



**An assessment of the role of the Independent Oversight Bodies
in Security Sector Reform
in Albania**

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List of Abbreviations

AF	Armed Forces
APCPI	Additional Protocol to Convention for Protection of Individuals
CA	Contracting Authorities
CISD	Classified Information Security Directorate
CLAPAHR	Committee on Legal Affairs, Public Administration and Human Rights
CNS	Commission on National Security
CPD	Commissioner for Protection from Discrimination
CPDP	Commissioner for Personal Data Protection
DCAF	Geneva Centre for the Democratic Control of Armed Forces
EU	European Union
FIU	Financial Intelligence Unit
GI	General Inspector
HIDAA	High Inspectorate for the Declaration of Audits and Assets
IOB	Independent Oversight Bodies
LPD	Law on Protection from Discrimination
LPP	Law on Public Procurement
MoD	Ministry of Defence
MoI	Ministry of Interior
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Cooperation in Europe
PA	Procurement Advocate
PsA	People's Advocate
RA	Responsible Authority
ShISh	State Intelligence Service
SIGMA	Support for Improving in Governance and Management
SP	State Police
SSAI	State Supreme Audit Institution

1. Introduction

This research paper analyses the independent oversight bodies (IOB) in Albania.¹ For the purpose of this study, IOBs are defined as those institutions that are established by the Parliament and are accountable to it. They form an essential part of the democratic governance of the security sector. Along with the executive branch, the legislative branch and the judiciary these institutions contribute in holding the security sector accountable to elected civilian representatives.

The aim of the research is to assess the performance of the IOB focusing on the role they play as part of the accountability system of the security sector institutions. This research is mainly addressed to decision-makers from the Albanian institutions but also to civil society, academia, media, and foreign donors.

The paper analyses the IOB by looking at the scope of their mandate, the legal framework through which they were created and function, their available resources as well as their relations with the security institutions, the government, the Parliament and the public. Given the importance of the *'independence'* of these institutions the paper pays particular attention to this element.

The institutions analyzed by this study include:

- the People's Advocate (PsA)
- the Commissioner for Personal Data Protection (CPDP)
- the Commissioner for Protection from Discrimination (CPD)
- the State Supreme Audit Institution (SSAI)
- the High Inspectorate on Declaration and Audit of Assets (HIDAA)
- the Procurement Advocate (PA)

The increasing number of IOBs during the last years reveals the high degree of confidence the Albanian Parliament has created towards these institutions by delegating them oversight and control competences for the implementation of the laws approved by it. However, no independent assessments exist on the performance of IOBs that could shed light on the extent to which this trend is justified. Attempting to fill in this vacuum, this paper analyses the IOB from the civil society perspective, specifically focusing on the role these structures have been playing in regard to the control and oversight of the security sector institutions.

The research is based on the analysis of the legal framework, the capacities, and expertise, the independence of the IOB, as well as their relations with the security sector institutions, the executive and the Parliament.

¹ Part of this publication was originally developed as part of the research project: "*Civil Society Capacity Building to Map and Monitor Security Sector Reform in the Western Balkans*". This regional project involved 7 regional think-tank organizations from Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia and was developed in cooperation with the Geneva Centre for the Democratic Control of the Armed Forces (DCAF) (www.dcaf.ch). The methodology for the mapping and monitoring of security sector reform was developed by the Belgrade Centre for Security Policy (www.ccmr-bg.org). The project was financially supported by the Ministry of Foreign Affairs of the Kingdom of Norway.

The findings of the research show that generally the legal framework that governs the functioning of IOBs is in line with international standards and allows them to perform their tasks. However the level of independence of some IOBs and their mandate with regard to security sector institutions seems to be weak. Further improvements are needed to allow for a more effective implementation of the existing legislation. The security sector institutions are generally supportive to the activities of the IOB and implement their recommendations. However, there are still recommendations which are either dropped or dragged into bureaucratic procedures.

The IOB are financed by the state budget and possess the necessary human and material resources to allow their performance. Nevertheless, nearly all of them maintain that their budgets have shrunk and that the human resources they possess do not suffice for allowing them to perform effectively.

In general, the effectiveness of the IOB is determined by the degree of institutional consolidation. The older institutions which are more consolidated are entirely focused in fulfilling their mandate while the more recently established ones are mainly concentrated in building their capacities.

All the IOB report regularly to the Parliament and their reports are discussed in the permanent Parliamentary committees. However, the Parliament can and shall do more to help the IOB to better fulfil their mandate. One of the main challenges faced by the IOB-s is the politicization of their activities and the trend to weaken their independence.

The research was conducted by reviewing the legislation, the IOB reports to the Parliament, parliamentary documents, information received by the IOB upon questionnaires sent to them, media reports, and reports of international organizations, interviews, and focus groups. Despite the readiness of the IOB to contribute to this research, they provided mainly superficial feedback.

The following section analyses the IOB that oversee the implementation of the legislation that guarantees the fundamental human rights and freedoms. The second section analyses the IOB that oversee the implementation of the legislation on the budget, procurements, and fight against corruption. The last section draws conclusions and recommendations for improving the effectiveness of the IOB.

2. Oversight of fundamental human rights and freedoms

This chapter analyses the IOB that control the implementation of the legislation that protects fundamental human rights and freedoms of citizen in Albania. The first institution analyzed is the People's Advocate, followed by the Commissioner for Personal Data Protection and the Commissioner for Protection from Discrimination.

2.1. The People's Advocate

This section considers the People's Advocate institution (PSA).

Particular attention is dedicated to analyzing the conditions that led to the establishment of the PsA, the constitutional mandate and other tasks attributed to this institution by the relevant legislation, its independence, its jurisdiction and access to security sector, the implementation of the legislation, the performance of the institution, the right to information on official documents and finally the relations with the other institutions and the public.

2.1.1. Establishment

The systematic breach of human rights in Albania during communism and the difficulties to provide full protection of these rights during the early post-communism years necessitated the drafting and adoption of a new framework.² Thus, the 1998 Constitution placed major attention to the protection of human rights and established the PsA, as the key institution for overseeing the implementation of the laws in this area.

Chapter VI of the Constitution provides the mandate, the independence, and the jurisdiction of the PsA.³ The law on the PsA was adopted in 1999 and further improvements to it were made in 2000 and 2005. The first PsA was elected in February 2000, marking also the start of this institutions' activity. The participation of 15 candidates in the election process of the first PsA indicated the major importance attached to the new institution by political actors.⁴

An important role was played by the international community which provided unlimited advice and support. The OSCE, the Council of Europe and several individual countries were active supporters of the establishment of the PsA. Denmark in particular provided considerable financial support and expertise which helped the process of the establishment and consolidation of the PsA institution during the early years.⁵

2.1.2. Constitutional and legal framework

2.1.2.1. Mandate

The task of the PsA is to: “defend the rights and freedoms of the individuals from unlawful or improper actions or failures to act of the organs of public administration”⁶ Apart from the mandate provided in the Constitution and the organic law,⁷ additional tasks have been allocated to the PsA through other laws. Thus, the PsA is responsible also for overseeing the implementation of the law on the right to information of official

² See Human Rights Watch, “*Report for Albania, 1996*” and Human Rights Watch, “*Report for Albania, 1997*”, www.hrw.org

³ Constitution of Albania, Article 134

⁴ Peoples' Advocate, “Annual Report to the Parliament. 2000”

⁵ The People's Advocate, “*The Peoples' Advocate in Albania*”, 2003, <http://www.avokatipopullit.gov.al/Raporte/AP.pdf>

⁶ Constitution of Albania, Part II, Chapter VI, Article 60

⁷ Law No.8454, date 04.2.1999, “On the People's Advocate”, amended by Law No.8600, date 10.04.2000, and Law No. 9398, date 12.5.2005

documents,⁸ and the law on the rights and treatment of the convicted.⁹ Until 2008 the PsA was responsible for overseeing the implementation of the law on the protection of personal data too.¹⁰

2.1.2.2. Independence

The Constitution stipulates that the PsA is independent in exercising its duties. The PsA is elected by the Parliament by three-fifths of all its members. It may be discharged from duty only by the Parliament with three-fifths of all its members on grounds of reasoned complaint filed by not less than one-third of its members. The PsA is immune from prosecution and enjoys similar immunity to the members of the High Court.¹¹ In an effort to strengthen its independence the PsA is banned from participating in parties or conduct political activities. In the discharge of his/her duties, the PsA is accountable only to the Parliament.¹² In order to ensure full independence, the PsA has its own budget which is approved by the Parliament.¹³

2.1.2.3. Jurisdiction over the security sector

With the exception of the President of the Republic and the Prime Minister, all other state institutions fall under the jurisdiction of the PsA.¹⁴ The court decisions and orders of a military nature are also excluded from PsA's jurisdiction.¹⁵

The law on the PsA lays down several provisions which facilitate the oversight of the security sector. First, it provides for the establishment of a section responsible for overseeing the police, the intelligence service, the Prisons Police, the Armed Forces and the judiciary.¹⁶ The section is headed by one of the three Commissioners elected by the Parliament. Second, in the course of an investigation the PsA is granted unlimited access documents, including classified information, to premises, staffs or other people with no immunity from prosecution.¹⁷ Third, in case of non compliance with the PsA request, the latter may initiate an administrative proceeding, propose sanctions against civil servants, or further propose to the Parliament to undertake specific measures.¹⁸ Fourth, the PsA may recommend the improvement or abrogation of legislation and other normative acts, in case they are considered susceptible to lead to human rights breaches.¹⁹

⁸ Law No.8503, date 30.6.1999, "On the right to information of official documents", Article 18

⁹ Law No.9888, date 10.3.2008, "On some amendments on the Law No. 8328, date 16.4.1998 on the Rights and Treatment of the Convicted",

¹⁰ Since 2008 this task is covered by the Commissioner for Personal Data Protection.

