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**Policy Paper**  
***"Security Management Network"***

The need to reform the intelligence system in Albania.

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**June 2011**

## **Abstract**

Over the last few years Albania has witnessed an expansion of the intelligence activity which has been accompanied by an increase in the number of agencies, mainly domestic intelligence. By and large this process has been driven by the need for fighting terrorism and organised crime but the fact that intelligence is no longer an exclusive activity of the traditional agencies poses several problems with regard to their governance and accountability.

Albania lacks central management and coordination mechanisms to ensure full and efficient cooperation among the intelligence and security and law enforcement agencies. Increasing the intelligence activity and number of the agencies with no coordination mechanisms in place has made the process of management and control more complicated. Another feature of the recent developments is the blurring of lines between law enforcement and intelligence. Lack of oversight provisions in the legislation of the newer agencies and poor practice have led to an incongruous oversight of agencies carrying out similar activities.

This paper analyses Albania's intelligence system and tries to make an assessment of the main problems it faces. The paper calls for the need of a comprehensive reform which should bring the intelligence system in line with the international norms and standards.

## **Introduction**

Intelligence is a special kind of knowledge that is essential for the security of the state and its vital interests. It is acquired through a systematic process that involves collection and analysis of information by using specialised structures. In order to perform their task the intelligence structures use methods and techniques that restrict individual rights. Therefore for a democratic state the intelligence and security agencies must be perceived as performing a necessary function, operating efficiently and effectively, accountable for their actions and those of their members, and under the firm control of elected authorities.<sup>1</sup>

Establishing an intelligence system which is efficient and accountable to democratically elected institutions is one of the most challenging tasks faced by modern states. However this is indispensable in order to avoid abuses and improve the efficiency of the intelligence and security services.

In dictatorial regimes, including former communist countries, intelligence services were used as an instrument to maintain the grip on power and therefore were not based on law. The task of democratically elected governments is to put intelligence services on statutory basis and clearly define their areas of responsibility and the powers they are allowed to use in performing their task.

There is no one single model of for organising the intelligence services, nor the accountability system. However there is a set of internationally recognised norms and standards that democratic states choose to adopt when establishing the intelligence services and the control and oversight system. These norms and standards require that intelligence

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<sup>1</sup> Marina Caparini, 'Controlling and Overseeing Intelligence Services in Democratic States', in Hans Born and Marina Caparini, eds., *Democratic Control of Intelligence Services: Containing Rogue Elephants*, Aldershot, England and Burlington Vermont: Ashgate, 2007.

legislation clearly defines the mandates and powers of the intelligence and security agencies, differentiates intelligence and security services from law enforcement institutions, establishes mechanisms for their management and coordination, clearly defines and delineates competences and authorities of the other actors involved such as the parliament, the executive branch of government and the judicial representatives.

This paper analyses Albania's intelligence system by subscribing to the above premises and proposes for a reform of the current intelligence and oversight system. The next section analyses the current state of affairs of Albania's by examining the legislation and structures in place. Following will be outlined some of the main international principles, norms and standards for organising the intelligence services and the accountability system. The following section points out the discrepancies between the Albanian intelligence system and the internationally accepted norms and standards. Finally the two last sections come up with recommendation and proposals to reform.

### **Albania's Intelligence and Security Services**

In the last few years the landscape of the intelligence and security services has been substantially changed. First the relevance of the main intelligence service the State Intelligence Service (SIS) has decreased while the opposite has happened with the Military Intelligence Service (MIS). Second the number of agencies entitled to collect intelligence has been increased, but apart from intelligence collection these new agencies have been given law enforcement powers also. More in details the number of agencies, their mandates and powers is described below.

The SIS is the only autonomous agency which depends directly from the Prime Minister and the President. The mandate of SIS consists on the collection of foreign and domestic intelligence in the interest of the national security. More precisely the SIS collects:

- foreign intelligence
- domestic counterintelligence
- intelligence on terrorism
- intelligence on narcotics
- intelligence on weapons of mass destruction
- intelligence on organised crime which threatens national security<sup>2</sup>.

The SIS has no power to use force, arrest, coerce people to cooperate or initiate criminal proceedings.

