

Albania's National Bureau of Investigation (NBI)

Three lessons for the region

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ALBANIA'S NATIONAL BUREAU OF INVESTIGATION (NBI) - THREE LESSONS FOR THE REGION

Introduction

Widespread corruption has a detrimental impact on the normal functioning of society. In Western Balkan countries, corruption remains among the biggest obstacles to their EU accession. According to the citizens of these countries, corruption is viewed as the third major concern, after unemployment and poverty.¹ According to the watchdog organisation Transparency International's latest annual report on perceived corruption around the world, the high level of corruption continues to be present in countries of the region.² As a result of continuous pressure from the European Union and other international actors, Western Balkan countries have undertaken several attempts, some of them successful, to address the issue of corruption. Inspired by the Hong Kong case, which was regarded as one of the very few successful models of turning a highly corrupt place into a clean one, many of the Western Balkan countries decided to establish specialised bodies to prevent and combat corruption.³ Establishing such institutions and structures was often viewed as the only means to fight corruption, as existing institutions were considered too weak and politically influenced to do the job.

Albania has proved to be no exception to corruption as the rest of the Balkan countries. With the fall of communism in the 1990s and the beginning of the establishment of the democratic institutions, the corruption in the justice system of Albania began to flourish.⁴ The corruption, added to political interference, has burdened Albania's justice system. Despite the national government being aware of the situation, little was done to improve it. The perception of Albanian citizens toward the justice system has sunk to a new low; according to them, corruption is considered the second most important problem their country faces, after unemployment.⁵ The situation has been continuously criticized by international actors whereas the European Commission has identified corruption in the judiciary as the No 1 obstacle to EU accession in its series of progress reports.⁶ International actors have pointed out the fact that corruption must be fought through special anti-corruption institutions, given that neither the Courts nor the Prosecutor's Office for Serious Crimes are specialized in the fight against corruption, therefore incapable of performing the job.⁷

In this regard, the government has decided to undertake a justice reform in order to lay the foundation of a new and improved judicial system. What we can refer to as "the Albanian spring" has come as a need to clean up and rebuild the justice system from corruption and tackle the issue of unaccountability and inefficiency. Due to this, the government of Albania has presented

¹ Corruption in the Balkans: An examination of the ties between government and crime in several southeast pg.3

² Watchdog highlights persistent corruption in the Balkans. Available at:
<http://www.balkaninsight.com/en/article/balkans-seen-as-corrupt-transparency-international-reports-01-24-2017>

³ European Parliament, Anti-corruption efforts in the Western Balkans, (2017). Available at:
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599417/EPRS_BRI\(2017\)599417_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599417/EPRS_BRI(2017)599417_EN.pdf)

⁴ Corruption, Albania's biggest challenge for integration in EU. Available at: <http://www.pecob.eu/Corruption-Albania-biggest-challenge-integration-E-U>

⁵ United Nations Office on Drug and Crimes, Corruption in Albania: Bribery as experienced by the population available at:
https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Albania_corruption_report_2011_web_small.pdf

⁶ EU Progress Reports on Albania

⁷ Press release: Albania pushes anti-corruption reform. Available at:
<http://www.balkaninsight.com/en/article/albania-pushes-anti-corruption-reform>

a new methodology to fight corruption at the top, based on the experience of Croatia and Romania which has proven to be quite a successful measure.⁸

Introducing Albania's National Bureau of Investigation (NBI)

Known as the “Albanian FBI”, the National Bureau of Investigation (NBI) is an independent structure foreseen in the Constitution of Albania, responsible for the investigation of criminal offenses in the criminal jurisdiction of the Special Prosecution Office. The NBI is a part of the Special Anti-Corruption Structure (SPAK) together with the Special Prosecutor Office responsible to investigate and prosecute acts of corruption and other crimes related to it. As an independent investigative body, NBI will serve as a contact point with the investigative authorities of other nations regarding crimes of corruption.

