



Fight against corruption as a non-negotiable condition in the negotiations with EU: Bridging the gap between public opinion and government discourse

Geron Kamberi

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Tel: 00355 4 22 509 86

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GERON KAMBERI
EXPERT ON EU INTEGRATION

FIGHT AGAINST CORRUPTION AS A
NON-NEGOTIABLE CONDITION IN THE
NEGOTIATIONS WITH EU:

BRIDGING THE GAP BETWEEN PUBLIC
OPINION AND GOVERNMENT DISCOURSE

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ABSTRACT

Albania started accession negotiations on July 19, 2022, 8 years since candidate status was granted by the European Commission. Negotiations started after a long-term waiting period for Albania compared to other Western Balkans countries. Such delays were related to the Greek veto on the North Macedonia name dispute, as well as the Bulgarian veto afterwards. But a very important factor in the case of Albania was the lack of progress in fight against corruption areas such as failing to provide track records of the investigation and trials of high-level corruption cases.

State	Open Negotiations with SAA	Signing SAA	Enter to force SAA	Application to EU candidacy status	EU Candidacy status	Open Negotiation For EU Accession	Signing the EU Accession Treaty	Enter to force the EU Accession Treaty
Croatia	24.11.2000	29.10.2001	01.02.2005	21.02.2003	18.06.2004	04.10.2005	09.02.2011	01.07.2013
Montenegro	10.09.2006	15.10.2007	01.05.2010	15.12.2008	17.12.2010	29.06.2012	N/A	N/A
Serbia	10.10.2005	28.04.2009	01.09.2013	22.12.2009	01.03.2012	21.01.2014	N/A	N/A
North Macedonia	05.04.2000	09.04.2001	01.04.2004	22.03.2004	17.12.2005	19.07.2022	N/A	N/A
Albania	31.03.2003	12.06.2006	14.01.2009	28.04.2009	24.06.2014	19.07.2022	N/A	N/A

Tab 1: The table shows the timeline difference of some other Western Balkan countries such as Croatia, Montenegro and Serbia compared to Albania and North Macedonia regarding EU integration process.

Although Albania received its candidacy status in 2014 there was not yet a formal date set to open negotiations. On 01 April 2018, the Commission issued an unconditional recommendation to open accession negotiations with Albania, in 2019 the EU Councils Conclusions set out the path towards opening accession negotiations depending on progress made in five priority areas such as the 1) judiciary, 2) fight against corruption and 3) organized crime, 4) property rights, and 5) public administration. In that way the fight against corruption was ranked amongst five key policy actions that Albania government should undertake to progress with the EU membership negotiation and would be considered always a must in the upcoming EU Commission statements related to that process. In that framework before its First Intergovernmental Conference, Albania is called upon to make further progress on electoral and judicial reforms and in the fight against organized crime and corruption.

One of the main reasons for the delays in achieving the track records recommended by the EU has been the lack of consensus about the results. Best epitomised is the distant

interpretations of the political parties to EU commission annual reports. During the years this political discourse has been calcified and become the mainstream of the government discourse even vis a vis media and civil society organization reports. However the surveys show that the public¹ and the businesses² see corruption as the main problem in the country and the new methodology of negotiations refers to the right of the EU institutions to consult other sources to take decisions. Also, it³ stipulates that the EU Commission will also use third party indicators to provide EU Member States with the broadest possible base for their decisions.

¹ Opinion poll : Trust in governance 2021 ,112 pages. The ‘Trust in Governance’ (See <https://idmalbania.org/public-opinion-poll-trust-in-governance-2021/>)

² American –Albania Chamber of Commerce-AMCHAM Business Index 2020-2021, 71 pages(See <https://amcham.com.al/amcham-publikon-indeksin-e-biznesit-per-periudhen-2020-2021/>)

³ Enhancing the accession process - A credible EU perspective for the Western Balkans, 05th February 2020, Communication from the Commission to the European Parliament , the Council , The European Economic and Social Committee and the Committee of the Regions Brussels, 5.2.2020 COM(2020) 57 final(See [https://neighbourhood-enlargement.ec.europa.eu/enhancing-accession-process-credible-eu-perspective-western-balkans_en- \)](https://neighbourhood-enlargement.ec.europa.eu/enhancing-accession-process-credible-eu-perspective-western-balkans_en-)

INTRODUCTION

The policy paper is an attempt to make a summarized analysis about the anti-corruption policies that Albania has followed since the 90s and especially the role that such factor has played so far towards EU membership. On the other hand, it is intended to provide an approach between the Albanian public's perception of corruption and how the government sees it from the perspectives to build "evidence-based policies". Fight against corruption and the track record that the Albanian government must show in this regard will be a non-negotiable condition within the process. The new enlargement methodology has included the fight against corruption as part of the first cluster (so called fundamentals). Although the fight against corruption is seen as a process that never ends, it is always important that each candidate country must build the "anti-corruption ecosystem" before the citizens of other EU countries work and live in its political, economic, social and legal "environment". Since July 19, 2022, Albania has officially started a long process related to the final membership in the EU and the negotiations will have a constant refrain "the fight against corruption". As Voltaire said, "*before we discuss, we must agree on the terms*". In that framework, it is important that the anti-corruption discourse on the part of the Albanian government and the EU must be at the same wavelength. Any attempt to ignore data, figures, facts, or surveys carried out by international or Albanian organizations regarding the perception of the Albanian public towards corruption doesn't help this process. All anti-corruption policies that have been undertaken by the Albanian governments as a form of counter-reaction to corruption have not succeeded in reducing the perception of the Albanian public that such phenomenon is widespread. The involvement of the public in various forms in fight against corruption, the digitization of public services to avoid petty corruption or the radical reforms in the justice system that Albania undertook a few years ago, haven't managed to bring relevant changes. Since the European Commission published the first Report on Albania in 2003.⁴ and until today, it is indicative that corruption has been a problem for both left and right governments. However, it should be stated that the fight against corruption is something which must be beyond the left and the right. The paper aims to provide in section 1. *Corruption as a "Siren song" and anticorruption policy for post-communist Albania*, a summary but even a detailed description of the entire legal and strategic framework that has been built where is explained that the anticorruption policy framework is seen as something necessary, but which has not been sufficient to bring essential changes. In the second section *Corruption as 'public perception' and through 'public reaction'* the approaches of all surveys or polls such as CPI of Transparency International or Albania Security Barometer which bring the

