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“Fight Against Corruption, a Battle without clear winners”

The corruption in the judiciary; its spread, forms and the factors that help it.

Corruption is very harmful for the stability of all democratic institutions. It endangers the essential rights and liberties of the citizens. It also deprives the citizens from the very important principle of the equality of the choices. The corruption endangers every effort for development. In this way the corruption endangers the democracy itself. The corruption in the judiciary is extremely dangerous. The judges are the public authority to whom has been given the sacred duty of the solution in a definite way of the conflicts that have to do with the violation of a right or interest protected by the law. It removes the last possibility to guarantee the rights and liberties of citizens.

Unfortunately the corruption in the Albanian judges is widespread.¹

There are different forms of corruption; economic, political and moral.¹ The pressure of the judges to the citizens to solve their problems in exchange for money, gifts and favours is very high. Especially the corruption in change of favours is widespread. The strong family ties, and bonds of friendship; favour nepotism and cronyism. Unfortunately this forms of corruption are more tolerated in the Albanian society.

The causes that affect this wide spread of corruption are many. Mainly we can mention general factors like: lack of stability, the will to get rich soon, the low incomes, the interference of the public duties with the private interests, lack of strict control and the moral crisis caused by the transition.

Specific factors for the judiciary are many.

The independence of the judges “de jure” is ensured in a satisfactory level. “De facto”, as a result of the deep politization and the polarisation of the Albanian society, independence of the judges is not at the required level.

Legal education is basic for the foundation of the “rule of law” state by preparing future law professionalist. Our legal education is at a low level. Personal favouritism is widespread. The teaching methodology is obsolete. It relies heavily on memorisation. This must change. Independent thinking must be encouraged.

Most of the professors are young, and inexperienced. They are also underpaid.

The insecurity of lives of the judges is high. In courts the security is acceptable. But after work, the authorities do not offer special protection to judges. This protection is needed because Albanians are very vindicative people. After the 1997 crisis¹, hundreds of thousands of light weapons are in the hands of the civil population.

Their indemnity is not satisfactory.

Professionalism of the judges is not high, especially for the above mentioned reasons. The best professionalists in the field of law have gave up from the judicial and law teaching carrier.

The fact that many **judicial decisions are not enforced**¹, especially for the civil cases, is an important factor that affect the decrease of the credibility and the increase of the corruption.

The attendance of the judicial sessions from the public is almost impossible due to the underdeveloped infrastructure. Most courthouses are in a deplorable condition. As a result the transparency, which is a very important factor in the decrease of the

corruption, is increased.

In my personal experience as an lawyer’s aide, I think that corruption is spread

especially in the Tirana Court of Appeals. The danger is greater because this court, according to Albanian legislation, gives the last decision.

For instance, in the judicial administrative case, *“Teknoprojekt constructions l.t.d. vs. The Ministry of Public Works, Construction Police Tirana*, the decision was clearly contrary to the law.

The facts¹

1. The Council for the Regulation of the Territory of Tirana¹ with the act Nr.766 in 22 December 1998 has given the permission for the construction of a 16-floor building, in a central area of Tirana to the plaintiff.
2. The Minister of Public Works has ordered the suspension of the works until the review from the Council for the Regulation of the Territory of the Republic of Albania¹. Tirana Constructions Police¹, was charged with the execution of this order.
3. The Tirana Constructions Police ordered too, the suspension of the Works.
4. C.R.T.R.A. decided¹ that:
 - Juridical interpretation of the permission was needed, because it was taken from the C.R.T.T. that was functioning according to the law Nr.7693, Dt. 6.04.1993 “On Urbanistics” when the new law Nr.8405, Dt. “On Urbanistics” was into force. C.R.T.T. was charged to make a new study of the area.
 - The Constructions Police was charged to apply sanctions for the violations.

The judicial case

In these circumstances the plaintiff sued the defendants in the Tirana District Court. It asked for the recognition of the absolute nullity of the acts issued by the defendants. The Tirana District Court decided that the acts were issued according to the law. It decided the lapse of the complaint. The plaintiff appealed in the Tirana Court of Appeals. The Tirana Court of Appeals decided the lapse of the decision of the Tirana District Court, for this reasons:

1. The act of the Minister of the Public Works is absolutely contrary to the law. This right is not given to him by the legislator.
2. The act of the Constructions Police is unlawful because it is based on the act of the Minister of the Public Works. Even if this act was right, the act of the Constructions Police would be unlawful again.¹
3. C.R.T.R.A. can't review the acts of C.R.T.T. Only when this interferes with the plans of the government.
4. The term for the examination of such cases is 30 days. The exam from the Tirana District Court was made beyond this term.

