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**ПРАВОВІ ЗАСАДИ ФУНКЦІОНУВАННЯ ПУБЛІЧНОЇ ВЛАДИ  
ЩОДО ЗАБЕЗПЕЧЕННЯ  
ІНТЕЛЕКТУАЛЬНОГО РОЗВИТКУ ТА БЕЗПЕКИ СУСПІЛЬСТВА**

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## СЕКЦІЯ 1

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### ІСТОРИЯ ТА ТЕОРІЯ ДЕРЖАВИ ТА ПРАВА, ФІЛОСОФІЯ ПРАВА

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#### **FROM TRANSITION TO STATE CONSOLIDATION: OBSTACLES FACED IN THIS PROCESS (Albania case)**

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#### Introduction

In the beginning of the 90' Albania has faced its post-communist transition in unpredictable way. Two decades after the transition from communism, democracy and state building in Albania remains fragile. According to Freedom House reports yearly labels Albania ‘partly free’, the Economist Intelligence Unit considers it a ‘hybrid’ regime and international organizations have expressed concern about the progress of Albania’s reform process in recent times especially the juridical reform. The European Commission’s 2014 ‘Albania Progress Report’, presented a mixed record in the areas of democracy and the rule of law, particularly in reference to the nature of political dialogue; the judicial system; the fight against corruption; and the independence of state institutions<sup>1</sup>.

During these years, the country has achieved remarkable progress in economic and social development even though state consolidation is an unfinished process. According to the World Bank report “... poverty has declined, and human development rankings have improved steadily. At the same time, Albania has experienced rapid social change, including internal migration from rural areas to urban centers and mass emigration of economically active citizens, who send back substantial resources in the form of remittances. Once known as “the poorest country in Europe,” Albania is now an upper-middle-income country”<sup>2</sup>. GDP growth decelerated further to an estimated 1.4% in 2013 from 1.6% a year earlier. The main driver of the slowdown remained sluggish domestic demand, as both private consumption and especially investment were adversely affected by weak confidence...<sup>3</sup>. Enduring politicization of the public administration and incomplete separation of powers, exemplified by instances of political interference in judicial processes, remain serious obstacles.

Corruption is one of the biggest problems in Albania. It takes up many different forms from bribing public officials, abuse of tenders, faulty privatization, rewarding of public contracts, formation of monopolies on basic goods, discriminatory application of laws and taxes, illegal funding of political parties, to outright theft of state property and revenue. Corruption is also closely interlinked with organized crime with many of the senior state officials being involved in smuggling, contrabands, tax evasions and land grabbing<sup>4</sup>.

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<sup>1</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-albania-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf)

<sup>2</sup> World Bank, Report no:62815-AL “Governance in Albania: A Way Forward for Competitiveness, Growth, and European Integration”, June 2011 pg.7

<sup>3</sup> EU report 2014, pg.15

<sup>4</sup> Fride, “Democracy Monitoring Report, Albania” April 2010, pg 3-4

According to a survey realized by the Institute for Development Research and Alternatives (2009), corruption is prevalent in all official sectors, with custom officers, tax officials, ministers and parliamentarians perceived as most corrupt.

Thus, this study aims at providing an analysis of successes and failures of the democratization processes that have taken place in Albania, which, on the other hand have led to difficulties in the consolidation of democracy. The main aim is to explore the reasons that lay behind this problematic path of Albania towards democracy and the steps that should be followed concerning the consolidation of democracy. The main research question that we pose is: why countries like Albania have not yet consolidated the foundations of a full democratic regime? Of course this aim cannot be fulfilled in one article alone. Much of our analysis of the democracy and state consolidation is based on an assumption that ex-communist country like Albania are struck in the past political culture and failures in economic development are connected with high levels of government corruption.

