

ALBANIA

Handbook on Open Local Government and Public Ethics

Original:

Handbook on Open Local Government and Public Ethics in Albania (English version)

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The Handbook is part of the series of country-specific Handbooks that aim to preserve and share the lessons learnt and best practices identified during the implementation of co-operation projects. For more information on various Handbooks please refer to the bE-Open tool that has been developed by the Congress to support all local and regional governance actors in their efforts to improve the quality of local democracy in their villages, cities, and regions, as well as any citizen interested in public ethics, accountability, transparency and citizen participation (<https://www.coe.int/en/web/congress/beopen>).

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Foreword

Governments can function effectively only if they enjoy and sustain the trust of citizens in their commitment to delivering services and policies that serve the citizens. Open local government and a high level of public ethics are key to building confidence in the institutions of government. Local government, municipalities and their elected representatives and civil servants have a crucial role in fostering and sustaining trust-building and participatory decision-making, since they have a certain degree of autonomy over the distribution of resources, play an intermediary role with regards to central governments, and usually represent the first interface between citizens and elected representatives. The professionalism and integrity of elected local government officials and local administrations, and their ability to function in a transparent, responsive, and accountable manner, are a prerequisite for the delivery of enhanced, fair, and equitable services to citizens. Local and regional elected representatives must therefore act as role models in the areas of public ethics, transparency, accountability, and participatory decision-making.

In order to fulfil this role, elected representatives must be well versed in the principles and standards underpinning public ethics. Furthermore, they should understand the legislation in force and the mechanisms and institutions through which the laws are implemented and enforced at the local level. The government authorities should also raise awareness among the public so that they also understand their legal rights and know where they should turn to make a complaint.

However, we cannot ignore the fact that local authorities, as any public authority, are susceptible to corruption, which poses a major threat to the legitimacy of democratic institutions, as well as to the degree of trust that citizens place in their representatives and public officials. A deficit of transparency and shortfalls in public ethics are problems faced by all levels of government, including the local and regional levels. They undermine the provision of services to citizens and businesses alike and pose a threat to the universal access to basic services and to sustainable local economic development. The fight against corruption needs to be a long-term priority for local and regional governments and their associations. Concerted preventive action and the monitoring of corruption risks are both paramount in order to foster economic growth, improve living conditions, and develop citizens' trust.

Where the decentralisation of power and financial resources advances, the quality of local governance becomes even more crucial. Therefore, along with the introduction and consistent application of criminal law provisions against corruption, it is essential to promote public ethics, transparency, accountability, and participatory decision-making in order to reduce the risk of corruption and boost citizens' confidence in local and regional authorities.

The Congress of Local and Regional Authorities of the Council of Europe took a firm step in the promotion of ethical governance by adopting in 1999 the European Code of Conduct for the Political Integrity of Local and Regional Elected Representatives. An advisory group revised this Code, which was then adopted as the European Code of Conduct for all Persons Involved in Local and Regional Governance in November 2018. The updated text addresses new challenges, including new forms of communication, the impact of digital technology and the need to respect the privacy of data, and enlarges the scope of its application to all actors involved in local and regional governance, and not just elected officials.

In its priorities for 2021-2026¹, the Congress underlines the importance of promoting the quality of local and regional democracy and citizen participation. At the same time, the Congress devotes its attention to

the challenges arising from the Covid-19 pandemic and underlines the necessity of adapting work and activities to a new situation, including corresponding social, economic, and political changes. The thematic priorities of the Congress also include reducing social inequalities and ensuring that digitalisation and artificial intelligence enhance citizen participation. The Congress underlines that local and regional authorities should be the main actors for change and points out the importance of the fight against corruption and clientelism, and the participation of citizens in decision-making processes, for the proper functioning of local and regional democracies.

The Congress is determined to sustain a comprehensive, long-term engagement in corruption prevention, and in this spirit has established the position of Spokesperson on Promoting Public Ethics and Preventing Corruption at the Local and Regional Levels. The publication of this *Handbook* and our intention to actively promote its use are further demonstration of our determination to make this a priority activity for the years to come.

The attitudes and expectations of our citizens with regards to public governance are changing. To renew and sustain confidence in public administration, we need to set up effective mechanisms for the implementation of, and compliance with, standards of ethical conduct. Preventing corruption, reducing its risks, and developing effective, accountable, and transparent institutions at all levels are key components of just and inclusive societies.

With this in mind, this *Handbook on Open Local Government and Public Ethics* is aimed at local authorities, mayors, local councillors, and civil servants, to support them in their efforts to improve the quality of local governance in their villages, towns and cities. The *Handbook* provides local authorities with practical guidelines on transparency and citizen participation, identifying the relevant international standards and domestic legislation, and providing case-law examples and good practices that can be applied and promoted by all local authorities.



Andreas Kiefer
Secretary General
Congress of Local and Regional Authorities
of the Council of Europe



PURPOSE AND STRUCTURE OF THE HANDBOOK

Transparency and citizen participation are key concepts in the development of good governance. Both help to create the conditions for citizens to understand and evaluate the decisions that the government is taking on their behalf, as well as to ensure that their own needs and views are taken into account in the decision-making process.

Effective application of tools to promote transparency and citizen participation, coupled with stronger accountability and public ethics, can help to drive out corruption and government malpractice. Both concepts also serve to help generate positive and enabling momentum to foster increased trust in public governance.

Finally, they help governments to draw on the skills, knowledge and experience of citizens to enable more informed decision-making, early identification of negative impacts of prospective policies, greater ownership of the resulting decisions, and the delivery of more effective public services.

The *Handbook on Open Local Government and Public Ethics in Albania* aims to support local authorities in their efforts to improve the quality of local governance in line with the principles of the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the Right to Participate in the Affairs of a Local Authority (CETS No. 207). It provides them with practical guidance on public ethics and accountability, transparency, citizen participation, and countering corruption, based on Council of Europe principles and guidelines, and drawing on international standards and examples of model legislation.

To fulfil its purpose as a practical reference guide to support local authorities in their daily work, the *Handbook on Open Local Government and Public Ethics in Albania* includes specific information about domestic anti-corruption legislation and provides examples of mechanisms and tools to raise standards in public ethics and accountability, transparency, and citizen participation. The *Handbook* provides a concise assessment of the most prevalent corruption risks and a set of good practices to introduce and implement public ethics and open government.

The implementation of the mechanisms included in this *Handbook* will also help local authorities contribute to attaining the United Nations' Sustainable Development Goals (SDGs)² of the 2030 Agenda for Sustainable Development,³ namely goals 5 (gender equality), 11 (sustainable cities and communities), 16 (peace, justice and strong institutions) and 17 (partnerships for the goals). In this regard, the implementation of open local government will serve as a powerful driver for deepening the commitment to good governance in the context of sustainable development.

The *Handbook* is structured in four main chapters:

- Chapter 1 – Public Ethics and Accountability:
This chapter highlights the importance and challenges of public ethics and accountability in Albania. It demonstrates the essential role that public ethics and accountability play in bringing about effective, transparent and participatory governance.
- Chapter 2 – Transparency:
This chapter introduces five transparency mechanisms, which have been selected to represent the diversity of approaches to transparency. The account of each mechanism includes an introductory description and an outline of international standards. This is followed by four sections summarising key domestic laws and presenting practical guidelines and best practices which can serve as examples for local authorities in their efforts to enhance transparency.
- Chapter 3 – Citizen Participation:
This chapter introduces five citizen participation mechanisms, which have been selected to represent the diversity of approaches to citizen participation. Following the same structure as in the previous chapter, an introductory description is provided for each mechanism followed by an outline of relevant international standards. The concluding four sections summarise key domestic laws and present practical guidelines and best practices which can serve as examples for local authorities in their efforts to foster and improve inclusive citizen participation.
- Chapter 4 – Corruption Risks:
This chapter introduces the most common corruption risks identified in Albania and outlines relevant international anti-corruption standards, along with the domestic legal framework pertinent to each form of corruption. This is then supplemented with examples of case law and good practices related to each type of corruption.

Chapter 1

PUBLIC ETHICS AND ACCOUNTABILITY

Introduction

Public ethics and accountability are essential concepts underpinning an effective local or regional authority. They refer to the culture, processes, structures and rules that ensure those in public office act in the wider public interest, rather than their own self-interest. They are an essential feature of good governance, and it is important that they are respected and monitored by relevant organisations.

Ethics embody the rules that define the conduct of public officials⁴ in order to ensure that the public is treated fairly and equitably. Ethics help officials make better decisions in the public interest and help people evaluate the decisions taken on their behalf by public officials.

Public accountability ensures that officials are openly answerable for the decisions they are taking on behalf of the public.

In the absence of public ethics and accountability, corruption and malpractice are able to thrive. As outlined in the final chapter, corruption is damaging to individuals, society, the economy, and government in a number of respects. The prioritisation of public ethics and accountability can help curb the worst excesses of power and encourage more responsible and fairer decision-making by local authorities.

Even where corruption is not endemic, the absence of public ethics and accountability can be corrosive to public trust in government, public institutions and officials. While the relationship between public ethics and accountability is complex, consistent and timely application of both can help to build and strengthen trust between the public and government.

Furthermore, public ethics and accountability can contribute to a positive environment where it is recognised that citizens and other stakeholders contribute to the quality of the decision-making process. Combined with citizen participation tools, public ethics and accountability can help to ensure that citizens' personal experiences, expertise, knowledge and scrutiny add value to, and strengthen, decisions taken by government and public officials.

Elected representatives should be aware of the process by which declarations of assets are monitored and by which body, and which sanctions can be applied, and how, in the event that an office-holder makes a false or incomplete declaration. They should know the rules governing whistle-blowing and which official or officials are responsible for considering whistle-blowers' complaints and reports of wrongdoing. Local authorities need to ensure in-house training for newly elected representatives and provide regular refresher training for all elected officials. Knowledge and understanding of the legal and institutional framework are essential if elected representatives are to succeed as role models of political integrity.

Finally, public ethics and accountability are key to improving public services because public services that are more responsive and accountable to people – and benefit from their insights, ideas, energy, and scrutiny – will work better for people and the community as a whole.

Taken together, public ethics and accountability help to ensure that decision-making and resource allocation are fair, efficient and effective, which in turn helps to enable a flourishing democracy, economy and society. To this end, the Congress of Local and Regional Authorities of the Council of Europe adopted the European Code of Conduct for all Persons Involved in Local and Regional Governance,⁵ encouraging local and regional authorities and associations of local and regional authorities to design appropriate educational programmes in integrity management and to implement advisory services to help their staff to identify and deal with potential ethical risk areas and conflict-of-interest situations.

Transparency and citizen participation are important mechanisms for promoting public ethics and accountability in central and local government. A recent report for the European Committee of the Regions on “Preventing Corruption and Promoting Public Ethics at the Local and Regional Level in Eastern Partnership Countries” found that lack of transparency was the main vulnerability in all of the cases assessed.⁶ This handbook outlines a range of transparency and citizen participation mechanisms that can be adopted by local and regional authorities.

General domestic context

Albania has undergone transformational change to its local government system. The administrative and territorial reform of 2014⁷ has been most significant, reducing the number of local government units (LGUs) from 373 “urban municipalities” and “communes,” to 61 new municipalities (the “communes” were abolished as an administrative unit). The National Cross-cutting Strategy for Decentralization and Local Governance 2015-2020⁸ is based on this reorganised system of local government. The strategy includes a comprehensive approach to decentralisation with the goal of empowering local governance, in line with the principles of the European Charter of Local Self-Government. The same approach is found in the National Action Plan 2020-2022,⁹ a continuation of the National Cross-cutting Strategy for Decentralization and Local Governance 2015-2020.

According to the European Commission’s 2016 progress report for Albania, the financial and administrative consolidation of the newly created municipalities has been slow, posing an additional challenge in the fight against corruption.¹⁰ Albania has recently adopted some measures that aim to tackle corruption, such as the Inter-Sectoral Strategy against Corruption 2015-2023,¹¹ and its Action Plan for 2020-2023,¹² and Law No. 9508 “On Public Co-operation in Combating Corruption”.¹³ In addition, the new Law No. 60/2016 “On Whistle-Blowing and Whistle-Blowers’ Protection”,¹⁴ which aims to prevent corruption in the public and private sectors, is applicable to local government.¹⁵

Despite these measures, Albania remains vulnerable to corruption because of political interference and the lack of independence in key oversight institutions.¹⁶ According to the 2016 survey by the Institute of Development Research and Alternatives (IDRA) Albania, on perception and experience of corruption, almost 89% of the public surveyed think corruption is either “widespread” or “somewhat widespread” among public officials.¹⁷ Citizens’ perception of corruption at the local government level is rated “average”.¹⁸

Regarding transparency and citizen participation, Albania has adopted Law No. 119/2014 “On the Right to Information”¹⁹ and Law No. 146/2014 “On Notification and Public Consultation”.²⁰ However, there is a large discrepancy between the legal standards and strategies adopted, and actual implementation. According to the 2016 survey on Trust in Governance by the Institute for Democracy and Mediation (IDM), 43% of citizens perceive local government to be transparent and 33% think municipalities are accountable. Moreover, citizen participation is the weakest in the governance dimensions of Albanian

municipalities.²¹ For example, 67% of respondents said that they lack sufficient opportunities to engage in decision-making and consultation processes at the local level.²²

Regarding ethics, the Albanian public administration has failed to fully implement effective anti-corruption mechanisms and the adoption and implementation of codes of ethics is poor.²³

1.1. CODES OF ETHICS AND PROFESSIONAL CONDUCT

Codes of ethics establish basic principles by which public servants must abide, such as integrity, selflessness and openness. A code of conduct draws on the code of ethics to formulate standards and practices that should be applied to the particular circumstances of an institution.

A code of conduct sets out specific standards of professional behaviour expected in a host of situations and provides public officials with guidance for handling them. In addition, codes of conduct bring transparency and public accountability into governmental operations.

International standards

Well-designed codes of ethics and codes of conduct will help meet the growing expectations from the public, business leaders and civil society for greater transparency and integrity in government, and will place an onus on governments to ensure high ethical standards amongst public officials and elected representatives. As such, they can support the development of trust between the public and government institutions and officials. It is important that codes of conduct are in place for both civil servants and elected officials, and that training and guidance is provided to ensure a full understanding of the codes by all office-holders. Disciplinary measures and sanctions should be clearly stipulated and consistently applied in the event of noncompliance with the codes.

The following international conventions and standards relate to codes of ethics and professional conduct:

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**²⁴ and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**²⁵ are the reference texts for local and regional authorities in Europe for ensuring political integrity.
- The **Committee of Ministers of the Council of Europe's Guidelines on Public Ethics**²⁶ consolidate in one single document Council of Europe core principles, standards and recommendations in this field, covering all categories of public officials, be they elected, appointed or employed. They are complemented by the **Guide on Public Ethics: Practical steps to implementing public ethics in public organisations**,²⁷ a living document which provides case studies and examples from Council of Europe member states.
- The **OECD Recommendation on Public Integrity**²⁸ shifts the focus from ad hoc integrity policies to a context-dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.
- The **Transparency International paper on Implementing Effective Ethics Standards in Government and the Civil Service**²⁹ provides practical mechanisms for institutionalising high standards of ethical integrity for elected officials and civil servants.

Domestic context

Ethics and integrity in public administration is a precondition for a democratic, transparent, and effective government, and greater civic engagement. In Albania, there is some confusion between codes of conduct, and codes of ethics, as the latter tend to regulate the norms governing the former. Many public institutions, like the Supreme State Audit Institution (ALSAI) and local governments, have also adopted their own codes of conduct and codes of ethics. This adds to uncertainty about the hierarchy of the legislation regulating ethics and the codes of ethics as they often duplicate legal instruments. In some cases, they are redundant or fail to address specific local concerns. There is also a lack of data regarding the implementation of local codes of conduct and codes of ethics which reflects the fact that their implementation has been limited in Albania.³⁰

Legislation

Norms for the conduct of public officials are regulated by Law No. 9131 "On the Rules of Ethics in the Public Administration".³¹ Article 1 of this law states, *"the purpose of this law is to set rules of conduct of employees of the public administration, according to the required standards, to help them achieve these standards and to make the public aware of the conduct that an employee of the public administration should have."*

In addition, Law No. 152/2013 "On the Civil Servant,"³² is the basis for adopting more specific and detailed regulations on ethics by different parts of the public administration. Public institutions are obliged to establish a human resources department responsible for the management and career development of the public officials of the institution. Disciplinary measures and sanctions are stipulated for application in the event of noncompliance with the law.

The existing codes of ethics or codes of conduct and related provisions in the internal regulations of local authorities complement the above-stated legal provisions.

Guidelines

Despite the lack of specific guidelines regarding codes of conduct, the ethics and conduct of public officials are regulated in different articles of the normative framework which aim to increase transparency, impartiality and non-discrimination in the actions and conduct of Albanian civil servants.³³ The following instruments contain provisions on the conduct of public officials.³⁴

- Law No. 7961, 1 July 1995, "Labour Code of the Republic of Albania", as amended
- Law No. 9049, 10 April 2003, "On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials", as amended
- Law No. 9367, 7 April 2005, "On the Prevention of Conflicts of Interest in the Exercise of Public Functions", as amended
- Law No. 9643, 20 November 2006, "On Public Procurement", as amended
- Law No. 9887, 10 March 2008, "On the Protection of Personal Data", as amended
- Law No. 90/2012, 27 September 2012, "On the Organisation and Functioning of Government Administration"
- Law No. 152/2013, 30 May 2013, "On the Civil Servant"
- Law No. 119/2014, 18 September 2014, "On the Right to Information"
- Law No. 44/2015, 30 April 2015, on "The Code of Administrative Procedures of the Republic of Albania"
- Cross-cutting Public Administration Reform Strategy 2015-2020.