The second largest service is the Military Intelligence Service (MIS), which is based in the Ministry of Defence (MoD) but separately from the Armed Forces and which reports to the Minister. The MIS quite a broad mandate. It includes collection of intelligence abroad and inside the country on:

- threats to the integrity of the country
- threats to the constitutional order
- espionage
- counterterrorism

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<sup>2</sup> The specification 'which threatens national security' was important to differentiate from the many different forms of crime which fall within the police mandate.

- activities of sabotage
- subversive acts against the Armed Forces
- every other activity that threatens the security and stability of the state.<sup>3</sup>

As a result of recent restructuring the MIS has become a much larger organisation which has included the SIGINT battalion and the J2 which formerly were part of the Armed Forces and reported to the Chief of the General Staff. Same as the SIS, the MIS has no police like powers.

The third service which has only intelligence collection powers is the Financial Intelligence Unit (FIU). The FIU is based in the Ministry of Finances (MoF) and reports to the Minister. The mandate of FIU is to collect intelligence on money laundering activities and financing of terrorism.

There are several other organisations, established mainly in the last five years, which collect domestic intelligence on specific areas, but differently from the above mentioned services these agencies have also powers to collect evidence, initiate criminal investigations, search people and premises and even arrest.<sup>4</sup>

The Service of Internal Control in the Ministry of Interior (SICMI) is an agency based in the Ministry of Interior (MoI) and reports to the Minister. The SICMI area of responsibility is to prevent, investigate and collect evidence on criminal acts committed by members of the State Police and of the MoI. SICMI has extensive powers which include the authority to search and confiscate materials that may lead to intelligence or evidence collection as well as to compel physical or legal persons to hand over documents or information they may hold.

The Service on the Internal Control of the Prisons System (SICPS) is an agency based in the Ministry of Justice (MoJ). The SICPS is part of the General Directorate of the Prisons and reports to the Minister of Justice. The mandate of SICPS mandate is to prevent and investigate illegal activities performed by the prisons' staff. Besides the intelligence collection powers, which according to the law are 'equal to the ones of the SIS', the SICPS powers include initiation of criminal investigations and power of arrest.

The Operational and Investigative Department (OID) is based in the General Directorate of the Customs (GDC), an agency which itself depends on the Minister of Finances. The area of responsibility is to protect Albania's economic and fiscal interests but also protect national security and public safety. The OID has the powers to conduct physical controls, collect intelligence and initiate criminal investigations.

The Directorate on Tax Investigations (DTI) is based in the in the General Tax Directorate (GDT), which same as the GDC is an agency that depends on the Minister of Finances. The DTI area of responsibility is to prevent, investigate and disrupt criminal activities in the domain of taxes and duties. The DTI competences include collection, analysis and dissemination of intelligence but also the right to initiate a criminal investigation.<sup>5</sup>

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<sup>3</sup> Law nr.9074, date 29.5.2003, On the Military Intelligence Service

<sup>4</sup> In the document 'Albania's Answers to the European Commission Questionnaire', none of the organisations discussed in this paper has been categorised as police structures. According to this document the following police authorities function in the Republic of Albania: the State Police, the Prisons Police, the Military Police, the Forrestral Police, the Municipality and Commune Police. ('Albania's Answers to the European Commission Questionnaire', available at: <http://www.mie.gov.al/data/pyetesori.rar>, page 2970)

<sup>5</sup> Council of Ministers Decision nr. 400, date 22.4.2009, On the definition of the tasks and functions of the Directorate of the Tax Investigation

## International Norms and Standards

In order to anticipate, prevent or protect itself against threats to its national security states need effective intelligence services. Intelligence services are vital to the protection of a state, its institutions its vital economic interests and its people. Based on their mandate, which may be based on a geographic area of operation or on an issue or domain, there may be distinguished four main categories of intelligence services.<sup>6</sup>

- Foreign Intelligence Services, which task is to collect, to analyse and produce intelligence relevant to the external security of the state and warn of impending external threats. Therefore their mandate is to operate outside the territory of a state.
- Domestic or Security Intelligence Services, which mission is to obtain, correlate and evaluate intelligence relevant to internal security. Their aim is to protect the state, territory, society and people against espionage, terrorism, sabotage, subversion, extremism, interference with electronic data relating to defence, foreign affairs or other matters affecting the vital interests of the State organised crime, and narcotics.<sup>7</sup>
- Military Intelligence Services, which produce intelligence, assessments and advice to the Ministry of Defence in support of defence policy, military operations and defence equipments.
- Criminal Intelligence Services, which task is produce intelligence on organised crime, corruption and criminal activities in support of law enforcement agencies. Such services are interagency organization which coordinate and share criminal intelligence amongst the police structures.

