

Albanian Judiciary and the Rule of Bargaining for Favors

*By Sami Neza**

Tired of being ordered by his superiors to favor companies bidding in government tenders, Dritan Prifti, while serving as Albanian Minister of Economy, secretly videotaped a March 2010 meeting with then-minister of Foreign Affairs Ilir Meta (also a former Deputy Prime Minister and Minister of Foreign Affairs).

This video, released in early 2011, shows Meta ordering Prifti to intervene in a hydropower plant concession tender involving an alleged “recompense” of 7 percent of 700,000 leks (US\$955,000). Meta brags about his influence on court decisions because of his relationship with Supreme Court Chief Justice Shpresa Becaj, whose daughter Meta had hired as an embassy diplomat.

Becaj defended the hiring and denied that it had been a favor. However, Meta asserted publicly that he had acted at the chief justice’s request. Still, Meta claimed the video was re-edited to show him in a bad light and denied any wrongdoing. He resigned soon after.

Chief Justice Becaj continued as chief justice, but the case exposed a judiciary increasingly perceived as influenced by favoritism, where judges are bribed by other judges for desired appointments, in addition to bribes by outsiders seeking influence.

Standardized Bribery

Experts from the European Union (EU) visited Albania in June 2010 to assess the state of the judiciary. They heard allegations of corruption “within the judiciary, be it to exercise influence on certain procedures, be it to get an ‘interesting position’ as a judge.”

The experts visited only for a few days and found no hard evidence of corruption. However, a report signed by Gerhard Reissner, vice-president of the Consultative Council of European Judges, states that the information came from “frank discussions” with “distinguished representatives” of the judiciary, who provided information about “facts that everybody knows.”

For the first time, an international report on Albanian justice openly discussed the possibility that court appointments were made by corrupt practices. Later, an article titled “Justice, the Envelope to Win the Job,” was published in the Albanian daily newspaper, *The Standard* on August 4, 2010:

“To be transferred from other districts and to be appointed to Tirana or Durrës, a judge should pay between 5 and 7 million lek

(US\$50,000 and US\$70,000); a place in the Court of Appeals (GA — *Gjykata e Apelit*) costs a judge up to 25 million lek (US\$250,000); while for a place on the Supreme Court (GL — *Gjykata e Larte*), the shame ‘tender’ starts at least 40 million lek (US\$400,000).” It alleged that corruption also occurs in the admission process for the School of Magistrates.

The Standard article says that, once appointed, judges who paid large sums for their positions presumably go on to accept bribes to “make back their investment.” Neither the community of judges nor court representatives denied or reacted to the report.

The Albanian judiciary hit a new low in 2010 with allegations of its corruption. Before then, it was understood that corruption originated mainly from outside the system, through bribes from businessmen and criminal groups, according to studies by the Organization for Security and Co-operation in Europe (OSCE), and other organizations.

In a 2010 survey by the Institute for Development Research and Alternatives, almost half of the judges surveyed (48.8 percent) said they had been offered bribes by lawyers from outside the court. This represents an 11.6 percent increase when compared to the 2009 survey.

Not surprisingly, a 2009 study by the Albanian watchdog Centre for Transparency and Free Information (C/TFI — *Qendra për Transparencën dhe Informimin e Lirë*) found that judges tend to enjoy more luxurious lifestyles than other professionals with similar salaries. For example, more than 30 percent of judges spend summer and winter holidays abroad, and a similar proportion own more than one house. Usually, one property is located in a pricy tourist area. Based on their income and expenses, it appears that these judges have access to much greater sources of money.

OSCE research from 2006, which was based on interviews with people who were either directly involved or first-hand witnesses of corruption, helps to better illustrate how bribery works, as shown in the following case:

“Y was charged with armed robbery. Via a middleman, Y’s relatives approached the judge and offered a brand new Mitsubishi in exchange for a low sentence. The judge agreed but stated that he would not give his word until he had seen the car. The car was brought in front of the court, after which the judge accepted the car and gave the defendant a very low sentence.”