Having a code of conduct is important not only to highlight, transmit and protect the internal values of the institution, but also to communicate these values to external stakeholders. Local authorities should

adopt a code of conduct to foster accountability and ethical behaviour and provide a guideline for handling ethical dilemmas.

Good practices

The Municipal Council of Shkodra³⁵ has published a Code of Ethics³⁶ which includes ethical principles in its first chapter, but also regulates the conduct of public officials. The employees of the Municipal Council should behave in accordance with the ethical principles set forth in the first chapter of the Code, which in subsequent chapters regulates the conduct of public officials with regard to the following topics: human resources, conflicts of interest, access to information, prohibitions of abuse of public expenditure, working time and position, gifts and bribery, and the protection of citizens who report the unlawful conduct of public officials. Finally, the Code lists a range of disciplinary measures that come into effect if public officials violate the articles of the Code, but their actions do not constitute a criminal offence.

1.2. COMPLAINTS MECHANISMS

Complaints mechanisms allow citizens to provide feedback to public authorities on the standards of services they receive. They provide an important accountability mechanism which allows civil servants and elected officials to identify where public services are being delivered ineffectively, inefficiently or inequitably. When such mechanisms result in the prompt and effective handling of complaints, they can help to create the conditions for increased trust of citizens in government administration.

International standards

To ensure confidence in the mechanisms, local authorities should endeavour to consider and resolve each complaint promptly and comprehensively. Complaints mechanisms can be made more accessible by applying a one-stop-shop approach so that citizens do not need to search among different offices and websites.

If government takes a proactive approach to pre-empt the repeat of similar causes for complaint, complaints mechanisms can also help governments to identify new approaches to service delivery and to increase citizen participation. To this end, complaints mechanisms should be combined with periodic evaluations of service delivery, including the use of public opinion surveys, and exchange of experience and tools with other local authorities to encourage wider adoption of good practice and tried and tested tools.

There are no specific international standards for complaints mechanisms relating to public services. However, mechanisms and procedures for responding to complaints are incorporated into an international legal guarantee to the right to participate in the affairs of a local authority, and there are a number of helpful civil society guidelines and handbooks. See for example:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**³⁷ provides an international legal guarantee to this right, including the establishment of mechanisms and procedures for dealing with and responding to citizen complaints and suggestions.
- **Transparency International's Complaints Mechanisms: Reference Guide for Good Practice**³⁸ sets out guiding principles and good practices for establishing and implementing complaint mechanisms

that provide safe channels for citizens to alert a public or private institution about any corruption risks or incidences.

- The **Danish Refugee Council's Complaints Mechanism Handbook**³⁹ describes how to set up and manage a complaints mechanism.
- **World Vision's Overview of NGO-Community Complaints Mechanisms**, with an overview of mechanisms and tools used by development agencies to receive complaints.⁴⁰

Domestic context

Complaint mechanisms at the local level are important in that they provide a channel for addressing citizens' concerns and problems. Citizens can submit complaints through one-stop shops at local government units and can seek redress for their concerns and problems by sending letters of complaint or calling a dedicated phone number created for this purpose. Local government units have internal regulations that stipulate the procedures for addressing and resolving complaints and they should provide complaint-form templates to facilitate citizens' feedback and subsequent documentation of their complaints and the responses provided. In addition, there are online tools in place to file complaints, such as Stop Corruption (www.stopkorrupsionit.al), Ask the State (www.pyetshtetin.al) and Improve Your City (www.permiresoqytetin.al). However, there is a lack of data on citizens' concerns regarding public institutions on most of those online platforms, especially local government units. This is compounded by a general lack of citizens' trust in public institutions at the local level, especially in the fight against corruption.⁴¹

Legislation

Article 19 of Law No.139/2015 "On Local Self-Government"⁴² stipulates that any citizen or group representing communities has the right to address requests, complaints, or objections to local government bodies on matters pertaining to functions and competences within the jurisdiction of the local government unit. Local government bodies are obliged to consider claims, appeals or remarks, and to reply within the deadlines set by the law. Law No.44/2015 "On the Code of Administrative Procedures"⁴³ regulates the procedure for administrative appeal in cases when the complaint is not taken into consideration. The one-stop-shop principle provided in this Code is a good legal basis which contributes to the effectiveness of complaints mechanisms.

The Office of the Commissioner for the Right to Information and Protection of Personal Data also assesses complaints in cases when the mechanism of the right to information is applied.

Other specific procedural laws also provide the legal basis for addressing requests, complaints or objections submitted to local government bodies on specific matters.

Guidelines

In addition to the internal procedures of local government units, the Office of the Commissioner for the Right to Information and Protection of Personal Data has created a procedure for complaints⁴⁴ and has designed a standardised letter for complaints⁴⁵ for those cases where the right to information is not yet observed and promoted by local government units. To improve their efficiency at local level, public authorities should develop and implement a clear process of complaints procedures whereby each citizen's problem and concern is considered and resolved promptly and comprehensively.

Good practices

"Improve your City" (www.permiresoqytetin.al) is an online platform that allows citizens to submit complaints to the local authorities of any of the municipalities in Albania and directly participate in local

government affairs of concern to them. It can be accessed via an internet browser or through its mobile application, resulting in an easy-to-use tool for citizens to have their say about municipal issues such as city cleaning, infrastructure, education, public transport, public spaces, construction, and much more.

Another example is the mobile application *Tirana Ime*, Albanian for “My Tirana” (www.tirana.al/aplikacioni-tirana-ime), launched by the municipality of Tirana in 2015. Available for download free of charge, the application includes six categories: traffic, transportation, pollution, information, reports, and tourism. Under the “Reports” section, residents of Tirana can submit online complaints and feedback or reports on a variety of municipal services.

1.3. GRIEVANCE REDRESS MECHANISMS

Grievance redress mechanisms (GRMs) are tools that go beyond complaints mechanisms and other feedback channels as citizens can use a GRM to address government institutions and local municipalities with concerns about the impact of policies and their implementation on the citizens themselves. When the policy of a public agency affects the interests of the citizens, or the decision made by the central or local governmental bodies causes a grievance on the part of the citizens, interested parties can use the redress system created by the government agencies and local municipal bodies to present their grievance. A grievance redress mechanism is not used to replace the court or audit system or formal investigation; nor is it the appropriate mechanism for grievance about potentially criminal acts, such as instances of corruption. GRMs are designed for collaborative solutions of grievances.

International standards

Redress mechanisms serve as a frontline service to be used by citizens to effectively resolve complaints and/or grievances. Furthermore, business organisations can use GRMs to mitigate risks to their business operations and GRMs can become a prompt and effective mechanism for dispute settlement short of legal action.

Effective redress mechanisms can serve to identify patterns of corruption and malpractice, and to forge corruption prevention policies. To ensure greater access, it is important to raise public awareness about GRMs and to provide free advice to citizens on the formulation of grievance claims and how to proceed when seeking redress.

Standards for grievance redress mechanisms are mostly set by international organisations such as the World Bank, Asian Development Bank (ADB), Organisation for Economic Co-operation and Development (OECD), United Nations Development Program (UNDP) and European Commission. These standards are mostly connected with setting the legal framework for the protection of citizens’ rights. These standards are presented in the following guidelines:

- **Reliability of Public Services: Ensuring Citizens’ Rights**⁴⁶ from the OECD addresses citizens’ rights to be heard using the legal framework established by state institutions.
- **OECD, Recommendation of the Council on Public Service Leadership and Capability, OECD/LEGAL/0445**⁴⁷ – the recommendation has 14 principles and defines the responsiveness of public service.
- **How to make a complaint at EU level by European Commission**⁴⁸ is a pamphlet outlining the opportunity for citizens to contact and submit a complaint to the European Commission.

- Guidance developed by the international institutions on the protection of citizens' rights during the implementation of a business project includes the **ADB's Building Capacity for Grievance Redress Mechanisms**.⁴⁹

Domestic context

According to "Corruption in Albania, Perception and Experience", a survey by the Institute for Development Research and Alternatives (IDRA)⁵⁰ in 2016, the public perceives the degree to which local government is responsive to citizens' concerns regarding local projects and developmental issues as "good". The survey data indicated that respondents consider the redress of citizens' complaints as "average", although secondary data reveals comparatively better satisfaction rates vis-a-vis the resolution of complaints.

Although some municipalities report a generally good level of resolution of complaints, a substantial number of municipalities publish neither statistics on the annual number of complaints filed by citizens and businesses nor the number of resolved complaints. It is evident that some municipalities have neither an integrated system for complaints management nor an effective system for tracking filed complaints.⁵¹

Legislation

Pursuant to Law 119/2014, all the municipalities have established a mechanism to handle filed complaints, known as the Complaints Office, Public Information Office, Appeal Office, or Public Relations Office. This is where citizens can raise issues of concern and file complaints or requests. The workflow, timeframes and other details related to the processing of complaints and requests are specified in the legislation. Other mechanisms that citizens can use are citizens' open days organised by the municipalities, dedicated windows in the municipality official website, and municipal phone numbers. Several small municipalities, such as Memaliaj, Këlcyrë, and Libohovë, have reported that they lack standard redress mechanisms, or that complaints are filed by citizens either as handwritten letters or through informal communication, which makes the process difficult to manage and complicates the authorities' ability to provide formal responses.⁵²

Other procedural laws also provide the legal basis for redress of complaints submitted to local government bodies on specific matters. These provisions provide legal deadlines applicable to the available redress mechanism.

The existence of the independent People's Ombudsman, established by Law no. 8454 "On People's Ombudsman",⁵³ as amended, represents an additional guarantee for an effective redress mechanism.

Guidelines

The accountability of municipal departments is enhanced by citizen complaints management and redress mechanisms, and municipalities declare that they have mechanisms for lodging complaints, but the response mechanisms are not effective.

The recommendations of the Supreme State Audit Institution (ALSAI) and of internal audit bodies serve as an important control mechanism for almost all local governance units (LGUs), but more emphasis should be placed on increasing the role of municipal councils, which need to be periodically informed about the progress made and the problems encountered during the implementation of their decisions. There is also a need to open the municipal council meetings up to the public, providing space for citizens and stakeholder groups to raise complaints or grievances in a concerted way, with a view to securing prompt action, such as redress or policy adjustments to prevent repeat of the harm done.⁵⁴

Good practices

Several innovative practices have been added to citizen feedback mechanisms, such as a dedicated space on official websites, for instance www.shqiperiaqeduam.al, www.stopkorrupsionit.al, www.pyetshtetin.al, www.permiresoqytetin.al, opendata.tirana.al, or applications like “My Tirana” where citizens can share input and seek improvements in policy and practice at the local government level. Other municipalities such as Belsh, Gramsh, Vlorë, Fier, Patos and Sarandë have developed IT tools, such as “Improve my City”, enabling citizens to provide input on municipal issues.

1.4. PROTECTION OF WHISTLE-BLOWERS

Corruption and other actions harmful to the public interest, including to public health, are more prevalent in organisations that lack a culture of transparency and oversight. A whistle-blower is a person who exposes information on illegal or unethical activities in a private or public organisation, and the rights of a whistle-blower who discloses wrongdoing, or acts and omissions harmful to the public interest, should be protected under “whistle-blowing” laws. Although usually an employee, the whistle-blower could also be a sub-contractor, supplier, unpaid trainee or volunteer. The protection of whistle-blowers is important also in the private sector, not least where they might uncover bribery to public officials or practices damaging to the environment or public health and safety.

International standards

Most whistle-blowers raise their concerns internally or with regulatory or law enforcement authorities rather than blowing the whistle in public. The protection of whistle-blowers, and an organisational culture that prioritises transparency and dialogue, serves to promote accountability, builds confidence in the integrity of government, and encourages the reporting of misconduct and corruption. Whistle-blower protection can motivate employees to report wrongdoing without fear of reprisals, and fosters transparency and trust within an organisation as well as outwards to citizens that ethics are upheld and misconduct detected and remedied.

The rights of whistle-blowers can be strengthened by stipulating clear processes and providing secure confidential channels for disclosure. Explicit remedies, including penalties, to redress reprisals against whistle-blowers should be introduced and consistently applied. Training of human resources staff in local government and government agencies needs to be complemented by awareness-raising among the public so that citizens and government employees alike understand the positive results from whistle-blowing in terms of sustained value for money, trust in public authorities, and quality of services.

The following international conventions and standards relate to the protection of whistle-blowers:

- Creating comprehensive and effective mechanisms to protect those who disseminate information in the public interest is a recommendation of both the United Nations and the Council of Europe,⁵⁵ as well as the Organization for Economic Co-operation and Development (OECD).⁵⁶
- The **Congress of the Council of Europe’s resolution and recommendation on *The protection of whistle-blowers Challenges and opportunities for local and regional government*** call on “local and regional authorities to establish and disseminate a whistleblowing policy, with appropriate internal and anonymous reporting channels and to ensure that independent designated institutions exist to oversee and process the disclosure of information.”⁵⁷
- The **United Nations Convention against Corruption**⁵⁸ is the only legally binding universal anti-corruption instrument.
- It is supported by the **Technical Guide to the Convention**.⁵⁹

- The **EU Directive on the Protection of Persons who Report Breaches of Union Law** requires EU governments to meet minimum standards for establishing reporting channels and ensuring legal protection for whistle-blowers.⁶⁰
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**⁶¹ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**⁶² defines common international rules for effective remedies for persons affected by corruption.

Domestic context

In May 2014, the National Coordinator Against Corruption (NCAC) and the Ministry of Justice, with the assistance of the Dutch government through Utrecht University, began drafting the Law "On whistle-blowers and the protection of whistle-blowers". This law serves to achieve a greater transparency of public and private institutions by creating a better environment for employees to step up and denounce corruption cases. The law defines corruption-related offences, delineates the competences of internal mechanisms, pinpoints which body should serve as the external reporting mechanism, and defines how the protection of whistle-blowers should be guaranteed. The law applies both to the public and private sector. It was adopted in Parliament on 2 June 2016. By Decree of the President of the Republic No.9647, the law entered into force on 8 July 2016, but did not have legal effect until 1 October 2016, and internal whistleblowing for private subjects only had legal effect from 1 July 2017. This was a commitment in the Open Government Partnership (OGP) National Action Plans for 2014-2016, and 2016-2018,⁶³ and it remains a commitment in the National Action Plan for 2020-2022.⁶⁴

Legislation

The Law on Whistleblowing and Whistle-blower Protection considers as reportable criminal offences of corruption, all illegal actions, or inactions, as per the criminal legislation in force, related to any and all forms of active and passive corruption, abuse of office or power, exercising illegal influence in the performance of duties or decision-making, misuse of state budget revenues, illegal profits, bribery, or grafts, as well as any other acts similar to the above.

The law includes the three elements of a comprehensive law on whistleblowing:

- Mechanisms for reporting on corrupt acts
- Mechanisms for investigating reported whistleblowing
- Mechanisms for protecting whistle-blowers from retaliation

The law applies to all people working in the public and private sector and includes some of the best international practices on whistle-blower protection, such as:

- Credible protection of confidentiality
- Protection from harassment intended to create an aggravated environment for the whistle-blower
- Prohibition of contractual agreements based on which the whistle-blower's rights and protection are ruled out or limited
- The option of transfer in case the whistle-blower chooses to not return to the same workplace and to relocate to another place to protect themselves from hostile reactions
- Charging of personal responsibility for retaliation against the whistle-blower.⁶⁵

Although four years have passed since the adoption of the law, the situation in local government units regarding the adoption of bylaws presents some problems. None of the ten largest municipalities in the country complied within the legal deadline of six months from the effective date of the law, with the

requirement to approve special internal regulations on the procedure for reviewing the administrative investigation of reporting illegal conduct or wrongdoing, and on the mechanisms to protect confidentiality. By 2021, only seven municipalities, namely Korça, Durrës, Tirana, Gjirokastrë, Lezhë, and Kukës, had fulfilled their legal obligation to approve the relevant regulations, two years after the legal deadline. Three other municipalities (Shkodra, Dibra and Vlora) have not yet approved these regulations.⁶⁶

Guidelines

State institutions and other stakeholders have been mostly focused on the legal and institutional infrastructure necessary to implement the law, but 2017 saw the first results of implementing the whistle-blower legislation. In 2017, eight cases of reports in state institutions were administered by the HIDAACI which indicates marginal changes in government practice regarding civic participation in reporting wrongdoings in institutions that are subject to this law.

Despite the importance of this commitment in creating a formal framework to strengthen the fight against corruption and address other malpractices, implementation has not yet resulted in observable changes for increased public access to information on reported cases or changed practices of public accountability.⁶⁷

Good practices

During monitoring carried out in 2020 by the Albanian Helsinki Committee in the ten main municipalities of Albania, only one internal report of illegal conduct or wrongdoing was registered (in Tirana Municipality). Respecting the confidentiality of the whistle-blower, the report submitted by an identified whistle-blower was initially addressed to the information office, which forwarded the report to the Directorate of Human Resources. The latter forwarded the report to the Responsible Unit. A decision was rendered to start the administrative investigation by the Responsible Unit, while the whistle-blower participated in the hearing, which was documented through a recording. Several days later, the whistle-blower was called again by the Responsible Unit and was asked to file some documents as additional evidence; these additional documents were not filed by the whistle-blower. The Responsible Unit set up at Tirana Municipality conducted an on-site verification at the Directorate where the report was identified. The verifications carried out did not reveal any suspicions of any corrupt acts, therefore, this case was closed.⁶⁸

A successful report was recorded in 2014, when Fier police official D.Z. blew the whistle on the involvement of then-Interior Minister S.T.'s cousins in drug trafficking. D.Z. said drug kingpin M.H. and his ring members used a private car purchased from S.T. to sell drugs. For a long period, the Albanian prosecution did not consider D.Z.'s allegations. Instead, D.Z. – the whistle-blower – was arrested and fled to Switzerland where he was granted political asylum.

