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COMBATING CORRUPTION IN THE ALBANIAN JUDICIARY: PROMOTING DUE PROCESS

by *Bojana Hajdini** and *Heliona Miço Bellani***

SUMMARY: 1. Introduction. – 2. Impact of Corruption on Due Process of Law. – 3. Due Process of Law Stipulated in the Albanian Constitution. – 4. Root Causes of Corruption in the Albanian Judiciary System. – 5. Justice Reform and Its Impact on the Fight Against Corruption. – 6. Concluding Remarks.

1. Introduction

Due process of law is a fundamental principle that guarantees fair treatment through the normal judicial system, especially as a citizen's entitlement. Due process of law is embedded in the natural law theory, which supported the ideas of Thomas Aquinas¹, according to whom the laws are rooted in moral principles inherent to human nature². According to this view, unjust laws that facilitate corruption are contrary to natural law and, therefore, illegitimate. Social contract theorists like Jean-Jacques Rousseau³ and Thomas Hobbes⁴ propose that individuals consent to government authority in exchange for the protection of their rights. This contract implies that the government must act in the public interest and uphold due process. Breaches of due process through corruption violate the social contract, undermining the legitimacy of government and eroding public trust.

Due process of law is entrenched in the legal systems of many democratic countries, ensuring that individuals are not deprived of life, liberty, or property without appropriate legal procedures and protections. The concept has its roots in historical legal traditions and has evolved through various landmark judicial interpretations. The origins of due process can be traced back to the Magna Carta of 1215⁵, a foundational document in the history of constitutional law. The Magna Carta asserted the right to justice and a fair trial, which laid the groundwork for modern understandings of due process⁶. Specifically, Clause 39 of the Magna Carta stated: “*No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in*

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¹ C. DIERKSMEIER, A. CELANO, *Thomas Aquinas on Justice as a Global Virtue*, in *Research Paper Series*, Vol. 22, No. 2, 2012, pp. 247-242.

² J. FINNIS, *Aquinas's Moral, Political, and Legal Philosophy*, in *Stanford Encyclopedia of Philosophy*, 2005.

³ P. SEABRIGHT, J. STIEGLITZ, K. VAN DER STRAETEN, *Evaluating social contract theory in the light of evolutionary social science*, in *Evolutionary Human Sciences*, No. 3, e20, 2021, pp. 1-22.

⁴ S. FISH, T. HOBBS, *The Father of Law and Literature*, in *Law and Literature*, No. 29, Issue 1, 2017, pp. 151-156.

⁵ A.C. JOHNSON, P. ROBINSON COLEMAN-NORTON, F. CARD BOURNE, *The Twelve Tables*, in *The Avalon Project: Documents in Law, History and Diplomacy*, 2008, available at https://avalon.law.yale.edu/ancient/twelve_tables.asp.

⁶ V. R. JOHNSON, *The Magna Carta and the Beginning of Modern Legal Thought*, in *Mississippi Law Journal*, Vol. 85, Issue 3, 2016, pp. 621-642.

any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land”.

This clause is significant as it lays the groundwork for the concept of due process of law, a fundamental principle in many modern legal systems. The ideas expressed in this clause have influenced various constitutional documents and legal systems around the world, underscoring the importance of fairness and justice in legal proceedings⁷.

Due process is also recognized in international human rights law. The Universal Declaration of Human Rights (UDHR)⁸ and the International Covenant on Civil and Political Rights (ICCPR)⁹ include specific provisions for due process. According to art. 10 of the UDHR, “*everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal to determine his rights and obligations and any criminal charge against him*”.

Moreover, art. 14 of the ICCPR enshrines the principles of due process of law, sanctioning that: “*All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law*”. The significance of due process as a cornerstone of international human rights law is continually reaffirmed.

The European Convention on Human Rights (ECHR)¹⁰ has sanctioned the pillars on which this principle is based. In the context of art. 6, which provides that “*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*”, it is evident that due process includes both the right to a fair trial and the right to an effective remedy.

The justice system must be capable of upholding specific rights and ensuring that no one is procedurally denied the ability to seek justice. Notably, due process includes guarantees of equality of arms and non-discrimination between the parties involved in legal proceedings, highlighting the justice system’s integrity.

Corruption and due process of law are intrinsically linked, as corruption undermines the very principles that due process seeks to uphold. Due process of law aims to ensure fairness, transparency, and equality in legal proceedings, while corruption distorts these ideals by introducing bias, favoritism, and inequality. Recognizing the relationship between corruption and due process is crucial for implementing effective measures to prevent corruption and enhance integrity within the judicial system.

