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Active and Passive Corruption of Judges, Prosecutors, and Other Justice Officials: The Impact of Justice Reform on Anti-Corruption Efforts

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Abstract

Corruption, including corruption within the justice system, is a phenomenon of both national and international concern, as it undermines societal security, disrupts the functioning of state and public institutions, weakens democratic values, and hinders the development of the rule of law. It is closely interconnected with other serious forms of criminal activity, particularly organized crime, drug trafficking, human trafficking, economic crime, and money laundering. These interconnections threaten the political, social, and economic stability of states, demonstrating that corruption is not solely a domestic challenge but a global phenomenon affecting societies and economies worldwide. In this context, international cooperation in preventing and combating corruption is of particular importance. Criminal offences of corruption in the justice system, in the forms of active and passive corruption, are regulated in Albanian criminal legislation to safeguard the proper functioning of the judiciary, prosecution, and other justice institutions, as well as to protect the lawful rights of citizens. Given that the justice system represents a fundamental mechanism for law enforcement and the protection of rights, any deviation from standards of integrity in this sector produces both institutional and societal consequences. Corruption in this area affects not only individual cases but also the quality of judicial decision-making, legal certainty, and the overall functioning of the justice system. In this context, legal reform has been considered necessary to strengthen the justice system through enhanced impartiality, transparency, and integrity. The 2016 justice reform in Albania, implemented through a comprehensive legal package, represents a significant structural intervention in both the legal framework and institutional organization of the justice system. Its primary objectives include increasing public trust and ensuring a more independent and efficient judiciary. This paper analyzes two distinct criminal offences: active and passive corruption involving judges and prosecutors. These offences are selected due to their critical importance in safeguarding judicial integrity, as well as the practical challenges associated with their detection and proof. Given the central role of judges and prosecutors in the administration of justice, any deviation from impartial conduct has far-reaching consequences not only at the individual level but also for the legal system as a

¹ Currently delegated to the High Judicial Council.

whole. In practice, issues related to the balance of powers continue to be observed, particularly in the relationship between the executive and judicial branches. This further underscores the necessity of addressing these offences as a key element in maintaining the separation of powers and ensuring the proper functioning of the rule of law.

Keywords: active corruption of judges and prosecutors, passive corruption of judges and prosecutors, justice system, rule of law, justice reform 2016, separation of powers, independence of the judiciary, public trust, integrity, "ex post facto" payments, receiving gifts.

1. Introduction

Corruption in the justice system represents one of the most serious challenges to the effective functioning of the rule of law, as it directly undermines the fundamental principles on which the legal and democratic order is based. The justice system is designed to guarantee legality, protect fundamental human rights and freedoms, and ensure equality before the law. However, when affected by corrupt practices, it ceases to function as a guarantor of justice and instead becomes a source of injustice and impunity. In the Albania, corruption within the justice system has historically been a widespread and persistent phenomenon, requiring comprehensive structural and legal intervention. In this context, the 2016 justice reform represents a pivotal moment in the development of the Albanian legal system. The reform aimed to reorganize justice institutions, strengthen judicial independence, and establish specialized mechanisms for combating corruption and organized crime. The reform was implemented through a comprehensive legal package, including constitutional and legislative amendments designed to restructure the justice system. Key laws include Law No. 84/2016 on the transitional re-evaluation of judges and prosecutors, Law No. 95/2016 on institutions for combating corruption and organized crime, Law No. 96/2016 on the status of magistrates, Law No. 97/2016 on the organization and functioning of the Prosecutor's Office, Law No. 98/2016 on the organization and functioning of the judiciary, Law No. 115/2016 on the governing bodies of the justice system, and Law No. 8577/2000 on the Constitutional Court, as amended by Law No. 99/2016. To address corruption and strengthen institutional accountability, Albanian criminal legislation provides a broad legal framework aligned with international conventions ratified by the state in the field of anti-corruption. The Criminal Code includes provisions on active and passive corruption of judges, prosecutors, and other justice officials, as well as corruption involving international judges, officials of international courts, and domestic and foreign arbitrators. These legal provisions aim to define clearly the responsible institutions and strengthen the integrity and independence of the justice system. The purpose of this paper is to analyze corruption in the justice system and assess the impact of the justice reform on combating this phenomenon, with particular focus on the criminal legal framework, judicial practice, the transitional re-evaluation process (vetting), and the role of newly established justice institutions. Through a legal and critical analysis, the study evaluates the

effectiveness of the implemented measures and identifies ongoing challenges in the practical implementation of the reform.

