

## **CURBING POLITICAL INFLUENCE ON ANTI-CORRUPTION AGENCIES: THE CASE OF ALBANIA<sup>1</sup>**

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### **National Context**

There is a general understanding among the Albanian public as well as national and international institutions that corruption remains endemic in Albania's governance and social-political culture.

Regrettably, no genuine efforts have been made to date to mitigate corruption risks. Rather, the tendency to control all government and anti-corruption institutions has increased during the last decade by dictating the appointment of their leaders. Public discourse on corruption has always been either fully dominated by politics or met with social indifference and passivity because of a lack of trust in governance and institutions.

Corruption and fraud undermine the potential impact of any reform and, ultimately, the efficient use of public resources for effective service delivery to citizens. Weaknesses exist in the overall institutional set-up, a highly complex legislative framework, deficient human resources and managerial accountability, and in the lack of cooperation among law enforcement agencies. The high level of corruption results in a low level of public trust in public administration and the judiciary.

In a study on Albania, Harald W. Mathisen argues that “the international community is faced with many endemically corrupt societies where anti-corruption strategies fail to bring any meaningful progress as they do not address the fundamental problem, i.e. the lack of political will of senior government officials in corrupt networks”<sup>2</sup>. This conclusion is shared by each and every one of us – either in the government or civil society, employed or jobless, rich or poor. For a considerable number of people, including the youth, widespread corruption often becomes a substantiated argument for leaving the country.

The handling of charges for corruption and misuse of public funds by political leaders follow a well-known formula. Political leaders or groups substantiate their arguments against these charges by citing similar charges previously brought against their political opponents. The justice system has failed to arrest any ‘big fish’. No serious policies or actions have been undertaken to date to adequately, comprehensively, and sustainably respond to the challenges of strengthening the institutional framework to prevent and fight corruption.

A lack of trust in political parties, the judiciary, parliament and government, as well as the politically dominated anti-corruption institutions and instruments in place at the national and local levels, do not allow for participatory, citizen-driven anti-corruption processes. Record-low public trust is one of the main implications of the meager results produced by current anti-corruption efforts. The level of trust in the ability to effectively fight corruption in Albania is the lowest in the region. Consequently citizens, civil society actors, and the business community are generally inactive and have limited interaction with public institutions.

### **Experiences and Challenges – Legislation, Institutions, Implementation**

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<sup>1</sup> This paper was a contribution to the Aspen Conference proceedings on “Curbing political Influence on Independent Institutions in the Western Balkans” on September 3-6, 2018 in Skopje.

<sup>2</sup> Mathisen, H.W. (2003), Donor roles in face of endemic corruption-Albania in the policy debate, Bergen, U4 Reports. Available at: [www.cmi.no/publications/file/2960-donor-roles-in-face-of-endemic-corruption-albania.pdf](http://www.cmi.no/publications/file/2960-donor-roles-in-face-of-endemic-corruption-albania.pdf) (Accessed: 15 August 2018)

Governments of various political coalitions have made efforts to develop policies and set up relevant institutions to fight corruption since 2005. The 2007-2013 and 2015-2020 anti-corruption strategies, and their corresponding action plans, were developed with international assistance.

In 2009, an Internal Control and Anti-Corruption Department was established within the Prime Minister's Office to address corruption in public institutions. This structure is still operational, although it has been downsized to a unit with inadequate human resources. In September 2013, the new Socialist Party-led coalition government assigned the duties of the National Coordinator against Corruption (NCAC) to the Minister of State for Local Issues. This duty was then transferred again in September 2017, this time to the Minister of Justice.

Some common characteristics of all the national anti-corruption authorities include scarce human resources (1-5 staff) and insufficient financial means to carry out their duties. Placed under the leadership of different ministries, the technical staff of the office of the NCAC are often assigned several other additional duties unrelated to their anti-corruption mandate. In such circumstances, it is next to impossible to speak of institutional legitimacy, since the office of the NCAC does not feature any of the preconditions of legitimacy, such as broad political support, powers, resources, independence, and accountability.

Indeed, it is debatable whether the NCAC can be properly called an institution. Anti-corruption has rather been one of several functions of the Minister of State for Local Affairs or Minister of Justice. To date, no political or public discussions of how an anti-corruption authority could better serve its purpose have ever been observed in the country. The fight against corruption has been treated as a priority linked with the executive authority of the head of the government. This is becoming more and more visible (as seen with a recent Government Decision, explained below) because all government anti-corruption structures and institutions are controlled and accountable to the Prime Minister alone.

