Basic Legal Concepts in Anti-Corruption: Defining Jurisdiction, Civil Remedies, and Damages in the Case of Albania

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Introduction

For over 10 years, organizations such as the Organization for Economic Co-operation and Development (OECD), the Council of Europe (CoE), and the United Nations (UN), have been helping Albania to adopt legal measures to fight corruption. However, such work has sometimes had less than desired impacts on reducing corruption. The UN, OECD and CoE conventions against corruption have been under-effective because these conventions, while being ratified by the Assembly (Kuvendi i Republikës së Shqipërisë), are not being implemented in the Albanian agencies most prone to corruption – particularly the Ministry of Interior's Traffic Police Directorate, Directorate General of Customs (DGC), and the General Tax Department (DPT or Drejtoria e Pergjithshme e Tatimeve). This short article seeks to provide practical guidance (inspired by the academic and practitioner literature on the subject) for Albanian senior officials who are looking to implement the international anti-corruption conventions in their agencies. Figure 1(a) and (b) show the various legal provisions which may be adopted in order to help strengthen transition economies’ fight against corruption and maps the various arguments made in the original paper which this article summarizes.

The Cause of Corruption

Corruption all around the world is caused by regulations which prevent economic actors from engaging in activity which they would prefer to engage in. Albania appears to prove the rule – as Albania is ranking 135 on the World Bank’s Doing Business database for 2007 and ranked 105 in Transparency International’s Corruption Perceptions Index for the same year. These regulations cause rationing and other types of economic distortions which led to the creation of rents. These rents provide a “pool of resources” which can be used to pay civil servants (who are supposed to be enforcing particular regulations) either to do their job or not to do their job. While more regulations on civil servants can sometimes reduce corruption (particularly when these regulations help increase productive over-sight or reduce secrecy), regulations often cause economic harm. Regulations require resources (and thus tax revenue) in order to be enforced and they can cause demoralization. While slapping regulations on Albanian civil servants is an almost visceral response to corruption, such an approach can – and often does – cost more than it benefits the civil service.

Figures 1(a) and Figure 1(b) provide the framework for the arguments in this paper and a useful study map for the legal concepts which are often required in anti-corruption legislative reform. Sections of the paper have been marked in the Figures in order to assistant the reader follow the linkages between arguments.

Words used in this article
OECD – often called the “rich country club” provides a forum for negotiating international conventions between 30 rich countries as well as produces data and economic studies.
Council of Europe – the human rights organisation based in Strasbourg (and not formally a part of the European Union)
convention – an agreement between countries about harmonisation of legislation
legislation – the laws which the parliament or legislative branch of government passes
rents – a payment or benefit a person gets which is not tied to that person’s productivity or present work effort
distortion – a distortion in economics refers specifically to some constraint to the free market (fixed prices, market power) which causes resources (like labour or capital) to be used in an inefficient (or less efficient) way.
Chisling Away at Rents used in Corrupt Transactions

According to most international surveys of perceptions about corruption, in Albania, as in most developing countries, bribes are often confused with gifts.4 A two-part test can help Albania law enforcement officers (and the internal as well as external prosecutors who must decide between bribes and gifts) understand the difference between bribes and gifts in non-criminal cases. A “payment” (a bottle of cognac or a box of chocolates) is not corrupt consideration if the gift does not coincide with the delivery of a service which the public service user has a right; and if the civil servant could not anticipate ex-ante (before delivering the service) that the gift would be rendered. If both these tests succeed, the “payment” is unlinked with possible corrupt service delivery. Naturally, a fixed rule against accepting any gifts may be easier to implement and cases where one part of the test fails would require special consideration. The current legislative provisions against corruption in Albania offer no guidance to help prevent the wide-spread cross-over between gift-giving and bribe-offering.5

Corruption often remains unprosecuted in Albania because in many cases, prosecutors cannot tell the difference between the initiator and the passive participant.6 Clearly, justice demands that the passive or unwilling party should receive a lighter (or no) punishment for engaging in corruption. In order to help assign responsibility, a test can be applied which helps identify which party held the criminal intent. Namely, liability for corruption should fall more heavily on the party which has regularly established methods of engaging in corruption and liability should fall more lightly on the party which had a “clear, present and distressing” need to perform on the corrupt contract.7 Survey evidence clearly points to the role of administrative extortion (or at least coercion) as roughly 30% of public service users had to pay money higher than the announced charge in order to process official documents.8

