

The Impact of Corruption on Rule of Law Enforcement: Evidences from Albania

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要 旨

汚職は法の支配、民主主義と人権を脅かすと同時に、良きガバナンス、公正及び社会的正義を弱体化させる。さらに、腐敗は競争をゆがめ、経済発展を妨害し、民主主義制度の安定性と社会の道徳的な基盤を危険にさらす。

アルバニアでは、1989～1991年の政治変革は、多くの希望と錯覚を生成した。それらのうち、法の支配の確立と汚職なき国家の構築は基も重要なものであった。しかしながら、民主化の波がアルバニアを襲ってから20年を経た現在でも、汚職が消えなかったことは事実である。本稿は、アルバニアにおける腐敗は法の支配にどのような影響を与えたかを明らかにすることを目的とする。

Keywords: corruption, rule of law, Albania

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1. Introduction

The Rule of Law definition

The issues of normative jurisprudence that may be exemplified in legal process are often defining the Rule of Law. Also, the idea of obedience to law is another important requirement associated with the rule of law.

Lon Fuller's formulation of the rule of law is a good example of a rule-book conception of the rule of law.

Fuller found that there are eight requisite that comprise a procedural morality of law. They are:

1. that law is sufficiently general (there must be rules);
2. it is publicly promulgated;
3. prospective;
4. clear and intelligible;
5. it is free of contradictions;
6. sufficiently constant to enable people to order their relations;
7. not impossible to obey; and
8. it must be administered in a way sufficiently congruent with the wording of its written rules so that people can abide by them.

These requisite meant for Fuller that there was a minimum set of standards that law had to follow and that if the proposed law substantially failed to satisfy the standards it would lose its status as a law.

According to Ronald Dworkin, the conception of the rule of law is:

The Rule of Law assumes that citizens have moral rights and duties with respect to one another, and political rights against the state as a whole. It insists that these moral and political rights be recognized in positive law, so that they may be enforced upon the demand of individual citizens through courts or other judicial institutions. ... The rule of law on this conception is the ideal of rule by an accurate public conception of individual rights. It does not distinguish, as the rule-book conception does, between the rule of law and substantive justice; on the contrary it requires, as part of the ideal of law, that the rules in the rule book capture and enforce moral rights¹.

Dworkin's model of integrity is characteristic of such a rights-based theory. It requires that judges not only follow and apply rules in their judgments but expand upon them so that they are adjusted in accordance with their purposes to show the practice of interpretation in its "best light"². This model of integrity is driven by the moral force of equality. The place of the rule of law in this context is in the first stage of judicial

interpretation.

The Political Corruption definition

Political Corruption is the use of legislated powers by government officials for illegitimate private gain³. Misuse of government power for other purposes, such as repression of political opponents and general police brutality, is not considered political corruption. Neither are illegal acts by private persons or corporations not directly involved with the government⁴. An illegal act by an officeholder constitutes political corruption only if the act is directly related to their official duties⁵. Forms of corruption vary, but include bribery, extortion, cronyism, nepotism, patronage, graft, and embezzlement. While corruption may facilitate criminal enterprise such as drug trafficking, money laundering, and human trafficking, it is not restricted to these activities.

The activities that constitute illegal corruption differ depending on the country or jurisdiction. For instance, certain political funding practices that are legal in one place may be illegal in another. In some cases, government officials have broad or poorly defined powers, which make it difficult to distinguish between legal and illegal actions⁶.

Corruption poses a serious development challenge. In the political realm, it undermines democracy and good governance by flouting or even subverting formal processes. Corruption in elections and in legislative bodies reduces accountability and distorts representation in policymaking; corruption in the judiciary compromises the rule of law; and corruption in public administration results in the inefficient provision of services. More generally, corruption erodes the institutional capacity of government as procedures are disregarded, resources are siphoned off, and public offices are bought and sold. At the same time, corruption undermines the legitimacy of government and such democratic values as trust and tolerance.

Corruption threatens the rule of law, democracy and human rights, weakens good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society⁷.

Corruption flouts rules of fairness and gives some people advantages that others don't have. Corruption is persistent; there is little evidence that countries can escape the curse of corruption easily or at all⁸. Instead of focusing on institutional reform, Eric M. Uslaner suggests that the roots of corruption lie in economic and legal inequality, low levels of generalized trust (which are not readily changed), and poor policy choices (which may be more likely to change). Economic inequality provides a fertile breeding ground for corruption,

which, in turn, leads to further inequalities. Just as corruption is persistent, inequality and trust do not change much over time, according to Uslaner's cross-national aggregate analyses. Uslaner argues that high inequality leads to low trust and high corruption, and then to more inequality—an inequality trap – and identifies direct linkages between inequality and trust in surveys of the mass public and elites in transition countries⁹.