Not until 2018 did the Italian authorities arrest M.H. and members of his gang. A year later S.T. was found guilty and sentenced to five years in prison for abuse of office. The sentence was reduced to 3.4 years and then changed to three years of probation. The Albanian authorities have not acknowledged D.Z.'s contribution to the case, and he remains on the wanted persons list.⁶⁹

In September, the Court of Serious Crimes cleared the former minister of interior S.T. of drug trafficking charges but found him guilty of abuse of office and sentenced him to a three-year probation.⁷⁰

1.5. DISCLOSURE: DECLARATION OF ASSETS AND CONFLICTS OF INTEREST

Disclosure is the act of routinely publishing and updating particular types of information, sometimes required by law, such as the financial interests of public officials. It can support anti-corruption measures by requiring the routine publication of assets and interests that could represent a conflict of interest. A conflict of interest arises, or can be perceived to arise, when the private assets or interests of public officials can improperly influence policies and decisions taken during the exercise of their official duties.

International standards

Disclosure requirements can build citizens' trust in the transparency and integrity of local decision-making. They also assist public officials in having regularly updated information that prevents conflicts of interest arising among employees. Disclosure of financial assets also provides important information to help clarify if elected officials or civil servants do not have wealth that is disproportionate to their income, either protecting them from false accusations or serving as evidence in the case of suspected illicit enrichment.

Service delivery at the local government level, whether it be construction or tendering of waste-management services, is often subject to conflicts of interest due to the proximity of local entrepreneurs to government officials.

Confidence of the public and business that competition for local government tenders, for instance, is open to all without discrimination will be much greater if both elected officials and civil servants involved in design of the tenders and assessment of tender submissions have completed declarations of assets and interests (including of close family members).

It is important that the institutions responsible for gathering and monitoring declarations are provided with protection against political or other interference in their work, for instance through oversight by independent ethics committees. Likewise, local government officials should be provided with clear guidance on what to declare, and also on prevailing anti-corruption legislation. A well-implemented and regularly updated and monitored assets declaration system can complement the work of an effective prosecution service.

Disclosure is an important element in the conventions and standards against corruption listed elsewhere in this handbook. Of particular relevance are:

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**⁷¹ and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**⁷² require private interests to be declared, made public and monitored.
- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest at local and regional level**⁷³ call on local and regional authorities to promote the proactive disclosure of declarations of interest prior to public request and to ensure that disclosure policies are accompanied by appropriate measures for resolving conflicts of interest.
- The **OECD's Managing Conflict of Interest in Public Service: Guidelines and Country Experiences**⁷⁴ provides practical instruments for modernising conflict-of-interest policies.
- The **OECD's Asset Declarations for Public Officials: A Tool to Prevent Corruption**⁷⁵ identifies the key elements of asset declaration systems.
- **Consultation, Participation & Disclosure of Information**, International Bank for Reconstruction and Development / The World Bank⁷⁶

Domestic context

The system for the declaration of assets and financial obligations has been one of the most important legislative steps in Albania, reflecting the key requirements of the UN Convention against Corruption. However, the legislation on the conflict of interest and its implementation has been hampered by several factors and, therefore, its application has been partial and fragmented. One of the main obstacles is the gap between the broad scope of the law and inadequate capacity to ensure its effective implementation.⁷⁷

Legislation

Law No. 9049 "On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials"⁷⁸ defines the rules for the declaration and audit of assets, the legitimacy of their sources, and the financial obligations for public officials, their relatives and persons close to them. As per Article 40, any violation of the obligations set forth in this Law may constitute a criminal offense or an administrative infraction, which is punished by fines based on the nature and degree of such a violation.

The High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (HIDAACI) administers the declaration of assets and financial obligations, and the audit of this declaration, according to the specifications outlined in the laws of declaration and conflict of interests.⁷⁹ In addition, according to Law No. 9367 "On the Prevention of Conflict of Interest in the Exercise of Public Functions",⁸⁰ the HIDAACI, which is the central authority responsible for the law's implementation, manages and improves the policies and mechanisms regarding the prevention of conflict of interest; offers technical assistance and advice on legal initiatives undertaken by public institutions for the prevention of conflict of interest; and monitors, audits and evaluates the exercise of this Law.⁸¹

Guidelines

To support local government anti-corruption efforts, the HIDAACI has developed and made available the Guide for Prevention of Conflicts of Interest in Local Governance⁸² together with an Explanatory Manual.⁸³ The Guide gives information on:

- What is conflict of interest in local governance (definition, types of conflict of interest, who is involved in conflicts of interest)
- Prevention of conflict of interest
- Limitations on local government officials for the prevention of conflicts of interest
- Basic measures for treating and solving conflicts of interest
- Sanctions
- Illustrative examples of administering and solving cases of conflict of interest

The Explanatory Manual for the Prevention of Conflicts of Interest in Local Governance aims to create standards and unification of practices in administering and solving conflicts of interest at the local level. To enhance disclosure, and prevent conflict of interest, public authorities should act in accordance with the Guide adopted by the HIDAACI and its Explanatory Manual.

Good practices

The Municipal Council of Tirana has published an internal regulation⁸⁴ which provides the rules and procedures of the Municipal Council. Article 12 of this internal regulation stipulates that councillors do not take part in the consideration and approval of the council's draft acts when they or their spouse, parents, children, siblings, parents-in-law, or partners have a conflict of interest in the matter being discussed.

Chapter 2

TRANSPARENCY

Introduction

The principle of transparency is applied to ensure that those affected by administrative decisions have comprehensive information about the results and implications of policies and about the process of decision-making. The public availability of information about government policies, programmes and activities enables citizens and local communities to gain a clear understanding of government actions, make informed choices, and participate in local decision-making processes. It also enables elected officials, those in government and those in opposition, to take informed decisions and to exercise effective scrutiny and hold the executive to account for their actions. In addition, access to information is essential for journalists and civil society representatives to effectively perform their watchdog functions and hold the government accountable.

Local government should make data available to the public in an accessible format and do so in a timely manner. This enables citizens and stakeholders to participate in decision-making processes from an informed perspective, and to monitor and evaluate government implementation of policies and decisions in order to hold public officials accountable for their actions. Transparency is achieved through a range of mechanisms, building on the right of citizens to access information. These include the disclosure of the financial assets and interests of senior public officials and elected office-holders, and the publication of information in accessible, intersearchable open-data formats.

According to the definition of the Open Knowledge Foundation, “open data is data that can be freely used, re-used and redistributed by anyone – subject only, at most, to the requirement to attribute and share alike.”⁸⁵ Therefore, the concept of open data goes beyond the availability of public information and focuses on its use, out of which additional economic, social and political benefits are generated.⁸⁶ To make it happen, the data published should be complete, permanent, non-exclusive, non-discriminatory, and non-proprietary, as well as provided by primary sources, in a timely manner and in machine-readable formats.⁸⁷

Limited access to public information negatively affects public trust towards public institutions, increases potential corruption risks, and restricts opportunities for various stakeholders to monitor government performance. It also inhibits citizens and stakeholders’ efforts to participate in policymaking and to design evidence-based policy recommendations for positive changes. The practice shows that access to information legislation and proper enforcement measures are an essential part of the enabling environment for citizens’ access to information.

Public procurement is considered to be one of the key areas susceptible to corruption. It accounts for around 12 percent of global gross domestic product,⁸⁸ and in most high-income economies the purchase of goods and services accounts for one-third of total public spending. In short, public procurement is a significant area for potential corruption, collusion, and other illegal practices. To avoid public procurement-related corruption risks, electronic means and platforms operating through open data solutions are increasingly available and used by government authorities to reform state procurement tendering procedures. Combined with open contracting (where bids and contracts are made public), the

increase in fully accessible, well-publicised procurement processes opens tendering to more bidders and reduces the scope for anti-competitive practices and bribery.

Another important component of transparency principles is the openness of the financing of political parties and election campaigns, as it is important for the electorate to know the sources of financing, and how the money is spent, in order to make informed decisions and to understand which financial, political or other interests are supporting particular candidates or parties. The transparency of political donations is a preventive measure against the use of money emanating from illicit and criminal sources in politics and elections.

Finally, to ensure that state resources are used in an economical, efficient and effective way, the independence and institutional capacity of the body responsible for external audit should be secured. Members of the wider public should have the possibility to familiarise themselves with reports and major recommendations issued by the auditor. External audit is important to identify major challenges in the public sector, improve transparency and performance of public institutions, and design evidence-based policies.

General domestic context

In 2019, minor positive developments in local democratic governance in Albania were overshadowed by single-party control of nearly all municipalities following the main opposition party's boycott of the June local elections. This unprecedented situation raised serious concerns over good governance due to the absence of opposition voices in the current four-year mandate.

In its fourth year of implementation, the territorial and administrative reform (TAR) process needs consolidation. The report titled "Functioning of municipalities in the framework of TAR," carried out by the Albanian Supreme State Audit Institution (ALSAI) in 2018, found serious concerns in relation to local finances, fiscal autonomy, alignment of other laws with Law no. 139/2015 on "Local self-governance", and legal ambiguities that may be misused to breach local government autonomy.

The European Commission's 2019 Progress Report on Albania⁸⁹ echoes similar challenges, and points to concerns over the civil service at the local level. National transfers still constitute 73 percent of the budgets of LGUs, which remain largely ineffective at collecting revenues and delivering quality public services.

Recent studies show that the average level of transparency regarding access to information in local governments in Albania is 57%⁹⁰ while approximately half of the 61 municipalities have adopted a transparency programme.⁹¹

The country's political stalemate saw an opening in January 2020, when the ruling majority and the parliamentary and extra-parliamentary opposition reached an agreement to take forward electoral reform, and to implement the recommendations of the Office for Democratic Institutions and Human Rights at the Organisation for Security and Cooperation in Europe (OSCE/ODIHR), ensuring transparent financing of political parties and electoral campaigns.⁹²

The robust law on access to information is not well implemented. Public procurement processes and public finances are frequently opaque, though parliamentary procedures are more open and accessible.⁹³

2.1. ACCESS TO INFORMATION

Access to information is the legal right for citizens to request and receive information from public authorities. It is often enacted by Freedom of Information legislation. As an integral part of the right of freedom of expression, access to information is a human right⁹⁴ and everyone should have the right to access information from public bodies and public agencies in accordance with the principle of maximum disclosure subject to only a narrow, clearly defined, set of exceptions proportionate to the interest that justifies them (e.g. grounds of security or data privacy).

International standards

Access to information supports accountability, oversight of government, and monitoring of corruption. It is also critical to informed citizen participation in decision-making, and is therefore fundamental for the effective functioning of democracies. Free access to information empowers civil society to monitor and scrutinise the actions of local authorities, it serves to prevent abuse of power by public officials and provides data for informed public debate.

The proactive publication of the maximum amount of information in the most accessible formats serves to reduce the need for citizens and stakeholders to file individual requests for the release of information. As well as providing the maximum amount of information electronically, local authorities should prioritise the designation of Freedom of Information officers in their municipalities. Such officers should prepare and publish detailed recommendations for both citizens and local authorities, and provide clear guidance on the appeals process in the event that a request for information is not granted. It is also important to analyse information requests from citizens and stakeholder groups, in particular trends and duplication, so that the authorities can subsequently release such information on a proactive basis.

Access to information is a fundamental component of a number of the conventions and standards against corruption listed elsewhere in this handbook. It also underpins a number of key UN human rights documents. The following specifically relate to Access to Information:

- The **Council of Europe's Convention on Access to Official Documents (CETS No. 205)**⁹⁵ affirms an enforceable right to information.
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**⁹⁶ call upon local and regional authorities to increase the use of open data and records management by their administrations, and to publish these in comprehensive, accessible and reusable ways.
- The **Aarhus Convention**⁹⁷ grants rights, including access to information, in decisions concerning the environment.
- The **OECD Recommendation of the Council on Open Government**⁹⁸ identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.
- **Resolution 59 of the UN General Assembly** adopted in 1946, states that "freedom of information is a fundamental human right", and Article 19 of the **Universal Declaration of Human Rights** (1948) states that the fundamental right of freedom of expression encompasses the freedom to "to seek, receive and impart information and ideas through any media and regardless of frontiers".⁹⁹

- **Directive 2003/98/EC on the re-use of public sector information, nowadays called the Open Data Directive,**¹⁰⁰ previously known as the PSI Directive, encourages EU member states to make as much public sector information available for re-use as possible.

Domestic context

Access to information is an important mechanism to address transparency and accountability. Recent studies show that the average level of transparency regarding access to information in local governments in Albania is 57%¹⁰¹ and approximately half of the 61 municipalities have adopted a transparency programme.¹⁰²

Legislation

Article 15 of Law No. 139/2015 “On Local Self-Government”¹⁰³ and Law No. 119/2014 “On the Right to Information”¹⁰⁴ (FOIA) stipulate that local self-government bodies are obligated to make all their acts and information accessible to citizens. They should be published on their official website and noticeboards for public announcements within the municipality. Each municipality shall adopt a transparency programme and appoint a co-ordinator for the right to information, thus ensuring access for all.

Article 18 of Law No. 119/2014 “On the Right to Information” also establishes administrative offenses for those who fail to comply with the provisions of this Law and imposes pecuniary sanctions according to the degree of violation. The Commissioner for the Right to Information and Protection of Personal Data has the right to supervise and monitor the implementation of the Law, to conduct administrative investigations, and to propose disciplinary measures against offenders.

Law No. 44/2015 “On the Code of Administrative Procedures”¹⁰⁵ regulates the procedure for access to public administration, the right to administrative requests, petitions, etc., that may be addressed to the public administration authorities. The principle of one-stop-shop provided in this Code is a good legal basis regarding access to information.

Guidelines

To increase access to information at the local level, especially for the poorest communities, local authorities shall adopt and keep updated a Transparency Programme, designed in accordance with the standard format approved by the Commissioner for the Right to Information and Protection of Personal Data.¹⁰⁶ The Transparency Programme enables local authorities to consider the community interest, especially by ensuring maximum access to public information, and making publicly available as much information as possible in order to reduce the need for individual requests for information.

In addition, local authorities shall create, keep, and make public a register, which keeps track of requests for information and includes the information made available in response. The register should be created in accordance with Article 8 of Law No. 119/2014 “On the Right to Information,” and with the Transparency Programme, following the standard format of the register issued by the Commissioner for the Right to Information and Protection of Personal Data.¹⁰⁷

Good practices

The municipality of Korçë¹⁰⁸ stands out for its good implementation of the legal regulations on access to information. According to a 2017 report by the Centre for Public Information Issues (INFOÇIP by its Albanian acronym), Korçë is the most transparent municipality in Albania based on five indicators:

- Having an official website
- Register of questions and answers

- Co-ordinator for the right to information
- Publication of the decisions of the municipal council
- Drafting and publishing the transparency programme

In addition, according to online monitoring of Albanian municipal websites carried out by the Balkan Investigative Reporting Network, the municipality of Korçë was ranked first out of all municipalities in 2017, with an online transparency score of 69%.¹⁰⁹ The most transparent categories in the municipality of Korçë were financial transparency, implementation of the right to information, and publication of municipal council meetings and decisions.

2.2. OPEN DATA

Open data is the publication of data and information in a format that may be freely used, modified and shared. The OECD states that open data is *“a set of policies that promote transparency, accountability and value creation by making government data available to all”*. By making data generated through the activities of public bodies available, government becomes more transparent and accountable to citizens. It also supports business growth and the development of services centred on citizens, and provides important data for research and innovation by public bodies, the private sector, and civic stakeholders.

International standards

The promotion of open data through one-stop portals can further increase the scope for interoperability of datasets in terms of search and analysis. The results can improve the efficiency and reach of service delivery and reduce corruption. Awareness-raising among stakeholder groups, the media, businesses, and the wider public can result in effective co-operation among different stakeholders and improvements in solutions on transportation, recreation facilities, parking zones, health services, and much more.

It is important to adopt consistent open data standards for all open data to ensure maximum interoperability and searchability of data. Local authorities should also ensure that qualified staff manage the municipality's open data publication, and train relevant employees in open data standards.

Open data is a relatively new phenomenon without officially endorsed standards. However, a number of useful guidelines exist:

- The **Congress of the Council of Europe’s Resolution and Recommendation on Open data for better public services**¹¹⁰ explain its importance for improving local democracy.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Transparency and open government**¹¹¹ call upon local and regional authorities to increase the use of open data and records management by their administrations.
- The **United Nations Guidelines on Open Government Data for Citizen Engagement**¹¹² introduce policy guidelines and good practice recommendations.
- This **World Bank Toolkit**¹¹³ starts from the basics, through to planning and implement, as well as avoiding common pitfalls.
- The **Five Star Open Data Deployment Scheme**¹¹⁴ provides five steps to fully opening data, explaining the costs and benefits of each.
- The **International Open Data Charter**¹¹⁵ sets out six principles for open, timely and interoperable government data.

- The **OECD Recommendation of the Council on Open Government**¹¹⁶ identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.