As a signatory to these international agreements, Albania has incorporated these principles into its domestic legislation, including its Constitution¹¹. Despite these formal guarantees, a considerable number of appeals to domestic courts and the European Court of Human Rights cite violations of the right to due process. Moreover, reports from international organizations consistently highlight corruption, particularly within the judiciary, as a pervasive and systemic issue, presenting a significant challenge for the Albanian state. This paper aims to examine the measures implemented to combat

⁷ C. MCCRUDDEN, *Human Dignity and Judicial Interpretation of Human Rights*, in *The European Journal of International Law*, Vol. 19, No. 4, 2008, pp. 655-724.

⁸ The 1948 United Nations Universal Declaration of Human Rights (UDHR), proclaimed on 10 December 1948 by the United Nations General Assembly Resolution 217 A.

⁹ The 1966 United Nations International Convention on Civil and Political Rights, adopted on 16 December 1966, by General Assembly Resolution 2200A (XXI).

¹⁰ The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), ETS No. 005, as amended.

¹¹ Arts. 27, 28 and 42 of the Constitution of the Republic of Albania, adopted by law no. 8417, dated 21.10.1998, as amended.

corruption in the judiciary and prevent this phenomenon approximately seven years after the initiation of justice reform. It seeks to assess the effectiveness of these measures in preventing corruption within the judiciary in light of EU directives and data from corruption indices. While the paper occasionally references the prosecutorial system, the primary focus is to analyze approaches to combating corruption within the Albanian judiciary by emphasizing the promotion of due process.

2. Impact of Corruption on Due Process of Law

Corruption is aptly described as one of the most damaging social issues. It undermines confidence in public institutions, stifles economic growth, and significantly affects the realization of human rights, especially for marginalized or disadvantaged groups¹². Due process of law ensures that individuals are treated fairly by the legal system and are not arbitrarily deprived of their life, liberty, or property¹³.

Corruption, on the other hand, compromises the impartiality of judges and other legal officials. Different forms of corruption, such as bribes, political pressures, and personal interests, can influence judicial decisions, leading to biased outcomes that violate the principles of fairness and justice¹⁴. When judges or court officials are corrupted, the right to a fair and unbiased trial is fundamentally breached.

At the global level, the 2003 United Nations Convention against Corruption (UNCAC)¹⁵ provides for preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. Additionally, Sustainable Development Goal 16 (Peace, Justice, and Strong Institutions) includes a commitment to reduce corruption and bribery in all their forms substantially¹⁶.

Furthermore, according to the Consultative Council of European Judges' opinion¹⁷, the definition of judicial corruption is broadened to encompass any dishonest, fraudulent, or unethical actions by a judge aimed at obtaining personal gain or advantages for others. It includes a series of recommended measures for member states to implement to combat judicial corruption. These measures involve establishing a regulatory framework for decisions regarding judges' careers, creating a comprehensive set of rules, principles, and guidelines for judicial ethics, instituting a strong system for asset declarations, implementing rules for recusal and self-recusal of judges, and imposing appropriate criminal, administrative, or disciplinary penalties for corrupt actions by judges¹⁸. These steps are intended to increase transparency and public trust in the judiciary.

¹² Commissioner's Human Rights of the Council of Europe Comment, *Corruption undermines human rights and the rule of law*, Strasbourg, 2021.

¹³ L. PECH, *The Rule of Law as a Well-Established and Well-Defined Principle of EU Law*, in *Hague Journal on the Rule of Law*, No. 14, 2022, pp. 107–138.

¹⁴ G. ANDRES, E. FIDELIS, E. KANYONGOLO, B. SEIM, *Corruption and the impact of law enforcement: insights from a mixed-methods study in Malawi*, in *The Journal of Modern African Studies*, No. 58, Issue 3, 2020, pp. 315–336.

¹⁵ United Nations Convention against Corruption, adopted by the UN General Assembly, 31 October 2003, by resolution 58/4, entry into force: 14 December 2005.

¹⁶ United Nations, *The Sustainable Development Goals Report*, Goal 16: Promote just, peaceful and inclusive societies, available at <https://www.un.org/sustainabledevelopment/peace-justice/>.

¹⁷ Council of Europe, Consultative Council of European Judges (CCJE), CCJE Opinion No. 21 (2018), *Preventing corruption among judges*, CCJE(2018)3Rev, Zagreb, 9 November 2018.