Corruption must occur because Albanian civil servants’ bosses (or superiors) exercise insufficient oversight over their subordinates. Thus, transferring additional liability for corruption in Albania through a public sector version of respondeat superior – to borrow a phrase from Anglo-Saxon jurisprudence -- may both increase the superior’s incentives to engage in oversight and reduce the profitability of corruption (particularly in cases where the superior may be involved). Such respondeat superior can be seen as a risk-transferring mechanism – assigning liability in a way to encourage oversight. Such provisions would have made it easier to prosecute individuals like Nikolin Jaka (Deputy Transport Minister) and Director General of Roads Bashkim Kamberi in 2007. In these cases several senior level civil servants in the transport ministry allegedly profited by colluding in tenders.

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Words used in this article
consideration – a benefit given to another person (often a money payment – from contract law)
success / failure – a test succeeds or fails when each of the various items in the test are either met or not.
liability – legal responsibility for harms or damages
performance – the completion or fulfilling of promises (on a contract)
respondeat superior – “the boss shall answer” – the legal concept of bosses being responsible for the actions of their employees (or agents)
agent – an individual who acts on behalf of another person (called the principal)
In the developing world, corruption is sometimes tied to political clientalism (and the proceeds from corruption are sometimes used to finance political campaigns). In Albania, politicians are widely perceived to be corruption -- they rate on average 7.1 on a ten point scale of perceived tendency to engage in corruption (with 10 being the maximum level of perceived corruption). A form of respondeat politicae – which is like respondeat superior but for politicians -- may reduce the incentives to collect bribes for use in the political process. Under respondeat politicae, the politician would be legally required to resign from office if any funds used to fund the candidate’s campaign resulted from bribery or corruption. The political equivalent of respondeat superior in an administrative context, the politician would legally answer for the corruption of his or her campaign staff. Naturally, Albanian prosecutors and judges may find the concept of such “imputed liability” difficult to accept. However, already, such a provision exists in many political party finance laws or electoral codes -- though Albania’s reminds far behind others.

Both respondeat superior and respondeat politicae point to expanding the legal definition of complicity in corruption offenses. In many corruption cases, colleagues of the corrupt official either passively participate or at least have scienter (guilty knowledge). Most legal traditions define for both delicts and crimes “inchoate offences.” In the case of corruption, such inchoate offences – particularly conspiracy in or aiding and abetting corruption – should clearly place liability on civil servants who know about – or who are likely to know about – their colleagues' corruption. To date, no prosecution of such inchoate offences have succeeded in Albania. As such cases can be handled in the same trial (by adding defendants in the same trial and applying the differing sentencing instructions contained in the Albanian Penal Code for each type of conviction), the extra expense should not be prohibitive.

**Making Government a Good Neighbour: Applying a More Stringent Duty of Care Standard to the Public Sector**

Article 2 of the 1998 Constitution of Albania lays out the traditional authority of government - government arises from a social contract made between free individuals. Such a social contract imposes on government (and its employees) the positive obligation to protect citizen rights and promote their interests. The Albanian government, as an organisation, incurs risks too large for private individuals (or even particular representatives of the current administration) -- in contrast to corporations in which liability vicariously passes to directors or their appointed representatives. Government, by constitution, must exercise a duty of care in its administration above and beyond the good neighborliness of other organisations.