Domestic context

Albania is ranked 37th out of 122 countries in the 2015 Global Open Data Index.¹¹⁷ Laws, published acts and updated legislation are available online through the Albanian Official Publishing Centre.¹¹⁸ Nevertheless, 59% of surveyed civil society organisations do not fully agree that draft laws, policies, and laws are available to the public, and 54% of them do not fully agree that draft laws, policies, and laws are published in a timely manner.¹¹⁹

Lack of awareness and understanding of open data persists in government institutions, and among public officials and citizens.¹²⁰ That said, there are initiatives in place to address this situation, such as the promotion of Open Government Partnership (OGP) values among local authorities, which was one of the partially achieved commitments of the OGP Second Open Government National Action Plan for Albania 2014-2016.¹²¹

Legislation

On 18 February 2015, the Council of Ministers approved decision No. 147 “On the Approval of the Document on the Open Data Policy and the Establishment of the Open Data Portal”.¹²² The OGP Third Open Government National Action Plan for Albania 2016 – 2018¹²³ foresees four major actions and 17 commitments to promote transparency and open data. Increasing access to information and modernisation of the public service are the two main actions that should be addressed by local authorities. A platform for transparency and innovation named OpenAlb¹²⁴ has been established to ensure the successful implementation of the OGP commitments in the country.

Guidelines

To increase openness and transparency at the local level, local authorities in Albania should engage substantially in developing open data tools in accordance with the Technical Standards for Publication of Open Data,¹²⁵ which will improve public access to information and lead to greater levels of citizen participation. Co-ordination between local authorities and civil society organisations, businesses, think tanks and other actors is important to raise awareness and understanding of open data as a transparency mechanism for strengthening local governance.

Good practices

Conceived in 2013 as an online one-stop shop, e-Albania¹²⁶ is the governmental portal where citizens can obtain detailed information on public services and official documents electronically. The portal is administrated by the National Agency for Information Society¹²⁷ and aims to improve service delivery, reduce delivery time, avoid bureaucracy, and narrow opportunities for the corruption of public institutions, including local self-government. All the 500 e-services offered on the portal are dedicated to a wide range of users, such as unemployed citizens, business, property owners, students, the elderly, Albanians living abroad, civil servants, etc. These services are classified by categories and institutions. According to the information available on the portal, the certificate services, which are administrated by local self-government, are the most used electronic services on the e-Albania portal.

2.3. PUBLIC PROCUREMENT

Public procurement refers to the process by which public authorities, including local authorities, purchase work, goods or services. As public procurement is an essential part of public service provision for local and regional authorities, efficient, cost-effective procurement is key to good governance.

International standards

As procurement involves a large proportion of public expenditure and the transfer of public resources to the private sector or non-profit organisations, it is particularly vulnerable to corruption. Public authorities should deploy new technologies to increase transparency over public procurement and encourage new economic actors to enter bidding processes in the confidence that free and fair competition is applied. By posting all tenders on a common online platform, the occurrence of unpublished tenders and direct awards will be minimised. Use of open contracting and open bidding solutions also allows greater scrutiny of the process, further reducing the scope for corrupt practices. Open contracting systems include a preventive effect because officials will refrain from manipulating the contracting process if they know that comprehensive disclosure of the bidding and contracting processes will be revealed.

Local authorities should ensure that there is a comprehensive system in place to monitor compliance with public procurement legislation, and that there is a responsive mechanism for reviewing appeals and complaints, including prompt and comprehensive replies. Authorities should also monitor contract implementation, in particular time extensions and cost increases, to ensure that the benefits in terms of value for money and quality of delivery are not compromised during contract implementation.

The following international conventions and standards relate to public procurement:

- The **Congress of the Council of Europe's Resolution and Recommendation on Making public procurement transparent at local and regional levels**¹²⁸ and the **OECD Checklist for Enhancing Integrity in Public Procurement**¹²⁹ provide guidance for enhancing transparency and promoting integrity in procurement.
- The **OECD Recommendation of the Council on Public Procurement**¹³⁰ promotes a strategic and holistic use of public procurement systems across all levels of government and state-owned enterprises. The online **Public Procurement Toolbox**¹³¹ provides policy tools, specific country examples as well as indicators to measure any public procurement system.
- The **WTO Agreement on Government Procurement**¹³² establishes rules requiring that open, fair, and transparent conditions of competition be ensured in government procurement.
- The **EU Directive on Public Procurement**¹³³ ensures the best value for money for public purchases and guarantees the respect of the EU's principles of transparency and competition.
- The **UNCITRAL Model Law on Public Procurement**¹³⁴ is a legal template available to governments seeking to introduce or reform public procurement legislation for their internal market.
- The **European Bank for Reconstruction and Development (ERBD) Guide to Electronic Procurement Reform**¹³⁵ provides information on and assistance with designing and implementing domestic eProcurement reforms.
- **Open Contracting Data Standard (OCDS)**,¹³⁶ providing open data standard for publication of structured information on all stages of a contracting process: from planning to implementation.
- **UNODC's (United Nations Office on Drugs and Crime) Guidebook on anti-corruption in public procurement and the management of public finances**,¹³⁷ which provides good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption.
- **World Bank's Annual Reports**¹³⁸ – Benchmarking Public Procurement, which have been assessing public procurement regulatory systems in different countries.

Domestic context

Albania is doing moderately well in public procurement. Some progress was made in the past year, by amending the law on concessions and public-private partnerships (PPPs) to remove the bonus for unsolicited proposals, in line with the European Commission's recommendations, and the adoption of the new law on defence and security procurement. Further efforts are needed to improve compliance with procedures and prevent corruption in the procurement cycle.¹³⁹

Since 2009, as part of measures designed to increase transparency and tackle corruption, all public procurement procedures in Albania occur via an electronic platform. Shifting to the e-procurement system, from the paper-based model, has been both a significant challenge and achievement for the Albanian public procurement system.

In 2016, based on data analysis, and assessments after several years of experience with the e-procurement platform, improvements were made to further increase transparency.

Improving the e-procurement system and using it as a tool to increase transparency and fight corruption, has helped to upgrade the performance of the procurement system in Albania. The most important data illustrating the system's impact is a reduction of the number of unpublished tenders resulting in direct awards, which decreased from 30% of the total number of procurement procedures (which represents the average during the period 2009-2017), to 2.5% in 2019.¹⁴⁰

Legislation

The current core legislation in the field of public procurement consists of Law no. 9643, "On Public Procurement", as amended, and the Decision of Council of Ministers no. 914/2014 "On the approval of public procurement rules", as amended. These legal instruments are based on the following regulations: Directive 2004/18/EC on the coordination of procurement procedures for the award of public works contracts, public supply contracts and public service contracts" (Public Sector Directive); Directive 2004/17/EC coordinating the procurement procedures entities operating in the water, energy, transport and postal services sector"(Utilities Directive), which was updated by new Directives in 2014; as well as Directive 2007/66/EC of the Parliament and European Council of 11 December 2007, amending Directives 89/665/EC and 92/13/EC on the increase of efficiency for public contract review procedures.

The legislation on public procurement also includes two decisions of the Council of Ministers, which further regulate centralised procurement at governmental level, namely DCM no. 81/2018 "On the establishment, organisation and functioning of the Centralized Purchasing Agency" and DCM no. 82/2018 "On entrusting Centralized Purchasing Agency with conducting public procurement procedures, on behalf and in the name of the Prime Minister's Office, Ministries and Subordinate Institutions, for some Goods and Services".

Also relevant to public procurement are laws on concessions and PPPs, which are governed by Law 125/2013 "On concessions and public-private partnership", as amended, based on Directive 2014/23/EU on the award of concession contracts. This law is also supported by three bylaws: DCM no. 280/2020 "On the approval of the regulation on the functioning manner of the selection committee of concession/PPP projects and criteria for evaluating contracting authorities' requests for support with specialized expertise"; and DCM no. 285/2020 "On the organisation and functioning of the Concession Treatment Agency (ATRAKO)".

Legal provisions related to the Procurement Ombudsman represent an additional guarantee to citizens and private entities.

Also, in the Cross-cutting Strategy for Decentralization and Local Government 2015-2020,¹⁴¹ one specific objective is the expansion of the reform of Internal Audit and Control, External Audit and Public Procurement, to include local government. This aims to build capacity of local government units to achieve effective monitoring of the progress of reforms in public financial management.

Guidelines

Albania has a central electronic public procurement portal administered by the Public Procurement Agency, where tender and contract notices, and other important information and guidance are published. Use of the portal is mandatory, including for low-value procurement. Standard tendering documents for each type of procedure and contract are published on the PPA website, and the procurement forecast register is prepared and posted online.

By the end of 2019, the concessions registry contained information on 224 PPPs, five of which had been signed in 2019. Although required by law, value-for-money analysis is still not systematically carried out before approval of all PPPs. The Ministry of Finance and Economy made initial attempts to establish regular monitoring and reporting on PPPs. The technical skills and capacity to design and assess concessions and PPPs require further development.

The PPA has recently strengthened its monitoring role, and applies a monitoring system to assess procurement performance, procurement compliance and, since 2019, contract implementation, with information available for 1,006 contracts. The monitoring system is based on a variety of performance indicators. There is still a need for: further support for contracting authorities; strengthening of the e-procurement system; monitoring of contract implementation; and analysis of market trends in public procurement.¹⁴²

Good practices

In 2015, the Public Procurement Agency together with the Public Procurement Commission and Supreme State Audit Institution (ALSAI) were the beneficiaries of the World Bank project, "Improving compliance monitoring and enhancing transparency in public procurement in Albania", which began implementation in 2016.

The purpose of this project is to support the Government of Albania to improve and further strengthen the system of compliance monitoring relating to public procurement law, by improving mechanisms for reviewing complaints, capacity building of the ALSAI to audit public procurement contracts in Albania and creating Electronic Archiving of Procurement Procedures.¹⁴³

The PPA has continued to strengthen the capacities of technical staff in its operations and has conducted online and informative sessions on the relevant legal framework.¹⁴⁴

E-governance was designed to make a difference at the central level and in the government-business public service (Government to Business - G2B) and G2G (Government to Government). The establishment of the National Licensing Center, National Registration Center, the expansion of GovNET (G2G) infrastructure, the establishment of infrastructure for interaction, e-tax, e-procurement, e-customs, e-patents, e-fines services, Civil State National Register, issuance of biometric document, etc., are some of the main developments that may be considered good practice relating to procurement.¹⁴⁵

2.4. EXTERNAL AUDIT

External audit is the regular, independent scrutiny of accounts and financial information to ensure that public money is used appropriately and effectively. External audits are undertaken in accordance with relevant laws and rules to support those external to government to hold it to account. As well as audit of the financial statements of local budget institutions, external audit can look beyond finances to assessing the performance of government against its own objectives, or in providing programmes and services.

International standards

- The **International Public Sector Accounting Standards**¹⁴⁶ focus on the accounting, auditing, and financial reporting needs of central, regional, and local governments, related governmental agencies, and the constituencies they serve.
- The **International Standards of Supreme Audit Institutions**¹⁴⁷ website contains a complete collection of professional standards and best practice guidelines for public sector auditors.
- A number of the conventions and standards for combatting corruption include provisions and clauses relating to external audit.

Domestic context

External audit coverage in Albania is limited. For example, in 2013, only 8% of public entities (accounting for 40% of budget spending) were audited. The independent Supreme State Audit Institution publishes an annual report on the implementation of the budget. However, there is currently no certification or audit opinion on the individual financial statements of central or local budget institutions, or on the consolidated fiscal statement.¹⁴⁸

Legislation

Article 13 of Law No. 139/2015 “On Local Self-Government”¹⁴⁹ stipulates that, “*local self-government units shall be subject to external audit by central government bodies with regard to the use of conditional and/or delegated funds provided by the State budget and/or funds of foreign aid, allocated to them according to the agreements signed by the central government.*” Article 43 of the same law, states that each local self-government unit is subject to external audit by the State Supreme Audit, and any audit report should be made available to the public. In exceptional circumstances, local executive bodies may be subject to audits conducted by specialised auditing companies.

The State Supreme Audit Institution (ALSAI) is the highest external audit institution in Albania.¹⁵⁰ In accordance with its functions, rights and duties, the ALSAI can also address criminal prosecution bodies, when further tracking of audit findings is part of their competence, and it can address the highest state bodies in case of noncompliance with its recommendations, as set forth in Article 15 of Law No. 154/2014 “On the Organisation and Functioning of the State Supreme Audit Institution”.¹⁵¹

Guidelines

To increase transparency on accounting standards and financial statements, public authorities should establish a sound internal budgetary control regime, produce publicly released annual reports, and perform an external audit of those annual reports. Local authorities are advised to disclose and publish the external audit reports, and to adopt the Audit Reporting Guidelines¹⁵² published by ALSAI.

Good practices

Fier is one of the largest municipalities in Albania.¹⁵³ In 2016, with the support of the USAID Planning and Local Governance Project, the municipality underwent an external assessment on public expenditure and financial accountability based on the Public Expenditure and Financial Accountability (PEFA) methodology, aiming to provide an analysis of the strengths and weaknesses of municipal public financial management systems.¹⁵⁴

According to the PEFA assessment, weaknesses identified included challenges around the efficient use of resources and service delivery. This weakness is addressed by the external auditing reports prepared by the High State Control (HSC) which are prepared every two years. These reports of HSC have served as steps to remedy this weakness.¹⁵⁵

2.5. FINANCING OF POLITICAL PARTIES

Financing of political parties and election campaigns is a necessary component of the democratic process. It enables the expression of political support and competition in elections.

Principles governing the financing of political parties should include fairness in the distribution of state funding, strict rules concerning the transparency and limits on the size of private donations, ceilings on campaign expenditure, full transparency of funding and expenditure, independent election commissions, independent audit of campaign finance, and the consistent imposition of proportionate sanctions on candidates and political parties that violate the rules (such as fines or a reduction in state contributions to future election campaigns).

International standards

Clear rules and transparent reporting of political campaign financing and expenditures are essential to sustain trust in political candidates, political parties, and government institutions. An imbalance in funding of political parties may result in an unfair advantage, handing undue influence to powerful narrow interests, running the risk that policies will be "captured" by narrow private interests, serving their goals over the public interest.¹⁵⁶

Mechanisms and rules on limits on party political financing, and on state financing of political campaigns, should be designed in a way that provides a level playing field for the different political candidates and parties competing in elections and serves to preserve the political forces' independence from financial supporters.

The following international conventions and standards relate to the financing of political parties:

- The **Congress Resolution 402 (2016) on "The misuse of administrative resources during electoral processes"**;¹⁵⁷
- The **Guidelines and report on the financing of political parties** (Council of Europe, Venice Commission, 2001);¹⁵⁸
- The **Compilation of Venice Commission Opinions and Reports concerning Political Parties** (Council of Europe, Venice Commission, 2013);¹⁵⁹
- The **Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns**.¹⁶⁰

Domestic context

In 2020, Albania addressed some of the OSCE recommendations for improving the organisation of elections. The passage of electoral reform, while partly positive, also included amendments that were added without opposition agreement. Conclusions from the March European Union Council meeting stipulated that prior to the first intergovernmental conference opening negotiations between Albania and the European Union, "Albania should adopt electoral reform fully in accordance with OSCE/ODHIR recommendations, ensuring transparent financing of political parties and electoral campaigns". Additionally, the negotiation framework, to be adopted by the Council, must reflect that Albania has implemented the agreed-upon electoral reform and that the Constitutional Court has issued a final decision on the lawfulness of the June 2019 local elections.¹⁶¹

Legislation

Financing of political parties is regulated by Law No. 8580 "On Political Parties"¹⁶² and by the Electoral Code of Albania approved with Law No. 10019, as amended.

Paragraph 2 of Article 15/1 of the above stated law stipulates that, *"The financing of political parties is guided by the principle of transparency. Data on the financial resources of the parties, as well as on their expenses are always published."*

This law identifies the Central Election Commission (CEC) as the body responsible for monitoring and overseeing the funding of political parties, ensuring that they comply with the rules, and to achieve this, political parties are obligated to submit annual financial reports to the CEC. The CEC is entitled to decide the specific amounts of public funding that each party will receive in the form of annual financial funding provided by the law, following the instructions set out by Article 19 of this law "On Political Parties".

Article 23/1 of Law No. 8580 "On Political Parties" stipulates that:

- 1. Each political party must record in a special register, according to the format approved by the Central Election Commission, the amount of funds received from each natural or legal person, as well as data related to the clear identification of the donor. In any case, the donor, at the time of donation, must sign a donation declaration, according to the format approved by the Central Election Commission. The list of persons who donate amounts not less than 100 thousand ALL, as well as the respective value, must always be made public.*
- 2. The donation of non-public funds, with a value greater than ALL 100 thousand, should be done only in a special account, opened in a bank by the political party. The person responsible for the finances of the political party, within three months from the establishment of the political party, declares to the Central Election Commission the number of the bank account, opened for this purpose. The bank account number for each political entity is published on the official website of the Central Election Commission.*
- 3. It is prohibited to benefit from non-public funds, carried out by entities that do not declare their identity or whose identity is clearly not defined by the political party beneficiary of the non-public fund.*
- 4. Every expense incurred by the political party is performed and documented respecting the tax legislation in force.*

This Article is very important for guaranteeing transparency in the financing of the political parties. Chapter III/1 of the law "On Political Parties" named "Financial funds and expenditure of political parties during the election campaign" was repealed by Law no. 135/ 2020.

Article 3, paragraph 5/1 of the Electoral Code¹⁶³ acknowledges the importance of transparency stating, *"...Electoral subjects bear the obligation for transparency and publication of election revenues*

and expenditures towards the Central Election Committee CEC, the persons in charge of auditing or monitoring and the public”.