⁴See https://www.parlament.al/Files/Integrimi/2003_progress_report_en_23382_1.pdf

public's perception towards corruption are analysed. In that framework any governmental discourse in certain time to minimize such perception is often an attempt or autosuggestion to convince oneself that the disease does not exist or isn't so serious. It is a misleading approach since it doesn't push you strongly towards the medicine to cure it. The next section 3.3. *Anticorruption policies under EU conditionality approach and its role model: The "refrain" of track records for Albania negotiations towards EU membership* is a descriptive analysis of how Albania's negotiation process to join the EU through the principle of conditionality has shaped a good part of the approach of anti-corruption policies. Then the paper is concluded with part of the Recommendations which aim to provide a series of steps that must be taken to build a sustainable anti-corruption approach from CSO perspective. The first principle to be mentioned is that all actors must have the same understanding on it and the civil society as one of the key stakeholders of the European integration, must play its monitoring and corrective role towards any policies and actions that may slow down the EU negotiation process.

CORRUPTION AS A “SIREN SONG” AND ANTICORRUPTION POLICY FOR POST-COMMUNIST ALBANIA

In the case of post-communist states like Albania, which is experiencing a long and harsh transition towards a competitive market economy and a democratic system, corruption can have power to transform such transition into a tunnel where often seems that there is no light at the end. Especially after the 90s, which marked the fall of the communist regime, people faced the phenomenon of widespread corruption at all levels. Beyond their anger with its often-obvious aspects, its spread at many levels of the administration became like a “Siren Song” that was luring officials and citizens into a relationship of giving and receiving bribes to solve problems instead of enforcing the law. As it is often defined that corruption resembles a “tango” that requires two people to dance. During the period 1992-1997 that culminated with the crisis of pyramidal firms, it could be said that such "tango" was often played under the sound of the "corruption sirens' song" which brought the crisis of 1997 and the completion of the first phase of the chaotic Albanian transition. Meanwhile along the period 1997-2005, the Albanian government and especially the international community that was helping Albania to recover its institutions after the crisis of 1997, started to build an approach and an anti-corruption agenda. It took into consideration the fact that the concept of good governance make sense only in a society and public administration that is “free of corruption” in all its classic forms known as petty corruption, grand corruption and systemic or endemic corruption⁵. In 1998, as part of a broad governance and anticorruption agenda defined and supported by the Friends of Albania, the World Bank has helped the Albanian government to develop and implement the first Anti-Corruption Plan (ACP)⁶, which included 150 specific actions affecting economic policy, rule of law, public administration, public finance, customs administration, procurement, audit, and public awareness. In the following years such “anticorruption policy approach” was followed by a series of surveys so – called Business Environment and Enterprise Performance Survey (BEEPS), that World Bank undertook with public officials in Albania to establish baseline measurements of the performance of the public

⁵ According to the definition of Transparency International (TI) 1) *Petty corruption* occurs at a smaller scale and takes place at the implementation end of public services when public officials meet the public. such as registration offices, police stations, state licensing board sand many other private and government sector2) *Grand corruption* is defined as corruption occurring at the highest levels of government in a way that requires significant subversion of the political, legal and economic systems. Such corruption is commonly found in countries with authoritarian or dictatorial governments but also in those without adequate policing of corruption 3) *Systemic corruption (or endemic corruption)*is a corruption which is primarily due to the weaknesses of an organization or process. It can be contrasted with individual officials or agents who act corruptly.(See <https://www.transparency.org/en/corruptionary/petty-corruption>;<https://www.transparency.org/en/our-priorities/grand-corruption>)

⁶ See World Bank support Albanian government towards an anticorruption policy measures http://web.worldbank.org/archive/website01337/WEB/0_CO-23.HTM

administration and its constituent parts. Such surveys continued to raise the concerns on the weak governance and poor business climate, it was reflected in the data from the second covering the period 1999-2002, which showed an increase in perceived administrative corruption and state capture in Albania compared to the first BEEPS, which covered the period 1996-1999. An April 2002 a report produced under the guidance of the Southeast European Legal Development Initiative (SELDI)⁷ indicates once again that Albanians rank corruption as the country's top problem. As result of such pressure even from the international community and donors Albania government started to build a strategic framework regarding anticorruption policies. It was reflected through the approval of the first national strategy against corruption. As a result, the World Bank continued supporting anticorruption efforts through several operations. Building on the NSSD- National Strategy of Social Economic Development process⁸, the World Bank's future operations were focused on increasing transparency and accountability to strengthen institutions and reduce corruption. In that period the Albanian Government also demonstrated commitment through an agreement to be resurveyed in the coming years and to systematically monitor medium-term improvements in the functioning of the public administration. The World Bank also supported the Government of Albania undertake a survey of salaries in the public sector, the private sector and within the local offices of the donor community; a survey which has provided important information in designing salary reform measures in Albania. It created the foundations for public administration reform, following the adoption of the new Civil Service Law in November 1999⁹. It marked the period of so – called “ *strategizing anticorruption policies*” which will paved the way for a series of similar policies and strategies in the following years by different Albanian government as an institutional attempt and political will to fight corruption But as it was verified later these weren't enough measures since structural changes , a pro-active approach and a public pressure associated with a different mindset by policy and decision makers would be needed to demonstrate the efficiency of such policies.