The National Bureau of Investigation has received a lot of support from international actors which keep pushing the government of Albania to establish the NBI without further delays. Experts from international structures for justice reform, EURALIUS and OPDAT are continuously supporting Albania in this direction. The creation of the NBI structure as a response to a rather high level of corruption and organized crime in Albania foreseen with the justice reform package, aims to open a new chapter of establishment of trusted, efficient and credible judicial institutions.

This paper is organized as follows:

- I) State of Play and Analysis of the Law on Organization of Institutions for Combating Corruption and Organized Crime.
- II) Analysis of the Opinion of Venice Commission regarding National Bureau of Investigation.
- III) Analysis of the verdict of the Constitutional Court of Albania regarding the older version of NBI.
- IV) Comparative analysis with Croatia’s institution for combating corruption.
- V) Concluding lessons from Albania’s case to be used for future references.

State of Play of the National Bureau of Investigation (NBI) and Analysis of the Current Legislation

The National Bureau of Investigation (NBI) has the sole jurisdiction to investigate crimes of corruption and organized crime, as well as crimes committed only by subjects provided in the Constitution of Albania, which are the President of the Republic, the Speaker of the Parliament, the Prime minister, members of the Council of Ministers, judges of the Constitutional Court and the Supreme Court, the Prosecutor General, High Justice Inspectors, Mayors, Members of the Parliament, deputy ministers, members of the High Judicial Council and High Prosecutorial Council, and heads of central or independent state institutions as defined by the Constitution or by law, as well as charges against former above mentioned officials, independent from any outside or inside inappropriate influence.⁹ The Jurisdiction of NBI covers the whole of the

⁸ Press release: the DNA of Romania’s anti-corruption success. Available at: <http://www.politico.eu/article/the-dna-of-romania-s-anti-corruption-success-eu-transparency-international/>,

⁹ <https://successfulsocieties.princeton.edu/publications/cleaning-house-croatia-mops-high-level-corruption-2005-2012>

⁹ Law on SPAK, article 8; Constitution of Albania, article 135.

Republic of Albania and may also create temporary or permanent offices outside Tirana in order to fulfil their duties as they see fit for the purposes of efficiency.¹⁰

The role of the Law on Organization of Special Anti-Corruption Structures (SPAK)

The functioning of the NBI is regulated by the Law on Organization of Special Anti-Corruption Structures (SPAK) issued in 2016, by the Assembly of Albania. The law was subject to a lot of changes until its finalization. Initially this structure was foreseen also in the Constitution of Albania, only to be removed later and regulated through the law. The EURALIUS mission, which is a European Union mission that is assisting in judicial reform in Albania, has explained that the reason for the removal of the NBI from the Constitution is because it will be regulated through a special norm which is the Law on Special Anti-Corruption Structure (SPAK).¹¹

The Special Anti-Corruption Structure (SPAK) refers to the NBI and the Special Prosecution Office, both responsible for the investigation of criminal offenses of corruption and organized crime.¹² The relationship between the Special Prosecution controlled and act upon the directions of the prosecutors of the Special Prosecution Office.¹³ One should note that with the law on SPAK, the competencies of the General Prosecutor's Office to supervise and direct the work of the NBI has been removed completely. Many consider that the reason for this is the failure and refusal of the General Prosecutor Office to effectively prosecute corruption crimes and corrupt politicians.

In some of the countries struggling with the fight against corruption, the anti-corruption structures remain formally part of the General Prosecutor's Office, but as an autonomous unit, so as not to be influenced by other officials, prosecutors or the government.¹⁴ In other cases it is completely independent from the General Prosecutor's Office. In the case of Albania, the NBI is a special unit of the Judicial Police which is completely independent by police structures and is only accountable to the Special Prosecution Office.