It is interesting to compare the experience of the Albanian NCAC with the experiences of other Western Balkan (WB) countries. Each of these countries employ different models, but they do have some core elements in common: independence from the executive branch, in some cases a system of checks and balances on powers to ensure independence, etc. The Albanian model is the outlier when compared with other WB anti-corruption authorities, and lags behind its peers in terms of human and financial resources.

Vested with the NCAC's powers, the Minister of Justice is currently leading two other central government structures established in April 2018 by a Decision of the Council of Ministers:

- 1) The Coordination Committee for the Implementation of the National Cross-Cutting Strategy against Corruption 2015-2020; Deputy ministers are members of this committee.
- 2) The Anti-Corruption Task Force, established with the purpose of conducting inter-institutional inspections according to the Action Plan 2018-2020. This task force is composed of senior level officials from four different departments within the Office of the Prime Minister.

This Council of Ministers' Decision requires the Agency for Dialogue and Co-Governance established within the Prime Minister's Office, as well as the Internal Auditing Units (IAU) of each governmental institution, to support the work of the Anti-Corruption Task Force.

Apparently, this makes the implementation of their legislation more complex and adds to the existing challenges currently confronting the Internal Auditing Units. In one of its policy briefs, the Institute for Democracy and Mediation (IDM) pointed out that "malpractices and corruption go unobserved mainly because, in practice, IAUs are not independent"<sup>3</sup>.

This system of overregulated governmental structures is often burdened with duplicate and overlapping tasks and responsibilities among government institutions and agencies, resulting in a vagueness and incoherence in their anti-corruption policies and efforts.<sup>4</sup> On the other hand, the NCAC's task to coordinate with other independent institutions of the sector does not seem to be relatively easy given its ability and capacity.

In addition, by possessing a majority in Parliament, the government has managed to maintain control of its own 'supervisors' by appointing heads of oversight and independent institutions through a simple majority vote. The General Prosecutor, the Inspector General of the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest

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<sup>3</sup> Qirjazi, R. (2017), Fighting Corruption in Albania: Improving the Efficiency of Internal Auditing, Institute for Democracy and Mediation. Available at: <http://idmalbania.org/fighting-corruption-in-albania-improving-the-efficiency-of-internal-auditing/> (Accessed 16 August 2018)

<sup>4</sup> Transparency International (2016), National Integrity System Assessment Albania 2016. Available at: [https://www.transparency.org/whatwedo/publication/national\\_integrity\\_system\\_assessment\\_albania\\_2016](https://www.transparency.org/whatwedo/publication/national_integrity_system_assessment_albania_2016) (Accessed: 16 August 2018)

(now amended, see below), the Head of the Supreme Audit Institution (SAI), even the President of the Republic, are voted into office by a simple majority vote. In this way, the law rarely guarantees the full independence of these institutions to check and balance political powers.

The legislation governing the Supreme Audit Institution is adopted using qualified majority voting, and provides for the SAI's operational independence. However, the SAI's credibility is often questioned by various government authorities any time they have to challenge SAI audit reports. Thus, the Supreme Audit Institution is constantly exposed to political pressure, and its recommendations or sanctions are only ever partially considered. According to Transparency International, the Supreme Audit Institution lacks the capacity to force audited public institutions to enforce its recommendations.<sup>5</sup>

Although there is no evidence yet of the efficiency of Parliamentary Decision No. 49/2017 "for the establishment of systematic monitoring and implementing mechanism of independent constitutional institutions", there are expectations that the parliament will take a more proactive role which in turn would enhance the credibility and performance of the SAI. The Supreme Audit Institution has requested that Parliament take a number of measures to improve its access and authority to audit various sensitive sectors. This request seems to have fallen on deaf ears, as Parliament has failed to respond to another SAI request to set up an audit mission on SAI performance. This may quite well be an indication of the parliamentary majority's agenda to marginalize the SAI's professional performance.

In April 2017 the Parliament approved an important legal amendment to elect the Inspector General of the High Inspectorate of the Declaration and Audit of Assets and Conflict of Interest (HIDAACI) through qualified majority voting for a nonrenewable seven-year office term. This comes after the adoption of the justice reform package in which an important role in the vetting process was assigned to HIDAACI. This legal amendment may be considered an important development in ensuring more independence from political interference, because in local political culture the role of the individual leading an institution is often a "stronger determinant of independence than legal provisions"<sup>6</sup>.

