. Improving Capabilities of Public Administration

a- Background information

The Labour Code³⁶ still governs the work relations for the most part of the public administration in Albania. Generally, there are no written employment contracts provided for the public administration subject to the Labour Code and it is considered that the incumbents are hired permanently until there is a violation of this law. It makes politically-based appointments easier following every power rotation. Since 2000 the left wing government started to apply some formal procedures for the recruitment of the staff based on the civil service law. The process was not transparent and was overwhelmed by the lack of trust and favouring the candidates affiliated with the government. The right-wing government that came in power after 2005 took the advantage of restructuring many state institutions to release from duty a number of state employees allegedly affiliated to the left wing and hired new staff on a politically motivated basis offering them initially a temporary contract in order to apply the formal recruitment procedures later. The restructuring of state institutions that foresees removal from the civil service of the redundant staff as provided in article 23 of the Civil Service Law³⁷ was the legal ground to change the staff in the public administration. The changes in the public administration after 2005 affected senior positions and often the middle level staff in almost all the central and local institutions. This is reflected in the Albania 2008 Progress Report of the European Commission. "Appointments have continued along party lines in contravention of the Civil Service Law. The authority of the DPA [Department of Public Administration] requires strengthening in order to implement the official recruitment, job classification and promotion criteria consistently. Full enforcement of the Civil Service Law and adoption of the Strategy for public administration reform will be key to progress in this regard"³⁸.

The trust of the public in state institutions is still very low. It requires a strong political will together with deep reforms to change this opinion that has been created during the whole transition period in Albania for about 20 years. In general, it is remarked that the governments start reforms in their first year of governance and then get stuck for different reasons, such as corruption, lack of consensus with the opposition, weak public administration etc. "Albanian citizens' trust in institutions

³⁶Labour Code of Republic of Albania approved with the law no 7961, date 29.04.1995

³⁷Law No. 8549, date 11.11.1999 on the status of the civil servant.

³⁸Commission of the European Communities, Albania 2008 Progress Report, Brussels 05.11.2008, COM(2008)674, 8

continues to be very low. On average, the score of the trust for all institutions is 44.3 points [on a 0-100 scale where 0 means “No trust at all” and 100 means “Trust a lot”]. The Property Restitution and Compensation Agency (28.5), trade unions (33.5) and political parties (33.7) are the least trusted institutions in 2009”³⁹.

“The public administration sector will be strengthened and consolidated in accordance with the public service principles, on the basis of meritocracy and performance. The government will improve professional qualifications in this sector through an open and competitive process of recruitment, career advancement and motivation and civil servants’ professional training ... The civil servant status will encompass the majority of the public administration bodies⁴⁰”. So far, these commitments provided in the NPISAA have still remained theory and are not enforced in practice. Also, the National Strategy for Development and Integration envisions the modernisation of the public administration as one of the strategic goals. “The public administration will be able to confront the challenges of developing and integrating the country, based on meritocracy and professionalism: there will be full compliance with the Civil Service Law”⁴¹.

Formally, the vacant positions are continuously advertised on the website of the Department of Public Administration and names of some hired staff appear on the daily national newspapers following the recruitment procedures. However, there is no doubt that there is no transparent or competitive recruitment procedure in place, but just the granting of civil service positions to the staff already employed on a political basis or based on informal relations. Career advancement and motivation are not based on the regular performance appraisal of the staff but on other non-transparent criteria.

b- Legal Framework

The current legislation pertaining public administration is at a satisfactory level, the main problem consists in its enforcement.