The political change of 1989-1991 generated many hopes and illusions. One of them was the expectation that the democratic transformation would eliminate the corruption and autocratic abuse of state power. In Albanian communist system, corruption and the abuse of public office had been widely known. At the same time it became prevailed in and even necessary for the functioning of centrally planned economies. Two decades after the democratization process, we have to recognize that corruption has not disappeared¹⁰. Moreover, some of its sub-varieties have blossomed and apparently gained in magnitude and damaging consequences. Thus the changes of 1989-91 can be summarized as the substitution of previous mixes of corrupt practices by new ones.

A strong rule of law is one of the most important conditions to be fulfilled by Albania for being part of the EU. The rule of law is a basic element of democracy and therefore a principle value of the EU. It is essential for democratic stability and a necessary factor to improve the social and economic context.

Even twenty years have passed from the beginning of the transition from communism, political, democracy and the rule of law in Albania still is volatile. Freedom House points Albania partly free, the Economist Intelligence Unit considers it a hybrid regime and international organizations have expressed concern about the progress of Albania's reform process in recent times. The European Commission's 2009 "Albania Progress Report", presented mixed evidences in the areas of democracy and the rule of law, particularly in the area of the judicial system and the corruption fighting¹¹.

This paper will briefly present the actual situation of the rule of law in Albania and how the problem of corruption impacts the rule of law enforcement.

2. Present Situation of the Rule of Law in Albania

The rule of law is the backbone of democracy and it is considered as the main pillar of democratic system¹². Politicians, lawyers, economists and policy-makers often use the term rule of law to characterize a certain type of legal-political regime. In the most basic sense, the rule of law is a system that attempts to

protect the rights of citizens from arbitrary and abusive use of government power¹³. The rule of law does not have a precise definition. Generally, however, it can be understood as a legal-political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions¹⁴.

The rule of law is the basis for the liberties and for the order. The rule of law treats the people fairly. It permits the people to plan their future and their lives, and to settle conflicts in a reasonable way. When the state behaviors are based on these principles, the citizens have more faith in authorities and to work with each other as members of one society. Absent the Rule of Law, people function very individualistically¹⁵. The rule of law pre-supposes a functioning legal sector that provides guidance on the basic rules governing social organization and helps to ensure their application.

The rule of law implies that government authority may only be exercised in accordance with documented laws, which were adopted through an established procedure. The principle is intended to be a safeguard against arbitrary rulings in individual cases.

The rule of law is a term that is often used but difficult to define. As the rule of law is an ambiguous term and has a broad meaning it can mean different things in different contexts. A strong rule of law means that no person can be ordered by the government to pay civil damages or suffer criminal punishment except in accordance with defined laws and procedures.

It means also that no branch of government is above the law, and no public official may act arbitrarily or unilaterally outside the law or known as the separation of powers. This ensures that no one person is able to gain absolute power and stand above the law. Each branch of the government has some level of control or oversight over the actions of the other branches. In a parliamentary system, like Albania, the powers of the executive and legislative branches are combined. Judicial independence means that judges are independent from political influences when they make their decisions. An independent judiciary is essential to maintaining the rule of law. Judges should not be pressured by the political parties, a private interest, or popular opinion when they are called upon to determine what the law requires. Keeping the judiciary independent of these influences ensures that everyone has a fair chance to make their case in court and that judges will be impartial in making their decisions .

The equality before the law and the law enforcement is not something negotiable, but an obligatory is another testimony for a strong rule of law. It is very difficult for a nation to maintain the rule of law if its people do not respect the law. The rule of law functions because most of the people agree that it is important

to observe the law. The agreement of citizens to obey the law to maintain the social order is sometimes described as an essential part of the social contract. This means that, in return for the benefits of social order people live according to certain laws and rules.

The real democracy can function properly only if there is a strong and healthy multi-party system and the party in power is elected through regular elections. This is the only legitimate means through which power should change hands. Therefore, free and fair elections are considered the angle corner stone of democracy.

This part presents the current situation of the rule of law in Albania.