¹⁸ *Ibidem*.

The Group of States against Corruption (GRECO) has underlined the need to guarantee the proper independence of judges as a way to avoid undue political influence on the judiciary which can lead to biased, corrupt judgments serving interests other than the public's¹⁹. Corruption in the judiciary severely affects the administration of justice, leading to a lack of public trust, inefficiency, and unfair outcomes. It manifests in various forms, including bribery, favoritism, and the manipulation of judicial decisions²⁰. This erosion of judicial integrity compromises the fundamental principles of justice and equality before the law.

3. Due Process of Law Stipulated in the Albanian Constitution

The right to due process of law is a fundamental principle enshrined in many democratic constitutions, ensuring fairness, justice, and protection of individual rights within the legal system. The Constitution of the Republic of Albania explicitly recognizes and guarantees this right, aligning with international human rights standards and providing a robust framework for its implementation. The Albanian Constitution contains several articles that collectively safeguard the right to due process of law. Key provisions include arts. 27, 28, 31, and 42, each addressing various aspects of due process, such as personal freedom²¹, arbitrary arrest and detention²², right to defense, right to a fair trial, access to justice, and due process of law²³. According to art. 42 of the Albanian Constitution, everyone, for the protection of his constitutional and legal rights, freedoms, and interests, or in case of a criminal charge against him, has the right to a fair and public trial within a reasonable time by an independent and impartial court specified by law²⁴.

The Albanian Constitution's provisions on due process align closely with international human rights instruments such as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). While the constitutional framework in Albania provides robust protections for due process, practical implementation can face challenges. Issues such as judicial independence, corruption, and access to legal resources can impact the effectiveness of due process rights. Ongoing reforms and international cooperation aim to address these challenges and strengthen the rule of law in Albania²⁵.

The jurisprudence of the Constitutional Court in Albania addresses several elements related to the due process of law. In recent years, the Constitutional Court has particularly focused on the specific criteria a court must meet to be considered as conducting a regular process²⁶. The element of independence of the judiciary encompasses several dimensions, including institutional, collective, procedural, administrative, and personal aspects, all of which are interconnected and fundamental to effective functioning. Institutional or

¹⁹ The Commissioner's Human Rights of the Council of Europe Comment, *Corruption undermines human rights and the rule of law*, Strasbourg, 2021.

²⁰ S. GLOPPEN, *Courts, corruption and judicial independence*, in T. SØREIDE, A. WILLIAMS (eds), *Corruption, Grabbing and Development*, Cheltenham, 2013, pp.68-79.

²¹ Art. 27 of the Constitution of the Republic of Albania, adopted by law no. 8417, dated 21.10.1998, as amended.

²² Art.28 of the Constitution of the Republic of Albania.

²³ Art. 42 of the Constitution of the Republic of Albania.

²⁴ V. BALA, *Rrugëtim Kushtetues, sfidat, arritjet, perspektiva e Gjykatës Kushtetuese*, Baar, 2018, p. 204.

²⁵ Komisioni i Posaçëm Parlamentar për Reformën në Sistemin e Drejtësisë, Grupi i Ekspertëve të Nivelit të Lartë, 'ANALIZË E SISTEMIT TË DREJTËSISË NË SHQIPËRI (Dokument i hapur për vlerësime, komente dhe propozime)' (Qershor 2015), <https://www.reformanedrejttesi.al/sites/default/files/dokumenti_shqip.pdf.

²⁶ A. VORPSI, *Procesi i rregullt ligjor në praktikën e Gjykatës Kushtetuese të Shqipërisë*, Tirana, 2011.

collective independence specifically concerns the judiciary's relationship with other government branches, often termed external independence. This form of independence safeguards the autonomy of individual judges by ensuring the judiciary operates free from undue influence or interference by legislative or executive authorities. It acts as a protective mechanism, preserving impartiality and the fair administration of justice²⁷. Constitutional guarantees concerning the status of judges are connected to their appointment, protection from unwarranted removal from office, immunity from criminal and disciplinary prosecution without a motivated decision by the High Council of Justice, and financial guarantees²⁸.

The independence of the judiciary is a fundamental principle of a democratic state. In such a state, the role of judges and courts is to ensure the implementation of constitutional norms, laws, and other legal acts while exercising their judicial functions. They guarantee the rule of law and protect human rights and freedoms. Judicial independence is not an end in itself; rather, it is a necessary condition for the protection of fundamental human rights and freedoms.