**Words used in this article**

- clientalism – system of organisation whereby “bosses” require services for their subordinates (or agents)
- imputed liability – liability (or responsibility) which is transferred, assigned or given to another person
- delict – a breaking of the law
- inchoate offence – types of crimes whereby individuals get ready or prepare to commit a crime
- positive obligation – the need to do something (as opposed to a negative obligation or need to refrain from doing something)
- vicarious liability – liability which has been passed (or imputed) to someone else
- duty of care – Anglo-Saxon concept that individuals must prevent harms to others
- imputed liability – liability (or responsibility) which is transferred, assigned or given to another person
- good neighbour principle – related to duty of care, each person has duty to act as good neighbour to the other
Toward its own civil servants, the Albanian government agency has a positive obligation to ensure civil servants do not have incentives to engage in corruption. If a civil servant engages in corruption because of strong incentives provided by his or her department, the government (as an organisation) should be clearly found liable for contributory negligence. For example, in the recent ruling against Nikolin Jaka (in the transport ministry) for allegations of bribes-for-contracts, the Albanian Transport Ministry would also be deemed liable by the three judges sitting the trial and fined or would be subject to trusteeship. Because government agencies (in general) are created to assume public risks and because of the compelling nature of government's duty of care, the burden of proof should be reversed – such that contributory negligence of an Albanian government department should be an effective defense against charges of corruption and the agency’s superiors must show (to a civil law standard) that the agency afforded a reasonable level of protection to its civil servants.

Toward public service users, Albanian government agencies should also have the duty of care. Clearly, civil servants who solicit bribes commit two legal infraction – the personal infraction committed by the civil servant (acting ultra vires) and the professional infraction (as the civil servant follows the incentives and implied terms of his or her service contract). While managerial, administrative, civil or criminal proceedings can be filed against the civil servant, his or her department should also bear responsibility (morally if not legally) in cases where public service users must pay bribes. As will be discussed later, such responsibility should consist of the payment of fines and damages paid by the government should be equal to the social harm engendered by the corruption of its staff.

Civil servants in Albania should have the duty to report cases of suspected corruption, given their duty to rescue the public service user. Clearly, failure to report cases of suspected corruption make the Albanian civil servant with scienter complicit in the corruption offence. Such a remedy would be extremely effective as survey data indicate that roughly 35% of civil servants are believed to have purchased their jobs.12 If the civil servant is likely to have known about the corruption of his or her peers, that civil servant should be prosecutable under a civil law standard (as applied in an administrative or civil law context).

Because Albanian government agency managers both have a duty of care and bear responsibility for possible corruption under respondeat superior, they should be allowed to engage in integrity probes of their staff. Such integrity probes may involve placing a nominated individual in contact with randomly sampled civil servants from the manager's department in order to measure the frequency by which agency staff solicit bribes. Because such probes are so new, the goal of such probes (as a “smoking out” exercise as opposed to as a measurement exercise of the magnitude of corruption) is often unclear as is the legal basis for such probes in Albanian law.

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Words used in this article:
- contributory negligence – failing in one’s duty of care or irresponsibility which leads (or “contributes”) to another person’s harm
- trusteeship – the legal taking over of an organisation by a court-appointed “trustee” (or manager)
- burden of proof – the “burden” (or amount) of proof required for a judge or jury to take a decision (find a person guilty for example)
- defence – a claim used to defeat (or to convince a judge or jury) that person is not guilty
- civil law standard – refers to many delicts or offences in criminal law which require the judge or jury be only reasonably convinced the person is guilty (as opposed to a “criminal standard” which requires the judge or jury to be convinced “beyond a reasonable doubt” (often heard in US legal drama movies)
- infraction – refers to a breaking of the law (less serious or part of an offence)
- ultra vires – acting outside or beyond one’s powers)
- implied terms – terms which an employee (or a party in a contract) assume (which are not written formally on paper).
- duty to rescue – refers to duty of care in which a person must help rescue another person from a harm if he can (or has legal obligation such as fire brigade).
- remedy – a decision which “fixes” (or remedies) a harm from an offence. Judges apply “remedies” in their sentences which serve the interests of justice.
- integrity probe – a test of a civil servant whereby they are put in a position where they may solicit (ask for) a bribe.
Despite pleas that these probes are illegal or unconstitutional, in Albania these probes can be designed in ways which avoid entrapment and do not violate privacy. Such probes may not fall afoul of entrapment if such probes are used only to collect data on the incidence of bribery, if civil servants consent to these probes (to the extent they are statutorily allowed) and temptation is not added to the probe exercise. Naturally, if these “ifs” are not met (a procedural violation occurs), then the appellate court would overturn the court of first instance’s initial conviction – costly the Albanian taxpayer money and the prosecutor’s office time.