There is no doubt that Albania has made notable progress on the road to democratization. The country has now a modern Constitution, media is generally free in imparting information to the public, the bases of the market economy are already laid, the civil society is demonstrating growing vitality and the universal human rights and freedoms are generally respected¹⁶. However, it is also true that public administration is not performing in accordance with standards consistent with modern and democratic benchmarks and the needs of the citizens are not adequately met. In addition, corruption has molested the entire political system, as a consequence of which the very legitimacy of the Albanian state has come to be at stake. It is clearly evident that the Albanian political leadership lacks the will to advance democratic reforms and implement the laws passed in these transitions years, as the only way to counter corruption which threatens to reverse the entire progress in governance made in the country. The lack of political will, coupled with lack of capacity on the part of public employees, is mostly evident in the poor quality of drafting and implementing legislation. Many of the public officials are not capable of following systems and procedures that would contribute to the efficient implementation of reforms¹⁷.

The rule of law in Albania is a very serious problem. The government members, executive agencies and their branches, local governments, and politically powerful organizations and individuals often fail to respect applicable laws and prescribed processes. The peculiarity of Albanian society is that the corruption is present at all of its levels. At the same time, there are serious doubts about the degree to which the own interests have trapped the Albanian state. Cozy relationship of private and government interests persist as a serious question, and critical conflicts of interest are common. In addition, organized crime is strong and allegedly has or has had patrons and protectors within the government¹⁸.

In 2008 European Commission noted that: "The rule of law in Albania remains deficient, which is notably due to weak law enforcement institutions, limited administrative capacity and widespread corruption and

organized crime”.

The mentality of a big number of Albanians is that the law and its enforcement are not obligatory, but something that can be negotiated. Another characteristic is that in Albania, the rule of law violation starts from politicians and public administration officials. Experience has proved that if the state tolerates the lawbreaking, the individual people will understand that their own interests are in fact best served by acting illegally themselves. Therefore, in Albania the idea that all are equal before the law must be developed¹⁹.

In Albania, the main features of weak rule of law are strongly determined by political and social components. In Albania these components are placed in a unique course with features that reflect the past and the present of the country. Albania's respect for the rule of law is lagging behind other post-communist countries of the region²⁰.

Government performance in Albania is poor and state institutions are often ineffective. Their failure to deliver health, education, electricity, and other basic services dampens public support and further weakens the already fragile legitimacy of state institutions, public officials and political parties. Corruption, widely perceived as the root cause of Albania's problems, is principally a symptom of these failures of governance²¹.

Major criticisms have centered not only on the implementation of laws, a common problem besetting the wider region of the Western Balkans, but also on the substance and content of certain legislation. Ineffective and inappropriate implementation has also undermined the rule of law in Albania. Indeed, laws in Albania are often not observed or are applied selectively. Evidences have indicated that poor translation of European legislation or partial adoption of international models have also created problems in the implementation phase; affecting the congruence and continuity of the legal system as a whole. The net result has been the promotion of a culture of no implementation in the country.

This part considers the rule of law from two distinct perspectives. The first is related to a system in which rules and regulations have the ability to restrain the actions of not only the citizens, but also of the government; creating both order and predictability²². The second perspective is related to the division of power or to the existence of institutional constraints that protect the citizens from the arbitrary and abusive use of power. One of the major concerns with respect to the state of democracy in Albania is related to these two dimensions of the rule of law.

While most locals and international analysts suggested that legal standards, especially on paper, had improved significantly in the past few years, they raised doubts about their ability to effectively create a system grounded in respect for the rule of law. The most dominant problems revolved around the substance,

procedures and implementation of the law. One of the key examples mentioned was the Lustration Law, approved in early 2009, whereby a 5-member authority was given extraordinary powers to investigate and fire any member of the government or the judiciary without due process. The international community, local observers and members of the opposition heavily criticized this law, arguing that it would provide an opportunity for political reprisal and undermine the impartiality of independent judges²³. The Lustration Law was ultimately suspended by the Constitutional Court and is currently under review (which suggests that this institution has managed to remain independent); although many believe that it served its purpose by sending a clear message to the judiciary²⁴. Another oft-cited example of questionable legislation was the recently approved anti-mafia law; whereby authorities are empowered through a civil procedure to confiscate private property based on reasonable suspicion that the person being investigated is involved in unlawful activities. Given that the confiscation of goods is based on a civil procedure, the responsibility to bring evidence falls upon the person whose property is seized, which, according to a member of the business community, represents a big burden for business²⁵. It was also argued that ineffective and inappropriate implementation has undermined the rule of law in Albania. The issue of language was mentioned repeatedly as a significant barrier. The law is translated poorly into Albanian and therefore makes no sense and this happens very frequently. The transfer or adoption of foreign laws from Europe and other western countries has created additional technical problems, affecting the congruence and continuity of the overall legal system²⁶.

