

CHANGES IN THE PENAL CODE OF THE REPUBLIC OF ALBANIA CONCERNING CORRUPTION

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Abstract

Corruption is seen as an increasingly noticeable phenomenon in our society which seriously affects the lawful state, democracy and Human Rights. After the great political, social and economical changes which took place in Albania after 1995, the phenomenon boosted. With the approval of the new Penal Code, more precisely in law 7895 date 27.01.1995, there was the legal basis which sanctioned Corruption as a penal offense. Yet, with time it needed to be improved and amended. This was largely due to the insufficiency of the actual legal basis to prevent or eliminate this problem.

This study aims to give an analysis of the phenomenon of corruption based on the statistics of the governmental institutions, civic society and various experts, in order to reflect the trend of this phenomenon in Albania, in the context of European Integration. There will be an analysis of the Albanian legal basis which deals with this phenomenon focusing more on the Penal Code of the Republic of Albania. The analysis will take in consideration the eventual changes that these dispositions were subjected to in the context of the democratic developments within the Albanian Society and the ratification of various international acts during the EU integration process. Basically the purpose of the analysis is to give an answer to the question:

- How efficient have been these normative changes in the achievement of, what we may call the objective of the legislator, in reducing such a negative phenomenon of our society?

There will also be an analysis of the respective articles of the Penal Code of the Republic of Albania.

- The Constitution of the Republic of Albania.
- An analysis of the general part of the Albanian penal Code.
- The specific part of the Albanian Penal Code.

Keywords: Corruption, Convention, Changes, Integration

Introduction

After the downfall of the totalitarian regime and the transition of Albania into political pluralism, the Albanian state faced many challenges in all the fields, including the penal right.

The new political orientation aimed at changing the former system of the penal right basing it on democratic and west-oriented grounds. In the framework of such changes the Constitution of 1976 was abolished and the law “On the main constitutional dispositions” was approved. This law brought new juristic basis for the new legislation in the whole system of penal justice. The new Penal Code was drafted and approved on June 1st 1995 with regard to “On the main constitutional dispositions”. It was based on the principles of democracy after the model of the western countries.

The Penal Code of the Republic of Albania is a material penal law which constitutes one of the main sources of the Albanian penal right. It is an act of major importance which serves as a weapon in the fight against criminality for the protection of the society and the individual against all the illegal deeds which are considered as penal offences by this code. Among the penal offences sanctioned by the Albanian Penal Code, the dispositions against all forms of corruption hold a considerable position. These dispositions have been subjected to frequent changes in the recent years in the attempt to bring them closer to the models of the developed European countries.

In the context of the fight against corruption, the Albanian state has ratified the following conventions:

- “The Penal Convention on Corruption” ratified by law 8778, date 26.04.2001, updated by law 9369, date 14.04.2009
- “The United Nations Convention Against Corruption” ratified by law No. 9492, dated 13.03.2006
- The Convention on the Search, Seizure and Confiscation of Proceeds of Crime”
- Resolution (97) 24 “On 20 Principles of Fight Against Corruption”
- Recommendation R (2000) 10 “On the Ethical Code of the Public Employees”

These conventions have had an effect on our domestic legislation as well. Therefore, the purpose of this study is to analyze:

- How did the Penal Code of the Republic of Albania change after the ratifications of various international acts?

- What has been the effect of the anti-corruption conventions ratified by Albania in our domestic legislation?

This analysis will reflect the changes of the Penal Code with regard to the ratification of the European Conventions as one of the many factors which paves the way of Albania towards European integration.

A brief historic overview on the development of the Penal Code in Albania

The Albanian Penal Code, as a crucial part of the Penal Justice, has been drafted and developed parallel to the evolution of the Albanian State. The History of the Penal Justice in Albania begins with the foundation of the Independent Albanian State and the Government of Vlora in 1912.

The period between 1912- 44 is very short compared to the ancient history of our nation, though if we consider its developments and dynamics, we can call it one of the most important ones. (Sufaj, 2008)

The great changes that took place during 1912 – 1944 had a huge effect on the field of Penal Justice. Because of several obstacles such as the beginning of the First World War, claims of neighboring countries over the Albanian territory, and the social disputes within the country, the efforts of the Government of Vlora for the foundation of the new Albanian state were not successful till 1920. The Government of Vlora has passed a number of different laws in the attempt to organize the Penal Justice in Albania, but it could not issue a Penal Code. After Ahmet Zogu came to power, 1920-28, new laws, among which a penal Code, were approved.