¹¹ Constitution of Albania, Article 61

¹² Constitution of Albania, Article 63

¹³ Constitution of Albania, Article 60

¹⁴ Law on PsA, Article 25

¹⁵ Law on PsA, Article 25

¹⁶ Law on PsA, Article 31

¹⁷ Law on PsA, Articles 19,19/1, 20

¹⁸ Law on PsA, Articles 22/1, 23

¹⁹ Law on PsA, Article 24

2.1.2.4 Implementation of the legislation

Since the establishment of the PsA institution two elections have taken place where the same person has been re-elected.²⁰ Since February 2010 the PsA position has been vacant. Due to the political stalemate since 2009 the Parliament has been unable to form the required quorum for electing the new PsA.

The PsA has reported annually on regular basis to the Parliamentary Committee on Legal Affairs, Public Administration, and Human Rights (CLAPHR). The reports cover extensively the activity of the PsA and the oversight of the security sector institutions occupy a considerable part of them.

The annual reports analyzed for this research reveal little or no problems with regard to the implementation of the legislation by the security sector institutions and the executive branch. The reports do not discuss any problems related to the access of the PsA to the security institutions including premises, documents, and staff. The analysis of the reports reveals that the acceptance rate of the recommendations of the PsA is relatively high.

The PsA has a staff of 48, including 5 human right experts running the National Preventive Mechanism against Torture.²¹ The institution has been able to recruit well educated personnel and in addition has provided continues on the job training for its staff. However the number of staffs is considered insufficient by the PsA.²² The reports reveal that the PsA is satisfied with the offices which are considered to offer a comfortable working environment for the staff.²³

2.1.3 Performance of the PsA institution

The performance of the PsA is assessed by reviewing the reports presented to the Parliament for the period 2000-2010, parliamentary documents, questions sent out to the institution and interviews.

As shown by the graph, the office of the PsA has dealt with a significant number of cases that involve security sector institutions (Graph 1). The institutions that have been reported the largest number of cases are the police and the prisons followed by the Prosecution and the Armed Forces (AF).

The number of cases involving the intelligence services is minimal, although the reports contain only cases referred on the State Intelligence Service.²⁴ Despite the variations in the number of cases treated during different years, the mean number is rather constant through the analyzed period. Although it is difficult to interpret this pattern with the current data in the long term the establishment of an environment conducive to the respect of human rights should have led to a constant decrease in number of cases.

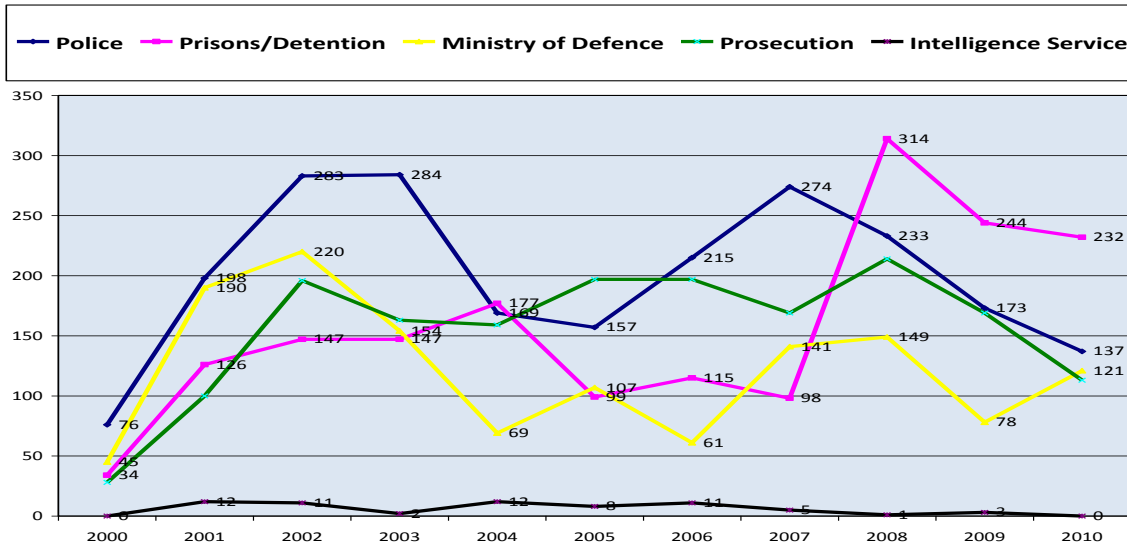
²⁰ Ermir Dobjani has served for two subsequent mandates as the People's Advocate from February 2000 to February 2010.

²¹ People's Advocate, "Annual Report to the Parliament, 2010"

²² Focus Group Discussion with IOB Representatives, 13 October 2011.

²³ Peoples' Advocate, "Annual Report to the Parliament, 2009"

²⁴ The reports do not contain cases referring to the Military Intelligence Service or the other intelligence services.



Graph 1: Number of cases addressed by the PsA related to the security institutions.
Source: Compiled with data from the PsA reports to the Parliament.

On the other hand, the high number of cases is indicative to the trust that the citizen place on the PsA institution. However, it is important to highlight that not all the cases treated in the PsA reports refer to human rights' violations. Apart from cases which involve police violence, unauthorized access to premises, unlawful detention, and inhuman treatment in custody, the cases reported by the PsA include also labour disputes, payment and allowances disagreements etc.

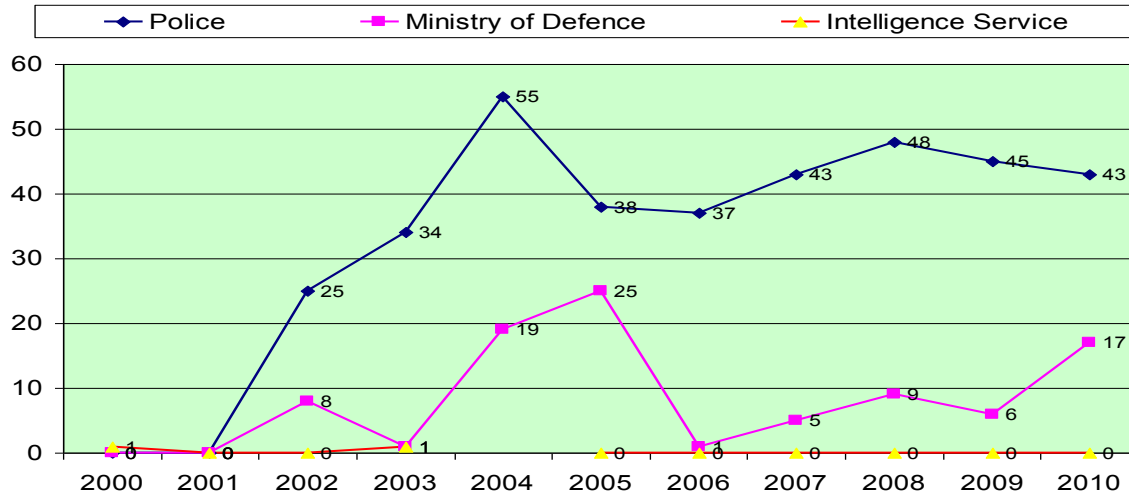
The PsA has issued a number of recommendations for amending legislation or other normative acts as well as in regard to the addressing of specific cases. Since the establishment of this institution, nearly 80% of the recommendations issued by the PsA have been endorsed by the security institutions, the executive, and the Parliament.²⁵ The flow of recommendations issued during the ten years period for the military, the police and the intelligence service is presented in the graph below (Graph 2).

An area where the PsA reports reveal no activity and which is highly susceptible to lead to human rights breaches, is the control on the legality of the operations conducted by the Police, the Prosecution and the Intelligence Service. The use of special measures of investigation, such as the interception of the telecommunications has been widely discussed even by the media. In 2007, the General Prosecutor reported a high number of interceptions conducted by the police and the intelligence services,²⁶ while in 2009 it was the vice Chairman of the High Council of Justice who raised the same issue and proposed the amendment of the law on the interception of telecommunications.²⁷ However the PsA has not reported any investigation or any recommendation to address this issue.

²⁵ Focus Group Discussion with IOB Representatives, 13 October 2011.

²⁶ Rama, A. "Sollaku: Albania same number of interceptions as the US" *Shekulli Newspaper*, 13 March 2007. <http://www.shekulli.com.al/news/45/ARTICLE/6270/2007-03-13.html>. Accessed in January 2011

²⁷ "Spahiu: Changes in the law on interceptions" *Koha Jonë Newspaper*, 14 February 2009 http://www.kohajone.com/html/artikull_37663.html. Accessed in January 2011



Graph 2: Number of cases addressed by the PsA related to the security institutions. Source: Compiled with data from the PsA reports to the Parliament.