As a result of the development of technological methods of collection specialised other types of agencies have been established which collect signals, imagery and cryptology intelligence.<sup>8</sup>

Depending on the needs, resources and traditions there are different models on how states have organised their intelligence services. Some countries have just one integrated intelligence service while other countries have multiple agencies. However, whether the intelligence system of a country is composed of one or more intelligence services, there is a set of best practices and principles that need to be taken in consideration when enacting legislation on intelligence and security services. Laws governing intelligence services should provide a clear and specific mandate, including:

- geographic areas of responsibilities;
- subjects of investigation;
- limits of competence and restrictions imposed on activities;
- the relations among the services working within the intelligence community and their coordination;
- the means by which the services are held accountable, including mechanisms of executive control, legislative oversight and judicial review; and
- the legal means to deal with complaints in cases of agency misconduct.<sup>9</sup>

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<sup>6</sup> Greg Hannah, Kevin O'Brien, and Andrew Rathmell, *Intelligence and Security Legislation for Security Sector Reform*, RAND Corporation 2005

<sup>7</sup> Council of Europe, Experts Report: European Committee on Crime Problems (CDPC), Group of Specialists on Internal Security Services (PC-S-SEC), Addendum IV, Final Activity Report, 40703, Strasbourg, July 2003

<sup>8</sup> Such agencies are the National Security Agency in the United States, the Federal Agency of Government Communications and Information in Russia, the Government Communications Headquarters in Great Britain.

The mandate of intelligence services should be clearly defined and limited to matters which involve serious threats to national security and their powers accompanied by safeguards. In order to avoid that the military gets involved in domestic affairs, the internal security services should not be organised within a military structure.<sup>10</sup>

Given the role of the domestic intelligence services and the special powers granted to perform their task, it is important that they are differentiated from other security actors such as law enforcement bodies. In the post-9/11 environment there has been an emphasis on counterterrorism and counter organized crime by the police. This type of activity tends to interact and overlap with intelligence resulting in the blurring of the lines between police and security or intelligence services. The failure of making these clear distinctions will lead to the blurring of accountability lines and the risk that the special powers that security and intelligence agencies possess are used in routine situations where there is no pre-eminent threat to the state. Therefore that legislation should distinguish more clearly between intelligence and security agencies on the one hand and specialized law enforcement agencies on the other.<sup>11</sup> Police powers of arrest, search and seizure, when they are combined in the one organization with the powers and capabilities of a security service lead to a concentration of powers and the creation of a very powerful institution that is difficult to control. As the Council of Europe recommends:

*Internal security services should not be authorised to carry out law-enforcement tasks such as criminal investigations, arrests, or detention. Due to the high risk of abuse of these powers, and to avoid duplication of traditional police activities, such powers should be exclusive to other law-enforcement agencies.*<sup>12</sup>

The intelligence services should be empowered to fulfil their legitimate objective of protecting national security but on the other hand they should not be given a free hand to violate fundamental rights and freedoms. Therefore there has to be a balance between the right of a democratic society to protect its national security and the protection of individual human rights. In order to prevent misuse of such powers there have to be control mechanisms in place form authorities outside the agency before and after their use.

The separation of domestic, foreign and other specialised intelligence functions into different agencies requires that these agencies are coordinated at the central level. This enables the elimination of overlapping missions, better management of resources and creates the basis for a more effective and more efficient performance. In most of the countries that have multiple services such coordination is carried out by structures placed at the central the government which report to the highest government officials.<sup>13</sup>

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<sup>9</sup> Intelligence Services - DCAF Backgrounder, 2006

[http://se2.dcaf.ch/serviceengine/Files/DCAF09/18413/ipublicationdocument\\_singledocument/74b8d616-a5f9-46cf-be6d-65bf82b392bf/en/bg\\_Intel%20Services2009\\_ENG.pdf](http://se2.dcaf.ch/serviceengine/Files/DCAF09/18413/ipublicationdocument_singledocument/74b8d616-a5f9-46cf-be6d-65bf82b392bf/en/bg_Intel%20Services2009_ENG.pdf)