Meanwhile the efforts at the institutional and legislative level during the period 1997-2005, which can also be considered as the “*second phase of the transition and formal institutionalized of anti-corruption policies*”, would be concluded by addressing the concept of “conflict of interest and public functions” through the adoption of Law No. 9367 dated

⁷ Corruption Indexes Regional Corruption Monitoring in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania, and Yugoslavia, SELDI- Southeast Europe Leadership for Development and Integrity, April 2002, 22 pages (See:https://seldi.net/fileadmin/public/PDF/Publications/Corruption_Indexes_2002.PDF)

⁸ Decision of the Council of Ministers Nr. 137, dated 7.3.2003 For the approval of the Letter of Development Policies for the second phase of the loan, in support of the National Strategy of Social and Economic Development -NSSD (Extra Official Journal No. 81, Year 2012, Page 5); Decision of the Council of Ministers No. 276, dated 08/05/2003 "For the approval of the Letter of Development Policies for the II Phase of the loan in support of NSSD (National Strategy of Social and Economic Development)" (Official Journal No. 41, Year 2003, page 1569); No. 561, dated 01/08/2003 For the approval of the Action Plan for the removal of administrative obstacles in the field of investments (Official Gazette No. 74, Year 2003, Page 3398)

⁹ Law No. 8549, dated 11.11.1999 Status of the civil servant.

07.04.2005 For the prevention of conflict of interests until running public positions.¹⁰ Also by the Decision of Council of Ministers No. 561, dated 01/08/2003 a framework of actions that would avoid grounds for officials to abuse complicated administrative procedures was approved.

At first glance, it seemed like an important conceptual leap of the prevailing mentality on public official power, but often these initiatives turned into an " *anticorruption bureaucratic policy rather than a practical one*" where significant results were missing. It is testified by the fact that the left-wing governing coalition, which undertook the entire legal and strategic framework, lost the election in 2005 thanks to an " *anti-corruption crusade*" followed by the right-wing opposition coalition.

The approach of anti-corruption policies through the strengthening of the normative framework continued with high intensity during the period 2005-2013 marking what can be considered a "third phase" transition of the anti-corruption policies. This period coincided with the signing, ratification, and entry into force of the Stabilization-Association Agreement (SAA).¹¹, which was based on the principle of conditionality by the EU regarding the implementation of such agreement provisions. In that framework the following Progress Reports of the EU for Albania, would be structured according to the 35 chapters of the *acqui communitaire* and the Copenhagen criteria. "Fight against corruption" would be the refrain that would accompany every paragraph of the political criterion in the Progress Reports of the EU, especially from 2006 onwards..¹²

From a normative point of view, the approval of Decision of Council of Ministers No. 794 dated 19/12/2005 On the establishment of the Anticorruption Task Force.¹³ marked the beginning of a more proactive approach from top to bottom to fight corruption. On the other hand, the ethical aspect of public administration was emphasized again, moving from

¹⁰ Law No. 9367 dated 07.04.2005 For the prevention of conflict of interests until running public positions (Official Journal No. 31, Year 2005, Page 1147)

¹¹ Law No. 9590, dated 27/07/2006 "On the ratification of the Stabilization-Association Agreement(SAA) between the Republic of Albania and the European Communities of their member states (Appendix II(B) (Official Journal Nr. 87, Year 2006, Page 2955)

¹² Albania Anti-Corruption Study December 2007 (revised January 2008),Swedish International DevelopmentAgency-SIDA,61pages(See<http://www.aidharmonisation.org.al/skedaret/1203101753-SIDA%20Albania%20Anti-Corruption%20Study%20-%20Revised.pdf>) ; Albania: Overview of corruption and anti-corruption,2010,10pages(See<https://www.u4.no/publications/albania-overview-of-corruption-and-anti-corruption.pdf>)

¹³ Decision of Council of Ministers Nr 794 dated 19/12/2005 On the establishment of the Anticorruption Task Force (Official Joournal No. 99, Year 2005, Page 3162)

a formal legal framework that "*avoided conflict of interest*" to "*avoidance of nepotism*" as a feature of societies where clientelism and family ties are often visible

It should be stated that in this period, Albania ratified one of the most important international documents in the field of the fight against corruption as it was the United Nations Convention Against Corruption (UNCAC)¹⁴. It is the only legally binding international anti-corruption multilateral treaty and was negotiated by member states of the United Nations (UN) and it has been adopted by the UN General Assembly on 31 October 2003 and entered into force in 14 December 2005

Regardless of these changes that were followed by a special law to fight corruption, such as Law No. 10192 dated 03.12.2009¹⁵, a lot of legislative acts were drafted based on business lobbying which paved the way to grant access into concessions of public assets and public-private partnership models (PPP)¹⁶.

The last almost 10-year period from 2013 until now, which has been characterized by the left-wing government, has witnessed the same efforts that have been focused mainly on the legal and strategic framework, but without very substantial results in the fight against corruption. The most important structural change that created high expectations among the Albanian public was the adoption Justice Reform strategy¹⁷ in 2016 that culminated with the vetting process¹⁸ of judges and prosecutors and the establishment of the Special Court & Prosecution Against Organized Crime and Corruption (SPAK) and the National Bureau of Investigation (BKH)¹⁹.