Article 86 of this Code expresses the sources of election campaign financing as follows, *“The sources of campaign financing for electoral subjects are:*

- a) funds provided in advance from the State Budget for registered political parties as electoral subjects*
- b) the income of the electoral subject itself created according to the law*
- c) gifts for the electoral subject and its candidates, in monetary value, nature or services provided, according to article 92/1 of this law*
- ç) loans or credits received from political parties or their candidates according to the law. In no case the value of a loan or credit should exceed the amount of funds, according to point 2 of article 92/1 of this law.”*

Election-registered political parties have a legal responsibility to report their candidates' income and expenses, and candidates must also comply with adjustments to the allowable donation limit. Candidates on the multi-name list must also record all donations received, ensure that in-kind donations are properly evaluated and registered, and keep one copy of the statement signed by the donor. Candidates can accept donations over ALL 50,000 only through a special bank account, or if the donations are less than ALL 50,000, but are made through a bank. These donations must be credited to the special account declared at the time of registration. If the candidate decides not to accept such donations (e.g., the candidate decides that donations should be sent to the special party account for the campaign), then the candidate is not obligated to open a special bank account.

It is illegal for an electoral subject or even a candidate to accept a donation from a natural or legal person who does not declare his or her identity, or whose identity is unclear.¹⁶⁴

Guidelines

Aiming to increase transparency and to ensure compliance with the campaign finance rules, the Central Election Committee (CEC) is authorised to appoint persons who are tasked to monitor and follow the election campaign, including adherence to prohibitions on certain forms of campaigning. In addition, the CEC shall establish and maintain an online tool for citizens to report potential violations of campaign and campaign finance rules.¹⁶⁵

The law sets limits for donations and expenditures for campaign finance and provides disclosure requirements. The auditors selected by the CEC oversee adherence to the campaign finance rules both before and after election day. The audit results will be published by the CEC, which can impose sanctions for financial violations. Several ODIHR Needs Assessment Mission Reports interlocutors have raised concerns over insufficient transparency of the campaign financing.

Amendments to the Electoral Code, related to the structure of the CEC, aimed to address previous ODIHR recommendations regarding public and private financing of campaigns and its oversight, transparency of verification of candidate nomination documents, use of public resources for electoral purposes, legal protection of people reporting on misuse of administrative resources, and electoral dispute resolution mechanism etc.¹⁶⁶

Good practices

There are no specific good practice examples in Albania related to the financing of political parties.

Chapter 3

CITIZEN PARTICIPATION

Introduction

“The right of citizens to participate in the conduct of public affairs”, including at the local level, is explicit in the European Charter of Local Self-Government,¹⁶⁷ the Additional Protocol to which states that “the right to participate in the affairs of a local authority denotes the right to seek to determine or to influence the exercise of a local authority’s powers and responsibilities”.¹⁶⁸ When local authorities consult with, and engage, citizens on the design of, and evaluation of, public services, they pave the way for better policy outcomes and also for greater mutual trust between citizens and government.

Citizen participation involves outreach to a range of local stakeholders, such as civil society activists, journalists, members of academia, business representatives, local communities, and active citizens. It is important that it is inclusive, taking into consideration the views of the wider public, expert stakeholders, and representative groups, including the vulnerable and marginalised. Moreover, stakeholder engagement must include outreach to those whose lives and interests will be affected by the implementation of the decisions under consideration. To ensure that such stakeholders are identified, public consultations should be launched before a commitment to action has been made or before a draft decision has been tabled. A more open consultative process first invites stakeholders to discuss and identify the problems, challenges and opportunities, then examines the different policy scenarios, before any decisions are drafted.

Participatory mechanisms can be grouped in the following categories that reflect different levels of engagement:

- informing the public about local priorities, government programmes and plans;
- holding consultations with the public and/or particular groups of people regarding public policies and collecting their experience or expertise;
- collaborating with the public and/or particular groups of people to develop solutions to local problems (including co-creation processes such as in the formulation of Open Government Partnership (OGP) Action Plan commitments);
- engaging local communities in decision-making processes through deliberative processes, voting (such as participatory budgeting and referenda), and other decision-making tools.

According to the Additional Protocol, “the law shall provide means of facilitating the exercise” of the right of citizens to participate. In order to ensure that the above-mentioned forms of participation are genuine engagement rather than token exercises, the consultation process around the formation of new policies and legislation needs to be backed up by laws, regulations and guidelines, and also by strong political will.

Inclusive policymaking must at the same time be effective, and the public should be well informed about their rights, opportunities, and ways they can participate in local decision-making. The policymaking processes need to be clearly stated well in advance to enable citizens and stakeholder groups to prepare

their submissions and interventions. Timeframes with clear entry-points for citizen engagement need to be published to ensure that citizen participation is a meaningful exercise, and the local authorities should provide feedback to those who make policy proposals or recommendations. The local authority should ensure that the viewpoints and positions of stakeholders are properly reflected and considered when adopting policies, and feedback should provide clearly stated reasons for the decisions to adopt proposals, or not to adopt them. This inclusive approach ensures that policies are relevant, evidence-based, cater to intersectional needs, and are responsive to public demands.

Local authorities also need to employ officials trained in managing public consultations and ensuring that the feedback to citizens is prompt and comprehensive.

Such inclusive approaches ensure that local authorities make better and more relevant decisions that reflect public interests and are well understood by all citizens. In tandem, local communities can develop a sustained capacity to voice their concerns, design solutions and monitor their proper implementation, resulting in improved public trust towards local service delivery.

General domestic context

Local government units in Albania made progress in improving their transparency, public participation, and participatory budgeting. A transparency program model for Local Government Units, developed by UNDP's STAR II project and the Institute for Democracy and Mediation (IDM), and adopted by the Commissioner on the Right to Information and Personal Data Protection, is under implementation in all 61 municipalities of the country. As a result of this project, all municipalities regularly publish decisions taken by their municipal councils online at "Vendime.al", a portal developed by InfoChip- a one-stop-shop platform for the delivery of public services at the local level. It has progressed smoothly since its inception in 2019, in achieving the objective of functional municipal offices nationwide.

Municipalities have made further progress on public participation in local decision-making, especially in participatory budgeting. However, the institutional framework for effective and inclusive participation needs further strengthening. Local-level implementation of the Law on public consultation remains unsatisfactory. An increasing number of municipalities disclose public information, with all 61 having appointed a local coordinator for the right to information.

The 2014 Law on public consultation, laying down the procedural norms for transparency and public participation in decision-making, is generally in line with European standards. However, its scope should be extended to government decisions. It requires reporting on how inputs from civil society organisations (CSOs) are taken into consideration, but there is little evidence of the use and effectiveness of the feedback mechanisms. No progress was made on public consultation in the adoption of sub-legal acts and the implementation of the Laws on volunteerism and social enterprises.¹⁶⁹

In general, Albania has adequate and modern legislation in most fields, but the policy-making process is conducted through closed-door policies and is limited to a narrow set of actors.¹⁷⁰ The process of digitalisation of services to improve transparency and accountability, and to bring citizens closer to government, is unfortunately associated with missing figures and scarce documentation. Regarding open policy making at the local level, the relationship between citizens and public officials is almost inexistent.

Budget transparency remains satisfactory with the publication of key budget documents. The annual budget, the citizens' budget, and the list of public investments (including PPPs under the medium-term budget program) have been published. However, the timeliness of budget execution reports, in particular

reporting on arrears, need to be improved. Also, information on state assets contained in this report does not allow for a full comparison with the original budget. Public participation in the budget process needs to be further strengthened.¹⁷¹

The European Commission's 2019 report for Albania underlines concerns with the government's approach to citizen participation in decision-making and public consultations, such as the need for more meaningful cooperation with civil society, comprehensive feedback, and follow-up mechanisms. The report also highlights the government's limited use of the public consultation portal and ineffective consultations with the private sector.¹⁷²

3.1. OPEN POLICY MAKING

Open policy making is a broad term describing policy development that is transparent and participatory. It describes a way of making policy and decisions that draw on the latest interactive tools that open up policymaking to different stakeholders in an increasingly digital world. There is no one-way to do open policy making: different policy decisions will need different approaches.

International standards

Open policy making approaches enable governments to reach more informed and better designed policy outcomes through collaborative approaches that draw on a variety of perspectives and expertise. Different digital tools and analytical techniques are deployed so that policy is more evidence-based and data-driven. Models of engagement can include a representative citizens panel, crowdsourcing of policy ideas, or the use of collective intelligence to draw on the knowledge and expertise of a diverse public.

By the use of open data and citizen engagement, more informed, inclusive decisions can be reached, and more innovation applied in both the policymaking process and the resulting policy decisions. To maximise the possible gains of open policy making, local authorities could set up an open policy making team that publishes the data used to inform and shape policy decisions. and trains public officials in working with data to inform policymaking.

Although there are no specific open policy making standards, the following are useful points of reference:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**¹⁷³ provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation.
- The **Council of Europe's Guidelines for civil participation in political decision making**¹⁷⁴ sets out standards for engaging with citizens and civil society.
- The **Committee of Ministers of the Council of Europe's Recommendation on the participation of citizens in local public life**.¹⁷⁵
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**¹⁷⁶ provide standards and mechanisms to enhance transparency and promote the involvement and participation of citizens in the local public life.
- The **Code of Good Practice for Civil Participation in the Decision-Making Process**, adopted by the Conference of International NGOs of the Council of Europe.¹⁷⁷
- **Civil Participation in Decision-Making Processes. An Overview of Standards and Practices in Council of Europe Member States**, European Center for Not-for-profit Law (ECNL) for the European Committee on Democracy and Governance.¹⁷⁸

- The **OECD Recommendation on Open Government**¹⁷⁹ helps to design and implement successful open government strategies and initiatives.
- The **OECD's Guiding Principles**¹⁸⁰ support the development of a culture of openness.
- The **OECD's Focus on Citizens: Public Engagement for Better Policy and Services**¹⁸¹ explores how to put open policy making into practice.
- The **OECD's Observatory of Public Sector Innovation**¹⁸² lists useful toolkits and resources.
- The **Open Government Partnerships Guide**¹⁸³ and **Toolbox**¹⁸⁴ provide an extensive range of support.
- The **OECD Background Document on Public Consultation**¹⁸⁵ defines consultation and provides a summary of consultation tools.
- Both **Australia**¹⁸⁶ and the **UK**¹⁸⁷ have both produced useful **toolkits**.
- The Royal Society of the Arts, UK, and the Forum for Ethical AI addressed some of the AI challenges posed by new technology in **Democratising decisions about technology. A toolkit**.¹⁸⁸

Domestic context

Transparency, accountability, and access to justice are key operational principles recognized for good governance, thus, constituting the main pillars of democracy.

Corruption weakens public trust in government, hampers legitimate economic activity, threatens public resources and income, and negatively impacts public administration and service delivery thus posing serious and far-reaching risks to development. In 2019, Albania was ranked 106 out of 180 countries in the Transparency International Corruption Perception Index. According to the 2019 Trust in Governance Opinion Poll, out of the 2,500 Albanians surveyed, 87% perceived petty corruption to be either widespread or very widespread, while 85% perceived grand corruption to be either widespread or very widespread. Addressing corruption therefore presents a significant challenge that requires measures throughout all levels of public administration.¹⁸⁹

The Albanian government has supported multilateral initiatives, such as the Open Government Partnership. This is one of the important tools that brings together government reformers and civil society leaders to promote increased access to justice, public services, and increased accountability through accessible approaches, to improve the quality of public information.¹⁹⁰

Legislation

Citizens' initiatives are a legal right foreseen in Article 20 of the Law No.139/2015 "On Local Self-Government".¹⁹¹ Each community, via its authorised representatives, or not less than 1% of the inhabitants of the municipality, has the right to propose citizens' initiatives to the municipal council on issues under the jurisdiction of the local self-government unit. Proposals presented to the municipal council as citizens' initiatives which have a financial impact on the municipal budget shall be considered by the council according to the agenda and shall not be approved without the opinion of the head of the local self-government unit.

Guidelines

Article 20, paragraph 1, of Law No. 139/2015 "On Local Self-Government" stipulates that the manner and form of the submission of citizens' initiatives, as well as their deliberation, and approval procedures shall be laid down in the statutes for the organisation and operation of the municipal council. To improve policymaking, local authorities should design and implement local action plans to bring new insights, perspectives, and expertise from local stakeholders (citizens, civil society organisations, businesses, etc.).

This will allow local governments to better link policymaking with the current needs and concerns of the population, and thus will lead to better implementation of local action plans and policies.

Good practices

The establishment of the Local Citizens Advisory Commission in the municipality of Durrës, in 2021, which consists of members of local civil society organisations, businesses, youth, women and underrepresented groups, has been a very successful initiative. It serves as an independent advisory body for the municipality of Durrës, strengthening citizen participation and supporting the municipality's work on decentralisation.¹⁹² The Local Citizens Advisory Commission meets on a regular basis to discuss issues related to budgeting, the annual fiscal package, the quality and delivery of local services, territorial planning and municipal priorities and projects.¹⁹³

3.2. PARTICIPATORY BUDGETING

One of the crowdsourcing forms of citizen participation, participatory budgeting invites citizens and community groups to propose new initiatives or improvements to public services that should be funded by the local authority. Different models include voting by citizens, often online, on different projects. It provides a way for community members to have a direct say in how public money should be spent. It creates opportunities for engaging, educating, and empowering citizens. It can also promote transparency, which in turn can help reduce inefficiency and corruption.

International standards

Participatory budgeting began in Porto Alegre, Brazil, in the late 1980s and has spread worldwide. To ensure that participatory budgeting is inclusive and reaches out to different groups, including minority groups and the disadvantaged, both online and in-person information events need to be organised, and support provided to citizens and different community groups and stakeholders in how to prepare a proposal for consideration. The introduction of gender-sensitive participatory budgeting can increase outreach and accessibility and can be planned in close co-operation with local civic groups with a focus on inclusion.

Although there are no specific standards for implementing participatory budgeting, the following serve as important reference materials:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**¹⁹⁴ provides an international legal guarantee to this right, including the implementation of measures that would facilitate its exercise.
- The **Congress of the Council of Europe's Resolution on Gender budgeting**¹⁹⁵ recommends introducing gender budgeting methods in the annual budgets at local and regional levels.
- The **OECD Policy Brief No. 22**¹⁹⁶ provides a series of policy recommendations for how key stakeholders can contribute to successful participatory budgeting.
- The **World Bank's book Participatory Budgeting**¹⁹⁷ provides an overview of the underlying principles, analyses current practice, and includes seven in-depth case studies.
- The **UN Habitat's 72 Frequently Asked Questions about Participatory Budgeting**¹⁹⁸ explores how to implement participatory budgeting.
- The **World Atlas of Participatory Budgeting**¹⁹⁹ represents the widest compilation of data on the situation of these processes worldwide.
- The **UK's Participatory Budgeting Unit has a useful list of resources and toolkits**.²⁰⁰

- The **Subnational Open Budget Survey Questionnaire**²⁰¹ of the International Budget Partnership sets out a range of metrics for measuring the openness of local government budgets.
- The **Principles of Public Participation in Fiscal Policy**²⁰² of the Global Initiative for Fiscal Transparency.

Domestic context

Participatory budgeting is a process that brings local communities closer to decision making in the allocation of the municipal or public budget. In recent years, one of the most effective mechanisms implemented by municipalities is participatory budgeting.²⁰³ According to the Open Budget Survey 2019 index,²⁰⁴ the Government of Albania made eight out of eight key budget documents available to the public online, compared to the 2017 Survey index,²⁰⁵ in which the Government made seven out of eight key budget documents available to the public online.

Barring a few exceptions, local public officials are either not very used to engaging with people on technical planning and budgeting, or find them ill-equipped to do so, or simply do not see the importance of listening to the public.²⁰⁶

Legislation

Articles 155 to 160 of the Constitution of the Republic of Albania²⁰⁷ and Article 20, paragraph 2, of the Law No. 139/2015 “On Local Self-Government” state that proposals coming to the council as civic initiatives, and which have a financial impact on the budget of the local self-government unit, are reviewed by the council in the agenda and cannot be approved without the opinion of the mayor of the local self-government unit. Local government units are responsible for ensuring that participatory budgeting is executed in accordance with the law.

Guidelines

Even though there is a positive trend in Albanian municipalities towards implementing participatory budgeting at a local level, better implementation, and harmonisation with the *Participatory Budgeting Toolkit for Local Governments in Albania*²⁰⁸ would enable more transparent and accountable local government. This toolkit, which builds on international practices and tested participatory budgeting methodologies, provides tailored mechanisms to fit Albanian local government budget law and practices.

Good practices

The municipality of Elbasan is one of the pioneer municipalities that have implemented participatory budgeting since 2004. Being aware of the low level of women’s participation in the participatory budgeting process of 2012, the municipality started to introduce gender-sensitive participatory budgeting in collaboration with two local civil society organisations.²⁰⁹ Considering the gender imbalance in the participatory budgeting process, the municipality collaborated closely with the media and local civil society organisations to discuss and stress the importance of equal participation of women and men in the process. In addition, training courses on facilitation skills were organised with municipal public officials to improve and elicit better feedback from women. Currently, the budgeting process works through consultation meetings organised in boroughs and villages under the jurisdiction of Elbasan, to consider the views of women and men.

3.3. PUBLIC CONSULTATION

Public consultation is a formal, often legally required, process for citizens and other stakeholders to give their views at key stages of the policy process. It can be both online and offline, or a mixture of both. Its main goals are to improve efficiency, transparency, and public involvement in important decisions. Done in a timely and effective way, public consultation can increase the quality of decision making, improve cost-effectiveness, render more sustainable policy solutions, and generate greater public trust in decision-making.

International standards

Different forms of consultation range from informing and consulting citizens to crowdsourcing ideas for policies, deliberative debates and assemblies where citizens can develop potential policy solutions to inform decision-making, and collaboration where social enterprises, civil society organisations or expert groups either participate in the design or delivery of services.

