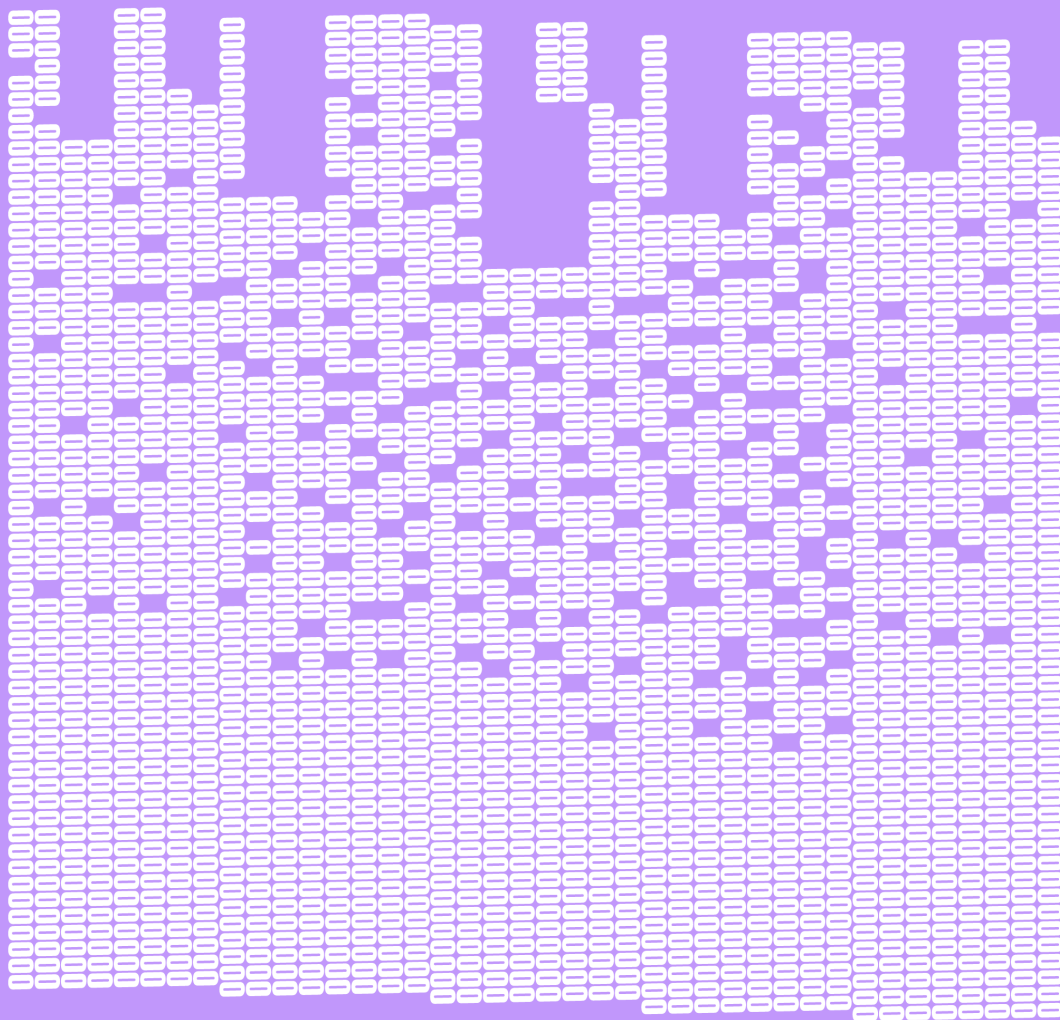


INSITUTTE FOR DEMOCARCY AND MEDIATION



# **MONITORING AND EVALUATION OF THE SECURITY GOVERNANCE IN ALBANIA**

TIRANE 2014



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INSTITUTE FOR DEMOCRACY AND MEDIATION

# Monitoring and Evaluation of the Security Governance in Albania

Tiranë 2014

[www.idmalbania.org](http://www.idmalbania.org)

The research papers are based on the methodology used for the evaluation and monitoring of the reform in the security sector developed by Belgrade Centre for Security Policy (BCSP).

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## FOREWORD

After the publication of the summary of the findings of the research project “Contextual Analysis and Chronology of the Security Sector Reform in Albania: 1991-2009” in 2011, the Institute for Democracy and Mediation (IDM) and his research unit in this area carried out the methodological and research publication entitled “Monitoring and evaluation of security sector governance in Albania” in 2012. It provided a collection of papers on the analysis of security sector governance in Albania, based on data collected in the period 2009-2011. In addition to the first two chapters, the ones on methodology and the rule of law, this publication also addressed some key topics in the security sector governance in Albania, such as: general transparency, executive control, parliamentary control, judicial control, financial transparency, gender and ethnic representation.

Subsequently, almost two years later, after a systematic and comprehensive activity as well as the additional experience accumulated in the field of security, IDM as a follow up on the earlier work and based on the same methodology for the assessment and monitoring the security sector reforms has prepared this new edition for the period 2011-2013. Likewise in the first publication, it includes the same thematic such as: general transparency, executive control, parliamentary control, judicial control, financial transparency, gender and ethnic representation.

Taking into consideration the reliability, quality and methodology used, such studies do not just help security sector practitioners, but policy-makers and legislators, media and the general public as well. These studies serve not only to achieve better monitored and understood, but also properly analyzed domestic changes (political, institutional and socio-economic) and foreign (global, regional, national) with a direct or indirect influence in the security sector. For instance, such as NATO membership. Therefore, obtaining the EU candidate status must necessarily be reflected in the analysis and further developments.

In this regard, as it can be noted from the papers, a more comprehensive support in the professional and financial level, as well as a continuous monitoring and careful analysis is currently required by

the intelligence agencies, their cooperation at the state-level, nationwide, regional and international level in the common fight against economic crime, terrorism and its supporting phenomena such as: drugs, arms, human beings trafficking, etc. Equally important is also the monitoring of the main issues closely related to the respect of human rights and the guarantee for fundamental freedoms. Even in critical situations, the adopted measures by the parliament and government for security purposes should not violate these basic rights (as it has resulted in some cases during the transition years, for instance, the repressive measures during the general crisis following the collapse of pyramid schemes).

Therefore, in crisis situations, national security measures, which imply the protection of society as a whole, may impose restrictions on media freedom, market economy principles, human rights and freedoms or embody lack of cohesion for certain groups of the population. Thus, under such conditions, the monitoring of specific legislation in the field of security, given the potential of any serious danger that threatens the country, or the fight against criminal phenomena, becomes absolutely necessary. Restrictions, in such situations, may be applied only for a short period of time, but by no means a regular component of democratic governance. Whatsoever, even in the field of security, they should not affect or impair particularly the “control–balance” mechanisms of parliament, independent institutions, civil society and media. Otherwise, antidemocratic components may rise and increase the tendency towards the “police state”, where police is involved in everything, which is in one way or another reflected in the quality of democracy, and therefore human security itself.

This is one of the important conclusions embodied in these papers in the frame of the assessment, monitoring and analysis of the security sector governance, given that these monitoring and evaluation processes in this sector now days have become a necessity. From this perspective, in my judgment, another issue that should be monitored within the security framework is the cyber security and drafting process of a comprehensive legislation in accordance with EU requirements in this field. Moreover, based on the experience gained so far, as it is highlighted in this new publication, other senses that are in one way or

another connected with the main components of human security should be further monitored and analyzed. Such as, for example, the component of poverty, corruption, economic inequality, deadly diseases, abuse of land and nature, pollution, natural disasters, global warming, thus focusing in the security of individuals, acceptable standards of living, education, health, environment, etc. Equally important are today's obstacles, although still minimal, in the context of coexistence between religious communities, there is the risk originating from "mercenarisation" of the religious nature.

As it turns out from the careful reading of the papers, it is worth highlighting the overview and approach to the objective and subjective changes in the society, as well as relevant recommendations on the harmonization of the constitutional - legal bases in the security sector, although such reflections and recommendations are not always self-evident. Moreover, among the changes observed it can be distinguished those related to the *system*, the ones relevant to the nature of the main actors in the security sector (e.g. the easement or transfer of the decision-making); the *systemic* ones, affecting the improvements in terms of control and governance of the security sector (e.g., the establishment of a parliamentary sub-committee to oversee the intelligence services, especially the SIS); or those related to the *interaction, cooperation, intricacies and related processes* between entities within the security system (e.g., avoidance of unnecessary parallelism, but harmful in the area of security, such as the one between the National Security Council and the relevant Committee to the Prime Minister).

Notably in this publication, as in the previous one, ensuring civilian control is reinforced through the analysis of the performance of the main control instruments. At their core remains the balance of the executive and the parliamentary process, the balance of political and military process, in parallel with civic participation. According to this view, Albania has met the criteria of democratic civil control of the Armed Forces in compliance with the NATO membership requirements, but it has not been under any strong pressure for a comprehensive reform of civil - military relations. Therefore, in this publication, other important issues are: increasing civilian influence, increasing



transparency particularly during the drafting phase of the defense and security budget, (AF, public order, SIS, etc.); improving parliamentary oversight; changing security and political culture in civil - military relations, in the gradual, conceptual and practical transformation and transition from traditional security to human security.

In this regard, based on the two publications, there remain the t recommendations such as the strengthening of: the civil constitutional-legal restriction (through the President, the National Security Council, the Prime Minister & Minister of Defense, the relevant Committee to the Prime Minister); parliamentary & institutional control, judicial and economic control, public control (civil society, media, citizens' response and participation by increasing the level of transparency and communication); control of the sort of association, etc.

To conclude, I would like to leave further and more detailed comments and appraisals to the readers. I will end here this brief foreword, congratulating the authors for the careful work carried out for this publication, as well expressing the wish for the follow up of this research activity, very necessary in the oversight, monitoring and analysis of security sector governance.

Tirana, 5 March 2014

Prof. Dr. Rexhep Meidani  
President of Albania 1997-2002

## **Introduction**

Security sector reform is a process that aims to ensure that security institutions provide effective and efficient security to the country and the citizens, operate within the rule of law adhere to the principles of good governance, respect human rights and are accountable to the democratically elected institutions and ultimately its peoples. In transitional societies from dictatorial regimes, the security sector reform serves as an indicator to measure the progress made in the democratization processes. Thus, security sector reform is both an operational as well as a normative concept.

In Albania the security sector reform has been an important part of the democratisation of the country, which despite the setbacks and challenges posed by the domestic political polarisation and the armed conflicts in the region has made progress and led to the NATO membership. However, security sector reform is an ongoing process as it has to adapt to new security challenges and at the same time uphold the democratic governance principles. At times certain progresses may even become reversible and security institutions may become an economic burden or even a source of threat to the well-being and fundamental freedoms of its citizens.

For these reasons the continuous monitoring of the security sector reform by civil society organizations is a very important contribution because it provides policy makers, security institutions and other relevant stakeholders with an independent assessment on processes and trends in this domain.

Following the publication of the ‘Monitoring and Evaluation of the Security Governance in Albania’ in 2012 this new contribution provides a new series of researches that aim to analyse the trends in security sector governance in Albania. The study is based on data collected within the period from 2011 to 2013 and uses the same methodology as the as the previous publication.

The criteria that are analysed in this publication include (1) the general transparency of the security sector, (2) the control of the security sector by the executive branch, (3) the parliamentary oversight of the security

sector, (4) the judicial oversight of the security sector, (5) the financial transparency of the security sector, and (6) the representation of women and minorities within the security institutions. The analysis of each criterion is based on different fields of observation and each field of observation is analysed based on four main indicators: the constitutional and legal framework, the implementation of the legislation and institutional practices, the administrative capacities and the extent to which these practices have become self-evident democratic values.

In overall the findings of the study suggest that despite some minor progresses a large number of issues that concern the improvement of legislation and administrative capacities remain unaddressed.

The security sector remains generally opaque and the harmonization of the primary legislation with secondary legislation, as well as with international law is progressing very slowly. The security institutions provide little information to the public and have no effective and professional structures in place to address this issue. Some positive developments have been identified regarding the protection of personal data as amendments to the legislation provide for stronger competences of the Commissioner for the Protection of Personal Data.

The control of the security institutions by the executive branch has been characterised by the tendency of the executive to use its control powers and competences for narrow political and individual interests with negative effects on the effectiveness and legitimacy of the security institutions. So, the study suggests that further reforms are needed in this area in order to allow for a better division of competences between the executive and the security institutions and to increase the accountability of the executive towards the parliament and the public.

Similarly the legislation on the parliamentary oversight of the security sector has not been improved and remains only partly regulated by the constitution and the rules of procedure of the Assembly. The parliaments' influence has declined as the attempts to assert its powers have been thwarted by the executive, in particular in the area of intelligence and defence. The administrative capacities of the parliament are still poor and the coordination of the different parliamentary committees that have oversight powers remains unaddressed.

The judicial control of the security institutions has remained poor due to evident political interference and lack of independence of the judicial branch. Despite the consolidated legal framework on the respect of human rights the research reveals that abuses and infringements of those rights continue to be present in the daily activity of the security sector institutions. The legislation on interception of communications was amended, but such amendment didn't include any strengthening of the role of the judiciary in controlling the use of such special methods of investigation.

The continued process of alignment of the legislation with the EU acquis communautaire and the EU budgetary practices has led to some positive trends regarding the financial control. However, further improvements are needed in order to complete loop holes in the legislation and to improve the practices in order to better combine financial controls and performance audits.

Regarding gender equality and women representation in the security sector, Albania has progressed in developing a comprehensive legal and institutional framework. However, regardless of the legal provisions, the implementation and outcomes vary across different sectors. Similarly the legal framework on equal minorities' rights is in compliance with international standards, but there remain problems regarding the effective implementation of this legislation. In order to improve the implementation, secondary legislation is needed, as well as the establishment of mechanisms and procedures for monitoring its implementation.

Through this publication the Institute for Democracy and Mediation and the research team seek to provide the policy makers, security sector practitioners, journalists, the academia and other interested stakeholder with a fresh outlook on some of the main issues of concern to the security sector reform and governance in Albania.

## **CHAPTER 1**

### **GENERAL TRANSPARENCY OF SECURITY SECTOR**

**Author: Besnik Baka**

## **1. EXECUTIVE SUMMARY**

The developing patterns of the transparency the security sector in Albania during the last 3 years represents little progress and few significant changes, being it in the field of the legal framework, administrative capacities or the implementation practices.

Regarding the access to official information, most of the issues and obstacles identified in previous reports remain unaddressed. Thus a better harmonization of the primary legislation with secondary legislation, as well as with international law is needed. As analyzed in this study the legislation needs to be revised in order to facilitate its implementation. Additionally the role of the Ombudsperson should be strengthened and the institutional culture and practices of this institution should be improved.

Concerning the law on Classified Information as State Secret the changes that occurred in 2013 were not essential to address obstacles and gaps that were identified from various actors during the past periods studied. Differently from the practice of other countries, in Albania the law does not foresee the ‘automatic declassification’ of the information after a defined period of time. The legal framework is improved regarding the procedures of data classification and de-classification in all the levels, however the system continues to remain non transparent.

Additionally steady developments have been identified regarding the protection of personal data and the recently revised law strengthens the authority of the Commissioner for the Protection of Personal Data. While the need for personal data protection is growing as the organizations and bodies that possess sensitive information is expanding, the role and the authority of the Commissioner has become more important.

### **1.1. INTRODUCTION**

This paper analyses the transparency of the security sector in Albania during the 2011- 2013 period. A good basis for this assessment is

the previous study conducted in 2011, with the same methodology and technical instruments that were utilized for this research, aiming to compare the indicators and assess if the transparency norms and practices of the security sector institutions have recognized progress or regress.

This study extends in three main fields of observation: (1) General Transparency, which covers issues, related to the access to official information and the norms of transparency in the security sector institutions. (2) Classified Information as State Secret, which represents the institutional system (norms, capacities and practices) to ensure the proper classification of information and the protection of the data. (3) Protection of Personal Data, which focuses on the implications surrounding the collection, elaboration and distribution of sensitive personal information from third parties.

Each field of observations is analysed based on four indicators: (1) the constitutional and legal framework, (2) the implementation of the legislation and institutional practice, (3) the administrative capacities and (4) the democratic value of each field. The analysis and the assessments of the above indicators are based on data collected over the time period from 2010 to 2013. For the purposes of this research different methods were employed such as desk research, interviews using different sources of information to reveal the latest information and to confirm when possible facts and findings.

## **1.2. ACCESS TO OFFICIAL INFORMATION**

### *1.2.1. Legal Framework*

The Right for Access to Official Information (AOI) constitutes a fundamental right in the Constitution of the Republic of Albania (Art 23), however the constitutions fails to define the conditions of the application for this fundamental right. The Law on Access to Official Information aims to do that defining the rights and obligations of the public institutions, civic community related to the norms of

transparency. On the other hand the Code of Administrative Procedures (Article 51) also tends to complete the framework related to the norms of transparency of the security sector public institutions, aiming a more practical approach in consolidating the transparency and accountability of the public institutions. Nevertheless, despite the fact that the Code of Administrative Procedures was revised in 2009, the two key laws are contradictory regarding the time period of answering an official request.

The Law on Access to Official Information brought a novelty when adopted 14 years ago, but it was never revised, despite major deficiencies identified from various actors concerning the application of the right to information.<sup>1</sup> As a consequence, the gaps in the legal framework concerning the right to access to information remain generally unaddressed.

Despite the low performance in the application of the Law on Access to Official Information and pervasive institutional and administrative obstacles articulated by various actors, no revision of the law was accomplished in the last 2 years. Some of the core concerns relates to the lack of a proper scheme of exceptions from the law on Access to Official Information, public interest test in revealing classified information, a proper definition of 'official information' and 'public authority', extended time frames for providing information etc. Another issue that remains unsettled is the fact that private companies which hold public functions are yet excluded from the law on AOI.<sup>2</sup> Such circumstances create proper conditions for corruption as companies contracted by the government are being left out of the transparency norms and obligations.

Albania, as a member of the Council of Europe, is bound to fulfill all the obligations deriving from the international documents in the framework of the European Commission. Nevertheless, [Civil Law Convention on Corruption](#), recognizes the right for protection of public administration officers when they denounce corruption cases, this is not reflected in

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1 Article 19, Transparency International, Albanian Helsinki Committee, Albanian Media Institute, Peoples Advocate, etc.

2 Article 19, Memorandum on the Albanian Law on Right To Information, London 2004.



the domestic legal framework and neither referred. The protection of ‘whistle-blowers’, a very important mechanism in the system of the transparency and accountable governance, is yet a challenge to face for the public authorities. Thus, while adopted in 2006, Law nr. 9508 date 03.04.2006 on “Cooperation of the public in the fight against corruption” that indirectly is linked with the role of the whistle-blowers lacks the authority to ensure any kind of protection for the latter.

In addition, even though the Law on AOI has entered into force since more than 10 years ago, it has been harmonized only partially, with the organic laws of the key security sector institutions. The Ministry of Justice, the General Directory of Prisons and the Prosecution Office have developed an organic legal framework that implicitly refers to the norms of transparency and access to official information. Nonetheless in the last 2 years no other security sector institutions have conducted any initiative concerning the harmonization of their organic laws with the norms of transparency enshrined in the constitution and the primary legal framework. Furthermore, referring to their organic laws, key security sector institutions such as National Intelligent Service, or Internal Control Service and Military Intelligent Service are totally excluded from the obligations of the law on AOI, avoiding any accountability before the public.

In this regards it can be concluded that in the course of the last 2 years no significant development can be noticed in regards to legal framework for the consolidation of transparency and public accountability norms of the security sector institutions.

### *1.2.2. Implementation*

Despite the noted deficiencies in the legal framework regarding AOI, the biggest problem is related to the poor implementation of the right to AOI from the security sector institutions. In this context security sector institutions and public institutions in general have not conducted any initiative to consolidate the transparency as an institutional practice. This view is mirrored in the assessment and reports of different international organizations which are concerned with transparency and media freedom to access of information.

Referring to all the key assessments and reports from international organizations related to transparency and governance accountability, the key indicators related to freedom of information have decreased. In this framework we could stress reports from Transparency International, IREX, Reporters Without Borders (RWB) which observe key issues related to transparency, media freedom, public accountability etc. Unfortunately in all the consulted reports Albania has recognized regress in the course of the last 2 years. IREX and RWB state that freedom of media has been affected negatively concerning the work of journalists to ensure proper transparency of the public institutions. As a consequence Albania is rated in the 103<sup>rd</sup> place, compared to the 80<sup>th</sup> position it was ranked 3 years ago, falling more than 20 places regarding freedom of media and access to information.

Despite the fact that the law on AOI clearly defines the steps and the conditions for providing official information from public bodies, overwhelmingly security sector institutions fail to fully fulfill the norms and standards stated in the AOI law. Additionally, since 2006 the Ombudsperson has prepared and issued the Template Regulation on AOI, requesting the Council of Ministers to approve the application of the Template in all the security sector institutions. Nevertheless, yet this Template is not approved by most of these bodies.<sup>3</sup>

The Ombudsperson has the legal authority for monitoring; assessing and taking needed measures for the rigorous respect of the law on AOI. The law recognizes full competences to the Ombudsperson as an independent institution in charge for investigating the cases of AOI law breaches. Nevertheless the number of complaints addressed to this institution in the core of two years is only 10, telling the law engagement of the Ombudsperson in the application of the right to official information.

Based on the empirical data and by comparing the indicators from 2011, it can be argued that limited progress has been made by the security sector institutions in providing timely and qualitative information for the public or other interested actors. This limited progress observed can be dedicated mostly to the rise of awareness on the need of sharing

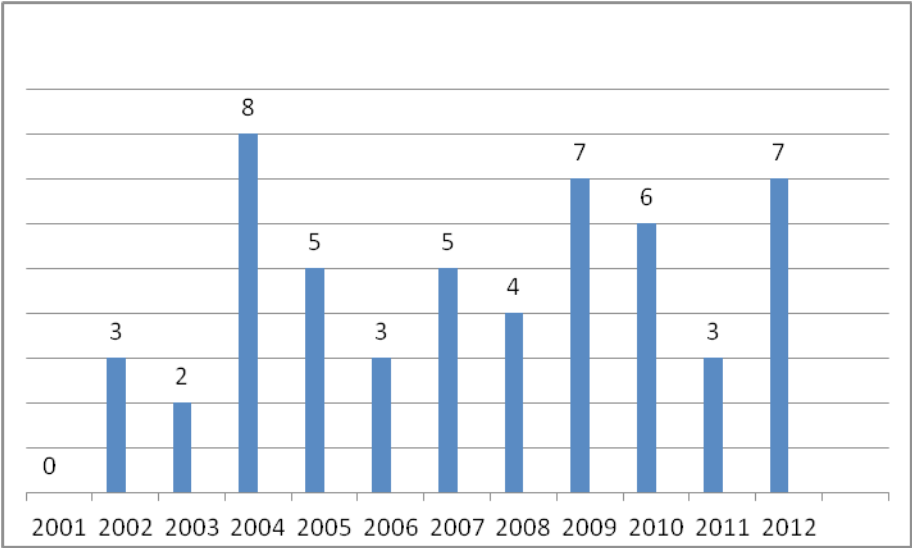
information from the security sector institutions personnel, rather than as a result of structured reforms that provide for sustainable results.

In this regards compared to 2011 can be emphasized an improvement of the quality and quantity of public information from the security sector institutions. Referring to a thorough observation of the websites of the main security sector institutions, there is an increase in the amount of information made available to the public. On the other hand based on data gathered for the purpose of this research,<sup>4</sup> a growing number of responses were registered compared to 3 years ago, although the information provided varied. Such institutional practices are yet not well defined and are mostly dependent on the awareness and will of the individual officials.

