Judicial accountability and independence: their relationship with economic growth and effects of judicial corruption on the economy ______

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Abstract

The purpose of this article is to examine the responsibilities and independence of the judicial system, referring to the Albanian judicial system, its connection to corruption, and the consequences it has on the economy. Albania transitioned with difficulty from a totalitarian system to a democratic one, striving to leave behind a dark past where fundamental human rights were denied. The reform of the justice system and the cleansing of these institutions from corrupt officials, based on new legal initiatives, are expected to bring long-awaited results. Moreover, the international factor, led by the European Union and the United States, has played a key role in advancing justice reform as a non-negotiable condition for Albania's accession to the larger European family. The negative role played by corruption in the Albanian economy cannot be denied, causing significant damage to strategic sectors with a direct impact on the country's stability and internal security. As a result of the transition from a centralized economy to a free market economy, the Albanian economy quickly faced

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high levels of corruption, tax evasion, and informality, suffering significant setbacks that left Albania in the state of a developing economy. The methodology used in this paper is based on the interpretation of the theoretical framework and the analysis of different authors' approaches and perspectives, as well as various studies.

Key words: judicial independence, corruption, justice reform, economic growth.

Introduction

Discussing about the judicial system today is one of the most heated issues, particularly when it comes to the Albanian state and its justice system. Emerging after over 45 years of a harsh communist dictatorship, which virtually isolated the country from the region, Europe, and the world, with laws, codes, and procedures resembling those established in countries like the Eastern Bloc, Albania in the early '90s faced significant challenges in transitioning to democratic changes. For 45 consecutive years, the system of the "red commissioners" dictated law enforcement in the prosecution and judicial organs in a biased manner, strictly adhering to directives from the Political Bureau of the Albanian Labor Party. Thousands of people were arrested, interned, and even executed without any legal procedure or court decision. The state party, under the leadership of Enver Hoxha, ruled the country with an iron fist, controlling all branches of legislative, executive, and judicial power.

The fall of the Berlin Wall and the complete destabilization of the Soviet bloc influenced Albania as well. The revolt of students from the University of Tirana began to take on a strong political character, shaking the communist leadership. As a result of the open rebellion against the communist system initiated by the students, strongly supported by the people of Tirana, the wave of anti-communist rebellion awakened throughout Albania. March of 1992 would mark the end of the dictatorship of the proletariat installed in Albania and implemented along Marxist-Stalinist lines. The country was moving towards new democratic changes and opening up to the Western world.

As a result of the numerous changes that occurred in Albania, the justice system could not escape reformation, which for 45 consecutive years had operated like the sword of Damocles over the lives of Albanians. The new democratic-based governing structures, although still very fragile, unanimously decided that the past justice system, which had openly violated human rights and fundamental freedoms, denied the right to defense, and abolished the role of the lawyer, needed to be removed once and for all. For these reasons, as well as due to the increasing international pressure, the People's Assembly of Albania, by means of Law no.



7491, dated 29.04.1991, "On the main constitutional provisions," decided that the structure of the judicial system in Albania would consist of the Court of Cassation, the Court of Appeal, the First Instance Court, and the Military Court.

New justice, old norms

Today, after 30 years of democracy and seemingly with an independent judiciary but much talked about for issues of corruption, the judicial system has entered another stage. The Albanian Justice System consists of Courts of First Instance, Courts of Appeal, and the Supreme Court. Each level deals with civil, criminal, commercial, and administrative cases. The military justice system is integrated into the criminal justice system. Our Justice System includes 346 judges distributed in 29 Courts of First Instance, 6 Courts of Appeal, 1 Military Court of Appeal, and the Supreme Court (Gjykata e Shkallës së Parë e Juridiksionit të Përgjithshëm Tiranë, Pushteti gjyqësor në Shqipëri).