2. Definition of corruption, international acts

The Albanian state, in order to strengthen the normative and institutional framework for the prevention and combating of corruption, has ratified a series of international legal instruments that constitute an important foundation in this field, in addition to domestic legislation. These instruments serve as binding and guiding standards for the harmonization of national law with international norms. One of the key instruments in this regard is the United Nations Convention against Corruption, adopted by the United Nations and ratified by the Albania in 2016. This Convention conceptualizes corruption through the definition of a range of specific acts that States Parties are required to criminalize in their domestic legal systems. Rather than providing a single doctrinal definition of corruption, the Convention operationalizes the concept through a catalogue of criminal offences, thereby establishing binding obligations for national implementation. In a similar manner, the Criminal Law Convention on Corruption, adopted by the Council of Europe and entered into force on 1 July 2002, does not define corruption as a general legal concept. Instead, it addresses corruption functionally by identifying specific criminal behaviours that member states are required to incorporate into their criminal legislation. In conclusion, both international instruments conceptualize corruption through the criminalization of specific conduct, thereby establishing a shared international legal standard in the fight against this phenomenon. In this context, among the offences provided for by the United Nations Convention is the bribery of public officials (Article 15), which includes both active and passive forms. Active bribery involves the promise, offering, or giving of an undue advantage in order to influence the performance of official duties, whereas passive bribery involves the solicitation or acceptance of such an advantage by a public official in exchange for acting or refraining from acting in violation of official duties. The Convention also regulates trading in influence (Article 18), which refers to the promise, offering, giving, solicitation, or acceptance of an undue advantage intended to induce the abuse of real or supposed influence over a public authority in order to obtain an improper advantage. In this way, corruption is understood as a set of criminally punishable behaviours involving the abuse of public functions or influence for personal gain or the benefit of third parties.

3. The legal-criminal framework of corruption in the justice system

Corruption in the field of justice constitutes one of the most serious violations of the rule of law, as it directly undermines the independence, impartiality, and integrity of the judiciary. It manifests through unlawful actions or omissions committed by judges, prosecutors, lawyers, experts, or other justice officials, motivated by the receipt or promise of undue material or immaterial benefits. At the constitutional level,

Article 7 of the Constitution of the Albania establishes the principle of separation and balancing of powers legislative, executive, and judicial, as a foundational element of state organization. Judicial independence is therefore an essential guarantee for the proper administration of justice and the effective protection of fundamental human rights and freedoms. Any unlawful interference in the judiciary, particularly through corrupt practices, constitutes a direct violation of the constitutional order and undermines public trust in the justice system. In this context, criminal-law protection of the justice system represents one of the most effective mechanisms for ensuring its independence and impartial functioning, as well as for strengthening democratic foundations. Criminal legislation aims to protect not only the institutional integrity of courts and prosecution bodies but also the procedural rights of individuals involved in judicial proceedings, including defendants, parties to litigation, and other procedural subjects.

Offences against justice are regulated in a special section of the Criminal Code and encompass a range of criminal provisions that sanction unlawful conduct affecting the independence of the judiciary, the proper functioning of courts and auxiliary justice bodies, as well as the rights and freedoms guaranteed by law. The legal object of these offences consists of legal relations established to ensure the independence and integrity of the judiciary, the proper functioning of the justice system, and the enforcement of court decisions (Elezi, 2014).

Based on legislative analysis and case law, a wide range of criminal offences exist in the field of judicial corruption. However, this paper focuses specifically on Article 319 of the Criminal Code, "Active corruption of judges, prosecutors and other justice officials," and Article 319/ç, "Passive corruption of judges, prosecutors and other justice officials."