According to the information ensured from the Ombudsperson based on the “Doculive” system, applied in this institution, the activity of the Ombudsperson related to the AOI law in the last 12 years is about 5 recommendations directed to security sector institutions regarding breaches related to the AOI law , out of which 3 were accepted and 2 refused. In other numbers can be noted that the total number of cases that have found solution is 13 out of 53 complains since 2000.

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4 During the research of this project, with the aim to gather official information and important data, a large number of official requests was submitted to most of the key security sector institutions.



**Cases for information in the Security Sector (2001-2012)**

On the other hand, mostly the inspections conducted by the Ombudsperson are focused on the adoption of the internal regulation to AOI, establishment and functioning of the office for public relations. In general the numbers reveal a limited engagement of the Ombudsperson concerning the sanctions of breaches related to the right for AOI and on the other hand limited authority in imposing its recommendations to respective security sector institutions. According to Ombudsperson institution there is no data related to further administrative sanctions on those institutions that have neglected Ombudsperson’s recommendations.

*1.2.3. Administrative Capacities*

As the conditions for the application of freedom of information have been established and institutional procedures are in place, it is required the consolidation of this system. Currently, all the key security sector institutions have specialized departments for public relations within their organizations. Nevertheless the administrative capacities and resources that they use are not defined by a clear and structured scheme to delineate the administrative and human capacities based on the work

load and activity of each institution has with the public. Such situation is reflected in the everyday institutional performance in regards to the public information, where the processing of the requests is slow and partial.

In this framework security sector institutions fail to systematically elaborate the requests for access to information and thus there is no database for registering official requests and further processing these requests in the institutional structures. Lack of records, prevent the possibility of making a comprehensive assessment of the situation concerning the respect of AOI law in the security sector. At the same time it is difficult to propose concrete measures concerning the consolidation of the transparency in this sector. The problematic situation in the application of the law on AOI is noted in the annual reports of U.S Department, stressing as serious cases the instances when legal acts, new legislation and internal regulations were not published in the Official Gazette or known for the public.

#### *1.2.4. Values*

Generally speaking the awareness of the legal rights from the side of the public remains also quite low, particularly away from the capital Tirana. As a result, the number of requests for official documents remains relatively low giving evidence of the little use of this law by the public.

The unaddressed gaps in the legal framework and the poor and fragmented implementation are a clear reflection the lack of political will and engagement to develop the transparency norms of the governing institutions, not merely as a legal act with limited authority, but as a value and standard in the security sector governance.

### **1.3. CLASSIFIED INFORMATION AS STATE SECRET**

#### *1.3.1. Legal Framework*

The Law on Classified Information as Secret (CIS) was revised in 2013. Nevertheless the changes were not essential, with regards to addressing

gaps that were identified from various actors during the implementation process thus far.<sup>5</sup> Therefore, the only change in the law consisted in transferring the National Security Authority (which organizes, leads, and controls the measures undertaken for the classification, administration and protection of sensitive information) under full dependency of Prime Minister. This has led to a further centralization of the processing of classified information. Additionally the law has not reflected important concerns identified in the past, such as lack of ‘public interest test’ during the process of de/classification of information.<sup>6</sup>

During 2011 the Penal Code of the Republic of Albania was also amended, and for the first time the ‘defamation’ was decriminalized, sanctioning it mostly with fines.<sup>7</sup> For a long time this article in the Penal Code was criticized for affecting the freedom of speech and expression. Nonetheless the Penal Code of the Republic of Albania has not brought any changes related to the prevalence of transparency as a basic norm, while the classification of official information as exception.

Despite the fact that in the Penal Code, defamation was decriminalized, in the current system of transparency it can be noted the fact that the Code continues to punish the dissemination of classified information as secret, with punishments going up to 6 years in prison. This constitutes a real danger to transparency and to the whistleblowers. Thus, the legal framework does not provide the conditions to support those who denounce illegal misconducts in the governing system, known as ‘whistleblowers’. In this context, referring to the international organization “ARTICLE 19”, the utilization of legal sanctions for criminalizing the dissemination of information is either legitimate by the international law, either positive for the dissemination of free information and the transparency principles.<sup>8</sup>

Additionally, the Regulation on how to Process Classified Information

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5 Law Nr 25/2012

6 For more information see the previous assessment (2011) on the “General transparency of the Security Sector in Albania”.

7 Article 120 of the Law

8 ARTICLE 19, Albanian draft Law on Freedom of the Press, January 2004, <http://www.osce.org/fom/34013>

as “State Secret” was revised in 2011 with the aim to consolidate the practices for providing protection for classified information in the framework of the duties and responsibilities that derive from NATO membership. It can be stressed that in the actual legal framework, the access to official information can be easily restricted and the information can be widely classified from the main security sector institutions based on their needs and circumstances. The analysis did not identify any consolidated mechanism concerning the indicators to be considered for the classification of specific information from the state authorities backed by the argumentation that how such information may affect national security or public interests. Thus, although the restriction of access to information is not enshrined on the constitution, the application of the law on AOI can be limited<sup>9</sup> from the Law on Classified Information as “State Secret” or other (organic) laws of security sector actors<sup>10</sup>. Therefore the law on AOI is positioned in a lower rank in the hierarchy of the legal framework.

In the international level, the process of classification and protection of information also represents several gaps. Referring to the European Commission Progress Report 2012-2013, the security agreement with EU on the mutual exchange and protection of classified information is yet not adopted creating gaps in the process of information exchange with EU countries or broader. This is reflected also in the cooperation with the EU related to the classified information exchange. During the period 2011-2013 only one bilateral agreement was signed with one EU member, France, on the reciprocal protection of classified information.<sup>11</sup>

### *1.3.2. Implementation and Institutional Capacities*

In difference from the implementation of the Law on AOI, the state structures seem more concerned to enforce the law on Classified Information as State Secret. This due to the importance and the sensitive field this law operates.

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9 Law No.8503, dated 30 June 1999, Article 4

10 Law No.9749, Article 66&4; Law Nr. 9069, Article 4; Decision No. 303, dated 25.3.2009 amended with the Decision nr.187 dated 17.03.2010 “On some amendments and changes in the Council of Ministers decision nr.303 dated 25.03.2009, “On the approval/adoption of the regulation of prisons”

11 Law No.10 460, dated 13.9.2011

The main body responsible for the control, organization and application of the law for protection of classified information, remain the National Security Authority. The Director of this body is appointed and dismissed by the Prime Minister, while no safeguards mechanisms exists regarding appointment and dismissal rising concerns on the potential political influences on this key institution.

On the other hand, under the umbrella of National Security Authority, are functioning the Commissions for Analyzing Classified Information for internal purposes. This structure has a trained staff who hold related ‘security certifications’ concerning the protection of data and the process of classification. It is this body that reviews and proposes the process of classification of information.

Despite the fact that there exists an institutional practice regarding the classification and protection of this information, it can be assessed that this institutional practice is yet based in a Council of Ministers Decision that dates 2001<sup>12</sup>, and not in any law.

Concerning the de-classification process of classified information, attached to the General Directory of Archives, are functioning these structures: High Council of Archives, Central Commission of Expertise, Commission of Declassification and Devaluation of Classified Information “State Secret”, as well as the Permanent Commission of the Experts for the Evaluation of Documents with Historical Importance.

The Central Commission of Expertise analyzes and adopts the list of documents to be destroyed, based on the decision proposed by the Expertise Commissions, which are functioning in all the state institutions, including security sector, and deliver their documents to the Central State Archives. Additionally the Commission of Declassification and Devaluation of Classified Information as “State Secret” conducts the declassification of documents, which have been classified in the Central State Archive or in the state archives’ network.

In the case of Albania the law does not foresee the ‘automatic declassification’ of the information after a defined time-frame, leaving

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12

Decision No. 377, dated 31.5. 2001



this process totally dependent on the continuous re-evaluation of by the state authorities. The automatic process of data declassification increases the potentials for publishing past classified information for research purposes or for informing the wider public. On the other hand the automatic declassification also ensures that specific documents classified since a long time, should remain classified due to the national interests. In this framework an informing mechanism about the processing of classified information is lacking. Therefore the declassified information is not acknowledged or made public, although it ceases to be ‘secret’.

### *1.3.3. Values*

Despite the fact that the legal framework is strengthened and the procedures/practices of data classification in all the levels have been consolidated, the system remains not transparent. The same can be noticed for the process of declassification of information, which is a much institutionalized process, lacking a proper mechanism of declassification based on time and specific indicators.

## **1.4. PROTECTION OF PERSONAL DATA**

### *1.4.1. Legal Framework*

Protection of the Personal Data is guaranteed in the Constitution of the Republic of Albania,<sup>13</sup> nevertheless the constitution does not provide a clear definition of the “procession of personal data” collected from private or public organizations, creating concerns about the elaboration of this information for the purposes of their activities in the public or private institutions.

The Law on Protection of Personal Data was revised for the last time in 2012. It provides a general legal framework regarding the protection of personal information and the process of elaboration of these data does not affect public and individuals rights

Referring to the information from the Commission for Protection of Personal Data, the draft law was prepared in consultations with various actors and a close cooperation with the Parliamentary Committees. The amendments aim to strengthen the decision-making role of the Commissioner, disciplining the work of the controllers, and the relationship between controllers and the data processing subjects as well as stricter administrative measures in case of breaches of the law. In this regards the adoption of the amendments in the law were also reflected in the sub-legal acts and regulations aiming to ensure a proper functioning of the law.

Additionally the law recognizes the right to every citizen for controlling and correcting personal information that are kept from the public and private institutions. Nevertheless such procedures remain little known and mostly unused as a consequence of unclear institutional procedures.

In the international level, since 2005, Albania has signed and ratified the Convention on Protection of Individuals from the Automatic Procession of the Personal Data and its Additional Protocol. This Convention constitutes the first international instrument that obliges the Albanian state to guarantee the protection of personal data to the citizens, taking the needed responsibilities for respecting this international right.

In related developments concerning the legal framework, in 2009 the Council of Ministers provided an expansion of the procession of the personal data from non-governmental organizations, faith organizations or unions, as well as the elaboration of personal data for internal management purposes, in the private and public sector<sup>14</sup>. These have expanded the area of procession of personal data from third parties, while the structures of control for guaranteeing the protection of personal data remain limited and generally insufficient.

#### *1.4.2. Implementation*

The developments in the legal framework have been reflected also in the activity of the Commissioner for Data Protection. During 2012, there have been submitted 16 directives to different institutions concerning

various issues related to the regulation of the collecting and processing personal data. According to the Commissioner this activity has been conducted in collaboration with other actors and interests groups.

The Regulation on Elaboration of Personal Data in the Public Registers<sup>15</sup> defines the legal obligations of public institutions concerning the collection, procession, and publishing of the personal data contained in the public registers. This regulation is believed to have played a key role to standardize and improve the process of personal data elaboration in the public as well as private institutions.

Additionally the Commissioner issued the Directive for Defining the Regulations of Protection of Personal Processed Data from Little Controllers,<sup>16</sup> which aims to regulate the process of data elaboration from other organizations. Other developments in this framework are the Directive on Defining the Time for Keeping the Personal Data, elaborated by electronic systems of State Police with the purpose to prevent, investigate and identify penal activity.<sup>17,18</sup>

The improvements in the legal framework and the increasing activity of the Commissioner have brought positive changes in the protection of personal data infrastructure and administrative scheme. Nonetheless there is no information regarding the application of these directives by the public and private institutions, while the controlling capacities of the Commissioner are limited.

#### *1.4.3. Administrative Capacities*

The study suggests that there has been no expansion of administrative capacities over the period analysed. The institution of the Commissioner for the Protection of Personal Data has an administrative structure

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15 The commissioner for the protection of the personal data: Instruction No. 39 Dated 05/08/ 2013 “On personal data processing of the public registers”

16 <http://mobile.ikub.al/ligje/per-percaktimin-e-rregullave-per-ruajtjen-e-sigurise-te-te-dhenave-personale-te-perpunuara-nga-kontrolluesit-e-vegjel-1211020179.aspx>

17 [http://www.mitik.gov.al/mitik/english/legjislacion/instruction\\_no.4\\_dated\\_16.03.2010.pdf](http://www.mitik.gov.al/mitik/english/legjislacion/instruction_no.4_dated_16.03.2010.pdf)

18 For an exhaustive list of these documents see: CPPD Annual report – 2012:[http://www.kmdp.al/web/pub/raporti\\_vjetor\\_2012\\_555\\_1.pdf](http://www.kmdp.al/web/pub/raporti_vjetor_2012_555_1.pdf)

composed of one councillor, one general secretary, 5 departments (Legal Foreign Relations Department, Registration Department, Inspection Department, Supporting Services Department, Public Relations Department) which contain one director and 3-6 officers. In total this institution has a staff of around 30 officials.

Despite the fact that in the last 3 years there weren't any increase in personnel, important initiatives have been undertaken towards the consolidation of expertise of the staff of this institution. Notably, the project on the "Support for the commissioner of personal data protection related to the training of the contact persons for data protection in the public and private sector in Albania" can be mentioned as a good example.<sup>19</sup>

#### *1.4.4. Values*

In the framework of the raising the awareness of the citizens concerning the law amendments, the Commissioner has organized different seminars and other activities with representatives of the civil society and other actors. In these activities have been promoted the novelties brought by the changes in the law and raising further the awareness of personal data protection as an important dimension of the human rights.

In other initiatives during this period of time concerning the enforcement of personal data protection values in Albania, can be stressed the IPA Project: Strengthening Of The Data Protection Commissioner Office In Albania Project Europeaid/129606/, as well as the Workshop on the Protection of Personal Data in the Framework of the Police Cooperation and in the Court System, etc.

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- Instruction No. 17, dated 11.05.2012 “On establishing the preservation period of personal data processed in electronic systems, from police state for the purposes of prevention, investigation, detection and prosecution of criminal offenses” [http://www.kmdp.al/web/pub/udhezim\\_nr\\_17\\_dsate\\_11\\_5\\_2012\\_391\\_1.pdf](http://www.kmdp.al/web/pub/udhezim_nr_17_dsate_11_5_2012_391_1.pdf)
- The Commissioner for the Protection of Personal Data: [http://www.kmdp.al/web/pub/dpprojectkmdp\\_al\\_496\\_1.pdf](http://www.kmdp.al/web/pub/dpprojectkmdp_al_496_1.pdf)
- Decision No. 1232, dated 11.12.2009, “Determining cases of exclusion from their obligation for notifying the personal data being processed”.
- Decision No. 377, dated 31.5. 2001, “On the protection of the classified information “state secret” in the international relations”.
- Law No. 10460, dated 13.9.2011, On the ratification of the Agreement between the Council of Ministers of the Republic of Albania and government of the Republic of France, for the mutual exchange and protection of classified information”.
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- Albanian draft law on the freedom of press: January 2004, <http://www.osce.org/fom/34013>
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- Decision No. 303, dated 25.3.2009 amended with Decision of the Council of Ministers no. 187 dated 17.03.2010 “On some amendments and changes on the decision of the Council of Ministers no. 303 dated 25.03.2009, “On the approval of the prison regulation”.

## **CHAPTER 2**

### **EXECUTIVE CONTROL OF SECURITY SECTOR IN ALBANIA**

#### **Appointments, Dismissals and Accountability**

**Author: Arjan DYRMISHI**

## **2. EXECUTIVE SUMMARY**

The constitutional and legal basis provides for full executive control of Albanian security institutions with regard to policy, budget, and personnel and operational matters. However, the practice reveals the tendency of the executive to use its control powers and competences for narrow political and individual interests that ultimately undermine the effectiveness and legitimacy of the security institutions. One of the most visible forms of misuse of executive powers is the practice of the appointment and dismissal of high security officials and security personnel in general, accompanied by further misuses in the management of funds and assets of security institutions.

The NATO membership, which has been considered as a milestone in

Albania's security sector reforms, has not been accompanied by any meaningful improvement of legislation and practices. To the contrary, the executive has grown more unaccountable towards the legislative by proposing legislation that further increases its control over the security institutions and by failing to respond to the parliament's calls for more transparent and accountable actions.

The paper argues that further reforms are needed in order to improve the legal framework to allow for a better division of competences between the executive and the security institutions and to increase the accountability of the executive towards the parliament and the public.

## 2.1. INTRODUCTION

The executive control is part of the system of democratic governance of the security sector. It refers to the legal procedures and instruments, norms and standards that empower the executive to control and oversee the institutions that are authorized to use coercion. In a democratic system the executive consists of the elected and duly appointed civil authorities, such as the president, the prime minister and the relevant ministries (ministries of defence and of the interior), that are responsible for the management and control of the security forces (Hänggi 2004).<sup>20</sup> Within the national security system the task of the executive is to make sure that the security institutions are subordinated, politically and administratively to the executive while providing security, in the domestic and international spheres, in accordance with the rule of law.

The direct responsibility of the executive over the security institutions presupposes direct interactions on daily basis between them. This kind of interaction bears also the risk of misuse of the security institutions for political and/or personal gains, such as intimidation of government opposition, channelling defence and security funds to the party or individuals in the government, etc. In addition, the integrity and efficiency of the security institutions may be damaged by the unclear

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20 Heiner Hänggi, "Conceptualising Security Sector Reform and Reconstruction." Reform and Reconstruction of the Security Sector 6 (2004)

separation of command and control and the overlap with the operational autonomy and managerial duties that must remain within the domain of the security institutions.

For these reasons the executive control must be regulated by a comprehensive and precise legal framework which provides for the chain of command and the rules through which the executive controls the security institutions. In addition the constitutional system of checks and balances must ensure the accountability of the executive towards the parliament and the judiciary.

After the end of the Cold War, the security sector reform and governance have attracted a lot of attention and consequently concrete recommendations and best practices have been issued on the role of security actors and on the control and oversight institutions such as the judiciary and the parliament.<sup>21,22</sup> Concerning the executive control, however, no clearly specified international norms have been drawn, despite its relevance. International organisations such as CoE, OSCE, NATO, and OECD specify only that the executive cannot use the internal security services for its own purposes and that it should be effective in managing and overseeing the security sector (Myshlovska).<sup>23</sup> Therefore, the way the executive controls the security institutions results mostly from factors such as the level of democratisation and political accountability, the government system (presidential, parliamentary), the institutional legacy and the political culture of specific countries.

Based on the above assumptions, this paper analyses the executive control of security institutions in Albania. Given the rather broad scope of the executive control concept the study will focus mainly on the analysis of the constitutional and legal framework that provides for the powers and competences of the institutions involved and the practice of

21 Fluri, Philipp H., Hans Born, and Anders B. Johnsson, eds. *Parliamentary oversight of the security sector: Principles, mechanisms and practices*. DCAF, 2003

22 Timothy Edmunds and Wilhelm N. Germann. *Towards Security Sector Reform in Post Cold War Europe: A Framework for Assessment*. Vol. 7. Dcaf, 2003

23 Oksana Myshlovska, "Overview and typology of IGO norms for Security Sector Reform and governance." *Intergovernmental organisations and Security Sector Reform*, 2007



the executive in the implementation of competences on the appointment and security personnel in general. The aim of the analysis is to examine the extent to which the executive in Albania refrains from using security institutions for narrow political purposes or personal gains.

From the point of view of the timeframe under scrutiny, the main focus will be on the analysis of empirical data during the period 2010 to 2013, which coincides with the post NATO membership. This focus is justified with aim of examining potential changes that may have been produced in the practice of executive control as a result of the NATO membership.

The data analysed include the legal framework that regulate the relations and interactions between the executive and the security institutions as well as related official documents, media reports and interviews with officials and experts that reveal the practice of the implementation of legislation.

The security institutions concerned are the Albanian Armed Forces (AAF), the Albanian State Police (ASP), the State Intelligence Service (SHISH) and the Military Intelligence Agency (MIA). The other security institutions such as the Prosecution Office, the Prisons Police and the Service for the Internal Control of the Prison System have been excluded from the analysis because of their smaller size and because the analysis of the four major security institution mentioned above provides sufficient evidence to draw conclusion that are relevant for the overall security sector.

The study argues that the constitutional and legal basis provides that ensure full executive control of Albanian security institutions with regard to policy, budget, and personnel and operational matters is in place. However the legal framework reveals gaps and omissions based on the time of the adoption of the laws, the policy concerns and intentions of the lawmakers at the time of the adoption and ultimately the lack of a comprehensive approach to the concept of executive control. In terms of implementation and practice the evidence reveals the tendency of the executive to disregard the legal provisions in the process of appointment and dismissal of high security officials and personnel and to use such

appointments for pursuing narrow political or individual interests. The findings suggest similar patterns even after Albania's membership in the NATO.

The next section provides an overview of the executive branch in Albania and its responsibilities over the armed forces, the law enforcement, and the intelligence services as provided by the constitution and the laws. The following section analyses the implementation of the legal framework and the patterns of institutional practice. Given the broad scope of the executive control the focus of the analysis will be limited to the implementation of legislation and practices with regard to the appointment and dismissal of high security officials. In the Albanian case this approach is justified due to the particular relevance of the competences of the appointments and dismissal of security officials as elements of control by the executive, to the extent that often the term reform is exchangeably used for partial or wholesale replacements of existing security officials. The last section will draw some concluding remarks and recommendations.

## **2.2. CONSTITUTIONAL AND LEGAL FRAMEWORK**

In Albania, the controlling powers and competences of the executive over the security institutions are laid down in the Constitution and the laws that provide for the establishment, function and management of these institutions, namely the Albanian Armed Forces, the Albanian State Police, the State Intelligence Service and the Military Intelligence Agency.

The executive bodies that have control powers and competences over the security institutions are: the President, the Prime Minister (PM), the Minister of Defence (MoD) and the Minister of Interior (MoI).<sup>24</sup> The Council of Ministers (CoM), which is a collective body composed of the PM and all the government ministers, has a number of important competences also. Under the principle of separation and balancing of

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<sup>24</sup> As anticipated in the introductory section the Minister of Justice has been intentionally excluded from the analysis.

powers provided by the Constitution,<sup>25</sup> the above bodies have been granted shared competences (See Table 1). The executive bodies can issue decisions and orders that are mandatory for the security institutions.

The President is the General Commander of the AAF but in peace time this competence is exercised through the Prime Minister or the Minister of Defence.<sup>26</sup> The main competences of the President, upon the proposal of the PM and/or the MoD, include the approval of the AAF's action plans and assets, the appointment and dismissal of the Chief of General Staff and the promotion and appointment of all high ranking military officials.<sup>27</sup> In addition to the AAF the constitutional and legal framework grants the President the competences of the appointment and dismissal of the directors of SHISH and MIA, upon the proposal of the PM.<sup>28</sup> The appointment and dismissal on the director of MIA is a recently added competence that has been granted to the President with the adoption of the new law on MIA in 2012.<sup>29</sup> The President has no competences regarding the ASP.

The Prime Minister is the head of the Council of Ministers and is responsible for both outlining the principal directions of general state policy and ensuring their implementation.<sup>30</sup> The PM is also responsible for coordinating and supervising the work of the members of the CoM and other institutions of the central state administration,<sup>31</sup> therefore the PM is the real power behind most of the competences of the CoM. Besides the nomination and appointment competences the PM and the CoM powers include the adoption of policies and priorities to be implemented under the approved budget; the approval of the number of personnel and organisation structure of all the security institutions; the approval of armament programs, uniforms and insignias; the adoption of the payment and subsidy system; the adoption of personnel and

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25 Constitution, Article 7

26 Constitution, Article 169

27 Constitution, Article 169

28 Law on SHISH, Article 5 and Law on MIA, Article 9

29 Law on MIA, 117/2012

30 Constitution, Article 102

31 Constitution, Article 102

disciplinary regulations.