Despite the great willpower to reform and restructure the Albanian judicial system in the early '90s, based on clear Western principles, it seems that something went wrong along the way, and this sector, so vital for rule of law and democratic state, took a wrong turn, turning into a major and unresolved wound for many consecutive years due to rampant corruption, which almost led to the complete gangrene of the justice structures and beyond. Numerous cases of corruption, ranging from the most minimal to the terrifying ones involving millions of euros and dollars, infiltrated the offices of judges and prosecutors, openly influencing their legal decision-making on issues ranging from the most sensitive criminal to administrative matters.

Instances of corruption in judicial decisions handed down by the courts increased excessively, in exchange for large sums of money or other material goods given under the table to prosecutors and judges. In this way, besides the rapid enrichment of justice officials, local organized crime evolved in an escalated manner. The corrupted judiciary entrenched a culture of impunity through its actions and inactions. Considering the recent convictions of high-ranking officials or politicians, we can observe that this culture has been implemented with meticulous precision. People's perception and public opinion in Albania gradually began to lose trust in the institutions of justice and to feel increasingly unprotected against individuals/groups with high social risks who continued their illicit activities freely and unabated. The upheavals of the dark March of 1997 dealt a fatal blow not only to the justice system in the country but also to the Albanian state itself, the consequences of which are still felt today. The almost complete collapse of state structures and the territorial control by armed gangs/clans dealt a major



blow to public order and security in Albania. The Albanian state was challenged by gangs and organized crime, the latter supported and amnestied by individuals within the justice system as well as by individuals with political power.

Political interference in the affairs of the justice organs can be openly characterized as one of the most fatal interventions, which not only politicizes and partisans the issue but also directly undermines the effectiveness of the justice institutions, pushing them back to the time of communist dictatorship. The resurgence of state and governmental structures failed to cleanse the judicial system from corrupt individuals within their ranks. According to a survey conducted by IDRA2 in 2005 (made public in June 2006), among 17 institutions and groups studied based on public perceptions, the most corrupt groups were: deputies, customs and tax officials, doctors, and judges. The least corrupt groups were the President of the Republic, religious leaders, and military personnel (Anastasi *et al*, 2007).

If we look at it from a comparative perspective, using the former Soviet countries of the East as a basis, we will see that corruption in state structures, especially in the justice system, has been significant. One of the most flagrant cases, with a problematic past in the area of a corrupt justice system, is Romania. Since 2007, Romania has been a full member of the European Union. Romania has struggled to secure the independence of its judiciary since the early 2000's, when the country was in serious talks with the European Union. In 2004, Romania was rocked with a scandal Freedom House has dubbed Romania's "Watergate" (Freedom House, 2005). In November 2004, Romania was scheduled to hold presidential and legislative elections. The party in power at the time was the Social Democratic Party (PSD). The former communist party enjoyed a majority in parliament and former-PSD Prime Minister, Adrian Nastase, was looking to extend the party's political control in the upcoming presidential election (Swink, 2017:94-95).

Just like in Albania, in Romania, high-ranking state and government officials sought to extend their influence over the courts and the prosecution by limiting their independence as much as possible, directly protecting their corrupt officials and their interests, which were not only political but also monetary. Thus, as can be understood, the traces of the past justice system, of the Ceauşescu-Soviet type, were reemerging before the Romanian people. The revealed transcripts clearly indicated high-ranking politicians from the PSD, openly attempting to protect their colleagues within their ranks from justice, as well as revealing their involvement in illegal influence on the justice process.

As if this scandal, which took on international dimensions, were not enough, officials and politicians from the ruling party took action to manipulate not only the disclosed transcripts but also to use all anti-corruption state agencies to cover up their serious offenses. The scandal highlighted the failure of Romania's anti-



corruption institutions to properly investigate these allegations. The Prosecutor General and the Head of the National Anti-Corruption Directorate (PNA) disappeared from the public eye for several weeks during the outbreak of the scandal and did not take sufficient steps to investigate the matter until after the national elections were concluded. This scandal had profound implications for Romanian politics, contributing to public sensitivity toward corruption and influencing the outcomes of the 2004 presidential and legislative elections. The scandal helped underscore the need for deeper reforms in the judicial system and in the fight against corruption in Romania.