2.1.4. Contributions and challenges

2.1.4.1. Right to information on official documents

The control on the implementation of the legislation on the right to access to official documents is another area where PsA's contribution has not been so effective. The Constitution guarantees the right to access information stating that 'everyone has the right, in compliance with law, to get information about the activity of state institutions'.²⁸ This fundamental right is regulated by the law on the right to information on official documents and the PsA is responsible for overseeing its implementation.²⁹ As reported by the PsA the law is poorly implemented for several reasons, mainly related to the poor knowledge and performance of public administration.³⁰ Since 2007, the PsA has recommended a template regulation to the Government for use by all state institutions in implementing the legislation on the right to access information but it has not been adopted yet.³¹ However, no administrative proceeding or sanction against civil servants or other public administration officials have been initiated by the PsA on the matter, as stipulated by the law.³²

2.1.4.2. Relations with other institutions and the public

²⁸ Constitution of Albania, Chapter II--Personal Rights and Freedoms, Article 23

²⁹ Law No. 8503, date 30.6.1999, "On the right to information on official documents", Article 18

³⁰ Peoples' Advocate, "Annual Report to the Parliament, 2011", p.8

³¹ Peoples' Advocate, "Annual report to the Parliament, 2010"

³² Law on PsA, Articles 22, 22/1, 23

The performance of the PsA institutions cannot be detached from the response of the security institutions which are subject to the oversight. So far the PsA has established a good working relation with relations with the security institutions which comply fully with the PsA requests during the investigation of the cases.³³

As the direct principal of this independent institution, the Parliament plays a key role in shaping the PsA activity. The PsA reports annually to the Committee on the Legal Affairs, Public Administration and Human Rights, but has reported in plenary sessions also. The Parliament assesses the reports through resolutions adopted in plenary session. However the members of the committee do not seriously scrutinize the respect of human rights by the security institution so the entire process is rather formal.³⁴ The resolutions simply ‘calls upon the public administration or ‘urges the PsA’ but there are no pledges by the Parliament to commit itself to concrete actions in support of the PsA.³⁵ The formal approach is evident in the poor coordination between the two permanent committees that deal directly or indirectly with the oversight of the security institutions: the Committee on Legal Affairs, Public Administration and Human Rights (CLAPHR) and the Committee on National Security (CNS). The first oversees the legality of actions of the security institutions with regard to the respect of human rights the latter oversees the performance of the security institutions with regard to their performance. Despite the obvious correlation, the PsA has never been invited to the hearings of the reports by the security institutions in the CNS. On the other hand the Parliament has failed to guarantee that the opinion of the PsA is always included in the draft laws related to the security institutions proposed by the government. A positive step has been undertaken through the establishment of the service for monitoring the relations with the independent institutions in the Parliament which has increased the frequency of communication with the PsA.³⁶

Since the establishment the institution in 2000 the PsA has become an important reference for the citizens. The high number of complaints and the high number of cases solved are demonstrations of the increasing public credibility towards this institution. The PsA maintains an easy to access and user friendly website which is rich in information. In addition to the information campaigns to reach out to public, the PsA has extensively taken advantage of the media to communicate to the public as well as to present the views and concerns of the institution.³⁷

³³ Interview with Artur Lazebeu, Chief of the Cabinet of the PsA

³⁴ Minutes from the report of the PsA to the Committee on the Legal Affairs, Public Administration and Human Rights, 2008, 2009, 2010,

http://www.parlament.al/web/Procesverbalet_10044_1.php, Accessed in August 2011

³⁵ Parliament of Albania, “*Resolutions of the Parliament on the assessment of the PsA activity for, 2004*”; Parliament of Albania, “*Resolutions of the Parliament on the assessment of the PsA activity for 2005*”; Parliament of Albania, “*Resolutions of the Parliament on the assessment of the PsA activity for 2006*”; Parliament of Albania, “*Resolutions of the Parliament on the assessment of the PsA activity for 2007*”; Parliament of Albania, “*Resolutions of the Parliament on the assessment of the PsA activity for 2008*”; Parliament of Albania, “*Resolutions of the Parliament on the assessment of the PsA activity for 2010*”

http://www.avokatipopullit.gov.al/?page_id=259. Accessed in August 2011

³⁶ Parliament of Albania, Decision No. 29, date 09.7.2007, “On the establishment of the service for the monitoring of the institutions that report and inform the Parliament”

³⁷ The report of the PsA to the parliament covering the year 2009, boasts some 370 newspaper articles and TV broadcasts related to the activity of the institution.

2.2. The Commissioner for Personal Data Protection

This section analyses the institution of the Commissioner for Personal Data Protection (CPDP). First we analyse the establishment of the CPDP and the legacy to the PsA. Then the mandate, the jurisdiction, and the level of independence of the CPDP are analyzed, to conclude with the analysis of the implementation of the legislation and the performance of the CPDP office. The analysis is based on the legislation, the reports of the CPDP to the Parliament as well as other secondary sources.

2.2.1 Establishment and Legacy to the PsA

The Constitution lays down clear provisions on the right for protection of personal data except when provided otherwise by law and the right to correction or erasure of untrue or incomplete data when these are collected in breach of the law.³⁸ In line with the constitutional provisions the law on protection of personal data was adopted and the People's Advocate was given the authority to oversee the implementation this law and create the register on the data protection.³⁹ However the performance of the PsA in this respect resulted to be poor as the legislation was lacking specific provisions for its implementation.⁴⁰

In 2004, the Parliament ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data' and the law for the ratification of the Additional Protocol to the Convention for the Protection of Individuals (APCPI) with regard to Automatic Processing of Personal Data regarding supervisory authorities and trans-border data flows. The APCPI stipulates the establishment of an independent oversight body empowered to 'investigate and intervene, as well as to engage in legal proceedings or bring to the attention of the competent judicial authorities cases of breach of domestic law provisions'.⁴¹ After the ratification of the APCPI, Albania committed itself to establish an independent authority for the protection of the personal data within the framework of the Stabilization and Association Agreement with the EU.⁴² The new law on the data protection which established the Commissioner for Personal Data Protection (CPDP) was adopted in 2008.

2.2.1.1. Personal data protection before 2008

Although the law on data protection was adopted since 1999, the reports of the People's Advocate to the Parliament began to mention the data protection only in 2005,⁴³

³⁸ Constitution of Albania, Article 35

³⁹ Law No.8517, date 22.7.1999, "On the protection of personal data", Article 15

⁴⁰ Peoples' Advocate, "Annual Report to the Parliament, 2008"

⁴¹ Council of Europe, "Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows", November 2001; Strasbourg, p.8.

<http://www.garanteprivacy.it/garante/document?ID=1798198>. Accessed in October 2011

⁴² Council of European Union, "Stabilization and Association Agreement between the European Communities and their Member States as one part and the Republic of Albania as the other", 22 May 2006, Brussels,

http://ec.europa.eu/enlargement/pdf/albania/st08164.06_en.pdf. Accessed on October 2011

⁴³ A reference is found in the 2004 reports which mention the risk of abuse by the media with personal data.

when the register of the treatment of personal data was created for the first time.⁴⁴ Nevertheless this register was never used.⁴⁵ During the following years until 2008 the PsA dealt with isolated cases that violated the law on personal data protection, involving mainly the compliance of legal orders issued by the police authorities.⁴⁶ The PsA had concluded that low number of cases reported was a consequence of the low level of information possessed by the citizens regarding this fundamental right and this didn't mean violations didn't exist.⁴⁷ Despite the weak performance regarding the direct oversight for the implementation of this law, the PsA has been a strong supporter of the establishment of the CPDP and has contributed in many ways for this institution.⁴⁸

2.2.2 Mandate, competences and jurisdiction

The CPDP is the responsible authority for supervising and monitoring, in accordance with the law, the protection of personal data by guaranteeing the fundamental human rights and freedoms.⁴⁹ Competences of CPDP include: undertaking administrative investigations, the authority to order the interruption, erasure, destruction, or suspension of data collection processes that violate the laws, and issues regulations on data processing.⁵⁰ The CPDP authorizes also the international transfer of personal data.⁵¹

All state and private institutions are obliged to cooperate with the CPDP office providing it with the information required to fulfil its tasks.⁵² However, regarding the security sector institutions the CPDP has limited jurisdiction. The law lacks provisions for access to classified information. Such access may be limited for national security purposes, foreign policy, or other important state interests.⁵³ In addition, the law excludes national security institutions and institutions tasked with the prevention of crime from the obligation to inform the CPDP on personal data processing.⁵⁴

2.2.3 Independence and resources

The Commissioner for the Protection of Personal Data is elected by the Parliament upon proposal by the Council of Ministers. It has a five year mandate which is subject to renewal. The Parliament approves the budget and the administrative structure of the institution. However the sub-legal acts that regulate the implementation of the law on data protection are issued by the Council of Ministers, limiting therefore the independence of CPDP.

⁴⁴ People's Advocate, "Annual Report to the Parliament, 2005", 26

⁴⁵ Peoples' Advocate, "Annual Report to the Parliament, 2008"

⁴⁶ Peoples' Advocate, "Annual Report to the Parliament, 2006"

⁴⁷ People's Advocate, "Annual Report to the Parliament, 2007"

⁴⁸ Peoples' Advocate, "Recommendation of the People's Advocate to the Prime Minister and the Minister of Justice of 3 may 2007 on the preparation of the draft law to establish an independent supervising authority responsible for the protection of personal data in Albania",

<http://www.avokatipopullit.gov.al/Korrespondenca/Korr%2022052009.htm>, Accessed in August 2011

⁴⁹ Law No.9887, date 10.3.2008, "On the protection of personal data", Article 29

⁵⁰ Law No. 9887, Article 30

⁵¹ Law No. 9887, Articles 8,9

⁵² Law No.9887, Article 32

⁵³ Law No.9887, Article 12

⁵⁴ Law No.9887, Article 21

The CPDP presents a yearly activity report to the Parliament but may be called to report whenever deemed as necessary by the last.⁵⁵

2.2.4. Implementation of the legislation and performance

The Commissioner for Personal Data Protection was elected by the Parliament within months after the adoption of the law.⁵⁶ Soon after, offices and staff were allocated to this institution. Currently the CPDP has a staff of 29 persons and considers this number as insufficient for fulfilling the institutions' needs. Office spaces are considered sufficient but office equipments do not suffice for all the staff. Apart from state budget funds, the CPDP has received funding and donations from the European Commission, the Council of Europe and the OSCE.⁵⁷ The budget covers for staff payment and basic operations. However, given the wide scope of this institution, the funds are considered as insufficient for sustaining the whole range of activities it performs. The training and qualification of the staff constitute a main priority for the CPDP institution that has been addressed through seminars and trainings taking place domestically and abroad.

The Commissioner issues administrative orders and regulations and the Council of Ministers has approved the sub legal acts for the implementation of the law.⁵⁸

As laid down in the legal provisions, the interaction of the CPDP with the security sector is limited. This is reflected also in the reports of CPDP to the Parliament. However, given the wide scope and difficulties to delineate the definition of national security, it remains unclear how the data relating to national security is defined. Given the limited interaction of the CPDP with the security sector institutions this issue has not emerged yet.