The law on the status of civil servants⁴² approved at the end of 1999 laid down some good foundations for strengthening the public administration under its jurisdiction. The work relations for some categories of state employees are regulated

³⁹ IDRA, Corruption in Albania, Perceptions and Experience, Survey 2009, 14

⁴⁰ Republic of Albania, Council of Ministers, The National Plan for the Implementation of Stabilisation and Association Agreement 2007-2012, Tirana, September 2007, 17

⁴¹ Republic of Albania, Council of Ministers, National Strategy for Development and Integration 2007-2013, March 2008, 13

⁴² The law no 8549, dated 11.11.1999 ‘On the status of the civil servant’

by certain laws like the ones on the state police⁴³, diplomatic service⁴⁴, local government authorities⁴⁵, army⁴⁶, state intelligence service⁴⁷ etc. The law on the status of civil servants oversees the establishment and functioning of the Civil Service Commission, functioning of the Department for Public Administration, classification of civil servants and hiring in the civil service. The ad hoc committee in charge of conducting the recruitment process is composed of five members, one from the Department of Public Administration, two members of the relevant central or local institution that proposed the filling of the vacant position and two professors from the university or experts in this field. The recruitment procedures for the new staff provides that the direct supervisor to whom that civil servant should report has the right to choose one of the three best-ranked candidates presented by the ad hoc committee. Given that it is not required that the best candidate be employed, it seems a shortcoming of the law on civil servants. However, if this law is correctly applied, then it does not represent a serious problem.

The Code of Administrative Procedures (CAP) stipulates the right to complain through an informal request against an administrative act or refusal to issue this act initially to the direct supervisor or to the institution that has made the violation within thirty days of being informed about the violation⁴⁸. The state institutions including the independent organs have not fully utilised their competence to issue sub-legal acts inherent to the CAP. Probably this is related to the deficiencies in its enforcement. Gent Ibrahim, a legal expert shares the same concern. "It is worth noting that there exists a huge discrepancy between the elevated standards

⁴³Law no 9749, date 04.06.2007 "On the State Police"

⁴⁴Law no 9095, date 03.07.2003 on the foreign service of the Republic of Albania

⁴⁵Law no 8652, date 31.07.2000 on the organization and functioning of local government.

⁴⁶Law no 9210, date 23.03.2004 on the status of military officer of the armed forces in the Republic of Albania and the law no 9171, date 22.01.2004 on the ranks and military career in the armed forces of Republic of Albania.

⁴⁷Law no 8391, date 28.10.1998 on the national intelligence service amended with the law no 8479, date 29.04.1999.

⁴⁸Code of Administrative Procedures of the Republic of Albania approved with the law no 8485, date 12.05. 1999 provides also that citizens have the right to request the revoking, abrogating or amending of an administrative act through a formal request within one month of being informed. CAP establishes the obligation of the relevant institutions to notify the parties to a proceeding, to award a hearing to all parties, to be expeditious (30 working days) in decision-making, to communicate decisions to all parties and to give reasons for administrative decisions.

introduced by the CAP and actual levels of implementation in the ground"⁴⁹. There is a low awareness of citizens on the rights evolved from the CAP, still it is not a regular practise in Albania to address to a lawyer or a legal expert on the legal remedy of a case.

The law on the prevention of conflict of interest⁵⁰ was amended twice during 2006. After the right wing government came into office at the end of 2005, the newly appointed directors of the state institutions were conditioned to give up from their owned businesses in order to obtain public functions. The new officials accepted de jure to transfer the ownership of their businesses to their relatives but in fact they continue to manage these businesses. The law on the rules of ethics in the public administration and the law on the prevention of conflicts of interests define the cases for the gifts and favours made to the public officials and the procedure of reporting. Also, the latter prohibits the former official in a period of two years after leaving office to represent any person or organization in a conflict or commercial relationship with the Albanian public administration for the duty that he performed or is in continuation of it.

The law on the right to information over the official documents⁵¹ approved in 1999 provides that the public authority decides whether or not to accept the request for information within 15 days from its submission and informs in writing the interested person. Following this, the state authority should provide requested information to the relevant persons within 40 days from the acceptance of its request. The People's Advocate is the responsible authority for the implementation of this law.

b- Institutions

Department of Public Administration (DPA) is the main responsible state authority for developing civil service policies, organising the recruitment procedures for civil service, restructuring of the central state institutions and issuing general instructions related to performance appraisal, job description, and salary structure. The DPA was

⁴⁹Gent Ibrahim, Administrative Procedures in Albania; Main features and drawbacks, December 2005, 5, at www.sigmaweb.org/dataoecd/58/53/35936539.pdf.