To improve both the inclusiveness and efficiency of public consultations, each local authority should aim to have a unit that takes responsibility for co-ordinating the guidelines and procedures for implementing public consultations, and for ensuring that they are in accordance with the prevailing legislation. Such a unit could also train officers in different departments on running public consultations. In the case of smaller local authorities with more limited resources, a unit in the central government's responsible ministry, such as a ministry of regional development, could provide such training and support on co-ordinating and updating guidance and procedures for public consultations at the local level.

Although there are no specific standards for implementing public consultations, the following are useful reference materials:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**²¹⁰ provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as consultative processes and local referendums.
- The **OECD Background Document on Public Consultation**²¹¹ defines consultation and provides a summary of consultation tools.
- The **Council of Europe's Guidelines for civil participation in political decision making**²¹² set out the different types of civil participation in decision making.
- The **Committee of Ministers of the Council of Europe's Recommendation on the participation of citizens in local public life**.²¹³
- The **OECD Recommendation of the Council on Open Government**²¹⁴ supports initiatives for designing and delivering public policies and services, in an open and inclusive manner.
- **Reaching Out: Guidelines on Consultation for Public Sector Bodies** sets out good practice in the Republic of Ireland.²¹⁵

Domestic context

A recent study by the centre "Res Publica" on public consultation shows that a very limited number of draft acts are published on the official webpage of public institutions.²¹⁶ The report also stated that only 18% of monitored institutions have a register for the publication of draft acts, in compliance with the Law No. 146/2014 "On Notification and Public Consultation".²¹⁷ This is reinforced by the experience of civil society organisations, more than half of which do not fully agree that draft and approved laws and policies are publicly available (59%) and that draft laws, policies and laws are published in a timely manner (54%).²¹⁸ The main concerns raised by civil society organisations relate to the quality of the consultation

process. They state that the institutions do not take their recommendations into consideration, and secondly, they state that there is a lack of debate about this. In addition, the latter is in violation with Law No. 146/2014 "On Notification and Public Consultation".

Legislation

The National Crosscutting Strategy for Decentralisation and Local Governance 2015-2020²¹⁹ stipulates that all decisions at the local level should be taken with the participation of citizens and in line with equal, inclusive, and transparent principles. In addition, Law No. 146/2014 "On Notification and Public Consultation" specifies that local authorities should take all necessary measures to facilitate public consultation, including:

- publication of the draft act, the notification of consultation, and the information related to the consultation on the draft act on the electronic register
- publication in the transparency programme of the annual planning related to policy making, pursuant to Law No. 119/014 "On the Right to Information"
- provision of information related to all stages of the notification and public consultation process, beginning with the publication of the draft act, and continuing with the review of the comments and recommendations for its improvement, the organisation of public debates and the adoption of the act.

The same law obligates public institutions to publish all draft and adopted laws and policy documents. To this effect, an electronic register (www.konsultimipublik.gov.al) permits citizens and experts to consult draft laws and give their recommendations. The law's requirements guarantee sufficient time (20 days) for civil society organisations to provide their opinion on the draft laws and policies. Also, the law stipulates that a summary of collected opinions should be made public and be part of the draft law package for approval. On the contrary, if the recommendations are not accepted, a summary of the reasons for non-acceptance should be made public.

Moreover, this law provides options for complaints in cases where, according to interest groups, the provisions for consultation are not respected. However, the law does not foresee any administrative sanction against the public institution or the responsible person for notification and public consultation; and it does not foresee any procedure for appealing the decision of the public authority either.

Guidelines

To meaningfully increase citizen participation at local level, local authorities should develop a clear process of notification and public consultation in compliance with Law No. 146/2014 "On Notification and Public Consultation". This should include the review and consideration of recommendations provided by citizens and the reasons why any of the recommendations have been dismissed.

Good practices

The municipality of Vau i Dejës is one of the municipalities that has considerably improved public notification and consultation. Evidence shows that public consultation for draft acts in the municipality of Vau i Dejës increased considerably, from 9% in 2016, to 86% in 2017, making it one of the first municipalities to implement citizen participation in an efficient way.²²⁰

3.4. PUBLIC PETITIONS

Public petitions enable citizens to raise issues with public authorities. The number of signatures collected can indicate the level of support for the issues raised. They aim either to raise the profile of the issue or to demand that specific actions be taken. Petitions are often inspired by civil society activity, but they are increasingly submitted through official, often online, platforms whereby petitions with a defined number of signatures will receive an official response.

International standards

It is important that the official response is provided promptly, and that clear and well-argued reasons are provided for the decisions taken or not taken in response to a public petition.

For public petitions to become a tool that resonates with the wider public, local authorities and civil society organisations should raise awareness of the nature of petitions and the procedures for gathering signatures and submissions of the petitions in their municipalities. Clarity should also be given on the status of electronic signatures to ensure that there is full transparency about the conditions that a public petition must satisfy to receive an official response.

The following international conventions and standards relate to public petitions:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**²²¹ provides an international legal basis for this right, including the establishment of measures to ensure citizen participation, such as public petitions.
- The **OECD's Promise and Problems of e-Democracy**²²² provides information on the value and challenges of establishing an online petitioning platform.

Domestic context

Public petitions are an important mechanism for public authorities to engage with the people they serve and to protect the public interest, and for citizens to participate in the democratic process and influence political debate and decisions. However, while public petitions are prevalent at central level, there is no official data about public petitions at the local level.

Legislation

Article 104 of the Regulation of Parliament²²³ stipulates the right of both individuals and groups to petition the government. No later than 45 days from the date of reception of the petition, the committee chairman of the public authorities presents the petition to the commission, also proposing legal alternatives and manners for its solution, or its rejection. The petition senders are notified of the steps taken and the solution of petition issues.

Guidelines

To enhance and support local reforms at the local level, but and at the same time meet citizens' concerns, local authorities should develop and implement a comprehensive process on how to submit, handle and respond to public petitions in compliance with Law No.44/2015 "On the Code of Administrative Procedures".²²⁴ The petition procedure shall be accessible to the public.

Good practices

On 3 December 2016, on the International Day of Persons with Disabilities, a group of civil society organisations organised a demonstration and signed a petition to the municipality of Tirana. They required the local authority to respect the human rights and well-being of people with disabilities and to better implement social services for this group of people.²²⁵ The then deputy mayor of Tirana stressed that the municipality would support their requests.

3.5. LOCAL REFERENDA

Local referenda, which are widespread in Council of Europe member States, provide a mechanism for local authorities to sound out the citizens' will on concrete issues that directly affect their everyday lives or for citizens to propose an initiative that they would like to see implemented, or even to block a planned decision.²²⁶

International standards

When initiated by citizens or groups of stakeholders, a referendum might form part of a campaign against a perceived harmful impact on their livelihoods or the natural environment, such as a plan for a new industrial park, a tunnel to re-route cars under a river or some other urban development.

Where there is both legislation providing for local referenda, and guidelines on how to hold referenda, there is usually a minimum percentage of the eligible voting population whose signatures are required to initiate a referendum. In some cases, the mayor or elected council can also decide to formulate a question for a local referendum. Depending on the legislative framework, the referenda may be binding on the local government or consultative, where the final decision rests with the elected council.

It is important that the legislation and procedures are clear, so that citizens know the framework within which the results of a referendum will be acted upon, and what response is required from the executive or elected council of the local authority. As with public petitions, it is important to raise awareness of the procedures for gathering signatures and the status of electronic signatures to ensure that there is full transparency about the conditions that need to be met before a referendum will take place. Transparency on political party financing should also be applied to the funding of a referendum campaign, including ceilings on expenditure, and an independent audit of funding and expenditure.

The following international conventions and standards relate to local referenda:

- The **European Commission for democracy through law (Venice commission), code of good practice on referendums**²²⁷ – provides the principles of holding referendums and practical advice on how to implement those principles.
- The **Council of Europe Committee of Ministers' Declaration on the Code of Good Practice on Referendums**²²⁸ – invites public authorities in the member states to be guided by the Code of Good Practice on Referendums.
- The **Congress of Local and Regional Authorities, Resolution 472 (2021) on Holding referendums at local level**²²⁹ – provides guidelines for member States to use local referendums responsibly and according to Council of Europe standards,
- **UN Sustainable Development Goal 16: Peace, Justice and Strong Institutions; Target 16.7**:²³⁰ Ensure responsive, inclusive, participatory and representative decision-making at all levels.

Domestic context

The idea of developing referenda in Albania, has become a key topic of political debate, especially when dealing with disputes where there is no consensus. Nevertheless, although topical during polarized disputes, once political consensus is achieved, the idea of a referendum is dropped.

Unlike many other countries of the world, where the organisation and development of referenda is common, Albania has seen only three referenda since the end of the dictatorship.

The first one was held in 1994 for the purpose of approving the new Albanian Constitution. The second was organised on 29 June 1997, together with the elections for the new parliament, where citizens voted whether Albania should be a monarchy or a republic. In 1998, a third referendum was organised to vote for the Constitution of the Republic of Albania.²³¹

Even though local referenda are one of the forms of expression of direct democracy in local governance, where citizens decide on issues of importance to the community, there is no practical case of any local referendum held in Albania.

Legislation

Article 108, paragraph 4, of the Albanian Constitution stipulates that, "self-governance in local units is exercised through their representative bodies and local referenda. The principles and procedures for conducting a local referendum are provided by law in accordance with Article 151 paragraph 2".²³²

Law 139/2015 "On Local Self-Government", recognizes the right to hold a local referendum. Specifically, Article 18, paragraph 2, of this law provides, amongst others, in that the "consultation with the public is done through taking the initiative to organise local referenda".²³³

In the Electoral Code, the term referendum means the direct exercise of the sovereignty of the people, by voting, on a certain issue or law.

Rules on referenda date back to 2003, when first set out by the Electoral Code, which has been subject to several amendments, in the context of contentious electoral reform. Provisions on referenda have always been excluded from this process.

According to Article 132 of Law No.9087, 19.6.2003, "Electoral Code of the Republic of Albania", the initiative for a local referendum on a local government issue can be exercised in two ways:

- 10 percent of the voters registered in the voter lists of the respective local unit or 20 thousand of them, whichever is smaller, have the right to a local referendum on a local government issue in the respective municipality or commune.
- Several municipal councils, representing not less than one third of the population of a county, have the right to request the holding of a referendum on a local government issue at the county level.²³⁴

A local referendum can be held on an issue of local government that is also a matter of special importance. A referendum on the same issue cannot be repeated in the same local government unit for the next three years.

Local referenda may not be held later than three months before the end of the mandate of the local government body, nor earlier than three months after the first meeting of the local council. If early elections are announced in a local government unit, the Electoral Code requires that the procedure for conducting a local referendum in that unit be suspended until three months after the beginning of the mandate of the local government body. Another condition for requests for a referendum is that any request that fails to follow all the procedures set out in the Electoral Code, by March 15 of each year, regardless of when submitted, is postponed until the following year.

The Electoral Code entrusts the administration of local referenda to the Central Election Commission (CEC), a body which performs this task through Local Government Election Commissions (LGECS). The CEC administers the local referendum in accordance with the procedures provided for the conduct of local elections, emphasising that this task should be performed as far as it is possible or necessary.

Guidelines

According to the type of act or issue raised, the Albanian Constitution provides for three types of referenda, which are constitutional, legislative, or on an issue of particular importance. Article 150, para 3, states that: "principles and procedures for conducting a referendum, and its validity, are provided by law".

Based on this constitutional provision, the Assembly of Albania approved the Election Code, law no. 8609/2000. Referendum issues are addressed in articles 114-128 of this Code. These provisions, with minor changes, were also included in the Electoral Code adopted by Law no 9087/2003. The Electoral Code reforms carried out until 2008, did not treat, in any case, the issue of referenda. Law no.10019/2008, "The Electoral Code of the Republic of Albania", as amended, does not contain any provisions on referenda, but there is a transitional provision, article 185, stating that, "provisions for referenda (Part IX of law no.9087/2003) and any part of its related provisions shall remain in force until the adoption of the new law on general and local referenda."

The administration of the referendum process and the disclosure of the outcome shall be made in accordance with this Code. Although the Electoral Code, approved by Law no 9087/2003, was abolished, its ninth section, "Referendums" was upheld. The law on referendums is still not approved today.

The analysis of the Electoral Code provisions regarding referenda reveals deficiencies, uncertainty, and incompatibility with the Constitution in some cases. This has been evidenced by the Venice Commission and OSCE / ODIHR findings.²³⁵

The Code does not address referendum campaign funding issues including the source of funds and their use, transparency, reporting and audit of these expenses.

Good practices

An example of good practice is the Localgate.al initiative (www.portavendore.al), which functions as a platform in support of local democracy.²³⁶ This is an initiative of the Open Society Foundation for Albania (OSFA) and 'Lëviz Albania' ('Move Albania'), implemented with the support of the Swiss Agency for Development and Cooperation, which aims to provide information to citizens and civil society organisations regarding the function, competencies, and specifics of local self-government units.

The platform aims to promote referenda as a form of local democracy and provides simplified information on how to conduct referenda (including local ones).²³⁷

Chapter 4

CORRUPTION RISKS

Introduction

In the absence of ethics and public accountability, corruption and malpractice are allowed to thrive, which undermines the foundations of a peaceful, prosperous, and just society.

Corruption is a major challenge to democracy and the rule of law. It results in decisions and resource allocation that do not reflect the interests of the public and concentrates political power in the hands of the few. It in turn causes political leaders and institutions to lose legitimacy and public trust, which reduces their ability to govern.

Corruption poses a great threat to sustainable development, increasing poverty and inequality. Consequently, strengthening local self-government and their active participation in the fight against corruption is one of the essential preconditions for democratic development. Corruption at the local level is a specific phenomenon and requires a specific approach tailored to municipalities.

Corruption also causes local and regional authorities to be inefficient and ineffective in exercising their duties. It results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interest of decision-makers and their associates. It leads to public money being misspent, with contracts being awarded to inferior providers and budgets being misallocated. At its worst, it enables public officials to misappropriate money and resources, using their position to get rich to the cost of those they have a duty to serve.

One of the major challenges for societies worldwide is the development of accountable and transparent systems that provide effective public services. Because of their proximity to the public, local governments are well positioned to deal with this challenge and to fight and prevent corruption at local level.

Under the current trend of decentralisation, local authorities are given not only resources, but also the discretionary power to use those resources. Thus, local governments have the potential to either reduce corruption and improve public services at the local level or, conversely, increase corruption and worsen the quality of service delivery.

Corruption can also result in public officials being appointed on the basis of favouritism rather than merit, meaning that local and regional authorities do not have access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces even more the efficiency and effectiveness of the administration.

Inefficient and ineffective organisations, staffed by individuals who gained their positions on the basis of criteria other than merit, result in poor-quality public services and infrastructure, thereby eroding public trust and the legitimacy of public institutions. More importantly, however, they result in significant human costs, including poverty, deaths, illness, and restricted life chances.

Finally, corruption harms economic development. It leads to public money being directed to uncompetitive businesses, rather than those that offer more innovative or cheaper products and services. Uncompetitive markets, coupled with the negative impact of corruption on the quality of local public

services and infrastructure, means that businesses do not have a solid foundation (of staff, security, investment, etc.) on which to build. In the end, this may cause private and international investors to avoid investing in an area.

General domestic context

According to the European Commission's 2020 Progress Report for Albania (covering the period May 2019 - October 2020), the country has made good progress in tackling corruption. The report notes that Albanian authorities strengthened operational, coordination and monitoring capacities in the fight against corruption, thus meeting the condition for the first Inter-Governmental Conference.²³⁸

Albania has continued its efforts in establishing a solid track record on investigating, prosecuting, and trying corruption cases. Although the vetting of the members of the judiciary is an administrative process, it is relevant to assess the concrete results by Albania to fight corruption. These have included the dismissal from office of several high-ranking magistrates, including at the Constitutional Court and High Court level. In 2019, there were two final convictions for the passive corruption of judges, prosecutors, and other officials of the judiciary.

In 2019, there were 262 first-instance convictions involving lower or middle-ranking officials compared to 294 first-instance convictions in 2018. In 2019, there were 246 final convictions at appeal level involving lower or middle-ranking officials compared to 289 final convictions in 2018. Robust action has been taken to tackle corruption, although this long-term objective requires further organised and persistent effort. While the number of ongoing investigations remains high, to date, final convictions in cases involving high-level officials remain limited. The newly established specialised anti-corruption bodies (SPAK²³⁹- Special Anti-Corruption and Organised Crime Structure and the Anti-Corruption and Organised Crime Courts) are expected to significantly strengthen the overall capacity to investigate and prosecute corruption.²⁴⁰

The establishment of the Special Prosecution Office on Corruption and Organized Crime in December 2019, one of two entities constituting the Special Structure on Anticorruption and Organized Crime, resulted in 327 new criminal investigations and 65 requests sent to court as of November 2020. While prosecutors made significant progress in pursuing low-level public corruption cases, including corrupt prosecutors and judges, prosecution of higher-level suspects remained rare due to investigators' fear of retribution, lack of resources, and corruption within the judiciary. In September, the appellate court remanded the conviction of a former interior minister for retrial. In November the Special Prosecution Office filed charges against a former prosecutor general for hiding assets and seized several of those assets in December.²⁴¹

In the Law on the Organization and Functioning of Institutions to Fight Corruption and Organized Crime,²⁴² the Special Prosecution Office carries out the criminal prosecution and represents the charges made by the state at the Court of First Instance against corruption and organized crime, at the Court of Appeal against corruption and organized crime, and at the High Court as well. This office also takes measures and supervises the execution of criminal decisions, as well as performing other duties according to the law.

The Special Prosecution Office performs its functions independently, through special prosecutors, who are appointed by the High Prosecution Council in accordance with this law.

The National Bureau of Investigation, as provided in Article 5 of the law, is a specialized structure of the Judicial Police, which investigates criminal offenses in the criminal jurisdiction of the Special Prosecution, according to the provisions of the Code of Criminal Procedure.

