



## *INTELLIGENCE ACCOUNTABILITY IN ALBANIA*

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### INTRODUCTION

Operating in secrecy, intelligence services are perceived not only as ‘mysterious’, but often as ‘uncontrollable’.

Efforts to establish democratic oversight and accountability mechanisms become more complex due to the unique difficulties linked to the nature of intelligence work. In the post-communist societies this process often becomes more complicated due to the lack of tradition in democratic governance.

Albania’s quest to make intelligence accountable currently stands at the heart of security sector’s priority requirements. To date, the legitimate need of intelligence services to operate in secret or the broad references to national security have often been used as justifications to exclude intelligence from democratic accountability.

The debate on ‘controllability of intelligence’, that has been sparked recently by allegations of misuse of funds and competences by the Military Intelligence Service (SHIU), and the distant positions of the actors involved, demonstrates the relevance of this issue and the need for sustainable and broadly accepted solutions.

This policy brief aims to facilitate the policy stakeholders’ discourse under a framework of alternatives targeting meaningful and effective intelligence

- The mandates and powers of the Albanian intelligence agencies have expanded significantly during the last decade, while intelligence accountability has remained stagnant.
- The accountability system should be improved to guarantee that intelligence services operate within the law and in an effective and efficient manner.
- Failure to establish effective control and oversight mechanisms may lead to abuses with intelligence powers, politicisation and encroachment on human right and the democratic processes.

accountability mechanisms as a key criterion for meeting democratic standards of intelligence governance. The Brief discusses the general trends and developments in Albania’s intelligence community, analyses the current accountability system and the extent to which it meets democratic standards and recommends the improvement of the accountability system based on broadly accepted international best practices. It maintains that the current debate may well serve as an opportunity to address the issue of intelligence accountability in Albania in a comprehensive way.

## DEVELOPMENTS AND TRENDS IN THE INTELLIGENCE COMMUNITY

Albania's intelligence community has evolved along three main reform waves, triggered by major political and security related developments.

The first reform was undertaken immediately after the fall of the communist regime. It overhauled the communist era security apparatus and provided the legal basis for regulating intelligence activities.

The second wave of reforms, that was mainly a result of the crisis that followed the collapse of the pyramidal schemes, detached the state intelligence service from the armed forces and removed its police powers.

Differently from previous reforms that were domestically driven and mostly linked to the democratization of the security sector, the third reform was externally driven. The war on terrorism following the 9/11 events, the need for structural adjustments to meet NATO membership standards and the EU's conditionality to tackle organised crime have been amongst the key reasons.

However, while external factors have been significant to shifting intelligence focus from traditional espionage and counter-intelligence activities to dealing mainly with non-state threats such as terrorism and organised crime, the institutional changes within the intelligence community have resulted largely from domestic dynamics.

The main reason, widely acknowledged by policy analysts and scholars, has been the dysfunctional relationship between the presidents and the prime ministers over the appointment of the directors of the State Intelligence Service (SHISH). This shared responsibility was in fact designed as a safeguard mechanism to avoid the concentration of power over control of intelligence. Another factor has been the ministers' tendency for developing

their own intelligence structures, which was mainly motivated by poor coordination with the main intelligence agency, the SHISH.

So, during the last decade there has been a constant shift in size and relevance within the intelligence community. The SHIU and other smaller intelligence agencies have been allocated more powers and resources while the SHISH position of being the key intelligence provider has shrunk. Currently, besides SHISH and SHIU, the intelligence community is composed of five other smaller agencies, placed under the ministries of Interior, of Justice and of Finances.

A problematical consequence of this trend is the increased intelligence activity inside the Albanian territory. The difficulty to conduct intelligence operations abroad, due to lack of resources and expertise, has pushed all the agencies towards domestic intelligence collection. This has led to the inevitable overlap among intelligence agencies and of intelligence and police, as some of these agencies have been empowered with law enforcement competences too.

This blurring of borders and functions between the intelligence agencies and intelligence and law enforcement bears the risk of repeating past errors. Experience of Albania and other countries has shown that excessive concentration on domestic intelligence inevitably leads to the collection of information on government opponents.

Without an effective accountability system in place intelligence services are inclined to identify more and more with the governing elites, on which they depend for resources and political support, and will be inclined to use the information collected through their operations as a means to gain their loyalty.

The risk of misuse of intelligence has become higher as new powers have been recently conferred to intelligence agencies to access internet communications and data.

## PATTERNS OF INTELLIGENCE ACCOUNTABILITY

Intelligence accountability in Albania has been a missed opportunity in all the three waves of reforms and the current accountability system has proved inadequate to ensure full and effective control and oversight of all intelligence agencies.

During the first wave of reforms, after the initial impetus to depoliticise intelligence and place it on statutory bases, the executive concentrated so much power that it left no space for the legislative and the judiciary to play their role in the process. Intelligence was politicised and went out of control during the 1997 crisis.