In the same time, the presence of the Traditional Right (the Kanun) was strongly felt, especially in the mountainous regions of the country. The Albanian Penal Code which was created based on the Italian Penal Code (1889) was approved on 01.06.1928. The approval of this Code marked the division of the Albanian Penal Justice from the Ottoman influence, and its orientation to Western European democratic principles. During 1939 – 1944 Albania was under foreign invasion and the Penal Justice was an instrument of the invaders. During 1945-1990, Albania was under the Dictatorship of the Proletariat and the War of Social Classes. The penal Justice and the Penal Code served to the State-Party. The Penal Codes of 1952 and 1977 had some dispositions which protected the principle of law, but they were far from meeting the democratic standards.

In 1990 the totalitarian regime collapsed and it was replaced by a democratic system. This change was reflected also in the country's laws. For the first time after the totalitarian era, the fundamental principles of a democratic law state were reflected in the law 7491, approved on 24.01.1991 *'The main Constitutional Dispositions'* which was partly changed with the law 7561, approved on 29.04.1992. Based on these principles, the new Penal Code was approved by the law 7895 date 27.01.1995. The Code was drafted according to the patterns of some democratic European states such as: Italy, France, and Germany. For the time speaking, they corresponded to some extent to the international standards. One the main characteristics of this Code were the innovation of a new concept concerning the relationship between the state and the individual. If the law had hitherto protected the

interests of the State-Party, now the individual was in the focus. Since the approval of the Penal Code in 1995, Albania has made a series of important legal reforms. One of the most important ones is the Constitution of the Republic of Albania, passed in 1998, the fundamental act of the Albanian State. There were also a lot of ratified international agreements and treaties which brought about eventual amendments in the Penal Code.

Legal and Institutional reforms in the Albanian Justice System began in 1998 and are still continuing to be implemented aiming at the improvement and the alignment of the Albanian legislation with the Western European one, and the establishment of a contemporary and democratic legal and judicial system. (Albanian Helsinki Committee, Report on Human Rights in Albania, 2006)

The Penal Code has been amended with 12 laws which changed 115 of its articles, while 7 articles are abolished and 107 are changed. New dispositions have been added and existing ones have been amended. To put it in other words, 50 % of the Penal Code is amended due to the tendency to bring it as close as possible to the models of the Penal Codes of the Western Countries, with the final purpose to fulfill the EU standards and achieve the integration of Albania.

Some of the international acts ratified by Albania in the framework of the fight against corruption

After switching to the democratic system in the early 90s, Albania ratified a series of international acts which were incorporated in the domestic legislation and brought about changing of the existing laws, as well as issuing of new ones. In the Penal Code approved in 1995 the democratic principles of a lawful state were implemented after the pattern of many democratic countries in Europe. As far as the penal right is concerned, Albania has ratified international acts even after 1995. We are going to deal here those which focus on the fight against corruption. For instance:

“The Penal Convention on Corruption”

It has been ratified by law No. 8778 dated 26.01.2001, and updated by law No.9639 dated 14.04.2009. This convention gives the highest priority to the issue of the corruption which severely hampers the lawful state, democracy and human rights, good governance, transparency and social justice. It is also tackles competition, economical development and endangers the stability of the democratic institutions and the moral foundations of society. (Law no.8778, 2001)

“The United Nations Conventions against Corruption”

It has been ratified by Albania by law No. 9492, dated 13.03.2006. The states party to this convention expresses their concern on the gravity of the problems and risks related to the issue of corruption. It threatens the social stability and security by damaging the democratic institutions and

values, the ethical values and justice by tackling basic development and the lawful state. The parties also express their concern over the connections between corruption and other forms of crime such as: organized crime and economical crime including money laundry. It is necessary to stress out what is defined in Article 6 of this convention that every state which has signed it must distribute and further increase their knowledge on corruption prevention. (Law no.9492, 2006)

The Convention “On the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime”

It has been ratified by Albania by law No. 9646 dated 27.11.2006. The state members of the Council of Europe and the other signers of this convention shared the common belief that the purpose of the Council of Europe is the strengthening of the unity between its members. Therefore, they were convinced in the necessity of pursuing a common penal policy, with the purpose to protect society. Since the fight against crime has become an increasingly international problem, and there is a high demand in the implementation modern techniques in global scale, they all believe that one of these methods consists in depriving the criminals of the income of their crimes and the instruments for committing them.