The Minister of Defence and the Minister of Interior are the main figures within the executive that have direct responsibilities in the control of the security institutions on daily basis.

The main competences of the MoD regarding the AAF include appointment and promotion of the military officials of all ranks, except the high ranks that are the competence of the President, approval of the composition of career commissions, approval of the composition and procedures of disciplinary commissions.<sup>32</sup> Regarding the MIA, the main competences of the MoD include the definition of policies and priorities, the guidance of the overall activity, the appointment and dismissal of all the MIA staff, except the MIA Director, the approval of international cooperation programs, and adoption of staff appraisal and promotion procedures.<sup>33</sup>

The main competences of the MoI include the definition of the strategic and annual objectives and the control of its implementation; the definition of special operations procedures and the procedures on collection and processing of information and data; the approval of the organisation structure of the ASP.<sup>34</sup>

The main intelligence service, the SHISH is not placed under any ministry. As such, SHISH is directly controlled by the PM and the CoM. The CoM appoints a General Inspector (GI) who is responsible for scrutinising the legality of all SHISH activity. The GI reports to the CoM on the discharge of his/her duties.<sup>35</sup>

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32 Law on ranks and military career, Law on military discipline, Law on the military status, Law on powers and authorities of command and strategic direction of AAF

33 Law on Mia 2012

34 Law on State Police 2007

35 Law on Shish, Article 12

	President	Prime Minister	Council of Ministers	Minister of Defence	Minister of Interior
<b>Armed Forces</b>	<ul style="list-style-type: none"> <li>Approves action plans and assets</li> <li>Appoints and dismisses the Chief of General Staff and all the generals</li> <li>Promotes the generals</li> <li>Gives awards</li> </ul>	<ul style="list-style-type: none"> <li>Approves Organisation Structure</li> <li>Nominates the appointment and proposes the dismissal of the Chief of General Staff</li> <li>Nominates the promotion of generals</li> </ul>	<ul style="list-style-type: none"> <li>Approves policies</li> <li>Approves armament programs</li> <li>Approves uniforms and insignias</li> <li>Defines the payment and subsidy system</li> <li>Decides participation in operations under NATO Article 5</li> </ul>	<ul style="list-style-type: none"> <li>Promotes all ranks except the generals</li> <li>Proposes the promotion of generals</li> <li>Approves career commissions</li> <li>Approves composition and procedures of disciplinary commissions</li> <li>Approves education programs</li> </ul>	<ul style="list-style-type: none"> <li>--</li> <li>--</li> <li>--</li> </ul>
<b>State Police</b>	<ul style="list-style-type: none"> <li>--</li> <li>--</li> <li>--</li> <li>--</li> </ul>		<ul style="list-style-type: none"> <li>Appoints the General Director</li> <li>Defines the overall number of police officers</li> <li>Defines the payment and subsidy system</li> <li>Adopts the personnel regulation</li> <li>Adopts the disciplinary regulation</li> <li>Defines the type of police armament</li> </ul>		<ul style="list-style-type: none"> <li>Nominates the Director of State Police</li> <li>Approves Organisation Structure of State Police</li> <li>Defines the strategic and annual objectives</li> <li>Controls the implementation of policies and tasks</li> <li>Defines the special operations procedures</li> <li>Defines procedures on collection and processing of information and data</li> <li>Defines the procedures for the persons searches</li> </ul>
<b>State Intelligence Service</b>	<ul style="list-style-type: none"> <li>Appoints Director</li> </ul>	<ul style="list-style-type: none"> <li>Approves Organisation Structure</li> <li>Nominates Director</li> <li>Appoints the General Inspector</li> <li>Defines policy and priorities</li> <li>Guides the overall activity</li> </ul>	<ul style="list-style-type: none"> <li>Defines the payment and subsidy system</li> <li>Defines the use and control of black operations funds</li> <li>Adopts Code of Ethics</li> </ul>	<ul style="list-style-type: none"> <li>--</li> <li>--</li> <li>--</li> <li>--</li> </ul>	<ul style="list-style-type: none"> <li>--</li> <li>--</li> <li>--</li> <li>--</li> </ul>
<b>Military Intelligence Agency</b>	<ul style="list-style-type: none"> <li>Appoints Director</li> </ul>	<ul style="list-style-type: none"> <li>Approves Organisation Structure</li> <li>Nominates Director</li> </ul>	<ul style="list-style-type: none"> <li>Defines the payment and subsidy system</li> <li>Defines the use and control of black operations funds</li> </ul>	<ul style="list-style-type: none"> <li>Defines policy and priorities</li> <li>Guides the overall activity</li> <li>Approves international cooperation programs</li> <li>Adopts appraisal and promotion procedures</li> <li>Appoints all MIA staff</li> </ul>	

**Table 1.** Legal powers and competences of the executive bodies over the key security institutions in Albania

As the review of the constitutional and legal framework shows, the executive is granted full control over the key security institutions. The legislation provides also for the establishment of institutional capacities that allow the executive to employ staff with civilian background within the security institutions.<sup>36</sup>

However the powers granted to executive officials and bodies vary from one security institution to the other. The legislation provides for the Director of the ASP and the Director of SHISH to manage the

respective budget,<sup>37</sup> while for the AAF this competence is granted to the MoD.<sup>38</sup> Similarly the Director of the ASP and the Director of SHISH have the competence to appoint and dismiss the personnel under their control while for the AAF this competence is granted to the MoD for all the military personnel.

On the other hand there is a lack of clear legal provisions for ensuring the separation of internal control and executive control mechanisms leading to a blurring of the lines of responsibilities between the executive authorities and the top officials of the defence, police and intelligence.

Another important omission is the lack of binding legal provisions to establish a coordinating body at the centre of the government. This mechanism would allow the CoM, which is the most important collective body after the parliament, to track the implementation of its decision and policies and to present the CoM and the other executive officials with relevant feedback and guidance.

In order to ensure the accountability of the executive the constitution stipulates that the Prime Minister and any other member of the CoM, must answer interpellations and questions by the members of the parliament.<sup>39</sup> However the legislation lacks any binding provisions for the the MoD and the MoI to issue periodical (i.e. annual) reports on its performance with regard to the control and management of security institutions while the constitutional provisions are meant to be activated on ad hoc basis and logically when there are suspicions of wrongdoings. The only laws that provide such binding provisions are the law on SHISH and the law on MIA.<sup>40</sup>

An important legal omission with regard to accountability is the exclusion of the president from any form of accountability. The only collective body where he/she can be queried on his/her decisions is the National Security Council (NSC), which in any case is a consultative body to the President.<sup>41</sup>

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37 Law on ASP, Article 9, Law on SHISH

38 Law on powers and authorities of command and strategic direction of AAF, Article 18

39 Constitution, Article 80

40 Law on MIA, Article 24, Law on SHISH, Article 7

41 Constitution, Article 168

The main body of legislation on security institutions has been adopted after the adoption of the Constitution in 1998 and often driven by sectoral rather than any comprehensive approach. However no meaningful efforts to address these shortcomings have been undertaken even following Albania's membership in NATO.

### 2.3. IMPLEMENTATION AND PRACTICE

This section looks at the main trends in the implementation of the legal framework and the practice of executive control. As pointed out in the introductory section at the focus of the analysis will be on period after Albania's membership in the NATO but in order to place the analysis on a wider context the first part of this section will look in at the main trends before this event.

The adoption of legal mechanisms discussed above originates in the reforms undertaken after the collapse of the communist regime. As in other communist countries, the security institutions in Albania were closely controlled by the communist party, although such control was not based on laws but on party rules and political directives. So the aim of the reform was to ensure the democratic control of the security institutions based on the division of powers and the rule of law principles.

It must be said that the communist regime was successful in controlling the praetorian trends of the armed forces and other security institutions which was demonstrated by the inexistent or very small resistance of the security institutions in the early democratic transition processes.<sup>42,43</sup> Therefore the adoption the legislation and the effective control of the security institutions by elected civilian authorities were conducted in a rather smooth manner. Against this context, one of the main challenges to reform has been the implementation of the legislation in a manner that keeps the security institutions free of political pressures and where the executive is held accountable for how it uses its legal powers and competences.

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42 Aldo Bumçi, "Security sector reform in Albania." Defence and Security Sector Governance and Reform in South East Europe: Insights and Perspectives. Albania. A Self-Assessment Study. Geneva: DCAF (2003)

43 Elez Biberaj, Albania in transition: The rocky road to democracy. Boulder, CO: Westview Press, 1998.

This tendency was more evident in the early postcommunist period when Albania was faced with the emergence of authoritarianism trends which led the security institutions to act in disregard with the rule of law and the disregard to implement the accountability system in place.<sup>44</sup> Following the 1997 crisis, the Constitution adopted a year later provided for a better system of checks and balances with more balanced division of powers between the executive and the parliament and between the President and the PM and the Ministers. In addition the adoption of strategic documents and new laws defining the chain of command, objectives, organisation and functioning of security institutions were adopted over the period 1998 to 2004. To a large extent the strategic documents and legislation adopted in this period are still in force except for the law on ASP (2007) and law on MIA (2012).

The improvement of the constitutional and legal framework has been accompanied by an overall improvement of the system of control and oversight of security institutions. Systematic violations of human rights or intimidation of political opposition have not been a major issue of concern for more than a decade.

However, as already pointed out, the analysis of practices in the implementation of the executive competences of the appointment, dismissal and promotion of security officials and the response to parliamentary scrutiny, reveals the tendency to use of control powers as a means to promote narrow political or individual interests. Evidence shows similar patterns after the membership of Albania in the NATO too, and at times even efforts by executive to use NATO membership as a justification for discretionary decision making and unaccountable actions.

## **2.4. APPOINTMENT, DISMISSAL AND PROMOTION OF SECURITY OFFICIALS**

The competence to duly appoint and dismiss high security officials and



security personnel in one the key control mechanisms provided by the constitution and the laws. Regarding the appointment and dismissal of the top security officials and those holding high military ranks the constitution and the laws provide for shared responsibility among executive official (President, PM, MoD, MoI).

In order to uphold a merit based system the legal framework on the security institutions provides for criteria that make the candidates eligible for being appointed to these institutions as well as provisions on promotion, disciplinary measures and dismissal. However the empirical evidence suggests partial implemented of legal provisions and use of unchecked discretion of executive officials in the exercise of their competences. The evidence shows a systematic replacement, or attempts to do so, of high security officials after new governments of ministers take over have. The security officials have either been constrained to resign or fired in a discretionary manner.

In the AAF, since the reinstatement of the military ranks in 1992, fifty-three military officers have been promoted to the rank of general and currently there are only ten still serving in the AAF. Of all the forty three generals dismissed only five have been dismissed in accordance with the legal procedures.<sup>45</sup> The majority have brought their cases to the courts and have won the right to be reinstated to their jobs or financial remuneration. This trend has continued even after Albania became officially a NATO member on 1 April 2009. In September 2009, a number of non-transparent dismissals and appointments of top military officers sparked public and media debate. Media has revealed that moves were made by the MoD and the President with no previous knowledge Chief of General Staff.<sup>46</sup> Surprise dismissals and appointments of generals followed in 2011,<sup>47</sup> 2012,<sup>48</sup> and 2013.<sup>49</sup> All such moves have been made

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45 Foto Duro, 'The Promotion System in the Albanian Armed Forces', European and Security Issues, Issue 25, Institute for Democracy and Mediation 2013

46 US Embassy in Tirana, cable 09TIRANA602, Surprise Top Brass Shakeup: Military Cries Foul. Retrieved at: <http://wikileaks.org/cable/2009/09/09TIRANA602.html>, August 2013.

47 Leonard Bakillari, 'Presidenti nxjerr në rezervë ish-shëfin e Shtabit dhe tre ushtarakë të lartë', Gazeta Mapo, 18 December 2014

48 Gazeta Shqip, 'Nishani gradon pesë gjeneralë, shkarkon e zhvendos krerët e ushtrisë' 16 August 2012

49 Besar Likmeta Albania President Faces Army Reshuffle Row, Balkaninsight, 07 June 13, <http://www.balka->

with no appropriate explanations of the motives, while media and commentators have alleged that the dismissed general had refused to sign documents that gave way to the privatisation of lucrative assets belonging to the AAF.<sup>50</sup> The resignation of the Chief of General Staff after the takeover of the new government, without giving any reason for such decision,<sup>51</sup> suggests that it has become unlikely for top security officials to survive to political rotations.

This approach to the appointment, promotion and dismissal of military officers is not limited to the high ranks only. There is a decline in the trust of the military in the career and promotion system which is reflected in the high frequency of requests of young military officers to leave the AAF.<sup>52</sup> The high number of complaints filed to the MoD or to the courts by low and medium rank military officers for unfair implementation of promotion criteria has been considerably high (up to 35 percent in 2008).<sup>53</sup>

The analysis of evidence from the appointments and dismissals in the Albanian State Police suggests that the level of discretion by the executive is higher in this institution. The turnover of the high level police officers has been frequent and all in cases replacements have sparked public debate. As a rule, replacements in the ASP have taken place after new government takeover, such as in 2005 and in 2013,<sup>54</sup> or when new ministers have taken over following government reshuffles.<sup>55</sup>

Given that the competence for the appointment of the General Director

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ninsight.com/en/article/albania-president-faces-army-reshuffle-row

50 Përparim Halili, 'Klani i trafikut të armëve Berisha-Imami, shkarkojnë Zv/Shefin e Shtabit të Ushtrisë, Sandër Lleshi dhe dy gjeneralë të tjerë', *Gazeta Sot*, 29 May 2013

51 Zëri i Amerikes, Shqipëri, jep dorëheqjen Xhemal Gjunkshi, 01 November 2013, <http://www.zeriamerikes.com/content/shqiperi-xhemal-gjunkshi-voa-ditari-shqip/1781667.html>

52 Foto Duro, 'The Promotion System in the Albanian Armed Forces', *European and Security Issues*, Issue 25, Institute for Democracy and Mediation 2013

53 Foto Duro, 'The Promotion System in the Albanian Armed Forces', *European and Security Issues*, Issue 25, Institute for Democracy and Mediation 2013

54 Ilirian Agolli, 'Qeveria miratoi reformë të thellë në polici', *Zeri Amerikes*, 9 October 2013, <http://www.zeriamerikes.com/content/saimir-tahiri-reforma-policore/1766476.html>

55 Artur Qoraj, 'Nepotizmi dhe klanet që rrethojnë Nishanin', *Gazeta Albania*, 2 April 2007

of the ASP (GDASP) is shared between the PM and the MoI it has been easier to replace the incumbent as both usually come from the same political party or coalition. Generally the dismissal of the GDASP has been followed by the appointment of politically trusted people in this position. Since 2002 the GDASP have been either unlawfully dismissed (as in the case of Bilbil Mema),<sup>56</sup> or asked to resign (as in the case of Ahmet Premçi in 2009,<sup>57</sup> and Hysni Burgaj in 2013).<sup>58</sup> The usual justification for such practice by the executive has been the objective to improve the performance of the ASP but as a rule the replacement of GDASP has been followed by the dismissal or replacement of tens, hundreds or even thousands of police officers in lower levels.<sup>59</sup> The opposition parties have always claimed the vacancies created are filled with party supporters.<sup>60</sup> On the other hand media and other reports suggest that the PM and the MoI have used their appointment competences to place in the ASP people who use police competence to divert police funds or even to support private economic and financial interests.<sup>61</sup>

Given that the appointment mechanism requires the consensus of both the President and the PM, where the President has the say on the final decision, the executive control of SHISH has been a more complex issue. The main trend has been the lack of desire of the new PMs to work with the existing Director of SHISH. Since 1998, for all the five PMs that have come to power the dismissal of the Directors of SHISH has been

56 Klodiana Lala, 'Ish-kryepolici fiton gjyqin për pagën' Gazeta Shqiptare, 16 August 2010

57 Gazeta 55, Jep dorëheqjen Ahmet Prençi, qeveria emëron Hysni Burgajn, 29 October 2009, <http://www.gazeta55.al/index.php?artikulli=9202>

58 Gazeta Shqip, 'Shkarkohen drejtorët e policisë në qarqe, Hysni Burgaj jep dorëheqjen', 9 October 2013, <http://gazeta-shqip.com/lajme/2013/10/09/shkarkohen-drejtoreset-e-policive-ne-qarqe-hysni-burgaj-jep-doreheqjen/>

59 Gazeta Sot, 'Ministri Noka largon 50 oficerë dhe policë rrugorë, i zëvendëson me "besnikë" nga Tropoja e Kukësi', 31 May 2013, <http://www.sot.com.al/politike/ministri-noka-largon-50-oficer%C3%AB-dhe-polic%C3%AB-rrugor%C3%AB-i-z%C3%ABvend%C3%ABson-me-%E2%80%9Cbesnik%C3%AB%E2%80%9D-nga-tropoja-e-kukesi/>

60 Silvana Muça, 'Drejtuesit e parë që largohen nga policia', Gazeta Shqip 12 Shtator 2013

<http://gazeta-shqip.com/lajme/2013/09/12/drejtuesit-e-pare-qe-largohen-nga-policia/>

61 Adriatik Doçi Agron Kuliçaj pas çdo skandali dhe trafikku, ja akuzat për njeriun e Berishës që u mbijetoi të gjitha lëvizjeve në polici, Gazeta Sot, 2 March 2013. <http://sot.com.al/politike/agron-kulicaj-pas-%C3%A7aj-pas-%C3%A7do-skandali-dhe-trafikku-ja-akuzat-p%C3%ABr-njeriun-e-berish%C3%ABs-q%C3%AB-u-mbijetoi#sthash.dU8f21ym.dpuf>

among the first requests submitted to the Presidents. However only in two instances, in 2002 and in 2012, the Presidents have complied to the such dismissal requests, but this because the dismissal of the Director of SHISH has been part of the President's election deal.<sup>62,63</sup> In order to balance their control powers the PMs have relied on the IG. As a result each PM has appointed a new GI, and this has been the case even during the 1998 to 2001 period when the PM and the President have belonged to the same political party.

Due to the veto powers of the President in practice all directors of SHISH have leaned towards developing and maintaining good relations with the Presidents, although the PM and the CoM are the executive bodies that have direct responsibility over the control of SHISH. Often the Directors of SHISH have used the presidential protection to pursue agendas that serve the President's interests or the interests of the political party that has promoted them.<sup>64</sup> In 2011 the PM alleged that the President had plotted with the Director of SHISH to stage a coup to overthrow the government and eventually to physically eliminate him.<sup>65</sup> Media reports suggest that the appointment of the new Director of SHISH in 2012 has been followed by high turnover of SHISH officers in all levels of the organisation, in order to create vacancies for employing party supporters.<sup>66</sup>

In the case of the MIA the Mod has the competence for the appointment of all personnel, which prevents the Director of MIA from pursuing any autonomous policy with regard to recruitment of staff. As the new law on MIA adopted in 2012 provides for the appointment of the Director

62 Balkans Report N°140, Albania: State of the Nation 2003, Tirana/Brussels 11 March 2003

63 Top-Channel, 'Shkarkohet kreu i SHISH', 09 August 2012, <http://www.top-channel.tv/artikull.php?id=240081>

64 Adriatik Doçi, 'Furtunë në SHISH, Visho Lika shkarkon 27 spiunë, kamikazët e PD mbushin shërbimin sekret' Gazeta Sot, 25 February 2013

65 This statement was made in the testimony provided by Prime Minister Sali Berisha on 21 January 2011 to the Parliamentary Investigative Committee on the Investigation, Identification, Confrontation, Neutralization, Disruption, and Punishment of the Criminally Organized Action to Violate the State Institutions and Reverse the Constitutional Order.

66 Adriatik Doçi, SHISH nis punësimin e gardistëve që lirohen nga puna, nga organ i sigurisë kombëtare kthehet organ i sigurisë së Saliut', Gazeta Sot, 25 September 2013, <http://sot.com.al/politike/shish-nis-pun%C3%ABsimin-e-gardist%C3%ABve-q%C3%AB-lirohen-nga-puna-nga-organ-i-siguris%C3%AB-komb%C3%ABtare-kthehet>

of MIA by both PM and the President, the President has the final say for both heads of the main intelligence agencies. Therefore it remains to be seen what kind of relations the PM will establish with the intelligence services given that both Directors belong have been promoted by the previous government.

## 2.5. RESPONSE TO PARLIAMENTARY SCRUTINY

The analysis of evidence on the implementation of the constitutional and legal framework that provide for the accountability of the executive shows that in practice the executive has emerged as the dominating power within the Albanian political system.

In the case of the President the main difficulty is the lack of legal provisions for holding the President accountable. The Constitution provides only the cases when the President can be dismissed in case of grave offences but no provisions for reporting on the discharge of his duties. The only collective body where the President can be queried on his/her decisions concerning the AAF and the SHISH is the National Security Council (NSC) but the NSC is rather dysfunctional and meets only rarely.<sup>67</sup>

In the case of the PM and the ministers, the poor accountability has resulted mainly from the naturally strong position of the executive and the growing tendency to influence the legislative and the judiciary through executive powers.

The most obvious evidence of poor accountability is the lack of regular reporting of the MoD and the MoI to the parliament on the discharge of their duties. On the other hand, neither of the abovementioned ministries publishes any annual or periodical report on the performance of the AAF and the ASP. Similarly, no such reporting exists on the performance of the President and the PM regarding their competences and powers as coordinators of the intelligence activity performed by the SHISH and

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67 Arjan Dyrnishi, Vlerësimi i Strukturave Vendimmarrëse të Sigurisë Kombëtare në Shqipëri Çështje

Europiane dhe të Sigurisë Nr. 19, Tiranë 2011

the MIA. Therefore, so far, it is not possible for the Albanian public to make any assessment of the performance of the main security institutions of the country based on documents official produced by the executive. In this context the main sources of information for the public to judge on the matter remain public statements of the executive officials, which usually are politically tainted and civil society and media reports.

A pattern of poor accountability can be noticed even in the post NATO membership period with regard to the legislative and the judiciary. In 2012, the MoD has failed to positively respond to requests by the parliament to scrutinise allegations on the unlawful purchase of intercept equipment and illegal interceptions by the MIA.<sup>68</sup> Moreover the MoD has referred to the obligations that stem from NATO membership as the justification for not allowing direct parliamentary scrutiny.<sup>69</sup>

Besides the poor accountability towards the legislative the executive has failed to respond to its obligations towards the judiciary. The most obvious example was the direct involvement of the PM to prevent the execution of the arrest warrants issued by the General Prosecution for six members of the Republican Guard in the course of the investigation of the violent riot of 21 January 2011 in which four citizens were killed.<sup>70</sup>

## 2.6. CONCLUSION

This paper analysed the executive control of the security institutions in Albania. As a result of the reforms conducted over two decades, significant achievements have been made in adopting the legal framework for the control of the security sector by democratically

68 Gazeta Panorama, 'Zbulohen dokumentet, Imami refuzoi Demin për kontrollin në Ministrinë e Mbrojtjes', 4 July 2012, <http://www.panorama.com.al/2012/07/04/zbulohen-dokumentet-imami-refuzoi-demin-per-kontrollin-ne-ministrine-e-mbrojtjes/>

69 Official Website of the MoD, 'Ministri Imami: Veprimtaria e Ministrisë së Mbrojtjes është e bazuar në ligj dhe ka qenë e suksesshme', [http://www.mod.gov.al/index.php?option=com\\_content&view=article&id=2074:ministri-imami-veprimtaria-e-ministrise-se-mbrojtjes-eshte-e-bazuar-ne-ligj-dhe-ka-qene-e-suksesshme&Itemid=475](http://www.mod.gov.al/index.php?option=com_content&view=article&id=2074:ministri-imami-veprimtaria-e-ministrise-se-mbrojtjes-eshte-e-bazuar-ne-ligj-dhe-ka-qene-e-suksesshme&Itemid=475)

70 Armand Shkullaku, 'Pse nuk i dorëzoi Berisha gardistët një vit më parë' Gazeta Panorama, 26 January 2012, <http://www.panorama.com.al/2012/01/26/pse-nuk-i-dorezoi-berisha-gardistet-nje-vit-me-pare/>

elected institutions including the executive. However the analysis shows that the legal framework needs to be further improved with regard to adopting standardised approaches for all security intuitions as a means to unify and consolidate the implementation and practices. With regard to accountability the legislation should be improved in order to provide for specific accountability mechanisms relevant to all executive officials and bodies, including the President.