The National Bureau of Investigation is composed of investigators and Judicial Police Services according to this law.

The head of the National Bureau of Investigation, investigators and the services of the Judicial Police are directed and controlled by the prosecutors of the Special Prosecution.

The Inter-Sectoral Strategy against Corruption 2015-2023 is one of the important formal legal efforts to address corruption and organized crime.²⁴³

In this Strategy, there are a set of General Indicators and Specific Objectives consisting of a triple approach: prevention, suppression, and awareness. This strategy's vision is, "Transparent Albanian institutions with high integrity that guarantee qualitative and incorruptible service and have gained the citizens trust."

In April 2020, the Ministry of Justice reported that 12 out of 18 objectives of the Anti-corruption Strategy, and 53 out of the 97 measures were fully implemented during 2018. However, an ALSAI (Albanian Supreme State Audit Institution) Performance Audit Report on "The implementation of the anticorruption strategy,"²⁴⁴ found several loopholes in the Strategy and its Action Plan. These included the following: the relevance of the objectives; incoherence between the Strategy and Action Plans; lack of involvement of the non-state actors in the implementation; and lack of institutional memory in the implementation.²⁴⁵

Overall, corruption remains widespread and is a serious concern.²⁴⁶

4.1. BRIBERY

Bribery is the promise, offer, acceptance or solicitation of a personal advantage (e.g. gift, loan, reward, favour, etc.) in exchange for an unethical or illegal action. Bribery results in decisions not being taken in the public interest, which reduces public trust in institutions and leads to poor public services.

International standards

The following international conventions and standards relate to bribery:

- The **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**²⁴⁷ establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction.
- The **International Anti-Bribery Standard 37001**²⁴⁸ specifies a series of measures to help organisations prevent, detect and address bribery.
- The **OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance**²⁴⁹ which supports the convention on combating bribery.

Domestic context

In 2015, less than half of Albanian citizens (44%) claimed to have had experience with bribery.²⁵⁰ Bribery is more prevalent in rural areas than in urban areas and bribes are given in the form of cash and in-kind contributions. Mostly, bribes are paid to facilitate bureaucratic procedures, or to avoid deficiencies and bottlenecks in the public sector.²⁵¹ The most common reasons for paying bribes cited by businesses are: to “speed up business-related procedures” (39.1 per cent of all bribes), “making the finalisation of a procedure possible” (16.8 per cent), “receiving better treatment” (7.2 per cent), “reducing the cost of a procedure” (6.6 per cent) and “receiving information” (2.8 per cent). At the same time, almost one out of seven (13.5 per cent) bribes paid serve no specific immediate purpose for the businesses paying them, suggesting that these are “sweeteners” given to public officials to “groom” them for future interactions in the interest of the company.²⁵²

The Government has launched several online portals to report bribery and other forms of corruption.

Legislation

Based on Article 244 of the Criminal Code,²⁵³ the active corruption of persons exercising a public function is defined as: *“promising, direct or indirect proposal, offer, or giving, to a person, who exercises public functions, of any irregular benefit for himself or a third person in order to act or not act in relation to his duty, is punished by imprisonment from six months up to three years”*.

As per Article 245 of the Criminal Code, the commission of this same offence by high state officials and local elected representatives is considered an aggravating circumstance and, thus, the penalty in this case is imprisonment from one to five years.

As regards passive corruption committed by persons that exercise public functions, it is defined in Article 259 as follows: *“Soliciting or taking, directly or indirectly, any kind of irregular benefit or of any such promise up to the value of 50,000 Albanian lek (ALL) or the equivalent in foreign currency, for himself or for a third person, or accepting an offer or promise deriving from an irregular benefit, by a person who exercises public functions, in order to act or not act in the exercise of his duty, is punishable by imprisonment of from two up to three years. The same act, when the irregular benefit or the promise of such a benefit is over the value of ALL 50,000 or the equivalence in foreign currency, is punishable by imprisonment of from three up to eight years”*. As with active corruption, and as stipulated in Article 260, the penalty for passive corruption by high state officials or local elected officials increases from four, up to twelve years.

Example of case law

In 2016, the police announced the arrest of the mayor of Bërzhitë. He was found guilty of passive corruption for accepting a bribe of EUR 4,500 for the issuance of a parking permit to one of the hotels of the area. An arrest warrant was issued for him, and he was found guilty in absentia, and sentenced to 5.4 years in prison.²⁵⁴ The ex-mayor of Bërzhitë submitted a petition for release to the Tirana District Court on 7 April 2016, on the grounds that he suffered from a severe respiratory disease.²⁵⁵ No further information has been announced by the Courts since then.

4.2. CONFLICT OF INTEREST

A conflict of interest is where an individual is in a position to derive personal benefits from the actions or decisions they take in an official capacity. Conflicts of interest – either if they are actual, perceived, or potential –²⁵⁶ result in decisions that are, or are considered to be, unfair and self-interested. This reduces public trust in institutions and results in worse outcomes for the public.

International standards

- The **Committee of Ministers of the Council of Europe’s Recommendation on Codes of Conduct for Public Officials**²⁵⁷ and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**²⁵⁸ cover the general issues normally thought to be necessary for avoiding such conflicts.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Conflicts of interest at local and regional level**²⁵⁹ propose a set of measures to mitigate the risks of conflict of interest and ensure that it is identified at an early stage.
- The **OECD Guidelines for Managing Conflict of Interest in the Public Service**²⁶⁰ identify principles and standards for developing policies.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Making public procurement transparent at local and regional levels**²⁶¹ and the **OECD Checklist for Enhancing Integrity in Public Procurement**²⁶² provide guidance for enhancing transparency and for promoting integrity in procurement.

Conflict of interest is also covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**²⁶³ is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.²⁶⁴
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**²⁶⁵ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**²⁶⁶ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**²⁶⁷ aims to fight corruption involving officials from the EU or its Member States.
- The **OECD Recommendation on Public Integrity**²⁶⁸ shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.

Domestic context

Study findings suggest that the management and prevention of conflict of interest in Albania has been deficient due to frequent amendments of the regulatory framework and lack of enforcement. The reported cases of conflict of interest focus almost exclusively on conflicts of financial or economic nature. As a result of the decentralisation process and their increased interactions with the public, local governments have been increasingly exposed to the risk of conflict of interest. Cases of conflict of interest are mostly related to building permits, procurement, and use of public spaces.²⁶⁹ One of the efforts to address this issue is also the approval of the Inter-Sectoral Strategy against Corruption 2015-2020.²⁷⁰ In 2014, legislative amendments in laws related to the declaration of assets and conflict of interest were approved, increasing the number and frequency of audits from the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (HIDAACI).

Legislation

According to Article 3 of Law No. 9367 “On the Prevention of Conflicts of Interest in the Exercise of Public Functions”, as amended,²⁷¹ conflict of interest is a: *“situation of conflict between the public duty and the private interests of an official, in which he has direct or indirect private interests that affect, might affect or seem to affect the performance, in an incorrect way of his public responsibilities and duties”*.

Article 29 of the above law provides restrictions on mayors and chairpersons of regional councils, who cannot also be chairpersons of CSOs, conduct economic activities, be members in managerial bodies in the private sector or civil society, and possess shares or capital in a commercial company. The central authority responsible for the implementation of this law is the HIDAACI. In Article 44, this law provides for a range of administrative penalties. Based on the type of conflict of interest, the fines range from ALL 30,000 to 500,000. The Law also stipulates disciplinary measures in Article 45.

Conflict of Interest is mentioned also in Article 4 of Law No. 9131 “On the Rules of Ethics in the Public Administration”,²⁷² Article 46 of Law No. 152/2013 “On the Civil Servant”,²⁷³ and Article 26 of Law No. 9643, dated 20.11.2006, “On Public Procurement”.²⁷⁴ Other related secondary legislation and HIDAACI regulations are important pieces of legislation related to Conflicts of Interest. Conflict of Interest is not a criminal offence in the Albanian Criminal Code, even though it is mentioned in many laws, such as the law No. 9367 “On the Prevention of Conflicts of Interest in the Exercise of Public Functions”.

Example of case law

The High Inspectorate of Declaration and Control of Assets and Conflict of Interest (HIDAACI) has started an administrative investigation into a suspected conflict of interest against the former mayor of Mallakastër.

The HIDAACI investigation followed media coverage about a tender held by the municipality of Qendër Mallakastër in 2012 – which was won by a company owned by the brother of the former mayor.²⁷⁵

The HIDAACI started the administrative investigation for the verification, treatment, and resolution of the suspected case of conflict of interest. Since the suspected case of conflict of interest is in the field of public procurement, the Inspectorate also referred the case for further follow-up by the Public Procurement Agency, the institution responsible for the implementation of the law on public procurement.

In a written response, the former mayor denied being in a situation of conflict of interest regarding this tender, arguing that the procurement procedure was controlled by the Supreme State Audit Institution.²⁷⁶

No further information about the investigation has been announced by the HIDAACI.

4.3. EMBEZZLEMENT

Embezzlement is the illegal appropriation of money, goods or other resources by an official to whom they have been entrusted. This results in the loss of public money, which reduces the capacity of authorities to act in the interests of the public, resulting in worse services and outcomes for people. It also undermines public trust in government.

International standards

As one type of corruption, embezzlement is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**²⁷⁷ is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.²⁷⁸
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**²⁷⁹ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**²⁸⁰ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**²⁸¹ aims to fight corruption involving officials from the EU or its Member States.

Domestic context

Only 8.2% of civil servants perceive embezzlement to be very prevalent. In addition, according to public servants, embezzlement is one of the less witnessed corrupt practices.²⁸² Despite this perception given by public officials in the study, in practice there are many cases of embezzlement reported by the Supreme State Audit.²⁸³ Moreover, there are some cases reported which have been successfully investigated and ruled on by the judiciary.

Legislation

As defined in Article 248 of the Criminal Code,²⁸⁴ abuse of office is understood as the: *"deliberate accomplishment or non-accomplishment of actions or failures to act, in violation to the law and constituting the failure of a person, who carries out public functions, to do his duties regularly, in cases when it has led to bringing him or other persons unjust material or non-material benefits or when it has brought damages to the legitimate interests of the state, citizens, and other legal entities, when it does not constitute another criminal offence, is punishable with imprisonment up to seven years"*.

In addition, article 246, states: *"appropriating a public title or office accompanied with the actions pertinent to the holder of the title or office, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment. If the act is committed for embezzlement purposes or has encroached the freedom, dignity or other fundamental rights of the citizen, it is punishable by a fine or up to five years of imprisonment"*.

Embezzlement is also mentioned in Article 57 of Law No. 152/2013 "On the Civil Servant",²⁸⁵ and in Article 13 of Law No. 9131 "On the Rules of Ethics in the Public Administration".²⁸⁶

Example of case law

The Special Prosecution Against Corruption and Organized Crime (SPAK) decided on 6 July 2021 on the measure of "arrest in prison" for the mayor of Lushnja.²⁸⁷ After a one-year investigation by SPAK, this mayor was arrested on suspicion of committing the criminal offence of embezzlement, along with 10 other officials of Lushnja municipality. They are suspected to be involved in corrupt affairs for a tender of 24 million ALL to rehabilitate the irrigation canal in the two villages of Bishqethëm and Bitaj.²⁸⁸ The investigation involves how the equality in the tender was violated by the Bid Evaluation Commission and the Procurement Unit, and SPAK also claims that the mayor abused his office in other ways, for example, by the mismanagement of fuel owned by the municipality, which was used by children of the mayor's friends and some of his officials.²⁸⁹

The Prime Minister dismissed the mayor of Lushnja with decision no.407 on 6 July 2021.²⁹⁰

This case is still ongoing in the Anti-Corruption and Organised Crime Court.

4.4. FRAUD

Fraud is the use of deceit in order to gain an unfair or illegal advantage. Fraud erodes public trust in government and reduces the capacity of government to act. It often results in the loss of public money, which harms public services and the ability of governments to address the public's needs and aspirations.

International standards

As one type of corruption, fraud is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**²⁹¹ is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.²⁹²
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**²⁹³ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**²⁹⁴ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**²⁹⁵ aims to fight corruption involving officials from the EU or its Member States.

Domestic context

Approximately 36.7% of civil servants surveyed perceive fraud to be a "more or less" prevalent corrupt practice in the Albanian civil service. It is mostly male civil servants who report having witnessed embezzlement, fraud and influencing of unfair decisions.²⁹⁶ Measures to stamp out fraud are contained in the New Customs Code,²⁹⁷ in which customs offenses and penalties, are based on the proposal of the European Commission and on best practices of EU member states. The new tax administration IT-system allows a simplification of processes and reduces the opportunities for fraud and corruption.²⁹⁸ According to Law No. 112/2015 "On Public Financial Inspection",²⁹⁹ the Anti-Fraud Coordination Service (AFCOS) is appointed in Albania to facilitate co-operation with relevant institutions in the European Union.

Legislation

Based on Article 143 of the Criminal Code,³⁰⁰ fraud is defined as follows: *"stealing property through lies or abuse of trust is punishable by a fine or up to five years of imprisonment. This very act, when committed in complicity in the detriment of several persons, or more than once, is punished by imprisonment from two to six years and, when it brings about serious consequences, it is sentenced by imprisonment from five to ten years."*

Example of case law

In 2016, the Krujë Prosecutor's Office indicted a former mayor of Krujë municipality and four other local public officials for theft through abuse of office. The defendants had allegedly misused emergency funds

allocated by the Ministry of the Interior, amounting to ALL 20.5 million, for the channelisation of a stream to reduce flooding. As a result of the investigation, the prosecutor ascertained that the real value of the project was much lower, thereby concluding that the former mayor, and the private company that had won the procurement process, had stolen over ALL 8 million.³⁰¹ The District Court of Krujë sentenced the former mayor to two years in prison and then he was placed on probation for a period of three years. In addition, the court decided to deprive him of the right to exercise public functions for a period of three years. The case is currently ongoing in the Supreme Court.

4.5. NEPOTISM

Nepotism is the exploitation of an official position to unfairly benefit a family member or friend (e.g. through giving a job or favour). Nepotism, and other forms of favouritism, results in local and regional authorities not having access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces the efficiency and effectiveness of the administration.

International standards

As one type of corruption, nepotism is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**³⁰² is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.³⁰³
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**³⁰⁴ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**³⁰⁵ defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe's Resolution and Recommendation on Fighting nepotism within local and regional authorities**³⁰⁶ sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union's Convention against Corruption Involving Officials**³⁰⁷ aims to fight corruption involving officials from the EU or its Member States.

Domestic context

Data show that recruitment procedures in Albania's public sector suffer from a lack of transparency. More than 36% of applicants who did not get a job think that somebody else was employed due to cronyism or nepotism, while an additional 25% believe that somebody else was hired due to bribery.³⁰⁸ Nepotism prevails among the most witnessed corrupt practices at the workplace, which may be because Albania is a country where social networks are very strong.³⁰⁹ As a result, many nepotistic practices in Albania are based on personal relationships and the network of social interactions.

Legislation

In Albania, there is no specific law on nepotism. However, Article 5 ("Private Interests") of Law No. 9367 "On the Prevention of Conflicts of Interest in the Exercise of Public Functions" mentions that the private interests of an official are those interests that conform with, contain, are based on, or come from relationships of family or cohabitation, of friendship, and any other juridical civil relationship, among others.³¹⁰

On 27 January 2006, two decisions of the Council of Ministers were approved. The decision of the Council of Ministers No.43, "On avoiding nepotism and influence of power on the hiring and career of personnel of the public administration" and the decision of Council of Ministers No.44, "On avoiding nepotism in the public administration"³¹¹ which states:

"Employees related to each other by family relationship, cognation or marriage are prohibited from exercising their duties within a public institution. The cause for the termination of employment is the existence of any of the following connections:

- a) family ties: spouse / cohabitant, son, daughter, and their children.*
- b) cognation relations: parents, siblings and their children, aunts or uncles.*
- c) family relationship: parent, child, brother / sister of the spouse, as well as spouse / cohabitant of the children".*

However, these decisions were deemed as incompatible with the Constitution.³¹² The Constitutional Court found that the above-mentioned decisions imposed a restriction on the right to work for the citizens. The right to work is guaranteed under Article 49 of the Constitution.

"Everyone has the right to earn a living by lawful employment, which he has chosen or accepted. They are free to choose the profession, the job, as well as the system of his professional qualification."

Also, Article 17 of the Constitution guarantees:

- 1. Restrictions on the rights and freedoms provided for in this Constitution may be imposed only by law for a public interest or for the protection of the rights of others. The restriction must be in proportion to the situation which has dictated it.*
- 2. These restrictions may not infringe the essence of the freedoms and rights and in no case may they exceed the restrictions laid down in the European Convention on Human Rights.*

The Constitutional Court concluded that this provision, in the way it is formulated, has not left the possibility of delegation to any state authority other than Parliament, as a representative body. The expression "only by law" means that if it is necessary to limit a right provided for in the Constitution, then this assessment is at the discretion of the legislator, and no other bodies, including the Council of Ministers.

The unconstitutionality of the decisions not only lies in the fact that the decisions of the Council of Ministers effect previously established relationships, but also because it violates the principle of proportionality, as employees affected by these decisions were not provided with another job.

Regarding the retroactive effect of the decisions of the Council of Ministers, even if these restrictions were made by law, according to the criteria of Article 17/1 of the Constitution, the principles mentioned above should be applied.

For these reasons, these decisions are invalidated as incompatible with the Constitution.