Before analyzing the constitutive elements of these offences, it is important to highlight the procedural dimension and jurisdictional competence. Their adjudication falls within the competence of the Special Court against Corruption and Organized Crime, a solution that is not incidental but derives from the need to safeguard judicial independence and integrity, as well as from Article 75/a of the Code of Criminal Procedure, which establishes special jurisdiction for corruption offences, including those provided for in Articles 319 and 319/ç of the Criminal Code.

As the adjudication of these offences is assigned to a specialized jurisdiction, their constitutive elements also present specific legal characteristics. These require detailed analysis, as each element—from the legal object to the subject and mode of commission—defines the scope of criminal liability and ensures effective protection of the justice system and individual rights. By Law No. 9275, dated 16.09.2004, Article 319 of the Criminal Code was amended in accordance with Article 2(7) of the Council of Europe Criminal Law Convention on Corruption. The provision defines that the promise, offer, or giving, directly or indirectly, of any undue benefit to a judge, prosecutor, or other justice official, for themselves or for third parties, in order to perform or refrain from performing an official duty, is punishable by imprisonment from one to four years. Prior to the amendments, the provision was titled "Requesting

or receiving a reward,” while references to “any other justice official” were introduced, and references to arbitrators were removed.

It is widely recognized that corruption has affected justice institutions, including judges, prosecutors, and other officials such as judicial police officers, bailiffs, and related administrative personnel. The legal object of the offence of active corruption consists of legal relations ensuring the lawful and proper functioning of justice officials, as well as the protection of citizens’ rights and interests safeguarded by criminal law.

From an objective perspective, the offence is committed through active conduct such as promising, offering, or giving money or other benefits to a judge, prosecutor, or other justice official, in order to influence the performance or non-performance of an official duty.

- Promise refers to the commitment to provide an undue benefit at a future time in exchange for an expected official act.
- Offer refers to the expression of willingness to provide such benefit at any stage of the process.
- Giving refers to the actual transfer of the undue benefit to the official.

The offence may also be committed indirectly, including through intermediaries, regardless of whether the benefit is intended for the official or a third party. The offence is considered complete from the moment the promise, offer, or giving of the undue benefit is made. The undue benefit may consist of money, property, gifts, services, or any material or immaterial advantage not legally justified.

As a rule, the benefit is directed to judges, prosecutors, or other justice officials. A judge is any person exercising judicial authority and administering justice. A prosecutor is the authority responsible for criminal prosecution and representation of public interest in criminal proceedings. Other justice officials include any person exercising official functions within the justice system, such as bailiffs, judicial police officers, and court administrative staff. The undue benefit may also be directed to third parties, such as relatives or associates of justice officials. In such cases, it is sufficient that the official is aware of the corrupt arrangement. Transactions may also be carried out through intermediaries, regardless of whether the final recipient is the official or another person. The promise, offer, or granting of an undue benefit by the perpetrator is made with the intention of inducing a judge, prosecutor, or other justice official to perform or refrain from performing an act within their official capacity. Such acts may include, for example, the dismissal of a lawsuit, the termination of criminal proceedings, or the failure to carry out an arrest in flagrante delicto where such arrest is legally required by a judicial police officer. The offence is considered complete at the moment the promise, offer, or transfer of the undue benefit is made, regardless of the outcome of the official’s subsequent actions. This reflects the preventive and absolute nature of the legal provision on active corruption, whereby any conduct aimed at influencing the official duties of judges or prosecutors through unlawful benefits is punishable, even if the official does not comply with the request or acts independently in accordance with the law.

In this sense, judges and prosecutors are required to exercise their functions independently, based on an objective assessment of facts and the interpretation of law, guided by their inner conviction and free from any direct or indirect external influence, regardless of its source or purpose. Consequently, liability for active corruption arises even where the judicial decision does not favour the individual who offered or promised the undue benefit.

The subject of the crime² is a person who promises, proposes or gives irregular benefit to a judge, prosecutor or other justice functionary to perform or not to perform an action related to the duty, who has reached the age for criminal responsibility and is responsible. Subjectively, the crime is committed with direct intent with the aim of obtaining a favor through the promise, proposal or giving of irregular benefit.