HIDAACI is the main institution responsible for the implementation of the Law on Whistleblowers adopted in 2016. While it expanded the normative framework of anti-corruption as a preventive tool for alleged acts/practices of corruption in the public and private sectors, implementation of this law will nevertheless remain a challenge.

Because of its mandate as an independent institution charged with the audit of asset declarations and the conflicts of interest of elected and other officials, HIDAACI might be in a better position to perform as an overall multi-purpose anti-corruption agency, and better able to coordinate and avoid a fragmentation of institutions in the fight against corruption.

The Parliament of Albania has adopted international conventions and a considerable number of laws related to the fight against corruption and good governance. The quality and enforceability of legislation, together with a guarantee of institutional independence and the durability of the institutions in the sector, should become top priorities for each political grouping within Parliament. Civil society will also have to enhance its communication with the Parliament regarding these priorities.

If it seeks to demonstrate that it is not under tight control of the government, Parliament should make better use of the work of independent institutions, such as the SAI, HIDAACI, and the Ombudsman, to hold the government to account and ameliorate the entire system to improve governance. This would also uphold the role of the Parliament in assessing the integrity of anti-corruption legislation. It should be noted, however, that the entire national practice of an anti-corruption institution contrasts with the generally accepted principles of good governance for Anti-Corruption Agencies (ACA):

*A broad and clear mandate:* ACAs should have a clear mandate to tackle corruption through prevention, education, raising awareness, investigation, and prosecution.

*Legally guaranteed permanence:* established through a stable legal framework, such as a constitution or special law, to ensure the permanence of the institution.

*Neutral appointment of ACA heads:* through a process that ensures their independence, impartiality, neutrality, integrity, apolitical stance, and competence.

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<sup>5</sup> Transparency International (2016).

<sup>6</sup> Transparency International (2016).

*Removal of ACA heads and leadership continuity:* their heads should have security of tenure, and may only be dismissed through a procedure established by law.

*Ethical conduct and governance:* ACAs ought to adopt codes of conduct that set high standards of ethical conduct for their employees and have a robust and enforceable compliance regime.

It should become clear to all decision makers in the country, including the opposition, that the continuing lack of a specialized, independent anti-corruption institution with sufficient human and independent financial resources will render it difficult for the country to meet the required standards and challenges.

Even comprehensive institutional efforts against corruption are prone to fail without the active involvement of civil society and the private sector, which together seem to be quite skeptical of any progress in the fight against corruption. To illustrate this, I would like to quote several contributors from the NGO sector, saying that “ours is a society where you can hardly find one single model to lead any sector that can serve as an example for the others”<sup>7</sup>.

An IDM assessment in 2016 gathered the feedback of close to 300 contributors from civil society and the business sector nationally. It rationalized that the current structure of the NCAC is in a conflict of interest, given that this structure is part of the executive branch and therefore politically controlled at the national and local levels. This contributes to the lack of trust on the part of the society in the anti-corruption processes.<sup>8</sup>

### **Support and Role of the EU**

There is no doubt that the role of the international community is very important for Albania as long as the country demonstrates a full commitment towards EU accession. In April 2018, the EU Commission recommended that accession negotiations be opened with Albania, while the Council underlined the critical need for Albania to deliver further tangible results in the fight against corruption at all levels. Nevertheless, advancement along the membership process remains conditional upon maintaining and deepening progress on key priorities, including fighting corruption.

But, evidence shows that reports do not say much to Albanians. Every time, either through EU Progress Reports or some other international instrument that assesses the country’s performance, they look upon such reports as each party doing its share, i.e. internationals mentioning some progress and issuing a to-do list. Locals, on the other hand, would read the same report through the lens of party politics. This lasts for a few days and then everyone goes back to the same daily routine.

It should be interesting to assess the progress (if any), judging upon the European Commission 2015 Progress Report for Albania. This report identified “a number of remaining challenges, such as increasing the independence of institutions in charge of the fight against corruption, which are still vulnerable to political pressure and other undue influence, and ensuring a solid track record of investigations, prosecutions and convictions”<sup>9</sup>.

According to a 2016 report drafted by EU Court of Auditors, Albania has performed poorly in implementing the EU Assistance Program. This report states that EU anti-corruption projects implemented in Albania failed to deliver any results: “Not only did it fail to deliver on measurable targets, but its sustainability was also affected by the fact that the national anti-corruption coordinator was not independent and coordinated policies at national and local level without adequate budget or staff”<sup>10</sup>.