Some early interaction of the CPDP with the security sector has been identified regarding the cooperation with the State Police (SP). More specifically the CPDP has signed agreements with the General Directorate of the State Police and drafted guidelines and regulations on the protection of personal data by the SP.⁵⁹ Another approach has been the information of the police structures in joint seminars organized by the CPDP with SP, to discuss the legislation and best practices in the protection of personal data by SP.⁶⁰

2.3. The Commissioner for Protection from Discrimination

This section analyzes the institution of the Commissioner for Protection from Discrimination (CPD). First it analyzes it's the establishment and legal framework of this institution and then it follows with the capabilities of CPD, its performance and its mayor contributions and challenges.

⁵⁵ Law No. 9887, Article 31

⁵⁶ Commissioner Flora Çabej was elected in September 2008.

⁵⁷ Commissioner for Personal Data Protection, "Annual Report to the Parliament, 2010"

⁵⁸ Commissioner for Protection from Discrimination, "Annual Report to the Parliament 2009" and, Commissioner for Protection from Discrimination, "Annual Report to the Parliament, 2011"

⁵⁹ Written information provided by CPDP

⁶⁰ Seminar on the protection of personal data in the police sector, 7 October 2011, <http://www.kmdp.al/>, Accessed in October 2011

2.3.1 Establishment and legal framework

The Constitution of Albania provides that ‘all people are equal to the law and no one should be unjustly discriminated on grounds of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry.’⁶¹ Based on these principles and upon the urge by international community and civil society, Albania adopted the Law on Protection from Discrimination (LPD) in February 2010.⁶² It aims to regulate the implementation and enforcement of the principle of equal treatment in connection with a non-exhaustive list of grounds including gender, race, disability, and sexual orientation.

Thus, the Law on Protection from Discrimination (LPD) aims to assure the right of every person to effective protection from discrimination and from every form of conduct that encourages discrimination and equality of opportunities and possibilities to exercise rights, enjoy freedoms, and take part in public life.⁶³ The principles provided by LPD apply to all the public sectors, including security.

In accordance with the LPD, the CPD was firstly appointed in April 2010, taking over the discrimination issues and policies that were previously covered by the PsA. However, the scope of CPD mandate is wider, since it comprises the private also.⁶⁴ The CPD represents the mechanism introduced by law to guarantee the effective protection from discrimination and inequalities for individuals as well as for legal entities. In addition the tasks of the Commissioner include the authority to:

- review the complaints from persons or groups
- review the complaints from organizations that have legal interest to act on behalf and with the written consent of the individuals or groups of individuals that pretend discrimination has occurred,
- conduct administrative investigations after receiving credible information for violation of LPD
- impose administrative sanctions for those that violate this law
- make recommendations for the improving of existing legislation or for the issuing of new one regarding anti-discrimination.⁶⁵

The CPD is elected by simple majority of all the members of Parliament upon proposal by a group of deputies. The commissioner is elected for a five years mandate subject to renewal only for one subsequent term.⁶⁶

The commissioner reports to the Parliament on the implementation of the LPD and its activities at least once a year. Due to the recent establishment, the CPD has reported only

⁶¹ Constitution of Albania, Article 18

⁶² Commission of European Communities, “Analytical report accompanying the Communication from the Commission to the European Parliament and the Council, Commission Opinion on Albania’s application for membership at the European Union”, 9 November 2010, Brussels

http://ec.europa.eu/europeaid/infopoint/publications/enlargement/47f_en.htm, Accessed in September 2011

⁶³ Law No.10221, date 4.2.2010, “On protection from discrimination”, Article 2

⁶⁴ As stated by the representative of CPD during the final conference for presenting this study’s findings.

⁶⁵ Law No.10221, Article 32.

⁶⁶ Law No. 10221, Article 25.

once before the CLAPHR. The report states that the number of complaints has been four and one of them is handled in by a former police official.⁶⁷ In this regard, The State Police has been fully cooperative with the Commissioner to review this complain.⁶⁸

2.3.2 Capabilities

The CDP has his own budget financed from the State Budget and from various donations.⁶⁹ The budgetary shrinking for 2010, have influenced the recruitment process in terms of number of recruited personnel. Currently the CPD's office has a staff of 20 persons instead of 23 as provided by the decision of the Parliament.⁷⁰ Also, the analytical report of the European Commission highlights the fact that the Office of the Commissioner is not fully operational. Therefore, an adequate funding of the office of CPD is essential to ensure its capacity to examine complaints and to undertake awareness-raising activities while implementing the principle of equal treatment.⁷¹

2.3.3. Performance

Given that the CPD has been recently established, it is difficult to assess the performance and contribution of this institution towards protection from discrimination.

Nevertheless, the limited budget has resulted in low levels of awareness on the LPD and CPD as the main mechanism for the implementation of the law provisions.⁷² It has also hampered the fulfilment of the Commissioners' competences and functions as provided by law.⁷³

2.3.4. Contribution and Challenges

LPD provides that the Council of Ministers, the Minister of Labour, Social Issues and Equal Opportunities and the Minister of Interior are responsible for taking measures of a positive nature in order to fight discrimination in connection within the respective fields of activity.⁷⁴ In compliance to LPD the Prime Minister issued an Order to further regulate the

⁶⁷ Commissioner for Protection from Discrimination, "Annual report to the Parliament, 2010"

⁶⁸ Commissioner for Protection from Discrimination, "Official letter from CPD to the Institute for Democracy and Mediation", date 13. 10. 2011.

⁶⁹ Law No. 10221, Article 21.

⁷⁰ Parliament of Albania, Decision No.34, date 20.5.2010, "On the approval of the organisational structure and the classification of pay for the employees of the Office of the Commissioner for Protection from Discrimination"

⁷¹ Commission of European Communities, "Analytical report accompanying the Communication from the Commission to the European Parliament and the Council, Commission Opinion on Albania's application for membership at the European Union", 9 November 2010, Brussels

http://ec.europa.eu/europeaid/infopoint/publications/enlargement/47f_en.htm, Accessed in September 2011

⁷²Open Society Foundation for Albania. "Analysis and Recommendations for the Action Plan to Address the 12 Recommendations of the EC Opinion", 22 April 2011

http://www.soros.al/2010/foto/uploads/File/OSFA%20-%20Analysis%20of%20Action%20Plan%20-%2012%20EC%20Recommendations%20-%20april%202011_EN.pdf, Accessed on September 2011

⁷³Commissioner for Protection from Discrimination, "Official letter from CPD to the Institute for Democracy and Mediation" date 13. 10. 2011.

⁷⁴ Law No. 10221, date 4.2.2010, "On protection from discrimination", Article 14

implementations of the law in the respective ministries.⁷⁵ However, as regards the security sector, in the near future, there will be reserved no special focus on raising awareness on the right of protection from discrimination to security sector institutions.⁷⁶

Therefore, the main priorities of the office of CPD would be awareness - raising campaigns of the citizens on the right of protection from discrimination, foster cooperation with other actors concerning the protection of human rights whether public institutions, national and international civil society organizations, capacity building of the personnel and making recommendations on the improvement of the current legislation.⁷⁷

3. Control on the state budget, procurements and corruption

This chapter analyses the IOB whose mandate is related to the financial activity of the security sector institutions. The first institution that will be analyzed is the Supreme State Audit Institution, followed by the Procurement Advocate and the High Inspectorate for Declaration of Audits and Assets.

3.1. The Supreme State Audit Institution

This section analyses the Supreme State Audit Institution. The analysis focuses on the legacy of the SSAI and on its transformation to an institution which complies with the international norms and standards of auditing. Then the mandate, jurisdiction, and independence of the SSAI are analysed based on the legal and constitutional provisions, concluding with the analysis of the implementation of the legislation and the performance of the SSAI.

3.1.1. Establishment

The SSAI was first established in 1992 as an institution formally independent from the executive branch.⁷⁸ However, the legislation and practice were not in line with international standards of external auditing institutions in regard to the scope of the mandate and for its independence. Apart from the control of the state budget, the SSAI was involved in performing internal financial controls. In terms of independence the SSAI was

⁷⁵Order No.57, date 29.4.2011, "On the stipulation of the memorandum of understanding between the ministries and other institutions depending from these ministries that have the duties to take measures in the framework of the fight against discrimination and the Commissioner for the Protection from Discrimination"

⁷⁶ Focus Group Discussion with IOB Representatives, 13 October 2011

⁷⁷ Commissioner for Protection from Discrimination, "Annual Report, 2010"

⁷⁸Despite the fact that this institution existed in different forms during Communism and during the Monarchy in Albania, this study focuses on the democratic oversight institutions of the security sector and therefore the analysis of the SSAI starts with the approval of the SSAI law by the first pluralist Parliament in 1992.

closely linked to the government and the Chairman of SSAI continued to be an active member of the political party in power.⁷⁹

With the adoption of the new law in 1997 and of the Constitution in 1998 the SSAI began the transformation to align with the international standards of auditing. So, differently from the other IOBs, which initially were faced with the institutional building challenges, the SSAI challenges consisted in transforming and modernising the existing institutional culture and capabilities.

The international assistance and support has been of essential importance in this process. The Support for Improvement in Governance and Management (SIGMA) project and bilateral assistance, such as the twinning project with the National Audit Office of the United Kingdom and the Netherlands Court of Audit, have helped the SSAI improve its administrative capacities and performance and design a new Strategic Development Plan for the period 2009-2012.

With Albania's membership into NATO the SSAI is regularly represented in the International Board of Auditors for NATO which since 2006 applies International Public Sector Accounting Standards for auditing the spending of NATO budget.⁸⁰ This exchange will be another opportunity for the SSAI to further improve its standards of performance.