<sup>10</sup> Council of Europe. Parliamentary Assemle. Recommendation 1402 (1999), Control of internal security services in Council of Europe member states. Extract from the Official Gazette of the Council of Europe – April 1999, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta99/EREC1402.htm>

<sup>11</sup> Fred Schreier, The Division of Labour in the Defence and Security Sphere, in Wim F Van Eekelen and Philipp H. Fluri, Eds. Defence Institution Building: A Sourcebook in Support of the Partnership Action Plan (PAP-DIB), Vienna and Geneva 2006

<sup>12</sup> Council of Europe. Parliamentary Assemle. Recommendation 1402 (1999)

<sup>13</sup> Examples of this type of co-ordinating role are the Director of National Intelligence and the National Security Council in the United States; the Security and Intelligence Co-ordinator and the Joint Intelligence Committee in the UK, The Department on Intelligence and Security in Italy, the successor of Executive Committee for Intelligence and Security Services, The Council for the Coordination of Security Intelligence Services in Croatia, The Intelligence Co-ordinator and the Department VI of the Office of the Federal Chancellor in Germany.

In a democratic system the intelligence services should operate within the rule of law and under effective democratic control. There exist five layers of scrutiny, which jointly serve as mechanisms to ensure that the intelligence services are held accountable:

- Internal control
- Executive control
- Parliamentary oversight
- Judicial review

The role of the internal control exercised by the agency itself consists in making sure that measures and policies are properly authorized and procedures are followed. It ensures that intelligence officers conduct their work effectively and comply with the national and international laws. Intelligence services receive instructions from the government and therefore they need to be controlled by the executive. The executive is politically responsible for the activity of the intelligence services, but on the other hand the executive may be tempted to use intelligence services to pursue illegitimate aims, including the use against political opponents. Therefore the executive is accountable to the parliament and the public for intelligence activities. The parliaments adopt the laws that regulate the activity of the intelligence services and establish institutions to oversee them. But the parliament is also responsible for overseeing the finances of intelligence services, both ex ante and ex post, and therefore influencing on their policies and actions. Despite the variations of the strength of the mandates of the parliaments over the intelligence,<sup>14</sup> parliamentary oversight is the key intelligence accountability mechanisms in most democracies.

The judicial review is another important accountability mechanism which focuses on whether intelligence services undertake their activities in a lawful manner, and prosecutes wrongdoing by their employees. Of particular concern for the judiciary is the collection, retention and use of personal data and the communications privacy. There are different forms of judicial control of the security services; through prior authorisation in a pre-trial phase or post ad hoc review of special investigative measures; through court cases concerning involving intelligence services; through general supervisory control over ongoing security investigations.<sup>15</sup>

In liberal democracies oversight by the media and civil society through information and public debate on the legality and performance of intelligence services is yet another accountability mechanism. The information that these actors have concerning the activities of security and intelligence agencies is limited but governments release information based on legislation on access to information and declassification. Other forms of public oversight include information acquired through investigative journalism on wrong doings by intelligence services. All these forms help keep the public informed on state security issues but on the other hand allow the government to be informed on public opinion views and policy preferences.

### **Main problems with the current system**

This section points out how the current state of affairs in Albania conflicts with the international norms and standards discussed above.

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<sup>14</sup> Parliamentary Oversight of Intelligence Services, DCAF Backgrounder, 2006

<sup>15</sup> European Commission for Democracy through Law (Venice Commission), 'Report on the Democratic Oversight of the Security Services', Study No. 388/2006, CDLDEM( 2007)001, 24.05.2007.

An essential remark with regard to the reforms that have led to the establishment of the current setting is the lack of broad political support. Almost all the legislation and policy decisions have been contested by the opposition and on some instances by civil society organisations. The main argument has been the politicisation of intelligence and the risk of impinging on individual rights.

With regard to the allocation of mandates overlaps exist between the two main services. Both the SIS and the MIS mandates include foreign intelligence, counterintelligence and counter terrorism. Furthermore the law on MIS does not provide for any clause preventing it to collect domestic civilian intelligence allowing it to get involved in domestic civilian affairs. As the Prime Minister let understood the MIS played an important role in thwarting the attempted coup d'état on the 21 January 2011.<sup>16</sup> The crisis revealed also the deep disagreements between the President of the Republic and the Prime Minister which largely stem from their different positions vis a vis the SIS.