⁵⁰Parliament of Albania, law no 9367, date 07.04.2005 on the prevention of conflicts of interests in the exercise of public functions amended with law no 9475, date 09.02.2006 and law no 9529, date 11.05.2006

⁵¹Parliament of Albania, law no 8503, date 30.06.1999 on the right to information over the official documents.

initially established within the Prime Minister's office in 1994 by a special decision⁵². Its activity was regulated by the civil service law later in 1999. At the end of 2005, the government transferred DPA from the CoM to the Interior Ministry on the grounds of a better management.

The performance appraisal system of the civil servants and state employees in general is not fully in place yet. The deficiencies in this regard are accepted by the Department of the Public Administration as well. "The supplementary staff or the changes made in the subordinated institutions structures do not correspond to the detailed job descriptions for the changed positions as well as for divisions and clarification of role of each unit. This happens because in most cases, there are missing job descriptions in these institutions"⁵³.

The promotion in duty, demotion and other disciplinary measures of civil servants or other state employees, in many cases does not take in consideration regular performance appraisals but is made mainly on other criteria like informal relations, political connections, immediate appraisals and verbal deliberations. The Departments of personnel in each institution needs to be conceived in that way to serve a non-politicized public administration.

The Training Institute of Public Administration (TIPA) was established in June 2000⁵⁴ and runs its activities under the direct supervision of the DPA. The structure of the TIPA includes three Departments of General Training, Fiscal Training and Local Governance Training; the latter was established in March 2008⁵⁵. The Institute is funded by the state budget but its programmes are also supported financially by international donors as well. There is noticed an increase of training sessions organized by TIPA over the recent years⁵⁶.

The Civil Service Commission is a supervisory body for the implementation of civil service law addressing complaints of the affected civil servants"⁵⁷. The Civil

⁵²Decision no 443 of the Council of Ministers "About the creation of public administration".

⁵³Department of Public Administration, 2008 Annual Report, 13.

⁵⁴The decision of Council of Ministers no 315, dated 23.06.2000 " On the creation and functioning of the Institute for Training of Public Administration and training of civil servants"

⁵⁵ Order no 19, date 18.02.2008 of the Albanian Prime Minister on the establishing of Local Governance Training Department within ITAP.

⁵⁶ Training Institute of Public Administration, 2008 Annual Report, 6, provides that: 72 Training sessions were conducted in 2003 (1225 participants), 84 in 2004 (2100 participants), 146 in 2005 (2360 participants), 113 in 2006 (1791 participants), 270 in 2007 (4489 participants) and 273 in 2008 (5050 participants. www.itap.gov.al

⁵⁷Law no 8549, dated 11.11.1999 "On the status of civil servants", 6, the competencies of the CSC are: to resolve individual appeals of decisions concerning hiring in the public services, probationary periods, promotions, literal transfers, appraisals, disciplinary measures and the

Service Commission (CSC) started its functioning with the full staff of 5 members and the Technical Secretariat as an administrative body in February 2001. The CSC members are appointed by the Assembly for a mandate of seven years on the proposal of: two by the Council of Ministers, one by the Supreme State Audit and two by the Local Government Units. The members of the CSC enjoy the same immunity as the members of the High Court. The Commission elects its chairman among its members and reports to the Assembly on annual basis and whenever requested. The CSC membership is not compatible with the membership in the steering organs of the political parties, is employed full time and should not have a second job during his/her mandate.

The political rotations in Albania bring consequently the change of the head of CSC as it was the case in 2007. This has a negative impact on the performance of this institution⁵⁸.

The civil service law does not foresee the measures taken by the CSC against the state institutions, which does not enforce its decisions. "Although the law on the civil service stipulates that the decisions of CSC are binding on the state institutions (article 8), this law does not provide the means to enforce this decision. Despite the efforts made during 2007, the scale of enforcement of CSC decisions has still been low"⁵⁹. A lack of trust in the Civil Service Commission is present; therefore many cases of dismissal are addressed directly to the court. On the other hand, most of the state employees are subject to the Labour Code so they cannot rely on the CSC.