Regarding strategic framework, this period has experienced the already known phase of what we can define as "*strategic inertia*" that began with a new strategy against corruption through Decision of Council of Ministers No. 988, dated 8.11.2013.²⁰

¹⁴ Law No. 9492 dated 13.03.2006 On the ratification of the UN Convention against corruption (Official Journal No. 27, Year 2006, Page 885)

¹⁵ Law No. 10192 dated 03.12.2009 On the prevention and attack of organized crime, corruption and trafficking (Official Journal No. 181, Year 2009, Page 8065) and Decision of Council of Ministers No. 717 dated 25.08.2010 For the approval in principle of the Agreement for the establishment of the International Anticorruption Academy as an international organization

¹⁶ https://images.transparencycdn.org/images/2021_Report_DeconstructingStateCaptureAlbania_English.pdf -

¹⁷ National Justice System Reforms Prepared from High Level Experts Group, Special Parliamentary Commission on Justice Reform, 2015, 52 pages (Albanian language strategy version (See <https://rm.coe.int/strategjia-ne-refomen-e-sistemit-te-drejtises/16809eb53a>)

¹⁸ Law No. 84/2016 dated 30.08.2016 On the temporary reassessment(vetting) of judges and prosecutors in the Republic of Albania (Official Journal No. 180, Year 2016, Page 20725)

¹⁹ Law No. 95/2016 dated 06/10/2016 On the organization and operation of institutions to fight organized crime and corruption (Official Journal Nr. 194, Year 2016, Page 21423)

²⁰ Decision of Council of Ministers Nr . 988, dated 8.11.2013 For the approval of the Action Plan for the fight against corruption and organized crime (Official Journal No. 182, Year 2013, Page 7712)

One of the innovative elements that aimed to bring a structural change in relation to the institutional aspect of the fight against corruption was the Electronic System for Registration and Tracking of Data on Cases of Corruption and Harmonized Statistics. On the other hand, the introduction of the concept of "whistleblowers" was supported legally with the protection and guarantee of their rights through Law No. 60/2016 dated 02.06.2016.²¹ . It could be considered a radical change to build a mentality of conscience and responsibility of public officials. Although the "whistleblowers" have not yet created real "success stories" so far, they remain an institutional factor that tends to correct and curb abusive behavior with public funds within the public administration.²²

Regardless of these structural changes, currently the Network of Coordinators against Corruption, which has been placed in each ministry, under the direction of the Ministry of Justice as the National Coordinator, remains the main structure in force that, from a formal point of view, guarantees the process of reporting and following up on cases.

Meanwhile the previous efforts to involve the public in the fight against corruption were formalized through the introduction of the so-called approach "co-governance" which was reflected through the approval of Law No. 107/2021 dated 04.11.2021 On Co-governance.²³ However such approach was mostly used as a preventive measure against the phenomenon of "petty corruption" and the abuse of mid-level officials since citizens could directly write their problems into Electronic Platform of Co-governance, administered by the Agency for Dialogue and Co-governance.²⁴ under the office of the Prime Minister.

In summary, beyond this long journey of anti-corruption policies, which have often been undertaken under the "pressure" of public opinion's perception on widespread corruption in Albanian society and especially the persistence of international partners such as the EU and the USA, corruption remains a great challenge for the government and the public.

²¹ Law No. 60/2016 dated 02.06.2016 On reporting and protection of whistleblowers(Official Journal Nr 115, Year 2016, Page 8218)

²² National Integrity System Assessment Albania, 2016, 237 pages This report is an analysing of the strengths and weaknesses of Albania's institutional design and practice in the fight against corruption which has been a great challenge and responsibility. It is the first National Integrity System assessment for the country. It was prepared by the National Democratic Institute, the Balkan Investigative Regional Network – Albania, and the non-governmental organisation Res Publica.(
See https://images.transparencycdn.org/images/2016_NISAAlbania_EN.pdf-

²³ Law Nr 107/2021 dated 04.11.2021 On Co-governance (Official Journal Nr 197, Year 2021, Page 18605)

²⁴ VKM No. 526 dated 29.07.2022 For the organization of the Agency for Dialogue and Co-governance (Official Journal No. 111, Year 2022, Page 13730)

CORRUPTION AS PUBLIC PERCEPTION AND THROUGH PUBLIC REACTION

Corruption is one of the country's greatest barriers towards its path to EU membership and impact the foreign investment climate. Although the public procurement and construction sectors are particularly affected by different forms of corruption, the enforcement is still poor and conviction rates are very low. It should be noted that it takes up many different forms and occurs in different levels. Sometimes its rapid spread in different sectors looks like the spread of a virus where bribing public officials, discriminatory application of laws and taxes often is associated with the illegal funding of political parties and misused of the state property and public funds ..²⁵

Corruption is also closely interlinked with organized crime as some senior state officials being involved in smuggling, contraband, tax evasions and land grabbing. It affects the daily lives of Albanian ordinary people in their dealings with the public administration, the service provider that a remarkable eight out of ten adult Albanians interact with it at some point during the year..²⁶

Meanwhile it has a direct impact on the human rights and environmental impacts of business activities since if it can be left unchecked, it can significantly weaken the protection of local communities against such impacts and undermine the efforts to strengthen respect for human rights. Even the Sustainable Development Goals implementing the 2030 Agenda for Sustainable Development²⁷ acknowledge the links between sustainable development and corruption, by including a specific commitment (expressed in target 16.5) to reduce corruption and bribery in all their forms. Also, various resolutions of the UN Human Rights Council also underline the direct link between the fight against corruption and the protection of human rights.