About the counts of the decision of the C.R.T.R.A. the Tirana Court of Appeals thinks that:

1. The plaintiff acted in good faith. The CRTT with that formation has given other permissions. The suspension for them was not requested. The law is equal for all. Even the Albania Constitutional Court in its decision Nr. 2 Dt. 25.02.1999 has abrogated the articles 13/1.3. and 14/4 of the law Nr.8405, Dt. 17.09.1998 “On Urbanistics”.
2. This law entered into force in 17.09.1999. The permission was given in 12.02.1999.¹

3. The C.R.T.T. has clearly stated that its decisions are according to the law.¹
4. This court appointed an expert. His categorical opinion was that no infractions were made.

The decision of the Tirana Court of Appeals is contrary to the law for this reasons:¹

1. The act of the Minister of the Public Works is not a personal act. He was acting as the vice premier of C.R.T.R.A.
2. The Act of the Constructions Police of Tirana, is based on the article 3 and 5 of the law “On Constructions Police “.
3. The jurisdiction of the C.R.T.R.A. results by the articles 9 and 10 of the law “ On Urbanistics “.
5. The new law “ On Urbanistics “ entered in force in 25.10.1998. The permission was issued in 22,12.1998. An act issued by an institution sup primed by law, based on an abrogated law, is null.
6. This is an administrative law case. The Tirana Court of Appeals acted as it was examine the merit of this case. The merit is out the judicial jurisdiction because the CRTRA has not given its final decision.
6. The principle of equality is valid only for lawful rights.
7. The reference in the decision of the Albania Constitutional Court has nothing to do with this case.
8. The opinion of Tirana Court of Appeals about the term is not based in any legal disposition.

All this may let think that there are two hypothesis on this case. The Tirana Court of Appeals deliberately gave this decision; so it is corrupted. The judges¹ are totally incompetent; so they can not be part of this court which is in the elite of Albanian judicial institutions.

What should be done for the reduction of the corruption?

Legal and institutional measures that should be taken.

To put corruption under control it requires a maximal engagement from the public authorities and from the civil society for the drafting of the programmes and the implementation of the measures for a maximal reduction of the above mentioned factors. The Albanian legislation should be improved in this direction. Albania has signed and ratified a number of international conventions and agreements for the fight against corruption. The immediate implementation of these conventions and agreements is crucial to fight corruption.

The Albanian Criminal Law must be amended. The criminalization of illicit enrichment¹ will help to fight corruption. This will offer a remedy for the loses of public funds.

The Albanian Civil Law must be amended too. The Civil Law must offer effective remedies for persons who have suffered damages as a result of corruption and try to compensate material damage, loss of profits and non –pecuniary loss.¹

The Albanian Administrative Law must assure greater openness, to all procedures and documents. The need for the application of administrative sanctions is very important. The discretion of the administration needs to be held under control.

There is urgent need to adopt codes of conduct, esp. to deal with conflicts of interest. The improvement of legislation will be useless if the laws will not be properly enforced by the judiciary and the government, and the citizens will not know and fulfil their rights and duties.

To help this, our government has created a special agency, the *Anti-Corruption Monitoring Group*.

This institution must monitor and coordinate the actions of other public institutions. But it must not intervene in the work of the judiciary. The composition of this institution allows its members to act as “whistleblowers”.

An independent and specialised agency in anticorruption is very needful, especially in this period of transition. The Anti – Corruption Monitoring Group cannot replace it.

With the approval of the of the Constitution (1998), the Supreme Justice Council, the only organism that make decisions for the transfer and the disciplinary measures of the judges, went through a deep reformation process. In the meantime the majority of its members are judges of all ranks.

For evaluating the professionalism as well as for taking in consideration the complaints for particular judges, it has been created the Office of the Judicial Inspectorate.¹

The role of the civil society

Despite the measures taken by the public authorities and the help given by the International organisations, all the efforts in the fight against corruption will be insufficient if the Albanian civil society does not engage maximally in the fight against corruption.

Fortunately, the Albanian civil society has understood this important role. A specific step in this direction has been made with the creation of *the Albanian Coalition Against Corruption*, which I am proud to be member of.

The Albanian Coalition Against Corruption, is a coalition of the civil society organizations, media and the private sector.

General objectives¹ of the Coalition are:

1. Raise awareness of the Albanian society for the causes and the costs of corruption.
2. Participate actively in the development and the implementation of measures and reforms for the reduction of corruption.
3. Encourage such principles as integrity, transparency, responsibility, and rule of law in government and society.
4. Raise the collaboration between groups of interests in the fight against corruption.

The priorities of the Coalition in the fight against corruption in the judiciary are:

5. Participation in the reforms in the judiciary especially to reinforce the independence

of the judicial system and lobbying for some specific changes in the legislation related with anticorruption.

1. Improvement of transparency of judicial sessions.
2. Protection and legal assistance of the victims of corruption.

The fight against corruption in the judiciary is a battle without clear winners. But it must be won to clear the road towards the rule of law and prosperity.

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