3.1.2. Constitutional and legal Framework

3.1.2.1 Mandate

The Constitution establishes the SSAI as the highest institution of economic and financial control of state institutions at central and local level.⁸¹ The SSAI has the authority to carry out the audit of all state institutions financed totally or partially by the state budget, including financial audit, performance audit and other specific audits such as legality, regularity, financial management, and performance aspects.⁸²

The main objectives of the SSAI are the proper and effective use of public funds, the development of sound financial management, and the audit of orderly execution of administrative activities.⁸³

3.1.2.2. Independence

The Constitution and the law on SSAI lay down provisions that guarantee the independence of the institution functionally, operationally and administratively. The Chairman of SSAI is elected and removed from office through a special procedure. The Chairman of the SSAI is appointed and dismissed by the Parliament upon proposal of the

⁷⁹ Official website of the SSAI, <http://www.klsh.org.al/mat.php?idm=80&l=a>, Accessed September 2011

⁸⁰ International Board of Auditors for NATO, http://www.nato.int/cps/en/natolive/topics_55937.htm, Accessed September 2011

⁸¹ Constitution of Albania, Article 162

⁸² Law No. 8270, date 23.12.1997, amended by Law No. 8599, date 01.6.2000, "On the SSAI"

⁸³ Law on SSAI, Article 6

President of the Republic for a seven years renewable term. The law provides the cases when the mandate of the Chairman of SSAI may be terminated.⁸⁴ The Chairman of SSAI is immune from prosecution equally to a member of the High Court. Conflicts over the competences of the SSAI and other state institutions may be referred to the Appeal Court.⁸⁵

To further strengthen its independence the law stipulates the SSAI as a depoliticized institution. The Chairman and the employees of the SSAI are banned from participating in political activities.⁸⁶

The SSAI has its own budget, provided from the state budget and approved by the Parliament. The Chairman of SSAI is independent in the management of the financial and human resources and the planning of the activity of the institution.

The SSAI is accountable to the Parliament and presents a yearly report on the activity of the institution.⁸⁷

However the law needs further adjustments to be fully in line with international standards in several technical aspects including the reduction of the number of criteria for the dismissal of the Chairman of the SSAI.⁸⁸

3.1.2.3 Jurisdiction and the security sector

No security sector institution is excluded from the jurisdiction of the SSAI. It has the authority to control the financial activity of all state institutions, including the security sector. The SSAI has the right to access to all information it deems necessary to have, in order to carry out its tasks.⁸⁹ In addition it has the authority to address questions to employees and to get access to premises while performing audit activities. In order to protect the classified information the law provides that the financial activities that are classified as state secret are controlled only by staff authorised by the Chairman of the SSAI who in turn reports the findings to the permanent Committee on Economy and Finances.⁹⁰

3.1.2.4 Implementation of the legislation

Since 1998 the SSAI has increasingly become a stable institution for the last fourteen years. There term in office of the first Chairman was normally terminated and the election

⁸⁴ The mandate of the Chairman of SSAI ends only in the case he resigns, is convicted of a criminal offense by final court verdict; is absent from duty for more than six months, is declared mentally or physically incapacitated to perform his duties by final court verdict; is charged with another duty which is incompatible with the incumbent function.

⁸⁵ Law on SSAI, Article 5

⁸⁶ Law on SSAI, Articles 12 and 20

⁸⁷ Constitution of Albania, Article 164

⁸⁸ "Support for Improvement in Governance and Management, 'Albania External Audit Assessment' May 2009, <http://www.oecd.org/dataoecd/0/56/43910245.pdf>, Accessed in September 2011

⁸⁹ Law on SSAI, Article 17

⁹⁰ Law on SSAI, Articles 21, 22

of the second Chairman went through smoothly and the candidate was supported by both the majority in Parliament and the opposition.⁹¹

Since 2008 the operational independence of the SSAI has increased as procedure for the proposal of the budget has excluded the government. The draft budget is proposed by the SSAI to the permanent Committee on Economy and Finances (CEF) which presents it for approval to the Parliament.

The total number of staff in the SSAI is 160, of whom 118 are auditors. With regard to the quality of staff the institution does not have problems with recruiting highly qualified people while the office space is considered to be insufficient.⁹² The SSAI considers getting the necessary number of staff as one of its main objectives, along with the improvement of human resources and the management systems.⁹³

The SSAI has regularly reported to the Parliament on the implementation of the state budget and on its activities. The reports include references of financial and procedural irregularities that have emerged from controls of security sector institutions and recommendations issued by the SSAI. From the analysis of the reports and the information received from the SSAI no problems are revealed in controlling the security institutions. In order to get access to the classified documents the Chairman of the SSAI and the auditors who have access to the security institutions are vetted and provided with cleared with Personnel Security Clearances.⁹⁴

3.1.3 Performance of the SSAI

As discussed earlier the SSAI challenge has been the transformation and the modernization of the instituting along with ensuring the necessary independence. Each year the Chairman of the SSAI presents two reports to the Parliament: an activity report in spring and a report on the execution of the budget in autumn. The reporting format and the information have improved in particular since 2008.

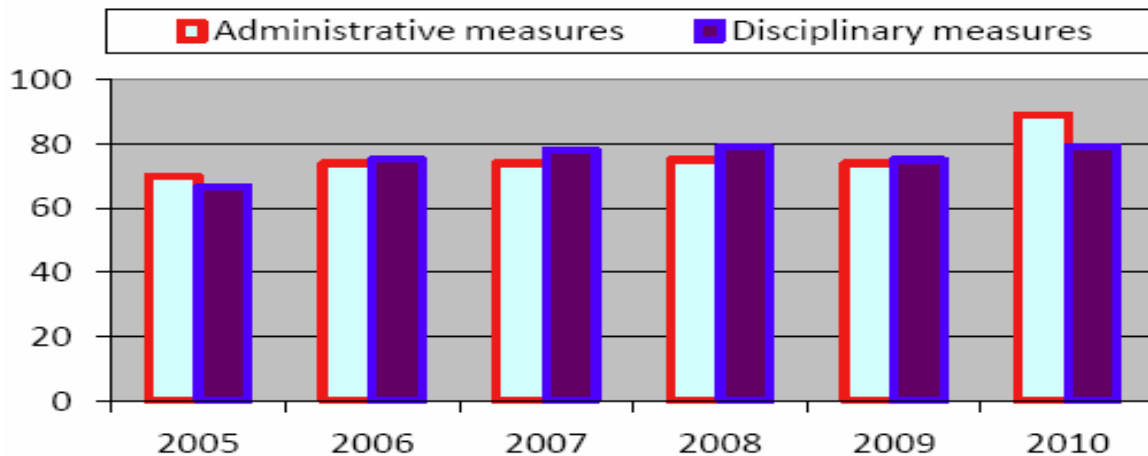
The reports contain information on financial irregularities found in the controls of the security institutions and the respective sanctions or recommendations that are proposed for each case. The acceptance rate of the recommendations issued by the SSAI for administrative and disciplinary measures has increased (Graph 3). It has not been possible to obtain records on the implementation of the recommendations by the security institutions but since the reports do not contain specific complaints for these institutions the rate should fall within the margins presented in the graph.

⁹¹ It must be said that the term in office of the current SSAI Chairman ends on the 28 October 2011, so it will be interesting to note how the election of the future Chairman will go.

⁹² SIGMA, "Support for Improvement in Governance and Management, 'Albania External Audit Assessment'" May 2009, <http://www.oecd.org/dataoecd/0/56/43910245.pdf>. Accessed in September 2011

⁹³ State Supreme Audit Institution, "Strategic Development Plan of the SSAI 2009-2012", <http://www.klsh.org.al/doc/20091224103949PlaniStrategjikiZhvill.2009-2012.pdf>, Accessed in October 2011

⁹⁴ According to information received from the Classified Information Security Directorate.



Graph 3: The acceptance rate of the recommendations issued by the SSAI during the period 2005-2010

Source: Compiled with data from the SSAI reports to the Parliament.

In addition to the auditing activity the SSAI regularly assesses the performance of the internal audit of the security sector institutions.

One area which is not reflected in the reports is the control of the funds used for national security purposes and which spending is not made public. Based on information received from the SSAI for the purpose of this research, the SSAI has conducted periodical controls on the spending of classified budget to all the security institutions in accordance with the medium term and yearly auditing calendar.⁹⁵ However the analysis of the reports presented to the Parliament reveals no evidence that the SSAI has controlled this part of the budget. The same finding emerges from the analysis of the minutes of the questions and answers sessions of the Chairman of the SSAI with the members of the CNS after the report.

The most recent reports reveal some progress seems in reporting on these controls. In the 2009 report the SSAI reported that the Ministry of Defence, the Ministry of Interior and the State Intelligence Service had spend ‘considerable funds’ for contracts related to ‘vital state interests’.⁹⁶ The SSAI had identified that such funds were used in the complete absence of bylaws to define the procedures that these institutions should follow and warned of the risk for potential misuse of the funds. This sparked the reaction of the Council of Ministers which has issued an act to regulate the procurement under classified provisions.⁹⁷ However the last report of the SSAI activity for 2010 contains no evidence on whether the situation has been improved after the adoption of this act.⁹⁸

⁹⁵ Written information provided by the SSAI

⁹⁶ Supreme State Audit Institution, “Report of the activity of the SSAI to the parliament for 2009”, p.37

⁹⁷ Council of Ministers, Decision No. 121, date 2.2.2009, “On the Information Classified as ‘State Secret’ in the industrial field”

⁹⁸ Supreme State Audit Institution, “Report of the activity of the SSAI to the parliament for 2009”

3.2. The Procurement Advocate

This section discusses the institution of the Procurement Advocate (PA). Firstly it looks at the legal framework and the establishment of this institution in 2006, analyses the mandate, the institutional capabilities and the performance of the PA.