The economic situation of Albania

Albania is a middle-income country that has made enormous strides in establishing a credible, multi-party democracy and market economy over the last two and a half decades. During the first decade remittances had played a significant catalyst for economic growth declined from 12-15% of GDP before the 2008 financial crisis to 7% of GDP in 2012, mostly from Albanians residing in Greece and Italy<sup>5</sup>. In general the Albanian economy system remains highly informal. From 2013 the new government is trying to reform and reduce informality in different sectors.

The recovery to growth rates above 3% in 2011 moderated in 2012 and 2013, reflecting the deteriorating situation in the Euro Zone and the difficult situation in the energy sector. Fiscal consolidation that started in 2014, coupled with a number of important structural reforms, including in public financial management, energy, and pensions, created the conditions for rebounding business confidence and domestic demand.<sup>6</sup> From 2013 the new government is focused on establishing a favorable business climate through the simplification of licensing requirements and tax codes, it entered into a new arrangement with the IMF for additional financial and technical support. The agricultural sector, which accounts for almost half of employment but only about one-fifth of GDP, is limited primarily to small family operations and subsistence farming, because of a lack of modern equipment, unclear property rights, and the prevalence of small, inefficient plots of land. Inward FDI is among the lowest in the region, but the government has embarked on an ambitious program to improve the business climate through fiscal and legislative reforms. Albania's energy supply has improved in recent years mostly due to upgraded transmission capacities that Albania has developed with its neighboring countries. The country will continue to face challenges from increasing public debt, having exceeded its former statutory limit of 60% of GDP. From 2013 the public debt of Albania raised up to 70.5%<sup>7</sup> facing the economy of the county in unpredictable situation. Strong trade, remittance, and banking sector ties with Greece and Italy make Albania vulnerable to spillover effects of debt crises and weak growth in the euro zone. The private sector remains dominant, accounting for about 80% of GDP and 82% of the workforce. Privatization is advanced but there is no progress on the sale of the remaining stakes in energy, oil, telecommunications and insurance companies<sup>8</sup>. The Albanian economy continues to be dominated by the

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<sup>5</sup> [http://www.theodora.com/wfbcurrent/albania/albania\\_economy.html](http://www.theodora.com/wfbcurrent/albania/albania_economy.html)

<sup>6</sup> <http://www.worldbank.org/en/country/albania/overview>

<sup>7</sup> [http://www.theodora.com/wfbcurrent/albania/albania\\_economy.html](http://www.theodora.com/wfbcurrent/albania/albania_economy.html)

<sup>8</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-albania-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf) pg.18

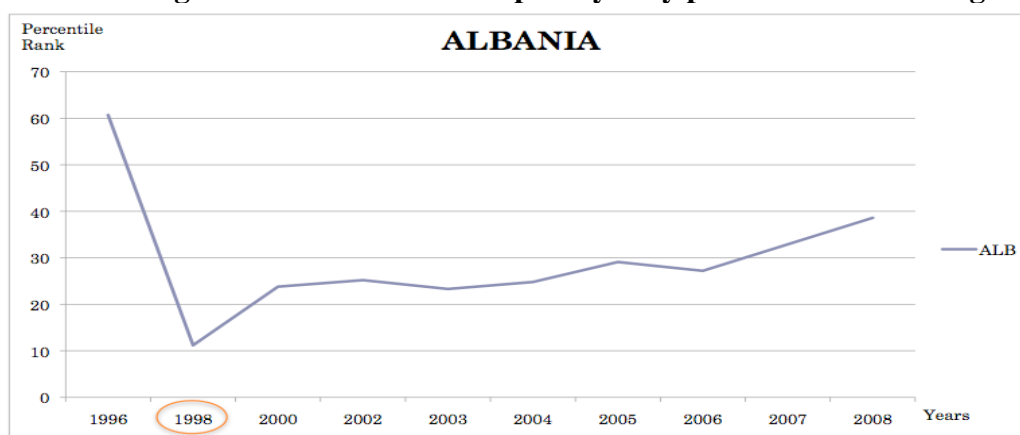
services sector, which accounted for around 50% of gross value added (GVA) in 2013, followed by agriculture, providing more than a fifth of GVA, and industry (15 %), comprising both manufacturing and the booming extractive industries (crude oil production increased by 18 % in 2013). Manufacturing relies to a large extent on the low value-added textile and footwear industries. Following a deep contraction a year earlier, the construction sector recorded modest growth. The sectoral composition of merchandise exports remained highly concentrated, with 83 % of total exports in 2013 accounted for by mineral 21 products (40%), textiles and footwear (28%) and construction materials and metals (15 %). This lack of diversification exposes the economy to industry-specific shocks. Small and medium-sized enterprises (SMEs) play a very significant role in the economy, providing 80% of employment and 68% of value added. Micro-businesses in particular make up a high proportion of the number of companies and account for more than 50 % of all people employed by SMEs. Various state and donor-funded schemes exist to increase SMEs' competitiveness and help them access finance.