The principle of independence, articulated in several constitutional provisions, mandates that judges and courts while delivering justice, are subject only to the Constitution and laws²⁹. They must remain impartial and objective in adjudicating cases. The Constitution explicitly prohibits interference in the activities of courts and judges. art. 145, paragraph three, states: "*Interference in the activity of courts or judges entails liability according to law*"³⁰. This procedural independence imposes a duty on institutions and other subjects to respect the independence of the judiciary.

4. Root Causes of Corruption in the Albanian Judiciary System

Understanding the root causes of corruption is crucial for devising effective strategies to combat and prevent it. In Albania, these drivers include: (i) the country's historical trajectory; (ii) political transformations and challenges; (iii) the state of economic and cultural development; (iv) the degree to which the rule of law has been institutionalized; and (v) the quality and enforcement of legislative frameworks³¹.

The Albanian judiciary has faced deep-rooted challenges that have fostered systemic corruption. Historical underfunding and insufficient salaries, which left judges earning some of the lowest wages in Europe before the 2016 judicial reform, created vulnerabilities and incentives for corrupt practices³².

²⁷ F. CAKA, *Personal Independence of Judges in Albania*, in *Research Chapter No. 26*, 2022.

²⁸ Për organet e qeverisjes së sistemit të drejtësisë | ligj nr. 115/2016 | Fletore Zyrtare nr. 231 | Data e publikimit në Fletore Zyrtare | 01/12/2016. Neni 96. (Law no. 115/2016. On the governing bodies of the justice system, Art 96.). <https://klgj.al/wp-content/uploads/2021/03/LIGJ-Nr.-115-2016-P%C3%8BR-ORGANET-E-QEVERISJES-S%C3%8B-SISTEMIT-T%C3%8B-DREJT%C3%8BSIS%C3%8B-i-Azhornuar.pdf>.

²⁹ Art. 145 para 1 of the Constitution of the Republic of Albania, adopted by law no. 8417, dated 21.10.1998, as amended.

³⁰ Art.145 of the Constitution of the Republic of Albania, adopted by law no. 8417, dated 21.10.1998, as amended.

³¹ B. HAJDINI, G. SKARA, *The Role of Information and Communication Technology in Fighting Corruption in the Judiciary System: The Case of 2016 Judicial Reform in Albania*, in *Journal of Liberty and International Affairs*, Vo. 8, No. 3, 2022, pp. 118 ff.

³² Group of High-Level Experts, (GHLE), *Analysis of the Justice System in Albania: Document open for evaluation, comments and proposals*, 2015, pp. 75 ff.

A lack of transparency in appointments and promotions further eroded judicial integrity and cast significant doubt on the meritocracy of these processes. The former High Council of Justice (HCJ) was criticized for failing to implement merit-based systems, with career advancements often seen as products of political connections and clientelism³³. The involvement of the Minister of Justice in disciplinary proceedings further exacerbated these challenges, raising significant concerns about potential executive interference in judicial affairs and undermining the judiciary's independence³⁴.

Accountability mechanisms have also been inadequate. Evaluations of judges by the HCJ were often superficial, lacking objective and standardized criteria³⁵. The declaration of assets proved ineffective, as the vetting process revealed a significant number of individuals avoiding scrutiny due to their inability to justify the origins of their assets³⁶.

Lengthy court proceedings have long been a source of public dissatisfaction, with significant delays persisting even after reform efforts. As reported by the Group of High-Level Experts, by September 2014, 70% of the complaints filed against judges with the HCJ were related to the prolonged duration of court proceedings. To date, nearly 50 cases have been brought against Albania in the European Court of Human Rights, citing excessive delays in judicial proceedings³⁷.

Moreover, inadequate physical infrastructure, such as limited courtrooms and outdated technology, hindered transparency and efficiency, with many court sessions held in judges' offices rather than proper venues³⁸.

Transparency issues further facilitated corruption. Limited public access to court decisions and schedules reduced oversight and accountability. This lack of transparency, driven by restricted access to information about the judicial system, fosters an environment conducive to corrupt practices and frequently catalyzes corruption³⁹.

Among other things, a culture of impunity toward corrupt acts has prevailed in Albania for a long time. A significant factor contributing to this lack of accountability within the judicial system was the concept of judicial immunity, which required prosecutors to obtain prior approval from the High Council of Justice before initiating investigations or prosecutions related to corruption⁴⁰.