However, until the establishment of SPAK institutions, the General Prosecution Office retains the power to conduct criminal prosecution and represent the prosecution party in court for corruption cases. The Law on SPAK clearly states that on midnight of the 300th day after this law enters into force, the competence to conduct prosecutions and investigations of corruption crimes and crimes related to it will pass to SPAK.¹⁵

Internal affairs of the NBI: appointments and roles of directors and investigators

The NBI Director is responsible for the entire functioning of the NBI. The director is appointed with a five-year mandate that can be renewed once. The director is elected through a transparent recruitment by the High Prosecutorial Council through a recommendation provided by a commission comprising of the Director of the Special Prosecutor Office and two special prosecutors with more than one year of experience in the field.¹⁶ This ensures a strong supervision of the director of the NBI by the Director of the Special Prosecution Office. The High Prosecutorial Council has a key role in the election of the Directors of SPAK (Director of NBI and

¹⁰ Law on SPAK, article 10

¹¹ Press release: Ja pse u fshi Byroja e Hetimit ne amendimet Kushtetuese. Also available at: <https://sot.com.al/politike/ja-pse-u-fshi-byroja-e-hetimit-n%C3%AB-amendimet-kushtetuese-si-do-t%C3%AB-ngrihet-prokuroria>

¹² Law on SPAK, article 3 par. 7.

¹³ Id. at article 5 par. 3

¹⁴ Case of Croatia, USKOK.

¹⁵ Law on SPAK, article 57, par 6

¹⁶ Id. at article 33

Special Prosecution Office)¹⁷ and for this purpose the judicial reform in Albania foresees also the reformation of the High Prosecutorial Council (HPC).¹⁸ This High Prosecutorial Council will contain 11 members approved by the Parliament, which increases the Parliamentary oversight over the Bureau.

It must be noted that previously with the law on State police which was declared unconstitutional, the director of the NBI was elected by the Minister of Internal Affairs.¹⁹ The dominant role of the High Prosecutorial Council on the election of the members of SPAK provides independency of the NBI from the executive branch and can be regarded as a welcoming step toward ensuring no political interference will affect the functioning and accountability of the Bureau.

Investigators of the NBI conduct investigations under the direction of special prosecutors. The appointment of an investigator in the National Bureau of Investigation shall be made by the Director with the consent of the Chief Special Prosecutor.²⁰

The internal organization of the NBI is regulated by the joint order of the Director of the NBI and the Director of the Special Prosecutor's Office. The National Bureau of Investigation shall be comprised of Director, Deputy Director, and administrative personnel. The National Bureau of Investigation shall also have judicial police services which include judicial police officers from the State Police and other relevant institutions, under the administrative direction of the Deputy Director and subordinated to the Special Prosecution Office.²¹ The director of NBI and other members of NBI operate under the direction of prosecutors of the Special Prosecution Office and cherish the status of judicial police officers.

Mandatory screening procedures to ensure fiscal independence

The candidates for director and investigator at the National Bureau of Investigation must undergo thorough screening procedures before being assigned or employed in one of these positions. They must consent to periodic control of their own and their close family's bank accounts and personal telecommunications.²² This security condition is similar to the security conditions of the judges and prosecutors appointed in Croatia's Office for the Suppression of Corruption and Organized Crime (USKOK) and Romania's National Anti-Corruption Directorate (DNA) whose members have to give consent on the verification of assets and telecommunications including their family members by the Bureau.

The purpose of this measure is to discourage the contacts of judges or prosecutors with corrupt intentions and possible blackmail and threats. Taken that the nature of this job is directly related to the investigation of governmental functionaries, the life of the members of the Bureau can be put in danger. They are also obligated to communicate only with a cellular phone number which is wired 24/7.²³ Although these drastic measures restrict the private lives of the investigators and their families, they are justified given the fact that it serves the purpose of the general interest. Similarly, in the opinion of the Venice Commission regarding the Vetting process of Albania, the Commission has concluded that background assessment of judges cannot be

¹⁷ Id.