#### Corruption and governance in Albania

One of the challenges that the Albanian transitional process is also facing nowadays is corruption. Defined as the “abuse of a public position for private benefits”<sup>9</sup>, corruption is still considered as an obstacle towards the consolidation of the democratic regime. It has hindered not only the political process of democratization, but also the economic development of the country.

However, during these two decades of transitional process which have aimed at paving the way towards the consolidation of democracy, corruption has shown different patterns. The World Bank, through the Control of Corruption index testimonies considerable achievements in mid 1990's, but since the fall of the pyramid schemes in 1997, this phenomenon spread at unprecedented scale in the country. Even though positive improvements have been made during the last years, it still remains an obstacle towards a democratic functioning of the institutions.

**Figure 1: Control of Corruption yearly percentile rank change**



Source: World Bank<sup>10</sup>

The Corruption Perception Index (CPI) also testimonies the same situation for Albania, which referring to the last years' evaluation, remains far behind from the other countries with a consolidated democratic regime. The table below shows the yearly evaluations and the rank of the country during the last decade:

<sup>9</sup> Johnston, M., (1998), 'Fighting systemic corruption: social foundations for institutional reform', *European Journal of Development Research*, Vol. 10(1): 85-104, p. 89.

<sup>10</sup> Corruption Perception Index, Transparency International/ <<http://www.transparency.org/research/cpi/overview>>

Table 1: Corruption Perception Index for Albania, 2002-2012

| Year | Albania    |         |
|------|------------|---------|
|      | Evaluation | Rank    |
| 2002 | 2.5        | 81/102  |
| 2003 | 2.5        | 92/133  |
| 2004 | 2.5        | 108/146 |
| 2005 | 2.4        | 126/159 |
| 2006 | 2.6        | 111/163 |
| 2007 | 2.9        | 105/179 |
| 2008 | 3.4        | 85/180  |
| 2009 | 3.2        | 95/180  |
| 2010 | 3.3        | 87/178  |
| 2011 | 3.1        | 95/183  |
| 2012 | 3.3        | 113/176 |
| 2013 | 3.1        | 116/177 |

Source: Transparency International

However, ‘there is evidence that the incidence of administrative (petty) corruption in Albania is declining with specific improvements in tax administration, customs, and the courts, though bribe frequency in these services remains higher in Albania than the regional averages’<sup>11</sup>. These improvements have been reflected in the overall evaluation of governance quality by the World Bank Worldwide Governance Indicators. Indicators, such as political instability, governance effectivity, rule of law appear to be low even in the last years:

Table 2: Governance Indicators for Albania, the trends: 2002, 2007, 2012

| Indicator                                  | Country | Year | Evaluation | Rank  |
|--|---------|------|------------|-------|
| Political Instability and lack of violence | Albania | 2002 | -0.39      | 30.77 |
|  |         | 2007 | -0.20      | 37.98 |
|  |         | 2012 | -0.16      | 39.81 |
| Governance effectivity                     | Albania | 2002 | -0.57      | 32.68 |
|  |         | 2007 | -0.38      | 42.23 |
|  |         | 2012 | -0.28      | 44.98 |
| Rule of Law                                | Albania | 2002 | -0.92      | 21.05 |
|  |         | 2007 | -0.70      | 27.75 |
|  |         | 2012 | -0.57      | 35.07 |

Source: Worldwide Governance Indicators, Albania, World Bank, 2013

(<http://info.worldbank.org/governance/wgi/index.aspx#reports>)

### Conclusion

The transition to democracy and free market in Albania has been implemented with difficulty, slowly and problematically just like other ex-communist countries of the Balkan region.