Broader sociopolitical and cultural dynamics, such as limited commitment to the rule of law and the judiciary's historical subservience to political influence, have deeply entrenched systemic corruption within Albania's justice system. The structural deficiencies inherited from the post-communist legal framework have further compounded these issues, rendering the judiciary vulnerable to external interference and impeding its evolution into a truly independent cornerstone of democratic governance. Addressing these challenges requires sustained reform efforts aimed at strengthening institutional independence, transparency, and accountability.

³³ *Ibidem*.

³⁴ *Ibidem*.

³⁵ N. MUIŻNIEK, Commissioner for Human Rights of the Council of Europe, Following his visit to Albania from 23-27 September 2013, CommdH(2014)1, pp. 8. <https://www.refworld.org/pdfid/53046b8a4.pdf>.

³⁶ European Commission, *Albania 2024 Report, Accompanying the document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, 2024 Communication on EU enlargement policy*, SWD(2024) 640 final.

³⁷ GHLE, *op. cit.*, p. 103.

³⁸ GHLE, *op. cit.*, p. 77.

³⁹ Consultative Council of European Judges (CCEJ), *Preventing Corruption among Judges*, 2018, pp. 11-12, available at: <https://rm.coe.int/ccje-2018-3e-avis-21-ccje-2018-prevent-corruption-amongst-judges/16808fd8dd>.

⁴⁰ N. MUIŻNIEK, *op. cit.*, p. 6

5. Justice Reform and Its Impact on the Fight Against Corruption

The judicial system is one of the main areas international organizations and citizens for many years have reported as problematic. According to the 4th GRECO Report on Albania, the judicial system has been characterized by “i) a low level of public trust, iii) a high corruption rate, iii) a weak position compared to executive and legislative branches; iv) a lack of control over the selection of High Court judges; v) the exclusive competence of the Minister of Justice to initiate disciplinary proceedings against first instance judges and judges of appeal courts; vi) the inactivity of the National Judicial Conference, which affects the selection negatively, career advancement, training, and disciplinary proceedings against judges”⁴¹.

Different surveys conducted to prepare the analytical document for the judicial reform show the following reasons as most influential regarding corruption in judicial processes: financial interests, business connections, personal connections of judges, and political interests and pressures⁴². For years, international experts and domestic organizations, including citizens’ denunciations⁴³, have considered the judiciary a sector with a high level of corruption⁴⁴.

Furthermore, the high level of corruption has been the main obstacle to Albania’s accession to the EU. Since 2009, when Albania applied for EU membership, opening the accession talks has been conditioned on the fulfilment of some recommendations, highlighting the judiciary reform⁴⁵. During the period 2010-2014, various European Commission Progress Reports⁴⁶ have considered corruption in the judicial system and political intervention in the promotion of judges⁴⁷, especially in the appointment of High Court and Constitutional Court justices, as a major concern⁴⁸.

To address these issues in the judiciary system, in 2014, the Albanian government started the process of a deep and comprehensive justice reform, which was approved in 2016 with the consent of all political parties.

In this context, the first measure proposed to restore the public trust in the judiciary was the re-evaluation process of all judges, prosecutors, and their legal advisers (known as the vetting process). Two particular institutions were created for vetting: the

⁴¹ GRECO and Council of Europe, *Fourth Evaluation Round Corruption prevention in respect of members of Parliament, Judges and Prosecutors, Evaluation Report Albania*, 24-28 March 2014, paras. 4-5.

⁴² GHLE, *op. cit.*, p. 3.

⁴³ I. GUNJIC, *Albania’s Special Courts against Corruption and Organised Crime*, U4 Brief, 2022.

⁴⁴ GHLE *op. cit.*, p. 10.

⁴⁵ European Commission, *Commission staff working document, Analytical Report Accompanying the Communication from the Commission to the European Parliament and the Council, Commission opinion on Albania’s Application for membership of the European Union*, 2010, SEC(2010) 1335 final; European Commission, *Commission Staff Working Paper Albania 2011 Progress Report Accompanying the document Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012*, 2011, SEC(2011) 1205 final; European Commission, *Commission Staff Working Document Albania 2012 Progress Report Accompanying the document Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2012-2013*, 2012, SWD(2012) 334 final.

⁴⁶ European Commission, *C Commission Staff Working Paper Albania 2011 Progress Report Accompanying the document Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012 cit.*, pp. 11-51.

⁴⁷ European Commission, *Albania Progress Report*, 2014, pp 39-44.

⁴⁸ European Asylum Support Office, *EASO Annual General Report 2016*, 2016, p. 24.