¹⁸ Harta e reformes ne drejtesi. Institucionet e reja ne gjyqesor dhe prokurori. Available at: <https://www.reporter.al/harta-e-reformes-ne-drejtesi-institucionet-e-reja-ne-gjyqesor-dhe-prokurori/>

¹⁹ Constitutional Court of Albania, Vendim nr.43 datë 26.06.2015(V-43/15)

²⁰ Law on SPAK, Article 32

²¹ Id. at Article 31

²² Id. At Article 32

²³ Id.

regarded as an unjustified interference with the private or family life of judges and prosecutors and therefore it is in compliance with the European Convention of Human Rights.²⁴

Fiscal independence is considered an important factor influencing the anti-corruption institution's performance. The NBI has an independent budget covered by the State budget.²⁵ The employees who will be appointed to the Bureau are expected to benefit from the highest salaries ever given to police structures due to the extensions provided in the law.²⁶

Unregulated process of the SPAK

Given that this paper aims to analyze also general aspects of the law on SPAK given the interrelation between the NBI and Special Prosecution Office, it must be noted that some aspects of the internal process of the SPAK are not well-regulated and may leave room for different interpretations:

Firstly, the Law on SPAK provides the prosecutors of SPAK with the authority to investigate and prosecute other prosecutors of SPAK and judges within the Anti-Corruption and Organized Crime courts.²⁷ This competence might potentially cause conflicts of interest among prosecutors, given that they can only be indicted by their colleagues, therefore it would be difficult for the prosecutor to maintain his or her impartiality.

Second, the law provides that the prosecutors of SPAK can be prosecuted for any criminal offence apart from corruption ones while the aim of the law on SPAK is limited to only the investigation and prosecution of crimes of corruption and other crimes related to it.²⁸ It must be taken into consideration that although the SPAK structure is independent from the General Prosecution Office, it creates potential risk for its members to become untouchable, alluding to the old saying “*Quis custodiet ipsos custodes?*”²⁹

The law provides the establishment of the Ad Hoc Committee for the Verification of Assets and Background of the candidates applying to become a judge and judicial civil servant of the Anti-Corruption and Organized Crime Courts, prosecutor and personnel of the Special Prosecution Office, or director and investigator of the NBI which consist of:

- a) Two prosecutors of the Special Prosecution Office, selected by lot.³⁰ The selection by lot shall be monitored by the Ombudsperson;
- b) A judge of the Anti-Corruption and Organized Crime Courts, selected by lot. The selection by lot shall be monitored by the Ombudsperson;
- c) An employee of the financial investigation section at the Special Prosecution Office, appointed by the Chief Special Prosecutor;
- d) An investigator of the National Bureau of Investigation, appointed by the Director of the National Bureau of Investigation. These persons must undergo the vetting process first before joining the committee.

²⁴ Council of Europe (2016), “Albania Amicus Curiae Brief for The Constitutional Court On The Law On The Transitional Re-Evaluation Of Judges And Prosecutors (THE VETTING LAW)”, Adopted by the Venice Commission, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)036-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)036-e)

²⁵ Law on SPAK, Article 56

²⁶ Press Release, Byroja Kombetare e Hetimit me “50 te paprekshem”, available at: <http://gazeta-shqip.com/lajme/2014/06/23/projektligji-byroja-kombetare-e-hetimit-50-te-paprekshem/>

²⁷ Law on SPAK, article 14

²⁸ Id.

²⁹ “Who watches the watchmen”.

³⁰ Law on SPAK, Article 6 part 5

The anomaly of this law article resides in the fact that the verification of the assets and background of the members of SPAK will be conducted by the members of this same structure. What is more, the High Prosecutorial Council, which is the institution responsible for the election of the members of the SPAK has no role in the process of the Verification of Assets and Background of Candidates.

Thirdly, a Commission comprised of criminal justice experts appointed by the missions of the European Union and the United States of America in Albania will provide expert guidance and advice on the implementation and development the anti-corruption structures. However, their services will only last for a period of two years following the establishment of the NBI. A longer presence of international actors in the oversight of NBI would guarantee the NBI's independence and accountability. For instance, in Guatemala an International Commission against Impunity has been helping and providing assistance with investigation of high level corruption since 2006, where they managed to arrest the Guatemalan president for masterminding a large-scale corruption scheme.³¹

BACKGROUND INFORMATION

Venice Commission Opinion

On October 2015, the Chairman of the Ad Hoc Committee on Justice System Reform of the Albanian Parliament, requested an opinion from the Venice Commission on the Draft Constitutional Amendments of Albania. Following the recommendations of the Venice Commission, the committee revised the Draft Amendments and submitted again to the Venice Commission requesting an opinion. The Venice Commission gave a number of recommendations and criticism regarding the judicial reform, but did not elaborate much on the establishment, competencies and the role of the NBI.