According to some information, the establishing of administrative courts, which is expected to happen following the approval of the pertaining law, may cause the Civil Service Commission to close, keeping into account its poor performance during the recent years and possible overlapping of state institutions.

The institutions of Civil Service Commission and Department of Public Administration should be strengthened and freed from political interferences. The

rights of civil servants. CSC monitors the management of the civil service in all the institutions under the scope of this law. When irregularities are uncovered, the CSC shall warn the incumbent institution giving a term up to two months to correct the illegality. The CSC shall resolve the individual appeals within 30 days from the day the complaint was filed.

⁵⁸ Civil Service Commission, 2007 Annual Report, Tirane 2008, 3, "During the first half of 2007, a considerable number of the submitted complaints were examined beyond the deadline of 30 days as provided in the law. A deadlock period in the decision making of the CSC happened in the third quarter of the reporting year following the resignation of the Head of CSC and the subsequent actions after this resignation, had a negative impact that resulted in the exceeding the legal deadline of the complaints review", at www.kshc.gov.al

⁵⁹ Civil Service Commission, 2007 Annual Report, Tirane 2008, 21

amendment of Civil Service law is required in order to include at the maximum extent, other categories of state employees outside its jurisdiction. Another idea can be to award more autonomous power to the Department of Public Administration.

Iv. Response on the Part of Albania In Combatting Corruption

Corruption is seen as one of the most serious illnesses of the democratic system in Albania and the public agrees that in addition to the mechanisms against it, criminal prosecution of all public officials involved in corruption is another indispensable solution. Sometimes, it seems that the public has lost confidence in the other sanctions and remedies against the corruption and does not trust the statistical information of the government regarding the number of officials prosecuted for bribery and corruption. There were some opinions that Albania has adopted laws that foresee more severe sentences against corruption than in some other countries but the margin of these sentences for example from fine to seven years imprisonment create possibility for corruption in the judicial sector. This shortcoming was addressed in 2004 through amending the Criminal Code that foresees both imprisonment and fines particularly against the active and passive corruption of public officials, active corruption in the private sector and illegal competition through the exerting of violence⁶⁰.

“A Special Corruption and Economic Crime Unit established within the office of the General Prosecutor have led to the arrest of a number of high-level officials. In September 2007, nine officials were arrested on corruption charges including the Deputy Minister of Public Works, Transport and Telecommunication and the General Director of Roads in connection with key public tenders for the reconstruction of national roadways”⁶¹. After nine months imprisonment, all the arrested officials of Ministry of Public Works, Transport and Telecommunication were released with the exception of the General Director of Roads. In November 2007, the Secretary General of Ministry of Labour and Social Affairs was arrested together with two other officials in this Ministry on corruption charges in a public tender. Also, several mayors of communes, numerous university professors, medical doctors and tax officials were arrested on bribery charges from 2006 to 2008. The amendments to the Albanian Criminal Code in 2004 foresee derogation for the persons that had promised or

⁶⁰ Criminal Code of the Republic of Albania approved with the law no 7895, 27.01.1995 amended with the law no 9275, date 16.09.2004, articles 186, 189, 245, 245/1, 248, 260,

⁶¹Freedom House Report on Nations in Transit, 2007 Country Report on Albania, June 2008, 73

offered remunerations or other undue advantage if these persons file criminal charge against their accomplices and assist in the criminal proceeding⁶².

Albania has continuously amended the Criminal Code and Criminal Procedural Code in accordance with UN Convention against Transnational Organised Crime and UN Convention against Corruption. After 2005, there is a noticeable increase of arrest in flagrancy of the public officials for bribery using the interceptions of conversations and communications as provided in the Criminal Procedural Code amended in 2004⁶³. However, it did not have the expected outcome on the reduction of corruption and bribes as the public officials started to be more careful and having trust only in reliable persons, which has encouraged the strengthening of strong political clans and their connections. "The Council of Europe and UN Conventions require law enforcement officials to use special investigative techniques that are compatible with the parties' domestic law"⁶⁴. The amended Criminal Procedural Code has foreseen some techniques to detect corruption-related and organized crimes like infiltration of the police agent, interception of communication etc., but the relevant institutions are still short of special equipments and adequately trained staff.