With the political changes that took place in the country in 2005, following the rise to power of Prime Minister Călin Popescu and the appointment of Monica Macovei as Minister of Justice, main policy initiatives included: increasing judicial independence from "political mechanisms" and removing "the institutional and personal influence of the old nomenklatura on judicial workings" (Hipper, 2015, 160). Macovei passed a three-law package on judicial reform in July 2005. The three laws included: the Law on the Superior Council of the Magistracy, the Law on judicial organization, and the Law on the Status of the Magistrates (Hipper, 2015, 162-3). The package was crucial in increasing judicial autonomy, as it "envisaged the transfer of powers from the Ministry of Justice to the Superior Council of the Magistracy...[and] ensured the protection of the judiciary from political pressure" (Hipper, 2015, 166). In particular, the Ministry of Justice lost its power to appoint judges, vote in the Superior Council of the Magistracy, and other powers pertaining to the suspension of judges (Hipper, 2015, 166). The laws sought to change the process in which members of the Superior Council of the Magistracy were elected. Previously they were chosen by Parliament, but under Macovei's reforms the members were required to pass competitive exams in order to move forward with the selection process (Swink, 2017:98-99).

This scandal is a clear example of the challenges faced by many transitioning states, such as Albania and Romania, with a shared Marxist-Stalinist past, as they attempt to implement reforms to strengthen democratic institutions and combat corruption. Unfortunately, the latter remains a tangible and pervasive issue in the Albanian institutional culture. Unlike Albania, Romania has made some progress in maintaining the autonomy of the judiciary, but it is clear that brief moments of progress have not contributed to an overall reduction in judicial corruption levels. The court does exercise its authority to carry out its mandate under certain times of extreme political duress. The Constitutional Court was largely successful in its efforts to insulate itself from politicization during the 2012 Constitutional Crisis (Swink, 2017:110).

Justice Reform - The last chance

The change of several governments as well as the initiatives undertaken by them to cleanse the justice system from unsuitable elements who had abused with their duty and the law, as well as the measures taken to increase the efficiency of justice issues, did not produce the desired results. For these reasons, on November 27, 2014, the Special Parliamentary Commission for Justice System Reform began its work at the Albanian Parliament. Given that corruption was one of the key pillars that had struck the Albanian justice system and had almost maximally diminished its credibility before citizens and international peer institutions operating in or focusing on Albania, the experts concluded that: (Kuvendi. Komisioni i Posaçëm Parlamentar për Reformën në Sistemin e Drejtësisë, Grupi i Ekspertëve të Nivelit të Lartë, 2015):

Justice reform will create conditions for the judiciary and prosecutors to meet the highest standards of integrity and ethics through the rigorous conception, approval, and implementation of systems for continuous monitoring and testing of the moral, ethical, and psychological integrity of judges and prosecutors as criteria for their tenure. Meanwhile, systems for measuring the professional performance of judges and prosecutors will be perfected, and their results will become exclusive criteria for the career progression of magistrates.

At last, after years of denial, state structures openly admitted that the justice system in Albania had been captured by organized crime groups and political power, which facilitated the flourishing of corruption and the collapse of the justice system. Given these circumstances, according to these experts (*Ibid*),

(...) the main aim of the reform (...) among others, is the establishment of a self-cleansing system within the ranks of the justice system, especially the judiciary and the prosecution, from corrupt elements, through effective monitoring of their professional abilities and their moral and ethical integrity. Only in this way can the institutions of the justice system unleash their potential in the fight against corruption in society, especially within the ranks of high-ranking officials.