Paying for Anti-Corruption

The Albanian budget is too small to fund large scale anti-corruption work – requiring much of the anti-corruption work to be self-financing. Allowing Albanian law enforcement agencies to keep (or claim from the budget) a proportion of the value of corruption they successfully detect and prosecute can both provide incentives to fight corruption and tie anti-corruption effort to the amount of corruption affecting the agency. Such payments also allocate resources to the individual or agency which can best fight corruption. While some countries have had good experiences using such a scheme (for example letting the Agency sell off cars seized from criminals), too strong ties between crime detection and budgetary allocations can led to “shake downs” and more inspections than economically, socially or legally desirable. However, rewards to Albanian department and civil servants (in the form of promotion prospects or perquisites paid by many developing country governments such as social housing or subsidies on public services) can be dampened to reduce the incentive to shake-down public service users.

Qui tam rewards can also help finance anti-corruption work in Albania as well as provide positive incentives to prevent corruption (instead of the negative incentives attendant with extending liability for corruption offenses as described earlier). The phrase qui tam derives from qui tam pro domino rege quam pro se ipso in hoc parte sequitur, meaning he who sues for the king as well as for himself. Qui tam provisions allow individuals to sue an individual who harms the State and claim a share of the damages paid by the offender. For example, if private individuals (instead of state investigators) denounced corruption by Albpetrol officials (the Albanian state oil company), these individuals could receive a bounty. In a corruption context, qui tam rewards certainly include lost revenue (from under-valuation of customs or tax declarations) and – depending on future changes to the Albanian legal code -- may even include damages for restricts in trade, harm to third-parties and the cost of enforcement.

The optimal qui tam reward will balance the need to reward the whistle-blower with the need to compensate victims and fund future anti-corruption work. Figure 2(a) shows the economic value of harms from corruption as lying on a line (and does not include harms arising from extortion from service users who try to threaten or manipulate civil servants!). Clearly bribes

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<td>statutory – US way of saying “legislatively” (in US, laws are often called statutes).</td>
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<td>procedural violation – violation of procedures when applying a law (in contrast with a “substantive” violation in which the “content” of the law is broken).</td>
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<td>entrapment – process whereby a law enforcement officer actively encourages a person to break the law.</td>
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<td>administrative law – in US, refers to regulations and other law governing the government. In the former Soviet countries, refers to laws which govern very minor people versus state type offences.</td>
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<td>civil law – refers to person versus person law (as opposed to criminal law which deals with offences deems severe enough to be against the society in general).</td>
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<td>qui tam – a legal provision which allows a whistle-blower to earn a “commission” if his complaint saves the government money.</td>
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<td>damages – refers to money (the money which the judge orders the guilty party to pay to the harmed party).</td>
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paid represent harms -- either as money unwillingly paid (in the case of coercion) or as losses in inefficiency (as preferential treatment is given to a less efficient producer, intermediary or less needy consumer). However, corruption indirectly harms a number of third parties – companies which compete with the briber (such as Albpetrol’s competitors in the case previously referred to), and consumers vying for scarce public services. Corruption can also increase prices, thereby decreases real wages and/or returns on capital. These social harms are also represented on a line in Figure 2(a) as social harms.

Any qui tam award which is above the cost of investigating and exposing corruption results in gains to number of parties. Figure 2(b) illustrates the case in which the reward level is less than the bribe paid. The extra money is returned to the Albanian treasury or the original victim and third-parties gain from being rescued from the damages concomitant with the corrupt act. Figure 2(c) shows the case where the whistle-blower is paid more than the value of the bribe – internalizing part of the gain to third-parties which his or her whistle-blowing activity has engendered. The government would still have an incentive to compensate the whistle-blower for this amount because the society overall still benefits. In this example, the malfeasor either internalizes part of the negative externality (or damage) which his corrupt act has caused by paying more than he or collected in bribes; or society compensates the whistle-blower from the general budget. However, Figure 2(d) shows the harms of offering too high a reward. For rewards which exceed the value of all harms imposed on society, the whistle-blower searches for ways of obtaining these rewards (instead of engaging in other productive activity) and government forgoes spending on other socially beneficial activities in order to pay the whistle-blower. The optimal reward clearly balanced the need to provide the maximum incentives (reward) to the whistle-blower with the need to use these resources on other productive anti-corruption activities.