One of the main indicators that shows the extent of the spread of corruption in a certain country is the perception of public opinion regarding this phenomenon. Transparency International's CPI has now become one of the most recognized indicators at the international level. Last report published by Transparency International, Albania's Corruption Perception Index-CPI or its CPI score dropped by one point, ranking 110th out of 180 countries globally, thus being six places lower on the list of Transparency International compared to 2020. Having achieved an index of 35 points, the country is 8

²⁵ Corruption as experienced by the population, : Albania 61 pages , 2011. This report was prepared by UNODC-United Nations Office on Drugs and Crime, Statistics and Surveys Section (SASS) and Institute of Statistics of Albania(INSTAT)(Seehttps://www.unodc.org/documents/data-and-analysis/statistics/corruption/Albania_corruption_report_2011_web_small.pdf)-

²⁶ Corruption on Albania : Perception&Experience , Survey 2016 :Summary of Findings, 31 pages. (See https://www.idrainstitute.org/files/Corruption%20In%20Albania%202016_EN.pdf-

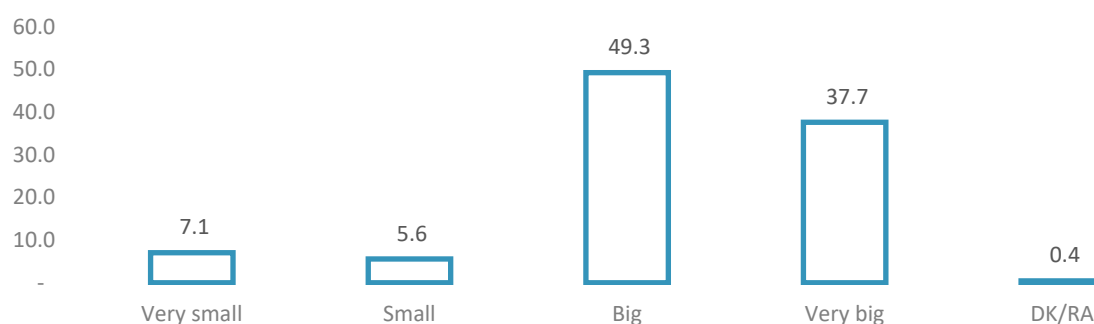
²⁷ https://ec.europa.eu/environment/sustainable-development/SDGs/index_en.htm

points below the world average, and together with Bosnia-Herzegovina BiH, takes the lowest position among the countries of the Western Balkans. Besides BiH, Albania shares its place with Thailand, Malawi, and Mongolia. The CPI figures show that Albania has not made significant progress since 2012 when its index was 33 points. Although the 2021 score of 35 is not the lowest in the last ten years (in 2013, Albania achieved 31 points and was in 116th place), this year's decline testifies to the large-scale corruption in the country

The Center for the Study of Democracy and Governance has published the Albanian Security Barometer 2022 (ASB).²⁸ It is the fourth edition and is an effort to link security with citizens opinions, to strengthen the influence of the public opinion on both the policy making processes in relation to security policies and security delivery. It should be mentioned that the barometer dedicates a special attention to the theme of corruption by examining corruption factors and causes, institutional responses to corruption and trust in the anticorruption action by the state institutions, also exploring the nexus between corruption and organised crime.

The citizens perceived the corruption as a big and a very big threat of security and is reflected in the figures provided by Albanian Security Barometer (ASB , 2022) .

Corruption threat in Albania



Graph 1. Opinion regarding the level of threat from corruption in Albania(Source : Albanian Security Barometer, 2022)

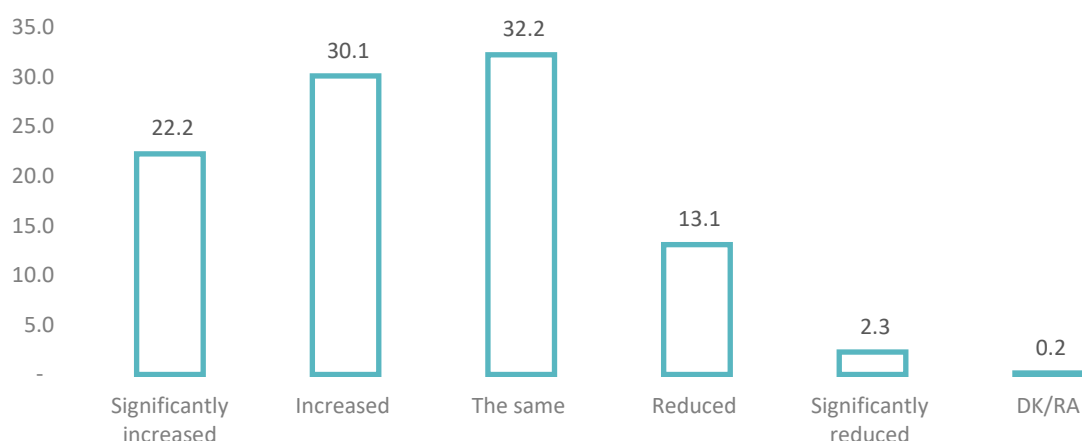
Even in the terms of corruption trends, the majority think that in the last five years corruption has increased or significantly increased. Taking account that the large majority of the citizens think that politicians and the public administration are responsible for the continuity of corruption, such perception undermine their trust to the institutions .If consider the efforts of government to minimize such perception such approach it creates a so-called” *spillover effect of mutual mistrust*” which makes the anticorruption environment weak.²⁹

²⁸ Albanian Security Barometer : National Survey, 2022, Center for the Study of the Democracy and Governance, 94 pages Prepared by Arjan Dyrmishi

(See <http://csdgalbania.org/wp-content/uploads/2022/06/ASB-2022-ENG.pdf>)