The establishment of new justice institutions was also a challenge in itself for the Albanian justice system and its fight against corruption and organized crime. As a result of the justice reform, several specialized institutions were created to combat organized crime and corruption, such as the National Bureau



of Investigation (BKH), the Special Prosecution Office, also known as the Special Anti-Corruption Structure (SPAK), as well as the Special Court against Corruption and Organized Crime. All these newly formed and uninfected institutions by the disease of corruption have the fundamental duty of investigating and adjudicating high-level state officials involved in corruption scandals and criminal acts related to organized crime. Law no. 95/2016, "On the organization and functioning of institutions to combat corruption and organized crime," in article 135, clearly defines the establishment of the Special Court, which will adjudicate criminal acts related to corruption and organized crime, including criminal charges against high-level officials who are still in their respective positions or have been removed from office, including a range of institutions such as the President of the Republic, the Prime Minister, the Speaker of Parliament, Members of the Council of Ministers, Judges of the Supreme Court and the Constitutional Court, the General Prosecutor, Mayors, etc. This law, in article 148, also establishes the creation of the Special Prosecutor's Office and the Special Investigative Unit with the aim of investigating and prosecuting citizens/officials involved in corruption and organized crime cases as well as criminal cases against high-ranking officials and former officials. The purpose of establishing the Special Prosecutor's Office is the necessity of a responsible and specialized prosecution to efficiently investigate and prosecute complex cases of corruption and organized crime, as well as crimes committed by important officials, independently and without any inappropriate influence.

The Special Prosecutor's Office consists of at least 10 prosecutors, appointed by the High Council of Prosecution for 9 years, without the right to reappointment. Special prosecutors are independent in conducting investigations and criminal prosecution from any other prosecutor, including the General Prosecutor himself, and even from the Head of the Special Prosecutor's Office. Special Prosecutors of the Special Prosecutor's Office individually may direct the actions of the National Investigation Bureau. The law guarantees the independence and necessary autonomy to make decisions during the exercise of their constitutional and legal functions by prosecutors, regardless of any unlawful, internal, or external influence from any public or private authority. When they have reasonable suspicions of committing a criminal offense, these prosecutors may investigate and criminally prosecute even prosecutors of the Special Prosecutor's Office or judges of the courts against corruption and organized crime (Reforma në drejtësi, 2018).

An important point that requires increased attention from the government is also the treatment of all employees who are part of these structures, so that they and their families feel protected from any external threats and can work peacefully with their respective duties. Another important aspect is the financial treatment that these employees should receive, the necessary infrastructure, as well as other

benefits and facilities due to the special importance of their duties. According to the report of the Institute for Policy & Legal Studies (2021):

The amendments to law 95/2016, in March 2021, where the Parliament approved increases and strengthening of the financial treatment of the Director of the National Bureau of Investigation, the Deputy Director of the National Bureau of Investigation, the investigators of this institution, and the civilian employees in special courts for the adjudication of criminal acts of corruption and organized crime, in the special prosecution office, and in the National Investigation Bureau, were necessary to ensure an independent investigative system free from any political influence, impartial, responsible, fair, and professional ones.

The Vetting process, both within the judiciary system and within the State Police structures, although slow, has yielded promising results in purging the ranks of the judiciary, the Prosecutor's Office, and the State Police from unsuitable individuals for performing their duties due to their unjust actions or inactions in violation of the law, unjustified material and monetary assets/properties, as well as their association/exposure to figures/exponents of organized crime. In fact, the vetting process brought significant slowdowns in the daily work of existing justice institutions, also due to the high number of magistrates who chose to resign from their duties.