The analysis of the practice of appointments, dismissals and promotions of high security officials and security personnel in general shows the tendency of executive to disregard the legal mechanisms that aim to establish a merit based system. The analysis shows that, to a large extent, appointments and promotions are based on the motivation of pursuing political goals in the form of employing party supporters or using the competences of the security officials to divert resources, even with the risk of breaking the criminal law. Thus the executive has emerged as the dominant and nearly unchecked power which has shown that it is ready to thwart the public interest through the failure to report on the discharge of its competences over the security institutions, the erosion of parliament powers and even the perversion of the course of justice.

Working to curtail the discretionary powers of the executive should be one of the main priorities of the executive, the legislative and the international organisations. In a system with a weak legislative and politicised judiciary it is mostly up to the executive to refrain from using its discretionary powers. The full implementation of the legal framework that promote a merit based system and the engagement in consultations with the legislative and other stakeholders prior to the appointment of top security officials could be a turning point.

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## **CHAPTER 3**

### **PARLIAMENTARY CONTROL AND OVERSIGHT IN ALBANIA**

**Authors:**

**Besnik Baka  
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**LIST OF ABBREVIATIONS**

AF	Armed Forces
CDP	Commissioner on Data Protection
CEF	Committee on the Economy and Finances
CLAPHR	Committee on the Legal Affairs, Public Administration and Human Rights
CNS	Committee on National Security
CoM	Council of Ministers
DIA	Defense Intelligence Agency
EU	European Union
GP	General Prosecutor
HR	Human Rights
LMBS System	Law on the Management of the Budgetary System
MF	Ministry of Finance
MIS	Military Intelligence Service
MoD	Ministry of Defense
MoI	Ministry of Interior
MP	Member of the Parliament
NATO	North Atlantic Treaty Organization
SAEC	State Authority on the Exports Control
SAI	Supreme Audit Institution
SIS	State Intelligence Service
UN	United Nations

### 3. EXECUTIVE SUMMARY

Control and oversight of the security sector by the Parliament is partly regulated by the constitution and the rules of procedure of the Assembly. There is a draft law on the parliamentary oversight of the intelligence and security services initiated since 2010 from the international community, but not approved yet. Moreover, parliamentary oversight is provided in the primary laws of the main security institutions, but there is still a need for amendments and clear provisions in this respect. The weak legal provisions and the complex institutional setting allow for wide margins of discretion by the Executive, thus hampering an effective parliamentary control and oversight. In order to perform the oversight process, the parliament is assisted by the independent institutions, such as the People's Advocate, the State Audit Institution, etc.

The permanent committees play an important role in the parliamentary control and oversight. But they lack inside coordination, few resources and high levels of politicization. When it comes to the security sector oversight, it falls mostly in the remit of the Committee on National Security (CNS), Committee on Legal Issues, Public Administration and Human Rights and Committee on Economy and Finance (CEF). Moreover, one of the persisting characteristic of the parliamentary oversight in Albania is the active involvement in the adoption of the legislation and policies and less proactive approach towards their implementation.

#### 3.1. INTRODUCTION

This paper analyses the parliamentary control and oversight of the security sector in Albania. The analysis is based on four fields of observation; the budgetary control that entails the control and oversight of the budgetary planning and spending of the statutory actors of the security sector; the control of compliance of work of the security sector institutions with laws and the respect of human rights covering the control and oversight over the use of special investigative measures, the use of coercive means and exchange of personal data; the control and oversight over the implementation of government policies; and the control and oversight of the state's bilateral and multilateral security

cooperation and integration.

All four fields of observation will be analyzed based on four indicators: the Constitutional and legal framework, its quality and harmonization, the implementation of the legislation, the administrative capacities and the extent to which parliamentary oversight has become an established democratic value. Moreover, the analysis of the fields of observations is based on the review of the activity of the three standing committees in the Assembly, which are responsible for the relations and consultations with the executive and security sector institutions:

- The Committee on National Security (CNS) is responsible for the organization of national security and Armed Forces, military cooperation, domestic issues, civil emergencies, public order and intelligence services.
- The Committee on Economy and Finance (CEF) is responsible for the budget and the oversight of its implementation.
- The Committee on the Legal Affairs, Public Administration and Human Rights (CLAPHR) is responsible for the organization of the judiciary, independent institutions and human rights.<sup>71</sup>

### **3.2. BUDGETARY CONTROL OF THE STATUTORY ACTORS OF THE SECURITY SECTOR**

#### *3.2.1. Constitutional and legal framework*

The Constitution of the Republic of Albania stipulates that the Parliament is the highest authority to control the budgets of state institutions, constituting a key mechanism in the financial control regarding the process of preparation of the draft budgets of the security sector institutions as well as in the phase of controlling the expenditures and the realization of the budget.

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71 Article 19. Assembly's Rules of Procedure, approved by Decision no.166, date 16.12.2004, amended by Decision No. 15, date 27.12.2005, Decision No. 193, date 07.07.2008, and Decision No. 21, date 04.03.2010, Decision No. 41, date 24.6.2010, Decision No. 88, date 24.2.2011, Decision No. 41/2013(date 30.05.2013)



Based on the Assembly's Rules of Procedure, the discussions and the voting of the budgets of the security sector institutions during the 2011-2012 were conducted in two phases: the discussion and the adoption in principle from the CNS and CEF. Other related parliamentary committees may also be engaged in commenting the draft. Additionally, in the second phase, the report is discussed in plenary session being voted in principle, by article and overall.

### 3.2.2. Implementation

The Draft Budget is proposed by the Council of Ministers to the Parliament, according to the procedure stipulated in the Law on Budget System Management. Additionally the examination of the security sector institutions budgets' is realized in time based on the established Parliament Calendar.

The Parliamentary Committee on National Security, plays an important role in the oversight of the budget and expenditures of the security sector institutions and have been rather active related to *ex-ante* oversight in examining the draft budgets of the forthcoming year concerning the key security sector institutions such as State Intelligence Service (SIS), Ministry of Interior (MoI) and Ministry of Defense (MoD), being represented by their higher officials. In this framework the CNS during November and December of each year has discussed and approved the draft budgets, in presence of the highest security sector officials.

It is worth mentioning that the discussions in the CNS about the draft budget of 2011 and 2012, however rich in debates and detailed question directed to the highest officials of the security sector institutions, have not produced any key qualitative changes in the initial draft-budget prepared by the central government institutions. In this regard the opposition objections and requests were not reflected, being overwhelmed by the power of the majority.

Nevertheless, based on the official reports from the Parliament, this commission has never conducted any meeting in examining and discussing the realization and expenditures of the budget of the security sector institutions, lacking an active role regarding the *ex-post* financial oversight. This role was mainly conducted by the CEF, through the

examination of the reports issued annually by the Supreme State Audit for all the state institutions, including security sector institutions. Additionally, the analysis of the realization of the budget in plenary session was conducted according to the calendar based on the reports of the Supreme State Audit which are usually issued in August.

During 2011 – 2012 PCEF has conducted 4 discussions *ex-post* related to the realization of the previous year budget and 12 discussions *ex-ante* related to the review of (draft) budgets of the forthcoming year. Based on the minute, in these meetings can be noted the participation of the highest officials of the Ministry of Finance (MoF) and related directories in this Ministry. Nonetheless in both cases (*ex-ante* and *ex-post*) these discussions have not brought any essential changes in the draft budget, minimizing the role of the parliament in the adoption and reviewing of the budget, as formal legitimating actor rather than a key player in advising and providing reviewing and potential changes in the process.

Furthermore, the CEF, CNS in plenary sessions, have not called in questioning session the Head of the Supreme State Audit to report in particular on the breaches identified in the security sector institutions. This has minimized the role of the Parliament in the *ex-post* oversight of the security sector institutions, only in receiving the annual report from the Supreme State Audit, which has happened in due time. As a consequence, the draft budgets of 2012 and 2013 and the budget reviews during the year have been adopted only with the votes of the majority and in general the comments and the objections of the opposition have not been taken into consideration.

Additionally, despite the fact that the CEF has the right to analyze “special funds” for classified tenders, it can be noticed that for 2011 and 2012 budget, there is no information that such reporting has taken place.

Currently, it remains unclear and is not in place any consolidated practice regarding the communication and coordination activity amid Parliamentary Committees (more specifically CEF and CNS) concerning their activity and capacities regarding the budget of security sector institutions. In a general overview can be noted that the permanent

parliamentary committees work independently, despite the fact that they might focus on the same subject such as financial oversight. In regards to the capacities of the Parliamentary Committees and in general to the Parliament capacities in analyzing and reviewing the budget, no essential changes have been reported.

### **3.3. CONTROL OF COMPLIANCE OF WORK WITH LAWS AND THE RESPECT OF HUMAN RIGHTS**

#### *3.3.1. Legal framework*

The Constitution stipulates that the limitation of the rights and freedoms may be established only by law, for a public interest or for the protection of the rights of others and without exceeding the limitations provided for in the European Convention on Human Rights. Meanwhile the primary legislation that regulates the activity of the security sector subjects as well as the legal framework on the interception of telecommunications and the protection of personal data has been amended.<sup>72</sup> As a result of the scope of work that is directly linked to the human rights, both of these laws have lead to political debates. The approval of these laws was supported only by the ruling majority in the plenary sessions, while the opposition voted against claiming the threat of violation of human rights and interest groups.

Meanwhile since two years now the parliamentary committees are preparing the draft law “On the parliamentary oversight of the intelligence services”, that i due to be approved in the next legislature. The Committee on National Security has held some hearings sessions with the Ministry of Justice, The Commissioner on the Protection of Personal Data, Ministry of Defense, etc. The consultation process has involved various institutional actors as well as the civil society and other interest groups, thus bringing about a novelty in the parliamentary practice. The law is meant to define and clarify the procedures on the intelligence services oversight in Albania that during these years has

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Law No. 117/2012, date 13.12.2012, On the Military Intelligence Agency and Law No.9157, date

04.12.2003 On the Interception of the Telecommunications, amended by law No.9885, date 03.03.2008, law No.10172, date 22.10.2009 and Law No. 116/2012 date 13.12.2012. [http://www.qbz.gov.al/botime/fletore\\_zyrtare/2012/PDF-2012/172-2012.pdf](http://www.qbz.gov.al/botime/fletore_zyrtare/2012/PDF-2012/172-2012.pdf)

been object to political struggle.

Currently, the legal framework clearly states that all the main security sector institutions should report regularly to the CLAPHR on their activity with regard to respect of human rights and freedoms. Depending on the institution, this practice is carried out annually or every 6 months in accordance with calendar provided by the parliament at the beginning of each year.

### *3.3.2. Implementation and institutional capacities*

A thorough analysis of the activity of the parliament shows that few initiatives have been conducted to oversee and control the respect of human rights by security sector institutions. Thus this process is limited mostly in review of annual reports of these institutions. As a result the four parliamentary investigation committees established during the 2011-2012 were not focused in the investigation of the respect of human rights by the security sector institutions or the investigation of their activity.

During 2011-2012 there were held only three interpellations in total with the heads of the security sector institutions: Minister of Justice, Minister of Interior and Minister of Defense. The parliamentary interpellations were required mainly by the opposition have not produced any result or change in the existing policies, thus were considered as ungrounded political attacks against the ruling majority.

Considering that GP has the mandate to authorize and control the use of special investigation measures by the security sector institutions, as provided in the primary legislation and the law “On the interception of telecommunications”, parliamentary control over this institution is important. The Prosecutor’s Office has submitted annual report on its activity in the CLAPHR, however, in 2011 and 2012, CLAPHR has not carried out any control initiative or oversight over prosecution’s procedures and activity in particular on the use of special investigative measures by the security sector institutions.

According to the Article 54 of the law “On the organization and functioning of the Prosecution” the GP reports to the Parliament or parliamentary committees at least once every six months or whenever required by the later. However, it is to be noted that this legal obligation is not fulfilled, as the GP has reported once during the years 2011-2012.

While in the parliament it is not held any interpellation with the GP on the activity of the Prosecutor’s in Office in 2011 and 2012. This is limited to the annual reports in the CLAPHR and after that its approval in the plenary session. It is to be highlighted that the GP did not participate in the voting of the resolution, whereas the MPs claimed to have had little time available to become familiar with the material.<sup>73</sup>

The other institutions such as the Commissioner for the Protection of Personal Data, People’s Advocate and the Commissioner for the Protection against Discrimination, have reported regularly on their activity in the CLAPHR. In this framework assessments have been carried out also by the Department on the Monitoring. Based on the minutes of the committees meetings it is to be noted that the discussions have been satisfactory.

At a time when the ruling majority controlled most of the seats in parliament, the majority of the legislative initiatives on security sector reforms are the product of central government institutions, by and large without the consultation of civil society, independent experts or interest groups. Generally, on sensitive issues with regard to the parliamentary oversight of the security sector, the two main political forces in the country have managed to find a compromise in the CLAPHR and CNS, thus draft laws and draft resolutions have passed for voting in parliament largely unchanged only with the ruling majority votes. According to monitoring report in the CNS carried out by IDM during 2012 suggest that generally the oppositions’ proposals have not been reflected in the draft laws submitted to the parliament for voting.

On the other hand the involvement of civil society and

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Minutes from the discussions of the Committee on Legal Issues, Public Administration and Human Rights,

date 11.07.2012.

interest groups in activity of CLAPHR and CNS, even though there is some improvement compared to previous years, again has been limited, creating many problems in the involvement of civil society organizations in the consultation process, society consultations, as well as the representation of interest groups in political decision-making. Despite the need of parliamentary committees for expertise from the independent organizations, in the CNS only in two cases of the legislation review in 2012, the representatives from civil society are called to give their opinion and there is no such practice in 2011. However, even when they are invited the proposals are not considered, nor were subject of further discussion in parliamentary committee meetings.

Furthermore, there have deficiencies in the voting process of the draft laws and draft resolutions in the plenary session. Although, there has not been formally any qualitative debate, yet these laws have been passed only with the votes of the ruling majority showing the lack of compromise and low quality of parliamentary scrutiny beyond party lines.

However, an active role in parliamentary oversight of the security sector, considering the above-mentioned shortcomings, has played the media that in an objective way has reflected parliamentary developments related to the parliamentary oversight of the security sector. Thus informing the general public over these processes and raising sensitive issues of parliamentary of the security sector for public debate.

### *3.3.3. Values*

During the last 2 years, the role of the parliament in oversight of the security sector could not avoid political collusion between the Ministry of Justice and the General Prosecution. This is also reflected in the activity of CLAPHR where the report of the Ministry of Justice on the performance and violations of the Prosecution Office are considered as political attack by the opposition in order to dismiss the GP. Consequently, the report is supported only by the ruling majority both in the CLAPHR and parliament without reaching a compromise.

The political confrontations have accompanied the activity of the CNS in an effort to oversee the activities of the Ministry of Defense and Military Intelligence Service on the implementation of existing legislation, its objectives and functions. A control by CNS was rejected by the Ministry of Defense, which prevented the process on the grounds of hampering the state secret and thus threatening the national security.<sup>74</sup> Furthermore, the Albanian assembly rejected the in the plenary session the establishment of an ad hoc investigation committee to investigate the Ministry of Defense.<sup>75</sup> This raised many questions on the institutional capacity and authority of Parliament to oversee the activity of key institutions of the security sector.

At a time when the parliamentary oversight mechanisms have not issued systematic violation of human rights by security institutions, in no case, the parliament has not developed any specific mechanism to initiate procedures to change or take the responsibility of relevant policies.<sup>76</sup>

Whereas in the frame of the oversight of the security sector governance, there is a lack of a functional mechanism for the protection whistle-blowers creating unfavorable conditions to denounce cases of corruption in the security sector and beyond. An attempt to institutionalize this important instrument in the fight against ‘corruption’ was realized in 2006, when the Parliament approved the Law on “Cooperation of the public in the fight against corruption”.<sup>77</sup> The law, which does not exclude employees of security sector institutions, also provides for financial incentives for reporting of corrupt practices. However, this law does not focus at all on the role of “whistleblowers” as supporters of public interest reporting the cases of corruption in the administration. Meanwhile the “The Code on Administrative Procedures” although provides for legal obligations on the transparency of public authorities to the public, currently fails to provide protection to those who dare

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74 Minutes from the Plenary Session, date 19.07.2012.

75 Minutes from the Plenary Session, date 08.11.2012. [www.Parliament.al](http://www.Parliament.al)

76 The annex at the end of the paper indicates the parliamentary oversight mechanisms and levels in a democratic system. Hans Born (2013) *Parliamentary oversight of the security sector*; European Parliament–OPPD, p25.

77 Law No. 9508, date 03.04. 2006, For public cooperation in the fight against corruption.

to report violations of the law and corruption cases. Consequently, during the past 2 years, there has not been recorded any reported case of corruption in the security sector by the employees of these institutions.

### **3.4 CONTROL AND OVERSIGHT OVER THE IMPLEMENTATION OF GOVERNMENT POLICIES AND LAWS ADOPTED BY THE PARLIAMENT**

#### *3.4.1. Constitutional and legal framework*

In the Constitution are embedded the competences of the Parliament for controlling and overseeing the legislation. As the literature points out, parliaments have the important task of enacting or revising the legal framework, notably the constitution as well as statutory laws that detail the mandate, functioning, powers and organization of the security sector. At the legislative level, parliament exercises its powers of oversight at various stages, alone or in conjunction with the executive.<sup>78</sup> Therefore, the Parliament is the sole authority that can amend the Constitution, approve legislation and ratify legally binding international conventions, treaties and agreements (Albanian Constitution, article 121). All legislation related to the organization and activity of security institutions is deliberated by the CNS and the CLAPHR. But the CEF is also involved as all legislation must be accompanied by a report that justifies the financial expenses of its implementation (Albanian Constitution - Article 82), Assembly's Rules of Procedure).<sup>79</sup>

The CNS is responsible for the organization of national defense and Armed Forces, military cooperation, domestic issues, civil emergencies, public order and intelligence services. The CEF is responsible for the budget and oversight of its execution and CLIPHR is responsible for the organization of the judiciary, independent institutions and human rights.<sup>80</sup> Regarding the adoption of policies, the Constitution (Article

<sup>78</sup> Hans Born (2013) *Parliamentary oversight of the security sector*; European Parliament–OPPD. <http://www.dcaf.ch/Publications/Parliamentary-Oversight-of-the-Security-Sector7>

<sup>79</sup> Arjan Dymishi, Mariola Qesaraku and Besnik Baka, (2012) *Monitoring and evaluation of the security governance in Albania*, Tirana: Gent Grafik.

<sup>80</sup> Assembly's Rules of Procedure, approved by Decision no.166, date 16.12.2004, amended by Decision No. 15, date 27.12.2005, Decision No. 193, date 07.07.2008, and Decision No. 21, date 04.03.2010, Decision No. 41, date



102) stipulates that the Council of Ministers is the authority that defines the principal directions of the general state policy, while the Parliament is responsible for approving the policy program of the Executive and its members (Article 97).<sup>81</sup>

Moreover, as provided by the law the activity of State Intelligence Service and Defense Intelligence Agency (Law no. 117, dated 13.12.2012), is controlled by the Parliament. For the latter, the new law states that the Council of Ministers, upon the proposal of the Minister of the Defense, regulates the usage and control of fund for specific operative activities (article 19). Thus, this tends to diminish the control from the Parliament in this respect.

Moreover, the PG<sup>82</sup> reports to the Parliament at least once in six months as well as the Prime minister and the Minister of Defense are accountable to the Parliament on the implementation of the defense policy.<sup>83</sup> Meanwhile, there are still no similar provisions on the law on police, nor on private security companies or other security institutions.

### 3.4.2. Implementation

During the years 2011 and 2012, parliamentary oversight of the implementation of government policies and legislation by the security sector remains weak due to the fragmented and unclear legal provisions. Based on the rules of procedure of the Assembly of Albania, the permanent committees are entitled to summon in any time the ministers on the fields they are responsible for as well as for the implementation of legislation, resolutions or declaration approved by the Parliament. Upon the request of the committees the heads of states institutions provide explanations and inform on issues related to their activity. The

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24.6.2010, Decision No. 88, date 24.2.2011, Decision No. 41/2013(date 30.05.2013)

81 Arjan Dyrmishi, Mariola Qesaraku and Besnik Baka, (2012) *Monitoring and evaluation of the security governance in Albania*, Tirana: Gent Grafik.

82 Law No. 8737, date 12.2.2001 Law Nr.8737, date 12.2.2001, On the Organization and Functioning of the Prosecution in the Republic of Albania, amended with the Constitutional Court Decision Nr. 25, date 13.02.2002, the law Nr. 9102, date 10.07.2003, and the law Nr. 10051, date 29.12.2008.

83 Law No. 8671, dated 26.10.2000 "On the Powers and Command Authority and Strategic Direction of the Armed Forces" amended by Law No.9194, date 19.2.2004

permanent committees can perform control or request the necessary documents for reviewing a certain issue.<sup>84</sup>

Thus, in 2011 the committee for national security has held hearing sessions with the Minister of Defense to discuss over the issues of arms trade, the quantity of exported arms and ammunition from 2008-2010.<sup>85</sup> Moreover, in the same year, the Minister of Interior reported on the situation of organized crime in Albania<sup>86</sup> and in the following hearing sessions the Minister of Economy, Trade and Energy was invited to report on the security of dams<sup>87</sup> and the another hearing session was held with the Minister of Foreign Affairs on the protection of classified information.<sup>88</sup>

While on 2012, two hearing sessions were held with the Minister of Defense and the Minister of Interior. The first one brought about lots of debate due to the refusal from the Ministry of Defense to allow an ad hoc group of MPs from the Committee for National Security to visit and control the premises of the ministry.<sup>89</sup> This episode incited the debate on the relations between the executive and legislative with regard to the control and oversight powers. In order to improve the parliamentary oversight, in 2010 was initiated the drafting process of the law on parliamentary oversight of intelligence and security services.<sup>90</sup> Based on IDM's CNS monitoring reports 2011-2012, the discussions over the abovementioned issues were highly politicized. In the first half of 2011 the opposition boycotted the parliamentary activity, as a result the draft laws have gone through the formal procedures of approval with only

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84 Assembly's Rules of Procedure, article 102

85 Minutes from the Hearing Session with the Minister of Defense in the CNS, date 21.03.2011.

86 Minutes from the Hearing Session with the Minister of Interior in the CNS, date 15.09.2011.

87 Minutes from the Hearing Session with the Minister of Economy, Trade and Energy in the CNS, date 08.11.2011.

88 Minutes from the Hearing Session with the Minister of Foreign Affairs in the CNS, date 04.10.2011.

89 Gazeta Mapo, "PS: Ministria e Mbrojtjes po pengon kontrollin e Kuvendit", 03.07.2012. <http://mapo.al/2012/07/03/ps-ministria-e-mbrojtjes-po-pengon-kontrollin-e-kuvendit/>

90 OSCE Presence supports parliamentary oversight of security services, 14 July 2010 <http://www.osce.org/albania/72077>

the majority MPs and in some cases without the required quorum.<sup>91</sup>

Moreover, even though the primary laws that regulate the activity of the security sector institutions provide for parliamentary oversight, full use of these competences do not follow. Therefore the policy review or legislation of the security actors is commonly initiated by the Executive and usually bears the will of the Prime minister and/or the ruling majority.<sup>92</sup>

### 3.4.3. *Administrative and management capacity*

In terms of administrative and management capacity, the parliament lacks the necessary human and financial resources to conduct the ex post control on the implementation of security sector policies and legislation. In practice this is done by parliamentary groups on partisan lines and the political parties have developed in-house capacities to live up to their daily performance in the Parliament.<sup>93</sup> The CNS is assisted by three security sector experts, as well as the Monitoring Department on Independent Constitutional Institutions. Nevertheless, there is no actual analysis of the efficiency and usage of the existing resources at the disposal of the assembly and the permanent committees.