Another problematic issue with the current setting is the allocation of intelligence collection roles to a series of other agencies the distinction between the intelligence and law enforcement has been eroded and there is no clear division of roles between the two. Powers of arrest, physical search and seizure, combined in the same organization with the powers and capabilities of a security agency have created really powerful institutions. Moreover some of these agencies are not established by an organic law and most of their powers are allocated by governmental decisions rather than by laws adopted by the parliament.<sup>17</sup> In addition due to lack of proper legislation the recruitment, training and vetting procedures for the staff are not typical to intelligence or security services. On the other hand they collect and use intelligence in a similar way as the traditional intelligence agencies posing thus the risk of breaches to individual rights, particularly as they get access to information acquired through special measures. Currently all intelligence, security and law enforcement have the power to use such measures once they get the approval by the Prosecutor General or the courts (See table 1).

But four of the agencies discussed above have the legal right to use both law on the interception of telecommunications and the Criminal Procedure Code to intercept targets. One of the key safeguards of the law on the interception of the telecommunications is that the interception acquired by the means of this law may not be used as evidence in courts. Being the same organisation, and most probably the same people conducting the investigative operations, it remains unclear how the intercepted product is managed in order to be in line with the legal requirement to remain separated. This becomes more concerning considering the poor role of the judiciary in controlling the interception process and the use of other special means of investigation in general. In a case tried last year, the High Court ruled that information obtained pursuant to the law on the interception of telecommunications was unlawfully used as evidence by both the first instance and appeal courts.<sup>18</sup>

The poor coordination and management of intelligence structures is another problematic area. Although the need for coordination processes has been widely accepted and pledges have been made,<sup>19</sup> the coordination as a concept is lacking and the legislation does not properly address it. It may easily be deduced from the analysis of the legal and institutional framework that

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<sup>16</sup> Testimony of the Prime Minister Berisha to the Investigative Parliamentary Commission on the events of the 21 January 2011, <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=14269>

<sup>17</sup> These are the Operational and Investigative Department, the Directorate on Tax Investigations and the Financial Intelligence Unit.

<sup>18</sup> Armand Bajrami, 'Rrezohen pergjimet e tenderit te uniformave', Gazeta Panorama, 30 Nentor 2010

<sup>19</sup> In a meeting held few days after the explosion of the military warehouse in Gërdec, in March 2008, the Prime minister called for the establishment of a department for the coordination of the activity of all the intelligence and security agencies at the Council of Ministers.



intelligence activity is not considered as a single action on behalf of the state interests but as a tool to support segmented institutional objectives. With the division of the areas of interest and the establishment of agencies with specific objectives to carry out specific tasks the need for coordination may have been further reduced. It is worth mentioning the trend to achieve coordination based on negotiated memorandums rather than on clear legal provisions. The implementation of such memorandums in fact has depended a lot on the personal relations between the heads of the institutions and the pressure from international actors.

As mentioned above different accountability mechanisms should be in place but the overall outcome depends on the effectiveness of each of the mechanisms and the way how these mechanisms interact.

As it currently stands, internal control of the intelligence and security services varies according to the position and size of each organisation. The larger organisations have internal control mechanisms in place, which derive from the legislation, while for smaller ones internal control is performed by the hosting organisation or it overlaps with the executive control. One of the main weaknesses of the internal control is the independence of the control bodies as legislation and regulations lacks mechanisms for increasing internal accountability, in particular with regard to guaranteeing the protection from disobeying unlawful or illegal orders. Agencies do not produce yearly reports on internal control findings which are the prime source of information for the other control mechanisms.

Concerning the control by the executive there are three main problems; first it is fragmented and lacks overall legal regulation; there are no permanent structures at the executive level that perform control on the implementation of the legislation and the activity of the services in general; third as there are no clear definitions between the political control and the administrative control. These two concepts overlap in particular for the services that are placed under the ministries and therefore the risk that intelligence produced by these organisations gets politicised is higher. As it will be discussed below, lack of structured executive control and lack of regular reporting on the activity of the services has an impact on the effectiveness of the parliamentary oversight.