Firstly, the Venice Commission in its Interim Opinion noted that the NBI should not itself be subject to any outside direction and its role and competencies must be specified, at least briefly in the Constitution of Albania.³²

In its final opinion, the Venice Commission does not refer specifically to the NBI, but it salutes the independency and autonomy of SPAK from the General Prosecutor's Office.³³ However, it criticizes Article 148, which provides that the election of the Chief Special Prosecutor among the "members of the office" but doesn't provide the method or by whom the election is to be made.³⁴ For this purpose, the Commission recommends finding a method for the election of the Chief Special Prosecutor which excludes political interference as much as possible. It also remains unclear to whom the Chief Special Prosecutor is accountable to. The Independence of the Chief Prosecutors doesn't presuppose the prosecutor lacks accountability to his or her superior. The prosecutors should be able to act in an autonomous manner but also held accountable for their actions.³⁵

Furthermore, the Venice Commission has been supportive of the establishment of specialized anti-corruption investigation/prosecution units enjoying a certain autonomy from the

³¹ Press release: Corruption in Guatemala available at: <http://www.borgenmagazine.com/corruption-in-guatemala/>

³² Venice Commission, Interim Opinion on the revised draft on Constitutional Amendments on the judiciary, Opinion No.824/2015, 21 December 2015, par. 90

³³ Venice Commission, Final Opinion on the Revised Draft Constitutional Amendments on the Judiciary of Albania, 14 March 2016, par. 46

³⁴ Id. at par. 48

³⁵ Id.

general prosecution system.³⁶ It must be noted that other international instruments emphasize the importance of the establishment of independent special units for combating corruption, such as the United Nations Havana Guidelines which emphasizes the importance of prosecution of crimes committed by the high public officials.

The NBI in the View of the Constitutional Court: An Initial Remark

At the outset, the NBI was envisioned to be set up as a special part of the State Police where the organization and functioning of the NBI would be determined by order of the Minister of Internal Affairs.³⁷ The Bureau's director would be appointed by the Minister of Internal Affairs and would function within the framework of the Judicial Police.³⁸ As far as the investigative activity is concerned, the NBI would answer to the prosecutor general. The NBI would perform an inquiry, research and investigative activities in accordance with the criminal procedure and legislation on criminal offenses in corruption and criminal activity associated with it.³⁹ With this said, the NBI is dependent on the Minister of Internal Affairs in terms of election and dismissal of the director of the NBI by the Minister. However, many members of opposition have viewed the appointment of the director of the NBI by the Minister of Internal Affairs as a maneuver of the executive branch to take over the judiciary.

As said above, the establishment of the NBI under the Albanian State Police has created a heated debate among members of the opposition (the Democratic Party) and the government regarding the fate of the NBI.⁴⁰ The current model gives the Minister profound power over this structure by taking the State Prosecution's exclusive competences to conduct investigations and prosecutions as foreseen with the Constitution of Albania. This initiative according to many lawyers of Albania was viewed as an attempt of the government to duplicate the work of the General Prosecutor's Office. According to them, the object of the Bureau's work is the same as that of the prosecution, with the only difference that the Bureau doesn't file charges to the court.⁴¹

Due to this, a number of MPs from the opposition have requested the Constitutional Court of Albania to declare the establishment of the NBI as unconstitutional and in violation of article 148 of the Constitution of Albania and article 49 of the law no. 108, date 31.07.2014 "on State Police".⁴² The claimant (no less than 1/5 of the members of the parliament) claims that the removal of the General Prosecutor's Office competence in conducting and leading the investigations affects the check and balance principle because although the law creates a new entity with competence in the area of investigation of criminal offenses, it doesn't foresee any superior-subordinate relationship between the General Prosecution Office and NBI.⁴³ The abolition of the Prosecutor's Office's exclusivity in carrying out criminal investigations constitutes a deviation of this body from exercising its activity according to the Constitution, therefore violating the checks and balances principle foreseen by article 7 of the Constitution of Albania.⁴⁴

³⁶ Id.