It is also important to note the salient differences between Albania and Western European countries in terms of resources and enforcement facility.

In other circumstances, European or international models were said to have been only partially adopted; missing critical components for the system to function as a whole, or creating additional loopholes that may have a rather negative impact upon the overall implementation of the law.

Another problem with respect to the rule of law relates to the lack of proper due process in the adoption of legislation and in the application of the law. Members of different interest groups also criticized the lack of due process in terms of the way in which consultations work with local stakeholders. For example, the law of the organization of the justice power was approved without the opinion of the judges in 2008. However, some parts of this law were ultimately declared unconstitutional by the Constitutional Court²⁷.

The enactment of the new electoral code, whereby important changes were introduced to the election process, including a new proportional system, new electoral thresholds, and a new composition for the election commission, followed a similar pattern of informal processes. These changes were not debated

within the Parliament's Commission on Electoral Reform and international officials, such as the Head of the OSCE Presence in Albania, regretted the lack of sufficient time to discuss the matter with civil society and those with a stake in the reform. Some smaller parties went so far as to initiate hunger strikes as a means of protest and demanded that the electoral code be approved by a referendum²⁸. The electoral commission rejected this proposal in June 2009.

In addition to the lack of due process in passing important legislation, laws in Albania are sometimes not observed, or are applied selectively. This development clearly has significant implications with respect to upholding of the rule of law. For example, media financing lacks any semblance of transparency despite legislation requiring full disclosure. Many have argued that the laws in this arena have simply been ignored by media companies and owners. Another example of this trend is the law on civil service, which dictates that appointments in the public administration must be merit-based²⁹.

During the last years Albania has introduced the basic institutions of democratic governance (elections, a representative form of government, independent institutions, a free market based on private property and competition etc). Such institutions are designed to create a free individual, buffered from government action by a catalogue of human rights, as well as a functioning society and economy³⁰.

Now that most institutions are in place and running a problem of implementation has emerged. Many are looking at the judiciary as a natural pressure source for the implementation of the rules and processes that are aimed at guaranteeing the proper performance of democratic institutions and, hence, the effective enjoyment of human rights by the Albanian citizens. Unfortunately, the judiciary itself has been ridden with problems ranging from insufficient education of magistrates, poor discipline and ethics as well as corruption. The very concept of the judiciary as a bulwark against human rights abuses is being dented. There is only one way for the judiciary to play its pre destined role: awarding the parties to a judicial proceeding a fair trial³¹.

Whereas most elements of what is commonly referred to as fair trial are indeed entrenched in legislation, its rigorous implementation by the courts is at least as important to the fulfillment of the goal. Unfortunately, the Albanian judiciary has failed to substantiate of this important obligation. Indirect data, such as the high incidence of judicial misbehavior and the stubbornly negative perception of the public regarding judicial performance indicate that judicial process in Albania is substantially flawed. A flawed judicial process is a direct menace to fair trial and, with that, a premise for the abridgement of human rights.

Paraphrasing a comment by French novelist Antoine Auduard about the recent civil unrest in France,

Albania is a society that has not yet learned how to enforce its own rules or how to create the dream of a better life for its new generations³². The rule of law in Albania is seriously lacking. Corruption within the legal system is endemic. There are serious questions about the extent to which private interests have captured the state. Collusion of private and government interests remains a critical problem, and serious conflicts of interest are common. In addition, organized crime is strong and allegedly has or has had patrons and protectors within the government.

The government, executive branch agencies, local governments, and politically powerful organizations and individuals often fail to follow or respect applicable laws and prescribed processes. In many respects, lawlessness prevails, and there is a lack of effective state authority³³.

The rejection of collectivism seems to have swung the pendulum toward extreme individualism and a breakdown of state authority, with organized crime groups and corrupt figures as prime beneficiaries. The operating principle for survival and success appears to be “every man for himself” or “anything goes.” The collapse of the state in 1997 is the extreme example of this phenomenon. In general, as many studies of the World Bank, USAID, IMF, OSCE and others have often observed, Albania suffers from weak compliance with the law, both by the state and citizens³⁴.