3.2.1. Establishment and legal framework

The Procurement Advocate (PA) was established as an independent institution by the Law on Public Procurement (LPP),⁹⁹ as amended.¹⁰⁰ The PA is elected by the Parliament upon proposal by the Council of Ministers and has a five years mandate subject to renewal.¹⁰¹

The PA's scope is to safeguard the rights and legal interests of bidders and suppliers participating in public procurement, concession¹⁰² and auction¹⁰³ against illegal actions or omissions by contracting authorities. In fulfilment of these functions, the PA monitors and investigates the performance and the completion of the administrative procedures in accordance with the applicable laws and regulations.

The monitoring and investigating of public procurements undertaken by the PA also applies to the security sector institutions. Nevertheless, based on the law provisions on public procurement, the PA has no rights to investigate the procurement procedures when they may threaten national security or when dictated by State's essential interests.¹⁰⁴ These law provisions have been addressed in the decision of the Council of Ministers for the execution of procurement of goods, work and other services that concern the security of information classified as 'State Secret' in the industrial field.¹⁰⁵ Based on this decision the Classified Information Security Directorate (CISD) will be in charge for the control of procurement procedures in accordance with the applicable laws and regulations.

Considering the particular nature and the specifics of the security sector, the experience of Western European countries shows that the excessive secrecy surrounding the purchase of particular items of equipment in the defence field can provide the cover for lax financial control, lavish and unnecessary expenditure, and corruption.¹⁰⁶

In addition, PA can issue recommendations to Contracting Authorities (CA) and recommend proposals for change, amendments and/or improvements to the laws. Since its establishment in 2007, the PA has reported every year to the Parliament and every three months to the Monitoring Unit of Independent bodies operating recently by the Parliament.

⁹⁹ Law No. 9643, date 20.11.2006, "On Public Procurement", Article 14.

¹⁰⁰ Law No. 9800, date 10.9.2007, Law No. 9855, date 26.12.2007, Law No. 10170, date 22.10.2009, and Law No.10309, date 22.07.2010

¹⁰¹ Law No. 9643, date 20.11.2006, "On Public Procurement", Article 15.

¹⁰² Law No. 9663, date 18.12.2006, "On concessions", amended, Article 7

¹⁰³ Law No. 9874 date 14.02.2008, "On the public auction "

¹⁰⁴ Law No. 9643, date 20.11.2006, "On Public Procurement", Article 5 and 6.

¹⁰⁵ Council of Ministers, Decision No. 121, date 02.02.2009, "On the security of the information classified 'state secret' in the industrial field"

¹⁰⁶ DIFID, "*Understanding and Supporting Security Sector Reform*", 33

http://www.ssrnetwork.net/uploaded_files/4033.pdf. Accessed in October 2011

In its 2010 report the PA states that most of the recommendations addressed to the CA have been taken into consideration by the later.¹⁰⁷

On the contrary to the previous years, in the 2010 report the PA has not reported any problematic related to security sector institutions identified while reviewing complaints and monitoring public procurement procedures of CA¹⁰⁸. While in the 2008¹⁰⁹ and 2009¹¹⁰ report the PA has highlighted some issues related to the public procurement of Ministry of Defence, Ministry of Interior, State Informative Service and the General Directorate of Prisons concerning the e-procurement platform efficiency, the lack of cooperation with the PA while reviewing the relevant documentation, delays in the performance of procurement procedures, lack of compliance with the legal framework in drafting of standard tender documents, etc. Furthermore the PA has stated that no criminal claim has been filed to the public Prosecutors Office for any CA.

3.2.2. Capabilities

The institution of PA has his own independent budget approved by the Parliament. Compared to the previous year, the 2010 budget for this institution has been reduced. The number of staff was 14 in 2010 instead of 15, as provided by the decision of the Parliament.¹¹¹ The insufficient budget allocated to this institution may affect the quality and performance in due time of the monitoring and investigation procedures.¹¹²

It is important to highlight that in the report presented to the Economy and Finance Committee, PA has stated the need for more staff to perform its activity effectively.¹¹³ Moreover, the ongoing training of the staff is a priority of the PA.

3.2.3. Performance

Although it has been recently established, the PA has been active and involved in several complaints from the economic operators participating in public procurement procedures. Nevertheless, during 2010 the PA has received a significantly lower number of complaints compared to 2009. PA concluded that the reduction of complaints is mostly affected by the consolidation of e-procurement procedures introduced by the Albanian Government that has reduced the opportunities for corruption, increased the competition and transparency of public procurement procedures.¹¹⁴

¹⁰⁷ Procurement Advocate, "Report to the Economic and Finance Committee, 2011"

¹⁰⁸ Procurement Advocate, "Annual Report to the Parliament, 2010"

<http://www.avp.gov.al/ppadv/AnnualReports.aspx>, Accessed in July 2011

¹⁰⁹ Procurement Advocate, "Annual Report to the Parliament, 2008"

¹¹⁰ Procurement Advocate, "Annual Report to the Parliament, 2009"

¹¹¹ Parliament of Albania, Decision No.116, date 23.7.2007, "On the approval of the structure and staff of PA", amended

¹¹² Focus Group Discussion with IOB Representatives, 13 October 2011.

¹¹³ Procurement Advocate, "Report to the Economic and Financial Committee, 2011"

¹¹⁴ Procurement Advocate, "Annual Report to the Parliament, 2010"

On the other hand, the statistics show that PA has carried out more inspections in 2010 compared to 2009.¹¹⁵ Most of these inspections have been initiated on a random basis¹¹⁶. These results constitute an indicator of the proactive role of the institution, aiming to achieve the fulfilment of the duties as provided by LPP, as well as the recommendations in the resolutions issued by the Parliament. In this respect, there is no evidence that showing that any of the security sector institutions has been involved in the inspection carried out by the PA. In the frame of public information and transparency, PA regularly updates its official website and enables access to the online registry of complaints, annual reports and relevant legislation.

3.2.4. Achievements, contributions and challenges

The adoption of the LPP and the establishment of PA have contributed to the strengthening of the general principles of transparency, equal treatment, and non-discrimination in the field of public procurement. In this regard, as a result of the e-procurement platform and the consolidation of the monitoring activity of public procurement procedures the number of complaints submitted to the PA has been reduced.¹¹⁷ Furthermore, the Procurement Advocate and its recommendations become more helpful in a procurement process since recommendations serve as positive pressure for CA representatives to be more responsible in administering procurement procedures.¹¹⁸

The analytical report of the European Commission has concluded that the legislative and institutional framework provides a good basis for development of an effective public procurement system in line with EU rules. Nevertheless, adequate capacity needs to be ensured in all public procurement bodies and clear definitions of responsibilities and cooperation mechanisms need to be established.¹¹⁹ While the report 'on monitoring the work of PA', reflecting the economic operators opinion, pointed out that the establishment of the PA was in itself an improvement and essential to protect the economic operators rights in public procurement procedures.¹²⁰

As mentioned above, one of the major challenges during the performance of the monitoring and investigative functions is the insufficient budget allocated to PA and the training and qualification of human resources. Therefore, in order to overcome these difficulties, PA may be required to reorganize its internal resources in order to maximize efficiency and succeed in the performance of its tasks. The reduction of budget for PA may

¹¹⁵ In 2010 PA carried out 93 inspections and in 2009 only 59. PA Annual report 2010.

¹¹⁶ Procurement Advocate, "Annual Report to the Parliament, 2010"

¹¹⁷ Procurement Advocate, "Annual Report to the Parliament, 2010"

¹¹⁸ Centre for Development and Democratization of Institutions, "Monitoring the work of the Procurement Advocate" Final Report, March 2011.

http://albania.usaid.gov/skedaret/1304066543-ProcurementAdvocate_En.pdf, Accessed in September 2011,

¹¹⁹ Commission of European Communities, "Analytical report accompanying the Communication from the Commission to the European Parliament and the Council, Commission Opinion on Albania's application for membership at the European Union", 9 November 2010, Brussels

http://ec.europa.eu/europeaid/infopoint/publications/enlargement/47f_en.htm, Accessed in September 2011

¹²⁰ Centre for Development and Democratization of Institutions, "Monitoring the work of the Procurement Advocate" Final Report, March 2011.

http://albania.usaid.gov/skedaret/1304066543-ProcurementAdvocate_En.pdf, Accessed in September 2011

affect the special focus and attention to the procurement in the security sector, as a highly sensitive and strategic sector.

In addition, PA has been criticized in several occasions for its independence and politicization given that PA is proposed by the Council of Ministers. In this case the recommendation would be to involve in the process of determining and proposing the PA, the economic operators participating or interested in the public procurement procedures.¹²¹

Despite the specifics of the security sector institutions, PA considers the public procurement procedures performed by these institutions the same as in any other public institution. Therefore, in its annual reports PA does not reserve a special attention and focus to the procurement in the security sector.

Another important issue to highlight regards to the activity of PA. Since the LPP does not regulate the procurement in the purchase of ammunition, weapons, and services in the military and defence field, PA may not monitor and investigate such procurement procedures. As a result, the principle of transparency and accountability may be hampered leading to corruption, abusive and illegal practices. In this case the recommendation would be to amend the existing legislation in force in order for the PA to monitor and investigate these procurement procedures.

3.3. The High Inspectorate for Declaration of Audits

This section assesses the role of the High Inspectorate for Declaration of Audits and Assets (HIDAA), as an independent oversight and control body in relation to security sector institutions. The analysis will focus on the context in which the institution was created, the Constitutional and/or legal framework through which HIDAA functions, the capabilities of HIDAA, its performance and the major contributions of this institution and on its problems and future challenges.

3.3.1. Establishment

HIDAA was established in 2003 by the Parliament to supervise the enforcement and practicing of two laws regarding the fight against corruption, the law on declaration of assets and that on conflict of interest (since 2005).¹²² The law on declaration of assets empowers HIDAA to administer the declaration of assets, financial obligations and the periodical and to conduct full audits of these declarations. HIDAA collaborates with audit structures and other institutions responsible for the fight against corruption and the economic crime when fulfilling the tasks appointed to it by the law.