³⁷ Albania Law on State Police

³⁸ Id.

³⁹ Id.

⁴⁰ Press release: Byroja Kombetare e Hetimit perplas PS dhe PD. Also available at: <http://time.ikub.al/Meta-LSI-e-gatshmete-votoje-Byrone-e-Hetimit/Byroja-Kombetare-e-Hetimit-perplas-PS-dhe-PD803554.aspx>

⁴¹ Constitutional Court quashes the Government Incentive for the National Bureau of Investigation. Available at: <http://www.balkaneu.com/constitutional-court-quashes-governments-incentive-national-bureau-investigation/>

⁴² Press release: Byroja Kombetare e Hetimit: Opozita ankimon. Available at:

<https://www.zeriamerikes.com/a/2478165.html>

⁴³ Decision of Constitutional Court of Albania, Vendim nr.43 date 26.06.2015 (V-43/15)

⁴⁴ Id. at pg 7 (par. 10); Constitution of Albania, article 7

In this respect, the Constitutional Court of Albania on 16.06.2015 has approved the Referral ascertaining that the creation of NBI under the Ministry of Internal Affairs with the objective of tracing and investigating criminal offenses in the field of corruption, as well as criminal activity in relation to it, violates the principle of the rule of law, legal certainty, separation and balancing of powers, as well as the rights of the individual for a due legal process provided with the Constitution of Albania.⁴⁵ The Court considers that the Constitution, Article 148 has established that the General Prosecutor's Office is the only body responsible for the prosecution, an integral part of which is the investigation of criminal cases.⁴⁶ The Criminal Procedure Code (CPC) has determined that the bodies charged with preliminary investigations are the prosecutor who conducts the investigations, and the Judicial Police at its disposal meaning that in exercising its duties and functions, the Judicial Police is directed and controlled by the General Prosecutor Office.⁴⁷

The Court assesses that the law creates confusion in regard to the tracing and investigative activities for criminal offenses of corruption and other related offenses which can bring collision with activities exercised by other structures, part of the Judicial Police, operating in the field of taxes, customs etc.⁴⁸ The lack of detailed description of the competencies and the activities of the NBI can cause its functioning to be incomplete, unclear and creating problems with the practical implementation. The court states that there must be a distinction between "tracing activities", which the legislation foresees to be carried out by the Police, and "investigative activities", which fall under the competencies of the Prosecution.⁴⁹

Furthermore, the Court has assessed that the allegation of interested parties that the NBI will respond for the tracking activities before the Director of the State Police and, for investigative and prosecution activities before the General Prosecutor's Office, has not been foreseen in any of the articles of the Law on State Police.⁵⁰ This could lead to problems in practical implementation of the law because the relationship between the General Prosecutor's Office and the NBI is not specified but is instead left vague in terms of reporting.

The NBI's dependence on the executive branch

Another issue which the Court has pointed out, is the fact that the appointment and dismissal of the head of the NBI is in the competence of the Minister of Internal Affairs, which creates dependency of this body from the executive branch. The appointment of the judicial administration, part of the judiciary, by the Minister of Justice, part of the executive power, constitutes a violation of Articles 7 and 145 of the Constitution. There is a risk that this dependence would also imply an influence / intervention of the executive power at the initial stage of prosecution – the preliminary investigations.⁵¹

Given the above-mentioned reasons, the Constitutional Court has declared the establishment of the NBI as incompatible with the Constitution of the Republic of Albania, (chapter Six, Articles 27-36) of Law no. 108/2014 "On the State Police". Judge Altina Xhoxhaj partly dissented the opinion claiming that the entire abolition of Chapter Six of the Law on State Police is unnecessary because the entire law doesn't establish constitutional problems. This law constitutes constitutional problems only in regard to the right of employees of the Investigation

⁴⁵ Id. at 52

⁴⁶ Id.