Although this observation is not new, it may be noteworthy that so many of the assessment team’s interlocutors expressed the view that Albanian democracy cannot move forward, past its current “stalled transition,” until the rule of law, especially as it applies to the state, is substantially strengthened.

3. Corruption in Albania

Corruption is endemic in Albania. Its most extreme manifestation, state capture, is a matter of serious concern. Collusion of private and government interests remains a critical problem, and conflicts of interest are both extreme and common³⁵.

According to Transparency International, perceptions are that corruption in Albania is extremely bad and getting worse. Corruption is a constant topic of conversation in the country. The term corruption, though, is rarely defined. It has come to embrace a variety of phenomena, ranging from the bribe taken by street police to illegal tenders run by Government ministers to abuse of power in general. For the population at large, corruption has become the symbol of every failure that has befallen post-communist Albania³⁶. Polls indicate that Albanians identify corruption as the main impediment to democratization and development. They

perceive most institutions as thoroughly corrupt but especially customs, hospitals and tax collection.

Corruption has become the target for almost all dissatisfactions, individual or collective. If something fails, it is due to corruption. If democracy in Albania does not work, it is because of corruption. If you cannot find a job, it is because the system is corrupt. Corruption is no longer viewed as the symptom of a dysfunctional democracy but rather as its cause. As a consequence, Albanian people see the fight against corruption as a panacea³⁷. It becomes the answer to all the problems Albanian democracy faces, as well as a subtle way to avoid discussion of concrete re-forms and policies. In fact the current approach to corruption has turned the relationship between cause and effect upside down. It is no longer the case that corruption is the outcome of failed re-forms, such as in the judiciary for example, but rather the source of such failure. Therefore, the argument goes, we first have to get rid of corruption in order to successfully implement reforms, and not vice versa³⁸.

Table 1. Honesty vs. Corruption, for the year 2009

Average	61.5
Religious leaders	27.1
President	34.1
Media	38.1
Military	39.2
Public school teachers	43.1
NGO leaders	46.7
Businessmen	58.1
Policemen	63.1
University professors	63.4
Mayors	67.2
Prefects	68.8
IPPRO*	69.3
Party Leaders	71.7
Judgers	74.6
Prosecutors	75.1
Doctors	77.1
Parliamentarians	77.7
Ministers	78.9
Tax officials	80.9
Custom Officials	84.3

IPRO is acronym for Immovable Property Registration Office

Note: Out of 20 institutions and groups evaluated by the general public in 2009, only six of them fall under the midpoint of a scale where 0 means “Very honest” and 100 means “Very corrupt”. The other 14 institutions are viewed as more corrupt than honest. The average score of all 20 institutions evaluated is 61.5 points, indicating a high level of

corruption perception, overall. Religious leaders, the President, the media, the military, public school teachers and NGO leaders are still perceived as the least corrupt. On the contrary, custom officials, tax officials, ministers, parliamentarians and doctors are perceived as the most corrupt.

Prepared by the author based on "Corruption in Albania, Summary of findings Survey 2009", IDRA (Institute for Development Researches and Alternatives), Albania.

Thus, the growth of anticorruption rhetoric has increased the perception of corruption without actually reducing the level of corruption. Once corruption becomes everything, it is also nothing. As a consequence anticorruption campaigns loose focus because they face such a pervasive phenomenon. Therefore, the first task should be to produce a more narrow definition and better distinguish among different types of corruption. It is not especially useful to categorize every systematic failure or abuse of power in general under the rubric of corruption, although such failures and abuses might produce corruption as a consequence. In the same fashion, it is not helpful to lump together phenomena as different as petty corruption and state capture, which are really very different problems and require significantly different responses³⁹.

A better typology of corruption would help us to view this phenomenon as a symptom of systematic failure rather than as an autonomous challenge. Corruption is the response of different actors, citizens, politicians or businessmen to the failures in different areas of governance. Bribes facilitate transactions in a dysfunctional and arbitrary tax or health system. Therefore, a better approach is not to declare war on corruption per se but rather to carry out reforms that address those systematic failures that enable the proliferation of corrupt practices⁴⁰. This may well be a far more complex, tedious and long-term process, but it is likely to be far more productive in the long run.