A significant part in the implementation and functioning of the justice reform was also played by the international factor, which followed events in Tirana with increased interest. For years, the Albanian justice system was considered by our strategic partners such as the European Union and the United States to be corrupt and with pronounced problems in the implementation of the law and the rule of law. Encountering their insistence on the reform of the Albanian justice system, as well as seeing the official Tirana's willingness to implement and enforce the justice reform, the European Union took on the task of securing the necessary funds and providing technical expertise, offering full assistance to the Albanian authorities. Given that the primary aim of Albanian foreign policy as well as the longstanding aspiration of Albanians has been membership in the larger European family, the implementation and finalization of the justice reform have been among the key conditions that the European Union has presented to Albania in order to advance in the integration process. The European Union itself has made it clear in its official positions regarding Albania that the success of this reform is an irreversible condition for the long-awaited opening of membership negotiations.

Another significant factor has been the United States of America, which, through their diplomatic representation in Tirana, has offered extensive technical and political support. The International Criminal Investigative Training Assistance



Program (ICITAP) and the Justice Sector Assistance Program (JSAP) have played effective roles in strengthening the justice institutions and have offered a wide range of valuable training for Albanian judges and prosecutors. The U.S. diplomatic mission in Tirana has long established its grant and donation program for non-governmental organizations operating in the country, which are engaged in monitoring the justice reform process, promoting the fight against corruption and organized crime. In their official statements, U.S. ambassadors have openly declared that the United States of America will strongly support the steps taken for the reform of the Albanian justice system and that any resistance to it aimed at proclaiming old forms and methods of justice will receive a harsh response, including sanctions and the prohibition of entry into the United States for responsible individuals. This is also one of the reasons why the United States Embassy in Tirana has closely monitored the progress of the justice reform in real-time and, based on the decisions and the steps taken, has offered recommendations regarding the continuity and progress of the process.

Despite nearly 8 years having passed since the start of the justice reform, if we refer to the latest report (2023) from the U.S. Department of State regarding Albania, it concludes that corruption has been present in all branches and levels of government. Despite this negative indicator, the report highlights that the justice structures have played a crucial role and have made effective progress in their fight against corruption and impunity.

Corruption in the judiciary - an open wound for the Albanian economy

Given that the justice system has been infected by active corruption for over 30 years, its consequences have also been felt in the country's economy. The transition from a centrally planned economy to a free-market economy was as challenging as it was liberalizing for Albania and its people. After the fall of the communist system not only in Albania but also in Central and Eastern Europe, which had applied the same economic model for decades, the question posed by the political scientist Ivan Krastev was rightfully raised: How could people, politics, and voters be given the power to undertake "democratically" policies and reforms that primarily led to price increases, increased unemployment, deepening social disparities, etc.? This question, which was also raised before Albanian intellectuals and government officials, for a relatively long time did not receive a clear, effective, or stable answer.

The free market economy gradually began to feel the impact of corruption, which was creating significant challenges for institutions working towards economic growth. Its consequences have always been detrimental, both in



developed economies, which are the engine of the world, and in developing economies, where the consequences have often been even more severe, severely impacting the country's prosperity. Upon analyzing the statistical data spanning from 2012 to 2022 as provided by (Transparency International, 2022), it can be observed that the year 2013 recorded the lowest Corruption Perceptions Index (CPI) of 31/100, indicating a significant prevalence of corruption. In contrast, the year 2016 recorded the highest CPI of 39/100, indicating a significant improvement. According to the 2022 statistics, Albania's corruption index stands at 36 out of 100, placing it in the 110th position among 180 countries. These statistics suggest that corruption is still a prevalent problem in Albania, despite some improvements in recent years (Mahilaj, Cenaj, 2023: 71-79).

The fight against corruption has been at the forefront of all governments, undertaking legal reforms as well as establishing specialized units to combat corruption in both the public and private sectors. Specialized units within the State Police, State Intelligence Service, and various ministries have been engaged in detecting/identifying and targeting individuals and factors involved in corruption, money laundering, tax evasion, as well as conducting unlicensed private activities (NIPT), often yielding satisfactory results in the fight against informality.