²⁹ Ibid

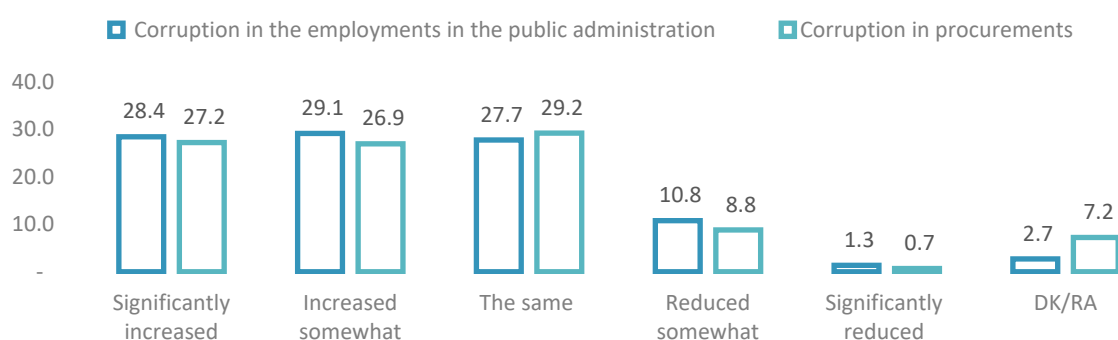
Compared to 5 years ago, corruption today is:



Graph 2. Opinion regarding corruption trend in the last five years (Source : Albanian Security Barometer , 2022)

The public opinion see the corruption mostly focused on the two main areas of government involvement such as employment in the public administration and corruption in procurements .(**Albanian Security Barometer-ASB, 2022**)³⁰

Trend of corruption in the employments in the public administration and corruption in procurements



Graph 3 Opinion regarding corruption in employments in the public administration and in public procurements in the last 3 years.(Source :Albanian Security Barometer-ASB, 2022)

In that framework , a proactive approach to bridge the gap between the public perception on the corruption and governmental discourse on that issue is the transparency on the

³⁰ Ibid

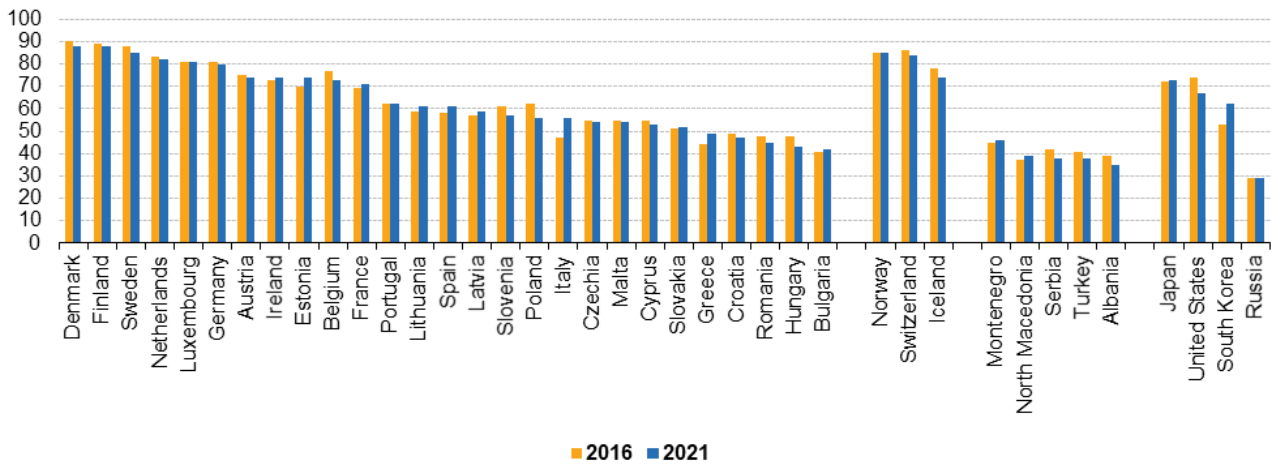
spending of public money through procurements is provided by “watch dog “civil society organization The Project Open Procurement.al³¹, which is funded by the National Endowment for Democracy is an effort to support such approach. The database for transparent procurement of Albanian Development Fund in Local Government coincides of transparent data (open data) on tendering procedures in the 61 Municipalities of the country. This database has well-structured information for any tendered procedure or contract on Public Works; Purchase of Goods; Purchase of Services or Public Private Partnerships PPP. Meanwhile, the RedFlag system, which is a procurement quality evaluation and scanning system, has been installed in it. The system selects and marks automatically, through algorithms, some procedures that coincide with facts, events, set of circumstances. Each fact represents a possible risk for illegal, unethical behaviour, with a high risk of favouritism, lack of competition, and opportunities for corruption.

However according to a comparative chart (see below) that Eurostat built for CPI indicator (2016-2021) Albanians and Russians have resulted the worst in the CPI index in Europe. In that framework Eurostat notes that an effective justice system is a prerequisite for the fight against the corruption.³² There is a clear relationship between CPI index and the perceived independence justice system since countries with high perception on independence justice system have lowest level of corruption

³¹ See <https://openprocurement.al/sq/index/project> ; <https://openprocurement.al/sq/index/list>

³²(See [https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=File:Corruption_Perceptions_Index_by_country_2016_and_2021_\(score_scale_of_0_\(highly_corrupt\)_to_100_\(very_\)\)](https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=File:Corruption_Perceptions_Index_by_country_2016_and_2021_(score_scale_of_0_(highly_corrupt)_to_100_(very_))))

Corruption Perceptions Index, by country, 2016 and 2021
(score scale of 0 (highly corrupt) to 100 (very clean))