Passive corruption of judges, prosecutors and other functionaries of justice bodies.

Law no. 9275, dated 16.09.2004 and law no. 23, dated 1.3.2012, amended Article 319/ç of the Criminal Code, which provides that: "*seeking or receiving, directly or indirectly, any kind of irregular benefit or such promise, for oneself or for other persons, or accepting an offer or promise deriving from the irregular benefit by the judge, the prosecutor or other functionaries of the justice bodies, in order to perform or not to perform an action related to his duty or function, shall be punished with imprisonment from three to ten years.*"

The object of the offence of passive corruption consists of legal relations aimed at ensuring the lawful, regular, and honest activity of judges, prosecutors, and other justice officials, including judicial police officers, agents, bailiffs, and civil servants within the judicial system. These relations also encompass the protection of the legal rights and interests of citizens, as safeguarded by criminal legislation against unlawful acts or omissions. From an objective perspective, the offence of passive corruption is committed through actions expressed in the solicitation or receipt, directly or indirectly, for oneself or for third parties, of an undue benefit such as bribes, monetary rewards, goods, or services. Such conduct is carried out in exchange for performing or refraining from performing an act related to the official duties of justice officials, or through the acceptance of an offer or promise of such benefit. The solicitation represents a unilateral act by the justice official whereby the official, explicitly or implicitly, communicates to another person that an undue benefit is expected in exchange for a requested action. In such cases, criminal liability arises solely for the justice official, provided that the other party does not comply with the request. The individual who refuses to provide the undue benefit does not incur liability for active corruption. In this scenario, the justice official is liable for passive corruption under Article 319/ç of the Criminal Code. However, if the person addressed agrees to the request and provides the undue benefit, both parties become criminally liable for active and passive corruption in the justice system. Receipt refers to the acceptance of

² Council of Europe, *Criminal Convention on Corruption* (ratified in Albania by law no. 8778, 26 April 2001) under Article 1 defines the use of terms including: "public official", which means any official, public official, mayor, minister or judge under the national law where the person exercises his function and in accordance with his or her criminal law; the term "judge" includes prosecutors and judicial service holders; and for proceedings involving public officials of other countries, the definition can only be applied if it complies with the national law of the respective state.

an undue benefit, either directly from the interested party or through an intermediary, such as a family member, relative, friend, or other associate of the justice official. Acceptance of an offer or promise refers to the agreement or confirmation by the justice official that they will receive an undue benefit in exchange for performing an official act. In such cases, a prior corrupt agreement (*pactum sceleris*) is established between the interested party and the official. After the official act is performed, the promised benefit is delivered to the official. The offence is considered complete from the moment of solicitation, receipt, or acceptance of an offer or promise of an undue benefit, regardless of whether the official subsequently performs or refrains from performing the requested act. The subject of passive corruption is a judge, prosecutor, or other justice official, including judicial police officers, bailiffs, civil servants, and legal assistants operating within courts of first instance and appellate courts, as well as legal advisors of higher courts such as the Supreme Court.

Subjectively, the offence is committed with direct intent and for the purpose of obtaining material gain. For the offence to be constituted, the official must be aware that the benefit offered, promised, or received is undue and is linked to the exercise of their official functions. An undue benefit is understood as any advantage not legally required or justified by law, which the official has no right or obligation to receive. Accordingly, the benefit may be offered or accepted explicitly, implicitly, directly, or indirectly, provided that the official has knowledge of its connection to the performance or non-performance of an official duty. A mere promise of a future benefit, not clearly directed to a specific official and not accepted or acknowledged by them, is insufficient for the constitution of the offence. Therefore, the promise must be sufficiently concrete and perceptible to the official in order to establish awareness and enable criminal liability.