Such an approach is useful also because it avoids entirely cultural explanations of corruption. In many instances the pervasiveness of corrupt practices is explained as an inbred cultural phenomenon⁴¹. Such an approach to corruption emphasizes the long-standing historical and cultural traits that make corruption seem inevitable, while at the same time not addressing its concrete and short-term causes⁴². Often, corrupt practices in Albania are attributed to legacies of the past, which avoids analyses of the systematic failure that produces them in the present⁴³. This in turn produces more corrupt practices that attest to the cultural and historical legacies they are rooted in. The result is much talk about corruption, but little remedy, becoming almost a self-fulfilling prophecy⁴⁴.

Generally, it would be more useful to perceive corrupt acts as violations of law or abuses of power, rather

than an inbred cultural phenomenon. With this idea of corruption in mind, the causes of corruption become more obvious: the absence of the rule of law. Poor law enforcement encourages the growth of corruption, from petty corruption to state capture. Thus, to end corrupt practices, Albania must first and foremost build a state based on the rule of law.

The current situation among the Albanian public administration contains elements of both continuity and discontinuity as compared with the situation under communist rule⁴⁵. Some elements of continuity derive from structural elements of authoritarianism that have merely assumed a democratic disguise and adjusted to the new political, social and economic setting. This kind of continuity is most obvious in the authoritarian or semi-authoritarian presidential systems where the president (often a former communist leader or high official) maintains the instruments of effective personal and institutional control over the military, the police and the rest of civilian state officials. Some forms of corruption flourishing in post communist societies reflect a considerable continuity of bureaucratic structures and practices, pervasive governmental controls over the distribution and use of state property, weak or even absent accountability within the executive branch and also in relation to parliaments and public opinion⁴⁶.

Another, and more important, source of continuity is found in the thick underbrush of social-cultural norms and attitudes toward work ethics and honesty among officials. They form the underlying culture of petty corruption, which includes giving and receiving small gifts and providing services to state officials free of charge. These norms and attitudes have preceded the period of communist rule and were only partly affected by it. The social subcultures of corruption have varied considerably throughout the region, reflecting diverse religious backgrounds, past experiences of imperial subordination, and cultural-political intercourse with the overlord Ottoman bureaucracy⁴⁷.

In Albania a durable imprint was left behind by Byzantine bureaucratic practices which contained traits of Oriental despotic abuse. The Byzantine heritage was transmitted directly through the state-church symbiosis to the societies that adopted Greek Orthodox Christianity. In the Ottoman Empire this bureaucratic religious influence had been compounded with the wide assimilation of earlier Byzantine bureaucratic habits as well as by the practice of using the diaspora Greeks (Phanariots) as high provincial officials and tax collectors. Thus, the Ottoman Empire combined Ottoman tribal traditions, strong Byzantine-Greek and Oriental (Arab) elements⁴⁸.

Conclusion

The fight against corruption does not require a proliferation of institutions and legislation that address corruption *per se*, and the country already has such institutions and laws in any event⁴⁹. Albania does have a serious problem with the implementation of existing legislation and the efficiency of existing structures. In the absence of effective enforcement and punishment or other meaningful disincentives, additional institutions and laws are not the answer. New institutions and laws might even exacerbate the problem. Although the Law on Declaration of Assets, for example, was an important legislative achievement in 2004, the poor compliance and enforcement of the law have only heightened public cynicism. Some high-level government officials have filed patently inaccurate asset declarations or have revealed assets built on unaccounted-for sources, but there has been no proper follow up or verification⁵⁰.

On the one hand, reducing corruption requires effective law enforcement and a functioning judiciary that will punish, and therefore increase the cost of, corrupt practices. A functioning judiciary is an indication of a state based on the rule of law. The rule of law also implies institutional responses and checks on power.

On the other hand, reducing corruption also requires a system by which the discretion of state authorities and administrative barriers in general are reduced as much as possible. In practice, this requires specific measures that aim to reduce restrictions on business liberalize licenses and limit government intervention in the market.

Yet, the remedy to corruption cannot be purely of an administrative or legal nature; there is a strong political dimension as well. Purely administrative and legal remedies cannot address the politics of corruption. Corruption in the form of state capture certainly is a political phenomenon. Such corruption requires political backing.