¹²¹Ibid. This is also one of the recommendations of that resulted from the report on the monitoring of the PA work.

¹²²Law No. 9049, date 10.4.2003, "On the Declaration and Audit of Assets, Financial Obligations of the Elected and certain Public Officials" and, Law No. 9367, date 7.4.2005, "On the Prevention of Conflict of Interest in the Exercise of Public Functions"

With the adoption of the law on conflict of interests in 2005, HIDAA is the central responsible authority in this regard. Its competences were extended to include the leading and improving of policies regarding; offering technical assistance to advice and support law initiatives undertaken by public institutions for preventing conflict of interest; monitoring, auditing and evaluating the practicing of this law.¹²³

3.3.2. Legal Framework

There are two Laws that govern the functioning of HIDAA. Law No.9049 sets the procedures and rules for the declaring and controlling of the financial assets and the legitimacy of the means by which they were created, for elected officials, public servants, their families, and the persons related to them.¹²⁴ The Law on conflict of interest adopted in 2005 provides HIDAA also with the relevant powers to conduct controls and other preventive activities regarding the conflict of interests

3.3.2.1. Mandate

The General Inspector (GI) is appointed by the Parliament upon proposal by the President, has a five years mandate, and enjoys the same privileges and payment as High Court members.¹²⁵ The GI leads HIDAA in controlling the declarations of assets and the legitimacy of their sources declared by the subjects to this law and notifies case by case the President, the Council of Ministers, the Prime Minister and the directors of central institutions regarding irregularities verified on the declarations of assets handled by employers.¹²⁶ HIDAA competences as identified by Article 17 of the same provision include exercising direct control on the declarations addressed to it, gathering of data, exercising direct controls and conducting investigative and administrative investigations.

With the adoption of the conflict of interest law,¹²⁷ HIDAA is responsible for preventing and avoiding the conflict of interest among officials exercising public duties. This law has been amended by means of another law.¹²⁸ Within the framework of conflict of interest, the GI is responsible for managing and improving the polices and mechanisms of preventing and avoiding conflicts of interest, offering technical assistance to advise and support legal and sub-statutory initiatives undertaken by the public institutions for the prevention of conflicts of interest; strengthening capacities for the administration of public institutions regarding the prevention of conflicts of interest; counselling particular officials, superiors, and superior institutions, at their request, about specific cases of the appearance of conflict of interests as well as on the periodical registration of interests.¹²⁹ Officials that

¹²³Law No. 9367, Articles 41 and 42.

¹²⁴Law No. 9049, Article 1.

¹²⁵Law No. 9049, Articles 11 (2) and (3)

¹²⁶ Law No. 9049, Article 15.

¹²⁷Law No. 9367, Article 43.

¹²⁸Law No. 9475, date 9.2.2006, "On some amendments and additions to the law on the conflict of interest in the excise of public functions"

¹²⁹Law No. 9367, Article 43.

must comply with the law on conflict of interest law are defined as the same as those comprised by Article 3 of Law No.9049.

3.3.2.2. Independence

The independence of the GI of HIDAA is defined by means of Article 13 of Law 9049 that specifies that the GI during the exercise of its duties shall not perform any other public function, shall not perform any other income generating activity and shall not be a member of any political party. So far no serious cases of non-respecting of such criteria have been seen in this regard.

3.3.2.3. Jurisdiction over security sector institutions

Regarding security sector officials, the law specifies that the obligation for declaration of financial assets and the source of their creation is valid for Ministers and vice ministers, Directors of Directorates and Commanders of AF in the Ministry of Defence (MoD) and for the State Intelligence Service (ShiSh), Prosecutors at all levels, general directors, directors of directorates, and chiefs of Stations at central and regional level of the State Police (SP).¹³⁰ Security Sector Officials that must comply with the law on conflict of interest law are defined as the same as those comprised by Article 3 of Law No.9049.

3.3.3. Capabilities

The organizational structure of HIDAA is appointed by the GI, its employers enjoy the status of civil servants, and it has an independent budget approved by the Parliament.¹³¹ The actual structure of HIDAA is fulfilled and comprises 45 employers, from which 11 High Inspectors and 11 vice High Inspectors. They are organized in two main sections, one dealing with the verification of assets and the other with the conflicts of interests.¹³² FG discussions revealed that HIDAA needs more internal and external capacities for strengthening investigations as well as for improving communication channels in relation to assets of officials located abroad.¹³³

3.3.4. Performance and implementation of the legislation

During 2008 HIDAA, aiming to strengthen its investigative capacities for fighting corruption has signed cooperation agreements with the General Directorate of SP and with the General Prosecutor's Office. Moreover, in accordance with Articles 17 and 18 of Law No.9367, HIDAA has undertaken full controls for the declarations of 642 officials out of

¹³⁰Law No. 9049, Article 3 (a), (ç), (d) and (e)

¹³¹Law No. 9049, Article 16.

¹³² Official Letter of HIDAA to IDM, date 26. 09. 2011

¹³³Focus Group Discussion with IOB Representatives, 13 October 2011.

which 152 declarations were selected by lottery.¹³⁴ From these, 25 belong to security sector officials including 14 prosecutors, 2 officials from the MoD, 6 officials from SP, and 3 from ShISh.¹³⁵

During 2009 HIDAA conducted trainings with representatives from public institutions and Responsible Authorities (RA) for raising awareness on prevention and avoiding of the conflict of interests among which were also officials from the MoI regarding security sector institutions.¹³⁶ Moreover, HIDAA after the appropriate controls of declarations after living the function has applied fines for 11 former subjects including also one former director at the MoD.¹³⁷ HIDAA's list of declarations selected by lottery for full control for 2009 comprised 165 officials, 14 of them belonging to security actor institutions (12 prosecutors, 1 MoD official, and 1 MoI official).¹³⁸

In 2010, HIDAA, in cooperation with the RA of the MoD have identified 10 suspected cases of conflict of interests within this ministry.¹³⁹ For 2010, the list of declarations for full control by HIDAA includes 190 officials 30 of them belonging to security sector actors (17 Prosecutors, 4 SP officials, 3 ShiSh officials, 1 former official at the MoD, and 3 actual officials at the MoI).¹⁴⁰ In 2011, 188 subjects were selected by lottery for full control from which 28 of them belong to security sector including 16 Prosecutors, 7 SP officials, 3 MoD officials, 1 MoI official and 1 ShiSh effective.¹⁴¹

Generally, HIDAA-s annual reports follow a certain structure that is improved from year to year. However, they mainly provide statistics of all kinds making no concrete reference to any specific sector (ex. Agriculture, Security etc) which makes it difficult to conduct a review by sector by means of such reports. Regarding security institutions, as shown also by the evidence considered, HIDAA exercises its functions also in relation to this sector. HIDAA treats security sector institutions in the same way as it does with other institutions and no distinction by nature or by any other kind exists in this regard. Moreover, HIDAA representatives stated that the distinction of security sector as a proper section is something premature for the moment.¹⁴²

¹³⁴ High Inspectorate for the Declaration of Audits and Assets, "Annual Report to the Parliament, 2008"
<http://www.hidaa.gov.al/raport-2008/?lang=en>, Accessed in October 2011

¹³⁵ "The Names of 152 officials subject to verification of assets", *Albania Newspaper*, 27 March 2008
<http://www.gazeta-albania.net/news.php?id=16092>, Accessed on October 2011

¹³⁶ High Inspectorate for the Declaration of Audits and Assets, "Annual Report to the Parliament, 2009"
<http://www.hidaa.gov.al/raport-2011/?lang=en>, Accessed in October 2011

¹³⁷ HIDAA website, "HIDAA fines 11 subjects for 'delays in declaration"
<http://www.hidaa.gov.al/22-nentor-2009/>, Accessed on October 2011

¹³⁸ Sulçe, Shaban. "166 officials will be fully investigated by HIDAA", *Albania Newspaper*, 30 April 2009,
<http://www.gazeta-albania.net/news.php?id=16092>, Accessed in October 2011.

¹³⁹ High Inspectorate for the Declaration of Audits and Assets, "Annual Report to the Parliament 2010"
<http://www.hidaa.gov.al/raport-2010/?lang=en>, Accessed in October 2011.

¹⁴⁰ High Inspectorate for Declaration of Audits and Assets, "List of subjects selected by lottery for full control during 2010"
http://www.hidaa.gov.al/njoftime/subjektet_perzgjedhur_shorti_2010.pdf, Accessed in June 2011

¹⁴¹ High Inspectorate for Declaration of Audits and Assets, "List of subjects selected by lottery for full control during 2011",
<http://www.hidaa.gov.al/njoftime/te-perzgjedhurit-shorti-2011.pdf>, Accessed on October 2011

¹⁴² Focus Group Discussion of 13th of October 2011.

3.3.5. Achievements, contribution and challenges

The adoptions of the laws on declaration assets in 2003 and on prevention of conflict of interest in 2005 are perceived as significant steps in increasing the fight against corruption. They provide comprehensive regulations, clear rules, and duties, strict limitations of personal interest of politicians as well as of mid and high level officials in relation to their duties, severe administrative penalties, and linkage with criminal law.¹⁴³

HIDAA's mayor contribution has been the continuous exposing identifying and publicizing of cases of conflict of interest and irregularities regarding asset declaration.¹⁴⁴ In 2009, the signing of cooperation memorandums between HIDAA and FIU are considered as a successful step towards increasing the fight against corruption.¹⁴⁵ During 2010, HIDAA produced satisfactory results regarding taking administrative measures against civil servants failing to submit their declaration and notifying the Prosecutors' office in case of non-compliance with the laws.¹⁴⁶

HIDAA has no proper investigative means and it has to rely on other organs for conducting and finalizing its investigations. Moreover, cases sent to the Prosecution are not properly investigated or are suspended.¹⁴⁷ For instance, in 2009 from 14 requests for starting penal procedures referred to the Prosecution, 3 have been suspended all the three of them belonging to high rank officials and in 2010 from 18 cases presented to the Prosecution 7 have been suspended.¹⁴⁸ The difficulties HIDAA faces for investigation are reflected also in a recent request made to PAMECA for assistance when conducting investigations on the verifications of financial assets located abroad.¹⁴⁹ Although an important player in combating corruption HIDAA has limited resources to undertake extensive inspections and full audits of asset declarations by officials.¹⁵⁰ This shows that further strengthening of investigative capacities of HIDAA is needed for performing its functions as an independent oversight body.

