

Interest Articulation and Lobbying in Unregulated Legal Contexts: The Case of Albania

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Abstract

The main argument of this paper is that the legal regulation of lobbying is an important factor for disciplining/curbing the undue (illicit) influence of different interests' groups on the political-making process, especially in countries with post-communist and non-consolidated democracies as Albania. In three decades of political and economic transition from a one-party communist system to a democratic one and towards a market economy, the democratization of Albania has faced various problems, which have often led to a loss of public confidence in the political class and apathy of citizens towards the political system. In many cases, this has come as a result of the perception or even the disclosure by the media and the public of corruption scandals, political clientelism, or undue influences in the decision-making processes in Albania. Surely, it can be said that that political scandals of trading or exercising illicit influences on public officials can affect, as numerous cases have shown, every democratic political system in the world. However, they are more likely to occur in new democracies (post-communist) countries that face weak state structures and a legal environment that is not yet well consolidated and where a culture of informality exists alongside written rules and laws. For this purpose, that of disciplining and controlling the influences that specific interests exert on

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the decision-making process of governments, legislatures, or other regulatory agencies, a good part of European countries have considered undertaking legal regulatory initiatives for lobbying activity in their environments.

Key words: *Lobbying, Lobbyist, Interest Articulation, Interest Groups, Trading in Influence, Public Policy, Political Clientelism, Corruption*

I. Introduction and Problem Statement

For a significant part of the Albanian public opinion (and also that of many other countries in Central and Eastern Europe), the terms “lobbying”, and “lobbyist” carry negative connotations and are often seen as related to illegal activities such as corruption, political clientelism, the undue influences or trading in influence of specific interests’ groups on politicians, etc. However, also in the perception of a large part of Albanian society, lobbying is an activity that already takes place in Albania and that this is done behind closed doors. In the absence of specific studies undertaken to show the actual extent of the existence or occurrence of lobbying activities in Albania, other studies conducted in countries of Central and Eastern Europe have shown that most unions, businesses, and employers’ groups “regarded themselves both as being either active or very active in efforts to influence government policy and as having enjoyed some success in their lobbying efforts”. (McGrath 2008, p. 19). Likewise, many business associations in the (EU) new member states now commonly conduct lobbying and advocacy efforts which would be quite familiar to observers of interest groups in more established democracies (McGrath 2008, p. 18). Thus, between different interest groups and governance [Government, Public Administration and Parliament], there are links that tend to develop naturally, and this is considered as an integral part of the decision-making process in modern democratic political systems. This is emphasized in the political science literature, where many authors point out the fact that “legislators always have been subject of pressure from societal interests haunting the legislative hallways in search of political influence (Cited in Binderkrantz 2014, p. 1). Regarding popular perception related to lobbying and lobbyists, a study undertaken in 1999 of almost 4000 firms in 25 countries undergoing transitions suggested that lobbying and corruption ‘are clearly related phenomena’ but that this is an inverse relationship—the more corrupt a nation is the less likely individual firms are to engage in lobbying (Campos & Giovannoni 2007).

Thus, trading or the exercise of illicit influences on politicians and in the formulation of public policies in favor of narrow personal interests is a concern not only of transitional post-communist countries, which are faced with weak

state structures and a legal environment not yet consolidated, but also of advanced liberal democracies. Political scandals of undue / trading illicit influences on certain public officials can affect, and as numerous cases show that it has happened, every democratic political system in the world. But, where the lobbying activities are not recognized or not legally regulated through legal frames or regulatory mechanisms, these (informal) relations tend to be consumed away from the eyes of the public, thus giving rise to negative phenomena, which in Albania are widely known, such as the trafficking interests, undue influences, corruption of officeholders, tailor-made laws or laws created to satisfy particular needs, clientelistic relationships formed on the basis of mutual benefit to the detriment of the public interest, acceptance by the government of unsolicited proposals for granting various concessions² (Sqapi & Mile 2022, p. 16).