The legal basis for the parliamentary control and oversight of intelligence and security services are found in the Constitution and the Regulation of the Parliament which lay down the obligation for the Council of Ministers and PM to answer the questions and interpellations from members of the Parliament. The parliament exercises ex ante control through adoption of legislation and budgets and ex post control through the reporting of the respective authorities. However parliamentary control is currently fragmented and partial. First there is no legislation that spells out the remit and the modalities of parliamentary control on intelligence services. As the sole authority to enact legislation the parliament has undermined its own role by adopting legislation which does not provide for the establishment of oversight mechanisms. The legislation on SIS and MIS only refers to the parliamentary control though the legislation on the other agencies does not even mention it. Second there are three permanent committees that are responsible for various areas of the performance of the intelligence services; the Committee on National Security, the Committee on the Legal Affairs, Public Administration and Human Rights, the Committee on the Economy and Finances. Although there is some activity that takes place in these committees it is mostly formal, uncoordinated and lacks the necessary expertise. One of the striking evidences of the partiality of the oversight is that apart from the report of the Director of SIS none of the ministers who has responsibility over intelligence has reported to the parliamentary committees so far.

Apart from the problems that generally concern the judiciary in Albania, such as corruption and lack of full political independence, there is partial involvement of the judiciary in overseeing the activity of intelligence and security services. The courts authorize the warrants on the use of special methods of investigation and validate the evidence pursuant to the Code of Penal Procedure, but only for the agencies which have powers to initiate criminal investigations. Given that fighting organised crime and corruption has been a priority for several successive governments in the last years the courts seems to have subdued to the trend to overuse the special methods of investigation. Such approach has led to collusion between the agencies and the courts which approve the warrants without fully observing the legal procedures.<sup>20</sup>

For the other services, which do not have powers to initiate criminal investigations, there is neither ex ante nor ex post control on the use of special measures of investigation by the judiciary as both authorization and controls are performed by the Prosecutor General.

The number of cases involving intelligence services brought to the courts has been limited, mainly for complaints on labour relation, but it must be said that for this kind of cases the courts have majorly ruled against the services.

### **Restructuring of the intelligence system**

As it may be concluded from the above analysis the need to reform the current intelligence setting is evident. The current intelligence system, with agencies which mandates overlap and the rivalries between them is difficult to manage and coordinate but it is wasteful for the public finances also. Furthermore, the fragmentation of the intelligence system, the allocation of extensive powers and the loose control and oversight pose serious threats to the fundamental rights and freedoms. In order to address these problems the following aspects that should be taken in consideration.

First, the intelligence collection should be treated as a single action performed on behalf of the nation and not as a separate institutional effort. All the intelligence service should function in line with the requirements of the intelligence cycle which consists of three basic points which include collection, analysis and distribution. The intelligence cycle begins with the requirements of the customer institutions, follows with the collection and analysis by specialized intelligence structures and ends with the evaluation and comments of the same customer institutions. In order for the services to be able to plan activities and resources the customers should come up with annual, five-year or ten-year orientations for the intelligence services. Given the deficiencies of the public sector planning in Albania this would be a too ambitious expectation. Adding the fragmentation as an additional variable the expectations from the current system would have to be dramatically moderated. This means that in parallel with the restructuring of the intelligence services, structures able to assist the customers in tasking, managing and controlling the intelligence services should be established.

According to the Albanian Constitution the Prime Minister is the highest authority to outline and present the principal directions of general state policy.<sup>21</sup> Therefore the Prime Minister should assume the high direction and the general responsibility over the intelligence activity of the Republic. In order to perform this task a structure should be established at the centre of

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<sup>20</sup> Ornela Manjani, 'Krimet e Rënda, 500 urdhra për përgjime në vit', Gazeta Ballkan, 14 Shkurt 2009, <http://www.ballkan.com/index.php?page=shownews&newsID=296>

<sup>21</sup> Constitution of Albania, Article 102

the executive branch responsible for ensuring the coordination between the intelligence services and other security structures such as the military and the law enforcement but also with the diplomatic service and other sectors of the public administration. This structure should be also responsible for elaborating strategic analyses for the Prime Minister and the government as well as produce strategic orientation and tasking for the intelligence services. This structure should also be responsible for controlling the intelligence services. The Inspector General, a position which is currently functioning only within the SIS, should become part of this structure and the Classified Information Security Directorate which is already part of the Council of Ministers. In the circumstances of a highly politicised administration the main challenges for such a structure would be to maintain its political neutrality so the success of such unit will above all depend on the political will of the Prime Minister.