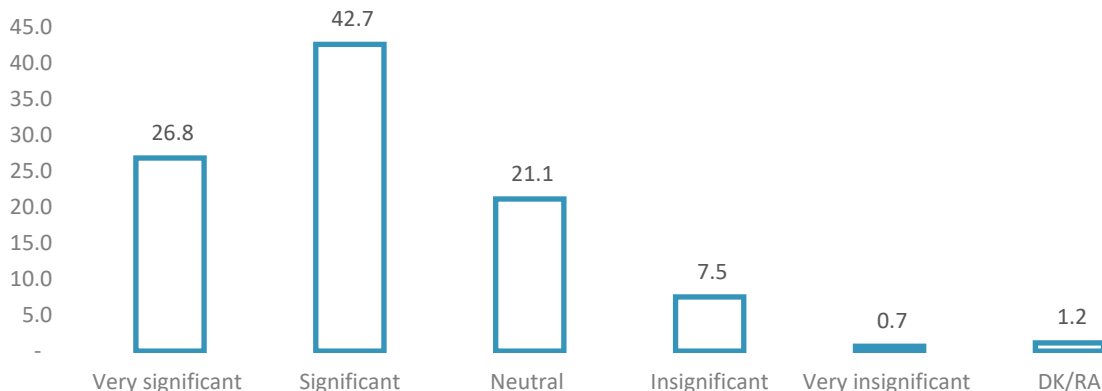
Source: Transparency International (Eurostat online data code: sgd_16_50)



Graph 4. Corruption perception index by country 2016-20219 (Transparency International)

For that reason, the Transparency International Index has seen the justice reform in Albania as a head start to the fight against corruption. It also reflected at the Albanian Security Barometer figures when the citizens are asked about the Special Attorney Office Against Corruption & Organized Crime (named in Albania SPAK) which was established due to the Albania Justice Reform Sector that took place in 2016. When asked specifically about the contribution of SPAK in the fight against corruption, the most of the respondents think SPAK contribution is quite significant

How would you rate the contribution of SPAK in the fight against corruption?



Graph 5. Opinion regarding the contribution of SPAK in the fight against corruption. (Source :Albanian Security Barometer-ASB, 2022)

However the delay caused in setting up key structures such as the Special Anti-Corruption Prosecutor's Office and the National Bureau of Investigation has contributed to a low expectation among the public opinion. There seems to be a clear link between the perception and reaction, particularly when citizens feel that the promise of good governance is no longer delivered, they lose trust in the institutions..

ANTICORRUPTION POLICIES UNDER EU CONDITIONALITY APPROACH AND ITS ROLE MODEL: THE “REFRAIN” OF TRACK RECORDS FOR ALBANIA NEGOTIATIONS TOWARDS EU MEMBERSHIP

The fight against corruption has a central place in the EU’s internal and external policies. It forms part of the EU acquis where are included preventive actions, criminalisation, freezing, confiscation and recovery of assets, international cooperation which are considered the key elements of any strategy to tackle corruption. The Albania –EU negotiation process is centred around the fight against corruption which itself can’t be measured only by number of adopted laws and strategic framework

All EU Member States are subject to monitoring and evaluation at the international level by the Council of Europe Group of States against Corruption (GRECO) and in the context of the UN Convention Against Corruption (UNCAC). Most of the Member States are also monitored by the OECD (Anti-Bribery Convention). In 2011, the Commission introduced a specific EU reporting mechanism, based on which one EU Anti-Corruption Report was presented in 2014.³³ The EU anti-corruption reporting mechanism was discontinued by the Commission in 2017. As a result, the only EU framework for assessing the effectiveness of anti-corruption efforts in the Member States is currently the European Semester of economic governance.

Sharing good practices is a corner stone of our work at EU level and in 2015, the Commission launched an EU anti-corruption experience-sharing programme. This offers anti-corruption practitioners a forum to seek inspiration from legislative, institutional and policy reforms in other Member States. The format is open and collaborative, allowing for a frank exchange on successful measures, but also on challenges and obstacles in effectively setting these in place

Meanwhile the 2018 reform of EU rules against money laundering delivered fundamental enhancement to the EU framework by setting up beneficial ownership registries of companies and other legal arrangements, setting up central registries of bank account information, enhancing supervisory cooperation and broadening the criteria for listing high-risk third countries.

One of the key actions within the framework of anticorruption policy has been The EU rules against money laundering have also been recently reinforced to better address issues of beneficial ownership and due diligence.

³³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52014DC0038>

In addition, a new Directive facilitating the access and exchange of financial and other information and improving the cooperation between law enforcement authorities and Financial Intelligence Units (FIUs).³⁴ and between FIUs has been adopted in June 2019. This Directive is an important milestone which will speed up financial investigations on serious and organised crime.

By virtue of this Directive, by mid-2021 the Asset Recovery Offices and other competent authorities have direct access to the national centralised bank account registries or data retrieval systems that all Member States are required to establish under new EU AML directive and will be able to expediently exchange information on bank accounts. In justified cases, Europol will also be able to obtain bank account information through the national authorities, which will enable Europol to support Member States' investigations more effectively.

The EU has also set up the European Public Prosecutor's Office, which is envisaged to take up its functions by the end of 2020 and will be competent to investigate and prosecute crimes, such as fraud, corruption, and money laundering where they affect the EU budget in 22 participating EU Member States.

Across the EU, have been striving to set in place measures to tackle corruption where can be mentioned, the European Directive on protecting whistleblowers which was agreed among the EU institutions in March 2019 and was formally adopted in November 2019.³⁵ . The directive and the national implementing legislations aims to guarantee a high level of protection for whistleblowers who report breaches of EU law by setting EU-wide standards. It is expected to prevent and deterrent fraud and other illegal activities which can affect the EU's financial interests and to the effective application of EU rules in a wide range of policy areas, including public procurement, financial services, and anti-money laundering.