This is especially true for post-communist countries, Albania also included, where such corrupt and clientelistic relationships of politicians and policymakers exist to varying degrees. As Gadowska also pointed out: clientelism (relationships between people of unequal status who form mutual and personal bonds, such as a patron offering assistance to lower-ranking clients in return for something of value) applies to varying degrees in *'every country of Central Eastern Europe'*, precisely because in periods of transition the political and economic spheres are necessarily intertwined as economic decisions take on an increasingly political nature (Gadowska, 2006). In other words, in periods of transition, especially from a previous communist system (where the transition is not only in the political aspect, but also in the economic, social, cultural aspect), the economic interests and becoming rich in such societies are thanks to the connections developed with politics. In most of them, these relationships remain informal, but they are developed to a considerable extent, although far from the public's attention. The *"culture of informality"*, carried over from communism and strengthened during transition" (Grodeland, 2006) it is what best characterizes the nature of Albanian society and the way the Albanian political system operates nowadays.

II. Definition of Lobbying and Lobbyist and What should Not be Considered as Lobbying

To emphasize at the beginning, one of the key points for the effectiveness of a lobbying regulatory system has to do with a clear and well-defined definition of

² See more regarding these tailor-made laws in Albania in the Reports of Transparency International (2020), *"Examining State Capture: Undue Influence on Law-Making and the Judiciary in the Western Balkans and Turkey"*, pp. 16-20; Transparency International & Institute for Democracy and Mediation (2021), *"Deconstructing State Capture in Albania: An Examination of Grand Corruption Cases and Tailor-Made Laws from 2008 to 2020"*, pp. 38-41.

what lobbying activity is. As it is emphasized in the fourth principle for transparency and integrity for lobbying in the OECD guideline document: “Definitions of ‘lobbying’ and ‘lobbyists’ should be robust, comprehensive and sufficiently explicit to avoid misinterpretation and to prevent loopholes (OECD 2013, p. 3). Such definitions should be successful in including all the activities undertaken by anyone or any interest group where an attempt to influence policy-making or prospective decision-making is made. Although the OECD guidelines document recommends that definition of lobbying should primarily target those who receive compensation for lobbying (which may be consultant lobbyists or internal lobbyists employed within an organization), the definition of lobbying should “be considered more broadly to include all those who seek to influence policy” (D.P.E.R. Ireland, 2012 p. 29), even if they are not paid for it. This broad definition should be done in order to best ensure the main goals for the implementation of a legal regulatory system of lobbying, which are: openness and transparency in the process of formulating public policies, the minimizing the risks of corruption, and creating a level playing field for all interest groups that want to influence the political process.

Referring to the authors Chari, Hogan and Murphy, lobbying is defined as *“the act of individuals or groups, each with varying and specific interests, attempting to influence decisions taken at the political level”* (2010, p. 3). The definition of lobbying should include all the communications, information, or arguments (to persuade) undertaken by a group or any individual employed or not by an organization, or receiving remuneration from it or not, to public officials and politicians regarding a prospective specific public policy or legislative decision-making. Thus, the main focus should be on the communications or contacts with public officials (ministers, MPs, or Civil Service employees) to ensure a clear and sound foundation for the regulatory approach [of lobbying activity], “rather than seeking to encompass preparatory work, research or planning in advance of that engagement” (D.P.E.R. Ireland 2012, p. 31).

The definitions of lobbying activity and lobbyists in the legal regulatory framework should also be clear regarding those types of communication or contacts with officials that should not be considered lobbying. “Essentially public communications with Government, the political system and the public service fall into three main categories:

- (i) Day-to-day contact between individual citizens in a personal capacity and their local political representatives, constituency TD, Councilor, or public servant in relation to any issues affecting them as individuals (i.e., such contact could range, for example, from personal administrative matters to representations the individual is making on international issues) or in relation to local issues which do not have a wider national or regional impact.

- (ii) contact between individuals representing organizations either in a remunerated capacity or as office holders in those bodies and office holders (i.e., ministers) or public servants in relation to matters concerning the objectives of the organization in which they are employed or hold office or on a wider sectoral or sectional interest, and
- (iii) interaction between individuals in professional lobbying organizations representing the interests of third-party clients and political representatives, office holders or public servants”. (D.P.E.R. Ireland 2012, p. 8).

Among these three mentioned categories, the interactions, or contacts between citizens and their elected or local representatives that fall into the first category (i) should be excluded from the scope of the lobbying regulatory system and should not be considered as lobbying activities. This is because the regulation of lobbying should have no intention of infringing the principles of representation, including the various contacts or concerns that an individual/voters or a community can communicate to their elected representatives. In the same way, communications or expressions of views broadcasted publicly by different individuals or interest groups should not be considered lobbying activities. These include, for example, communication that is already on public record – such as formal presentations to legislative committees, public hearings and established consultation mechanisms. (OECD 2013, p. 3).