Although none of these findings were addressed, the EU has continued financial assistance to the country for anti-corruption projects. In November of the same year (2016), the Neighborhood and Enlargement Negotiations Director General announced in Albania another “€10 million of financial support in the pipeline for the implementation of the cross-cutting strategy against corruption.”<sup>11</sup>

### **Recommendations**

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<sup>7</sup> Report on Local Forum Consultations with CSOs and Business Community, 2016 IDM (unpublished)

<sup>8</sup> Ibid

<sup>9</sup> European Commission (2015), Albania 2015 Report, Brussels, Chapter 32 (Financial Control)

<sup>10</sup> European Court of Auditors (2016), EU pre-accession assistance for strengthening administrative capacity in the Western Balkans: At: [https://www.eca.europa.eu/Lists/ECADocuments/SR16\\_21/SR\\_WESTERN-BALKANS\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR16_21/SR_WESTERN-BALKANS_EN.pdf) (Accessed: 17 August 2018)

<sup>11</sup> NEAR’s Director General Christian Danielsson on anti-corruption at Tirana Uninvestiy. 16/11/2016

The challenge of fighting corruption in Albania should acquire greater importance and be made the responsibility of Parliament. This would ensure a more inclusive approach by putting participatory anti-corruption mechanisms in place to make the Albanian society more sensitive, contributive and supportive of anti-corruption efforts.

Most countries have established Anti-Corruption Agencies based on national priorities, legislation, context, and other performance indicators. This paper is not opting for a particular model, but mostly promoting the need to rigidly apply globally accepted principles of good governance to an effective anti-corruption agency. The recommendations provided below reflect IDM's opinions of what might work in Albania.

The role of the Parliament in ensuring the independence and integrity of an effective National Anti-Corruption Authority is indispensable. An Anti-Corruption Agency should have legally guaranteed independence and permanence and be established on a solid legal framework adopted by qualified majority. It is quite advisable, for all the reasons mentioned in this paper, that such an agency might also be a constitutional institution. The Parliament should also consider a comprehensive review of all anti-corruption legislation in order to overcome fragmentation and improve cooperation among different institutions.

HIDAACI is closer than any other authority to being transformed into an Anti-Corruption Agency. In order to move in this direction, this institution should achieve the main requirements of legitimacy, especially as it is performing at a national scale and trying to involve citizens as much as possible. Public accountability, communication, and oversight are all important elements of citizen outreach.

The government should support a national anti-corruption authority that is independent and has sound institutional and financial capacities. The National Anti-Corruption Authority should have a clear mission and a mandate to tackle corruption through prevention, education, raising awareness, investigation, and prosecution.

The office of the Anti-Corruption Authority should be ensured independence, permanence, and financial and human resources that enable smooth operational performance, even if a model linked with the executive branch is employed (as is currently the case of Albania). In this case, a system of checks and balances should be established to ensure the neutral appointment and dismissal of the head of this office. The head of the Anti-Corruption Authority should have a secured tenure, and can only be dismissed through a procedure established by law.

In both cases, it is advisable that the Parliament establish a special and permanent anti-corruption structure led by Members of Parliament, civil society, academia, unions, and other private sector interest groups. These should by all means constitute a majority of this structure. Its mission should include monitoring implementation, commissioning research, assessing cooperation among independent anti-corruption agencies, and formulating policy recommendations for Parliament and other institutions. This structure should also include objectives to ensure convergence of the fragmented work of different anti-corruption and law enforcement agencies.

International bodies, including the EU but also its member states, might have been taught that the most effective language for the Albanian local politics is calling things by their name.

Otherwise, both Albania and the EU will lose more time and opportunity trying to adjust their programs to fit with Albania's existing governance models, which are far removed from the principles of good governance. The EU must highlight all democratic deficiencies and deviations from good practice, otherwise assistance will seem like a ticking-the-box exercise. I find it difficult to understand the impact of the expertise and knowhow provided by international experts given that, in Albania, the legislative framework of the anti-corruption office is politically dominated and controlled, and are operating with exceptionally limited human and financial resources. The approval of the Anti-Corruption Action Plan 2018-2020 by the Government of Albania in April 2018 without any prior consultation with other groups, including civil society, is the most recent example of an anti-corruption process dominated and controlled by the government.

The EU should clearly outline steps and benchmarks that Albania should meet to reform its legal and institutional infrastructure in the fight against corruption, rather than simply adjusting its financial and knowhow to Albania's existing anti-corruption framework. This would not serve the purposes and goals of the EU, and even less so those of Albania.

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