Endnote

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- 20 FRIDE (Fundacion para las Relaciones Internacionales y el Dialogo Exterior), “Democracy Monitoring Report; Albania”, 2009, p. 1. FRIDE is a think tank based in Madrid that aims to provide the best and most innovative thinking on Europe’s role in the international arena. It strives to break new ground in its core research interests of peace and security, human rights, democracy promotion, and development and humanitarian aid, and mould debate in governmental and non-governmental bodies through rigorous analysis, rooted in the values of justice, equality and democracy.
Source: <http://www.fride.org/page/5/about-fride>
- 21 CEC, *supra* note 8, at 7.
- 22 According to Lon Fuller, laws must: exist (and be public) and be obeyed by all, including the government (which

implies that laws need to be enforced); be prospective in nature; avoid contradictions with one another and be clearly stated in order to avoid unfair enforcement; be reasonable and stay constant (although they should be able to adjust in accordance with times). See Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1969). These conditions need to be fulfilled in order for the rule of law to be in place.

23 CEC, *supra* note 8, at 7.

24 This law was approved at a time when several cases of high-level corruption implicating members of the government were under investigation. An international official stated that, ‘the law was so blatantly unconstitutional in so many ways, that I’m not sure about what was intended other than putting the judges under even more pressure. It was like telling the judges, “look, we can do things to you if we want to”.

25 In criminal procedures, the prosecutor is the one responsible for bringing evidence on the illicit origin of the property that is confiscated.

26 CEC, *supra* note 8, at 8

27 *Ibid.*

28 Locals’ criticisms centered on the favorable terms laid out for the two largest parties in Albania, the DP and the PS. There are two particular issues that smaller parties have contended. The first is related to the electoral thresholds. Article 162 of the electoral code stipulates that parties need to reach a threshold of 3 per cent (or 5 per cent in the case of coalitions) in order to be able to enter the parliament. Given that mandates are allocated according to the D’Hondt formula (which favors large parties) and that the allocated number of mandates in each district is based on the distribution of the population (the smaller the population in a given electoral district, the fewer the mandates), in practice, the electoral code requires small parties to reach a 25 per cent threshold in regions with a scarce population in order to be able to gain a deputy. The second issue is related to the composition of the electoral commissions. The new 2008 electoral code has reduced the number of their members to seven in both the electoral and voting commissions, including five representatives from the larger parties (counting the head of the commission who is nominated by the government and voted in by parliament), and two from the smaller runner-up parties. In practice, locals have argued, the seats reserved for smaller parties go to the larger parties’ coalition partners, excluding smaller parties (such as the SMI) from these institutions.

The d’Hondt method is a highest averages method for allocating seats in party-list proportional representation. The method is named after Belgian mathematician Victor D’Hondt. This system favors large parties and coalitions over scattered small parties.

Source: Pukelsheim, Friedrich (2007), “*Seat bias formulas in proportional representation systems*”, 4th ecpr General Conference. <http://www.essex.ac.uk/ecpr/events/generalconference/pisa/papers/PP996.pdf>.

29 CEC, *supra* note 8, at 10.

30 NOSA, *supra* note 10, at 6.

31 *Ibid.*

32 "ALBANIA: DEMOCRACY AND GOVERNANCE ASSESSMENT", Revised Version, Submitted to: The U.S. Agency for International Development DCHA/DG, Under USAID Contract No. DFD-I-00-04-00229-00 Democracy and Governance Analytical Services, Prepared by: Democracy International, Inc. 4802 Montgomery Lane, Suite 200 Bethesda, Maryland 20814 February 2006, p. 6.

33 *Ibid.*

34 *Ibid.*

35 Transparency International: Corruption Perception Index for 2004

Source: <http://www.transparency.org/cpi/2009/cpi2004.en.html>. Accessed September 22, 2010.

36 "ALBANIA: DEMOCRACY AND GOVERNANCE ASSESSMENT", *supra* note 26, at 30.

37 *Ibid.*

38 *Ibid.*

39 *Ibid.* p. 32.

40 *Ibid.*

41 Bebler, *supra* note 2, at 3

42 "ALBANIA: DEMOCRACY AND GOVERNANCE ASSESSMENT" *supra* note 26, at 33.

43 *Ibid.*

44 *Ibid.* p. 34.

45 Bebler, *supra* note 2, at 3

46 *Ibid.*

47 *Ibid.*

48 *Ibid.*

49 "ALBANIA: DEMOCRACY AND GOVERNANCE ASSESSMENT" *supra* note 26, at 36

50 *Ibid.*

(博士研究員 「WTOの紛争解決メカニズムに関する研究プロジェクト」所属)