Independent Qualification Commission and the Appeal Chamber⁴⁹. They were entitled to vet the judges and prosecutors in three important aspects: i) the assets of judges and prosecutors, ii) the detection or identification of their links to organized crime, and iii) the evaluation of their work and professional skills⁵⁰. The vetting process began functioning in February 2018, a year and a half late, due to the appointment procedure of the Independent Qualification Commission, the Appeal Chamber members, and supporting staff⁵¹. According to art. 197b, point 8 of the amended Constitution of Albania, the vetting process was supposed to start in 2017 and end in 2022 for the first instance (Independent Qualification Commission) and 2026 for the second instance (Appeal Chamber). Due to the failure to vet all judges/prosecutors within the stipulated date (end of 2022), its mandate was extended.⁵² As of 22 October 2024, 296 judges/prosecutors have been confirmed in office; 187 judges/prosecutors have been dismissed and 165 cases where the employment relationship has been terminated (out of which 111 are due to resignations)⁵³.

The vetting process in Albania, while initially welcomed by political actors and supported by the international community (notably the EU and US), faced numerous challenges during its implementation. These included delays, allegations of political influence, inconsistencies in decision-making, and criticism over professionalism and double standards.⁵⁴

The process has faced criticism for inconsistent decision-making, the application of double standards – where similar cases have resulted in vastly different outcomes – lengthy proceedings, and a lack of clear reasoning in its decisions⁵⁵.

Furthermore, the 2016 judicial reform provided a deep legislative reform affecting the constitutional provisions and other laws concerning judicial governance, the status of judges, professional training, career advancement, accountability, and discipline, which brought several novelties to the judiciary system⁵⁶.

Firstly, the reform led to the creation of new institutions for managing the judicial and prosecutorial systems. The High Judicial Council (HJC) and the High Prosecutorial Council (HPC) were established as governing structures for these systems, focusing on judges and prosecutors. The selection of members and the composition of these bodies ensure independence from political interference by appointing professionals from the judiciary, academia, the legal profession, and civil society, thus avoiding executive influence⁵⁷.

⁴⁹ Law No.84/2016, *On the transitional re-evaluation of judges and prosecutors in the Republic of Albania*, Official Journal No.180, Arts. 3, 5.

⁵⁰ Law No. 84/2016, *op. cit.*, Art. 4.

⁵¹ Independent Qualification Commission. Statistical report February 2018-October 2024. <https://kpk.al/wp-content/uploads/2024/11/Raport-statistikor-shkurt-2018-31-tetor-2024.pdf>.

⁵² Law 8417/1998, *The Constitution of the Republic of Albania*, Official Journal 28 as last amended by Law 16/2022 Official Journal No. 37, Annex B; Law 84/2016, *On the transitional re-evaluation of judges and prosecutors in the Republic of Albania*, Official Journal No. 180.

⁵³ Delegation of the European Union to Albania, *Overview of the activity of vetting bodies until 21 October 2024*, 2024, available at https://www.eeas.europa.eu/delegations/albania/overview-activity-vetting-bodies-until-21-october-2024_en.

⁵⁴ G. SKARA, B. HAJDINI, N. KILIC, *The Role of the EU as a Promoter of Judiciary Reform in Candidate Countries: The Case of Vetting Process in Albania 2024*, in *EU at the Crossroads – ways to preserve Democracy and Rule of law*, No. 8, 2024, pp. 225-252.

⁵⁵ E. SKENDAJ ET AL., *Proçesi i Vetingut në kuadër të detyrimeve të Integritetit në Bashkimin Evropian*, 2022.

⁵⁶ B. HAJDINI, G. SKARA, *The Role of Information and Communication Technology cit.*, p. 123.

⁵⁷ Law no. 115/2016, *cit.* Art. 54-58; 105-110; 117; European Commission, *Commission staff working document, 2024, Rule of Law Report, 2024 Rule of Law Report Country Chapter on the Rule of Law situation in Albania*, SWD(2024) 828 final, p. 3.

Challenges regarding competitiveness and transparency have been reported also with regard to the implementation of the current selection procedures by the Parliament⁵⁸. Concerns about attempted interference and pressure on the judicial system by public officials or politicians remain⁵⁹.

The establishment of this institution has led to the development of a comprehensive regulatory framework for appointments, career systems, and the evaluation of magistrates. Its functioning has resulted in increased trust from citizens and businesses in the independence of the judiciary over the past year. Despite the strong independence safeguards in the process of appointment, promotion and transfers of magistrates, it is impacted by limited transparency and challenges in ensuring timely and qualitative evaluations⁶⁰.