With the invalidation of these decisions of the Council of Ministers, the legislation on nepotism remains weak, as the only related legal provision is Article 5 ("Private Interests") of Law No.9367 "On the Prevention of Conflicts of Interest in the Exercise of Public Functions", as amended. Nepotism is not foreseen as a criminal offence in Albania, but it is considered an administrative offence and it is punished by a fine varying from 50,000 ALL to 300,000 ALL.³¹³

Example of case law

Currently, there are no examples of relevant case law.

4.6. MISUSE OF ADMINISTRATIVE RESOURCES IN ELECTION CAMPAIGNS

The misuse of administrative resources³¹⁴ during the electoral processes involves unlawful or abusive behaviour on the part of politicians and civil servants, who use human, financial, material, *in natura* and other immaterial resources to influence the outcome of elections, and thus undermine the fairness of the election itself.

International standards

As one type of corruption, the misuse of administrative resources in election campaigns is covered by the following international standards and guidelines:

- The **United Nations International Covenant on Civil and Political Rights**³¹⁵ (Articles 19, 21, 22 and 25), further elaborated in paragraph 25 of the Human Rights Committee's General Comment No. 25.³¹⁶
- The **Council of Europe's European Convention on Human Rights (ETS No. 5)**, in particular Articles 10 and 11, and Article 3 of the **Protocol No. 1** to the Convention (**ETS No. 9**).³¹⁷
- The **United Nations Convention against Corruption**,³¹⁸ in particular Articles 7, 17 and 19.
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**.³¹⁹
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**.³²⁰

The misuse of administrative resources during electoral processes is covered by the following international standards and guidelines:

- The **Council of Europe's Venice Commission and the OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes**³²¹ specify a series of measures and laws to be adopted in that regard.
- The **Council of Europe's Venice Commission report on the Misuse of Administrative Resources during Electoral Processes**.³²²
- The **Congress of the Council of Europe's Resolution on The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials** and its Explanatory Memorandum.³²³
- The **Congress of the Council of Europe's Resolution on Preventing corruption and promoting public ethics at local and regional levels** and its Explanatory Memorandum.³²⁴
- The **Congress of the Council of Europe's Checklist** for compliance with international standards and good practices preventing misuse of administrative resources during electoral processes at local and regional level.³²⁵
- The **Congress of the Council of Europe's booklet on Administrative Resources and Fair Elections** provides practical examples and guidance.³²⁶

Domestic context

The misuse or abuse of administrative resources (sometimes referred to as "public resources" or "state resources") during parliamentary³²⁷ and local³²⁸ election campaigns in Albania has been one of the most recurrent concerns of international election observers over the last two decades. In the context of the parliamentary elections of 2017, Parliament convened an extraordinary session on 22 May 2017 to take actions related to the electoral process.³²⁹ Among other measures, a political agreement between the two main parties led to the establishment of an inter-ministerial structure in the form of a Task Force to

prevent the abuse of public officials in the electoral process.³³⁰ Also, to prevent the risks of the misuse of administrative resources, penalties were introduced for public servants who might be involved in campaigning.³³¹

Although significant steps have been made at national, local, and regional levels, elections have their own characteristics, which make them especially vulnerable to the misuse of administrative resources. Therefore, specific actions may be required for local and regional elections.

At the local and regional levels, elected representatives usually have personal ties to the territorial community in which the election takes place. Likewise, their relation to public employees and civil servants working for the municipality is often particularly close.

Moreover, local elected representatives and/or employees frequently have functions which are relevant during the electoral campaign, such as the allocation of places for campaigning. Municipal employees may also have tasks related to the preparation of the elections, for instance, as members of polling station commissions. Such functions may give them possibilities to interfere in favour of the incumbent or the party/parties in power, which may be problematic in local and regional elections.³³²

Legislation

On 22 May 2017, in the above-mentioned context of reforms, the Parliament of Albania approved amendments to the election legal framework. These amendments were adopted to Law No. 8580, "On Political Parties",³³³ Law No. 97/2013 "On Audio-visual Media",³³⁴ and the Criminal Code.³³⁵ The amendments introduced new requirements for campaigning, campaign finance, and advertising in broadcast media, as well as establishing new electoral offences and increased sanctions for existing ones. However, the reform process lacked transparency and consultation with stakeholders, and the late timing created significant difficulties in the implementation of key aspects of the election administration.³³⁶

Amendments to Law No. 8580 "On Political Parties" aimed to limit campaign spending.³³⁷ They largely constrained the use of electoral promotion materials at the urban level and prohibited paid political advertising in media outlets, television, and radio channels.³³⁸ Furthermore, Article 88 of the Electoral Code of Albania³³⁹ prohibits the use of public resources for the support of electoral subjects.

In line with the amendments to Law No. 8580 "On Political Parties", the revision of Law No. 97/2013 "On Audio-visual Media" prohibited paid political advertising in media outlets during the electoral period. However, the legal framework still fails to regulate political advertising, paid or unpaid, hidden, or direct, outside the electoral period, as well as in written and online media, within or after the electoral campaign.³⁴⁰

Articles 325-332 (Chapter X) of the Criminal Code provide for 15 criminal offences which threaten the freedom and integrity of free elections.³⁴¹ The new criminal offenses introduced in 2017 include the abuse of public function for electoral activities, the use of other peoples' identification documents, and more detailed prohibitions on vote-buying and vote-selling. Article 328/a (Using the public function for public electoral activities) is of a particular relevance:

"The use of the public goods, the function or the state activity or of the financial or human resources by an employee, who carries out a state duty, to favour a political party or a candidate in the elections constitutes a criminal offence and is punishable by imprisonment of one year to three years".

Example of case law

During the pre-electoral period of the 2017 Parliamentary Elections (January-February 2017), some decisions of the municipal council raised suspicions of abuse of state resources. This was because the number of persons receiving social assistance benefits, which are intended for families with very low incomes, and in particular people with disabilities, increased.³⁴²

The Central Election Commission (CEC) released the mobile phone application 'Vote 2017' as an instrument to report corruption. In total, 22 cases were reported through this mobile phone application in relation to vote integrity and freedom, out of which 19 were submitted on Election Day (25 June 2017). In addition, through the telephone line established by the CEC, official reports confirmed that in the period from 25 to 28 June, a total of 240 cases were reported. None of these cases were forwarded to the prosecution and the CEC explained that the reported cases were incomplete.³⁴³ Most ministries made available alternative reporting mechanisms, such as phone lines, and public officials assigned for the specific purpose of receiving reports of corruption during the electoral campaign and voting. In general, the number of reported cases was low, but the Ministry of Interior was an exception, with 484 cases reported for penal offences related to electoral processes.³⁴⁴ Based on official communications with the prosecution offices of the judicial district courts, there was a low number of procedural materials submitted for criminal offences that threatened the freedom and integrity of the election, and there is no information about the phase of the investigations or any imposed penalties.³⁴⁵

Regarding administrative penalties for the participation of employees of local government units in electoral activities, only 45 municipalities responded to the Task Force established for the 2017 election.³⁴⁶ According to the related summary report prepared by the Task Force, the municipality of Skrapar dismissed two employees and suspended one for participating in electoral activities during working hours.³⁴⁷ Other municipalities did not specify the reasons for dismissal. Only some of these cases were related to local officials, such as the mayor of Vlorë municipality, who was suspected of «*obstructing electoral subjects*».³⁴⁸ Yet, there is no information about further investigations and penalties imposed by the responsible authorities.

During the Parliamentary Elections of April 2021, despite a robust legal framework in place to prohibit the misuse of administrative resources and minimise the advantage of incumbency, ministers continued to campaign during official engagements.

4.7. EXTORTION

Extortion is the use of coercion to obtain money, goods, services, or some other advantage from an individual or institution. Beyond the damage it does to the victim, extortion reduces public trust in government and can discourage business growth and investment in the area.

International standards

As one type of corruption, extortion is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**³⁴⁹ is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.³⁵⁰

- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**³⁵¹ aims to co-ordinate criminalisation of corrupt practices and improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**³⁵² defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**³⁵³ aims to fight corruption involving officials from the EU or its Member States.

Domestic context

Extortion has been a problematic criminal activity in Albania and, though not very common, it is a criminal form that has become more organised. In the cases adjudicated by the First Instance of Serious Crimes Court during the period 2008-2012, about 18% of the judgements related to extortion.³⁵⁴

While the prevalence of extortion for businesses in Albania amounts to only 0.5%, data from the United Nations Office on Drugs and Crime report on Business, Corruption and Crime in Albania indicates that extortion is a cause for concern. Extortion is a very serious crime in which the perpetrators try to obtain money or other benefits from a company by threatening or intimidating managers or employees. In some cases, extortion is also presented as the offer of “protection” from damages to property or persons. Sometimes extortion can be linked to organised crime groups, who have the power and the means to make a credible threat towards a business with potentially dire consequences if their demands are not met.³⁵⁵

On the Research Report of Gender and Corruption in the Albanian Civil Service,³⁵⁶ among the corrupt practices scoring highest under the “not prevalent” response appear to be extortion. Women more often than men see extortion (including sexual extortion) as not prevalent (22.9% of the women as compared to 16.7% of the men) or of low prevalence (33.3% of the women as compared to 31.3% of the men). Likewise, more men than women believe that extortion is highly prevalent in the Albanian Civil Service (6.3% men vs. 4.2% women).³⁵⁷

The 2020 Crime & Safety Report on Albania published by OSAC (Overseas Security Advisory Council) states that the Albanian government is making a concerted effort to improve the country’s law enforcement capabilities and reduce corruption. Organized crime has a noted impact on Albania, with a network of criminal organisations involved in drug trafficking, extortion, bribery etc.³⁵⁸

Legislation

Based on Article 109/b of the Criminal Code,³⁵⁹ “Forcing through blackmail or violence for submission of the wealth (Extortion)”, is defined as: *“Causing a person, through blackmail or violence, to do or not do a certain action, in order to unjustly gain wealth or any other benefit, for themselves or for third persons, is sentenced with imprisonment from two to eight years. The same act, when committed by using or by threatening to use a gun, torture, inhuman and humiliating acts which have caused harm to the health, are sentenced by imprisonment of from seven to fifteen years. When the crime has caused the death of the person, it is sentenced by life imprisonment”*.

Example of case law

In October 2019, the State Police notified the public about the operation “Repeaters” executed by the Serious Crimes Against Life and Property Sector in the Local Police Directorate of Tirana, under the direction of the Prosecutor of the Court of First Instance for Serious Crimes. Two people were arrested and

one more was declared wanted. They were suspected of being authors of several cases of extortion (forcing through blackmail and violence for submission of wealth).³⁶⁰

The investigation materials were forwarded to the Prosecutor's Office at the First Instance Court for Serious Crimes to continue the prosecution procedure.³⁶¹

No further information has been made public regarding this case from the national authorities or the media.

4.8. CLIENTELISM

Clientelism is the promise and acceptance of a personal benefit (e.g. gift, loan, reward, favour, job, etc.) in exchange for political support. It is often based on an unequal relationship between a patron (e.g. political leader) and client (e.g. voter). Clientelism results in decisions that reflect the special interests of a few, rather than the wider public interest, leading to unfair and unjust outcomes.

International standards

As one type of corruption, clientelism is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**³⁶² is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.³⁶³
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**³⁶⁴ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**³⁶⁵ defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe's Resolution and Recommendation on Fighting nepotism within local and regional authorities**³⁶⁶ sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union's Convention against Corruption Involving Officials**³⁶⁷ aims to fight corruption involving officials from the EU or its Member States.

Domestic context

Concerns over accountability, transparency, and the capacity of local governing bodies to deliver quality services remain a pressing matter in Albania.³⁶⁸ Clientelism is a phenomenon widespread throughout the Western Balkans, but it manifests itself in various forms and ways, which are difficult to identify and scientifically verify.³⁶⁹

Besides employment, the inclusion of families within the social aid scheme in the months prior to elections is a form of clientelism, especially important for low-income families. Cases of decision-making by local institutions which increased the number of persons receiving social aid during the pre-election period in 2017, indicate the persistence of this form of political clientelism.³⁷⁰

Albanian legislation on political parties is restrictive for regional, local, and religious parties, and prohibits ethnic parties. However, if the lobbying phenomenon continues to develop as expected, the relevant legislation and the current parties' profile will need to be reviewed. As long as the state continues to be the biggest employer, clientelist methods will continue to damage the quality of administration and other public sectors. Simultaneously, the negative effect is twofold: those who benefit are identified with the party in power, those who lose are identified with the competitive alternative of the current party in government, and they are expected to repeat the same selective and clientelist process when their team wins.³⁷¹

Legislation

Article 328 of the Criminal Code "Active Corruption in Elections" provides that: *"offering or giving money, material goods, the promise of a job or other favours in any form, to the voter or other related persons, in order to obtain the signature for the nomination of a candidate in the election, to vote in a certain way, to participate or not to vote, or to engage in illegal activities in support of a candidate or political party, constitutes a criminal offense and is punishable by imprisonment of one to five years."*

Example of case law

A clientelist and corrupt relationship has been established between political parties and some citizens in Albania: "you give me a job - I give you my vote".³⁷²

During the pre-electoral period of the 2017 Parliamentary Elections, the police in Korça arrested a man who, according to their report, promised employment to a young individual in exchange for his vote for the Socialist Movement for Integration (in Albanian language 'LSI'). In his car, the police found voters' lists, contacts, telephone numbers and ALL 20,000 which, according to the executor's office, would have been used to buy votes for LSI. Call registrations of the arrested individual were seized by the police and submitted to the prosecutor's office as proof and evidence of vote buying.³⁷³

On 28 June 2017, the Korça District Court imposed the security measure of "prison arrest" for this individual. One month later, on 24 July 2017, the Korça Court of Appeals decided to release the suspected person on the grounds that there was no danger of escape and that he could not destroy evidence.

The Prosecutor's Office sent the case to the court, but after several court hearings, the prosecutor decided to withdraw the criminal case.³⁷⁴

4.9. PATRONAGE

Patronage is the use of an official position to appoint a person in a public office based on favouritism, often in exchange of political support. It can be closely linked to the concepts of clientelism, cronyism and nepotism. Patronage results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interests of the decision maker and their associates. It violates the boundaries of legitimate political influence and the principles of merit, and leads to public money being misspent.

International standards

As one type of corruption, patronage is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**³⁷⁵ is the only legally binding universal anti-

corruption instrument.

- It is supported by this **Technical Guide to the Convention**.³⁷⁶
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**³⁷⁷ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**³⁷⁸ defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe's Resolution and Recommendation on Fighting nepotism within local and regional authorities**³⁷⁹ sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union's Convention against Corruption Involving Officials**³⁸⁰ aims to fight corruption involving officials from the EU or its Member States.

Since the misuse of administrative resources during electoral processes is the most widespread manner to use patronage as a form of corruption, the following international standards are of relevance:

- The **Congress of the Council of Europe's Resolution on the Misuse of Administrative Resources during Electoral Processes: The Role of Local and Regional Elected Representatives and Public Officials**³⁸¹ provides international standards and best practices to tackle the misuse of administrative resources.
- **Joint Guidelines of the Venice Commission and OSCE/ODHIR for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes**³⁸² aim to assist decision makers in adopting laws and initiating concrete measures to prevent misuse of administrative resources.

Domestic context

The most common corrupt practices in Albania that seem to contribute to high levels of perceived corruption include favouritism, such as nepotism and patronage.³⁸³

During electoral periods, patronage networks employ vote-buying/selling as a method to collect votes in exchange for different forms of favours/support.

To reduce the levels of patronage in Albania, several changes were made to the Electoral Code related to employment during election campaigns. Considering the electoral campaign of the parliamentary elections of April 2021, not much progress has been made.

Legislation

The Electoral Code of Albania in Article 3, under "General Principles", paragraph 7, states: *"Except as otherwise provided by law, it shall be prohibited to provide electoral subjects with the opportunity to use equipment, funds and materials that are public property, as well as with other individuals who are working in the public administration of any level."*³⁸⁴

The Electoral Code of Albania also includes regulations such as: "During the election campaign, employment, dismissal from work and job transfers, in public entities or public institutions are prohibited, except in justified cases."

Also, it is prohibited for the employees of the state administration, during working hours and within the premises of the state institutions, to participate in activities of a political nature, or that benefit a political party or candidate in the election campaign. An employee of the state administration is prohibited from using public goods, state function or activity or public financial, material, human resources, to favour a political party, coalition, or candidate in elections.

The employee of the state administration has the right to participate in the political or electoral activities of an electoral subject or candidate, only after the official working hours and outside the premises of the state institutions.

Example of case law

At present, there are no examples of relevant case law.

CONCLUSION

Local government plays a critical role in sustaining the well-being of citizens, delivering services, and providing the first point of contact between people and public administration. The proximity with citizens can help ensure that public authorities and services are truly responsive and accountable, attuned to people's needs and aspirations, improving people's lives and strengthening their trust and confidence in local institutions.

Local governments are taking important strides in improving the legal framework towards more open and inclusive decision-making. It is essential to involve citizens and other residents in decision-making from a very early stage in the policymaking process. Local governments should translate laws and policies on open government into practice and increase their efforts to ensure transparency, accountability, and the meaningful participation of citizens in policy- and decision-making. As well as being important qualities of local democracy, transparency and civic participation can help deliver effective public services, combat and prevent corruption, and build citizens' trust in government.

The mechanisms outlined in this handbook present a variety of ways in which local and regional authorities can prevent corruption, reduce its risks, and develop effective and accountable institutions at all levels. Other reforms, such as the protection of whistle-blowers and support for independent media and civil society, are equally critical to building open government, public ethics and accountability.

The Congress of Local and Regional Authorities of the Council of Europe is committed to supporting local governments in their efforts to improve the quality of local democracy, prevent corruption, raise standards of public ethics and accountability, and promote transparency and citizen participation.

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According to the International Covenant on Civil and Political Rights (1966), "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

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