Words used in this article
whistle-blower – the person who denounces the unethical or illegal act of another person (out of interest for the public good as opposed to the pejoratively named “stool pigeon” or “spy” which makes denouncements to harm others or help oneself only.

internalisation (of an externality) – when individual assume, absorb or bear the costs or benefits which would normally be borne by others (the smoker paying my medical bills).
Who Should Investigate Corruption? Where Should the Case be Heard?

Yet, heavy reliance on the criminalisation of corruption offences is not practical in corruption-ridden public administrations like Albania’s. For example, the prosecution of Prosecutor-General Theodhori Sollaku -- who in 2007 was accused of engaging in corruption -- was severely limited because of the criminal-only remedies available to Albanian law enforcement. Four **jurisdictional** levels can be defined for investigating and prosecuting corruption offences (as shown in Figure 3).

**Figure 3: The Four Possible Jurisdictions for Corruption Offences**

**Managerial:** The suspected civil servant’s manager receives a complaint and hears preliminary evidence. The manager imposes remedial disciplinary measures (such as written sanction); being convinced of guilt on a civil evidentiary standard. Managers can reasonable handle minor offences where the civil servant is probably acting individually, probably has no repeated offences and the offence involves a small amount of money.

**Administrative:** The suspected civil servant appears in front of a dedicated tribunal (such as one in Internal Security/Affairs or in an administrative court). The administrative instance has expanded powers of investigation (including ability to **subpoena** witnesses and documents) and prosecution (ability to impose fines and fire). Administrative jurisdiction should be reserved for cases of possible collusion between multiple suspects, where a more senior officer is involved, or when the manager is not-competent to adjudicate. The administrative instance may also hear appeals of managerial sentences.

**Civil:** The suspect may be called to compensate victims of corruption for damages. Civil procedure is well-defined and applies a more lenient burden of proof than that required for a criminal case. As discussed previously, the government agency should be eligible to act as a plaintiff or defendant in civil cases.

**Criminal:** Used when evidence against a suspect is likely to convince a judge or jury that the civil servant engaged in corruption “beyond a reasonable doubt.” Penalties under criminal liability are often rather severe (large fines, jail time). International organisations promote criminalisation because of expected deterrence effect of criminal sanctions (though the extent of such deterrence remains to be empirically proved!)

The investigation of corruption offences should be done by the individual or organisation with the **lowest marginal cost** and **highest marginal benefit** for conducting the investigation and/or prosecution. The Public Prosecutor’s Office will certainly have a **docket** of corruption cases. The cases in this docket can be sorted by the probable amount of funds involved in the particular corruption case (accepting that very few cases have enough **prima facie** evidence to ascertain with certainty the amount of bribes collected by corrupt officials). Prosecutors can subsequently prosecute those high value cases (or cases which cause the greatest amount of economic distortion to commerce). Balanced against the gains of prosecuting these cases are

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**Words used in this article**

**Jurisdiction** - the “area” in which a court (or other body) has the right to take decisions and give sentences which will be applied.

**Subpoena** – a court order requiring a person or documents to appear before a judge.

**Rstitution** – rightly return (of money or assets), “returning” money to its rightful owner.

**Marginal cost** – concept from economics which describes the cost for the last or most recent case or item (or the change in cost). For example, the cost of prosecuting one case of corruption might be $10,000 but the cost of prosecuting the fifth case might only be $2,000 because prosecutors learn how to do things more quickly and efficiently. The marginal cost refers to that last (or “marginal”) case.

**Marginal benefit** – concept from economics which describes the change in social welfare or social benefits from the most recent (or “marginal”) case prosecuted.

**Social welfare** – intellectual “slight of hand” in economics describing the dollar value of well-being, welfare or benefits people get from access to justice, life, liberty, enjoyment of the environment or other areas which non-economists cry can not be quantified.