⁴⁷ Criminal Procedure Code of Albania, Article 277

⁴⁸ Id. at 52

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

Bureau to conduct investigative actions which fall on the competencies of the Prosecution branch, in the absence of any provision for the status of these employees of the State Police. The abolition of the words (from articles 27/2 and 36/1 of Law No.108 / 2014,) which give competencies to the Police to conduct activities which fall in the competence of the prosecution branch, would be sufficient to restore the state of constitutionality and legality.⁵²

The decision of the Constitutional Court to declare the establishment of the NBI unconstitutional under the Ministry of Internal Affairs (Police Department) was regarded as a means to ensure the independency of the NBI from the executive branch. The independence of the NBI is a fundamental requirement for a proper and effective exercise of this structure.

Lessons to be learned from Croatia's experience

Reform and initiatives to fight corruption were also undertaken in Romania, Croatia, Montenegro, Ukraine, "the former Yugoslav Republic of Macedonia", etc. In this regard, Albania has decided to establish a structure following the model of Croatia and Romania, given that the two countries can be considered as success stories in the fight against corruption.

Different countries have approached the issue of establishing anti-corruption institutions in different ways. In Croatia, for instance, USKOK, a special structure for combating corruption, was established under the auspices of the State Attorney's Office⁵³, while Romania's National Anti-corruption Directorate (DNA) is an independent judicial structure which operates within the Prosecutor's Office attached to the High Court of Cassation and Justice. In Macedonia, the State Commission for Prevention of Corruption is composed of seven members appointed by the Parliament, to which they are responsible. This Commission in Macedonia is autonomous and independent in exercising its function, meaning that it is detached from the Government and other Constitutional powers. In Kosovo such institution doesn't exist, nor does the judicial police.

The evolution of the Bureau for Combating Corruption and Organized Crime (USKOK)

Croatia as an EU aspiring country was conditioned by the EU to undertake reforms for combatting corruption. The European Commission (EC) had continuously reported corruption in Croatia as a serious concern. For this reason, in 2001, the Croatian Government established the Bureau for Combating Corruption and Organized Crime (USKOK), part of the Office of the State Prosecution which has become one of the most trusted institutions in Croatia.⁵⁴ USKOK is responsible for the investigation and prosecution of corruption based on its establishing legislation.⁵⁵ Different from NBI which is established independently from the General Prosecutor's Office, USKOK is a specialized department of the State Attorney's Office of the Republic of Croatia. The director of USKOK is also appointed by the State Attorney with the recommendation of the Minister of Justice, while in Albania the director of the NBI is appointed by the High Prosecutorial Council.

In its first years USKOK had very limited resources and almost no political support. Lack of funds and human resources also contributed to the agency's ineffectiveness. After years of hard work, USKOK became one of the most effective institutions for combating corruption.⁵⁶ With the arrest of Ivo Sanader, the former Prime Minister of Croatia, the credibility of the agency reached a

⁵² Dissenting Opinion of Albania Constitutional Court, Vendim nr.43 date 26.06.2015 (V-43/15)

⁵³ Assembly of Croatia, The Law on The Office for the Supresion of Corruption and Organized Crime, article 2

⁵⁴ See Chapters of the Acquis at, <http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-theacquis/> 64
A former

⁵⁵ Anti-Corruption Authorites, Croatia, available at: <https://www.acauthorities.org/country/hr>

⁵⁶ Cleaning House: Croatia Mops Up High Level Corruption, 2005-2012, Innovation for Successful Societies. Available at: https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/Policy_Note_ID226.pdf

milestone. For the first time in the history of Croatia as an independent country, an influential politician was prosecuted by his own government, and more specifically by USKOK, which was established under the Prime Minister himself.