Bargaining Favors

In addition to the payment of bribes, negotiation of “favors” among judges is also a common part of the decision-making process.

“The lack of reasoned decision and the fact that there is no possibility of challenging the decision (of an appointment) foster rumors, speculation and mistrust, even if the decision from the High Council of Justice (HCJ — *Këshilli i Lartë i Drejtësisë*) was correct. The experts were confronted with claims that exchanges of mutual favors dominate the decisions,” the EU report stated.

Further, the HCJ does not publicize the reasons why some candidates are recommended over others.

Appointments to both district and appellate courts are made by the president of Albania, based upon proposals from the HCJ. Even though the law establishes certain criteria for making the appointments, the EU experts determined the criteria “need interpretation” and more “detailed regulation.”

The Law of the Organization of Justice, approved by parliament in February 2008, required the creation of a scoring system to evaluate the candidates’ performances and a list of eligible candidates. Those who collect the most points would receive the best appointments. However, that list has never been used. The HCJ took more than two years to prepare the evaluation system — it was finally ready in the Spring 2010 — but it has refused to apply it in subsequent appointments.

“The argument that there was not enough time for an evaluation using the new elements is not convincing,” the European experts said in their report about the HCJ’s reasons to postpone using the new system.

Kreshnik Spahiu, vice-chairman of HCJ, said in October, “The scoring system was delayed because there was no international experience that we could refer to. In 2009, the European Union Mission for Justice in Tirana took over the development of criteria and it is already in operation.” However, it was put into operation only in two local courts.

In an October 2010 interview, Minister of Justice Bujar Nishani said that he had requested, during a meeting in early July with the HCJ, that appointments and transfers be postponed until the institution was ready to use the evaluation system: “It is clearly understood that the EU experts are greatly alarmed. Given the situation, I asked the HCJ that, until the scoring system is available and ready, they should not make appointments.”

At the end of 2010, appointments were continuing to be made under the old system.

Anonymous sources within the HCJ say many members of the council strongly oppose the new system, claiming that it would make the selection process more time consuming. The opposition

might also be due to the fact that the system may reveal that many judges fail to meet the criteria to hold their current positions or receive further promotions.

Application of the scoring system in two local courts in Durrës and Elbasan, performed in the second half of 2010, showed that out of 40 judges evaluated, only five fulfilled the requirements to reach higher office, Kreshnik Spahiu said.

Maks Haxhia, chairman of the National Chamber of Advocates, is not surprised by these results: “The proposals (of candidates) often reflect the narrow interests of clans, and ignore the criteria of fairness and professionalism at all levels of the judiciary, including appointments to the Constitutional Court (GK — *Gjykata Kushtetuese*).”

Nominees to the Supreme and Constitutional Courts are proposed by Albania’s president. Some of these are low-profile judges that the National Chamber of Advocates thinks for those positions.

“The community of lawyers believes that only when the process of selection of judges is applied in a transparent and rigorous way, will an independent, impartial, professional and honest judiciary be in place and working,” Haxhia added.

Disciplinary actions have faced similar obstacles. There were no disciplinary sanctions for corruption against a judge between 2003 and 2007, and 15 between 2008 and 2009; however, the Supreme Court annulled the HCJ’s sanctions in most of those cases (10 out of 15). In one case, the HCJ ordered the removal of three judges, and in another case it gave permission to start criminal proceedings against one judge. The Supreme Court invalidated both decisions.

Despite the EU’s pressure for Albania to make its judiciary more transparent if it is serious about becoming a member, politicians and members of the justice system don’t seem to be exactly eager to move ahead on that path. In their report, the EU experts recount being told during their visit that the EU had offered money to renew court buildings, the Tirana District Court among them, to help alleviate a pressing lack of rooms to conduct hearings.

The project would have eliminated what is now a very frequent practice of conducting hearings in the privacy of the judges’ offices. “This does not only jeopardize the principle of conducting public hearings but also gives substance for speculation that behind closed doors some incorrect ways influence the outcome,” the report warns.

The renovation of the buildings never took place, though. “It was not possible that politicians provided an appropriate plot of land,”

the report states.

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