The immunity of the high officials has been another legal barrier to start criminal investigations against them for corruption. The initiative of the government majority after 2005 parliamentary elections to approve a law in which the Members of Parliament would not enjoy immunity status in case of investigations against corruption was not supported by the opposition, the latter were afraid that this initiative was politically motivated against its supporters. During the first half of 2008, the Albanian Parliament decided to lift the immunities of two MPs holding the

⁶²Criminal Code of the Republic of Albania approved with the law no 7895, 27.01.1995 amended with the law no 9275, date 16.09.2004, article 245/2, provides that persons involved in corruption who report their accomplices can benefit reduction up to exemption of the conviction from the court depending on the moment of filing criminal charge and consequences of the penal offence as well.

⁶³Criminal Procedural Code of the Republic of Albania approved with the law no 7905, 21.03.1995 and amended with the law no 9187, date 12.02.2004.

⁶⁴Organisation for Economic Co-operation and Development, Corruption-A Glossary of International Criminal Standards, 2007, 69, the techniques to detect corruption cases may include the use of undercover operations that allow a law enforcement agent to infiltrate a criminal organisation to gather evidence. When investigating a close-knit group for an outsider to penetrate or survey or where physical infiltration is unacceptably risky, law enforcement may need to resort to electronic surveillance e.g. interceptions of communications, listening devices, hidden cameras.

functions of Minister of Public Works and Minister of Defence to open the way for the investigations from the Prosecution Office on the tender procedures of Durres-Morine highway under construction and the explosion of military ammunitions depot in Gerdec/Tirana. "Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention"⁶⁵.

Recently, the left-wing opposition has showed some signs to agree the bill on the lifting of immunities of the high rank officials including MPs but the legal experts say that it requires the prior amendment of the Constitution, which is not likely to happen soon. The approval of the new law on Prosecution Office in December 2008 with the consent of the opposition and the legal assistance provided by specialized international agencies in Albania was a step in the right direction.

The anti-corruption rhetoric and some measures taken by the Albanian government after 2005 against corruption are not having the expected results. Along with the criminal proceeding against officials accused of corruption, it needs to apply the administrative measures and sanctions as well.

a-Cooperation of the public with the state institutions

The cooperation of the public with the state institutions is another weak point of the fight against corruption and crime in Albania. A special law in this regard was approved lately in 2006⁶⁶ which needs to further be completed by sub-legal acts.

The Department for Witness Protection and Justice Collaborators as a special central institution in the State Police and the Commission for Evaluation of Special Measures of Witness Protection and Justice Collaborators were established following the law on witness protection in Albania approved on 2004⁶⁷. This Commission is headed by the Deputy Minister of Interior and composed by one judge, one prosecutor and another judicial police officer appointed respectively by High Council of Justice, General Prosecutor and General Director of State Police. The law on witness

⁶⁵United Nations Convention against Corruption adopted by UN General Assembly on 31 October 2003, Resolution 58/4, article 30, paragraph 2.

⁶⁶ Law no 9508, date 03.04.2006 ' On the cooperation of the public in the fight against corruption"

⁶⁷ Law no 9205, date 15.03.2004 " On the Justice collaborators and witness protection"

protection foresees the temporary protection measures and extraordinary protective measures but given the poor state budget, it is not fully put in place.

Starting from the 1997 unrest in Albania, the intimidations against the witnesses in Albania became a phenomenon. During recent years, the security situation has been improved significantly and such intimidations are not very visible but still existing. The phenomenon of blood feud conflicts and the influence of customary traditional rules, especially in mountainous areas make it difficult to implement the law on witness protection and especially to provide for testimonies in the court because of the following consequences. "Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings and, as appropriate, for their relatives and other persons close to them"⁶⁸. The law on the cooperation of the public against corruption aims to encourage whistle blowers by denouncing public officials for corrupt behaviour⁶⁹. This law foresees the possibility of a monetary reward to the person who made the denunciation if the provided information is true and the denounced public official is penalised. Also, it requires that the institution that receives the denunciation should respect the principle of confidentiality, ensure the anonymity of the whistle blower and guarantee protection for him/her"⁷⁰.