Moreover, the High Inspector of Justice (HIJ) was established with the responsibility to verify claims against judges/prosecutors and begin the disciplinary process against judges/prosecutors, HJC and HPC members, and the General Prosecutor⁶¹. The establishment of this institution has completed the regulatory framework related to disciplinary proceedings and has played a significant role so far in increasing public trust in the new reform institutions⁶².

Secondly, the 2016 judicial reform consolidated the status of the judges by adopting specific legislation. Law 96/2016 as amended, provided in more detail the rights and obligations of the judges in the procedure of appointment; career development, ethical and professional evaluation; and disciplinary responsibility⁶³. This law established measurable criteria for assessing the ethics and integrity of magistrates⁶⁴, which are fundamental for strengthening integrity and are also prerequisites for preventing judicial misconduct. To strengthen judicial integrity, the Code of Ethics for judges has been adopted, and an Ethics Advisor has been appointed to support judges in navigating dilemmas related to the appropriateness of their conduct, both in their professional roles and in their personal lives⁶⁵.

Thirdly, the 2016 judicial reform established structures to investigate and deal specifically with corruption and organized crime, such as Special Structure Against Corruption and Organized Crime (SPAK), National Bureau of Investigation and Court of First Instance and Second Instance for Organized Crime and Corruption⁶⁶. Currently, the work of these structures is assessed as very positive in the context of the fight against high-level corruption, even by international organizations⁶⁷. Their efforts and results have increased citizens' trust in the system and have contributed to breaking the myth of impunity for high-level officials, including those in the judiciary.

⁵⁸ *Ibidem*, p. 5.

⁵⁹ *Ibidem*, p. 7.

⁶⁰ *Ibidem*, p. 5.

⁶¹ Law 115/2016, *On Governance Institutions of the Justice system*, Official Journal No. 231 as amended by Law 47/2019 [2019], Art 194.

⁶² European Commission, *Commission staff working document, 2024, Rule of Law Report, 2024 Rule of Law Report Country Chapter on the Rule of Law situation in Albania cit.*, p. 13.

⁶³ Law No 96/2016, *cit.*

⁶⁴ Law No 96/2016, *cit.*, art. 75.

⁶⁵ High Judicial Council. Decision No. 171, *On the approval of the "Code of Judicial Ethics"*, 2021. https://www.gjp.gov.al/rc/doc/KODI_I_ETIK_S_GJYQ_SORE_VKLGJ_nr_271_date_22_4_2021_4666.pdf.

⁶⁶ Law No. 95/2016, dated 6.10.2016, *On the organization and functioning of institutions for combating corruption and organized crime*.

⁶⁷ European Commission, *Albania 2023 EC Progress Report*, SWD(2023) 690 final, p. 24- 25.

Fourthly, one of the key objectives of the reform was to enhance accountability through increased transparency within the judiciary. In this context, the Information Technology Center for the Justice System was established as a regulatory body for standards in the field of information technology for the entire justice system⁶⁸. Additionally, several measures have been taken for the implementation of technology in daily activities in the courts, such as the random assignment of court cases through electronic means⁶⁹, the construction of a new case management system⁷⁰, or equipping courtrooms with audio and video systems⁷¹. There are challenges as regards the random allocation of cases and publicity of proceedings. The random allocation of cases for prosecutors is regulated by law³⁶ but is not applied in practice³⁷. Hearings in the counselling rooms without the necessary publicity requirements have been reported at the district courts' level⁷². However, e-justice tools and coordination among the actors responsible are lacking, and the use of electronic communication between courts and parties remains limited⁷³.

The Justice Reform, up to the current stage of implementation, has given its impact in the fight against corruption, however, for further results, consolidation and further advancement are needed. Recent data continues to highlight the pervasive nature of corruption in Albania. According to Transparency International's Corruption Perceptions Index (CPI)⁷⁴, Albania consistently ranks among the most corrupt countries in Europe⁷⁵. As of 2023, Albania ranks 98th out of 180 countries on the CPI, with a score of 37 out of 100⁷⁶. This marks a slight improvement from the previous year, where Albania scored 36 and ranked 110th.

The institutional framework for prevention has seen some development, but its implementation continues to have a limited impact⁷⁷. Furthermore, the prevalence of corruption continues to hinder Albania's aspirations for European Union membership, as rule-of-law reforms are key prerequisites for accession.