Croatia's USKOK can be viewed as the institution which helped Croatia's accession to the EU by undertaking serious steps toward reducing high level corruption. Between 2007 and 2014 thousands of investigations have been conducted and more than three thousand persons have been accused. With the amendments to the Criminal Code and Criminal Procedural Code, the role of USKOK has been further strengthened taking into consideration that 3098 persons were sent before the court, of which 2915 were found guilty.⁵⁷

Other social, political and legal factors toward fighting corruption in Croatia

Legal reforms, prosecutors training in asset tracking and special surveillance methods and better cooperation with police counterparts have played a significant role in making the prosecution and trials more efficient. Political will was a key factor to the overall success of USKOK. High level officials have been accused and convicted including: the former Prime Minister of Croatia, two vice ministers, a Minister of Interior, another of Defense, the Ambassador to the UN, some generals of the Croatian Army and other high officials of the Intelligence Security Agency.⁵⁸

In the long term, the sustainability of Croatia's gains against corruption will depend upon preventive reforms and educational efforts to change societal habits which should serve as lessons for Albania. Regarding the sustainability of the reform, it seems that the measures which were taken so far are deeply rooted in the system and most likely will have an everlasting effect. Although corruption still remains a problem in Croatia, the number of high profile corruption prosecutions has increased significantly over the past years.

Concluding Remarks

This piece has sought to analyze how Albania has been undertaking its fight against corruption by looking at the National Bureau of Investigation (NBI) it set, the role of the Law on Organization of Special Anti-Corruption Structures (SPAK), and how all officials, directors and investigators involved are screened in order to assure independence from unsuitable means. A comparison with former candidate country, now EU Member State, Croatia was also examined in order to offer a look into a successful case of a similar nature.

Based on this research, below are three main findings.

Political will is the keystone of every anti-corruption initiative

The establishment of the NBI and an overall anti-corruption structure is a process that requires strong political commitment. The several months' delay in issuing the law establishing the NBI structure due to internal political clashes between the opposition and the government has delayed the process of establishment of new judicial institutions. One of the main reasons for the delay is the time taken by an "Ad Hoc Committee" to re-evaluate the country's current judges and prosecutors in a vetting process. Given the importance of justice reform toward EU accession, the government of Albania must continue with the establishment and proper functioning of these institutions without delay.

⁵⁷ Fighting Corruption in Croatia and Recommendations for Albanian Authorities, EURALIUS. Available at: <http://www.euralius.eu/index.php/en/news/127-fighting-corruption-in-croatia>

⁵⁸ Id.

Independence of a specialized anti-corruption institution is fundamental

Lack of dependency of the newfound institutions is considered a fundamental requirement for a proper and effective exercise of its functions including Fiscal independence which is an important factor influencing the institution's performance. An independent and impartial anti-corruption institution is a key requirement to ensure its effectiveness and shield from political influence. In the case of Albania, this was done through removing the competencies of the General Prosecutor Office and the Ministry of Internal Affairs over the NBI and establishing this institution under the Special Prosecution Office as an independent body responsible for investigation and prosecution of corruption crimes and crimes therein related. Given the sensitivity of these cases, their investigation must be done from a politically independent institution in order to avoid witch hunts. However, the level of independence of anti-corruption institutions must be in accordance with human rights and the rule of law. This means anti-corruption institutions must be independent yet accountable and their scope of work and competencies must be clearly defined with the law.

Support from international actors guarantees long lasting success

International support is an important factor which enables sustainable success of anti-corruption institutions. In Albania, the foreseen services from international experts such as the FBI will only last for a period of two years following the establishment of the NBI. Given that so far History has shown that Albania has failed to carry out anti-corruption measures on its own, the international element must remain with support to the NBI until Albania receives its full membership to the EU. The case of many developing countries has shown that the longer the support from international actors.

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Policy Analysis

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policyrelevant choices and recommendations to the key stakeholders and parties of interest.



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