4. Improving legislation in the field of criminal offences against corruption in the justice system

Article 319/ç of the Criminal Code does not provide a differentiated legal treatment between cases in which the solicitation or receipt of an undue benefit is linked to the performance of an act contrary to official duty and the law, and cases in which such solicitation or receipt relates to an act that is in accordance with official duty and applicable law. In the first scenario, the level of danger is significantly higher, as the solicitation or acceptance of an undue benefit not only undermines the integrity and honesty of judges, prosecutors, or other justice officials, but may also result in acts that violate the rights of parties involved in judicial proceedings, harm state interests, or affect the public interest. In this sense, passive corruption involving unlawful official conduct constitutes an offence with a pluralistic legal object.

Given the seriousness of the social interests affected, it may be argued that passive corruption of judges, prosecutors, and other justice officials should distinguish between two distinct situations:

- cases in which the solicitation or receipt of an undue benefit is linked to the

performance of an act contrary to official duty and the law;

- cases in which the solicitation or receipt of an undue benefit is linked to the performance of an act consistent with official duty and the law.

In Albanian legislation, however, certain behaviours that fall within the broader conceptual scope of corruption have not been explicitly criminalized. Criminal offences related to corruption in the justice system are intended to ensure the lawful and honest activity of judges, prosecutors, and other justice officials, as well as to protect the rights and legitimate interests of citizens, which are safeguarded by criminal law against unlawful acts or omissions.

As previously noted, judges, prosecutors, and other justice officials are prohibited from requesting or receiving benefits in exchange for acts performed in the course of their official duties. However, in practice, there are additional situations that, although not explicitly covered by Articles 319 and 319/ç of the Criminal Code, may still undermine institutional integrity and the proper functioning of the justice system. One such issue concerns so-called “*ex post facto*” payments, namely situations in which a justice official requests or accepts a payment as a reward after performing an official act, without any prior agreement or corrupt arrangement. Under current Albanian criminal legislation, such conduct is not included within the scope of active or passive corruption, provided that the official act was performed independently and without prior influence. Nevertheless, such practices raise concerns regarding ethical integrity and institutional trust. From a legal-policy perspective, it may be argued that “*ex post facto*” payments should be regulated as a separate criminal offence, in order to broaden the protective scope of criminal law and strengthen the ethical and professional integrity of judges, prosecutors, and other justice officials.

A further controversial issue concerns the acceptance of gifts or other benefits by officials due solely to their official position, without any direct link to a specific act or omission. The question arises whether such conduct constitutes corruption under Albanian criminal law.

In such cases, the benefit is not connected to a concrete judicial or prosecutorial act but is instead offered due to the official status of the recipient. Under the current legal framework, the acceptance of such gifts is not expressly classified as corruption under Articles 319 and 319/ç, as these provisions require a functional link between the benefit and a specific official act. Nevertheless, accepting gifts based solely on official position may be considered incompatible with ethical standards of judicial conduct, as it undermines public confidence in the impartiality and integrity of justice officials. Even in the absence of a direct corrupt agreement, such practices may create conditions of vulnerability, increasing the risk of future improper influence.

From this perspective, gift-giving to justice officials may function as a preparatory mechanism for potential future corrupt exchanges, as it may facilitate expectations of reciprocity or preferential treatment. Consequently, some legal systems, including several Member States of the European Union, regulate or criminalize the acceptance of gifts linked solely to official status. Therefore, it may be argued that both the giving and acceptance of such benefits should be subject to clearer legal regulation,

potentially as a separate offence, in order to strengthen preventive mechanisms against corruption and reinforce the integrity of the justice system.

5. Challenges of the justice system

One of the main challenges in the justice system is the protection of judicial independence from interference by other branches of power, particularly attempts to influence judicial decision-making through public or media-based pressure, including targeted criticism of judges' decisions. Such practices are detrimental to the rule of law and contradict constitutional principles. Article 7 of the Constitution of the Albania establishes the separation and balancing of legislative, executive, and judicial powers as the foundation of the state organization. Judicial independence constitutes a fundamental guarantee for the proper administration of justice and for the effective protection of human rights and fundamental freedoms. Any inappropriate interference in judicial activity undermines institutional balance and weakens public trust in the justice system. Additional challenges relate to the need to strengthen the professional integrity of justice officials in order to ensure equality before the law and enhance public confidence in the judiciary. According to the Report of the Prosecutor General on the state of criminality for 2024, offences provided for under Articles 319 and 319/ç of the Criminal Code recorded only one investigation and no cases adjudicated or sanctioned by courts in 2023. This indicates a low level of prosecutorial and judicial activity in addressing corruption in the justice system. These findings suggest the need to strengthen institutional capacity for the investigation and prosecution of corruption offences within the judiciary, in order to ensure effective implementation of both national legal obligations and international standards.