According to the article 4 of this convention, “Every party must take the necessary legislative as well as other necessary measures to empower the identification, tracing, or the immediate freezing of the incomes which are subject to the confiscation in accordance with article 3, with the purpose to facilitate the execution of a latter confiscation. The achievement of this objective requires a functional system of international collaboration (Law no.9646, 2006).

Resolution (97) “On 20 Principles of Fight against Corruption”

This resolution of the Council of Europe, demands first of all the sensitizing and awareness raising of the public opinion about the passive corruption, and its forms of manifestation in the relations between the citizens and the state employees or the functionaries of the local power.

The Albanian State has participated in several programs against corruption or organized crime organized in the South-Eastern Europe, or in similar programs initiated by international organizations which operate in Albania. In term of regional partnership, the Albanian state is part of SPAI (Stability Pact Anti-corruption Initiative) initiated in February 2000 in Sarajevo among eight regional countries. It has also been a part in the international developments in this field.

The Council of Europe has appointed a mechanism of control (Greco 2003) to monitor the implementation of the basic anti-corruption principles in accordance with the action plan against corruption. Corruption nowadays reveals itself openly in the public administration sectors. The facts

supporting this statement are very easily identifiable and measurable. Systematic measurement of corruption levels in the state institutions was considered as difficult in the past, but today there are international structures dedicated to the statistic measurement of corruption, such as: The World Bank, the Global Organizations on Crime Study, the World Economic Forum, Transparency International (TI) etc. That conduct periodic surveys for the monitoration of corruption levels worldwide.(ACAC The Albanian Coalition Against Corruption – Buletin pg.9)

According to the report of TI, Albania has dropped eight places in the classification of the perception of corruption in 2011. It ranked 87th out of 173 countries in 2010, while now it is in the 95th position. In an evaluation system where the top grade is 10 for countries with zero corruption, the estimate for Albania is 3.1, which means 0.2 points less than the last year. This report is a clear indicator of the corruption in our country.

The changes in the Penal Code with regard to the international acts ratified by Albania

The approval of the Constitution in 1998 and the ratification of several international acts from Albania after 1995 were accompanied with many changes and amendments to the Penal Code in order to bring it our legislation closer to the fellow ones of the democratic countries, and help the Albanian Integration in EU. This remodeling was characterized by an addition of new penal offences such as the ones about the organized crime, trafficking, corruption, terrorism, computer hacking and domestic violence.

The adaptation of our inner legislation to meet the EU standards with the purpose of strengthening the fight against corruption, called for several legislative and institutional reforms. Such fight was primarily oriented in the implementation of preventive measures. In this framework, the standards of the Penal Convention of the Council of Europe against Corruption have been set up in the inner legislation. Furthermore, the process of adapting the civil legislation to the standards of the civil Convention of EU against corruption has begun and is still going on. Some of the things worth mentioning are: the ratification of the United Nations Convention against Corruption; the approval of the changes in the law for the prevention of the conflicts of interests; the approval of the law for the collaboration with the citizens and rewarding those who denounce corruption; the approval of the law on business enterprises, in April 2008, adapted to the EU Civil Convention against Corruption. The reform has been oriented towards the reduction of corruption in sectors like taxes, procurements, business services, admissions to university, etc. Considerable improvement has been achieved so far. We could mention the newly-built system of paying taxes online for the large businesses as an initiative which has visibly reduced corruption as well the business costs as far as calculation and paying off financial obligations is

concerned. This system is gradually being embraced by all the businesses (Progress report, 2008). The following laws, along with the respective amendments and changes, are a clear illustration of what we treated above.

Law No. 7895 dated 27.1.1995

The approval of the law No.7895 dated 27.01.1995 means that there already was the legal basis which sanctioned corruption, nevertheless, further improvements and changes were required due to the insufficiency of the existing legal basis to stop the phenomenon. (Law no.7895,1995)

Law No. 9030, dated 13.3.2003

The following changes are made with the approval of this law: after the article 257, the article 257/a is added “*Refusal of declaration, failure to declare, concealment or false declaration of wealth of the elected and the employees of the public administration*”

Law No. 9086, dated 19.6.2003

This law brought the following changes: After the article 124, the article 124/a is added: “*Asking or acceptance of bride for the procedures of adoption*”

Law No. 9275, dated 16.9.2004

By means of this law, several penal offences were added or changed. For instance:

There were added: some dispositions on the active and passive corruption in the public and private sectors. (articles 164/a; 164/b; 245I); article 170/b “*Illegal Competition through Violence*” 245/1 “*Illegal Influencing towards public functionaries*”; article 319/a “*Passive Corruption of judges, prosecutors and other functionaries of justice*”, and some dispositions on the active and passive corruption in the public and judicial sector (articles 244, 245, 259, 260, 319), to article 312 “*Active corruption of the witness, expert or translator/interpreter*” These changes helped in the further adjustment of the domestic legislation to the acts ratified by Albania.