¹⁴³ Casals and Associates and Claro Associates, "Albania: Report on Benchmarking and Draft Capacity Assessment", (2010), 59.

¹⁴⁴ SIDA, "Albanian Anti Corruption Study", (2008), 30
<http://www.aidharmonisation.org.al/skedaret/1203101753-SIDA%20Albania%20Anti-Corruption%20Study%20-%20Revised.pdf>, Accessed in October 2011

¹⁴⁵ Commission of European Communities, "Analytical report accompanying the Communication from the Commission to the European Parliament and the Council, Commission Opinion on Albania's application for membership at the European Union", October 2009, 46

http://ec.europa.eu/enlargement/pdf/key_documents/2009/al_rapport_2009_en.pdf, Accessed in June 2011

¹⁴⁶ Commission of European Communities, "Analytical report accompanying the Communication from the Commission to the European Parliament and the Council, Commission Opinion on Albania's application for membership at the European Union", 9 November 2010, Brussels, 23,

http://ec.europa.eu/europeaid/infopoint/publications/enlargement/47f_en.htm, Accessed in September 2011

¹⁴⁷ Gjipali Gledis, "Albania: Nations in transit 2011", 2011 Freedom house, 65.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Albania.pdf>, Accessed in October 2011

¹⁴⁸ HIDAA, "Annual Report to the Parliament, 2009" and HIDAA, "Annual report to the Parliament, 2010"

¹⁴⁹ HIDAA website, "Corruptive affairs Of 4 million Euros: In Albania they are fined with 2000 USD"
<http://www.hidaa.gov.al/11-qershor-2011>, Accessed on October 2011.

¹⁵⁰ Commission of European Communities, "Albania 2011 Progress Report. Accompanying the document Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and main challenges 2011-2012", October 2011, Brussels

http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/al_rapport_2011_en.pdf, Accessed in October 2011

Most of the institutions that are supposed to investigate the cases presented by HIDAA are themselves subjects to HIDAA inspections. Although not admitted by HIDAA representatives during FG discussions, there exists the fear that the concretization of HIDAA-s work could be undermined since it relies for enforcing its decisions on institutions subject to its control such as Prosecution, Police, and Judiciary.

The laws on declaration of assets and on conflict of interest comprise a large number of subjects and public officials. This raises concerns that HIDAA might not possess the proper organizational capabilities to address to the whole range of subjects. Therefore, the scope of the laws could be narrowed focusing on high ranking officials.¹⁵¹

Regarding security sector it can be said that the officials of this sector are not separately treated by HIDAA. Moreover, a separate treatment for security sector actors is considered as premature also by HIDAA itself during FG discussions. Considering the different nature of the sector and the specifics it involves it could be useful that in the mid-to-long term to create the premises for a separate sector within HIDAA that specifically deals with security sector institutions.

Year	Declarations selected by lottery	Security sector declarations selected by lottery
2008	152 (100%)	25 (16.45%)
2009	165 (100%)	14 (8.48%)
2010	190 (100%)	30 (15.79%)
2011	188 (100%)	28 (14.89%)

Table: Number of the assets declarations scrutinised by the HIDAA for the period 2008 to 2010

4. Conclusions

The IOB have become an important part of the democratic governance and play a crucial role in controlling and overseeing the implementation of the laws. However, their successful performance is strongly related to their independence. The findings of this research reveal that degree of independence varies.

One element that is easily identifiable is the procedure of the election of the heads of the IOB. Given that the IOB are monocratic institutions the appointment procedure is of key importance for their independence. The reports suggest that election procedure seems

¹⁵¹ PACA, “*Technical Paper, Summary conclusions following the meeting between the PACA Team and the High Inspectorate for the Declaration and Audit of Assets amendments to/comments on the conflict of interest and asset declarations laws*”, 2010, 4
<http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/Technical%20Papers/1917-PACA-TP34-HIDDA-CoI.pdf>

to determine also the relations of the IOB with the Parliament. The whole concept of the IOB lays in their independence from the executive branch which they are supposed to control. Therefore any involvement of the executive not only in the election procedure but also in the authority to issue normative acts or propose the budget, compromises their independence.

The table below presents the chronology of the establishment of the IOB and the election procedure and mechanisms (Table 2).

	SSAI	PsA	HIDAA	PA	CPPD	CPAD
Established	1997	1998	2003	2006	2008	2010
Immunity from prosecution	Yes	Yes	No	No	No	No
Nominated	By the President	By not less than one-third the MPs	By the President	By the Council of Ministers	By the Council of Ministers	Unspecified number of MPs
Elected	By absolute majority	By three fifths of votes of all the MPs	By absolute majority of all the MPs	By absolute majority	By absolute majority	By absolute majority of all the MPs
Dismissed	By two thirds of votes of all the MPs	By three fifths of votes of all the MPs	By absolute majority of all the MPs	By absolute majority	By absolute majority	By absolute majority of all the MPs
Dismissal proposed	By the President	Not less than one third of all the MPs	Not less than one third of all the MPs	Not specified	Not specified	Not less than one third of all the MPs

Table 2: Year of establishment and election mechanisms of the IOB

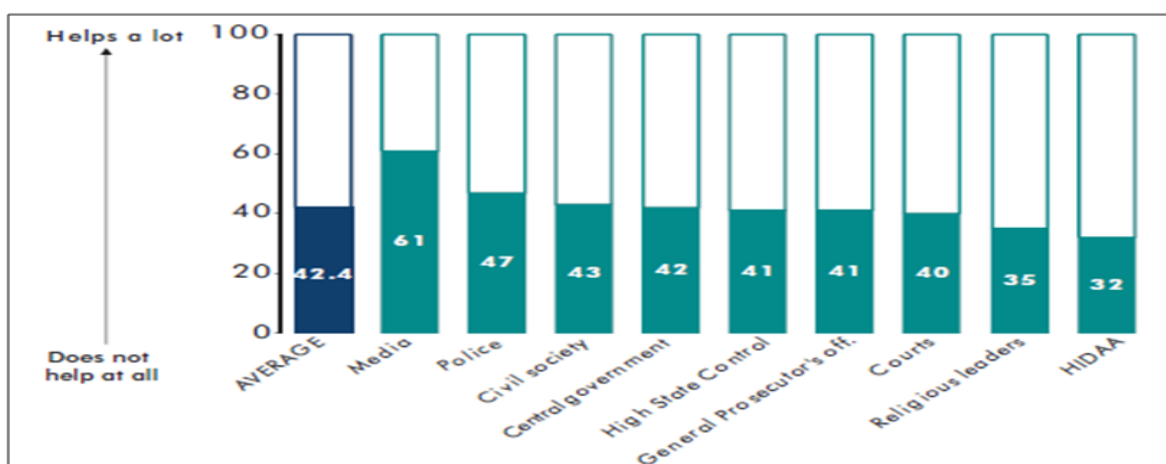
As it may be seen the election procedure varies in relation to the time of establishment of the institution. The election procedure of the IOB established earlier is more parliamentary and provides for more independence while for the institutions established later the executive branch is also involved. In addition for the latter established IOB there is a trend to abandon the qualified majority as an appointment mechanism.

Another important element that guarantees the independence of the IOB is their funding. It has been widely discussed by the media and the civil society that the executive tends to put pressure on the IOB through the budget. In this respect there are not so much variances as the budget of the IOB is proposed by the executive branch with the exception of the SSAI. Since 2008 the SSAI is the only IOB which procedure for the proposal of the budget has excluded the government.

As for the role of the IOB in controlling the security sector the performance of the IOB tends to be poorer than their overall performance. Apart from the above discussed problem this is related to the fact that traditionally the security sector has enjoyed a special position within the governance structures. As a consequence the oversight legislation, structures and practices have been the weakest and least defined for the security sector. The laws on the IOB have not tried to offset this inherent problem by including specific clauses for the control of the security sector.

A last point that is worth mentioning is the public perception of the IOB. There are only limited surveys and polls to measure this aspect but those available do not place the

IOB in any better position than the other state institutions. The graph below indicates the low expectation that the public places on the SSAI and the HIDAA in fighting the corruption (*Graph 4*).¹⁵²



Graph 4: The degree to which institutions help fight corruption

Source: "Corruption in Albania: Perception and Experience, Survey 2010, Institute for Development Research and Alternatives" (IDRA)

5. Recommendations

Below are presented some recommendations, drafted during the conducting of this research and from the discussion with interested stakeholders and IOB representatives.

1. The Parliament should revise the legislation on the independent oversight bodies in order to strengthen their independence and facilitate their interaction with the security sector.
2. The Parliament should establish better working relations and employ measurable mechanisms to assess the performance of the independent oversight bodies.
3. The independent oversight bodies should be able to propose their own budget to the Parliament.
4. The independent oversight bodies should focus more in the oversight of the security sector by taking into consideration the specificities of this sector, by improving the oversight tools and by developing more capable resources.
5. Apart from the complaints from the public, the independent oversight bodies should engage more in proactive actions.

¹⁵² In the graph is named as the High State Control

6. In general the independent institutions should do more to attract public attention and support.
7. Heads of independent oversight bodies should not be proposed/nominated by the executive branch, but by more impartial institutions such as the Parliament and/or the President in order to guarantee the division of powers and their impartiality in regard to executive.
8. The Parliament shall make more use of qualified majority voting when electing and/or dismissing the heads and the staff of independent oversight bodies.

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