6. Conclusion

Corruption in the justice system represents one of the most significant challenges to the proper functioning of the legal order, as it directly affects the free, fair, and impartial exercise of the duties of judges, prosecutors, and other justice officials. By undermining standards of integrity and institutional independence, corruption does not only affect individual cases but also weakens the quality of judicial decision-making, legal certainty, and the overall functioning of the justice system. In response to this phenomenon, the Albania has strengthened its normative and institutional framework by aligning domestic legislation with international legal instruments, including the United Nations Convention against Corruption, ratified in 2016, and the Criminal Law Convention on Corruption, which entered into force on 1 July 2002. Both instruments do not provide a single unified definition of corruption; instead, they operationalize the concept through the identification of specific criminal offences that States Parties are required to incorporate into their national legal systems. The criminal-law protection of the justice system constitutes one of the most effective

mechanisms for safeguarding judicial independence and impartiality, as well as for strengthening the foundations of democratic governance. Criminal legislation is designed to protect not only the institutional integrity of courts and prosecution bodies, but also the rights of individuals involved in judicial proceedings, including defendants, litigants, and other procedural subjects. This paper focuses on Articles 319 and 319/ç of the Criminal Code, which regulate active and passive corruption of judges, prosecutors, and other justice officials. Practice indicates that these offences are often difficult to detect and therefore result in a low number of cases brought before the courts. At the same time, the effectiveness of the fight against corruption in the justice system could be enhanced through the inclusion of additional offences already recognized in the legal systems of European Union member states. In particular, “ex post facto” payments and the acceptance of gifts linked solely to the official position of justice officials, without any connection to a specific official act, could be regulated as distinct criminal offences. Furthermore, a clearer legal distinction between different forms of passive corruption—based on whether the undue benefit is linked to an unlawful act or to a lawful exercise of official duties—would allow for a more accurate assessment of the social danger of the conduct. Such differentiation would also ensure that criminal sanctions better reflect the principle of proportionality in sentencing.

7. Recommendations

It is recommended that the Criminal Code be further improved by expanding and refining criminal offences in the field of corruption. In particular, a clearer legal distinction should be introduced for passive corruption of public officials, senior officials, judges, prosecutors, and other justice officials, based on two distinct situations:

1. cases in which the solicitation or receipt of an undue benefit is linked to the performance of an act contrary to official duty and applicable law;
2. cases in which the solicitation or receipt of an undue benefit is linked to the performance of an act consistent with official duty and applicable law.

It is further recommended that Albanian criminal legislation explicitly regulate the following practices as separate criminal offences:

- “ex post facto” payments, namely benefits received by officials after the performance of an official act without prior agreement;
- the acceptance of gifts due solely to official position or public function, where such benefits are not linked to any specific official act or omission.

The independence of the judiciary should be strengthened by preventing inappropriate interference from other branches of power and by protecting judicial decisions from undue external pressure or unfair public attacks.

Investigative and prosecutorial capacities should be enhanced in relation to the identification, investigation, and prevention of corruption offences. This requires improved coordination among key justice institutions, including the High Judicial

Council, the High Prosecutorial Council, the High Inspector of Justice, and the Special Structure against Corruption and Organized Crime (SPAK). Particular attention should also be given to corruption risks involving candidates for magistrates enrolled in the initial training program at the School of Magistrates.

Public trust in the justice system should be strengthened through increased transparency of court decisions, publication of judicial ethics standards, and regular public reporting on the activities of justice institutions.

Measures should be implemented to prevent political and institutional pressure on the judiciary, ensuring that all actions undertaken by justice officials are independent, impartial, and protected from external influence.

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