According to the article 281 of Criminal Procedural Code, the public officials are obliged to submit a written report on a suspected criminal offence to a prosecutor or judicial police officer. The lack of cooperation of the public with the police or justice bodies to report crimes has been a major concern in Albania because of the prejudices coming from the communist system as well. During that period, the persons who reported to the police and secret services against certain people were politically motivated, so the majority of the community got distanced, and they had a very poor reputation. The Albanian society has not given up to such mentality, so in general the people do not report to the relevant authorities for different crimes but consider it as only a state obligation. On the other side, they do not feel sure that the state institutions will keep this information confidential. Until several years ago, many police operations failed because of leaked information from the police ranks. "Each State Party shall consider incorporating into its domestic legal system

⁶⁸United Nations Convention against Transnational Organised Crime adopted in Palermo, 2000, article 24, paragraph 1.

⁶⁹ Law no 9508, date 03.04.2006 ' On the cooperation of the public in the fight against corruption"

⁷⁰Law on the cooperation of the public in the fight against corruption", article 12.

appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention”⁷¹.

The establishing of proper mechanisms to encourage citizens in reporting corruption to state authorities and increase cooperation of the public with state institutions through the involvement of civil society representatives would help to identify corruption cases and address them.

b- Some examples of good governance reforms

Some examples of good governance reforms undertaken by Albanian government during the recent years are worth mention.

One of them is the reform in the education sector for the admission in the public universities in 2006. As a result of this reform, the students finalising high school studies can sit exams in their own schools, which are then evaluated by anonymous teams from the Ministry of Education. The students no longer need to travel to Tirana to sit their exams in overcrowded auditoriums with the risk of the exam tests being disclosed for corrupt interests.

Since April 2008, the new procedures and regulations on e-procurement were fully applied and have had a positive impact on the increase of access and transparency to all the tender applicants. Although the number of internet visitors is still not high in Albania (according to some surveys 15%), the practise to get the required forms online helps to create equal opportunities for all applicants and to avoid favourite companies. Direct procurement procedure has finally been prohibited.

A good initiative undertaken by the Ministry of Economy, Trade and Energy and supported from USAID was establishing of the National Registration Centre (NRC)⁷² and National Licensing Centre (NLC)⁷³. Starting from September 2007, the procedure for registration of new businesses is transferred from a multi-phase process going through the court to an administrative process through one stop shop

⁷¹United Nation Convention against Corruption, 2000, article 33

⁷² National Registration Centre was established in September 2007 in accordance with the law no 9723, date 03.05.2007 following the initiative of the Albanian government through Ministry of Economy, Trade and Energy (METE) and supported by “Stage I” Millennium Challenge Corporation Threshold Programme (MCCTP) administered by USAID, at www.qkr.gov.al.

⁷³ National Licensing Centre was established in June 2009 in compliance with the law no 10081, date 23. 02.2009. It is a central public institution subordinated to the METE, it was established with the support of “Stage II” MCCTP administered by USAID, at www.qkl.gov.al.

at the service windows of the NRC established at the regional level. This reform also encourages e-registration of new businesses. It reduces in one day the approval of the registration of new businesses if the required documents are submitted. Also, it applies the silent consent rule (positive silence) if the applicant is not notified on the suspension of the application within the same day of the documents' submission. The establishing of National Licensing Centre helps to reduce significantly administrative barriers and costs of the business entities in the licensing process through one-stop shop and expedited and transparent procedures. A number of licenses and permits for services in the private sector were liberalized and removed. "Albania's economic freedom score is 63.7, making its economy the 62nd freest in the 2009 Index. Its level of economic freedom increased by 1.3 points during the past year and it has improved in three of the 10 freedoms. Comparatively, Albania's freedom level is on par with that of other developing Balkan states like Croatia and Macedonia ... However, Albania's overall score is reduced by weak property rights and pervasive corruption"⁷⁴. Also, 2010 Doing Business Report of the World Bank on Albania recognises the progress made by this country during the recent years with regard to the applied procedures and regulations. "Albania is ranked 82 out of 183 economies (countries) in the ease of doing business"⁷⁵.