**Docket** – the list or file of cases waiting to be heard by a particular court.

**Prima facie** – “at first glance” refers to the initial impression.
the costs of prosecution. The extra marginal hour the investigator spends collecting evidence will have different impacts for different cases. Again, the docket of cases can be sorted based on the expected likelihood of collecting strong enough evidence to convince a judge or jury of the suspect's guilt. Clearly, in some cases, handing over cases to the police for criminal prosecution very expensive and the expected quality of evidence collected by the Internal Affairs or Security departments is at least as good as that collected by the prosecutor's office.

Corruption increasingly crosses national borders. Lulzim Basha’s allegedly corrupt involvement with a number of construction companies (including the Bechtel-Enka consortium for a construction project for a road leading to Kosovo), highlights this international dimension.15 As such, Basha has committed a crime in Albania, the US and Turkey. Because of the fundamental legal principle that the same case can not be tried in more than one place and that judgment is a res judicata, the issue of forum selection comes to the fore. In cases where comity between nations allows for international legal assistance or even extradition -- because of the differing quality of various legal systems -- the highest quality courts should be used -- using a legal standards of the jurisdiction decided by the judge in that court. In this case, the highest quality court would be in the United States (though the court of preference would depend on each case)!

Should Albanian law enforcement agencies accept rulings from US courts (in cases like Basha’s) or others? As corruption -- and the proceeds from corruption -- increasingly crosses national borders, national courts and executive agencies need to decide on the extent to which they will accept the judgments of foreign government bodies. Under the United Nations Convention Against Corruption, countries who receive requests for the restitution of gains from corruption can apply four standards -- foreign jurisdiction (accepting foreign requests), translated judgment (retrying the case by receiving country's legal standards), joint judgment (participating in the foreign investigation and trial), and no foreign jurisdiction.16 The choice of which standard to apply depends on the reliability of the foreign court (the US court in this case) and the costs/benefits of applying each standard.

Restituted funds in corruption cases involving Albanian nationals can be awarded to a number of parties; and the choice of beneficiary should be governed by both concerns for efficiency and equity. Allocating part of these funds to the law enforcement agency who cracked the case helps provide salary, material and moral incentives to continue investigating international corruption cases. Awards to the victims of corruption (or the plaintiffs in a lawsuit) encourage victim activism against corruption and justly ties compensation to actual harm. Providing damages to groups of individuals indirectly harmed by the corruption case -- through a class-action suit for example -- helps remedy social harms caused corruption and ties benefits to social harms (a desirable feature from a public policy standpoint). Finally, if these funds are absorbed into the Albanian state budget, they can -- in theory -- help the benevolent Albanian state to create the social goods like trains and roads which best help Albanian society.
Helping to Enforce the OECD Anti-Bribery Convention

The OECD Convention criminalizes the payment of bribes by businessmen from OECD member countries to Albanian officials. Both Bechtel and Enka officials could (and should) be prosecuted for bribery abroad. Yet, the relative lack of successful prosecutions under the Convention suggests that a criminal standard (requiring guilt beyond a reasonable doubt) as well as the problems of international investigation may be hindering the successful application of the Convention. The Convention can be amended in order to help promote enforcement without significantly reducing liberties or hindering trade. Organisational liability -- incurred by the corporation independently of its directors -- can be established for corruption offences. Such a civil (rather than criminal) liability would be incurred when: a) representatives of the company (like Bechtel) could reasonably anticipate that a company representative could have incentives to engage in corruption and, b) when the company can not provide documentation definitively refuting allegations of corruption. Effectively, such a provision reverses the burden of proof on corporations as legal persons (but not for its directors and members as "real" persons). The reversal of the burden of proof is justified by the stronger duty of care which should be required of corporations and the lower costs of obtaining the evidence needed to disprove allegations of corruption. The charge brought before the regulator would not be a charge of corruption, but an accusation of negligence.

Organisational liability for corporations whose employees are suspected of engaging in corruption can pave the way of "negligence fines" which dissuade corruption and provide finance for anti-corruption work. Such "negligence fines" (targeted at companies which can not show that they are not engaged in corruption such as Enka encourage companies to spend more on self-monitoring. For too low levels of fines, companies have the incentives to benefit from corruption and pay these low fines. Fines which are set too high choke-off commerce, as businesses spend large amounts of money on protecting themselves against allegations of corruption. The optimal fine balances these two effects; while also providing finance for future anti-corruption work (particularly qui tam rewards for whistle-blowing).