### 3.4.4. *Values*

The reviewing and oversight of the implementation of legislation and policies has not improved over the years. Moreover, the political polarization and partisan policies have challenged the development of favorable conditions for the strengthening of the parliaments' role.

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91 IDM, (2011-2012) Monitoring report of the PCNS, [http://idmalbania.org/sites/default/files/publications/pens\\_monitoring\\_report.pdf](http://idmalbania.org/sites/default/files/publications/pens_monitoring_report.pdf)

92 Arjan Dyrnishi, Mariola Qesaraku and Besnik Baka, (2012) *Monitoring and evaluation of the security governance in Albania*, Tirana: Gent Grafik.

93 *Ibid*

### 3.5. CONTROL AND OVERSIGHT OF THE STATE'S BILATERAL AND MULTILATERAL SECURITY COOPERATION AND INTEGRATION

#### 3.5.1. Constitutional and legal framework

The control and oversight of over the bilateral and multilateral security cooperation is regulated by the Constitution which empowers the Parliament with the exclusive right to adopt international agreements by law. The ratification of the international agreements is addressed in the relevant permanent committees. Generally, this process is a consensual one among the interested parties. In this area the relation with the Executive is crucial, when it comes to the negotiation level in certain fields. The Constitution (Article 12) provides that no foreign military force may be situated in, or pass through, the Albanian territory, and no Albanian military force may be sent abroad, except by a law approved by a majority of all members of the Assembly.

The law on the deployment of military forces delegates some authority to the Executive, depending on the nature of the mission and the size of the force to be sent or allowed to enter, but only when this is done in the framework of the implementation an agreement adopted by the Parliament.<sup>94</sup> After the membership in NATO the law was amended to delegate to the Executive the right to decide sending up to one company abroad and to decide on allowing entering the country up to 1000 military personnel, only when this is done in the framework of implementing an agreement adopted by the parliament.<sup>95</sup>

The law on SIS and DIA provide for these institutions to establish intelligence cooperation with other countries. A Government Decision further specifies the areas and levels of cooperation.<sup>96</sup>

With regard to the arms trade and ammunition exportation there are

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94 Law Nr.9363, date 24.3.2005, On the Manner and Procedures of Entry and Passage of Foreign Military Forces in the Territory of the Republic of Albania and on the Sending of Albanian Military Forces Aboard, amended with Law Nr. 10218, date 4.2.2010

95 Arjan Dyrmishi, Mariola Qesaraku and Besnik Baka, (2012) *Monitoring and evaluation of the security governance in Albania*, Tirana: Gent Grafik.

96 *Ibid*

no constitutional provisions. The arms trade is regulated by law which vaguely stipulates that the Parliament establishes the ‘legal basis of the arms export policies’, but there are no provisions on how the Parliament is to exercise its control.<sup>97</sup> The law empowers the Executive to define the state policy on the control of arms exports and implement it through the State Authority on the Exports Control (SAEC) within the MoD.

Concerning the international exchange of the personal the law on personal data protection requires the CDP to report to the Parliament annually.<sup>98</sup> Since its establishment, the CDP has enacted instructions and issued recommendations towards the protection of personal data by all institutions.

### *3.5.2. Implementation and administrative capacity*

As provided by the Constitution, the parliament plays an important role in the adoption of international agreements on security cooperation. The international agreements cover a wide range of relations such as: the deployment of troops abroad or in the country, police, terrorism, money laundering, exchange of information, etc. In general, review of draft-laws for agreements ratification has been conducted with little discussion in the PCNS’ meetings, where most of the time is being occupied by other issues raised by the members of the PCNS. Thus discussions have been limited among the PCNS’ members, and in some cases there was no discussion on the content of the agreement.<sup>99</sup>

The contribution of Albania in the international missions is part of the obligations that derive from the membership in NATO, UN and relations with EU. Therefore, the deployment of troops abroad and the authorization of foreign troops in Albania is quite frequent issue in the CNS sessions. In 2011, with the consent of the opposition, the Assembly has approved the law on the participation of States Police

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97 Law Nr.9707, date 5.4.2007, On the State Control of Activity of the Exports of Military Goods and the Goods and Technologies of Double Use

98 Law No. 9887, date 10.03.2008 “On the protection of personal data”, amended by Law Nr. 48/2012

99 IDM, (2012) Monitoring report of the PCNS, [http://idmalbania.org/sites/default/files/publications/pcns\\_monitoring\\_report.pdf](http://idmalbania.org/sites/default/files/publications/pcns_monitoring_report.pdf)

in the peacekeeping and humanitarian missions abroad.<sup>100</sup> By law, the decision to send police forces abroad resets on the Council of Ministers and the assembly for over 100 police officers.

The total contribution of Albania and AF in military operations lead by NATO, EU and UN from 1996-2012 is 5360 military troops.<sup>101</sup> The engagement in these operations has increased the capacities of the AF personnel through professional and specialized trainings.

The arms trade issue raised in 2012 by the opposition party was followed with direct collusion and accusation for corruption affairs with the Ministry of Defense.<sup>102</sup>

The reports of SIS are not made public, so it is not possible to assess whether the Parliament properly oversees this area. Also, the use of special investigative measures is beyond the current focus of the parliamentary oversight.

Regarding the request for international exchange of the personal data (Law Nr. 48/2012, article 8& 9), the CDD has reported some cases of international transfer but this does not concern the security sector institutions.<sup>103</sup> Moreover, the CDD requested more information on the request of the General Police Directorate for opportunity to install devices to collect biometric data, that EUCOM will lend to the State Police and after that the transferring and evaluation of these data in USA.<sup>104</sup> In 2012, the General Police Directorate was subject of control from the CCD on the processing of personal “images” through the CCTV that are installed in Tirana.

In terms of administrative capacities for the oversight of the international security cooperation, the parliament requires specific

100 Law Nr.10 438, date 28.6.2011 “On the participation of State Police in peacekeeping and humanitarian missions”.

101 MoD website (2013), “Angazhimet e Shqiperise ne misionet nderkombetare – përvoja dhe mesimet e nxjerra”, p 15. <http://www.mod.gov.al/qksm/images/1angazhime.pdf>

102 NOA “Tregtia e Armeve, Ambasadori Arvizu takon Imamin” 03.10.2012 <http://www.noa.al/artikull/tregtia-e-armeve-ambasadori-arvizu-takonimamin/236115.html>

103 CDD Report 2011, [http://www.kmdp.al/web/pub/raporti\\_vjetor\\_2011\\_318\\_1.pdf](http://www.kmdp.al/web/pub/raporti_vjetor_2011_318_1.pdf)

104 CDD Report 2012, [http://www.kmdp.al/web/pub/raporti\\_vjetor\\_2012\\_555\\_1.pdf](http://www.kmdp.al/web/pub/raporti_vjetor_2012_555_1.pdf)

expertise and coordination within the permanent committees and the security sector institutions.

### 3.5.3. *Values*

In the area of international cooperation, the parliament has thrived to gain a broad consent from both the majority and the opposition. This attitude is mostly dictated from NATO, UN obligations and EU integration perspective. Nevertheless, the ex post oversight is very weak and there is still a need to address the issue of the improvement of legislation in the arms trade and ammunition export.

## 3.6. CONCLUSIONS

In the recent years, the parliamentary control and oversight of the security sector has become a more visible issue. However, there are few attempts that can be noted in order to address the need for clear legal provisions and implementation of the latter. Parliamentary control and oversight is hampered by the persistent problematics such as: the lack of adequate resources and their efficient usage, the politicization of the oversight process and at times the difficult relation with the Executive.

### **Recommendations**

- The legislation should be amended in order to allow for the MPs to participate in the planning process of the budget of the security institutions.
- The permanent committee's activity with regard to the security sector should be further consolidated and provided with the adequate expertise and resources.
- Internal communication and coordination should be improved among permanent parliamentary Committees.
- Primary legislation of all the security actors should be upgraded with specific provisions on the obligations to protect personal data.
- The Parliament should take a more proactive approach in scrutinizing the process of the adoption of legislation and policies.

- The legislation should be revised and provide the parliament with a more precise role on the control over the arms trade.

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## Annex 1

<b>Tools for Parliamentary Oversight</b>	
<b>Legislative powers</b>	<ul style="list-style-type: none"> <li>• Setting the legal framework for oversight;</li> <li>• Influencing government policy on a broad level</li> </ul>
<b>Budget control</b>	<ul style="list-style-type: none"> <li>• Oversight/verification of the respect of the allocated budget;</li> <li>• Sanction in case of excesses/illegitimate conduct by the executive.</li> </ul>
<b>Direct oversight</b>	<p><i>Oversight organs</i></p> <ul style="list-style-type: none"> <li>- Parliamentary committee(s);</li> <li>- Independent oversight bodies to assist parliament</li> </ul> <p><i>Involvement in important decisions</i></p> <ul style="list-style-type: none"> <li>- Prior approval in case of: foreign missions, war, state of emergency, international treaties;</li> <li>- <i>A posteriori</i> control of decisions (with possibility to revoke or substitute);</li> <li>- Appointment of senior officials;</li> <li>- Defense procurement.</li> </ul> <p><i>Access to (classified) information</i></p> <ul style="list-style-type: none"> <li>- ‘Obtaining document’/Proactive disclosure</li> <li>- Summons/Hearings</li> <li>- Information/Consultation</li> <li>- Secrecy safeguards</li> </ul> <p><i>Investigative powers</i></p>

## **CHAPTER 4**

### **JUDICIAL OVERSIGHT OF SECURITY SECTOR IN ALBANIA**

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#### **4. EXECUTIVE SUMMARY**

The paper analyzes the judicial oversight of the security sector in Albania. The constitutional and legal framework in Albania foresees the oversight of the activity of the security institutions without any explicit limitation. However, lack of independence of the judiciary and political interference are hindering the oversight function of the judiciary.

The legal framework guaranteeing the respect of human rights is fully in place. Inhuman treating by law enforcements agencies is strictly forbidden and a number of procedural guarantees aim to protect the rights of the citizens that are in contact with those agencies. However, reports on the human rights situation reveal that many power abuses and infringements of those rights continue to be present in the daily activity of the security sector institutions. Many complaints and criminal charges have been issued against police officers. Thus, very few administrative measures and legal punishments have been taken by competent authorities including the judiciary. In addition, a general lack of transparency exists on the criminal proceedings issued and little information is available on the matter.

Albanian legislation regulating the use of special investigative measures did not experience any important change in relation to the improvement of the oversight function of the judiciary over the use of such measures. The law on interception of telecommunications was amended to include the interception of all electronic communications. The information available for the use of these measures from intelligence institutions is almost inexistent. Data on the number of warrants issued for this purpose and any information on the performance of the Prosecutor General in controlling the implementation of the law on interception of communications and the deliberation process by the judges is not available.

#### **4.1. INTRODUCTION**

Judicial oversight in security sector is analysed based on the following structure: general presentation of the domestic court system, judicial oversight of the exercise of law enforcement and use of special investigative measures.

The first section describes briefly the Albanian domestic court system based on the main rules for the organization of judicial system. The other section on the judicial oversight assesses the use of force law enforcement actions such as arrest or pursuit exercised by law enforcements officials. Another field of observation is the treatment and respect of human rights of detained or arrested persons during accompaniment, arrest or detention and the respect of procedural guarantees enjoyed by the persons deprived from their liberty and provided by the legislation during the investigation stage of criminal proceedings. The third section is focused on the use of special investigative measures from law enforcement agencies and the judicial oversight of the use of such measures.

These fields of observations are analysed based on four indicators: the constitutional and legal framework, the implementation of the legislation, the administrative capacities and value. The analysis and the assessments of the above indicators is based on the latest developments extended over a time period from 2010-2013.

## 4.2. GENERAL PRESENTATION OF THE ALBANIAN DOMESTIC JUDICIAL SYSTEM

Judicial power in Albania is exercised only by the Courts in compliance with the Constitution and the competencies provided by the law. The Constitution has stipulated the three instances of the exercise of the judicial power. The judicial system consists of: Court of First Instance, Court of Appeal and the High Court.

The Albanian Constitution clearly affirms some of the most important principles of the organization and functioning of the judicial power: the independence of judges, the independence of the budget of the courts, criminal immunity of judges and security of tenure and pay. In order to guarantee the full independence of judges the Constitution has created the High Council of Justice which is in charge of appointing, promotion and transfer of judges and disciplinary responsibilities of judges.

The law on the organization and functioning of the judicial power<sup>105</sup> regulates the organization and competencies of the courts, conditions and procedures for the appointment of first instance and courts of appeal judges, rights and duties of the judges, disciplinary measures and dismissal from their appointment. The High Court and the Administrative Courts are regulated with a separate law.

**The courts of first instances** are the courts of judicial districts and Courts of Serious Crimes. The first instance courts are organized and function in the entire territory of the Republic of Albania. The districts courts have general jurisdiction. Criminal cases are adjudicated in a panel of three judges when they deal with crimes and one judge when they deal with penal misdemeanours. Civil cases are reviewed by one judge. For the adjudication of the commercial and familiar dispute cases these courts judge in special sections.

**The second instances courts** are the Courts of Appeal and Courts of Appeal for Serious crimes. Albania has six Courts of Appeal located in six districts of the country. The Courts of Appeal review appeals against the decisions of the first instance courts. They deliver their decisions in

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Law No.9887, date 18.9.2008.

panels of three judges.

**The High Court** is the highest judicial authority which has original and review jurisdiction. It has original jurisdiction over criminal charges against high state officials such as the President, the Prime minister, members of Council of Ministers, members of the Parliament, judges of the High Court and the Constitutional Court. Its review jurisdiction is exercised in civil and criminal “colleges” based on the judicial cases appealed before this court pursuant to the Codes of Criminal and Civil Procedure. Recently, changes were brought to the law on the organization and functioning of the High Court and the composition of the High Court increased to 19 judges. The High Court is organized and functions upon the Law No. 8588, date 15.3.2000, “On the Organisation and Functioning of the High Court in the Republic of Albania while other procedural competencies of the High Court are provided also in the Codes of Criminal and Civil Procedure.

**The Constitutional Court** in the Republic of Albania is not part of the judicial system but it has a special jurisdiction to control and guarantee the compliance of laws and other normative acts with the Constitution of Albania and to make its final interpretation. The Constitution regulates the organisation, appointment and status of the judges, the competencies of constitutional review, the list of subject who put into motion the Constitutional Court, and the binding power of its decisions.<sup>106</sup> The Constitutional Court is composed of 9 judges appointed for a period of 9 years.

#### 4.3. JUDICIAL OVERSIGHT OF THE EXERCISE OF LAW ENFORCEMENT

##### *4.3.1. Constitutional and legal framework.*

The protection of human rights by the activity of the law enforcement official is guaranteed by the Constitution of the Republic of Albania. In very general terms the Constitution provides that “no one may be subjected to torture, cruel, inhuman or degrading punishment or

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Constitution of the Republic of Albania, Articles 124-134.

treatment”<sup>107</sup>. The constitution provides guarantees for the protection of human rights during arrest and pursuit from law enforcements officials. First of all, pursuant to the article 27 of the Constitution persons may be deprived from their liberty only in very specific cases and procedures provided by the law. Furthermore, law enforcement agents are obliged to respect a number of procedural guarantees. The person being arrested or detained enjoys numerous rights such as the right to be notified immediately on the reasons for this measure, as well as the accusation made against him/her, he/she shall be informed that has no obligation to make a declaration and has the right to communicate immediately with his lawyer.<sup>108</sup> In addition, this person must be brought within 48 hours before a judge, who shall decide upon his pre-sentence detention or release not later than 48 hours from the moment he receives the documents for review. In all other cases, the person whose liberty is taken away extrajudicially may address a judge at any time, who shall decide within 48 hours regarding the legality of this action.

The rights of the detained and arrested persons are further detailed and guaranteed in the Code of Criminal Procedure (CCP). The CCP, with the aim to protect the personal freedoms and lawful rights and interests of citizens, guarantees that torture or humiliating punishment or treatment of persons is strictly forbidden<sup>109</sup>. As regards treatment in custody the CCP states that persons convicted to imprisonment are ensured of human treatment and moral rehabilitation.

On the other hand, the law on State Police establishes the rights and responsibilities of the Police employees in order to provide a democratic and professional Police service. According to article 101 of the law the Police officer accompanies persons to Police premises or to the premises of the body that issued the order. The law provides guarantees for the treatment of the persons during the accompaniment as well as their rights. The persons who are being accompanied have the right to human treatment and respect for their dignity.<sup>110</sup> Article 118 of the law provides the cases and forms of the use of force from the police

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107 Ibidem (cit 2), Article 25

108 Ibidem, Article 28

109 Code of Criminal Procedure, Article 5

110 Law No. 9749, date 04.06.2007 on State Police, Articles 10 and 108.



officers. Use of force from the police officers is legitimized only for a legal purpose, only when it is necessary, and only after other measures have been unsuccessful or are impossible. The police officers have to use the minimum amount of force necessary in accordance with the principle of proportionality. This is valid also in cases of the use of force during demonstrations and public gatherings. The activity of the police officers in relation to respect of human rights is sanctioned also in the “Regulation of Discipline of the State Police”.

Pursuant to CCP (article 254) arrest and detention is permitted only under specific circumstances. In this case, the judicial police informs immediately the prosecutor. After the interrogations from the prosecutor, when the immediate release is not ordered, the prosecutor, within forty-eight hours from the arrest or detention, demands the evaluation of the measure in the court. Failure to meet this time-limit makes the arrest or detention null and void. The court fixes the hearing for the evaluation as quickly as it can, giving notice to the prosecutor and the defence lawyer<sup>111</sup>.

As regards treatment in custody and detention centres, prisons police is the responsible authority for maintaining public order and security during transfer and accompaniments of detainees before courts or other institutions in accordance with the law. The prison police are obliged to respect human rights during their activities. The use of force in detention centres are envisaged in the law on prisons police as well as General Regulation of Prisons. The law on the rights and treatment of prisoners sanctions the rights and treatment of convicts to prison and competencies and duties of the responsible institutions. In general, the Albanian legislation regulating the Pre-trial detention system is compliant with international standards.

The Albanian legislation guarantees access to justice in cases of violence and inhuman treatment and use of force from law enforcement officials. However, in practice access to justice for vulnerable groups is impeded by high judicial administration fees.<sup>112</sup> Amendments to the

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111 Code of Criminal Procedure, Article 258

112 European Commission, Albanian Progress Report 2013, Brussels

law on legal aid formally guarantees free access to justice for civil and administrative proceedings but lack of implementation in practice of this law has hampered this right <sup>113</sup>. In addition, this law does not exempt from taxes all the persons in need who due to economic reasons are not able to pay judicial fees but rather a specific category of people (victims of domestic violence and of trafficking).

The activity of the security sector officials is subject of judicial review without any limitation. However, a number of high ranking officials enjoy immunity from criminal prosecution. The last amendments (2012) of the Constitution of the Republic of Albania lifted the immunity of high ranking officials such as MPs and High Courts judges and those of other instances for criminal prosecution. As a result, the prosecution does not encounter any legal barriers to launch an investigation against prosecutors or judges. Nevertheless, no investigations were conducted following the latest amendments.

In relation to human rights protection and increasing of public safety amendments to the Criminal Code (CC) were introduced in 2013. Changes to the existing articles of the CC refer to more severe punishments for criminal offences which aim to protect women and children.

#### *4.3.2. Implementation*

As envisaged in the previous section arrested /detained persons enjoy a number of procedural guarantees (the right to be defended by a lawyer, to be notified on the motives of such arrest, the right to inform family members or other trusted persons etc.). In the time period when this person is detained/arrested in no circumstances may he/she be part of any violence or inhuman treatment. The persons escorted by the police have the right of human treatment and respect for their dignity. Moreover, the CCP stipulated that when the procedures are taking place in violation of the law, the persons whose rights are being infringed are being compensated for the damage caused. However, cases of ill-treatment and excessive use of force continue to be reported, during

police custody and arrest.

A very disputable cases of use of force from law enforcement officials during demonstration occurred in January 2011 when police officers where retaliated against violent civilian protestors. Many reports expressed their concern on violent and inhuman treatment of the demonstrators. Nevertheless, no institutional reaction followed the event. From the investigations carried out from the Service for Internal Control and the report published on the Albanian state police handling of the situation prior, during and after the demonstrations, there was no reporting on these cases and no measures were taken against any police officers. However, lately General Prosecutor Office has opened new investigations for the violence exercised by the police officers during demonstrations.<sup>114</sup> Two officers from the Guard were charged with the murder of three demonstrators and brought before court. The investigations conducted found out that police bullets killed the civilian protestors; however, court's decision acquitted the two guardians with the justification that the prosecutor could not prove the charges. The ruling caused disappointment and was considered as impartial, not transparent and corrupted.

The violation of human rights from the security sector institutions continues to remain an issue of concern in the recent years. Although the constitution and a number of legislative acts explicitly prohibit arbitrary arrest and detention, inhuman treatment and abuse, complaints about mistreatments, unjustified detentions and other violation continue to reveal cases of human rights infringements from law enforcement agents.<sup>115</sup> According to the US Department Human Right Reports, no improvement was noticed in the recent years in relation to excessive use of force during arrests and detentions.

Approximately half of citizen's complaints against police officers in 2012 (out of 234) relate to physical maltreatments and other arbitrary actions. Other concerns relate to unlawful arrest executed from the police officers, for unlawful accompaniment in the police premises, non

114      Gazeta Shqip, 2013, <http://gazeta-shqip.com/lajme/2013/12/04/hetim-ri-per-dhunen-e-policise-ndaj-protestuesve-gjate-demonstrates-se-21-janarit/>, accessed on December 2013

115      US department Report, Human Rights Report, 2010, 2011, 2012.

treatments of complaints and penal charges made by citizens.

Table 3: Complaints against law enforcement officials (handled from Ombudsperson)

Year	No. of Complaints	
	Police	Detention and pre-detention staff
2010	137	232
2011	175	250
2012	234	-

In addition different observations made by the Albanian Helsinki Committee (AHC) on human rights situation in police premises and pre-detention centres confirm that the situation has not changed in the last few years. According to the AHC reports for 2012, most problematic issues relate to violation of the procedural rights of the arrested/detained person. Many violations of procedural rights are happening because police officers are not aware of the rights. Poor knowledge on the legislation and human rights provisions has produced cases of rights infringements.<sup>116</sup>

Infringement of the procedural rights from the police officers is a very frequent violation from the police officers as observed also by the Service for Internal Control (SIC) inspections. Regarding inhuman treatment during arrest and detention, some cases have been reported. However, due to delay in notification, no subsequent investigation could verify such cases.