The democratic deficit in Albania and the political and social tensions which have accompanied the inter-party strife have generally obstructed the progress of the country and the development of its civil society. Another critical weakness of democracy in Albania pertains to the lack of access to the decision-making process for key local stakeholders. On

<sup>11</sup> ‘Governance in Albania: A way forward for competitiveness, Growth, and European Integration’, No. 62518-AL, A World Bank Issue Brief, June 2011.

the other hand, the persistence of corruption, low positive achievements in terms of governance dimensions continue to put Albania in the category of “hybrid democracies”.

## **ЛЮДИНА ЯК ПРЕДМЕТ І ОСНОВА ФІЛОСОФІЇ ПРАВА**

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Для філософії права людина є вузловою проблемою, яка визначає саму сутність та специфіку цієї особливої сфери людського пізнання. Адже формуючи розуміння права, людина в цьому процесі відображає саму себе, свою власну сутність та власне розуміння. Про такий взаємозв'язок людини і права писав один із перших вітчизняних дослідників сучасного етапу розвитку філософії права В.В. Шкода. На його думку, людина є вузловим предметом філософії права, утвореної її культурною діяльністю, через яку вона сама себе осмислює та пізнає. «Правова філософія покликана зрозуміти підвалини права, що кореняться в глибинах культури. А в широкому розумінні – зрозуміти людину завдяки розумінню права» [1, с. 41].

Близькою до цього є і думка Ю.В. Тихонравова, який вважає, що право реалізує саму людину, покладену в ній універсальну мету життя, яка без права в принципі реалізуватися не може [2, с. 46]. Та все ж, як вважає В.А. Бачинін, сьогодні «...юристи, правознавці дуже рідко звертаються до питань, пов'язаних з обговоренням уявлення про природу і сутність людини. А між тим, правова реальність існує не сама по собі, а всередині просторого антропологічного контексту. Тому праворозумінню необхідний «антропологічний поворот», який дозволив би вийти через теоретичні лабіринти уже не до держави і норм, не до права і законів, а до людини як онтологічно первинної реалії. Підкреслимо, що теорія і філософія права потребують дослідницького, методологічного антропоцентризму, який дозволить, з одного боку, глибше проникнути в сутність права через осягнення природи людини, а з іншого боку, допоможе краще зрозуміти природу людини через осягнення сутності права» [3, с. 607].

Та всупереч віковим намаганням кращих розумів європейської філософсько-правової думки «покласти» людину в якості наріжного каменю права, людина як його фундаментальна засада виявилася високо декларованою, але в дійсності непізнаною, сутнісно незрозумілою та нецілісною у свої діях, зумовлюючи розрив між належним і дійсним у праві. Більше того, залишилося незрозумілим, що в сутності людини утворює єдиний фундамент для різних форм і видів права.

Причина такої ситуації полягає в традиційній для науки і філософії моделі сприйняття людини і світу. При цьому під традиційною науково-філософською моделлю світосприйняття розуміються, за визначенням В.С. Стьопіна, два етапи розвитку європейської науки, класичний та некласичний, які змінювали один одного в межах техногенної цивілізації та передували появі в 60-х рр. XX ст. третього типу наукової раціональності, постнекласичному [4].

У європейській науці класична модель людини будувалася відповідно до ньютонно-картезіанської парадигми, яка склалася в XVII-XVIII ст. і описувала виключно матеріальний навколишній світ. Її основу склало уявлення про те, що