In the beginning of 2007, the Albanian government took a decision to modify the tax on the personal incomes from the progressive tax to a flat rate one. Also, the corporate income tax was reduced from 20% to 10% effective January 1, 2008. The aim of these decisions was to increase registration of private sector employees in the social security scheme and reduce the fiscal evasion. This reform started to produce some positive results, however, it needs to make more efforts to reduce significantly the number of employees working in the black market.

The establishment of mechanisms and reforms against corruption produce more results than the penal proceedings of the corrupt officials. The shortening of bureaucratic procedures, rotation of the staff in sensitive positions and the staff assignment in the different tasks that are not predictable to them reduce the potential for bribery.

⁷⁴ Freedom House, 2009 Index of Economic Freedom on Albania, at <http://www.heritage.org/index/country.cfm?id=Albania>

⁷⁵ World Bank and International Finance Corporation, Doing Business 2010-Country Profile Albania, 5. In the 2009 Doing Business Report, Albania was ranked 89 out of 181 countries in the ease of doing business.

V. Fighting against corruption versus strengthening public administration

The issues of fighting against corruption and strengthening of public administration are correlated because it is obvious that they have an impact on each other. Normally, the state employees recruited on politically motivated basis seems more inclined to the corruption practices and feel more protected from the state sanctions. On the other side, precedents of unpunished corruption cases discourage the honest part of the public administration.

Unlike in the anti-corruption field, the Albanian governments so far have not expressed clearly and openly their political will about the full implementation of civil service regulations. Modernization of the public administration is formally incorporated in the approved national strategies but it is not considered as a political priority. The pressure coming from the party militants to get jobs in the public sector, high unemployment and unsustainable private sector particularly in the rural areas might be some reasons to remove this priority from the political agenda of the major political parties. Both the government and the opposition overlook this issue or mention it occasionally in the public speeches being afraid that they risk losing the support from the grassroots level. The implementation of the civil service law is not an open debate among the main political parties but just dismissal of the state employees affiliated to their party.

The conception of being a “civil servant” to serve the community, receiving as a payback a fair salary and not for personal benefits and corruption affairs is not imprinted in the memory of the most state employees in Albania. Nevertheless, a job in the public administration remains a special favour offered to a certain number of people because there is still not an empowered and sustainable private sector. However, the transition period in Albania has been a “gold mine” for a considerable number of former state employees who were deeply involved in corruption and latter left public service unscathed establishing their businesses and still benefiting from their connections with the public administration.

So far, the Albanian politicians have not shown to be fully committed to enforce the civil recruitment procedures, performance appraisal and other relevant regulations because it might endanger their clientelism practices. “In a country like Albania, where unemployment is high, the ability to influence “hiring” in a clientelistic way is a source of great power. In this country where private economic activity is limited and public funds are very important, the scope for patronage is enormous”⁷⁶.

⁷⁶Mirela Bogdani and John Loughlin, *Albania and the European Union, Tumultuous Journey towards Integration and Accession*, I.B.TAURIS, London 2007, 150

The weak public administration is one of the major deficiencies that is hampering European integration of the country and making life difficult for the citizens. A strong political will, which has been lacking up to now, is essential in order to begin the full enforcement of civil service law and gradually shape a modernised public administration.

The fight against corruption has been declared as a priority during the electoral campaign of 28 June 2009 general elections in Albania by the main parliamentary parties. It reflects a common concern of the broad public. These political platforms need to be vested and transcribed in deep reforms specified in each sector and require strong political will, cooperation among parties and professional capabilities to succeed.

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