SIC is an important institution that aims to protect citizen's rights against abuses and unlawful actions exercised by police officers in their daily work and functions. In 2011, SIC has undergone investigations

<sup>116</sup> Albanian Helsinki Committee, Monitoring report "On the Situation of Human Rights at Police directorates and commissariats, pre-detention institutions and prisons" 2012,

for criminal offences committed by police officers. As can be seen from the tables below the number of police officers reported for criminal prosecution is very high compared to those who are arrested (table 1). The same stands for cases when police officers are being investigated for arbitrary actions committed during exercise of their duties (table 2). For instance, none of the 31 employers reported for arbitrary actions have been arrested in 2012.

Table 1: Police Officers reported for criminal prosecution

Year	No. of Complaints	No. of Employers	Mid -Management	1 <sup>st</sup> line of supervision	Operational	Arrested/ detained
2011	101	135	3	39	93	20
2012	105	132	1	50	77	19

Table 2: Investigations of Service of Internal Control for arbitrary actions

Year	No. of Complaints	No. of Employers	Mid -Management	1 <sup>st</sup> line of supervision	Operational	Arrested/ Detained
2011	21	25	-	7	18	6
2012	28	31	-	5	26	-

The Ombudsperson acting as a specialized Unit for Conflict prevention has undergone 42 and 70 inspections in State Police premises. Recommendations were drafted in response to the issues raised during investigation. 10 recommendations were drafted for disciplinary measures against police. However, there is no reaction from the senior police officers in taking any punitive measures against the subordinate levels for the cases reported. Whereas on the other side, Ombudsperson have recommended to the General Prosecutor Office starting criminal prosecution for verified cases of abuse from the law enforcement officials. In 2012, 16 recommendations issued by the Ombudsperson pressed criminal charges against 55 police officers from different grading levels. However, no information is available if any of the cases were brought before the courts.

Regular investigations have been undertaken also from prosecutors on the actions of the judiciary police during preliminary investigation phase. Several violations of the procedural right were noticed during these investigations. For these infringements 18 disciplinary measures were taken against 16 police officers.<sup>117</sup>

Judicial investigation of cases in terms of violation of human rights from law enforcement officials has been one of the 12 recommendations of the European Commission, which actively invokes strengthening of the role of Ombudsperson and implementation of respective recommendations from law enforcement institutions. In fact, there is no evidence of any substantial progress on increasing judicial follow up of cases of ill-treatment<sup>118</sup> or any case handled through judicial procedure.<sup>119</sup>

#### *4.3.3 Administrative and management capacity*

An important development in the field of judiciary is the adoption of the law on the judiciary administration, which sets the rule for the internal organization and structure of the courts, competencies as well as rights and duties of the servants of the judicial administration. This law provides for clear functions of the administration acting in full support to the first instance and appeal courts and contributing to effective justice. However, court management remains poor despite of the latest legal amendments to improve the work of courts and courts staff. Adequate training of the courts staff is needed and the budget allocated to courts and court staff remains insufficient.<sup>120</sup>

Other legislative changes aimed to enhance the professional integrity of the judges and the proper functioning of the judicial system. The increase of salaries of first level and appeal court judges aimed to positively impact the daily work of judges and minimise the interference in the decision-making process. However, corruption of the judiciary remains

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117 Report of the Prosecutor General, “On the level of Criminality in 2011”,

118 European Commission, Albanian Progress Report 2011, Brussels

119 European Commission, Albanian Progress Report 2012, Brussels

120 European Commission, Albanian Progress Report 2013, Brussels

one of the major problems increasingly diminishing the public trust and confidence in the judicial system.

In terms of improving the efficiency of the judiciary in relation to the workload and other standards for increased professionalism changes were brought to the law on the organization and functioning of the High Court. The composition of the High Court increased to 19 judges and other selection criteria for the appointment of judges were introduced.

The adoption of the law on the organisation and functioning of the administrative courts and the settlement of administrative disputes (2012) is considered another major achievement which is expected to positively impact the overall functioning of the judicial system in terms of better access to justice for citizens and businesses, and faster procedural actions and trials. However, no impact and improvements brought to the efficiency of the judiciary has been noticed since the administrative courts started to function very recently. Backlog of cases and long judiciary proceedings continue to remain an issue of concern.<sup>121</sup>

A major shortcoming in relation to respect and adequate treatment of detained/arrested persons relates to poor conditions and inadequate infrastructure which in most of the cases does not offer minimal conditions for living for the persons deprived from their liberty.

#### *4.3.4. Values*

Despite slight improvements and decrease in citizen's complaints against cases of violent treatment and abuse from law enforcements officials, reports and statistics indicate the importance of tackling this problem which still represents a problematic issue.

On the overall, the number of the complaints remains high compared to the disciplinary measures or punishments before courts which shows that judicial oversight of the law enforcement officials is not revealing any improvements. In addition, little information is available on cases when law enforcement officials are being convicted. Political pressure

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European Commission, Albanian Progress Report 2013, Brussels

and interference and widespread corruption have widely compromised the impartiality and independence of judiciary.<sup>122</sup>

Disciplinary measures are the most common measures taken against the police officers. Thus, senior police officers in most of the cases are not initiating any punitive actions in cases when violation or arbitrary actions are being performed by police staff.

#### **4.4. USE OF SPECIAL INVESTIGATIVE MEASURES**

The Constitution of the Republic of Albania stipulates that the freedom and secrecy of correspondence or any other means of communication as well as the inviolability of the residence are guaranteed. Searches of a residence, as well as premises that are equivalent to it may be done only in the cases and manner provided by law.<sup>123</sup> As regard the interception of communications, the boundaries for the violation of human rights are provided by the law. The Constitution states that the collection, use and making public of data about a person is done with his consent, except for the cases provided by law (and that no one may be declared guilty on the basis of data collected in an unlawful manner.<sup>124</sup>

In concrete terms, the use of special investigative measures (SMI) is regulated in the Code of Criminal Procedure (Article 221-226) and the law on the interception of telecommunications. The use of SMI is permitted only for a specific category of criminal offences and criminal contraventions. The decision on permitting interception/surveillance is issued only by the court upon the request of the prosecutor or an injured party. The authorities responsible for the use of SMI are the prosecutor and the judicial police. In urgent cases the prosecutor orders the interception by a reasoned decision and informs the court immediately, but not later than twenty-four hours. The court has the

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122 Freedom House Report, Nations in Transit 2013, Albania, [http://www.freedomhouse.org/sites/default/files/NIT13\\_Albania\\_3rdProof\\_0.pdf](http://www.freedomhouse.org/sites/default/files/NIT13_Albania_3rdProof_0.pdf)

123 Constitution of the Republic of Albania, Articles 36-37

124 Ibidem (cit 19), Article 32/2



power to review the authorization given by the prosecutor. Accordingly, the judge, within twenty-four hours from the order of the prosecutor, makes the evaluation by a reasoned decision.

The decision of the court on the use of SMI stipulates the way the process is conducted as well as the time limits which cannot exceed fifteen days. However, they can be extended by the court upon the request of the prosecutor in specific cases. Apart from the authorization on the use of SMI issued by the court, the CPP does not indicate if this process is part of any further judicial review. At the end of the process, the court is provided with the material collected from the use of SMI but it only decides whether these materials may be used as evidence in trial.

The minutes and records kept for the interception that are not necessary, may be destructed upon the request of the interested persons. In this case the court decides on the request. The court orders also the destruction of interception of the documents that may not be used, such as the interception of conversations or communications of those who are obliged to keep the secrecy because of their profession or duty.

The law on interception of telecommunications (LIT) provides the procedures for the use of SMI from state intelligence institutions, the State Police and other authorities under the Ministry of Interior, Defence, Finance and Justice. The materials collected through the use of SMI pursuant to this law, may not be used as evidence, when they are not taken in accordance with CCP. Besides, the LIT does not provide any powers of review from the Court. The responsible authority for issuing the warrant is the Prosecutor General. The LIT stipulates that the interception section of the State Intelligence Service may conduct the technical process for interception of telecommunications authorized by a court's decision, but this process is performed either by the prosecutor or judicial police pursuant to the CCP.

In the recent years the legal framework regulating the use of special investigative measures has not experienced any substantial change. The only relevant change on the law on the interception of

telecommunications, amended in 2012, was related to extension of interception also on other forms of communications through internet. Accordingly, the new law was entitled the law on interception of electronic communications.

In general information on the use of the special investigative measures and related data continue to be very limited. The sources of information are the reports of the Prosecutor General on the level of criminality in the country which in itself contain limited data on the matter. In 2011, during investigations, the number of criminal proceedings applying interception of telecommunications (phone tapping) has slightly increased to 70 compared to 65 interceptions in 2010 and 54 in 2009). Except for phone tapping, there is no information concerning the use of the other methods.

In 2011, 365 warrants were issued (103 less compared to the previous year) for the interception of 683 terminals (90 less than in 2010). 30 warrants were issued for interception of premises and 10 for public places.

#### **4.5. RECOMMENDATIONS**

- Implementation in practice of the legal framework on protection of human rights from law enforcement institutions should be strengthen.
- Continuous training of the law enforcement agencies and enforcement of the legal framework on guaranteeing the rights of the detained/arrested persons.
- Enforcement of the judicial oversight of the security sector through guaranteeing the independence of the judiciary from political interference.
- Abuse from law enforcements officials should be seriously addressed not only through criminal charges but also judicial conviction.
- The role of oversight body should be increased through better

cooperation with law enforcements institutions and implementation in practice of respective recommendations.

- The Criminal Procedure Code and respective legislation on the use of special investigative measures should be revised to strengthen the role of judiciary control on the use of interceptions.

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- Gazeta Shqip, 2013, <http://gazeta-shqip.com/lajme/2013/12/04/hetim-ri-per-dhunen-e-policise-ndaj-protestuesve-gjate-demonstrates-se-21-janarit/>, accessed on December 2013

## **CHAPTER 5**

### **FINANCIAL TRANSPARENCY OF THE SECURITY SECTOR IN ALBANIA**

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#### **5. EXECUTIVE SUMMARY**

Financial control of the security sector in Albania, in general, has followed a positive trend during the 2011-2013 timeframe, producing some positive results, even though not free of controversies and setbacks. Legal framework, mostly in line with EU standards, has been further amended, reflecting EU Commission recommendations. Legal changes have provided for a better oversight and control of the legislative and executive over the budgeting cycle in general, in its four stages (preparation, approval, execution, audit) but still have had little effect in relation to security sector, failing to limit, if not eliminate, the loop-holes still existing in this respect.

During this period, the legislative (including its financial control instruments, such as the High State Control) as well as the CSO's, in their attempts to exert their oversight and control role, have exposed their still existing lack of expertise and competence. Nevertheless, there are cases during this time, where institutional capacities have improved by creating new bodies or consolidating the existing ones and, more importantly, enhancing performance and cooperation among each others.

In practice, there have been problems in the way the legislative has exerted its financial oversight/control role over the security sector. The plenary and committee sessions have never gone further than just endorsing of the executive's budget proposals. In addition to that, there have been cases in the parliament, when the majority has harshly blocked opposition's initiatives to scrutinize into some financial management and procurement practices in security institutions. On the other hand, a tendency of "soft hand" penalizations has been evident concerning financial irregularities found in the security sector.

## **5.1. INTRODUCTION**

This paper analyses the financial transparency of the security sector in Albania for the period 2011-2013 putting in focus two major topics; budgeting and procurements. It comes after the previous one, which assessed the pre-2010 period. It was conducted during February–October 2013 and was based on a combination of desk research, interviews and monitoring mechanisms. Reports of the EU Commission, the US State Department and the ones produced by some of the main bodies of the legislative and executive in Albania, have been very important source of information and assessment. In that respect, the pre-2010 assessment has served as a comparison reference, giving this study a certain extension in time and continuity. In addition, the Institute for Democracy and Mediation, for the last two years, has conducted direct monitoring of sessions of the Albanian Parliament and its permanent committees, related to security sector, which have provided tremendous information on paces of the Albanian security sector towards EU standards.

Having to deal with money, financial control has the potentials to become a very effective means for overseeing and controlling of the security institutions by legislative, executive and even (though more indirectly) by the civil society.

Three factors determine the effective oversight and control over the security sector (including financial one): a) authority (derived from the constitutional and legal framework as well as customary practices)



b) ability (mostly related to resources, expertise, staff and access to information) and c) willingness (of political parties, society fabric, as well as the security sector itself, to accept and support this control). In Albania, these factors have proven problematic with many difficulties to be overcome. Concerning “authority”, the actual legal framework for financial control of the SS, even though meeting in general the western democratic standards, still has many loop-holes and does not explicitly refer to all security institutions. As for “ability” of the legitimate bodies (including their supporting staffs) it remains of real concern their lack of expertise. Finally, considering “political will”, it has been indicated a tendency of the ruling party/coalition in Albania to overly control the security institutions, on partisan basis, while blunting any overseeing effort, coming from the opposition through legislative or other democratic mechanisms.

This assessment uses the same four indicators, as the previous one, in assessing the level of financial transparency in the security sector: legal framework, practices, administrative and management capacities and values established.

## **5.2. FINANCIAL CONTROL OF THE SECURITY SECTOR**

Financial control of the security sector in Albania is still influenced by several factors, which refrain it from meeting desired democratic standards, despite some feeble progress so far. That’s because of tradition of the past, but also due to diverse missions, relatively large manpower and structural composition of security institutions which make them very difficult to be controlled financially. Security institutions traditionally take relatively large portions of state budget, usually structured and spent into a multitude of programs and projects, which in their entirety constitute a real challenge to be traced and controlled. In addition, financial control of the SS in Albania faces additional challenges, due to loop-holes in the legal framework, legacy practices and unwillingness of both the body politic and security institutions to accept and establish democratic standards in this respect.

### 5.2.1. Constitutional and legal framework

Legal framework concerning financial control of security institutions in Albania, despite a number of new laws has remained almost the same as before 2010<sup>125</sup>. Some of the laws addressing integrity issues have many loopholes, sometimes by design, and do not have adequate implementation mechanisms<sup>126</sup>. Regarding security institutions control by the parliament, despite the State Intelligence Service, to which, at least, there is a direct related legal framework, there are six other intelligence/informative services<sup>127</sup>, for which there is practically not any legal clause concerning their legislative control. On the other hand, even for the SIS, it's not clear how the legislative, namely the PNSC, can exert financial control, except through the High State Control (HSC), which will be elaborated later. In that regard, the PNSC initiated a new law on intelligence/informative institutions in 2011-2012, providing for a new sub-committee to oversee them. Due to the objections of the opposition, considering that as a maneuver of the Prime Minister, to put the SIS under his full control, but also from some executive institutions (MoD) in issues of financial control prerogatives given by the new draft to the sub-committee, the draft was not submitted to the parliament.<sup>128</sup>

The new law “On state budget – 2012”<sup>129</sup> has provided for a better control of financial performance of state institutions by the Legislative and Executive. The Law on Inspections (June 2011) has

125 - As part of the legal framework before 2010, could be mentioned: Law No. 9720, date 23.04.2007 “On the internal audit in the public sector” (amended), Law No. 10296, date 08.07.2010 “On financial management and control”, Law No. 9936, date 26.06.2008 “On the management of the budgeting system in Republic of Albania”, and Law No. 9228, date 29.04.2004 “Accounting in Republic of Albania”.

126 SIGMA, Assessment, Albania, 2012, pg.5.

127 The other 6 services/agencies belong to: MoD (Defense Intelligence Agency), MoI (Internal Control Service) MinFin (3 agencies) and Ministry of Justice (Prisons Informative Agency).

128 See more for the problems of overseeing and controlling of the Intelligence Services in Albania at: Dyrmi-shi, Intelligence Services in Albania, 2011, pg 20 and article at “Shekulli” newspaper, Feb.17, 2013

129 The law No. 10487, date 05.12.2011 (amended) as well as some directives on budget executions, issued in 2011 and 2012 in relation to a more effective budget execution are based on the Organic Budget Law (OBL) of 2008, and the Financial Management and Control Law of 2010.

extended its scope “...over all inspections of ...economic activities, but has proceeded very slowly”.<sup>130</sup> In some cases, the difficulty of formally changing the legal framework (mostly due to the constitutional requirement of a qualified majority to change it) “*has led to the political class plainly ignoring it*”.<sup>131</sup>

### 5.2.2. Implementing Practices

The parliament has remained involved in scrutinizing the financial performance of the executive, three times per year: in March (3-year macroeconomic forecast analysis) August (receiving the Mid-Term Budgeting Program - MTBP) and November (state budget approval). The Parliament oversees security institutions through three permanent parliamentary committees<sup>132</sup>: Committee on National Security (PCNS), Committee on Economy and Finance (CEF) and Committee on Legal Affairs, Public Administration and Human Rights (CLAPHR).

Practices of law revisions have remained politicised, whereas, concerning intelligence services, in almost any case, decisions have been made, with no consensus from the opposition, which tends to consider these initiatives as suspicious and biased.<sup>133</sup> The second half of 2012 was especially clashing, with PCNS meetings characterized by long debates on issues of oversight control over security institutions.<sup>134</sup>

Concerning budget preparation, the highly politicized climate in the Parliament and the lack of specialized expertise<sup>135</sup> caused the level of financial control and oversight, exerted by the Parliament and its permanent committees over the security institutions to be insufficient.

130 SIGMA, Assessment, Albania, 2012, pg.8.

131 SIGMA, Assessment, Albania, 2012, pg.10.

132 According to the Parliamentary Regulation, concerning the competencies of the permanent committees, the Article 102/3 provides: “...The permanent committees, in their respective areas of responsibility, can do controls, or ask for documents which they consider necessary for reviewing of a specific issue...”.

133 Dymishi, Intelligence Services in Albania, 2011, pg 26.

134 IDM Monitoring Report on the work of the Parliamentary Committee on National Security, 2012, pg.5.

135 The experts' staff consists of only 3 experts for the PCNS, 3 for CEF and 8 for the CLAPHR.

On the other hand, long debates and distanced political positions have characterized the committee's work, concerning the quality of submitted budget documents, during the review of the budget-2012 execution and 2013 draft-budget proposals of the Ministry of Interior (MoI), Ministry of Defense (MoD) and State Intelligence Service (SIS). Opposition MPs considered both documents as not serious. They claimed that the related material provided to them did not fulfill the criteria of reporting, due to the lack of information, data granularity and explanation on both: budget 2012 implementation and budget 2013 allocation for all these institutions.<sup>136</sup> So far, plenary and committee sessions have never gone further than just endorsing of what have been submitted by the Executive as budget proposals. The above mentioned facts speak for a tendency of "*...the dominance of the Parliament by the executive and a de facto lack of parliamentary control over the executive branch*".<sup>137</sup>

Concerning the scrutiny level and transparency of budget execution in the SS institutions, it was a persistent culture of partisan politics that has hindered that during 2011-2013. In 2012, opposition members in the PCNS raised the tone for a more rigorous control over the security institutions<sup>138</sup>, but it was only partially considered<sup>139</sup>. The whole 2012, was characterized as well by the insistence of the opposition to conduct investigation in the MoD about legality of resource management (financial, material and human). In particular, tension escalated to almost an open conflict which lasted for months between the MoD and the opposition members of the PCNS, related to the latter's claims about the role of the Military Intelligence Service

136 More on: IDM Monitoring Report on the work of the Parliamentary Committee on National Security, 2012, pg. 6.

137 SIGMA, Assessment, Albania, 2012, pg.8

138 Institute for Democracy and Mediation, Monitoring Report on the work of the Parliamentary Committee on National Security, 2012, pg.3

139 In 2011, PCNS conducted only one hearing session with the MoD (IDM Monitoring Report, 2011,pg1).

In 2012 PCNS conducted two hearing sessions, held with the Minister of Interior, about measures in combating organized crime, and with the Minister of Defense about "Peacetime Stationing Plan of the AAF" and the Armed Forces real-estate. Concerning the MoD, the deputies from the opposition, in the object of their request, had required an in-depth investigation of this Plan (including other related documents) and not a hearing session with the Minister of Defense (IDM Monitoring Report, pg.7).

(MIS)<sup>140</sup> and acquisition of equipment allegedly aiming to intercept opposition. The PCNS opposition members issued the request for MoD investigation since beginning of February (2012) but the majority applied a procedural prolongation, which finally caused this request to be rejected.<sup>141</sup>

A basic problem in the Albanian budget execution (including the security sector) remained the lack of reporting on changes in the MTBP and the budget from year to year. Thus, “...*budget performance analyses...lack a sound analysis of causes for not accomplishing of the objectives. Despite others, they lack analysis of the unit cost for many budget activities. There are cases, when for some of these (unfinished) activities justification is the “process of reforming”, conducted during 2012*”<sup>142</sup>. Considering the financial performance of security institutions during 2012, it was noticed that in the MoD, out of 7 major budget programs, only two were almost fully (about 97%) accomplished, whereas the rest were executed at the level of about 20%.<sup>143</sup> In the SIS, one major budget program out of 15 was fully accomplished.<sup>144</sup> In the State Police 62 major activities, out of 78, ran well in 2012, and could be considered as fully accomplished.<sup>145</sup> Since the same problems have been present also in 2011<sup>146</sup>, it could be concluded that the role of legislative and other controlling mechanisms have been ineffective, at best.

The HSC relations with the Parliament have remained limited to two reports, the “HSC Annual Performance” (April) and the “State Budget Execution” (October).<sup>147</sup> Information about financial performance of the security institutions, provided by the HSC has

140 MIS is now transformed to the Defense Intelligence Agency

141 More on: IDM Monitoring Report on the work of the PCNS, 2012, pg.3,8.

142 MinFin report on finance monitoring/inspection, conducted in the MoD, 2012, pg.5

143 Ibid, pg.2

144 MinFin report on finance monitoring/inspection, conducted in the SIS, 2012, pg.2

145 MinFin report on finance monitoring/inspection, conducted in the MoI, 2012, pg.3

146 Ibid, pg.6

147 SIGMA, Assessment, Albania, 2012, pg.21-22

remained very limited and sketchy.<sup>148</sup> Furthermore, out of 158 auditing activities conducted by the HSC during 2012 (covering 2-3 years in the past), only one has been conducted in the MoI and one in SIS<sup>149</sup>. In the HSC report of 2012, the MoI was mentioned only for problematic procurement practices<sup>150</sup> while the SIS for some “financial irregularities”.<sup>151</sup> Based on the findings of auditing of 2011 and 2012, HSC referred to the State Prosecutor, respectively, 6 and 40 cases, which implicate, respectively, 13 and 125 persons,<sup>152</sup> but none of them belonged to the security sector institutions.<sup>153</sup> The HSC audit plan for 2013 covered 6 broad areas of state institutions<sup>154</sup>, but none of them belonged to the security institutions.