Second, intelligence services should be restructured and their mandates more clearly defined in order to avoid overlaps. The structures which perform both intelligence and law enforcement functions should be cleared and this omission brought in line with international standards. Intelligence service should support decision making and assists law enforcement in their role of countering crime, but without being themselves involved in law enforcement activities.

For a small country like Albania, with limited resources and the problems it faces, putting up efficient Intelligence Services is difficult task in itself. Recruiting, training and maintaining qualified personnel, allocating sufficient resources and financial means, ensuring government interest and commitment, ensuring politically neutral control and oversight is a very difficult combination to achieve. Therefore there are more chances for a centralised intelligence system to be effective rather a fragmented system. Between internal and external threats Albania is more likely to concentrate on the former. So the SIS mandate could be modified to focus on internal threats such as counterespionage, terrorism and other serious threats to national security while the MIS, apart from supporting defence policy and operations could be given the mandate to collect foreign intelligence. In any case, with Albania's membership in to the NATO, the MIS has been more involved in dealing with external threats in the framework of NATO intelligence structures. On the other hand the SIS role with regard to foreign intelligence has diminished in the last ten years. However, considering the difficulties with the coordination both SIS and MIS should go under the direct authority of the Prime Minister. It would be worth examining the Italian intelligence reform undertaken in 2007, where both foreign intelligence and internal security services which have been under the ministries of Defence and Interior for thirty years, were placed under the authority of the Prime Minister.<sup>22</sup>

Third, there should be better lines of division between the intelligence and law enforcement which as mentioned have been lately blurred. As a result almost all agencies, except the MIS, overlap mostly in the criminal intelligence area. Last year's legislative initiative to introduce corruption as part of the SIS mandate indicates that countering different forms of crime may require strengthening of the intelligence capabilities. However, allocating to the SIS the task to collect intelligence on corruption is not in line with the Council of Europe recommendation which requires that 'the sole task of the internal security services must be to protect national security...economic objectives, or the fight against organised crime per se, should not be extended to the internal security services.'<sup>23</sup> On the other hand establishing

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<sup>22</sup> Legge 3 agosto 2007, n. 124, "Sistema di informazione per la sicurezza della Repubblica e nuova disciplina del segreto," Gazzetta Ufficiale n. 187 del 13 agosto 2007

<sup>23</sup> Council of Europe. Parliamentary Assemble. Recommendation 1402 (1999)

several agencies which have wide powers but unclear status is not effective, poses risks to the protection of individual rights and is difficult to control and oversee. Recognising that countering different forms of crime is currently one of the main threats for Albania, it could be realistic to establish a Criminal Intelligence Service which could aggregate all the smaller agencies in one single agency. Several countries have such agencies (See table 2) which in order to achieve better coordination are placed within the police force. The establishment of such agency would concentrate resources and expertise and would be more flexible to be deployed in collecting intelligence on new types of crimes. Besides the areas that are covered by the current agencies such as, narcotics, human trafficking, money laundering, customs and financial fraud, narcotics, or corruption in general, a centralised CIS could cover other important areas such as cyber crime, identity crimes, intellectual property crime etc. These areas are currently covered by police, but more often police deals with these crimes after they happen rather than proactively. On the other hand the SIS could collect intelligence to support decision making on criminal activities that seriously threaten national security and focus its traditional tasks.

Another aspect which has missed a comprehensive approach is the signals intelligence. So far signals intelligence is a decentralised activity which makes it difficult to sustain it financially, develop the required expertise but above all to effectively control. On the other hand the existing capacities focus very little on the protection of government communications. Given the technological challenges and the costs of developing such capabilities a viable option would be the establishment of an integrated unit which could be placed in one of the agencies.

### **Establishing an effective oversight system**

A key requirement for the reform should be the establishment of a plurality of accountability mechanisms in order to ensure that intelligence agencies do not violate the rule of law.

The executive should have the political control on the authorisation of intelligence activities and should ensure that intelligence services perform their functions effectively and lawfully. Both tasking and control of the services by should be based on legislation and the executive to comply with it. In order to prevent political abuse legislation should clearly provide that the executive's tasking of intelligence agencies should be given in written and that the records of reviews and controls should be strictly preserved. In case it is needed, such records should be subject to parliamentary or judicial scrutiny.