The second wave that began with the adoption of the Constitution in 1998 provided another opportunity to improve oversight. It stipulated shared responsibilities between the President and the Prime Minister and gave more powers to the parliament. Independent institutions were also established, namely the People's Advocate (PA) and the State Audit institution (SAI) with competencies to oversee intelligence regarding respect of human rights and control on the budget spending.

In addition to the Constitution, the Law on SHISH established the Inspector General (IG) to control the intelligence activities on behalf of the Executive and provided for SHISH to coordinate the intelligence activity of other services. To avoid abuses with basic human freedoms the law conferred to the Prosecutor General (PG) the competence to approve and control the use of special investigative measures. However, although this accountability system appears rather good on paper, in practice it has not worked that perfectly. Generally the above mechanisms were vaguely interpreted and their functioning has been limited to formal accomplishment of procedures as required by law.

Thus, the Members of the Parliament have never gone beyond the hearing of the annual

report presented by SHISH Director to the Parliamentary Committee on National Security (PCNS). The SAI has circumvented the scrutiny of SHISH finances while the Parliamentary Committee on Economy and Finances (PCEF) has never required for such scrutiny as provided by law. The PA has mostly dealt with complaints against SHISH by former employees but has not played any role in overseeing the SHISH activities regarding the compliance with the legislation on respect of human rights. Similarly the PG reports to the Parliament do not discuss at all how the PG fulfils the mandate on the control of the use of special measures of investigation.

With more agencies being involved in intelligence activities accountability has turned out to be thinner. The existing accountability system discussed above does not fully apply, even formally, to all the intelligence agencies. The mere fact is that since their establishment neither SHIU nor the other agencies have been subject, formally and regularly, to the full set of oversight mechanisms discussed above.

As lack of legislation has been identified as the main impediment, the parliament, with the OSCE's assistance, put forward in 2010 an initiative to adopt legislation to place all intelligence agencies under parliamentary oversight. Nevertheless the law failed to pass, and since then no political will has existed to revitalise this initiative.

In these circumstances, with the lack of adequate legislation and lack of any track record of good practice, the guarantees for success of any oversight initiative would be slim. Further, the lack of courage and experience by political elites to manage potentially embarrassing results makes this undertaking unlikely.

For these reasons, this Brief considers that the pressure produced as a result of the ongoing political debate can be turned into an opportunity to comprehensively address intelligence accountability with the aim to establish an effective control and oversight system.

## IMPROVING INTELLIGENCE ACCOUNTABILITY

Against the presented context, there appear two main issues that should be addressed. The first is the need to reform the intelligence community and redefine the intelligence's role within the national security system in the present political, economic and social context and the needs and aspirations of Albania for its future.

The second and immediate issue is the establishment of an adequate and balanced accountability system, capable of controlling and overseeing the intelligence agencies without preventing them from operating efficiently and fulfilling their mission. The resumption of the legislative initiative to adopt legislation on the oversight of all agencies that form the intelligence community can be an uncomplicated starting point of the process. However, differently from the initial draft law, which scope was to establish parliamentary oversight of all intelligent agencies the new initiative, should aim to establish an accountability system which is composed of parts that function as complementary to each other. In more practical terms the main challenge is the adoption of a system that harmonizes the political legitimacy of the parliament with the expertise and continuity of the specialised oversight bodies.

The compilation of good practices, prepared by the UN Special Rapporteur drawing upon practices as applied by states, international treaties, resolutions of international organizations and the jurisprudence of regional courts, can be a good resource in addressing this challenge.

Concerning the process, apart from the relevant state institutions, other stakeholders should be involved such as the media, academia and civil society. The participation of these actors would contribute to reduce the politicisation and ensure the incorporation of wider expertise.

*Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight*

**Practice 6:** Intelligence services are overseen by a combination of internal, executive, parliamentary, judicial, and specialized oversight institutions whose mandates and powers are based on publicly available law. An effective system of intelligence oversight includes at least one civilian institution that is independent of both the intelligence services and the executive. The combined remit of oversight institutions covers all aspects of the work of intelligence services, including their compliance with the law; the effectiveness and efficiency of their activities; their finances; and their administrative practices.

**Practice 7:** Oversight institutions have the power, resources, and expertise to initiate and conduct their own investigations, as well as full and unhindered access to the information, officials, and installations necessary to fulfil their mandates. Oversight institutions receive the full cooperation of intelligence services and law enforcement authorities in hearing witnesses, as well as obtaining documentation and other evidence.

**Practice 8:** Oversight institutions take all necessary measures to protect classified information and personal data to which they have access during the course of their work. Penalties are provided for the breach of these requirements by members of oversight institutions.

**Practice 22:** Intelligence-collection measures that impose significant limitations on human rights are authorized and overseen by at least one institution that is external to and independent of the intelligence services. This institution has the power to order the revision, suspension or termination of such collection measures. Intelligence-collection measures that impose significant limitations on human rights are subject to a multilevel process of authorization that includes approval within intelligence services, by the political executive and by an institution that is independent of the intelligence services and the executive.