In 2013, the High Inspectorate of Declaration and Audit of Assets (HIDAA) changed the practice of making public the declaration of officials’ assets, on the grounds of its obligation to verify first the accuracy of the declarations before releasing this information. Given the highly politicized atmosphere prior and after the general elections of June 2013, coupled with the controversy which accompanied the Inspector General election by the Parliament<sup>155</sup>, in January 2013, blocking such information has been interpreted by the former opposition (now in power) and other civil society actors as a manoeuvre to hide illicit personal gains and abusing with posts of top level authorities

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148 In the budget execution report of 2011, presented to the parliament by the HSC, there are figures of budget execution of security institutions, but assessments for some failures are missing (e.g. there’s no explanation why the MoD investment plan of foreign support results “zero execution” in end-2011). See Budget execution report, 2011, pg.224, on: <http://www.klsh.org.al>

149 HSC Annual report, 2012, pg 11, 19, at: <http://www.klsh.org.al/>

150 Ibid

151 Recommendations of HSC concerning its auditing in SIS, 2012, pg.2

152 HSC Annual report, 2012, pg 30, at: <http://www.klsh.org.al/>.

153 Despite the fact, for example, that 51% of irregularities discovered by the HSC, in all procurements done in Albania during 2012, belonged to the MoI (HSC Annual report, 2012, pg.19).

154 HSC, Annual report, 2012, pg. 72-74.

155 The actual IG candidature, proposed and approved in the Parliament by the majority of that time, was strongly opposed by the opposition on the grounds of not fulfilling legal criteria.

during the last two years, in particular<sup>156</sup>.

The role of civil society in improving public sector integrity and fighting corruption is limited and cannot be considered as putting pressure on the Government<sup>157</sup>. In dealing with the security sector it still has to cope with two challenges: first, the lack of sufficient data, while for the intelligence services they are totally missing<sup>158</sup>, secondly, the fact that the expertise provided by civil society organizations only rarely is taken in consideration (to some extent) by the government.<sup>159</sup>

### *5.2.3. Administrative and management capacity*

The Integrated Planning System (comprising three components: long-term sectoral plans, sectoral programs and the Mid-term Budgeting) despite some administrative guidelines, has remained the same since its inception in 2007.

Starting from early 2012, the High State Control (HSC) as an independent supreme audit institution has taken over all main types of audit as defined in the INTOSAI standards. Still, the majority of its audits had been conducted in regularity/compliance issues. Thus, in 2011, 139 out of 152 audits were compliance audits<sup>160</sup>, while in 2012, there were 148 compliance audits out of 158.<sup>161</sup>

The Parliament has still suffered by the lack of its own staff capacities. There are only 14 experts for the three standing parliamentary committees mentioned above<sup>162</sup>. Furthermore, frequent shuffling of the staff members has hampered accumulation of the institutional memory

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156 A parliamentary investigative commission is set up so far, while investigation is still ongoing.

157 SIGMA, Assessment, Albania, 2012, pg.15

158 Dymishi, "Intelligence Services governance in Albania", 2011, pg.23

159 Dymishi, "Intelligence Services governance in Albania", 2011, pg.23

160 SIGMA, Assessment, Albania, 2012, pg.22

161 HSC Annual report, 2012, pg.11

162 3 for each of the committees of Security and Economy and 8 for the Committee of Legal Issues

and expertise – a process which time after time has been worsened by the tendency of hiring personnel based on the loyalty towards the ruling party/coalition.<sup>163</sup>

As a requisite of the new Internal Audit Law (2010) a Financial Inspection Directorate has been newly established, in 2011 within the Ministry of Finance. It became operational in August 2011 and consists of a small coordinating team with the ability to “call on” selected officials from other ministries on an *ad hoc* basis. In 2011, 126 such persons were selected as inspectors<sup>164</sup>.

The Public Internal Financial Control Management Board was created in mid-2011. It consists of nine top managers of the Ministry of Finance and is chaired by the Minister of Finance<sup>165</sup>. The appointment of the General Inspector and the recruitment of the staff of the general inspectorate only took place at the end of 2011<sup>166</sup>.

The joint investigative units<sup>167</sup> composed of prosecutors, judicial police, tax inspectors, customs officials, and officers from state police, financial intelligence service and HIDAA, have produced results on combating corruption practices. Among them, judges remained not specialized and ill-equipped to deal with corruption<sup>168</sup>.

#### 5.2.4. *Values*

Regardless of some improvements in the legal framework, along with some administrative measures, actually little progress can be noted concerning a more effective financial control of the security institutions by legislative, executive and public.

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163 Dyrnishi, “Intelligence Services governance in Albania”, 2011, pg.20-21

164 SIGMA, Assessment, Albania, 2012, pg.17-18

165 Law No. 10296, dated 08 Jul 2010, “On financial management and control”, Article 28.

166 SIGMA, Assessment, Albania, 2012, pg.8

167 Created in 2010

168 SIGMA, Assessment, Albania, 2012, pg.12



In addition, representatives of both parties have kept accusing each other without following legal denouncing actions, contributing to a situation where anyone can accuse anybody else, but nobody is actually investigated and convicted.

During period under review, a risen awareness was noticed, however, concerning problems in place and the need for a tighter control over security sector in the way they manage available funds. That risen awareness, can be seen among different segments of politics and society, which could serve for further headways, in this respect, in the future.

Another encouraging aspect is the increasing willingness and progress (yet modest) concerning the interagency cooperation for a better financial control of the state institutions including the security sector as well. Even though the security sector remains a bit aside in this respect, it is expected, soon or later, it will follow the general trend and join the main stream of a better transparency and accountability in managing public funds.

### **5.3. PUBLIC PROCUREMENT TRANSPARENCY IN SECURITY SECTOR**

There has been an increasing pressure from the Parliament, specifically from the opposition, concerning procurement practices in the security sector in Albania, during 2011- 2013. Nevertheless, an atmosphere of secrecy and opaqueness, together with a wider than needed range of discretion for contracting authorities, still remain, favored, to some extent, even by the actual Public Procurement Law. This situation, justified with the sensitivity of procurement cases, has impeded the parliament in fully exerting its oversight and control role of over some of the security sector procurement practices.

#### *5.3.1. Constitutional and legal framework*

The Law No. 9643 of 2006 on Public Procurement (PPL) *mostly in*

*line with the acquis*<sup>169</sup>, was amended in 2012. The amendments aimed at the approximation of the Albanian PPL with dispositions of the EU directives<sup>170</sup>, namely – Directive 2004/18/EC<sup>171</sup>, and Directive 2007/66/EC<sup>172</sup>.

PLL amendments still have no effect in defense procurement, allowing thus the defense procurement institutions to use “specific procedures” when it is justified by “*interests of national security*”<sup>173</sup>. Despite conclusions of the EU Commission that “... *the provisions on ...defense procurement are deficient...*”<sup>174</sup>, the legal framework in this area has remained unchanged. It is still being regulated with the Council of Ministers (CoM) Decision No.1403 (2008) which provides for “*procedures to be applied by the Ministry of Defense in procuring equipment and services, which are exempt from the PLL*”. CoM Decision No.1403 sets definitions, procedures and entities in charge for procuring equipment and services, when they are qualified as sensitive for national security.

In addition to the previously mentioned legal initiatives, during 2011-2013, the Public Procurement Agency (PPA) drew up seven different guidelines to help contracting authorities<sup>175</sup> on issues related to “small purchases”, “joint procurement procedures”, “standard tender documentation” etc. In that respect, Guideline No. 2, dated 28 March 2011, elaborated the Council of Ministers Decision No. 53, dated 21 January 2009 “On entrusting the Ministry of Interior with the conducting of public procurement procedures on behalf of the Prime Minister’s Office, ministries and subordinate institutions, for some goods and

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169 SIGMA, Assessment, Albania, 2012, pg.5

170 Public Procurement Agency, Annual Report, 2012, pg. 3-4.

171 related to criteria for the awarded bid, general and electronic rules of communications, etc,

172 related to timelines for revision of contracting authority decisions, etc

173 PLL, No.9643 (2006) amended, Article 5/2.

174 SIGMA, Assessment, Albania, 2012, pg.5.

175 For more information see: Public Procurement Agency, Annual Report, 2011, pg. 6, and Public Procurement Agency, Annual Report, 2012, pg. 6-7. Available at: <https://www.app.gov.al/ep/ReportsMonitorings.aspx>

services”<sup>176</sup>.

### 5.3.2. *Implementing practices*

The Albanian authorities do not seem to have a coherent, comprehensive strategy concerning the further development of the procurement system in either a medium or long-term perspective<sup>177</sup>.

Albanian legislation does not provide for the Parliament to scrutinize for the procurement practices in the security sector. It is left to the Government discretion to give that information.<sup>178</sup> However, there are only two cases, so far, that relatively very expensive contracts have been submitted to the Parliament for approval, but just one of them, the MoD contract related to mid-lift, transport helicopters<sup>179</sup> falls into the period of this assessment. Helicopters contract was discussed in three permanent committees<sup>180</sup>, and finally adopted by the Parliament with the Law No 10222, dated 04 Feb. 2010. Nevertheless, due to the lack of expertise, committee and plenary sessions, rather than contract related, were mostly focused on political aspects. During almost the whole 2012, opposition representatives in the PCNS insisted to scrutinize procuring by the Military Intelligence Service<sup>181</sup> (MIS) of equipment which, in their view, were out of the MIS’ spectrum of missions, expressing thus suspicion on possible use of them to intercept opposition communications. As it was mentioned above, the opposition

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176 Some negative consequences of this overconcentration of procurement procedures in one ministry are elaborated in the following sections.

177 SIGMA, Assessment, Albania, 2012, pg.29.

178 Based on the Government’s assessment about the impact of the contract on the national security and on the state budget (when it exceeds three year time – covered by the mid-term budgeting)

179 See more at: [http://www.minfin.gov.al/minfin/Programi\\_Buxhetor\\_Afatmesem\\_ne\\_Vite\\_576\\_1.php](http://www.minfin.gov.al/minfin/Programi_Buxhetor_Afatmesem_ne_Vite_576_1.php) and [http://www.minfin.gov.al/minfin/pub/pba\\_2011\\_2013\\_final\\_1789\\_1.pdf](http://www.minfin.gov.al/minfin/pub/pba_2011_2013_final_1789_1.pdf) (pg.253). In brief, the AAF will acquire 5 mid-lift helicopters. The total price of about €76 million (roughly half of the annual defense budget) for 5 years (2010-2014)

180 The permanent committees of: Economy, Security and Judiciary

181 Since December 2012, based on the Law No. 117, dated 13 Dec 2012, the MIS has converted to the Defense Intelligence Agency (DIA) with almost the same mission and roles.

was ultimately barred from materializing this initiative.

Another serious issue related to procurement practices in security sector is the relatively “soft hand” penalizations. Thus, even though, for example, during the 2012 the HSC found that more than 50% of all economic damage<sup>182</sup>, incurred in public procurement as a direct disregard of legal and regulation framework, had occurred in the MoI, penalizing measures consisted only in one person dismissed and three others let in the discretion of the PPA<sup>183</sup> for penalization.<sup>184</sup>

All the procurements for a defined list of common use items are (overly) centralized by charging the MoI as the central procurement body<sup>185</sup>. *“But the MoI does not use framework agreements but rather enters into a procedure to award a contract (usually based on a single common specification) with a single tenderer who is given a long-term contract for fixed quantities and prices. The combined effect of these practices reduces flexibility and lowers competition, thereby increasing the risk that the benefits normally associated with centralized purchasing will not be achieved”*.<sup>186</sup>

Procurement of defense equipment and services, which are exempted from the PPL, is now running in a different way. Methodologically<sup>187</sup>, it proceeds through three consecutive phases: a) generation of operational requirement b) procurement c) contract execution. Generation of an

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182 Out of about 444.5 million Leks, as economic damage found from the inspections of the HSC, during 2012, in the public procurement, 225.7 million Leks have been occurred in the MoI. See more at HSC Annual report, 2012, pg 19, at: <http://www.klsh.org.al/>

183 HSC Quarterly Bulletin, 2012-4, pg 50, at: <http://www.klsh.org.al/>

184 This decision was in clear disregard of the position of the HSC audit team, which after finding that the four high level persons of the MoI Public Procurement Commission had violated the Penal Code, namely article 248 (abusing with post) and article 258 (break of impartiality in public tendering) recommended that the implicated persons to be indicted to the General Prosecution (High State Control – “On the auditing exerted in the MoI”, pg.5 at: <http://www.klsh.org.al/>)

185 With the CoM decision, No.53, dated 21 Jan 2009.

186 SIGMA, Assessment, Albania, 2012, pg.28.

187 CoM Decision, No.1403, dated 27 Oct 2008, chapter V.

operational requirement, considered crucial to mission accomplishment, is responsibility of the respective major command, while a high level body, “Modernization Board” (MB) has the responsibility to approve (or reject) that requirement, after assessing how much it is in conformity with the Albanian Armed Forces (AAF) long term plans, deciding also if the whole procuring process for this specific equipment, is to be exempted from the PPL<sup>188</sup>, or should follow the PPL as a normal procurement procedure.

### *5.3.3. Administrative and management capacity*

With amendments of the PPL, done in 2012, the position of the Public Procurement Advocate was abolished<sup>189</sup> reflecting recommendations of the EU working groups, which considered that as a duplication of the Public Procurement Agency (PPA). With these changes, PPA is now the only authority to monitor the public procurement process.

Improvements in the electronic procurement system during 2010-2013 and posting on the web of electronic archive of the procurement system have significantly increased transparency of procurement procedures in general,<sup>190</sup> but they have had little effect on the “sensitive procurements” of the security sector.

The Modernization Board is an ad-hoc structure<sup>191</sup> created for the AAF procurements. It is composed by the Major Command Commanders and most of directors of the General Staff (GS) and chaired by one GS Deputy Chief. Despite the MB’s responsibilities mentioned previously, other responsibilities for all other stages, finalized with product delivery, are responsibilities of the Modernization Directorate (MD), an organic body of the MoD<sup>192</sup>. Because of the fact that information for

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188 In this case, laying under the provisions of the CoM Decision No.1403

189 Law No.131, dated 27 Dec 2012, “On some changes of the Law 9643/20.11.2006 “On Public Procurement”, articles 32 and 34

190 Public Procurement Agency, Annual Report, 2012, pg. 10, 28.

191 MoD Order, No.1827, dated 15 Dec 2008, amended by the MoD Order, No.1385, dated 29 Aug 2011

192 CoM Decision, No.1403, dated 27 Oct 2008, chapter II, article 1.4

this kind of procurement is considered sensitive, it is hard to conduct a correct analysis, yet some conclusions can be drawn. So, due to MD's insufficient capacities<sup>193</sup> some of its typical functions (bid evaluations in particular) are being done by ad-hoc bodies, namely "bid evaluation commissions"<sup>194</sup>(BEC) composed by specialists coming mostly from the same major commands which generated the operational requirement<sup>195</sup>.

Another administrative capacity/actor, still missing in the defense acquisition (procurement) process in Albania is the program manager, as a "*...designated individual with responsibility for and authority to accomplish program objectives... accountable for credible cost, schedule, and performance reporting...*"<sup>196</sup>. So far this function is either missing or carried out on an ad-hoc basis.

#### 5.3.4. Values

Regardless of revisions and improvements in the legal framework on one hand, and administrative and technical measures on the other hand (creation of procurement bodies, special trainings, extensive usage of electronic practices) little progress can be noted in security sector, concerning a new institutional culture in relation to procurements.

The fact that the publicized abuses not only hadn't been indicted deservingly by the competent institutions (namely the HSC, or General Prosecution Office) but also had not caused a strong reaction by the public, speaks for a relatively high level of tolerance still existing among the Albanian institutions and the Albanian society at large, towards these phenomena, not to mention that general aversion which would enable a stifling environment for any abusive practices in this area.

193 Based on the Prime Minister Order No.94 dated 30 Apr 2010 (annex 2.V/1) the Modernization Directorate has 4 sections (equipment; infrastructure, contracts; contract management) 22 people altogether.

194 CoM Decision, No.1403, dated 27 Oct 2008, chapter II, article 1.5.

195 This practice, despite questionable expertise and responsibility of the BEC members, violates the principle of "division of power", which calls for a clear separation between actors involved in each of the three phases of defense acquisition (a. operational requirement generation b. procurement c. contract execution and payment)

196 US DoD Directive, No.5000.01, certified 20 Nov 2007, pg.2

Nevertheless, legal and administrative improvements at least have helped to give evidence in the magnitude of these problems in security sector. As a matter of fact, now it is broadly known the very fact that more than 50% of all economic losses, incurred in public procurement during the last 2 years, belong to security sector.

#### 5.4. RECOMMENDATIONS

1. The legal framework, concerning the financial control of the security sector, should be improved in order to avoid any loop hole related to effective financial control of the legislative over security institutions in general and intelligence institutions in particular.
2. The parliament should ask from the security sector to provide timely and comprehensive information, seeing that quantitatively (websites, printed publications) and, most important, qualitatively (quality of reports/information). Furthermore, this information should be accessible for the public as well.
3. The parliament (permanent committees in particular) should be better supported with qualified staffs, possessing the adequate expertise for financial control of the security institutions.
4. Legislative in Albania should change its approach towards the role of the Civil Society in enhancing transparency of the SS. Strengthening its relations with SCOs and inviting the latter to contribute in this aspect, will provide for a better financial transparency and accountability of the security institutions.
5. All specialized auditing institutions (High State Control in particular) need to move further from performing traditional “financial controls” in security sector institutions, to “performance audits”, being them both, “*ex-ante*” or “*ex-post*” ones.

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## **CHAPTER 6**

### **REPRESENTATIVENESS OF WOMEN AND MINORITIES IN ALBANIAN SECURITY SECTOR**

**Author: Elona Dhembo**

## Acronyms

AF- Armed Forces  
For- Air Forces  
ASP- Albanian State Police  
CEAZ- Local Commission for Administration of Elections  
CEC- Central Election Commission  
CEDAW- Convention for Elimination of all Forms of  
Discrimination against Women  
EC- European Community  
EU- European Union  
GSAF- General Staff of Armed Forces  
INSTAT- Institute of Statistics  
OSCE-Organization for Security and Cooperation in Europe  
LB- Logistic Brigade  
LF- Land Forces  
MDGs- Millennium Development Goals  
MoD- Ministry of Defense  
MoI- Ministry of Interior  
NF- Naval Forces  
RSB- Regional Support Brigade  
SS- Security Sector  
SSR- Security Sector Reform  
TRADOC- Training and Doctrine Command  
UN- United Nations  
UNSCR- United Nations Security Council Resolution

## **6. EXECUTIVE SUMMARY**

Albania has developed a comprehensive legal and institutional framework for the promotion of gender equality and the protection of women's rights in particular as well as the protection of minorities and human rights at large. Regardless of developments at policy logic and legal provisions, their implementation and outcomes vary in time and across sectors. This chapter looks at the issue of representation of women and national minorities in security sector institutions in Albania. The analysis is organized around two main pillars; one focusing on the access to jobs and the other on access to career development opportunities of women and national minorities in the security sector. Under both, we look at the state of the legal framework, its implementation, the administrative and management capacities, as well as values of the respective sector and institutions for the years 2011 and 2012. Based on review of documents, data from official sources, and primary data gathered from interviews and focus-groups discussions with representatives from the targeted sector, we explore whether the legislation guarantees equal access to jobs, whether hiring policies encourage women and national minorities to apply, and if state actors promote employment of women and national minorities. Findings show that despite progress in legislation and policy logic and provisions, practice and results of advancing gender and minority representation in Albanian security sector are still lagging. There is poor data and information on women and particularly on minority representation in the security sector. Main legislative body is not well supported by secondary laws, mechanisms and institutional capacities to enable effective implementation.

### **6.1. INTRODUCTION**

In recent years, a number of significant achievements have been made by Albanian governments to move towards ensuring equal opportunities for women and men in the country as well as towards a more pro-active implementation of the standards and norms laid out in the UN Convention on the Elimination of all forms of Discrimination

Against Women (CEDAW), in the Beijing Platform for Action, in the Millennium Development Goals (MDGs), and in the EU directives and policies addressing gender equality.

Albania has readily signed and ratified a series of international instruments on the protection and observation of human/women's rights, including CEDAW. This has directly affected domestic legislation provisions, by ensuring that minimum standards in regards to elimination of gender discrimination and gender equality principles are at least respected *de jure*. In fact, Albania has developed a comprehensive legal and institutional framework for the promotion of gender equality and the protection of women's rights.

The principle of parity of women and men is a core to the Constitution of Albania and other domestic legislation. The Constitution [frames the principle of non-discrimination such that: "No one can be discriminated against for reasons such as, gender, race and religion."<sup>197</sup> Though the Constitution does not define discrimination expressly, it provides for international agreements to become part of the domestic legislation and even to prevail over such legislation, when contradictions are implied.

Regardless of developments at policy logic and legal provisions, their implementation and outcomes vary in time and across sectors. This chapter looks at the issue of representation of women and national minorities in security sector institutions in Albania. The analysis is organized around two main pillars; one focusing on the access to jobs and the other on access to career development opportunities of women and national minorities in the security sector. In this analysis, security sector is understood as armed forces and police, "access to jobs" is operationalised as the recruitment and entry level training related to women and national minorities, and "access to career development" includes criteria and processes applied for career advancement. Under both, access to jobs and access to career development opportunities, we look at the state of the legal framework, its implementation, the administrative and management capacities, as well as values of the respective sector and institutions for the years 2011 and 2012.

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Constitution, Article 18 point 2

Reviewing documents and analysing secondary data from official sources, and primary data gathered from interviews and focus-groups discussions we explore whether the legislation guarantees equal access to jobs, whether hiring policies encourage women and national minorities to apply and if state actors promote employment of women and national minorities. The section on access to career development opportunities examines whether legal documents provide an equal opportunity system of appointments and promotion, and whether women and national minorities have equal opportunities for accessing training and education necessary for career advancement.

## **6.2. REPRESENTATION OF WOMEN ACCESS TO JOBS AND CAREER DEVELOPMENT OPPORTUNITIES**

### *6.2.1. Gender legal framework in Albania*

Albania's gender legislation and policy reflect the country's process of accession to and integration into the European Union. UNWomen National Report on the Status of Women and Gender Equality in Albania 2011 summarises that by signing the Stabilisation and Association Agreement in 2006, Albania has committed itself to adopting the *acquis communautaire*, the legal heritage of the European Union which requires the approximation of domestic legislation with EU legislation, and continuing the harmonization of the national institutional framework with EU standards. Equality is one of the guiding principles of the EU; it is also a goal and task and an integral part of the EC Treaty and the EU Charter on Fundamental Rights. Albania's gender mainstreaming obligations are also derived from the five priority areas foreseen in the EU strategy for equality between women and men 2010-2015.<sup>198</sup>

In line with these obligations and developments, Albania has adopted new laws and made improvements to the existing ones in accordance

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UN Women Albania (2011). Mapping Assessment on the progress in implementation of United Nation Security Council Resolution 1325 in Albania and the identification of entry points for the development of a National Action Plan on UNSCR 1325.

with CEDAW and other important international standards. In addition to the national legislation improvements, Albania has ratified a number of international acts, which intend to eliminate discrimination against women (See Annex 1 for details).

However, these laws have all been adopted in the period prior to 2011 and the adoption of laws does not guarantee their (adequate) implementation, which by default should be more the focus of the analysis for the period 2011-2013. Often laws fail to be properly internalized and implemented due to a series of reasons including absence of appropriate structures in place for their implementation, existing but not adequate or irrelevant structures; limited or no budget resources allocated for their implementation; human resources falling prey of intermittent political changes which affect institutional continuity and sustainability; discriminating cultural stereotypes still holding strong, and low awareness on gender issues, sometimes even at senior levels, etc.<sup>199</sup>

Notwithstanding these legal improvements, Albania has, for instance, kept the same place in Gender Gap Index of the World Economic Forum because of a below-average performance in terms of female educational attainment. While major institutional and structural developments in Albania have served the advancement of women, further efforts are needed to effectively promote gender equality, particularly in the Security Sector Reform (SSR). At the policy level, Albania still needs to develop and implement a National Action Plan on UNSCR 1325 on Women, Peace and Security.<sup>200</sup>

### *6.2.2. Implementation*

Besides the overall spirit of the legal framework in Albania which prohibits gender-based discrimination, the specific law on gender equality in the society requires, among others, a minimum of 30%

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199 Dhembo, E. (2013) in Women, Peace and Security in the Western Balkans: Independent review of transition of UNHCR 1325 into the policies – Albania, Bosnia and Herzegovina, Kosovo, Macedonia and Serbia, editors Gorana Odanovic and Sonja Stojanovic Gajic – Belgrade <http://www.bezbednost.org/All-publications/5380/Women-Peace-And-Security-In-The-Western-Balkans.shtml>

200 Ibid



representation of any gender in all decision-making bodies, across any area, including security sector. From the adoption of the law on Gender Equality in the Society in 2008, the public discourse and stakeholders efforts have mainly been concentrated in one specific area – politics.