Seeing that over the years the class of justice officials was rapidly and seemingly endlessly enriching themselves as a result of under-the-table incomes, it was quickly noticed that many of these officials began to invest the ill-gotten gains in illicit forms such as undisclosed properties, private businesses, or joint ventures with third parties in strategic sectors, significantly impacting the country's economy. Corrupt practices such as nepotism, favoritism based on family relations or gender connections, or clientelism, where benefits are secured in exchange for loyalty or political affiliation, are a common phenomenon. There have also been cases where favors and privileges were granted based on regional criteria or friendship relations. "This aspect of corruption makes it visible not only from a social perspective but also a political one." (USAID, 2007):

As a result of these actions, "Albania introduced important anti-corruption legislation by adopting the Law on Declaration of Properties by Officials (2002) and the Law on Prevention of Conflict of Interest (2005), which gave the High Inspectorate for the Declaration and Auditing of Assets (HIDAA), established in 2003, the legal infrastructure to fulfil its purpose, that is the fight against corruption (United Nations Office on Drugs and Crime, 2013).

Despite all these measures taken against corruption among judicial officials, aiming to minimize its consequences on the Albanian economy, the local economy has still experienced significant fluctuations, remaining in the stage of a developing economy. Albania needs many years of significant, sustained economic growth to approach EU income levels. Since this growth can only be accomplished by a



robust, competitive private sector, Albania must create and maintain a business environment free of corruption and volatile politics to grow and prosper and, importantly, to provide jobs for a large and growing youth population (USAID, n.d.).

Economic indicators show the impact of direct corruption on hindering fair competition and the lack of equal opportunities for economic operators to expand their activities in Albania. According to Dafa *et al* (2021), key sectors of the economy affected by high-level or political corruption in the cases we have selected include (i) energy, (ii) infrastructure (transport and waste management), (iii) defense, and (iv) healthcare. These are crucial sectors for the security, development, and wellbeing of the country. The privatization process of public services and property has been steeped in corruption and mismanaged through contracts from which private contractors have benefited to the detriment of the public interest.

Corrupted economies are just not able to function properly because corruption prevents the natural laws of the economy from functioning freely. As a result, corruption in a country's political and economic operations causes its entire society to suffer (Dossier: Corruption, Informality, and Economic Growth, 2023)

Conclusions

The justice system in Albania remains one of the most problematic issues and an "open wound" in Albanian society today. The lack of fair and transparent decisions for a long time, as well as favoritism towards individuals/groups with criminal records, leading to acquittals in exchange for monetary/material benefits, has led to the degradation of the Albanian justice system and the loss of citizens' trust in these institutions. The change in systems in Albania in the early '90s was seen as a positive sign to dismantle the totalitarian past and to affirm the fundamental freedoms and rights of individuals, which were once again shining upon the Albanian sky after 45 years of isolation. The new justice system, oriented towards Western codes and procedures, began to take shape and form the first institutions of justice based on democratic principles. However, it quickly became apparent that these institutions would falter and suffer a severe blow, especially in 1997, but also thereafter. Corruption within the judiciary would undermine the Albanian justice system from within, resulting in biased decisions and eroding the prestige of judicial bodies in the eyes of the Albanian public opinion.

As a result of the ever-increasing corruption, the developing Albanian economy experienced significant fluctuations, unable to achieve overall stability but only temporary stability. Corruption continues to remain a key factor influencing the business climate in Albania. Corruption is of course one of the prevailing factors



contributing to the stagnation of the Albanian economy today, but seen in the macro context, it is just one among many other factors operating within the Albanian environment. Judicial reform as well as the new institutions in the fight against corruption are the latest tools for the reorganization and restructuring of the Albanian judiciary according to contemporary Western standards and legislation. From the above, we can say that judicial reform has partially achieved its goal. It is understandable that its path is long and difficult, considering the environment in which it operates, which has been deteriorated and almost on the verge of complete collapse for many years. Despite all these harsh realities, this does not mean that the road to creating a new justice system, with Western laws and norms where everyone, whether high-ranking officials or ordinary citizens, will be equal before the law, should be endless.

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