The parliament is the ultimate authority which approves the legislation governing the activity of the intelligence services but which controls and oversees the compliance with the legislation also. Therefore during the reform the parliament should take a key role and make sure that the adopted legislation covers all the areas of concern and that it is implementable. However in order to be successful with this task the parliament will have to overcome the typical partisan approach to debates and act as an independent institution which has its own institutional agenda.

There are different models with regard to the specific mandate that the parliament will have but the basic requirements that the legislation should include is the establishment of a select committee on control and oversight of intelligence. The overall mandate of this committee should be to verify that the activities of the intelligence agencies comply with the Constitution and the rule of law and that these agencies are exclusively used for the protection of the interest of the Republic and its institutions. In order to fulfill its mandate the committee should have the authority to request and access documents, control premises and

budget, summoning personnel for to testify. However in order to ensure the secrecy of intelligence activity some of the actions should require prior consent of the Prime Minister. The committee should ensure equal representation and be headed by a representative from the opposition parties. This choice would discourage the executive from attempting to use the intelligence services for political interests and in the long run it may serve to heal the traditional mistrust that the opposition parties have always had *vis a vis* the intelligence services and their use by the executive.

Another aspect that should be covered by the legislation is the definition of the mandate of the directors of the services and the screening by the parliament of the candidates to be appointed as directors. The term in office of the directors should not be more than five to six years so that it overlaps with the parliament's mandate. So far, the appointment and dismissal of the directors has lacked transparency and due to the personalisation of the official relations in the Albanian public administration the procedure has been detrimental to the image and legitimacy of the services.

The reform should consider also the improvement of the role of the judiciary in overseeing the activity of the intelligence services. The legislation on intelligence should include specific provisions where the courts could adjudicate on disputes involving the intelligence services and the executive and oversight bodies. This is in line with the Constitution which stipulates that the 'Constitutional Court adjudicates on conflicts of competencies between powers'<sup>24</sup>. Involving the courts to rule on such potential conflicts would send the message to the intelligence services that no one is above the law but also would contribute to depersonalize the relations between the intelligence services, the executive and the parliamentary oversight committee.

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<sup>24</sup> Constitution of Albania, Article 131/ç

## Annex

		Legislation adopted during 1998-2003			Legislation adopted during 2005-2009					
		Intelligence & Security Services		Law enforcement		Security Services				
		Prime minister President	Ministry of Defence	Ministry of Interior		Ministry of Justice	Ministry of Finances			
		NIS	MIS	Military Police	State Police	SICMI	SICPS	FIU	OID	DTI
Mandates	Foreign Intelligence	X	X							
	Counterespionage	X	X							
	Terrorism	X	X	X	X			X		
	Armed Forces		X	X						
	Organised crime	X			X					
	Narcotics	X			X					
	Money laundering	X			X			X	X	
	Criminal Activity			X	X	X	X	X	X	X
Powers	Collection, analysis, dissemination	X	X	X	X	X	X	X	X	X
	Use of special measures of investigation	X	X	X	X	X	X	X	X	X
	Judicial police and collection of evidence			X	X	X	X		X	X
	Conduct physical searches			X	X	X			X	
	Arrest and detention			X	X	X				
	Compel physical and juridical persons to provide information				X	X				

Table 1. The mandates and powers of the intelligence services and law enforcement agencies

Country	Fused	External	Internal	Criminal	Military	Signals
Austria			X	X	X	X
Belgium			X		X	X
Bulgaria		X	X	X	X	X
Czech Rep.		X	X		X	X
Denmark			X		X	
Estonia			X			
Finland			X		X	
France		X	X	X	X	X
Germany		X	X		X	X
Greece			X			
Hungary		X	X		X	X
Ireland					X	
Italy			X		X	
Luxembourg			X		X	
Netherlands	X				X	
Norway			X		X	
Poland		X	X		X	
Portugal			X		X	
Romania		X	X	X	X	
Serbia	X					
Slovakia	X				X	
Slovenia		X			X	
Spain	X				X	
Sweden			X		X	X
Switzerland		X	X		X	X
Ukraine	X				X	
United King.		X	X	X	X	X

Table 2. Intelligence and security services in different European countries  
Source: Intelligence Services - DCAF Backgrounder, 2006