As Albania has recently started its membership negotiations with the EU, key obstacles to the country's progress are expected to relate to the EU's "*fundamentals first*" approach. It is an well known fact that "*the fundamentals first*" approach, which was announced in EU Enlargement Strategy 2012-2013, places the focus of the EU integration process on democracy and the rule of law .Also, in its 2012-13 Enlargement Strategy, the EU introduced a "new approach" to negotiations in the area of rule of law. This recognized

³⁴ Proposal for a Directive of European Parliament and of the Council amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point(See <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52021PC0429>)

³⁵ Directive(EU) 2019É1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>)

"the need for solid track records of reform implementation to be developed throughout the negotiations process. Reforms need to be deeply entrenched, with the aim of irreversibility."³⁶

Albanian citizens are very aware of the obstacles to EU integration posed by corruption and organized crime. Compared to the previous enlargement rounds, the EU is expected to place a much greater emphasis on the quality of the implemented reforms, monitor the achieved results, demonstrate a track record of implementation of the approved legislation, improve administrative, institutional, and financial capacities as well as the resources for the provision of reliable statistical information. The "benchmark mechanism approach"³⁷ has also put a lot of pressure on the candidate country during the negotiations.

As the EU Commission has stated, the new accession methodology is based on four main principles such as 1) credibility, 2) predictability, 3) dynamism and 4) stronger political steering.³⁸ The key change proposed by the EU Commission is to group 35 chapters into six clustering chapters which assume to allow for more thorough political discussions on thematic areas and to identify opportunities for early alignment and integration into EU policies. In that framework 35 EU acquis chapters will be divided in clusters : 1) fundamentals, 2) internal market 3) competitiveness and inclusive growth 4) green agenda and sustainable connectivity 5) resource, agriculture and cohesion 6) external relations

At its meeting on 25 March 2020, the Council of the European Union adopted a series of requirements for Albania to fulfil before its first Intergovernmental Conference (IGC) with the EU Member States. This is based on the German Bundestag's adopted resolution of 27 September 2019, which allows the German Government to support accession talks with Albania, while simultaneously listing conditions required for the first and second Intergovernmental Conference.

It should be noted that out of fifteen conditions that the Council of European Union adopted for Albania, seven of them are directly related to the areas of the so-called cluster

³⁶ Communication from the Commission to the European Parliament and the Council : Enlargement Strategy and Main Challenges, Brussels, /* COM/2012/0600 final */(See <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52012DC0600>)

³⁷ Effective benchmarking for concrete rule of law reforms in the Western Balkans, October 2019 TEN- Think for Europe Network , Authors Dr .Simonida Kacarska,Dr Ardita Imeri (See <https://cep.org.rs/wp-content/uploads/2019/10/Effective-benchmarking-for-concrete-rule-of-law-reforms-in-the-Western-Balkans.pdf>)

³⁸ EU Commission Communication: A more credible, dynamic, predictable and political EU accession process, February 2020: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_181

"fundamentals" where anticorruption policies and actions are clearly highlighted as follow³⁹:

"Prior to the first Intergovernmental Conference (IGC), Albania should adopt...1) the continued implementation of the judicial reform, including ensuring the functioning of the Constitutional Court and the High Court, taking into account relevant international expertise including applicable opinions of the Venice Commission... and 2) finalize the establishment of the anti-corruption and organized crime specialized structures. Albania should also further strengthen the 3) fight against corruption and organized crime, including through cooperation with EU Member States and through the action plan to address the Financial Action Task Force (FATF) recommendations...."

On the other side the EU Council through its conclusions of 25 March 2020 noted that *"The Commission will provide a report on these issues, including progress regarding the track record when presenting the negotiating framework. The negotiating framework will be adopted by the Council and has to reflect that Albania has successfully addressed all five key priorities such as the... 3) initiation of criminal procedures against judges and prosecutors accused of criminal conduct during the vetting process, 4) a soundtrack record regarding fight against corruption and organized crime at all levels, including initiation of proceedings and completion of first proceedings against high ranking public officials and politicians."*⁴⁰

Even the EU Progress Report on Albania last year (2021) continues with the already known definition that corruption remains an important issue to be addressed by Albania.

On 19 July 2022 Albania and North Macedonia started accession negotiations with EU in Brussels in what was described as a "historic moment" for the two Western Balkans countries and for the European Union. As it is already known the first phase of the accession negotiations entails "screening" of the EU acquis. As EU Commission President von der Leyen said *"The screening will enable Albania and North Macedonia to get familiar with the rights and obligations of our union, from treaties to legislation to international agreements"*

In that framework, Albania must focus the fight against corruption on two broad areas – firstly, keeping the institutions themselves as free of corruption as possible; and, secondly, promote anti-corruption and transparency reforms through pro active polices.

³⁹ Enlargement and Stabilisation and Association Process – The Republic of North Macedonia and the Republic of Albania. Council conclusions, March 2020: <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>

⁴⁰ Ibid.

RECOMMENDATIONS

Despite the fact that Albania is still in the first phase of membership negotiations with the EU (19 July 2022), which includes the "screening" process, it is very important that the issues of the fight against corruption and track records that are part of cluster known as Fundamentals, must have a proactive approach

- Building a mechanism in the form of a Watchdog network with civil society organizations that report to the Parliamentary Commission on European Integration on cases of high corruption that are denounced in the media and their progress in the investigation and trial process.
- Defining clear deadlines for the investigation and trial of corruption cases of high-level officials, avoiding procrastination, and postponing them in relation to political circumstances or situations.
- A complete review of current public procurement procedures, the law on concessions, strategic investments and public private partnership (PPP) by establishing an Online Platform with full where is included the process of announcing the open tenders , the companies that apply and the way of selecting the winners.
- Creation of an *Electronic Register with red flag public procurement cases* that must be submitted at the end of each year for review and analysis to the Parliamentary Committee on European Integration by a Civil Society Integrity Network.
- Increasing public awareness through media campaigns "Albania: No Corruption" and strengthening the network of investigative journalists.
- -Publishing an *Newsletter: EU for Anticorruption policies*, prepared by the Office of the Chief Negotiator to inform the public about the duties and measures left by EU negotiating officials for Albania in that area.