Subject to the regulation of lobbying and mandatory requirements for registration in the public register of lobbying activities should be the contacts or interactions that fall into the categories (ii) and (iii) mentioned above. The regulation approach proposed in this paper aims to regulate the lobbying activities undertaken by consultant lobbyists (or lawyers) who represent the interests of clients as a third party or by internal lobbyists employed by an organization/firm, who receive or not a [financial] remuneration from it in their attempt to influence prospective public policies or legislative decision-making on certain issues. Therefore, the approach proposed in this paper aims to regulate both professional [paid] and non-professional lobbying, thus focusing on their purpose and the communication or contacts with public officials, which seek to influence specific prospective public policies or legislative decision-making.

III. The Main Reasons for Regulating Lobbying in a Statutory Form in Albania

Among the main reasons for the adoption of a comprehensive framework to regulate lobbying in Albania on a [legally] statutory basis would be: disciplining/curbing the problem of uncontrolled lobbying or informal [personal] connections

that exist to varying degrees between different interest groups and decision-makers; increasing transparency and accountability in the political process; minimizing the risks of corruption in the political system; providing ample information from all interested parties to make the decision-making process better informed; and finally, leveling the playing field for all the different interest groups that want to influence public policies.

First, legal regulation of lobbying activity through registration and (public) reporting requirements for lobbyists on a mandatory basis in a publicly accessible register would shed light on the relationships that exist between different interest groups and politicians/public officials. As noted in the literature on lobbying, one of the key goals of regulating this activity and introducing a lobbying register (easily accessible by anyone), “is to make information available to the public on the identify of those seeking to influence public policy decisions as well as providing a framework for holding those engaged in lobbying accountable for the manner in which they conduct the activity” (D.P.E.R. Ireland 2012, p. 10). Making public the relationships that exist between certain interest groups and politicians through mandatory reporting requirements for lobbyists (and for the politicians as well), would make the general public better informed about the interests who stands behind proposed public policies and would curb, in this way, the phenomenon of informal relationships/ties that exist between actors and economic interest on the one hand and politicians on the other. The need to manage these interactions by other means may explain the spread of regulation and supervision in some countries over the last years and decades (de Sousa & Coroado & Lang, 2015, p. 16).

Second, legal regulation of lobbying would also lead to increased transparency and accountability in the political system. The possibility of a proper independent scrutinization by the public about the relationships that exist between different interest groups (mainly economic but not only) and prospective political decision-making would make politicians more careful and more accountable in the political process of policy formulation. The recognition and legal regulation of lobbying in this regard is expected to function as a valuable mechanism in promoting openness and transparency in the political system, enabling the possibility for the people to monitor not only the government in relation to its activity but also providing a general overview regarding of who is influencing the public policies. On the other hand, lack of transparency effectively facilitates abuses and illicit behaviour on both the active and passive side of lobbying (de Sousa & Coroado & Lang 2015, p. 18). This, is because the disclosure of information on lobbying activity and those involved in it through the legal regulation of this activity would constitute a valuable function not only for the public but also for legislators and other (competing) interest groups because “without adequate and traceable records of exchanges between decision-makers and lobbyists, the democratic process as a

whole may suffer from the “secrecy surrounding the basis on which a decision has been made.” (ICAC 2010, p. 18).

Thirdly, and closely related to the above point, is the argument that the legal regulation of lobbying on a statutory basis would reduce/minimize the premises for corruption and illicit influence on public officials since the legal obligation to report the contacts that lobbyists have with politicians would discipline/model their behavior within the legal framework in force, not risking sanctions for possible legal offenses. In the context of today’s Albanian society, where political corruption and clientelistic networks are widespread phenomena, where there is a culture of “coffee” or of honor (culture of informality), most of the interactions between certain interests (groups) and public officials tends to be done mainly on the basis on mutual obligations or benefits. This, in turn, has often taken the form of uncontrolled lobbying, giving rise to such negative phenomena as the corruption of officials, clientelism, the exercise of illegal/undue influences, etc. Precisely, “unregulated lobbying can give rise to significant public concern about the role of vested interests in policy making and risk that privileged or excessive influence may result in sub-optimal public policy decisions which might be made to suit private agendas to the overall detriment of the community and society at large” (D.P.E.R. Ireland 2012, p. 10). The main virtue that the regulation of lobbying would perform in this direction has to do with getting under control certain privileged influences on elected officials, which often in Albanian society has given life to phenomena such as political corruption, clientelism, etc.