Conclusions

The international anti-corruption conventions will force the Albanian parliament and Cabinet of Ministers to impose more regulations on their administrations and spend taxpayer money on controls; without providing means of financing these requirements. Yet, many non-regulatory legal solutions exist in order to help fight corruption. The best legal solutions, especially for Albania, remove the vast economic distortions which cause rents (and thus rent-seeking behaviour) in the first place. The second-best legal remedies -- such as expanding the liability for corruption through punishment for complicity, respondeat superior, respondeat politicae, and applying a more stringent duty of care -- help spread liability over more people; making corruption more expensive to the many participants in corrupt transactions. The third-best legal remedies "mop-up" the rents from corruption by rewarding
whistle-blowers, investigators, and other law enforcers -- while providing the socially welfare maximising compensation to victims of corruption from these rents. The fourth-best remedies make anti-corruption work self-financing; providing incentives for more Albanian citizens to fight corruption instead of actively participating in it.

1 Bryane Michael is at Linacre College (Oxford) and serving as a senior advisor to the EU on anti-corruption in Eastern Europe. Maurizio Varanese is a Chief Inspector of Police in the Commission on Anti-Racketeering (Italy). This paper summarises a much longer treatise which is available at: http://www.qeh.ox.ac.uk/RePEc/qeh/qehwps/qehwps150.pdf

2 For a critique of donor assistance to Albania, see Harald W. Mathisen, Donor roles in face of endemic corruption – Albania in the policy debate, CMI.

3 For an excellent overview of the issues, see Ilir Gjoni, Cleansing the Augean Stables: Corruption in Albania Disrupts Democratic Development and Undermines Quality of Life, MEDITERRANEAN QUARTERLY - VOLUME 13, NUMBER 3, SUMMER 2002, pp. 33-39

4 Vian and Burak in their survey of corruption in the Albanian health sector note that survey respondents confuse corruption (bribery) with gifts to such an extent that special care needs to be taken to identify and separate out these two concepts in survey work. See Taryn Vian and Lydia Burak, Beliefs about informal payments in Albania, 21 HEALTH POL. & PLANNING 5, (2006): 392-401.

5 The Albanian Criminal Code has provisions which ratify the international conventions discussed in this paper (albeit to a minimum standard). The 2005 Law On the prevention of conflicts of interest in the exercise of public functions (No.9367/7 April 2005) also has only tangential applications to gift-giving situations.

6 See Mitchell A. Seligson and Siddhartha Baviskar, CORRUPTION IN ALBANIA: REPORT OF COMPARISONS BETWEEN 2004 AND 2005 Surveys, available at: http://sitemason.vanderbilt.edu/files/hANU6Q/Good%20Governance%20in%20Albania%20v82r.pdf. The authors note that according to surveys, politicians are judged more harshly for taking bribes than service users are who must give bribes. Albanian legislation provides for equal punishment.

7 For an overview of some of these types of offences, see Daniela Irrera, The Balkanisation of Politics: Crime and Corruption in Albania, RSCAS WORKING PAPERS.

8 See supra note 6 at 86.

9 See supra note at 2.

10 See supra note at 6 at 30.

11 The 2003 Electoral Code of The Republic Of Albania

12 New frontiers in diagnosing and combating corruption, PREM Notes, October 1998.

13 Most Albanians do not think that the judicial system will punish criminals (rating 3 out of 10 where 10 indicates maximum likelihood of punishment). See supra note 6 at 154. Clearly, small judicial sector budgets comprise one reason for such lack of effectiveness.


17 For an overview of such fines, and the logic employed to arrive at an optimal fine, see Robert Innes, Enforcement costs, optimal sanctions, and the choice between ex-post liability and ex-ante regulation, 24 INT’L REV. L. & ECON. 1, (2004): 29-48.

18 For a quantification and discussion of these distortions, see Laszlo Csaba, Regulation and Public Sector Development: A Post-Transition Perspective, 17 POST-COMMUNIST ECONOMIES 2, (2005): 137-152.