After 5 years of the law being in force there is progress done but far from expectations. The legal provisions had a positive impact in the increase of women's participation in the parliament of 2009 (moving from 7% women in the 2005 Parliament to 16.4% in 2009), while the 30% target remained only part of the candidates lists reality.<sup>201</sup> Women participation in the central government was even poorer with only 1 woman as Minister of Integration for the period under research.<sup>202</sup> However, the results were less optimistic in the local elections of 2011 with lower participation rates of women either as mayors or members of the councils.<sup>203</sup> Likewise, women were under-represented in the election administration too. Two out of seven CEC members were women, and only 3 of the 66 CEAZs were chaired by women. In total, women represented only 24 per cent of CEAZ members.<sup>204</sup>

The data picture a reality which stands far from the minimum target in the institutions which, in fact, have been targeted the most by the public discourse and the civil society activism. This leaves us with lower expectations for areas where women participation and representation is only recently considered an issue; security sector been one. Below we report on the developments of this sector and achievements for 2011 and 2012.

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201 Dragoti et al (2011) Why not women? Monitoring Albanian Steps towards Gender Equality, the case of gender quotas in politics. Tirana: Dajti 2000

202 It is only with the new government, in office from September 2013, that 30% are women; a period which goes beyond the target of this paper and which still needs to be tested in terms of sustainability.

203 NDI (2011) Albanian's 2011 Local Elections: Pre-Election Report No. 2 May 5, 2011 <http://www.ndi.org/files/Albania-2011-Election-Watch-Report-no2.pdf>

204 OSCE (2011) Local Government Elections, 8 May 2011 OSCE/ODIHR Election Observation Mission Final Report <http://www.osce.org/odihr/81649>

### *6.2.3. Participation and representation of women in the Albanian Armed Forces (AF)*

Women representation in Albania's Armed Forces (AF) originates back in 1967 when the first women were involved in the Albanian AF. Although they have constituted a considerable part of the Albanian AF (for instance 13.4%-15.2% in a timespan from 2008 to 2013), traditionally they have been underrepresented in the hierarchy of grades and positions. Promotion policies in AF are gender blind. There is no formal negative discrimination or double standards for women and men.<sup>205</sup> However, the system is based and applies standards that are designed on the model of the typical AF – the man. In addition, besides bias in designing the criteria of promotion, further investigation and analysis is needed on how criteria's are applied.

Regardless of lack of formal discrimination in the army, statistics show that women's representation in decision-making process and leading positions is much lower. It was not until 2009 when the first woman received the rank of Colonel, which is the highest rank in the Albanian AF - evidence of the "malehood" for decades in the Albanian AF.

Gender disbalances and low participation and representation of women in Albanian AF, start from the very beginning of the military career and builds up and accumulates disadvantages for women throughout it. Starting with education; traditionally, women have constituted only a small minority of the Military Academy students' and staff' body. To address these discrepancies, regulations have been introduced to narrow the gap down. A quota of a minimum of 15-20% of the students entering the Military University in Albania is required to be women. This has positively impacted women's entrance in the AF.<sup>206</sup>

Despite the fact of this slight increase in admitting women to military school and the fact that women are not excluded from serving to any

205        System procedures in the military are similarly based on seniority and professional qualifications as sanctioned by the Law on Grades and Carriers in the Armed Forces<sup>15</sup>. When the criteria are fulfilled women can get promoted in higher positions.

206        Dyrnishi, Qesaraku and Baka, (2012) Monitoring and evaluation of the security governance in Albania, Tirana: Gent Grafik

military career fields, their presence is still overwhelmed by engagement in logistical and supportive jobs such as in the administrative fields and human resources rather than on operational positions.<sup>207</sup>

Several factors shape this situation, among which the institutional culture is identified by the representatives interviewed as the dominant one. Although AF representatives declare that there are no problems regarding the recruitment process of women and that their access in education is at a satisfactory level, the number of requests to get involved as a professional soldier in the army continue to be higher compared to the quota decided for admission. This has stronger impact particularly in regards to women's advancement in career/higher positions.

In the AF the main criteria for advancing in career are education, experience in key positions and military specialization.<sup>208</sup> In the Albanian army there are no formal restrictions for women in choosing specializations they would like to endorse. Nevertheless, very few of them choose key specializations such as infantry, artillery etc., due to physical strain and long time engagement on the ground that keeps them away from their families. Therefore, the low rate of women involvement in such key positions influences their career advancement. Apparently the length of the courses and the criteria for advancement are such that do not account for gender differences.

Another persistent challenge is the hidden discrimination related again to the institutional culture. As stated by AF representatives, although women may fulfil the criteria priority, it is a norm that more advanced qualifications are given to men.<sup>209</sup> According to them, women are offered fewer opportunities for advanced trainings as men are considered more suitable for higher and more difficult decision-making positions which, unlike the assumptions on women's physical limitations, involve more the other type of skills and preparation.

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207 For instance, only two women participate in the peacekeeping missions in Iraq in 2008 (Dyrmishi et al, 2012).

208 Dyrmishi, Qesaraku and Baka, (2012) Monitoring and evaluation of the security governance in Albania, Tirana: Gent Grafic

209 Ibid

Institution / unit	Hierarchical level			
	Commandment		Decision-making	
	M %	F %	M %	F %
Ministry of Defense	100	0	70.2	29.8
GSAF (General Staff of Armed Forces)	100	0	83	17
LF, AFor,NF, TRADOC	100	0	80	20
LB, RSB	100	0	0	0
Regiments/centers	100	0	0	0
Battalions	100	0	0	0

**Table 1. Representation of women in commandment and decision-making within Albanian Armed Forces (2012)<sup>210</sup>.**

#### *6.2.4. Participation and representation of women in the Albanian State Police (ASP)*

The progress of women's participation in the ASP is more notable as compared to that of the AAF. Back in 2010 the number of women in police was 867 or only 0.9% of the total ASP staff. Measures undertaken have resulted effective and boosted their participation in just one year to a total of 930 or 9.6 %. The current figures about women's participation the Albanian police force show for a total of about 11 % of the overall number and 6% in graded functions. The following table presents gender segregated data of the ASP for 2011 and 2012.

Managerial level	2011	2012
High level	0.0%	16.7%
Middle level	7.7%	7.6%
First level	11.3%	9.7%
Implementation level	4.0%	5.4%
Civilians	53.4%	53.5%
Total	5.50%	6.0%

**Table 2. Women in police according to managerial levels in (%) for 2011 and 2012**

<sup>210</sup> The above mentioned acronyms stand for: LF Land Force, AFor Air Force, NF Naval Force. TRADOC,

Training and Doctrine Command, LB Logistic Brigade RSB Regional Support Brigade

This more optimistic picture in the ASP is a result of a combination of the legal provisions and institutional policies and measures. Recruitment campaigns, awareness raising activities (mainly media campaigns, leaflets, etc) have wakened the interest of young women to get involved in this sector. Part of the mission of these campaigns has been to target the public opinion and enhance their understanding and acceptance of the necessity for including women in police. With the support of international donors (like the OSCE presence in Albania), ASP have conducted media campaigns to encourage women's participation in police.

During these years, the ASP has drafted and implemented the Action Plan on Diversity in State Police 2011-2013 aiming to support the implementation of the gender legal framework in the country. A special directorate within the general directorate of ASP is dedicated to diversity and gender issues. Recruitment processes are claimed to be transparent and accordingly advertised in the website of the ASP, in newspapers, and other media. However, the competitions often lack transparency and appointments are sometimes influenced by political affiliation, particularly when it comes to the leading/decision-making positions.

Position	Females in %
<b>General Director</b>	0
<b>Deputy General Director</b>	25
<b>1<sup>st</sup> level directors</b>	2.4
<b>Directors</b>	9.7
<b>Head Commander</b>	8.8
<b>Commander</b>	7
<b>Deputy Commander</b>	10.6
<b>Head Inspector</b>	6.5
<b>Inspector</b>	3.1
<b>Deputy Inspector</b>	29.8
<b>Civilian</b>	53.5

**Table 3. Women in ASP according to grades 2012 (operational and managerial positions)**

Although the Labour Code stipulates equal payment for work of equal value gender wage gap persists in Albania in all spheres, including security.<sup>211</sup> Regardless of the achievements on the legislative level, in practice, women's opportunities for education and jobs are more limited than those of men. Particularly in the security sector, where the horizontal and vertical gender segregation is more evident than any other sector in the country, Women still remain in supportive, logistical and administrative positions and their representation in primarily managerial position and decision-making ones is still at minimum levels.

### **6.3. REPRESENTATION OF MINORITIES, ACCESS TO JOBS AND CAREER**

According to Albanian legal framework national minorities (Greek, Macedonia-Slav and Montenegrin) are officially recognized as national minorities by the Albanian State. However, there are also ethno-linguistic minorities such as Roma and Aromanian/Vlach communities. This distinction in Albania is embodied in Albanian legal framework in accordance with United Nations Human Rights System and the Framework Convention of the Council of Europe on the Protection of National Minorities. In this frame, in this analysis we consider both categories when reporting representation and participation and only the first category (national minorities) when addressing legal and policy framework.

#### *6.3.1. Constitutional and Legal Framework*

Albanian legal framework on minorities is mainstreamed by principles of equity and respect of human rights of minorities strictly prohibiting policies and practices that could discriminate or put in a disadvantaged position minority members'.<sup>212</sup> The Albanian Constitution sanctions the general principle of equity before the law and protection against

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211 Miluka, J. (2011) Gender Wage-gap in Albania: Sources and recommendations, UNWomen, Tirana: Pegi

212 See Dyrmishi, Qesaraku and Baka, (2012) Monitoring and evaluation of the security governance in

discrimination on different grounds including ethnic minorities.<sup>213</sup> It stipulates the principle of protection and promotion of the identity of persons who belong to national minorities.<sup>214</sup> In addition, it prohibits the existence of organizations that incites and support racial, religious, regional or ethnic hatred.<sup>215</sup>

At the international level, Albania has ratified the Framework Convention of the Council of Europe on the Protection of National Minorities in 1995 which is not legally binding. Also the European Convention on Human Rights (26 November 2004) (the Protocol No. 12) has been ratified. It extends the scope of the prohibition of discrimination, including national minority to all rights. These conventions, according to the Albanian legal system, take precedence to the national laws and they are directly applicable.<sup>216</sup> Also the Stabilization and Association Agreement has incorporated as a membership criteria “respect of human rights and protection of national minorities”. However, Albania has still not adopted the European Charter for regional and minority languages.

More specifically, the Law on State Police stipulates in its article 61 and 62 the principle of non-discrimination on the bases of ethnic origin. Despite all these legislation, there is no special Law on minorities which could take into account the complexity of minority issues including the right to access in jobs. Such law could also help to clarify the State’s position *vis-à-vis* its minorities, including the territorial application of the protection provided to minorities in Albania. A major achievement on this regard is the approval of a comprehensive Law on Anti-discrimination (April 2010). This Law has also included positive discrimination measures for achieving equality as well as measures on

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213 Constitution, Article 18

214 Ibid, Article 20. Further guarantees are provided through legislation such as the Labour Code which provides protection from discrimination in public and private sector (Article 9). In the Article 202 the same Code stipulates that in cases of violations of the art. 9 fines should apply. Also the Code of Administrative Procedures of the Republic of Albania” (1999) sanctions that the Public Administration is guided by the principle of equality, meaning that no-one shall be privileged or discriminated against on grounds of gender, race, religion, ethnic origin, language together with the Penal Code .

215 Constitution, Article 9, See for more details Dyrnishi, Qesaraku and Baka, (2012) Monitoring and evaluation of the security governance in Albania, Tirana: Gent Grafic

216 Constitution, Article 122

protection from any form of discrimination on employment. However, this law does not take particular measures regarding the territorial application of the protection provided to minorities in Albania. This is due to the fact that minorities in Albania are territorially focused in the South of Albania.

Although the legal framework regarding protection of minorities in general could be considered positive, secondary legislation is often lacking making the implementation process more difficult/slow. The secondary legislation is necessary to be adopted in order to enact the constitutional guarantees referring to equality and non-discrimination can be in practice applied.

### *6.3.2. Implementation*

In order to be able to report on implementation and results, indicators and data are necessary. When it comes to minorities obtaining these necessary tools becomes almost an impossible mission. Collection of updated data on the minorities in security sector institutions in Albania is very limited (as in the case of ASP which gathers sporadic data on Roma and ethnic minorities) or inexistent (as in the case of the AF). Thus, very little is known about the situation of minorities in SS due to the lack of statistics. Based on the information gathered from interviews with key informants, it is confirmed that these institutions continue to lack institutional practices of keeping record on representation of minorities in general and on security sector institutions in particular.

Only ASP provided limited data which show for a better-off situation of the Greek minority the hierarchy of the Albanian State Police while Roma and Macedonians are involved only in lower positions. This is in line with the position of Greek minority in the country. They have been dominating the Party of Human Rights in Albania and been in the governing coalitions in the last decades (including the years targeted by this report).<sup>217</sup> Completely opposite is the situation of the Roma community suffering social exclusion and extremely poor integration in

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217      Party of Human Rights in Albania promotes respect of human rights in the country with a main focus on minorities. However, they are overwhelmingly related to the Greek minority of the country.



almost all sectors.

AF do not keep/provide any data on the ethnic makeup of their forces. Their claim, that asking employees/military forces on their ethnicity would be discriminatory, ignores alternative practices which avoid stigmatization or best practices from other sectors and/or countries. Nonetheless, statistics on minorities are difficult to obtain in any sector in Albania. Even the Census 2011 process and results were much contested by the minorities in Albania.

This lack of data, practices in collecting them as well as lack of sensitivity on the issue in general within SS in Albania needs to be addressed immediately. As a first step, it is necessary to introduce institutional practices on the collection and update of data on the presence of minorities in each of the security sector institutions. This might be a useful tool to trigger the development of evidence-based inclusion policies and promotional strategies.

### 6.3.3. *Institutional Capacities*

Lack of data is a major concern for each institution in security sector. Even though the situation of records for women is better than that for minorities, measuring progress and informing future policy/strategy making processes on gender and minorities is made very difficult. To this scope the Minister of Labour, Social Affairs and Equal Opportunities (now Ministry of Welfare and Youth) has endorsed the “National Set of Harmonized Indicators” that requires state institutions, including the Institute of Statistics (INSTAT), to collect data annually from the line ministries including Ministry of Defense (MoD) and the Ministry of Interior (MoI) regarding the percentage of women involved in the Police and Armed Forces according to their grades. Yet, little can be accessed from what it is expected and needed for gender disaggregated data.

At the national level, there have been other attempts to boost institutional capacities for promoting gender equality, women’s rights and minorities rights (although less on the last one). Following the approval of the Law on “Gender Equality in Society” in 2008, a special directorate

was established within the Ministry of Labour Social Affairs and Equal Opportunities (now Ministry of Welfare and Youth) – the Directorate for Equal Opportunities and Family. Additionally, a Sub-Commission on Juveniles, Minors and Equal Opportunities was set up within the Standing Parliamentary Commission of Health, Labour, and Social Affairs as well as National Council on Gender Equality.

Besides these cross-cutting initiatives at the national level, additional measures are taken by respective institutions in the Albanian Armed Forces and Albanian State Police. Since 2010, the Ministry of Defense has established the structure of gender specialists or “gender focal points”. To further improve the institutional performance on gender issues in AF, in 2012 within the Center of Personnel and Recruitments the Sector of Equal Opportunities was established with a mission to monitor implementation of gender equality legal framework and equal opportunities in recruitments of women in the AF. However, even this sector has not “survived” the overall trend and out of 3 staff, 2 are men, including the head of the sector.

Further, a network of gender focal points is established within all the AF relevant institutions. Their mission is to promote gender equality in close collaboration with the gender focal points of the Ministry of Welfare and Youth as well as the Sector of Equal Opportunities within the AF. However, the gender focal points have neither job descriptions nor calculated/recognized workload leading to an overall consideration of the tasks rather of a burden. At least, their capacities have been raised through various trainings and seminars, including trainings on UNSCR 1325 and its implementation.

The ASP has been more attentive in targeting in tandem with gender issues also issues of minorities. As regards institutional structures, the Albanian State Police has established a diversity unit within its recruitment and human resources directorate and has adopted the Declaration of Diversity which highlights that “Diversity is very important for the future of the state police .... Albanian State Police aims to be among the forefront of institutions promoting diversity and gender equality in the country”.

Regarding mechanisms of implementation, monitoring and protection of minorities, progress can be noticed in Albania. Several institutions are established with competences in the field of combating racial discrimination and protection of minorities, such as the People's Advocate, the State Committee on Minorities, and the Office for Minorities within the Ministry for Foreign Affairs. The institutional capacity of the State Committee on Minorities remains weak. Its role as mediator between the government and minority representatives is necessary to be further strengthened in order to ensure effective participation of minorities in decision-making processes (European Commission: 2009).

While the Office for Minorities has as the main objective to monitor the fulfilment of international commitments of Albania with regard to human rights and minorities. It also coordinates together with other institutions implementation of minorities' policies. Another achievement with the Law Anti-Discrimination is the establishment of another mechanism, an independent Commissioner, who is responsible for dealing with complaints brought forward by individual parties, minorities, women, NGO's or the Government.

#### 6.3.4. *Values*

In Albania, what is documented through legal and policy documents and endorsed in institutional structures, does not necessarily comply with the values predominating the institutional culture of both ASP and AF. The discourse on representativeness of women in Albania has been mainly focused on politics with general parliamentary elections and local elections being the main (if not the only) targeted events. Nonetheless, even this discourse has been such that minimum of 30% representation has been considered more of a ceiling rather than a floor to be guaranteed. Representation of women on similar rates in other decision-making bodies besides the Parliament, have been either peripheral or inexistent. Particularly, implementation of quotas in security sector decision-making bodies has been out of the picture.

From interviews and focus-group discussions institutional values and

culture result to be the laggards when it comes to gender equality issues and even more so when it comes to minorities. Gender issues have managed to become part of the agenda while institutional values, culture and often policy framework is still, at its best, minority-blind.

Values and norms of security sector institutions on gender equality seem to combine a gender-neutral approach at the formal, policy level and persist with gender discrimination at the practice level. This might explain also the mismatch between the requests from women wanting to enter AF and police in Albania and the current participation rates as well as the gap between women education and their career advancement.

Training requirements and career development goals as well as qualifications required by each rank and position, are the same for both genders. The professional career in the Albanian Armed Forces has the same promotion span for men and women. Women are educated and trained in the same way, share the same responsibilities, and get the same salaries. Situation is similar in the ASP; although, different norms are applied for men and women during the selection procedures for the physical readiness test, while the intelligence test is the same.

However, women from police and AF report for practices, values and norms within the SS that have consolidated an impermeable glass ceiling which inhibits women to advance in their career. Women in SS are reluctant and unmotivated to participate for promotional positions. The lack of job description and information on specific area of employment discourages them from applying and negatively affects their advancement towards leading positions. Additionally, career development is based on criteria such as qualifications, trainings, testing procedures and experience based in a system of grades. Even there is no restriction for women participation; criteria are designed by and for men and selection processes are run by men within SS leading to an overall biased situation.

Security sector in Albania remains minority-blind. Still, there is no evidence in public debates on the issue of the necessity of representation of minorities in security sector institutions. There is also lack of evidence

regarding minorities representatives' interest to work in security sector institutions and barriers that prevent them from entering and advancing in these institutions. It is even less likely for debates, policies, and data to differentiate and inform on the variations between different minorities. This is particularly important in a context where certain minority groups are particularly empowered and others highly excluded.

#### 6.4. CONCLUSIONS AND RECOMMENDATIONS

- In Albania, despite measures at policy/institutional level, it still remains easier for men compared to women to get involved and promoted in SS in Albania. Promotional or encouraging measures to support women's engagement and advancement within Albanian Police and AF are still sporadic. Measures at policy, regulation and practice level are less vibrant regarding minorities, their integration and participation in the Albanian security sector.

***Recommendation:*** women, gender, and minority issues should be priority issues in the agenda of policy- and decision-making in the security sector of Albania.

- It seems that although Albania has achieved progress regarding the legal framework on protection of minorities which is in compliance with international standards, there are concerns regarding the effective implementation of this legislation. Many of these laws are not followed by clear implementing mechanisms and procedures as well as financial support that would help minorities exercise their rights.

***Recommendation:*** legal framework should be enriched with secondary legislation and mechanisms and procedures which give way and help monitor their implementation need to be put in place.

- Particularly minority issues remain peripheral not only to the values and culture of security sector but also to the Albanian public

discourse. This is, among others, manifested in the lack of minority sensitive data in the security sector. Gender-segregated data are also not always available and/or easy to access.

***Recommendation:*** security sector in Albania should strengthen and improve the gender-segregated collection of data and introduce the practice of collecting data on the minorities participation and representation at horizontal and vertical levels within security sector in Albania.

- Overall, beyond general development trends, within security sector there are variations in performance and achievements among sub-sectors with several positives initiatives and achievements for the ASP or AF respectively. These practices could serve as examples in improving policy practice and achievements in the other areas.

***Recommendation:*** Cross-sectoral and intra-sectoral collaboration, sharing of experiences and best practices should be encouraged so that local best practices in specific areas can benefit the security sector developments at large.

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## **Annex 1**

### **Milestones in integrating gender equality in Albanian legal framework**

- Adoption of Law No. 9970, date 24.07.2008 “On Gender Equality in Society” which, among other things, addresses the areas of labour and employment, and the adoption of the National Strategy on Gender Equality and Domestic Violence (NSGEDV), and its accompanying Action Plan, 2007-2010 (CMD Nr.913/19.12.2007);
- Adoption of the Law No. 9669, date 23.12.2006, “On Measures Against Violence in Family Relations”
- Adoption of Law No. 10237, date 18.2.2010, “On Health and Safety at Work” which addressed issues such as the protection of pregnant and lactating women from hazardous substances, hard working conditions more in line with CEDAW and EU standards;
- Adoption of the Law No. 10221, date 4.2.2010, “On Protection from Discrimination”, which reinforces the law on Gender Equality. It includes the establishment of new independent mechanisms, such as the newly established Office of the Commissioner for the Protection against Discrimination, which was not envisaged under the Law on Gender Equality.

#### **Relevant international instruments:**

- Protocol No. 12 of the European Convention “On Protection of Fundamental Human Rights,” ratified by Law No. 9264, dated 29.07.2004, the focus of which is the prohibition of discrimination in general;
- Optional Protocol of the Convention “Against Severe Inhuman or Degrading Torture and Treatment,” ratified by Law No. 9094, dated 03.27.2003;
- European Convention “On Compensation of Victims of Violent Crimes,” ratified by Law No. 9264, dated 29.07.2004;
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