Fourth, another valuable function that would be made possible by the regulation of lobbying would be the provision of abundant information, which would come from all interested groups at stake, and which would make better informed the decision-making process. Lobbying provides decision-makers with valuable insights, information, policy perspectives, identification of and debate regarding different policy options. (D.P.E.R. Ireland 2012, p. 9). Considering the complexity of the political process in undertaking effective public policies, which includes not only the question of formulation but also that of harmonizing and finding a balance between competing interests, as well as the question of efficient implementation when such interests (powerful) are at stake, the need for complete and comprehensive information on the feasibility of these policies is vital. Various authors have pointed out this role of lobbying also in longer established democracies: the “functional need for additional information and perspectives and better prospects for implementation if concerned interests are involved in the policy stage; political need to “appease social unrests” and communicate policies to the public” (Cited in McGrath 2008, p. 16). The benefit that would come from a more complete information from all stakeholders and broader perspectives from different interest groups would be in favor of better public decision-making.

Fifth, a final reason for the legal regulation of lobbying would be because it would make possible the leveling of the playing field for all the different interest groups that exist in society, giving all of them fair and equal access to influencing public policies. The argument that is advanced here, and that is related to the problems that come from the context of countries where lobbying is unregulated and the uncontrolled influences by certain (powerful) interest groups on the political decision-making process, has to do with the “danger to the functioning of the democratic system: the difficulty of access to government for all but the most powerful and well-connected individuals and groups in society” (ICAC 2010, p. 20). The inequalities that naturally and generally exist in free market societies between various interest groups, be these in their financial resources, capacities, or the different opportunities they have, would be remedied to a large extent by giving each of them an equal access to influence the process of drafting public policies. One of the main principles of the Organisation for Economic Co-operation and Development’ guidelines document on lobbying emphasizes that: “allowing all stakeholders, from the private sector and the public at large, fair and equitable access to participate in the development of public policies is crucial to protect the integrity of decisions and to safeguard the public interest by counterbalancing vocal vested interests. (OECD 2013, p. 3). The creation of a level and equal playing field in principle for all interest groups, which would become possible through the legal regulation of lobbying activity and the legitimization of the influence that each interest group can exert in the political decision-making process, would be a great service to countries like Albania with a weak, fragmented, and disorganized civil society. In such an environment, specific interests (e.g, environmentalists) find it even more impossible to compete fairly and equally against more powerful interests (such are the business groups) also as a consequence of the structural disadvantage of a weak civil society operating in the country, where the traditions of mobilization and recruitment related to certain causes (however righteous they may be) are absent. Legal regulation of lobbying activity would enable all interest groups to have equal opportunities to influence the development of public policies, to each have their voice in this process, and to defend their perspectives on these policies even in the face of the most powerful interests existing in society.

IV. The Main Objectives of a Lobbying Regulatory Framework in Albania

Given what we have mentioned above as the reasons why recognizing and legally regulating lobbying would be valuable for society, the general objectives that are intended to be achieved through the adoption of a comprehensive legal framework

for this activity in Albania are related to: increasing transparency in the political decision-making process; creating equal opportunities for greater openness and participation towards the public and interest groups in the process of drafting public policy; as well as guaranteeing the integrity and efficiency of public policy-making. Considering the socio-political, economic, and administrative context of Albania, the principles developed by prestigious international institutions and organizations and their main principles regarding transparency and integrity in lobbying, as well as the best experience and practices of the regulation of various countries that have approved legal regulatory frameworks for lobbying activity in their environments, the main objectives that are aimed through the adoption of a Law on Lobbying in Albania are:

- Creation of a National Lobbying Register, easily accessible (online) by everyone in society, where every lobbyist should, on a mandatory basis, register, report and update data related to key aspects of the lobbying activity he/she is undertaking.
- The creation of an obligation for the legislative and executive branches of government, as well as all institutions under the latter's jurisdiction, to publish in a preliminary calendar the announcements on draft laws or public policies that they intend to undertake.
- The requirement for all public authorities that are involved either in the process of drafting public policies, either in the decision-making process or their approval in the form of laws, to declare, in the publicly accessible lobbying register, the contacts from which they have been lobbied.
- The establishment of a separate and independent institution to be responsible for monitoring and supervising the entire regulatory system for lobbying activities, which should have all the administrative power, capacity, and authority necessary to ensure compliance with the rules and effective enforcement of the Law on Lobbying. This institution (either the Authority or the Office of the Commissioner for Lobbying Control and Supervision) should be responsible for monitoring and controlling the Lobbying Register and should have the power to undertake audits/investigations for any possible violations of the rules. Considering the sensitive nature of the lobbying activity and that of the data in the register that it would have to manage, this supervisory institution should be independent, and its director should be elected by 3/5 of all members of the Parliament.