Law No. 23/2012

In the second paragraph of article 6 the following sentence is added: “*The condition for the simultaneous conviction in the territory of the other state is not implemented in the cases of public or private corruption, and the illegal influencing.*”

Article 224 is added the article 224/a “*Active corruption of foreign public employees*”

To the article 246, the article 246/a is added “*Exertion of the profession of expert accountant and auditing company without being registered.*” To the article 248, article 248/a is added “*Illegal granting of pensions and other allowances from the social insurance.*” Article 257/a is changed. To the article 259, the article 259/a is added “*Passive corruption of foreign public employees.*” To the article 319, the article 319/a is added

“Active corruption of the judges or officials of international tribunals,”; 319/b “Active corruption of domestic or foreign referee”; 319/c “Active corruption of the members of foreign juries”; 319/d “Passive corruption of the judges or officials of the international tribunals.”; 319/dh “Passive corruption of the domestic or foreign referee”; 319/e “Passive corruption of the members of foreign juries”

The recent changes and amendments to the Penal Code are very important. The formulations on corruption are based mainly on the international juristic acts. The dispositions have been improved in terms of content and details, and the penal sentences have been intensified. The system of penal sanctions has been adopted to comprise fining as an alternative to imprisonment.

In the context of the fight against corruption, new dispositions related to the active and passive corruption of the high rank functionaries of the state, judges, prosecutors and other functionaries of justice, have been added to the Penal Code. The penal offences related to the corruption in the private sector were included for the first time.

An innovation of the Penal Code is the foreseeing of penal responsibility not only for those who give and accept bribe, but also for those who offers illegal influence on the decision-making of the public officials. As far as penal responsibility is concerned, it includes physical persons as well as juristic ones. The legal basis has been considerably improved, though it has not achieved the intended success in the prevention and punishment of corruption, as Albania still manifests high levels of the phenomenon. This is due to the fact that there is a series of factors which must perform in unison in order for the process to be efficient. The laws are made to be implemented and therefore, the role of the organs of justice in the correct application of the legislation, which is one of the most important aspects in the fight against corruption, must be stronger. It is exactly these organs who give life to the penal legislation and make it efficient. The role of the prosecution takes on a particular importance when it comes to corruption because evidence is often hard to be obtained. This difficulty is boosted due to the lack of denounces of cases of corruption by the citizens. Since the citizens are the first point of encounter with the forms of corruptions, they must become aware that nothing comes out of it, but criminal acts. The children must be educated since the early years of school with educative programs which explain what corruption is, and how to fight back this phenomenon which is as gangrene to a democratic society. These programs must contain sufficient juristic knowledge.

Conclusion

- After the downfall of the Communist Regime in the early 90s, Albania adapted a democratic system after the model of many

countries throughout the world. This brought about many changes in the Albanian legislation, including the Penal Code.

- The new Penal Code, approved in 1995, was based on the democratic principles of the lawful state and it included many international acts.
- In the framework of institutional reforms, even after 1995, Albania has ratified several international acts which were reflected in the changes and amendments of the Penal Code.
- The fact that the changes in the Penal Code have been subjected to further modifications indicates a lack of stability in the law, and it is a violation of the right to security recognized by the European Convention of the Human Rights.
- The attempt to bring the Penal Code to the European standards enriched it with new penal offences such as those related to the organized crime, illegal trafficking, corruption, terrorism, computer hacking, domestic violence etc.
- In spite of the many changes, a lot of work is still to be done in terms of drafting the new dispositions because many times they are unclear, and need to be reconsidered.
- In the changes applied to the Penal Code, we lack an explanation of the content of the new dispositions and notions.
- The dispositions are often long and not clear. This leaves room for misinterpretation and subjectivism.
- There is need to reconsider and to monitor the policies for the prevention of corruption, and to improve the cooperation between the actors of civil society and state institutions.
- It is important to include in the elementary school educative program sufficient juristic knowledge about corruption like: what it is, and how to protect from it.

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