6. Concluding Remarks

Combating corruption in the Albanian judiciary is a complex but essential task for ensuring the rule of law and promoting due process. Strengthening judicial independence, enhancing transparency through public hearings, and rigorously enforcing anti-corruption measures are critical steps in this endeavour. The right to due process of law is a fundamental principle embedded in the Albanian Constitution, ensuring fairness,

⁶⁸ Decision of the Council of Ministers No. 972/2020, *On the organization, functioning and determination of the competencies of the Information Technology Center for the Justice System*.

⁶⁹ Law 98/2016, *On the organization of the judicial power in the Republic of Albania*, Official Gazette 209 amended by Law 46/2021, Art. 25.

⁷⁰ Annual reports of the High Judicial Council, available at: <https://klgj.al/category/raportet/>.

⁷¹ *Ibidem*.

⁷² European Commission, *Commission staff working document, 2024, Rule of Law Report, 2024 Rule of Law Report Country Chapter on the Rule of Law situation in Albania cit.*, p. 5.

⁷³ *Ibidem*, p. 7.

⁷⁴ The CPI is a composite index based on various surveys and assessments from independent institutions focusing on governance and business climate analysis.

⁷⁵ A. TAYLOR-BRAÇE, *Albania improves slightly in corruption index, remains among Europe's worst*, in *Euroactive*, 2023 available at: <https://www.euractiv.com/section/politics/news/albania-improves-slightly-in-corruption-index-remains-among-europes-worst/>.

⁷⁶ <https://www.transparency.org/en/cpi/2023>.

⁷⁷ European Commission, *Commission staff working document, 2024, Rule of Law Report, 2024 Rule of Law Report Country Chapter on the Rule of Law situation in Albania cit.*, p. 11.

transparency, and justice within the legal system. By aligning with international human rights standards and providing comprehensive protections, the Constitution of Albania upholds the rule of law and the rights of individuals. Moreover, the 2016 justice reform represents a significant milestone, but continuous efforts and vigilance are necessary to achieve Albania's truly fair and impartial judicial system. The fight against corruption is ongoing, and success will depend on all stakeholders' sustained commitment. Continuous efforts are needed to address implementation challenges and ensure that these constitutional guarantees are effectively realized in practice.

ABSTRACT

The article “Combating Corruption in the Albanian Judiciary: Promoting Due Process” examines the intersection of judicial corruption and due process in Albania, highlighting reforms aimed at ensuring fairness and integrity within the judiciary. It underscores that due process, a cornerstone of international human rights law, is compromised by systemic corruption, eroding public trust and undermining justice. Despite constitutional guarantees and alignment with international standards, Albania's judiciary has struggled with inefficiencies and bias, significantly impacting public trust. The 2016 judicial reform, which introduced measures such as the vetting of judges and prosecutors and institutional restructuring, aimed to restore trust and combat corruption. Progress includes the dismissal of numerous corrupt officials and enhanced transparency in appointments. However, challenges persist, including the need for better implementation of reforms and increased accountability.

KEYWORDS

Albania, Corruption, Due Process, Judicial Power, Justice Reform.

LOTTA ALLA CORRUZIONE NEL SISTEMA GIUDIZIARIO ALBANESE: PROMUOVERE IL GIUSTO PROCESSO

ABSTRACT

L'articolo “Combattere la corruzione nel sistema giudiziario albanese: Promuovere il giusto processo” esamina l'intersezione tra corruzione giudiziaria e giusto processo in Albania, evidenziando le riforme volte a garantire l'equità e l'integrità del sistema giudiziario. Il documento sottolinea che il giusto processo, pietra miliare del diritto internazionale dei diritti umani, è compromesso dalla corruzione sistemica, che erode la fiducia del pubblico e mina la giustizia. Nonostante le garanzie costituzionali e l'allineamento con gli standard internazionali, il sistema giudiziario albanese fatica a lottare contro le inefficienze e i pregiudizi, con un impatto significativo sulla fiducia dei cittadini. La riforma giudiziaria del 2016, che ha introdotto misure come il controllo dei giudici e dei pubblici ministeri e la ristrutturazione istituzionale, mirava a ripristinare la fiducia e a combattere la corruzione. Tra i progressi compiuti figurano il licenziamento di numerosi funzionari corrotti e una maggiore trasparenza nelle nomine. Tuttavia, persistono delle sfide, tra cui la necessità di una migliore attuazione delle riforme e di una maggiore responsabilità.

KEYWORDS

Albania, Corruzione, Giusto Processo, Potere Giudiziario, Riforma della Giustizia.