Hereby the main objective of a regulatory law on binding lobbying in Albania would be to shed light and publish the activities of lobbyists/interest groups that want to influence public decision-making, as well as define the main rules that

guide relations between lobbyists and politicians. The objective of shedding light on the relationships that exist between specific interest groups and public/elected officials, especially in the political settings of countries like Albania where informal and corrupt/clientelistic practices are widespread, should be seen as a desired development that can be achieved to a certain extent through the legal regulation of lobbying activity. This, in turn, would make possible also the strengthening of the levels of political accountability in the Albanian political system, since a larger amount of information (obligatory to be disclosed publicly by lobbyists and public officials) becomes possible for the general public, who has the opportunity to understand which interest groups/economic actors are behind specific public policies, thus making those involved in this process much more responsible.

Likewise, a significant aspect in terms of the objectives of the proposal for the adoption of a legal regulatory framework for lobbying in Albania is also related to the extent to which level of government lobbying activities should be allowed. The approach proposed in this paper aims at regulating lobbying and the right of various interest groups to influence the political-making process only *at the central level of government*, including here the legislative branch, the executive branch, as well as all the directorates that are under the dependency of the latter and who have the right to initiate legal initiatives. This is also taking into account the important fact of implementing a system of regulation for lobbying in countries (such as Albania) where previously there was none, so “a phased and measured approach may be appropriate in the first instance to ensure that the system works from the outset and over an explicitly specified and planned time frame, fully consistent with ensuring its successful operation...”. (D.P.E.R. Ireland 2012, p. 78). The approach of recognizing, permitting, and regulating lobbying only at the central level of government, takes into account also the political and social-cultural context of Albania, as well as the possible limitations and difficulties that could arise in the control and effective implementation of a system of regulation for lobbying beyond the central level of the political system. The operation of a regulatory system for lobbying only at the central level of government (that is, only in the legislative and executive branches) would be easier to control efficiently by the relevant proposed institution (e.g., Lobbying Supervisory Authority), whose main task will be to ensure compliance with the rules and effective implementation of the Law on Lobbying. In any case, the most important challenge of a regulatory system for lobbying is the monitoring and its effective implementation in practice to ensure that the general objectives of the law, which are: those of increasing transparency and accountability, as well as the opening and increasing public participation in the political process.

Regarding the type of regulation that the lobbying regulatory system in Albania should have, the approach proposed in this paper is that it should be of a *statutory*

type, where lobbyists are legally obliged to register in a register (publicly accessible), disclose some data on key aspects of their activity, as well as undertake them in accordance with the legal norms specified in the legislation.

V. Conclusions

In this paper, I argued that the recognition and legal regulation of lobbying activity should be considered a valuable and positive function for the political system and good governance. In the paper, it is emphasized that the reasons to recognize and regulate lobbying activity in Albania are based on the need to strengthen transparency in political decision-making processes, the levels of accountability by politicians, as well as creating opportunities for greater openness for the involvement of the public and various interest groups in the process of drafting public policies. Democratic systems [especially countries with new and non-functional democracies] are increasingly being pressured to consider the need for interest articulation by different groups within their societies and channeling them into the political system through practices that are consistent with openness, transparency, fair and equal access. This need is even more remarkable in the context of countries in transition, such as Albania, where patterns of social and political relations based on clientelism and corruption are widespread, and the relationships that develop between different interests and politicians are more informal. The main purpose of the legal regulation of lobbying activity in Albania would be to discipline, curb and control such informal relationships that exist (and which are consumed away from the “public eye”) between different interest groups and politicians, and to develop these ties on a formal, sound basis and in favor of the public interest. The main contribution that the regulation of lobbying would bring in this direction is that, through the mandatory requirements for public disclosure of certain information about the lobbyists’ activities and the restrictions it imposes on inappropriate/undue influences, it will increase the level of transparency and the possibility of an independent review by the public, and reduce the premises for corruption by different actors in the political system.

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